DISTRICT COURT INDEX.

Relevant District Court Docket Entries 1
Relevant Court of Appeals Docket Entries 8
Complaint 11
Answer 14
Plaintiff's Answers to Certain of Defendant's Interrogatories 20
Affidavit of L. B. Dodds in Support of Plaintiff's Memorandum on Objections to Interrogatories 32
Subpoena Duces Tecum 34
Affidavit of L. B. Dodds in Support of Plaintiff's Motion to Quash Subpoena Duces Tecum 39
Transcript of Proceedings—Colloquy 41
Motion to Strike Paragraph 13 of Defendant's Answer. 48
Affidavit of L. B. Dodds in Support of Plaintiff's Motion to Strike 50
Plaintiff's Memorandum in Support of Its Motion to Strike Paragraph 13 of Defendant's Answer 52
Pre-Trial Stipulation 55
Affidavit of L. B. Dodds in Support of Plaintiff's Memorandum in Opposition to Defendant's Motion to Hold Plaintiff in Contempt 58
Substituted Motion to the Production of Documents... 60
Order on Production of Documents 61
Defendant's Motion for Leave to File Counterclaim.. 62

Affidavit of Francis W. Crotty 63
Counterclaim of Zenith 64
Plaintiff's Reply (Answer) to Defendant's Counterclaim 70
Stipulation with Reference to Documentary Evidence. 72
Stipulation with Reference to Description of Companies 90
Appendix III to Defendant's Pre-Trial Brief 91
Excerpt from Testimony of Samuel M. Thomas in Patent Trial 101

TRANSCRIPT OF PROCEEDINGS

ANTITRUST AND MISUSE ISSUES.

Colloquy 110
Opening Statement on Behalf of Defendant-Counterclaimant 113
Opening Statement on Behalf of Plaintiff-Counterdefendant 130

WITNESSES FOR DEFENDANT-COUNTERCLAIMANT.

Testimony of:

Dodds, Laurence B. (deposition) 141
Ruestow, Edward A. 278
Dodds, Laurence B. 316
Crotty, Francis W. 391
Wright, Joseph S. 440
Stevenson, Willis 495

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 1266

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,
vs.
HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

APPENDIX.

RELEVANT DOCKET ENTRIES IN UNITED STATES DISTRICT COURT.

11/20/59	Filed complaint and copy.
11/20/59	Issue Summons and copy with copy of complaint.
4/ 7/60	Filed answer.
4/15/60	Filed appearance of Laurence B. Dodds, atty. for pltff.
1/11/62	Filed motion to quash subpoena duces tecum—Affidavit of L. B. Dodds in support of pltff's motion to quash subpoena duces tecum and exhibits.

3/16/62	Enter order, ptlff: mo. to quash subpoena duces tecum overruled & certain limitations imposed, Austin, J. Mld. Ntcs. 3/20/62.
4/ 3/63	Pre-trial conference held and adjourned to May 22, 1963 at 9:00 a.m.—Austin, J.
5/ 9/63	Plaintiff's Memorandum in support of its motion to strike pars 13 of deft's Answer.
5/ 9/63	Fld Affidavit of L Dodds in support of pltff's Motion to strike and pltff's Motion for leave to file the same—
5/22/63	Fld Motion and affidavit of deft for leave to file counter-claim and *Counterclaim.*
7/23/63	Fld Pltf's Reply to Deft's counterclaim.
9/ 9/63	Order issues of patent and anti-trust separated. Petition for contempt order denied as to patent case and contd. generally as to anti-trust case. Cause contd. to Oct. 7, 1963 for trial of patent issue and contd. to Sept. 13, 1963 for ruling on pending motions. Austin, J.—Mld Ntcs. 9/10/63.
9/10/63	Motion pltf. to strike Para 13 of deft's answer is sustained, Austin, J., Mld. Ntcs. 9/11/63.
10/10/63	Cause called for trial of issue of patent infringement. Plaintiffs evidence heard in part. Trial adjourned to Oct. 11, 1963—Austin, J. Mld. Ntcs. 10/11/63.
10/21/63	Enter order further rebuttal heard. Plaintiff rests. Surrebuttal heard. Parties rest. Advisement—Lv to pltff to file post trial brief and suggested findings of fact and conclusions of law within 45 days. Leave to deft to file post trial brief and suggested findings of fact and conclusions of law within 45 days thereafter and leave to pltff to reply thereto within 20 days thereafter—Austin, J. Mld. Ntcs. 10/22/63.

2/17/64	Cause called for trial—Opening statements heard. Conuter-pltffs evid heard in part and trial adjourned to Feb. 18, 1964, Austin, J. Mld. Ntcs. 2/18/64.
2/25/64	Filed stipulation re description of companies contained in Appendix III to Zenith's Pre-trial brief.
2/25/64	Order—Further evid. heard for counterdefendant. Counterdefendant rests. Rebuttal heard. Parties rest. Arguments heard in part. Trial adjourned to 2/26/64. Austin, J. Mailed Notices 2/27/64.
2/26/64	Order—Further arguments heard and concluded. Advisement. Leave to counterplaintiff to file post-trial brief and suggested findings of fact and conclusions of law within 30 days. Leave to counterdefendant to file post-trial brief and suggested findings of fact and conclusions of law within 30 days thereafter and leave to counterplaintiff to file reply within 20 days thereafter. On motion to plaintiff, time to file reply with respect to patent issue extended to 3/26/64. Austin, J. Mailed Notices 2/27/64.
4/15/64	Filed defendant's Post Trial Brief on the Antitrust issues raised in the answer and counterclaim.
6/ 8/64	Filed Plaintiffs post trial brief on misuse and antitrust issues.
7/23 64	Filed Defendant's Post Trial Reply Brief on the Antitrust issues raised in the answer and counterclaim. (File E (Copy).
1/25/65	Enter Findings of Fact and Conclusions of Law. Draft. Austin, J. Cause continued to Feb.

	25, 1965 for entry of judg.—Austin, J. Ntcs. mld. 1/26/65.
2/11/65	Filed appearance of attorneys for plaintiff. Proof of Service and Affidavit re Rule GR 39.
2/15/65	Order continuing from 2/25/65 to 3/29/65 the date for submission of judgment in the above case, and permitting plaintiff to file prior to 3/29/65 such motions as it deems appropriate.—Draft—Austin, J. Ntcs. mld. 2/16/65.
3/19/65	Filed Notice re defendant-Counterclaimant's Proposed Final Judgment and Decree.
3/26/65	Filed motion for Withdrawal of Antitrust Findings and Conclusions and for other relief.
3/26/65	Filed Memorandum of Hazeltine Research, Inc. in support of its motion for withdrawal of Antitrust Findings and conclusions and for other relief.
3/26/65	Filed plaintiff's motion for withdrawal of Findings and Conclusions as to Misuse of Patents.
3/26/65	Filed Memorandum in Support of Plaintiff's Motion for Withdrawal of Findings and Conclusions, as to Misuse of Patents.
3/26/65	Filed Offers of Proof by Hazeltine Research, Inc. in support of Motion for Withdrawal of Findings and Conclusions, etc.
3/26/65	Filed Affidavit of Laurence B. Dodds with exhibit attached.
3/26/65	Filed Affidavit of David Westermann.
3/30/65	Enter order, cause called for hrg. on pltff's motion for withdrawal of findings of fact and conclusions of law as to antitrust issues and misuse—argts heard in part and hearing adjourned to March 31, 1965. Austin, J. Mld. Ntcs. 3/31/65.

3/31/65	Further argts. hd with respect to motion of Hazeltine for withdrawal of Findings of Fact and Conclusions of Law, etc. and hrg. adjourned to April 1, 1965. Austin, J.—Mld. Notices 4/1/65.
4/ 1/65	Further argts hd on motions of Hazeltine for withdrawal of Findings of Fact and Conclusions of Law on antitrust issue and misuse. Argts. concluded. Oral motions of Hazeltine for leave to file affirmative defenses and to dism. counterclaim for lack of proof & lv is granted to file said motions in writing within 5 days nunc pro tunc as of April 1, 1965. Evidence is reopened for the sole and limited purpose of submitting proof of damages as to Australia and England. Cause cont'd to June 1, 1965 for hrg of said proof. Counsel for Zenith to prepare partial judgment order and present same April 2, 1965, at 11 A. M.—Austin, J. Mld. Notices 4/2/65.
4/ 2/65	Filed defenses of Hazeltine Research, Inc.
4/ 2/65	Filed SPECIAL APPEARANCE for purposes of opposing entry of judgment against Hazeltine Corporation.
4/ 2/65	Filed Memorandum in Support of Special Appearance in opposition to entry of Judgment against Hazeltine Corporation.
4/ 2/65	Filed Motion of Hazeltine Research, Inc. for Dismissal of Counterclaim. Argts. hd on objs. to proposed order of Zenith for judg and argts hd with respect to certain stipulation and advisement. Cause cont'd to April 5, 1965 at 10:15 A. M. for ruling. Motion of Hazeltine to dis. counterclaim is denied.—Austin, J. Mld. Notices 4/5/65.

4/ 5/65	Filed Reply Memorandum of Hazeltine Corporation in Opposition to entry of Judgment against it.
4/ 5/65	Enter Judg and Decree—Deft—Counter-claimant recover of pltffs—counter-dfts. Hazeltine Corp., et al. the sum of $19,042,173.00 and costs and atty's fees Claims 1, 2 and 4 of U. S. Letters Patent No. 2,547,648 invalid etc. Pltff's complt dismd. Hazeltine Corp., et al enjoined, etc. Jurisdiction retained and further hrg cont'd to June 1, 1965.—Draft—Austin, J. Mld. Notices 4/6/65.
4/ 7/65	Filed Certified Copy, U. S. C. A. of order entered April 7, 1965. Ordered that the Emergency Motions are denied and further ordered that the petition for Writ of Mandamus is hereby denied.
4/13/65	Filed offer of Security by Hazeltine Corporation in connection with its Motion for Stay of Enforcement of Money Judgment.
4/13/65	Filed Offer of Security by Hazeltine Research, Inc. in connection with its Motion for Stay of Enforcement of Money Judgment.
4/19/65	Enter order granting stay of execution of judgment. Draft—Supersedeas bond of Hazeltine Research, Inc., et al. approved—Austin, J. Mld. Notices 4/19/65.
4/19/65	Filed Notice of Appeal of Plaintiff, Hazeltine Research, Inc., and of Hazeltine Corporation, respectively.
4/27/65	Filed certified copy of order entered April 26, 1965 by the U. S. C. A., 7th Circuit, denying petitions for writs of mandamus and prohibition in causes Nos. 15106 and 15107.
10/15/65	Further evidence heard for pltff counter-deft and adjourned to Oct. 18, 1965—Austin, J. Mld. Ntcs. 10/19/65.

10/20/65	Enter order—Pltff-counterdeft rests—Opening statements heard for deft-Counterpltff—Evidence heard—Deft-counterpltff rests—Rebuttal heard. Parties rest—Arguments heard—Cause adjourned to Oct. 21, 1965—Austin, J.—Mld. Ntcs. 10/21/65.
10/21/65	—Cause continued to Nov. 12, 1965 at 2:00 p.m. for hearing of further proof as to method of computation of Australian and English market shares —Austin, J. Mld. Ntcs. 10/21/65.
11/22/65	Evidence heard—Parties rest—Arguments heard in part and hearing adjourned to Nov. 23, 1965—Austin, J.—Mld. Ntcs. 11/23/65.
11/23/65	Further arguments heard and concluded—Leave to Hazeltine to file offers of proof within 20 days. Motion of Zenith for attys fees and costs under advisement and ruling reserved—Austin, J. Mld. Ntcs. 11/4/65.
11/30/65	Ordered—Defts motion to enter amended finding of fact and to enter final judgment entered and continued to Dec. 13, 1965 on motion of pltff motion of Hazeltine to dism counterclaim for lack of indispensable party is denied—Austin, J. Mld. Ntcs. 12/1/65.
12/ 9/65	Filed Memorandum of Hazeltine Corporation, appearing specially.
12/ 9/65	Filed Memorandum of plaintiff, Hazeltine Research, Inc., concerning form of proposed amended finding of fact XXXVI and proposed final judgment submitted by Zenith Radio Corporation on November 30, 1965.
12/13/65	Filed Offer of Proof on market share and damages (pltf).

12/13/65	Offer of Proof recd on behalf of Hazeltine together with certain affidavits in support thereof. Enter findings of fact and conclusions of law (Draft) Enter final judgment in favor of Zenith Radio Corp., deft-counterclaimant and against Hazeltine Corp., et al. in sum of $15,919,458 and costs and attys fees—Jurisdiction of this Court reserved for hearing on costs and atty's fees (Draft) Austin, J. Mld. Ntcs. 12/14/65.
12/29/65	Filed notice of appeal by Hazeltine Research, Inc. Mailed copy of notice of appeal to attys. for defts.
12/29/65	Filed notice of appeal by Hazeltine Corporation. Mailed copy of notice of appeal to attys. for defts.
12/29/65	Filed notice of appeal by Hazeltine Corporation. Mailed copy of notice of appeal to attys. for defts.

RELEVANT DOCKET ENTRIES IN UNITED STATES COURT OF APPEALS.

7/15/65	Filed original record on appeal.
7/23/65	Filed original and 4 copies of motion under rule 15(f) to vacate judgment, etc. service.
8/ 3/65	Filed original and 4 copies of answer to Hazeltine Corp. motion to vacate judgment, affidavit of McConnell.
8/ 6/65	Filed original and 4 copies of appellants motion for leave to file reply brief in support of its rule 15(f) motion to vacate judgment on jurisdictional grounds, affidavit and service (reply brief tendered is additional affidavit of L. B. Dodds).

8/16/65	Entered order that motion to vacate judgment be taken with the case.
2/18/66	Filed original and 4 copies of motion of appellant to consolidate with 15246-7 and for briefing of the antitrust issue, service (15563-4).
3/ 1/66	Entered order granting motions of February 18, February 24 and February 25, 1966 (15563-4).
7/ 6/66	Filed original and 4 copies of motion to correct record, stipulation (15246-7).
7/ 7/66	Entered order granting motion of July 6, 1966.
12/ 6/66	Filed original and 4 copies motion to vacate December 13, 1965 judgment on jurisdictional grounds and to incorporate herein prior Rule 15(f) motion to vacate April 5, 1965 judgment and briefs, affidavit and appendices filed in support thereof, service.
12/12/66	Filed original and 4 copies motion to correct omissions in record on appeal, affidavit and service and stipulation.
12/20/66	Entered order granting motion of December 12, 1966.
12/20/66	Filed, per order of December 20, 1966, supplemental record consisting of proposed findings of facts and conclusions of law with respect to the defense of misuse and defendant counterclaimant under the antitrust laws and p. 951 of trial transcript of proceedings.
12/13/67	Entered judgment order.
12/26/67	Filed original and 4 copies motion to stay mandate, affidavit and service.
12/27/67	Filed original and 4 copies motion for extension of time to file petition for rehearing to January 3, 1968, affidavit and service.
12/27/67	Entered order granting motion of December 26, 1967.

12/27/67	Entered order granting motion of December 27, 1967.
1/ 3/68	Filed 30 copies of petition for rehearing en banc.
1/23/68	Entered order denying petition for rehearing or reconsideration en banc (Judge Fairchild voted for rehearing en banc "limited to one issue").
1/26/68	Filed original and 4 copies motion to stay mandate, affidavit and service.
1/26/68	Entered order granting stay of mandates.
2/23/68	Filed original and 4 copies motion to stay mandate, affidavit and service.
2/27/68	Entered order granting stay of mandates to March 27, 1968.

IN THE UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

Hazeltine Research, Inc.,
Plaintiff,
vs.
Zenith Radio Corporation,
Defendant.

Civil Action
No. 59-C-1847.
On Patent No.
2,547,648

EQUITABLE RELIEF SOUGHT. COMPLAINT FOR INFRINGEMENT OF UNITED STATES LETTERS PATENT.

To the Honorable the Judges of the United States District Court for the Northern District of Illinois, Eastern Division:

The Plaintiff for its Complaint alleges that:

1. Plaintiff, Hazeltine Research, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois.

2. Plaintiff is informed and believes, and therefore, avers, that Defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and has a regular and established place of
6 business and has committed the acts of infringement
hereinafter alleged within the Northern District of Illinois, Eastern Division.

3. This is a Civil Action arising under the Patent Laws of the United States for infringement of United States Letters Patents.

4. On April 3, 1951, United States Letters Patent No. 2,547,648 was duly and legally issued to Plaintiff, as as-

signee of Arthur V. Loughren, the inventor thereof, for an invention in Automatic-Contrast-Control System For Television Apparatus, and, since such assignment, Plaintiff has been, and still is, the owner of said Letters Patent No. 2,547,648.

5. Plaintiff does not manufacture or sell television apparatus but, through its own laboratories and those of an affiliate company, conducts an extensive research and development program in the radio and television fields and licenses others to manufacture radio and television apparatus embodying the inventions resulting from such program; further, Plaintiff and its affiliate company have expended large sums of money in making the invention and improvements described and claimed in said United States Letters Patent No. 2,547,648 of benefit to its licensees and to the public and profitable to itself and they have been put into extensive use by manufacturers under license from Plaintiff.

7 6. Defendant has been selling and using, and continues selling and using television receivers embodying automatic-contrast-control systems for television apparatus and has been, and still is, aiding, abetting, and contributing to the manufacture, sale, and use of such television receivers by others.

7. The automatic-contrast-control systems embodied in the television receivers referred to in Paragraph 6 have been, and still are, utilizing the invention of said Letters Patent No. 2,547,648 and the aforesaid manufacture, sale, and use constitutes an infringement of said Letters Patent No. 2,547,648 by Defendant and will continue to do so unless enjoined by this Court.

8. Plaintiff has given notice to Defendant of its infringement of aforesaid Letters Patent.

9. Plaintiff is informed and believes, and therefore avers, that, notwithstanding aforesaid notice, Defendant

has continued and is continuing and threatens to continue said infringement in defiance of Plaintiff's rights as hereinabove alleged.

Wherefore The Plaintiff Prays:

1. That an injunction may issue against further in-
8 fringement by Defendant and all those controlled by
Defendant.

2. That an accounting be ordered for damages suffered by Plaintiff by virtue of aforesaid infringement.

3. That the cost of this Action be assessed against Defendant.

4. That Plaintiff may have such other and further relief as the equities of the case may require and as may to this Court seem meet and just.

Hazeltine Research, Inc.,
Mason, Kolehmainen, Rathburn and Wyss,
By M. Hudson Rathburn,
20 North Wacker Drive,
Chicago 6, Illinois,
Attorneys for Plaintiff.

Chicago, Illinois

Dated:

Of Counsel:
M. Hudson Rathburn,
20 North Wacker Drive,
Chicago 6, Illinois.
E. A. Ruestow,
59-25 Little Neck Parkway,
Little Neck 62, New York.

16 In the United States District Court.

* * (Caption—59-C-1847) * *

ANSWER.

Now comes defendant Zenith Radio Corporation and, for its answer to the complaint herein, says:

1. The allegations of Paragraph 1 are admitted.

2. Answering Paragraph 2, defendant admits that it is a corporation duly organized and existing under the laws of Delaware, and that it has a regular and established place of business within the Northern District of Illinois, Eastern Division. The other allegations of Paragraph 2 are denied.

3. The allegations of Paragraph 3 are admitted.

4. Answering Paragraph 4, defendant admits that United States Letters Patent No. 2,547,648 issued on April 3, 1951, but denies that such Letters Patent were duly

17 or legally issued. Defendant has no knowledge respecting the other allegations of Paragraph 4 and therefore denies them, leaving plaintiff to its proofs.

5. Answering Paragraph 5, defendant admits that plaintiff does not manufacture or sell television apparatus and further admits that plaintiff and a corporation affiliated with plaintiff conduct research in the radio and television fields and license others to manufacture radio and television apparatus. Plaintiff is without knowledge respecting the other allegations of Paragraph 5 and therefore denies them, leaving plaintiff to its proofs.

6. Answering Paragraph 6, defendant admits that it has sold and used and continues to sell and use television receivers embodying automatic-contrast-control systems. The other allegations of Paragraph 6 are denied.

7. The allegations of Paragraph 7 are denied.

8. Answering Paragraph 8, defendant admits that it has received from plaintiff a written charge of infringe-

ment relative to Letters Patent No. 2,547,648. The other allegations of Paragraph 8 are denied.

9. The allegations of Paragraph 9 are denied.

18 Further answering the complaint, defendant avers:

10. United States Letters Patent No. 2,547,648 are invalid and void in law, and without force and effect, for each of the following reasons:

(a) The alleged invention thereof was patented or described in patents and printed publications in this country and elsewhere before the alleged discovery thereof by the alleged inventor designated therein, or more than one year prior to the date of application for said Letters Patent. Plaintiff will be given notice in writing by defendant of such patents and printed publications at least thirty (30) days before the trial hereof, in accordance with the provisions of Section 282 of Title 35, United States Code.

(b) Said Letters Patent fail to disclose and claim any patentable invention in view of the known art at the time the alleged invention or discovery thereof was made. Plaintiff will be given notice in writing at least thirty (30) days before the trial hereof of patents and printed publications disclosing said known art, in accordance with the provisions of Section 282 of Title 35, United States Code.

(c) The subject matter of the alleged invention of said Letters Patent was in public use or on sale in this country more than one year prior to the date of application for said Letters Patent. Plaintiff will be given notice in writing of the names and addresses of the persons who thus previously used or offered for sale the subject matter of said alleged invention, at least thirty (30) days before the trial hereof, in accordance with the provisions of Section 282 of Title 35, United States Code.

(d) The subject matter of the alleged invention of said Letters Patent was abandoned to the public because of unreasonable delay in making and asserting claims thereto.

(e) The claims of said Letters Patent are vague and indefinite and do not point out and distinctly claim the subject matter of the alleged invention of said Letters Patent, as required by Section 112 of Title 35, United States Code.

11. The claims of said Letters Patent No. 2,547,648 were, during the prosecution thereof before the United States Patent Office, so restricted in meaning and limited in scope, in order to distinguish the alleged invention thereof from prior art, that said claims do not describe or embrace any structures manufactured, used, or sold by defendant.

Further answering the complaint, defendant avers, on information and belief:

12. Plaintiff is pursuing, and for some years past has pursued, a policy of patent licensing which constitutes misuse of plaintiff's patents barring plaintiff from enforcing said Letters Patent No. 2,547,648 or any others of its patents. Plaintiff's policy is to grant no license for the manufacture, use, or sale of radio broadcast receivers of sound, monochrome television, and color television, other than its so-called "standard license," and to sue for patent infringement manufacturers of such products who refuse to enter into such "standard license." The standard license, by its terms, is a package license under all United States patents and applications for United States patents to which plaintiff has title or licensing rights. The package includes more than 400 patents and numerous applications. Under the terms of plaintiff's standard license the royalty payable by the licensee is precisely the same, whether the licensed products sold by such licensee embody one, or a

greater number, or none of the licensed inventions. 21 Plaintiff has stated to defendant that it will on request grant a license limited to one or two of its patents at royalty rates equal, respectively, to 50% or 80% of the package rate. This alternative licensing arrangement, however, applies arbitrarily, without regard to the particular patent or patents involved or to the stature of the alleged inventions covered thereby. Further, this alternative licensing arrangement is available only for radio broadcast receivers of sound and/or monochrome television; no such reduction from the package rate is available with respect to color television, and no such limited license at a royalty rate below the package rate affords the licensee any protection against the assertion by plaintiff of any of plaintiff's 400-odd patents except the one or two patents specifically embraced in such limited license. The evident purpose and practical result of plaintiff's policy is unlawfully to coerce defendant and other manufacturers into accepting licenses under an unwanted package of more than 400 patents, as the only means of avoiding the harassment and expense of infringement litigation. In short, plaintiff, as a conscious corporate policy, refuses to bargain in good faith with defendant or other manufacturers relative to the royalty rates and other licensing terms applicable to individual patents in plaintiff's collection. In furtherance of the above-described policy of unlawful coercion, patent misuse, and illegal extension of its patent monopolies, 22 plaintiff tendered to defendant its so-called "standard license," informed defendant of its licensing policies as above described, asserted that defendant was infringing at least four or more of the patents in plaintiff's package, and informed defendant that, unless the standard license were entered into, infringement action or actions would be initiated on one or more of the patents in plaintiff's package. Defendant informed plaintiff that it was not infringing any valid patent rights of plaintiff and refused to enter into the standard license. Thereupon, plaintiff served defendant with a notice of infringement and initiated the instant action shortly thereafter.

13. Plaintiff has entered into international agreements and cartel arrangements with domestic and foreign companies constituting a combination and conspiracy in restraint of trade between the United States, on the one hand, and Canada and other countries of the world, on the other hand, in violation of the Sherman Act (United States Code, Title 15, §§ 1 and 2). Pursuant to such agreements, combination, and conspiracy, plaintiff and its co-conspirators have set up pools of patents in Canada, Great Britain, Australia, countries in continental Europe, and other areas foreign to the United States, for the purpose and with the effect of unlawfully dividing the market areas of the world into exclusive territories parceled out among the conspirators, controlling the manufacture, use, and sale of radio
and television apparatus in such foreign countries,
23 and preventing the importation of said apparatus into
such countries from the United States by defendant
and other United States manufacturers not parties to the conspiracy. Pursuant to the aforesaid combination and conspiracy, plaintiff and its co-conspirators, through their aforesaid patent pools and international cartels, have refused to license radio and television apparatus or to permit importation of such apparatus from the United States into Canada, Great Britain, Germany, Scandinavia, Australia, and other countries under threat of ruinous patent litigation against distributors and purchasers of such apparatus. In carrying out such activities, plaintiff and its co-conspirators have employed the inventions, including the alleged invention covered by the patent here in suit, which are the subject of plaintiff's so-called standard license described in Paragraph 12 hereof, and which are the subject

of plaintiff's patents asserted against defendant by plaintiff and its co-conspirators, both in the United States and abroad, for the purpose and with the effect of restraining and preventing defendant and other manufacturers of radio broadcast receivers of sound and television from engaging in foreign commerce in such products. By reason of plaintiff's above-described activities in violation of the Sherman Act, plaintiff comes into this Court of equity with unclean hands and is therefore barred from receiving any relief in this action.

24 Wherefore, defendant prays that the complaint herein be dismissed for want of equity, that judgment be entered against plaintiff in defendant's favor for costs and attorneys' fees as provided by law, and that defendant have such other and further relief as justice may require.

Zenith Radio Corporation,
By Casper W. Ooms,
Dugald S. McDougall,
135 So. LaSalle Street,
Chicago 3, Illinois,
Attorneys for Defendant.

Of Counsel:
Thomas C. McConnell,
Philip J. Curtis,
134 So. LaSalle Street,
Chicago 3, Illinois.

Francis W. Crotty,
Zenith Radio Corporation,
6001 W. Dickens Avenue,
Chicago 39, Illinois.

68 IN THE UNITED STATES DISTRICT COURT

* * (Caption—59-C-1847) * *

PLAINTIFF'S ANSWERS TO CERTAIN OF DEFENDANT'S INTERROGATORIES SERVED APRIL 11, 1961.

Plaintiff, Hazeltine Research, Inc., by L. B. Dodds, its President, hereby makes answer to certain of Defendant's Interrogatories served on Plaintiff's attorney on April 11, 1961, namely, numbers 1 to 8, incl., 10(a), 10(b), 10(c), and 11 to 28, inclusive (formal objections having been filed to Interrogatories numbers 9 and 10(d)), such answers being furnished voluntarily without prejudice to the relevance of them or any of them and such answers being limited to matters within the knowledge of the officers of Plaintiff, Hazeltine Research, Inc., or found in its records or within the knowledge of the officers of Hazeltine Research, Inc., who are also officers of its parent company,
Hazeltine Corporation, or in the records of Hazeltine
69 Corporation, in each case the information being
furnished through the calendar year 1960:

* * * * *

76 Foreign Situation.

Interrogatories 13 to 28, inclusive, relate to licensing activities under foreign patents corresponding to the U. S. patents owned by Plaintiff. Plaintiff owns no foreign
patents and has no foreign licensing activities.
77 However, rather than engage in procedural fencing,
Plaintiff has obtained from its corporate affiliate, Hazeltine Corporation, and voluntarily furnishes herewith such answers to these Interrogatories as are within the knowledge of the cognizant officers of Hazeltine Corpora-

tion, or are available in that company's records and, since Plaintiff has no subsidiary companies the answers given below, where appropriate, are in terms of Plaintiff's corporate affiliate, Hazeltine Corporation.

"13. With respect to the patent in suit, state whether or not foreign patents covering the invention have issued and list all the following as to each such foreign patent that has issued:

(a) country where issued,
(b) patent number and title,
(c) record owner or owners."

Answer: There are listed below the foreign patents in question:

(a) Country	(b) Patent No. and Title	(c) Record Owner
Argentina	98,773 Automatic-Contrast-Control System for Television Apparatus	Hazeltine Corporation
Australia	139,522	Neutrodyne Proprietary, Ltd.
Austria	185,856	Hazeltine Corporation

78

(a) Country	(b) Patent No. and Title	(c) Record Owner
Belgium	470,657 498,563	Hazeltine Corporation
Canada	487,448	Hazeltine Corporation
Denmark	75,969	Svenska Aktiebolaget Gasaccumulator
Finland	23,766 25,673	Svenska Aktiebolaget Gasaccumulator
France	941,302 Ad. 60,782	Hazeltine Corporation
Great Britain	623,431	Hazeltine Corporation
Hungary	138,910 141,922	Hazeltine Corporation
Italy	429,415	Svenska Aktiebolaget Gasaccumulator
Norway	79,646 83,116	Svenska Aktiebolaget Gasaccumulator
New Zealand	95,721	Neutrodyne Proprietary, Ltd.
Sweden	122,334 138,374	Svenska Aktiebolaget Gasaccumulator
Switzerland	256,730 289,908	Hazeltine Corporation

"14. List and identify all persons, companies and corporations which now have or have had the right to grant licenses under each of said foreign patents, and fully describe such right.

(a) Fully describe the terms and conditions of licenses issued by said companies or individuals or supply a copy of the form of license or licenses used.

79 (b) Have said companies or individuals granted licenses under patents owned or controlled by companies other than plaintiff or subsidiaries of plaintiff?

(c) Fully describe the licenses referred to in (b) or supply copies of same.

Answer: The following companies have the right to grant the licenses in question:

Country	Company having Licensing Rights	(a) Terms and conditions of Licenses Granted	(b) (c) Licenses granted under Patents other than those of Plaintiff and Affiliate
Argentina	Ad. Auriema, Inc.	None Granted	None granted
Finland Norway Sweden Austria Belgium France Hungary Switzerland	Svenska Aktiebolaget Gasaccumulator	Note 1 below	Not known
Canada	Canadian Radio Patents Limited	Not known	Not known
Great Britain	General Electric Company Limited	Note 2 below	Note 2 below
Australia New Zealand	Neutrodyne Proprietary, Ltd.	Note 3 below	Note 3 below

80

Note 1.

Of the licenses issued by Svenska, there can be found only copies of the following, copies of which are attached: Telsa, Prague, Czechoslovakia—dated July 1, 1947 (Exhibit C); Philips S. A. Belge re European part of Belgium and Luxembourg (Exhibit D); N. V. Philips' Gloeilampenfabrieken re Scandinavia and remaining countries of Europe with the exception of Great Britain and Northern Ireland (Exhibit E).

Hazeltine Corporation has been informally advised that a number of licenses under its patents, including French Patents Nos. 941,302 and Ad. 60,782, have been issued in France but has no copies of, nor knowledge of

"14(d) For each year, from 1951 to date, state the amount of royalties paid to plaintiff or to any of its subsidiary companies and identify the company or com-
82 panies which paid said royalties together with the agreements pursuant to which said payments were made."

Answer: The information requested is not obtainable. The only royalties received by Hazeltine Corporation under its foreign patents during the period in question have been from the licenses in France referred to above, from the General Electric Company Limited with respect to Great Britain and from Canadian Radio Patents Limited with respect to Canada. Under none of these licenses or arrangements is there any segregation of royalty income with respect to any particular patent.

---

the terms of such licenses. However, the invention of the patent in suit is not of advantage in television receivers designed to receive a positively modulated signal, while most of the European countries have standardized on such a signal.

Note 2.

The General Electric Company Limited has included the Hazeltine British patents as well as its own British patents in several of the so-called British Radio and Television Patent Pools. There can be found copies of only the A. 6, A. 7 and A. 8 Pool Agreements and Supplements which are attached as Exhibits F, G and H. The British Pools have, in

81

turn, granted licenses to the British radio and television manufacturers. There can be found only the A. 5, A. 6 (and supplement), A. 7S and A. 7T (and 2nd edition of each) Pool Licenses, copies of which are attached as Exhibits I, J, K, L, M, and N.

Note 3.

Neutrodyne Proprietary, Ltd., has from time to time included Australian and New Zealand patents of Hazeltine origin in the Australian and New Zealand Patent Pools (Australian Radio Technical Services—A. R. T. S.). There can be found only a copy of the Australian Radio Technical Services & Patents Co. Ltd. and Neutrodyne Proprietary Ltd.—dated April 12, 1934, a copy of which is attached as Exhibit O.;

There can be found only copies of the following licenses issued by A. R. T. S. to Australian radio and television manufacturers, copies of which are attached as Exhibits P, Q, R and S:

Australian Patent License No. 1 issued 1934 (Exhibit P)
Australian Patent License No. 5 issued 1951 (Exhibit Q)
Australian Patent License No. 6 issued 1953 (Exhibit R)
Australian Patent License No. 6B issued 1953 (Exhibit S)

"14(e) As to infringement litigation involving the foreign counterparts of the patent in suit,

i. Identify each suit, the parties and the parties sued on;

ii. What was the outcome of the suit;

iii. Describe the judgment entered;

iv. State who bore or shared in the expenses of the suit;

v. State the amount or amounts of money paid directly or indirectly to plaintiff or to any of its subsidiaries as a result of said litigation."

83 Answer: Hazeltine Corporation has no record of any infringement litigation involving foreign counterparts of the patent in suit.

"15. List and identify all contracts, assignment or other documents by which the right to grant licenses referred to in Interrogatory No. 14 was acquired and all agreements, arrangements and understandings relevant thereto. (If any of said agreements, arrangements or understandings were oral, describe them fully.)"

Answer: With respect to Finland, Norway and Sweden, the right to grant licenses under the respective corresponding patents in those countries was granted to Svenska Aktiebolaget Gasaccumulator by an agreement dated July 25, 1946 and effective to December 31, 1960; this agreement was extended by a letter agreement dated May 26, 1950 to December 31, 1955; and further extended by a letter agreement dated December 4, 1953 to December 31, 1960.

With respect to Austria, Belgium, France, Hungary and Switzerland, the right to grant licenses under the respective corresponding patents in those countries was granted to Svenska Aktiebolaget Gasaccumulator by an agreement dated July 25, 1946 and effective to December 31, 1950; this agreement was extended by a letter agreement dated May

26, 1950 to December 31, 1955; and further extended by a letter agreement dated December 4, 1953 to December 31, 1960.

84 With respect to Great Britain, license rights were granted to General Electric Company, Limited by an agreement dated April 6, 1939, extended and modified by agreements dated July 24, 1948, and November 10, 1948, which were superseded by an agreement dated February 27, 1953, extending to December 31, 1957, and by a supplemental agreement dated November 14, 1957, extending to June 30, 1960.

With respect to Canada, the license rights referred to were granted to Canadian Radio Patents Limited by an agreement dated July 2, 1943 for a term of ten years renewable for a further period of ten years.

With respect to Australia and New Zealand, the license rights referred to were granted to Neutrodyne Proprietary, Ltd., by an agreement dated September 11, 1928, which is still in effect.

With respect to Argentina, the license rights referred to were granted to Ad. Auriema, Inc. of New York by an agreement dated October 28, 1953.

"16. As to each patent referred to in Interrogatory No. 13, describe fully the consideration which passed in connection with the acquisition of the rights referred to in Interrogatory No. 14, and state in each case who paid or shared in the cost of such acquisition, listing the exact consideration borne by each party."

85 Answer: No consideration passed in connection with the acquisition of the foreign patent rights by Svenska Aktiebolaget Gasaccumulator, General Electric Company Limited, Canadian Radio Patents Limited, Neutrodyne Proprietary, Ltd., or Ad. Auriema, Inc.

"17. List all individuals and companies which participated, directly or indirectly, in the formation of Canadian Radio Patents, Ltd."

Answer: Neither Plaintiff nor its affiliate, Hazeltine Corporation, has any knowledge of the matter inquired of.

"18. Give full details concerning the organization, management and corporate structure of Canadian Radio Patents, Ltd."

Answer: Neither Plaintiff nor its affiliate, Hazeltine Corporation, has any knowledge of the matter inquired of.

"19. List the directors of this company from 1951 to date and set forth any connection or affiliation each of such directors have or have had with plaintiff, or with any American or foreign subsidiary of plaintiff."

Answer: Neither Plaintiff nor its affiliate, Hazeltine Corporation, has any knowledge of the matter inquired of.

86 "20. List all companies or individuals which hold or have held stock in this Canadian company and state the amount of stock held by each such individual or company."

Answer: Neither Plaintiff nor its affiliate, Hazeltine Corporation, has any knowledge of the matter inquired of.

"21. List and identify all contracts, agreements or arrangements of any sort, oral or written, which plaintiff or any of its subsidiaries has or has had with Canadian Radio Patents, Ltd."

Answer: The information requested is included in the Answer to Interrogatory No. 15, supra.

"22. List all radio and television manufacturers which have been or are licensed, under patents of plaintiff, to manufacture or sell radio and/or television home receivers or tubes in Canada by Canadian Radio Patents, Ltd."

Answer: The only information with respect to this request which can be found comprises a list supplied to Hazeltine Corporation by Canadian Radio Patents, Ltd., dated September 1, 1950, copy of which is attached as Exhibit T.

87 "23. State generally the terms and patent coverage of said licenses or, if a standard license form has been used, supply a copy of said standard form."

Answer: The only information which can be found is a copy of a license supplied to Hazeltine Corporation by Canadian Radio Patents Ltd. on or about June 6, 1960, copy of which is attached as Exhibit U.

"24. If a standard form has been used, describe fully any variations from said form which have been made in particular instances and state the reasons and considerations for such variations."

Answer: Neither Plaintiff nor its affiliate, Hazeltine Corporation, has any knowledge of the matter inquired of.

"25. Did plaintiff ever issue a patent license for the manufacture, use or sale of radio and/or television home receivers of tubes directly to any manufacturer, importer or others in Canada, England, France, Germany, Austria, Holland or any of its possessions, Norway, Denmark, Sweden, Australia and New Zealand? If so, identify the licensee and fully describe the terms and duration of such license or supply a copy of same."

88 Answer: Plaintiff's affiliate, Hazeltine Corporation, has issued the following patent licenses covering the manufacture and sale of radio and/or television home receivers directly to manufacturers, importers or others in the countries inquired about as follows:

Canada

1. Stromberg-Carlson Television Manufacturing Company of Canada, Ltd., dated July 1, 1934; term, 5 years, extended to June 30, 1942; royalty 1¼% and 2½%, applicable to various categories; terms and scope of license essentially the same as the then current United States license form.

2. Northern Electric Company Limited, dated July 1, 1935; term, 5 years, extended to June 30, 1943; royalty 1¼% and 2½% applicable to various categories; terms and scope of license essentially the same as the then current United States license form.
3. Rogers-Majestic Corporation Limited, dated January 1, 1935; term, 5 years but extended by various supplements to June 30, 1943; royalty 1¼% and
89 2½% applicable to various categories; terms and scope of license essentially the same as the then current United States license form.
4. Philco Products Ltd., dated February 5, 1938; term, 5 years, exclusive license (except for licenses 1, 2 and 3 above) with the right to sublicense; field, sound broadcast receivers; royalty 2% with a minimum of $25,000 and a maximum of $50,000 per year.

England

1. Licenses were granted by Hazeltine Corporation's British subsidiary, Hazelpat Ltd., to Philco Radio and Television Corporation of Great Britain Ltd., and Majestic Electric Company Ltd., about 1933, but no details of such licenses nor copies of the licenses can be found.
2. Royalty free licenses were granted to the General Electric Company Limited in conjunction with the grant of rights referred to in Answer to Interrogatory No. 15. Such licenses terminated December 31, 1952.

90 *France, Germany, Austria, Holland,*
Norway, Denmark and Sweden.

Various licenses have been issued by Hazeltine Corporation to manufacturers in such countries commencing about 1932. These licenses have been negotiated by its European representative, Svenska Aktiebolaget Gasaccumulator or, prior to World War II with respect to Continental Europe other than the Scandinavian countries, by Hazeltine-Patent-Verwaltung. The only copies of such licenses as to which information is available are referred to in Note 1 to the Answer to Interrogatory No. 14, supra.

Australia and New Zealand

Patents corresponding to the Hazeltine United States patents in these two countries are not owned by Hazeltine Corporation but by Neutrodyne Proprietary Ltd. Consequently, no licenses have been issued under such patents by Hazeltine Corporation.

"26. Did plaintiff at any time license any American manufacturer or seller of American made radio and/or television home receiver sets or tubes to export from the United States and sell American made radio and/or television home receiver sets or tubes in any of the following countries under plaintiff's patents in force in said countries: Canada, England, France, Germany, Austria,
91 Holland or any of its possessions, Norway, Denmark,
Sweden, Australia and New Zealand. If so, fully describe each such license or supply a copy of same."

Answer: No records can be found which indicate that any licenses granted by Plaintiff to such American manufacturer or seller of American made receivers explicitly granted a license under corresponding foreign patents owned by Hazeltine Corporation. However, no record can be found that Plaintiff ever refused to grant such a license or that such a license has ever been requested. None of the licenses granted by Plaintiff to American manufacturers of radio and/or television receivers has restricted the exportation of licensed apparatus in any way. Moreover, the European representatives of Hazeltine Corporation referred to in the Answer to Interrogatory No. 14 have consistently offered to license importers of American receiver manufacturers and have done so in many instances, but no copies of such licenses and details with respect thereto can be found.

"27. Is it, or has it, been the policy of Canadian Radio Patents, Ltd. not to license American radio and/or television manufacturers for the unrestricted importation into Canada from the United States of American made radio and/or television home receiver sets or tubes for resale in Canada?"

92 Answer: Neither Plaintiff nor its affiliate, Hazeltine Corporation, has any knowledge of the matter inquired of.

"28. If such is or has been the policy of this organization, state who participated in the formation of that policy and when and where said policy was adopted."

Answer: Neither Plaintiff nor its affiliate Hazeltine Corporation, has any knowledge of the matter inquired of.

L. B. Dodds.

State of New York }
County of Queens } ss:

On this 26th day of May, 1961, there personally appeared before me, a Notary Public in and for the County and State aforesaid, L. B. Dodds who, being duly sworn, deposed and said that he is President of Hazeltine Research, Inc., Plaintiff in the above-entitled Action, and that the foregoing Answers to certain of Defendant's Interrogatories subscribed to by him are true to the best of his knowledge and belief.

Alice M. Ressler,
(Seal) *Notary Public.*

My commission expires March 30, 1962.

Service of a copy of Plaintiff's Answers to certain of Defendant's Interrogatories is acknowledged this 29th day of May, 1961.

Dugald S. McDougall,
Attorney for Defendant.

287 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

AFFIDAVIT OF L. B. DODDS IN SUPPORT OF PLAINTIFF'S MEMORANDUM ON OBJECTIONS TO INTERROGATORIES.

(Filed June 21, 1961.)

State of New York } ss:
County of Queens }

L. B. Dodds, being duly sworn, deposes and says that:

1. He is now and has been since the organization of Plaintiff in 1946 an officer of that Company and is now and has been since 1939 (except for an absence during part of 1944 and 1945) an officer of Plaintiff's parent Hazeltine Corporation.

2. He has searched and reviewed the files and records of Plaintiff and its parent, Hazeltine Corporation, to locate the information and documents requested by Defendant's Interrogatories to Plaintiff filed on or about April 11,
288 1961, and has prepared Plaintiff's Answers filed May 29, 1961, to all of such Interrogatories save Nos. 9 and 10(d).

3. He determined that during the period 1951 through 1960 some 230 license agreements relating to radio and/or television receivers were in effect with various U. S. manufacturers of such equipment. All of those licenses (with the exception of a single license to General Electric Company referred to in Plaintiff's Answers) were, as a matter of mechanical convenience, issued on a printed license form which varied slightly from time to time in accordance with variations in the terms and scope of the licenses offered by Plaintiff to the radio and television industry. As a result of the practice of using printed license forms, it

became necessary in the case of nearly every licensee to issue one or more amendatory or "side letters" to take care of particular circumstances and the particular nature of that company's business. These "side letters" covered a wide range of contractual clauses, there generally being several, and in some cases a large number of such letters issued in connection with each license. It is estimated that the total number of these "side letters" issued by Plaintiff in connection with the aforesaid 230 licenses is of the order of 1,000 or more, the great preponderance of which covered miscellaneous formal matters and matters peculiar to the business of a licensee.

L. B. Dodds.

Subscribed and sworn to before me this 31st day of May, 1961.

Alice M. Ressler,
Notary Public.

My commission expires March 30, 1962.

317 UNITED STATES DISTRICT COURT,
Northern District of Illinois.

SUBPOENA DUCES TECUM.

The President of the United States of America.

To: Hazeltine Research, Inc., by its Secretary
5445 W. Diversey Avenue
Chicago, Illinois

—Greeting:

We Command You, that all business and excuses being laid aside, you and each of you attend at the offices of McConnell, Paschen & Curtis, 134 S. LaSalle Street, Chicago 3, Illinois, on the 19th day of January, A.D. 1962, at 10:00 o'clock in the forenoon in Room 1110 of said offices, to testify and give evidence in a certain cause now pending and undetermined in said Court, wherein Hazeltine Research, Inc. is plaintiff and Zenith Radio Corporation is Defendant, on the part of said Zenith Radio Corporation. And that you also diligently and carefully search for, examine, and inquire after and bring with you, and produce at the time and place aforesaid, the documents described in the schedule attached hereto and made a part hereof which are in the possession, custody or control of Hazeltine Research, Inc., or any of its subsidiaries or controlled companies, or the officers, directors, agents, representatives, employees or counsel of any of them.

314 Definitions.

The term "documents" includes all writings, and/or records of any kind, including, but not limited to, the originals and all copies and drafts of contracts, agreements, and amendments thereto, correspondence, cablegrams, radiograms, telegrams, memoranda, reports, recordings and other transcription of telephone and/or other conversations, conferences and/or meetings, affidavits, books of account, transcripts of testimony in judicial or administrative proceedings, minutes of meetings, including directors' meetings and committee meetings, diaries, intra-office communications, logs, advertisements, scrap-books, press and publicity releases, reports to stockholders and/or to governmental bodies, records, reports and/or summaries of negotiations and all other writings of every kind, including documents passing from or to or between Hazeltine Corporation and Hazeltine Research, Inc. or their domestic or foreign subsidiaries or affiliated or controlled companies, or the officers, or representatives or any of them, and any documents passing from or to or between said companies and foreign companies, or the officers, directors, agents, representatives, employees or counsel of any of them.

The term "Hazeltine" as used herein includes Hazeltine Corporation, Hazeltine Research, Inc. and any and all domestic or foreign subsidiaries and/or affiliated companies under the control of Hazeltine Corporation or Hazeltine Research, Inc.

The term "patent" as used herein means any patent usable in the manufacture or sale of radio and television apparatus or any constituent part thereof.

Subpoena Duces Tecum.

1. All documents referring or relating to foreign patents or foreign patent licenses or rights of any kind covering any invention which is the subject of any United States patent licensed under the standard license agreements issued or proffered by Hazeltine to any licensee or prospective licensee in the United States at any time during the life of the patent in suit.

2. All communications between Hazeltine and any company or person having licensing rights under foreign patents of Hazeltine, referring to or relating to the actual or proposed licensing of any foreign patent on inventions which are the subject of any United States patent licensed under any Hazeltine standard license agreement issued or proffered in the United States at any time during the life of the patent in suit.

3. All documents referring or relating to the following foreign patent licensing organizations and/or any of their patent pooling and/or licensing activities:

315 Canadian Radio Patents Ltd.

Australian Radio Technical Services and Patents Co., Ltd.

British radio and television patent pool*

Telefunken G. M. B. H.

N. V. Philips Gloeilamphenfabrieken

Any other foreign patent pool or company or organization having licensing rights under any of the patents of Hazeltine and any other patentee

and all communications between Hazeltine and/or any of its officers, agents, representatives or counsel and any of said foreign patent licensing organizations, and/or any of the officers, agents, representatives or counsel of any of said organizations.

4. All documents concerning the creation, administration, operation, purposes and/or policies of any and all patent pools or licensing organizations having rights in respect of patents of Hazeltine or foreign patents covering inventions of Hazeltine, including without limiting the generality of the foregoing, Canadian Radio Patents Ltd., Australian Radio Technical Services and Patents Co., Ltd., the British radio and television patent pool*, Telefunken G. M. B. H. and N. V. Philips Gloeilamphenfabrieken.

5. All documents referring or relating to the issuance or denial of any license to import or export under any foreign patent of Hazeltine.

6. All documents relating to the assertion against Zenith Radio Corporation or others engaged in the manufacture or sale of radio and/or television apparatus, and/or constituent parts thereof, in the United States of America, Canada and/or any other country of any foreign or domestic patents or patent rights owned or licensed by Hazeltine.

7. All documents relating or referring to policies and/or practices of Hazeltine and/or of any person having a right to extend licenses under any patent rights of Hazeltine in the United States of America and/or any foreign country in respect of any actual and/or proposed license of the export and/or import of radio and/or television apparatus and/or constituent parts thereof.

8. All documents relating or referring to any request or inquiry, by any person or company manufacturing
316 and/or selling radio and/or television apparatus, for
a license under some but less than all of the patent rights owned by Hazeltine or in which Hazeltine has, or at any time during the life of the patent in suit has had, a beneficial interest.

9. All documents relating or referring to package* licensing of Hazeltine patent rights, together with all copies, drafts, and vouchers relating to the said documents, and all other documents, letters, and paper writings whatsoever, that can or may afford any information or evidence in said cause. And this you shall in nowise omit, under the penalty of the law in that case made and provided.

---

* Referred to in note number 2 to plaintiff's answer to defendant's interrogatory 14.

To the Marshal of the Northern District of Illinois to execute and return in due form of law.

Ray H. Johnson,
Clerk,
By: William E. Kelley, Jr.
(Seal) *Deputy Clerk.*

Dated: December 19, 1961.

318 Served this writ on the within named Hazeltine Research, Inc., a corporation, by delivering copies thereof to W. O. Divingard, Vice Pres. an agent, of said corporation, this 2nd day of January, A.D. 1962.

The president of said corporation not found in my district.

J. N. Tierney, U. S. Marshal by Mac Fisher, Deputy.

1	Service	$ 50
24	Mileage	$ 240
	Total	$ 290

321 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

AFFIDAVIT OF L. B. DODDS IN SUPPORT OF PLAINTIFF'S MOTION TO QUASH SUBPOENA DUCES TECUM.

State of New York } ss:
County of Queens }

L. B. DODDS, being duly sworn, deposes and says:

1. That he is counsel for Hazeltine Research, Inc., Plaintiff herein, and that since its organization in 1946 he has been, and is now, a Director of that Corporation and that from 1946 until 1960 he was an Executive Officer of that Corporation and completely familiar with its operations.

2. That Hazeltine Research, Inc., and its predecessor, Hazeltine Corporation, have for more than thirty-five years been engaged in research, development engineering, design and testing and consulting services in the radio and television field, certain of these activities being located at its laboratory in Chicago; that it derives its income 322 to support these activities solely from royalties on patents flowing from such research and development work, its policy being to license any and all responsible manufacturers of radio and television apparatus at royalty rates which, for many years, have been of the order of 1 percent; that it does not manufacture or sell any products, although its parent, Hazeltine Corporation, is engaged in supplying complex electronic equipment to the Armed Forces; and that its average gross income for the five year period ending 1961 has been less than $750,000 per year.

3. That there is attached hereto as Exhibit A a copy of the Subpoena Duces Tecum served by Defendant on

January 2, 1962, on Edward H. McDermott, Secretary of Plaintiff.

4. That the scope of the "Definitions" forming a part of the Subpoena is so sweeping that it includes documents dealing with many matters not involved in any of the issues of this case, for example, documents dealing with the technical aspects both of the patent in suit and of several hundred others of Plaintiff's patents wholly unrelated to any issues in this case, such as patents relating to devices, components and systems having solely military application. Such "Definitions" are also so broad as to include routine proceedings in the filing and prosecution of
323 all of the several hundred foreign patents of Plaintiff's
parent, Hazeltine Corporation, relating to many inventions not in any way involved in any of the issues in this case.

5. That paragraphs 1 and 2 of the Subpoena require the production of all documents relating to unexpired foreign patents corresponding to United States patents which were not expired at the time of the grant of the patent in suit, namely, April 3, 1951, which foreign patents date back as early as 1933, some twenty-eight years past and long prior to any activities of Plaintiff or its related companies under the patent in suit.

6. That the "Definitions" forming a part of the Subpoena, as well as paragraph 3 of the Subpoena, require the production of communications with counsel, which are privileged.

L. B. Dodds

Sworn to and subscribed before me this 8th day of January, 1962.

Alice M. Ressler,
Notary Public.

No. 41-8549820 Qualified in Queens County.
Commission Expires March 30, 1962.

In the United States District Court.

* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS.

had in the above-entitled cause before the Hon. Hubert L. Will, one of the judges of said court, in his courtroom in the United States Courthouse at Chicago, Illinois, on Wednesday, July 25, 1962, at the hour of 10:00 o'clock a.m.

Appearances:

Clemens Hufmann, Esq. (20 North Wacker Drive, Chicago, Illinois) and E. A. Ruestow, Esq. (59-25 Little Neck Parkway, Little Neck 62, New York), on behalf of plaintiff;

Messrs. McConnell, Paschen & Curtis (134 South LaSalle Street, Chicago, Illinois), by Thomas C. McConnell, Esq. and Philip J. Curtis, Esq., on behalf of defendant.

2 The Clerk: 59 C 1874, Hazeltine Research, Incorporated *v.* Zenith Radio Corporation, plaintiff's motion to compel defendant to answer plaintiff's Interrogatory No. 10.

Mr. Hufmann: I represent the Hazeltine Corporation. We were before your Honor on Friday last week, and the problem is a discovery problem with which Mr. Ruestow is familiar. He was recognized by Judge Austin in this case. He is a member of the New York Bar and will present the argument.

The Court: Let me first—

Mr. McConnell: If the Court please—

The Court: Let me first greet Mr. Ruestow. Is there anything you want to say before Mr. McConnell tells me what the truth is in the case?

Mr. Ruestow: It is my motion, and I think I would like to have my story heard first.

The Court: Proceed.

Mr. McConnell: I was going to suggest this, if the Court please—

The Court: Unless you are going to concede.

Mr. McConnell: No, I am not going to concede any-
thing, but it is going to take me quite some time to
3 develop these facts, and I thought it might be more con-
venient for everybody if we passed it to the end of the
call.

The Court: Well, if it is going to take you quite some time, you are going to do it in writing.

Mr. McConnell: Well, it will. I can't do this in two or three minutes.

The Court: All right. This will be taken under Rule 13 then. I thought it could be disposed of expeditiously.

Mr. Ruestow: I think it can.

Mr. Hufmann: May I mention the same problem was raised when we were here on Friday, and at that time somebody expressed the view that briefing was not necessary because no legal problems were involved.

Mr. McConnell: I think that is true.

The Court: Mr. McConnell says he is going to go on at some length as to the factual reasons for his opposition to answering this interrogatory. Then I am not disposed—I suspect if that happens, we are going to get into affidavits, perhaps, and what else?

4 Mr. McConnell: Counter-affidavits.

The Court: And that is the kind of thing you do by paper and not by mouth.

Mr. Ruestow: Mr. McConnell might have given us some warning about this because I made a trip from New York for this.

The Court: I certainly agree, and I apologize for the fact I am not going to hear you this morning, but it doesn't seem to me it will serve any purpose if this is going to require perusal and examination of affidavits, counter-affidavits, and all the rest, in chambers. Judge Austin may as well look at the whole package at one time.

I am very sorry you came from New York. I was under the impression when I set this that it could be disposed of on brief oral argument; that there were no legal questions.

Mr. McConnell was not here when this was projected, so I didn't know what his intentions were. I had the impression it would not be an extensive or extended matter, but he now tells me it is or will be.

Mr. McConnell: It took me three years to develop these facts.

5 The Court: I take it the oral argument would be briefer than that.

Mr. McConnell: Yes, but I can't do it in three minutes.

Mr. Ruestow: Affidavits have been in for a week from our office, and Mr. McConnell submitted an affidavit this morning, whch I am prepared to accept as in the record. Does he mean he wants to submit more?

Mr. McConnell: No. I want to tell the court what the facts are that you are asking about and what the whole factual situation is, and I can't do it as a motion of course. If the case can be passed to the end of the call—

The Court: I am in the middle of a trial.

Mr. McConnell: I know. I know your Honor's situation, but I know mine too.

Mr. Ruestow: I think it is much simpler—

Mr. McConnell: It isn't a mater that can be disposed of summarily here. I want a chance to be heard on it.

Mr. Ruestow: You Honor, I think—

Mr. McConnell: A lot is involved in this motion. There is more to it than meets the eye.

6 Mr. Ruestow: May I comment on that, your Honor?

The Court: Yes, Mr. Ruestow.

Mr. Ruestow: The motion is, in my mind, far simpler than Mr. McConnell indicates. We are asking them simply to identify the parts of a mountain of documents that they know all about that identify us with this conspiracy they charge us with. So it is simply a matter of who is going to identify the proper parts of this mountain of evidence that they picked up against other people, RCA, G. E., and others, not us, and who is going to do the work of finding out which is the part that is pertinent to our alleged participation in the conspiracy. Are we to spend two months at it or are they? I think it is a simple one.

The Court: I take it that you also want them to be bound by the identification of these documents, in the nature of a Rule 34 production, and if you don't produce, that is it.

Mr. McConnell: That is right.

The Court: Isn't that correct, Mr. Ruestow?

Mr. Ruestow: That is correct, but that is not the issue today.

7 The Court: I don't say that. I just want it to be understood.

Mr. Ruestow: The issue today is are they going to identify them?

The Court: Yes, I understand.

Mr. Ruestow: If they will identify them, they can take as long as they want to find them.

The Court: Why should you, just very briefly, Mr. McConnell, why should you not, having alleged the conspiracy, identify the documents upon which you rely to support that allegation?

Mr. McConnell: Your Honor, we have identified all of these documents. We have given them a list of them. We have made them available. We have put them in a separate room where they can come and see them.

Now, there isn't a single document in that group that we put in that is irrelevant or immaterial to this conspiracy. I spent three years developing this.

The Court: Your answer to the interrogatory is that all documents are in Room so and so, period.

Mr. McConnell: We collected them, your Honor, and got them there and gave them access to them to come
8 and look at them.

The Court: Mr. Ruestow, what Mr. McConnell says, if I understand him, is that in answer to your interrogatory No. 10, all the documents have been assembled at some identifiable place.

Mr. Ruestow: It is just not so, your Honor.

Mr. McConnell: He doesn't want to read them. He has been there and he doesn't want to read them.

Mr. Ruestow: That is true, your Honor. I do not want to read two months of depositions directed against other people.

The Court: I take it that Mr. McConnell has answered your interrogatory by saying here are the documents. All of these, he just said, are relevant and material to the issue of conspiracy. Now you say that is not a bona fide response.

Mr. Ruestow: That is correct.

The Court: You would then come in with examples of documents which are—

Mr. Ruestow: I have, your Honor.

The Court: I don't see any.

Mr. Ruestow: I have an affidavit in the file.

The Court: The affidavit doesn't identify docu-
9 ments in this room which you say are not relevant.

Mr. Ruestow: It does. It identifies 2,250 pages of depositions given to me by Mr. McConnell, and I spent a week's time going through them, six days in fact, going through them and I found—

The Court: Forty references, forty casual references to Hazeltine, the plaintiff.

Mr. McConnell: May I answer that?

Mr. Ruestow: Now that is not a fair response to our needs.

The Court: I think I would have to look at the references before I could conclude that.

Mr. McConnell: If the Court please, I have a very short answer to that. We allege and are prepared to prove that as a matter of fact their own documents which they have produced prove, not to mention the ones we have produced for their examination, show that they are in a conspiracy which is worldwide and is grounded in patent pools existing all over Europe. I went all over Europe and took these depositions; and in each one of them these gentlemen are in it. Now every single document that goes to prove that conspiracy doesn't mention the Hazeltine Corporation, but once they are in it, all that evidence which is relevant to the conspiracy, they as a co-conspirator are bound by it, and we intend to introduce it on the issue of misuse in this case.

Now counsel is trying to say either that the only thing we have a right to rely on is something that specifically mentions Hazeltine by name, which isn't the law, as your Honor well knows, or that we have got to go through all the mass of documents which we have already gone through to show are relevant to a conspiracy issue and pick out the ones which he says are material to the conspiracy issue.

Now, that isn't the law.

The Court: Mr. Ruestow, this is the first time in some long time that I have had anybody complaining about having too much produced on discovery. This may be a great burden upon you, but Mr. McConnell says all of these documents are produced in response to Interrogatory

No. 10, and in his judgment they are all relevant. You know how broad the definition of relevant is for discovery
purposes. They may not be relevant and admissible
11 on a trial, but most of the time I am saying to people
the opposite, you know, give him those documents. You
may object to their admission on the ground of relevance when the trial comes up, but for purposes of discovery they are relevant.

I see no reason to change the standard, the criteria, when somebody says he is giving me too much, giving me things which I don't think are relevant even though he thinks they are. If I understand Mr. McConnell, he is saying all these documents which he has tendered are relevant, and he is saying particularly in a conspiracy is the scope of relevancy broad because it doesn't have to refer to the alleged particular co-conspirator if it is done by another co-conspirator in furtherance of the conspiracy. If you establish the existence of a conspiracy and the participation in it of the one alleged named conspirator, then it is relevant to him and you have the problem at that point, says he, of defending not only against what you did but what everybody else in the conspiracy did.

You had better look at these documents because
12 you may have to be answering them sometime if he
establishes the conspiracy, isn't that true?

Mr. McConnell: That is exactly right.

Mr. Ruestow: That is his idea of the facts.

Mr. McConnell: Let me develop—

Mr. Ruestow: Let me finish.

The Court: I am ready to rule. This is discovery motion. Have you not answered it at all, Mr. McConnell?

Mr. McConnell: I have answered everything. I have listed all the documents. I have given the names of the depositions, who the witnesses are. I have put them in a room and made them available to this gentleman. His complaint is that he doesn't want to read them.

The Court: You are a victim of prosperity, Mr. Ruestow, but I can't help you because I think for discovery purposes that is a proper response.

The party called on to identify documents says these are all relevant—unless he is clearly sandbagging you and engaging in a tactic, and I say that even a deposition of 2,250 pages which refers to other alleged co-conspira-
13 tors and forty times refers to you isn't a deliberate
sandbag.

That is hardly so obviously and clearly irrelevant as to make its tender to you in response to a discovery motion an abuse of the discovery rule. I will deny the motion.

MOTION TO STRIKE PARAGRAPH 13 OF DEFENDANT'S ANSWER.

Now Comes Plaintiff, Hazeltine Research, Inc., and moves under the provisions of Rule 12(f) of the Rules of Civil Procedure to strike paragraph 13 of Defendant's Answer on the ground that it fails to state a legally sufficient defense to the instant Action. Specifically, said paragraph 13 alleges that Plaintiff's parent Company, Hazeltine Corporation, is a party to international patent agreements in restraint of trade, but none of Hazeltine Corporation's international agreements are based in whole or in part on, nor are they related in any way to, United States Letters Patent 2,547,648, which Defendant is charged in this Action to infringe.

Therefore, even if it be assumed, arguendo, that aforesaid international patent agreements of Hazeltine Corporation were in restraint of trade (which is denied)
522 that is an issue having no relation to the simple pat-
ent infringement issue of this Action and is not a suffi-

cient legal defense to the Action. To consume five weeks of trial, estimated by Defendant's counsel as required to try this issue, would constitute an intolerable burden on the court and on Plaintiff.

This Motion is based on Plaintiff's Supporting Memorandum and on the attached Affidavit of L. B. Dodds, of counsel for Plaintiff in this Action.

Mason, Kolehmainen, Rathburn & Wyss,
By M. Hudson Rathburn,
20 North Wacker Drive,
Chicago 6, Illinois,
Attorneys for Plaintiff.

Chicago, Illinois.

Dated: 5/9/63.

Of Counsel:
L. B. Dodds,
E. A. Ruestow,
59-25 Little Neck Parkway,
Little Neck 62, New York.

Philip F. LaFollette,
Tenney Building,
Madison 3, Wisconsin.

524 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

AFFIDAVIT OF L. B. DODDS IN SUPPORT OF PLAINTIFF'S MOTION TO STRIKE AND PLAINTIFF'S MOTION FOR LEAVE TO FILE THE SAME.

State of New York, }
County of Queens. } ss.

L. B. Dodds, being duly sworn, deposes and says that:

1. He is of counsel for Plaintiff in the above entitled Action.

2. He has been retained by or employed by Plaintiff's parent Company, Hazeltine Corporation, continuously since 1934 and has been a Vice President of said Hazeltine Corporation continuously since 1939 (except for a period during 1944-1945 when he had no connection with Hazeltine Corporation or any of its affiliates). He also was an officer of Plaintiff, Hazeltine Research, Inc. from its organization in 1946 until June 7, 1961. Since 1946 he has been 525 continuously familiar with the patents and patent licenses of both Plaintiff and its parent Hazeltine Corporation.

3. Plaintiff does not manufacture or market any products but, since its organization in 1946, has been engaged exclusively in extensive research and development activities in the field of radio and television broadcast receivers, both at its own laboratories and, through inter-company agreements, at research divisions of its corporate affiliates. Such research and development activities have resulted in a number of inventions on which United States Letters Patent have been granted. Plaintiff grants licenses under such patents to all United States manufacturers of radio and television receivers at moderate rates of royalty and on a non-discriminatory basis. It has also made available to its licensees technical assistance and testing, measuring and

evaluation services at its laboratories without charge over and above royalties payable under such licenses. Each of said licenses has included the following provision or other provision of like import:

> "Nothing herein contained, and no act or acts hereunder, shall be construed as, or result in, conveying any license to Licensee, expressly or by implication, estoppel or otherwise:
>
> * * * * *
>
> (b) "Under any patents of countries foreign to the United States;"

526 4. Prior to 1946 Plaintiff's aforesaid parent, Hazeltine Corporation, engaged in the activities described in the preceding paragraph and since about 1940 has additionally engaged in research, development and manufacture in the military electronic field.

5. Since its organization in 1924 the aforesaid Hazeltine Corporation has continuously obtained patent rights on aforesaid inventions in certain foreign countries and has entered into agreements in certain foreign countries to license and promote the use of such patents in their respective countries. None of said agreements has ever granted any rights under United States Letters Patent owned either by Plaintiff or by said Hazeltine Corporation, specifically including patent 2,547,648 in suit.

6. At no time has either Plaintiff or its parent Hazeltine Corporation manufactured or sold radio and television receivers, or either of them, in competition with either the licensees of Plaintiff in the United States or the licensees of Hazeltine Corporation in foreign countries.

L. B. Dodds.

Sworn to and subscribed before me this 7th day of May, 1963.

Alice M. Ressler,
Notary Public, State of New York,
No. 41-8549820, Queens County.

Commission Expires March 30, 1964.

528 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION TO STRIKE PARAGRAPH 13 OF DEFENDANT'S ANSWER.

Statement of the Case.

This is an action for infringement by Defendant, Zenith, Radio Corporation, of Plaintiff's patent 2,547,648—Loughren covering a television receiver circuit. Zenith Radio Corporation publicly claims to be the largest manufacturer of television receivers and is located in Chicago. It is believed the Court can take judicial notice of the general character of Defendant's business.

Plaintiff, Hazeltine Research, Inc., is a small Chicago research and development organization. The nature of Plaintiff's operations is described in the attached affidavit of L. B. Dodds as follows:

529 "Plaintiff does not manufacture or market any products but, since its organization in 1946, has been engaged exclusively in extensive research and development activities in the field of radio and television broadcast receivers, both at its own laboratories and, through intercompany agreements, at research divisions of its corporate affiliates. Such research and development activities have resulted in a number of inventions on which United States Letters Patent have been granted. Plaintiff grants licenses under such patents to all United States manufacturers of radio and television receivers at moderate rates of royalty and on a non-discriminatory basis. It has also made available to its licensees technical assistance and testing, measuring and evaluation services at its laboratories without charge over and above royalties payable under such licenses. Each of said licenses has included the following provision or other provision of like import:

> 'Nothing herein contained, and no act or acts hereunder, shall be construed as, or result in, conveying any license to Licensee, expressly or by implication, estoppel or otherwise:
>
> * * * * *
>
> '(b) Under any patents of countries foreign to the United States;' "

Plaintiff's parent Company, Hazeltine Corporation, has, since 1924, continuously sought and obtained patent rights on certain of Hazeltine inventions and has entered into a number of agreements with foreign concerns to promote the use of such inventions in radio and television receivers in their respective countries.

530 As stated in L. B. Dodds' affidavit, paragraph 5, none of these Agreements has granted any rights whatsoever under any of the Hazeltine United States patents, specifically including patent 2,547,648 in suit. Understandably Paragraph 13 of Defendant's Answer does not so allege.

This situation resolves itself simply to this. Plaintiff owns a number of United States patents on inventions made in the Hazeltine laboratories which are licensed on a non-discriminatory basis to all manufacturers and such licenses contain no restriction on the exploration of license apparatus to foreign countries. Plaintiff's parent Company, Hazeltine Corporation, owns a number of foreign patents and has entered into agreements in certain foreign countries to promote the use of the inventions covered by such foreign patents. None of those Agreements conveys any rights under any of Plaintiff's United States patents.

531 Thus, there is no relation whatever between Plaintiff's licensing operations in the United States under its United States patents and the licensing operations of Hazeltine Corporation in foreign countries under its foreign patents.

Moreover, even if Hazeltine Corporation were using its foreign patents in violation of the antitrust laws (which Plaintiff denies), still such operation would be no defense to an action for infringement of Plaintiff's United States patents.

For the purposes of discussion, Plaintiff finds it unnecessary to rely on the fact that it is a corporate legal entity separate and distinct from its parent, Hazeltine Corporation, and is willing that the two companies be considered as a single legal entity insofar as their respective foreign and domestic licensing operations are concerned.

* * * * *

537 In the instant Action, paragraph 13 of Defendant's Answer alleges only that Plaintiff is using its foreign patents in violation of the antitrust laws which, even if true (which is denied), bears no relation to the United States patent in suit.

It is submitted that paragraph 13 of Defendant's Answer should be stricken as legally insufficient.

Respectfully,

Mason, Kolehmainen, Rathburn & Wyss,
By M. Hudson Rathburn,
20 North Wacker Drive,
Chicago 6, Illinois,
Attorneys for Plaintiff.

Chicago, Illinois

Dated: 5/9/63

Of Counsel:
L. B. Dodds,
E. A. Ruestow,
P. F. LaFollette.

539 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

PRE-TRIAL STIPULATION.

The parties to this Action, by their attorneys, in fulfillment of certain understandings reached orally in the course of the pre-trial conference held herein on April 3, 1963, in order to simplify and expedite trial hereby stipulate and agree, for purposes of this Action only, as follows:

1. Plaintiff agrees that it will not assert against Defendant or its agents, distributors, or customers, by legal action or otherwise, any of its patents other than patent No. 2,547,648 already in suit, until after final disposition of the instant Action.

2. Defendant agrees that it will not file any counterclaim herein or any separate action seeking a Declaratory Judgment of invalidity or non-infringement, or both, of any 540 of Plaintiff's patents other than patent No. 2,547,648, until after final disposition of the instant Action.

3. Defendant agrees that, in any legal action that may hereafter be brought against it by Plaintiff, charging infringement of any of Plaintiff's patents, other than Patent No. 2,547,648, Defendant will not rely, as a defense to such legal action, on any delay in the commencement of such action that is occasioned by Plaintiff's compliance with Paragraph 1 hereof.

4. Plaintiff agrees that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company.

5. Any party desiring to introduce in evidence at trial a document or copy thereof previously produced by either party during discovery proceedings herein, or produced by any party to either of certain actions entitled *Radio Corporation of America* v. *Rauland Corporation and Zenith*

Radio Corporation, No. 48-C-1818, in this Court, and *Zenith Radio Corporation v. Radio Corporation of America, et al.*, No. 1098, in the District Court of Delaware, may do so without further authentication or proof that, (a) such document is genuine, (b) such document was kept in the regular course of business, (c) such document was prepared
541 by the author (or authors) indicated thereon on or about the date appearing on the face thereof, and (d) in the case of correspondence or memoranda, that such document was sent by the addressor(s) and received by the addressee(s) on or about the date it bears; providing that all objections under the rules of evidence are reserved, and subject to correction if error appears. Each party agrees to furnish the other party, at least thirty (30) days prior to trial, a list of such documents on which it intends to rely at the trial and the party having custody of such documents agrees to make them available to the other party for inspection.

6. The parties agree that photocopies or equivalent reproduced copies of all documentary exhibits may be received in evidence at the trial of this Action in lieu of the original documents, without formal certification or verification; provided, however, that as to any document of which the original or a master copy thereof from which the copy in question is reproduced is in the custody of one of the parties (except charts, diagrams and the like prepared for the purposes of the trial of this Action), such original or master copy will be produced for inspection by counsel for the other party on reasonable notice, either prior to or during the trial; providing that all objections under the rules of evidence are reserved.

542 7. Uncertified printed copies or photostatic or equivalent reproduction copies of United States and foreign patents, printed publications, and official records and publications of the U. S. Patent Office may at trial be offered

in evidence by either party with the same force and effect as originals or certified copies thereof, and the dates of filing, issuance, or publication indicated thereon shall be accepted as correct, subject to correction if error should appear and providing that all objections under the rules of evidence are reserved.

8. Plaintiff is and has been since its date of issue the owner of Letters Patent No. 2,547,648, granted to A. V. Loughren on April 3, 1951, involved in this Action.

9. Solely for the purposes of establishing venue in this Action, Defendant admits that it has a regular and established place of business within the Northern District of Illinois, and that it sold or offered for sale within the Northern District of Illinois, prior to the filing of the Complaint herein, television receivers identified as Model 16D21, a correct circuit diagram of which is attached hereto as Exhibit A.

10. Charges of the Court Reporters for the Official Court
copy of the transcript at trial shall be paid initially one-
half by Plaintiff and one-half by Defendant, and shall
543 be taxed as costs against the losing party, or as the
Court may direct. Such transcript copies as may be
ordered by a party for its own use shall be paid for by
such party.

11. This Stipulation and attached Exhibit may be offered in evidence in whole or in part by either party.

L. B. Dodds,
Counsel for Plaintiff.

Dugald S. McDougall,
Attorney for Defendant.

Dated: May 7, 1963.

/

764 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

AFFIDAVIT OF L. B. DODDS IN SUPPORT OF PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO HOLD PLAINTIFF IN CONTEMPT.

State of New York, }
County of Queens. } ss.

L. B. Dodds, being duly sworn, deposes and says that:

1. He is trial counsel for Plaintiff in the above-entitled action.

2. That in response to a Subpoena Duces Tecum served by Defendant on Plaintiff on or about January 1, 1962, as restricted by the order of this Court, dated March 16, 1962, Plaintiff made available to counsel for Defendant, for inspection, more than thirty legal-size file drawers 765 and transfer files, comprising several tens of thousands of pages and constituting the complete files of Plaintiff and its parent, Hazeltine Corporation, embracing the subject matter of the Subpoena Duces Tecum. These files covered the period from the early 1930's, the earliest files available, to the filing of the Complaint herein on November 30, 1959.

3. Counsel for Defendant spent several weeks carefully inspecting the aforesaid files, and selected from them several thousand pages of documents, marked for identification as Defendant's Exhibits Nos. 1-2786, inclusive. Many of these exhibits comprised several pages, and some of them a great many pages.

4. Plaintiff then undertook to obtain photocopies of the documents selected and marked by counsel for Defend-

ant and furnished them to counsel for Defendant at Defendant's expense.

5. It is deponent's opinion that Plaintiff has complied with the spirit of the order of this Court of March 16, 1962.

L. B. Dodds.

Sworn to and subscribed before me this 22 day of August, 1963.

Alga J. Osterlund,

(Seal) *Notary Public.*

Commission Expires March 30, 1965.

816 In the United States District Court.

• • (Caption—59-C-1847) • •

(Filed October 25, 1963.)

SUBSTITUTED MOTION FOR THE PRODUCTION OF DOCUMENTS.

Defendant moves the Court for an order requiring plaintiff to produce and to permit defendant to inspect and to copy all documents in the categories described in the subpoena duces tecum issued herein on January 2, 1962, which came into existence at any time during the period from November 20, 1959, to May 22, 1963, the date of the filing of the counterclaim herein.

Plaintiff has possession, custody, or control of each of the documents to which access is sought by this motion. Each of them constitutes or contains evidence relevant to matters involved in this action, as is shown in the affidavits and briefs submitted in support of the pending Motion To Hold Plaintiff In Contempt, which latter 817 motion is hereby withdrawn and the instant motion substituted in its place. The Court is respectfully requested to rule on this motion on the basis of the affidavits and briefs already filed herein with respect to said prior motion.

Zenith Radio Corporation,
By Thomas C. McConnell,
Philip J. Curtis,
134 South LaSalle Street,
Chicago 3, Illinois,

Dugald S. McDougall,
135 South LaSalle Street,
Chicago 3, Illinois,
Its Attorneys.

818 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

ORDER.

This cause having come on to be heard on the substituted motion of defendant for an order requiring plaintiff to produce and permit defendant to inspect and copy all documents in the categories described in the subpoena duces tecum issued herein on January 2, 1962, which came into existence at any time during the period from November 20, 1959, to May 22, 1963, the date of the filing of the counterclaim herein, and it appearing to the Court that plaintiff has the possession, custody, and control of the foregoing documents, and that each of them constitutes or contains evidence relevant to matters involved in this action, it is:

Ordered, that the plaintiff produce and permit defendant to inspect and copy all documents in the categories described in the subpoena duces tecum issued herein on
819 January 2, 1962, which came into existence at any time during the period from November 20, 1959, to May 22, 1963, the date of the filing of the counterclaim herein; and it is further

Ordered, that said documents be produced at such place and date as may be agreed upon by the parties.

Enter:

R. B. Austin,
United States District Judge.

Dated: October 25, 1963.

590 IN THE UNITED STATES DISTRICT COURT

* * (Caption—59-C-1847) * *

MOTION FOR LEAVE TO FILE COUNTERCLAIM.

Pursuant to Rules 13(a), (e), (f) and Rule 15(a) of the Federal Rules of Civil Procedure, defendant moves the court for leave to file a counterclaim, a copy of which is attached hereto, on the grounds that:

1. Said counterclaim arises out of the matters set forth in paragraphs 12 and 13 of defendant's answer herein and current related unlawful activities of plaintiff occurring since the filing of the answer which activities are the proximate cause of present and continuing damage to defendant sustained after the filing of the answer.

2. Said counterclaim is compulsory and justice requires that it be filed.

Attached hereto and marked Exhibit A is an Affidavit of counsel in support of the Motion.

Thomas C. McConnell,
Philip J. Curtis,
Attorneys for Defendant Zenith Radio Corporation.

May 22, 1963.

591 Exhibit A.

In the United States District Court.

* * (Caption—59-C-1847) * *

AFFIDAVIT OF FRANCIS W. CROTTY.

State of Illinois,
County of Cook. } ss.

Francis W. Crotty, being duly sworn, deposes and says:

1. That he is Vice President in Charge of Patents at Zenith Radio Corporation, defendant herein, and one of defendant's counsel in this case.

2. That matters alleged in paragraphs 6-9 of defendant's counterclaim, to which this affidavit is attached, and which are the proximate cause of damages alleged and require the relief sought in said counterclaim, occurred after the filing of the answer herein.

3. That the unlawful conspiracy set forth in paragraphs 12 and 13 of the answer is the same conspiracy which is the subject of the counterclaim and said paragraphs are incorporated by reference in the counterclaim.

592 4. That the discovery proceedings already conducted by defendant with reference to paragraphs 12 and 13 of the answer revealed evidence in support of both the answer and the counterclaim.

5. That the filing of this counterclaim should in no way delay or prolong the trial of this cause.

Francis W. Crotty.

Subscribed and Sworn to before me this 21st day of March, 1963.

Edith B. O'Connor,
(Seal) *Notary Public.*

My Commission Expires Jan. 31, 1967.

593 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

COUNTERCLAIM.

Zenith Radio Corporation, defendant and counterclaimant, counterclaims against Hazeltine Research, Inc., plaintiff and counterdefendant, pursuant to Rule 13(a) of the Federal Rules of Civil Procedure and says:

1. This is a counterclaim for damages and for injunctive relief under the following provisions of the Federal Anti-trust Laws. Sections 1 and 2 of the Act of Congress of July 2, 1890, 26 Stat. 209, as amended, commonly known as the Sherman Act (U. S. C. §§ 1 and 2) and Sections 4 and 16 of the Clayton Act, 38 Stat. 731, 737 (15 U. S. C. §§ 15 and 26).

The Parties.

2. Counterclaimant, Zenith Radio Corporation, is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 6001 W. Dickens Avenue, Chicago, Illinois, and
594 is now and has been continuously for more than 43
years last past engaged in the development for sale and use and in the manufacture, sale and use of radio apparatus and receiving sets, and since the advent of television, television receiving sets throughout the United States and in foreign commerce, and during said period has built up a large volume of business in manufacturing and selling as the demand therefor has existed and will continue to exist, and in the shipment and sale of such apparatus in commerce between the various states of the United States and in foreign commerce, and said counterclaimant is now and has been engaged in said commerce during all of the period above stated and during all time material to this counterclaim.

3. Counterdefendant, Hazeltine Research, Inc., the party plaintiff in this suit, is an Illinois corporation owned and operated as a wholly owned subsidiary of Hazeltine Corporation, a New York corporation, engaged in the manufacture and sale of electronic equipment and devices. Counterdefendant's sole business is research in the radio and TV fields and the licensing of a patent pool in the United States pertaining to radio and television receivers and other electronic products, said pool being the United States counterpart of a number of inter-related territorial patent pools formed and operated in various market areas of the world, pursuant to a combination and conspiracy between counterclaimant, its parent, Hazeltine Corporation, and sundry other persons and corporations, domestic and foreign, as more particularly described and set forth hereinafter.

595 4. Counterclaimant realleges Paragraphs 12 and 13 of its Answer herein and further asserts that counterdefendant and its parent, Hazeltine Corporation, in furtherance of the conspiracy alleged herein have entered into illegal agreements and arrangements with large foreign companies including General Electric Co. Ltd. of England, Canadian Radio Patents Limited of Canada, Svenska Aktiebolaget Gasacumulator of Sweden and Neutrodyne Proprietary Ltd. of Australia wherein and whereby the inventions and patents of the parties and their co-conspirators have been pooled into mutually exclusive market areas of the world which are thereby illegally blockaded from imports of electronic devices from the United States. Counterdefendant and its parent, Hazeltine Corporation, have thereby agreed with their foreign co-conspirators not to grant licenses under their patents and inventions that would permit exports from the United States into England, Canada, Australia and other markets and said foreign co-conspirators have in turn refused to

issue any licenses for importation into their mutually exclusive territories without the consent of the respective pool members. The domestic patent rights of the foreign co-conspirators are, by agreement between Hazeltine Research, Inc., Hazeltine Corporation and said co-conspirators, funneled into the Hazeltine domestic pool by assignment to counterdefendant, Hazeltine Research, Inc.

5. To implement and effectuate the conspiracy, each of said pools has adopted the standard package type of license described herein covering hundreds of unidentified patents and by threats of expensive protracted and
596 ruinous infringement suits, has compelled acceptance of said licenses and effected the consequent restraint of trade and commerce between the United States and said foreign countries described above. This illegal employment of such package licenses has shielded the hundreds of pooled patents of the co-conspirators from attacks on their validity.

6. Following defendant's refusal to pay tribute to plaintiff under the illegal package license proposal and demands described in paragraph 12 of defendant's answer and after the complaint and answer in this suit had been filed, plaintiff presented to defendant for signature a form of agreement licensing defendant's manufacture and sales of television receivers of any type under a large number of patents, many unidentified, at exorbitant and prohibitive and discriminatory "royalty rates" having no reference to the use, if any, of the patents covered by the proffered package license or of the value of all of the individual patents in the pool. Said license, providing for total payment of "royalties" in excess of $2,500,000, was many times more onerous and discriminatory in its terms than the standard package license first proffered before the filing of this suit, and the illegal demand was made that defendant either sign it or face protracted and expen-

sive patent litigation on any number of hundreds of plaintiff's patents having any relation to television receivers.

7. The illegal package licenses which are the subject of counterdefendant's demands on counterclaimant include the following United States patents which counterdefendant specifically claims are infringed by television receivers manufactured and sold by counterclaimant: 597

Patent No.	Inventor	Issued
2,547,648	Loughren	4/ 3/51
2,728,813	Loughlin	12/27/55
2,773,929	Loughlin	12/11/56
2,774,072	Loughlin	12/11/56
2,848,537	Richman	8/19/58
2,905,749	Loughlin	9/22/59
2,922,839	Richman	1/26/60
2,933,558	Richman	4/19/60
2,954,425	Richman	9/27/60

Counterdefendant has further asserted that the aforesaid claims of infringement were not necessarily limited to the above-numbered patents but that hundreds of patents were at their disposal for possible assertion if the proffered package license agreement were not signed. Counterdefendant and its co-conspirators have thus employed all of the aforesaid patents and inventions in furtherance of the unlawful conspiracy described above.

8. The filing of this suit and the threats to file other infringement suits against counterclaimant on any number of patents in the Hazeltine pool were acts employed to effectuate the conspiracy alleged herein and to compel by economic coercion the signing of counterdefendant's package license. In turn either the signing of the license or a finding of validity and infringement in this suit will signal and lend overwhelming support to attacks on counterclaimant's export trade by the foreign pools under foreign patents covering the same inventions. 598

9. The acts performed by counterdefendant and its coconspirators pursuant to the unlawful conspiracy alleged herein were the direct and proximate cause of loss and damage to counterclaimant which injury is continuing and includes:

(A) Counterclaimant has been, and will be forced to expend large sums of money and to use the time of its officers and employees to defend against the patent infringement claims asserted;

(B) Counterclaimant has been forced by the threat of suit to expend a substantial amount of money to investigate the scope and validity of counterdefendant's patents;

(C) Because of the pendency of this suit and counterdefendant's other charges of infringement described in paragraph 7 above, counterdefendant has been forced to delay expansion of its foreign trade in England, Canada, Australia and other countries where, in furtherance of the conspiracy alleged herein, counterdefendant's inventions and patents are employed to restrain and prevent importation and trade.

Wherefore, counterclaimant prays for:

1. A judgment against counterdefendant for treble the amount of damages sustained by defendant as the proximate result of said acts of counterdefendant and its coconspirators and for costs and attorneys' fees.

599 2. An injunction enjoining counterdefendant and anyone in privity with it from bringing or prosecuting this or any other action at law or suit in equity charging infringement of any patents against counterclaimant, its agents, vendees, distributors or others in privity with counterclaimant and enjoining counterdefendant from continuing its said unlawful combination and conspiracy.

3. Such other and further relief as the Court may deem just.

Thos. C. McConnell,
Philip J. Curtis,
Attorney for
Defendant-Counterclaimant,
Zenith Radio Corporation.

Dated: March 21, 1963.

Of Counsel:
Dugald S. McDougall,
Francis W. Crotty.

622 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIM.

Now comes Plaintiff, Hazeltine Research, Inc. by its attorneys and for its Reply to Defendant's Counterclaim states:

1. Plaintiff admits the allegations of Paragraph 1 thereof.

2. Plaintiff admits that Zenith Radio Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 6001 W. Dickens Avenue, Chicago, Illinois, but is without knowledge or information with respect to each and every other allegation of Paragraph 2 thereof sufficient to enable it to form a belief as to the extent and nature of Defendant's operations.

3. Plaintiff admits that Hazeltine Research, Inc. is an Illinois corporation and a wholly-owned subsidiary of
623 Hazeltine Corporation, but denies each and every other allegation of Paragraph 3 thereof.

4. Plaintiff denies each and every allegation of Paragraph 4 thereof and of Paragraphs 12 and 13 of Defendant's Answer incorporated therein by reference.

5. Plaintiff denies each and every allegation of Paragraph 5 thereof.

6. Plaintiff denies each and every allegation of Paragraph 6 thereof.

7. Plaintiff admits that Defendant has been charged to infringe the patents enumerated in Paragraph 7 thereof, but denies each and every other allegation of said Paragraph 7.

8. Plaintiff denies each and every allegation of Paragraph 8 thereof.

9. Plaintiff denies each and every allegation of Paragraph 9 thereof.

Wherefore, Plaintiff denies that Defendant is entitled to the relief prayed for or to any relief and, therefore, prays that Defendant's Counterclaim be dismissed with costs to Plaintiff, for Plaintiff's reasonable attorneys' fees,
624 and for such other and further relief as the equities
of the case may require and as may to this Court seem meet and just.

Mason, Kohlemainen, Rathburn & Wyss,
By ....
20 North Wacker Drive,
Chicago 6, Illinois,
Attorneys for Plaintiff.

Chicago, Illinois,

Dated:

Of Counsel:
L. B. Dodds,
E. A. Ruestow,
59-25 Little Neck Parkway,
Little Neck 62, N. Y.

Philip F. LaFollette,
Tenney Building,
Madison 3, Wisconsin.

980 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

STIPULATION WITH REFERENCE TO DOCUMENTARY EVIDENCE.

It is hereby stipulated by and between the parties hereto, by their respective counsel of record:

The documents identified in the attached list of fourteen pages entitled "Documentary Evidence" may be offered, marked by the reporter and received in evidence subject to the following objections:

1. Receipt in evidence of those documents from the files of Zenith Radio Corporation and the record in the case involving Zenith and Radio Corporation of America, so identified on the aforesaid list, are subject to the ruling of the Court on the present objection of Plaintiff that they are not admissible as constituting hearsay and not the best evidence.

981 2. Objection to the relevance of any of the documents on the aforesaid list, is reserved for a later date which may include objection in the briefs of the parties.

3. Plaintiff shall have the right to offer additional documents from the files of Plaintiff and/or Defendant on subject matter related to the subject matter of the documents identified in the aforesaid list, subject to the conditions of aforesaid Paragraph 2.

It is further stipulated that the author of the handwritten notes marked Defendant's Exhibits 24, 27, 30 and 32 is Mr. E. A. Ruestow, Executive Vice President of Hazeltine Research, Inc.

Lawrence B. Dodds,
Attorney for Plaintiff.
Thomas C. McConnell,
Attorney for Defendant.

982 List of Documents.

I. Counterclaimant's Exhibits:

A. Documents from Hazeltine Files:

- DXBud 2615
- Dodds X21
- DXBud 2328-9
- DXBud 193
- DXBud 191 ABC
- DXBud 2496-7
- DXBud 2509-10
- DXBud 2582-4
- DXBud 2502-3
- DXBud 2009
- Dodds X18
- DXBud 157
- Dodds X109
- DXBud 2674
- DXBud 2779
- DXBud 340A
- Dodds X62
- Dodds X64
- Dodds X70
- Dodds X72
- Dodds X73
- Dodds X76
- Dodds X75
- Dodds X89
- Dodds X96
- DX Bud 592
- DXBud 583-5
- DXBud 580
- Dodds X131
- Dodds X36
- Dodds 37
- Dodds X39
- Dodds X41
- Dodds X42
- Dodds X43
- Dodds X44
- Dodds X45
- Dodds X46
- Dodds X47
- Dodds X48
- Dodds X51
- Dodds X52
- Dodds X54
- Dodds X98
- 983 Dodds X101
- Dodds X100
- Dodds X99
- Dodds X118
- Dodds X121
- Dodds X122
- Dodds X106
- DXBud 528
- Dodds X109
- Dodds X108
- Dodds X107
- Dodds X110
- Dodds X111
- Dodds X112
- Dodds X113
- Dodds X104
- Dodds X117
- Dodds X119
- Dodds X120
- Dodds X123
- Dodds X124
- Dodds X125
- Dodds X126
- Dodds X128
- Dodds X127
- Dodds X129

Dodds X130
DXBud 1157
DXBud 2148-49
DXBud 2147
DXBud 2090
DXBud 2531
DXBud 2295-2307

Ltr. 3/19/63—McFarland to CRPL
11/20/61—Ruestow to Wilson
Undated, unsigned, handwritten notes (Comments of EAR on LBD memo of 12/14/61)
Undated, unsigned memo—"Notes on Haz. Patent Picture"
5/8/62—Ruestow to Swinyard
1/1/63—Ruestow to Beam & McFarland
12/14/61—Dodds to Wilson
1/24/63—Dodds to McFarland
Undated, unsigned, handwritten notes (EAR notes re LBD Plan of 1/24/63)
1/28/63—Boos to Ruestow
984 2/8/63—Westermann Memo to File
Undated, unsigned, typewritten sheet with 3 paragraphs I, II & III
2/15/63—Ruestow to Beam
2/25/63—Unsigned "Domestic Patent Licensing Plan Draft"
2/25/63—Unsigned "Problem for Special Consideration"
3/4/63—WMM to LaFollette
3/10/63—Unsigned, handwritten notes (by EAR?)
3/20/63—Report of Ruestow to Board
4/17/63—Report of Ruestow to Board
License Draft—3/26/62EAR:AMR
3/20/63—Ruestow to Crotty
5/20/63—Ruestow to Crotty
Hazeltine Standard License Agreement Form 918 and Form A
DXBud 133 A-B
DXBud 131 A-B
DXBud 120, 121
Ltr. 4/7/60—Dodds to MacQueen
Ltr. 4/13/60—MacDonald to Dodds
Ltr. 4/19/60—MacDonald to MacQueen

Ltr. 6/14/60—MacQueen to Dodds
9/5/33—Hazelpat/Hazeltine
4/6/39—Hazeltine/GEC (2 agreements of even date)
7/24/45—Hazeltine/GEC
11/14/57—Hazeltine/GEC
Agreement of 1962—Hazeltine/GEC
Exhibit H—To Hazeltine's Answers to Certain Interrogatories of Zenith
Exhibit I-1—Of Hazeltine's Answers to Interrogatories
Exhibit K—Of Hazeltine's Answers to Interrogatories
Exhibit L—Of Hazeltine's Answers to Interrogatories
Exhibit M—Of Hazeltine's Answers to Interrogatories.
Exhibit N—Of Hazeltine's Answers to Interrogatories
License A8-S
License A8-T
Agreement—Hazeltine/Neutrodyne—9/11/28
Australian Patent License, License No. 1—Exhibit P
License No. 5—Exhibit Q
License No. 6B
License No. 7B (1961)
Ltr. 11/17/60—Warner to Dodds
Ltr. 1/2/63—Tiffany to McFarland
Ext. Agreement of 11/14/57
DXBud 1789-92
Dodds X77
DXBud 679A-695

B. Documents from the Record in RCA/Zenith Litigation 985

PD2477-8—Ltr. 1/21/24—Manton Davis (RCA) to I. J. Adams (RCA)
PD2479-80—Ltr. 1/23/24—Adams to Davis (RCA)
CAV914-5—Ltr. 11/27/35—McFarlane (CGE) to Grimley (RCA Victor)

CAV447—Ltr. 6/11/36—Brooke (CRPL) to Gardner (RCA Victor)
IL2185-97—Ltr. 1/13/44—MacKenty to Schairer (RCA) MacK X 33
IL2236-39—Ltr. 12/11/44—MacKenty to Schairer —Brownlee X15
CAV256-62—Ltr. 11/6/46—Marpole (RCA) to Shackelford Brownlee X21
LM517—Ltr. 11/17/49—Mayer to Shackelford—Mayer X25
MK80 to 80-22—Ltr. 8/10/51—Johnson to Marpole
1603-4 (WE) Minutes 4/27/45
CRPL 217 & 221—Ltr. 11/23/50—Brownlee to CRPL Board—Brownlee X11
Minutes 5/7/53—Brownlee X13
Minutes 3/5/53—Brownlee X24
CGE-2-5 to 2-9—Ltr. 11/5/53—Thompson to File —Thompson X1
Ltr. 3/1/54—Scroggie to Members—Brownlee X9
CGE-3-44 to 3-113—12/53 General Survey—Hamer X4
CW644-6—Ltr. 9/9/55—McConnell to Steiger (West'hse)
CW665—CRPL Notice to Importers
CRPL 200—Notice to Importers
CRPL 201—Notice to Importers
CRPL 208—Notice to Importers
CRPL 213-15—Notice to Importers
CRPL 204—Notice to Importers
CRPL 205—Notice to Importers
CRPL 268-9—Notice to Importers
CRPL 141—2/13/51—Brownlee to Consolidated Motors—Brownlee X30
CRPL 140A—Ltr. 2/14/51—Lush to CRPL—Brownlee X30
CRPL 141A—Ltr. 2/16/51—CRPL to Lush—Brownlee X30
S-10924-27—Ltr. & Memo—3/30/44—3/27/44—MacKenty X32
IB311-12—Ltr. 8/2/48—Shackelford to Coe (RCA) —Shackelford X120

Agreement —1/19/27—CGE/C. Marconi/C. West'hse/No. E Ltd./Std. Radio—Zenith X1

S3121-2—Ltr. 12/13/26—Shoenberg to Sarnoff—Sarnoff X53

PD6027-34—Ltr. 11/29/32—MacKenty to Schairer—MacKenty X1

Ltr. 12/15/48—Birney to Shackelford—Mayer X2

Ltr. 1/2/50—Mayer to Shackelford—Mayer X44

15084-6—Ltr. 8/18/33—Topham to Western Electric Co. Ltd.

9/13/60—Topham to GEC

S3123-6—License A Issued by Marconi's Wireless Telegraph Co. Ltd.

S2538-45—License A.4 (2nd Edition)

986 IL-2139—IL-2144—1/24/51—Shackelford to Brunet—Shackelford X132

ISE-1-ISE-1æ — 8/11/33 — Agreement. Amalgamated Wireless (A'Asia) Limited/Standard Telephones & Cables (A'asia) Limited Herod X4

CX-107-12—Ltr. 4/23/35—Clapp to Brown (Internat'l GE Co. Inc.)

CX-107-16

CX-107-19—4/28/47—Ltr. Clapp to Eveleth

CX-107-22

License 9/26/57—RCA/Zenith/Rauland

License 9/27/57—GE/Zenith/Rauland

License 9/27/57—CGE/Zenith/Rauland

License 9/27/57—Western Electric/Zenith/Rauland

Dodds X28

Dodds X22

Dodds X25

Dodds X3

Dodds X6

Dodds X7

Dodds X8

Dodds X5

Dodds X9

Dodds X34

Dodds X97

987 1. Counterclaimant's Exhibits:

Documents from the Files of Zenith

Z2338—Ltr. 2/21/51—Coleman to Zenith Bonfig X4
Z2339—2/20/51—Miguel to Lush Bonfig X4
2335 & 6—Ltr. 5/7/51—Miguel to Consolidated Bonfig X3
2337—Ltr. 4/27/51—Consolidated to Miguel Bonfig X3
1851—Ltr. 6/12/51—Consolidated to Zenith
1731—Ltr. 5/1/52—Miguel to Consolidated
1732—Ltr. 4/24/52—Consolidated to Miguel Lush X4
2687-8—Ltr. 4/11/53—Winnipeg to Gonzalez
2352—Ltr. 8/20/54—MacCuspie to J. S. Wright Bonfig X5
2353—Ltr. 8/16/54—Brownlee to MacCuspie Bonfig X6
2689—Ltr. 8/16/54—Brownlee to MacCuspie (Ideal)
2354-5—Ltr. 7/21/54—J. S. Wright to MacCuspie Bonfig X7
2356-7—Ltr. 7/16/54—MacCuspie to Peirels Bonfig X8
2358-9—Ltr. 7/6/54—Brownlee to Ideal Bonfig X10 & Brownlee X22
X.P. Exhibit 1179—6/24/27—Ltr. CRPL to Zenith
6/22/27—Ltr. Zenith to CRPL
2246-2252—Sample Memo of Agreement of 1927
X.P. Exhibit 1180—Ltr. 2/6/30—CRPL to Zenith
2226-2237—Standard Agreement form attached thereto
X.P. Exhibit 1183—Ltr. 11/30/36—CRPL to Zenith with Notice
X.P. Exhibit 1182—Ltr. 1/30/30—Zenith to CRPL
X.P. Exhibit 1191—Ltr. 9/12/51—CRPL to Zenith Patent Dept.
2127—Ltr. 9/10/51—Zenith Patent Dept. to CRPL
2128—Ltr. 9/6/51—CRPL to Zenith
~~*X.P. Exhibit 1193 Ltr. 12/4/51 CRPL to Crown Electrical Mfg. Ltd.*~~

X.P. Exhibit 1193—Ltr. 7/23/53—CRPL to Zenith—Intl. Div.
2073—Ltr. 7/21/53—Zenith to CRPL
X.P. Exhibit 1194—Ltr. 1/17/52—CRPL to Zenith Patent Dept.
~~*2075 2125 Std. output license agreement attached*~~
Ltr. 4/16/59—CRPL to Zenith—Curtis
Telegram 9/10/58—ZRC of Canada to CRPL with adv.
Ltr. 9/16/58—CRPL to Zenith RC of Canada
Ltr. 9/23/58—ZRC of Canada to CRPL
Memo of conf. held on 7/30/58 with CRPL and ZRC of Canada personnel (Kiely)
~~*Ltr. 4/27/60 of Can. G. E. Co. Ltd.*~~
Ltr. 6/5/59—CRPL to Zenith
Memo of Conf. held on 7/30/58 with CRPL and ZRC of Canada personnel by Capell
~~*Ltr. 7/30/58 CRPL to Kiely, ZRC of Canada*~~
~~*Ltr. 4/3/58 CRPL to Hackbusch Electronics Ltd. with copy of alternative licenses attached*~~
Exhibit 1258—Ltr. 5/22/28—Electric Radios Ltd. to ZRC
Exhibit 1251—Ltr. 12/18/29—Zenith to Williams Motor Company
Ltr. 12/11/29—Munroe of Williams to Zenith
988 Exhibit 1253—Ltr. 3/10/30—Zenith to Monroe of Williams
Ltr. 3/4/30—Monroe to Zenith
Ltr. 3/1/30—G. P. Williams to Smart & Biggar
Ltr. 2/21/30—Smart & Biggar to Williams
Exhibit 1252—Telegram 3/23/30—Munroe to Zenith
Exhibit 1254—Ltr. 4/3/30—Munroe to Zenith
Exhibit 1255—Ltr. 4/17/30—Munroe to Zenith
Exhibit 1256—Ltr. 6/27/30—Haugh to Klugh
Exhibit 1262—Memo 2/18/30—Vasquez to Mr. Robertson
Exhibit 1314—Ltr. 11/4/36—Zenith to Grosser & Glass Ltd.
Ltr. 10/31/36—Grosser & Glass Ltd. to Zenith
Exhibit 1263—Memo 2/3/37—McDonald to Bryant
347—Ltr. 6/28/37—Zenith to Beasley's

348—Ltr. 6/18/37—Beasley's to Zenith
Exhibit 1319—Ltr. 9/1/37—Zenith to Easingwood
428—Ltr. 8/16/37—Easingwood to Zenith
Exhibit 1324—Ltr. 10/15/37—Zenith to Wall
446—Ltr. 10/6/37—Wall to Zenith
Exhibit 1241—Ltr. 12/10/37—Bryant to Nemetz
1820—Ltr. 12/6/37—Nemetz to Zenith
Exhibit 1328—Ltr. 3/14/38—Zenith to Columbia Sales Service, Inc.
261—Ltr. 3/11/38—Zenith from Columbia Sales Service Inc.
Exhibit 1392—Ltr. 3/25/38—Zenith to Bailey
276—Ltr. 2/11/38—Bailey to Zenith
Exhibit 1329—Ltr. 3/25/38—Zenith to Jarvis Elec. & Ref. Co.
2629-2631—Ltr. 3/10/38—Jarvis Elec. & Ref. Co. to Zenith
Exhibit 1391—Ltr. 3/28/38—Zenith to Parkinson
273-274—Ltr. 3/26/38—Parkinson to Zenith.
Exhibit 1401—Ltr. 8/8/38—Zenith to Grosser & Glass Ltd.
246—Ltr. 7/18/38—Grosser & Glass Ltd to Zenith
Exhibit 1412—Ltr. 9/15/38—Zenith to Jack Becker
265 — Ltr. 9/9/38 — Jack Becker — Dominion to Zenith
Exhibit 1333—Ltr. 9/20/38—Zenith to Mfrs. Sales Company
2617—Ltr. 9/14/38—Mfrs. Sales to Zenith
Exhibit 1334—Ltr. 12/31/38—Zenith to Bassingthwaighthe
Z-19444-6 — Ltr. 12/21/38 — Bassingthwaighte to Zenith
Exhibit 1406—Ltr. 2/21/38—Zenith to Park Ave. Furn. Store.
976—Ltr. 2/15/39—Park Ave. Furn. Store to Zenith
Exhibit 1397—Ltr. 2/22/39—Zenith to Cherniak & Co., Ltd.
Exhibit 1416—Ltr. 3/1/39—Zenith to Mr. Allen
938—Ltr. 2/18/39—D. E. Allen to Zenith

Exhibit 1398—Ltr. 7/6/39—Zenith to Norton Motors

936—Ltr. 7/3/39—Norton Motors to Zenith

Exhibit 1417—Ltr. 8/8/39—Zenith to National Mkt. Service

933—Ltr. 7/22/39—National Mkt. Service to Zenith

Exhibit 1250—Ltr. 8/8/39—Zenith to Coast Dist. Ltd.

989 464—Ltr. 7/31/39—Coast Dist. Ltd. to Zenith

Exhibit 1340—Ltr. 11/30/39—Zenith to Mr. Droneck

Z-19454—Ltr. 11/25/39—Droneck to Zenith

Exhibit 1419—Ltr. 11/30/39—Zenith to Air Electric Dist.

953—Ltr. 11/27/39—Air Electric to Zenith

Exhibit 1267—Memo 9/30/40—McDonald to Thompson with circulation list attached

Exhibit 1275—Memo from I.H. re Sale of Zenith Radios in Canada dated 11/24/45

2364—Telegram 8/8/51—Zenith to Montebello Electric

2365—Telegram 8/8/51—Montebello Electric to Zenith

Exhibit 1342—Ltr. 8/21/51—Intl. Div. to North Shore Elec. Dist. Ltd.

Z-13801—Ltr. 8/13/51—North Shore Elec. Dist. Ltd. to Zenith

Exhibit 1282—Telegram 8/31/51—Zenith to Tomas

2411—Telegram 8/31/51—Tomas to Zenith

Exhibit 1345—Ltr. 1/25/52—Intl. Div. to Taylor Hdwe. Ltd.

Z-17986—Ltd. 1/18/52—Taylor Hdwe. Ltd. to Zenith

Exhibit 1358—Ltr. 3/9/52—Intl. Div. to Trevor Peck Co. Ltd.

1428—Ltr. 2/24/53—Trevor Peck Co. Ltd. to Zenith

Exhibit 1347—Ltr. 3/11/52—Miguel to Gardozo Furn. Co.

67—Ltr. 2/26/52—Cardozo Furn. Co. to Zenith

Exhibit 1348—Ltr. 7/4/52—Hobbs Hdwe. Co. Ltd. to Zenith
181—Ltr. 7/1/52—Miguel to Hobbs Hdwe. Co., Ltd.
182—Ltr. 6/20/52—Hobbs Hdwe. Co., Ltd. to Zenith
Exhibit 1352—Ltr. 9/26/52—Miguel to Manning Equipment Ltd.
152—Ltr. 9/16/52—Manning Equipment Ltd. to Zenith
Exhibit 1221—Ltr. 12/24/52—Intl. Div. to Codere Limitee
54—Ltr. 12/16/52—Codere Limitee to Zenith
Exhibit 1344—Ltr. 1/13/53— Intl. Div. to Atlas Intl. Agency
90—Ltr. 12/30/52—Atlas Intl. Agency to Zenith
Exhibit 1356—Ltr. 2/11/53—Intl. Div. to Belltower Dist. Ltd.
1404—Ltr. 2/4/53—Belltower Dist. Ltd. to Zenith
Exhibit 1357—Ltr. 2/18/53—Arthur J. Turner to Zenith
1493—Ltr. 2/11/53—Intl. Div. to Turner
1494—Ltr. 2/2/53—Turner to Zenith
Z-19500—Ltr. 3/8/56—Mrs. Galinsky to Zenith
Exhibit 1359—Ltr. 3/14/53—Miguel to Robinson Electric Ltd.
1759-60—Ltr. 3/6/53—Robinson Electric to Zenith
Exhibit 1219—Ltr. 3/27/53—Intl. Div. to Winnipeg Sup. & Fuel Co. Ltd.
1489—Ltr. 3/23/53—Winnipeg Sup. & Fuel Co. to Zenith
Exhibit 1361—Ltr. 4/16/53—Miguel to Firestone Tire & Rubber
197—Ltr. 4/2/53—Firestone Tire & Rubber to Zenith
Exhibit 1211—Ltr. 5/4/53—Robinson Electric, Ltd. to Zenith
990 133—Ltr. 4/28/53—Miguel to Robinson Electric Ltd.
134—Ltr. 4/20/53—Robinson Electric to Zenith

Exhibit 1217—Ltr. 5/5/53—Intl. Div. to Winnipeg Supply & Fuel Co.

87-88—Ltr. 4/11/53—Winnipeg Supply & Fuel Co. to Zenith

Exhibit 1216—Ltr. 5/7/53—Miguel to Mark Rycharski

127—Memo 5/2/53—McDonald to Miguel (ZRC)

128-129—Ltr. 4/26/53—Mr. Rycharski to Zenith

Exhibit 1242A—Ltr. 5/14/53—Miguel to Major Appliance Div. Seattle Hdwe.

3-RCA 963—Ltr. 4/28/63—Seattle Hdwe. to Zenith

Exhibit 1362—Ltr. 6/9/53—Intl. Div. to Pacific Electric

1500—Ltr. 5/6/53—Pacific Electric to Zenith

Exhibit 1238—Ltr. 6/19/53—Miguel to National Television

1764—Ltr. 6/6/53—National Television to Zenith

1765—Ltr. 5/23/53—National Television to Zenith

Exhibit 1364—Ltr. 7/1/53—Intl. Div. to Arkley, Payne & Watson Ltd.

1505—Ltr. 6/26/53—Arkley, Payne & Watson Ltd. to Zenith

Exhibit 1368—Ltr. 7/2/53—Intl. Div. to Harris Music Shop

1513—Ltr. 6/20/53—Harris to Zenith

Exhibit 1214—Ltr. 8/31/53—Intl. Div. to Crepeau

1377—Ltr. 8/26/53—ZRC of NY to Crepeau

1378—Ltr. 8/19/63—Crepeau to ZRC of NY

Exhibit 1210—Ltr. 10/22/53—Miguel to Robinson Electric

131—Ltr. 10/8/53—Robinson Electric to Zenith

1791—Ltr. 12/22/53—Miguel to P.B. Hart Agency

1792—Ltr. 12/8/53—P. B. Hart to Zenith

166—Ltr. 2/1/54—Industrial Dist. Co. to Zenith

167—Ltr. 12/18/53—Miguel to Industrial Dist. Co.

168—Memo 12/15/53—Monfig to Miguel

169-170—Ltr. 12/1/53—Industrial Dist. Co. to Zenith

171—Ltr. 10/19/53—Industrial Dist. Co. to Zenith

Exhibit 1243—Ltr. 2/2/54—Miguel to Amana of B.C.

1740—Ltr. 1/25/54—Amana of B.C. to Zenith
Exhibit 1247—Ltr. 2/24/54—Roch Potvin to Zenith
2388—Ltr. 1/21/54—CRPL to Roch Potvin with Notice
Exhibit 1372—Ltr. 4/8/54—Intl. Div. to Weco Sales
Z-18067—Ltr. 4/4/54—Weco Sales to ZRC
Exhibit 1372—Ltr. 7/23/54—Intl. Div. to Lumsden and Company
Z-18043—Ltr. 7/20/54—Lumsden & Company to Zenith
Exhibit 1206—Ltr. 8/11/54—Miguel to Shelbern Industries
Z-19463—Ltr. 8/6/54—Shelbern Industries to Zenith
Exhibit 1205—Ltr. 10/26/54—Miguel to Valliere Limitee
Z-19472—Ltr. 19/20/54—J.D. Valliere Limitee to Zenith
Exhibit 1278—Ltr. 11/29/54—Watkins Co. Ltd. to Zenith
2428-9—Ltr. 11/26/54—Cowling, MacTavish, Osborne & Henderson to Watkins Co. Ltd.
991 2430—Memo 11/1/54—Kaplan to Bonfig, Miguel, Wright
Exhibit 1374—Ltr. 2/15/55—Miguel to McMullen Supplies, Ltd.
Z-19477—Ltr. 1/29/55—McMullen Supplies, Ltd. to Zenith
Exhibit 1202—Ltr. 11/17/55—Miguel to Marshall-Wells Can. Cos.
Z-19492—Ltr. 11/4/55—Marshall-Wells Can. Co. to Zenith
Exhibit 1201—Ltr. 11/24/55—Pacific Goldsmiths to Zenith
4166—Ltr. 11/17/55—Miguel to Pacific Goldsmiths
Exhibit 1245—Ltr. 12/8/55—Miguel to Southern Canada Power Co.
Z-19497—Ltr. 11/28/55—Southern Canada Power Co. to Zenith

Exhibit 1376—Ltr. 4/12/56—Alford & Co. Ltd. to Zenith
Z-19506-7—Ltr. 4/6/56—Miguel to Alford & Co. Ltd.
Z-19508—Ltr. 4/2/56—Alford & Co., Ltd. to Zenith
Z-12740-1—Ltr. 12/12/33—Canadian Marconi Co. to McDonald
618-20—Ltr. 3/31/31—to Paul B. Klugh
Z-9932-37—Report 8/17/31—by Thornton
3692—Ltr. 11/13/33—Thompson to Topham
3693—Ltr. 10/31/33—Topham to Thompson
2536-7—Ltr. 5/26/36—Topham to Turnpress Limited
2534-5—Ltr. 5/28/36—Toubin to ZRC, Zenith-del Mercado Ex. 1
2527-30—Ltr. 11/9/36—Toubkin to ZRC, Zenith-del Marcado Ex. 2
2645—Ltr. 3/5/37—Toubkin to ZRC, RCA France Ex. 7
2642—Ltr. 3/18/37—Toubkin to ZRC, Zenith-del Mercado Ex. 4
2641—Telegram 3/18/37—Toubkin to Zenith, Zenith-del Mercado X8
2639—Ltr. 3/31/37—Duke to Toubkin
2638—Ltr. 4/3/37—Toubkin to ZRC, Zenith-del Mercado Ex. 8
2643-4—Ltr. 3/8/37—Toubkin to Weldon, Zenith-del Mercado Ex. 5
2639—Ltr. 3/31/37—Duke to Toubkin
2633—Ltr. 6/25/37—Toubkin to ZRC, Zenith-del Mercado Ex. 9
2634—Ltr. 6/22/37—Weldon to Toubkin
2635—Telegram 6/19/37—Toubkin to Zenith
2646—Ltr. 7/3/37—Weldon to Entwistle
2647—Telegram 6/15/37—Entwistle to Zenith
2641—Ltr. 9/3/37—Weldon to Toubkin, Zenith-del Mercado Ex. 11
2462-4—Ltr. 9/13/37—Toubkin to Weldon, Zenith-del Mercado Ex. 11
3707—Ltr. 8/3/38—Topham to Thompson, Zenith-del Mercado Ex. 12

3708—Ltr. 7/13/38—Thompson to Topham, Zenith-del Mercado Ex. 12
3681-90—Ltr. 12/21/38—Topham to Thompson with license
Ltr. 4/4/58—Grimm to Argerich
Ltr. 1/25/58—Argerich to ZRC
Ltr. 12/21/58—Grimm to Suloiman & att. ltr. from Suloiman
Ltr. 12/30/58—Grimm to Brookes & Att. Ltr. from Brookes
Ltr. 3/30/59—Olsen to Rogers & att. Ltr. from Rogers
Ltr. 6/16/59—Peirels to Winter
Ltr. 5/30/59—Winter to ZRC
Ltr. 9/17/59—Carstens to Wedderspoon
992 Ltr. 9/4/59—Harley to Miguel
Ltr. 8/4/59—Ramsey to Harley
Ltr. 9/14/61—Semonoff to Ramsey
Ltr. 3/28/62—Ramsay to Miguel
Ltr. 4/19/62—Ramsay to Semonoff
Ltr. 4/26/62—Carstens to Ramsay
Ltr. 4/19/62—Ramsay to Miguel
Ltr. 8/1/62—Ramsay to Miguel
Ltr. 8/3/62—Semonoff to Ramsay & att. telegrams
Ltr. 8/7/62—Semonoff to Ramsay
Ltr. 8/1/62—Ramsay to Semonoff
Ltr. 8/2/62—Ramsay to Semonoff
Ltr. 8/3/62—Ramsay to Semonoff
Ltr. 8/15/62—Semonoff to Ramsay
Ltr. 10/9/62—Semonoff to Ramsay
Ltr. 9/28/62—Ramsay to Semonoff
Ltr. 11/8/62—Ramsay to Miguel
Ltr. 4/21/60—Peirels to Jarvis
Ltr. 7/18/60—Jarvis to Peirels
Foreign Information Service (Bulletin No. 2,405) 3/28/60
Ltr. 12/20/56—Peirels to Hannah
Ltr. 10/15/56—by Hannah
Ltr. 3/20/57—Peirels to Blahout
Ltr. 3/13/57—Blahout to ZRC
Ltr. 4/15/57—Peirels to Brooks & Co.

Ltr. 4/5/57—Brooks & Co. (Platt) to ZRC
Ltr. 8/7/57—Carstens to Hegh
Ltr. undated—by Hegh
Ltr. 12/10/57—DeRobertis to Irvine
Ltr. undated—by Irvine
Ltr. 4/28/58—Olsen to Magnecord Australasia Pty. Ltd.
Ltr. 12/10/58—Miguel to Bean
Ltr. 12/3/58—Bean to Hunt
Ltr. 12/24/58—Mary Anne Sundt to Bean
Ltr. 3/2/59—Grimm to Bailey & att. inquiry
Ltr. 3/4/59—Grimm to Hossain
Ltr. 2/24/59—Hossain to ZRC
Ltr. 4/1/59—Grimm to Evans & attached letter from Evans
Ltr. 10/30/58—Grimm to Evans and attached letter from Evans
Ltr. 5/6/59—Cook to Bennett & attached letter from Bennett
Ltr. 6/22/59—Cook to Oldfield
Ltr. 6/2/59—Oldfield to Zenith Radio Corp.
Ltr. 5/21/59—Oldfield to Zenith Radio Corp.
Ltr. 12/24/59—Peirels to Hawkins
Ltr. 12/16/59—Hawkins to Peirels
993 Ltr. 2/29/60—Vigil to Jacoby
Ltr. 2/10/60—Jacoby to Zenith Radio Corp.
Ltr. 3/8/60—Cook to Cassa & attached letter from Cassa
Ltr. 3/8/60—Cook to Varga
Ltr. 3/2/60—Varga to Zenith Radio Corp.
Ltr. 3/22/60—Grimm to Barrett & attached ltr. from Barrett
Ltr. 4/22/60—Grimm to Chan
Ltr. 4/19/60—Cham to Zenith
Ltr. 4/22/60—Grimm to Rawson
Ltr. 4/15/60—Rawson to Zenith Radio Corp.
Ltr. 6/10/60—Grimm to Vidler
Ltr. 6/3/60—Vidler to Zenith Radio Corp.
Ltr. 10/4/60—Semonoff to Tremayne
Ltr. 9/29/60—Lemayne to Zenith Radio Corp.
Ltr. 10/17/60—Semonoff to Smith
Ltr. 10/10/60—Smith to Zenith Radio Corp.

Ltr. 11/29/60—Semonoff to Lawrence & ltr. from Lawrence
Ltr. 12/20/60—Semonoff to Cominos
Ltr. 12/14/60—Cominos to Zenith Radio Corp.
Ltr. 5/8/62—Hart to Rayford's Home Electrics Pty. Ltd.
Ltr. 5/2/62—Rayford's to Zenith Radio
Ltr. 11/20/62—Hart to O'Neil
Ltr. 11/15/62—O'Neil to Zenith Radio Corp.
Ltr. 1/3/63—Hart to Gersekoski
Ltr. 12/18/62—Gersekoski to Zenith Sales Corp.
Ltr. Swinyard to Robertson, Notice of Infringement 10/13/59
Ltr. 9/28/61—Ruestow to Crotty
Ltr. 10/3/61—Crotty to Ruestow
Ltr. 10/25/61—Crotty to Ruestow
Ltr. 11/1/61—Crotty to Ruestow
Memo to Hazeltine files—Crotty—11/14/61
Ltr. 11/21/61—Crotty to Ruestow
Ltr. 4/16/62—Crotty to Ruestow
Ltr. 4/27/62—Ruestow to Crotty
Ltr. 5/17/62—Crotty to Ruestow
Ltr. 7/23/62—MacCuspie to J. Wright
Ltr. 5/17/62—McConnell (CRPL) to Electrical Distributors
Ltr. 4/2/63—Crotty to Ruestow
Annual Report of Haz. Corp. for 1962
Ltr. 1/17/64—Swinyard to Zenith (Crotty)
Excerpts from Monthly Bulletin of Production Statistics, No. 145, October, 1960, Commonwealth Bureau of Census and Statistics, Canberra, Australia.
994 Excerpts from Monthly Bulletin of Production Statistics, No. 280, September, 1963, Commonwealth Bureau of Census and Statistics, Canberra, Australia.
Excerpts from Monthly Bulletin of Production Statistics, No. 174, March, 1963, Commonwealth Bureau of Census and Statistics, Canberra, Australia.
Excerpts from Canadian Statistical Review, October 1963, Cat. No. 11-003.

Excerpts from Canadian Statistical Review Historical Summary 1963 Edition, Cat. No. 11-502.

Excerpts from Canadian Statistical Review, 1955 Supplement, Sup. No. 2.

Excerpts from Canadian Statistical Review, December, 1963, Cat. No. 11-003.

Excerpts from Monthly Digest of Statistics, No. 214, October, 1963—London: Her Majesty's Stationery Office.

Excerpts from Annual Abstract of Statistics, No. 100, 1963 London: Her Majesty's Stationery Office.

1090—Ltr. 12/7/34—Rothermel to Zenith.

995 II. Counterdefendant's Exhibits:

Pleadings From The RCA/Zenith Delaware Litigation.

1. Plaintiff's reply to the counterclaim of RCA et al.
2. The stipulation and order of dismissal.

Pleadings From The RCA/Zenith Illinois Litigation.

1. Amended complaint of 12/7/60.
2. Defendant's answer and counterclaim.
3. Amended counterclaim and amended prayers for relief.
4. Amendment to the counterclaim.
5. Amendment and supplement to the counterclaim.
6. Stipulation and order of dismissal.

RCA/Zenith Settlement Agreement.

Canadian Patent Act of 1935.

Sections 66-73, inclusive.

Documents from the Files of Zenith.

1384—Memo—12/28/34—McDonald to Robertson and attached memoranda of 12/27/34—Hefter to Robertson and letter 2/25/35—Hefter to Rothermel.

1190—Memo—10/15/45—Howland to Robertson.

1188—Memo—12/5/50—Birchard to Miguel.

1187—Memo—10/3/45—Howland to Herriot.

1184—Notes from CRPL.

1273—Memo—11/8/45—Herriot to Robertson and attached memorandum 10/29/45—Howland to McDonald.

1072 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

STIPULATION.

It is hereby stipulated by and between counsel for the parties herein that the description of the companies contained in Appendix III to Zenith's Pre-Trial Brief on the anti-trust issues is a correct abstract of the operations of the companies concerned with the following exceptions:

1. Canadian Radio Patents Limited at page 77. In the next to the last line, before Hazeltine, insert the words—has the right to grant licenses under the Canadian patents of—.
2. Electric & Musical Industries, Limited at page 78. Substitute for the present description, the following:—This is a public company formed in 1931 and is engaged in research development and patent licensing and is also a holding company for several concerns in various fields, including vacuum tubes and household appliances. 1073

L. B. Dodds,
Attorney for Plaintiff.
Thomas C. McConnell,
Attorney for Defendant.

APPENDIX III.

Hazeltine's Co-conspirators.

In Australia.

Australian Radio Technical Services & Patents Co. Pty Ltd.
47 York Street

Sydney, Australia

The Company which was started in 1933 does not trade but functions solely as a licensing agent for its shareholders which are two of the largest manufacturers of electrical goods in the Commonwealth. It has an authorized capital of £10,000 and its shareholders are Amalgamated Wireless (A'asia) Ltd., and Standard Telephones & Cables Pty. Ltd., infra.

Amalgamated Wireless (A'asia) Ltd.
47 York Street
Sydney, Australia

The Company was formed in 1913 and has an authorized capital of £5,000,000 in 20,000,000 ordinary shares. In association with Standard Telephones & Cables Pty. Ltd., it holds the shares in Australian Radio Technical Services & Patents Co. Pty. Ltd., and it is a substantial shareholder in Grafton Broadcasting Co. Ltd., Telephone Manufacturing Co. (Aust.) Pty. Ltd., Amalgamated Wireless Valve Co. Pty. Ltd., and Manufacturers Special Products Pty. Ltd. Its total assets are in excess of £13,000,000.

The Company is regarded as the leading manufacturer of electronic equipment in the Commonwealth and maintains an annual turnover in excess of £20,000,000 and has more than 5,000 employees. It is the manufacturer of radio

broadcasting and television transmitters with associ-
968 ated studio equipment, sound broadcast and television
receivers, appliances, recorders, receiving valves or
tubes, picture tubes and a variety of communication and
radar equipment.

Standard Telephones & Cables Pty. Ltd.
252-274 Botany Road
Alexandria, Australia

The Company was formed in 1895 as a branch of Western Electric Co. Ltd., London, England and was incorporated in 1912. It has an authorized capital of £5,000,000 in £1 shares. Its total assets are in excess of £11,000,000 and its sales are in excess of £15,000,000 annually. The Company is a subsidiary of International Standard Electric Corporation of New York, U. S. A. and in association with Amalgamated Wireless (A'asia) Ltd., holds the issued capital stock in Australian Radio Technical Services & Patents Co. Pty. Ltd. Subsidiaries of the Company include Standard Telephones and Cables (Q'ld) Pty. Ltd., New Zealand Electric Totalisators Ltd., and Silovac Electrical Products Pty. Ltd.

The Company is a manufacturer and distributor of electronic equipment and telephone equipment having discontinued the manufacture of domestic appliances in the early part of 1962.

Philips' Gloeilampenfabrieken N. V.
Eindhoven, Netherlands

The original business was formed in 1891 and now has an authorized capital of £3,000,000,000. The assets of the Company are in excess of £4,600,000,000 and its sales for 1962 exceeded £5,500,000,000. The Company has over 25 subsidiary and affiliated companies located all over the world and employs 233,000 persons.

The group of companies engage in the manufacture,
969 import, export and wholesale of a great many indus-
trial and consumer items such as radio tubes, lamps,
household electric apparatus, electronic tubes, radio and
television apparatus, medicinal and scientific apparatus and
electronic measuring equipment.

Neutrodyne Pty. Ltd.
440 Little Collins Street
Melbourne, C1, Australia

The Company was formed in 1928 and has an authorized capital of £100,000. Its issued stock is owned 70 per cent by Hazeltine Corporation, Little Neck, New York, and 30 per cent by Electronic Industries Ltd. of Australia.

The Company was formed to acquire the patent rights of Hazeltine Corporation of America.

In Canada.

Canadian General Electric Company Limited
212-220 King Street W.
Toronto 1, Ontario

The Company was formed in 1892 and is a subsidiary of General Electric Company (Inc.) of Schenectady, New York. The authorized capital stock comprises 625,000 cumulative convertible preferred shares and 8,178,800 common shares of which General Electric Company of Schenectady owns 95 per cent of the outstanding voting stock. The Company has a number of subsidiaries, including Dominion Engineering Works Limited, Radio Valve Company Limited, Canadian General Electric Export Limited, Montreal Armature Works Limited and W. L. Stevens Limited.

The Company is the biggest and most diversified manufacturer of electrical equipment in Canada. It manufactures a complete range of electrical apparatus, supplies and

equipment, including motors, transformers, heavy
970 industrial equipment as well as household electrical
appliances, radios, television receivers and is the largest producer of incandescent lamps in Canada. As of 1962, its total assets were in excess of $216,000,000, its net sales for that year were in excess of $263,000,000 and its net worth exceeded $144,000,000.

Canadian Marconi Company (Inc.)
2442 Trenton Avenue
Montreal 16, Quebec

The Company was organized in 1903 and since 1953 has operated as a subsidiary of The English Electric Company, Ltd., London, England. The authorized capital stock is 7,500,000 shares and The English Electric Company Ltd., London, England, owns 50.6 per cent of the outstanding stock. Total current assets as of 1962 were in excess of $15,000,000 and the net worth is over $9,000,000. The Company employs around 2,700 persons and has a number of subsidiaries, including Canadian Marconi Electronics Ltd., Canadian Marconi Sales Limited, Telefaximile Ltd. and Canadian Marconi Company (U. S. A.).

The Company has become a leader in its various fields throughout Canada. The important part of the Company's business is in the marine radio field. The Company designs and manufactures marine radio telephone equipment. It also designs and manufactures electronic communications equipment and equipment for the home entertainment field, including radio and television receivers. It markets all types of transmitting and receiving tubes including picture tubes for television sets. The Company owns and operates broadcast stations in Canada.

971 Canadian Westinghouse Company Limited
Sanford Avenue N
Hamilton, Ontario

The Company was formed in 1903 and is a subsidiary of Westinghouse Electric Corporation, Pittsburgh, Pennsylvania. The authorized capital stock is 900,000 shares and 76.1 per cent of the outstanding capital stock is owned by Westinghouse Electric Corporation. The total assets of the Company as of 1962 were in excess of $79,000,000 and net sales for that year exceeded $138,000,000. Its net worth is over $47,000,000. The Company has two subsidiaries: B. F. Sturtevant Canada, Ltd. and Canadian Westinghouse Supply Co. Ltd.

The Company manufactures a complete line of electrical equipment divided into a number of groups such as heavy apparatus, including turbines and generators, light apparatus, such as small motors and consumer goods, including household appliances, radio and television receivers. The Company also manufactures lamps and tubes and employs some 8,600 persons.

Northern Electric Company, Limited
1261 Shearer Street
Canada, Montreal, Quebec (25)

The Company was organized in 1914 with an authorized capital stock of 1,500,000 shares. It is a subsidiary of the Bell Telephone Company of Canada which owns 90 per cent of its stock; the remaining 10 per cent is owned by Western Electric Company of the U. S. A.

The Company has attained a leading position in its field in Canada and manufactures telephone apparatus and equipment, radio transmitting equipment and receiving sets as well as other electronic equipment. As of 1963,

the company was worth in excess of $80,000,000 and its
972 net sales were $281,000,000. The Company employs 16,904 persons.

Standard Radio Limited
37 Bloor Street W
Toronto 5, Ontario.

The Company was organized in 1925 with an authorized capital of 215,000 shares. Originally known as Rogers Majestic Corporation Ltd., its name was changed to its present style in 1951.

As of 1963, estimated gross sales were in excess of $5,000,000. The worth of the Company is in excess of $2,000,000 and it operates as a holding company for three wholly owned subsidiaries: C. F. R. B. Limited which operates three radio stations in Toronto; C. J. A. D. Limited which operates two radio stations in Montreal and Standard Broadcast Sales Limited sells radio time.

Canadian Radio Patents Limited.
200 St. Clair Avenue W
Toronto 7, Ontario

The Company was formed in 1927 with an authorized capital of $50,000.

The Company operates as a patent licensing agency for electronic manufacturers collecting royalties on equipment manufactured in Canada. The Company represents Canadian General Electric Company Limited, Canadian Westinghouse Company Ltd., Northern Electric Company Limited, Canadian Marconi Company and Phillips Electronics Industries Limited and Hazeltine Corporation of Little Neck, New York.

973 *In England*

Electric & Musical Industries Ltd.
Blyth Road
Hayes, Middlesex, England

This is a public company formed in 1931 and has powerful interests in the fields of manufacturing radio and television apparatus, musical equipment, etc.

General Electric Company, Ltd.
1, Stanhope Gate
London, W. 1

The Company was incorporated in 1900 and has an issued capitalization in excess of £250,000,000. Its assets as of 1963 were over £94,000,000 and its net worth over £68,000,000 with sales of all of its groups or divisions exceeding £131,000,000. The Company has in excess of 45 subsidiaries and affiliates the world over, including Osram, Ltd., Machlett X-ray Tubes (Great Britain) Ltd., M. O. Valve Co. Ltd., Salford Electrical Instruments and G. E. C. Semiconductor Division.

The Company is engaged in a wide variety of products including mouldings, electric lighting supplies, telephones, heating equipment, electric furnaces, wireless receiving apparatus, lamps and wireless valves, electric motors, cathode ray tubes, television sets, transmission apparatus, X-ray devices, etc. Employs 80,000 persons.

Marconi's Wireless Telegraph Co. Ltd.
Chelmsford, Essex. (New Street)

The Company was organized in 1897 and the controlling interest was acquired by English Electric Co. Ltd. in 1946. Since that time the Company has functioned as a subsidiary

of English Electric Co. Ltd. Its authorized capitaliza-
974 tion is £4,000,000 and it employs some 11,000 persons.

The Company name was changed to Marconi Company Ltd. in August of 1963. Its subsidiaries are Marconi's Instrument Ltd., Marconi Internation Code Co. Ltd. and Marconi Television Co. Ltd.

The Company is the manufacturer of wireless communication and electronic equipment. Its parent company, English Electric Co. Ltd. is one of the most important electric companies in England. (Changed to Marconi Company Ltd. in August, 1963.)

Murphy Radio Ltd.
Welwyn Garden City, Herts.
Broadwater Road
(Also Brook Street, London, W. 1)

The Company was registered in 1963 with a nominal capitalization of £100. The Company is a manufacturer of radio, television and electronic equipment.

Philips Electrical Ltd.
Century House
Shaftesbury Avenue
London, W. C. 2

The Company is a member of the Internationally known Philips Group headed by N. V. Philips Gloeilampenfabrieken of Holland. It was registered in 1925 as Philips Lamps Limited and changed to its present title in 1947. Its authorized capitalization is £10,000,000.

The Company controls, directly or indirectly Philips Croyden Works Ltd., Research & Control Instruments, Ltd., Philips Hamilton Works Ltd., Philip Records Ltd., Ada (Halifax) Ltd., Mullard Ltd., Mullard Radio Valve Co. Ltd., Mullard Overseas Ltd., Cossor Radio & Television

Ltd., Stella Radio and Television Co. Ltd., Stella Lamp
975 Co. Ltd., Mullard Equipment Ltd., Mullard Blackburn
Works Ltd.

The Company markets a wide variety of products in the industrial, medical and consumer fields. The radio, television and record player production of this group of companies employs about 4,000 workers and the Mullard Companies of the group are the largest producers of radio and television valves and tubes in the United Kingdom. The Philips Group has associated companies in nearly every country in the world and ranks as one of the world's leading commercial enterprises.

Pye Ltd.
Cambridge, Cambs.
Radio Works, St. Andrews Road

While originally founded in 1890, the Company was registered in 1929 with an authorized capitalization of £9,000,000. It has some 37 subsidiary and affiliated companies including Pye TVT Ltd., Cathodeon Ltd., Cathodeon Electronic Ltd., and High Definition Ltd.

The Company manufacturers radio and television apparatus and high fidelity gramophones and maintains an active profitable business of substantial extent. They are the best known of their type in the country. They have acquired interests in or from a number of other companies and as a group manufacture radio and television apparatus, studio equipment, telephone communications industrial electronic equipment, domestic appliances, cathode-ray tubes and semiconductor devices.

976 Rank Cintel Ltd.
Worsley Bridge Road
Lower Sydenham
London, S. E. 26

The Company was registered in 1960 with a nominal capitalization of £100. It is associated with Rank Radio & Television Ltd. which holds most of its stock.

The business of the Company is the manufacture of scientific and television equipment and it employs a staff of several hundred persons.

Standard Telephones & Cables Ltd.
Connaught House, Aldwych.
London, W. C. 2

The Company was registered in 1910 to acquire the United Kingdom business of the Western Electric Company of Chicago, USA. Its authorized capitalization is £14,000,000 and its principal shareholder is International Standard Electric Corporation of New York, USA.

The Company are contractors to the General Post Office, Admiralty, War Office and conducts an important business of Telegraph, telephone and radio engineers in all parts of the world employing some 26,000 persons.

Gramophone Co. Ltd.
Blyth Road
Hayes, Middlesex, England

The Company was registered in 1900 with an authorized capitalization of £3,340,000 and most of the issued stock is held by Electric & Musical Industries, Ltd., Hayes, Middx.

The Company acquired from Marconi's Wireless Telegraph Company Ltd. the wireless receiving set manufacturing business. It manufactures television apparatus, gramophones, radio apparatus, household appliances, etc. It occupies a leading position in the industry.

TRANSCRIPT OF PROCEEDINGS.

SAMUEL M. THOMAS, called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Thomas, will you state for the record your name, residence, and occupation?

A. My name is Samuel M. Thomas. I reside at Ridgeview Avenue in Greenwich, Connecticut, and have resided there for the past sixteen years. At the present time, I am senior vice president of the Hazeltine International Division of Hazeltine Corporation, and a vice president of Hazeltine Research, Inc.

Q. The latter company, is that the plaintiff in this action?

A. It is the plaintiff, a wholly-owned subsidiary of Hazeltine Corporation.

Q. Would you give a very brief resume of your
13 education and experience?

A. Yes, sir. In 1926 I graduated from the Georgia School of Technology with a degree in electrical engineering. I became employed by the Allis-Chalmers Manufacturing Company in West Allis, Wisconsin. For approximately six years I remained with the Allis-Chalmers Company in the manufacture, testing and sale of electrical equipment.

In 1930, approximately, I became an employee of the United States Corps of Engineers and, for some ten years, was engaged in various construction and operating positions on the various dams in the west, and particularly in the installation and operation of electrical equipment.

By 1946—by 1940, this was after ten years, approxi-

mately, with the Corps of Engineers, I entered into active duty in the United States Army as a Captain. I served through the ranks and became a Brigadier General after some six years of service, during which time I ended up in Berlin having charge of the operations of all the tele-
14 communications facilities of the Western Zone of Germany as occupied by the American Forces.

I returned to the United States and became employed then by the Radio Corporation of America. I started in as assistant vice president—I beg your pardon; as assistant chief engineer of RCA Communications where my duties were to modernize and improve the radio telecommunication facilities of the worldwide network operated by RCA.

There was some 50 radio circuits operated out of the eastern facilities of RCA, and for some six years I stayed in that capacity, becoming a vice president of RCA Communications, a wholly-owned subsidiary of RCA.

This brought us up until 1952, I believe, approximately, at which time the Korean War was in effect, the activity there. I was called in as a special assistant to the Secretary of the Army to expedite electronic equipment that was required for the Armed Forces.

In March of 1952, I joined the Hazeltine Corporation as an assistant vice president and was shortly thereafter sent to England where we conducted a very large-scale op-
15 eration in the manufacture of electronic equipment for the Armed Forces, which later was transferred to the NATO government.

I returned to the United States in 1957 and undertook the setting up of a classified survey, and study, and research project for the Defense Department which has continued with Hazeltine for the last several years.

Two years later, approximately, I was made—I was placed in charge of the contracts and customer liaison activities of Hazeltine—what was known at that time as the

Hazeltine Electronics Division, a portion of the Hazeltine Corporation—I beg your pardon; the reverse; that was the Hazeltine Electronics Corporation, a wholly-owned subsidiary at that time. But shortly after it was changed into the Hazeltine Electronics Division of the Hazeltine Corporation, to which name it goes at the present time.

Shortly thereafter, I was given the added duties of vice president and general manager of the Hazeltine International Division, and two years ago I was made the head of that organization, at which point I am still operating
16 but am now a senior vice president in charge of that complete activity, and also—and a year ago, I was made a vice president of Hazeltine Research, Inc.

17 Q. What is the relationship of Hazeltine Research, Inc. to Hazeltine Corporation?

A. Hazeltine Research, Inc. is a wholly-owned subsidiary of Hazeltine Corporation.

Q. Are you an employee of Hazeltine Research?

A. I am an officer of Hazeltine Research, Inc. but I am not an employee as such, and I draw no salary on that basis from the Research Corporation.

Q. That is, you draw no salary directly—

A. Directly, as such, no.

Q. What is the scope of your familiarity with the operation of Hazeltine Research, Inc. since you indicated you have been directly associated with it only for about a year?

A. Well, ever since I joined the organization—something over ten years ago—I have had the pleasure of working with and knowing the founders of our company, Professor Hazeltine, Mr. Binns, Mr. McDonald, other engineers of the Hazeltine Research, Inc.—HRI, as we speak of it.

And at monthly meetings, I sat in at every board meeting, essentially, during that period except for the time I

was in England and heard the annual—the monthly
18 reports and followed the activities of the research
group as much as I did any other portion of the company, although my time was not specifically spent in the HRI activities.

Q. Can you state whether or not it was customary to receive the reports of the operations of HRI at the monthly meetings of which you spoke?

A. Yes, it was. I rendered my report for my particular activities and the other portions of the corporation—reports were delivered each month, and I of course was present at each of these monthly board meetings except for a few occasions on which I could not attend.

* * * * *

22 By Mr. Dodds:

Q. All right. Mr. Thomas, would you describe briefly the character of the present operations of HRI?

* * * * *

A. I will describe the nature of the operations, yes, sir. We have a laboratory in Chicago which does considerable activity and work in the radio and television field in
perfecting circuits, and improving and assisting our
23 licensees. We make available to our licensees the
services of not only those people that are employed directly by Hazeltine—HRI, but by the parent company, and by another research division of the company located on Long Island. We do considerable work in that activity, and are continuing to do so.

Q. Do you know, of your own knowledge, what activities of the same general character have been carried on since you first joined the Hazeltine organization in 1953?

A. Yes, sir. I have been associated with them during the period—indirectly I have, yes, sir. I have known the laboratories that have existed in Chicago since 1928. We have had laboratories on Long Island, and still have. We have a facility on the West Coast to service our licensees out there.

Q. Do you know of your own knowledge, or from an examination of official records, whether or not these activities continued back to the time when the present invention was made in the latter part of 1945?

A. Will you repeat that question, please?

24 The Court: Will you read the question.

(Question read.)

By the Witness:

A. Yes, I do, from an examination of records.

By Mr. Dodds:

Q. Has that examination of records—

A. And personal contacts with people that were associated with it.

Q. Do you know the general nature of the patent in suit, the Loughren patent 2,547,648?

A. Yes. I know in general that it is a circuit that gives you automatic gain control in your television circuits; yes, sir—color contrast.

Q. This may be a duplication, but did you indicate that the laboratories—I believe—rendered technical assistance to licensees of HRI?

A. Yes. I know that to my own personal experience, since I have been an employee of HRI. I have been in our laboratories in Chicago during the past year, and have actually seen television sets in there that were undergoing tests, and being given—we were giving the companies technical assistance to evaluate them, and to help them

25 get new models in production.

Q. Do you know whether or not from the time you joined the Hazeltine organization in 1953, the Hazeltine Laboratories and its associated companies which you have described have carried on any research and development work in addition to the technical assistance?

A. Yes, sir. They have—they certainly have—outside of the television field, or in the television field, do you mean? Both, as a matter of fact.

Q. I was interested particularly in the television field.

A. Yes, sir, they have.

Q. Do you know the general nature of the current licenses that are in effect, granted by HRI?

A. Yes, sir, I do.

• • • • •

28 By Mr. Dodds:

Q. Now, are you familiar, Mr. Thomas, with certain of the licenses which have been granted by HRI, and are in effect, and as to whether or not they do or do not include a license under the Loughren patent in suit?

A. Yes, sir. I have examined, certainly, a total of nine that include the use of the Loughren patent.

Q. You say includes the use of the Loughren patent?

29 A. That are exclusively for the Loughren, cover only exclusively. There are others.

Q. Are you familiar with any of the licenses granted which include the Loughren patent as well as other patents?

A. Yes. The Admiral Corporation and RCA include more than the Loughren patent. There are nine having, as I said, only the Loughren patent.

Q. Could you name some of the principal licensees that have a license with respect only to the Loughren patent in suit?

A. Yes, sir. There is Giannini Control Corporation, there is Magnavox—

Q. Excuse me—

A. That's known also as Conrac.

Q. Conrac, yes.

Q. Conrac. Curtis Mathes.

A. Conrac. Curtis Mathes.

Q. Where are they located?

A. Curtis Mathes—I cannot answer, sir. I have looked at the—I have examined the license, and it is on the first page of it. I can tell you—the state is listed, but it escapes my memory.

Q. All right. I interrupted you. You were naming
30 some other companies.

A. Yes. Magnavox, Packard-Bell, Wells-Gardner, Westinghouse.

Q. With respect to Wells-Gardner, do you know whether they sell receivers principally under their own name, or do they sell principally brand name merchandise—

A. Yes, they do sell brand name items.

Q. Do you know for what concern principally?

A. Well, there are two involved; not only Wells-Gardner; but Warwick sells to Sears—sells Sears, as Wells-Gardner produces for Montgomery Ward.

Q. I interrupted you. You were naming other companies.

A. I believe I have covered about seven or eight there. There are a total of nine.

Setchell-Carlson—it was a new concern to me; the name Setchell-Carlson.

Q. Do you know whether or not Sylvania—

A. Sylvania is included.

Q. Do you know whether or not Westinghouse—

A. Westinghouse is included; yes, sir.

Q. Do you know approximately the royalty rate
31 which is paid with respect to the Loughren patent in
suit?

A. Yes, sir. .95 is the percentage, but that has been reduced to something half of that. It is less than ½ of 1 percent when you get down to the value of a television set.

Q. What does the .95 you mentioned—what does that apply to?

A. This applies to that portion of the set—a certain portion is exempt from it, such as—

Q. What I am getting at is, you quoted two rates. Will you tie this up with what patents are involved?

• • • • •

33 By Mr. Dodds:

Q. What is the basis of your understanding of the licenses to these various concerns, as to which you have testified? Have you looked at the license agreement, or are you taking somebody's word for it?

A. Oh, I personally examined them, and most of them are printed on Form 918 by number, and 417—there are a couple of them. But there are additional documents that definitize the payment to be made. I have examined them. I am not expert in it, but I have certainly examined them to a reasonable extent.

• • • • •

34 By Mr. Dodds:

Q. Do you know, Mr. Thomas, the magnitude of expenditures of HRI in its research, development, and technical assistance to its licensees during the ten years that you have been with Hazeltine?

35 A. Yes, sir.

• • • • •

Objection overruled.

By Mr. Dodds:

Q. Would you so state?

A. Yes. There has been spent here more than eight million dollars in giving technical assistance to our licensees and in research and development work during the past ten years.

The Court: During what period of time?

The Witness: During the last ten years.

Mr. Dodds: I asked during the last ten years he was with the company.

The Court: All right.

By Mr. Dodds:

Q. Was that money all spent directly by HRI, or was it spent indirectly or—

A. The records indicate that part was spent by
36 HRI, and part by—portions of our parent company,
and the other research corporation—the Research Division of our corporation. We called on them for assistance. Any facility or any capability of the Hazeltine Corporation was made available to HRI to assist our licensees.

* * * * *

By Mr. Dodds:

Q. Can you tell us what the total television receiver production in this country has been since World War II?

* * * * *

39 By the Witness:

A. Well, the figure, starting in 1947, starts at about 200,000 sets a year. And by 1950, it had risen very sharply to over seven million sets produced a year, 7.4, as a matter of fact.

And the curve will show up and down through 1961, averaging five, to six, to seven—on our high point in 1955 of seven and three-quarter million sets a year.

These total up to approximately 82 million sets in the last 15 years.

* * * * *

THE FOLLOWING EVIDENCE AND EXHIBITS PERTAIN TO THE ANTITRUST AND MISUSE ISSUES.

IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS

had in the trial of the above-entitled cause, before the Honorable Richard B. Austin, one of the Judges of said court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Monday, February 17, 1964, at 10:00 o'clock a.m.

Present:

Mr. Laurence B. Dodds (59-25 Littleneck Parkway, Littleneck, New York), and Mr. Bartholomew Diggins, and Mr. Edward A. Ruestow, on behalf of the Plaintiff;

2 Messrs. McConnell, Curtis & McConnell (134 South LaSalle St., Chicago, Ill.), by: Mr. Thomas McConnell, and Mr. Philip J. Curtis; and Mr. Francis W. Crotty (6001 W. Dickens, Chicago, Illinois), on behalf of the Defendant.

3 – The Clerk: 59 C 1847, Hazeltine Research vs. Zenith Radio, trial.

The Court: Are you ready, Mr. Dodds?

Mr. Dodds: We are ready.

Mr. McConnell: Cross-claimant is ready, your Honor.

Mr. Dodds: I would like to make just about a one-minute comment on counter-plaintiff's pre-trial brief.

The Court: Anybody can say anything they want to at this time.

Mr. McConnell, do you care to say anything in addition to what you have said in your brief?

Let me assure counsel, perhaps to their surprise, that I have read them both.

He wants to make comment on your brief and maybe you will want to comment on his comments before he gets through.

Mr. McConnell: I haven't anything to add, your Honor, to our brief.

The Court: All right.

Yes, Mr. Dodds.

Mr. Dodds: Just a couple of very short ones. I just want
to characterize it that I believe their pre-trial brief
4 is one of the most distorted documents that it has been
my misfortune to have to read. I believe that it is a
veritable tissue of misstatements, half truths, and statements misleading because they are out of context and I would like to cite just a couple of examples.

A good deal of attention is paid to some statements which Mr. Ruestow made in memoranda in his personal file, but the majority of those statements relate to and criticize a document which was abandoned and dropped and never was the policy of Hazeltine at any time. It was just a discussion relating to a conversation piece, as you might say.

Now, at Page 31 of this brief, Mr. McConnell mentions that General Electric and Westinghouse and the Philips Company of Andoven, as he puts it, were ordered out of the Canadian pool.

Now, we have with us copies of the judgments. This is an antitrust action, you will recall, by the Government against these three concerns based solely on the Canadian
pool, and the consent judgment is quite to the contrary.
5 While they are reciting certain things they may not
do, it says, "The provisions of this Section 4 shall not

be construed to prohibit without more patent license agreements or assignments,'' and that is just the subject matter that was actually in dispute, as the judgment will show, and these documents will be exhibits in the case.

Then at Page 33 of the brief there is a reference where they said that I had personally participated in negotiating extensions of this illegal pooling arrangement, and he is talking about the British pool. And that is absolutely contrary to fact. I never participated in any negotiations of any British pool at any time, and I think that Mr. McConnell knows this.

At Page 47 and Page 48—

The Court: Of course, as I understand it, this is a pretrial brief, and as I understand it, this, of itself, is not evidence.

6 Mr. Dodds: That is right.

The Court: It is perhaps in the nature of an opening statement advising the court what they anticipate the evidence will show, and as I instruct juries, I will so instruct myself, that anything that is not later borne out from the witness stand in the way of evidence will be disregarded by the court in regard to what was said in the opening statement.

Mr. Dodds: That was really the only purpose of my statement.

The Court: I have already instructed myself to disregard anything that is not borne out by the evidence.

Mr. Dodds: Okay. Thank you.

Opening Statement on Behalf of the Counter-Plaintiff by Mr. McConnell.

May it please the Court?

The Court: Yes, Mr. McConnell.

Mr. McConnell: I represent the cross-claimant, Zenith Radio, and Mr. Curtis is here associated with me.

7 The Court: Let's have a little understanding. We are going to hear evidence on the misuse and on the counter-claim, right?

Mr. McConnell: That is my understanding.

The Court: Are they going to be sort of woven together or will they be separated?

Mr. McConnell: Well, I am going to try to separate them as much as I can. To some extent it is impossible. It is all interwoven.

The Court: I didn't know what your plan of approach was.

Mr. McConnell: Well, I thought I would approach it from the cross-claim first, and then along with that, at the end, if I can, distinguish the misuse issue.

The Court: Very good.

Mr. McConnell: And I think that maybe an opening statement will be helpful there, and as your Honor noted, the brief is—we believe that the brief will be borne out by the evidence, but I don't care to argue the evidence at this time.

The Court: There is no evidence to argue at this time.

8 Mr. McConnell: No.

As I say, Mr. Curtis and I and Mr. Crotty represent the Zenith Radio Corporation in the cross-claim, and it is based primarily on Section 1 of the Sherman Act and its concomitant or parallel Sections of the Clayton Act.

We have alleged and set up a conspiracy here to restrain commerce between the United States and foreign nations, and we are particularly interested and involved with the trade of the Zenith Radio Corporation in radio and television sets between their plant in Chicago and in Canada and England and Australia, those three countries.

9 Section 1 of the Act, as your Honor knows, expressly refers not only to commerce between the states, interstate commerce, but also refers to any conspiracy, combination or contract which has the effect of restraining commerce between the United States and foreign countries. And that sort of case doesn't come before the courts too much, and sometimes—

The Court: Let me assure you it is the first one that has come before me. I will be happy to get as much help from you regarding that, having that in mind, Mr. McConnell.

Mr. McConnell: It has come before this Court—not this Judge, but this Court. And some reference will be made to that in the evidence, I believe, because we have a stipulation here in the record, in the Zenith case; part of it, portions of it are to be considered as in evidence.

As I say, the instant cross-claim alleges a conspiracy between the Hazeltine Corporation, and we have a stipulation in the record that the Hazeltine Corporation and its subsidiary companies are to be considered as one company in this proceedings. So we don't have to bother
10 with whether it is the Hazeltine Research Corporation
or the Hazeltine Corporation. There are three companies, I believe, and all of them are involved here under our arrangement with counsel, Mr. Dodds, that they are all to be considered as one company.

We will start in our proof with the situation in England, and there isn't really much dispute in the evidence. I don't see how there can be much dispute in the evidence, because practically all of it is documentary, either in the sense of agreements between different parties, or letters of which Hazeltine is a party and much of the evidence comes from the Hazeltine Corporation files. We have had quite a bit of discovery. We have been all through their files on this issue, and we have had Mr. Dodds' deposition. And there may be a dispute as to the meaning of the evidence and conclusions to be drawn from the facts and the inferences from the facts, but the ultimate underlying facts I don't see how there can be a great deal of dispute on.

For a period of some 35 years, the proofs will show, there has been in England a pooling arrangement so
11 designated by written agreement betweeen the parties
that created it. And those agreements will be in evidence, each one. They run from up through the A.8 pool, I believe, and, as I say, they cover a period of some 35 years.

The Court: One of the Hazeltine companies is a party to the pooling arrangements?

Mr. McConnell: Yes, they are, and I will develop how they are a party.

The Court: All right.

Mr. McConnell: The proofs will show that the main signatories to these agreements through the years have constituted the holders of practically every patent in Great Britain that has anything to do with the electronics field, either in radio, or television, or color television. And some of the patents get in there through other holders. For instance, German patents get in there, Telefunken and Company, and the German General Electric patents get into this pool through the English Electric Company and the RCA patents get into the pool through English Musical Industries Company, and the Hazeltine patents get into the pool through General Electric Company—which is
12 not our General Electric Company, but the General
Electric Company of England.

13 There was an express agreement between the Hazeltine Corporation, which we will introduce in evidence—

a written agreement signed by Hazeltine in which General Electric Company was authorized to seek the admission of the Hazeltine patents into the pool, and an arrangement was made whereby the two contracting companies were to split the returns of the money received from the pool, fifty-fifty between them.

The Court: Are these Hazeltine British patents?

Mr. McConnell: These are Hazeltine British patents. They are the counterparts of patents which are registered in the United States Patent Office.

The Court: I mean, that was going to be my next question. Some of these British are identical with the United States patents?

Mr. McConnell: I think they are all identical.

The Court: All right. That answers my question.

Mr. McConnell: They are all counterparts.

The Court: All right.

14 Mr. McConnell: And under this agreement with General Electric Company, General Electric Company was authorized by Hazeltine to seek admission into the British pool. And they sought admission and obtained it in a number of the pools, and they are in it now, right down to the time of the trial of this cross claim. And under their latest plan, I think they received forty per cent instead of fifty per cent—forty per cent of the amount assigned by the pool to the combination of General Electric and Hazeltine patents which are placed in the pool.

The Court: That is, one of the Hazeltine Companies gets forty per cent of what is paid into the pool?

Mr. McConnell: That's right.

The Court: For the use of Hazeltine patents?

Mr. McConnell: Right.

The Court: All right.

Mr. McConnell: Now, wait a minute. They get forty per cent of the joint take of all the General Electric and the Hazeltine patents.

The Court: All right.

15 Mr. McConnell: The two companies pooled their patents, put them into the pool, and under their arrangement they get forty per cent of the—

The Court: General Electric gets sixty per cent and Hazeltine gets forty.

Mr. McConnell: That's right.

The Court: All right.

Mr. McConnell: And by agreement, the pool members—and they constitute, well, the Philips Company is in there, English Electric, English Musical Industries, the German companies, and Pye Company of England—practically every concern that has any patents at all have pooled them in this pool.

From the very beginning of the pool—and the evidence will show that Hazeltine knew this from the outset, and has known it all the way through; that Mr. Dodds went over, negotiated at one time the arrangements in this pool, made analyses of the different pools and the agreements and their restrictions, and notes the restrictions on imports, exports.

And in all of these pools, it is provided in there output
16 licenses that there shall be no licenses granted to any company to import any sets, or any sets that come into England by import cannot be licensed under any of the patents in this pool. There is also a restriction on exporting of any sets that are licensed by the pool. So that there is a complete stoppage of any import or export by any company who is in the pool or is licensed by the pool.

The Court: A minute ago, you used pool in the plural form, and that confused me—"studied these pools." And now we are back to a singular pool. Are there still pools or is there just one pool now?

17 Mr. McConnell: There is reason for that confusion.

There is only one pool, really. It has existed, as I say, for a period of about 35 years—I think 1927 was the first time they pooled, but the pool agreements themselves would run for, say, four or five years, and then they would have to be renegotiated. So there are about eight—A.1, -2, -3, -4, -5, -6, -7—the last one I believe is A.8.

The Court: Which is just sort of renewals of the original?

Mr. McConnell: That's right. Every one of them had the same provisions to export, import; the same provisions, the same standard license all the way through.

The Court: As I understand it, possibly some companies came in later than other companies, and possibly some of them dropped out?

Mr. McConnell: That's right. I don't think any have ever dropped out, but I think some joined that were not there originally. I know one of them—Pye—did that, and the Philco Company got its patents into the pool at one time, after it had been barred and found it impossible to do business. It attempted to meet the requirements of the 18 pool by manufacturing in England.

Now, the proofs will show that as a practical matter, the only way anybody that wanted to be in the business of selling or manufacturing radio or television sets in England would be to manufacture them in England. It was impossible under this arrangement for the Zenith Radio Corporation to manufacture sets in Chicago and put them into commerce and send them over to England and sell them, because they couldn't have any protection at all against any of the patents in that pool. And there were thousands of patents, which the proofs will show, that are involved. They would be in continuous litigation. They would never free themselves from the litigation which was possible for the pool to provide.

The Court: I mean, litigation in England?

Mr. McConnell: In England, litigation in England which would prevent any distributor—the proofs will show that

our distributors, people we sought to distribute our goods, refused, couldn't distribute them, because of the threat they would be sued immediately by the pool if they at-
19 tempted to handle any radio sets or any television sets produced by Zenith and put into interstate commerce. And there was no way in which Zenith could obtain a license from that pool, no matter how much they offered, or what they paid, because no license under the terms of the pool and the agreement of the license—no license could be issued which would permit the use of any patent or any invention covered by any patent in a set which was imported into Great Britain. It was just as strong as that. There were no exceptions to it. You could not import.

And our proofs will show that as a result, the Zenith Radio Corporation, which is, the proofs will show, the first in television in this country in number of sets produced and sold, and it is a very close second to RCA in radio in the number of sets produced and sold, couldn't sell a thing.

The Court: Is it my understanding—maybe I shouldn't ask the question; maybe I ought to know the answer—is selling a Zenith set in England a violation of the English patent laws so that that would become an infringement of the patent?

20 Mr. McConnell: Yes, sir. The patents cover three things; the manufacture and the sale of the sets—

The Court: So that a manufactured article in the United States using some of the patents that are in the English pool, and shipping it to England, that of itself becomes an infringement?

Mr. McConnell: Right. We couldn't sell it. As soon as we sold it, even though we were covered by the Hazeltine patents,—

The Court: I understand that—here.

Mr. McConnell: Here. When we sold those foods in England, we violated the patents which were in existence in

England owned by the pool, which had been placed in the pool, and the pool was slicing the import of sets into England.

The Court: I mean, there was some substantial hope that the pool would be successful in an infringement suit in England on a set made in America and shipped to England?

Mr. McConnell: No defense to it.

The Court: That answers it. I don't purport to be a patent expert either.

21 Mr. McConnell: I say, there is no defense to it, assuming that we were using apparatus which infringed their patents. And with all these companies together, it was a certainty that somewhere we would be infringing something. There would be some patent that would be covered, and many of the patents were ones we already thought we had to have a license on in the United States. But we could not sell.

22 The Court: All right.

Mr. McConnell: Even though there was no embargo on our goods by any governmental agency.

Now, since—oh, in the last four or five years, and since our RCA litigation, as a result of which we obtained licenses from RCA under their foreign patents, as a result of the settlement, we have been able to sell radios to some extent in England.

The Court: Those are radios made in this country and shipped in?

Mr. McConnell: Yes. Radios, not television.

The Court: I understand. But they were manufactured here and shipped to England?

Mr. McConnell: And shipped to England and sold there. And there were two reasons which permitted us to do that on a limited basis: The first was that most of the patents which have to do with radio have expired by lapse of time;

that is, the art is pretty old in the radio business, and people have been producing radio sets for a long long time. And practically every patent, as the correspondence shows, that was held by the pool in radio has gone by the board just by lapse of time.

23 The Court: So that you didn't get much in the way of relief from RCA.

Mr. McConnell: We didn't get much, but what little we had was enough to justify us in some small way in going into the British market. Still we couldn't obtain distributors of the character necessary to promote and to sell and to really create a market for a product as good as that produced by the Zenith Radio Corporation.

The proof will show that even in radio, we were in constant trouble and had constant difficulty in selling our products. So far as television is concerned, we couldn't sell anybody for the reasons which I have stated to your Honor.

Now, the proof will show that Hazeltine had direct absolute knowledge, knew all the time that these restrictions were in force; knew there was no way in which anybody could be licensed under a license from the pool or the pools —I call it one pool because it is the same parties continuing through these numerous agreements.

24 There is no question at all but what the Hazeltine Corporation had absolute knowledge from the very first moment that they joined, and to the end of the line, of what this scheme and plan was. And we have some correspondence which characterizes it. While there is nothing in the law which permits it, still, the English people and the English manufacturers and then English companies do not want any imports to compete with their home grown products. And this is the method which they have used to stop that.

Now, I think I have mentioned this before, but RCA patents were in this pool: the General Electric patents were in it; at one time, the Telephone Company patents were in it, and the Philips Company, which is the General Electric Company of Europe—it is one of the largest companies in the world; it is the dominant electrical company of Europe, certainly; their patents were all in it, and it was a simply overwhelming group of patents in this pool, all licensed under a single standard form of license. And it was a situation where the pool could—even though you could defeat one particular action for infringement, it 25 was a constant thing. They wanted to utilize all the patents which could be applied to the art, why, you would be in litigation from now on out. You would never be through, and no company could stand that sort of an attack, and no distributor could stand it either, no local distributor.

And the correspondence throughout is full of the threats and methods of stopping this sort of attempt to gain access to a British market.

Now, in general, that is what the proof will show so far as the English market is concerned. And we will have computations here to show what we had a reasonable expectation of doing in that market, based upon what we have done against comparable competition in the United States; the same kind of products, the same kind of sets, the same kind of competition. Probably in the American market, the proof will show it is supplied by a better product than they have in England. I think that the sets you buy here in Chicago—I would say they are certainly better than anything you could buy in Europe. So that from a product stand- 26 point, we were a competitor equipped to compete with the best there was in the world. And from that assumption, we will have expert testimony to show what we should be able to do in that market if we had ever been able to gain access to it. And, of course, our proofs in that respect fall within the realm of the rules laid down by the Supreme

Court in the Bigelow case, where a market is completely destroyed, and where the parties that are in the conspiracy have destroyed it. That sort of proof is admissible.

Now, so much for the English. I don't want to go into the detail of the evidence. We will get to that in the proofs, but so much for the overall. It isn't a conspiracy that you have to infer. It is shown by written documents, and it is shown to be a plan. And the scheme back of it is to stop the import into England of television sets and radio sets. And the Hazeltine Company, the proofs will show, joined the
plan, accepted the fruit of the plan, and the proceeds
27 from the licensing of their patents under this plan, and
agreed not to license them in any other way.

28 Now, so much for the English situation. We had a
similar situation in Canada that was the subject of
litigation between the Zenith Radio Company and RCA
and General Electric, Western Electric Telephone Company in a suit that was tried here and settled.

In that situation it is practically the same thing. It follows the same pattern, the same line. They have a pooling of the patents of the leading electronic companies, General Electric Company of Canada, Western Electric Company of Canada, the Westinghouse Company of Canada, the Philips Company or the Majestics Company, which was the Philips Company, in Canada. Pye got in it finally, that is an English company in the electronics field. And there again we find that the pool agreements themselves provide that no license will be granted by the pool, in any of these patents, that none of the participating parties will license anybody except under the standard form of license of the pool, and that standard license provided in the very beginning, some
30-od dyears, that while in the early days I think im-
29 ports were permitted up to $200,000 at one time, there
was one license agreement for $100,000 and one for
$200,000, but in later years there has been an absolute for-

bidding of any import except a minimum number of components to be used.

But generally speaking, in any year that is involved in this litigation, there has been an absolute prohibition of any imports into Canada. And the pool has made statements from time to time that no licenses will be issued to anyone who does not establish a factory in Canada and manufacture their goods in Canada.

30 The Court: And, again, these patents are identical with the United States patents?

Mr. McConnell: Exactly the same.

The Court: All right.

Mr. McConnell: Same numbers. In fact, one of the patents in the Canadian pool is the identical patent that is being sued on in this suit. I mean, it is the identical invention. It is the counterpart of the same patent. It is identical—the description of the invention is identical with the one that is in suit in this case.

So through the years there has been this prohibition of any import into Canada. And, again, Zenith Radio was unable to import anything into Canada.

By stipulation there is in this record the result of that suit which was tried here, and the damages in that action for our losses in Canada were affixed by a stipulation and agreement at ten million dollars. That was a settlement figure which was paid for the damages occasioned to Zenith Radio up to the time of the settlement of that suit, which was in 1957, on account of being excluded from that market.

31 Now, at that time, and as part of that settlement, the RCA patents were withdrawn from the pool. RCA then gave us a license subsequent to 1957 on their foreign patents for the respective lives of the patents, which they then had in that pool, or which were being licensed through the pool, and so that RCA no longer stayed in the pool.

Also, General Electric to a certain extent, granted us immunity under their patents, but they still stayed—the General Electric Company of Canada still stayed in that pool, and the Hazeltine Company still stayed in it right straight through, right up to now, and then they renewed their agreements, right up to 1964. And their patents in Canada can only be licensed through the pool and can only be licensed under these restrictions. And the proofs will show that if we took a license from Hazeltine in the United States we would recognize the invention. We would estop ourselves from contesting the validity of the invention of the patent, and we just completely make ourselves defenseless to any sort of a patent proceeding in
32 Canada on the Hazeltine patents.

We can't get a license from the Hazeltine Company in Canada because their patents are licensed through the pool, and the correspondence will show that where their patents have been placed in pools they will not license except in accordance with the plan and scheme and the standard license of the pool itself, and that is shown in their own correspondence, which will be introduced here in evidence.

33 So that it is impossible to be licensed under the Hazeltine patents to sell any product which we make here in Chicago, in our plant here in Chicago. And, of course, it acts as—it just cuts the stream of foreign commerce like it is cut with a knife. There is nothing you can expect that can be sold there without subjecting yourself to the risk of litigation on the Hazeltine patents. And in color television that claim has been made that those color patents will be asserted against us, and the proofs will show that also.

And I say that that is not something that has existed and has come to an end, it still is existing and it still goes on and the Hazeltine Company is still in and Mr. Dodds is very familiar with that. His fingerprints are shown all the way through the documents of the thing, written to him, back and forth, and he knows all about it, and the proofs will so show.

Then we get to Australia, and in Australia we have the same thing, we have a pooling arrangement, practically the same companies involved. I don't think any of them I have mentioned aren't involved in the Australian
34 pool also. Again, the pool is created by written documents and again their standard license prohibits, by its express terms, the import and the export and any foreign trade in the subject matter of these patents, which are radio sets and television sets. And, again, we find that the Hazeltine patents are in the pool and they receive money from the pool. They were put in the pool through the Neutrodyne Company, of which they own 70 per cent of the stock, and the payments from the pool are sent back to the Hazeltine Corporation. Again, our claim there is that our trade has been disrupted, cut off. We can't sell anything in Australia.

Now, here are three of the largest markets outside of the United States which we are kept from and kept from developing or working up our trade by this sort of an arrangement which we say violates the antitrust laws of this country.

Now, aside from the pools which I mentioned and which disrupt our trade, we were faced here in the domestic situation with a demand by the Hazeltine Company that
35 we sign what they call their standard license. The first license that was offered to us was a license which we designate and characterize as a package license. The courts have so characterized such a license.

The Court: This was submitted to you when, Mr. McConnell?

Mr. McConnell: Well, this was submitted at the time that our—we were licensed under Hazeltine patents up to 1959.

The Court: That is what I mean. For how long prior to 1959 were you licensed?

Mr. McConnell: Under Hazeltine patents?

The Court: Yes.

Mr. McConnell: I think we were licensed about 10 or 12 years.

The Court: All right.

Mr. McConnell: And we were licensed under their patents during—

The Court: That was always on a package deal basis?

36 Mr. McConnell: On a package deal, that is right.

Now, we came down to 1959 and our license expired, and that was after we had finished our litigation with RCA and these other companies, General Electric and the Telephone Company, and they came to us and wanted us to take a license under their patents in a package license.

Well, there was discussion back and forth about the validity of the patents, for one thing, which on this phase of the case is not particularly important, but the only thing that was at first offered to us was a package license under which we took all of the patents. And the significance of a patent license is that, as the courts have expressed it, one patent borrows strength from another, and the license fees are not computed in the court with any evaluation of any given patent. And the Supreme Court has said that the patent act is designed to reward an invention, where a person makes an invention. It is not designed to reward a combination of inventions, but it is designed to give a
return to the particular invention which is patented,
37 and you can't join one with the other. Now, I don't
care to argue the law on that at the moment, but I
am just indicating what our theory of it is.

Well, they came to us first, as I say, with nothing to offer except the standard license, a package license, and then there was discussion—

The Court: Now, are you talking about 1959?

Mr. McConnell: I am talking about 1959.

The Court: Which was the kind of license that you had had for ten or twelve years before that.

Mr. McConnell: Right, that is right. We had had a package license up to that time.

The Court: Yes.

Mr. McConnell: Of course, a lot of things have changed in the meantime, a lot of patents have run out as far as the radio field was concerned. As their own documents show, they had very little left to offer.

But, anyway, they put all the patents together in a
package license, and that is what they offered, and we
38 could take it or leave it. We talked about it for a while
and said that we weren't interested in a lot of patents
which had no application to our sets. There was some
talk about licensing on less than the package. And then
the proposal was made that there would be a package
license which we could have for X dollars, and we could
have one license on one patent for fifty per cent and we
could have two for eighty per cent, and then if we had
three or more we had to pay more than the package
license.

39 Now, I don't care to argue the law on that at the
moment. We say that that is an illegal licensing ar-
rangement, that it cannot be justified under the law and
constitutes a misuse of the patents. That was the situation
up until the time that this suit was brought. We refused to
accept that proposal.

The Court: Let me stop you here. In regard to a certain amount, was that certain amount a percentage of your total production?

Mr. McConnell: Yes, ~~on~~ everything we produced. It was a royalty regardless of whether the set had components which weren't under any patents whatever. The amount was fixed on a percentage of the sales price.

The Court: Is this a maximum or a minimum?

Mr. McConnell: They had a maximum, and the maximum —you reached the maximum if you took over three patents.

The Court: I understand that.

Mr. McConnell: And it is our contention that there was no effort made at any time to evaluate any particular patent, it was merely a device to force us to take the whole package. And as soon as we took the whole package,
40 then we acknowledge the validity of patents and their
counterparts all over the world, and just left us completely defenseless as to the validity of any patent which they included in their package.

The Court: I realize that that is the law in regard to patents in this country; is it also the law in regard to the British counterparts?

Mr. McConnell: I don't think so, but I don't know. They have no antitrust laws which are comparable to ours.

The Court: No, I am just talking about the validity. You say, and I am sure, that one who has a license can't contest the validity of a patent.

Mr. McConnell: I don't think we can contest it in England or Canada or Australia if once we admitted their validity here.

The Court: But, of course, technically, you are not a licensee under the British or Canadian or Australian—

Mr. McConnell: That is true, but we would be a licensee under the counterpart of the patent, and I believe the
41 law is that we would thus admit the validity.

The Court: I am just making an inquiry to satisfy myself. Go ahead.

Mr. McConnell: Now, this is sort of a brief sketch of what the proofs will show, but I think it indicates all that I should indicate in an opening statement. That is what our proofs tend to show.

There is, as I say, quite a bit of documentary evidence and I expect to start with the reading of admissions of Mr. Dodds in his deposition on these issues.

The Court: Have you an opening statement that you would care to make, Mr. Dodds?

Mr. Dodds: Yes, I would, you Honor, if I might.

The Court: All right.

42 Opening Statement on Behalf of the Counter-Defendant by Mr. Dodds:

In fact, I welcome an opportunity to meet some of these points which are repeated from the brief.

First of all, Mr. McConnell was talking of Great Britain; Hazeltine is not now and never was a member of the British pool. It's never had any participation in its policy making or in the formulation of its policies or its licenses. There are now and there have been for more than thirty years general industry wide patent pools in Canada, Australia and Great Britain. Those are consonant with the laws of those respective countries. If you want to do business in patent licensing in those countries, you have to do it through the pools or you don't do it, because industry for such a long period of time has accepted this principle; they take one license and pay one royalty and all their patent problems are ended. Now, we may criticize and say that that is not the way to do business—

43 The Court: I mean, it is not the law, it is just the way to do business.

Mr. Dodds: It is the way to do business, but my point is that it is not illegal under their laws.

The Court: I understand that.

Mr. Dodds: And so as a practical matter you have to do business that way if you want to do business, and under their laws it is perfectly legal.

We will show that with respect to certain of these countries where it has been expressly accepted by governmental bodies as being a perfectly proper type of operation. To the best of our information it has never been attacked by the government in any of those three countries. It is a long standing arrangement. That is the way they like to do business.

The Court: You say that Hazeltine is not in any pool there. Let me ask you this, are any of the counterparts of the American patents in the pool?

Mr. Dodds: Yes, they are.

44 The Court: All right, that answers my question.

Mr. Dodds: Yes, they are.

The Court: All right.

45 Mr. Dodds: And the point is this, our patent law, Section 261 of the 35 U. S. Code, says that a patent shall have the attributes of personal property. What we at Hazeltine have done have effectively sold its personal property to these pools. It is just as if we sold them office furniture, or it is just as—let me draw an analogy: If we were to rent a house here in Chicago knowing that it would be used for gambling purposes, we would be violating the law, but if we rented a house in Las Vegas knowing that it was going to be used for gambling purposes, we would not be violating a law either of Illinois or of Nevada. The point is that what we are doing is selling these chattels, you might say, to these foreign pools which operate consistently with their laws.

Now, one thing I think that must be kept clear, I think that confusion has been introduced by the fact that there is talk—Mr. McConnell speaks repeatedly about these pools keeping out sets. These pools don't have any power to

keep out anything. They are not a government body. All
it means is that if you import goods into Great Britain
46 or Canada or Australia, and if what you are importing
are infringements of the patent they administer, you
may subject yourself to an infringement suit, the same as
if you infringe a patent in this country. And we can't prevent Zenith from selling acts without an adjudication, which we are in the process of trying to get now. We believe they infringe. We don't have any power to stop them. The pools don't have any power to stop importation. But the only thing is, if the importer or the exporter in this country takes the risk that if he is infringing patents of those pools he may get himself an infringement suit.

Actually, we believe that Mr. McConnell is in something of a paradox. We wonder why he is so concerned about the infringement of the Hazeltine patents in Canada where they flagrantly violate the patents in the United States. What is the difference?

We submit that the only thing there is to that they do not want to pay for either case. They don't want to pay for patent property which they are appropriating and using.
It is much nicer to use that without paying for it, and
47 that is what they want to do here. That is what
they want to do in Canada, and that is what they want
to do in Great Britain, and that is what they want to do in Australia.

Actually, and this is a fact which I think will be brought out, the most important obstacle to the exportation of radio and television sets in Canada and Great Britain are large tariffs, customs duty. It makes it impractical. And there is another factor: Take television sets. I think that you will recall during the infringement aspects of this case there was some talk about positive modulation and negative modulation. It so happens that Great Britain adopted positive modulation for its standard. It also adopted the standard of 405 lines per picture.

This country adopted negative modulation and 525 lines per picture. Therefore, a set that is made for the United States market will not work in Great Britain It has to be a specially designed set. That means additional cost.

48 I think the Court can take judicial notice that normally a United States company's export business is only a small fraction of its total business, and if that small fraction has to be redesigned and designed to fit a special market, its costs go up. You add to that a very substantial custom duty, and it just does not present a very favorable competitive picture with a local manufacturer.

Now, Mr. McConnell keeps referring to these thousands of patents. We submit that that is a red herring. What actually happens in practice? What happens is that a manufacturer decides that he wants to make a television set. He designs it. He generally submits the specifications of that to the patent owner. Hazeltine has received hundreds over the years. They say, "What patents do you have that apply to this set?" And that may be, usually, three or four or half a dozen. Those are patents that the manufacturer is burdened with investigating, a half a dozen, not the thousands.

49 The thousands are the devices which were too early or too late or went along at a different tack.

Again coming back to the question of positive versus negative modulation, Hazeltine was doing a great deal of research and development work at a time before these standards were fixed. It was not known which way they would go. Therefore, they did work on both types of circuits and both types of systems. As soon as the United States adopted negative modulation, all the patents on positive modulations went out the window. Nobody takes any time in this country investigating those patents. Everybody knows that they are valueless, they have been obsolete by the different standards.

So this question of the thousands of patents is just a red herring. It has no real significance whatever.

Now, in the Canadian situation, I think is the clearest of all, because there the Canadian law is very explicit that if a patent owner licenses importation of a patented
50 item he suffers very severe penalties. He may either be subject to a compulsory license granted by the court or even revocation of his patent. That is a risk which most patent owners do not want to take. And, as you can see, again you may say, "No, we don't like that way of doing business," but the Canadian law is to foster Canadian business, and they have many facets of Canadian law favoring Canadian business and to prevent aggrandizement of their market by their big neighbor to the south. We say that may be we don't like it, but that is the law in Canada and there isn't anything that we can do to fixit.

51 Now, coming to Australia, Mr. McConnell says that the license granted by the Australian pool expressly prohibits importation. But one thing that he did not tell your Honor is that he is talking about an 18 year old license. That hasn't been the practice in Australia since 1946, and the record will show that.

And, again, coming as a practical matter, your Honor, coming back to Canada; he has painted a horrendous picture. But what is the difference, as a practical matter, if Zenith ships a television set into Canada which infringes a Hazeltine Canadian patent? As a practical matter, what is the difference whether Hazeltine is the plaintiff in an infringement suit or whether if its exclusive licensee is the plaintiff? The obligations and the liability are just exactly the same, no matter who is the party plaintiff in that action.

Coming to the domestic situation, I think the proofs will show what we categorically deny, and that is that Hazeltine ever offered Zenith an exclusive package license.

The Court: You mean in 1959?

Mr. Dodds: In 1959, yes, your Honor.

52 The Court: Prior to that you did?

Mr. Dodds: May I explain that, your Honor? It is true, prior to '59 there was no license issued other than a package license, but the fact is also—

The Court: To anybody?

Mr. Dodds: To anybody.

The fact is also true, your Honor, that nobody either asked for one or wanted one. The general practice has been for many years that in this country RCA and Hazeltine were the two principal research development and licensing organizations. If a manufacturer took one of these licenses from RCA and from Hazeltine they got complete freedom of design. They solved the patent problems, patent worries. They didn't have to worry what patents RCA might get next week or what patent Hazeltine might get next month. They had, you might say, complete freedom of the design, and that is what they wanted.

It is strange, all that has been said about this package licensing—I have been associated with Hazeltine for 34 years and until that time, until this time of the nego-
53 tiations with Zenith, and nobody ever asked for a package license. They didn't want one. That isn't what they wanted. They just didn't want it. But during that same time, by the same token, there was never any refusal of a license had anybody wanted one.

And, as a matter of fact, at that time it was Hazeltine that voluntarily worked out an arrangement, and that was worked out at the time of the expiration of a very basic Hazeltine patent which was sustained by this court and the Court of Appeals of this Circuit in litigation against ABCO. That patent covered a circuit, you might say, effectively without which you couldn't build a television receiver, a competitive one. When that patent expired Hazeltine voluntarily came to the conclusion that now is the time to offer people licenses under individual patents because we found that some manufacturers would use one patent and other manufacturers would use a different circuit and no one used all of them and, as a matter of fact, it was entirely possible not to use any of them if you wanted to.

If you wanted to have a design it would be perfectly
54 possible to have a television that didn't use any of
these patents. Therefore, we voluntarily developed this program for licensing on individual patents and submitted to that. We not only offered it to companies which were not licensed, we offered the opportunity to those companies who had a package license to convert it to a license under individual patents if they chose to do so. Some did and some elected to continue under the package license, and that is the story about package licensing.

55 I would like to answer one question that you posed
to Mr. McConnell, and that is the proposition that the acknowledgment of the validity of the United States patent in a license in the United States carries with it an acknowledgment of the validity of the corresponding foreign patent is utter nonsense.

In the first place, your Honor asked Mr. McConnell several times, "Were these patents the same?"

Well, the answer to that is yes and no. The patents were gathered on the same inventions, but the laws of these different countries as to what the scope of protection you get, and how broad or how narrow your patent is is quite different. The laws which determine who is the first inventor as between two or three people that some often make an invention with a great deal in common, that law is different in those countries. So while the patents are based on the same inventions, the patents are not the same in any sense of the word.

Thank you.

The Court: I have one more question, and maybe I shouldn't ask it of you because you say there wasn't 56 any package deal offered in 1959. My question, and perhaps it ought to go to Mr. McConnell, what was the basis, if there was a package deal offered in 1959, of the $200,000 maximum? Why was it that instead of one hundred or three hundred or fifty or four fifty? How was that arrived at?

Mr. Dodds: All right. That was arrived at this way: In the first place—I didn't mean to misstate myself—a package license was offered to Zenith in 1959 but the point was that it was not exclusively. We offered that or alternatively the individual type.

The Court: You offered them one for $200,000.

Mr. Dodds: That included black and white, color and everything, although I believe the record shows that at that time Zenith was not making color receivers at all.

The way the $200,000 was arrived at was actually, you might say, just some hard bargaining. We had started out offering a license on color patents without a ceiling.

One of the most powerful companies in the industry said, "As a matter of policy we won't take a license with- 57 out a ceiling. You are going to have to sue us. We have never taken a license without a ceiling and we won't take one now."

And by some hard bargaining we arrived at a ceiling of $200,000. Now, on the theory that every licensee has to be treated the same, having put in a ceiling for that concern, we offered the same ceiling to everybody else.

The Court: Regardless of the fact that some other company might have half of the production as Zenith? They would still have to pay a $200,000—

Mr. Dodds: That is the maximum, your Honor.

The Court: I understand that.

Mr. Dodds: It would depend upon what their production was.

The Court: How do you arrive at the minimum?

Mr. Dodds: There is no minimum. The typical license is that you pay X per cent on your receivers up until a maximum and then you don't pay royalties any more.

58 The Court: What is it that you pay X per cent on? That is what I—

Mr. Dodds: The television receiver.

Now, I might explain one other point. I think that Mr. McConnell said a great deal about it in his brief, about this question of payment of royalties on complete television receivers—

The Court: That use none of the inventions?

Mr. Dodds: That use none of the inventions.

59 Mr. Dodds: All right.

First of all, I have never encountered anybody who was willing to take a license and pay this royalty if they didn't use any of our inventions.

These licenses run—

The Court: Assume that half of their production use your invention and the other half of their production didn't.

Mr. Dodds: Then they pay on their production, and the reason for that is that the rate of royalty is effectively low to take that into account, because of the fact that if they pay on what uses and what doesn't use, there is a constant argument and disagreement as to whether circuit "A" does or does not use it, just as you have gone through an argument as to whether or not this Zenith circuit infringes their Loughren patent; so we have taken the position that the royalty base, the base on which royalties are computed is apparatus of the type licensed.

Now, that point has been attacked. It went up to the United States Supreme Court and, as a matter of 60 fact, the Department of Justice filed a brief amicus curiae in that case, and the Supreme Court of the United States in the case of Automatic Radio—

The Court: Is that the case where they say if you enter into such a contract with your eyes open you are stuck with it. Is that the case?

Mr. Dodds: I don't think that anybody suggested that Zenith's eyes are not open, your Honor.

The Court: I understand that, but they said that one couldn't complain about a contract that they had voluntarily signed even though it didn't seem fair that they would have to pay a percentage on articles that didn't embrace the use of any patents.

Mr. Dodds: Well, your Honor, I think that is more Mr. McConnell's interpretation of the Supreme Court. I don't think the Supreme Court said just that. What they said was—

The Court: They probably said it much more eloquently than I am saying it.

Mr. Dodds: The Supreme Court said that any reasonable royalty base could be used. It could be so many dollars 61 a set or it could be how many sets you produced, it could be on any reasonable basis. And, as a matter of fact, in the Supreme Court—and I presented the case to the Supreme Court—there were quite a number of earlier decisions of other courts which had held exactly the same thing. As I say, the reason is that you can—

The Court: You can agree to do anything.

Mr. Dodds: Well, you can agree to do anything.

But the reason for it, I mean the reason which is advantageous to both parties, is because of the fact, as I say, that it avoids complex disagreements of constant arguments as to whether a set does or does not come within the patent.

Also, it very much simplifies accounting procedures. I might cite as an example, in the early days it was customary in licenses of this sort to have the royalties based only

on the chassis portion, excluding cabinet, tube and speaker, because the manufacturer said, "Why should I pay
62 royalties on the cabinet? We have no patent on a
cabinet. Why should I pay royalties on a speaker? You have no patent on a speaker."

So what was done was that an investigation was made and it was found that at that time about fifty per cent of the cost of a total receiver was represented by these items which were deductible, cabinet, tube and speaker; so what Hazeltine did was say—this was at the suggestion of licensees—we cut the rate in half and pay on the whole thing and we come out with the same answer. And that is what we have in here, instead of paying say a five per cent royalty which is quite often a reasonable royalty on the basis of use, just on those sets which happen to use this circuit or that circuit, it is a very small percentage and paid across the board.

The Court: I would assume that each television or radio manufacturer has a certain number of models of radios and televisions, some of which use part of your patent
63 and some of which don't, and I would think it could
be ascertainable which model—and I assume that they keep their books showing how many of each model they sell—I would assume that it could be ascertained how many sets they show with your patents in them and how many they sold of your patents in them.

Mr. Dodds: That is a way of doing it. And as I say, that used to be the sort of a license which Hazeltine had. But the practical matter is that the amount of time spent for administration both by the manufacturer and by the licensees investigating every model every time they make a change in the model, and the models change in television sets more frequently than automobiles, every time they make a change, determine whether or not that is taken with another patent or without a patent and getting an agreement with the licensor, it just becomes a very serious administrative problem. And both the licensee and the licensor have found it more practical to say, "Well, we will take a smaller royalty and spread it across the board and get rid of all the arguments."

64 The Court: I think at this time we will take our short morning recess and then we will start the evidence.

(Whereupon a short recess was had herein, after which the following further proceedings were had, to-wit:)

65 The Court: You may proceed.

Thereupon, the counter-claimant, to maintain the issues in its behalf, presented the following evidence, to-wit:

Mr. McConnell: May it please the Court, I want to open this case by reading certain portions of a deposition which was taken by me, and the witness was Mr. Laurence B. Dodds. He was a vice president of the Hazeltine Company. Under the applicable rules, the Federal Rules, we can use his deposition, portions of it, read into the record their admissions.

The Court: Admissions against interest?

Mr. McConnell: Yes, all right. Which corporation is he the vice president of? Both of them, or all three of them?

Mr. McConnell: Hazeltine Corporation.

Mr. Dodds: Hazeltine Corporation.

Mr. McConnell: If the Court will bear with me, there are a few preliminary questions which give the background.

The Court: I am aware of the trivia which exists in depositions.

66 Mr. McConnell: I am reading from Page 2, examination by myself:

"Q. State your full name, please.

"A. Laurence B. Dodds.

"Q. Where do you live, Mr. Dodds?

"A. Great Neck, New York.

"Q. What is your profession?

"A. I am a lawyer.

"Q. Have you any connection with the Hazeltine Corporation?

"A. Yes.

"Q. What is that connection?

"A. I am a vice president.

"Q. Where is that company located? Where are its offices?

"A. Its principal place of business is at Littleneck, New York.

"Q. Has it got a street address?

"A. 59-25 Littl[illegible]eck Parkway, Littleneck 62.

"Q. In what state is that company incorporated?

"A. It is a corporation of Delaware.

"Q. Is there also a Hazeltine Research, Inc.?

67 "A. Yes.

"Q. Do you have any connection with that company?

"A. I am a director.

"Q. Where is that company incorporated?

"A. Illinois.

"Q. Where is its principal place of business?

"A. 5545 West Diversey, Chicago, Illinois.

"Q. What is the nature of its business?

"A. Its business is to conduct research and development in the radio and television fields, to hold patents resulting from that research work, and to administer licenses under such patents.

"Q. You said you were a director of that company. Are you also an officer of the company?

"A. No.

"Q. Are you an attorney for that company?

"A. Yes.

"Q. General counsel?

"A. No. I have no special title.

68 I am trial counsel in the instant litigation representing the plaintiff.

"Q. Is there a Hazeltine Electronics Co.?

"A. No.

"Q. Is there any third company?

"A. Yes.

"Q. What is the name of it?

"A. Hazeltine Research Corporation, a corporation of New York. The principal place of business is at Plainview, New York.

"Q. Does it have an address there?

"A. If it does, I do not know it.

"Q. What connection do you have with that company?

"A. None.

"Q. You are not a director?

"A. I said I had none.

"Q. You don't represent it legally? Are you a lawyer for it?

"A. I have on occasion. At the moment I am not representing it in any manner.

69 "Q. How long have you been a vice president of Hazeltine?

"A. Since 1939 with an interruption in 1944 or 1945.

"Q. Have you always been general counsel for that company?

"A. I have never had the title of general counsel for any Hazeltine Company.

"Q. But you have acted as attorney from time to time?

"A. Yes.

"Q. How long have you represented them as a lawyer?

"A. The first instance was as of about July 1, 1935.

"Q. Have you continually represented them ever since that time?

"A. Except for 1944 and 1945.

"Q. What are your duties as vice president of this company?

"A. At present my duties as vice president are rather general. I have no specific responsibilities.

70 "Q. When you say 'at present,' has there been a time in the past when you have had specific duties?

"A. Yes.

"Up until March of 1960, I was vice president of the Hazeltine Corporation in charge of all of their patent matters and had such other responsibilities as were assigned to me from time to time, by the chief executive officer.

The Court: Yes.

"Q. Will you tell us who the chief executive officers have been during the time that you have been serving as vice president?

"A. I can tell you who they have been, but I cannot tell you the exact periods because my recollection for dates is not that good.

"When I joined the Hazeltine organization in 1934 the chief executive officer was Jack Binns whose title, I believe, at the time was vice president and treasurer. Subsequently the chief executive officer was William

71 A. MacDonald. After his death Webster H. Wilson was chief executive officer.

"At the present time Wilfred M. MacFarland is the present executive officer.

"Q. Where does Mr. MacFarland live?

"A. Bronxville, New York.

"Q. What is the business of the Hazeltine Corporation?

"A. The business of the Hazeltine Corporation is preponderately research development and manufacturing military electronic equipment.

"Q. Does it own patents which it licenses?

"A. It owns foreign patents. It owns no United States patents.

"Q. Does it have a subsidiary that owns patents which are licensed to domestic users?

"A. The plaintiff in this action, Hazeltine Research, Inc.

"Q. Does the Hazeltine Corporation own the stock of Hazeltine Research, Inc.?

"A. Yes. It owns it all.

72 "Q. Of the three Hazeltine Companies, the Hazeltine Corporation is the holding Corporation of the stock of the other two?

"A. It does hold all of the stock of the other two companies.

"Q. When did Hazeltine Corporation or its subsidiaries start the business of licensing the use of its patents?

"A. 1924.

"Q. Prior to that time what had been its business?

"A. It was organized in 1924 to acquire the patent rights of Professor Alan Hazeltine, and its initial business was the licensing of those patents.

"Q. Were the patents of Professor Hazeltine largely in the electronic field?

"A. They were entirely in the radio receiver field.

"Q. Did it also start licensing those patents in foreign countries as well as the United States?

73 "A. It started licensing the foreign counterparts of those patents in foreign countries.

"Q. In other words, the patents which it owns and the licenses in foreign countries all have counterparts in the United States; is that correct?

"A. I could not state that as a one hundred per cent correct statement.

"Q. Substantially, is that so?

"A. Substantially that is so.

"Q. Are you familiar with an organization known as Canadian Radio Patents Limited?

"A. Yes.

"Q. How long have you known of that organization?

"A. For a great many years. I don't know just when I learned of it.

"Q. Can you give us approximately the time that you first knew of it?

"A. Between 1930 and 1940.

"Q. Do you know what the business of that company was?

74 "A. Was or is?

"Q. Well, was and is. When you first knew about it, what was its business?

"A. To the best of my knowledge the business of that company had always been the licensing of Canadian patents in the electronics field which it either owned or under which it had the right to grant licensees.

"Q. Do you know who the members of that organization were when you first knew it and who they are now?

"A. I don't know the answer to either of those questions."

75 I am going to Page 9:

"Q. What companies do you recall were members of it? You say you may recall some of them.

"A. I do recall that at one time at least the Canadian General Electric Company and the Canadian Westinghouse Company were members. Whether they are not now I do not know.

"Q. Do you know whether the Canadian Northern Electric Company was a member?

"A. I don't know with assurance."

I am going to Page 10:

"Q. Do you know of any agreement which the Hazeltine Corporation had with the Philco Company whereby Philco was to be permitted to sublicense or issue licenses through the Canadian Radio Patents, Limited?

"A. I recall the Hazeltine Corporation did have an agreement with Philco, one of the Philco companies, relating to the Hazeltine Canadian patents. Without refreshing my recollection I do not recall the nature of the rights which were granted to that Philco company."

76 I identified Exhibit No. 1, which is introduced here in evidence. I don't have the corresponding number here.

I asked him:

"Q. Can you identify this document as the license agreement under which the Philco products was licensed under the Canadian patents of the Hazeltine Corporation?

"A. Yes."

Then on Page 12, I examined him on the document. I asked him:

"Q. I call your attention to this provision, and I am quoting from Page 2 of the document:

" '. . . provided Hazeltine secures an adequate return for the use of its patents and inventions and Philco secures complete patent protection under the patents of both Hazeltine and Canadian Radio Patents, Limited, by an exchange of Radio-free licensees between Philco and Canadian Radio Patents, Limited, under the Hazeltine Canadian patents and the patents owned

> or controlled by Canadian Radio Patents, Limited,
> 77 respectively.'
>
> "Did you know from that language or from any other source that it was contemplated that Philco was going to enter into an arrangement with Canadian Radio Patents, Limited?
>
> "A. I do recall that one of the objects of the Philco was going to enter into an arrangement with Canadian Radio Patents, Limited?"

Turning to Page 14, I examined the witness on a memorandum, "under date of November 5, 1953, re CRPL, signed by H. K. Thompson with copies to H. M. Turner and R. H. Littlejohn."

> "Q. I call your attention to this document which recites that the shareholders of Canadian Radio Patents, Limited, are Northern Electric Company, Limited; Canadian General Electric Company, Limited; Canadian Radio Manufacturing Corporation (Rogers); Canadian Westinghouse Company, Limited, and Canadian Marconi Company. There is a recitation that each of these shareholders owns 20 per cent of the issued capital stock.
>
> "I hand you this document and ask you whether or not that refreshes your recollection as to who were the members of that pool.
>
> "A. No. I have no recollection other than what I expressed before. I have never seen the document in question or any copy of it."

Mr. Dodds: Your Honor, I move to strike the preceding question and answer.

The Court: In view of the fact that it doesn't refresh your recollection, I assume that was the only purpose—

Mr. Dodds: I think there is implied—reading the question, it was obviously a leading question. I just want to make sure that wasn't cited for proof.

Mr. McConnell: We are going to introduce the document.

Mr. Dodds: I still move that it be stricken.

The Court: I mean, the question and the answer will be stricken. Something was read to you for the purpose, for the hope that it would refresh your recollection, and 79 you stated that it didn't. Therefore, any reference to it at this time will be disregarded by the Court.

Your motion to strike that question and answer is granted.

80 Mr. McConnell: Returning to page fifteen of the deposition:

"Q. Do you recall a time when your company, one of your companies, and I assume it was the Hazeltine Corporation, entered into a license agreement with Canadian Radio Patents Limited?

"A. Yes.

"Q. Did you at that time make any inquiry or take any steps to find out who were the members of this organization?

"A. I did not.

"Q. Did anybody in your organization?

"A. I do not know.

"Q. You didn't know at the time; is that right?

"A. I don't recall whether I knew or not. I say I don't recall having knowledge of that. I may have."

"Q. I show you a document which is marked Defendant Dodds Exhibit 3 for identification"—which is marked in evidence here as Defendant's Exhibit 118—"which purports to be a photostatic copy of a 81 license agreement under date of July, 1943, between the Hazeltine Corporation and Canadian Radio Patents Limited. I ask you to examine that. It was produced from the pool files. The original was produced from them. I ask you if you can identify that as the license agreement which Hazeltine Corporation entered into with the pool?

"A. I could not identify this without comparing it with a copy from the Hazeltine files."

And then there was some colloquy about what was produced from the files. Going to page 18:

"Q. Do you know who drafted the agreement under date of July, 1943," which is this document which is marked here as Defendant's Exhibit Number 118, "between Hazeltine Corporation and the Canadian Radio Patents Limited?

"A. To the best of my recollection it was drafted by the Canadian Radio Patents Limited.

"Q. Did you examine it and read it was signed
82 by Hazeltine Corporation?

"A. I did.

"Q. I call your attention to Section 1 on page 3 of this document which has been marked for identification as Dodd's Exhibit 3:

> 'The Licensor hereby grants to the Licensee, for the term of this agreement, the exclusive and divisible license, with the right to license others, to make within the Dominion of Canada the licensed apparatus specified in Section 2 hereinafter, and to sell said apparatus made by Licensee or its sublicenses to others for the use specified in Section 2 hereinafter, and for resale for such uses. Said license to manufacture includes the right to make all or any of the separate parts and the right to have all or any of the separate parts made by others, but no licenses granted to sell parts separately except as a bonafide repair of used licensed apparatus of replacement of worn
> 83 out or defective parts of used licensed apparatus.'

Do you remember that provision in the license agreement?

"A. May I see it, please?

"Q. Here it is.

"A. I don't have any recollection independent of the document, and I cannot identify this document without comparison with the document from the Hazeltine files."

And I turn to page 20. I asked the witness:

"Q. I show you a document which is marked for identification as Defendant Dodds Exhibit 4, which purports to be a copy of a letter under date of April 6, 1943, addressed to J. C. MacFarlane, Secretary-Treasurer, Canadian Radio Patents Limited. Apparently the original of this was signed by you as vice-president of the Hazeltine Corporation. I ask you to examine that document and to state whether or not you wrote it and sent it through the mail to Mr. MacFarlane?

84 "A. I can identify this letter. I wrote the original of it addressed to Mr. McFarlane.

"Q. In this letter, the first paragraph, you say:

> 'This letter is to confirm the substance of discussions yesterday morning between yourself, Messrs. Lanoue and Fortheringham of Northern Electric, and Mr. Binns and the writer of Hazeltine Corporation relative to the proposed License Agreements from Hazeltine Corporation to Canadian Radio Patents Limited . . .'

Would you say after hearing that that you knew that at least Northern Electric was a member of the pool?

"A. Yes.

"Q. Had you had a discussion on April 5, 1943, between the gentlemen named in that first paragraph?

"A. I did have such a conference.

85 "Q. Did you have some discussion about whether or not Canadian Radio Patents Limited could bring litigation to enforce Hazeltine patents in the event they were infringed?

"A. I don't have any recollection now of this discussion twenty-five years ago other than what is in the documents themselves."

86 Turning to Page ....I said:

"Q. I call your attention to Page 3 of the letter in which you say: 'It is understood that Canadian Radio Patents, Limited, shall have the right to bring litigation for the enforcement of the Hazeltine Corporation Canadian patents at its expense and for its benefit.'

"Does that refresh your recollection?

"A. No.

"Q. You have no recollection of the subject matter, I take it, other than what is contained in the letter, is that right?

"A. Except to what is contained in the letter and the license itself if and when a copy, which I can identify, is placed before me."

Turning to Page 23:

"Q. Did you ever see such a license"—going back to Page 22:

"Q. Had you seen at that time any of their license agreements which the pool was using to license manufacturers?

"A. I believe not.

87 "Q. They didn't furnish you a copy of what kind of license they were going to use?

"A. I don't recall. I believe not.

"Q. Did you ever see such a license?

"A. I believe I have."

Then I asked that the document be marked for identification Defendant Dodds' Exhibit 5, which is marked in evidence here as Defendant's Exhibit 123, which is a copy of a license agreement between Canadian Radio Patents, Limited, and blank licensee.

"Q. I ask you whether you can identify that as a document out of your files, and tell us, if you can, from what source you obtained it?

"A. I can identify this as an exhibit from the Hazeltine files. I have no recollection of when or how it was obtained.

"Q. Could you tell us whether or not it came from Canadian Radio Patents, Limited?

"A. I do not know what the source of this was.

"Q. Is there anybody in your organization that would have any information on this?

88 "A. I am reasonably sure there is not."

Turning to Page 24:

"Q. Do you know what file it was produced from?

"A. To the best of my belief there is a file entitled 'Canadian Radio Patents, Limited' and I believe that that came from that file.

"Q. I call your attention to Article II of this purported license. On Page 3, Section 1:

> ' "The licensor hereby grants to the Licensee, upon the terms and conditions hereafter set forth, a personal, indivisible, non-transferable and non-exclusive license, only for the Licensed apparatus hereinafter specified and defined, and only as follows:
>
> ' "(A) to manufactured licensed apparatus in Canada and to sell or lease Licensed apparatus so manufactured and
>
> ' "(B) to have Licensed apparatus manufactured in Canada for the Licensee and to sell or 89

> lease such Licensed apparatus so manufactured for the Licensee subject to the payment of royalties thereon by the Licensee as provided in Article III hereof. Such Licensed apparatus shall be deemed to be licensed under this Agreement at the time of sale or lease by the Licensee.'

"Did you know that the form of license being used by Canadian Radio Patents, Limited, was confined to the manufacture of licensed apparatus in Canada in the sale of such apparatus?

"A. I have known that the Canadian Radio Patents, Limited, in some instances refused to grant licenses under its patents with respect to certain apparatus imported into Canada. When I learned that first I do not recall.

"I might correct my previous statement by referring to Plaintiff's answer to defendant's interrogatories which indicates that the license agreement, Exhibit
90 5, was received from Canadian Radio Patents, Limited, June 6, 1960, approximately six months after the complaint in the instant action was filed.

"Q. You understood, did you not, that this was the form of license—and I am referring to Defendant's Dodds Exhibit 5—that was being used at that time by Canadian Radio Patents, Limited?

"A. I think I have to qualify that. I did not understand it was the form, but I understood it was a form that was being used.

"Q. Have you produced any other form that you had in your files?

"A. To the best of my knowledge there is no other form in the files of Hazeltine.

91 "Q. So far as you know, this is the only form you have ever seen of theirs?

"A. That is correct.

"Q. Do you recall a time when a different license agreement was used when they were permitted to import up to $100,000 worth of their products?

"A. I have no knowledge of any specific other form. Over the years I have had an understanding that other forms have been used which permitted certain importation. I do not have any knowledge of the details.

"Q. Where did you get your information from that there were other forms?

"A. From Canadian Radio Patents, Limited.

"Q. Did you get it by writing?

"A. I do not recall."

Then I turn to the bottom of Page 27. I am examining on a document which was marked in the deposition as Defendant Dodds Exhibit 6, which purportedly is a memorandum of agreement, "apparently a form between Canadian Radio Patents, Limited, and some unnamed licensee." 92

"Q. I call your attention to this language which is contained on Page 5 of the document under Paragraph 9:

> "'The Licensee shall not import or cause to be imported directly or indirectly, into the Dominion of Canada, radio receiving sets manufactured or sold under this license during any one calendar year having an invoice price (including freight and duty) in the aggregate or more than $100,000.'

"Were you familiar with that provision in the earlier license agreements?

"A. That license agreement is dated seven years before I joined the Hazeltine organization or had any familiarity with the radio industry. To the best of my knowledge I have never known of such a provision."

Mr. Dodds: A similar motion to strike, your Honor, for the same reason.

The Court: Well, I think this is pretty immaterial. It may stay there for what it is worth. It is worth nothing, I guess. 93

Mr. McConnell: Well, it is historical.

The Court: It gives some background. At one time, they could bring in $100,000 worth—

Mr. Dodds: Your Honor, I don't think that is true. This is a piece of paper which Mr. McConnell showed me. I have never seen it before; it was dated back to the 1920's. Nobody has identified it. We don't know whether anybody signed such an agreement.

Mr. McConnell: Well, we have a stipulation that all questions of authenticity are waived here.

Mr. Dodds: That isn't the point. The authenticity only says the document is what it purports to be.

The Court: Well, it is a document that was in Hazeltine's files?

Mr. Dodds: No. This was not in Hazeltine's files. This was a document which—

The Court: It was an unknown licensee?

Mr. Dodds: This was a blank form. It didn't come out of Hazeltine files. The earlier one did. This one did not.

94 The Court: Is there any possibility or intention, Mr. McConnell, to hook this up in some other fashion other than in this fashion?

Mr. McConnell: Definitely.

The Court: Then I will take under advisement your motion to strike, and make a note to renew it at the end of all of the evidence. If he doesn't hook it up, I am going to strike it.

Mr. McConnell: I am going to hook it up with proof of the over-all conspiracy. This comes out of the file of the pool.

The Court: I mean, who said so besides you?

Mr. McConnell: Well, we have a stipulation—

The Court: I don't know where it came from, based on—

Mr. McConnell: I know. We submitted all these documents to Mr. Dodds, and he has stipulated that they come from where we say they come.

Mr. Dodds: Not anything of the sort. We only stipulated, and the stipulation says that we stipulate to the 95 authenticity; that the document is what it purports to be without having to refer to the originals. Many documents are copies. They came from various sources. We stipulated the authenticity, meaning the document is what it purports to be, and that is all that was stipulated.

Mr. McConnell: Well, if you want a witness to testify that it came out of the files—

Mr. Dodds: The custody of the original, or what happened to it—htis is just stipulating the authenticity of it.

The Court: By the authenticity, do you mean—do you stipulate that this did come out of the files of the Canadian pool?

Mr. Dodds: No, no. We just stipulated that each of these documents are what they purport to be, because many of them are copies.

Mr. McConnell: We will connect it up. We will put a witness on to testify where they came from.

The Court: It is a distinction I am not quite able to grasp, but let's go on.

Mr. McConnell: I can't either. I can't either.

The Court: Let's go on.

96 Mr. McConnell: On page 29, I asked the witness—

"Q. I show you a document marked for identification as Defendant Dodds Exhibit 7 which purports to be a form of license agreement used by the Canadian Radio Patents Limited which is dated 1929. I ask you whether or not you have ever seen that form?

> "A. I have no recollection of ever having seen that form. Perhaps I should qualify my testimony to this extent: I did inspect a large volume of files of Zenith Radio Corporation dealing with the foreign licenses. I had selected some documents which at the time I did not read. When I say I have no recollection, it will have to be the understanding that they might have been selected without my present recalling just which documents were selected."

Mr. Dodds: Your Honor, may we have a continuing motion of these documents which I never seen before?

The Court: Of course, nobody—all you have done in
regard to this document is to say you have never seen
97 it before. And we have none of the contents of it in
the record.

Is this being offered now?

Mr. McConnell: I am going to offer these, but if he says I have to put on proof where they came from, I have to put witnesses on.

Mr. Dodds: It is more than that, your Honor. I think he has to prove relevance. A printed piece of paper doesn't prove anything. There is no proof that anybody ever signed a license like that. It may have been something they had in their files that they might use. There isn't any indication that anybody ever used it, or signed it, or submitted it to anybody. It is a blank form.

The Court: At this point, I agree with you. At this point, the offer would be denied.

Now, I don't know what else he is going to come up with.

Mr. Dodds: That's my point.

The Court: I mean, make a note of this too, a motion to
strike, except I don't know what you are striking at
98 this point. The only thing in the record at this point
is that this is a document that you never saw before.

Mr. Dodds: That's right.

The Court: What is in it isn't in the record, so I haven't been biased by its contents. Certainly, I won't see its contents until he comes up with more proof about it than he has at this moment.

All right.

Mr. McConnell: Well, I would like to offer in evidence, at this time, the pre-trial stipulation which was signed by Mr. Dodds as counsel for the plaintiff.

The Court: Let's get to the point of the pre-trial stipulation as it has some bearing on these two documents, if there is such a thing.

Mr. McConnell: It has bearing on it, I believe. Number five of the stipulation on page 2—

The Court: Paragraph five?

Mr. McConnell: Paragraph five. It says:

> "Any party desiring to introduce in evidence at trial a document or copy thereof previously produced by either party during discovery proceedings herein, or produced by any party to either of certain actions entitled Radio Corporation of America versus Rauland Corporation and Zenith Radio Corporation, Number 48-C-1818, in this court, and Zenith Radio Corporation versus Radio Corporation of America, et al., Number 1098, in the District Court of Delaware, may do so without further authentication or proof that: (a) such document is genuine, (b) such document was kept in the regular course of business, (c) such document was prepared by the author (or authors) indicated thereon or about the date appearing on the fact thereof, and (d) in the case of correspondence or memoranda, that such document was sent by the addressor(s) and received by the addressee(s) on or about the date it bears; providing that all objections under the rules of evidence are reserved, and subject to correction if error

99

> appears. Each party agrees to furnish the other
> 100 party, at least thirty days prior to trial, a list of such documents on which it intends to rely at the trial and the party having custody of such documents agrees to make them available to the other party for inspection."

We have given Mr. Dodds all of these documents prior to trial, and he has never indicated he wanted proof.

The Court: Do these refer to one of two lawsuits you refer to?

Mr. McConnell: Yes, they do, and they have been given to him and indicating this came from one of these lawsuits.

The Court: Under this stipulation, since it isn't correspondence and doesn't come under the qualifications that it is from whom, and to whom—it's supposed to be from and to—what does it come under?

Mr. McConnell: Well, the relevance of this is that this is a form of license agreement which I have been examining the witness on, which he later admits he has seen,
101 later on in the deposition, which shows how they conducted their business.

True, they are not bound by—at this time, it is, all subject to my connecting it up, their being in this conspiracy. If they are once in the conspiracy, then they are bound by whatever any of the conspirators did in the course of the conspiracy.

102 The Court: What you are complaining about at the present time is, there is no minimum importation. I mean, this tends to indicate that at one time they were more liberal on the importation than they are at the present time.

Mr. McConnell: That's right. It is just historical. That is all. It just shows how it developed.

Mr. Dodds: But, your Honor, I still say the basic thing, even assuming that we admit that there was in existence such a document, and it is an authenticated document, it doesn't show—there is still no showing of any relevance in the sense that there is no showing that anybody ever used this document. It is a blank form. It wasn't a copy of a license which CRPL granted to Joe Doaks. It is just a blank form. There is no indication anybody used that form.

Mr. McConnell: When I get to offering it—

The Court: I mean, just keep a memo on it. At this time, surely, Mr. Dodds, it is not admissible. He keeps
103 saying that pretty soon you are going to admit something about it, so we will wait and see if you do.

All right.

Mr. McConnell: Turning to Page 31:

"Q. I call your attention to Article II on Page 3 of this document, Section 1, under the designation 'Licensee':

> " 'Upon the terms and conditions herein set forth' "—

The Court: This is the same document?

Mr. McConnell: Yes, the same document?

> " 'Upon the terms and conditions herein set forth and solely and only to the extent and for the uses hereinafter specified and defined, the Licensor hereby grants and agrees to grant to the Licensee for the term of this agreement under all of the letters patent of the Dominion of Canada set forth in Schedules A and B attached hereto relating or applicable to or useful in the manufacture of radio receiving sets, a personal, indivisible, nontransferable and nonexclusive license to manufacture radio
104 receiving sets as herein defined at its factories within Canada, and not elsewhere without previous written permission obtained from the Li-

censor and to sell only in the Dominion of Canada radio receiving sets so manufactured by the Licessee, . . .'

"Do you recall ever having seen that provision anywhere?

"A. I am reasonably certain that I never saw that provision.

"Q. You never heard of it?

"A. Never heard of it.

"Q. You never heard that the Canadian Radio Patents, Limited, only licensed licensees who manufactured in Canada?

"A. That's a different question. I didn't say that. I think I answered that question some time before mainly to the effect that I did understand and have known that in certain cases they did grant licenses with respect to imported receivers of certain classes."

Turning to Page 35:

"Q. When did you first find out that your patents
105 were being licensed under a standard license agreement by Canadian Radio Patents, Limited?

"A. I believe the first positive information we had was upon the receipt of the license from defendant Dodds Exhibit 5 for identification.

"Q. You say you received that in 1960?

"A. Yes, sir.

"Q. Have you received royalties under that agreement since 1960?

"A. Under what agreement, Mr. McConnell? We don't receive any royalties under this license agreement, Defendant Dodds Exhibit 5 for identification.

"Q. You are right. Wait a minute, and we will start all over again.

"Under your agreement with Canadian Radio Patents, Limited, you do receive royalties for the use of your patents, do you not?

"A. Yes.

"Q. You are familiar that Canadian Radio Patents, 106 Limited collects moneys out of which they pay you royalties from sublicenses which they make; is that correct?

"A. Yes.

"Q. After you had knowledge in 1960 of the terms of the general license agreement or standard license agreement which they used, your company did receive royalty payments from Canadian Radio Patents, Limited, did it not?

"A. Yes.

"Q. And kept those payments?

"A. Yes."

Then I asked a question:

"Q. I show you a document which has been marked for identification as Defendant Dodds Exhibit 10. This document purports to be a letter on the letterhead of Noblitt-Sparks Industries of Columbus, Indiana, dated December 19, 1939, addressed to the Hazeltine Corporation. I ask you whether or not you have ever seen that document before?

"A. I have seen this document before.

"Q. Did you see it about the time it was received 107 by The Hazeltine Company?

"A. I saw it on December 22, 1929."

Mr. Dodds: That must be mistaken, Mr. McConnell.

The Court: '39 probably. The document is dated '39, isn't it?

Mr. McConnell: (Reading)

"I saw it on December 22"—I'm sorry—"1939."

The Court: All right.

108 Then I asked him:

"Q. I show you a document which was marked for identification as Defendant Dodds Exhibit 11. This document purports to be a letter from the Hazeltine corporation apparently by Mr. Binns to Mr. T. Earl Robinson, Noblitt-Sparks Industries, Columbus, Indiana, under date of January 5, 1940. I ask you if you ever saw that document before.

"A. I believe that I have seen this before. The first time I saw it was on the instance of reviewing the documents which were representative as selected from the Hazeltine files during the course of this litigation.

"Q. You had nothing to do with drafting this reply; is that right?

"A. I have no recollection of having anything to do with drafting the reply.

"Q. There is reference made here as follows:

" 'Insofar as Canada is concerned, I wish to point out that some few years ago Canadian Radio Patents, 109 Limited, of 159 Bay Street, Toronto, Canada, sued an alleged infringer under certain Canadian letters patent. This litigation continued over a period of years and finally was decided by the Privy Council in London.'

"Do you know anything about that litigation?

"A. No."

Turning to Page 40:

"Q. When did you first acquire any information about the patent situation involving, let us make it, importing of sets into Canada, so far as the patent situation was concerned in Canada?

"A. I believe that the first time I had any information on that subject was on or about the time of the granting of a license to Philco Products, Limited, and at that time I believe my knowledge was confined to the patent situation of Canadian Radio Patents, Limited, and The Hazeltine Corporation.

"Q. That was 1938. What information did you have at that time?

"A. In 1938?

110 "Q. Yes.

"A. I knew at that time that Hazeltine Corporation owned a large number of Canadian patents. I was informed and believed that Canadian Radio Patents, Limited, either owned or had the rights to grants, licenses, under a large number of Canadian patents. I believe that was the extent of my knowledge at that time."

Turning to Page 43:

"Q. Did you ever find out from any source that Canadian Radio Patents, Limited, were issuing licenses to their licensees which included the Hazeltine patents?

"A. Did I ever?

"Q. Yes.

"A. Yes.

"Q. When did you find that out?

"A. Some time after 1943.

"Q. But you did not know it prior to the license agreement between Canadian Radio Patents, Limited, and the Hazeltine Company?

"A. I have no recollection of any such knowledge. In fact, my recollection is to the contrary."

111 And then I skipped a couple of questions, and on the same page, 44:

"Q. Does your company have records which would show whether or not they did receive royalties and from what source from the Canadian patents?

"A. I would expect that there would be records which would show royalties received from the Philco Corporation pursuant to the agreement Defendant Dodds Exhibit 1 for identification.

"Q. Who would have those?

"A. The Officer responsible would be Mr. B. J. Tiffany, who is treasurer of the Hazeltine Corporation."

112 Turning to page 51, I was referring to a letter which Mr. Binns had written, and I asked the witness:

"Q. What did he have to do with the situation in Europe so far as patents were concerned?

"A. When? As of 1940?

"Q. You said he had been engaged for sixteen years.

"A. 1924 to 1940 was sixteen years. As of the date of this letter Mr. Binns had made several trips to Europe and had conducted a number of negotiations with respect to foreign licenses and he had also made a number of trips to Canada.

"Q. Did Mr. Binns conduct the negotiations which led to Hazeltine putting its patents in the Canadian Radio Patents Limited?

"A. Mr. Binns conducted negotiations which led to the Canadian Radio Patents Limited agreement which is Defendant Dodds Exhibit 3 for identification.

"Q. Did you have anything to do with that negotiation?

113 "A. Yes.

"Q. What did you have to do with it?

"A. I observed and advised Mr. Binns when requested to do so.

"Q. Did you go up to Canada and talk to anybody about it?

"A. It is my recollection that the negotiations were all conducted in New York.

"Q. Do you recall whom the negotiations were with?

"A. They were principally with Mr. J. C. MacFarlane.

"Q. Did you sit in on all of the negotiations?

"A. That I do not know.

"Q. Was there any discussion by Mr. MacFarlane of what use he was going to make of the Hazeltine patents if they were included in the Canadian Radio Patents Limited pool?

"A. My recollection is that Mr. MacFarlane advised that they would be added to the general collection of patents under which the pool had rights to grant licenses." 114

Turning to page 54:

"Q. Before I leave that subject, you don't know what investigation Mr. Binns made of what Canadian Radio Patents Limited was doing?

"A. I have no idea what investigation he made.

"Q. You don't know what knowledge he had?

"A. I don't know whaf knowedge he had as of 1940.

"Q. They entered into the arrangement with Canadian Radio Patents Limited in 1943?

"A. That is right.

"Q. Was it 1943 that you were having these negotiations?

"A. Yes.

"Q. Forgetting about what you knew in 1940, what did you know about this in 1943?

"A. I knew the same in 1943 as I knew in 1940.

"Q. Nothing?

"A. Nothing."

115 Page 55:

"Q. Did anybody from Canadian Radio Patents Limited ever discuss with you a contention that under

Canadian law it was impossible to license the import of American sets to be sold in Canada?

"A. I don't recall that anyone ever characterized it as being impossible. I recall discussions with representatives of Canadian Radio Patents Limited stating that there were some limitations on the right to grant licenses, with respect to apparatus imported into Canada.

"Q. When did you have these discussions?

"A. I don't have any recollection. I believe that there has been several over a period of years."

116 Page 60:

"Q. I show you a document which has been marked as Defendant Dodds Exhibit 15 which is a letter under date of March 13, 1940, addressed to Mr. W. M. Angle, Stromberg-Carlson Telephone Manufacturing Company from the Hazeltine Corporation, apparently signed by Mr. Binns. I ask you whether you have ever seen that document before.

"A. The answer is the same as the one to the previous question.

"Q. Here is the recitation:

"'At the present time our existing licensees in Canada are Northern Electric, Rogers-Majestic, Philco and Stromberg-Carlson.'

"You knew that Northern Electric and Rogers-Majestic were both members of this pool?

"A. I knew it at one time. I don't know whether I knew it as of the date that letter was written."

Then turning to 62. I am referring now to Defendant Dodds Exhibit 16, which is a copy of a letter dated

117 January 27, 1941, to A. S. Wells from the Hazeltine Corporation:

"Q. I show you a document which has been produced from the Hazeltine files, DXBUD 2571, which purports to be a letter to A. S. Wells of Wells-Gardner & Co., dated January 27, 1941, apparently signed on behalf of Hazeltine by Mr. Binns. I ask you whether or not you have seen that document, or a copy of it.

"A. I have no recollection of having seen this document prior to the review of the documents selected by defendant's representative in this case.

"Q. In this letter to Mr. Wells your Mr. Binns says:

" 'The only sure way of securing complete protection from suit in foreign countries is to manufacture the patented apparatus under license in that country. This is particularly true since the right to manufacture is one of the three specific rights conveyed by a patent license in all countries.'

118 "Did Mr. Binns get that information from you?

"A. I have no present recollection.

"Q. Then he goes on to say:

" 'Unless you actually manufacture in countries where adversely held patents are in existence, the threat of those patents is just as much a risk to your business as are tariff regulations, currency restrictions, freight rates, insurance, and the many other impedimenta to the flow of trade.'

"Did he get that information from you?

"A. I have no present recollection."

Turning to Page 64:

"Q. I show you a document which has been produced from the Hazeltine files DXBUD 1859, which is marked for identification as Defendant Dodds Exhibit 17, which purports to be a letter from the Hazeltine Corporation by its president, apparently Mr. Binns, to Mr. A. J. R. Lanoe, Northern Electric Company in

Canada. I ask you whether or not you ever saw that document.

119 A. I have no recollection of ever having seen this document prior to the review previously referred to. I believe I was familiar with the circumstances to which it relates.

"Q. Were you familiar with the discussions which were being had with Mr. Lanoue in the latter part of the year 1942? To refresh your recollection, this letter states:

"'In connection with our discussions during the latter part of last year, this is to advise you that Philco Products, Limited, have not exercised the option to renew their agreement with us in Canada.'

"A. It is my recollection that I was familiar with those discussions but did not participate in them.

"Q. Do you know where they were held?

"A. I do not.

"Q. Who was Mr. Lanoue?

"A. Mr. Lanoue was Mr. MacFarlane's assistant and at the time I believe Mr. MacFarlane was seriously

120 ill and Mr. Lanoue was substituting for Mr. MacFarlane.

"Q. He was his assistant in the pool?

"A. I don't know. He was, I believe, an employee of the Canadian General Electric Company. What his relation to CRPL was, I do not know.

"Q. He's addressed here at Northern Electric.

"A. I am mistaken, I thought it was the Canadian National General Electric.

121 "Q. They were a member of the pool, were they not?

"A. I believe they were.

"Q. Now, your Mr. Binns says:

"'Under the circumstances, the agreement is no longer in effect. Representatives of the Philco Corporation, however, have asked us to discuss the basis of a new agreement in which they desire to modify some of the terms of the old agreement to meet their conditions. It is our opinion that we are now in a position to discuss with you or with Canadian Radio Patents Limited, the possibility of entering into an agreement with that company in Canada. I would be very glad to get your reactions to this and if you desire to have a preliminary conversation on the matter with us, I will be glad to arrange a mutually convenient time and place.'

"Did you discuss with Mr. Binns the advisability of 122 entering into a license agreement with Canadian Radio Patents Limited?

"A. I have no recollection of any specific discussions.

"Q. Did you know of any discussion that arose as a result of this letter of February 6, 1943?

"A. There were some discussions that followed that letter. Whether they were as a result of the letter I do not know. There were discussions with Mr. MacFarlane.

"Q. Were you present?

"A. As I previously testified, I was present at some of the discussions. I do not know that I was present at all of them.

"Q. What generally were the discussions about?

"A. About a proposed agreement between Hazeltine Corporation and CRPL.

"Q. Did you discuss terms that you were to receive?

123 "A. Certainly we discussed terms. Those terms are the ones which we memorialized in the agreement which is Defendant Dodds Exhibit 3 for identification.

"Q. Did you discuss at that time with Mr. MacFarlane the source of the revenue of Canadian Radio Patents Limited?

"A. I have no recollection of such discussion.

"Q. Did you know anything about where they got what money they had?

"A. I had a general knowledge. I didn't have a specific knowledge.

"Q. What was your general knowledge?

"A. My general knowledge was that they licensed the patents under which they had a right to grant licenses on the royalty basis and collected those royalties.

"Q. That was their entire business?

"A. That I didn't know.

"Q. You knew that they were not manufacturing anything?

"A. That is right.

"Q. You knew that they were not importing anything?

124 "A. I believe I knew that, but there were also other patent activities."

The Court: Well, maybe this is a good time for our noon break, Mr. McConnell. It is 12:30.

Mr. McConnell: All right.

The Court: We will recess until 2:00 o'clock.

(Thereupon, Court recessed until 2:00 o'clock p.m.)

125 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

Before Honorable Richard B. Austin on Monday, February 17, 1964 at 2:00 o'clock P. M.

Appearances:

Mr. Dodds, Mr. Diggins, Mr. Ruestow,
Mr. McConnell, Mr. Curtis, Mr. Crotty.

Trial resumed pursuant to recess.

126 The Court: You may proceed, Mr. McConnell.

Mr. McConnell: Thank you, your Honor.

Starting with page 86 of the deposition of Mr. Dodds, I asked that an exhibit be marked as Dodds Exhibit 26,

"which is produced from your files under the designated DXBUD 2184, this letter being under date of March 29, 1955, addressed to George A. Schnell, Esquire. Apparently, this is written by you. I ask you whether or not you wrote and sent this document?

"A. Yes. I wrote that letter.

"Q. What was the occasion of checking on the circuits of the Motorola receivers?

"A. I have no specific recollection as to this particular checking on the Motorola receivers.

"Q. I call your attention to the recital here of U. S. Patent 2,547,648 with a Canadian counter-part of 487,448. The U. S. Patent is the one that is in suit in the instant lawsuit, is it not?

"A. That is right.

127 "Q. And the Canadian patent is its counter-part?

"A. That is right.

"Q. I show you a copy of a letter marked Defendant Dodds Exhibit 27 for identification from Mr. Hultman in Stockholm, Sweden, signed apparently by Mr. Binns with a copy to you. I ask you whether or not you got the copy that is referred to in that letter?

"A. I have no recollection independent of the document. I will take the responsibility for having received a copy of the letter.

"Q. Do you recall what this was with reference to?

"A. I don't have any recollection independent of the letter itself.

"Q. I call your attention to this paragraph in the letter:

"'The situation in Canada is quite different from that expressed in your letter in these rather important 128 particulars. We are not a member of Canadian Radio Patents Limited, the membership of which is comprised of a half dozen or so of the leading Canadian manufacturers. Consequently, we have no control and very little influence on their policies. The actual fact is that we have granted them an exclusive license with the right to sublicense in Canada under the patents owned by us in that country.'

"Is that a true statement?

"A. What you said comprised quite a number of statements. Some of them are true and some of them are statements of which I don't have knowledge.

"Q. Let us take them one at a time:

"'Consquently, we have no control and very little influence on their policies.'

"Is that correct?

"A. To the best of my knowledge, that is correct.

129 "Q. Then the next statement:

"'The actual fact is that we hae granted them an exclusive license with the right to sublicense in Canada under the patents owned by us in that country.'

"It that correct?

"A. I would not like to accept that paraphrase. I would rather rely on the agreement itself which is here offered as Defendant Dodds Exhibit 3 for identification.

"Q. Did you have anything to do with the preparation of this letter?

"A. May I see it, please?

"Q. Sure.

"A. Not that I recall.

"Q. Do you know who Mr. Hultman is?

"A. Yes.

"Q. Who is he?

"A. He is the patent attorney for Svenska Aktiebolaget Gasaccumulator.

"Q. Did you meet him over in Sweden?

"A. No.

130 "Q. Did you ever know him?

"A. Yes.

"Q. He was the man that was running the pool over in Scandinavia, wasn't he? Wasn't there a Scandinavian Patent pool?

"A. Not that I know of.

"Q. Do you know of an organization called AGA?

"A. The company I just named is properly referred to as AGA.

"Q. That is a patent pool, is it not?

"A. AGA is one of the larger electrical manufacturers in Sweden, to the best of my knowledge.

"Q. Weren't they running the patent pool?

"A. I don't know what you mean by 'the patent pool.' At various times there were patent pools in various countries. I don't know of anything that could be characterized as the patent pool."

131 Now we go to the bottom of Page 106 of the deposition:

"Q. You did know, did you not, that there was an effort on the part of Canadian Radio Patents, Limited, to stop the importation of any American sets into Canada?

"A. I stated that before, that I do know that—that was, in general, their policy with certain exceptions.

"Q. Do you recall any particular specific exception?

"A. No, not with certainty. I have a recollection that they licensed the importation of FM tuners, but I am not certain as to that.

"Q. Do you know of any instances where they licensed the importation of complete sets of radio or television?

"A. I do not know."

On Page 108, starting at the bottom of 107:

"Q. In this letter there is the following statement by Mr. Brownlee:

132 " 'Our vice president, Mr. E. M. Coles of Canadian Westinghouse has taken over Mr. MacFarlane's CRPL work for the time being, and after getting things straightened out with RCA he and I held a meeting with Admiral two weeks ago. Mr. Siragussa was supposed to attend, but sent one of his American vice presidents instead and we offered a proposal for settlement which included both a reduced and simplified royalty rate and a substantial reduction after sales exceed five million dollars in any one year. We realized the weakness of allowing very much for accepting or refusing the proposal, but finally gave to the end of July on the basis that Mr. Siragussa was not available to make the final decision.'

"The first question I wanted to ask you is this: Did you know at that time that Canadian Westinghouse was a member of the pool?

"A. I have testified before that Canadian Westinghouse was a member of the pool.

133 Q. I thought you had said Canadian General Electric.

"A. And Canadian Westinghouse, too."

134 Going to page 110:

"Q. Did you ever make any investigation of whether or not this pool up there in which your patents were being licensed was violating the American antitrust laws?

"A. I would be very surprised if I ever attempted even such an investigation because I don't see how a Canadian company could violate the American antitrust laws.

"Q. I didn't ask you that. I asked you if you made an investigation and you tell me no.

"A. That is right.

"Q. Did you know that the United States Government had sued RCA for being in that pool?

"A. I did.

"Q. When did you first learn about that?

"A. It was several years ago. My memory for time is not too good.

"Q. Apparently you were greatly surpised at that suit.

135 "A. No.

"Q. You were not?

"A. No.

"Q. Did you know that Zenith Radio had sued RCA and General Electric for being in that pool?

"A. I knew there was litigation between General Electric and RCA. The only litigation which I was familiar with—wait a minute. I knew there was litigation between Zenith and RCA and General Electric and Westinghouse. I do not recall that I ever had any knowledge of the date of the details of all of the issues in that litigation.

"Q. I didn't ask you whether you knew anything about the details or not. I wanted to know whether you knew that Zenith had sued General Electric and RCA for being in that pool?

"A. I don't have any such specific recollection.

"Q. You never found out that that lawsuit involved the Canadian pool?

136 "A. No. I didn't say that.

"Q. When did you find that out?

"A. I could not pinpoint—my recollection is that the suit filed by Zenith against RCA was filed either at the end of 1945 or 1946 which is some fifteen, sixteen, or seventeen years ago and sometime in that intervening period I found out various issues involved in that case. When I first learned that participation in the Canadian patents pools was involved I don't recall.

"Q. When you did find it out, whether you recall the date or not, did you look into it to find out whether or not you might be liable for being in the pool?

"A. I am not quite sure how to answer it. I have been aware, of course, for a great many years, of this attack upon American companies who directly or indirectly participated in the Canadian Radio Patents Limited. I have tried to keep myself informed both of any litigation involving that subject matter, or any proceedings in this country or abroad, and when I

137 acquired any particular bit of information I just do not recall. That's a long period of time.

"Q. You knew something was going on in the way of an attack by American companies against that pool, didn't you?

"A. Yes.

"Q. You know that for a long time.

"A. Yes.

"Q. You still stayed in the Pool?

"A. Most definitely, and we intend to continue to stay in the pool."

138 Page 114 of the deposition:

"Q. Have you read the consent decree entered in the Government's suit against RCA involving the Canadian Radio Patents, Limited pool?

"A. I said before I have read a consent decree in an antitrust action by the Government against RCA. I have also said that I do not recall that any provision of that required RCA to get out of the Canadian Radio Patents pool. I didn't say it was not a fact. I said I did not recall it."

Page 115:

"Q. How long does your contract with the Canadian Radio Patents, Limited last?

"A. It expires some time in 1963.

"Q. Have you had any negotiations to renew it?

"A. Not that I have any knowledge of.

"Q. Who is in charge of the renewal of that in the event that it is going to be renewed?

139 "A. Mr. Ruestow.

"Q. You have never participated in any discussion at any time with anybody of Canadian Patents, Limited, as to whether this contract is to be renewed?

"A. That is correct.

"Q. After you had executed your exclusive license to CRPL which I think you said was in 1953 running to some time in 1963, you had no right to license anybody else in Canada, did you?

"A. I don't remember so testifying and I don't remember that the agreement ran from 1943 to 1963. It ran for ten years with an option on the part of CRPL to renew for another ten years.

"Q. It ran to when?

"A. To 1953.

"Q. And they had the option to renew?

"A. Right.

"Q. And you are going to quibble with me as to whether or not they exercised their option?

"A. I want to make the record clear. That's all.

140 "Q. They have had a contract from 1943 to 1963, have they not?

"A. They have, yes.

"Q. During that time you have not been free to license your patents in Canada or anywhere else, have you?

"A. Canada or anywhere else."

Mr. Dodds: Excuse me, that is "Canada or anywhere else?" with a question mark.

The Court: Well it is in there twice. At which time is the question mark? It is in the question and it is also in the answer.

Mr. Dodds: The witness answered "Canada or anywhere else?" question mark.

Mr. McConnell: There is a question mark here. I don't know what it means. You answered the question: "Canada or anywhere else." Who put the question mark in—I assume it was the court reporter.

The Court: I assume that the court reporter did. Why, I don't know.

Mr. McConnell: I don't either.

The Court: It would have been a good place for it before the last one, but I don't know why it is there. That is where I assumed it was. All right, it must have been

141 Mr. Dodds' inflection.

Mr. McConnell: Page 118:

"Q. Did you, from 1943 down to 1963 ever execute any other license for the manufacture, importation or sale of radio or television in Canada except the one with CRPL?

"A. No.

142 Then I say:

"All right, we will now pass on to England."

And then I had a document marked. It was dated November 18, 1958, to Mr. Binns, J. Binns from L. B. Dodds and was marked Defendant Dodds Exhibit 33 for identification:

"Q. I show you a document which is produced from your file DXBUD 351A, B and C, which purports to be a copy of the Hazeltine-GEC agreement under date of November 18, 1938 which has been marked for identification as Defendant Dodds Exhibit 33.

"I ask you whether or not you have seen the original of that document?

"A. Yes.

"Q. Did you sign the original of that document?

"A. I believe I did.

"Q. Did you prepare it?

"A. I did."

Have we got the counterpart number on that? That is Dodds Exhibit 33?

143 Mr. Curtis: 43.

Mr. McConnell: It is marked in evidence here as Exhibit 43.

Could I have that document? Have you got it?

This document is by stipulation in evidence. It is a Hazeltine document produced from the Hazeltine file and it purports to be and is an agreement between Hazeltine, Hazeltine Corporation and GEC, that is General Electric Company, Limited, incorporated in England.

It grants:

> "It is hereby mutually agreed between the parties as follows: For the consideration hereinafter mentioned, the corporation hereby grants and to the company the right to utilize the Hazeltine patents hereinbefore referred to for the purpose of securing entry as a licensor into any British wireless broadcast pool which may be formed on such terms as the company may deem proper, or otherwise to deal with the said
> 144 patents by way of granting sublicenses thereunder, and generally to utilize such rights for the purpose of consolidating the position of the company in the radio industry in carrying on business on radio and television."

The Court: This is dated when, Mr. McConnell?

Mr. McConnell: This is dated the 6th day of April, 1939.

The Court: All right.

Mr. McConnell: And that agreement remained in full force and still is in force with renewals up to now.

The Court: Do you accept that testimony, Mr. Dodds?

Mr. Dodds: Most definitely not, your Honor.

Mr. McConnell: I thought we had agreed on a few things, but apparently we haven't.

The Court: Well, I mean, I don't know whether this was based on a stipulation or just based on your unsworn testimony. That is what I was inquiring about.

145 Mr. McConnell: Well, I think anything that I say here, I will assure the court that I will offer not sworn testimony but documentary evidence which proves it conclusively.

The Court: I mean, there is nothing at this point to indicate that this 1939 document is still in effect as of today. That is the only point—

Mr. McConnell: I will have to connect it up.

Mr. Dodds: It even specifies on its face that it is effective for five years from 1939.

Mr. McConnell: I said with renewals.

The Court: All right, we will just pass that up, and I am sorry that I raised it.

Mr. McConnell: No, I am very happy to have your Honor raise it because it is possible that I could be in error in some of these things, but I don't think so.

I examined him on that document and asked him whether or not he had ever seen the original of that document and he said:

"A. Yes.

"Q. Did you sign the original of that document?

146 "A. I believe I did.

"Q. Did you prepare it?

"A. I did."

147 Then on page 124 I continue with the interrogation—bottom of page 123:

"Q. When did you first find out that there were pools over there in England?

"A. I don't have any recollection of when I first got that information.

"Q. Did you know a Mr. Topham?

"A. I met Mr. Topham once.

"Q. He was a manager of the radio pool in England, was he not?

"A. As of what date?

"Q. Well, for a long time. My first question will be: Did you know that he was the manager at any time?

"A. Yes.

"Q. What time did you know that he was the manager?

"A. In 1960. That is when I met him.

"Q. Did you know that he had been a manager for many years prior to that time, apparently as far back as 1933, according to this letter?

"A. As of 1960 I knew he had been manager of
148 the successive British pools for quite a period of
time. I don't believe I ever knew just how long.

"Q. Do you know how the Hazeltine patents got into the pool, the 'successive pools,' as you put it?

"A. I don't know anything about the A.4 pool. I believe the first contact that I had was with the A.6 pool and as to that pool the Hazeltine patent rights in Great Britain were given to the General Electric Company Limited for exploitation in Great Britain. That included the right to place those patents in the British Radio and Television pools."

And then I asked that a document be marked, an agreement between the Hazeltine Corporation and General Electric Company, dated 1945, and it was marked as Defendant Dodds Exhibit 35.

"Q. I show you a document which was produced
from the Hazeltine files, DXBUD 1972, marked for
identification as Defendant Dodds Exhibit 33, which
149 purports to be an agreement between the Hazeltine
Corporation and General Electric Company Limited.
I ask you if you can identify that document as being
the copy of the contract of the Hazeltine Corporation?

"A. To the best of my knowledge this is a draft of a proposed agreement but not a copy of any actual agreement.

"Q. Could you identify the writing on this?

"A. The writing is that of the then office manager of the patent department.

"Q. Who was he?

"A. A Miss Coyle.

"Q. You say this document was never executed?

Was there a document executed on the same subject matter?

"A. Yes.

"Q. Did you have anything to do with negotiating this agreement or the agreement that was actually executed?

"A. No.

150 "Q. Where is the original of the document that was executed?

"A. Well, I think it is in the same place as these other agreements, apparently in the safe of Hazeltine."

At the bottom of Page 126:

"Q. This purports to have a date in 1945 and the first agreement we have apparently was executed in 1948, so we have a hiatus in here so we want to check the agreement.

"Let's go to the 1948 agreement.

"I ask the reporter to mark this as the next exhibit.

"Copy of an executed agreement made on the 10th day of November, 1948, between the Hazeltine Corporation and General Electric Company, Limited, was marked as Defendant Dodds Exhibit 36 for identification."

Now, have we got the counterpart of 36? Will you get it for me, please.

"Q. Referring to Defendant Dodds Exhibit 36 for identification, it bears the Hazeltine file number DBUD

151 1789. This purports to be a copy of an executed agreement made the 10th day of November, 1948, between Hazeltine Corporation and General Electric Company, Limited, signed for the Hazeltine Corporation by Jack Binns, president, and Laurence B. Dodds, vice president.

"I show you this document and ask you whether or not your signature appears on it and if it was executed by the Hazeltine Corporation?

"A. My signature does appear on it and it was executed by the Hazeltine Corporation.

"Q. There are a number of 'whereas' clauses in here which refer to earlier agreements, and I call your attention to this one:

" 'And Whereas a British Wireless Broadcast Pool was duly formed and the said rights were duly exercised by the Company and the said further Agreement was by agreements between the Corporation and the Company dated the 24th day of July one thousand
152 nine hundred and forty-five and the Twenty-fifth Day of June, One Thousand Nine Hundred and Forty-eight extended for additional periods of three years and one year respectively . . .'

"Is the contract referred to as being executed on the 24th day of July, 1945, the one of which we had the tentative draft here, which was identified as Defendant Dodds Exhibit 35?

"A. I have no independent recollection. I would have to check the actual document.

"Q. I call your attention to this provision:

" 'Now It Is Hereby Mutually Agreed between the Parties as follows:

" '1. For the consideration hereinafter mentioned the Corporation hereby grants unto the Company the right to utilize the Hazeltine patents hereinbefore referred to for the purpose of securing entry into the New Pool on such terms as the Company may deem proper or otherwise to deal with the said Patents by way of granting sublicenses thereunder for the purpose of
153 the New Pool.'

"Do you know what pool that was? Was it the A.6 pool?

"A. I believe that was the A.6 pool.

"Q. Do you recall that Hazeltine was to get half of the receipts of General Electric Company, Limited, from the pool?

"A. I have no recollection independent of the document.

"Q. Look at this document and tell us this: Was there another document which gave the terms which Hazeltine was to receive for the use of its patents in the pool?

"A. I believe there is no other document.

"Q. Where would we have to go to find out what Hazeltine was receiving for the use of its patents in the pool?

"A. I would suggest Defendant Dodds Exhibit 36 for identification.

"Q. It seems to me I finally got something right here. I call your attention to Paragraph 2. It states:

154 " '2. As consideration for the rights granted by the Corporation to the Company hereunder the Company shall pay to the Corporation Fifty Per Cent of all sums received by the Company from the New Pool by way of royalties upon the combined Patents of the Corporation and the Company in the said New Pool.'

"That's what they were getting?

"A. I prefer to let the document speak for itself.

"Q. You don't think I read the document correctly?

"A. I think you can read as correctly as I can.

"Q. Did you fellows get together and decide that you would not characterize any documents or testify to anything except the best evidence?"

And then there was some colloquy on that statement, which I don't need to go into, I guess.

155 Then I marked the next document Defendant Dodds Exhibit 37 for identification, which is marked in evidence here as Defendant's Exhibit 47.

"Q. Before going to this document let me ask you this:

"Did you ever advise your corporation, the Hazeltine Corporation, or any of the subsidiaries whether they should let the Hazeltine patents be put into this pool?

"A. I don't recall ever giving that specific advice. The Hazeltine patents through the British General Electric Company were included in the then current British pool before I ever joined the Hazeltine organization.

"Q. But they were not included in perpetuity, were they?

"A. That's right.

"Q. These agreements were renewed from time to time. At any time when they were renewed or when a new pool was formed, were you consulted as to whether or not an arrangement that you were entering into was 156 a legal arrangement?

"A. I don't believe the question was ever raised.

"Q. You didn't volunteer any information or any advice as to whether this pool might violate the antitrust laws?

"A. I never gave any such express advice, to the best of my knowledge.

"Q. Nobody asked you and you were not concerned about it?

"A. I had my own opinion and I did not have any concern.

"Q. That is not quite what I had asked you.

"A. You asked me if I was concerned. I said I had no concern.

"Q. You had no concern about it at all and still don't?

"A. That is correct."

Turning to Page 134 of the deposition, I identified a document as Dodds Exhibit 39, which was an agreement executed on the 27th day of February, 1953, between Hazeltine Corporation and General Electric Company, Limited, and which is here in evidence by stipulation as Defendant's

157 Exhibit 48.

"Q. I show you a document which is marked for identification as Defendant Dodds Exhibit 39 which apparently has been produced as Exhibit G in answer to our interrogatories, which purports to be an executed agreement on the 27th day of February, 1953, between the Hazeltine Corporation and the General Electric Company referring to the A.7 pool. I ask you if that is a true copy of the original document which you and the other official of the Hazeltine Company signed?

"A. Yes, it is.

"Q. Under this your company was to get 40 per cent of the sums received by General Electric Company, Limited?

"A. I prefer to stand on the document itself.

"Q. If the document says that, would you accept the document?

"A. I will.

"Q. Those receipts were from the A.7 pool upon the combined patents of the corporations in the said pool

158 and GEC in the said pool.

"A. If that's what the document says, I stand by it.

"Q. You read it before you signed it, I take it?

"A. Yes.

"Q. Did you ever see the form of license which the pool was using?

"A. I have seen several forms of license which the pool has used from time to time. I do not recall whether I have seen the specific license under the A.7 pool."

Then on Page 136:

"Copy of memorandum by L. B. Dodds dated February 24, 1958, was marked as Defendant Dodds Exhibit 40 for identification.

"Q. I show you a document marked for identification as Defendant Dodds Exhibit 40 which is a memorandum by you under date of February 24, 1958, and I ask you whether or not you wrote that memorandum?

"A. I did.

159 "Q. You state here: 'The British pool agreement, in which GEC and Hazeltine participate, has been extended from December 31, 1957, to June 30, 1960.'

"Is that true?

"A. I stand on what the document says.

"Q. It is your document. Are the facts you state there true?

"A. The facts stated in that document are true, to the best of my knowledge.

"Q. Do you recall where you got that information?

"A. I don't recall that I got it from any single source. I got the information from agreements and correspondence and my own personal familiarity with the pool and with the agreements and arrangements with the General Electric Company, Limited.

160 "Q. Speaking of your familiarity with the pool, you knew that the pool refused to license the import of radio sets and television sets?

"A. My information is to the contrary.

"Q. What information do you have to the contrary?

"A. The documents themselves.

"Q. What documents?

"A. The pool agreement and the licenses granted by the pool.

"Q. Have you any of those documents in your possession?

"A. Not at the moment. I believe they have all been made available such as we had during the discovery process.

"I might say on the record that you have all of such documents of that character which we have because they were all in our files. None of them were in the safe because Hazeltine Corporation is not a party to any of those documents."

Then I identified a copy of an agreement dated 1939 between Electrical and Muslical Industries Limited, 161 Marconi's Wireless Telegraph Company Limited, the Mullard Radio Valve Company Limited, N. V. Philips' Gloilampenfabricken (hereinafter together called 'The Pool Parties') and the General Electric Company Limited. It was marked as Defendant Dodds Exhibit 21 for identification, and it is marked in evidence here as Defendant's Exhibit 51.

"Q. I ask you if ~~you~~ have the original of this document in your possession. By 'you,' I mean your company.

"A. We do not.

"Q. Where did you get that copy?

"A. I have no present recollection.

"Q. It recites at the top of that document who the pool parties are. Is that your recollection as to who the members of the British pool were?

"A. I don't have any recollection independent of this document because as of 1939 I had no contact with the British licensing arrangement of the Hazeltine Corporation.

162 "Q. After you got interested in this matter of pools, whom did you understand were the members of the pool?

"A. I could not recall without referring to the pool documents. The membership of the pools changed from pool to pool and often, after a pool was formed, other companies were added.

"Q. What documents have you got in your possession which you could turn to that would tell you that?

"A. In Plaintiff's answer to Defendant's interrogatories at page 13 there are listed the various pool agreements and various licenses issued by the successive pools of which copies were available in the Hazeltine files and copies of all those documents were attached as Exhibit F through N inclusive."

That document is in evidence here as Defendant's Exhibit 52.

I turn to page 141:

"Mr. Dodds, calling your attention to Defendant Dodds Exhibit 40 for identification which is your memorandum on the extension of the British Pool Agreement until June 30, 1960, could you tell us whether that pool was extended beyond that date? 163

"A. It is my recollection it was not.

"Q. There is no pool agreement at present ending in England?

"A. I believe there is.

"Q. What is the name of that pool?

"A. I believe it is called the A.8 Pool.

"Q. Could you tell us for what period of time the A.8 Pool was to run?

"A. It is my recollection that it was for four years.

"Q. That would be to June 30, 1964?

"A. That is my recollection. I am not too positive.

164 "Q. I show you a document which has been marked for identification as Defendant Dodds Exhibit 42 which was produced in answer to our interrogatories as Exhibit F. It purports to be an agreement of the pool members in Britain made under date of the 31st of August, 1948. I ask you if you have seen the original of that document?

"A. It is my recollection that I have not seen the original of that document.

"Q. Do you know from what source Hazeltine Company received it?

"A. I am reasonably certain it was received from the General Electric Company.

"Q. The General Electric Company was acting on behalf of Hazeltine in handling the Hazeltine patents in Great Britain, isn't that true?

"A. That is correct.

"Q. Do you know whether this document which pur-
165 ports to be a copy was executed by the signatory parties?

"A. I have no knowledge of that.

"Q. Can you tell us what pool this purports to be a copy of so far as the name is concerned? A. 6, A. 7, or A. 8?

"A. I believe that was related to the A. 6 pool.

"Q. Can you tell us whether or not the A. 6 pool actually took effect?

"A. It is my information that it did.

"Q. The Hazeltine Company through the General Electric Company Limited, received royalties through the use of their patent in that pool, did it not?

"A. The Hazeltine Corporation did not receive royalties. It received income through the General Electric Company which the General Electric Company derived from the pool.

"Q. I call your attention to Paragraph 7 of this document which is contained on Page 5 of Defendant Dodds Exhibit 42 for identification:

166 " '7. Unless otherwise agreed no licenses are hereby agreed to be granted to import Radio Apparatus into the United Kingdom or to deal in in the United Kingdom imported Radio Apparatus or Radio Apparatus containing imported component parts to an extent exceeding in value 10 per cent of the retail list price of such Radio Apparatus except in each case samples and experimental models for the use of the parties hereto.'

"Were you familiar with that language?

"A. Yes.

"Q. You knew that was the cause under which the A. 6 pool was being operated, did you not?

"A. Yes."

Then I marked for identification a copy of an agreement dated the 4th day of February, 1949, between various companies, marked as Defendant's Dodds Exhibit 43 for identification, and it is here received in evidence as Defendant's Exhibit 53 by virtue of our stipulation.

167 "Q. I show you a document which has been marked for identification as Defendant Dodds Exhibit 43 which is produced from the Hazeltine files under the number DXBUD 815. This purports to be an agreement under the 4th day of February, 1949, between various companies. I ask you if you have ever seen the original of that document?

"A. To the best of my knowledge I have not seen the original of which this is a copy."

"Q. Do you know from what source Hazeltine received this document, this copy?

"A. I believe it received it from the General Electric Company."

Then I marked for identification a copy of an agreement dated March 23, 1949, between various signatory companies, as Dodds Exhibit 44. It was received here in evidence as Defendant's Exhibit 54.

"Q. I show you a document which has been marked for identification as Defendant's Dodds Exhibit 44
168 which was produced from the Hazeltine Company files DXBUD 819, which purports to be an agreement of the 23rd of March, 1949, between various signatory companies. I ask you whether or not you have ever seen the original of that document?

"A. To the best of my knowledge I have never seen the original of this document.

"Q. Can you tell us the source of that copy?

"A. I believe it came from the General Electric Company."

169 Then I marked for identification an agreement dated June 16, 1949, between various signatory parties, marked Dodds Exhibit 45 for identification. I asked him whether or not he had ever seen the original of that document before. And he said:

"I believe that I have not seen the original of that document before.

"Q. Tell us from what source the Hazeltine Company received that document?

"A. I believe it was received from the General Electric Company.

"It is to be understood that each of the references to the General Electric Company refer to the General

Electric Company of Great Britain and not the United States General Electric Company.

"Q. That is the same General Electric Company which you told us a moment ago was acting on behalf of your company in handling its patent right in Great Britain?

"A. That is correct."

Then I marked for identification an agreement dated June
16, 1949, between various signatory parties, labelled
170 Exhibit J-1, marked as Defendant Dodds Exhibit 46,
and they are here in evidence as Defendant's Exhibit 55.

"Q. I show you the document which is marked for identification as Defendant Dodds Exhibit 46. This purports to be an agreement made the 16th day of June, 1949, between various signatory parties and is produced as Exhibit J-1 in answer to our interrogatories. The names of the signatories are typed in. I ask you whether or not you have ever seen the original of that document?

"A. May I see the preceding Exhibit?

"Q. Here it is.

"A. I believe this document is a duplicate of Exhibit 45 and my answer with respect to Exhibit 45 applies thereto.

"Q. Your company received Defendant Dodds Exhibit 46 for identification from the General Electric Company of England?

171 "A. That is right."

Then I marked for identification an agreement under date of March 3, 1950 between various signatory parties as Defendant Dodds Exhibit 47, which is here in evidence under our stipulation as Defendant's Exhibit 56.

"Q. I show you a document marked for identifica-

tion as Defendant Dodds Exhibit 47 which purports to be a copy of an agreement under date of March 3, 1950, between various signatory parties. I ask you whether you have ever seen the original of that document?

"A. To the best of my knowledge I have not seen the original of that document.

"Q. Can you tell us from what source Hazeltine received that?

"A. General Electric Company."

I next marked an agreement dated March 8, 1950, between various signatory parties, as Defendant Dodds Exhibit 48, here in evidence as Defendant's Exhibit 57.

172 "Q. I show you a document marked for identification as Defendant Dodds Exhibit 48 which is produced from the files of Hazeltine Company under the designation DXBUD 832, purporting to be a copy of an agreement under date of March 8, 1950, between various signatory parties. I ask you whether or not you have ever seen the original of that document?

"A. To the best of my knowledge I have not seen the original of that document.

"Q. From what source did you receive this?

"A. From the General Electric Company."

173 Then I marked an agreement dated August 1, 1952, between various signatory parties. I marked it as Defendant Dodds Exhibit 49:

"Q. I show you a document which is produced from the files of the Hazeltine Company which has been marked here for identification as Defendant Dodds Exhibit 49 and which bears the identity of the Hazeltine File No. DXBUD 656. This purports to be an agreement made the first day of August, 1952, between various signatory parties. I ask you whether or not you have seen the original of that document?

“A. To the best of my knowledge I have not seen the original of that document.

“Q. Can you tell us from what source you received the copy?

“A. General Electric Company.

“Q. I notice there are a number of marginal notes on this document. Can you identify the handwriting of those notes?

“A. Some of the handwriting is mine and some is a secretary in the Hazeltine office.

“Q. Apparently those notes indicate that this document was compared by you with another document.
174 Can you tell us what you were comparing it with where the changes were noted?

“A. I believe the comparison is made with the A.6 pool agreement.

“Q. And this is the A.7 agreement; is that correct?

“A. I don't know whether this is the A.7 agreement or a preliminary draft of the A.7 agreement.

“Q. You will note that it purports to have signatories at the back of it?

“A. I didn't note that. That was why I felt it was a draft. The end of the agreement is found on Page 10 and I don't see any signatories on there.”

Then I asked that the document, the agreement dated May 12, 1953, be marked Defendant Dodds Exhibit 50, and it is received here in evidence under our stipulation as Defendant's Exhibit 58.

“Q. Referring again to Defendant Dodds Exhibit 49 for identification, after you made these notes and noted the differences between the A.6 pool and this draft did you make any suggestions to the General
175 Electric Company or to anyone in the pool?

“A. I don't have any recollection of that at all.

If I did, it would appear in the correspondence that was made available.

“Q. If it is not in any correspondence you produced it does not exist?

“A. That is right.

“Q. I show you a document which is marked for identification as Defendant Dodds Exhibit 50 which was produced as Exhibit H in answer to our interrogatories in this case. This purports to be an agreement made the 12th day of May, 1953. Apparently this is the A.7 pool agreement. I ask you whether or not you have seen the original of that document?

“A. I have no recollection of having seen the original of that agreement.

“Q. Where did your company get this copy if you know?

“A. Either from the General Electric Company or from their solicitors, Faithfull Owen & Fraser.

“Q. Can you identify this as a copy of the A.7 pool?

176 “A. No. This is a copyl of the A.8. There seems to be some confusion. I am not certain. I believe it is a copy of the A.7 pool although I notice in the answer to interrogatories it was answered as a copy of the A.8 pool.

“Q. The A.7 pool bears the date of that document. Now, whether it is the A.7 pool, I don't know. I am asking you that question. Can you help us on that point?

“A. I believe it is a copy of the A.7 pool agreement.

“Q. I call your attention to Paragraph 1 which is contained on Page 7 of this copy of the agreement. This reads as follows:

“ ‘7. Unless otherwise agreed no licenses are hereby agreed to be granted to import Radio Apparatus into the United Kingdom or to deal in in the United

Kingdom imported Radio Apparatus or Radio Apparatus containing imported component parts to an extent exceeding in value ten per cent of the retail list price of such Radio Apparatus except in each case samples and 177 experimental models for the use of the parties hereto.'

"Were you aware that that language was contained in the pool agreement?

"A. Oh, yes."

Then I asked that an agreement dated September 23, 1957, headed Extension of Broadcast Pooling Agreements of May 12, 1953, and October 29, 1953, be marked as Defendant Dodds Exhibit 51, and they are marked in evidence here as Defendant's Exhibit 59.

"'Q. I show you a document which is produced from the Hazeltine files under the number DXBUD 785 which is marked for identification here as Defendant Dodds Exhibit 51. This purports to be an agreement under date of the 23rd of September, 1957, being an extension of the Broadcast Pooling Agreement of May 12, 1953, and October 29, 1953. I ask you whether or not you have seen the original of that document?

"A. I am reasonably certain I have not seen the original of this document.

"Q. Tell us from what source your company re-178 ceived that copy?

"A. From the General Electric Company."

Then I marked for identification a copy of license agreement under the A.5 pool, which was marked as Defendant Dodds Exhibit 52 for identification, and which is by stipulation here in evidence as Defendant's Exhibit 63.

"Q. In our interrogatories we asked for a copy of the A.8 pool and apparently we have got a little confusion because what is produced in answer to that interrogatory now appears to be the A.7 pool. Have you got in your possession a copy of the A.8 pool?

"A. I certainly have it in our possession somewhere, yes."

179 "Q. As I understand the testimony now, the A.8 pool continues through 1964 or up until some time in 1964; is that correct?

"A. I said that I thought that is my present recollection but I was not positive of that date.

"Q. Can you help us to that extent?

"A. Yes.

"Q. On that same subject, can you tell us whether or not the Hazeltine patent rights were included in that A.8 pool through the General Electric Company of England?

"A. They were.

"Q. I show you a document which has been marked for identification as Dodds Exhibit 52 which is produced from the Hazeltine files under the number DXBUD 840 which purports to be a license agreement under the A.5 pool, or a copy of it. I ask you whether or not you have seen the original of that document.

"A. I don't know what you mean by the original of the document. This is a printed form. I have seen a printed form of which this document is a copy.

180 "Q. Is that a form of the license agreement used by the pool?

"A. I have no direct knowledge on the subject.

"Q. Tell us then from what source you received this document?

"A. I received this document from the General Electric Company.

"Q. So far as you knew, your patents which were in the pool were being licensed under a form as shown by Defendant Dodds Exhibit 52; is that correct?

"A. I believe I previously testified that I had no familiarity or knowledge at all with the A.5 pool and I believe this was a license issued pursuant to the A.5 pool agreement.

"Q. I call your attention to the provision contained in Paragraph 4 of this document, Defendant Dodds Exhibit 52, which reads as follows:

" 'The Licensee agrees with the Grantors as follows:

181 " '(a) not without the previous written consent of the Grantors to export or sell for export or knowingly permit to be exported any Broadcast receivers or radiogramophones. Such consent shall be given unless the Grantors or any of them have commitments prohibiting the same but the Grantors' decision shall be accepted as final and any consent will not imply or grant licenses under foreign patents.'

"Were you familiar with the fact that that language was contained in this license agreement?

"A. I believe it was not at the time that the license agreement was in effect.

"Q. I also call your attention to Clause (b):

" '(b) not without the previous written consent of the Grantors to sell, let or hire or put into use any broadcast receiver or radiogramophone which has not been manufactured in the territory for which this License is granted. No broadcast receiver or radio-

182 gramophone shall be deemed to have been so manufactured within the meaning of this License which incorporates imported components and accessories sold therewith (such as for example cabinets and valves and cathode ray tubes, et cetera) to an extent per broadcast receiver and/or radiogramophone greater in value than ten per cent of the retail selling price thereof.'

"Did you know that that language was contained in the license?

"A. I have already testified that I had no familiarity with that license as of the time it was in effect."

Mr. Dodds: That same reservation with respect to these that we discussed previously.

The Court: This doesn't refresh your recollection either.

Mr. Dodds: That is right. I have no familiarity with them.

Mr. McConnell: Well, these are documents that come out of their files in which, under our stipulation, are admissible in evidence.

183 The Court: Yes, but they are not admissible for the purpose that you are mentioning them at this time, showing them to him to refresh his recollection and they fail to do so. For that purpose they are not admissible.

Mr. McConnell: No.

The Court: They are admissible for something else, for some stipulation or something else.

Mr. McConnell. Under our stipulation they are in evidence.

Mr. Dodds: Your Honor, I beg to differ. These documents, these agreements were not stipulated to the actual agreements in effect. They were stipulated to the authenticity of the documents which are in our files, but these documents of which the witness had no knowledge, we don't know whether those are the documents which were used by the English pool or not.

The Court: I assume that the least that we can say about them is that it was somebody's brain child once that these should be a draft of an agreement.

Mr. Dodds: Could have been a draft or had something to do with it.

184 The Court: That is the least.

Mr. Dodds: That is right.

The Court: All right.

Mr. McConnell: (Reading.)

"Q. When did you first acquire familiarity with this license?

"A. I am not sure that I ever had familiarity with it.

"Q. Did you know it had been sent to the Hazeltine Company by General Electric Company?

"A. I don't have any recollection of the subject at all."

Page 158:

"Q. You never made any inquiries as to what kind of license the pool was using?

"A. The answer is no.

"Q. What was the occasion of this license being in your files?

"A. I have no idea. I just found that there.

"Q. It couldn't have been by any chance because you had your patents in the pool?

185 "A. I wouldn't want to conjecture on the subject.

"Q. You think that is a conjecture?

"A. I said I had no knowledge. Anything I would answer beyond that would be conjecture.

"Q. Who was handling this matter?

"A. Mr. Binns.

"Q. Mr. Binns is dead; is that correct?

"A. That is right."

I then identified a document as a copy of A.5 license extension, identified in the Dodds Exhibit 53. It came out of the Hazeltine file. It has been marked in evidence here as Defendant's Exhibit 64.

"Q. I show you a document which is marked for identification as Defendant Dodds Exhibit 53 which was produced as the A.5 license extension and as Exhibit I-1 in answer to our interrogatories."

In other words, we asked them to produce this license in the A.5 pool and they produced it in response to our interrogatories.

186 “I ask you whether or not you have ever seen the original of that document?

“A. I am not sure what you mean by the original of this document because this purports to be a form letter, a blank form letter. I recall that I have seen a typed copy of that blank form letter.

“Q. Up at the top it says ‘copy’ and I assume it is a copy of something. I want to know whether or not you have seen the original of the document of which this purports to be a copy.

“A. I have seen the piece of paper from which that is a typed copy. I do not believe that it is an original in the ordinary meaning of that word. I think it is just a typed copy.

“Q. From what source did the typed copy come, if you know?

“A. I believe it came from the General Electric Company.

“Q. Did you prepare this document to be submitted to us as the answer to our interrogatory?

187 “A. My office did.”

Then I marked an agreement dated August 31, 1948, which concerns the A.6 pool. It comes out of their files and it was marked Defendant Dodds Exhibit 54 for identification, and it is in evidence here under our stipulation as Defendant’s Exhibit 65.

“Q. I show you a document which was produced from the Hazeltine files, DXBUD 836, which was marked for identification here as Defendant Dodds’ Exhibit 54. This purports to be an agreement under date of August 31, 1948, apparently a form license under the A.6 pool. I ask you whether or not you have ever seen the original of that document.

"A. I have seen a printed form copy from which this document is a photocopy.

"Q. That is really what my question imported. I probably did not phrase it correctly, but this is a photocopy?

"A. That is correct.

"Q. Again I call your attention to Paragraph 4(a) and (b) which reads as follows:

" '(a) not without the previous written consent of 188 the Grantors to sell any broadcast receiver or radiogramophone which has not been manufactured in the territory for which this License is granted. No broadcast receiver or radiogramophone shall be deemed to have been so manufactured within the meaning of this License which incorporates imported components and accessories sold therewith (such as for example cabinets and valves and cathode ray tubes, et cetera) to an extent per broadcast receiver and/or radiogramophone greater in value than ten per cent of the retail selling price thereof.'

"Did you know that clause was in the form license used by the A.6 pool?

"A. I did."

The Court: What was the answer, "I did"?

Mr. McConnell: "I did." He knew it.

The Court: All right.

Mr. McConnell: (Reading)

"Q. When did you first learn that?

"A. Some time during 1948.

"Q. After you had learned that fact your Hazeltine Company patents still remained in the pool, did they 189 not?

"A. Yes, sir.

"Q. Your company received payments or income derived from the pool?

"A. Yes."

Then I marked a copy of a license with respect to the A.7 pool.

The Court: Let me interrupt you at this point. As I understand it, you are reading, at least in regard to this one, a copy of the license between a British licensing agency and a licensee in Britain, is that right?

Mr. McConnell: Is it a copy of a license, your Honor, between the pool and one of its licensees.

The Court: Yes, the pool and it licensee.

Mr. McConnell: Yes.

The Court: Well, I wondered whether there was any contemplation that a licensee would import finished radio or television sets. That strikes me as odd.

Mr. McConnell: Well, I think it is self-evident that somebody thought there was that possibility, because they provided in this agreement that it couldn't be done.

190 The Court: Well, I mean what you are complaining about or what—yes, what you are complaining about is not the licensee will not import and sell Zenith, you are complaining that retailers of the licensees will not import and sell Zenith, isn't that your position?

Mr. McConnell: Yes, but these people that were licensed were either licensed to sell sets or manufacture sets. They could be retailers or wholesalers or manufacturers, and probably were all three.

The Court: Is yous evidence going to show that some of the licensees were retailers who refused or were afraid to import Zeniths for sale?

Mr. McConnell: Well, I don't think that the evidence will show that the licensees—

The Court: I didn't think it would and—

Mr. McConnell: No.

The Court: Go ahead.

Mr. McConnell: This is to show a pattern—

The Court: At least between the pool and the licensee.

Mr. McConnell: Yes, show how they licensed the
191 patents.

The Court: But it doesn't take it beyond that to a retailer.

192 Mr. McConnell: Well, it does because the retailer
couldn't sell without a license, and the retailer couldn't get a license to import sets from the pool no matter what he did. This is the way they licensed their patents.

The Court: I mean that a retailer like Polk Brothers, if they had one in England, does not need a license from the British pool to sell sets if they buy them from a British manufacturer, do they?

Mr. McConnell: No, if they bought them from a British manufacturer.

The Court: They don't need a license at all.

Mr. McConnell: No, but if they bought them from an American manufacturer they certainly would need a license to sell them.

The Court: All right, just so that we clear that up. Would you perhaps like to give your voice a rest? Would you like to take a recess now?

Mr. McConnell: I think that would be very helpful.

The Court: All right.

(Thereupon a short recess was had herein, after
193 which the following further proceedings were had,
to-wit:)

Mr. McConnell: I then identified a copy of a license with respect to the A.7-Spool which was marked Defendant Dodds Exhibit 55 for identification.

The Court: These, as I understand it, are four year things, are they? I mean, somebody said so.

Mr. McConnell: Yes, they were three, four or five years. They didn't run the same period of time.

The Court: I see. All right.

Mr. McConnell: But the pools were set up and ran their life.

The Court: And were renewed.

Mr. McConnell: Then were renewed.

The Court: And that is how they get the new number.

Mr. McConnell: That is how they get a new number.

The Court: All right.

194 Mr. McConnell: We have got them all in evidence.

The Court: You don't know what period this covers, like this 7.

Mr. McConnell: Well, A.7—we are getting pretty close down to date now. We are getting up to the 57's.

The Court: All right.

Mr. McConnell: (Reading.)

> "Q. I show you a document which has been produced to us in answer to our interrogatory as Exhibit K which has been marked now for identification as Defendant Dodds Exhibit 55 which purports to be a license under the A.7 pool on sound. I ask you whether or not you have seen the document from which this photocopy has been made?
>
> "A. I have.
>
> "Q. From what source did it come, if you know?
>
> "A. General Electric Company.
>
> "Q. It is produced here from files of Hazeltine, I take it?
>
> 195 "A. That is correct.
>
> "Q. I call your attention to paragraph four which is contained on page two of the document. This provides as follows:
>
> '(a) Not without previous written consent of the Grantors to sell within the said territory any Broad-

cast Sound Receiver which has not been manufactured in the territory for which this License is granted. No Broadcast Sound Receiver shall be deemed to have been so manufactured within the meaning of this License which incorporates imported components to an extent per Broadcast Sound Receiver greater in value than ten per cent of the retail price thereof. The Licensee will if so requested furnish information as to the value of any such imported and incorporated components.'

"Did you know that clause was contained in this license of the A.7 pool?

"A. I did."

196 Then I marked for identification a copy of agreement of license or form of license under the A.7 pool for television which was marked Defendant Dodds Exhibit 56 for identification and which, under our stipulation, is marked in evidence here as Defendant's Exhibit 68.

"Q. I show you a document which has been produced by the Hazeltine Company in anwser to our interrogatories which is described as Exhibit L and which is marked for identification as Defendant Dodds Exhibit 56. This purports to be an agreement of license or form of license under the A.7 pool for television. I ask you whether or not you have seen the document from which the photocopy is made?

"A. I have.

"Q. From what source did your company receive it?

"A. General Electric.

"Q. I call your attention to Paragraph 4 on Page 2 which reads as follows:

" '4. The licensee agrees with the Grantors as follows:—

197 "'(a) not without the previous written consent of the Grantors to sell within the said territory any Television Receiver which has not been manufactured in the territory for which this License is granted. No Television Receiver shall be deemed to have been so manufactured within the meaning of this License which incorporates imported components to an extent per Television Receiver greater in value than ten per cent of the retail list price thereof. The Licensee will if so requested furnish information as to the value of any such imported and incorporated components.'

"Did you know that that clause was contained in this license?'

"A. I did."

Then I marked a copy of the license under the A.7 second edition pool, marked Defendant Dodds Exhibit 57, and which is marked in evidence here by stipulation as Defendant's Exhibit 67.

"Q. I show you a document which has been pro-198 duced in answer to our interrogatories as Exhibit N which is marked for identification here as Defendant Dodds Exhibit 57. This purports to be a license under the A.7 second edition pool. I ask you whether or not you have seen the document from which that photocopy is made?

"A. I have.

"Q. Can you tell us from what source it comes into the possession of your company?

"A. The General Electric Company.

"Q. I call your attention to the language in Paragraph 4 (a) which I am not going to take the time to read again. This is on Page 2. I will let you look at it. Tell us whether or not you were aware of the fact that that language was contained in the agreement.

"A. I was."

Then a copy of a license agreement for television under the A.7 second edition pool was marked as Defendant Dodds Exhibit 58 for identification and marked in evidence here as Defendant's Exhibit 62, pursuant to stipulation.

199 "Q. I show you a document which has been produced in answer to our interrogatories as Exhibit M. This purports to be a license agreement for television under the A.7 second edition pool which has been marked for identification as Defendant Dodds Exhibit 58. I ask you whether or not you have seen the original document from which this photocopy is made.

"A. I have.

"Q. From what source did that document come, if you know?

"A. General Electric Company.

"Q. I call your attention to Paragraph 4 (a) on Page 2 of the document and ask you to look at that and tell us whether or not you were aware of the fact that that language was contained in the license agreement?

"A. I was."

That language is the same as that that I have previously read, your Honor.

The Court: In regard to selling.

200 Mr. McConnell: Yes.

Then the next Exhibit was a copy of a letter to Mr. Binns from the General Electric Company of England signed by Mr. Heather dated September 2, 1947, marked for identification as Defendant Dodds Exhibit 59.

"Q. I show you a document which has been produced from the Hazeltine files, DXBUD 2026 and 2027, which has been marked for identification here as Defendant Dodds Exhibit 59. This purports to be a letter to Mr. Binns from the General Electric Company of

England signed by Mr. Heather. I ask you to examine that document, if you will, and tell us whether or not you have ever seen the original of it?

"A. I have seen the original of this document."

And then I marked for identification a letter dated September 19, 1947, addressed to Mr. T. W. Heather, as Defendant Dodds Exhibit 60 for identification.

"Q. I show you a document which is produced from

201 the Hazeltine files, DXBUD 2022, marked for identification here as Defendant Dodds Exhibit 60. This purports to be a photocopy of a letter under date of September 19, 1947, addressed to Mr. T. W. Heather of the General Electric Company and written by Mr. Binns, President of the Hazeltine Corporation. I ask you if you have ever seen a copy of that letter.

"A. I have no recollection of having seen this letter."

Now I am skipping over to page 171:

"I ask that this be marked as the next Exhibit for identification, a document dated November 9, 1949, and headed 'Outline-A.6 License (British Pool)', marked Defendant Dodds Exhibit 64 for identification.

"Q. I show you a document produced from the Hazeltine files DXBUD 791, marked for identification here as Defendant Dodds Exhibit 64. This purports to be an outline under date of November 9, 1949, of the

202 A.6 license in the British pool. I ask you to examine that, and tell us, if you will, who prepared that.

"A. I did.

"Q. Did you make that analysis from some document?

"A. I have no present recollection beyond what is on the document itself.

"Q. What does the document indicate as to what you made an analysis of?

"A. The title of the document is 'Outline-A.6 License (British Pool)'.

"Q. I call your attention to paragraph four (a) which states:

> '4. Licensee agrees: (a) Not to sell Imported Receivers.'

"Is that your conclusion as to what that paragraph provides?

"A. That is a document which I wrote for my own information and it was naturally in shorthand and therefore accuracy was sacrificed for brevity.

203 "Q. Do you think that is an accurate answer?

"A. I think it is incomplete.

"Q. It was complete enough for your purposes at that time.

"A. It was complete enough to serve as a topical reminder to me, yes.

204 "Q. Anything else that may have been in Clause 4 (a) you didn't consider at that time important enough to include in this outline; is that correct?

"A. That is not correct.

"Q. Well, you didn't include it.

"A. I think the document speaks for itself.

"Q. And the document says just that, doesn't it?

"A. I will stand on the document.

"Q. You say that you will stand on the document. Would you vouch for its accuracy?"

There was some colloquy. I finally said:

"As I said before, the accuracy was sacrificed for brevity. This was just a topical outline.

"Q. You don't think it is accurate?

> "A. Nothing is accurate other than the complete document of which that is an outline.
>
> "Q. Let me ask you this: Is the statement in Paragraph 4 'Licensee agrees: (a) Not to sell Importer
> 205 Receivers' true or false?
>
> "A. That statement is not complete and therefore it is not completely true."

I then asked "that this be marked as the next exhibit for identification," a copy of a letter dated December 6, 1949, to Mr. L. B. Dodds, signed by Mr. Owen, as Defendant Dodds Exhibit 65 for identification.

> "Q. I show you a document produced from the Hazeltine files as DXBUD 774, marked for identification here as Defendant Dodds Exhibit 65. This purports to be a photocopy of an original letter addressed to Mr. L. B. Dodds of the Hazeltine Corporation to Mr. Owen of Faithfull, Owen & Fraser, Solicitors. I ask you whether or not you received the original of that document?
>
> "A. I did."

I had marked for identification a copy of an outline of the British A.6 pool agreement supplement, as Defendant Dodds Exhibits 66 for identification.

> "Q. I show you a document which has been produced from the Hazeltine files, DXBUD 846, which is
> 206 marked for identification here as Defendant Dodds Exhibit 66. This purports to be an outline of the British A.6 pool agreement supplement. I ask you if you can tell us who prepared that document?
>
> "A. First of all, I believe that the question is not completely accurate because this is an outline of supplements and it outlines several pool supplements. I prepared this document.
>
> "Q. What did you prepare it from?

"A. I have no present recollection independent of the document itself.

"Q. What would you conclude from the document itself that you prepared this from?

"A. I would not want to draw a conclusion but I would say that the title of the document refers to the A.6 pool supplements and I have no reason to doubt the accuracy of that title.

"Q. Did you have the agreement supplements of the A.6 pool in your possession at that time?

"A. I don't have any present recollection.

207 "Q. Do you know what the occasion was for preparing this document?

"A. I do not know of any specific occasion that called for the preparation of that document, no.

"Q. Generally, this analysis shows additional parties getting in as pool members, does it not? It also shows the terms under which they got into the pool.

"A. May I see the document?

"Q. Sure.

"A. It purports to show that."

208 "Q. I show you a document produced from the Hazeltine files, DXBUD 765, marked for identification here as Defendant Dodds Exhibit 67. This purports to be a memorandum to the file of a conference with C. O. Stanley of Pye, Limited re British Pool and general situation in Great Britain. This is under date of June 19, 1950. It shows that a copy was sent to you. I ask you to examine that and tell us whether or not you received the copy as indicated on that document?

"A. Yes, I did."

And I marked that for identification.

I marked an exhibit which was a copy of a letter dated

February 12, 1951, addressed to Mr. Thomas W. Heather, Director, marked Defendant Dodds Exhibit 68.

"Q. I show you a document produced from the Hazeltine files, BXBUD 314, marked for identification as Defendant Dodds Exhibit 68. This purports to be a copy of an air mail letter to Mr. Heather of the General Electric Company from you under date of 209 February 12, 1951. I ask you whether or not you wrote and sent that document?

"A. I did.

"Q. At the time you wrote this letter were you desirous of entering into some further pools in England with the Hazeltine patents?

"A. We were desirous of getting additional income from the Hazeltine patents by any means at our legitimate disposal.

"Q. You thought getting into the pool was a legitimate disposal?

"A. That was one possibility."

And I marked a letter dated April 10, 1951, to L. B. Dodds as Defendant Dodds Exhibit 69.

"Q. I show you a document produced from the Hazeltine files, DXBUD 308A, which is marked for identification as Defendant Dodds Exhibit 69. This purports to be a letter to you under date of April 10, 1951, from General Electric. I ask you whether or not you received the original through the mails?

210 "A. I did."

And I marked for identification a copy of a letter dated February 23, 1951, to Mr. Owen re Hazeltine Corporation, as Defendant Dodds Exhibit 70, which is received here in evidence pursuant to the stipulation as Defendant's Exhibit 87.

"Q. I show you a document which has been produced from the Hazeltine files, DXBUD 763, which is marked for identification as Defendant Dodds Exhibit 70. This purports to be a letter to Mr. Owen with reference to the Hazeltine Corporation from A. F. Cornock. I ask you if you ever saw the document which that purports to be a photocopy of?

"A. I did.

"Q. I call your attention to this statement on the last page of this document:

" 'The present position is that about 90 manufacturers have taken licenses, that the Pool is keeping a careful watch on the activities of nonlicensees, that an infringement action is in progress against Sobell In-211 dustries, Limited, and that other infringement actions are contemplated—counsel's advice having been taken in regard to at least one such Action. The expenses of these proceedings are being divided among the licensors in proportion to their respective shares of Pool revenue.

" 'Broadly, therefore, my understanding of the position is that the majority of manufacturers of any importance have taken licenses; and you will see that the Pool is being active in its steps to stop infringement.'

"Did this statement come to your attention at or about the time of this letter?

"A. Yes.

"Q. Did you oppose or object to that procedure of suing infringers?

"A. No."

212 Then there was a copy of a statement of royalties received from the A.5 pool from April 1, 1944 to December 31, 1947, marked as Defendant Dodds Exhibit 71.

"Q. I show you a document DXBUD 746, marked for identification as Defendant Dodds Exhibit 71. This purports to be a statement of royalties received from the A.5 pool from the first of April, 1944 to the 31st of December, 1947, and from the first of January, 1948, to the 31st of March, 1951. Do you know who prepared that statement.

"A. No. I do not.

"Q. Do you know from what source that document is produced?

"A. General Electric Company."

I then marked the next exhibit for identification as Dodds Exhibit 72, which was a copy of an air mail letter to Mr. A. F. Cornock, dated June 11, 1951. It is marked in evidence here as Defendant's Exhibit 73.

"Q. I show you a document marked for identification Defendant Dodds Exhibit 72 which was produced 213 from the Hazeltine files, DXBUD 303-A and B. This purports to be an air mail letter addressed to Mr. Cornock of General Electric Company under date of June 11, 1951. This, apparently, was written by you. I ask you whether or not you wrote and sent that letter?

"A. I did."

I then marked a copy of a letter to L. B. Dodds dated June 28, 1951 from Mr. Cornock, marked as Defendant Dodds Exhibit 73 for identification, marked in evidence here as Defendant's Exhibit 74.

"Q. I show you a document which was produced from the Hazeltine files, DXBUD 301-A and B, which was identified here as Defendant Dodds Exhibit 37. This is a letter to you from Cornock of General Electric Company on the subject of Hazeltine patents in Eire. I ask you if you received that letter through the mail?

"A. I did.

"Q. Was that letter received in answer to Defendant Dodds Exhibit 72 for identification?

"A. I believe it was."

214 "Q. I show you a document which has been produced from the Hazeltine files, DXBUD 700, marked for identification as Defendant Dodds Exhibit 74. This purports to be a letter to W. A. MacDonald, President of the Hazeltine Corporation from T. W. Heather. I ask you whether or not you have seen the original of which document purports to be a copy?

"A. I did."

Then I identified a copy of a letter dated October 30, 1952, to Mr. Thomas W. Heather, as Dodds Exhibit 75, which is marked in evidence here as Defendant's Exhibit 76.

"Q. I show you a document which has been produced from the Hazeltine files, DXBUD 696 and 697, which is marked for identification as Defendant Dodds Exhibit 75. This purports to be a letter from Mr. MacDonald, the President of Hazeltine to Mr. Heather, the Director of General Electric under date of October 30, 1952. I ask you whether or not you have ever seen a copy of the letter that was sent?

215 "A. I have.

"Q. Did you have anything to do with drafting that letter?

"A. I did.

"Q. What did you have to do with it?

"A. I wrote it.

"Q. Was that your practice in Hazeltine to write the president's letters on matters that involved patents?

"A. No, not uniform practice. It was done occasionally.

"Q. I call your attention to the statement quoted in the fourth paragraph of this letter:

'It is our suggestion that Mr. Dodds, who is fully acquainted with our relationships with your company and through you with the Pools go to London to discuss the matter directly with you or whatever representative of your company will participate in the negotiations with the Pool.'

"That was your statement, wasn't it?

216 "That was your statement that you were thoroughly familiar with the Pool and the relationship of General Electric with the Pool?

"A. That was my statement which I wrote.

"Q. You were suggesting that you make the trip to England to sit in on the negotiations. Now, I ask you this: Did you make such a trip?

"A. I did."

217 Next I identified a copy of a draft of a letter from MacDonald to Heather dated October 29, 1952, marked as Defendant Dodds Exhibit 76, and introduced and received in evidence by stipulation here as Defendant's Exhibit 93.

"Q. I next show you a document produced from the Hazeltine files DXBUD 733, which is marked for identification as Defendant Dodds Exhibit 76. This purports to be a draft of a letter from MacDonald to Heather. I ask you whether this is a draft which you prepared?

"A. It is."

Then I marked for identification a copy of a longhand letter dated Friday, November 14th to "Dear Jack and Mack" on the stationery of the Mount Royal Hotel, as Dodds Exhibit 77 for identification.

"Q. I show you a document marked for identifica-

tion as Defendant Dodds Exhibit 77 which was produced from the Hazeltine files but apparently does not have the file number or production number on it. This is a longhand letter to Jack and Mack from you, apparently written on the stationery of the Mount Royal 218 Hotel of London. I ask you whether or not you wrote and sent that letter?

"A. I did.

"Q. How long were you engaged in the negotiations which you are referring to here in Defendant's Exhibit 77?

"A. I was in London a total of ten days of which perhaps half was spent in negotiations about which you inquire.

"Q. You say here on Page 2 of this letter:

'Heather outlined the Pool discussions to date.'

"Q. Heather was a Director of General Electric, was he not?

"A. Yes.

"Q. You say:

'The proposal is to include the same members except BTH, which is being dropped. EMI, Philips, and Marconi have already made a three-party agreement complete except for the allocation of percentages. I was 219 given a copy confidentially. It follows rather closely the A.6 Pool and is for five years. It provides for the addition of other 'joining parties'. One point of difference is that the fifteen thousand pounds of royalty ceiling for members has been removed. A few of the larger companies exceeded this figure during the A.6 Pool but not very much.'

"Can you recall who the members of that pool were?

"A. I do not recall independent of the document itself.

'Q. Heather said that the British industry favored a single pool license and that the members also did, so it was only a question of terms.'

"Did you object to the single pool license?

"A. No.

"Q. You didn't?

"A. Of course not.

220 "Q. Did you at that time see the form of the single license that was going to be used by the pool?

"A. I believe not.

"Q. You were familiar, however, with the single form of license which had been used during the A.6 pool?

"A. Yes.

"Q. Was there any discussion that that license should be changed in any manner?

"A. I do not recall any such discussion.

"Q. Did you at that time meet a gentleman by the name of Shoenberg?

"A. No.

"Q. Did you ever meet him?

"A. No."

221 I go to Page 188.

Mr. Dodds: What page?

Mr. McConnell: 188.

"Q. I show you a document produced from the Hazeltine files, DXBUD 643 and 644 which is marked for identification as Defendant Dodds Exhibit 78. This purports to be a letter to the Hazeltine Corporation on the letterhead of the General Electric Co., Ltd., under date of November 20, 1952. I ask you whether or not you have seen the original of that document?

"A. I have.

"Q. The first paragraph of this letter states:

'This is to confirm the agreement arrived at between us today, whereby the Hazeltine Corporation grants

us the unconditional right to include its patents in the A.7 Broadcast Licensing Pool, which is about to be formed for a period of five years from the first of January, 1953, upon the understanding that the Hazel-
222 tine G. E. C. patents will be allocated such a number
of points that the ratio of those points to EMI's points will be as 17 to 100.'

"Had such an understanding been reached at that time?

"A. The understanding as to the allocation of points? Is that what you are inquiring about?

"Q. He states the conditions as stated in Paragraph 1 of this letter. He says: 'This is to confirm the agreement arrived at between us today.' You may look at the document.

"A. The agreement described in the first paragraph of the letter had been arrived at.

"Q. I show you a document which is produced by Hazeltine, DXBUD 641 and 642. This is marked for identification as Defendant Dodds Exhibit 79, purporting to be a memorandum of a telephone conversation between Mr. Binns and Mr. Dodds under date of November 20, 1952. A copy of it is shown as being sent
223 to Mr. L. B. Dodds.

"I ask you if you have ever seen that before?

"A. Yes. I have seen this or a copy of it.

"Q. Does that accurately set forth the telephone conversation that you had?

"A. At this time I have no recollection of the telephone conversation other than as set forth in this memorandum."

"Q. This account of your conversation signed by Mr. Binns stated:

'I told him that, of course, I had color in mind. He said that they had discussed it. It would be possible but not very practical and that the changes of increasing it were slim. He said he had discussed the matter with the pool members and it was their opinion that irrespective of what happened in the United States, the chances of color coming into effect during the life of the pool was practically zero in Great Britain.'

224 "What pool members had you discussed it with?

"A. I didn't discuss it with any pool members.

"Q. He quotes you here as saying you had discussed it with pool members.

"A. I think that was a mistake.

"Q. You think he misunderstood you in the conversation?

"A. That could be.

"Q. Did you discuss it with anybody?

"A. I recall discussing it with representatives of the General Electric Company. I don't recall discussing it with anyone else.

"Q. The General Electric Company was a member of the pool, was it not?

"A. I believe so.

"Q. I show you a document which has been produced from the Hazeltine files DXBUD 635, marked for identification as Defendant Dodds Exhibit 80, this being a letter by Mr. Cornock to Mr. L. A. Dodds on the letterhead of the General Electric Co., Ltd. and 225 dated the 27th of November, 1952. I ask you whether or not you received that letter?

"A. Yes. I did.

"Q. Mr. Cornock states in this letter that he is preparing a note of these various discussions during the past fortnight about the information of a new broadcasting licensing pool. Did you ever get a copy of his notes on that subject?

"A. I don't have any present recollection. If I did, it would be in the files which had been available to the defendant for inspection."

226 "Q. I show you a document produced from the Hazeltine files, DXBUD 679-A, marked for identification as Defendant Dodds Exhibit 81, which purports to be notes of discussions with Hazeltine Corporation, Mr. L. B. Dodds and E. M. I. at the Magnet House, November 13, 1952; Present: Mr. T. W. Heather, Mr. L. B. Dodds, Mr. K. H. Nalder, and A. F. Cornock. I ask you if you have seen those notes before?

"A. Yes, I have.

"Q. Whom did you receive them from?

"A. The General Electric Company.

"Q. Are those the notes that Mr. Cornock refers to in his letter of November 27, 1952, discussions about the A.7 pool?

"A. I believe they are.

"Q. Can you tell us whether or not his notes accurately describe what happened over there in those discussions?

"A. I certainly could not without reading them
through carefully and I doubt if I would have any recol-
227 lection at this time of any details contrary to what is
set forth in those notes.

"Q. Did you read them at or about the time you received them?

"A. I did.

"Q. Did you object to them in any way?

"A. I do not recall, but if I did it would be in correspondence made available to the defendant for inspection.

"Q. He notes here on Page 4:

> 'As between Hazeltine and GEC, it was agreed that they wished to act in concert in licensing, . . .'

"Is this a fact, that you wished to act in concert?

"A. I don't believe that is the term that I would have chosen to describe what our objectives were at that time.

"Q. You think that term that he used is a little embarrassing at this time?

"A. No."

"Q. Then it is stated at the bottom of Page 4:

228 'The general sense of the discussion was that EC would not continue to pay Hazeltine a direct royalty for the use of Hazeltine patents in Great Britain, apart from Hazeltine's share of pool income.'

"Does that accurately set forth your understandings?

"A. No.

"Q. It is not correct?

"A. It is not.

"Q. On the top of Page 8 of these notes it is stated:

'Mr. Heather, in the light of this, suggested that one should not, in the forthcoming discussions with EMI attack the general nature of the Pooling Arrangement, but should argue about the method of evaluating patents. Mr. Dodds said he was generally of the same view, but felt that Pool Voting by a majority of points holding was objectionable and might also be criticized.'

229 "Did you make that comment?

"A. I don't recall whether I made that specific comment but I do recall that I had criticized the operation of the pool by a control of the majority votes based on the points allocated to the various pool members.

"Q. On Page 16 he states:

'Mr. Heather said that he did not feel it was necessary to argue specially about the relative positions of the GEC and EMI; but if it was desired that Hazeltine should be members, he felt it was necessary to come to meet them.

'Mr. Dale-Harris then said that he had heard from Mr. Shoenberg that, if the offer could be accepted at once, EMI would offer Hazeltine/GEC a holding in the ratio.

'EMI: Hazeltine/GEC: 100:17 instead of the 100:12 approximately computed previously—it being expected that the total Pool parties' points would be about 200.

230 'After a short withdrawal for consideration, Mr. Heather and Mr. Dodds told EMI that each would recommend his Company to accept this proposal.'

"Did you say that?

"A. Did I say what?

"Q. That you would recommend that your company would accept the proposal?

"A. Yes.

"Excuse me. I said that I would recommend to Hazeltine Corporation that it should accept that proposal.

"Q. That is what I mean.

"A. Yes.

231 "Q. I show you a document which has been produced from the Hazeltine files, DXBUD 628, 629 and 630, which is marked here for identification as Defendant Dodds Exhibit 82. This purports to be a letter on the letterhead of the General Electric Co., Ltd., under date of the 1st of December, 1952, addressed to L. B. Dodds of the Hazeltine Corporation from Mr. Nalder. I ask you if you received that letter?

"A. I did.

"Q. In this letter reference is made to enclosing to you a copy of the new proposed pool agreement. He states:

> 'I shall be grateful to hear from you as soon as possible,'

whether you find yourself in agreement with the wording.

"Could you tell us whether or not you replied to this letter?

"A. I don't have any present recollection.

232 "Q. Referring to this letter, on Page 2, Mr. Nalder states:

> 'Since you left England, I have had one or two conversations with Mr. Dale-Harris . . .'

"Who is Mr. Dale-Harris?

"A. Mr. Dale-Harris is an employee of Electrical and Musical Industries.

"Q. That is the company known as EMI?

"A. That is correct.

"Q. He states:

> 'I received late last Friday, an Agreement for our signature whereby GEC becomes a Joining Party to the A.7 Pool. In this Agreement GEC represents that it can put into the Pool not only GEC's own Patents but also those of Hazeltine and are allowed 12 points as against EMI's 100, but contemporaneously EMI will give us a covering letter agreeing to pay to us out of their own share of the Pool, an amount equal to the additional amount to which GEC would be entitled by way of share in the Licensing Revenue Pool had the number of points allotted to GEC been 17 instead of 12. Mr. Heather informed Mr. Dale-Harris that if towards the other pool members, EMI felt that they could only justify allotting to

233

GEC (and Hazeltine) 12 points, he would not object to this amount appearing in the formal Agreement provided, of course, that EMI made up the total number to 17.'

"Did you agree to that Agreement?

"A. Substantially, yes.

"Q. You did not object to GEC putting Hazeltine patents in the A.7 pool, did you?

"A. That is correct.

"Q. I show you a document which is produced from the Hazeltine files DXBUD 251 A, 251 B, 251 C, marked for identification as Defendant Dodds Exhibit 83, which purports to be a letter under date of December 12, 1952, addressed to Mr. K. H. Nalder o fthe General 234 Electric Company written by you, apparently. I ask you if you did write that letter and send it to Mr. Nalder?

"A. I did.

"Q. I notice that you made certain suggestions as to the pool agreement, changes that should be made in the draft. Do you know whether or not those changes were made, the changes you suggested?

"A. Well, first of all, I think there should be a clarification. The term 'full agreement' as used in that letter is not the same as 'pool agreement' that we have been using in this testimony. The pool agreement there means the agreement between Hazeltine and the General Electric Company relating to the pool.

"Q. So you were not suggesting any changes in the actual pool agreement but only in your agreement with GEC?

"A. No. The letter does not consider the pool agreement itself in the sense we have been using that term.

"Q. What agreement are you referring to when
235 you are going to make changes?

"A. I was referring to a draft which preceded the Hazeltine General Electric Agreement relating to the pool. I don't locate it at the moment, but I believe it has been put in before. I believe it was Defendant's Exhibit 39.

"Q. I call your attention to the paragraph on Page 3 of this letter which reads as follows:

> 'You understood that our License Agreements are very similar to the Pool License in that they are blanket licenses under all of our patent rights with no portion of the royalties specifically allocable to any patent or patents. Therefore, the patent rights which Hazeltine might acquire from your company under this Agreement would not represent a source of additional revenue to it.'

"What are you referring to as 'our license agreements?'

"A. I am referring to the license agreements of
236 the Hazeltine subsidiary, Hazeltine Research, Inc., under the United States patents.

"Q. I show you a document which has been produced from the Hazeltine files DXBUD 600 and DXBUD 601. This purports to be a note of discussion between MacQueen and Laczay on September 14, 1953, with a copy to L. B. Dodds. It is marked for identification here as Defendant Dodds Exhibit 84. I ask you whether or not you received a copy of this at or about that time?

"A. I did."

237 "Q. First, who is A. V. Loughren?

"A. He is at present President of the Key Color Studios, Inc.

"Q. It states here:

'In accordance with a suggestion which I believe was originally made by Dodds, Laczay visited MacQueen on September 14 to obtain from him a general picture of the structure and operation of the A.7 Pool, to assist Laczay in establishing some background from which he might appraise the possibilities for a proposed pool in one or more of the countries of Continental Europe.'

"Did you make that suggestion?

"A. I believe I did.

"Q. Who is Laczay?

"A. He was an employee of AGA.

"Q. This gentleman states:

'I joined them for this discussion, in view of Hazeltine's interest both in the A.7 pool, and in the matter which Laczay had under consideration.'

238 "What was the interest that Hazeltine had in the matter that Laczay had under consideration?

"A. As I have previously testified, the AGA Company had an agreement with Hazeltine for the licensing of the Hazeltine patents in Continental Europe, so it was to Hazeltine's interest to assist Laczay in any way in promoting that program.

"Q. You thought it was a good idea to have a pool in Europe similar to the A.7 Pool in England?

"A. Not necessarily.

"Q. What was the point of going in to find out what they were doing in the A.7 Pool?

"A. Simply that if one is going to make a decision to do something or not to, it is a good idea to find out what the experience has been. As a result of that, you might decide it advantageous or not advantageous.

"Q. He states:

239 'In the course of the conversation, MacQueen ar-

ranged to provide copies of the A.7 license agreement to both Laczay and Hazeltine; he also separately arranged to furnish to Hazeltine a copy of the agreement between the licensors; these copies have been already forwarded to Mr. Dodds.'

"Was that so? Had they been forwarded to you?

"A. I don't have any recollection as to when I received them. I don't know whether it was before or after that date.

"Q. You did receive them?

"A. I did receive them and have so identified them in this deposition.

"Q. Did Laczay, after this look-see at the operation, structure, and background of the A.7 Pool set up any pools over in Europe in which Hazeltine patents were used?

"A. It seems to me there are several questions.

"First of all, I don't know whether he had a look-240 see at the operation of the A.7 Pool.

"Secondly, I do not have any knowledge of any patent licensing pools which Laczay set up in Europe with one possible exception: in France he did have rights to represent not only Hazeltine but EMI and I do not know, I do not recall, just how closely the licensing under the two groups of patents was carried out.

"Q. Was there a GEC Pool there in France?

"A. I don't have any knowledge of any such pool.

"Q. I show you a document produced from the Hazeltine files, DXBUD 1109, 1110 and 1111, which purports to be signed by you as a memorandum of the discussions with Mr. T. W. Heather of GEC; this is dated October 26, 1954. It is identified here as Defendant Dodds Exhibit 85. I ask you whether you wrote that memorandum?

"A. Yes. I wrote this memorandum.

241 "Q. You quote Mr. Binns here as expressing a view that he could see no reason for terminating a satisfactory working relationship which had produced such good results which apparently are the GEC-Hazeltine Agreements. Is that what he said?

"A. I have no recollection independent of the document.

242 "Q. Do you remember that you did have this discussion?

"A. I do remember having a discussion.

"Q. You say with reference to the A.8 Pool:

'There was some considerable discussion with respect to the timing and nature of negotiations for the A.8 Pool. Mr. Heather explained in some detail why he felt rather strongly that it would be inadvisable for GEC and Hazeltine to attempt to form a group with some of the pool members before negotiation with EMI. He felt that while EMI's methods were often iritating, they were, in the final analysis, rather fair in their negotiations. He also felt that any such preliminary groupins might be intepreted by EMI as 'ganging up', which might completely change their attitude.

243 'Mr. Heather felt that even now we should commence preparation for the A.8 Pool negotiations. He felt that it would be helpful if we knew a little better or just where each of the major Pool Members stood. He was going to attempt to obtain information on GEC's position and on the EMI position from his Patent Department. It was agreed that the writer would prepare a general and brief review of the Hazeltine patents and patent applications in England and would send three copies to Mr. Heather.'

"Did you prepare such a list and send it to Mr. Heather?

"A. I don't have a present recollection but the file that the defendant has inspected would reveal whether or not I did.

"Q. After that discussion, did your Hazeltine patents go into the A.8 Pool?

"A. Many year later.

"Q. I show you a document produced from the Hazeltine files, DXBUD 559, 560, 561, and 562, identified here as Defendant Dodds Exhibit 86, which 244 purports to be an air mail letter under date of November 12, 1954, to T. W. Heather, General Electric Company. It does not show who signed it. I ask you if you could tell us, first, whether you wrote the letter?

"A. I wrote this letter. I am sure I wrote the letter.

245 "Q. You say here: 'Yesterday I had a cordial luncheon conference with Dr. Shackleford'. Who is Dr. Shackleford?

"A. At one time he was in charge of the International Licensing Division of RCA.

"Q. This is in 1954 when you wrote this. Was he at that time in charge of International licensing?

"A. I do not recall. I might by refreshing my recollection from the letter because shortly after that he retired from that position. It was about that time. I don't recall the date.

"Q. Perhaps this will refresh your recollection:

" '. . . I asked him whether they had any present intention of not renewing their grant of licensing rights to EMI. He said that certainly they had no intention in any way to obstruct formation of the A.8 pool but that in confidence, they were not too happy with their arrangement with EMI and that unless certain changes would be made in that arrangement 246 they would not extend it. When I suggested that this might raise a difficult problem for the pool if EMI had rights for the initial part of the term and another party for the remainder, he stated that their arrangement with EMI was non-exclusive and that if they were unable to conclude a satisfactory extension of that arrangement with EMI, they would negotiate with some other party for the full five-year term of the A.8 pool. You probably were aware of the fact that EMI's rights to the RCA patents are non-exclusive, but it was a surprise to us.'

"Did you know that up until 1945, at leaest as to patents which had been isuued prior to 1945, EMI had exclusive licensing rights on RCA patents?

"A. At that time I did not know that.

"Q. Did you learn that at some time subsequent?

"A. Yes.

"Q. It was only with regard to patents after 1945 247 that they were non-exclusive?

"A. I learned that within the last six months.

"Q. In these prior pools did you know that the RCA patents had been put into these pools through EMI?

"A. That was not my understanding.

"Q. You didn't know when you were discussing with Shackleford that up to that time they had put in the RCA?

"A. It was my understanding that they had not.

"Q. According to this you state: 'I asked him whether they had any present intention of not renewing their grant of licensing rights to EMI.'

"You knew at that time they had given their rights to EMI to license their patents, didn't you?

"A. I knew they had granted to EMI the right to grant non-exclusive licenses under their patents.

"Q. Did you know that the RCA patents were in the A.7 pool?

248 "A. To my best recollection they were not.

"Q. They were not?

"A. They were not.

"As I previously testified as of that time I was not aware of the differentiation between the pre-1945 patents and the post-1945 patents.

"Q. You suggested that it might raise a difficult problem for the pool if EMI had rights for the initial part of the term and another party for the remainder. What did you mean by that?

"A. I don't know that I can express it any more clearly than I have expressed it in this letter.

"Q. What initial part of what terms?

"A. That refers to the term of the A.8 pool.

"Q. You are talking about having licensing for a part of it and not having licensing for all of it; is that right?

"A. Yes.

249 "Q. You just told us that EMI didn't have any rights and didn't put anything into the pool.

"A. I didn't say that at all.

"Q. What do you know about that? Did they put RCA patents in the pool at any time to your knowledge?

"A. As of that time, to my knowledge—

Wait a minute! I am not familiar back of the A.6 pool. But from the A.6 pool on, to the best of my knowledge, RCA did not put its patents into the several successive pools.

"Q. Did EMI put their patents in the successive pools?

"A. Yes.

"Q. They had the exclusive right to license the RCA patents as two patents which had issued up to 1945?

"A. You are asking me what I now know. I didn't realize that EMI had those exclusive rights.

250 "Q. Do you realize now that EMI had put many before in the pool?

"A. Yes.

"Q. What were you asking assurances for from Shackleford about the pool if you didn't think his patents were any good anyway?

"A. I think the letter speaks pretty clearly. They were not in the pool but EMI did have non-exclusive licensing rights under the RCA patents so that there was assurance that the RCA patents would be made available to pool licensees and if that assurance were to terminate in the mid-term of the pool it would raise a difficulty.

"Q. Did you want to get them into the pool?

"A. I didn't want to get them into the pool at all.

"Q. You were not discussing this with Shackleford with the idea in mind of getting the patents into the pool?

"A. No.

"Q. What was the purpose of your talking with 251 Mr. Shackleford?

"A. I don't have any recollection about what is in the letter.

"Q. Do you remember whether you called him or he called you?

"A. I do not recall.

"Q. Mr. Shackleford had sort of a dim view of these pools, didn't he?

"A. I don't believe I can answer that.

"Q. Didn't he tell you at one time that he thought it was very questionable as to whether or not they didn't violate the United States antitrust laws?

"A. I am sure he did not tell me that because he was not a lawyer. I don't think he would express an opinion as to what would and what would not violate the antitrust laws.

"Q. Your Mr. Binns was quite free with his legal advice. He was not a lawyer, was he?

"A. Mr. Binns was not a lawyer.

"Q. I show you a document which is marked from
Hazeltine's files DXBUD 549, marked for identifica-
252 tion as Defendant Dodds Exhibit 87 which purports
to be a letter from 'Jack' which we assume to be Binns
—to 'Dear Larry,'—whom I assume to be you. This
is written on the letterhead of the Dorchester in Lon-

"A. Yes. I received this letter.

"Q. He states: 'Today I went out to Hayes and had lunch with Schoenberg.' Who is Schoenberg?

"A. Mr. Schoenberg is connected with Electrical Musical Industries. I don't know what his exact title is.

"Q. Wasn't he in charge of their patent licensing?

"A. I don't know that.

"Q. He states: 'After lunch I spent considerable time with Schoenberg. He tried very hard to get direct association with us, but I told him we saw no reason at present to sever our relations with GEC.'

253 Did you read this letter at about the time you received it?

"A. I did.

254 "Q. He stated: 'In any event it was left that I would get in touch with Schoenberg the second week in September when we can discuss the possibilities of a deal.'

"Do you know what that deal was?

"A. I do not.

"Q. He states: 'In the meantime I would appreciate your opinion as to whether we can enter into a direct deal with EMI, also the pros and cons of our British situation, so I a mnot caught off guard.'

"Did you give him your opinion as to whether or not you could enter into a direct deal with EMI?

"A. I don't have any present recollection. If I did, it would be in the files which have been made available for inspection.

"Q. I show you a document marked for identification as DXBUD 547 and 548, that being the Hazeltine number. This is marked here for identification as Defendant Dodds Exhibit 88. It purports to be a letter to Mr. Jack Binns at The Dorchester in London under 255 date of August 8, 1955, from you. I ask you if you wrote that letter and sent it to Mr. Binns?

"A. I did.

"Q. Is that letter in answer to the handwritten letter which was written here as Defendant Dodds Exhibit 87?

"A. I believe it is.

"Q. You state: 'In view of your discussions, however, we will not allow any others to lapse until it can be determined whether a deal can be made with EMI.'

"Do you know what deal you were talking about?

"A. I believe this related to a possible deal with EMI in fields outside of broadcasting receivers.

"Q. I show you a document marked for identification DXBUD 535, 536, 537, 538, and 539, those being the Hazeltine identification numbers, and which is marked here as Defendant Dodds Exhibit 89 for identification. It purports to be a letter to Mr. Dodds with reference to the British broadcasting licensing pool

256 under date of May 8, 1956, from Mr. Cornock of the General Electric Company. I ask you if you received that document?

"A. I did.

"Q. On Page 3 of this document Mr. Cornock states:

"'We know that EMI's present agreement with RCA ends in 1960. We also know that, even under the present agreement, EMI cannot grant direct licenses under RCA patents—though RCA do grant licenses, without additional royalty, to Pool licensees nominated by EMI.'

"Did you know about that arrangement?

"A. I believe I did.

"Q. How long had you known about that arrangement?

"A. I think I learned about it in 1952.

"Q. The licensees of the pool got access to the RCA patents were getting to the licensees of the pool?

"A. Again, I don't think RCA patents got into the

257 pool in any manner. That was the manner in which the pool licensees obtained rights under the RCA post-1945 patents.

"Q. The licensees of tthe pool got access to the RCA patents in this manner; did they not?

"A. Yes.

"Q. Being a licensee of the pool gave them a right to get access in that manner, didn't it?

"A. I don't know that.

"Q. Do you know whether or not that arrangement was worked out by RCA to attempt to obviate objections which their counsel had to their pools as violations of the American antitrust laws?

"A. I don't know that.

"Q. You never heard that?

"A. I didn't say that.

"Q. Did you hear it from any source?

"A. Oh, yes.

"Q. From whom did you hear it?

"A. I believe from the people in the General Electric Company.

258 "Q. They say:

" 'The inferences we draw from this are: Firstly, that the balance of probability is that EMI will, in future, not have more control over RCA patents than in the present pool; and, secondly, that RCA may contemplate putting their patents direct into the next pool rather than through EMI.'

"Did they ever tell you on what they based that inference aside from this letter?

"A. No.

259 "Q. Now it states:

> 'Whichever of us is to make the move, there is a preliminary point to be settled: Namely, since we do not know what RCA's position will be (and this may greatly affect EMI's position), ought one to sound RCA on the matter before approaching Mr. Schoenberg, or should one treat the RCA question as to one of the first points to be raised with Mr. Schoenberg during the talk with him? (We could, of course, raise the question with Commander Mayer over here, or you might raise it with RCA on your side of the Atlantic, whichever seems more convenient, if it is decided to try to obtain further information before trying to discuss the position with Mr. Schoenberg.)'

"Did you approach anybody at RCA to find out what the position was with reference to them?

"A. I think I did.

260 "Q. Whom did you approach?

"A. Again I don't remember the dates. It would have been either Doctor Shackleford or Mr. Karns.

"Q. What did they tell you?

"A. My best recollection was that at the time they said they had not made up their mind what they were going to do.

"Q. Did you know a Mr. Mayer, Commander Mayer?

"A. I know the name. I have never met him.

"Q. Do you know whether or not Mr. Cornock approached Mayer on the job?

"A. I do not know.

"Q. I show you a document produced from the Hazeltine files, DXBUD 528, 529, 530, 531 and 532, marked for identification here as Defendant Dodds Exhibit 90, under date of May 28, 1956, the letter being sent by airmail to Mr. Cornock of General Electric Company, apparently written by you, on the subject of the broadcast license pool in Great Britain. Did
261 you write that letter and send it to Mr. Cornock?

"A. Yes.

"Q. On page 2 of this letter you state:

'As suggested above, I did discuss with Mr. M. E. Karns, who succeeded Doctor B. Shackleford as Director of the International Licensing Division of RCA, the RCA/EMI agreement. He confirmed the fact that that Agreement terminates at the end of 1960, and said further that no approach had been made on either side with respect to its extension. He said also that their decision as to whether or not to extend the EMI agreement would be delayed as long as possible in view of an antitrust suit which the government brought against them. There have been extensive negotiations between RCA and government lawyers with respect to a settlement of the suit to

avoid a protracted and diverting trial. They were
262 quite unsuccessful in reaching an acceptable settlement with Mr. Stanley N. Barnes, Assistant Attorney General of the United States in charge of the antitrust division. However, some weeks ago, Mr. Barnes was elevated to the Federal Court of Appeals and I rather gathered that RCA is somewhat more hopeful in reaching a settlement with his successor. In any event, since RCA's license activities abroad are one of the targets of the antitrust suit, they want to avoid changing the status quo if at all possible until a settlement is reached or negoiations finally break down.'

"Is that a true statement of your conference with Mr. Karns at RCA?

"A. I have no present recollection in detail beyond what is in the letter itself.

"Q. This was made almost contemporaneous with the talk, was it not?

"A. I believe so.

263 "Q. Did Mr. Karns discuss with you the view of their attorneys that these pools were illegal?

"A. I don't recall such a discussion.

"Q. I show you a document, DXBUD 525, marked for identification as Defendant Dodds Exhibit 91, which purports to be a memo to Mr. Binns from you under date of May 29, 1956. I ask you whether or not you wrote that memorandum?

"A. I did.

"Q. I show you a document produced from Hazeltine files, DXBUD 515, marked for identification as Defendant Dodds Exhibit 92, purporting to be a letter from Binns to you under date of August 10, 1956. This is on the letterhead of The Dorchester. I ask you if you received that letter.

"A. I did.

"Q. In this letter Mr. Binns states:

> 'There have been some developments in EMI that make it inopportune to start discussions as yet. Heather told me in confidence and I will tell
> 264 you when I get back to New York. There is also some doubt as to Schoenberg's status.'

"What was this confidential matter that made it inopportune to start discussions with EMI?

"A. I don't have any personal knowledge of the subject.

"Q. Mr. Binns said that he was going to tell you about it when he got back. Did he?

"A. Yes.

"Q. What was it?

"A. He said that there were rumors of an impending reorganization in the management of EMI.

"Q. I show you a document from the Hazeltine files, DXBUD 490, 491, 492 and 493, marked for identification here as Defendant Dodds Exhibit 93, under the letterhead of General Electric Company Limited, under the date of the 26th of September, 1956, addressed to you from 'Arthur'. I ask you if you received that letter?

265 "A. I did.

"Q. In this letter Mr. Cornock states:

> 'The only other general point that I may mention, though it does not directly affect these suggestions, is that it looks as though pooling and like agreements which regulate the freedom of a company to grant licenses under its British patents, may need to be registered under the Restrictive Trade Practices Act, 1956, which has recently come into force.'

"Can you tell us whether or not you did have to register the licenses under that Act?

"A. I don't have any information on that at all.

"Q. I show you a document produced from the Hazeltine files, DXBUD 498, 499, 500 and 501, identified here as Defendant Dodds Exhibit 94 for identification which purports to be 'Suggested Future Hazeltine-GEC Arrangements,' dated September 26, 266 1956. Can you tell us if you know who prepared that document?

"A. I don't recall. I did not.

"Q. Would you look at the handwriting with respect to the marginal notes and tell us if you can identify any of that?

"A. The marginal notes are in my handwriting.

"Q. I show you a document from the Hazeltine files, DXBUD 487 and 488, identified here as Defendant Dodds Exhibit 95, this being a copy of a letter under date of October 3, 1956, sent to A. F. Cornock of General Electric Company Limited, apparently written by you. I ask you whether you wrote and sent that letter?

"A. I did.

267 "Q. I call your attention to the third paragraph on page 2 where you say:

" 'We are somewhat concerned with the provisions in Clause (b. 2) limiting GEC's right to grant licenses under its patents upon the consent of Hazeltine. We are apprehensive that this would be incompatible with our Antitrust Laws. I would suggest rephrasing this clause to provide for an exclusive right to Hazeltine to grant non-exclusive licenses with respect to GEC patents relating to items (4) and (5) of the Field, subject to the right of GEC to grant licenses as a part of arrangements with third parties of the types specified. Of course the parties, by independent agreement, can always permit GEC to grant other licenses and it might be that, in this respect GEC would have to rely on the good faith of Hazeltine in not unreasonably refusing such permission.'

"Was that change made pursuant to your suggestion?

"A. I don't believe I can answer that question 268 directly. It was not a change made. There was not any agreement. This was all correspondence relative to a possible arrangement which I believe was never completed.

"Q. There was a draft apparently proposed which you were commenting on?

"A. That is right.

"Q. You don't think it was ever executed?

"A. I don't think there ever was an agreement of that nature executed.

"Q. In any event, you thought that something that was happening over in England might be incompatible with the American anti-trust laws; is that right?

"Q. Whose opinion was it, then?

"A. The opinion expressed in the letter is mine.

"Q. you were talking about patents granted over in England, were you not?

"A. I would have to see the letter.

"Q. Look at it.

"A. I don't have any recollection independent of 269 what is in the document itself.

"Q. You can't tell us by looking at that document that you were talking about patents in England?

"A. No, I cannot. I cannot because the draft agreement dealt with the General Electric patents in England and in the United States.

"Q. You don't know whether you were talking about foreign patents or United States patents? You can't tell from looking at that letter?

"A. I don't know that I can tell by reading the entire letter. I can't tell by reading that paragraph.

"Q. Look at the whole letter and see if you can tell us.

"A. I cannot tell from the letter whether the reference there is to United States patents or to British patents.

"Q. I show you a document produced from the Hazeltine files, DXBUD 443 and 444, marked for identification here as Defendant Dodds Exhibit 96, 270 purporting to be a letter to you on the subject of broadcast and television licensing pool under date of September 25, 1957, from 'Arthur'. I ask you whether or not you received that letter.

"A. I did.

"Q. And in this letter Arthur Cornock in General Electric said:

" 'We should begin to have a fair picture of the Trade reactions in about two months' time, and I will try to let you know as soon as we have a Pool meeting which gives us a preliminary idea of how the picture is shaping.'

"Did he write you and tell you how the thing was shaping up?

"A. I don't recall. If he did, the correspondence would appear in the files and would be available for inspection.

"Q. Do you recall that RCA was objecting to any restriction in the licenses of the pool on imports?

"A. At what time?

"Q. At any time.

"A. I don't recall any knowledge of that at any 271 time.

"Q. I will show you a document which is marked for identification as Defendant Dodds Exhibit 97, which purports to be a memorandum from Mayer to

Shackleford in New York on the subject of EMI licensing.

"This is produced from RCA's files.

"My point in showing this to you is to read something to you and I wanted to hear your comment on it. In this memorandum Mayer writes:

" 'Another aspect of this matter is the question of imports raised by Article II, Section 2(e) of the draft sub-licensing agreement which states:

" 'That EMI shall not restrict any license (by written agreement or otherwise) in regard to exports or imports to or from any country.'

" 'Shoenberg said that they could not agree to license foreign manufacturers to import into Great Britain, and he says this on the basis of his claim for exclusivity. In their view it would mean the im-272 mediate collapse of the whole licensing pool and of the revenue derived from it. They have always had to refuse to license imports from anywhere. British manufacturers are extremely jealous of importers, and although the Patent Act does not specifically support this attitude, there is no doubt that the old idea of patents giving a monopoly continues today and confirms a basis for a general licensing policy in Britain of using patents to build up trade and to keep out cut-throat competition from foreign countries where prices may be cheaper.'

"Have you ever heard anybody in the pool express that thought?

"A. No."

273 Mr. Dodds: Your Honor, same objection. This is for a document not from the Hazeltine files as to which the witness testified he had no knowledge.

The Court: And you also said that you had never heard of this.

Mr. Dobbs: That is right.

The Court: All right.

Mr. McConnell: (Reading.)

"Q. Did anybody in the pool for General Electric ever tell you the reason for the provision in their license precluding import?

"A. No.

"Q. You didn't ask anybody, I take it?

"A. I have to correct that. Yes, they did, within the last year.

"Q. Who told you that?

"A. Nobody told me directly but I received word indirectly from, I believe, a Mr. Chapel of General Electric Company.

"Q. Nobody in the pool directly communicated with you on the subject?

"A. That is right.

274 "Q. I show you a document which has been produced in response to our interrogatories, Exhibit O, which purports to be an Agreement between Australian Radio Technical Services and Patents Company—

The Court: Are we starting with Australia now?

Mr. McConnell: Yes.

The Court: Maybe we can move down south tomorrow. We have done pretty well today. It is about time to—

Mr. McConnell: Thank you very much, your Honor.

The Court: We have been over in England and in Canada and we will go to Australia tomorrow.

Mr. McConnell: Thank you.

(Thereupon, Court adjourned until 10:00 o'clock A.M. Tuesday, February 18, 1964.)

IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

Before Honorable Richard B. Austin
on Tuesday, February 18, 1964
at 10:00 o'clock A.M.

Appearances:
Mr. Dodds,
Mr. Diggins,
Mr. Ruestow.
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

Trial resumed pursuant to adjournment.

276 The Clerk: Case on trial.

The Court: You may proceed, Mr. McConnell.

Mr. McConnell: If it please the Court, I was just starting on—

The Court: You were just going to Australia.

Mr. McConnell: Australia. I am starting at page 226 of the deposition.

> "Q. I show you a document which has been produced in response to our interrogatories, Exhibit O, which purports to be an agreement between Australian Radio Technical Services and Patents Co. Limited, and Neutrodyne Proprietary, Limited dated April 12, 1934. It is identified here as Defendant Dodds Exhibit 98."

And it is received here in evidence pursuant to our stipulation as Defendant's Exhibit 182.

> "I ask you if you have even seen the original of that document?"

The witness asked me a question which is not relevant. Then he said:

> "Yes. This is a correct copy of the original agreement.
>
> 277 "Q. I show you a document produced from the Hazeltine files, DXBUD 425A to and including 425S, purporting to be an agreement between Australian Radio Technical Services and Patents Company, Limited, and Neutrodyne Proprietary Limited marked here for identification as Defendant Dodds Exhibit 99."

And it is marked in evidence here as Defendant's Exhibit 184.

> "I ask you whether or not you have seen a copy of an original of that document?
>
> "A. I don't have any present recollection of having seen the original of this document but that is a copy of the document so identified in the Hazeltine files.
>
> "Q. What is the Neutrodyne Proprietary Limited Company? What is its business?
>
> "A. It is in the business of licensing under the Australian Patents originating from Hazeltine inventions.
>
> "Q. Was it through the Neutrodyne Company that 278 Hazeltine Patents got in to the ARTS pool?
>
> "A. It is my information that Hazeltine Patents are not in the ARTS pool."

Then he said:

> "I am mistaken. I believe the answer to your question is yes.
>
> 279 "Q. I show you a document produced from the Hazeltine files DXB 56A to and including DXB 56J, marked here as Defendant Dodds Exhibit 100 for identification. This, apparently, is an analysis of the New Zealand Pool Agreement under date of April 5, 1939.

Your name appears at the bottom. Will you tell us whether or not you prepared that analysis, and if so, from what document?

"A. This is an outline which I prepared and it appears to be prepared from the copy of the agreement between ARTS and Neutrodyne dated November 28, 1938, which is attached to the outline.

"Q. I show you a document produced from the Hazeltine files, DXB 55A to and including DXB 55I, also having on the front page of it the date of April 5, 1939, an analysis of the Australian Pool Agreement, with your name under it; this is marked for identification here as Defendant Dodds Exhibit 101. I ask you if you made that analysis and, if so, from what document?

280 "A. Yes. This is an outline which I made and apparently it is made from an agreement between ARTS and Neutrodyne dated November 28, 1938, a copy of which is attached to the outline.

281 "Q. Who owns the stock of Neutrodyne Proprietary, Limited?

"A. It is owned 70 per cent by Hazeltine Corporation and 30 per cent by Electronic Industries, Limited.

"Q. Is Electronic Industries, Limited an Australian company?

"A. It is.

"Q. I show you a document marked DXBUD 1850, from the Hazeltine files, marked here as Defendant Dodds Exhibit 102; this purports to be a memorandum on the subject of Neutrodyne Proprietary, Limited, under date of January 2, 1947. Can you identify that as coming out of the files of Hazeltine?

"A. I can.

"Q. I show you a document, DXBUD 1851, marked here as Defendant Dodds Exhibit 103, this being a memorandum under date of February 24, 1947, and I ask you if you can identify that document as coming out of the files of the Hazeltine Company?

"A. Yes, I can.

"Q. I show you a document, DXBUD 1847, 1848

282 and 1849, produced from the Hazeltine Corporation files—"

Which is marked here as Defendant's Exhibit 208.

"—This purports to be a letter to the Hazeltine Corporation, attention of J. D. Grayson, under date of February 2, 1948, on the letterhead of Neutrodyne Proprietary, Limited. I ask you if you can identify that as coming from the files of the Hazeltine Company?

"A. I can and do.

"Q. I show you a document, DXBUD 1826 and 1827, consisting of four attached papers, marked for identification here as Defendant Dodds Exhibit 105, which purports to be comparative income and expense statements of Neutrodyne Proprietary, Limited. Can you identify that as coming from the files of the Hazeltine Company?

"A. Yes, I can and do.

"Q. I show you a document which comes from the files of the Hazeltine Company DXBUD 2035, which is

283 identified here as Defendant Dodds Exhibit 106."

It is in evidence here as Defendant's Exhibit 188.

"This purports to be a license agreement between ARTS and a licensee which is a form agreement, apparently, and I ask you if you have ever seen that document before.

"A. Yes. I have seen that document before.

"Q. Do you know from what source Hazeltine received it?

"A. I have no present recollection.

"Q. Did it come from ARTS?

"A. I don't have any direct knowledge to that effect.

"Q. Where do you think it came from?

"A. I think it came from ARTS.

"Excuse me: I was not thinking. I am sure that it did not come from ARTS. I think it came from Electronic Industries when it did.

"Q. I call your attention to the provision in Paragraph 4 on Page 3 of this form agreement:

284 " 'The licensee agrees with the Grantor as follows:

" '(a) Not without the previous written consent of the Grantor to export or sell for export or knowingly permit to be exported any broadcast receiving apparatus or radiogramophone.

" '(b) Not without the previous written consent of the Grantor to sell, let on hire or put into use in the territory for which this license is granted any broadcast receiving apparatus or radiogramophones which have not been manufactured in the territory for which this License is granted.'

"Were you familiar with those provisions in this license?

"A. No.

"Q. When did you first learn of it?

"A. During the course of this litigation.

"Q. You have never read that before?

"A. I have no recollection of ever having read that before.

"Q. Is that the best that you can tell us, that you 285 don't have a recollection of it?

"A. I believe that is best I can tell you."

286 Mr. Dodds: Same objection, your Honor.

The Court: In regard to this document, the only value of this testimony is that you at least now are aware of it.

Mr. Dodds: Right.

The Court: All right.

Mr. McConnell: Well, it came out of their files, your Honor.

The Court: It came out of their files, but knowledge of it on the date that it is dated cannot be attributed to him in view of the testimony.

Mr. McConnell: (Reading.)

> "Q. I show you a document, DXBUD 2033 marked for identification as Defendant Dodds Exhibit 107—"

That is marked in evidence here as Defendant's Exhibit 190.

> "—I ask you if this document has been produced from the files of the Hazeltine Company and, if so, from what source was it received, if you know?

287 "A. This has been reproduced from the files of the Hazeltine Company. I do not know what the source of it is or was.

> "Q. I show you a document marked DXBUD 2034—"

Mr. Dodds: Excuse me. Just to avoid the continuing interruption, can we have a standing ruling that with respect to these documents of which the witness testified that he had no knowledge or familiarity it would be subject to the same ruling without having to object to each question.

The Court: Well, in regard to your knowledge of them. There is another aspect of them and that is their relationship to Hazeltine Corporation, if they came from Hazeltine's files.

Mr. Dodds: That is correct, your Honor, only except that there isn't any proof, at least up to this point, as to when they came or what the date was or how they arrived there. These could be, conceivably, documents that were received fifteen years later.

The Court: All right. The standing objection may stand.

288 Mr. McConnell: (Reading.)

"Q. I show you a document marked DXBUD 2034 marked for identification as Defendant Dodds Exhibit 108, entitled 'License Number 3 between Australian Radio Technical Services and Patents Company Proprietary Limited and a blank Licensee.' I ask you whether or not you have seen the document before."

And that has been marked in evidence here as Defendant's Exhibit 189.

"A. I have seen it before in connection with collecting documents for this discovery proceeding.

"Q. Prior to that time you had not seen it?

"A. I don't have any recollection of having seen it before.

"Q. What file did you take it out of when you collected it for this proceeding?

"A. I believe that there is a file in the Hazeltine office entitled 'Neutrodyne Proprietary Limited,' and

289 I believe that that came from the Neutrodyne file.

"Q. You never had occasion to consult that file before?

"A. Not files for years as early as that. The files are broken down by periods.

"Q. I show you a document consisting of three pages, DXBUD 54, 54A, and 54B, marked here for identification as Defendant Dodds Exhibit 109, this being an analysis under date of April 5, 1939, having your initials, and I ask you if you prepared the analysis and if so from what documents?"

And that document is marked in evidence here as Defendant's Exhibit 197.

> "A. Well, this is certainly an outline which I prepared in 1939, some twenty-three years ago. I have no present recollection either of the outline or the agreement beyond what is set forth in the paper itself.
>
> 290 "Q. I call your attention to the second page of that document, 4(b) in which you say 'Licensee agrees not to import without consent of Grantor.'
>
> "Did you make that comment?
>
> "A. I made whatever comment is on that document.
>
> "Q. Can't you tell us whether you made that comment or not, looking at the document?
>
> "A. Mr. McConnell, I think the document speaks for itself. I don't think it adds anything to it that when you say, did I say say.
>
> "Q. I don't care what you think. I am trying to make a record in a lawsuit. I am asking you a perfectly plain, simple, ordinary question. I asked you whether or not that comment is yours.
>
> "A. I don't know whether you are reading verbatim or not.
>
> "Q. Look at it.
>
> "A. I made the comment. You identify the section in that and I will say that I made the comment there identified."

291 And then turning to Page 235:

> "Q. I show you a document marked DXBUD 2032 marked for identification as Defendant Dodds Exhibit 110—"

which is in evidence here, marked in evidence here, as Defendant's Exhibit 191.

> "—and I ask you whether or not this document comes out of the Hazeltine files and, if so, from what source it was received.
>
> "A. This is a copy of a document from the Hazeltine files. I have no present recollection where it came from.

"Q. I show you a document produced from the Hazeltine files, DXBUD 406, marked for identification as Defendant Dodds Exhibit 111."

It is marked in evidence here as Defendant's Exhibit 192.

"—and I ask you if you can tell me from what source that document came.

"A. This is a copy of a document from Hazeltine files. I do not recall where the original document came from.

"Q. I show you a document which was produced
292 here as Exhibit R in response to our interrogatories, marked for identification as Defendant Dodds Exhibit 112. I ask you if you can tell us from what source that was received by Hazeltine.

"A. I do not have any present recollection of what source this document came from.

"Q. I show you a document which has been produced here by Hazeltine as Exhibit S in response to our interrogatories, marked for identification as Defendant Dodds Exhibit 113."

It is marked here in evidence as Defendant's Exhibit 194.

"—and I ask you if you can tell us from what source that document was received by Hazeltine.

"A. I have no present recollection of the source from which that document was received.

"Q. I show you a document which has been produced from the Hazeltine files, DXBUD 1602, 1603 and 1604. This is marked for identification as Defendant
293 Dodds Exhibit 117."

It is marked in evidence here as Defendant's Exhibit 199.

"This purports to be a letter to Mr. Binns from Mr. A. G. Warner, with a memorandum attached. Have you ever seen this document before?

"A. To the best of my recollection I have not seen this document before.

"Q. I show you a document designated DXBUD 424 and 423, marked for identification as Defendant Dodds Exhibit 118. This purports to be a letter to

Mr. Warner of Neutrodyne under date of July 6, 1950, from Mr. Hook, and a reply letter from Mr. Warner. I ask you if you have ever seen these documents before.

"A. To the best of my recollection I have not seen those documents before. When I say 'before,' I mean before this discovery proceeding.

"Q. I show you a document designated as DXBUD 2780 and 2781, marked for identification as Defendant Dodds Exhibit 119."

294 It is marked in evidence here as Defendant's Exhibit 200.

"This is a letter to Mr. Binns from Mr. Warner. I ask you if you ever saw that document before.

"A. Yes, I have seen that document before.

"Q. I call your attention to this statement and ask you if you knew about it at or about the time of this letter:

"'Our general proposals are that we shall issue only one form of license which will be a joint television and radio receiver license, and must be taken in toto, and taken so as to operate from the first January 1951. The effect of this will be that every person desiring a television license within the five-year period will have to pay upon his radio receivers as from the first January 1951.'

"A. I knew of that as of about the date of the receipt of this letter.

295 "Q. I show you a document marked for identification as DXBUD 422A and 422B, marked here as Defendant Dodds Exhibit 120 for identification."

It is marked here in evidence as Defendant's Exhibit 202.

"And I ask if you have ever seen that document before.

"A. Yes, I have seen it.

"Q. I show you a document, DXBUD 420, produced from the Hazeltine files and marked here as Defendant Dodds Exhibit 121 for identification, and I ask you if you have ever seen that document before.

"A. I do not believe I have seen that document before.

"Q. I show you a document marked for identifica-

tion as Defendant Dodds Exhibit 122, produced from the Hazeltine files, DXBUD 410D and 410E, and I ask if you have ever seen that document before.

"A. Yes, I have seen this document before.

"Q. I show you a document, DXBUD 414-A, 414-B, 296 and 414-C, which purports to be a letter from Electronic Industries, Limited to you, identified here as Defendant Dodds Exhibit 123 for identification,"

and it is introduced or received in evidence pursuant to stipulation as Defendant's Exhibit 203.

"—a letter dated April 10, 1958, and I ask you if you have ever seen that letter.

"A. Yes, I have seen that letter.

"Q. On the second page of this letter there is the following statement:

> " 'AWA agreed to a smaller share and to contribute to share of Parker because of weakness via RCA anti-trust embarrassment.'

"Who is 'AWA'?

"A. Amalgamated Wireless (Asia) Limited.

297 "Q. Do you know what the embarrassment was?

"A. I have no direct knowledge whatsoever.

"Q. Indirectly, what do you know about it?

"A. I believe there has already been testimony about the government antitrust action against RCA a few years back.

"Q. I show you a document marked DXBUD 410C under date of October 2, 1958, identified here as Defendant Dodds Exhibit 124 for identification. I ask you if you have ever seen that document?

"A. Yes. I have seen this letter.

"Q. I show you a document marked DXBUD 413, identified here as Defendant Dodds Exhibit 125 for identification, which purports to be a letter from you to Arthur G. Warner under date of October 22, 1958. I ask you if you wrote that letter?

"A. Yes. I wrote that letter.

"Q. I show you a document, DXBUD 411, under date of January 15, 1959, marked for identification as 298 Defendant Dodds Exhibit 126, which purports to be a letter from Warner to you, and I ask you if you received that letter?

"A. Yes, I received that letter.

"Q. In this letter he states:

" 'No formal agreement between ourselves can be enforced in any Court of Law, so that after we have dotted the i's and crossed the t's and argued about the clauses, they will still be unenforceable. In fact, we can only hang together with good will and good intentions, a point incidentally which is often missed by American companies dealing with Australian organizations.

" 'In addition, a formal agreement is subject to examination by Governmtnt departments, taxation and otherwise, and it is difficult to avoid the commitments of the written agreement, whereas if there is no formal agreement one is able to argue the arrangements and circumstances arise from time to time to suit our mutual interest as opposed to that of Government interests.'

299 "What was there about your agreements that made them unenforceable?

"A. I don't know to what he had reference.

"Q. Did you agree with him that the best way to have an agreement was to have it so flexible that you could take any position you thought suited your mutual interest?

"A. I didn't agree or disagree with him.

"Q. You just didn't answer him?

"A. I didn't answer him.

"Q. I show you a letter, DXBUD 409, marked for identification as Defendant's Exhibit 127,"

marked in evidence here as Defendant's Exhibit 206,

"dated January 26, 1959, written by you to Sir Arthur G. Warner. I ask you if you wrote that letter?

"A. Well, I have to correct my testimony. Apparently I did answer that letter. I had forgotten it. I did write the letter, Exhibit 127.

300 "Q. I show you a document DXBUD 410A—apparently the second page is missing—marked here as

Defendant Dodds Exhibit 128 for identification, a letter to you. I have no way of knowing who wrote it. I ask you if you received the first page?

"A. I received the document, Exhibit 128.

"Q. I show you a document, DXBUD 407, marked for identification as Defendant Dodds Exhibit 129."

It is marked in evidence here as Defendant's Exhibit 207.

"This purports to be a letter from Arthur Warner to you under date of February 2, 1959. I ask you if you received that letter?

"A. Yes. I received that letter.

"Q. In the letter he states:

" 'I understand the position, and if, as and when we want a formal agreement in the light of some Government matter, then I think we can frame an agreement to suit our mutual interests as opposed to those of the Government.

301 "What did you understand that he was proposing?

"A. I don't know that anything definitely was proposed.

"Q. What, generally, was he trying to accomplish by leaving it open to oppose the Government with something?

"A. Mr. Warner is an individual who, perhaps, is not an anarchist but he seriously abhors Government routine, red tape and conducts his business accordingly.

"Q. I show you a document, DXBUD 100, marked for identification as Defendant Dodds Exhibit 130. This purports to be a letter from you to Mr. Hultman of AGA-Baltic on the subject of Scandinavian patent pools, and I ask you if you wrote and sent that letter?

"A. Yes, I wrote and sent that letter.

"Q. In that letter you state:

" 'We believe that the decision of RCA relative to its participation in these pools in the Scandinavian countries is unfortunate and legally unsound, but apparently they are firmly committed to it.' 302

"What was their decision?

"A. I believe it was their decision not to participate in the pools in question.

"Q. Was that because they thought that the pools were illegal?

"A. I don't know RCA's motives.

"Q. In your next sentence you say:

" 'Recently I checked with Dr. Shackleford, their foreign license administrator, as to the basis of their conclusions and as to their plans for exploiting their patents in the several countries. He said that he had had only a brief time with Mr. Sarnoff since his return, but concerned their position as Mr. Sarnoff explained it to you.'

"What was the position of Mr. Sarnoff explained to Mr. Hultman?

"A. I do not know.

"Q. You didn't know at the time you wrote this letter?

"A. I don't have any recollection of it.

303 "Q. Your next paragraph states:

> 'Doctor Shackleford said that, while he was not in agreement, their general counsel was of the firm conviction that participation in such pools would constitute violation of our Anti-trust laws.'

"Did he tell you that?

"A. I don't have any recollection independent of what is written in the letter.

"Q. This letter was written contemporaneously with your talk with Doctor Shackleford, was it not?

"A. Yes. It was.

"Q. Then you say:

> 'However, their attitude is due in part to the diversity of their operations in the radio field including manufacturing, patent licensing, broadcasting, and commercial communication, and to the fact that they have been subjected to repeated investigations by the Congressional Committees and the Department of Justice for suspected violations of the Anti-trust laws.' 304

"Where did you get that information?

"A. I don't believe there was any specific source. I think that was just a matter of common knowlege accumulated over a period of years.

"Q. That is your inference, is it not?

"A. I don't think it is an inference. I think it is a question of my statement of facts as I recalled them at that time.

"Q. Can you tell us where you got your facts, specifically, and not just generally?

"A. I cannot tell you where I goth them specifically. I get them from one hundred places. You remember it in the papers, the trade magazines, and you talk to people in the industry.

"Q. Well, you say as a statement of fact that they developed a rather strong phobia with respect to antitrust matters. Did somebody tell you that?

"A. That was my own conclusion.

305 "Q. Evidently you had not developed any strong phobia with respect to antitrust matters at that time, had you?

"A. I don't believe I did then and I don't believe I have now. I try to avoid phobias.

"Q. You don't apparently try to avoid trouble with the antitrust laws, do you?

"A. That's your opinion. You are entitled to it.

"Q. How much of the statement did you get from Doctor Shackleford, or can you tell us?

"A. I have not the slightest recollection, except that the portion where I effectively quote or state the substance of our conversation, that I will assume came from Doctor Shackleford.

"Q. Do you know who their general counsel was that had the firm conviction that participation in such pools would constitute violation of our antitrust laws?

"A. I don't recall who the general counsel was back that far in 1946.

306 "Q. Did you know it was Mr. Cahill's firm here in New York?

"A. I did not refer to Mr. Cahill's firm. I was referring to RCA's internal personnel.

"Q. I quote:

> 'Doctor Shackleford said that, while he was not in agreement, their general counsel . . .'

"Their general counsel were outside lawyers, correct?

"A. As I said, I was not using the term in that sense. I believe that they have had people in there—officers who have carried the title of general counsel.

"Q. You were not quoting from Doctor Shackleford in this characterization of general counsel, were you?

"A. I was not quoting Doctor Shackleford in anything.

"Q. You say here Doctor Shackleford said—

"A. I said in substance and I didn't call him.

307 "Q. ' . . . while he was not in agreement, their general counsel . . .' Did he tell you that their general counsel—

"A. I don't remember the exact words that were used. What is said there is much more accurate than anything I could say now.

308 "Q. I believe that that concludes this deposition except that there are two sets of documents that we have not received—the A.8 pool agreement—

"A. To the best of our information we have no copy of the A.8 pool agreement in our files.

"Q. Have you a copy of their output license?

"A. The A.8?

"Q. Yes.

"A. I have not checked that specifically because that was not asked for."

On page 250, the witness said:

"If I may, I would like to modify one answer or a couple of answers I gave this morning. I think I did not speak too accurately.

"Q. You said you wanted to amend an answer or two. Please do.

"A. I believe I was asked whether or not the General Electric Company represented Hazeltine in making its patents available to the British pool. I think I 309 agreed to that statement, but the General Electric Company has not been a representative of Hazeltine in the ordinary sense of the word. It has acquired certain rights under the agreements between the two companies which, I believe, have been marked for identification, and that is the limit of their rights with respect to the Hazeltine patents.

"Q. I take it the documents then will speak for themselves as to what the rights are?

"A. Correct."

That concludes the reading of the deposition, your Honor.

Mr. Dodds: Just one minor comment. I think the portion of the deposition was skipped where it explained why the witness had no knowledge of these early foreign agreements. Because in the early years, those were handled exclusively by Mr. Binns, and the witness did not have any contact with or familiarity with those foreign agreements until a considerably later period of years. That was 310 why the witness repeatedly said, "I have never seen this document before," or "I have no knowledge of it."

The Court: All right.

Mr. McConnell: At this time, your Honor, I want to read into evidence answers to certain interrogatories which we have asked here in these proceedings pursuant to the interrogatory rules of this Court.

The Court: Now that you are through with that, will you tell me what BUD meant?

Mr. McConnell: That's their document number. That's the way they marked their documents. I don't know why.

Mr. Dodds: What is that?

The Court: I wondered what BUD meant?

Mr. Dodds: Oh, BUD, excuse me. That was the defendant's mark. That was the deposition of Mr. Vern Budd, secretary of the Hazeltine Corporation. I think that was the abbreviation they adopted in marking this Exhibit. And they marked DXBUD as being the deposition exhibit of Mr. Vern Budd.

The Court: I restrained my curiosity until it was all over, but now I wanted to know.

311 Mr. McConnell: All right. Your Honor, I thought that we both marked them together and agreed on that designation, but I may be wrong.

Interrogatory No. 2:

"Does plaintiff"—That's Hazeltine "—have a standard form of agreement extending licenses under its domestic patents for the manufacture, use and/or sale of any of the following classes of apparatus:

"(a) Radio receivers,
"(b) Monochrome television receivers;
"(c) Color television receivers."

The Court: That is the interrogatory?

Mr. McConnell: That's the interrogatory.

> "Answer: Plaintiff has a standard form af agreement extending licenses of the type inquired about, a copy of which is attached as Exhibit B."

And that is marked in evidence here as Defendant's Exhibit 2. Have you got a copy of that agreement?

This is in evidence, your Honor, as Exhibit 2 pursuant
to our stipulation, which stipulated all documents produced
from the Hazeltine files can be received in evi-
312 dence here. And, of course, this comes in under an-
other rule of this Court, and that is, answers to in-
terrogatories are evidence in the case.

Mr. Dodds: Your Honor, there is a qualification on that stipulation. It is received in evidence subject to an objection as to relevance.

The Court: All right.

Mr. McConnell: Well, it is your position that this standard license agreement is irrelevant?

Mr. Dodds: No.

The Court: He was just objecting to your blanket statement that everything that you have in your possession is admissible without qualification. That was his only objection, not this particular document.

Mr. McConnell: This license agreement is a standard license—by standard license it applies to the licensees generally of these patents, and the royalties—

The Court: Are we back in America, Mr. McConnell?

Mr. McConnell: Yes, we are back in America at the moment.

313 The Court: This is the American license.

Mr. McConnell: The domestic license agreement.

The Court: All right.

Mr. McConnell: It provides as to royalties. This goes to a point that your Honor talked about in some of the questioning yesterday. It provides as to royalties:

> "Licensee agrees to pay to licensor upon each complete apparatus of any of the types identified in Article II, Section 2, sold or leased by the licensee during the continuance of this license, royalties as follows: Upon apparatus of any of the types identified in Subsections (a) and (e), a royalty of .45 per cent of licensee's net selling price of said complete apparatus."

Now, in Article II, Section 2, the apparatus is described as follows, and I am quoting from Page 3 of the license:

> "Section 2: The apparatus for which the said license is granted is, as follows: The license in each 314 case being limited to apparatus designed and intended primarily for use in homes, use for educational purposes, and private non-commercial use;
>
> "(a) Complete radio broadcast receivers of sound,
>
> "(b) Complete broadcast receivers of pictures (television),
>
> "(c) Chassis of radio broadcast receivers of sound,
>
> "(d) Chassis of radio broadcast receivers of pictures (television),
>
> "(e) Complete carrier current receivers of sound,
>
> "(f) Complete carrier current receivers of pictures,
>
> "(g) Combinations of the apparatus specified in (a) and (b) of this section, and
>
> "(h) Combinations of the apparatus specified in (c) and (d) of this section."

And this license provides for the payment of those royalties whether or not the apparatus there described is covered by any of the Hazeltine patents.

315 The next interrogatory I want to turn to is Interrogatory 12.

"State year by year for each calendar year from and including 1951 to date:

"(a) The number of United States patents subject to licensing by plaintiff for the manufacture, use and/or sale of radio and/or television receivers,

"(b) The number of United States patent applications filed during the year by plaintiff,

"(c) The number of patents owned by plaintiff which were issued during the year."

"Answer: There follows the total number of patents and patent applications owned or subject to licensing by Plaintiff and those filed by Plaintiff, as requested, but no attempt has been made to segregate those patents useful in the manufacture, use and sale of radio and television receivers for two reasons: (1) Under the Hazeltine form of license agreement, Exhibit B attached hereto, the licensee has the pri-

316 ilege of using any one or all, or none of the licensed patents; and (2) there have been a wide range of designs of radio and television receivers during the period 1951 through 1960 and Plaintiff does not have information thereon to enable it to make such a segregation:

And then there follows a designation of the number of patents. Up to 1960, it was five hundred ten and the number of U. S. patent applications up to 1960 was forty-eight. And in, (c) The number of U. S. patents owned by the plaintiff issued during each calendar year, for 1960, was forty-five.

The next interrogatory I want to read is 13.

"With respect to the patent in suit, state whether or not foreign patents covering the invention have issued and list all of the following as to each such foreign patent that has issued:

317 "(a) Country where issued,

"(b) Patent number and title,

"(c) Record owner or owners."

"Answer: There are listed below the foreign patents in question."

"Australia; Patent No. 139,522"; the record owner is stated to be "Neutrodyne Proprietary, Ltd."

"Canada," a patent number—equivalent patent number covering the same invention of the patent here in suit, 487,448, and the record owner is the Hazeltine Corporation—

Mr. Dodds: Your Honor, just to keep the record straight, I think the equivalent is Mr. McConnell's interpolation. I don't believe the interrogatory says they are equivalent. We found out yesterday that many of these foreign patents are not at all equivalent. They are counterparts. The laws of foreign countries are quite different.

The Court: Have we run into a semantic thing, have we?

318 Mr. Dodds: I should think Mr. O'Connell interpolated—

The Court: All right. Counterpart you will accept, equivalent you won't, apparently.

319 Mr. McConnell: Well, I am willing to stand on his answer in the interrogatory. We asked him a very clear question: List the patents in the foreign countries which were the equivalent—

Mr. Dodds: I don't think either the interrogatory or the answer uses the word "equivalent." That's what I am objecting to.

Mr. McConnell: All right. Here is what the interrogatory states:

> "With respect to the patent in suit, state whether or not foreign patents covering the invention have issued and list all the following as to each such foreign patent that has issued:
>
> "country where issued,
> "patent number and title,
> "record owner or owners."

Now, I got down to Canada, and there you said the patent covering this invention is 487,448, and it is owned by the Hazeltine Corporation.

I want to call your Honor's attention to counsel's statement yesterday that they didn't own these patents in
320 foreign countries. He said they sold them.

Mr. Dodds: Point out in the record where I said that, Mr. McConnell. I never said that in my life, and it is not true.

Mr. McConnell: I will point it out.

Mr. Dodds: Please do.

The Court: I am not concerned with what he said, except what he said under oath. Are you talking about what he said in his deposition or—

Mr. McConnell: What he told your Honor yesterday.

The Court: Well, as I told both of you counsel, and as you both know, anything that you say that is not under oath is not considered as evidence by me, so let's go on.

Mr. McConnell: (Reading.)

> "Great Britain: Patent number and title, 623,431,"

and the record owner is "Hazeltine Corporation."

Now, Interrogatory No. 14:

> "List and identify all persons, companies and corporations wihch now have or have had the right to grant
> 321 licenses under each of said foreign patents, and fully describe such right.

> "(a) Fully describe the terms and conditions of licenses issued by said companies or individuals or supply a copy of the form of license or licenses used.
>
> "(b) Have said companies or individuals granted licenses under patents owned or controlled by companies other than plaintiff or subsidiaries of plaintiff?
>
> "(c) Fully describe the licenses referred to in (b) or supply copies of same."

In answer to that, they list "Canada," and the company having the licensing rights as the "Canadian Radio Patents, Limited." And they state:

> "Terms and conditions of licenses granted, not known."
>
> And "Licenses granted under patents other than those of plaintiff and affiliates, not known."

"Great Britain:" They state that the General

322 Electric Company, Limited, is the person having the licensing rights. And under the terms and conditions, "Note 2 below." And under the license terms, "Note 2 below."

"Australia and New Zealand." They list the company having the licensing rights as Neutrodyne Proprietary, Ltd., and they refer in the following columns as "Note 3 below."

> "Note 2: The General Electric Company, Limited, has included the Hazeltine British patents as well as its own British patents in several of the so-called British Radio and Television Patent Pools. There can be found copies of only the A.6, A.7 and A.8 Pool Agreements and Supplements which are attached as Exhibits 52, 48 and 50."

What are the corresponding—

Mr. Curtis: I think they are marked there.

Mr. McConnell: They are now marked in evidence, your Honor, as Defendant's Exhibits 52, 48 and 50.

> "The British pools have, in turn, granted licenses to
> 323 the British Radio and Television manufacturers. There can be found only the A.5, A.6 (and supplement), A.7S and A.7T (and second edition of each) Pool Licenses, copies of which are attached as Exhibits I, J, K, L, M and N,"

which are defendant's exhibits here, now, as 59 and 64, 65, 66, 68, 69, 67, plus A.8S and A.8T, which are marked in evidence here as Defendant's Exhibits 70 and 71.

> 324 "Note 3: Neutrodyne Proprietary, Ltd., has from time to time included Australian and New Zealand patents of Hazeltine origin in the Australian and New Zealand Patent Pools (Australian Radio Technical Services—ARTS). There can be found only a copy of the Australian Radio Technical Services & Patents Co. Ltd. and Neutrodyne Proprietary, Ltd.—dated April 12, 1934, a copy of which is attached as Exhibit O."

And that is marked in evidence here as Defendant's Exhibit 182.

> "There can be found only copies of the following licenses issued by ARTS to Australian radio and television manufacturers, copies of which are attached as Exhibits P, Q, R and S:
>
> "Australian Patent License Number 1 issued 1934 (Exhibit P),"

marked in evidence here as Defendant's Exhibit 188.

> "Australian Patent License Number 5 issued 1951 (Exhibit Q),"

marked in evidence here as Defendant's Exhibit 192.

> 325 "Australian Patent License Number 6 issued in 1953 (Exhibit R),"

in evidence here as 193.

> "Australian Patent License Number 6B issued 1953 (Exhibit S),"

marked in evidence here as Defendant's Exhibit 194.

326 The next interrogatory I wish to read is 15:

> "List and identify all contracts, assignment or other documents by which the right to grant licenses referred to in Interrogatory No. 14 was acquired and all agreements, arrangements and understandings relevant thereto. (If any of said agreements, arrangements or understandings were oral, describe them fully.)
>
> "Answer: With respect to Finland, Norway and Sweden, the right to grant licenses under the respective corresponding patents in those countries was granted to Svenska Aktiebolaget Gasaccumulator by an agreement dated July 25, 1946, and effective to December 31, 1950; this agreement was extended by a letter agreement dated May 26, 1950, to December 31, 1955; and further extended by a letter agreement dated December 4, 1953, to December 31, 1960."

Then they refer to Austria, Belgium, France, Hungary and Switzerland, which we are not concerned with here,
327 and which I will not read.

> "With respect to Great Britain, license rights were granted to General Electric Company, Limited, by an agreement dated April 6, 1939,"

which is Defendant's Exhibit 43 and 44, here in evidence.

> "—extended and modified by agreement dated July 24, 1948—"

which is Defendant's Exhibit 45.

> "—and November 10, 1948,"

which is Defendant's Exhibit 45-A.

> "—which were superseded by an agreement dated February 27, 1953,"

which is Defendant's Exhibit 48.

"—extending to December 31, 1957, and by a supplemental agreement dated November 14, 1957—"

which is Defendant's Exhibit 48-A.

"—extending to June 30, 1960.

"With respect to Canada, the license rights referred to were granted to Canadian Radio Patents, Limited, by an agreement dated July 2, 1943, for a term of ten 328 years renewable for a further period of ten years.

"With respect to Australia and New Zealand, the license rights referred to were granted to Neutrodyne Proprietary, Limited, by an agreement dated September 11, 1928, which is still in effect."

The next interrogatory that I wish to read is 23:

"State generally the terms and patent coverage of said licenses or, if a standard license form has been used, supply a copy of said standard form.

"Answer: The only information which can be found is a copy of a license supplied to Hazeltine Corporation by Canadian Radio Patents, Limited, on or about June 6, 1960, a copy of which is attached as Exhibit U."

Which is marked in evidence here as Defendant's Exhibit 123.

That concludes the interrogatories which I wish to present at this time.

329 I would like to call Mr. Ruestow to the stand to be examined in adverse examination under the rules of this Court.

The Court: All right.

Mr. McConnell: May he be sworn, please?

EDWARD A. RUESTOW, called as an adverse witness on behalf of the defendant herein, having been first duly sworn on oath, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Mr. Ruestow, where do you live?
A. Valley Road, RFD 1, Glenhead, New York.
The Court: And your first name, Mr. Ruestow?
The Witness: Edward A.
The Court: All right.

By Mr. McConnell:

Q. And what is your connection with any of the Hazeltine Companies?
A. I am general patent counsel of the Hazeltine Corporation, the parent corporation. I am executive vice-
330 president of the plaintiff Hazeltine Research, Inc.
Q. Are you a director of either of those companies?
A. I am a director of Hazeltine Research, Inc. as well.
Q. How long have you been connected with these companies?
A. Since April, 1954.
Q. Will you tell us what your duties are in connection with the licensing of the Hazeltine patents?
A. At the present time my responsibilities are that of a patent advisor.
Q. And what are the duties of that office?
A. The qualification of patent applications on inventions derived from all of the Hazeltine organization and advising on the license structure, the license problems of both Hazeltine Corporation and Hazeltine Research, Inc.
Q. I show you a document which has been received in evidence here pursuant to stipulation as Defendant's
331 Exhibit No. 2, which purports to be a standard license

agreement of the Hazeltine Company; will you look at that, please, and I want to ask you a question about it?

A. Very well.

Q. Did you have anything to do with drafting that document?

A. No.

Q. Do you know who did draft it?

A. No.

Q. Do you know during what period of time that standard license agreement has been used?

A. Been used, did you say?

Q. Yes.

A. Since about September, 1958.

Q. Did you have anything to do with negotiations with the Zenith Radio Corporation about seeking or soliciting or asking them to take a license under Hazeltine patents, domestic patents?

A. Yes.

Q. About when did those negotiations start?

A. In the fall of 1961.

Q. And who did you deal with at the Zenith Radio Corporation?

332 A. Mr. Crotty, Francis Crotty.

Q. That is the gentleman sitting at the counsel table here?

A. That is correct.

Q. In the last seat.

Now, in the course of those negotiations, did you tender to him that standard license agreement at any time, or proposal from your company?

A. No.

Q. You never did?

A. Not to—I have no recollection of that.

Q. Did you ever give him that copy?

A. I don't believe so. My recollection is that I did not.

Q. But you say that standard license has been used by your company with your licensees from time to time?

A. Yes.

Q. Is it still being used?

A. No.

Q. When was it discontinued?

A. Except, of course, for those that are already in
333 existence as executed agreements. We have not used this since about the time I talked with Mr. Crotty.

The Court: That was when again?

The Witness: The fall of 1961.

The Court: All right. So this was the standard agreement from the fall of '58 until the fall of '61, is that it, about? I think that that is what you—

The Witness: That is correct.

The Court: All right.

334 By Mr. McConnell:

Q. Now, what did you offer to Mr. Crotty when you first talked to him in the way of a license?

A. I didn't offer him anything. We had only exploratory discussions.

Q. And that was about when, do you say?

A. The fall of 1961, is my recollection.

Q. I show you a document which is marked Defendant's Exhibit 10 and ask you whether or not you received that document from Mr. Crotty through the mails, or the original of it. That is a copy.

Mr. Dodds: Would you please tell us what it is? We don't have the defendant's numbers on any of these exhibits. We can't identify them by defendant's numbers.

Mr. McConnell: I will show you the document.

Mr. Dodds: All right.

By the Witness:

A. Yes, I received this, the original of it.

By Mr. McConnell:

Q. Well, read it and refresh your recollection if you will.

335 A. Yes, I will.

Mr. McConnell: Do you want to see this, Counsel?

By Mr. McConnell:

Q. Does this refresh your recollection that you had a meeting with Mr. Crotty on October 18th of 1961?

A. Yes.

Q. Now, he refers here, Mr. Crotty does, in this letter, to some nine patents which you apparently had discussed; did you make any assertions or claims about those patents as to whether or not the Zenith Company was infringing those patents?

A. My recollection is that I indicated to Mr. Crotty that those patents were probably involved in the Zenith color television receivers that we were discussing at that time.

Q. Did you have any discussion at that time of the patent here in suit?

A. Yes, I think we did.

Q. What was said about that, if you recall?

A. Very little. ~~My recollection~~ is that we sort of 336 casually acknowledged that it was in suit.

Q. All right.

Now, I want to call your attention to a statement in this letter in which Mr. Crotty says:

> "At the same time you supplied me with a copy of what I understand to be your standard form of license agreement bearing the numeral 918 on its face."

Is that the document that I just asked you about?

A. I don't know. I have already indicated that my recollection was that I did not give him a copy of it, but it may be faulty.

The Court: Does it bear that number on the front?

The Witness: That is correct, your Honor, it bears the number 918, designation 918.

By Mr. McConnell:

Q. You didn't write back to Mr. Crotty and say that he was in error about furnishing you with a standard form of license agreement, did you?

A. I did not.

337 Q. You still maintain you didn't give it to him at that time?

A. I stand on the answer I gave you before. It is my recollection that I did not.

Q. Well, you did have a standard form of license agreement with 918 on it in your company at that time, didn't you?

A. Definitely.

Q. I show you a document which is marked in evidence here as Defendant's Exhibit No. 11, which purports to be a copy of a letter from Mr. Crotty to you under date of November 21st, 1961, and ask you whether or not you received that document through the mail.

Mr. Dodds: Your Honor, I must object to this. We have a stipulation that the other side has agreed that they would supply us with information on the documents that they were going to rely on thirty days prior to the trial. These documents that he has been handing the witness, we don't have any record of, we don't have copies of, and we don't know anything about them. This is a complete surprise, to bring in this correspondence. I wouldn't have any
338 objection if we would have had just the mechanics of
having our copies here so that we could look at them, but we haven't received any notice of these papers. We have a list which was supplied to me not 30 days before the trial, but 10 days before the trial, listing some 200-odd documents. We have collected those together. We don't have these documents with us.

The Court: Well, we will do the best we can by letting you read them prior to the time there is any interrogation on them, Mr. Dodds. It will slow us down, but—

Mr. Dodds: I would suggest that a minimum—

Mr. McConnell: What do you want to do about it, Counsel? I want to cooperate with you.

Mr. Dodds: I think it is the minimum that they should supply us with copies of these at the earliest opportunity, these papers which are not on the list which they furnished us about ten days before the trial, so that we could at least read them and see what is in them and be famiilar with them.

339 Mr. McConnell: Well, if you want to defer the examination on these documents until after the lunch hour so that you can examine them, I will go along with you on that. I can take up another subject with the witness.

Mr. Dodds: I don't know how long an examination that you propose. I don't want to delay the proceedings, but I would certainly like, before cross-examination, to have a copy of these and look them over and see what they amount to.

Mr. McConnell: I am not aware that I ever agreed with you to give you copies of what I was going to cross-examine on.

Mr. Dodds: There is a stipulation on file, Mr. McConnell, saying that each party would give the other party a list of documents that they were going to rely on thirty days before trial.

The Court: How many more of these are there, Mr. McConnell, approximately?

Mr. McConnell: Not too many. There are only a few
that he hasn't seen. What I am dealing with now is
340 correspondence between Mr. Crotty and Mr. Ruestow
and the negotiations that went on with reference to
licensing.

341 The Court: Well, I think that if over the noon hour you get some copies made of these that you have not supplied him with copies of, it will serve its purpose. He is going to have an opportunity to read these before you interrogate the witness. It will delay us a little but not as much as—Show the documents to counsel.

Mr. McConnell: Well, we will go to another subject and then we will come back to it after they have had a chance to look at these.

The Court: Do you want to take this document back?

Mr. McConnell: I will take the document back.

Mr. Dodds: Well, what I have referred to was the pretrial stipulation, Paragraph 4. It says:

> "Each party agrees to furnish the other party at least 30 days prior to trial with a list of such documents on which it intends to rely at the trial. The party having custody of such documents please make
> 342 them available to other party for inspection."

Mr. Curtis: Your Honor, may I clear this up a little bit? We sent them virtually 99 per cent of everything that we are possibly going to use here. He has had notice of this.

I am quite surprised at these statements that you are now making on the record.

Mr. Dodds: We don't have any notice of these documents. You gave us a list and these documents are not on the list.

The Court: Mr. Curtis, can you take the list that you supplied him with and point out that these documents are on the list?

Mr. Curtis: Yes, your Honor. We will do that and we will show him. Any that are not on the list we will give him copies of immediately.

Mr. Dodds: That is my point, there are some that are not on the list.

The Court: The point is, are they on the list now? Did he have notice of them? I assume, based on what we 343 have here, at least in regard to the first document, the original should be in Hazeltine's files because this is a carbon copy from Zenith.

Mr. McConnell: That is right.

Mr. Dodds: They are in Hazeltine but they are not available readily. We don't have them here in court with us.

The Court: I understand that. That is why I am trying to find out if they gave you notice that they were going to introduce a letter of October 18, 1961.

Mr. Dodds: They did not.

The Court: From Mr. Crotty to this witness.

Mr. Dodds: They did not.

The Court: That is all I am trying to find out.

Mr. Dodds: Yes.

The Court: Apparently they didn't and so—

Mr. McConnell: Well, maybe we could save some time if I could have a five-minute recess and put these documents before counsel and see if there are any here that 344 I am going to use.

The Court: We will take our morning recess now. That is a very good idea, Mr. McConnell. We will take a short recess and will you let the Clerk or the Marshal know when you have completed your exchange of documents?

Mr. McConnell: I will, your Honor.

The Court: Thank you.

(Thereupon a short recess was taken, after which the following further proceedings were had herein:)

345 Mr. Dodds: Your Honor, Mr. Curtis said he thought I had conveyed the impression that Zenith had not supplied us with these documents. They did supply us with the documents, 95 per cent of them. It so happened that

the documents which Mr. Tom McConnell was examining on were the 5 per cent or the 3 per cent—

The Court: I got that impression, Mr. Dodds, from Mr. Curtis, too. All right. It is the difference between 95 and 98 per cent that is the only difference.

By Mr. McConnell:

Q. I call your attention to a document, Defendant's Exhibit No. 11, which purports to be a copy of a letter under date of November 21, 1961, from Mr. Crotty to you, and ask you to look at that and tell us whether or not you got it through the mails?

A. Yes, I did.

Q. Now, in that letter, Mr. Crotty tells you—I'm quoting from Page 2 of the letter:

> 346. "I of course am fully aware of the Hazeltine standard license agreement, and understand that a license is available through that instrument under not only these selected patents but also of the patents subject to licensing by Hazeltine."

Is that true? Was that standard license available at that time?

A. Let me answer it this way. As of that moment, yes; but as of a matter of days thereafter, it was not.

Q. Now, this date is November 21, 1961, when it was available; correct?

The Court: That's what he said, Mr. McConnell. Why push your luck?

Mr. McConnell: I know. I just want to get the date fixed.

By the Witness:

A. Yes.

By Mr. McConnell:

Q. All right. Now, was there a maximum on that standard license?

A. I can't remember the details of that license.

Q. Well, do you want to refresh your recollection 347 by looking at the document, license agreement 918?

A. There are—or there is what we termed a lump sum payment in there of $50,000, having to do with monochrome.

Q. Wasn't there an over-all maximum which was equivalent to the maximum paid by RCA under their license?

A. Not in this instrument.

Q. Well, was that offered as a maximum, if you took the package license?

A. No.

Q. You never offered that to Mr. Crotty?

A. No.

Q. Did you discuss with Mr. Crotty—

A. To the best of my recollection, no.

Q. Did you ever have any discussion with Mr. Crotty about a maximum on the RCA license?

A. I don't recall.

Q. Well, was there a maximum in the RCA license?

A. Yes.

Q. Which was in force at that time. And what was that maximum?

A. The RCA agreement supplements this Form 918 348 by providing a maximum of $150,000 a year on color, color television, a figure which was, by the year—this supplemental agreement increased to $200,000 a year at a later date.

Q. And how long did that maximum run?

A. To June 30, 1966.

Q. And wasn't it the policy of your company not to offer a package license to any other licensee any different from that maximum?

A. Would you read that back. I'm not sure I got it.

Mr. McConnell: Read the question, please.

(Question read.)

By the Witness:

A. There was no certain policy on that.

By Mr. McConnell:

Q. You didn't have a policy not to discriminate as between licensees?

A. Again, there was no certain policy. It was generally an attempt to put everyone on a similar basis, meaning non-discrimination.

Q. All right. Now, how was that attempt evidenced or shown?

Well, let me withdraw that question—

349 A. I really can't answer that. It is too vague.

Q. Well, did you make that attempt known to your prospective licensees, that there was an attempt on your part not to discriminate between them and RCA?

A. I don't recall. There may have been casual conversations to that effect, but I have no recollection.

350 Q. You don't recall ever having told that to Mr. Crotty?

A. I do not.

Q. At any time in your discussions?

A. I do not recall. We may have had some casual conversation about it. I do not recall.

Q. Now, Mr. Crotty in this letter, Defendant's Exhibit No. 11, says:

> "Since we obviously have no need for a license under all of the patents of your portfolio, I am most desirous of learning the terms under which individual licenses may be obtained under any of those identified patents. This information is required in order to prepare for further meeting with you on this whole question. I would like a letter of advice at your earliest convenience."

Did you send to Mr. Crotty the license rates on individual patents?

A. The best I can answer that question is, a recall
351 sending him a draft, new form of license agreement labelled "for discussion."

Q. I show you a document which is marked in evidence as Defendant's Exhibit No. 12, and ask you if you can identify that as the document which you just referred to?

A. Yes. Without reading all the fine print in here, that is undoubtedly it.

Q. Now, does that license agreement have a maximum?

A. I've forgotten what it provided. I would have to study it.

Q. Doesn't it have a maximum of $500,000?

A. I don't know. I don't know.

Q. You don't know?

A. Without studying it.

Q. All right. I don't want to take the time for you to study it.

A. It is a long document, and it's three years ago.

Q. You knew that Zenith would reach a maximum on its sets, of any maximum, didn't you?

A. I knew nothing about that.

Q. Well, didn't you know it was the largest producer of television, radio sets in the industry?

352 A. I understood it was.

Q. And the other—RCA reached its maximum, didn't it?

A. Yes.

Q. Producing less than Zenith, RCA reached its maximum.

A. I didn't get that question. Is that a question?

Q. All right. Let's skip it. We will get on to something else.

Didn't Mr. Crotty point out to you, when you gave him that license agreement, that you were putting a maximum of $500,000 on the package in a situation where RCA was getting the same coverage for $200,000?

A. I have no recollection of such a statement, no.

Q. Well, it wasn't acceptable to Mr. Crotty, was it—that license?

A. I don't know. All I know is that the talks were broken off.

Q. All right. I note that that license agreement is
designated as something that is a proposal. Was there
353 ever any such license agreement executed by any
licensee?

A. No.

Q. That was one peculiar—a proposal particularly for Zenith; is that right?

A. No, it was not only for Zenith.

Q. Well, was it proposed to anybody else?

A. It was a draft for discussion.

Q. Well, was it proposed to anybody else, any other company in the industry, except Zenith?

A. Yes.

Q. Who?

A. I sent a copy—my recollection is pretty certain that I gave the same draft to the General Electric Company.

Q. And did they execute it?

A. No.

Q. Now, at or about the time of these discussions with Zenith, was there some discussion in your company about whether or not a package license constituted a misuse of the patent?

A. Yes.

Q. And what part did you have to play in those discussions, if any?

354 A. Well, it is a long story that took up the next
three years. I perhaps am the one that initiated it at
the time of these talks with Mr. Crotty. I initiated it by a
memorandum which I sent to my president, Mr. Wilson.

355 Q. I show you a document which is marked in evi-

dence as Defendant's Exhibit 23A, which purports to be a memorandum under date of November 20, 1961 from E. A. Ruestow to W. H. Wilson, "Special Report Requested By You."

Is that the document that you are referring to?

A. Yes.

Mr. Dodds: The list that I was given doesn't have a 23A on it.

The Court: Well, will you read the date of it, and who it is from and who it is to, for Mr. Dodds' information?

The Witness: This is a memorandum from me to Mr. W. H. Wilson, dated November 20, 1961.

Mr. Dodds: Thank you.

By Mr. McConnell:

Q. Now, will you tell us the occasion for your preparing that memorandum?

A. I had come to the conclusion that the old standard license agreement 918, which appears to be Exhibit B that you showed me before, was no longer workable. It presented problems.

356 And so, after some thought, I prepared this memorandum to Mr. Wilson as an attempt to explore a new solution to the problems.

Q. I call your attention to your statement on page one of your memorandum, under paragraph two, numbered two. Well, first, you say:

> "The problem is very complex but centers around two major factors; one business, and one legal."

I am referring to two, which is the legal. You say:

> "New trends in the law (patent misuse) threaten to deprive us of the right to enforce our patents if we maintain our present standard license, unless we are willing to accept even lower royalties than we now ask."

What were the trends in the law which you referred to?

A. Well, that is a very broad question. I think most lawyers are aware of a case law on this doctrine of misuse, and that is a very broad question. I think most lawyers are aware of a case law on this doctrine of misuse, and that is all I had in mind.

Q. Well, did you have in mind that under the decisions, the recent decisions of the courts, this standard license 357 which you were using was illegal under the antitrust laws?

A. I didn't think it was illegal.

Q. You thought it was legal?

A. Yes.

Q. I call your attention to page three of this memorandum, under the title, "The Legal Problem (patent misuse):

> "This simply stated is that we may not get ourselves in a position where we are forcing a licensee to take a license under all our patents in order to get those he wants. He must be free to make his own selection of those he wants without being blackmailed to recognize others. If we do this, the courts will not enforce our patents until we purge ourselves of this misuse of patents. That can be a very disastrous penalty if we cannot purge ourselves quickly, and it conceivably could take us six years to do so."

Was that your opinion of your standard license at the time?

A. That was not my—necessarily my opinion of 358 the standard license. It was my opinion of problems we might get into.

Q. Well, wasn't it your opinion of any license that made the licensee take the whole package in order to get what he wanted?

A. That I think—I think I stand on that statement I made there. I wrote that, and that expresses about what I thought at the time.

Q. Well, you still stand by it, do you?

A. Yes.

Q. Then you say:

> "This legal problem is by no means new, but it has assumed a more threatening nature in view of a recent court decision, wherein a company was held to have misused its patents by telling a licensee he could have all patents or only one, but that the rate was the same either way. This decision implies that the rate for one must be proportionately smaller than the rate for all in order to be legal."

Now, what decision were you referring to?

359 A. The Securit decision.

The Court: What decision?

The Witness: I've forgotten the citation.

The Court: No. I mean, you just said a word—

The Witness: Securit, S-e-c-u-r-i-t.

The Court: Just so my court reporter gets it down in the record.

All right. Go ahead.

By Mr. McConnell:

Q. That was the decision by Judge Leahy down in the Delaware Federal Court, wasn't it?

A. I don't know.

Q. You don't know?

A. I've forgotten.

Q. You've forgotten.

Then you say:

> "This is precisely the situation with HRI."

That's Hazeltine Research?

A. Yes.

Q. (Continuing.)

"Zenith wants a license under only a few more patents of their own choosing. We will have to offer them 360 at less than our present royalty for all, or run the risk of running afoul of the law and incurring a severe penalty."

Was that your opinion then and now?

A. That was my opinion then.

Q. Now, you say:

"While I once minimized the threat in this misuse problem, I now take a more serious view of it. It is closely related to antitrust problems. And in view of political trends in Washington, I think this whole business is more apt to get worse than better during the profitable life of our color patents."

Was that your opinion at that time?

A. I wrote it. I stand by it.

Q. All right.

A. As of that time.

Q. Now, you never, at any time, offered Zenith a license for patents of their choosing at less than your present royalty rates for all, did you?

361 A. Will you read that one back.

Mr. McConnell: Read the question to the witness, please.

(Question read.)

By the Witness:

A. I don't understand that. You will have to clarify it.

By Mr. McConnell:

Q. Well, you can't answer the question; is that it?

A. I don't understand it.

Q. Well, I'm content with that answer, I guess.

I show you a document which is marked Defendant's

Exhibit 24 in evidence, and ask you in whose handwriting that document is?

A. That's my handwriting.

Q. What was the occasion for preparing that—

A. May I say, I would much prefer to see the original, since these are undated and I am not at all certain whether this is exactly an original copy of it.

The Court: Maybe Mr. Dodds has the original.

362 Mr. Dodds: Yes, your Honor, we do have it—

Mr. McConnell: I would like to see it. I can hardly read it myself.

Mr. Dodds: Which document are you referring to?

The Court: Can you give him a hint of what you want, Mr. McConnell.

Mr. McConnell: It is notes of Mr. Ruestow under date of December 14, 1961, on the L. B. D. memo.

The Witness: I must make a statement. That remark at the top is not my handwriting, and I believe it was added within the last few months by someone else.

Mr. McConnell: Well, all I can tell you is what is on here. That is the only description on the document.

The Court: Let Mr. Dodds look and see if he can find the original.

363 Mr. Dodds: Does the witness want it back?

Mr. McConnell: The witness wants it, I guess.

By the Witness:

A. Very well. I want to point out, first, that the original does not bear that handwriting right at the top which says, "Ruestow's notes on LBD's memo of 12/14/61"; that is not my handwriting and it is not on the original.

By Mr. McConnell:

Q. All right, it is not your handwriting but it is accurate?

A. Yes.

Q. That correctly describes the document, doesn't it?

A. Yes, except for the date. I am not sure of the date.

Q. Well, what was the "LBD memo"?

A. The LBD memo was a memo written by Mr. Dodds to Mr. Wilson shortly after my memo to Mr. Wilson.

Q. The one that we have previously been testifying about?

364 A. Yes.

Q. I call your attention to this note in your handwriting on the paragraph two, entitled "Misuse law".

You say, "He is wrong about the threat of Securit—"

I can't read that name. Can you tell me what that name is? Hasting, is it?

A. Houston.

Q. (Reading.)

> "Kenyon, Phil LaFollette agree with me. Many others are worried (Page, Rathburn). Zenith subpoenas us now."

Now, what does that refer to?

A. I have already indicated these were comments on Mr. Dodds' memo.

Q. Well,—

The Court: Well, in regard to the phrase "he was wrong," who was he?

The Witness: Mr. Dodds.

The Court: All right.

By Mr. McConnell:

Q. Well, was it your opinion and that of Houston and Kenyon and Phil LaFollette that the Securit case 365 made a package license illegal?

A. No.

Q. It wasn't?

Then you say:

"Attorney General's report is out of date, with a

> new rambunctious Attorney General, R. Kennedy, raising hell in anti-trust matters. GE troubles, common pricing."

What does that refer to?

A. Just what it says. I wouldn't care to amplify it.

The Court: What is "GE troubles"? Could you amplify that?

The Witness: General Electric Company antitrust.

The Court: You are talking about the electrical equipment cases all over the country?

The Witness: Yes.

The Court: All right, that at least makes some sense to me. "GE troubles" doesn't mean anything. Now I know what you are talking about.

366 By Mr. McConnell:

Q. Then you say:

> "3. My whole case hinges on the above two points in which LBD is in error. It opens the possibility of higher income and gets misuse off our backs. I must act now. Zenith is forcing me. I must either give them low rates to avoid misuse or raise the package rate."

Now, did you ever give Zenith a lower rate to avoid misuse, at any time?

A. We never got—as I indicated before, these dicussions were broken off. We never got even to the point of discussing it.

367 Q. Well, you didn't, though, did you? You didn't offer them a lower rate to avoid misuse?

A. Not at this time, no.

Q. Now, you say under paragraph 8:

> "It was not the absence of ceilings that brought RCA down, it was antitrust shennanigans in Europe. The Government decree is good evidence of that."

Now, what were you referring to by "antitrust shennanigans in Europe"?

A. I don't recall, except that the RCA situation was in the air then, and that is about all I can say.

Q. Well, you knew they were in these pools all over Europe, didn't you, just like your company was?

A. I didn't know anything about what they were doing in Europe.

Q. Well, you knew enough about it to say that there were "antitrust shennanigans in Europe" in your memo, right?

A. Is that a question?

Q. Yes, that is a question.

368 A. All I knew was that a lot of people were shouting about it.

Q. Well, who?

A. The press, Mr. McConnell, many other people.

Q. Which Mr. McConnell? This Mr. McConnell?

A. Yourself.

Q. Where was I shouting about it?

A. In this lawsuit.

Q. In the Zenith lawsuit against RCA, is that what you are referring to?

A. That.

Q. Now, you say it was not the absence of ceiling that brought RCA down. What is the absence of ceiling that you are referring to?

A. Well, I would have to refer to Mr. Dodds' memo which I was analyzing and on the basis of which I wrote these notes before I can say any further.

Q. All right, I will show you a document, Defendant's Exhibit No. 3, which purports to be from L. B. Dodds to Mr. W. H. Wilson under date of December 14, 1961, marked

"Personal and confidential" on the subject of prospec-
369 tive Hazeltine royalty income, and ask you if you can identify that as a report on which you were commenting?

A. Yes. I am going through this hastily, but I assume it is a full copy.

Q. All right.

Your comment under 8 was directed at Page 5 and you say, "It was not the absence of ceiling that brought RCA down."

Now, what did Mr. Dodds say about that? Did he say the ceiling brought them down?

A. Page 5?

Q. Page 5, his memo.

A. I don't find the remark that ties together with my comment here.

Q. All right.

Under 9, in your notes, you say, your comment is:

> "If I am forced to stick to the present agreement, Zenith will make me divide 1.35 per cent up among maybe 80 patents, or if I offer 50 per cent, 80 per cent, 100 per cent deal to pick the patents, then zingo, we are right back in misuse."

370 A. Yes.

Q. Now, actually, you did offer 50 per cent, 80 per cent and 100 per cent deal, didn't you, to Zenith?

A. Not I.

Q. You didn't?

A. I don't recall.

Q. You don't recall making—

A. I mean I didn't. My recollection is that I did not. Whether someone else did, I don't know.

371 Q. Well, you had such a deal, didn't you, of fifty per cent for one patent, eighty per cent for two and a hundred per cent for three or more?

A. Yes, we had.

Q. And you don't know who offered it to Zenith, if they did offer it to Zenith?

A. That is correct.

Q. But you thought if they did offer it you were right back in misuse, is that right?

A. That is what I apparently thought at the time, yes, I did think at the time.

Q. And you say:

> "I am really in a box and the only way out is to break down the old walls."

A. Yes.

Q. You didn't break down any old walls, did you?

A. Yes, we did.

Q. What did you do so far as Zenith is concerned?

A. As far as Zenith is concerned, the negotiations were terminated by Mr. Crotty so there was no opportunity to break down old walls.

372 Q. And that was when—well, what have you done to break down the old walls?

A. We had under discussion a number—

Mr. Dodds: Your Honor, I think it would be appropriate to suggest that the witness confine his answer to a period up to May 22, 1963, which was the termination date following the counter-claim in which your Honor has previously ruled would be the termination of this proceeding.

The Court: And I will so do at this time.

By Mr. McConnell:

Q. What did you do up to that time to break down the old walls?

A. We attempted to draft new forms of license agreements.

Q. Well, did you submit any of them to Zenith?

A. I have forgotten. I believe we did submit one in—

just before this May 22nd date. What is it that we were speaking of?

The Court: May something of '63.

373 By Mr. McConnell:

Q. '61, wasn't it?

A. '63, I am sorry.

The Court: We are talking about the date of your counter-claim, Mr. McConnell.

Mr. McConnell: Oh.

The Court: May something.

By Mr. McConnell:

Q. Well, were you convinced at least up until May, or whenever you submitted this new proposal, that your old proposals, your old license agreements, constituted misuse under the patent?

A. No.

Q. You weren't? And this was sort of a gratuitous undertaking, was it? It was not to remedy any of your legal defects in your licensing system that you made up this new licensing agreement?

A. The picture—it was not to remedy, necessarily, defects, it was to solve an economic problem, as far as I am concerned.

Q. Have you had anything to do with negotiating extension of the agreements between your company and 374 the Hazeltine Company and Canadian Radio Patents Limited?

A. Yes.

Q. And what negotiations have you had?

Mr. Dodds: Again, I suggest that the question be confined to the period prior to May 22, 1963.

The Court: That will be the order.

By the Witness:

A. Just exploratory discussions as to what we would do.

By Mr. McConnell:

Q. Well, was there an agreement in existence with Canadian Radio Patents, Limited up to the date of the filing of the counter-claim here under which your patents were in the Canadian Radio Patent Limited Pool?

A. Would you read that one back?

Mr. McConnell: Read it back to the witness.

(The question was read.)

By the Witness:

A. Yes.

By Mr. McConnell:

Q. Had you any negotiations prior to that date
375 seeking to renew that arrangement?

A. Yes.

Q. And I take it that those negotiations had not borne fruit, at least to the time of the filing of the counter-claim, is that right?

A. They had not borne fruit by that time.

376 Q. How long have you had to do with the Canadian Radio Patents, Limited matter up in Canada?

A. Since 1954. Perhaps I better make that a little more clear. If you are talking about the contractual arrangements, it would be since, oh, the last year. When I said 1954 I had in mind the filing of patent applications up there, which was my responsibility.

Q. Well, in your handling of the matter, the relationships of your company with Canadian Radio Patents, Limited, did you find out that their output license from that pool was limited to licensees who manufactured in Canada?

A. No.

Q. You never found that out, at any time?

A. Would you restate that to make sure that I understood it correctly?

The Court: Will you read the question, Mr. Comeau.

(Question read.)

By the Witness:

A. Well, let me try that again. I heard a lot of talk to that effect, but as far as I understood it, it was
377 not unqualifiedly so.

By Mr. McConnell:

Q. Did you ever see a copy of the standard license issued by that pool?

A. No.

Q. Never saw it in the files of your company?

A. I don't believe I have. It is quite possible that if there is one in the files I might have seen it at one time or another, but my recollection is that I did not.

Q. I show you a document which is produced from the files of the Hazeltine Company, which is marked in evidence as Defendants' Exhibit 123, and I ask you whether or not you have ever seen this document before, or a copy of it?

A. No, I have no recollection of having seen this document.

Q. Have you ever made any inquiry of the Canadian Radio Patents, Limited, as to what kind of license they were using, output license?

A. No.

Q. Did you know that there was litigation between Zenith and RCA and General Electric over the restric-
378 tions of that pool?

A. By way of the Law Reports, yes.

Q. I call your attention to this provision under Article II of this form of license which comes out of your files:

"The licensor hereby grants to the licensee upon the terms and conditions hereinafter set forth a personal, indivisible, nontransferrable and nonexclusive license only for the licensed apparatus hereinafter specified and defined and only as follows:

"a. To manufacture licensed apparatus in Canada and to sell or lease licensed apparatus so manufactured and

"b. To have licensed apparatus manufactured in Canada for the licensee and to sell or lease such licensed apparatus so manufactured for the licensee subject to the payment of royalties thereon by the licensee as provided in Article III hereof. Sublicensed apparatus shall be deemed to be licensed under this agreement at the time of sale or lease by the licensee."

379 You never heard of that clause being in the standard license?

A. No.

Q. Never heard of it before today?

A. I have already indicated that I never saw the—had any recollection of having seen the agreement and, therefore, I haven't seen it before today.

Q. That wasn't quite my question.

My question was whether or not you had heard of it before from any source.

A. No, not that provision, no.

380 Q. Were you familiar with the antitrust suit brought by the United States Government against RCA and others down in New York seeking to declare this pool illegal because of that restriction?

The Court: Which pool, the Canadian pool?

Mr. McConnell: The Canadian pool.

By the Witness:

A. I thought I had already answered that.

The Court: This is a new question. Had you ever heard of that lawsuit? This is the question.

By the Witness:

A. I thought we referred to that lawsuit a few moments back, or perhaps you were talking of another. In any event, my only knowledge of them was what I have read in law reports.

By Mr. McConnell:

Q. Well, from law reports or any other source, did you ever find out that the United States Government was attacking that pool because of that restriction on imports of sets from the United States into Canada?

A. I can't answer that. I just don't know what the
381 United States Government was attacking. All I know is that there was litigation.

Q. Well, did you know that as a result of it the RCA patents were taken out of that pool?

A. No, I do not.

Q. Nobody ever told you that? You never found that out from any source, is that right?

A. No, I don't know that.

Q. Did you ever read the decree that was entered in that case?

A. I did see a copy of the decree, yes.

Q. When did you see a copy of the decree?

A. Oh, a year ago, perhaps longer.

Q. And you don't recall what was in it?

A. I don't recall what was in it.

Q. Have you had anything to do with the negotiations with the pools in England?

A. Yes.

Q. What have you had to do on that subject?

A. I have reviewed the contracts of extension, and that is about all.

Q. Well, what do you mean "reviewed them"? You have looked at them and read them?

A. Looked at them, yes.

382 Q. And you are referring to the extensions of the A.7 pool and the A.8 pool, is that what you are referring to?

A. I have forgotten the numbers. I think the numbers A.8 and A.7 are correct, but I am not sure.

Q. The A.8 pool is still in existence, is it not?

A. I don't know the number. There is a pool still in existence.

Q. And in that pool you have the Hazeltine patents, do you not?

A. Well, they are as provided in the Hazeltine contracts which you have here. There are certain provisions about the patents going into the pool, and I don't remember the details.

Q. Do you remember that you have a partner over there called General Electric Company, Limited, in England?

A. I know General Electric Company, Limited. Whether you call it a partner or something else, I don't know.

Q. You wouldn't want to characterize it?

A. I don't want to characterize it. We have a 383 written contract.

Q. Is that one of the things that you have reviewed, the contract?

A. Yes, I have read that.

Q. Have you reviewed all of the contracts?

A. No.

Q. Well, what was the purpose of reviewing them?

A. The more recent ones?

Q. Why were you reviewing them?

A. To familiarize myself with the position of my company in contract matters.

Mr. McConnell: I have no further questions of this witness.

384 The Court: Have you anything, Mr. Dodds, at this time?

Mr. Dodds: Yes, I have.

The Court: Go ahead.

Mr. Dodds: Do you want these papers?

Mr. McConnell: Yes, I will take them back if they are mine. Thank you.

The Court: Did you get your original back, Mr. Dodds?

Mr. Dodds: Yes, I have it.

The Court: All right.

Mr. Dodds: I apologize for some confusion of exhibits. We have had three successive lists and they have been arranged in different orders and with some 250 exhibits, it has been hard to make a current list.

The Court: It is not necessary to make excuses. I am amazed, with the volume, that you are able to do as well as you have.

Cross-Examination by Mr. Dodds.

Q. Mr. Ruestow, do you consider yourself an expert in the antitrust field?

A. Definitely not.

385 Q. Would you state whether or not, when the company has been presented with antitrust problems, you have called on outside counsel expert in that field?

A. The company has, yes, definitely.

Q. You were asked with respect to this $200,000 maximum, which is in effect in the RCA license, and I think you were asked whether or not that would extend to other licensees having what has been characterized as a package license; is that correct?

A. I was asked the question, yes.

Q. Yes. I think you indicated that—I don't have the transcript, but I think you indicated that it was the policy of Hazeltine Research to treat its licensees equally so that similar terms would be offered to another company; is that correct?

A. I think what I meant to indicate is that we had that desire as simply good business. It might not have been possible in all events.

Q. Now, still on this maximum of $200,000, would you state whether or not it would apply to a license, whether the licensee elected to have a license under all of the Hazeltine patents or only under some of the Hazeltine
386 patents? In other words—I will rephrase the question.

Assume that a licensee elected to take a license, including a license for color television and elected, say, only four of the Hazeltine patents. Would you state whether or not this $200,000 maximum would still apply?

A. No, I think not.

Q. Well, in that case, would the maximum be more or less? And I am speaking as of May 22, 1963.

A. Would the maximum be more or less?

Q. Yes, if the licensee elected fewer than all of the Hazeltine patents.

A. I really don't know. I can't at the moment answer the question. I haven't got all the contracts firmly enough in mind.

Q. Well, the point that I had in mind was to state whether or not—and if you don't remember, obviously, say so; but state whether or not the $200,000 maximum was effective only with respect to licensees electing the entire package, or whether it was effective only with respect to licensees electing fewer patents of the Hazeltine
387-8 group.

A. I thought I already answered that. As far as I'm concerned, the maximum we are talking about was in one contract. What we would have done with other contracts I'm not sure.

Q. Now, you were examined about Defendant's Exhibit 27, which is the one I think you have in your hand, relating to comment on a memorandum of myself to—I'm sorry;

yes, with respect to a memorandum which I had written to Mr. Wilson.

Would you state whether or not that concern which you had as to misuse of patents arose from, say, an extension of the form of license agreement then in effect to the color television field?

A. My concern was definitely with the color television area, yes, if that's what you mean.

389 Q. Do you know whether or not the form 918 license about which you have testified was drawn primarily with the view of black and white television, or color television, or both?

A. It covers both. But at the time it was written, monochrome television was the only thing of importance.

Q. Insofar at least as the Hazeltine patents are concerned, in your opinion, is their situation different in respect to black and white television than color television, or the same?

A. I'm not sure I got the first part of that. Will you read it?

The Court: Will you read the question, Mr. Court Reporter.

(The question was read.)

By the Witness:

A. Their situation is completely different in terms of relative patent strength.

By Mr. Dodds:

Q. As of 1958, which is the time I believe you said this form 918 agreement went into effect, what was the status of the commercial manufacture and sale of colored television receivers in this country?

390 A. At that time, only the RCA company was manufacturing colored television.

Q. And do you have any idea of the relative magnitude of the manufacturing and sale of color as against monochrome? Was it one per cent, ten per cent, fifty per cent?

A. Oh, according to my best information, it was extremely minor. It must have been around one per cent or lower.

Mr. Dodds: I believe that is all.

The Court: I have a question. You said that there would be a difference in the maximum if they took less than the whole package. Would there be a difference in the rate of forty-five hundredths of one per cent of total sales if they took less than the whole package? You did use that figure, didn't you?

The Witness: No, I didn't use—

The Court: I mean, you heard it read.

The Witness: Yes.

The Court: Are you familiar with that figure, forty-five—

The Witness: Yes, I'm familiar with that figure.

391 The Court: Would that percentage be less or more or different in regard to total sales if they took less than the whole package, the package deal, or did that question ever come up?

The Witness: That question never came up, your Honor. It is speculative—

Mr. Dodds: Your Honor, I think you can hark back to the early part of this trial, and remember Mr. Thomas' testimony. He pointed out that under the 918 license for monochrome television, the rate was, I think, .95, and he referred to some licenses that took a license under a single patent at half that rate. I believe that is of record.

The Court: Then maybe it is time for our noon recess. We will recess until 2:00 o'clock.

(Whereupon, the trial in the above entitled matter was recessed until 2:00 o'clock P.M., the same day.)

392 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

Before Honorable Richard B. Austin
on February 18, 1964, at
2:00 o'clock P.M.

Trial resumed pursuant to recess.

Appearances:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

393 The Clerk: Case on trial.

The Court: You may proceed, Mr. McConnell.

Mr. McConnell: I want the witness back. Are you through with your cross?

Mr. Dodds: Yes.

The Court: He said he was.

Mr. McConnell: Just a couple more questions on redirect.

The Court: You want some redirect of this adverse witness.

EDWARD A. RUESTOW, having previously been sworn as an adverse witness, resumed the stand and was examined and testified as follows:

Redirect Examination by Mr. McConnell.

Q. Mr. Ruestow, Mr. Dodds asked you if you were an expert in antitrust law and you said no. Now, I want to ask you, are you a lawyer?

A. I am a lawyer.

Q. Where are you admitted to practice law?

A. In the District of Columbia and New York state.

394 Q. In this memorandum which is in your handwriting in evidence as Defendant's Exhibit No. 24, you refer—

A. May I have a copy of it or, rather, the original.

The Court: Have you got the original, Mr. Dodds?

Mr. Dodds: You want the original?

The Court: Your witness wants the original, or his witness wants it. I don't know whose witness it is.

By Mr. McConnell:

Q. Now, on the first page of that memoranda or memorandum, you say:

"Many others are worried about this misuse law,"

And you cite Page and Rathburn.

Who are they?

A. Attorney associates of mine, or friends, I should say.

Q. Are they Chicago lawyers?

A. Rathburn is.

Q. How about Page?

A. I don't know where he is.

395 Q. Is he a lawyer?

A. Yes.

Q. Then you refer to LaFollette, Phil LaFollette.

A. Yes.

Q. Is he a lawyer?

A. Yes.

Q. And you also refer to Houston, is he a lawyer?

A. Yes.

Q. And Kenyon, is he a lawyer?

A. That is one name, Houston Kenyon.

Q. Houston Kenyon? Where does he practice law?

A. New York City.

Q. Now, in your note you say that they are all worried about the misuse, is that right?

A. Well, the words I used are "others are worried".

Q. And you cite their names.

A. Yes.

Q. Now, you also say on Defendant's Exhibit No. 27—well, let me ask you about Defendant's Exhibit No. 27; is this memorandum in your handwriting?

396 A. Yes. Again, I would like the original, because I am not at all certain that these pages all fit together.

Mr. McConnell: The witness wants the original of 27.

Mr. Dodds: Your Honor, I object to consideration of this as being outside the scope of the direct examination. This Exhibit has not been brought into the case, I believe.

The Court: Well, it may be—of course, I don't know what this says, but it may be that the cross examination has opened the door to this. I don't know what it contains.

Mr. Dodds: Well, I would like to make an objection subject to a ruling connecting it up with the cross examination.

Mr. McConnell: Well, I will state what it is for. You asked the witness whether or not he was an expert in anti-trust law and then we have reference to four other lawyers in one document, and in Defendant's Exhibit No. 27 we have a reference to Mr. Diggins who is worried about this

397 misuse and I want to find out who Mr. Diggins is.

Mr. Dodds: For that purpose, I will withdraw the objection, your Honor.

The Court: All I have to do is look at the front of my plaintiff's pre-trial brief and I would assume that he is a lawyer.

Mr. McConnell: Yes, he should be or he shouldn't be here. Have you got the original?

The Court: You want to ask him who Mr. Diggins is?

By Mr. McConnell:

Q. Have you got the original?

A. No.

Q. Who is Mr. Diggins?

A. Mr. Bartholomew Diggins is sitting in the courtroom here.

Q. Well, Mr. Diggins is an expert in antitrust law, isn't he?

A. I suppose so. I think whether he is or not is really not within my province to say.

398 Q. Well, do you know whether or not he has written articles on antitrust law?

A. I do not know.

Q. You don't know. You do know he is a lawyer?

A. I do.

Q. Well, was Mr. Diggins worried about this misuse defense?

A. Oh, I don't know.

Q. You don't know.

The Court: Do you want to get the original of that?

Mr. McConnell: Yes, I want the original.

The Court: To refresh his recollection.

By Mr. McConnell:

Q. All right. Will you look at the original of Defendant's Exhibit 27, and will you look at Page—

A. There is some mistake here. I don't think I have the same thing as you have, Mr. McConnell.

Q. All right. Now, here is what I want to ask about—that statement there in your notes. See if you can find it in your original.

A. It's not on this original.

Q. Not on the original?

399 A. Not on the original of what I have before me.

Q. Can you identify that as a copy of your handwriting?

A. That happens to be my handwriting, yes.

Q. Well, your note that Diggins was worried about this—can you tell us what that refers to?

A. I wrote it one time, probably having in mind some casual remark he made to me, and that's all I can recollect right now.

Mr. McConnell: I have no further questions of the witness.

The Court: All right.

Recross Examination by Mr. Dodds.

Q. Mr. Ruestow, do you know if Mr. Page is an antitrust lawyer or a patent lawyer or a general lawyer?

A. He is a patent lawyer.

Q. The same question with respect to Mr. Rathburn.

A. Patent lawyer.

Q. The same thing with respect to Houston Canyon.

400 A. Patent lawyer.

Mr. Dodds: That is all.

The Court: All right. Step down.

(Witness excused.)

The Court: Next witness.

Mr. McConnell: I would like to call Mr. Dodds for adverse examination, your Honor.

The Court: You have counsel here with you. We don't have to send for him today, do we?

Mr. Dodds: That's right.

The Court: The last time we had to send for counsel.

Mr. Dodds: That's right.

Mr. Diggins: And I have already been identified, your Honor.

LAURENCE B. DODDS, called as an adverse witness by the defendant herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Mr. Dodds, did you ever actively undertake
401 negotiations with reference to the placing of the Hazeltine patents into the English pool?

A. Yes.

Q. And when did you undertake those negotiations?

A. Maybe I should qualify that. I did not ever undertake negotiations to place the Hazeltine patents in the British pool. But I did participate in negotiations with the General Electric Company, Limited, of England for a continuation of the patents in the British pool.

The Court: Which means that they were in the pool before you—

The Witness: Right.

The Court: All right.

By Mr. McConnell:

Q. Well, you also undertook to negotiate with a company known as Electrical and Musical Industries—EMI, did you not?

A. I had some discussions in 1952, which included representatives of EMI.

Q. And EMI was a member of the English pool, was it not?

A. Yes, and so was the General Electric Company, Limited.

402 Q. I show you a document which is produced from the Hazeltine files, which is marked Defendant's Exhibit No. 76-B, and ask you if you can tell us who prepared that document.

A. I did not. I am not certain what individual did prepare that document.

Q. Now, this purports to be "Notes of Discussions with the Hazeltine Corporation;

"(Mr. L. B. Dodds) and EMI." Did you participate in such discussions?

A. I just so testified that I had.

Q. Did you attend discussions at Magnet House on the 13th of November, 1952, at which Mr. T. W. Heather, Mr. K. H. Nalder, and Mr. A. F. Cornock were present?

A. I do not independently recall that date, but I will accept the statement of the date. And with accepting that, I did attend such negotiations.

Q. Now it is recited here that—well, before I ask that question—I withdraw that.

Who is Mr. Heather?

A. Mr. Heather, at that time, was, I believe, assistant managing director of the General Electric Company, Limited.

403 Q. And it states here that:

> "Mr. Heather having welcomed Mr. Dodds, the draft continuation agreement (continuing all existing Hazeltine/GEC agreements to 31 December 1952 with certain adjustments) was referred to."

What was the reference made to that continuation agreement?

A. I just don't independently recall, of that discussion some twelve years ago, the details. One of the purposes of the negotiation was to negotiate a renewal of the Hazeltine agreement with the General Electric Company which was about to expire.

Q. Well, do you recall that there was a proposed draft there before you, which you were discussing?

A. I'm sorry, I just don't recall that.

Q. You don't recall that?

A. No.

Q. The memorandum then says:

> "Mr. Heather then outlined the state of negotiations
> in Great Britain for the formation of an A.7 Broadcast
> 404 Licensing Pool to succeed the existing A.6 pool on the
> 1st of January 1953. He said that EMI, Marconi, and Philips had completed an agreement to collaborate in licensing from 1 January 1953 to December 1957, and he believed the trade would wish to have licensing arrangements in being. A copy of the EMI/MWT/Philips pooling agreement (omitting Points allocations) was handed to Mr. Dodds with a copy of a note on the variations in the A.6 pooling agreement."

Do you recall that document having been handed to you?

A. I recall vaguely the document. I do not recall the details of that document.

Q. Well, do you recall having examined at that time the A.6 pooling agreement

A. I do not recall that. I do not think that we went beyond the document to which reference was made there.

Q. Do you recall a note advising you of what differences there were between this proposed draft and the A.6 pooling agreement?

405 A. Yes.

Q. And you examined and studied that, did you?

A. I at least examined it.

Q. Then it stated that:

> "Mr. Heather said that in principle the GEC"—that's General Electric Company, Limited, I assume—"wished to be licensor members of the pool, and would like to know if Hazeltine also wished to join it, either alone or (as GEC would hope) jointly with the GEC. Mr. Dodds replied that Hazeltine would like in principle to row in with the GEC."

Did you make that statement?

A. I have no independent recollection.

Q. Well, do you recall that you wanted to get in the pool along with GEC at that time?

A. That isn't a correct expression. It wasn't get in. We were willing to continue our relationship with the General Electric Company, which had theretofore placed the Hazeltine patents with their own in the British pool.

406 Q. Then it stated in this memorandum:

> "Mr. Heather then said that a stage had been reached at which direct discussion by Hazeltine-GEC (as partners) with the other present parties was needed. It was arranged by telephone to have a discussion with Mr. Preston and Mr. Dale-Harris of EMI at Magnet House on November 18."

Do you recall the arrangements for such a meeting?

A. I recall the arrangements for such a meeting. I do not specifically recall that date, although I will accept it as it is so stated in that memorandum.

Q. He then states:

> "It was agreed that grounds for asking for a higher pointing were: (a) color potentialties; (b) possible extension of Hazeltine Patent Number 436,940 (mixers) and potential use in TV; (c) recognition of need for stability of income for a research organization such
> 407 as Hazeltine. It was agreed to see solicitors and counsel as early as possible regarding the extent of the Mixer patent."

Now, what was the higher pointing that you were going to talk about?

A. It is my recollection that some representatives of the British pool had made an offer to the General Electric Company for the participation by General Electric Company and Hazeltine collectively which Hazeltine considered unsatisfactory. And the objective of my visit was to attempt to obtain what we thought was a more equitable share of the royalty income.

408 Q. In other words, you wanted to get more money out of the pool, isn't that right?

A. We wanted to get more money from our arrangement with the General Electric Company.

Q. And out of the pool. Your money was coming from the pool, wasn't it?

A. Our money came from General Electric Company and it in turn drew money from the pool.

Q. Now, it is stated here:

> "As between Hazeltine and the GEC, it was agreed that they wished to act in concert in licensing, discussion of division of income to be deferred."

A. Well, the term "in concert" is not a word of my choice and it has different meanings.

I understood that the purport of the meeting was that Hazeltine would continue its contractual relationships with the General Electric Company whereby it had the right to promote the use of the Hazeltine inventions in Great Britain.

Q. Then you were sharing the income from the pool fifty-fifty, weren't you, at that time?

409 A. We were, at the time, sharing—getting a 50 per cent participation of what the General Electric Company collected from the pool.

Q. Then the writer of this memo goes on to say.

> "As regards the former license from Hazeltine covering manufacture by the GEC under the Hazeltine patents, Mr. Gornock asked whether it was really equitable now that the GEC paid substantial royalties to the pool in which Hazeltine participated in drawing its share of pool income, that the GEC should also continue to pay royalties direct to Hazeltine in addition."

Now, is that a correct statement, that Hazeltine participated in drawing its share of pool income?

A. That, again, would not be my choice of words. That was the writer's choice of words.

Q. Well, the writer was one of those who was in this negotiation, I take it.

A. I believe so.

Q. Then he goes on to say:

410 "The general sense of the discussion was that GEC would not continue to pay Hazeltine a direct royalty for the use of Hazeltine patents in Great Britain, apart from Hazeltine's share of the pool income."

Now, what is Hazeltine's share of the pool income?

A. In my view, it did not have any share in the pool income directly.

Q. Well, apparently this man had a different view. You can go that far.

A. Apparently he did.

Q. That you had a share of the pool income.

Well, did you have 50 per cent of the pool income that was paid to GEC?

A. We had 50 per cent of the income which GEC obtained from the pool.

411 Q. Then this refers to a discussion on the A.7 pool which apparently took place at Magnet House on the 17th of November, 1952, present Mr. T. W. Heather, Mr. L. B. Dodds, and Mr. A. F. Cornock. Do you remember being present at such a discussion?

A. It is my recollection that that was the same date and the same group to which you previously referred.

Q. Well, do you remember this discussion between these three gentlemen on the 17th of November, 19—

A. I do not remember any distinction between discussions. My recollection is that the discussions continued most of the day, but I don't remember exactly who sat—whether it was a different group in the morning than in the afternoon, for example; that I do not recall.

Q. You have identified Mr. T. W. Heather. Now, can you tell us who Mr. A. F. Cornock is?

A. Mr. A. F. Cornock, at that time, was manager of the patent department of General Electric Company.

Q. Now, in this discussion, this last discussion I am
412 referring to, it's stated:

> "Mr. Heather, in the light of this, suggested that one should not, in the forthcoming discussions with EMI attack the general nature of the pooling arrangement, but should argue about the method of evaluating patents.
>
> "Mr. Dodds said that he was generally of the same view but felt that pool voting by a majority of points holding was objectionable and might also be criticized."

Do you recall making that statement?

A. Yes.

Q. (Reading):

> "Mr. Heather said the point had been noted, but one was conscious that this method had not in the past led to difficulties in practice.
>
> "Mr. Cornock reassured them that the majority vote applied only to a limited number of matters and could not compel the bringing of infringement actions by a patentee or be used to alter the participations of the
> 413 pool parties."

Now, you were interested in what is happening inside the pool, is that correct?

A. Only to the extent that it might affect the income of the General Electric Company and thus, indirectly, Hazeltine's income.

Q. Well, anything that affected the income of the General Electric Company directly affected the income of Hazeltine, did it not?

A. Right.

414 Q. (Reading):

> "Mr. Heather then asked whether, in discussion, one should, one, attack the method of pointing or; two, the detailed evaluations of the present method of pointing.
>
> "Mr. Cornock said that while details of EMI's own evaluation could be criticized to some extent, he felt that an attack on one would be necessary to produce any effect, though he doubted whether Mr. Preston and Mr. Dale Harris would consider themselves free to discuss this, as Mr. Shoenberg objected to discussing arrangements with the two parties jointly, though prepared to discuss with each separately. Possible modes of attack would be, A, to criticize the gamma of the point scale as having produced a result obviously not representative of the disadvantage that the pool would suffer if GEC and Hazeltine were not included."

Now, wasn't Hazeltine included in the pool at that 415 time?

A. No.

Q. It wasn't?

The Court: Could you tell me, Mr. Dodds, what this pointing business means?

The Witness: Yes.

The Court: I assume it has nothing to do with setters.

The Witness: No.

At that time, in order to minimize the disputes between the pool members as to their relative participations, a formula was worked out for evaluating the patents of the different members, and the formula resulted in assigning a certain number of points to the patents of each participating member. Then they added up all the points, and I believe at the time that it came out something like—my recollection is 1600 points, or something like that, and then they divided each party's points by that total pointage to determine what his percentage participation would be.

The Court: And that was based on the number of
416 patents one had in there or the importance of the patents?

The Witness: Well, it was a composite factor that took both into account. The formula included a factor for the number of patents and it also included a factor for the extent of use of certain of the patents.

The Court: All right.

The Witness: In other words, a patent which was in widespread use was given a larger number of points than a patent that was only a little or not at all.

The Court: All right, that clears it up for me.

By Mr. McConnell:

Q. And the Hazeltine patents were given some points, weren't they?

A. Yes.

Q. And you wanted the Hazeltine patents to be given a larger amount of points than was then contemplated, isn't that true?

A. No, I was not directly interested in points. What I was interested in was the percentage, irrespective of the formula by which it was arrived at.

417 The Court: Did the GE, Limited—were Hazeltine and GE patents in for the same number of points?

The Witness: The General Electric Company patents and Hazeltine's were considered as a unit, as an entity, and were collectively—and then, of course, the pool didn't have any interest in how those were distributed as between the parties.

The Court: I understand that, but this pointing had to do with the combined patents of Hazeltine and General Electric, Limited.

The Witness: Right.

The Court: All right. It wasn't a separate pointing thing for Hazeltine.

The Witness: No.

The Court: All right.

By Mr. McConnell:

Q. Then this memorandum says:

> "After further discussion, in the course of which it was felt that the securing of a change of gamma—"

What is a change of gamma?

418 I believe a gamma is defined as the ratio of the implemental change in income to the implemental number of points over the range of the decimal points.

The Court: And what language does that come from, CPA's or engineering?

The Witness: Engineering. That comes from engineering. An amplifier is generally considered to have a gamma if it is a non-linear amplifier. It has a curve characteristic so that it responds more in one portion of its range than in a different portion of its range.

By Mr. McConnell:

Q. (Reading):

> "After further discussion, in the course of which it was felt that the securing of a change of gamma might have undesirable future repercussions, and that an argument for revaluation of color or FM were adopted was less desirable than the adoption of the attitude that the present pointing did not do justice to Hazel-
> 419 tine/GEC, Mr. Heather summed up the proposed opening for the discussion with EMI as follows:

"1. Hazeltine and the GEC intended to operate together.

"2. Mr. Dodds had visited England to take part in joint discussions as the matter was of great importance to Hazeltine.

"3. The parties wished to cooperate, but on an equitable basis. EMI would then be asked to justify their scheme by stating its merits and how it was expected to work out, and it would be pointed out to them that it did not do justice to Hazeltine's potentialities or the value of acquiring rights in their inventions as an insurance policy."

Now, did you go along with that discussion and that proposed method of handling the negotiations with EMI?

A. I believe I did.

420 Q. What is meant here by the statement: "Value of acquiring rights in their inventions as an insurance policy"?

A. I believe the meaning of that was this: At the time, as I previously stated, Hazeltine had what it believed to be important patent position in the field of color television. At the time there was no color television in Britain. It was not sure—no one was sure just when they would have color television and, therefore, it was thought to be an insurance for the pool to have the rights in important Hazeltine color television patents should color television become commercial during the period of the next pool.

Q. In other words, that was to insure a prospective licensee that he wouldn't be sued on something that might eventuate out of applications for color and other things?

A. It was to insure that the licensee of a pool, if color should materialize within the period of the pool, would be licensed under the Hazeltine color television patents.

Q. Now, do you recall on the following day, on the 18th

of November, 1952, at Magnet House, you had a con-
421 ference with the EMI people?

A. I recall that on the day following the discussion with the General Electric people we did have such a conference which was attended also by two representatives of EMI.

Q. Was Mr. Dale-Harris of EMI there?

A. Yes.

Q. What was his position with EMI?

A. He was, I believe, manager of their patent department.

Q. And who else was there from EMI, if you recall?

A. Mr. S. J. Preston.

Q. What was his position?

A. He was assistant to Mr. Dale-Harris.

Q. All right, it is stated that:

> "Mr. Heather opened the discussion by saying that Hazeltine and the GEC wished to act together and approached the question of cooperation with EMI in the most friendly spirit."

Do you recall that statement being made?

A. I do not recall any specific statements. I recall only the general substance of the discussions.

422 Q. Do you recall that EMI was the most important member of the pool?

A. Well, I don't know what you mean by "most important," Mr. McConnell.

Q. Well, it had the largest number of patents, didn't it?

A. I do not know that.

Q. You don't know that?

Do you remember that they had the disposition of the RCA patents in the pool?

A. I do not specifically recall as of that time exactly what the nature of their rights was, but I do know as of that time they had some rights in the RCA British patents.

423 Q. Then he goes on to say:

> "They understood that the proposed scheme for the next pool was on the same general lines as for the past pool and the main point for consideration was, therefore, what was a fair basis for the assessment of holdings. They would therefore like to know the basis for EMI's proposed method of scaling holdings. Mr. Pressman said that TV design was now stabilized, and as it had in the past been necessary to bring actions against obdurate infringers, patents in force and available for action against infringers had been weighed heavily."

Do you recall that discussion?

A. I do not recall that specific discussion.

Q. (Reading):

> "Mr. Heather then asked why the particular scaling now proposed had been adopted. It weighed very heavily against potentially useful patents not actually in use at the moment, and he would like to know 424 whether other probable members of the new pool had accepted it. Mr. Dale Harris said that he thought it irrelevant whether others had accepted the scale. Mr. Preston said that the scale was somewhat on a 'cut-and-try' basis, adopted after considering the results of a range of possible scales. Mr. Heather repeated that it put a very high weight on patents actually in use: The GEC and Hazeltine had been concerned by the facts that, (a) patents expire, (b) new ideas become important, and (c) licensees take a license partly as an insurance policy. It was not clear that the scale took care of these factors properly."

Do you recall that argument being made in favor of your patents?

A. Yes.

Q. (Reading):

> "Mr. Dodds said that, in the U. S. A., a factor which markedly influenced licensees was not so much the ex-
> 425 isting patents as the potentialities of the licensor. He referred to color TV, saying that it would only be a question of time before it came in, and it was expected in about two years in the U. S. A."

Do you recall making that statement?

A. I don't recall the specific statement, but I recall comments to that general effect.

426 Q. Then they say that you made this statement:

> "A possible way of dealing with this would be to revalue holdings when color was adopted, but he was not really in favor of revaluation during the currency of a Pool. Mr. Preston said that he agreed with the two last comments, and added that, if revaluation were carried out, it would have to affect all licensors and EMI themselves considered they would still have a strong position, to which Mr. Heather replied that EMI had made a change of scale now and might propose a further change of scale when color came in. Mr. Dodds further pointed out that an adjustment would not affect all parties equally, because not all had had a long term research program on color as Hazeltine had had. Evaluation at one point per patent not in use did not do justice to the future importance of color, and Hazeltine's evaluation would increase more heavily than that of RCA as color developed."

427 Did you make those statements to the EMI representatives there?

A. As I said before, I do not remember making specific statements, but I remember making comments to that general purport.

Q. Well, your arguments were directed to the point of trying to get a better point rating for your patents in that Pool, weren't they?

A. No, they were not.

Q. They were not?

Then the writer of this says:

> "Mr. Preston said that he thought color was unlikely during the 'A. 7' Pool. He also pointed out that EMI had had to give an undertaking to the BBC that their patents would be available to manufacturers, and he thought that others in a dominant position would probably have to do the same.
>
> "Mr. Heather said that the GEC had had a certain participation in the past, and a reduction of participation in the next Pool needed to be justified. Moreover, suppose the Mixer Patent were extended for five years, 428 shortly after the formation of the Pool, what adjustment would the formula have provided for this important patent which would then be in existence at the date of issue of new Pool licenses? This led to further discussion about the evolution of formula for Pool pointing, in the course of which Mr. Dodds said that the formula could only be a first approximation and would need adjustment to take care of potentialities and 'intangibles'."

Did you make that statement?

A. Again, I do not recall making the statement in those exact words. I do recall making a statement to that general purport.

429 Q. Well, you were trying to make some changes in the pool's evaluation of patents, weren't you?

A. I was trying to make—no, not exactly, or no with qualification.

Q. Well, you had some point in being there and discussing the value of Hazeltine patents, didn't you?

A. Mr. McConnell, I stated previously that my sole purpose there was to get more bucks for Hazeline.

Q. Right. I think we are all in agreement with that statement.

> "Mr. Cornock pointed out that some subjective judgments were inevitably incorporated tacitly into any formula which was not impossibly complicated, so that there was no logical inconsistency in making an allowance for Hazeltine's potentialities."

Now, that allowance they wanted to make was to increase the pointing for the Hazeltine patents, wasn't it?

A. I don't believe that it was necessarily a question 430 of increasing points at all. It was a question of increasing the proportion of the net pool income which the General Electric Company would receive.

The Court: Wouldn't the net pool income depend on the pointing system?

The Witness: No, your Honor. The pointing system was only a question of the distribution of the pool income as between those members of the pool. The pool income was dependent upon the percentage of royalty incorporated in the licenses issued by the pool to the British television manufacturers..

The Court: So the pool income could be increased by raising the rate for a licensing agreement?

The Witness: By doing that or by just an increased volume of production.

The Court: I agree. All right.

By Mr. McConnell:

Q. But your share of the pool. Hazeltine's share, would be increased if the points given to the Hazeltine patents was increased, wouldn't it?

431 A. That is one way in which it would have been increased.

Q. All right, if it is one way, that is enough.

Then this statement goes on:

> "Mr. Heather thereupon asked how many points
> EMI expected members other than they would hold in
> the pool, and on being told that it was expected that
> the non-EMI points would approximately equal the
> EMI points so that the GEC-Hazeltine holding would
> probably be about 6 percent of the pool, on the existing
> evaluation. Mr. Heather said that so low a holding
> would call for very serious consideration. Mr. Dodds
> said that he was doubtful whether Hazeltine could con-
> sider that so small a holding was worth bothering
> about: As a newcomer to these pool negotiations, he
> felt that the secrecy of the negotiations made coopera-
> tion difficult, though he realized the difficulty of having
> a discussion with 15 parties round the table simultane-
> 432 ously. Mr. Dale-Harris said that experience had
> shown that round table discussion with many parties
> were impracticable—instancing the experience of the
> Marine Radar Pool. He could not give names of the
> other parties as not all had yet signed."

Do you remember that discussion?

A. Just generally.

433 By Mr. McConnell:

Q. When you said that you were doubtful whether Hazeltine could consider that so small a holding was worth bothering about, were you sort of threatening to take your patent out of the pool if you didn't get more money?

A. Well, I will stand on the statement. You can draw any implication that you wish.

Q. Well, would you draw that implication? Is that the implication that you wanted drawn from your statement?

A. Well, I will say that's not inconsistent with an implication which I thought might be drawn.

The Court: You wouldn't have minded if somebody did draw that, no.

By Mr. McConnell:

Q. (Reading.)

> "Mr. Heather asked whether the arrangements were rigid or whether there was room for negotiation, to which Mr. Preston replied that there was not much room for elasticity because of their commitments to
434 other parties, and (on Mr. Heather's saying that the present proposal looked completely unattractive on the face of it) Mr. Dale-Harris asked what share Hazeltine/GEC would want. Mr. Heather said they had not yet formulated a figure, as they had preferred to have a talk with E. M. I. first. In reply to Mr. Cornock, Mr. Dale-Harris said that the expected number of licensors was seven or eight.
>
> "Mr. Dodds said that G. E. C./Hazeltine had jointly had about 16 per cent of the previous Pool."

Is that a true statement, that you had jointly with G.E.C. had about 16 per cent of the previous pool?

A. I don't have any present recollection, but I will stand on the statement that was made there.

The Court: That's 16 per cent of the income; is that what it means?

The Witness: Jointly, 16 per cent of the net income of the pool.

435 The Court: Which would be 8 per cent of the pool?

The Witness: Which would be 8 per cent of the pool, your Honor, yes.

By Mr. McConnell:

Q. (Reading.)

> "And if Color came in, the Hazeltine pointing should be very much greater; but violent fluctuations of participation were unsatisfactory to Hazeltine, since they depend on research and licensing and must be able to plan ahead. A licensor-group should therefore take a longer view: Hazeltine demands in Great Britain had always been very modest, whereas they had about 30 per cent in the U. S. A."

Did you make that statement?

A. I don't remember that specifically, no.

The Court: Well, 30 per cent—there was no pool in the U. S. A., was there?

The Witness: That is correct.

The Court: Thirty per cent of what?

436 The Witness: That's what I don't understand. That's why I said I don't remember that.

The Court: All right.

By Mr. McConnell:

Q. Well, did you mean 30 per cent of the income from licensing in the United States? Is that what you were trying to say?

A. I don't think I was trying to say that at all. I don't have any recollection of any statement alone that line.

Q. Now, the writer of this memorandum says:

> "Mr. Heather and Mr. Dodds then said that they would like to join in pooling."

Did you make that statement?

A. That isn't a statement that I would have made, no.

Q. (Continuing):

> ". . . but they doubted whether the present picture was sufficiently attractive and therefore asked whether

> some form of accommodation could be found. Rec-
> ognizing the difficulty of modifying the formula, Mr.
> Heather asked whether there was any possibility of a
> 437 deal between Hazeltine/G. E. C. and E. M. I.''

Do you remember that?

A. I remember the general purport of that, yes.

438 Q. (Continuing):

> "Mr. Dale-Harris said that this would have to be referred to Mr. Schoenberg."

Who is Mr. Shoenberg?

A. I do not recall his title but he was, I believe, an official of Electrical and Musical Industries; EMI.

(There was a brief interruption, after which the following further proceedings were had herein:)

The Court: I see your former lawyer, Mr. Rathburn. Maybe he can take over.

The Witness: Yes, sir.

Mr. Diggins: I am sorry, your Honor.

The Court: All right. You may proceed, Mr. McConnell.

Mr. McConnell: Thank you, your Honor.

By Mr. McConnell:

Q. This memorandum goes on and says:

> ''There was then a discussion of the form of counter
> proposal that might be made to EMI. Finally, Mr.
> Heather rang up Mr. Preston saying that the present
> proposals appeared inequitable and unattractive and
> 439 that a share of about 11 per cent appeared to be the
> least which would be attractive. It was arranged that
> there should be a further talk with EMI on November
> 20th.''

Do you remember that taking place?

A. I don't remember that date specifically, but I will accept the date as stated in the memorandum.

Q. Well, do you remember that you were ready to go for 11 per cent of the pool?

A. I do not remember that figure specifically. As I recall, it was for a higher percentage than the 6 per cent.

The Court: I thought it was 8 percent.

The Witness: That was the preceding pool. It would have been 16 per cent, 8 per cent each. Now, the offer was 6 per cent total, 3 per cent each.

The Court: I see: All right.

By Mr. McConnell:

Q. (Reading.)

> "Turning to the question of GEC-Hazeltine arrangements in the light of the morning's discussion, it was 440 agreed that the GEC wished to continue the Service Agreement, and that the GEC's royalty payments to the Pool would provide an equitable return (assuming Hazeltine-GEC were accorded terms which justified Hazeltine's patents being placed in the Pool) for the GEC's own use of Hazeltine patents. The Patent Agreement (Agreement (d)) would also be continued if both GEC and Hazeltine became members of the Pool."

Do you remember that being discussed, that you were to become a member of the Pool?

A. I certainly do not. I am very sure that no such discussion took place in my presence.

Q. (Reading):

> "It was further felt that if the joint participation were about 10 per cent of the Pool, a 60:40 division of income between GEC and Hazeltine would be about fair. Mr. Dodds said that if Hazeltine's share were less than 4 per cent, and Color television came in, 441 they would want to review the position."

Do you remember making that statement?

A. I said before, Mr. McConnell, I don't remember any one of those details in those statements, and I do not remember that specific detail.

Q. Well, do you think the man that's writing up this is indulging in fiction; he isn't properly stating what took place?

A. I would say no, with qualifications.

Q. Well, let me ask you this. Did this memorandum come into your possession shortly after these meetings took place?

A. Yes.

Q. Did you write back and correct him in any way?

A. I did not.

Q. On this statement?

A. I did not.

442 Q. He goes on and says:

> "In the alternative, if Hazeltine and G.E.C. were not both in the Pool, the G.E.C. would like to continue the Service Agreement at 1,000 pounds p.a. and would like the right to use Hazeltine patents, and would be prepared to continue Patent Agreement (d). Mr. Dodds said that if this state of affairs arose, Hazeltine would probably not want to grant G.E.C. a formal manufacturing license but would then undertake not to sue the G.E.C. for infringeemnt."

Do you recall that statement being made?

A. No.

Q. (Reading.)

> "There was also discussion of an arrangement by which if Hazeltine received 5,000 pounds on account of Pool income (including refunds of British Income Tax, if any) further payments should be suspended until Hazeltine 'income' reached 6,000 pounds from the Pool

443 —to allow the GEC to recoup the 1,000 pounds p.a. paid under the Service Agreement.

Do you recall that?

A. Yes.

Q. Now, what were they referring to here about GEC's payment into the Pool for royalties? Were they paying royalties on licenses issued to them by the Pool?

A. That is my understanding.

Q. Then there was another meeting on the 20th of November, 1952 at Magnet House, at which Heather, Dodds, Nalder and Cornock were present. Do you recall that meeting?

A. I recall the series of meetings. I do not at this date distinguish in my mind one meeting from the other.

Q. (Reading.)

> "Mr. Heather said that Mr. Dodds would be returning to America very soon, and the situation, as it appeared initially, did not seem satisfactory. He had no special comments of a general nature to make on the GEC's position, but he felt that Hazeltine's position, as non-manufacturers, was special. He was surprised at the large number of points likely to accrue to members other than EMI, Hazeltine and the GEC. Two suggestions had occurred to him, (i) the allocation of a reasonable number of points to Hazeltine in view of their circumstances, or (ii) a special arrangement outside the formal point evaluation to meet the Hazeltine position." 444

Q. Do you remember making that statement?

A. Yes.

Q. (Reading.)

> "EMI then stated that MWT., Philips, Cinetel and Murphy had agreed to join them: they had not yet settled with S. T. C.—nor with Pye, but Pye had played only a subsidiary part in the previous Pool and were only expected to do the same in the new

Pool. Similarly, not much was expected from Ekco or Cossor.

"Mr. Heather said he did not feel it was necessary to argue specially about the relative positions of the GEC and EMI; but if it was desired that Hazeltine
445 should be a member, he felt it was necessary to come to meet them."

Do you recall that statement being made?

A. I do not recall any statement being made about Hazeltine becoming or being a member of the Pool.

446 Q. All these references throughout here to your getting into this pool and your becoming a member, that is a figment of this man's imagination; is that it?

A. I didn't say that, Mr. McConnell. I think it was just a loose use of language.

Q. I see.

"Mr. Dale-Harris then said that he had heard from Mr. Shoenberg that, if the offer could be accepted at once, EMI would offer Hazeltine/GEC a holding in the ratio.

"EMI:Hazeltine/GEC::100:17

"instead of the 100:12 approximately computed previously—it being expected that the total Pool parties' points would be about 200."

Do you recall that?

A. Yes.

Q. (Reading.)

"After a short withdrawal for consideration, Mr. Heather and Mr. Dodds told EMI that each would recommend his company to accept this proposal."

447 Did you recommend that for acceptance by your company?

A. Yes.

Q. And it was accepted, I take it?

A. Yes.

Q. (Reading.)

"Mr. Dale-Harris then said that it was hoped that the income of the Pool would be of the same order as for the A.6 Pool, though the basis for computing royalty would probably be different. He hoped, therefore, that a Committee Meeting of licensor members would meet very soon to discuss proposals for new licensing terms. He thought that other potential licensors were thinking of a royalty of the order of 3 per cent, though he hoped that an even higher figure might be possible. He promised to send Mr. Nalder a draft Agreement covering membership of the Pool, on the same lines as the Agreement with Cinetel.

"The Pool points mentioned during the conversation were as follows:—

448

"EMI	100.
"MWT	13½
"Philips	25
"Hazeltine/GEC	17
	155½."

Do you recall that?

A. I don't recall those specific numbers, no.

Q. Do you recall that the pool points were divided Hazeltine/GEC, 17?

A. I recall that the arrangement with EMI was that GEC and Hazeltine collectively would receive an income which was related to EMI's income in the ratio of 17 to 100.

449 Q. Then it goes on and says:

"The remaining details of the Hazeltine-G. E. C. arrangements were discussed.

> "Mr. Heather then said that the G. E. C.'s broad consideration was that if the G. E. C.'s percentage participation in the Pool was equal to their percentage of the market, they had the equivalent of a free license, and they did not want to fall below this. Mr. Dodds said that, on the figure so far given, it would appear that G. E. C./Hazeltine would have eight and one half per cent of the Pool,".

Did you say that on those figures, your company and G. E. C. would have eight and a half per cent of the Pool?

A. I don't recall that specific statement, no.

Q. (Reading.)

> ". . . and if this income were divided 60:40, this would give Hazeltine about three and a half per cent of the Pool:"

Do you recall that?

A. I recall that figure three and a half per cent 450 as being the final conclusion of what Hazeltine would get from General Electric Company.

Q. And they quote you as saying you would like four per cent, but felt that three and a half per cent was near enough; is that right?

A. I don't recall that.

Q. (Reading.)

> "It was finally agreed that the division should be:
> "Hazeltine: GEC: 40:60—subject to final confirmation by the Management of the respective companies. A letter authorizing the G. E. C. to put Hazeltine patents into the Pool was drafted, and subsequently signed on behalf of the Parties after confirmation of acceptance by the Companies."

Is that what happened?

A. That is my recollection.

Q. All right. Now, I show you a document which is marked in evidence here as Defendant's Exhibit 46, which purports to come out of the Hazeltine files, and which appears to bear the signature of Jack Binns and Laurence
451 B. Dodds. I ask you if you can identify those signatures?

A. I can.

Q. The Laurence B. Dodds signature is yours, is it?

A. Right.

Q. Did you read this agreement before you signed it?

A. I have no specific recollection, but that is usually my practice.

Q. This document recites:

"Whereas by virtue of two agreements between the Corporation and Company dated respectively"—the Corporation is the Hazeltine Corporation, and the Company is the General Electric Company, Limited of England—

"Whereas by virtue of two agreements between the Corporation and the Company dated respectively the 6th day of April One Thousand Nine Hundred and Thirty-Nine and the twenty-fourth day of July One Thousand Nine Hundred and Forty-Five the Company hold from the Corporation until the Thirty-first
452 day of December One Thousand Nine Hundred and Forty-Nine a sole and exclusive license (but not including the right to grant sub-licenses) under all present and future patents belonging to the Corporation relating to Receivers for broadcast radio and to television transmission and reception as therein set out.

"And Whereas by a further Agreement between the Corporation and the Company dated the Sixth day of April, One Thousand Nine Hundred and Thirty-Nine the Corporation granted to the Company rights inter alia to utilize the said Patents for the purpose of securing entry as a Licensor into any British Wireless Broadcast Pool which might be formed or otherwise to deal with the said Patents by way of granting sublicenses thereunder."

Is this a true recital of what had occurred?

A. I would prefer to let the document speak for itself.

453 Q. Well, you signed the document.

A. I signed the document.

Q. When you say you prefer to let the document speak for itself, do you mean by that statement that you are not quarreling with the document, that you are not taking any different position?

A. That's right.

Q. Then it recites:

"And whereas a British Wireless Broadcast Pool was duly formed and the said rights were duly exercised by the Company and said further Agreement was by agreements between the Corporation and the Company dated the 24th day of July, 1945, and the 25th day of June, 1948, extended for additional periods of three years and one year respectively and is due as a result thereof to expire on the 31st day of December, 1948.

"And Whereas the aforesaid British Wireless Broadcast Pool has terminated or is about to terminate and 454 negotiations are now in progress for the formation of a new British Wireless Broadcast Pool (hereinafter referred to as The New Pool).

"Now It Is Hereby Mutually Agreed between the Parties as follows:

"1. For the consideration hereinafter mentioned the Corporation hereby grant unto the Company the right to utilize the Hazeltine Patents hereinbefore referred to for the purpose of securing entry into the New Pool on such terms as the Company may deem proper or otherwise to deal with the said Patents by way of granting sublicenses thereunder for the purpose of the New Pool.

"2. As consideration for the rights granted by the Corporation to the Company hereunder the Company shall pay to the Corporation 50 per cent of all sums received by the Company from the New Pool by way of royalties upon the combined Patents of the Corporation and the Company in the said New Pool."

Now, pursuant to this agreement, did Hazeltine and
455 GEC put their patents in the New Pool?

A. The Hazeltine Company did not. The General Electric Company did.

Q. Hazeltine didn't put their patents in the pool?

A. No.

Q. They received royalties from the pool, didn't they?

A. No.

Q. Well, now, did GEC put the Hazeltine patents in the pool?

A. Yes, and you know that, Mr. McConnell. There is no use quibbling on words.

Q. You are quibbling with me, I think.

A. No, I am not.

Q. Your patents got into the pool and you got the money from the patents out of the pool, didn't you?

A. No, we did not.

Q. Directly or indirectly through GEC?

A. We got money from GEC. We of our own knowledge don't know where GEC got its money. We can presume it got it from the pool.

456 Q. You have difficulty in understanding where the money came from that you got from the pool?

A. We didn't get money from the pool.

Q. All this talk that we have just been through and your negotiations where you get a larger rating and a larger point number, and a larger participation in the pool—that didn't give you any knowledge that you were getting money out of that pool?

A. I didn't say we didn't get any knowledge. I say we did not get money from the pool. We got money only from the General Electric Company under our agreement with the General Electric Company.

Q. I see. Let me ask you this. GEC didn't give you any money they didn't get out of the pool, did they?

A. I have no knowledge of that.

Q. Didn't you get a statement, an accounting from them, of what they received from the pool?

A. Yes.

Q. Sure. Now, I show you a document which is in evidence here, as produced from your files as Defendant's
457 Exhibit 41, which purports to be an agreement made the fifth day of September, 1933, between Hazelpat, Limited, a company incorporated in England. What was the Hazelpat Company?

A. I have no direct knowledge.

Q. Well, do you have any indirect knowledge?

A. All I have is hearsay.

458 Q. Well, let's have the hearsay. What was it?

A. Well, even the hearsay is very incomplete. To the best of my knowledge, that company had been created and had gone out of existence before I ever became associated with Hazeltine or any of the Hazeltine companies.

I do know that it was a company formed in Great Britain in which Hazeltine Corporation had an interest.

Q. Well, all I want to ask you about this document is—and see if you can answer—is, was this contract at any time terminated, or did it terminate by its terms, and the patents which are covered by it become again free to be licensed to General Electric Company, Ltd.?

A. I don't have any knowledge of this subject.

Q. Well, you do know that at some subsequent time, the Hazeltine patents were licensed—were turned over to GEC; you know that, don't you?

A. I know that; yes, sir.

Q. And you undertook to enter into an agreement involving those patents free and clear of any relationship of Hazelpat, didn't you?

459 A. To the best of my knowledge, no consideration was given to Hazelpat. I don't know whether it was in existence or not at the time of these pools.

Q. I didn't ask you about your consideration. I just asked whether or not you don't know, as a practical matter, that all relationships between Hazeltine and Hazelpat had terminated before you went into an arrangement with GEC?

A. I don't know that.

Q. You don't know?

A. No.

Q. As far as you know, you may still have your patents in Hazelpat; is that it?

A. I don't suppose there is any point in playing games.

Q. No, I don't think so—

A. To the best of my knowledge, Hazelpat had become a dormant inactive company. It was not operating. Whether it was formally dissolved, and when it was formally dissolved, or if it was formally dissolved, I don't know.

Q. I show you a document which has been marked in evidence here, as produced from your files, as Defend-
460 ant's Exhibit 47, and I ask you to look at it—it is supposedly a Xerox copy—and I ask you whether or not you signed the original of it? That is your signature that appears on the bottom of the paper?

A. No, it is not.

Q. It isn't?

A. No. In fact, it indicates it is not. It has a small "s" and a slant. All the signatures have been in the common hand.

Q. Well, "L. B. Dodds, Vice President"—is that your signature or isn't it?

A. That is not my signature, Mr. McConnell, no. Somebody wrote the name "L. B. Dodds" in there.

Q. All right. Did you sign the original of the document? Can you tell us that?

A. I have no recollection. But on the other hand, I have no reason to believe that I didn't.

Q. You think the signature that appears on here is somebody conforming this?

A. Definitely.

Q. With an original?

A. Definitely.

461 Q. It purports to be signed by Mr. MacFarland, President, and you as Vice President.

This document recites:

"(b)"—

Well, it recites:

"Whereas four agreements were entered into between the Company and the Corporation"—

And again, the company is the General Electric Company of England and the Corporation is your company, the Hazeltine Corporation.

"Whereas four agreements were entered into between the Company and the Corporation on the 6th day of April, 1939, relating to the following matters, namely:

"(a) A license from the Corporation to the Com-

/

pany under certain Letters Patent (hereinafter referred to as 'the License Agreement').

462 "(b) The right for the Company to utilize the Patents the subject of the said License for the purpose inter alia of securing entry into any British Wireless Broadcast Pool and for carrying on business in radio and television (hereinafter referred to as 'the Pooling Agreement')."

Do you recall that you authorized the use of the Hazeltine patents by the company, the General Electric Company for use in the British Wireless Broadcast Pool?

A. I have so testified repeatedly.

Q. Do you recall some difficulties that you had over the Hazeltine patents in Eire, Ireland?

A. I don't recall any difficulties over the Hazeltine patents. I recall that there arose some confusion as to who had the rights to the Hazeltine patent in Eire.

Q. I show you a document which is marked in evidence, because it is produced from your files, as Defendant's Exhibit 72, which purports to be a letter by you, written by you and sent to Mr. A. F. Cornock of the patent depart-
463 ment of the General Electric Company in Wembley, England, with reference to Hazeltine patents in Eire under date of June 11, 1951, and I ask you if you wrote and sent that letter?

A. I did.

Q. And what was the occasion for writing this letter?

A. May I read it?

Q. Yes.

A. I believe the occasion is rather well and definitely spelled out in the letter. It was a dispute as to the division of territory between Continental Europe on the one hand, Great Britain, Northern Ireland and Eire on the other hand.

Q. Well, you wanted to get your patents released from the pool, didn't you, so that you could license them in Ireland.

A. No.

Q. You didn't want that? Weren't you requesting of Mr. Cornock advice as to whether or not those patents were included in the pool?

A. Yes.

Q. And you got a letter back from him, didn't you, 464 under the date of the 28th of June, 1951, which is taken from your files. It is in evidence here as Defendant's Exhibit 74.

I ask you whether or not you did receive that letter back, the original of it, rather, from Mr. Cornock.

A. I did.

Q. In this letter, Mr. Cornock states:

> "As promised in my letter of June 15th, I have had a word with Mr. Macqueen about the difficulties you have run into in Erie, and have re-read our Agreement with the Members of the A.6 Pool, and the A.6 License, to see exactly what our commitments are.
>
> "Under our main Agreement with the Pool, which is dated the 31st August, 1948, and of which I sent you a copy recently we make the following representations and give the following undertakings:"

Now, had he sent you a copy of the main agreement with the pool?

A. I have no present recollection.

465 Q. Well, would you accept his statement here?

A. I would accept his statement.

Q. He says:

> "We make the following representations and give the following udertakings:"
>
> "(a) Recital (9) states that we have the right to

grant or procure the grant of licenses from the 1st April, 1948 to the 31st December, 1952 under all present and future patents of the British Isles originating with the Hazeltine Corporation or our own company;

"(b) Recital (10) states that no licenses have been granted (within the Pool scope) under such patents during the relevant period (except for extensions of the A.5 License);

"(c) Clause 1 defines the 'British Isles' to include Eire;

"(d) Clause 18 provides that no license shall, during the period of the Agreement, be granted by any Party except in accordance with the decisions of the Management Committee of the Pool."

466 Now, did you know that prior to this letter, that your patents were in this pool and could not be licensed except in accordance with the decisions of the Management Committee of the Pool?

A. I am not sure whether I did or not. I don't recall. I don't recall whether I knew—and I still don't know—whether in the agreement between the General Electric Company on the one hand, and the Pool on the other, all of General Electric's rights were granted so that they retained no licensing rights themselves.

Q. I am not talking about General Electric. I am talking about Hazeltine patents.

A. Well, Mr. McConnell, we have already stated that we granted the General Electric Company the exclusive right to exploit the Hazeltine patents in the United Kingdom.

Q. I understand that. We have also got a lot of other evidence here which qualifies that statement.

A. And I am asking you now whether or not you knew that during the period of the pool agreement your patents could not be licensed except through the Management 467 Committee of the Pool?

A. I just answered that question, Mr. McConnell.

468 Q. You don't know?

A. I said I didn't know. I don't know whether I knew. I don't believe I knew. I don't believe I know now.

Q. Well, we are talking now about the A.6 Pool, are we not?

A. I understand.

Q. And you did have in your possession the agreement under which the A.6 Pool was operated, didn't you?

A. I am not sure. We have had copies of some of the Pool agreements.

Q. Well, let me see if I can refresh your recollection.

The Court: Maybe you can do that after the afternoon recess.

(Thereupon, a short recess was had herein, after which the following further proceedings were had, to-wit:)

The Court: You may proceed.

By Mr. McConnell:

Q. When we adjourned, I was about to refresh your recollection as to your knowledge of the A.6 License, the British Pool, I show you a document which is pro- 469 duced from the Hazeltine file, which is marked Defendant's Exhibit 75 and is in evidence under our stipulation under date of November 9, 1949 entitled "Outline of the A.6 License, British Pool," and I ask you if you made that outline?

A. Yes.

Q. Now, when you made that outline you had before you something, didn't you?

A. I had before me a copy of the Pool—

Q. Pool agreement?

A. No, I beg your pardon, this is an outline of the license, A.6 License, granted by the British Patent Pool.

Q. All right, what did you have before you when you prepared that?

A. I say, a copy of the license agreement, not a copy of the Pool agreement.

Q. Now, in this document, Defendant's Exhibit 74, I pointed out to you that no license could be granted by any party except in accordance with the decision of the management committee of the Pool. Do you know how that management committee was made up?

470 A. No, I do not—well, excuse me, I know generally. I do not know specifically.

Q. Well, tell us generally what you know about it.

A. I believe that each of the Pool members had a representative, appointed a representative, and those representatives became this committee.

471 Q. Now, in this outline which you had prepared here, you show as the grantors BTH—that's British, Thompson, Houston Company, isn't it?

A. Yes.

Q. EMI, that is Electrical Musical Industry Corporation?

A. Yes.

Q. GEC, that is General Electric Company of England, isn't it?

A. Yes.

Q. Marconi is Marconi Wireless Telegraph Company?

A. Yes.

Q. Philips, that is the Philips Company of Holland, is it not?

A. I don't believe so.

Q. What is it?

A. I believe it is a British subsidiary.

Q. A British subsidiary?

A. Of the Philips Company of Holland.

Q. And Standard Telephone.

Now, isn't it a fact that those grantors were the members of the Pool, of the A.6 Pool?

A. That I do not know. I will explain why I don't 472 know. It is because they may have been the original members of the pool, but as it has been testified before, that from time to time members were added and dropped. They were the names of the individuals that appeared on the printed form of license agreement issued by the pool; so I think it would be safe to say that they were the members of the pool at the time that license was granted.

Q. All right.

The Court: And the date of that, Mr. McConnell, is what?

Mr. McConnell: November 9, 1949.

The Court: All right.

By Mr. McConnell:

Q. Now, every one of those companies was a producer, manufacturer of radio or television sets, were they not?

A. I don't know.

Q. You don't know that?

A. No, I do not know that and I never did know it. I know that some of them are.

Q. Which ones do you know are?

A. Well, you mean are or were in 1949?

473 Q. Well, were in 1949.

The Court: Were on the date of that instrument, about.

By the Witness:

A. At that time—I am sorry, the only two that I know definitely as of that time were EMI and GEC. The others may have been but I have no direct knowledge.

By Mr. McConnell:

Q. Well, they would be competitors of the Zenith Radio Corporation, would they not, if Zenith had sets to sell in England?

A. I don't know.

Q. You wouldn't think so?

A. I didn't say that. I said I don't know.

Q. Well, they were selling radio and television sets, weren't they?

A. I just answered that question. I said I didn't know except with respect to EMI and GEC.

474 Q. Well, I am talking about those two companies that you said.

A. Those two companies, yes. I misunderstood you. I thought you were referring to all of these companies.

Q. No, I am talking about the two companies that you know about that do produce and sell radio and television sets in Great Britain.

A. All right.

Q. Now, will you go along this far with me, that if Zenith Radio Corporation can get there or was there they would be a competitor?

A. I don't know whether they would or not. I don't know whether they sell the same class of merchandise.

Q. Well, anyway, the determination of whether your patents would ever be licensed to Zenith Radio is going to be made by these grantors in this pool, wasn't it, or their committee?

A. That is not my understanding, Mr. McConnell.

Q. You don't think that is true?

A. No.

Q. This letter, which is addressed to you from Mr.

475 Cornock—now, he is the attorney for General Electric, isn't he?

A. No, he is not an attorney.

Q. He is not an attorney?

A. No.

Q. But he was a manager of their patent department?

A. Yes.

Q. And he says that Clause 18 of the document which you have—had in your possession—

A. Just a minute, Mr. McConnell, I didn't testify I had that in my possession. I testified that I didn't know whether we did or not.

Q. Well, he says in his letter:

> "Under our main agreement with the pool, which is dated the 31st of August, 1948, and which I sent you a copy recently."

You still say you did not have a copy?

A. No, I didn't say I didn't have it. Don't twist my words. I said I didn't know whether we had it or not. I don't have any present recollection of it.

Q. I see.

476 Well, he quotes that pool agreement, which he says you have a copy of, as saying that:

> "Clause 18 provides that no license shall, during the period of the agreement, be granted by any party except in accordance with the decisions of the management committee of the pool."

Now, didn't you have in your files a copy of that pool agreement?

A. For the third time, or the fourth time, Mr. McConnell, I said I don't know. I have no present recollection.

Q. You don't know?

A. I have no present recollection of it.

477 Q. Under the interrogatories which were given your Company you were asked to produce copies of the Pool agreements which you had in your possession, and pursuant to that you produced this document, did you not, Defendant's Exhibit No. 52, which purports to be an agreement made the 31st day of August 1948, between these different companies, as constituting the Pool agreement about which I have just been examining you.

Now, look at it and tell us whether or not you did produce it in accordance with that interrogatory?

A. This is a document which was produced in response to interrogatory, however, there is no evidence here—I will put it stronger. I will say that I believe to the best of my knowledge that I never saw this prior to this present discovery proceedings.

Q. Well, you will go this far with me, won't you, that you produced it in response to our interrogatories purporting to be the document called for by the interrogatory.

A. The interrogatories, as I recall, didn't call for 478 any specific document, but we furnished in response to interrogatories all the documents of a category that we had and could find.

Q. All right, we are going to find the interrogatory in due course and we will read it to you and you can qualify it any way that you want.

Now, look at clause eighteen and tell us whether or not that provides that no licenses shall, during the period of the agreement, be granted by any party except in accordance with the decision of the management committee of the Pool.

A. It does not so provide.

Q. It doesn't?

A. No.

Q. What does it provide?

A. It provides:

> "No licenses shall be granted by any party hereto for radio apparatus in the British Isles in respect to the period from the 1st of April 1948 to the 31st of December 1952, except in accordance with the decision of the committee, or in the cases mentioned in clause

479 eleven (c), little i and two little ii's."

Q. That is different, is it, from what I read to you?

A. I believe it is significantly different, yes.

Q. Okay.

Well, anyway, will you go along with this statement, that you had granted your patents for disposition by a Pool where a license couldn't be granted to Zenith Radio except in accordance with the decision of the management committee of the Pool?

A. No.

Q. You won't?

A. No.

Q. I show you a document which is marked 78A and B, which is produced from your files and which is here in evidence under those identifying numbers pursuant to our stipulation and ask you to tell us whether or not you prepared and signed that memorandum, the original of it, of which this purports to be a copy?

A. I prepared the memorandum comprising the 480 final three pages of the group of pages which you handed me.

481 Q. Well, how about the rest of it, who prepared the rest of it, or do you know?

A. The first sheet purports to be a letter from Mr. MacQueen of the General Electric Company to me, which I reecived and read on February 19, 1954.

Q. Well, all I asked you about was the memorandum, and you prepared that, I take it.

A. I so answered.

Q. Now, this purports to be, the date of April 5th, 1954, a report of a conference with Mr. M. M. MacQueen of GEC on April 2nd, 1954, three days before; who were you making that report to?

A. The report indicates that it goes to the file. I was just making a record of it for future reference.

Q. Well, you say here, "This memo is to record the substance of a discussion between Mr. Binns and the writer with Mr. MacQueen of GEC."

Now, who is Mr. MacQueen of GEC?

A. You mean who is he now or who was he in 1954?

Q. Well, who was he in 1954? That is when we
482 are interested in.

A. I don't recall exactly what his title was. He was a member of the—what we call the radio and television department of GEC.

Q. In this memorandum you state, under Paragraph 5:

> "Mr. MacQueen feels that the committee does have a practical significance from the viewpoint of the pool members in spite of the fact that EMI permanently holds a majority of the votes on the committee."

Now, what is that committee that he is talking about? Isn't that the same management committee I was just interrogating you about a moment ago?

A. I believe it is.

Q. And the company that has—that permanently holds the majority of the votes on the Committee is EMI, is that right?

A. I don't have any direct knowledge of that.

Q. Well, this is your memorandum that you made at the time.

483 A. This is what Mr. MacQueen told me.

Q. Yes, that is what he told you.

A. Yes.

Q. And Mr. MacQueen was in a position to know, was he not?

A. I would assume so.

The Court: But he might have misled the witness.

The Witness: That is right.

Mr. McConnell: I don't think—Well, I am not going to comment.

By Mr. McConnell:

Q. Who was he again?

A. I said he was a member of the Radio and Television Department, what we would call the radio and television department of GEC. I don't know his exact official title.

Q. All right.

Now, he says here:

> "In spite of the fact that EMI permanently holds the majority of the votes on the committee—"

And the committee that he is referring to is the one that I was talking to you about a moment ago, the management committee, wasn't it? 484

A. The Pool Management Committee, yes.

485 Q. And EMI, that is Electrical and Musical Industries, was a producer and a seller of radio and television sets in Great Britain, was it not?

A. I believe it was.

Q. W[illegible], you know it was, don't you?

A. Now, listen, Mr. McConnell, it was, and a number of years ago it gave it up entirely, and I don't recall the exact year and when it sold out its business. That is the only reason that I am qualifying my answers. I don't remember the exact time when they sold their radio and television business.

Q. And then he says to you, you are reporting him:

> "It is Schoenberg's view that EMI has a major patent investment in the industry and that he must protect it against any ganging up by the other members of the Pool which would in any way seriously affect EMI's patent position."

Now, can you tell us whether or not the decisions of this management group, the management committee, were decided by a majority of votes?

486 A. I have no direct knowledge.

Q. You don't know how they recorded their decisions?

A. What do you mean, "how they recorded them"?

Q. Well, they have a meeting of the committee, I take it, and they reach some conclusions. Now, did they do it by a majority vote or a unanimous vote or how?

A. Mr. McConnell, I never attended a meeting of the management committee. I never saw any minutes of the management committee, and I don't have any knowledge of how the management committee operates.

Q. Well, now, as I recall, you objected to this management committee in the Pool, didn't you?

A. No.

Q. In your previous discussions?

A. No.

Q. Didn't I just get through taking you over a memorandum where you voiced your objection to that method of doing business, of having a management committee 487 made up by the number of points on their patents?

A. Well, that is a different thing. I may have raised some objections to the manner in which the management committee was constituted.

Q. Well, you knew something about it then, didn't you?

A. I—

Q. You weren't completely walking around in the dark on the management committee?

A. I never suggested that.

Q. You knew what there was there. There was a management committee, and you knew how it was composed, didn't you, when you were having those negotiations over there?

A. I testified it was composed by the appointment of a representative from each member of the Pool. I knew that.

488 Q. You quote him as saying:

> "There are 12 firms in England doing about 80 per cent of the television business, each of which has a volume such that it will reach the maximum 25,000 pound royalty ceiling in the television license agreement. The remaining 20 per cent of the television business is scattered among a number of smaller companies. Mr. MacQueen said that the principal television sets now on the market in England were a 14-inch table model having an average manufacturer's selling price of 31 pounds, which he thought represented about 70 per cent of the TV receivers sales, and a 17-inch table model having a manufacturer's selling price of 38 pounds. He gave an estimate of the A.7 pool income based upon two assumptions; A, that the TV business continues approximately on the 1953 level of one million sets per year; B, that the three outstanding nonlicensed 489 firms will accept the pool license, namely, Kosser, Ferguson and Plussy. On the foregoing assumption, MacQueen estimates the pool income at 450,000 pounds gross per year before taxes. Based on joint Hazeltine—GEC take of approximately 8 per cent of the pool income and the 60-40 disposition between GEC and Hazeltine respectively, this would yield to Hazeltine approximately 12,000 pounds per year."

Now, based on the language, "based on the joint Hazeltine—GEC take," that is your language, isn't it?

A. I don't know whether it is my language or whether I was repeating what Mr. MacQueen said.

Q. Well, you wrote this.

A. That is right.

Q. That was your take from the pool, wasn't it?

A. That was General Electric's take from the pool on behalf of both of us.

Q. Well, yes. You say, "a joint Hazeltine—GEC take," but the joint Hazeltine—GEC take, you say, is approximately 8 per cent of the pool income. That is what it
490 was, wasn't it?

A. I don't have any independent recollection. In fact, that isn't in accordance with my recollection. There is a discrepancy there which I can't reconcile at the moment.

Q. You think you wrote this down wrong?

A. I don't know whether I did or not, or I don't know whether I wrote down what Mr. MacQueen said and what he said was wrong.

Q. You think you would like to amend that language now?

A. No.

491 Q. Now, you say:

> "It was agreed that the writer would supply Mr. MacQueen with the following information; one, the numbers of British patents which may have issued on the Hazeltine constant liminous and shunted monochrome development or other important color cases. Two, attempt to obtain from RCA information as to the duration of their patent agreement with EMI."

Now, did you go and see RCA and attempt to find out the extent of their patent agreement with EMI?

A. I do not recall. I have had conversations with representatives of RCA on two or three occasions, but I don't remember exactly what times they were. I believe the correspondence dealing with those conversations are in the record. You have copies. I would be glad to confirm the dates, but I don't recall independently now the dates of those meetings.

Q. All right, did you ever, at any time, can you recall, ever, at any time, talking with anybody at RCA about
492 the duration of their patent agreement with EMI?

A. Yes.

Q. Who did you talk with?

A. Well, over the period of years, I recall at least one conversation with Doctor B. E. Shackleford. I recall at least one conversation with Mr. M. E. Karns, and I recall a conversation with Mr. Henry Johnson, but I don't recall which of those conversations dealt with this particular point.

Q. Well, did you find out from any of them, Karns or Shackleford or anybody else at RCA what was the duration of their patent agreement with EMI?

A. I believe I did, though I don't really—

Q. You don't recall?

A. I don't recall what it was because I don't recall on what date that I had, and I believe that the RCA agreements with EMI have been renewed from time to time; so depending on when I inquired, why, the information I would get would be a different date.

493 Q. Well, did you find out that EMI had the handling of the RCA British patents in this Pool in England?

A. Well, to the best of my recollection, the RCA patents were not in the British Pool. I will qualify that; the RCA patents having dates after 1945.

Q. Well, up to 1945 RCA had granted an exclusive license to EMI to use their patents, isn't that true?

A. Up to 1945?

Q. Covering patents up to 1945, yes.

A. That isn't my understanding.

Q. What is your understanding?

A. Well, I am not too sure of its preciseness. My understanding was that RCA had granted exclusive rights under its patent to another concern. I think it had Victor in its name, which EMI subsequently bought.

494 Q. In other words, because they went in through the Marconi Company into EMI you say they don't have them?

A. No, I didn't say that.

Q. Well, they did have them, didn't they, whether they got them through Marconi or His Master's Voice, or any other way, they had them on all patents issued prior to 1946. They had an exclusive license under them, didn't they?

A. They did for a period. When they acquired that, I do not know.

Q. And those patents, at least you will agree with me, were in this Pool, weren't they?

A. Right.

Q. And then in addition to that they had an arrangement, RCA did, with EMI whereby EMI gave every licensee under this Pood a free license under the RCA patents, isn't that true?

A. I don't know whether EMI did that or not. I believe EMI had the right to do that.

Q. You don't know whether they actually did it?

A. I have no knowledge.

Q. Well, will you go this far with me; that a
495 licensee under that Pool had a right to get a free
license from RCA through EMI?

A. For a period of time, until that arrangement between EMI and RCA terminated. I believe that is right.

Q. All right.

Now, did you find out when that arrangement terminated?

A. Yes, I did.

Q. When was it?

A. I don't remember.

Q. You can't remember that?

Well, it must have been sometime after 1954?

A. Yes.

Q. I show you a document which is marked Defendant's Exhibit 82, which is in evidence here by stipulation as being produced from your files, a letter under date of September 25, 1957, addressed to you and signed "Arthur." I assume that is Arthur Cornock, and I ask you whether or not you received that on or about the date that it bears.

496 A. That is Arthur Cornock and I received it and read it on October 2, 1957.

Q. On page 2 of this letter—wait, I will start back on the last paragraph on the first page, he said:

> "Topham considers that the extended licenses should be accepted by the trade without any real difficulty."

Now, Topham was manager of the British Pool, was he not, at that time?

A. I believe so.

497 Q. (Reading.)

> "And since he is the person in most direct contact with licensees and hears such grumbles and complaints as they wish to make, he should be in as good a position as anyone to forecast the trade reception of the proposals. On the face of it his view seems to me to be reasonable. The modifications and royalty rates should go some way toward mollifying those of the medium and smaller licensees who have considered themselves rather hardly used in the past so that the chances that they will decline to extend their licenses has been reduced. About half of the large licensees whose royalty payments reached the quasi feeling will accept licenses since they are members of the Pool, and it does not seem likely that the concessions to the smaller licensees will cause the remaining large licensees to stage a strike, since even on the modified figures the insurance policy obtained by taking a
> 498 license is better value than the gamble of fighting infringement actions when they are in fact using at least a few of the patents under which the Pool is

> willing to license them. Of course, one can always meet the man who thinks that if he is cussed enough he will manage to get something more, but we do ourselves consider that the revised licensing proposals are inherently reasonable, and that reason will ultimately prevail. All in all, therefore, we ourselves think that Topham has weighed up the position correctly. We should begin to get a fair picture of the trade reactions in about two months time, and I will try to let you know as soon as we have a Pool meeting which gives us a preliminary idea of how the picture is shaping up."

Did he write and tell you how the licensing was progressing?

A. I don't have any recollection.

Q. What did he mean by the insurance policy obtained by taking a license—

499 A. I don't know what—

Q. —is better than the gamble of fighting infringement actions?

A. I don't know what was in Mr. Cornock's mind.

Q. Well, did he, by any chance, mean by that that it assured them against freedom from an infringement suit no matter whether there was any merit in it or not?

A. I would be very much surprised if that was in his mind.

Q. You don't think he had that in his mind?

A. No.

Q. What do you think he had in mind?

A. I don't have any idea what he had in mind.

Q. Well, wasn't it a fact that this Pool had thousands of patents at its disposal on which it could bring an infringement suit against anyone who didn't join it?

A. I am definitely sure that that is not so. I would be surprised if they had six patents on which they could bring infringement suits.

500 Q. You think all the rest of them were no good? Is that right?

A. Not so good, but not used in British television receivers.

Q. I see.

Well, if you took a license under the Pool, you took a license under every patent that the Pool had, didn't you, whether or not you used it in the set or not? Didn't make any difference whether you used it in the set, did it?

A. What do you mean, does it make any difference whether you used it or not? You had a right to use it. You had the right to use as many as you wanted.

Q. Whether you used it or whether you didn't use it, you paid a license fee on your set and you were covered by all the patents in that Pool and they could sue you on any one of them, couldn't they?

A: Oh, no, they couldn't.

Q. All right, we don't agree.

A. Definitely not.

501 Q. I show you a document which is produced from your files, which is Defendant's Exhibit No. 84, which is a letter written under date of April 13, 1960, to you on the letterhead of the General Electric Company. I can't read the signature on it. Maybe you can help me.

A. A letter from Mr. McQueen.

502 Q. He's the same gentleman we have been talking about a while ago.

A. Yes. Do you want me to read it?

Q. You received the letter?

A. I received the letter and read it on April 19, 1960.

Q. He said in this letter:

"Since I wrote to you a tentative plan has been produced by the pool manager, a Mr. Chapel, and

> I have discussed this with him. This new plan involves many changes affecting both licensors and licensees, and as I see it it will put both the GEC and Hazeltine in a less favorable position. And at this juncture, I have not encouraged the pool to think that it will have our ready acceptance. In any case, we would have to have your agreement before making any commitment which would involve your company."

Now, is that true that they had to have your agreement before they could do anything with reference to this pool?

503 A. I believe, as a matter of law, no. Perhaps as a matter of moral practice, yes.

Q. Well, you were partners with him, weren't you?

A. No.

Q. You weren't?

A. No.

Q. Well, we will get to that and see whether you weren't.

A. Yes.

Q. (Reading.)

> "In the meantime, Mr. Chapel and I have had an interesting discussion with three people representing the RCA International licensing interests, and they have made their position quite clear."

Do you know what that was?

A. No. I have no idea.

Q. Then he goes on to say:

> "I am going away after Easter on a short holiday and will be back in London on May 9th; Monday, the 9th of May. Mr. Chapel is also going away and
> 504 will not be available until a week later. If, therefore, it were possible for you and/or Mr. Ruestow to visit us during the week commencing the 16th of May, that would be convenient to us."

Did you make a visit over there at that time?

A. Approximately that time, yes.

505 Q. All right. Now, what was the purpose of your going over there at that time?

A. The purpose of going over there at that time was either—I will put it this way; it was to negotiate with the General Electric Company as to the possibility of renewing the contractual relationship with them, to permit them to continue to include Hazeltine British patents in the British pool.

Q. Was that with reference to the A.8 pool?

A. I think so. I am not sure. These numbered pools confuse me a bit. At least one of the pools—instead of forming a new pool, the current pool was extended for a short period. And I don't frankly remember whether this visit was in connection with an extension of A.7 pool, or the consideration of a new A.8 pool.

Q. Well, the A.8 pool is the pool that is now functioning, is it not?

A. That is my understanding.

Q. You are not sure whether you were over there in 1960 on that pool or some other pool; is that it?

A. I testified just exactly the extent of my recollection.

Q. Well, what was the outcome of your negotiations 506 there in 1960? What occurred?

A. Well, there was a—as I recall, there was a tentative agreement reached on behalf of Hazeltine Corporation and GEC and, frankly, I don't remember the terms of it. And before that agreement was consummated, my responsibilities and activities in the field were discontinued.

Q. Well, do you know whether or not you got the Hazeltine patents in the pool?

A. I believe—it is my best belief that the General Electric Company did continue to include the Hazeltine British patents in the pool.

Q. I show you a document which is marked Defendant's Exhibit 79 which was produced from the files of Hazeltine so, under our stipulation, it is in evidence, and which is entitled "License Abstracts," and I ask you to examine that and tell us, if you will—or if you can, who made those abstracts?

A. I made these abstracts.

Q. All of them?

A. I am not sure. This goes back some sixteen years. I know I made the first one. I will accept it, at least, 507 because my dictating initials appear on it.

Q. What is that one?

A. That is the outline of the British pool agreement of 1948.

Q. What is the number of it? What pool is that?

A. I don't know. Somebody has marked it here in pencil A.6.

Q. A.6?

A. The second document is entitled "Outline—A-6 License." That also contains my dictating initials.

The third one is an outline of the British A-7 pool agreement. That contains my dictating initials.

I believe I prepared all of these abstracts.

Q. Can you tell us what the purpose was of preparing these abstracts, if any?

A. I believe it was just for my own information.

Q. Now, the first one of these in 1948 outlines the British pool agreement of 1948.

In paragraph 7, you say in your outline, and I 508 am quoting:

> "No Licenses granted for importation of sets nor of components exceeding in value 10 per cent of retail list price."

Did you get that out of the license?

A. I assume that is an abstract of what I got out of the license.

Q. Well, can't you go any farther than to make an assumption? After all, this is your work.

A. I said I believe it is an abstract I got out of the license. If anything is abstracted, the accuracy is sacrificed for brevity. It is incomplete. It is just a topical outline.

Q. I don't think I asked you whether it was complete. I asked you whether or not you got it out of the license.

Now, the next one purports to be the A.5 pool. Didn't you tell us that you had never seen the A.5 license pool?

A. No.

Q. You didn't say that?

A. No. I said I believe I said that I didn't have any recollection of that.

509 Q. Well, you say in the A.5 license pool, under "4-Licensee, a- not to export without written consent of grantor;

"b- not to use equipment without written consent of grantor, if not made in licensed territory."

Did you get that out of the license agreement?

A. Well, your Honor—excuse me. I thought you referred to the pool agreement. That is not a pool agreement. That is a license agreement issued by the pool, is it not?

Q. The A.5 license, yes.

A. Yes.

Q. Am I misleading you here, or what?

A. I understand you to say the A.5 pool.

Q. Well, you put it here A.5 license (pool).

A. Yes.

Q. That is the way you describe it.

A. Yes. But the A.5 license from the pool.

Q. From the A.5 pool.

A. All right.

Q. Now, in the A:6 license. which is November 510 9, 1949—

The Court: I think there is an unanswered question. Did he get this out of the license?

Mr. McConnell: I think you are right, your Honor. I think you are absolutely right.

The Court: You go off into the side streets, and you forget about where you were heading.

Mr. McConnell: That's right. A lot of lawyers do it, and I am no exception to the rule.

By Mr. McConnell:

Q. (Reading.)

"4-Licensee;

"a-not to export without written consent of grantor;

"b-not to use equipment, without written consent of grantor, if not made in licensed territory."

Did you get that out of the license agreement?

A. I believe that is an abstract of what I got out of the license.

Q. In the A.6 license, which is dated November 511 9, 1949, your abstract shows:

"4. Licensee agrees:

"(a) Not to sell imported receivers."

Did you get that out of the license agreement?

A. I believe that is an abstract of what I got out of the license agreement.

512 Q. The A.7 pool, your abstract under date of February 4, 1954, recites:

"7. No license granted to import radio apparatus or to deal in such apparatus containing imported components exceeding in value 10 per cent of the retail list price."

Did you get that out of the license agreement?

A. I believe that is an abstract of what I got out of the license.

The A.7 license of which you made an abstract, Paragraph 4, provides:

> "Licensee agrees:
>
> "(a) Not to sell any TV receiver not made in territory of Agreement—i.e., incorporating imported components of a value exceeding 10 per cent of the retail list price."

Did you get that out of the license agreement?

A. I believe that is an abstract of what I got out of the license agreement. I think those last two were both A.7. I think the question should indicate one is with re-

513 spect to sound receivers and one is with respect to television receivers.

Q. All right. I am just getting to the other one. You entitled this "Abstract of A7-S License (British Pool)."

And in No. 4, you state—this is under date of June 22, 1954.

> "Licensee agrees:
>
> "(a) Not to sell imported receivers except by permission."

Did you get that out of the license?

A. I believe that is an abstract of what I got out of the license.

Q. Then an abstract of A7-T license (British Pool), your note is the same:

> "(Same as A7-S License except in substitution of 'Television Receivers' for broadcast sound receivers throughout and except Paragraph 4 (c) below.)"

4 (c) has to do with payment of royalties. Is that a correct abstract of a license which you examined at that time?

A. I will accept the statement in there.

514 Q. I show you a document which is here in evidence as Defendant's Exhibit 80, which purports to be a letter written by you under date of June 22, 1954, to Mr. M. M. MacQueen of the General Electric Co., Ltd. It purports to be a copy of a letter you have written. I ask you if you wrote the original and sent it on or about the date that bears?

A. I believe this is a copy of a letter which I wrote to Mr. MacQueen.

Q. What was the occasion for your reviewing pool licenses?

A. Just to keep informed.

Q. Well, you say here:

> "Belatedly I have had an opportunity of reviewing the A7-S and A7-T Licenses of both the first and second editions. Copies of the first edition were sent by Mr. Cornock last September, while you will recall that you left copies of the second edition with me during your visit in April."

Had Mr. Macqueen been over to see you in the States in April?

515 A. I have no present recollection, but I will accept the statement in the letter.

Q. Well, do you recall discussing with him the subject of licenses by the pool?

A. No, I do not.

Q. You don't know why he left you a copy of the license?

A. I don't know. I suppose for my information.

Q. So you would know how your patents were being licensed by the pool, wasn't that it?

A. No, I don't think that is it.

Q. You don't think that is it?

A. No.

Q. I show you a document which bears Defendant Exhibit No. 81, which comes out of your files, which is on the letterhead of the General Electric Co., Ltd. of England, under date of 8th May, 1956 on the subject of Broadcast Licensing Pool in Great Britain, addressed to you and signed by Cornock.

I ask you whether or not you received the original of that letter on or about the date that it bears?

516 A. I received and read the original of this on May 11th, 1956.

Q. In this letter, Mr. Cornock says:

> "The present Broadcast Licensing Pool in Great Britain will, as you will remember, expire on the 31st December, 1957. We have from time to time discussed the position with Mr. Heather and Mr. Macqueen to weigh up the way it has been developing, as you will know from your talks with them during the last two or three years; and at the end of a discussion last Friday Mr. Heather asked me to write to you to summarize the picture as it appears to us at present and to ask for the views and comments of the Hazeltine Corporation. Since the best tactics might be conditioned by the strength of EMI in the next Pool, this letter begins by setting out the considerations that lead us to think that EMI are likely still to have the strongest individual position in the next Pool."

He says:

517 "We assume that the next Pool will probably last for five years."

Now, do you know whether or not the pool, the following pool was for a period of five years?

A. I think it was not, it is my recollection.

Q. How long do you think it was?

A. My present recollection is that it was for a shorter period, to be coterminous with the termination of EMI's rights on the RCA patents.

518 Q. Now, he says:

"We assume that the next Pool will probably last for five years. It is unlikely that Color TV broadcasts will, at the earliest, come into being before half of the life of the next Pool has expired; and when Color broadcasts have begun, Color receivers will not, at the most, account for more than half the value of the turnover in TV, and probably substantially less. Color will, at most, therefore, not account for more than one-quarter of the revenue of the next pool.

"EMI's own earlier patents on TV (i.e., patents not
arising from RCA) have been the main patent strength
of the present Pool. The more important of these
patents are due to expire within 12-18 months unless
extended. EMI express themselves as fairly confi-
dent of getting several (say two or three) years' fur-
ther extension of these patents (on the ground of
belated loss resulting from the war). The possibility
519 of such extension seems to us somewhat speculative,
though not impossible.

Then he goes on to say:

"From the foregoing assessment, two points appear to us to emerge:

"(i) EMI's position in the financially dominant section of the next pool (viz. Monochrome) will be at least as good as that of others (and will be equal to their position if their patents are extended),

"(ii) EMI's position in the 'minority' section of the next Pool (viz. Color) will probably be markedly weaker unless either their patents are extended or they make new arrangements with RCA.

"On this summing up, and giving the necessary

> weighting to the Monochrome situation, we feel that it is still EMI, and not some other company, that one should regard as the main target for any negotiations.
>
> 520 "The other broad factor that affects the matter, is the question of RCA's position. Such information as we at present have, can be summarized by saying:
>
> "(e) We know that EMI's present agreement with RCA ends in 1960."

Now, what was that agreement?

A. I have no idea.

Q. You don't have any idea at all?

A. No.

521 In other words, this man is writing you something about which you are absolutely and totally ignorant—the RCA arrangement with EMI?

A. Maybe I misunderstood your question. I have no idea about details. I knew, under the agreement, EMI had certain rights on the RCA patents. But the details of that I have never known. Let's see if you don't get some information on the details right here in this letter:

> "We also know that even under the present arrangement EMI cannot grant direct licenses under RCA patents".

Did you know that?

A. Well, that depends upon your definition of "know." I do not know that of my own knowledge. I have heard that. I have never seen the agreements.

Q. Well, here is a man that is making a direct statement to you in this letter, and he is a responsible person, and he is telling you directly:

> "We also know that, even under the present agree-
> 522 ment, EMI cannot grant direct licenses under RCA
> patents."

Then he says:

> ". . . though RCA do grant licenses, without additional royalty, to Pool licensees nominated by EMI,".

Now, did you know about that prior to this letter?

A. Again, it depends on what your definition of "know" is. I don't know that. I have heard it.

Q. Well, you knew it after you got the letter?

A. No. I don't know anything that somebody writes me or somebody tells me.

Q. Well, they were your partner, weren't they?

A. They are still people, and they are subject to making mistakes.

The Court: He is very skeptical, Mr. McConnell.

Mr. McConnell: Apparently he is.

By Mr. McConnell:

Q. He says:

> ". . . though RCA do grant licenses, without additional royalty, to pool licensees nominated by EMI, RCA have in this way, and also by their arrangement for supplying technical information, been pressing themselves into increasingly direct contact with the Pool's licensees."

523

Did you know about that?

A. I know of nothing other than what is related in that letter, and that isn't my own knowledge.

Q. All right. Then he goes on:

> "The inferences we draw from this are: Firstly, that the balance of probability is that EMI will, in future, not have more control over RCA patents than in the present Pool; and, secondly, that RCA may contemplate putting their patents direct into the next Pool rather than through EMI—though this second point is (so far as we are concerned) pure speculation."

Do you know whether or not they ever did put the patents in directly?

524 A. I had no first-hand knowledge. But my information is that they did not.

Q. Well, in the present pool, apparently by inference at least from this letter, you would get the information, wouldn't you, that RCA had put their patents in indirectly through EMI?

A. I think the document speaks for itself. I have no knowledge independent of that document. And it is no point in asking me what I know. There is certain things—statements are made in that letter.

Q. All right. Then on the next page, he says:

> "It is, as you know, our hope and belief that Hazeltine and the GEC will again find themselves working together in the next pool."

Had you been working together in the pool?

A. As far as to the best of my knowledge, Hazeltine never worked in the pool at any time.

Q. This is just an aberration of this man, that you were working together with them in this pool?

525 A. I don't know what his basis for that statement was.

Q. But you don't accept it, whatever it was?

A. I certainly do not accept it.

The Court: Again, it is an unfortunate choice of language.

The Witness: I think that is the point, your Honor.

Mr. McConnell: If you were writing this letter, you wouldn't use that language, I take it.

This is a good place to stop.

The Court: I think so. I was waiting for you to get through with the letter.

Mr. McConnell: Thank you.

The Court: We will convene again at 10:00 o'clock tomorrow morning.

(Whereupon, an adjournment was taken to 10:00 a.m., of the following day, Wednesday, February 19, 1964.)

526 * * (Caption—59-C-1847) * *

Before The Hon. Richard B, Austin,
Wednesday, February 19, 1964,
10:00 o'clock, a.m.

The trial was resumed pursuant to adjournment.

Present:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

527 The Clerk: Case on trial.
The Court: You may proceed.
Mr. McConnell: Thank you, your Honor.

LAURENCE B. DODDS, called as an adverse witness by the Defendant herein, having been previously duly sworn, was examined and testified further as follows:

Direct Examination (Continued) by Mr. McConnell.

Q. Mr. Dodds, you made a statement here in court the other day, and I am reading from Page 51 of the transcript. I guess it was your opening statement.

> "Now, coming to Australia, Mr. McConnell says that the license granted by the Australian Pool expressly prohibits importation. But one thing that he did not tell your Honor is that he is talking about an 18 year old license. That hasn't been the practice in Australia since 1946, and the record will show that."
>
> Do you recall that?

528 A. Yes, I recall that statement.

The Court: Do you want to get back on the stand here with the transcript. Take it with you if you want. It is easier for the court reporter, that is all.

The Witness: Yes.

Mr. Diggins: Do you mind if I stand over there so that I can follow it, too, your Honor?

The Court: Not a bit, no. Get over there. It is Page 51, I guess.

By Mr. McConnell:

Q. Now, I show you a document which is produced from the Hazeltine files, and also produced as Exhibit S as an answer to our interrogatories, marked here as Defendant's Exhibit No. 194, and purports to be a form of license agreement between—form license agreement between ARTS, the Pool, and an unnamed licensee. Have you ever seen that document before?

A. I have seen so many of these documents that I wouldn't be able to identify this one particularly, but I assume that I have seen it.

Q. Well, do you recognize your exhibit number
529 here?

A. Yes.

Q. As produced in response to an interrogatory?

A. Yes.

Q. All right.

Now, I call your attention to a recitation in this document which says:

> "Such license shall be deemed to have commenced on the first day of July, 1953, and shall continue until the 30th day of June, 1958, unless previously revoked as hereinafter provided."

Now, can you tell us whether or not that license was used by the Pool during the period in which it recites that it was used?

A. I don't have any personal knowledge as to whether this license was used or not, Mr. McConnell.

Q. But you will concede that it comes out of your files?

A. Oh, yes.

Q. I show you a document which is marked in evidence here as No. 211. It is produced from your files and
530 pursuant to our stipulation it is in evidence, and purports to be a letter under date of November 17th, 1960, to you, on the letterhead of Electronic Industries, Limited, signed by Arthur Warner, and I ask you whether or not you received that letter on or about the date that it bears, or shortly thereafter.

A. I received this letter and read it on November 22, 1960.

Q. On Page 2 of this letter, Mr. Arthur Warner says:

> "You will notice under the liabilities that we owed you 23,000 pounds at June 30th and this was sent forward to you on the 9th of August as a draft, $53,214.42."

Can you tell us whether or not your company got that money?

A. I have no personal recollection. I have no reason to believe that it did not.

Q. And that came from the pool, didn't it?

A. That came from Neutrodyne Proprietary, Limited, as a dividend, I believe.

Q. Which they had received out of the Pool, isn't
531 that right?

A. Neutrodyne Proprietary agreement, to the best of my knowledge, had in turn licensed the Pool and did receive royalties from the Pool.

Q. And that payment was on account of those royalties, was it not?

A. It was on account of the profits of Neutrodyne Proprietary, Limited.

Q. Which they got out of the Pool, isn't that right?

A. As I just stated, they received royalties from the Pool under their agreement with the Pool.

Q. I know they received royalties, but what I am asking you is whether the money that you are receiving, this $53,000, isn't the proceeds of what they received out of the Pool.

A. Well, it may be in part the proceeds that they received from the Pool.

Q. That is the best you can do for us?

A. That is the best I can do for you, yes. Neutrodyne Proprietary has expenses.

532 Q. There is nothing said about any expenses in this document, is there?

A. That's not an accounting statement, Mr. McConnell. That is just advising that the money—the dividend is being forwarded.

The Court: Is it a fact, Mr. Dodds, that if Neutrodyne had received no royalties from the Pool, they would have owed you nothing?

The Witness: I think that is a fair statement; yes, sir.

The Court: All right.

By Mr. McConnell:

Q. Now, you have also told us, at page 52 of your opening statement, and I am quoting—do you want to turn to 52. Have you got your place?

A. Yes.

Q. I am quoting:

> "It is strange, all that has been said about this package licensing—I have been associated with Hazel-

tine for thirty-four years and until that time, until
533 this time of the negotiations with Zenith, and nobody
ever asked for a package license. They didn't want
one."

A. That is an error in transcfiption, Mr. McConnell.

Q. Is it?

A. Yes, definitely.

Q. What is the error?

A. It should have read "nobody asked for anything other than a package license."

Q. Nobody ever asked—

A. Either that or I misstated myself. Either I misstated myself or there is an error in transcription.

Q. Well, it should read that "nobody ever asked for anything other than a package license"; is that right?

A. Yes.

Q. And that is your position, is it?

A. Yes.

Q. I shown you a document which is marked for identification Defendant's Exhibit No. 7, which is produced
from the Hazeltine Corporation files, signed "Larry,"
534 written to Mr. Binns. And I assume—it's got the
initials LBD; I assume Larry is yourself—under date
of August 8, 1951. Did you write that letter to Mr. Binns?

A. I did.

Q. Now, you say in this letter, and I'm quoting:

> "As I told you in my last note, we had a date with Redfield of Crosley in Cincinnati yesterday."

What is Crosley?

A. Crosley, at that time, was a division of Avco Manufacturing, a manufacturer of radio and television receivers.

Q. The Crosley radio, did they manufacture that?

A. Pardon?

Q. Did they manufacture the Crosley radio?

A. I believe they did.

Q. (Reading.)

"However, a couple days in advance he phoned me and suggested that I come alone so that Admiral Shea did 535 not attend. Charlie Hogan, whom you may recall was in our Patent Department for a short time, sat in the discussion with Redfield.

"Unfortunately, the discussion did not prove to be particularly fruitful. I reviewed again our 'package' license story. Redfield said that they felt that their 1949 settlement of litigation with Hazeltine had materially aided us in building up our license situation. I told him that we did not believe that that was an important factor since Emerson had not made a similar settlement as was contemplated at that time. I told him that we probably would not have made the deal except that we expected Emerson to make the same deal and clean up the Delaware cases. As it was, the same group of patents were still in litigation in Delaware and there was not too much importance whether there 536 were one or two parties arrayed on the other side."

Now, on the second page of this, page 2, you say:

"Redfield urged that they be permitted to take for a 'sample' of our license for a shorter period than five years to try it out and see if they like it. I said the answer to that was absolutely no."

Was he asking you for a license under less than the whole package?

A. No.

Q. He wasn't?

A. No.

537 Q. (Reading:)

"Redfield then asked that we made a proposal to them based only on the patents on which we had warned them of infringement," Now, wasn't that less than the package?

A. Will you continue the rest of the context, Mr. McConnell.

Q. (Continuing:)

"... royalties to be based on the use of these patents."

A. The rest of the paragraph. Read the last sentence of the paragraph, if you will, please.

Q. Will you let me conduct the examination?

A. I think—I understood that's what you are doing.

Mr. Diggins: If the Court please, we have had too many of these things taken out of context. I think the witness is entitled to ask to have the whole paragraph read to him.

The Court: Of course, any lawyer can run his case any way he wants to. It is my understanding that
538 cross-examination, or redirect, or whatever it is with an
adverse witness, is then used to show what was asked was taken out of context. That, of course, doesn't do counsel any good, to show that he makes a practice of taking things out of context. And I am sure that Mr. McConnell is aware of that.

He is entitled to ask his question any way he wants to, and you can straighten it out when you get Mr. Dodds back.

Mr. Diggins: Very well.

The Court: Now, do you want the reporter to go back to the question or will you ask it again?

Mr. McConnell: I will ask it again.

The Court: Because there have been two or three interruptions.

By Mr. McConnell:

Q. (Reading:)

"Redfield then asked that we make a proposal to them based only on the patents on which we had warned them of infringement, royalties to be based on the use of
539 these patents."

Did he make that request of you?

The Court: Did Redfield make it?

Mr. McConnell: Yes:

By Mr. McConnell:

Q. Did Redfield make that request?

A. Yes.

Q. Then you say, and I am quoting:

> "I said that I would do so but that the rates of royalty for such a license would probably be such as to exceed the $50,000 on their volume of business and that the license would necessarily contain some provisions to insure against litigation as to the use of the licensed patents."

Did you tell him that?

A. I believe I did.

Q. Well, then, you were going to fix the rates on the individual patents that he wanted, so that he would have to pay as much for the one that he wanted as he would for the whole package; isn't that true?

A. That is definitely untrue, Mr. McConnell, on two counts.

Q. That's not true?

A. I will be glad to explain, if you wish.

Q. All right. Then you go on:

> "I also said that we disliked that sort of arrangement as being one in which the licensee might be licensed at any given time under one group of patents while we would find it necessary to sue them on other patents, and that such litigation would seriously impair the usefulness of the license."

Is that what you told him?

A. I believe so.

Q. (Reading:)

> "As the discussion progressed, this suggestion pretty well dropped out of the picture."

In other words, you talked him out of his request, didn't you?

A. No.

Q. You didn't?

A. No.

Q. All right. I show you a document which is pro-
541 duced from your files as Defendant's Exhibit No. 127,
and ask you if you can identify the writing on this document, the handwriting?

A. This is my handwriting.

Q. And what does that purport to be?

A. You say what does this purport to be?

542 Q. Yes. What does the document purport to be?

A. I cannot identify it beyond this. This was a memorandum which was prepared some time before 1944, some 20 years ago. I don't have any recollection independent of what is on the document itself.

Q. Well, were you making an analysis of the situation up in the Canadian Radio Patents, Limited?

A. I'm not sure of an analysis. There are some topical outlines which appear to be the basis of a possible discussion for an agreement, is the way I would interpret this.

Q. Anyway, it is in your handwriting?

A. Yes.

Q. I show you a document which is produced from your files as Defendant's Exhibit No. 172, which purports to be a letter addressed to the Hazeltine Corporation from a Mr. Lemsky of the Trav-ler Radio and Television Corporation of Chicago, Illinois, and a copy of a reply by you to Mr. Lemsky under date of May 10, 1940, and I ask you whether or not you received Mr. Lemsky's letter on or about the
543 time dated, and whether or not you wrote the letter in
reply?

A. The answer is yes to both questions.

Q. Mr. Lemsky's letter to you, or to the Hazeltine Corporation—I quote:

> "Please send us any information you have regarding Canadian patent rights. We would like to know if we can sell our merchandise and if there is any Canadian law which does or does not permit the sale of same."

And in reply, I quote your—

The Court: Mr. McConnell, who was that from?

Mr. McConnell: That, your Honor, is from the Trav-ler Radio and Television Corporation.

The Court: All right.

Mr. McConnell: Of Chicago, Illinois. Mr. E. Lemsky was writing the letter.

The Court: I was just wondering what company. You have answered the question.

By Mr. McConnell:

Q. Now, I ask you whether or not you made this reply:

544 "This is in answer to your letter of May 2nd with respect to Canada. A group of patents generally corresponding to those owned or controlled by Radio Corporation of America is vested in Canada in the Canadian Radio Patents, Limited. This company has a number of licensees in Canada, and it is my understanding that they will not license sets for importation into their country. They are located at 159 Bay Street, Toronto, and perhaps you can write to them direct. The Hazeltine Corporation patents in Canada are not entirely under our control and consequently licenses can only be obtained by a manufacturer in Canada."

Now, were those facts true?

A. May I see the letter, Mr. McConnell?

Q. Yes, sir.

A. My answer to that is, I apparently believed them to be true in 1940. As of the present time, I do not believe they are strictly accurate.

545 Q. I want to call your attention to a statement which you made under oath in your deposition, which appears at page 180 of this transcript.

A. I have it.

Q. Now, according to the transcript you testified to this question and answer:

> "So far as you know, your patents which were in the pool were being licensed under a form as shown by Defendant Dodds Exhibit 52; is that correct?
>
> "A. I believe I previously testified that I had no familiarity or knowledge at all with the A.5 Pool and I believe this was a license issued pursuant to the A.5 Pool agreement."

Did you so testify?

A. I believe so.

Q. Now, you have told us that you prepared the license abstracts which are shown in Defendant's Exhibit 79, is that right?

A. I don't identify that number, Mr. McConnell.

546 Q. Well, look at it.

The Court: Was that the group of abstracts?

Mr. McConnell: That is the group of abstracts, your Honor. He said that he prepared it yesterday.

By the Witness:

A. Yes.

By Mr. McConnell:

Q. Do you find in there an abstract of the A.5 Pool license?

A. Yes, in 1948.

Mr. McConnell: I have no further questions.

Mr. Diggins: If the court please, we are going to call Mr. Dodds in our defense, and rather than try to cross-examine him, which would necessarily be piecemeal and limited to the direct, I would like to reserve all of our questions until we call him in our case so that we can carry it right straight through, if the court will grant us that right.

547 The Court: Leave is granted. It makes sense.

Mr. Diggins: Thank you.

(Witness was excused.)

Mr. McConnell: Mr. Crotty, would you take the stand, please?

FRANCIS W. CROTTY, witness called on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your full name, please?
A. Francis W. Crotty, C-r-o-t-t-y.

Q. Where do you live, Mr. Crotty?
A. In Park Ridge, Illinois.

Q. What is your address there?
A. 165 Michael John Terrace.

Q. What is your business or occupation?
A. I am a patent attorney.

The Court: Do you want to sit in the jury box, Mr. Dodds?

Mr. Dodds: I was going to say that Mr. McConnell 548 is right in the line of sight.

The Court: All right, fine, make yourself comfortable where you can hear and see.

By Mr. McConnell:

Q. And you are admitted to practice as a lawyer?

A. Yes, sir.

Q. In the State of Illinois?

A. Yes, sir.

Q. And by whom are you employed and in what capacity?

A. I am employed by Zenith Radio Corporation. I am vice-president in charge of patents.

Q. And how long have you held that position, Mr. Crotty?

A. I have been employed by Zenith since July of 1948. I was in charge of the patent activities from first joining the organization and became a vice-president, I believe, in 1958.

Q. Do you recall having had a conversation with a Mr. Brian McConnell?

A. Yes, I do.

549 Q. And when and where was that conversation, and tell us who Mr. McConnell is, if you know.

A. I think it is Mr. Bryan McConnell, who I understood at the time to be the director or the manager of Canadian Radio Patents, Limited, in Canada. The conference took place in my office at the plant in 1958 or 1959. I am inclined to think that it was midyear of 1959.

Q. And who was present at that conversation?

A. In addition to McConnell and myself, Mr. Curtis.

Q. He is the attorney here representing Zenith Radio Corporation?

A. Yes, sir.

Q. Did Mr. McConnell tell you who he was representing at that time?

A. Yes, he said he was representing Canadian Radio Patents, Limited.

Q. All right.

Now, will you tell us what was said at that conference? If you cannot remember the exact conversation, give us the substance of it.

Mr. Dodds: I object, your Honor, and this is apparently the key to a very broad and far-reaching
550 dispute between the parties.

Plaintiff takes the position—counter-claimant and defendant—that conversations, what Mr. McConnell said, are pure hearsay.

Now, Mr. McConnell, I know, is taking the position that it is a statement by what he terms a co-conspirator.

The Court: During the course of the conspiracy.

Mr. Dodds: Pardon?

The Court: During the course of the conspiracy, I assume.

Mr. Dodds: During the course of the conspiracy, yes.

Mr. McConnell: Yes.

The Court: I mean, if it is after, why, it makes no difference.

Mr. McConnell: No, this is the course of the conspiracy and pursuant to it.

Mr. Dodds: Excuse me until I get some notes.

We submit, your Honor, that there isn't one scintilla
551 of evidence of the existence of any conspiracy involving
Hazeltine Corporation.

Mr. McConnell has referred, among other things, to what he calls the co-conspirators involved in this extensive litigation with RCA, but if you look through the issues involved in that case, you will find that it was a totally different picture.

Now, I have a copy of the complaint in that case, in the Chicago case. There was one in Chicago and one in Delaware. It is a very voluminous and wordy complaint and I certainly won't bore the Court with attempting to read it, but these are some of the things that it alleges, your Honor:

I alleges a conspiracy between Radio Corporation of America, General Electric, American Telephone and Telegraph Company, the Western Electric Company, the Bell Telephone Laboratories, and the Westinghouse Electric Company, all United States corporations, and it alleges—these are the things which that complaint alleges that these companies had conspired to do:

552 One, to monopolize trade in the electronics field, and those concerns, the majority of them, I believe all except the Bell Laboratories, were manufacturers of electronic equipment; so the first allegations are that they had a conspiracy to monopolize that trade, United States trade.

Two, the second assertion and allegation is that they conspired to divide the fields among themselves. And among the fields that are mentioned were communications field, radio telephone, radio telegraph, radio and television manufacture, X-ray and medical apparatus, and vacuum tubes, and a few other secondary products; so it alleges that by these agreements and the conspiracies between them there was an attempt to illegally divide fields, so that each party had effectively exclusive right to manufacture and sell in the field allotted to it.

A third charge was made that they had conspired to monopolize, to establish a patent monopoly and patent licensing by having these half a dozen dominating com-
553 panies in industry all pool their patents into a common pool and to use that collective, coercive force to dominate the patent licensing position. Perhaps I should back up a little bit and compare that—

554 The Court: And that pool was located where?

Mr. Dodds: That pool—it was no formal organization, your Honor. What happened was different ones of the organization administered the patents in different fields; for example, Radio Corporation of America administered the field in the radio communication field—I am sorry, in the radio and television manufacturing field—

The Court: In America.

Mr. Dodds: In America, all in America, yes.

The Court: All right.

Mr. Dodds:

3. The complaint alleges that these companies had also conspired among themselves and with foreign affiliate and associate companies to achieve the same objects in foreign countries, that is, to monopolize the trade, to divide the fields, and to establish and monopolize the patents and licensing position.

555 It alleges that these parties, these half a dozen major, dominating electronic manufacturing companies had conspired to divide the foreign territory among themselves and against competitors so that their foreign associate companies of the Radio Corporation would manufacture and sell only in its territory and Radio Corporation of America would sell only in its territory.

Lastly, there was the allegation that these six companies had conspired among themselves to provide that the sales of tubes, vacuum tubes, used in all electronic equipment should be made only with illegal restrictions on their use.

Now, the complaint, in this case I guess it is the counter-claim, traces this conspiracy back to 1919, goes up through the 1932 antitrust action by the government against these parties in which there was a consent decree in the District Court of Delaware which permitted them to do cer-
556 tain things and prohibited them from doing certain
things and did constitute some rearrangement of their practices. And the counter-claim alleges that these parties were proceeding in violation and in contravention of the consent decree in that antitrust action. And in this case here in Chicago, the Zenith Radio Corporation asserted

damages of fifty-seven million dollars and, finally, as the record has shown, settled for ten million dollars.

Now, let's contrast that to the facts in this case, which I think your Honor is pretty well familiar with by this time.

The Court: Is your point at this point that the conspiracy charged in this counter-claim is not the same conspiracy charged in this other lawsuit?

557 Mr. Dodds: No. 1, the conspiracy charges are not the same, and, secondly, there has been no conspiracy of any sort proved. All that has been proved is, and which I admitted in my opening statement, was that Hazeltine had sold the rights in some of its personal property, in certain foreign countries, to concerns who were using that property in consonance with their laws, and that is not a conspiracy under any decision which is entered by any court in this United States.

And in support of that, your Honor, reference has been made to a fairly recent decision—not decision, action, antitrust action by the Department of Justice against the General Electric Company, the Westinghouse Company, and—no, the Philips Company of Holland, which is one of the great industrial empires, directed specifically, your Honor, and we have a copy of the complaint on the action in that case, directed specifically to prohibiting them from permitting their patents to be in the Canadian Radio

558 Patents, Limited. In that case, consent orders were entered with respect to each of the three defendants, General Electric, Westinghouse, and the Philips Company. We have copies of those consent judgments which permit them to continue to include their patents in the Canadian Radio Patents, Limited. That is the latest action, and that took place within the last couple of years.

The Department of Justice, who is the guardian of our antitrust laws, has permitted these three major, dominating manufacturing companies, not just somebody that does

research, development and licensing—we are not competitors of these people—There might be a little bit more reason. But even those companies, they have permitted them to keep their patents in the Canadian Radio Patents Pool. The only restriction in the consent order was that these companies could not, by concerted action with their Canadian affiliates—and I should mention that in each case the patents were put in the Canadian Radio Patents,
559 Limited through a Canadian affiliate, and there was a restriction that these companies could not, by agreement with their affiliates, in concert, enforce any restriction on the use of their Canadian patents.

560 In other words, the Philips Company of Holland could not enter in agreement with its Canadian Philips Company which prohibited them, for example, from licensing importation. In other words, the Canadian affiliate had to have a free hand, but as long as they exercised their own free hand they were at liberty, they were permitted to continue the use of the inclusion of their patents in the Canadian Radio Patents, Limited.

So that is an example—I cite that because a great deal of emphasis has been put on Canada, but I believe the situation is similar in both England and Australia, so that as long as Hazeltine's only connection with these companies was merely to sell them some of their personal property or some rights in their personal property and had no connection whatever with the operation of any of these pools, which were illegal in their country and perhaps might even be illegal in this country, that hasn't been decided, it is not necessary to decide, there can be no
561 possible basis of alleging a conspiracy between Hazeltine and these foreign companies.

I raise this point because this is at the root of a whole mass of material among this list of exhibits which is included as a great mass of material, of documents taken from the Zenith-RCA litigation, and the only basis on which they could possibly be admitted would be statements or admissions of co-conspirators, otherwise they are pure hearsay.

The Court: You do concede, I assume, Mr. Dodds, that if there is a conspiracy or if there is evidence of a conspiracy, that anything said by one conspirator during the course of the conspiracy is binding on the other conspirators during the course of the conspiracy?

Mr. Dodds: In general, yes, I agree with that.

The Court: You concede that?

Mr. Dodds: Yes.

The Court: All right, Mr. McConnell.

562 Mr. McConnell: If the Court please, I do not want to argue the whole conspiracy case here and now, nor do I want to argue the Zenith case, which was a different case entirely than the one that we are trying here, although it had many aspects which are in common. The allegations there were broader and involved other companies and different companies, but they did have common aspects insofar as the use of the patents are concerned. Now, we come—

The Court: You do concede that you cannot prove this conspiracy with this kind of evidence unless there is some evidence—

Mr. McConnell: Absolutely.

The Court: I mean you concede that?

Mr. McConnell: Certainly, unless there is a prima facie case of conspiracy or if all the proofs, when they are here before your Honor, do not convince you that there is a conspiracy, you pay no attention to this evidence.

The Court: That is my understanding of the law.

563 Mr. McConnell: We are here in a bench trial, and

I don't want to argue my whole case piecemeal on objections to evidence. I will point this much out at the moment, however, we have introduced here—

564 The Court: Mr. Dodds had said, and I thought you might want to answer, that there is no scintilla of evidence that indicates any conspiracy at this point, as you offer this evidence.

Mr. McConnell: I know that he says that.

The Court: I wondered if you thought there was a scintilla.

Mr. McConnell: Well, I think it is a conclusive case of conspiracy, not just a scintilla. We have their company, on the documents which have come out of their files, in the Pool. They have their patents in the Pool.

The Court: They don't deny that, I don't think.

Mr. McConnell: They have their patents in the Pool and they are receiving the proceeds from the Pool.

The Court: They don't deny that.

Mr. McConnell: And we have the plan of the Pool setup in the documents, and we have in from their files the 565 license agrements which show the restrictions which are imposed by the Pool acting together to restrict any import of American sets into Canada through the devices of refusing to license under any of these patents—this isn't just one individual patent holder, it is all of them acting together to refuse any license under the Pool license to anybody who imports sets into Canada, and it is all in black and white in documents that have come out of their files.

Now, the law of conspiracy, and we have stated it in our briefs, and there is any amount of law on it—

The Court: Let me ask Mr. Dodds this one question at this point: If your patents had got into the Canadian patent pool by virtue of Hazeltine itself putting them in rather than thorugh—

Mr. Dodds: Well, in Canada Hazeltine itself did put the patents in the Pool by an agreement with the

566 Canadian Radio Patents Pool. In that respect the situation is different than in Great Britain and Australia.

The Court: All right, go ahead.

Mr. McConnell: They went in directly by their agreement with knowledge of how they were going to be used, and they get royalty payments back from the Pool. They get the proceeds of what the Pool is doing.

The Court: Is this witness going to go into anything other than Canadian—

Mr. McConnell: No, not for this conversation, no.

The Court: Not with this conversation, but before he gets off the stand, is he going to talk about England and Australia?

Mr. McConnell: I don't think so, no.

The Court: Then we have another problem.

Mr. McConnell: That may be.

The Court: I mean, I just want to settle it now if it is going to come up with this testimony.

567 Mr. McConnell: Not with this testimony, no.

The Court: All right, you may proceed.

568 Mr. McConnell: Now, we have cited the cases to your Honor in our briefs that conspiracy of this kind and under the antitrust laws—and the Supreme Court has said this over and over again—all you have got to show is a plan, the purport of which is to restrain commerce either between states or between foreign countries, joined in by a person with knowledge of what it's attempting to do, participating in the plan. You don't have to find that they all sat around the table and agreed all together this, that and the other thing.

The Court: I know all about conspiracy, I think.

Mr. McConnell: I know you do. I am just stating our position.

Now, we have in the evidence right now, your Honor, a prima facie case of conspiracy on documents which come out of their files, which they can't contest. They are in the Pool. They put their patents in it. They were deriving the profits from it.

Now, his talk about General Electric and these com-
569 panies that have been restrained, he made an absolute
misstatement of that to your Honor. Those companies
are restrained from imposing restrictions on their licenses
such as we are complaining about here.

Mr. Dodds: I have a copy here.

Mr. McConnell: All right. We will get to that in the course of this trial.

The Court: Is it your position, Mr. Dodds, that a conspiracy to prevent the importation of American radios and television sets is not a violation of the Sherman Act?

Mr. Dodds: Oh; no, if there is a conspiracy, no, I would agree that that would be a violation.

The Court: All right. I just wanted to clarify that.

Mr. Dodds: Our whole point is that there is no conspiracy.

The Court: I understand that. I just wanted to be sure
what your attitude was, whether if it became apparent
that that was the purpose of the conspiracy whether, in
your opinion, that was a violation of the Act, that is
570 all.

You may proceed.

Mr. McConnell: May I suggest this, your Honor? I have the law here. I could argue a whole conspiracy case at this time or any time, but it seems to me that the time to argue the conspiracy issue on the law is when we have got our evidence before your Honor and can point out here how this piece fits into that. Conspiracies, as a general rule, can't be proved by one document and they can't in this case, although this comes pretty close to it. And all I have to show, under the decisions which we have cited in our brief, is a prima facie case and then—

The Court: I mean, it is your position, Mr. McConnell, that you have shown a prima facie case?

Mr. McConnell: Yes, at this moment. That is our position.

The Court: All right.

Mr. McConnell: And if your Honor finds at the end
571 of this case that we are wrong, we haven't proved it, why, of course, this evidence is going to go out. You are not going to take evidence—

The Court: I mean, just so that it is clear to all concerned that this is not offered for the purpose of proving the conspiracy.

Mr. McConnell: No, it is offered for the purpose of showing what they threatened to do to us, but not to prove the conspiracy, no.

The Court: It is a matter of semantics. We have been talking about shades of differences in words ever since we started this lawsuit.

572 Mr. McConnell: If we were before a jury, I could see why we might want to argue the whole position now, at this time. But this is a bench trial. Your Honor is a seasoned trial judge, and is not going to be influenced by any evidence except what is competent evidence. And the courts so hold, in a bench trial the court is presumed to only consider competent evidence.

The Court: I assume that the technical way of doing this, in the event that there appears to be no evidence of any conspiracy, is to take it, in the way of clearing the record, as a motion to strike this testimony which eliminates it completely.

Mr. McConnell: Yes. That is available to him.

Mr. Dodds: May I say a few words.

The Court: Yes.

Mr. Dodds: In the first place, there has been some rather general statements, that the Canadian Radio Patents Limited refuses to license all importation. That just isn't so, and we have evidence to show to the con-
573 trary.

There are certain restrictions on importation they impose, that they impose because of the peculiarity of the Canadian law.

Secondly, in order to show a conspiracy—say, for example, supposing it were necessary to show a conspiracy between Hazeltine and CRPL, as Mr. McConnell suggested; you would have to show in their arrangement some purpose or plan of restraining trade. Now, Hazeltine has no interest at all in restraining trade anywhere. Its sole interest is maximum trade, because that means maximum royalties.

The Court: I mean, it's not necessary, as I understand it, that that be your objective. If you are aware of the fact that what you are doing for a different motive does restrain trade, why, that of itself is sufficient; isn't that true?

Mr. Dodds: Well, I'm not sure; it depends. Be-
574 cause in this case, what we are doing in and of itself
doesn't restrain trade. In other words, if we were—if Hazeltine were to administer these patents in Canada by itself, no conspiracy or anything, it would have to impose the same restrictions or risk the revocation of its patents. It isn't because the Hazeltine patents are in the Canadian Radio Patents Limited that this is true.

The Court: Does the government up there require that you keep out—

Mr. Dodds: It definitely does. Sections 53 to 76 of the Canadian Patent Act—unfortunately, I don't have it

in the courtroom; I have it in the hotel—states that if the patent owner or his licensee is not able to supply the market by Canadian manufacturers, then any member of the public can do one of two things. It can come in and ask the court for a compulsory license under its terms—not the owner of the patent's terms, but under its terms; and in flagrant cases, for a revocation of a patent; that is,
575 an absolute nullification of a patent.

And the Attorney General of Canada fairly recently brought just such a nullification proceeding in some patents involving particular eye glasses. So that whether these patents were administered by Hazeltine itself or by CRPL, or by any party, those same restrictions have to be imposed under Canadian law or else the owner of the patents is subject to forfeiture of his rights.

576 The Court: I mean, let me see if I've got this clear. It is your position that if you kept control of your patents in Canada and licensed manufacturers up there to use your patents, and that all you did was to license them to use your patents, then, of course, your license would only be good in Canada so you don't have to put that in. You can't grant them a Canadian license to manufacture something in Greenland or America.

But if one of your licensees then imported a Zenith radio or television and sold it, is that, first of all, a violation of your license? Secondly, is that a violation of the Canadian law?

Mr. Dodds: I believe the Court interpretations have been substantial. In other words, they don't take account of any de minimus. But unless the patent owner or his licensees substantially meet the needs of the Canadian market, then the patents are subject to compulsory license and/or revocation by the court.

577 The Court: Well, does that mean that the Canadian public buy only material that is made in Canada?

Mr. Dodds: Yes. I don't know whether your Honor recalls, but at the time this antitrust action was brought against General Electric, Westinghouse, and Philips, there was quite a furor in the press.

The Court: I don't recall it. I had no interest in it.

Mr. Dodds: It was all in the press, because the Secretary of Foreign Affairs of Canada went down to Washington and made representations to the people here, complaining that the United States Government was trying to tell Canada how to run its business. And there was quite a furor in the press, on both sides of the border.

That is the policy. Now, we may not like that. We may say Canada is wrong, but that is their law and I don't believe we are in the position to tell Canadians how they
are to run their business. And if we are going to do
578 business in Canada, we have to comply with Canadian
law.

The Court: Of course, I'm unaware of what you are saying being the fact. And, of course, I'm unaware of it because of the fact that you haven't yet had a chance to put on your case.

Mr. Dodds: Right.

Mr. McConnell: That's defense.

The Court: And I can't assume at this point that that is the law with no evidence before me in regard to that.

I would say that if that turned out to be the law, and you so demonstrate in your case, you ought to look forward very hopefully to a motion to strike this testimony. But I, at this time, am going to overrule your objection to it and let it come in subject to a motion to strike at an appropriate time, when you have convinced me that what went on here is not a violation.

Mr. Dodds: Just one final point. In the agreement
which, again, has not been shown to your Honor—but
579 in the agreement between Hazeltine and the Canadian

Radio Patents, Limited, there is no restriction provision whatever. All it is, as I have said, is that Hazeltine has merely sold interest in its personal property. No restriction whatever is placed upon the use of that property.

580 The Court: However, if the one to whom you sold it uses it in such a way that it violates the antitrust laws—

Mr. Dodds: Your Honor, the Canadian company can't violate the antitrust laws.

The Court: No. I mean, the Canadian can't. But if as a result of your knowledge that it violates the antitrust laws, by virtue of the fact that it prevents importation in Canada of American merchandise, if that is a violation of the antitrust laws, why, then if there is sufficient evidence, there could be a conspiracy such as is charged in the counter-claim.

Mr. Dodds: Well, that's a little difficult for me to follow; that a Canadian company, absent any concerted any action—and I think we will assume that there isn't any concert between Hazeltine and the Canadian company in the sense there is no restrictions or agreement on their freedom of action—as to how the Canadian company, acting unilaterally, would—

581 The Court: I agree that an individual, under the law—and this is most unusual; something that doesn't exist as far as any state law is concerned—

Mr. Dodds: It is not only an individual, it is a foreign individual, in a foreign country, operating in a foreign country.

The Court: I understand that, I am aware that if one commits the substantive offense when it is not an offense, but if you conspire to do this with someone else, why then it becomes an offense. It is a quirk that I haven't become familiar with until I got down here, and I had great difficulty in believing that that was the law. But the difficulty in my mind is now believing that, despite the fact that it is something that doesn't exist in any other sphere of illegal activity.

The objection—

Mr. Diggins: Your Honor—

The Court: Did you want to say something, Mr. Diggins?

582 Mr. Diggins: May I make one statement here.

The alleged conspiracy which is supposed to keep the Zenith products out of Canada—

The Court: Well, American products.

Mr. Diggins: Well, American products, but Zenith is the one that is complaining.

The Court: That's right.

Mr. Diggins: (Continuing.) is in essence a conspiracy —and I will use the word—among a group of Canadian companies.

Now, as far as Hazeltine, the plaintiff here, is concerned, Hazeltine has granted a license or granted rights under its U. S. patents to the Canadian CRPL, to use those patents lawfully under Canadian law. There is no agreement, no commitment, no contracts, combinations or conspiracy to which Hazeltine is a party in any way restraining U. S. trade. The only thing that restrains U. S. trade, your Honor, is the right of the Canadian Pool to bring in-
583 fringement suits against infringers.

And, your Honor, I submit that the whole pattern of this case is—and it is the pattern that has been argued to your Honor time and again—is that Zenith is trying to get a free ride and not pay for taking somebody else's brain products. And in Canada, I don't think there has been any showing whatsoever by independent evidence that there is a conspiracy to which Hazeltine is a party. There has been no showing of that; and that this evidence, for that reason, is not admissible.

And, your Honor, it has got to also be brought to mind that all of this evidence is not on the misuse theory of the patents. This is under the counterclaim where they must show—

The Court: I'm aware of the difference.

Mr. Diggins: I just think, your Honor, that there has been no showing, no sufficient showing by independent evidence of a conspiracy to which Hazeltine is a party.

584 The Court: I don't know what you mean by independent evidence. As I said time after time, this is not going to be used to prove the conspiracy if there is no other evidence of a conspiracy.

Mr. Diggins: Your Honor, the case that Zenith relies on is quite interesting in that regard. This case says:

> "We think that the industry-wide license agreements, entered into with knowledge on the part of the licensor and the licensees of the adherence of others, with the control over prices and methods of distribution through the agreements and the bulletins were sufficient to establish a prima facie case of conspiracy."

585 We haven't got it. All you have got here, your Honor, is concerning Canada alone, is a group of Canadians acting in accordance with Canadian law who have reached a certain conclusion. And the only way in which we can sell our patents and get some sort of a return—our Canadian patents, not U. S.—our Canadian patents and get a return on those is to sell them to the Pool.

The Court: I mean, why couldn't you have just retained them and issued licenses there as you do here?

Mr. Diggins: Several reasons, your Honor. In the first place, the Pool is the big licensing agency up there. Secondly, it would be quite an expensive operation to set up a policing agent, a licensing agency in Canada If we did it in Canada, why not require us to do it in Great Britain.

in Australia. And when you set up these policing agencies, it is just not worth while taking out the patents.
586 Foreign patents are expensive anyhow. And if you have to police them and enforce them, your Honor, it is the old pipeline theory that sitting in New York or Chicago, and trying to enforce your patents against defendants in Canada, in Great Britain, in Australia, is a hopeless task.

The Court: I assume, Mr. Diggins, that prior to putting Hazeltine's patents in the Canadian Pool, Hazeltine was aware of the fact that the Pool was not going to permit the importation of American merchandise and, knowing that, put their patents in the Pool. Does that, in your opinion, make any difference?

Mr. Diggins: Your Honor, I don't think it makes a particle of difference.

The Court: I just wanted to find out.

Mr. Diggins: The reason, your Honor, is, it's a question there of the propriety under the Canadian law. Mr. Dodds mentioned the other day that it is the same thing
587 as leasing a building for a share of the proceeds; and if you lease it in Chicago knowing that the business is going to be used for gambling, you are a party to an illegal activity and a party to an illegal conspiracy. If the same two parties enter into a lease where the building is located in Las Vegas, then, your Honor, it is not illegal. It is not an illegal conspiracy. Now, the point is, what we are saying—

The Court: I agree. And that is why I say, assuming that you knew prior to the time that they turned them over, that they were to be used in such a way, that it would be a restraint of trade in regard to American products going to Canada for Hazeltine patents—they knew this ahead of time.

Mr. Diggins: I would assume if they knew it ahead of time, it would still be perfectly proper.

The Court: I mean, you have answered my question.

588 The objection will be overruled, and this will be admitted subject to a motion to strike.

By Mr. McConnell:

Q. Mr. Crotty, will you now tell us what was said in that conversation, if you can tell us who said what, or tell us literally what was said, or give us the substance of it.

A. The best I can do is give the substance of the conversation as I recollect it. McConnell identified himself as the representative of CRPL and informed me of the companies whose patents were being administered by that group. He mentioned specifically that they had the licensing rights under the patents of Canadian General Electric, Canadian Westinghouse, Canadian Marconi, the Philips Company of Canada, and Hazeltine.

I believe, also, he mentioned the Parker patent on intercarrier sound, but I could be in error on that.

He told me that Zenith was putting an instrument on the market in Canada. He said that it infringed patents 589 that CRPL licensed. I think he identified at least three, one of which was a patent of Hazeltine origin. He told me that I would have to take a license; that the license could not be for importation, it would have to be for local manufacture.

He did say that he had been instructed by General Electric that he could and should grant licenses for importation under the patents of General Electric. He made the same statement with respect to the patents of Westinghouse. He said that—

590 The Court: Now, let me understand this. He said that he was told by both General Electric and Westing-

house that they could and should grant licenses for importation?

The Witness: I believe, your Honor, he expressed it that he had been instructed by those companies, in granting licenses under their patents.

The Court: That they could and should?

The Witness: Yes, your Honor. He said that he could not grant a license for importation under the patents of Marconi, Philips, or Hazeltine.

By Mr. McConnell:

Q. Well, did he tell you—well, have you exhausted your recollection now of what was said there?

A. That's about the substance of it. It was left on this note. He did not have a copy of the standard form license that they issued with him at the time, and he agreed to send it to me.

Q. Did he send it to you?

591 A. Yes, he did.

Q. Was there any discussion at that time about what you would have to do in order to obtain a Hazeltine license aside from paying royalty fees?

A. Well, he said to obtain the Hazeltine license I would have to manufacture—I would have to manufacture in Canada.

Q. Was that true—did he say that was true of the other patents of the companies that he mentioned, aside from General Electric and Westinghouse?

A. Yes, he did.

The Court: May I inquire further, Mr. Crotty. You indicated that he said you used three patents in your set, one of which was Hazeltine's. Did he tell you who the other two patents belonged to that you were using?

The Witness: Yes, your Honor, he did. My recollection is one was a patent owned by Canadian Marconi, and I believe the third was a patent owned by the Philips Company in Canada.

592 The Court: And neither of those were the ones he told you he had been instructed that he could or should permit importation of?

The Witness: That is correct.

The Court: All right.

By Mr. McConnell:

Q. Well, didn't he tell you that he couldn't issue a license?

A. Yes, he did.

Q. Except where you manufactured in Canada?

A. Yes.

Mr. McConnell: Have we got that document?

Mr. Curtis: It is up there.

Mr. McConnell: Which one is it, Mr. Curtis?

By Mr. McConnell:

Q. I show you a document which is marked for identification Defendant's Exhibit 154, which purports to be a letter from Mr. B. McConnell, President, on the letterhead of Canadian Radio Patents, Limited, 200 St. Clair Avenue, West Toronto, under date of June 5, 1959, addressed to you; and, also, Defendant's Exhibit No. 24-C, which 593 purports to be a license agreement, or a form of license agreement for Canadian Radio Patents, Limited, and a supplementary agreement marked Defendant's Exhibit No. 124-D which also purports to be a license agreement, standard license agreement of Canadian Radio Patents, Limited.

I ask you if you received through the mails the original of which Defendant's Exhibit 154 purports to be a Xerox copy, together with the enclosure, a form of licenses?

A. I'm sure I received the letter from CRPL under date of June 5, which is Defendant's Exhibit 154.

594 Q. All right. Will you tell us whether or not there were enclosures and, if so, if you can identify the enclosures?

A. I believe there were. Document 124-C is a form of license issued by CRPL which I believe is the one that was transmitted with that letter. I think the supplementary agreement, Exhibit 124-D was also with that letter. That's my recollection.

Q. All right. In the standard license agreement—will you look at it. Do you find that any restriction on the importing of radio or television sets?

A. The granting clause, which is in Article II, Section 1, as I understand it, is specifically confined to local manufacture in Canada, and the license, therefore, is only for local manufacture. Therefore, if you imported under this license, it would not be a licensed operation.

Q. Will you read that into the record please.

A. Section 1 of Article II reads as follows:

"The licensor hereby grants to the license upon the
595 terms and conditions hereinafter set forth a personal indivisible nontransferrable and nonexclusive license only for the licensed apparatus hereinafter specified and defined, and only as follows:

"(a) To manufacture licensed apparatus in Canada and to sell or lease licensed apparatus so manufactured;

(b) To have licensed apparatus manufactured in Canada for the licensee and to sell or lease such licensed apparatus so manufactured for the licensee subject to the payment of royalties thereon by the licensee as provided in Article III hereof. Such licensed apparatus shall be deemed to be licensed under this agreement at the time of sale or lease by the licensee."

Mr. McConnell: I offer those documents in evidence at this time, your Honor, under those exhibit numbers.

The Court: They may be received subject to a mo-
596 tion to strike. That is going to apply to all of this
testimony and all these documents.

Mr. Dodd: I needn't necessarily repeat this each time, I assume?

The Court: I will make an announcement now, for the record, that that is the fact, and without further objections.

Mr. Dodd: Yes.

The Court: Because if he shouldn't testify in the first place, anything that he identifies and gets in the record shouldn't be in the record.

All right.

Mr. McConnell: In this letter—I want to read this to the Court, if I may—under date of June 5, 1955, from Mr. McConnell to Mr. Crotty. He says:

> "During the discussions with yourself and Mr.
> Curtis in your office on May 12th, you requested a copy
> of one of our present standard license agreements to-
> gether with further information relative to Canadian
> 597 Patent No. 562,773. A blank copy of an agreement is
> enclosed herewith. With regard to the patent and its
> use in Zenith Television Receiver No. B2225, I have
> had this matter reinvestigated and there is no doubt
> in our minds that the invention covered by the patent
> is used in this receiver. The tests show this quite
> conclusively. To explain this by correspondence would,
> however, be a most difficult task, as I surmise, and
> I would suggest therefore that, if possible, you visit
> Toronto at which time a test demonstration can be ar-
> ranged for you."

By Mr. McConnell:

Q. Now, what was Patent No.—Canadian Patent No. 563,773? Do you know?

A. I can't identify the patent, except that the letter makes clear to me that this was one of the patents that McConnell said our instrument infringed.

Q. But you don't know which company? You can't tell us at the moment which company that patent belongs to?

598 A. My recollection is that is a patent of Philips.

Q. Now, did you have any other or further conversation with Mr. McConnell?

A. None comes to mind.

The Court: Maybe this is a good time to take our morning recess. It is halfway.

Mr. McConnell: All right. Thank you, your Honor.

(Thereupon a short recess was taken, after which the following further proceeding were had herein:)

599 Q. Mr. Crotty, at the time that you had your talk with any Canadian companies to import your sets into Canada?

A. I had received licenses which involved rights under Canadian patents and which would permit importation. They didn't always come from Canadian companies. For example, I had a license under the patents of Radio Corporation of America, which extended to their Canadian patent and had no restrictions whatsoever against importation.

I had a license under the patents of Canadian General Electric which had no restrictions against importation.

I had a license from Western Electric which included rights under their Canadian patents and again had no restrictions against importation. And I had the same kind of a license under the Parker Intercarrier Sound patents.

Q. Now, isn't it a fact that the licenses which you had received from RCA and General Electric and the telephone company came pursuant to the settlement which

we had in the litigation here in this United States
600 District Court?

A. That is right.

Q. Did anything further happen after Mr. McConnell came and talked to you?

A. No. It was just a few months after that that this lawsuit was started.

Q. I show you a document which is marked for identification Defendant's Exhibit No. 124-A, which purports to come from the Zenith files and also Defendant's Exhibit No. 150, and ask you whether or not you can identify these documents as having been received by Zenith from Canadian Radio Patents, Limited, on or about the dates they bear. I mean the original of them. Those are Xerox copies.

A. The document identified as Defendant's Exhibit 150 was received by the company. I observe my initials on it with the date, essentially contemporaneous with the date of the letter.

The other document, which is Defendant's Exhibit 124-A is addressed to Mr. Birchaid, who at that time was my assistant, and I am sure that I saw this when it came in.

601 Q. What do those documents purport to be?

A. The last one that I referred to is a letter from —the signature is very obscure on this copy, but I am sure it is Stuart Brownlee, who at the time was an officer of Canadian Radio Patents, Limited. He signed the letter as secretary-treasurer, and it transmitted to Zenith a copy of the then standard license form issued by CRPL.

The Court: And the date of this is what?

The Witness: 1952, your Honor.

The Court: All right.

By Mr. McConnell:

Q. And what does the other document purport to be?

A. I will have to read this.

The documnt, Defendant's Exhibit 150, is comprised of two letters, the first under date of July 21, 1963, in which Mr. Miguel, who was in charge of our international operation, writes to CRPL and reviews past experiences of Zenith in connection with their pool operation, pointing out that we had been instructed that we could not 602 get a license except for local manufacture, and when we had imported sets, we were threatened with legal proceedings if the importation was not stopped, and he asked whether or not it was now possible to secure a license that would permit importation.

The second letter is under date of July—I believe it is 22. It is very difficult to read this.

Q. Well, that is the reply to it, is it?

A. It is the reply.

Q. All right, you don't need to go into the contents of it.

Mr. McConnell: I offer the documents in evidence.

Mr. Dodds: May I see it? I was supplied with only the first page of this exhibit. I haven't seen the second.

The Witness: It is a very difficult copy to read.

Mr. McConnell: That is always a problem when we are working with copies. I don't know any answer to it when we have got so many people that have to see it.

603 The Witness: It might help you if I were to read that into the record. I think that I probably can.

Mr. Dodds: I think that it would. I do not have a copy of that.

By the Witness:

A. The date is July 23, 1953.

"Dear Mr. Miguel:

"We have your letter of July 21st with reference to the requirements of the Canadian Patent Act and the licensing policy of Canadian Radio Patents Limited.

"There has been no change in the 'working in Canada' requirements of the Canadian Patent Act or in the specific ruling with respect to Canadian Radio Patents, Limited, given by the Canadian Commissioner of Patents to the effect that CRPL cannot grant licenses for importation.

"All of the companies selling radio or television receivers in Canada are licensed under the patents owned or administered by Canadian Radio Patents, Limited, 604 and all of these companies are manufacturing their receivers in Canada in accordance with the requirements of the Canadian Patent Act.

"We will be pleased to grant Zenith a license under the same terms and conditions as the other royalty-paying licensees, but one of the provisions is to manufacture in accordance with the requirements of the Canadian Patent Act.

"If you require any further details, please do not hesitate to call upon us.

"Yours very truly,

"S. D. Brownlee."

Mr. McConnell: I offer those documents in evidence, your Honor, under their respective exhibit numbers.

The Court: Well, of course, I don't know the contents, and, therefore, I don't know the relevancy and I am having difficulty in—

605 Mr. McConnell: The relevancy is that it shows that as far back as 1952 this Pool was refusing to license Zenith under these patents of this Pool to import.

The Court: If that is what they tend to show, and I assume they do, based upon your statement, they may be received, subject to the same—

Mr. McConnell: Thank you, your Honor.

(Said documents, so offered and received in evidence, was marked as DEFENDANT'S EXHIBIT NO. 150.)

By Mr. McConnell:

Q. Now, going to a different subject, Mr. Crotty, did you have a meeting with Mr. Ruestow of the Hazeltine Corporation on or about October 18, 1961, on the subject of patent licensing?

A. I have difficulty assigning the specific date, but I did have discussions with Mr. Ruestow on the subject of patent licenses, yes.

Q. Well, let me show you a document which is in evidence here as Defendant's Exhibit 10, which is a letter 606 under date of—copy of a letter under date of October 25, 1961, addressed to you from Mr.—by you to Mr. Ruestow, and I ask you to look at that letter and see if it refreshes your recollection as to when you had your meeting with Mr. Ruestow.

A. Yes, this letter I recognize I had written to Mr. Ruestow.

The meeting of which I speak was one that took place in the offices of Hazeltine on the occasion of my visit to their offices in order to study documents in connection with this litigation.

Q. All right.

Now, will you tell us what was discussed there? Give us the substance of your conversation with Mr. Ruestow and tell us who was there. You told us where it was and the approximate time.

A. Just Ruestow and myself were present.

The discussion concerned the color television receiver that Zenith was manufacturing and Ruestow's statement that we would require a license under the Hazeltine patents.

607 Q. Now, were the patents that you discussed there those that are set forth, the nine patents that are set forth in this letter of October 25th, 1961?

A. If my memory serves me correct, those were the patents that Ruestow told me at that meeting we would require licenses under.

Q. Now, you say here:

> "At the same time you supplied me with a copy of what I understand to be your standard form of license agreement bearing the numeral 918 on its frontispiece,"

And I show you a document which is marked here as Defendant's Exhibit No. 2, which bears 918 on its frontispiece. It purports to be a standard form of license agreement between Hazeltine Research, Inc. and an unnamed licensee, and I ask you whether or not the original of that document was left with you by Mr. Ruestow?

A. I can't say this is the one, Mr. McConnell, because you observe this has the legend "Exhibit B" at the upper right hand corner, that this is a copy of the
608 same form of license that came from Hazeltine's file, but you will observe it has the number 918, so I assume it is the same form of license that I was given by Ruestow.

Q. Well, as you state in your letter here—well, let me put it in a different form.

Did Mr. Ruestow supply you with a copy of a license agreement bearing the numeral 918?

A. I believe he did.

609 Q. And can you identify that that he furnished you as the same as the one I just showed you?

A. Yes, this is the same instrument, same kind of instrument.

Q. Was that the form of license which he tendered to you to cover licensing of these nine patents which you were talking about here?

A. That was my understanding of the purpose of giving me the form, yes.

Q. Did he ask you to sign it? Did he want you to execute it?

A. Well, not at the moment, because he knew I wasn't

Q. Well, did he give you any other document to sign?

A. No.

Q. To study?

A. No.

Q. All right.

Now, did you have a further meeting with Mr. Ruestow?

610 A. I expect I did, but I don't recall any.

Q. Let me ask you this—I will withdraw that question.

I show you a document which is Defendant's Exhibit No. 11, which purports to be a copy of a letter from you to Mr. Ruestow of the Hazeltine Corporation, under date of No-
going to sign it until I had studied the patents that were first identified to me, I believe, at that meeting.
vember 21st, 1961, and I ask you whether or not you wrote and sent that letter through the mails?

A. Yes, I did.

Q. Now, in this letter you ask him if he would make known to you "the basis upon which licenses may be obtained under such of those patents called to my attention."

You further say:

> "I, of course, am fully aware of the Hazeltine standard license agreemnt and understand that a license is available through that instrument under not only thes selective patents but also of the patents subject to licensing by Hazeltine. Since we obviously have no need for a license under all of the patents
> 611 of your portfolio, I am most desirous of learning the terms upon which the individual licenses may be obtained under any of those identified patents."

Did you receive any reply to that request?

A. I did not receive a letter in response to that.

Q. What reply did you receive, if any, letter or otherwise?

A. Subsequent to writing that letter, and perhaps another one in which I urged Ruestow for the license terms, I did receive a document that purported to be—at least I understood it to be a license offer.

Q. How was it received? Do you recall?

A. I believe it was handed to me in a visit to Hazeltine's offices. I am not certain.

Q. I show you a document which is marked for identification as Defendant's Exhibit No. 12, which purports to be a tentative draft for purposes of negotiation of a license agreement and ask you if you can identify this document as the one to which you referred as having been given
612 to you by Mr. Ruestow?

A. Yes. I have noted here in my own handwriting that it was received from Ruestow at Litteneck on April 11, 1962.

Q. Are the notes on that document yours?

Q. Now, did you have any discussion with him at that time about that document?

A. We had no discussion at the time the document was given to me. I was to take it with me and study it.

Q. And you took it and you did study it?

A. Yes, I did.

Q. Was there a maximum amount set forth in that document?

A. I believe there is. I think on the last page of this instrument I have computed what I understood to be the maximum provided by the instrument and it turned out to be approximately $500,000 a year.

613 Q. Now, did you also compute from that document the prices fixed on these nine patents which were called to your attention and which it was claimed your company was infringing.

A. I didn't have to compute that. It sets forth in the Schedule A, which is the last page of the instrument, in that schedule each patent is identified by number. A royalty percent for license under each patent is given and, also, an annual maximum that the licensee would have to pay for a license under each such patent is set forth.

Q. Did you total up what those maximums would amount to on those nine patents?

A. I did, and if my arithmetic is correct, it was $435,000.

Q. Now, did you have some discussion with Mr. Ruestow about a maximum figure on their licenses which was different from $500,000?

A. Well, in giving Ruestow my severe criticism of this instrument—

Q. All right, let's get at it this way: Did you have a talk with Mr. Ruestow after you had made an analysis of that document?

614 A. Yes, I did.

Q. All right. Now you tell us what was said. Where was it?

A. I believe it was the telephone conversation, and you will observe my handwritten note on the first page of the instrument states that the yearly maximum of this instrument is $500,000, but the RCA's maximum is between $150,000 and $200,000, and I told him that it was just totally objectionable that we should be asked to pay anything like $500,000 when this other industry member had everything that this license offered, at that time, at a yearly maximum of $150,000.

Q. What did he say to that, if anything?

A. Well, if I remember correctly, I think he said that he had no intention of asking me to pay $500,000, but I advised him that this instrument didn't reflect it, and this, then, would lead me to believe that the instrument was an effort to push me into the standard package license which carried this $150,000 maximum at that time.

Q. Did you tell him why you thought it was an effort to lead you into that package license?

A. I am not sure that I did.

615 The Court: When did you have a discussion with him about the standard package license, or did you?

The Witness: I don't believe we did, your Honor.

The Court: All right, I just wondered how—this is the first time you have mentioned it and I wondered if I had slept through some of that testimony.

The Witness: No, I mentioned that at the first contact he gave me a copy of the standard form. That was the 918. That was the package license and I then—

The Court: I haven't seen any of those and I don't know whether 918 has a maximum in it because I haven't had a chance to look at it.

Mr. McConnell: Let me ask it.

By Mr. McConnell:

Q. Does 918 have a maximum in it?

A. 918 has a maximum for monochrome radio receivers but not for color receivers.

Mr. Dodds: Would your Honor like to see a copy of this?

616 The Court: I would like to see the one that is in evidence.

Mr. Dodds: This is a copy of the one that is in evidence.

The Court: I would like to see it at the proper time and for me to look at it he will hand it up to me.

Mr. McConnell: I am going to offer them.

By the Witness:

A. The instrument itself has no maximum on color. That maximum was granted to some industry members who had taken the license by way of a side letter.

617 By Mr. McConnell:

Q. Well, now, did you ever have any talks at any time with Mr. Ruestow, where he told you in effect, or in substance, that your maximum wouldn't be any larger than RCA's?

A. Yes.

Q. When did you have that talk?

A. Well, that was—I believe a telephone conversation when I told Ruestow that I would not acept this.

Q. He then told you that in any event, your maximum would not be any more than RCA's?

A. He told me I wouldn't be expected to pay any more than $150,000, which surprised me because there was no evidence of that in this document.

The Court: Let me ask you this. You said you complained to Ruestow about RCA's $150,000. Did that cover radio, and black and white, and color television?

The Witness: It did, your Honor.

The Court: I mean, that is the first time I found that out.

618 By Mr. McConnell:

Q. It covered every product, did it?

The Court: If I keep digging, I will understand this. Go ahead.

By the Witness:

A. It covered the radio products, by which we mean the radio receiver, the monochrome receiver, the color receiver, and it conveyed licenses unto all of the patents subject to the licensing rights of Hazeltine within the license interval. I think that's essentially what it was.

By Mr. McConnell:

Q. Now, that $150,000 maximum that you talked about, that you talked to Mr. Ruestow about, that however was only for the package license, was it not?

A. That was my understanding.

Q. Well, did he tell you that in words, or in effect, or in substance?

A. No. I just think we both understood it. We were talking about the RCA license that we both knew, I'm sure, to be the standard license.

619 Q. To be a package license?

A. Yes.

Q. Well, now, why was it that you believed that you were being forced into the package license when the nine patents which you have designated add up to $435,000 for license fees?

A. Well, just the matter of economics. We couldn't take the competitive disadvantage of the license under nine patents at $435,000.

Q. If you could get it for $150,000 for all of it; is that it?

A. That's it, yes.

The Court: Isn't that the difference between buying on the first floor and buying in the basement?

The Witness: Yes, sir.

By Mr. McConnell:

Q. All right. Now, after you had made that analysis, did you write the letter, Defendant's Exhibit No. 14, under date of May 17, 1962 to Mr. Ruestow?

A. Yes, I did.

620 Q. Does that state your position with reference to his proposed individual patent licenses?

A. Yes.

Mr. McConnell: I want to read this paragraph to the Court, if I may, from Defendant's Exhibit 14.

It says:

> "You have supplied a list of nine patents which you say are used in our color receiver, and you have

suggested that licenses could be obtained under any or all of them, but the terms of this sort of license have certainly not been known to me. I am mindful of a document prepared by you in the form of a license draft, but it bears on its face a statement that it is not to be construed as an offer to license."

By Mr. McConnell:

Q. Were you referring to that document that I identified there, that you made your penciled memorandum on—

621 A. Yes, I was; our Exhibit 12.

The Court: That is the one where you took your pencil and added up the $435,000?

The Witness: Yes, your Honor.

The Court: All right.

By Mr. McConnell:

Q. (Reading.)

> "Moreover, that instrument, whatever its intent and purpose may be includes the royalty rates that are so extreme in comparison with the Hazeltine standard license and other established royalty rates of the industry to be totally unacceptable. I advised you of that conclusion sometime ago."

Then you say:

> "In a phone conversation subsequent to your last letter, you stated that it was your intention further to study the terms under which licenses may be acquired."

Did he tell you that?

A. Yes, he did.

622 Q. Well, now, did he make some further study and suggest anything further in the way of individual licenses to you?

A. Well, I don't know what he did, but I did get another instrument, another schedule of royalty rates, yes.

Q. I show you a document which is Defendant's Exhibit 16, which is on the letterhead or Hazeltine Research, Inc., under date of May 20, 1963, apparently from Mr. Ruestow to you, and I ask you if you received that through the mails?

A. Yes, I did.

Q. Is that a further proposal by Mr. Ruestow on licensing?

The Court: This I assume is all offered under the misuse theory?

Mr. McConnell: Correct, it didn't have anything to do with the overall conspiracy.

The Court: I understand.

By the Witness:

623 A. Well, Mr. McConnell, there was an earlier schedule from Ruestow. The one that you hand me here supplements the earlier one by adding a new paragraph six. The earlier one was identified as having been furnished to me with his letter of March 20, 1963.

By Mr. McConnell:

Q. All right. I will show you a document which is Defendant's Exhibit 15, which is a letter under date of March 20, 1963, signed by Mr. Ruestow of the Hazeltine Research, addressed to you and enclosing schedule of license terms of television receivers.

I ask you if you can identify that as having been received through the mails from Mr. Ruestow?

A. Yes, it was.

Q. Now, does that set forth a new schedule?

A. Yes, it does.

Q. Of licensees?

A. Yes, it does.

Q. All right. Now, did you make some analysis of that?

A. Yes, I did. On the first page of their schedule, the schedule that is attached to his letter of transmittal, 624 there is a list of the nine patents with the rates proposed here. And I have in my own handwriting put in the rates that had been assigned to these patents in the first document submitted to me and compared them in this way.

Q. All right. Now, what conclusions did you reach after making that comparison?

A. It looked to me like Mr. Ruestow made quite some change.

The Court: Up or down?

The Witness: Down, your Honor. The total royalty charge for the nine patents under the first document amounted to 3.2 per cent. And the charge—

The Court: 3.2 per cent of what?

The Witness: 3.2 per cent of our selling price of the instrument.

The Court: I mean, of your entire production or of the instrument in which it was involved?

The Witness: This is a unit royalty, your Honor. You pay the 3.2 per cent of the selling price of each instrument. 625 And the obligation to pay attached to all instruments, that you made, whether they used the patents or not.

The Court: That's what I'm trying to find out.

The Witness: That is correct. Now, with the new percentage rates, they now aggregate to a little less than 1.9 per cent in this document.

By Mr. McConnell:

Q. Well, did you figure out what the maximum would amount to on those nine?

A. Yes. This instrument provided a variety of elections that you could take. For example, I could have taken a license under the nine patents, on one application that is mentioned here, for a yearly maximum of $275,000; or I could take those same nine in the one application and add to that, it seems to me, patents—yes, I could add to that the patents and applications that Hazeltine had as of January 1, 1963. This gives me a larger package for a yearly maximum of $300,000.

626 The Court: That is patents that haven't yet been patented; is that it?

The Witness: Your Honor, it would include patents or patent applications of Hazeltine as of January 1, 1963.

The Court: Whatever they might be?

The Witness: Yes, your Honor.

627 The Court: All right. I mean, it was a vague sort of thing.

The Witness: That's right.

Now, the third choice you had, you could have, by bringing in—let me say after acquired patents or applications within the terms of this instrument, and then the maximum was $310,000 a year. I believe that's right That is my recollection of this document.

Mr. McConnell: All right.

The Court: May I take you back. In regard to that first document you mentioned two figures. One was in excess of $500,000; the other was $435,000. You indicated the $435,000 was what you contemplated the maximum would be. What was the $500,000 figure that you were talking about?

The Witness: The $435,000 was the maximum obligation for a license under nine identified patents. Now, if you added to that those nine patents, license rights under the rest of the patents and patent applications of
628 Hazeltine, it took a little—it would cost you a little
bit more: I think you added .15 per cent of 15 per cent, and it comes up to about $500,000.

The Court: I mean, I wondered what that was because we dwelled on it very lightly.

All right. You may proceed with this.

By Mr. McConnell:

Q. All right. Now, the maximum there, then, under those nine patents is something over $300,000; is that correct?

The Court: With the fringe benefits.

By the Witness:

A. ~~That's right.~~ With the fringe benefits, yes. The nine themselves require a yearly maximum of $275,000.

By Mr. McConnell:

Q. And the package license, you say—

A. At this time was $150,000, I believe.

Q. Which would include these and everything else that Hazeltine had?

A. Yes.

Q. Now, did you—

629 The Court: I mean, the package license that you say was offered RCA was $150,000.

The Witness: Yes, your Honor.

By Mr. McConnell:

Q. But I understood you to say that that was, impliedly at least, offered to you by Mr. Ruestow?

A. Yes. Well, this instrument also provided a package, a different package from any that I have mentioned thus far. In Paragraph 4, Subparagraph (a), this instrument provided that if I took a license that covered both patents and patent applications of Hazeltine for both color and monochrome receivers, then my over-all maximum would be $200,000.

Q. So your over-all maximum for everything is $200,000, and the nine patents is three hundred and something—$310,000?

A. The nine patents were $275,000.

Q. $275,000.

The Court: That is strictly TV patents?

The Witness: Yes, your Honor.

The Court: And as I understand it, you believed prior to that time that you could get all patents, radio and 630 TV patents, for $250,000?

The Witness: Yes, your Honor. But we didn't pay much attention to the radio, because I wasn't aware of any significant outstanding patents of Hazeltine in that—

The Court: I understand that, but theoretically there was more in the basket whether you needed them or not.

The Witness: I believe so.

The Court: They were there if the time ever should come that you did need them. They were available.

The Witness: Yes.

By Mr. McConnell:

Q. Now, pursuant to that last offer, did you receive as a supplement to it another proposal for licensing?

A. Well, the schedule that we have been talking about was to be next to a new standard license agreement that was under preparation. This schedule so states, and I ultimately did get the new standard license agreement.

Q. All right. I show you a document which is 631 marked for identification as Defendant's Exhibit 17, which purports to be a letter on the letterhead of Hazeltine Research, under date of May 29, 1963, addressed to you from Mr. Ruestow, and I ask you whether or not you received that and whether or not enclosed with it was that other document?

632 Mr. Dodds: Your Honor, as a matter of principle, I think I should object since this is dated after the

cutoff date. I would be perfectly willing to waive it if I didn't establish a precedent to waive everything after that date.

Mr. McConnell: I think that Counsel is all right on his date. But this first document, which was within our time, which we have been talking about prior—

The Court: You mean March 20th?

Mr. McConnell: Yes. It refers to something that is coming later, which was part of that original offer.

Mr. Dodds: I say, I am perfectly willing to waive it so far as this document is concerned, so long as I don't set a precedent with regard to all documents.

The Court: Let me say that I will see that it doesn't create a precedent.

Mr. McConnell: I am not trying to set a precedent. 633 I'm just trying to show the complete terms of that document.

The Court: No. But I think that if Mr. Dodds hadn't spoken up, you could, and properly so, and I think I would if I were in your place, say, "Well, he has already waived one after the 1st of May; now he can't object to any others." He is waiving as to this document, but not as to any other. And it having been waived, it may be received in evidence.

By the Witness:

A. I received the letter, Defendant's Exhibit 17, and with it Defendant's Exhibit 18 which is standard license form A.

By Mr. McConnell:

Q. Does that have a maximum on it?

A. My recollection is that the schedule we mentioned earlier with the next two and incorporated in this instrument; and to that extent, yes, it was.

Q. Now, prior to the filing of the counterclaim in this cause, did you ever have any further communications, 634 or documents, or correspondence with Mr. Ruestow?

A. Yes. After having received the schedules that we are speaking of here, I believe still another was received. I'm not sure whether that was received addressed to me personally or to Mr. Wright. Perhaps others; there was at least one more.

Q. No. I said prior to the filing of the counter-claim. The document referred to, I think, was dated November 14—

A. I misunderstood. I thought you said subsequent to that.

Q. So that we have covered everything now that went on between you and Hazeltine and Mr. Ruestow in negotiating licenses, or talking about a negotiation of a license up to the time of the filing of this counter-claim; is that correct?

A. I believe so.

Q. Now, going back to 1958, did you have a talk with Mr. Dodds?

A. 1958, I may have.

635 Q. Well, you had a license from the Hazeltine Company up to what time?

A. 1959.

Q. Now, prior to the expiration of that license, did Mr. Dodds communicate with you seeking a renewal or another license?

A. Yes—

The Court: May I ask what kind of a license you had?

The Witness: Yes, your Honor. We had the standard monochrome and color receivers. It was a five year license.

The Court: It was executed in '54?

The Witness: It was executed in '54; it expired on June 30, 1959, I think.

The Court: Did it have a maximum on it?

The Witness: It had a maximum for monochrome and color. That maximum was $50,000. It did not have a maximum, as I remember it, for color.

The Court: You mean it had a maximum for monochrome and radio.

The Witness: That's right, but not for color.

636 By Mr. McConnell:

Q. Well, was there any maximum worked out by custom or agreement?

A. I'm sure the RCA license was of the same type, and theirs had a maximum for color which came in by way of—

The Court: All I'm trying to find out is what the terms of your license was that expired on June 30 of 1959. That's all I'm trying to find out.

The Witness: Yes. That had a maximum for radio and monochrome, but not for color.

The Court: And that maximum was $50,000?

The Witness: Yes, your Honor.

By Mr. McConnell:

Q. All right. Then you had talked, did you, with Mr. Dodds?

A. Yes. He came in to visit with me shortly before the expiration of the license, I think, and asked that the license be renewed.

Q. All right. Now, did you have any talk with Mr. Dodds about terms for individual license—or individual 637 patents?

A. Well, our discussion amounted to this. I told Mr. Dodds that I would not recommend that the license be accepted unless I was satisfied of the need for the license. And he then said that we were using four of their patents. This was in answer to my request that he show a need for the license.

The Court: Four of—

The Witness: Four of Hazeltine's patents.

The Court: In what?

The Witness: Monochrome.

The Court: All right.

The Witness: At this time, your Honor, we were not making color receivers.

638 The Court: That eliminates it, then. I mean, so that up until the expiration of this, your maximum was $50,000 a year for everything, because you weren't using any color patents; is that right?

The Witness: That's correct. We were not making color receivers at that time.

The Court: So that at the time this expired, your maximum was $50,000 a year.

The Witness: Yes, your Honor.

By Mr. McConnell:

Q. On everything you were making.

A. That's right.

The Court: On everything you were making, all right.

By Mr. McConnell:

Q. All right. Now, he pointed out to you four patents; is that right?

A. Yes, he did.

Q. Now, did he make you a proposal as to license fees on those four patents?

A. Well, I was not in agreement that we required licenses under the four patents.

Mr. Dodds then told me of a scheme, a new licensing
639 formula that I had heard of previously, from Hazeltine
under which you could get a standard—the standard
license, but now restricted, if you please, to one patent of
your choosing, for which the maximum would be half of
the package maximum.

The Court: In your case, $25,000?

The Witness: $25,000.

Or you might also have a license under two patents of your choice for 80 per cent of the package price.

The Court: Which would be 40.

The Witness: Yes, your Honor. But the price, if you took three or more patents in the license, would be the package price of $50,000.

By Mr. McConnell:

Q. In other words, if you took three, you might as well take the whole package so far as the money is concerned?

A. Well, yes.

Q. Did you have any further talks with Mr. Dodds on the subject of licensing?

A. Well, the experience that I related was not just
640 one meeting. There were several meetings over which this transpired.

Q. Well, was there any other subject or any other proposal made to you?

A. No other proposal was made.

Q. The 50, 80 and 100 per cent?

A. That is all.

The Court: This applied only to radio and monochrome?

The Witness: Yes, your Honor. It did not apply to color. And it is my understanding that all of the other terms of this standard license would be in effect.

Mr. McConnell: You may cross-examine.

The Court: I mean, I don't know what that means, all the other—

The Witness: For example, your Honor, the obligation to pay whether you used any licensed invention or not, would still be with you.

The Court: As I understand it, you and Mr. Dodds never discussed the color patents.

The Witness: Not at this juncture, no, sir.

641 The Court: All right. I mean, that's what we are talking about.

Mr. McConnell: You may cross-examine Mr. Dodds.

The Court: You may proceed.

Cross-Examination by Mr. Dodds.

Q. Taking last things first, when you and I were discussing these four patents, as to some of which you disagreed, one was a patent, was it not, on a grounded grid amplifier to which you showed me a reference that I agreed would probably make the patent unenforceable?

A. I think that is correct.

Q. And another one of those patents, was it not, was a patent which had been involved in litigation with the Philco Company, and in which they had found a reference which we concluded made that patent unenforceable, is it not?

A. I don't remember that.

Q. Well, do you remember that as a result of these discussions that finally ended up, that we were only discussing the patent here in suit?

A. Well, we ultimately discussed only one, but I
642 think that was your choice.

Q. And it was true, was it not, that at that time Zenith Radio Corporation was offered a license under the patent in suit for a maximum fee of $25,000 as applied to the monochrome receivers?

A. That's correct.

Q. Now, you have testified about your conversation with Mr. Brian McConnell. Had he indicated that there was one Hazeltine patent which he felt covered Zenith TV receivers? Do you recall what patent that was?

A. I cannot identify the number, but I believe it had to do with a centering magnet structure for cathode ray tubes.

Q. It was not the counter part of the patent in suit?

A. No, it was not.

Q. To the best of your knowledge, Mr. Crotty, did you ever request from Hazeltine a license under any one or two or three patents?

A. Yes, I did.

Q. When was that, and to whom was the request made?

643 A. I put this request to Ruestow. It wasn't for one or two or three patents. My request was for something other than the standard package, and it had to do with our discussions on color.

Q. Well, isn't it true that actually your request was a request for rates? You didn't actually request a license under those patents, did you?

A. I requested the terms.

Q. Yes. And up to the time of the filing of the counterclaim in this action, did you or the Zenith Radio Corporation ever make any request of Hazeltine for a license under any of its color television patents?

A. Did we request such a license?

Q. Yes.

A. No.

Q. Speaking about the question of package licenses, I think you indicated in your earlier conversations with Mr. Ruestow, he had left a copy of the Form 918 which was a package license for your corporation. At the time he did that, did he indicate that if Zenith Radio Corporation did not accept that license, it would be sued? 644

A. Well, I take that to be implicit in his representation that I needed a license under nine patents.

Q. I thought in the first conversation, at the time when he left the 918 form license with you—at that time, had you arrived at the nine patents which Mr. Ruestow thought you required?

A. He had. I hadn't.

Q. He had arrived at that?

A. Yes.

Q. However, he did not explicitly or expressly say that if you do not accept that form 918 license, that Zenith Radio Corporation would be sued?

A. No, he did not.

Mr. Dodds: That is all the questions I have.

645 The Court: Anything else, Mr. McConnell?

Mr. McConnell: I have no further questions of the witness, your Honor.

The Court: All right, step down.

(Witness excused.)

Mr. McConnell: Mr. Wright.

JOSEPH S. WRIGHT, called as a witness on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your full name, please.

A. Joseph S. Wright. W-r-i-g-h-t.

Q. And where do you live, Mr. Wright?

A. I live in Kenilworth, Illinois.

Q. Your address there?

A. 145 Oxford Road.

Q. And what is your business or occupation?

A. I am president of Zenith Radio Corporation.

Q. And where are their general offices located?

A. At 6001 West Dickens Avenue, Chicago, Illinois. 646

Q. How long have you been connected with Zenith Radio Corporation in any capacity?

A. Since 1952, I believe the date was, May 1.

Q. And how long have you been president of that company?

A. Since April of 1958—'59 I am sorry, excuse me. I believe that is the date.

Q. Are you also a director of that company?

A. Yes, I am.

Q. And prior to the time that you were president, what was your position with the company?

A. Executive vice president.

Q. And were you also at one time general counsel for the company?

A. I was.

Q. During what period of time?

A. I was general counsel of the company, as I recall dates, from approximately 1953 or '54 until 1958.

Q. I show you a document which is marked Defendant's Exhbiit No. 138, which consists of a letter purportedly
647 written by you to Canadian Radio Patents Limited, under date of September 10th, 1958, attached to it is a notice, and attached to it is a letter from Mr. McConnell to you under date of September 16, 1958, and also a letter from you to Mr. McConnell under date of September 23rd, 1958, written on the letterhead of Zenith Radio Corporation of Canada Limited, and I ask you whether or not you can identify these documents as having been sent by you and received by you through the mail, telling us which documents you sent and which documents you received.

A. Yes, I recall these documents. The first is a carbon copy of a telegram that I sent to Canadian Radio Patents Limited under date of September 10, 1958.

The second document is a notice to importers, vendors, or users of radio and television receivers, and other electronic equipment by Canadian Radio Patents Limited, which had appeared in the magazine Trade Builder in Canada for August 1958 and which was the subject of my telegram to CRPL.

The third document is a letter that I received from 648 B. McConnell, president of Canadian Radio Patents Limited, which is dated September 16, 1958, apparently in reply to my telegram.

The fourth is a carbon copy of a letter that I sent to Mr. McConnell on September 23, 1958, in reply to his letter of September 16.

649 The Court: Acting in what capacity?

The Witness: I was, at that time, executive vice-president, your Honor.

The Court: Of what?

The Witness: Zenith Radio Corporation.

The Court: Well, the reason I asked is that there has suddenly been thrown into this lawsuit something about Zenith of Canada, Limited, and I wondered if this had anything to do with Zenith of Canada, Limited. If it doesn't, why, fine. I am just trying to straighten out the two Zeniths.

By Mr. McConnell:

Q. Will you tell us what Zenith of Canada Limited is?

A. Zenith Radio Corporation of Canada, Limited, I believe that is the correct name, is a corporation organized under the laws of Canada with its principal offices, I believe, in Toronto. It has been in existence for quite a few years and is a wholly owned subsidiary of Zenith Radio Corporation which, I believe, originally engaged in the sale of hearing aids in Canada, extensively, and now is also en- 650 gaged, to some extent, in the sale of radio and television receivers as well.

The Court: Maybe at this time, having that explanation, it would be a good time to recess.

For the benefit of you gentlemen, so that you can plan your time, I regret that I have to attend a judge's meeting at four o'clock this afternoon. I would much rather attend the hearing on this lawsuit than go to a judge's meeting.

I also regret that contrary to what appears to be the practice down in Washington, they have turned the clock back and, Federally, we celebrate Washington's birthday on the 21st of February instead of the 2nd, and as a result they compel us to close the court on Friday, the day before Washington's birthday. This is something new, too, so that we will go to four o'clock this afternoon, and pursuant to having no choice about it, we won't be able to proceed on Friday, so that you can plan your time accordingly.

(Court recessed until 2:00 o'clock P. M.)

651 * * (Caption—59-C-1847) * *

Before the Hon. Richard B. Austin,
Wednesday, February 19, 1964,
2:00 o'clock, p.m.

The trial was resumed pursuant to recess.

Present:

Mr. Dodds,
Mr. Ruestow,
Mr. Diggins,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

652 The Clerk: Case on trial.
The Court: You may proceed.

JOSEPH S. WRIGHT, called as a witness by the Defendant herein, having been previously duly sworn, was examined and testified further as follows:

Direct Examination.

Mr. McConnell: If the Court lease, I want to offer these documents in evidence at this time as Defendant's Exhibit 138, bulk exhibit.

The Court: These are the documents regarding which he testified prior to the recess?

Mr. McConnell: Yes, your Honor.

The Court: They may be received.

(The said documents, so offered and received in evidence, were marked DEFENDANT'S EXHIBIT 138.)

Mr. McConnell: I would like to read parts of these documents to your Honor, so that we know what we are talking about here.

The first document under date of September 10, 1958, 653 is a telegram addressed to Canadian Radio Patents Limited, 200 St. Clair Avenue, West Toronto 7, Canada, signed by Joseph S. Wright, executive vice president, Zenith Radio Corporation of Canada, Limited.

The context of the telegram is as follows:

> "In the magazine Trade Builder for August, 1958 there appears an advertisement under the headline 'Notice to Importers, Vendors or Users of Radio and Television Receivers, and other electronic equipment' in the name of Canadian Radio Patents Limited. This advertisement contains false statements that importers, vendors, purchasers or users of radio and television receivers incorporating patented inventions owned or administered by Canadian Radio Patents Limited and not manufactured or sold by certain named licensees of Canadian Radio Patents Limited will be held liable for patent infringement. This false statement is calcu- 654 lated to and does injure and damage the business of Zenith Radio Corporation of Canada, Limited, whose products are fully licensed to the extent that they employ any patents administered by Canadian Radio Patents Limited. We insist that such statements immediately be terminated; that we have your assurance that they will not be repeated in the future and, also, that a public retraction be made. Lacking such assurance and retraction, we will be forced to take appropriate legal action to protect our interests."

Then there is a notice which was to importers, vendors or users of radio and television receivers and other electronic equipment, which reads as follows—

The Court: Is this the ad, Mr. McConnell?

655 Mr. McConnell: Yes, your Honor.

"Canadian Radio Patents Limited is a central patent licensing agency administering various important Canadian patents of inventions relating to radio and television receivers and other electronic equipment. Under the provisions of Section 46 of the Canadian Patent Act, the owner of a patent and his legal representative have the 'exclusive right, privilege and liberty of making, constructing, using and vending to others to be used' the patented invention and Canadian Radio Patents Limited, in accordance with the requirements of Section 67 and 68 of the Patent Act, has licensed the following Canadian companies for the manufacture and sale in Canada of radio and television receivers and other electronic equipment embodying inventions which it administers."

And then follows a number of different companies, and the Zenith Radio Corporation is not included among them.

"The above companies are working the patented
656 inventions in Canada on a commercial scale and are
prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms. Canadian Radio Patents Limited desires to inform importers, vendors, purchasers or users of sets of radio and television receivers and other electronic devices and equipment incorporating patented inventions owned or administered by Canadian Radio Patents, Limited and not manufactured or sold under license from Canadian Radio Patents, Limited that they will be held liable for patent infringement. Canadian Radio Patents, Limited will be glad to furnish upon application full particulars and information in respect to the patents that it owns or administers relating to radio and television receivers and other electronic devices and equipment.

"Canadian Radio Patents, Limited, 200 St. Clare Avenue, West, Toronto 7, Canada," 657 In response to Mr. Wright's telegram this letter was received from Mr. B. McConnell, president, and on the letterhead of Canadian Radio Patents, Limited under date of September 16, 1958:

"Dear Mr. Wright:

"I acknowledge your telegram of September 10 and regret that you feel obliged to take exception to the advertisement of our company which appeared in the August issue of 'Trade Builder.' I gather that you may be dealing directly with some patentees concerning licensing arrangements in this country. However, you are no doubt aware of my discussion with Mr. Kiely of your company regarding the Canadian patent situation in the electronic field. He very kindly furnished me with circuit diagrams of your sets now appearing on the Canadian market, and from a preliminary inspection of these diagrams it appears that you are using inventions covered by patents which we administer and under which we are informed you are not licensed. For
658 example, there is Armstrong Patent No. 441,777 which is owned by Canadian Marconi.

"It would obviously be to our mutual advantage to avoid any misunderstanding with respect to these matters. With this in view, I shall be very pleased to meet you or other officers of your company at your convenience. If you expert to be in Toronto in the near future, please call me and I will make myself available.

"Although your telegram is signed on behalf of Zenith Radio Corporation of Canada, Limited, I observe that it originated in Chicago. I am therefore sending this letter to your Chicago Office and forwarding a copy to your Canadian address."

659 In response to that letter, Mr. Wright wrote to Mr. B. McConnell of the Canadian Radio Patents Limited under date of September 23, 1958, as follows:

"Dear Mr. McConnell:

"I have your letter of September 16, 1958, in reply to my telegram of September 10th. Your letter completely ignores the advertisement in the August issue of Trade Builder which was the subject of my telegram, unless your statement that Zenith receivers make unlicensed use of patents you administer can be interpreted as meaning that you intend to continue to employ such statements in the future. If that is the case, then there is certainly no misunderstanding between us nor is there any useful purpose to be served either by a conference or further correspondence on the subject. We are thoroughly familiar with Armstrong Patent No. 411,777, which is the Canadian counterpart of a U. S. patent which has never been considered in
660 our industry as having any validity. This patent has been universally ignored, has never been adjudicated as valid, and has no valid application to our apparatus.

"You say you gather that we may be dealing directly with some patentees regarding licensing arrangements in Canada. I find it very difficult to believe that you are really uninformed about the crossed licenses under all the Canadian patents between Zenith and Radio Corporation of America, General Electric, Canadian General Electric, and Western Electric, as well as Zenith's other direct licenses on important Canadian radio and television receiver patents.

"You actively participated in the litigation which resulted in these licenses, and must be well aware that the activities of Canadian Radio Patents Limited in stopping our Canadian business in past years was at

the very heart of the substantial claim for damages
661 which was settled at the same time the licenses were granted.

"Under the circumstances, we feel shocked that you would publish statements such as those in your advertisement in the August Trade Builder, and I must insist on your assurance that they have been stopped and will not be resumed. Circulation of such statements are directly and seriously damaging to our business, and unless it is stopped we shall be required to take immediate steps to protect our interests. Will you please advise me promptly as to your intentions regarding discontinuing publication of these statements.

"Very truly yours,
"Joseph S. Wright,
"Executive Vice President."

By Mr. McConnell:

Q. Now, in this letter, you state to Mr. McConnell—first, let me ask you this: Did Mr. McConnell answer that letter?

A. I have no recollection of a reply to that letter.

662 Q. You did know, did you not, that he came down and talked to Mr. Crotty?

A. I understand that. Yes, I was aware that he did.

Q. Now, you, in this statement, in this letter, you say:

"You actively participated in the litigation which resulted in these licenses and must be well aware that the activities of Canadian Radio Patents Limited in stopping our Canadian business in past years was at the very heart of the substantial claim for damages which was settled at the same time the licenses were granted."

Now, what was it that Canadian Radio Patents Limited did to stop your Canadian business? I am talking now about Zenith Radio's business.

A. Well, over the whole period of time that I have been at Zenith and up through the incident which is reflected in these documents, there were numerous instances where we had been able to sell token quantities of radio and television receivers to people in Canada for resale. Almost
663 invariably when that happened that was followed by
either a threatening letter or a visit by a lawyer representing Canadian Radio Patents Limited to the distributor to whom we sold the goods warning him that he was infringing and that he would be held liable and accountable for it.

Q. Now, did that situation change, and if it did change, in what respect, after the settlement of the so-called Zenith-RCA litigation?

A. Well, the Zenith-RCA litigation in the cross licenses from General Electric and the telephone company and RCA were accomplished in September of 1957. Following that exchange, and on the assumption that we were now going to be able to do business in Canada, as we had tried to do for many years, we went to Canada and made an effort to secure wholesale distributors and other people to participate with us in the marketing of our products and to really build up from virtually no business at all to a thriving business. And we were in the process of doing this and of building a marketing organization in Canada when just
about one year later this advertisement appeared,
664 which I must say came as a great surprise to us, be-
cause we had assumed that this Canadian Radio Patents Limited situation had been ended with the settlement in the RCA case.

Q. Now, that was also followed, was it not, by the visit of Mr. McConnell?

A. That is right.

665 Q. And what was your understanding of that? As the executive officer of this company, were you advised—

A. It was my understanding that Canadian Radio Patents, Limited still took the position that we required a license from them before we could do business in Canada and that there was only one kind of license available and that was the license that would require us to build all products in the Dominion of Canada and would prevent us from exporting anything made here in Chicago.

Q. Now, would you tell us what you know of your own knowledge from the time you were out there at Zenith of your attempts, if any, to obtain a license from the Canadian Radio Patents, Limited, to import Zenith sets into Canada?

A. Well, I can recall that it was in the early fifties, it was either 1953 or 1954, when I personally became familiar with this Canadian patent situation. When I found out about it, I went back into the records of the company, talked with the people that had engaged in the export 666 marketing, and was informed by them that it had been traditional in Canada that you could not get a license except from the Pool, and that that license was one that required you to manufacture the goods in Canada, and this went all the way back to the 1927 license that we got from the Radio Corporation of America. At that time we signed up with RCA for a license, package license under the patents of RCA, General Electric, and the Telephone Company here in the United States, and we paid a royalty of seven and a half per cent of our selling price. We exported some of these products to Canada shortly after that, assuming that since these Canadian patents were the counterparts of the U. S. patents almost entirely, that the seven and a half per cent royalty we paid would cover. We were soon advised, however, and our distributor up there to whom we sold was advised, that this was not the case. As a matter of fact, Westinghouse, I believe, Canadian Westinghouse, threatened infringement on some 667 Canadian Westinghouse patents as of that time, and we were advised that we would have to pay at that time, I believe, an additional ten per cent royalty on top of the seven and a half per cent here, but that this could only be done in an interim period, but that ultimately we would have to manufacture everytthing in Canada.

Over the years, since there are many markets in the United States which are across very open borders from Canada all the way from British Columbia to theMaritime Provinces, and there are always people coming back and forth, our magazines, our newspapers, our radio broadcasts and television, everything penetrates the Canadian market, we had many inquiries from people who wanted to handle Zenith's goods, either purchase them directly as a consumer or to handle them for resale.

When we entered into arrangements to handle—with people to handle them for resale, invariably, if this in-668 volved any quantity, they were threatened by the Pool. And this advertisement which is in the last Exhibit was a typical ad which appeared with great frequency in all of the Canadian journals over a period of at least ten years prior to 1957, and I believe it has been a typical ad that has appeared ever since around 1930.

Now, I can recall one specific instance where we had a distributor in one of the Maritime Provinces, in Halifax. He decided, after we had advised him of the risks that he ran and that probably the Pool would step on him if he took on Zenith, nevertheless, in the early fifties he did handle Zenith. MacCuspie was the man's name.

He immediately received a long threatening letter from the Pool saying that not only he but his customers and any users that purchased from his customers would be held accountable for infringement.

669 One of the difficulties in this business is that a distributor for resale must make a rather substantial investment in an inventory of goods to handle. He has got to do a lot of work in hiring salesmen and in developing a territory, and we just found that it was impossible to get anyone who was willing to take that sort of a risk with this threat of infringement hanging over them.

I remember another concern that came in very enthusiastic about handling Zenith, because so many of our products had gotten across the border at Seattle into Vancouver, and he wanted to try, and we entered a temporary arrangement with him and, surely, he was threatened by the Pool immediately afterwards. This man didn't have adequate capital, but he was about the only kind of a distributor that we could really get at that time because no one else was willing to take the risk on it.

So we assumed that when 1957 came and we had won this long struggle that had gone on from 1946 insofar as the litigation with RCA and GE and the telephone company
670 that we had solved the problem, and it wasn't until we got this notice in one of the magazines up there that we found out otherwise.

Q. Now, Mr. Wright, let me ask you this: What did Zenith do to try and obtain a license from the Pool to import?

A. Well, I recall on several junctures writing to the Pool myself and asking them for a license which would permit us to import.

Q. What was their reply?

A. Their reply was that this was not available and that they would not grant us a license for that purpose.

Q. You were ready and willing to pay license fees?

A. Yes, sir.

Q. For such a license?

Did you so advise them?

A. Yes—well, I don't recall that I specifically told them that, but we asked them if we could have such a license, and we made that request of them with the full intention of considering it favorably if it could be worked out without this restriction against imports.

671 Q. Now, what was the restriction, actually, what did they tell you you had to do in order to get a license?

A. They said that the only way that you could get a license in Canada was to build your product in the Dominion of Canada.

They said, "We will just wink at imports over a short period of time until you can get your factory started up there, but unless you intend to put a factory in there, why, you can't have a license.

Q. Do you recall who told you that?

A. I believe at the time it was Mr. Stuart Brownlee.

Q. He was then managing the pool, was he not?

A. Yes, sir.

672 Q. Well, now, you have referred to cross licenses with Westinghouse, General Electric and RCA on Canadian patents; did those licenses permit you to import into Canada?

A. Yes, sir, those licenses had absolutely no restriction as to where the goods must be made. In other words, our goods, wherever made, were fully licensed for sale or retail or for manufacture if we wanted to do that in Canada.

Q. So that since the time of the settlement of the Zenith case, which was when, by the way?

A. That was September 8th, I believe, 1957.

Q. You have been able to export under those licenses, at least, your sets into Canada?

A. That is correct.

And another thing that entered into this was the fact that Canadian General Electric has always more or less run that pool in Canada, was the largest stockholder and provided the management for it, so we had assumed that since we had a license directly from Canadian General Electric under all their patents, that this took care of us.

The Court: You are a lawyer, Mr. Wright?

673 The Witness: Yes, sir.

The Court: To your knowledge, there is no Canadian law that bars the importation of American products for sale in Canada?

The Witness: No, sir.

The Court: All right.

By Mr. McConnell:

Q. And none of the patents of Canadian General Electric or Canadian Westinghouse Electric or Canadian RCA has been forfeited by any government because they have licensed you to import, have they?

A. Mr. McConnell, at one point GE and RCA and the telephone company raised the same point that they couldn't participate in any license from CRPL that permitted manufacture in the United States, but as soon as they settled the lawsuit that was all over and done with. They have themselves been importing goods up there from the United States for years, in large quantities.

Q. All right.

Now, you have told us how you got over your difficulties with RCA, General Electric, and the telephone company. Those were the defendants in the suit, were they not? 674

A. Yes, sir.

Q. Hazeltine was not in that suit?

A. No, sir.

675 Q. Now, what further difficulty have you had, if any, occasioned by the activities of this Hazeltine outfit?

A. Well, of course, Canada was our primary target for expansion. We are naturally interested in developing our export business wherever we can, because our trademark is known all over the world, and some of our products you will see anywhere you go, and there has always been a demand for them in almost every foreign country that I can think of. After Canada, which was, of course, our primary target because it was so close to the United States and so similar in most respects, we tried to penetrate England.

Q. Well, before we get to England, let's stay with Canada for a moment. Were you able to develop your business in Canada after this settlement in the litigation?

A. We were able to put on some distributors in Canada, particularly in Western Canada, and we developed through Zenith Radio Corporation of Canada our own distribution in Ottowa and Ontario, and I believe Quebec; so we have gradually increased our business in Canada despite the
676 fact that there still hangs over us this threat from CRPL.

Q. All right.

Now, who is the leading producer insofar as number of units are concerned of television in the United States, if you know?

A. I believe it is Zenith, but I don't have access to the unit figures of the other producers, but I think Zenith—we know what our own per cent of industry is, and we have a pretty good idea of what most of our competitors' per cent of industry is, so I think we are generally accepted as being the No. 1 producer in both units and dollars.

Q. And is that true also in radio?

A. I don't believe so in radio. I think we are probably two or three in radio.

Q. Who is the leader in radio, RCA?

A. I don't know, Mr. McConnell. I think that GE makes an awful lot of very cheap clock radios and small radios, and I don't know.

Q. Would you say in unit numbers that you were up in the first three in radio in the United States?

677 A. Oh, yes, I would think so. We produced last year, I know, over a million and a quarter radio receivers, produced and sold them.

Q. Now, going back to the Canadian market, is the competition that you have in the Canadian market in radio and television comparable to what the competition is here in the United States?

A. Well, it is comparable in one sense, that you are dealing principally with the Canadian subsidiaries of American companies in Radio Corporation, General Electric, Admiral, and to a lesser degree Philips. There are a few Canadian companies in the business who aren't located anywhere else, but the competition is certainly comparable.

I would say that probably in the United States prices are quite a bit lower, and I think that the styling and the features are more advanced than they are in Canada or anywhere else in the world.

678 Q. From your experience in this business with Zenith, have you an opinion as to whether or not, in a free market, without any restrictions of the kind that we are talking about here, you could do proportionately as well in Canada?

A. I don't have any doubt about it, Mr. McConnell.

Q. What is your opinion?

A. Excuse me. I believe—I am convinced that with the kind of quality product we make and the reputation we enjoy both here and in Canada, that taking away these clouds and difficulties that we have had with the Pool, these patent matters, that we could build up to a similar percentage of industry in Canada that we have in the United States.

Q. Now will you tell the court what effect, what residual effect has remained from the activity of this Pool even after the settlement that you made with the three defendants in the Zenith litigation?

A. Well, it is typified by this ad in the Trade
679 Builder. Here is a threat by an apparently respectable organization which is composed of companies like Canadian General Electric and the Telephone Company in Canada and Westinghouse, Philips, the Marconi group, everyone that handles our product from the user on up to the distributor is going to be sued. This has a serious effect on your ability to get the kind of distributors that you would need to do the kind of marketing job that we have been talking about, to be able to get them to make the kind of an investment and do the promotion and the advertising and to build a sales force that will do it.

Q. Can you tell us whether or not you know, if you know, the sets that would have been purchased by distributors that were in their hands would be subject to forfeiture in the event that they lost the patent infringement suit to this Pool?

A. Yes, the Canadian patent law has some very, very rough provisions for someone that is found guilty of
680 infringing. I don't recall precisely what they are. I know they are much more drastic than—it is my impression that they are more drastic than the comparable provision of our own patent laws.

The Court: Mr. Wright, would this ad, in your opinion, cover, say, General Electric's imports? Would that be a threat to—

The Witness: Well, your Honor, I believe you will find Canadian General Electric is listed as one of the acceptable companies in there along with the Radio Corporation and the others who are licensees of CRPL.

The Court: Yes, but the imported sets don't get their licenses from the Canadian subsidiaries. They are manufactured in this country and are imported and therefore not under these licenses, are they?

The Witness: Well, your Honor, my own opinion of this story about the Canadian patent law is that it is just a
681 screen to cover up what they wanted to do, to keep imports out of Canada. I don't think anyone can read the Canadian patent law and get any conclusion that this law results in the forfeiture of patents if someone permits imports under it. They know this and they have known it for years.

682 The Court: Well, isn't it the tenure of this ad that this tends to bar anything that isn't made in Canada by one of these companies?

The Witness: That is exactly right.

The Court: Well, anything made in this country by General Electric or RCA doesn't come under the terms of that, does it?

The Witness: That is exactly right, and we are talking, your Honor, about sets that we paid the Canadian duty on and cleared through customs and—

The Court: I am not concerned about Zenith sets, I am concerned about those companies that have cross licensing and which you say now are shipping sets up there and they are not being bothered in regard to the sets that they shipped up there.

Mr. McConnell: They are not included in this ad, your Honor.

The Court: What—

683 Mr. McConnell: The Canadian Admiral, Canadian General Electric, Canadian Marconi, the Telephone Company, they are noted in the ad as being covered by the Pool so they are told in this ad that the Pool is not attacking them, only companies that are not on this list. Now, Zenith is not on this list. This is notice to the world that Zenith is fair game.

The Court: Admiral, Limited isn't making the sets, they are being shipped to Canada, aren't they?

The Witness: I believe, your Honor, that most of Admiral's sets are made in Canada.

The Court: I am talking about the imports. You indicated awhile ago that there is a flood of merchandise crossing the border which apparently is proscribed by this.

Mr. McConnell: That is right, but they are not proscribing it against these particular companies.

684 The Court: I understand that, but if they are made in America by General Electric or RCA under American General Electric and RCA patents, isn't that a violation of that?

Mr. McConnell: Well, this only purports to be a notice to the trade, and people who are in the trade, that if they do not get their sets from these companies on this list they are in trouble with the Pool. Now, Admiral—

The Court: Is it your position that these people on the list are selling American made sets?

Mr. McConnell: In certain instances, yes, but they are not proscribed, we are.

The Court: I understand that, but I thought perhaps these American made—this American made merchandise was shipped right to a retailer from America rather than going through somebody on the list.

685 Mr. McConnell: Well, our indication is—

The Court: This has nothing to do with the lawsuit, but it arouses my curiosity.

Mr. McConnell: I know.

Well, the fact is that all these companies import into Canada, but the only one that gets proscribed is a company like Zenith that doesn't have a license because we don't manufacture anything in Canada, and we cannot get a license; no matter what we offer for it, we can't get it because we are not doing that business.

The Court: Let's go on to the next question. I am sorry I brought it up, since I didn't get an answer.

Go ahead, since it makes no difference anyway.

By Mr. McConnell:

Q. To what extent has your business been interrupted in exporting sets to Canada by the activity of this pool since your settlement?

A. Well, this is always a very difficult thing to say
686 what might have been had the circumstances been other than what they have been, so that I can only answer that by stating that I feel that if we had not been subject to think of pressure in the trade among dealers, among distributors and among customers, that we would certainly, over this period of time, have built up a business that would have been comparable in Canada to what we enjoy here in the United States.

Q. You mean that you would have an eqaul percentage of the business in Canada against that competition?

A. That is right, that is correct.

Q. I show you a document which is marked Defendant's Exhibit No. 71, which purports to be a license agreement under the A.7 pool in England and call your attention to the recitation of the grantors, and I call your attention particularly to the reference to a company called Pye, limited. Do you know that company?

A. Yes, sir.

Q. Who is the chairman of the board of that company?

687 A. C. O. Stanley.

Q. And what does the company do?

A. Pye is one of the quite large and aggressive and good companies in England that manufactures radio and television apparatus, communications equipment.

Q. Can you look at that document and tell us whether or not Pye is a member of the British Pool, the A.7 pool? You will find that in the—

A. Yes, the standard license here, the license A.8T is between the EMI, General Electric, Limited, Marconi Wireless Telegraph Company, Limited, Murphy Radio, Limited, Philips Electric Industries, Limited, and Pye and Rank Cinetel, Limited, and Standard Telephone and Cable; those are the pool members who are granting this license under this form.

Q. All right.

Now, do you recall a conversation which you had in England, in London, with Mr. C. O. Stanley with reference to this pool?

A. Yes, sir.

Q. And where was that?

A. I had several conversations with Mr. Stanley;
688 I had one in his home; I had one when I had dinner with him—this was in, I would guess, around July or 1955, late June or early July of 1955.

Q. Did you make any inquiry of him as to whether or not there was any method whereby Zenith Radio could be licensed to import radio or television sets into Great Britain?

A. Yes, I did.

689 By Mr. McConnell:

Q. Now, would you tell the Court what that conversation was, what was said?

A. Well, I asked him about the policy of the Pool which we were already familiar with. They required that sets be made in England, and that nothing would be licensed if it was imported from abroad, and I confirmed with him that that was what the situation was and asked him if there was any possibility of any modification in the future.

Q. What did he tell you?

A. He told me that he saw no possibility that that would be modified.

Q. Now, since the lawsuit which we have been talking about, has Zenith made any effort to sell radios in England?

A. Yes, we have.

Q. And with what results?

A. Well, we made an arrangement with a man—I've forgotten the name of the company; the man's name is Adam Ramsey, who is the owner of it, or the proprietor of the business, who has been over here many times at our
690 conventions and has been very enthusiastic about the possibility of developing our business in England.

And he has wanted to go ahead with us as a distributor to bring about the widest exploitation of that business. We informed him, of course, as to what our experience has been previously in England, efforts to import things into the country, and to get a license that would permit such imports. And he—

Q. Tell us what your experience had been?

A. Well, our experience previously had been that when someone would buy a few receivers for resale in England, that as soon as that word got around among the trade, someone from the pool either called or wrote a letter, and called his attention to the fact that we were not licensed by the pool and that infringement actions would result if the goods were resold.

I informed him about that, and he was willing to take a chance to go ahead and see what he could do, at least in the field of radio, to see what the result of this would be.

He was, as I recall, unwilling to try to invest much in
691 the television business because this required too large an inventory speculation for him.

Apparently the pool has not bothered him insofar as radio is concerned, and I am not surprised at that because, actually, there are hardly any radio patents left that anyone would seriously think of threatening infringement with.

Q. All right. Have you made any effort at all to go into the English market with television?

A. Well, we have only sent a very few television receivers to Mr. Ramsey, which he has attempted to market But we have not made any effort on television because we were informed that the pool license then in effect, and there was no possibility of getting such a license.

The Court: Since you were a manufacturer here, you couldn't sell any, could you?

The Witness: Yes, sir.

The Court: Would it function?

The Witness: Well, yes, sir. Sometimes we have to 692 make minor modifications in these sets. They use a slightly different system in England.

The Court: That's what I mean.

The Witness: But these are modifications that aren't too difficult, ordinarily. It is just like having another model on the line. I believe in England they have a different number of lines, and they use AM sound instead of FM sound, but these are modifications. We have the same situation—

The Court: I mean one off your line here wouldn't function in England.

The Witness: No, sir.

693 By Mr. McConnell:

Q. You could set up a line that would?

A. Oh, Mr. Ramsey in the back room of his little establishment could make the simple repairs and alterations that are necessary to make this work. We supply him with parts and kits to do that at times.

Q. Now, is the competition in England comparable to what you have in the United States?

A. Well, in England it is a little different. I don't know that I understand your term comparable. There are different companies that are involved. We are dealing with roughly the same products.

In England, the leading companies are Pye and English Electric, and Philips, and Marconi, and, oh, there are several other English companies.

Q. You have seen their products on display, haven't you?

A. Oh, their products look—their current products look like the products that we were selling three, four, five years ago.

Q. Would you say your product was superior to theirs?

694 A. Yes, no question about it; not only in design, in construction, but in styling.

Q. Well, have you an opinion as to whether or not you could obtain a comparable share of the English market if you were free from the restrictions which we have been talking about here?

A. Well, I think we could attain a fairly respectable share of the British market. But I can't say that I think we would get, say, around twenty per cent of the market that we get here in the United States. The distances are too great.

But I think—I don't have any question in my mind that we could do a substantial share of the British business if we were given an opportunity to compete without these restrictions.

Q. What proportion of that market do you think you could attain?

A. I would say we could get a half of our per cent of the industry in the United States. In other words, if we did twenty per cent here, I would think that we could
695 build up to a ten percent share of the British market.

Q. In other words, transposing ten per cent of the market here to there, you would have ten per cent of their market—against their competition?

A. That's right—no.

The Court: Well, in regard to price, having in mind the difference in cost of production and the cost of putting it in the dealer's store in England, at what disadvantage would you be?

The Witness: We would be at some disadvantage, your Honor. That is one of the factors that I was taking into account when I said we would—our potential would be less than it would be in the United States.

But, actually, the price levels in England have been higher than they have been in the United States. And, of course, in Canada that has been substantially so.

The Court: All right.

696 By Mr. McConnell:

Q. Can you tell the court what these three companies that were sued by Zenith paid you for damages—paid your company for damages for the time up to the settlement of that suit in 1957?

A. Ten million.

Mr. McConnell: You may cross-examine.

The Court: That covered what—the countries?

Mr. McConnell: That was for damages in Canada.

The Court: All right.

Mr. Dodds: I don't have a copy of the Exhibit that you were examining Mr. Wright—

Mr. Curtis: It is up there.

Mr. Dodds: No, it isn't that one. It is the one that included the notice—

The Court: The telegram and all?

Mr. Dodds: Yes. This is it.

The Court: All right.

697 *Cross-Examination by Mr. Dodds.*

Q. Taking last things first, Mr. Wright, do you know what the customs duty on a set imported from the United States—a television set from the United States to Canada is?

A. Well, my recollection is that it is 20 or 22½ per cent, something like that. I could be off on that, Mr. Dodds.

Q. How about England?

A. I don't recall the tariff in England. It is probably—

Q. Do you think it is more or less?

A. Well, it may be just a little more.

Q. And how about Australia?

A. Oh, I did have that figure on Australia.

The Court: He's talking about tariff, not anything else.

Mr. Dodds: That's all; just tariffs.

By the Witness:

A. I did have that but, you know, these things change, too.

By Mr. Dodds:

Q. Yes. It's on the order—

698 A. I can get that information for you very quickly.

Q. It's somewhere between 20 and 30 per cent, anyway?

A. That's my recollection of it. It may have been lower than that in Australia. I'm not sure.

Q. Now, if you are going to export a set to Australia, what would be a typical transportation cost in terms of percentage of your selling price?

A. Mr. Dodds, we never got that far in Australia.

Q. I don't believe that answers my question. Do you know or do you not know?

A. I do not know.

Q. Do you know what the transportation cost would be in shipping a set to England, as an average percentage of cost?

A. No, sir, I do not. I think you would find this would depend on the quantity in which you send them—

Q. But you don't have any idea whether it is 5 per cent or 50 percent?

699 Well, I don't know. I'm sure it's not 50 per cent. I would be surprised if it is 5 per cent.

Q. Well, how are you sure it is not 50 per cent if you have never investigated?

A. Well, I have seen some breakdowns of our costs of doing business in connection with our radios that we sell in England. And I am sure if it had been 50 per cent, it would have struck my eye and I would have remembered it.

Q. How about Australia?

A. I just don't know. I have never seen it.

Q. Now, in this Defendant's Exhibit 138, your telegram to CRPL, the notice and reply, the companies listed there are all Canadian companies, are they not?

A. I don't know whether they are or not.

Q. Well, would you review it and see if you find any that are not Canadian companies.

A. I see an awful lot of them that are subsidiaries of, obviously, American companies.

Q. Well, that wasn't my question, Mr. Wright. The question is whether those companies are Canadian

700 companies.

A. I don't know.

Q. Do you recognize any that are not?

A. No, sir. I don't know where these companies are organized.

Q. Is it customary for a United States corporation to end up with the term "Ltd."?

A. A United States company—

Q. Yes.

A. It's not customary.

Q. No. You don't know of any of those that are U. S.

companies? You don't see any of those that you know are U. S. companies?

A. I don't know as to any of them. I do know that Canadian General Electric is a Canadian company. I know Canadian RCA is a Canadian corporation. I believe Canadian Westinghouse is. These are the ones I know. As to the others, I don't know.

Q. How about Canadian Admiral Corporation?

A. I don't know.

Q. How about Canadian Marconi Company?

A. Yes. I believe that is a Canadian company.

Q. Do you know about Dominion Electrohome Industries?

701 A. I understand that it is a Canadian company.

Q. Do you know anything about Emerson Radio of Canada, Limited?

A. No, sir.

Q. Do you know about Hallicrafters (Canada) Limited?

A. No, sir.

Q. Do you know anything about a Northern Electric Company, Limited?

A. That is a Canadian company.

Q. Do you know about Philco Corporation of Canada, Limited?

A. That I understand is a Canadian company, although I don't know.

Q. I think you did mention RCA Victor Company, Limited?

A. That is a Canadian company.

Q. Have you ever seen a license agreement from CRPL to any of these Canadian companies?

A. Yes, I believe I have.

702 Q. Does that license restrict their importation of U. S.-made apparatus?

A. My recollection is it restricts the importation of any

—nothing is licensed under this which isn't made in Canada, which would restrict U. S. or anything else.

Q. So that if Canadian General Electric Company were to import television sets from its American parent company, the General Electric Company, and sell them in Canada, it would not come under their license with CRPL, would it?

A. Presumably not. It wouldn't be in accord with the terms of the agreement.

The Court: Thank you for giving the answer for me.

By Mr. Dodds:

Q. Now, let's talk about radio. I think I understood your testimony that there aren't any radio patents still in existence that are really worth talking about; is that about right?

A. That was my testimony. But Mr. Dodds, I'm not a patent lawyer or patent expert, so I don't want to—

Q. I will put it this way. You don't have any 703 knowledge to the contrary. You don't have any knowledge of any patents that are of substantial importance in sound radio at the present time, do you?

A. I do not have any knowledge of such patents.

Q. Now, have you had difficulties in exporting radio sets to Canada? Have you had difficulties with CRPL?

A. Well, yes, over a long period of time. See, we didn't get into television until about 1949. So that all our difficulties were exclusively about radio. And my recollection is that the problems we were having in the fifties involved radio as well as television. But they made no distinction.

Q. That is the question I wanted to know. When did you stop having troubles with Canadian Radio Patents Limited about radios?

A. I don't think we ever stopped having trouble with Canadian Radio Patents Limited about anything.

Q. Now, Mr. Wright. if there are no patents, worthwhile patents outstanding on radios, how can CRPL give you any trouble in exporting radios to Canada?

704

A. Mr. Dodds, certainly, as you know, there are many, many, many thousands of patents that purport to relate to this art. And nothing can prevent a man from asserting a patent and threatening infringement on it. This is done quite frequently. And as a matter of fact, this has been done by the Hazeltine Corporation. It's been done by Canadian Radio Patents Limited.

You never have any way of knowing whether the patent's valid or infringed or not until you have got it through litigation.

Q. Mr. Wright, I could sue you tomorrow on a patent which I don't own. I wouldn't stand much chance of collecting, but that's theoretically right. I can sue you, can I not?

A. I guess paper won't refuse ink.

Q. That's right. And do you think it would be good business to bring suits on patents that didn't have any relation to radio sets which were being built?

A. Would you read that question again, please.

705 (Question read.)

By the Witness:

A. No, sir.

By Mr. Dodds:

Q. Do you recall when was the last time in which any dealer or prospective dealer of Zenith in Canada complained about interference by the Canadian Radio Patents Limited with respect to radio sets?

A. The last I recall on this, Mr. Dodds, was shortly following this Trade Builder ad, about which was the subject of this—

Q. In 1958?

A. In 1958. We had a number of our distributors who were handling our products in Canada who came to us and were greatly concerned as to what the future held, whether they were going to be subject to this litigation.

Q. I don't think that quite answers my question. I asked you when, if you knew, was the last time any of your dealers or prospective dealers was interfered with by CRPL because of importation of radio receivers.

A. Well, if you will notice this ad of Trade Builders,
706 it covers radio receivers, television receivers, and that
is the last instance that comes to my mind.

707 Q. I move that the answer be stricken. What I
asked—

The Court: It will be stricken.

By Mr. Dodds:

Q. When was the last time that the CRPL interfered with one of your dealers or prospective dealers. I am not talking about ads in papers.

Would you read the question back—

A. I don't understand what you mean by interfered.

Q. Made a direct threat either orally or by correspondence, or had any communication with your dealer or prospective dealer with respect to importation of radio receivers into Canada.

A. I don't recall any specific threat of litigation over radios alone in the last few years. I don't—I can't—

Q. Perhaps back to about 1958?

A. Yes, sir.

Q. Well, what have you done toward building up your distribution of radios in Canada since 1958?

A. Well, we really handle radio and television to-
708 gether as a distribution thing; the same concern will
handle both of them together. We have gone to Canada, and we have talked with many wholesale distributors about the possibility of their taking on our line of radio,

and television, and hi-fidelity, and phonograph instruments, and about the investment that would be required in it, and the kind of organization, staff, and territory which they would be expected to be responsible for.

We have appointed such distributors in virtually all of the western provinces. We have not been able to find that kind of distribution in the central provinces, and we have been trying to handle that through our own subsidiaries. We have done that same thing in the Maritime provinces, although we have had some difficulties in getting adequate distribution in that area.

Q. Well, now, have you made any attempt to distribute your radios and phonographs and hi-fidelity without accompanying the television—without television distribution?

709 A. I can't recall of an instance where we have done that in Canada.

Q. You made no attempts to do that?

A. No, sir.

Q. All right. Now, let's come to England. When was the last time when the British Pool interfered with a dealer or prospective dealer of Zenith with respect to importation of radio receivers into Enlgand? And by interfere, so that there will be no misunderstanding, I mean made any sort of direct approach, oral, correspondence, or other threatening approach, neglecting general advertisements or notices in the trade press?

A. Well, we were completely cut out of England, where we did no business whatever until, I would say, from a period—of my knowledge of the company—from the end of the War until approximately 1958 is my recollection—or '59 perhaps, when the current man who is representing us over there on some products took on the job of trying to build up some distribution there.

710 So I recall no threat in that period of time, except for the oft repeated statement that there was no other possibility of doing any distribution there except by having such a license, which, of course, precluded imports.

Q. Well, did you make any attempts to establish a distribution of radios only in Great Britain?

A. Well, not prior to the time we took on—well, wait a minute. We made such attempts in the thirties and then—

Q. Let's talk about '58 on. I think that was the time we agreed—

A. Yes. '58 on, we talked to several men in England.

Q. On radios only?

A. Yes. Only one of them—well, we talked to them about all of the products, but we were given to understand that television was just out of the question.

Q. How about radio? Was it out of the question?

711 A. No. Mr. Ramsey felt that he was willing to take a chance and bring radios in without a Pool license, and felt that perhaps he could build up some distribution then.

Q. And has the Pool bothered him in that importation of Zenith radios?

A. I don't know of any specific acts that they have taken with reference to his limited distribution.

Q. All right. Now, let's go to Australia. When was the last time that any dealer or prospective dealer of Zenith radios in Australia was threatened directly, either overtly or by correspondence by ARTS—you know what I mean by ARTS, I assume?

A. Yes, sir. We haven't had a dealer in Australia since, I would say, going way back to the early thirties or the late twenties. I have talked with several people in Australia about the possibility of setting up an enterprise. These talks have been over a period of four, five years, and

always I have gotten the same story from them;
712 namely, it is going to be bring in finished sets from the United States. Perhaps we can bring in some components, but it is going to be necessary, to do any business in Australia, to set up a factory there.

713 Q. Have you spoken with people in Australia about the importation of radios and phonographs and high fidelity only?

A. Well, I would talk to them about everything we produce, and those are the principal products.

Q. Well, what I meant—my question was, have you discussed with them, or explored the possibility of distributors for radios, phonographs, and high fidelity equipment without, at the same time, distributing television sets?

A. No, sir, I don't recall that.

Q. And still on Australia, do you know whether the Zenith Radio Company ever asked ARTS for a license?

A. I have a recollection that we had some correspondence with them, Mr. Dodds, but I can't tell you when it was.

Q. You don't have any knowledge that ARTS ever refused Zenith a license, do you?

A. I don't recall that.

Q. Do you know, or do you not, that ARTS has licensed the Admiral Corporation to import television receivers into Australia?

A. It was my understanding that Admiral was
714 given the right to import a few in the beginning, but on the understanding that they would build a factory there to build their receivers, which I understand they have done.

Q. You don't—I will ask you this: Do you know of any concern that has been refused a license to import television receivers into Australia?

A. Well, as I recall it, Mr. Dodds, we were thrown out of Australia in either the late twenties or the early thirties by the pool activity. And the people that have been handling our goods said they couldn't do it any more because of these threats.

Q. Well, Mr. Wright, the twenties and the thirties are some thirty years ago. There is a lot of water over the dam.

Have you been refused, say within the last 20 years, a license to import television receivers into Australia?

A. I can't recall that we made a specific request of the pool directly, but I have discussed this matter with many people in Australia with a view to distribution, and
715 there was no question in their mind that we could not
get such a license, and there was no use talking about any sort of arrangement that contemplated that.

Q. You say you talked with people. Who did you talk with?

A. Well, I can recall talking with officials of Stromberg-Carlson in Australia, Mr. Beam. I can recall talking with the head of a company that makes components in Australia and is a licensee of ours in another area—Mr. Webb of the Rola Corporation.

Q. Did you talk with anybody at ARTS?

A. No, sir.

Q. Did you ever talk to Mr. Gilmore?

A. No, sir. I don't know Mr. Gilmore.

Q. You don't know Mr. Gilmore who is the manager of ARTS?

A. No, sir.

Q. Mr. Wright, on what basis did you answer the Court's question that the Canadian Patent Act did not prohibit importation of television receivers made in the United States? I understood you to say that. If I misunderstood, correct me.

716 A. My answer was based on—I must hasten to say that I'm not admitted to the Canadian bar and not an

expert in Canadian law. But I have been admitted to practice law in the United States and have practiced law for most of thirty years.

I have read and studied the Act, and read and worked on and seen many briefs on the subject, and that is my opinion. The Act nowhere—there is nothing in that act which supports the construction that a patent can be forfeited because someone imports into the country.

Q. Is that your own conclusion, or is that what someone told you?

A. Well, I'm talking now about what my own conclusion is, sir.

Q. I think reference was made to a Canadian subsidiary of Zenith. I don't remember the title.

A. Zenith Radio Corporation of Canada, Limited.

Q. Has it ever been sued for infringement by CRPL for importation of U. S.-made radio receivers?

A. No, sir. You see, Zenith Radio of Canada never sold a radio or a television receiver in Canada until after 717 the 1957 decree. They were—their primary business was in hearing aids, which we have supplied to Canada for years and years and years through that corporation.

Q. All right. Then in the six and a half years since September—I believe it was September 8, 1957—has Zenith Radio Corporation of Canada been sued for the sale of imported radio receivers?

A. No, sir. But as you will note in this exhibit, Mr. Brownlee stated that he had been over to see Mr. Kiely, and told him that he thought we needed the license, and that we were infringing the patent of CRPL. Mr. Kiely was the general manager of Zenith of Canada.

718 Q. Well, that was, as you say, September of 1958?

A. Yes, sir.

Q. By coincidence, almost contemporaneous with the decree—no, it was a year after the decree, September 1958, some five and a half years ago, but in spite of that CRPL never sued the Zenith Canadian company for importation of either radio or television receivers, has it?

A. No, sir, I believe it was about that time that—

Q. You have answered my question.

Now, there has been a lot of general testimony with respect to sales of radio and television receivers in Canada and England particularly, not in Australia; do you have any figures of those sales year by year?

A. I don't have them with me, but we—

Q. Could they be made available, say, since 1950?

A. I am sure they can be made available.

Q. And I think it would be interesting to compare the sales since 1950 in England, Canada and Australia with
719 the sales or exports to other countries that are not involved with apparently troublesome patent pooling organizations; could that information be made available?

A. I am sure it can be prepared, Mr. Dodds.

Q. I would like to ask if it may be done.

Let's come back to England for a minute: Do you know that, if any, patents, British patents owned by Hazeltine would prevent Zenith from distributing monochrome television receivers in England?

A. No, sir.

Q. They never had an investigation made?

A. I don't recall such an investigation. There may have been one made, but I didn't ask for one and there seems little point in making a long and expensive patent search on the thing when there is no possibility of getting a license anyway.

Q. Well, if there are no patents you don't need a license, do you?

A. No.

Q. You haven't made an investigation. You don't know of any investigation?

720 A. I don't know. There may have been one made, though. I don't want my answer to stand for the fact that one wasn't made.

Q. Do you know whether or not at the present time there are any color television sets on the market in England?

A. No, sir, I don't know. They have been talking about color, but whether they have authorized it as a service regularly, I don't know.

Q. Maybe you anticipated the second question; do you know whether Great Britain has established a standard of color television transmission?

A. I don't know that they have.

Q. Well, now, in connection with your efforts to build up your business in radio and television in Canada, I noticed in going through some of the correspondence files quite a volume of correspondence between Zenith and dealers and prospective dealers and some relating to their troubles with CRPL; do you know whether or not that volume of correspondence has been fairly uniform over the years?

A. I don't know whether it has or not.

Q. Well, do you—

721 A. It goes back to at least 1927, that I know of.

Q. Was there any particular period when Zenith made a concentrated effort to build up its Canadian business, say, by an advertising program or such?

A. Well, Mr. Dodds, we have been under constant pressure on this Canadian thing ever since the beginning, because the Saturday Evening Post goes to Canada, the Colliers, a great many newspapers and everything, and we have got many cities where they are almost twin cities like Windsor and Detroit and Vancouver and Seattle—

722 Q. I appreciate that, but I don't think that answers my question. My question was, do you recall of any

special concentrated effort in any period of time to build up your Canadian business in radio and television receivers?

A. No, sir. After we—we had to tell everybody that came and wanted to buy from us about this risk prior to 1957.

After 1957, then we did make a concentrated effort, because we had assumed that we now were on a regular basis where we weren't under this handicap. Then we started making a concentrated effort, because we thought that our distributors and dealers could have some assurance that they could be permitted to build up their business without threat of litigation.

The Court: That's provided you didn't use patents of Marconi or Hazeltine or something.

The Witness: Absolutely, your Honor. We had taken a license under some individual patents that we thought were
important up there, including the Parker patent that
723 was referred to here this morning, which is under
CRPL. We take a license and pay a royalty on that
when we ship sets to Canada.

By Mr. Dodds:

Q. The reason that I asked the question, Mr. Wright, if you refer to Defendant's Exhibit 179, which is a collection, a bulk Exhibit of correspondence between Zenith, its dealers and prospective dealers—I wouldn't want to estimate in there, but I would guess there are perhaps fifty or seventy-five—

The Court: Dealers where, Mr. Dodds?

Mr. Dodds: In Canada.

The Court: All right.

By the Witness:

A. I see a lot of these relate to whether we were going to establish a factory in Canada.

By Mr. Dodds:

Q. Well, they were inquiries from dealers or prospective dealers, correspondence with them, I believe.

A. Yes.

724 Q. Well, now, I estimate there is somewhere between fifty and seventy-five in there.

A. I would accept your count or estimate.

Q. I didn't count them. I estimated.

I personally inspected the correspondence files supplied by Counsel for Zenith in this particular field supposedly going back from the beginning up to date, and I would say that this volume, in a period largely within—the bulk of it within '55 and '56 was more than all the rest combined. Do you have any way of accounting for that?

A. No, sir, I would be surprised at that.

Q. There was no special advertising campaign?

A. No, sir.

Q. Or a "write your Congressman campaign"?

A. No, sir, under no circumstances, and everybody that inquired we had to tell them frankly what the risks were if they did business with us.

725 Q. You have no way of accounting for the concentration of nearly all of this correspondence in a period of about two years?

A. No, sir—well, I am not sure that it did.

The Court: Well, assuming that it did, you can't account for it.

The Witness: No, sir, that is right.

The Court: All right.

Mr. Dodds: Now, your Honor, there are a few questions that I would like to ask Mr. Wright which are not in the scope of the direct. If Mr. Wright will be available, I would like to call him—

The Court: You intended to call him as an adverse witness, is that it?

Mr. Dodds: Yes.

The Court: Have you any objection to him asking questions of him—

Mr. McConnell: Not at all, your Honor.

Mr. Dodds: On the other hand, I think if Mr. Wright is going to make some of these figures available, maybe it would be just as well to combine it with them at that time.

726 The Court: Do you have any more questions?

Mr. McConnell: I have one or two. I wish we could finish with Mr. Wright, because he has out-of-town engagements.

Mr. Dodds: I assume that Mr. Wright will be available. You are not going to Europe or Japan?

The Witness: Actually, my family is away and I was hoping to get out tonight and meet them and be back on Monday, so it would be a real favor to me if we could conclude.

The Court: You don't intend to call him tomorrow?

Mr. Dodds: It depends on Mr. McConnell. He indicated the last time that we talked that he expected his prima facie case to take two weeks, so we wouldn't be calling any witnesses until after that.

Mr. McConnell: We will be through with our prima facie case tomorrow.

The Court: I was about to make an inquiry as to
727 if we were making the progress that you anticipated.

Mr. McConnell: We are way ahead of what I thought. We are going to be through tomorrow.

Mr. Dodds: Well, I certainly don't want to inconvenience—

The Court: You are not going to finish your defense tomorrow, are you?

Mr. Dodds: Tomorrow?

The Court: Yes.

Mr. Dodds: I would not expect so. As a matter of fact, I—

The Court: Can we excuse this witness until Monday?

Mr. Dodds: Yes.

The Witness: Thank you very much, your Honor.

Mr. McConnell: I had one or two questions.

The Court: Oh, yes, he has one or two questions and then you can go until Monday.

The Witness: Thank you, sir.

•

728 *Redirect Examination by Mr. McConnell.*

Q. You started to say something about the Parker patent; what is that patent?

A. The Parker patent is a patent on what is called intercarrier sound, and I am not an engineer so I can't tell you precisely what that is except that it was a new and ingenious way of doing something that had to be done with the signal, and it represented a substantial saving over the way the industry had been doing it. We took a license under the Parker patent here in the United States some time, I believe, in the fifties and paid a royalty, and we also took a license under the Parker patent which permits us to export out of the United States to any foreign country for, I believe, an extra ten cents a set.

729 Q. Well, are you licensed under the Canadian Parker Patent?

A. Yes, sir.

Q. To export from the United States into Canada?

A. Yes, sir.

Q. Now, you were asked about what you knew about the legality of restriction on imports; did you find out what the opinion of the general counsel and the lawyers for RCA was on that subject?

A. Yes, sir.

Q. What was their opinion?

A. Well—

Mr. Dodds: Your Honor, I object. That is pure hearsay.

Mr. McConnell: Well, you asked him about what he knew, where he got his information.

Mr. Dodds: If he wants to tell that he got it from the RCA lawyers, I think that is appropriate, but asking that opinion is, I think is something else.

Mr. McConnell: You asked him where he got his opinion, what it was based on and—

730 The Court: The objection is overruled.

Go ahead.

By the Witness:

A. I recall a memorandum from Ira C. Adams, who was the head of the patent department of the Radio Corporation for many years when this Canadian thing was set up, and it is my recollection that he stated that the efforts to make this Canadian patent law look as if it were—the "working condition in Canada provisions" of the Canadian patent law look as if they prevented imports was just not true, that it couldn't be sustained.

By Mr. McConnell:

Q. Was he head of their legal department?

A. I believe at the time he was vice-president in charge of patents for the Radio Corporation of America, and lawyer.

Q. Did you get any other expressions from the other lawyers of those companies, General Electric and RCA?

A. I don't recall any other from their lawyers. That one stuck in my mind because it was different than

731 the position they were taking in the lawsuit.

Q. Well, do you recall that there was research made on that subject and opinions taken from lawyers in Canada at the time of Zenith litigation?

A. Yes, sir.

Q. And did you consult any lawyers on that subject then.

A. Yes, we consulted Canadian lawyers at the time and we were advised by these Canadian lawyers to the effect that the "working in Canada provisions" of the Canadian Patent Act were primarily designed to prevent a situation where the Canadian Government would, by virtue of giving a man a patent monopoly under the state, would then be able to deprive the Canadians of the benefits and uses of this invention by taking out a patent but then refusing to work the patent in Canada or permit it to be used there and that—

732 Q. Well, did they give you an opinion—

A. —that this could not be stretched to the point where it would prevent imports so long as there was production and so long as there was trade and the benefits of this invention were freely available to the people of Canada, there was nothing in that act which would prevent importation under a license.

Q. Now, you were asked whether you or your distributors had been sued for infringement in Canada and you said, "No, sir," and then you started to say, "I believe it was about that time—" and you were cut off by counsel. Was there something else that you wanted to add to that?

A. Would you read it again to me, sir.

Q. Well, you were asked whether or not any of your distributors or dealers had been sued for infringement and you said, "No, sir. I believe it was about that time—" and then you were cut off by counsel; did you have something you wanted to add here, to qualify that?

A. I don't recall what I had in mind, I am sorry.

Q. All right.

733 Mr. McConnell: Where is that correspondence that you were talking about?

The Court: Let's take a five-minute recess. I have got another matter set.

(Thereupon a short recess was taken, after which the following further proceedings were had herein, to wit:)

734 The Court: You may proceed.

By Mr. McConnell:

Q. You were asked on cross about a Mr. Kiely, Lloyd B. Kiely. Who is he?

A. Mr. Kiely was the general manager, I believe, of Zenith of Canada whom we appointed to handle the distribution of radio and television in Ontario and some of the central provinces. Prior to that time, the general manager had been a man named Pratt who had just had hearing aids.

So we appointed another man to take care of distribution of radio, TV and phonographs.

Q. I show you a document which is marked here Defendant's Exhibit No. 151, which purports to be notes of a conference between McConnell of Canadian Radio Patents, Limited, and Kiely and Capell. Who is Mr. Capell?

A. Mr. Capell is presently the vice-president and general manager of Zenith of Canada. I believe at that time we had hired him as a consultant. He had been in the business of radio and television distribution and manufacturer
735 in Canada for many years. I believe he was head of Philco of Canada prior to the time he came with us.

Q. I show you a document and ask you if you can tell us from whom you received it?

A. I received this from Mr. Kiely.

Q. Did you read it?

A. Yes, sir I did.

Q. And what is the date of it?

A. The date is July 30, 1958. That is several months prior to the ad we—

Q. That was a report received by you in the ordinary course of your business as president of this company?

A. Yes, sir. I believe when Mr. Kiely was first approached by Mr. McConnell, he called me on the telephone and told me he had been. I suggested that he go ahead and meet him and see what they had to say, and try to bring him up on the background of the patent situation so that he would—

Q. And this is the result of that conference?

A. Yes, sir.

736 Mr. McConnell: I am going to offer this document in evidence, if the court please—a report that was received in the ordinary course of business of Zenith Radio Company—as Defendant's Exhibit No. 151.

Mr. Dodds: No objection.

The Court: It may be received.

(Said document, so offered and received in evidence, was marked DEFENDANT'S EXHIBIT NO. 151.)

Mr. McConnell: And I would like to read it:

"Conference
"Canadian Radio Patents Limited
"Mr. B. McConnell, President
"Zenith Radio Corporation of Canada, Ltd.
"Mr. L. B. Kiely, Mr. S. L. Capell
"Date: July 30, 1958
"Place: Toronto Board of Trade
"Time: July 30, 1958, 11:00 a.m.

737 "Mr. Brian McConnell, President, Canadian Radio Patents Limited, 200 St. Clair Avenue West, Toronto, phoned me on July 25, for the purpose of setting up an appointment to discuss matters of mutual concern. I advised Mr. McConnell that July 30 would be the earliest date possible and that I would confirm this date on the morning of July 30, to be sure both parties were available.

"Mr. S. L. Capell and I had other business downtown on July 30. Therefore, Mr. Capell accompanied me to the Board of Trade to meet Mr. McConnell at 11:00 a.m.

"Mr. McConnell opened the discussion with the suggestion that he would like to know more specifically what Zenith plans and objectives are in Canada, as he and his group had no further knowledge than had been published in various news releases.

738 "Mr. McConnell wished to determine:

"Were Zenith importing sets now? He understood such was the case.

"Was Zenith planning to set up Canadian manufacturing at some future date?

"To the first question, I answered: 'Yes, Zenith are importing sets into Canada now.'

"To the second question, I answered that there had been no decision as yet by senior officials of the company regarding the matter of Canadian production in the future, or if any decision had been made, it had not been expressed as an opinion by the Company at this time.

"Mr. McConnell told us that he had read of the litigation in the United States, involving Zenith with RCA Victor and other prime tube patent holders, and he assumed that the agreements that concluded this litigation would be extended to Canada by the parties 739 involved.

"He was of the opinion, however, that Zenith television receivers and high-fidelity instruments might infringe patents controlled by Canadian Radio Patents Limited, such as:

"Parker—held by C.R.P.L.

"Armstrong, F.M.—Represented by C.R.P.L.

"some Marconi patents—Represented by C.R.P.L.

"some Philips patents—Represented by C.R.P.L.

"Mr. McConnell told us that under Sections 67 and 68 of the Canadian Patent Act, any of the patents or groups of patents controlled by C.R.P.L. that might be infringed by Zenith equipment in Canada could result in such patents being categorized as 'Abused' by the Commissioner of Patents, in the event that action for infringement by patent holders was not initiated
740 within the prescribed period after importation, as spelled out in Section 67 and 68 of the Canadian Patent Act.

"Mr. McConnell then requested that we supply him with a couple of schematic diagrams of Zenith television equipment (two typical chassis), and I offered to do so, inasmuch as these schematic diagrams are readily available through any Zenith dealer. Mr. McConnell explained that the diagrams would be examined by C.R.P.L. principals and that in all probability the Philips engineering division in Canada would accept this assignment for the Canadian Radio Patents Limited. He told us that in the event infringement of patents held by Marconi, Philips, or C.R.P.L. patents administered in Canada under the name of Parker or Armstrong F.M. was indicated by the examination, he would like a meeting to discuss the problem
741 with Zenith representatives, to forestall a serious situation for C.R.P.L. under the Canadian Patent Act.

"The conference closed with the understanding that we would supply the Zenith schematics to Mr. McConnell. These would be examined by the engineering division of one of the C.R.P.L. members, and subsequently, Zenith would be notified of the findings of this examination.

"Yours very truly,

"Lloyd B. Kiely,

"General Manager."

742 By Mr. McConnell:

Q. Now, after receiving that letter, can you tell us whether that had any influence at all upon the policy of the Zenith Radio Corporation with reference to Canada?

A. No, it was, as I indicated before, very surprising to us because we had thought that this dispute was all over, and apparently it wasn't. And this then made it perfectly apparent that we were going to be working under a cloud in Canada, just so long as CRPL was asserting this Pool against us, and presumably as they had in the past against our distributors and dealers.

Until that could be settled in some way, why, we were always going to be operating under some uncertainties up there.

Q. Well, did it have any effect on the amount of money Zenith was willing to invest in the Canadian market to promote it, or to exploit it?

A. Well I think it was an effect in our own thinking
about what we were willing to undertake in the form
743 of promotions and advertising. But I think even more
important than that, it had a profound effect if it
were to go beyond this, which was between CRPL and
ourselves, and create the same kind of feeling of uncertainty
on the part of our distributors and our dealers.

And of course, following that by a few months, when that ad appeared, why, then this did get it out in the open.

Q. I show you a document which is on the letterhead of a Zenith dealer or distributor up in Nova Scotia, a Mr. N. A. MacCuspie. You referred to him in your examination.

A. Yes, sir

Q. Did you receive this letter through the mails from Mr. MacCuspie on or about the date that it bears?

Mr. Dodds: What Exhibit number is that?

Mr. McConnell: Well, it hasn't got an Exhibit number. I guess we better give it one.

744 Mr. Curtis: Its got an Exhibit number.

By the Witness:

A. Yes, sir. I recall getting this letter.

Mr. McConnell: It has an Exhibit number, No. 1620.

Mr. Dodds: That's not in the file. That's not a trial Exhibit Number.

Mr. McConnell: It is a trial Exhibit number, Defendant's Exhibit No. 1620.

Mr. Diggins: 162D.

Mr. Dodds: 162D.

Mr. McConnell: You are right. It is 1620. That to me means 1620. I don't analyze figures and letters. 1620.

Mr. Diggins: 162D, I think it is.

The Witness: It looks like a D, Mr. McConnell.

The Court: Somebody decide; we need the BUD, but not the 162D.

Mr. McConnell: 'If there is a consensus on it, we will call it 162D.

By Mr. McConnell:

Q. Now, you received this form Mr. MacCuspie 745 through the mail?

A. Yes, sir.

Q. On the date of the 23rd of July, 1962?

A. I believe there is a stamp showing its receipt in my office on that date.

Q. "July 26, 1962, Joseph S. Wright"—that's your receipt stamp?

A. Right.

Q. And Mr. MacCuspie, who was he again?

A. He was a man who had, over a period of a number of years, tried to distribute our products in, I believe, it's Halifax or Truro, one of the Martime Provinces.

Q. And attached to that letter is a copy of a letter from Canadian Radio Patent Limited under date of May 17, 1962, signed by Mr. McConnell; is that right?

A. Yes, sir. This is the similar kind of letter that our distributors had received in years past from the Pool whenever it came to their attention that they had been marketing any products, Zenith products imported.

746 Q. Now, can you tell us what the purpose was of sending this in to you?

A. Well, Mr. MacCuspie sent it to me to let me know that the Pool was apparently still very active in stopping the importation of products made—

The Court: The date of this is what, Mr. McConnell?

Mr. McConnell: The 23rd of July, 1962. I offer this document in evidence with the enclosure.

The Court: It may be received.

(The said document, so offered and received in evidence, was marked DEFENDANT'S EXHIBIT NO. 162-D.)

Mr. McConnell: I want to read from it.

"Dear Mr. Wright:

"When in Montreal and Toronto in June at the Open House Showing, I was given to understand that either you or Mr. Caplin would be interested in receiving a copy of the letter our competitors, namely, Electrical Distributors Ltd., of this town received 747 from our friends Canadian Radio Patents Ltd., of Toronto relative to them importing sets manufactured in USA by Motorola.

"If you were not the interested party in this information would you kindly hand same on to Mr. Caplin, as I was able to receive a photostatic copy from Electrical Distributors Ltd. of this town, it is quite evident that our friends Canadian Radio Patents

Ltd., are trying to use the same tactics as they did on us a number of years back.

"If you are interested in any further information as to the proceedings now taking place I would be glad to obtain for you the photostatic copies of such correspondence.

"Thank you for past favors."

Then there is a letter to Electrical Distributors Limited, apparently distributors of Motorola products in Canadian Radio Patents, which is—I don't think I will read it at this time. It states the position of the Pool and asks for the 748 stopping of the importation of Motorola products.

Well, I will read this:

"At this point it seems fairly evident that importation of Motorola products incorporating our inventions would hinder the Canadian manufacturer on a commercial scale of similar products. Accordingly, in order to comply with the intent of the Canadian Patent Act, we would not be prepared to license such imported products with the exception of patents of Canadian General Electric Company Limited and Canadian Westinghouse Company Limited. These, we have been instructed to license irrespective of the country of origin of the patented products.

"Accordingly, should importation of Motorola products take place and should these be found to incorporate inventions covered by patents which we are empowered to license other than those of Canadian Westinghouse or CGE, we would be forced to place the matter in 749 the hands of our solicitors with instructions to take whatever action they may deem necessary in order to protect our patents."

By Mr. McConnell:

Q. Was that the sort of action that had been threatened against your distributors in the past?

A. Yes, sir, it had. And I might add in response to that, that a wholesale distributor is generally—and particularly in Canada—a rather small business enterprise. And when someone talks to him about threatening patent litigation in which he is to be the defendant, this is a very effective way of putting him out of business in the art. That has been our experience over the years, at least.

Q. I show you a bulk exhibit here which has been marked HRI against Zenith, PX 179. I ask you to identify this as a bulk exhibit about which Mr. Dodds asked you some questions.

A. Yes, sir.

750 Mr. McConnell: All right, I will offer this bulk exhibit in evidence.

Mr. Dodds: You are supposed to use your copy. This is my copy. This is the only copy that I have.

Mr. McConnell: I will use mine, but I want a ruling by the Court on it. He examined the witness on it and I think that that makes it competent.

Mr. Dodds: No objection.

The Court: All right, it may be received as a bulk exhibit, whatever number it is.

Anything further?

Mr. McConnell: I have no further questions.

Mr. Dodds: I have a couple of questions, your Honor.

The Court: All right.

Recross Examination by Mr. Dodds.

Q. Still referring to this Exhibit 162-D, enclosing a copy of the letter received by Electrical Distributors Limited of Nova Scotia, that concern was not a distributor of Zenith Products, was it?

751 A. No, sir, —or not to my recollection. They apparently were distributors of Motorola products.

Q. I believe you indicated that your decision that the Canadian Patent Act did not bar importation from the U. S., you indicated was based in part upon an opinion by Mr. Ira J. Adams, is that right?

A. Yes, sir.

Q. Have you read Defendant's pretrial brief in this action?

A. Yes, sir.

Q. Is the opinion to which you refer that which is reproduced at the bottom of Page 43 of your brief?

A. Yes, sir.

Q. That is dated 1924, is it not?

A. I believe it is.

Q. Do you know the present Canadian Patent Act was passed in 1935 so that is eleven years later?

A. Yes, sir.

Mr. Dodds: That is all.

The Court: Anything further?

752 Mr. McConnell: Nothing further, your Honor.

The Court: Thank you, Mr. Witness. Monday is the earliest that you have to return.

(Witness excused.)

Mr. McConnell: Mr. Stevenson.

WILLIS STEVENSON, called as a witness on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Where do you live, Mr. Stevenson?

A. I live in Clarendon Hills, Illinois.

Q. And what is your business or occupation?

A. I am manager of internal auditing at Zenith Radio Corporation.

Q. Are you an accountant?

A. Yes, I am. I am a CPA, a member of the Illinois Society of CPA's and I am a member of the American Institute of Accountants.

Q. How long have you been a CPA?

753 A. Since 1947.

Q. Now, what is your business and what are your duties out at Zenith Radio Corporation?

A. My duties are the management reviews of the operations of the parent company and the subsidiary companies in such a way as to protect the interest of the companies.

754 Q. And do you have under your supervision and control statistical data with reference to the operations of the company as to sales, for instance, what their sales are?

A. I have access to such data, but I do not keep it.

Q. Who keeps it?

A. It is kept in several places, the financial division of the company, the marketing statistical department of the company and several other places.

Q. Have you made any examination of the records of the company to determine the unit volume of its sales in recent years?

Mr. Dodds: Your Honor, I should like to inquire if this testimony goes to the quantum of the damages, and I would object to it as premature.

The Court: I would assume so.

Mr. Dodds: I believe there are several authorities that bear me out on that point. I can cite one, one which is
relied upon by the plaintiff in its brief. It was an
755 antitrust case, General Electric Company, in 1949, and
I'm quoting from a decision of the Supreme Court in
United States versus United States Gypsum Company, and
in referring to that case said:

> "There is a particular burden thrust upon a trial court in anti-trust cases by the Supreme Court as a result of its decision in United States v. United States Gypsum Company,"

And the citation

> "—in the admission and rejection of evidence and declarations of Defendants. The key is the determination that a prima facie case of conspiracy has been established."

Then there are two lower court decisions on the specific question of damages; one is Ball versus Paramount Pictures in Pennsylvania, 1944. It was an action for treble damages and injunctive relief based on the alleged antitrust law violations. The plaintiff was the owner of a motion
756 picture theatre in Pennsylvania and alleged that defendants had conspired to destroy the value and productive possibilities of the theatre. Voluminous interrogatories were filed, including one numbered forty.

In sustaining an objection to this interrogatory the court said:

> "As to interrogatory forty calling for gross annual receipts of these defendants at the Penn Theatre in Ambridge, it may have evidential importance, if we find that plaintiff is entitled to recover damages; but until, and if, we so find, we will not require an answer to this interrogatory."

Another case in the Middle District of Pennsylvania was Brosious versus Pepsi Cola Company. It was a suit for damages arising from defendant's alleged violation of the antitrust laws. The plaintiff in that case moved to
757 refer the case to a special master for a hearing and report on the damages sustained by the plaintiff.

In denying the motion the court said:

> "This action was brought under the provisions of

15, U. S. C. A. Section 15. An examination of the allegations of the complaint clearly shows that there are no 'exceptional' conditions requiring a reference to a master of the issues relative to liability on the part of either or both defendants. This leaves only the matter of damages as a proper issue for reference to a master. I feel that the orderly way to dispose of this case is to determine first whether or not there is liability on the part of these defendants and, if it is found that they are liable for such damages as the plaintiff may have sustained, then the issue relative to the amount of the damages suffered by the plain-
758 tiff may be submitted to a master if it is then found that there is necessity for such reference."

That is also the uniform practice in patent infringement action where damages are claimed, to defer any evidence on the question of the quantum of damages until and after there is determined to be liability for damages. I submit that the testimony on the quantum of damages is premature at this time and I object to testimony on the issue.

759 The Court: Well, I have in mind that I was first informed that the counter-plaintiff's case was going to take two weeks. Now I am informed that even with proof of damages it is going to take less than four days. Having in mind that both you and Mr. McConnell are difficult people to get in Chicago at the same moment, I don't know what your trial schedule is, but if it is what it has been in the past, I don't know whether I could get you back before fall in case that I found that the question of damages should be heard by the Court. I think I am prepared, even though it is premature, to get this damage question over now in one day, resting on his assurance, so that when you leave town you won't be concerned about having your schedule in Baltimore or San Francisco or Phoenix interrupted to

come back here for a day or two on the damage question; so I am going to permit it at this time in view of the fact that it is not going to take us another two weeks or so to get this testimony in.

760 Mr. McConnell: I think we are going to be through by tomorrow noon.

The Court: I understand that, and that is why I want to get the show on the road.

It is now one minute before four, and the Judges' meeting is going to start in a minute, and as I say, I would rather be here than where I am going to be, but I have no choice.

Mr. McConnell: We will be through by noon tomorrow. We made good time here, thanks to your Honor.

The Court: I don't like things hanging fire either.

We will stand in recess until 10:00 o'clock tomorrow morning.

(Thereupon an adjournment was taken to 10:00 a.m., of the following day, Thursday, February 20, 1964.)

761 * * (Caption—59-C-1847) * *

Before The Hon. Richard B. Austin,
Thursday, February 20, 1964,
10:00 o'clock, a.m.

The trial was resumed pursuant to adjournment.

Present:

Mr. Dobbs,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

762 The Clerk: Case on trial.

The Court: Get your witness back, Mr. McConnell. We certainly made up for no motions yesterday, didn't we?

Mr. McConnell: Yes, we did. It's the law of averages, I guess.

Before continuing with the examination, your Honor, I want to offer for filing in the case a stipulation which Mr. Dodds and I have entered into with reference to documentary evidence, and I want to express my appreciation to Mr. Dodds for his cooperation, which I think has saved probably ten days to two weeks of the time of this court in not having to have underlying evidence.

The Court: I might say that it also saves your client and Mr. Dodds' client an awful lot of money, too.

Mr. McConnell: Yes.

The Court: Being aware of your rates and per diem.

Mr. McConnell: I hope they are not too far out of line.

763 The Court: Well, apparently there has been an official ruling on it.

WILLIS STEVENSON, called as a witness on behalf of the Defendant herein, having been previously duly sworn, was examined and testified further as follows:

Direct Examination by Mr. McConnell (Continued).

Q. Mr. Stevenson, we got your qualifications into the record the other day.

Now, have you made some research and some tabulations as to the number of units of the products manufactured by the Zenith Radio Corporation which that company has sold during the four years preceding the filing of the counterclaim in this case.

A. Yes.

Q. And from what records did you procure that data?

A. I obtained that information from statistical records prepared within the company.

764 Q. Well, did you go to the actual records of the company kept in the due course of business at Zenith?

A. I went to reports prepared from those records.

Q. Were those reports prepared under your supervision?

A. No, sir, they were prepared under the supervision of the manager of the Marketing Statistical Department.

Q. Were they prepared in the due course of business of the company?

A. They were.

Q. Now, will you tell us what the nature of those computations are?

A. The number of units that were compiled were prepared from shipping reports prepared daily by our IBM department.

The Court: Is all assembly done here in Chicago on the Zenith products?

The Witness: Not all of it, but a large majority of it, sir.

The Court: You are talking about, then, shipping reports from all assembling stations?

The Witness: Yes, sir.

765 The Court: All right.

By Mr. McConnell:

Q. From all branches of the Zenith Manufacturing Company, is that it?

A. Yes.

Q. And that was prepared by your IBM department?

A. Yes.

Q. Now, you refer to units. Will you tell the Court what units you are talking about? In other words, is that a mix of units, or how do you make up the units?

A. The units are segregated into product lines, television, radio, hi-fi, stereo and color television. The units that I have excepted from the record deal only with black and white television and radios.

Q. You have not included any color television?

A. No.

766 By Mr. McConnell:

Q. Now, how did you tabulate that? Did you tabulate it—or if you did tabulate it, did you tabulate it according to years?

A. I tabulated it by years for periods within the four-year period to which you have referred.

There are five periods by this method; June 1 to December 31, 1959; the year 1960; the year '61; '62; and the period January 1 to May 31, 1963.

Q. That is the date of the filing of the counter-claim in the instant case, that last date?

A. Yes.

Q. All right. Now, have you got a tabulation of those figures?

A. Yes, sir.

Q. Are your work sheets here anywhere?

A. Yes.

Q. How does that appear in your work sheets? Is this tabulation made by you personally?

A. This tabulation is made by me personally.

767 Q. All right. And you have it here in court?

A. Yes.

Q. Can you show me which sheet you are referring to?

A. I'm using the Zenith column on that sheet.

Mr. McConnell: Can you give me a number for this.

By Mr. McConnell:

Q. I show you a document which is marked for identification Defendant's Exhibit 218, and ask you whether or not you can identify this as being personally prepared by you from the sources about which you have just testified?

A. Yes, sir, it is.

Q. Is it an accurate computation?

A. Yes, sir.

Q. Now, after preparing those figures of those units, did you obtain from any source the units sold in the United States during the same period for those same products by the industry as a whole?

768 A. Yes, I did.

Q. And from what source did you get those figures?

A. I had obtained those units from a report prepared by our statistical department. This report is prepared by that department from statistics received from the Electronic Industries Association, and used internally within the company to compare with the units that Zenith has sold.

Q. Will you tell us what that industry association is, as far as you know?

A. Well, for this purpose, the industry association obtains from the manufacturers in the United States on a confidential basis the number of units of sets which they have shipped both on a weekly and a monthly basis, and these are totalled by them and distributed to the manufacturers as a total in order to advise them of the total industry production.

Q. And you have received that over regular periods of time from this association?

A. Yes.

Q. And on that, you base your business calculations
769 and so forth out there at Zenith, in the regular course
of your business?

A. Yes.

Q. All right. Now, from that data, did you compute or total the industry sales on those products during the four years that are involved—the four years prior to the filing of the counterclaim?

A. I did.

Q. And have you such a tabulation from your work sheets?

A. Yes, sir, I have.

Q. Will you produce it, please?

A. This is on the same sheet which has been marked by you before.

Q. Which you have already identified as being accurately compiled by you personally?

A. Yes.

770 Mr. Dodds: May I see a copy of what the witness is
talking about. Do you have a copy?

Mr. McConnell: Have we got a copy? You can use the original.

The Witness: These are worksheets and one of a kind. We would like the privilege of reproducing these.

Mr. McConnell: We will have photostatic copies made for the record, Xerox copies.

By Mr. McConnell:

Q. Now, with those two figures, what the industry sold or produced, rather, during this period of time, and what Zenith produced in this period of time, did you make some percentage calculation as between the two items?

A. Yes, I did.

Q. And what determination did you make as between those two items?

A. I determined the percentage of units shipped by Zenith to the units shipped by the industry.

Q. And are those percentages shown on your work-
771 sheet there?

A. They are.

Q. And did you calculate them correctly and accurately?

A. Yes.

Q. Now, did you make any computations of what units were sold in Canada during that same period of time, the four years prior to this counterclaim?

A. Yes, I did.

The Court: That is, industry units, the industry as a whole unit?

Mr. McConnell: You are right, your Honor.

The Witness: Yes, sir.

By Mr. McConnell:

Q. And from what source did you get that information?

A. I obtained that information from Government statistical reports. In the case of Canada, it was the Canadian Statistical Review, Historical Summary, 1963 Edition by the Dominion Bureau of Statistics, and also from the Canadian Statistical Review of October 1963, prepared
772 by the same organization.

Q. Can you identify that statistical data as contained in the defendant's bulk exhibit 216, which I show you now?

A. Well, I don't see here the Canadian Statistical Review Historical Summary, 1963 Edition.

Q. Have you got that in your papers there?

A. I don't have it here, but I have it in the courtroom.

Q. Can you go to whatever you have back here and get it for us, please?

Will you describe what you have produced now?

A. From these statistical papers, reports, I have extracted the number of units of radio and television produced by the Canadian producers and sold within Canada.

Q. Well, now, what I want is to find out what the source of this document is—Statistical Reviews, Canadian Statistical Reviews. Where did you get it?

A. I obtained this from our legal counsel.

Q. You don't know where you got it?

773 A. No.

Q. What does it purport to be?

A. It purports to be a publication prepared by Dominion Bureau of Statistics, Ottawa, Canada.

Q. That is a Government agency?

A. A Government agency.

Mr. McConnell: We have a stipulation on this, do we not, as to being a public record?

Mr. Dodds: It is stipulated as to its authenticity.

The Court: All right.

By Mr. McConnell:

Q. And from this document, I take it you obtained certain figures?

A. Yes.

Q. Which you have tabulated?

A. Yes.

Q. Now, will you tell us what figures you obtained from this document, and I guess we better have a number on it so we know what we are talking about.

The document I am referring to, Mr. Stevenson, is 774 Defendant's Exhibit 219.

A. Yes.

Q. Now, what figures did you obtain from that document?

775 A. In Table 50 of this document is a table showing radio and television sets, producers' sales thereof, and within that bracket, radio receivers. Under radio receivers are five columns of which home sets, portables, auto, combinations and total are a part. This is combined in monthly averages from 1930 to 1962.

Mr. Dodds: Your Honor, that is not one of the documents within the stipulation. I have never seen that document. The one furnished me is the one—1955 supplement.

Mr. Curtis: I thought you had everything. We will check and see.

Mr. Dodds: I have here—it starts, the first one, 1955 supplement.

Mr. Curtis: I think it will show that the statistics are the same in those that are marked.

Mr. Dodds: At least I certainly want to see what this is about, because this is 1952, you say?

The Court: No. This goes back to '32.

Mr. Dodds: What is the date of the exhibit?

776 The Witness: The date is the 1963 Edition, Historical Summary.

Mr. McConnell: It covers what period of time?

The Witness: This table covers from 1930 through 1962.

Mr. Curtis: The statistics are the same, Mr. Dodds.

Mr. Dodds: Pardon?

The Court: What years do you have statistics for, Mr. Dodds?

Mr. Dodds: The one they supplied me here, the last one—it's true, it may be duplicate information—is a 1963 supplement. But it isn't that document, and it may be that the things are the same. I just don't know.

The Court: I mean, are these broken down by years?

The Witness: Yes, sir.

The Court: I mean, let's see if the years—the only ones
we are concerned with is '59 to '62. Let's see if those
777 three pages are the same. Let's compare them right
now. Let's see whether or not—

Mr. McConnell: All right.

The Court: If that will terminate any problem.

Mr. Dodds: They probably are, your Honor, but I just haven't seen them.

The Court: I know. I see you are on the alert for your client, and I congratulate you.

The Witness: I didn't go far enough in these. This is the one that we are referring to.

Mr. Dodds: That I don't have. I have here—maybe you don't need to take this down, unless you want it down.

The Court: I don't want it down. This is off the record, Mr. Court Reporter.

(There was a discussion off the record, after which the following further proceedings were had herein:)

The Court: Back on the record, Mr. Court Reporter.

By Mr. McConnell:

778 Q. Now, we are trying to get from you what are those figures you used in your tabulations.

A. For radio, as the market in Canada, we used the producers' sales of radio receivers, home sets, and portables. We have excluded auto and combination.

Q. Auto radios, you mean?

A. Yes.

Q. Combinations, what are they?

A. Combinations are radio-phono combinations.

Q. All right. Now, did you tabulate that somewhere?

A. Yes. These are shown in monthly averages. And for the years in which I used a part of a year, I multiplied by the number of months involved. And for those four years I multiplied by 12 and I tabulated these figures on a schedule.

Q. And have you got such a schedule here?

A. I do.

Q. Will you produce it, please.

Mr. McConnell: Let's get a number on this.

Mr. Dodds: Judge, I want to make sure I'm looking 779 at the same thing. Is that what you are referring to?

The Witness: Yes. That is it.

780 Q. Mr. Stevenson, I show you a document which is marked here for identification as Defendant's Exhibit 220, and ask you to tell us whether or not you prepared it and whether the tabulations that you have made from the sources you have indicated are accurate?

A. I believe they are, sir.

Q. And where do they appear on this schedule, in some column?

A. It appears in the column shown on this schedule as "Market Units."

Q. All right.

Now, that, then, I take it, shows the number of units produced by the industry in the respective years of the four years preceding this counter-claim, is that correct?

A. Yes, sir.

The Court: And this is broken down between radio and televisions?

The Witness: Yes, sir.

The Court: All right.

By Mr. McConnell:

781 Q. All right, did you make a computation of any kind from the books and records of the Zenith Radio Corporation of the number of units of products, the products that you have mentioned that you did sell in Canada that period of time?

A. Yes, I did.

Q. And from what source did you make that computation?

A. I extracted this information from the report—monthly reports prepared by our marketing statistical department. This department compiles the sales made by all of our distributors in Canada into one total.

Q. And did you make a tabulation of those sales?

A. I did.

Q. In Canada?

A. By units.

Q. And does appear on this schedule 220?

A. Yes, it does.

Q. And is it correctly transcribed from the sources that you mentioned by you personally?

A. Yes.

782 Q. And is it accurate?

A. Yes.

Q. Now, did you make any determination as to profits per unit obtained by Zenith Radio?

A. I did.

Q. And from what source did you make such a computation?

A. Basically, from the financial documents of the company.

Q. Now, will you tell us what documents you used in making such a computation?

A. I used reports prepared from the records of the company, prepared within the financial division, to show profits by production lines and by other divisions within the production lines.

Q. All right, now were those records kept in the regular course of business, can you tell us, of the Zenith Radio Company?

A. They were.

Q. And are they accurate? Do you know?

A. I believe they are.

Q. Well, you have to do with overseeing the accuracy of the accounts, as I understand it, at Zenith?

783 A. Yes.

Q. And can you tell us whether those records are accurate?

A. They are.

Q. All right.

Now, how did you compute the profit per unit, what formula did you use in computing it?

A. The determination of the profit per unit is expressed for this purpose as a percentage of the sales dollar. We obtain from the records reports prepared both for television and for radio of the percentage of profit made in the normal course of business on sales made to Canada within these specific five periods.

784 Q. All right.

Now, what I am getting at is, how do you determine the profit? You must take cost figures and deduct that in some way from what you receive. Is that the way you do it?

A. Yes, the profits are determined by relating to every unit sold the costs which apply to that unit.

Q. All right.

Now, did you determine or obtain a profit figure per unit either in percentage or in dollars on the goods sold in Canada?

A. I did.

Q. And what is that figure?

A. It varies from period to period.

Q. All right, let me ask you this; did you calculate it or compute it from period to period?

A. I did.

Q. And have you any work sheets there which shows that computation?

A. Yes, sir, I have a work sheet which shows the profit we made in the normal course of business on these sets sold to Canada.

785 Q. And what figure did you use as a figure in this schedule 220 that you have produced here?

A. These figures were not used directly, they are adjusted to eliminate from the cost which had been used those expenses which would not be duplicated if there were additional volume added to the present volume of production.

Q. You are speaking now of fixed overhead and things of that kind?

A. Yes.

Q. And what are the items? Can you tell us what they are?

A. The items which were eliminated are, generally, in large part, our factory overhead items of a fixed nature; they are Zenith profit sharing retirement plan provision, which is based on profits of an operation rather than on salaries. They eliminate the administrative overhead expenses which would not be increased by an additional volume of business, legal expense, engineering expense and several other small items.

786 Q. All right.

Now, will you tell the court why you have eliminated those in making this computation, from an accounting standpoint?

A. I have eliminated these because these items would not increase with an additional volume of business at the manufacturing level.

Q. In other words, they remain the same no matter how much business you had, is that it?

A. Yes, within reasonable limits they would.

Q. Well, within the limits of the operation at Zenith, would they?

A. Within the limits that we are talking about here, they would remain the same.

Q. All right.

Now, does this profit computation appear anywhere in your schedule 220?

A. Yes, it does.

Q. And where does it appear?

A. It appears under the column "Profit applying to additional volume," and it is expressed as a per cent.

787 Q. Per cent of what?

A. Per cent of sales dollars.

Q. And does that—and is that translated into a dollar figure?

A. That translates, when applied to sales dollars, into a lost profit dollar.

Q. And then how did you use that in making your computation of lost profits?

A. I did apply these percentages as determined to the dollar volume of lost sales in the Canadian market to arrive at the lost profit on these sales.

Q. All right.

Now, will you tell the court how you computed or how you reached the conclusion of the lost sales, the item "Lost Sales"?

A. Yes, sir.

In the Canadian market we have started with a base of the market, which I have previously described, for each of the five periods. We have applied the Zenith share of the domestic market expressed as a percentage for each of these five periods to arrive at a Zenith share of the Canadian market, expressed in units.

788 The Court: Assuming their share would be what, the same as it is in America or what?

The Witness: The same as it is in the United States.

The Court: All right.

By the Witness:

A. (Continuing.) From that number of units I have deducted the number of units we actually sold in the Canadian market in each of these five periods to arrive at the lost sales in the market, expressed in units. To those units I have applied a Zenith average factory selling price to Canada of sets, within these five periods, actual experience of our selling price—

By Mr. McConnell:

Q. Yes.

A. —to arrive at the lost sales in that market expressed in U. S. dollars at the factory selling price level.

Q. All right.

Now, as to determining the lost profit, what did you do?

A. To the figure of lost sales in the market, I have applied the percentages of profit applying to additional 789 volume of business and arrived at the lost profit on the lost sales, also expressed in U. S. dollars.

Q. And you have done that for the four periods that we have talked about?

A. Yes, sir.

Q. Is it four periods you have got?

A. There is five periods, four years.

Q. One of them is a portion of two years, I take it.

A. Two of them are a portion of a year, yes.

Q. That is what I meant to say.

A. Yes.

Q. Now, turning to the English market, what computation did you make, if any, as to lost sales in England, and tell us how you made the computation.

A. The formula for determining lost sales was followed in England as it was in Canada, with the exception that in determining Zenith's share of the market in units, instead of using the Zenith share of the domestic market, I have used 25 per cent of that percentage, or one quarter, and in other respects the computation is similar.

790 Q. Well, it is identical, isn't it, in formula, at least?

A. It is identical except that the number of units varies.

Q. Now, where did you get the industry figures in England?

A. The industry figures in England were obtained from two sources. Annual Abstract of Statistics, 1963, by the Central Statistical Office, and the Monthly Digest of Statistics, October 1963, by the Central Statistical Office.

Q. Did you draw off the figures from those reports?

A. I did.

Q. And can you tell us whether or not they are accurately transcribed or transposed from the one to the other?

A. They are. It is not a direct abstraction. In the process of determining the market for radios we have estimated the number of auto radios included in their sales total and deducted that to reduce what otherwise was shown as a Canadian Radio sales. We have reduced it to just portables and home sets.

791 Q. But with that qualification you have accurately drawn off the figures?

A. Yes, sir.

Q. From the industry reports?

A. Yes, sir.

Mr. Dodds: May I check to see again if we are looking at the same document?

The Witness: Yes, sir.

Mr. Dodds: You are talking about Great Britain?

The Witness: This is October 1963, Table 78.

Mr. Dodds: Just a minute, I don't think I—I am sorry, it is out of place. Monthly digest, October 1963, is that—

The Witness: Yes, October 1963.

Mr. Dodds: And Annual Abstracts, 1963.

The Witness: Yes, sir.

Mr. Dodds: Fine.

By Mr. McConnell:

Q. Now, those figures, I take it, appear on your Exhibit 220?

A. Yes, sir.

Q. And from them you have made similar calcu-
792 lations as to what you—applying this formula, at least,
what the figures would show would be lost sales?

A. Yes, sir.

Q. And have you also made a computation of lost profits on those sales?

A. Yes, sir.

Q. And what have you used in making that calculation?

A. I have used the same percentages which were used for the Canadian computation.

Q. Have you made any computation of what actual sales you have had in the British market or English market?

A. These have been complied by our export division and have been given to me, and I have them as a part of this computation.

Q. And what use have you made in your computation of those figures?

A. Those units have been deducted from the Zenith share of the United Kingdom market to obtain the lost sales in the market for Zenith expressed in units.

Q. So that you have given credit in your computa-
793 tion to the sales that were actually made?

A. Yes, sir.

Q. All right.

Now, will you turn to Australia. What computations have you made with reference to Australia?

A. The formula followed with respect to Australia is similar. The formula is the same as for the other countries with the exception that the percentage of the Australian market which was applied to obtain Zenith's share of the market has been reduced to one-tenth of Zenith's share of the domestic market.

Q. I take it that that is an arbitrary formula that you are given in making your computation?

A. It is.

Q. Aside from that, have you made the computations in the same manner?

A. Yes, sir.

Q. Now, where did you get your Government statistics from Australia?

A. The Government statistics were contained in Government publications, monthly bulletin of production
794 statistics for October 1963—October 1960, March '63,
September '63, issued by the Commonwealth Bureau of
Census and Statistics.

Q. And you accurately transcribed those figures, did you?

A. Yes, sir, these figures in this bulletin are production figures in the market rather than sales figures of the manufacturers, but this was all that was available.

Q. Now, can you tell us from looking at your schedule and from your worksheets there and on the basis of the computation and the formula which you have used, what figures do you come up with for the different years as a figure for lost profits in the Canadian market?

A. Well, in the Canadian market for the period June 1 to December 31, 1959, in television the lost profit was $708,028; in radio, $138,048.

Q. That is in the whole period of the four years?

A. That is in a seven-month period of 1959.

Q. All right, what is next?

A. In 1960, with respect to television, the lost profit
795 was $1,116,597, and for radio $145,371.

Q. What was your next period?

A. In 1962, for television, it was $1,300—

The Court: You skipped 1961.

By the Witness:

A. 1961, sir, the lost profit in television was $1,348,867; in radio, $68,241.

Mr. Dodds: That is sixty-eight or fifty-eight?

The Witness: Sixty-eight, sir.

By the Witness:

A. (Continuing.) In 1962, the lost profit on television was $1,883,774, and on radio $75,622; for 1963, for the first five months, January through May, the lost profit in television was $769,630, and in radio, $43,213.

Q. All right, now, will you turn to Great Britain, or England, and tell us what your lost profit figures are in those same periods of time.

A. Yes, sir.

In television in 1959, from June 1 to December 31, the lost profits were $1,517,357 for television, and for radio, $127,203.

For the year 1960, for television, $1,921,439.

796 Mr. Dodds: I am sorry, what figure?

The Witness: $1,921,439.

By the Witness:

A. (Continuing.) And for radio, $212,851.

In 1961, for television, $1,977,694, and for radio, $313,921.

For 1962, $1,806,007, and for radio, $334,203.

In 1963, for the five-month period January through May, for television, $857,362, and for radio $180,889.

797 Q. All right, now, will you turn to Australia and give us your computation of lost profits in that market for the four years involved here?

A. Yes, sir.

In Australia, for television, in 1959, for the seven months June 1 through December, the lost profits are $89,875, for radio, $10,004.

For 1960, $156,430 for television, $15,846 for radio.

For 1961, $157,177 for television and $15,138 for radio.

For 1962, for television, $150,106, for radio, $16,238.

For 1963, for the five month period of January through May, for television, $72,198, and for radio, $9,543.

Mr. McConnell: You may cross-examine.

798 Mr. Dodds: Your Honor, this is quite a problem.

We haven't been supplied with copies of any of these tabulations or figures. I would like a moderate amount of time to look them over.

The Court: You let the Marshal know when you have had a sufficient time to look them over. We will take a recess subject to your looking them over.

(A short recess was taken, after which the following further proceedings were had herein:)

The Court: You may proceed, Mr. Dodds.

Mr. Dodds: Your Honor, I have a few preliminary questions. However, with respect to these cost figures, I think your Honor is aware that, ordinarily, proof of damages in this stage of an action is not customary.

The Court: I understand.

Mr. Dodds: These are rather voluminous figures. We should like two things: one, copies of these work papers on which they are based; and two, an opportunity

799 to review them with an accountant, which I am not, to see the meaning of these terms, and have Mr. Stevenson available for examination after that review has taken place.

The Court: All right.

Cross-Examination by Mr. Dodds.

Q. A few preliminary questions, Mr. Stevenson. I believe you indicated that you used the Electronic Industries Association—properly called EIA, which I will use—figures for domestic production of radio and television receivers; is that correct?

A. Domestic shipments, factory shipments of television and radio receivers; yes, sir.

Q. Do you know what companies do and do not report their statistics to EIA?

A. No, sir, I do not.

Q. Do you know whether all of the U. S. manufacturers report their statistics to EIA?

A. No sir, I do not.

800 Q. And to the extent that industry figures are not included in those reported by EIA, then, the Zenith percentage of the industry figures is correspondingly enlarged; isn't that correct? In other words, if two major manufacturers don't report to EIA, then the Zenith figures would represent a relatively larger percentage?

A. Yes, sir, they would be in error.

Q. Now, in arriving at what you assert to be Zenith's share of the market in Canada, the United Kingdom, and Australia, what basis did you use for arriving at that claimed share?

A. The claimed share for Canada was Zenith's domestic percentage applied to the producers' sales of sets in Canada less those sets which we actually sold in Canada.

Q. Well, if you used the same percentage of their domestic share of the market based on the EIA figures; is that correct?

A. Yes, sir.

Q. Had you used that same percentage in the United Kingdom?

801 A. No, sir.

Q. What percentage did you use there?

A. I used one-fourth of Zenith's domestic percentage.

Q. And what percentage, what share did you use for Australia?

A. For Australia, I used ten percent of Zenith's domestic percentage.

802 And in each of those instances, the percentages were based on the percentage of Zenith's U. S. share of the market based on the EIA figures; is that correct?

A. Yes, sir.

Mr. Dodds: I believe that is all the cross-examination, subject to an examination on the figures when I have had an opportunity to review them.

And I believe—I think maybe it is a little premature now, but after an analysis and further questioning on the figures, I propose to move to strike Mr. Stevenson's testimony on several grounds.

I would like to request copies of these exhibits such as this which we do not have copies of, as well as copies of these cost sheets of Mr. Stevenson.

Now, if we are to continue on Monday, I would certainly need these some time tomorrow or late tomorrow morning at the latest, to give me some opportunity to review them with an accountant.

803 The Court: These can be Xeroxed, can't they?

Mr. Dodds: It can be done very quickly.

Mr. McConnell: We will get them, your Honor. We can do that.

The Court: Mr. Witness, how did you pick the 25 per cent figure for Great Britain? What was the basis of your arbitrary selection of that figure?

The Witness: Your Honor, I didn't make the selection of the percentage. It was done by others in the organization.

The Court: I mean, somebody suggested to you that you use in regard to Great Britain 25 per cent?

The Witness: Yes, sir.

The Court: Someone suggested to you that you use the figure 10 per cent for Australia?

The Witness: Yes, sir.

The Court: Do you know the basis for that selection?

The Witness: No, sir.

The Court: All right. I have no further questions.

804 Mr. Dodds: Your Honor, I think, as I recall, I'm sure that Mr. Wright testified yesterday that they had made an estimate, admittedly an estimate of their share of business in England and Australia on the basis of the difficulty of doing business in those countries, for whatever that testimony may be worth.

The Court: But I was wondering if this witness had done something himself in regard to this guesstimate.

Mr. Dodds: Yes.

By Mr. Dodds:

Q. Did you, Mr. Stevenson, base these estimates on information given to you by Mr. Wright?

A. The percentages to use were given to me by Mr. Kaplan.

Q. What is Mr. Kaplan's position?

A. Mr. Kaplan is executive vice president and treasurer of Zenith Radio Corporation.

The Court: All right.

Mr. McConnell: Our next witness.

The Court: All right.

(Witness excused.)

805 Mr. McConnell: Mr. Kaplan. Let me ask, do you want this witness held at your further call; is that it?

Mr. Dodds: Yes. I would like the witness—

Mr. McConnell: You want this witness held for your further call.

Mr. Dodds: Yes. When I get the copies of the sheets.

The Court: All right.

INDEX.

Witnesses for Defendant-Counterclaimant.

Testimony of:

Kaplan, Samuel 523
Crotty, Francis W. 550

Witnesses for Plaintiff-Counterdefendant.

Crotty, Francis W. 555
Westermann, David 571
Ruestow, Edward A. 607
Wright, Joseph S. 643
Henderson, Gordon F. 667
Stevenson, Willis 726
Dodds, Laurence B. 772

Rebuttal Witnesses for Defendant-Counterclaimant.

Scott, Cuthbert 807
Closing Argument of Defendant-Counterclaimant..... 827
Closing Argument of Plaintiff-Counterdefendant..... 891
Reply Argument of Defendant-Counterclaimant...... 927
Certificate of Court Reporter.......................... 935

SAMUEL KAPLAN, a witness called by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your full name, Mr. Kaplan?

A. Samuel Kaplan.

Q. Where do you live, Mr. Kaplan?

A. Oak Park, Illinois.

Q. Have you got an address there?

806 A. 1226 North Fair Oaks Avenue.

Q. How long have you been associated with the Zenith Radio Company?

A. Since 1923.

807 Q. And will you tell us the various positions you have had with that company, from the time you came there up to now. Give us approximately the period of time in which you occupied the various positions, if you can.

A. Well, I started in 1923 in the mail room as a mail clerk and office boy. And I progressed through various clerical jobs in the bookkeeping and accounting department.

In 1934, I was made assistant treasurer and assistant secretary of the company. In 1935, I became credit manager.

In 1942, I believe, I became vice-president, and controller in 1948, and treasurer in 1949. And I became a director in 1958, and executive vice-president and treasurer in 1959.

Q. Now, at the present time, are you the chief financial officer of the Zenith Radio Corporation?

A. I am.

Q. And are all of its accounting procedures and its bookkeeping records, financial matters, under your general supervision and control?

A. They are.

808 Q. You have been in the courtroom while Mr. Stevenson has been testifying, have you not?

A. Yes.

Q. And you have heard his references to the underlying books and records which he utilized in making his computations. Can you tell us whether or not those books are kept in the regular course of business, and whether or not they are accurately kept?

Mr. Dodds: Your Honor, I stipulate that they are kept in the regular course of business and accurate. No question about it.

The Court: All right. That solves that.

By Mr. McConnell:

Q. Have you had anything to do, over the course of the years, with this problem of trying to obtain licenses to import Zenith radios and television sets into Canada?

A. Yes. During—oh, for the last twenty, thirty years, we have had an interest in selling our merchandise in Canada, because we have had a demand for our merchandise in Canada. And I have been a part of any 809 discussions and conferences.

In 1953, I believe it was, I made a trip to Canada.

Q. All right.

Mr. Dodds: Your Honor, I object to this line of testimony. It is duplicative of what Mr. Wright testified, in addition to this bulk exhibit of some seventy-five letters of correspondence indicating their problems.

I am perfectly willing to stipulate that Zenith has had problems in exporting their radio and television receivers to Canada.

The Court: Maybe he has something in addition to that. I don't know what his testimony is going to be, and I can't guess.

Mr. McConnell: I'm not going to duplicate the testimony. I may overlap a little, but it will be very, very slight.

The Court: I mean, it is not your intention to duplicate what is already in evidence?

Mr. McConnell: No.

810 The Court: This is going to be supplementary?

Mr. McConnell: That's right.

The Court: All right. The objection is overruled, if that is the case.

By Mr. McConnell:

Q. Did you make any investigations or surveys up in Canada to determine whether or not Zenith Radio could manufacture their products in Canada?

A. Yes. We have done this in many ways. Over a period of years, we have made economic studies of the advantages or financial disadvantages of manufacturing in Canada as opposed to manufacturing in our main plants in Chicago. And while I was in Canada, I visited the plants of several competitors to determine to the extent that you could, either visually or by discussions with the managers, the costs and their efficiencies.

811 Q. Well, did you reach some conclusion as to whether or not Zenith should embark on the manufacture of its product in Canada?

A. Yes. In every instance, our conclusion was that it was more advantageous to manufacture in Chicago and export into Canada.

Q. Now, can you tell us on what that judgment was based, what considerations?

A. Well, considering the cost of components, the cost of labor and the relative efficiencies, and the overheads applicable, and compared to a limited production as opposed to the rather large production that we have at Chicago. In each case, the economics was in favor of manufacturing in Chicago and exporting.

Q. Now, you heard Mr. Stevenson's testimony this morning that there were certain fixed items of cost which would not be duplicated in the type of product which was to be shipped, or contemplated could be shipped to Canada. Did you hear that testimony?

A. Yes, I did.

Q. Will you explain to the Court why that is so?

812 A. Well, in addition to the items that Mr. Stevenson specifically named, you have such items, for instance, as depreciation and rentals and real estate taxes that are measured more on a time basis than a per-unit basis. And to the extent that you don't have to add any facilities to accomplish this production, the additional production amounts to a dilution of these costs over a larger amount; or another way of accounting for it would be not to add these costs to the additional increment of production.

Q. Are you familiar—

The Court: That is, your real estate taxes would be the same regardless of how many units you make?

The Witness: That's right. And your depreciation on your plant and equipment, your Honor.

The Court: Well, it may well be that by making more units, it might increase your depreciation. It might shake the building a little more. All right.

By Mr. McConnell:

Q. All right, your fixed salaries and all that would 813 be the same, too, would they not?

A. That's right. They would be in the same category. They vary by time rather than by unit of production.

Q. Now, are you familiar with this EIA organization?

A. Yes.

Q. What is that organization?

A. Well, it is an organization of electronic manufacturers of which consumer products is one division. Zenith is not presently a member of the EIA. However, in order to keep their statistics accurate and valid, they have asked us to continue to report our production. And we have done so because it is vital to us to get back the total industry figures so we can compute our marketing position.

As far as I know, their figures include either actual reports from all major manufacturers or an estimate of their production.

Q. So that all production, domestic production, is included in those figures?

A. We assume that that is so.

Q. Well, you base your business calculations on 814 that in running your business at Zenith?

A. That is right.

Mr. McConnell: Mr. Dodds, have you got Exhibit 220, the one that we examined the witness on this morning? It is the yellow—

Mr. Dodds: I gave that back to Mr. Curtis. I gave the whole group back to Mr. Curtis for duplication.

Mr. McConnell: Here it is.

By Mr. McConnell:

Q. Now, I take it that you knew that Mr. Stevenson was making some calculations with reference to the Canadian and the United Kingdom and the Australian market?

A. Yes, I did.

Q. What was the basis—or did you give to him the percentages to be used in making those calculations?

A. Yes, I did.

815 Q. Now, on what did you base your figure for Canada?

A. Well, our figure for Canada was—in our opinion, we thought that we could accomplish in Canada the same percentage of industry that we were able to accomplish in the United States.

Now, this took into consideration the similarities between the countries, the effect of our advertising which overlaps and spills back and forth between the countries, and the nature of our competition.

Q. And you were assuming, of course, that you were in a free market, free of the restrictions which we have had evidence of in this case?

A. That is right. That was the basis on which it was arrived at.

The Court: Do the Canadian broadcasting stations use the same signal as the American—

The Witness: The same standards, your Honor.

The Court: Different than the British signal?

816 The Witness: Yes, sir. They are the same as the United States.

The Court: All right.

By Mr. McConnell:

Q. Now, as far as the United Kingdom was concerned, what was the basis of taking twenty-five per cent of the market?

A. Well, I would have to admit that the twenty-five per cent was to some extent arbitrary. I mean, what we are being asked to do here is to determine if a horse that died yesterday could win the Kentucky Derby. But this decision, this opinion was arrived at by taking into consideration the same factors. And in this case, we don't have the similarity in the population. We don't have the same benefits of the spill over of advertising, and the country is three thousand miles away.

It was obvious that it would be difficult to accomplish the same percentage there that we could in the United States or in Canada so we had to make an arbitrary assumption that it would be somewhat less. And in our 817 opinion, the figure of twenty-five per cent of our domestic shares seemed very conservative.

Q. Well, let me ask you this. Is that opinion based upon your long experience with the Zenith Radio in this particular field?

A. Yes, it is.

The Court: I assume you took into consideration the tariff factor and the transportation factor?

The Witness: Yes, yes, I did, your Honor.

The Court: All right.

By Mr. McConnell:

Q. What is the tariff, by the way; do you know?

A. The tariff, I understand, is twenty per cent.

Q. And that is true in Canada too, is it not?

A. That's right

Q. And you took that into consideration in your computation?

A. That's right.

Q. Or your estimate, or your opinion as to the 818 part of the market you would have obtained in Canada?

A. That's correct.

Q. All right. Now, we had the figure of ten per cent of the Australian market.

A. No, sir. It is ten per cent of the twenty per cent that we do domestically. In other words, it is two per cent of the Australian market that we are talking about.

Q. I see. In other words, in your opinion, three of the restrictions of these pools, you think that you could obtain two per cent of that market with your products?

A. I consider that a conservative estimate.

Q. And you gave that figure to your accountant, Mr. Stevenson?

A. That's correct.

Q. To make the computations?

A. That's correct.

Q. I take it you took into consideration, in making that estimate, the tariff, the nature of the competition, and all relevant factors which you would know you would
819 meet in this kind of a market; is that correct?

A. That's correct.

The Court: Would a different picture tube be necessary in England and Australia than you use here or in Canada?

The Witness: No. Well, in Australia, I understand that the polarity of the picture tube has to be changed because they are in the other hemisphere. But it is a tube that we make here and can ship there. We do ship such type of tubes to South America.

In England and Canada, they would be identical.

By Mr. McConnell:

Q. What do you mean by the polarity? I would just like to know myself.

A. Well, you are asking me to explain something—I'm no technician. But in a cathode ray tube, and particularly in a color tube, you have to make adjustments for the magnetic effect of the earth. And in the northern hemisphere, it adjusts one way, and in the southern hem-
820 isphere it adjusts another way. This is a minor thing that can easily be done in the production of tubes.

821 Q. Well, let me ask you this, is there anything, to your knowledge, in Great Britain or England, which would prevent you from making television or radios which

could utilize the broadcast of the British Broadcasting Company?

A. Nothing at all, nothing at all.

Q. You could put that on a regular assembly line here, could you?

A. There are no profound problems that we either don't handle or are not capable of handling.

Q. Well, let me ask you this, haven't you actually made sets at Zenith that can be used in the British market?

A. Yes, we have.

Q. I mean television and radios.

A. That is right.

Q. How about your shipping problem, what does that amount to in the way of cost?

A. Well, of course, this varies by product. It could be as low as 3 per cent and as high as—or some products to Australia, as much as 6 per cent of the advalorem.

Q. Do you have some product such as transoceanic
822 radios which are in demand practically no matter what the price is?

A. Yes. Giving a reasonable definition to what the price is—

Q. Well, what is the situation with respect to transoceanic radios?

A. Well, a transoceanic is a type of a specialized, exclusive Zenith product that has got nine wave bands. Many companies have tried to enter this field, have tried to copy it, and no one has been able to do it with the success that we have enjoyed. We have made, since inception, over a million, or approximately a million of these units, and for people in a foreign country that want to listen all over the world, there just isn't any commercial competition, and there is a great demand for this product from all parts of the world.

Q. Thank you, Mr. Kaplan.

Mr. McConnell: You may cross-examine.

Cross-Examination by Mr. Dodds.

Q. Mr. Kaplan, what percentage of your total radio 823 business is represented by this transoceanic set that you just mentioned?

A. I don't know that percentage.

Q. One percent, two percent?

A. It is more than one percent.

Q. Two percent?

A. It is more than one percent but probably less than ten.

Q. Less than five?

A. I don't know.

Q. Do you know what other major radio and television manufacturers than Zenith are not members of EIA?

A. The only other one I know of for sure is Admiral, and they are either reporting, or there is an estimate made for their production. I understand they report, but I don't know this.

Q. You don't know that they report?

A. No, but I do know that an estimate is made or that they report. I am not sure which.

Q. You don't know that they report?

A. I don't know that.

824 Q. How about Emerson?

A. I don't know, but I think they do.

Q. Do you know whether they are a member of EIA?

A. I think they are.

Q. Are you sure of that?

A. If you are referring to my testimony, I said I don't know of any major manufacturer that is not a member.

Q. Well, you don't consider Admiral a major manufacturer?

A. I said that is not a member or who doesn't report or for whom—

Q. Just a minute. I am not asking about reporting, I am just asking about membership. I have asked you about what major manufacturing companies were not members, and I think you said that Admiral was not.

A. Admiral and Zenith are not members.

Q. Do you know whether Emerson is?

A. I don't consider them a major manufacturer.

Q. All right, would you consider them an intermediate manufacturer? They are certainly not a small manufacturer.

825 A. I consider them a small manufacturer.

Q. Do you know what their volume of business is in a year?

A. Yes.

Q. What is it?

A. Well, in television we happen to know what it is. It is less than 200,000 pieces a year.

Q. And what is that in dollars?

A. In dollars, that might be 20 million dollars.

Q. And you consider that a small company?

A. Everything is relative, Mr. Dodds.

Q. Please answer the question.

You consider 20 million dollars a small business?

A. In sales.

Q. In sales?

A. Yes.

Q. Now, do you know whether Packard-Bell is a member of EIA?

A. I don't consider them a major manufacturer.

Q. Please answer the question, Mr. Kaplan.

826 A. I don't know.

Q. You don't know?

A. No.

Q. Now, of these non-members of EIA, do you know which ones report and which ones don't, and I am not asking now for speculation or guesswork. Do you know which ones report and which ones don't?

A. Is your question confined to major manufacturers?

Q. Well, let's consider all the ones that I mentioned, for example, Admiral, Emerson, Packard-Bell—Zenith, you said, does report.

A. I would want that question a little more confined. I am not sure what the question is.

Q. All right, I will ask you specifically: Do you know that Admiral, Emerson and Packard-Bell report their sales statistics to EIA?

A. No, I don't.

827 Q. You don't know, then, what their accuracy might be?

A. I don't know what their accuracy is, but—

Q. All right.

Now, you say that you believe the EIA figures include estimates for those companies that do not report. Do you know how those estimates are made?

A. No, I don't.

Q. That answers the question. I just want to know what you know, Mr. Kaplan.

There are quite a number of United States Radio and Television manufacturers that have manufacturing subsidiaries in Canada, are there not?

A. There are some.

Mr. Dodds: I am sorry, your Honor, but I still have not got these exhibits straightened out.

The Court: That is all right. Don't be concerned about it. We are making fine progress.

Mr. Dodds: There was testimony yesterday afternoon about a concern in Canada that received a notice from the Canadian Radio Patents Limited which notice includes the names of the Canadian Companies which were licensees of CRPL.

The Court: I remember that.

Mr. Dodds: That is the one that I am looking 828 for.

The Court: And they were read off.

Mr. Crotty: Mr. Dodds, look at Exhibit 138 and see if that is what you are talking about.

Mr. Dodds: 138? Thank you.

May I borrow your copy? That is one that it seems we have not got.

Mr. Crotty: Sure. I don't seem to have it either.

Mr. Dodds: Can I have this?

Mr. Curtis: Yes.

Mr. Dodds: Thank you. This apparently isn't complete because it doesn't have the notice in it.

Mr. Curtis: You want the notice?

Mr. Dodds: Yes.

Mr. Crotty: This is the one I had in mind.

Mr. Curtis: Yes, this is the one.

Mr. Dodds: Thank you.

829 By Mr. Dodds:

Q. I am referring to defendant's Exhibit 138, about which there was some testimony yesterday. This Exhibit includes a notice dated in 1958 from the Canadian Radio Patents Limited listing a number of Canadian companies which are licensed by that organization. I would like to ask you as to which of these you know whether or not there is an American, U. S., counterpart. The Canadian Admiral Corporation, is there a U. S. counterpart?

A. I believe that is a subsidiary.

Q. And the Canadian General Electric Company?

A. I assume that is a subsidiary.

Q. And the Canadian Westinghouse Company?

A. I assume that also is a subsidiary.

Q. And Emerson Radio of Canada?

A. I assume that is a subsidiary.

Q. And Hallicrafters of Canada Limited?

A. They are no longer in business, I don't believe, up there.

Q. They were a subsidiary of Hallicrafters Company in Chicago?

830 A. Why don't you ask me why they went out of business.

Q. All right, why did they go out of business?

A. Because it was uneconomic to stay up there.

Q. Do you know that of your own knowledge?

A. Yes.

Q. Or did somebody tell you?

A. The officers of Hallicrafters told me.

The Court: You mean that it is out of business in Canada?

The Witness: Yes.

The Court: But it is not out of business in America? It is in business in America.

The Witness: Yes, sir.

The Court: All right.

By Mr. Dodds:

Q. The Philco Corporation of Canada?

A. I assume that is a subsidiary.

Q. And the RCA Victor Company Limited?

A. I assume that is a subsidiary.

Q. The Spartan Company of Canada Limited?

A. I don't know the American counterpart.

831 Q. You know of the Sparks Wittington Company, do you not?

A. Are they still in business?

Q. It is my impression that they are still in business as the Spartan Company. I think they changed their name. You don't know about that?

A. I don't know that Spartan is in business.

Q. It is listed on the New York Stock Exchange, incidentally.

The Court: He just buys Zenith.

By Mr. Dodds:

Q. Now, I think you testified that Zenith was the largest manufacturer of television receivers in the United States, isn't that correct?

A. I did not testify to that, but I will.

Q. I thought you did.

The Court: Somebody else has, and it was in the opening statement, too.

By Mr. Dodds:

Q. The figures that Mr. Stevenson gave, I think, indicated that for the last period on which they reported
that Zenith had more than twenty percent of the entire
832 market in television receivers in the United States.

A. Black and white.

Q. Black and white, yes.

Now, I think that you also testified that there is a relationship between volume of business and costs; in other words, as your volume goes up, your fixed charges don't go up correspondingly, isn't that correct?

A. That is correct.

Q. So that I assume Zenith has relatively low cost of manufacture because of its large volume?

A. For comparable products and comparable quality, yes.

Q. Yes, that is what I am referring to.

Now, if Zenith—I think you testified that Zenith explored the possibility of establishing a Canadian manufacturing subsidiary.

A. Several times.

Q. And if it established that subsidiary and if it was able to secure the same percentage of the market as is

secured of the American market, on which Mr. Steven-
833 son based his assumed figures, then its costs would also be correspondingly lower than its competitors in Canada, would it not?

A. This is possible.

Q. It is quite likely, isn't it?

A. (No response.)

Q. So that do you know of any factor that would make it less attractive to Zenith to establish a manufacturing subsidiary in Canada than it would to these companies that we have just gone over?

A. Well, Mr. Dodds, that was not the basis of our decision.

Q. So that do you know of any factor that would make it less attractive to Zenith to establish a manufacturing subsidiary in Canada than it would to these companies that we have just gone over?

A. Well, Mr. Dodds, that was not the basis of our decision.

834 Q. Just a minute, please. Will you answer my question?

Do you know of any factor which would make it relatively less attractive for Zenith to establish a manufacturing concern in Canada than these other American concerns that have subsidiary manufacturing organizations in Canada?

A. Well, I will have to answer it a different way, then. It is more economical to us to manufacture those same products—

Mr. Dodds: Your Honor, I move to strike the answer. That is not responsive at all.

The Court: If you will answer his question, I am sure that Mr. McConnell will ask you the question that you now want to give the answer to. Just answer this question and then you can straighten yourself out when he gets you back.

By the Witness:

A. Would you ask the question again.

Mr. Dodds: Would you read back the question, please, Mr. Court Reporter.

(Question read.)

By The Witness:

A. Well, specifically, to answer that question, yes,
835 I know of several factors.

Q. All right, what are they, please.

A. Well, for instance, RCA has many other businesses in Canada. General Electric has many other businesses in Canada. Westinghouse has many other businesses in Canada.

Q. How about Philco?

A. They have other businesses in Canada.

Q. Just appliances, though, isn't that correct?

A. Yes, but this takes overhead.

Q. How about Arvin Industries?

A. I don't know about them.

Q. How about Travler?

A. I don't know about them.

Q. All right.

Mr. Kaplan, do you know whether the television sets sold in Canada are made to operate on the same frequency, that is, 60 cycles, and the same voltage, that is 110 volts, as the American sets?

A. It is my understanding that there are modest changes to conform to their—what will be the equivalent of their underwriters' requirements, but otherwise I under-
836 stand they are the same.

Q. You understand that there is a 60-cycle power supply through Canada? Isn't most of it 25 cycles?

A. I am sure it is not.

Q. Well, I am sure it is, but—

The Court: Well, we will get you under oath in a minute.

Mr. McConnell: I move to strike out the testimony of Mr. Dodds.

The Court: We will strike it.

By Mr. Dodds:

Q. All right, how about England, what frequency and power supply voltage is prevalent in England?

A. I can't answer that, Mr. Dodds. That is an engineering.

Q. How about Australia?

A. I can't answer that.

Q. Now, I think you testified that the tariff on television sets exported to Canada is 20 per cent. Now, what is the basis for your estimate that Zenith would expect to achieve the same percentage of the market in Canada
837 as it has in the United States with a 20 per cent tariff differential?

A. Well, in the first place, our sets, because of their higher quality and basically better construction always sell at a premium.

Now, in addition, this 20 per cent tariff which I assume you consider a penalty is, to a great extent, offset by the smaller volume of production in what we estimate to be the lower efficiency of the Canadian plants.

838 Q. Well, I understand your strong tendency to claim that the Zenith radio and television receivers are bigger and better than those of your competitors; do you think your competitors would agree with that statement?

A. I wouldn't know.

Q. Mr. Kaplan, did you ever make an application to the ARTS, that is Australian Radio Technical Services for a license to import either radio or television receivers into Australia?

A. I don't know.

Q. You don't know that you did, though?

A. No, that is right.

Q. Now, when we talk about Britain and Australia, Britain particularly, you do know that Britain has five different standards of transmission, five hundred and twenty-five lines.

A. No, they are 405.

Q. 405 lines, I mean, and positive modulation.

A. And AM sound.

Q. So that if you were to manufacture those sets—and,
also, amplitude modulation for sound—so if you were
839 to manufacture those sets in the United States, they
couldn't come off of the same assembly line as the
sets for domestic sale, is that correct?

A. That is correct.

Q. Now, taking your figures—first, I will ask this; do you know what the annual production in sale of television receivers in England is?

A. No, but that is part of this Exhibit 220.

Mr. Dodds: Can I see that 220?

Mr. McConnell: We had it a minute ago. Here it is, right with your own papers.

Mr. Dodds: Thank you.

By Mr. Dodds:

Q. According to these figures of Exhibit 220, for the last full year of 1962 there were one million three hundred and seventy thousand television sets sold or produced, I don't know which the figure is, in the United Kingdom; that is roughly about a fifth of what the United States volume of production sales is, isn't that correct?

840 A. That is correct.

Q. In round figures?

A. But not for '62.

Q. That is 1962. That is the last year for which there are complete figures, on this chart, at least, that is in evidence. That is what I am relying on.

The Court: I think what Mr. Kaplan's question is, is whether this is the fifth of the American production in 1962, is that—

Mr. Dodds: No, I am talking about—

The Witness: It is more than a fifth.

Mr. Dodds: Well, not very much more.

The Court: Well, roughly—

By Mr. Dodds:

Q. It was about six and a half million, wasn't it, in the United States for 1962?

A. That is right.

Q. And this is a million three hundred and seventy thousand. If it was a million three hundred thousand it would be exactly a fifth.

A. That is right.

841 Q. So now, your estimating that, other conditions being as you would like to have them, that you might get twenty-five per cent of the market in Great Britain.

A. No.

Q. So that would be twenty-five per cent of five per cent, and that would be 1.25 per cent based on United States—total United States market. Is my arithmetic correct?

A. Tweny-five per cent of five per cent?

Q. Yes.

A. What is the five—yes, that is right.

Q. I am sorry, I misled you. It would be one-fifth of twenty-five per cent, or five per cent of the U. S. market.

The Court: I am having difficulty with those fractions.

Mr. Dodds: I am, too, your Honor.

The Court: Maybe we can think clearer after lunch. We will take our noon recess at this time.

(Court recessed until 2:00 o'clock P.M.)

842 * * * (Caption—59-C-1847) * * *

Before the Hon. Richard B. Austin,
Thursday February 20, 1964,
2:00 o'clock, p.m.

The trial was resumed pursuant to recess.

Present:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

843 The Clerk: Case on trial.

Mr. McConnell: Mr. Kaplan, will you get back on the stand, please.

SAMUEL KAPLAN, called as a witness on behalf of the Defendant, having been previously duly sworn, was examined and testified further as follows:

Cross-Examination (Continued).

Mr. Dodds: I think we were a little involved in arithmetic at the end of the morning session.

The Court: That's right.

Mr. Dodds: I think there was an agreement that the British market for television receivers was approximately one-fifth that of the U. S. market in '62.

The Court: That's right.

By Mr. Dodds:

Q. And that Zenith asserted a share of the British market of a quarter of the U. S. market, or approximately 5 percent of the market?

A. That's right.

844 Q. So then, translating in terms of the U. S. market that would be one-fifth of five per cent, or one per cent of the U. S. market—is that correct—would be your reasonable expectation of sales in Great Britain?

A. Yes.

Q. And I think that you also agreed that it would involve a different assembly line to produce a British receiver than a U. S. receiver. So taking that into account, with a volume of production for British export of only one-twentieth of the U. S. receivers, would you achieve the same economies of production, or expect to achieve the same economies of production?

A. Are you through with your question?

Q. Yes.

A. Yes.

Q. Well, would you explain that?

A. Well, because to a great extent the British receiver would have many of the components and a great portion of the work content that would be very similar. So that the components that feed that would be made together with the millions of other components.

845 Q. That's right. Now, isn't a substantial factor in the cost of a television receiver the engineering?

A. Yes.

Q. So those portions of the British television receiver which were not common would require special engineering, wouldn't they?

A. To the extent that it is different, yes.

Q. Yes. And that would involve the detector in the sound channel, and it would involve the scanning oscillator?

A. I can't answer that.

Q. Oh, all right. Anyway, there would be a number of things that would be involved. So that engineering applied to those would be divided over a base of about one per cent of the base that you apply your engineering to U. S. sets, as I calculate it; is that correct?

A. Well, you are talking only about a very small portion of our engineering.

Q. You said you didn't know about the scanning oscillator. How do you know it's such a small portion?

A. Because I have discussed with our engineering department the extent of the difference.

846 Q. All right. That's what I asked you. How about the scanning oscillator?

A. I'm not prepared to discuss technical problems.

Q. I'm just asking what components.

A. The extent of the problem.

Q. All right. The scanning oscillator, as I understand, and the deflection system is a fairly substantial portion of the cost of a television receiver. But you say you don't know whether the scanning oscillator has to be different. Now, it is my information that if you are going to scan at 525 lines or 405 lines, you need a different kind of scanning system. It has different numbers in it.

A. Mr. Dodds, I would like to answer by saying that this difference is so profound that our distributor changes them in his back room.

847 Q. On a laboratory or hand basis, not on the production of several thousands or hundreds of thousands of receivers.

A. No. But I think this illustrates the extent of the difference.

Q. Well, the extent of the difference is a question of how skilled, first, your man is, and how long it takes him to do it in the back room. If you are going to do it on a production basis, you can't spend very many minutes on an assembly operation.

A. I wouldn't think it would take many minutes.

Q. But you don't know whether it would or not, because you don't know anything about the scanning oscillator.

A. No. I am not a technician.

Mr. Dodds: That's all.

The Court: All right. Anything further?

Mr. McConnell: Is that all?

Mr. Dodds: That's all.

The Court: Yes.

848 *Redirect Examination by Mr. McConnell.*

Q. You were asked about the people who either were members or who gave statistics to this EIA organization in your examination this morning.

Over the noon hour, have you made some inquiry from that company about that subject?

A. No. Our inquiries were made to our own statistical department, who are familiar with the contents—

Q. Yes. What did you find out?

A. (Continuing.) of the EIA reporting. I had previously testified that all major members of the industry reported. I now find out that Admiral does report, RCA reports, Zenith reports, Warwick reports for Sears, General Electric, Westinghouse, Curtis-Mathes, Packard-Bell, Hoffman, Sylvania, Motorola, Philco, and Magnavox do report.

Mr. Dodds: Your Honor, I wish to move to strike the answer on the basis that it is obviously hearsay.

849 The Court: I think it was probably hearsay this morning, and I think this is an effort to correct his testimony.

Mr. Dodds: I don't know—my recollection was he said, this morning, he didn't know. He knew a certain—

The Court: I thought this morning he said that all of them either were members or reported to the institution.

Mr. McConnell: That's what he said.

The Court: Now, we are getting into a little more specificity.

Mr. Dodds: No, your Honor. He acknowledged, I believe, that for those who were nonmembers and did not report, estimates were made by the association. As a matter of fact, he was not sure just what the accuracy of those estimates were. But he said he didn't know which ones reported.

I say that what he is stating now is pure hearsay. I move to strike the answer.

850 The Court: It may stand for what it is worth.

By Mr. McConnell:

Q. Now, you were asked about manufacturing operations up in Canada by Mr. Dodds. I want to call your attention to a company known as the Motorola Company. Do you recall whether or not they had manufacturing facilities in Canada?

A. Yes. We visited their plant in 1953.

Q. Can you tell us what happened to their manufacturing operation in Canada?

A. Well, it is closed. They have abandoned their manufacturing operation.

Q. What would you conclude from that?

A. I would conclude that it was not successful.

Q. Do you know of any other company that attempted to manufacture in Canada and then abandoned it?

A. I think Sylvania has abandoned their operation.

851 Q. Now, of the other companies that are there, I think you stated this morning in your cross-examination that they had other activities. What did you mean by that statement?

A. Well, RCA, as you know, is a broadly based communications company. And they have many other electronic products that are made in their Montreal operation.

852 Q. You mean over and beyond radio receivers and television receivers?

A. That's right.

Q. Is that true of the other companies that you mentioned, such as Marconi, Philips, and so forth?

A. Marconi has other equipment, and my recollection is that their operation has not been outstandingly successful. I don't know—I know Philips has other products; I don't know how to measure their success.

Q. Mr. Dodds asked you a question this morning, and you started to answer it or did answer it, and then qualified it by "but," and then you were cut off. Was there something else you wanted to add to that?

A. I am not sure what the question was.

Q. Well, I don't recall just what it was now. Was there anything that you were cut off from, that you wanted to—

A. Yes, I recall, but I don't recall the subject of it.

Q. Well, what would you want to add?

853 The Court: I was in error, then, assuming that you would ask the question that he wanted to give the answer to. I will confess error on that.

Mr. McConnell: I hate to lead your Honor into error on that sort of a basis.

By Mr. McConnell:

Q. Do you recall what it was, or not? If not, we will leave it.

A. No, I do not, Mr. McConnell.

The Court: And I don't either.

Mr. McConnell: I have no further questions.

Mr. Dodds: I have a couple, your Honor.

Recross Examination by Mr. Dodds.

Q. I think you said you inspected the Motorola Canadian plant in 1952?

A. '53, I think it was.

Q. '53. And do you know of your own knowledge the reason for their abandonment of their Canadian operations?

A. Not of my own knowledge. But my answer was that I concluded it was not successful.

854 Q. Does the same answer apply to Sylvania?

A. Yes.

Q. All right. Now, Mr. Kaplan, how many television manufacturers were there in the United States in 1953? There were about 50, were there not?

A. I think there were more than that.

Q. And how many are there now?

A. I think there is less than 40.

Q. There is less than 20, are there not?

A. I don't know. I think it's less than 40.

Q. Let's name a few of them. I think my recount is about 16.

There is RCA, General Electric—if you disagree with me, say so, would you, Mr. Kaplan?

There is RCA, General Electric, Westinghouse, Sylvania, Magnavox, Warwick, Muntz, Packard-Bell, Zenith, Admiral. Can you think of any I have missed?

A. I don't think you mentioned Philco.

Q. Philco, right.

A. Did you mention TravLer?

855 Q. TravLer.

A. Did you mention Wells-Gardner?

Q. Wells-Gardner. Thank you.

A. Then I can assume we have overlooked many others, Mr. Dodds.

Q. Well, name them.

A. I don't—I mean, it would be so simple to get a list of them.

Q. Well, I had a list, and my recollection is there is about 16. And there were more than 50 in 1953.

Now, do you think those United States television manufacturers went out of business because of CRPL?

A. I have no reason to know why they went out.

Q. You wouldn't draw that conclusion, though, would you?

A. I wouldn't draw any conclusion.

Q. You wouldn't draw that conclusion?

A. I wouldn't draw any conclusion.

Mr. Dodds: Thank you. That's all.

The Court: Is that all?

Mr. McConnell: That is all.

856 The Court: All right.

(Witness excused.)

857 Mr. McConnell: I want to recall Mr. Crotty for just two or three questions on an entirely different subject.

The Court: All right.

FRANCIS W. CROTTY, called on behalf of the defendant and counterclaimant, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Mr. Crotty, you have already been sworn as a witness in this case?

A. I have.

Q. I asked you to compute the legal expense which was occasioned by you and your associates in the trial of a patent case in this court. Did you make some research or investigation to determine what those costs are?

A. Yes, I did.

Q. Tell us what the source of your data was and what it is.

A. Well, I have, as a practice, my associate attorneys
keep a record of their times in diaries, charging the
858 times that they devote throughout a day to the project
at hand, and I had the attorneys review their diaries
for the period in question.

The Court: Well, I want to know what period that is.

The Witness: Well, the period that I concerned myself with was from '59 through May of '63.

By Mr. McConnell:

Q. That is four years prior to this counter-claim?

A. Yes.

The Court: Well, we are getting more specificity than we had before. You just said "a patent case", and I was sure it wasn't this one because you didn't so specify it. This is the one, now, that you are talking about.

The Witness: Yes, your Honor.

The Court: That is fine. All right.

By the Witness:

A. (Continuing.) And they reported to me the num-
859 ber of hours recorded in the diaries devoted to the
study of Hazeltine patents, and I have had those times
collected, summed and converted into salary costs.

By Mr. McConnell:

Q. All right, can you tell us who the gentlemen are and the respective hours of which their time records show they spent on this Hazeltine patent problem?

A. Well, first there is myself, and I could give you the hours by the years, but I can't give you a summation of the total hours. I haven't added that up. I can give it to you by the year.

Q. Well, let me ask you if you haven't added it up. I show you a document which is marked Defendant's Exhibit 40 and ask you whether or not you prepared that?

A. Yes, this was prepared for me by just having these tabulated, and this does give the total hours.

860 Q. How many hours did you spend?

A. For myself, it was fifteen hundred and twelve and a half hours.

Now, I should point out to you that that includes my time devoted to this litigation in not only the patent aspects, but also this particular counter-claim.

Q. All right.

A. There was Mr. J. G. Wright, who is to be distinguished from J. S. Wright, our president; he spent twelve and a half hours on the problem.

Mr. J. E. Tracy—Wright and Tracy are associate attorneys in my office; he devoted eighteen hours.

Mr. A. H. Sanders, this is my draftsman who devoted time in preparation of exhibits and so forth in the patent trial of this litigation; his time was sixty-six hours.

Mr. C. J. Sindelar, an associate attorney, fourteen and a half hours.

Mr. C. J. O'Connor, an attorney, seventy-eight and a half hours.

861 Mr. R. J. Miller, an attorney, thirty-one hours.

Mr. H. Drake, an attorney, one hundred and ninety-nine and a half hours—actually, One ninety-nine point four.

Now, three engineers devoted some time in helping us on the technical aspects of the patents. I have accounted for their times as well. A Mr. W. Stroh, one hour; Mr. John Renick, fifty and a quarter hours; Mr. Charles Heuer, eighty-nine hours.

862 Q. All right, now, did you put a dollar amount on their time?

A. I had the payroll department convert the time to a salary cost, using the rates of pay of these individuals, and I have the summation of that.

Q. What is the summation of that?

A. For all involved, it was $25,041.33.

Q. Can you break it down?

A. I can't break it down from that sheet. I can break it down from a worksheet that I have here, I think.

For my own case it is $21,359.72.

For Mr. Wright, $63.10.

Mr. Tracy, $119.99.

Mr. Sanders, $263.06.

Mr. Sindelar, $66.82.

Mr. O'Connor, $477.33.

Mr. Miller, $118.03.

Mr. Drake, $14,779—I am sorry, it is $1,477.92.

Mr. Stroh, $6.81.

Mr. Renick, $495.85.

Mr. Heuer, $592.70.

863 Q. All right.

Now, did you have some other expenses?

A. I did. The document that you handed to me, which gives a summation of the times of the individuals, has as its first item disbursements in the amount of $23,587. This represents the cost to Zenith of the patent trial of this litigation, having in mind the cost of persons who are not on your payroll, such as our technical expert, Mr. Johnson, our trial attorney, Mr. McDougall, the reporting costs. This is a total figure for the patent trial.

Q. This is actual disbursements?

A. Yes, it is.

The only other thing I have here is an item of travel expense in the amount of $1,437.39, which represents the travel that I or my men have undertaken in connection with patent studies or the document studies, and things of that nature.

Q. Does that represent an actual disbursement?

A. Yes, it does.

Q. What is the total amount? Have you got a total on the whole thing?

864 A. I do have a total, and I should point out that this computation goes only to December 31st of 1963, and the total was $50,065.72.

Mr. McConnell: You may cross.

Mr. Dodds: No questions.

The Court: All right. Thank you.

(Witness excused.)

865 Mr. McConnell: The plaintiff rests, your Honor.

Thereupon the Defendant and Counter-Plaintiff Rested Its Case in Chief.

The Court: May I take your motion under advisement and go on with the evidence?

Mr. Dodds: I beg your pardon?

The Court: I say, may I take your motion under advisement and go on with the evidence and save some time?

Mr. Dodds: All right.

The Court: All right. The motion for a finding for the defendant at the end of the plaintiff's case is taken under advisement, Mr. Court Reporter.

Mr. Dodds: Mr. Crotty seems to be a very popular witness. I would like to call Mr. Crotty.

The Court: All right.

Thereupon the Plaintiff and Counter-Defendant, to Maintain the Issues in Its Behalf, Introduced the Following Evidence, to Wit:

866 FRANCIS W. CROTTY, recalled as a witness by the plaintiff and counter-defendant for adverse examination, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Crotty, your name appears on Zenith's pretrial brief. Did you participate in its preparation?

A. Yes.

Q. And you accept responsibility for what is said in the brief, is that correct?

A. I helped Mr. Curtis prepare the brief, and I guess, then, I accept responsbility for it, yes.

Q. And you say that you do accept responsibility?

A. I guess so.

The Court: You mean that you are letting Mr. McConnell out of the responsibility?

The Witness: Well—

The Court: I will withdraw the question.

867 The Witness: We are all responsible, I guess.

By Mr. Dodds:

Q. Mr. Crotty, I notice throughout this brief the repeated use of the word "Pool"; now, I would like to ask you what your definition of "Pool" is.

A. We have used "Pool" in this brief and in this experience as the type of operation represented by the CRPL in Canada and the British Pool and the Australian Pool.

868 Q. I don't think that is the definition. I think those are examples. I would like a definition.

How do you define the word "pool"?

The Court: I have a legal dictionary "Words and Phrases" back here, Mr. Crotty.

By the Witness:

A. We are using this in the sense of a group of conspirators putting together their patent products in a single administration.

By Mr. Dodds:

Q. Well, I gather, then, you would not consider a pool a group of patents all of common origin.

A. The patent products, say, of a single company?

Q. Yes.

A. That is right.

Q. Even if they had ten thousand patents, you wouldn't consider that pool?

A. No.

The Court: Do you consider that Hazeltine runs a pool?

The Witness: If I consider Hazeltine's product, by 869 which I mean now the product of their own research, I would say no, your Honor.

The Court: But in regard to all that they own, do you consider that a pool?

The Witness: Well, they have a pool to the extent that they had licensed their own patents, and I believe under their arrangement with General Electric Company of England they have the licensing rights under the United States patents originating on the inventions of GEC in England; whether that is still true or not, I am not sure, but this is my recollection from the document.

By Mr. Dodds:

Q. That was the next subject I wanted to come to, Mr. Crotty.

Do you know of any Hazeltine patents of origin from the General Electric Company of England or of the AGA, and you know what I mean by "AGA", do you not?

A. Yes, I do.

870 Q. Do you know of any Hazeltine patents of origin from General Electric Company or from AGA of which Zenith was ever charged with infringement.

A. No, I do not.

871 Q. Have you ever run across, of your own knowledge, any television receiver that embodied the invention of any patent owned by Hazeltine from General Electric or AGA origin?

A. I have never examined a television receiver with that question in mind.

Q. The answer is no, then, is it not?

A. Yes.

Q. And did you ever conduct a validity or infringement investigation of any Hazeltine patent of General Electric Company, Limited, or AGA origin?

A. No.

Q. And, in fact, have you ever considered any Hazeltine patent of General Electric or AGA origin other than to give it a perhaps cursory glance?

A. I can't answer that. I don't know.

Q. You don't recall having done so?

A. No particular patent comes to mind. The reason I can't answer your question definitely is that if I am making an infringement study of a product I will examine patents from any of a variety of sources, and I can't tell you 872 that it didn't include some of GEC's.

Q. I didn't ask you whether it did. I say that you don't have any recollection of ever having done so.

A. No.

Q. Now, Mr. Crotty, does the Zenith Radio Corporation customarily give its dealers and distributors a patent indemnity?

A. I am not familiar enough with the contract agreements that the company may have with its distributors to answer that, but as a matter of practice, I would say yes.

Q. And does that indemnity include an agreement to defend infringement suits which might be brought against the distributor or dealer?

A. I can't answer that.

Q. Who would know that?

A. I am not the best one to answer that question, Mr. Dodds.

Q. Well, now, Mr. Crotty, you are vice president in charge of patents. This is a patent matter. If your dealer was sued with infringement, wouldn't you know about it?

A. Indeed I would.

873 Q. And wouldn't you ordinarily know about the patent relations on all phases of your company's activity?

A. I told you that while I couldn't tell you from familiarity with a distributor contract, that it was a contract obligation, I told you that as a matter of practice we do stand back of our product and we would indemnify it.

Q. Well, all right, then. As a matter of fact, would you normally, as a matter of practice, defend a dealer or a distributor if he were charged with patent infringement?

A. I don't know. He may not want us to.

From what you say, I assume that the suit would be brought against him.

Q. I am assuming that it is a patent infringement suit brought against one of your dealers or distributors based on a sale of a Zenith receiver; would you normally take over the defense of that suit or offer to take over the defense of that suit?

A. I am sure we would consider it with him, and it would have to be his choice, because, after all, he would be the named defendant and not Zenith.

874 Q. That is right, but you would offer to do so.

A. Yes.

Q. Do you recall whether you have ever had occasion to do so?

A. Not in my experience.

875 Q. You say not in your experience. Now, Mr. Crotty, do you know of any Hazeltine Canadian patent which you consider to be valid and to cover any Zenith radio receivers or television receivers which you may have shipped into Canada?

A. Yes.

Q. Would you give me the number of that, please.

A. I can't give you the number. I can identify it for you.

Q. If you would.

A. The Intercarrier Sound patent.

Q. That is not owned by Hazeltine. I said Hazeltine.

A. I beg your pardon. No, I don't.

Q. You don't know of any?

Well, now, if you don't know of any Hazeltine-Canadian patents which you consider covers a Zenith radio receiver, and if you customarily would offer, at least, to defend the dealer or distributor from patent infringements, what is their problem of the Canadian Radio Patents Limited insofar as Hazeltine is concerned?

A. Well, Mr. Dodds, you have actually sued me

876 on a patent that I thought was invalid.

Q. I am not asking what—

A. They would have the same worry, they would have the same threat that we have here in the United States as represented by Hazeltine.

Q. Well, Zenith is a pretty responsible company, and if some small dealer in Saskatchewan were sued and Zenith Radio Corporation undertook to defend them, do you think that that company in Saskatchewan would worry too much about having to pay the bill?

A. You would have to ask him, Mr. Dodds.

Mr. Dodds: That is all.

The Court: Do I understand that to your knowledge none of the television or radio receivers that you ship to Canada contained a Hazeltine patent?

The Witness: Your Honor, the difficulty we run into is this—

The Court: I mean, can you answer that question?

The Witness: I am trying to answer your question.

These are matters that are open to dispute. For
877 example, we in this litigation had a patent in suit
because Mr. Dodds took the view that it was a valid patent owned by Hazeltine and infringed by our product, and I took the view that the patent was not valid and was not infringed.

The Court: And was this article used on the merchandise that you shipped to Canada this one—

The Witness: This same circuit, I believe, your Honor—

The Court: This one that is in dispute, was that on the—

The Witness: Yes, the answer to interrogatories makes it clear that there is a Canadian counterpart of the patent in this suit, and I would presume that Mr. Dodds would take the same attitude with respect to the Canadian patent that he has with respect to the U. S. patent and we would have another dispute.

The Court: In regard to any other patent other than
the one that is the patent in suit here, are you aware
878 of any other patent that they claim that you have
infringed on anything that you shipped to Canada?

The Witness: Well, your Honor, when Mr. Dodds approached me in 1959 he brought to my attention four patents, and I assume that he would assume the same attitude with respect to the Canadian counterpart.

The Court: I understand that two of those four were eliminated or something.

The Witness: One I eliminated for him and the other two I think he dropped.

The Court: So that we have got down to the patent in suit, right?

The Witness: Yes. We finally got down to, by choice or otherwise, to discussing one in particular.

The Court: Are you, to your knowledge, using in your color television any patents that you feel they have a valid claim to that do not come from GE or AGA, or whatever that other thing is?

The Witness: There are nine patents that—

The Court: That is the nine I am talking about.

879 The Witness: —Hazeltine says we used. I have studied most of them. I am not prepared to give you a—

The Court: I mean that at this time you don't concede—

The Witness: No, your Honor.

The Court: All right. That is the most I could expect.

By Mr. Dodds:

Q. Just one question, Mr. Crotty, this patent in suit certainly hasn't deterred the Zenith Radio Corporation from becoming the No. 1 television receiver manufacturer in the United States. Why is it such a deterrent effect in Canada?

A. Well, this patent in suit is the only patent that CRPL can bring to bear in Canada even of Hazeltine origin.

Q. Yes, but you have no regard for it. Why is the situation any different in Canada than it is in the United States? The most that could happen would be an infringement suit as in the United States, of which you are
880 confident of winning?

A. I don't know what you want me to say.

Q. I want to ask you what was the difference in the situation that was any more of a deterrent in Canada than in the United States.

A. Well, in Canada your threats are made to our outlets. Your threats are not made to the Zenith Radio Corporation itself.

Q. Yes, but the practice of Zenith is to defend its outlets and indemnify them.

A. Mr. Dodds, you are talking about the effects on our retail outlets. You are not talking about the effects on me.

Q. That is what I am talking about—

A. These outlets, under these threats, have had difficulties.

881 Q. Well, your brief alleges that Hazeltine has harassed its dealers and distributors in the United States, so what is the difference?

A. I don't believe that our brief says that Hazeltine has harassed our dealers in the United States of recent years.

Q. I don't believe—

A. I think the reference in the brief, if you looked at it carefully, was back at the time when we first became a licensee of Hazeltine, which was back in the thirties, as you know.

Q. That is correct, but I believe—I won't take the time to check it—but I believe there is an indication that that is a policy of Hazeltine, to harass the dealers and distributors of an unlicensed manufacturer, and if that is the case, I don't see any difference between the situation in Canada and the situation in the United States, but if there is a difference, I would like to know what it is.

A. Well, I think there is a difference. Now, in Canada, for example, Hazeltine wouldn't be doing the harassing anyway. Hazeltine says that it has parted with its
882 right in Canada, and CRPL would be doing the harassing, not Hazeltine.

Now, in this country it may still be your practice, I don't know, but we have been licensed for so long in this country under your patents that we haven't experienced such harassment.

Q. So, as far as Canada is concerned, it is important whether Joe Jones or Willie Smith is the plaintiff in a patent infringement suit. Is that the substance of your answer?

A. I don't think so.

Q. Well, you are complaining that CRPL would be the plaintiff instead of Hazeltine. What is the difference?

A. Well, the CRPL is a pool.

Mr. Dodds: No more questions.

Cross-Examination by Mr. McConnell.

Q. You were asked to define the pool. Can you tell us who the pool members are in the Canadian pool?

A. As I recollect them, Canadian General Electric,
883 Canadian Westinghouse, Canadian Marconi, the Canadian Philips Company, Northern Electric—I believe that is the group of companies.

Q. Well, the Hazeltine patents are in that pool, aren't they?

A. The Hazeltine patents are in that pool, yes.

The Court: How did they get in there?

The Witness: They get in there through a contract arrangement that is distinguished from a stock ownership.

By Mr. McConnell:

Q. Well, the others put their patents in by a contract arrangement, too, don't they?

A. Yes, I guess they do.

The Court: I mean, is there some distinction between the way Hazeltine got in the pool in Canada and the other people?

The Witness: I don't think there is any distinction in how they got in. I think the only distinction is the take they get from the pool. I think Hazeltine's take is speci-

fied in their contract to be a certain amount of money,
884 and I think the shareholder's take is determined by
their success in selling licenses.

885 By Mr. McConnell:

Q. Well, in any event, whatever the take may be, Hazeltine gets a part of the receipts of the pool, do they not?

A. Well, yes.

The Court: They don't get it through a conduit as they do through General Electric Limited in England, do they?

The Witness: That is correct. This comes directly from the pool.

By Mr. McConnell:

Q. They get it direct from the pool, and the receipts of the pool come from the licensing of all the patents in the pool, do they not?

A. Right.

Q. Now, all those patents in the pool blanket the entire electronics field, don't they?

A. They have over the years.

Q. And that pool can bring against Zenith or anybody else who hasn't got a license not only Hazeltine patents, but any patents that they have in the pool, can't they?

A. They can bring to bear the whole conglomeration of patents.

886 Q. And that is the threat that is made against your distributor up there, isn't it?

A. Yes. That is the big distinction between Hazeltine bringing—as a single patent owner. taking an action against somebody and the pool taking an action against somebody.

Q. Well, Hazeltine, when it gets in the pool, is responsible for the acts of everybody in it, isn't it, as a matter of law?

A. Yes, it is.

Q. So that the threat to your business up in Canada is the threat brought by the pool against your dealers and distributors to stop them selling Zenith radio sets which are imported; isn't that true?

A. That is the threat.

Q. Now, if a distributor buys sets from Zenith Radio Corporation here in Chicago and puts them in a warehouse, and then is threatened, what is the potential liability that that distributor has under the patent law?

A. His investment in those sets.

Q. What can happen to his investment in the sets?

887 A. He can lose it all.

Q. Why?

A. Because he can be required to just—well, they can become inalienable. He can't sell them. He can't do anything with them.

Q. Because he is using a licensed device which isn't covered by the Canadian patents; isn't that right?

A. That's right.

Q. Now, you know, do you not, that Zenith cannot get a license from that pool to send its sets by export, and to import into Canada; isn't that true?

A. Yes. We were told that by Mr. McConnell.

Q. And you were told that as recently as what—what was the last time you were told?

A. '59, 1959.

Q. Now, when Mr. McConnell came down here and threatened to sue you on some of the patents of the pool, did he mention that Hazeltine patent at that time?

A. Yes, he did.

Q. What patent?

A. I can't identify it by number.

888 Q. Well, tell us the device. What was it about?

A. It had to do with a centering magnet, as we call it, for a picture tube, as I recall it.

Q. And that was a Hazeltine patent in the pool?

A. Yes.

Q. Which he was administering?

A. Yes.

Q. And threatening you with suit on?

889 Mr. Diggins: If your Honor please, I would like to object here on the record. There is no conceivable way that the Canadian pool could have come down and threatened to sue Zenith under a Canadian patent, because Zenith is taking the position that they are not doing business in Canada, and I don't like these—

The Court: Of course, anybody can make idle threats.

Mr. Diggins: I don't believe that that kind of a threat was made, your Honor. I don't like the implication.

The Court: I mean, he is testifying it was made. You are pointing out that they couldn't fulfill it, but he could still make it. All right.

By Mr. McConnell:

Q. Well, at that time. you were sending sets up there which were liable to this sort of suit; isn't that the fact?

A. Yes, of course.

Q. Now, your difficulty, as I understand it, is that some
distributors and some dealers, and important ones,
890 wouldn't do business with you because of that threat;
isn't that so?

A. That has been our experience.

Q. Now, shortly after you talked to Mr. McConnell of the pool, and he threatened you with suit on this Hazeltine patent, did he have some other patents he was threatening you with suit on, too?

A. There were three altogether.

Q. Who did they belong to?

A. One to—one was owned by Philips and one by Canadian Marconi, if I remember correctly.

Q. Now, you have some patent protection up there in Canada, do you not?

A. Yes, indeed we do.

Q. And what is it?

A. Well, at the time he came down and had his conference with me, we had the licenses from RCA, from Western Electric, and from Canadian GE under the Canadian patent holdings of those companies.

Q. And you also had the Parker patent?

A. Yes, and we still have that.

891 Q. And you couldn't get Marconi or Philips or Hazeltine because they were in the pool; isn't that right?

A. That's right. We couldn't get them unless we engaged in local manufacture. McConnell said he could not grant a license for importation under their patents.

Q. Well, you couldn't get a license for doing the business that you wanted to do—make sets here and send them up and sell them in Canada?

A. That's correct.

Q. No matter what you paid for it; isn't that right?

A. That's right.

Q. What is this Intercarrier Sound patent that you were speaking of?

A. That has to do with the amplifying portion of a television receiver.

Q. And that is being asserted against you by the pool, you say?

A. No, because I have a license under that patent.

Q. That is the Parker patent?

A. That is the Parker patent.

892 Q. And you are licensed under that to export from the United States into Canada under Canadian patents, aren't you?

A. That is correct.

Mr. McConnell: I have no further questions.

Redirect Examination by Mr. Dodds.

Q. Did I understand you to say that Hazeltine received a cut in the income of CRPL?

A. I said that Hazeltine was paid directly by CRPL.

Q. It doesn't get a cut in the income of CRPL.

A. This may be a matter of definition. You are paid a certain amount of money by CRPL.

Q. I'm sure you have examined the agreement between Hazeltine and CRPL. And is it not a fact that Hazeltine receives a royalty, ten cents on each television receiver, with a maximum of $45,000 per year?

A. That is my recollection of it.

Q. Now, assume that Zenith exported a television
893 receiver to Canada which, if you can imagine this,
infringed somebody's patent. Now, what could the
owner of that patent do other than sue a distributor or
dealer of Zenith in Canada?

A. Well, he could sue anybody who used or sole it.

Q. Yes. He couldn't sue Zenith, though.

A. He couldn't sue Zenith here in the United States, no.

894 Q. And Zenith isn't suable in Canada, is it?

A. Not the Chicago company.

Q. And I just want to make this one point clear. Did Mr. McConnell, Mr. Brian McConnell threaten to sue Zenith Radio Corporation on any patents administered by CRPL?

A. These people aren't that blunt. They just come and advise you of the patents they think you need.

Q. Please just answer the question yes or no.

A. They don't come out and say specifically, "I am going to sue you tomorrow," like you did.

Q. Will you please—now, will you please answer the question. Did Mr. Brian McConnell threaten to sue Zenith

Radio Corporation on any Canadian patents administered by CRPL?

A. He didn't specifically say to me he was going to sue us, if that is what you are asking.

Q. Did he indirectly say he was going to sue Zenith Radio Corporation?

A. I think he did it by implication.

895 Q. Did he explain to you how he would do that?

A. No.

Q. Well, you certainly couldn't have taken any such statement, if he made it, very seriously, could you?

A. Certainly you and I know he couldn't sue the Chicago company.

Q. Well, the Zenith Radio Company is the Chicago company, isn't it?

A. Well, we have a Canadian outfit too.

Q. But I understand that it doesn't sell television receivers, isn't that true?

A. No. That is not true.

Q. When did it start selling television receivers?

A. I am really not qualified to speak about it. My understanding is that Zenith in Canada does some distributing.

Q. It is my recollection that Mr. Wright's testimony wasn't quite that, but I will stand on the record, whatever it is.

896 Mr. Dodds: That's all.

The Witness: I thought he said that the Canadian company had accounted for about sixty per cent of the distribution in Canada.

Mr. Dodds: Whatever the record says I will stand on. That's all. Thank you.

Recross Examination by Mr. McConnell.

Q. There is no reason why they couldn't sue the Zenith subsidiary in Canada, is there?

A. No. But the subsidiary would have to deal in the product to be liable to suit.

The Court: I think you can sue, regardless of the fact they didn't have a chance of getting any place, you can sue anybody any place, any place that you haven't even been or where you haven't done anything.

The Witness: Yes, sir.

By Mr. McConnell:

Q. And they can sue your distributors, can't they?

897 A. Oh, yes.

Q. They can sue your dealers?

A. Oh, yes.

Q. They can sue anybody that buys the set and uses it, can't they?

A. Yes, indeed.

898 Q. And you knew that they publicized to the whole trade that that's what they were going to do, didn't you?

A. Yes, I did.

Mr. McConnell: That's all.

The Court: Anything further?

Mr. Dodds: No further questions.

(Witness excused.)

The Court: Next witness.

Mr. Dodds: I would like to call as the next witness for the plaintiff Mr. Westermann.

The Court: All right.

DAVID WESTERMANN, called as a witness on behalf of the plaintiff and counter-defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Westermann, will you identify yourself, your address.

A. David Westerman, 10 Colorado Place, Huntington Station, New York.

899 Q. Do you have a position with any of the Hazeltine companies? And if so, will you state what it is.

A. I am Vice President and General Counsel of Hazeltine Corporation, and I am President and a Director of Hazeltine Research, Inc.

Q. And how long have you been employed by any of the Hazeltine companies, and would you state briefly what your experience with them has been.

A. I've been employed by Hazeltine Corporation since 1950. I have been General Counsel since the fall of 1961, and a Vice President, and I have been President of Hazeltine Research, Inc., since mid-December of 1963.

Q. And would you state the circumstances under which you were elected president of Hazeltine Research, Inc. —and for abbreviation I think we will just call it HRI.

A. Mr. MacFarland, Wilfred MacFarland, who was President of HRI, died in early December, 1963. And I was elected President to succeed him.

Q. Will you tell the circumstances under which you became interested in Hazeltine licensing, and particu-
900 larly royalty schedules of Hazeltine licensing for color.

A. In January, 1963, Mr. Richard Beam, the President of Hazeltine Corporation, talked to me about the discussions in HRI, and the Patent Department, about a proper method of licensing, particularly color television, and asked me if I would study the problem and advise him.

Q. And did you thereafter, in any way, participate in the development of a royalty schedule for color TV? And if so, would you describe what your activities were, what happened?

A. Yes. I made the study that Mr. Beam asked me to, and I participated under the direction of Mr. MacFarland in the evaluation of various proposals and drafts. And I gave him advice with respect to a draft which was distributed in March, and a supplement to that which was distributed to some companies in the industry, in May, prepared for distribution in early May 1963.

Q. Did these drafts of which you spoke—were there one or two or many, or what was the general score?

A. I think there were a number. I couldn't say how
901 many. There were a number before I started studying
the matter in January and February of 1963, and there
were several considered after I started my study.

Q. Do you recall a meeting in early February of '63 in which this matter was discussed?

A. Yes.

Mr. Dodds: Your Honor, I should now like to refer to a few exhibits. I included them all in a binder for convenience, and some of them will be offered from time to time, and some will be offered in a group as a result of the stipulation which was offered this morning.

902 By Mr. Dodds:

Q. And I should like to refer you, first, Mr. Westermann, to Exhibit 22—the other side, your Honor, has copies of these Exhibits—and I ask you if you can identify that Exhibit?

A. You have shown me DX 23. Is that what you want?

Q. It is 23. I had 22.

A. This is a Ruestow memo.

Mr. Dodds: I believe it is 22.

The Court: Theoretically, do I have that before me?

Mr. Dodds: Yes, it is in there, your Honor.

The Court: Listed as DX—

Mr. Dodds: Yes, as 22. No, I'm sorry.

The Court: Mine starts out as Plaintiff's 36.

Mr. Dodds: I'm sorry. I'm confused.

The Court: I know it confuses me.

Mr. Dodds: These are Defendant's Exhibits. I believe we won't have extra copies.

The Court: Well, keep that until I need it. I won't 903 be looking for something that isn't there.

Mr. Dodds: Yes, your Honor.

By Mr. Dodds:

Q. Will you refer to that and describe briefly the subject matter or the results of that meeting, Mr. Westermann.

A. This is a memorandum of a discussion held February 7th, it indicates, 1963.

Mr. Dodds: Would your Honor like to see this—

The Court: No, no. In case I want to, I will indicate.

By the Witness:

A. (Continuing.) —in which case Mr. Beam, you, Mr. Dodds, Mr. Ruestow, and I participated, considering a possible approach to the licensing problem.

I believe—I'm not familiar with the details on this memo now, but I believe it had no results directly. There were certain proposals made, and then others superseded them.

By Mr. Dodds:

Q. I think you previously mentioned a draft of March 20, '63. And I believe there has been some testimony 904 with respect to that. That is Exhibit 15.

Would you refer to that and tell us what you know about that draft, or to what extent you participated in it?

A. This was prepared basically by Mr. MacFarland, and he had advice of other lawyers, and advice from me with respect to it.

Q. And this letter, I believe it was, of March 20, Exhibit 15, what did it do? What was done with it, and what did it provide? Was this distributed to licensees, or prospective licensees?

A. I believe it was distributed to some licensees and prospective licensees, and the letter transmitted a proposed schedule of license terms for television receivers.

Q. All right. To the best of your knowledge, were any license agreements issued, including the royalty schedule set forth in Exhibit 15?

A. No, sir, not to my knowledge.

Q. Well, were there later conferences with respect to this color TV royalty schedule?

905 A. Yes. Specifically, in early May, 1963, I believe the first week, the 8th or 9th, there was a discussion of the number among a number of people concerned, and a modification to the schedule was adopted and prepared in a document dated, I believe, May 20th.

Q. Was there any particular defect or anything particularly wrong with this schedule of March 20th that was attempted to be corrected, or what was the purpose of this meeting that you mentioned?

A. The purpose of the meeting in early May, 1963 was to consider a proposal made by certain of the officials—

The Court: Officials of what—Hazeltine?

The Witness: Of Hazeltine, yes, sir; yes, your Honor.

By the Witness:

A. (Continuing.) to add an additional paragraph to this which became paragraph six in the document of May 20th. And the purpose of that was to provide a maximum

royalty for every possible patent selection by a pro-
906 posed licensee. And the way that was done was to take
the royalty—

By Mr. Dodds:

Q. Before we come to that, Mr. Westermann, was there any particular deficiency or defect in this proposed schedule of March 20th, DX 15, which anyone at the meeting thought should be corrected?

907 A. Yes. It was thought that by the addition of this
paragraph, there would be a maximum royalty for every possible selection of patents by a proposed licensee; whereas in the document here attached to the letter of March 20th, in that schedule, there were only maximums for certain selections.

Q. And in the—

The Court: Now, let me ask you, do you mean certain specific numbered patents, or a percentage, like this one for fifty per cent, two for eighty per cent, and three for one hundred per cent? Is that what you are talking about?

The Witness: In the March 20th document—

The Court: You must bear in mind that I haven't seen any of these.

The Witness: In the March 20th document, there are maxima only for certain groups of patents, specified groups.

The Court: And these are by groups rather than by patent numbers, or—

908 The Witness: The first group is a group of nine
patents and one patent application. There is—

The Court: Are these by any chance the nine patents that Zenith was interested in?

The Witness: I don't know, your Honor.

The Court: All right.

By Mr. Dodds:

Q. Do you recall in the Exhibit 15, the proposal of March 20th, what the relationship between, say, maximums for certain selected patents were with respect to maximums for the entire group? Do you remember what the maximums for the entire group were in this letter of proposal of March 20th, Exhibit 15?

A. For all of the Hazeltine patents, I believe it was $310,000, the maximum.

Q. And what relationship did that bear to, perhaps, certain selections of individual patents? Would they be more or less? Suppose the licensee—I believe the March 20th letter—

909 The Court: Are you saying 310 for a package deal; is that what you are saying?

The Witness: There was one—there was a maximum, among others, of $310,000 for all Hazeltine—

The Court: Is that what you call a package deal?

The Witness: Yes.

The Court: That's radio, monochrome, and color?

The Witness: Yes, sir.

The Court: Everything that you had anything to do with; right?

The Witness: I will have to refresh myself a moment. No. I believe it was $310,000 for all color. Then there were different maxima with respect to monochrome.

The Court: And a different maximum in regard to radio?

The Witness: This didn't provide for radio.

Mr. Dodds: I might say, your Honor, that Hazeltine dropped royalties on radio in 1955.

910 The Court: Well, that clears some air then. Thank you. All right.

By Mr. Dodds:

Q. Now, then, would you turn to the modified proposal, the one with the additional clause six, which is Exhibit 16—and I believe that was a letter of May 20, 1963, of which a copy went to Mr. Crotty of Zenith; is that correct?

A. That's what this Exhibit is, yes.

Q. And what modification in the overall scheme did that letter of proposal effect?

A. That provided an annual maximum amount for each individual patent election, referring to the royalty rates for individual patents. It went up in increments of .05 per cent, so that at each increment there was a different maximum.

Q. Would you cite a couple of examples, say an election of patents which would result in a certain percentage royalty, and then give the corresponding maximum applicable to that selection.

911 A. Well, for example, this was a supplement to the March 20th document. And one of the groups or packages in the March 20th document would be the nine color patents and the application. The rate for that would be 1.65. And the maximum would be $275,000.

But the supplemental provision six for a royalty rate of 1.65 had a maximum of $265,000.

Q. And what was the relationship in this proposal between the maximum for the overall group, what you call the package license, and the maximum for any individual patent selections?

912 A. Well, the individual patent selections start with $50,000—

Q. Well, I should say any group of individual selections. What was the relationship between the maximum for any group? Supposing you elected these nine color patents. Would the royalties then be less or greater than that for the package?

A. The maximum would be somewhat less under this provision six.

Q. Would that be true for any combination of individual selections?

A. I believe so, but I'm not sure that that is so with respect to monochrome.

The Court: Is it my understanding that as of May 20, 1963, there were only nine Hazeltine color patents?

The Witness: No, your Honor. It is my understanding that there were nine patents and one patent application considered by our engineers and patent department to be of significant value in color television.

The Court: So in all there weren't more than ten?

913 The Witness: Of significant value.

The Court: In regard to color television.

The Witness: Yes, your Honor, but I believe—

The Court: And this two-seventy-five figure is just for television patents, right?

The Witness: It is for those nine and that application; yes, your Honor.

The Court: And it has nothing to do with monochrome television patents?

The Witness: No. Monochrome television was in a different section.

The Court: That would be in addition to the two-seventy-five?

The Witness: Yes, your Honor.

The Court: All right. Now, to get this clear, or to muddy it up again, is it my understanding that for all television patents, monochrome and color, you could get them for three-ten, for every television patent you owned, regardless of what kind it was? Is that what you are telling me?

914 The Witness: I don't believe so, your Honor. It would be $310,000 for all existing and future patents within the terms of the license with respect to color, and $80,000 for the same with respect to monochrome.

The Court: All right. Thank you.

By the Witness:

A. Mr. Dodds, may I also add, so that my statements are complete, that there was a $200,000 maximum on color until June 30, 1966.

By Mr. Dodds:

Q. Well, then, just to make it perfectly clear—

A. And also maxima with respect to monochrome.

Q. Just to make it clear, these figures that you have been talking about, the $275,000 and the $310,000, what was the earliest date on which those figures would have become effective?

A. After June 30, 1966.

Q. That is spelled out in that letter, is it?

915 A. It says:

> "Until June 30, 1966, all licenses covering both patents and patent applications for use in both color and monochrome television receivers shall be subject to an overall maximum of $200,000."

Q. Was there any relationship between that and the outstanding commitment to RCA?

A. Yes, that was included because of the outstanding commitment to RCA, which has a lump sum of $200,000, and also because of a similar license to Sylvania.

Q. During this period that you have described for seeking a formula, was there ever any intention either to insist that a licensee take a package license, or to coerce him economically to take a package license?

A. Not to my knowledge.

Q. Was there just no intention, or was there an intention to the contrary, or what was the attitude of Hazeltine management at that time?

916 A. The intention of Hazeltine management, as I understood it—

Mr. McConnell: I object to their intention. I don't think that is relevant in this lawsuit.

Mr. Dodds: Intention is certainly relevant to any conspiracy that I heard of.

Mr. McConnell: No. Your intent—you are presumed to intend the legal effects of your act. And when you get into a conspiracy, it doesn't make any difference what you say your intent was.

The Court: Now, we are getting back to the good guys and the bad guys we started out with. The purity of your intentions apparently makes no difference in this kind of a lawsuit.

Mr. Dodds: Well, it depends, your Honor, whether or not there may be any ambiguity in the document. I believe it is correct to refer to the collateral circumstances to resolve that ambiguity.

Mr. McConnell: That isn't a contract.

The Court: Going back to some figures that some-
917 body threw around a while back, a few days ago,
that if you bought these individually they cost $435,000, but if you got them as a package deal, it would be considerably less—

Mr. Dodds: We have an answer to that, your Honor.

The Court: I know you probably do. But I say if that is a fact, if that were a fact, if it is not subject to some explanation that I can't conceive of at this time, that I would think that someone perhaps would be warranted in drawing an inference that, perhaps, there was an attempt to coercion to make a package deal rather than an individual.

Mr. Dodds: I don't think your Honor will recall, but that figure of $435,000—and I think there was one of $500,000 tossed around—relates to a period a year earlier than what we are talking about now. That was a draft that was submitted to Mr. Crotty in March of 1962. Now, we are talking about May of 1963.

918 The Court: I say, using those figures as an example
in regard to intent, I would say that perhaps if that were the fact, that it would not be way out to draw an inference that somebody is trying to sell somebody a package deal rather than an individual patent.

Mr. Dodds: I think that is correct.

The Court: I am not saying that is what we are talking about now. I am just giving you an indication as to how someone might arrive at what the intent was from those facts, if those are the facts.

919 Mr. Dodds: I think there was an objection to the last question.

Mr. McConnell: I object to this man stating what the intent of this company was. The Court will determine what its intent was from the facts in this case.

The Court: Well, I think I have indicated before, and I have given them some latitude in permitting them to say what their intention was, and at the same time saying that under the law it makes no difference what their intent was; so I will permit him to testify to what it was even though it makes no difference.

Mr. Dodds: Would the reporter read back the last question, please.

(Question read.)

Mr. Dodds: I guess we need the question before that, because this refers back to the preceding question.

The Witness: Well, I can—

The Court: Can you answer without going back?

The Witness: Yes.

920 Mr. Dodds: All right. Never mind, Mr. Reporter.

By The Witness:

A. It is my understanding that the intent was to determine reasonable rates for the individual patents and at the same time to be in a position to offer an over-all package to those proposed licensees who would desire, without having that over-all package price be unreasonably high and, therefore, preclude such companies' obtaining a license.

By Mr. Dodds:

Q. During this period of evolution of the royalty schedule for color licenses, do you know whether or not the Form 918 license, which I believe is Exhibit 2, Defendant's Exhibit 2, whether that was offered to any of the licensees?

The Court: In regard to color patents, you mean?

Mr. Dodds: Yes, that would cover both monochrome and color.

By The Witness:

A. During the period January 2—

By Mr. Dodds:

Q. To May 20.

921 A. —to May 20th, 1963, when I was concerned with this, Form 918 was not offered, to my knowledge.

The Court: Prior to that had it been?

The Witness: I understand it had been.

The Court: All right.

By Mr. Dodds:

Q. Now, will you turn to Exhibit DX-15, Paragraph 4(a). At the time that was drafted, what did you understand that clause to mean?

A. I understood our intent was to provide to proposed licensees the same maximum that was outstanding in the licenses with RCA and Sylvania.

Q. Did you recognize, at the time, that that paragraph might have a different meaning?

A. I did not, no.

Q. Have you since come to realize that it could have a different meaning?

A. Yes.

Q. And what were the circumstances of that?

A. On looking at it last evening because of a question

in my mind raised, I believe, listening to Mr. Crotty's
922 testimony here yesterday morning, I believe.

Q. And what—

A. And the question in my mind was whether this had been offered as a $200,000 maximum available only to a proposed licensee who would take an entire package of all our color and all our monochrome, present and future, during the term of the license.

Q. Was that the intent of that clause?

A. I don't believe it was.

Q. Were any licenses granted by Hazeltine including the clauses of Exhibit 15 prior to May 22, 1963?

A. No.

Q. If anyone had called your attention at any time to the partial meaning of that clause, what would you have done?

Mr. McConnell: I object.

The Court: That is pretty iffy, and the objection is sustained.

By Mr. Dodds:

Q. Can you tell me whether this clause of Exhibit 16 and Exhibit 15, of which there was a modification, did you
consider those at that time a final proposal of Hazel-
923 tine for a granting of licenses under its color patent,
or as an evolutionary step, or as a basis of discussion, or what did you consider that proposal to be?

Mr. McConnell: Well, I will object to that. The document is in evidence. It speaks for itself. Now, what this witness considers it to be—

The Court: All the Court considers it to be is the best offer that they had that day.

Mr. McConnell: Well, I think that is probably true. I think that is exactly what it was.

The Court: We have one in March and we now have another one in May, and I assume that if anybody had come in between March and May they would have got the March offer and if they came in right after May they would have got the May offer, and I don't know what they would have got in July, but—

Mr. Dodds: Your Honor, I think the simple answer to that is, at least in any business that I have been con-
924 nected with, is the first offer a final offer. It is usually someone makes an offer and then there is some haggling.

Mr. McConnell: That is a matter of argument.

The Court: I have had enough pretrial conferences to know that that is a fact.

Mr. Dodds: What I am asking this witness is whether they consider this a final, absolute proposal or whether they consider this, you might say, an invitation to negotiation.

The Court: Well, I would say that unless you have a stranglehold on the market everything is open to negotiation, and I will so assume without him so stating.

Mr. Dodds: Is the witness permitted to answer, your Honor?

The Court: All right, you can answer if you want to. The objection is overruled.

925 By the Witness:

A. I believe what has just been said here is correct.

By Mr. Dodds:

Q. Would you state it in your own words.

A. I believe it was an offer subject to negotiation.

Q. Now, would you look at Exhibit DX-12, which was a draft license proposal, I believe, about which there was some testimony yesterday; will you state whether or not the proposal for a license represented by that draft had been rejected or accepted before you became interested in the licensing picture?

The Court: May I have the date of this?

Mr. Dodds: This is the date of March 26, I believe, 1962, the one which resulted in the $400,000-odd figure.

The Court: All right, just so that I can identify it in my mind because, as you know, I haven't seen any of these. I am trying to keep it in my mind's eye without having seen them.

Go ahead.

926 By the Witness:

A. It is my understanding that this had been discarded before I entered the study in January of 1963.

By Mr. Dodds:

Q. Now, there were references in the defendant's pretrial brief to some criticisms which Mr. Ruestow had of certain license forms. Those are represented in Exhibits DX-24, 27 and 30.

Would you look at those? Actually, what I intended to ask you was a general question; will you state whether or not drafts, all prior in which I have been criticized by Mr. Ruestow, had been abandoned prior to the submission of the proposal of May 20, 1963, Exhibit DX-16.

Mr. McConnell: I object to that as calling for a conclusion. Whether they had been abandoned, and were they subject to negotiation with my client. I think the Court will determine whether they have been abandoned or not.

Mr. Dodds: I said they were abandoned prior to 927 May 20, 1963, the date of the last proposal.

The Court: The only evidence I have is the one that happened in May of '62 between Mr. Crotty and Mr. Ruestow, and the next one that I am aware of is this one of March 1963. Now we have another one of May of '63.

Mr. Dodds: Well, there was still another. As a matter of fact, there were many; so I asked the general question of whether or not Mr. Westermann knew whether or not all prior drafts which Mr. Ruestow had criticized had been abandoned by May 20 of 1963.

Mr. McConnell: My objection is that that calls for a conclusion on a whole branch of this case which the Court will decide.

Mr. Dodds: No conclusion about it. It is a simple fact. Mr. Westermann participated in drafting these several drafts and whether those drafts were still extant or whether they had been junked before May 20 of '63, that is the simple question.

The Court: As I understand, this March one was
928 never submitted to anybody, is that right?

Mr. Dodds: It was submitted, your Honor.

The Court: To whom—I mean to what—

Mr. Dodds: It was submitted to Zenith and it was submitted to a number of companies.

The Court: The March of 1963 one?

Mr. Dodds: Yes.

The Court: Well, then, I assume that at least in the minds of those to whom it was submitted, why, it did supplant the May of 1962 one.

Mr. Dodds: Yes. Actually, your Honor, part of Mr.—

The Court: And any intervening ones which—

Mr. Dodds: That is what I am asking, any intervening ones, whether the March 20 of '63 proposal or any prior proposals, whether or not they had been abandoned as of the time that the May 20 proposal was sent out.

The Court: I think that is—

Mr. McConnell: I can't see how we can be bound
929 by what is in this man's mind. They make certain proposals to us and whether or not they are abandoned—

The Court: I would assume that if this is a more favorable one for a licensee and a less favorable one for Hazeltine, that they have in effect abandoned them, and I will just assume that on the basis of common sense and everything else. I mean, if they are now offering in March of '63 a different proposal than they had prior to March of '63, that it is less favorable to Hazeltine and perhaps more favorable to a licensee, I will assume that, in effect, this does abandon the prior ones, and without asking his mental process or the mental process of a corporation or anything else. I will sustain the objection, counsel knowing at least what my thought processes are in regard to that.

Would this be a good time to recess, Mr. Dodds?

Mr. Dodds: Fine, yes.

The Court: We will take a short recess.

930 (Thereupon a short recess was taken, after which the following further proceedings were had herein:)

931 By Mr. Dodds:

Q. Mr. Westermann, is it your understanding that Mr. Ruestow approved the royalty schedule of the proposal of May 20, 1963, Exhibit DX 16?

A. That would be the schedule of March 20th as modified by the May 20th document?

Q. Right, yes.

A. It is my understanding that he did approve it.

Q. Would you describe briefly the relationship between the business of HRI and that of its parent, Hazeltine Corporation?

A. HRI is engaged in research and development principally in the television field and formerly the radio field and a licensing of patents in that field and does not sell any hardware products or manufacture them. It is wholly owned by Hazeltine Corporation, its parent, and Hazeltine Corporation's business, which it conducts itself, is research development and manufacture of advanced electronic equipment for military and other uses of the United States and allied governments.

932 Q. Are the products on which HRI works, that is, radio and television receivers, similar or different products than which the Hazeltine Corporation is engaged in developing and manufacturing?

A. I am not an engineer, but it is my understanding that they are very different.

Q. Do you know what the gross dollar intake of HRI was during the last audited fiscal year?

A. I am not sure I know the entire gross. There was both royalty income and interest income. I believe the royalty income was approximately five hundred thousand dollars or somewhat under that in the calendar year 1962. The interest income I am not sure of at the moment.

The Court: And the interest income comes from what, investments?

The Witness: Investments, yes, your Honor.

The Court: Is it my understanding that HRI is the one that gets the—I have got to be careful semantically, too—gets the money, and I won't say in what fashion
933 from the English patents?

The Witness: No, your Honor, that is Hazeltine Corporation.

The Court: All right.

By Mr. Dodds:

Q. It has been testified that Hazeltine Corporation, the parent, also gets money from Neutrodyne Proprietary Limited of Australia; in what form is that money received? Do you know?

A. Hazeltine Corporation is a stock holder of Neutrodyne Proprietary Limited and the money it receives is dividends declared for the stock holders.

The Court: The same as being a stock holder in the English General Electric Limited.

Mr. Dodds: Well—

By Mr. Dodds:

Q. Is Hazeltine Corporation a stock holder in the British General Electric Company?

A. No.

The Court: What is it?

934 The Witness: It has a contract with General Electric.

Mr. Dodds: That is all.

The Court: Is that all, Mr. Dodds?

Mr. Dodds: Yes, that is all.

The Court: Have you some questions?

Mr. McConnell: Yes, I do, your Honor.

Have you got that document, Mr. Dodds, that you were asking this witness about claiming that you were clearing up an ambiguity?

The Court: Which one, 15?

Mr. Curtis: 16, is it?

The Court: We have them over here, don't we, 16 and 15?

The Witness: This is 15, I believe.

The Court: The witness has something before him.

Mr. McConnell: I don't know what it is.

Mr. Dodds: The witness has those Exhibits, yes.

935 By Mr. McConnell:

Q. Is this the document that you were referring to where you said there was some ambiguity in the clause B about the maximum?

A. I believe it is, yes, this is the document, and I believe it is clause IVA.

The Court: This is the March '63 document or the March—

The Witness: March 20th, 1963.

The Court: All right.

By Mr. McConnell:

Q. It is IVA.

936 By Mr. McConnell:

Q. Now, that is the document that you were operating under up to the very time we filed this counter-claim—

Mr. Dodds: Your Honor, I object. There is no testimony that Hazeltine ever operated under that form of license schedule.

The Court: The objection is sustained to the form of the question.

By Mr. McConnell:

Q. All right. Are you a lawyer?

A. Yes, I am.

Q. Now, you were referred by Counsel to clause 4(b).

The Court: Of the same document?

By Mr. McConnell:

Q. Of this document dated March 20, 1963; is that right?

A. I thought he was referring to 4(a).

Mr. Dodds: I was going to correct that. I only asked with respect to paragraph 4(a).

937 The Court: Well, the witness has already—

Mr. McConnell: All right. 4(a).

The Court: All right.

By Mr. McConnell:

Q. All right. I show you a document which is attached to a letter signed by Mr. Ruestow to Mr. Crotty of the Zenith Radio Corporation, and ask you if that attachment there to that letter is the same document that was sent to us on March 20, 1963?

A. I believe it is.

Mr. Dodds: Mr. Westerman, could you speak up a little louder.

By the Witness:

A. I believe it is.

By Mr. McConnell:

Q. Well, can't you make it any stronger than that?

A. Well, I'm sure it is. I didn't look at it in your hands.

Q. All right. Now, that document, at least in the form of an offer, was given to Zenith Radio and remained in
938 their possession up until the time they filed their counter-claim; isn't that true?

A. I understand so.

Q. Now, you say you are a lawyer?

A. Yes.

Q. I read this statement to you, which your Counsel examined you on:

> "(a) Until June 30, 1966, all licenses covering both patents and patent applications for use in both color and monochrome television receivers shall be subject to an overall maximum of $200,000."

What in that statement is ambiguous?

A. I believe it could be taken to mean either that the $200,000 maximum could be available on any license, or it could be taken to mean that it would be available if an entire package were taken.

Q. And you say it shall be subject to an overall maximum of $200,000. That to you as a lawyer is an ambiguous statement; is that right?

939 A. Not the words "an overall maximum." That means that the royalty paid by the licensee overall would not exceed $200,000.

Q. On everything, doesn't it? Wouldn't that mean that to anybody that reads the English language?

A. On everything subject to the license. I believe the misunderstanding can come from the earlier part of the clause.

Q. All right. But the $200,000 maximum came from the RCA arrangement, didn't it?

A. The RCA and the Sylvania arrangements.

Q. Which ran until when?

A. RCA until June 30, 1966. I'm not sure—the Sylvania may have run a little longer; I'm not sure of it.

Q. Well, at least until June 30, 1966, all of these licenses were going to be an overall maximum of $200,000 because you had that arrangement with RCA; isn't that true?

A. That's true, yes.

940 Q. Now, your arrangement with RCA wasn't ambiguous at all, was it?

A. No, sir.

Q. It covered everything they had in color or monochrome, didn't it?

A. That's right.

Q. For $200,000?

A. That's right.

Q. And that's what you are referring to here.

A. Yes.

941 Q. Now, when you were looking over this thing the other night, after you had read Mr. Crotty's testimony, you saw that you were offering individual patents with maximum whose aggregate was more than this overall maximum, didn't you?

A. That's correct.

Q. That's what bothered you, wasn't it?

A. Yes. I didn't read Mr. Crotty's testimony. I just heard it.

Q. You heard it. But that's what bothered you when you got thinking about it at night, wasn't it?

A. I wanted to look at this for that reason, yes.

Q. And that was a misuse defense, and you knew it, didn't you?

A. I believe—

Q. You as a lawyer know that is a misuse defense, don't you?

A. I believe it might be misuse, if we forced a package by offering a $200,000 maximum which was substantially lower than the total of the aggregate patents.

942 Q. That's right. So you are trying to tell this court that isn't what you intended; is that it?

A. I am not aware of any intention at the time of drafting this document to accomplish that.

Q. I didn't ask you that. I ask you whether in this testimony you have been giving here about intent, your purpose wasn't to persuade this court that your intent wasn't what your document says—to offer a maximum on a package which was less than the aggregate of two or three patents.

A. I believe I have testified that the intent was not to force the taking on a package.

Q. That's what you are trying to persuade this court, isn't it?

A. Yes.

Mr. McConnell: Pardon me while I sit down a moment, your Honor:

The Court: You may interrogate from there, if you choose, Mr. McConnell.

Mr. McConnell: No, it isn't necessary to do that. I 943 just want to go through this document.

By Mr. McConnell:

Q. Mr. Ruestow was advising you legally, or the members of your company, the officials of your company, on what he thought was misuse, wasn't he?

A. Yes, sir.

Q. And he was writing memoranda from time to time?

A. Yes, sir.

Q. Did you see his memoranda?

A. I saw some of his memoranda.

Q. You have seen them all, haven't you?

A. I have now seen all—

Q. You have now seen all of them?

A. Yes.

Q. I call your attention to his note and comment in Defendant's Exhibit No. 27, in which he discusses the package license and the larger amounts of individual licenses. And under five, he makes this comment which I call to your attention.

944 Mr. Dodds: Exhibit 7 is a letter to myself from Mr. Binns—

Mr. McConnell: 27, I said.

The Court: Let him find it.

By Mr. McConnell:

Q. Here is his comment:

> "So what have we gained for the risk of misuse charge. The whole thing is still apt to be viewed for just what is intended—a transparent attempt to force them into a package."

Now, is Mr. Ruestow missating your intent?

A. I don't know what document he is referring to her.

Q. I didn't ask you that. Read the question to the witness.

Mr. Dodds: Your Honor, I object to that. Mr. McConnell has been quizzing the witness about his intent on the Exhibit, Defendant's Exhibit 15. The witness says he doesn't know whether these comments refer to that or not.

945 The Court: I think it is a fair response. I sustain your objection.

If you want to pin him down to this or to something else —I don't know what Mr. Ruestow was looking at when he wrote the memo.

By Mr. McConnell:

Q. All right. I will read the first comment, the one preceding that—and I take it you have read these; you are familiar with these notes; is that right?

A. I believe I have, yes.

Q. (Reading.)

> "Questionable that it baits them to take the whole package."

Now, that's what you were afraid of in this document, isn't it, when you realized the effect of it here in court, that offering the package at a lower rate, the whole package, with everything in it at a lower rate than the aggregate maximums of two or three patents was subject to the interpretation that that baited us into taking the entire package; isn't that correct?

946 A. I would be concerned about the language that we were just speaking about in Exhibit 15, I believe, if the effect was to—in effect a refusal to offer less than the total package. I would be concerned about it.

947 Q. You would be concerned about it because it baited us into taking the entire package through economic necessity; isn't that true?

A. If it had that effect, yes.

Q. Yes.

The Court: Can somebody, for the purpose of my benefit, give me the date of Mr. Ruestow's comments. Do you have that?

Mr. McConnell: Yes, I can give you that.

The Court: I mean, that might help me determine whether he is talking about a document from 1955 or—

Mr. Dodds: This document, your Honor, isn't dated. I don't believe anybody can give the date, unless it is Mr. Ruestow.

Mr. McConnell: I guess we can't give you the date, your

Honor. I would like to—we do have this testimony that he did talk about this with the officials of the company.

Mr. Dodds: Yes. But there is no testimony whatever relating this document to Exhibit DX 15.

948 The Court: I guess the best you can do, under the circumstances, is to determine whether or not—

Mr. Dodds: Your Honor, we are going to put Mr. Ruestow on the stand, and he will clarify this and will identify these notes and to what he was referring when he wrote—there is a series of these notes, as you may recall, from the plaintiff's briefs.

Mr. McConnell: That's all right. I just want to cross examine this witness. He says his intent is something entirely different from this. Mr. Ruestow doesn't agree with that.

Mr. Dodds: That's not true, Mr. McConnell. Mr. Ruestow so far, on the record, hasn't made any comment on Defendant's Exhibit 15.

The Court: Well, let me ask this question, since it doesn't occur to anybody else.

If his comments in regard to this offer was based on 949 this offer, would you say that that is a fair comment?

If his comment is based upon this—what is it, document 15—

Mr. Dodds: Exhibit 15, the March 20th offer.

The Court: Would you say that that—

The Witness: I would say it would be fair if—

The Court: Other than the use of the word "bait" and that sort of thing. I mean the purport of it.

The Witness: I believe that we should not force—

The Court: Well, I think we have solved that one, maybe. Now, it is just a question as to when he made the comment.

Mr. McConnell: Well, his comment is here:

"So what have we gained for the risk of misuse charge."

The Court: Well, I assume that this witness adopts that too.

950 Mr. McConnell: (Reading.)

> "The whole thing is still apt to be viewed for just what we intended—a transparent attempt to force them into package."

By Mr. McConnell:

Q. Now, the "we intended" means your organization, doesn't it?

A. Well, your Honor, I don't accept that interpretation or comment on the document.

Q. I know. You have been telling us that your intent is something different.

Mr. Dodds: Your Honor, I request that Mr. McConnell stop misconstruing and distorting the witness' word. He says he has no way of tying in this document about which he is being examined, Defendant's Exhibit 15, the March 20th offer.

The Court: I'm aware of that.

Mr. Dodds: And Mr. McConnell keeps trying to shift back and refer everything in this—the witness' comments to Exhibit 15. So far, there is no relationship.

951 The Court: I thought I had an answer to a question that if his comment was in regard to Exhibit 15, would he consider that a fair comment.

The Witness: Your Honor, then I would want to say no, because I think the language I have referred to in Exhibit 15 was mistaken.

The Court: All right. Then that is your new answer. That is your new answer. All right.

If you didn't understand the question before and you want to change your answer, you of course have a right to straighten out the record.

The Witness: Yes, sir.

By Mr. McConnell:

Q. Now, do you recall that there was a proposal at one time, which the court referred to awhile ago, of fifty per cent for one license, for one patent, eighty per cent for two, and one hundred per cent for three or more?

A. I have heard that, yes.

952 Q. Well, will you go along with me that there was such a proposal at one time?

A. Yes, sir.

The Court: Would anybody care to place that in point of time?

Mr. Dodds: Your Honor, I believe that went back many years, back to about 1958 or, '9, I believe. And I believe it was only with respect to monochrome, where there were only a few applicable patents.

The Court: All right. Fine. That solves that one.

Mr. McConnell: It doesn't solve it to my satisfaction, your Honor, because—

The Court: I mean, it answers my question. If you can get a different answer, why, fine.

Mr. McConnell: We had Mr. Crotty testifying about that. He testified it was being offered to him shortly before this controversy arose, after these patents expired.

The Court: Well, that would be '58 or '59, wouldn't it, which is what Mr. Dodds said.

953 Mr. McConnell: Well, I confess I haven't got the date in mind.

The Court: All right.

Mr. McConnell: I guess we are talking about something we can clear up.

The Court: Good.

Mr. McConnell: Well, anyway, I would judge from these comments that it was after the controversy with Zenith that this memoranda was written—

The Court: You can argue that, but it would be better if you had some evidence to support the argument.

Mr. McConnell: Well, I'm going to read it right now.

The Court: Go ahead.

Mr. McConnell: This memorandum:

> "Problem was to make it attractive to take package so there would be no suits—without misuse.
>
> "Misuse is still with us and Zenith will hang us.
>
> "Loew affirms Securit."

Mr. Dodds: Which document are you referring to,
854 Mr. McConnell?

Mr. McConnell: I haven't left the one document at any time. I was reading from Defendant's Exhibit No. 27. And he says he is familiar with it; he has read it; he has seen it.

Mr. Dodds: I might say, your Honor, there has been some confusion introduced, because there are two entirely separate memos of different dates which have been clipped together as Exhibit 27. So you would have to know which one he is talking about for reference.

The Court: Of course, what confuses me is a few minutes ago you told me there weren't any dates on any of them.

Mr. Dodds: No dates. But I say they refer to different events.

The Court: I don't know how you know that there are different dates as you indicate.

Mr. McConnell: Well, what I indicated, your Honor, was that this has to refer to a time after the controversy with Zenith.

The Court: I would say that there is circumstantial
955 evidence that you can draw an inference from, which is better than what we had before, which was nothing.

Mr. McConnell: Well, you see, it refers to the misuse in Zenith.

The Court: I understand what you are talking about, and I think maybe you agree that that is more than you had when you read that.

Mr. McConnell: I think so.

The Court: All right.

By Mr. McConnell:

Q. Now, his comment is that where the individual patent—and I am paraphrasing here, but you can correct me if I am wrong—where the individual patents are offered at an aggregate maximum over the package maximum, his comment is this:

> "Economic blackmail toward package no matter how you slice it."

Do you agree with that or not?

A. I don't know what he is referring to, but I—

Q. Well, I gave you—assuming my analysis and
956 paraphrasing of it was correct, I told you what he was
talking about, which was where the aggregate of the
individual patents and a small number of them less than
the package reaches a larger amount than the maximum
under the whole package, whether or not his comment—
"Economic blackmail toward package no matter how you
slice it"—is one that you agree with—

Mr. Dodds: Your Honor, I object. That is a hypothetical statement, unless this statement is related to some particular proposal.

Mr. McConnell: No. I am talking about his intent. Now, he is trying to tell your Honor that—

Mr. Dodds: Intent with respect to what?

Mr. McConnell: He intended something that didn't appear from this document.

Mr. Dodds: He has referred to intent only with respect to Exhibit 15. There has been nothing to tie up any of these comments with Exhibit 15.

Mr. McConnell: I don't have to tie it up with Exhibit

15. I am cross-examining him on his intent, what he
957 knew about this—.

The Court: I think the witness has already indicated on another occasion, and perhaps with regard to this frivolity, that Mr. Ruestow's language is more picturesque than the language this witness uses in regard to this situation. And he has refused to adopt his picturesque language in regard to other matters and prefers perhaps not to do it at this time.

958 By Mr. McConnell:

Q. All right. On this proposal that was sent to Zenith under date of March 20th, 1963—

Mr. Dodds: That's 15.

By Mr. McConnell.

Q. You had an over-all maximum at that time, including everything that you had in color or monochrome, of $200,000; isn't that correct?

A. Yes.

Q. Now, on this Exhibit 15 you had a table which set forth the sum of percentage rates for individual patents elected. And the total of all of these patents, if you took the individual maximums, reached $305,000, didn't it?

A. I don't follow that. Is that with the supplement of May 20th?

Q. Yes. This is the table.

Mr. Dodds: That's not the March 20th letter, though. That is the May 20th letter.

Mr. McConnell: This is May 20th.

The Court: Well, this is a new document. Let's get the record straight.

Mr. McConnell: All right. I am talking now about
959 Exhibit—Defendant's Exhibit No. 16.

The Court: All right.

The Witness: Yes.

By Mr. McConnell:

Q. Well, now, at that time your maximum was still going to be $200,000. That was going to be the maximum until June of 1966, wasn't it?

[illegible] That's correct.

Q. So that your maximum was $200,000, but the aggregate of the individual maximums in this package was $305,000; isn't that right?

A. That's right, yes.

Q. And you could pick two patents out of this package which would aggregate more than $200,000, couldn't you?

A. Yes.

Q. So that there was an economic coercion to take the package up as far as May 20th, 1963, wasn't there?

A. If that paragraph that I referred to as being mistaken was enforced, as a means—if that was offered only as an offer for an entire package, and it were enforced, you are right, yes.

960 Q. Well, you said in your prior letter that it was open until June of 1963, didn't you?

A. Yes. But I believe it was a mistake.

Q. Oh, it was a mistake?

A. Yes.

Q. You never wrote Zenith and told them it was a mistake, did you?

A. It never occurred to me until last night.

Q. Well, did you or didn't you?

A. No.

Q. I show you a document which is marked in evidence here as Defendant's Exhibit 22, under date of February 8, 1963. Did you prepare this document?

A. I did; yes, sir.

Q. On the bottom of Page 1, you state:

"All patents other than the two basic ones called 'insignificant patents' would be offered only as the monochrome B package. An attempt is to be made not to license them at all. However, if it becomes necessary to license them because an applicant for the basic 961 patents would not take them without such assurance against Hazeltine infringement, then the insignificant patent package would have to be available to any responsible manufacturer.''

What do you mean by the insignificant package?

A. That would be the package of patents other than those considered to be valuable in television by our engineers and patent department.

962 Q. They were still patents on which they needed insurance value, is that it?

A. No, the idea there was that if a prospective licensee wanted all of the patents, they would—we would make them available.

Q. Well, you say:

> ''It became necessary to license them because an applicant for the basic patents would not take them without such insurance against Hazeltine infringement.''

A. Because it was my understanding that some prospective licensees, if they took a license at all, would want to be covered by all Hazeltine patents present and future during the term of the license.

Q. In other words, somebody that didn't know what you knew, that they were insignificant, thought that they had some significance, but really they didn't, is that it?

A. No.

The Court: You would consider those radio patents on which you hadn't charged royalties since 1955 insignificant patents?

963 The Witness: I don't know, your Honor, whether any of those patents are also included in this group.

The Court: But, I mean, if you hadn't charged royalties on them since 1955 they could fairly be called insignificant, couldn't they?

The Witness: Yes.

The Court: And would they be thrown into this package deal?

The Witness: I am not sure about that. What I believe that this would be any Hazeltine patents in its entire inventory that might have any value in television.

The Court: All right.

By Mr. McConnell:

Q. Then you say:

> "In addition, if for reasons peculiar to his own requirements, a particular licensee desired any one or more but not all of this package of insignificant patents they would be offered to him, assuming that we had already been obligated to license any of them
> 964 as indicated above. But the rates for each patent would then be a custom-made rate based and negotiated on his particular requirements (on the basis that in an over-all industry sense the patents are virtually worthless separately)."

It wouldn't mean that they are worthless separately but they are worth a lot more when they are in a package.

A. What I mean there is that in the sense of contributing to performance or to cost savings in a television—

Q. Don't you mean this, really, that you couldn't license the individual patents alone, but if they borrowed some strength from some of your other portfolio you might get a license for them; isn't that what you mean?

A. I did not mean that.

Q. You don't mean that?

A. No.

Q. That isn't what that language means?

A. No, sir.

965 Q. Then you say:

> "It would be contemplated that if the package of insignificant patents is taken by a licensee of one of the basic patents for insurance purposes—"

What do you mean by that, so he won't get sued?

A. Yes, if a prospective—

Q. So you wouldn't sue him on those insignificant patents, is that it?

A. If a prospective licensee wanted to take all the patents for insurance or other purposes, we would make them available.

Mr. McConnell: That is all.

The Court: Anything further, Mr. Dodds?

Redirect Examination by Mr. Dodds.

Q. Mr. Westermann, still referring to Exhibit 15, as modified by Exhibit 16, the March 20th letter as modified by the May 20th letter, you have referred to Sylvania; did Sylvania have an overall maximum $200,000 clause attached to its license agreement?

966 A. Yes, sir.

Q. Did it have a package license in monochrome television receivers?

A. No, sir. The $200,000 was in a side letter.

Q. Well, it formed a part of the license agreement, did it not?

A. Yes.

Q. Was it the natural operation of those letters or of any Hazeltine plan that the $200,000 maximum operate concurrently with these other royalties coming to a higher figure or did they operate in sequence?

A. The $200,000 would be the maximum that would—

the other maximum would not apply until June 30, 1966, if I understand your question.

Q. So they were effective in sequence rather than simultaneously?

A. Yes.

Q. When did you first see Mr. Ruestow's memos of Exhibits 24, 27 and 30?

A. These handwritten notes I saw several weeks ago
when Mr. Ruestow handed me a folder which he said
967 contained copies of the documents obtained by Zenith
on the discovery proceedings.

Q. Was that the first time that you saw them?

A. The handwritten notes, yes.

Q. Or any copies of them?

A. That is right.

Mr. Dodds: That is all.

The Court: All right, thank you.

Mr. McConnell: I have no further questions, your Honor.

The Court: What?

Mr. McConnell: I have no further questions, your Honor.

The Court: That is all then.

(Witness was excused.)

Mr. Dodds: I would like to call Mr. Ruestow.

The Court: I think he has been sworn.

Mr. Ruestow: I have been sworn.

968 EDWARD A. RUESTOW, witness called on behalf of the plaintiff and counter-defendant, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Ruestow, will you refer to Exhibit DX 24, comprising a series of your notes, and I ask you whether in writing those notes that those notes were made with reference to any particular document?

A. I think I testified earlier that they were made with reference to the memo that I sent to Mr. Wilson—pardon me, with reference to your memo to Mr. Wilson back in—

Q. Was that Exhibit 3? You might check Exhibit 3 and see if that is the document to which you refer?

A. Yes.

969 Q. Do you know what disposition was made—

The Court: Can you give me the date on Mr. Wilson's thing, whatever that is?

The Witness: That is December 14th, 1961, your Honor, and my notes would have been a few days after that.

The Court: All right.

By Mr. Dodds:

Q. Do you know what disposition was made of the recommendations in that memorandum of Defendant's Exhibit 3?

A. Yes, I do.

Q. What were they?

A. They were abandoned. I had a conference with Mr. Wilson and Mr. LaFollette concerning my ideas as expressed in Exhibit 24 and those of your memorandum, Defendant's Exhibit 3, were abandoned because they agreed with me, and from there on I was authorized to begin to formulate a new plan.

Q. Now, will you refer to Exhibit 27, and particularly Pages 1 and 2, and will you review your notes there and tell the Court to what document or proposal or arrangement those notes refer?

970 A. They refer—

Mr. McConnell: What document have we got now, 27, is it?

The Court: 27.

Mr. Dodds: Pages 1 and 2 only.

The Court: Those also were handwritten notes, is that right?

The Witness: That is right. We are on Exhibit 27.

By Mr. Dodds:

Q. The first two pages only.

The Court: What is the pending question?

Mr. Dodds: I asked him to what document or proposal, if any, those notes referred. These notes comprise some critical comments.

The Court: I understand.

By the Witness:

A. There was confusion in the copying so I must check these carefully. The first two pages—well, with reference to—

Mr. McConnell: What is the witness referring to, if I may ask.

The Witness: Exhibit 27.

971 Mr. Dodds: Exhibit 27, the first two pages.

The Court: He is reading from something else.

Mr. McConnell: He is reading from something else.

The Witness: These are my personal notes made in the hotel to keep in mind what these exhibits were all about.

Mr. McConnell: Well, I object to the witness testifying from notes. He has not exhausted his recollection or anything.

The Court: Your objection is sustained. Put the notes away until such time as they become necessary to refresh your recollection.

The Witness: Very well.

By the Witness:

A. Are you asking me about the first two pages of Exhibit 27?

By Mr. Dodds:

Q. Right.

A. These refer to a proposal that you had made about January of 1963.

Q. Would you refer to Exhibit 34-A and see if there is any relationship between that exhibit and the
972 memorandum of mine to which you referred.

A. 34-A?

Yes, 34-A is the proposal that I had in mind, because 34-A is a memorandum of yours to Mr. MacFarland.

973 Q. Under what date?

A. Dated January 24, 1963.

Q. And what disposition, if you know, was made of the recommendations contained in that Exhibit 34-A?

A. They were abandoned.

Q. Now, will you refer to pages three and four of Exhibit 27, and I ask you to what proposal or documents, if any, those two pages relate?

A. Pages three and four? Do you mean—

Q. Of Exhibit 27. If you look—look at the photostat copies. The four pages were all clipped together as 27.

A. All right.

Q. I believe in your original longhand notes they were two separate documents.

A. I see. Yes. Now, what was the question?

Q. The question was, with respect to pages three and four of Exhibit 7, to what document or proposal, if any, do pages three and four of that Exhibit refer?

A. I think you meant to say 27.

Q. Exhibit 27, pages three and four.

974 A. They refer to the same proposal that you have made in Defendant's Exhibit 34-A.

Mr. McConnell: Now I object to cross-examining his own witness.

The Court: The objection is sustained to Counsel testifying.

Mr. Dodds: All right.

By Mr. Dodds:

Q. Will you refer to Exhibit 30, Mr. Ruestow, and that is your longhand notes of March 10, 1963.

A. Yes.

Q. And will you state to what, if any, proposal or document those notes refer to?

A. Those referred to some preliminary drafts which preceded the letter sent out May 20th—I think March 20th, at least the document that was referred to—

The Court: March 20th of 1963?

The Witness: March 20th of 1963.

975 By Mr. Dodds:

Q. As Exhibit 15. Will you check and see if that is Exhibit 15?

A. Yes.

Q. To your knowledge, had any concern signed a license including the schedule royalty rates of Exhibit 15 prior to the memorandum of May 20, 1963, Exhibit 16?

A. No one had signed it.

Q. Mr. Ruestow, did you, at any time, have any concern about whether or not the license agreement form 918 presented a problem of misuse when applied to color? And that is Exhibit 2 in the binder, in case you want to refer to it.

Mr. McConnell: I object to whether this witness had any concern about it. I don't see how that defenses this thing.

The Court: Well, we have heard about his concern about other documents, Mr. McConnell. We will see if he had any concern about this one.

The objection is overruled.

976 By the Witness:

A. Am I to answer?

By Mr. Dodds:

Q. Yes.

A. I believe I testified earlier that I had no concern about this agreement 918 as such.

I believe I indicated that it presented to me some problems that I thought had to be solved and could not be solved by this instrument.

977 Q. Were those problems primarily legal problems or economic problems or both?

A. It was a combination of both, but mainly economic.

Q. At any time, did you or your associates reach a decision not to offer licenses under form 918 any longer?

A. Yes.

Q. When did you reach that decision?

A. Shortly after the memorandum that I wrote to Mr. Wilson to which we referred earlier; I have forgotten the Exhibit number.

Q. Would you refer to Exhibit 23 and see if that is the document which you had in mind?

A. Yes.

Q. And you say your decision not to use form 918 any more—was that approved or disapproved by Mr. Wilson?

A. It was approved. I urged upon him that we should no longer use 19.

The Court: 918, you mean.

The Witness: Yes, 918, and he approved my recommendation.

978 By Mr. Dodds:

Q. Did you ever offer Mr. Crotty or the Zenith Radio Corporation a license in the form of 918?

A. No.

Mr. McConnell: I move to strike that. I didn't have a chance to get an objection out, but that is going to be a conclusion, I think, that the court will have to determine from the testimony.

The Court: Well, that testimony will be his denial plus whatever else there is.

The objection is overruled.

By Mr. Dodds:

Q. Mr. Ruestow, I would like to refer you to page twenty-one of the Defendant-plaintiff's brief in which they quote a portion from your report to the Board of Directors of April 17, 1963, which is Exhibit DX 31, which you might want to refer to.

A. 21, did you say?

Q. 31.

A. Yes, I have it.

979 Q. Do you find that in the portion quoted in Zenith's trial brief?

A. You mean this portion quoted at the top of page twenty-one?

Q. Yes.

A. Yes, I find it here.

Q. Now, that statement in your report to the Board of Directors of Hazeltine Corporation, will you state whether that represented an analysis of your views or an analysis of Zenith's charges or something else?

A. An analysis of Zenith's charges.

Q. Now, Mr. Ruestow, there has been some repeated reference to the Hazeltine "standard" license agreement; do you have any statement with respect to whether there is or is not such a "standard" agreement?

Mr. McConnell: I object to that as calling for a conclusion of the witness, whether or not there is a "standard" agreement. The court will determine that from the facts in this case.

980 Mr. Dodds: This is utter nonsense.

The Court: That term appears throughout the trial from various witnesses. I think what you are asking now, based on your question, is, is there as of this moment a "standard" agreement, and you haven't asked him if there ever was. The objection is sustained to the form of the question. Whether there is or is not now does not make a great deal of difference.

By Mr. Dodds:

Q. Would you answer the question, Mr. Ruestow?

The Court: I sustained the objection to the form of the question. You put it in the present tense as to whether there is one now and that is why I sustained the objection.

Mr. McConnell: Well, I object to that, if the court please, because Mr. Dodds has been very meticulous in limiting me up to the time of this counter-claim.

Mr. Dodds: I was going to amend it, your Honor,
981 myself. I was going to limit it to the period of March to May 1963, whether at that time there was anything that could be termed a "standard" license agreement.

The Court: Well, I think he ought to tell us what agreement, if any, was available, and then perhaps the court ought to decide if that is what could be called a "standard" agreement.

Mr. Dodds: All right.

982 By Mr. Dodds:

Q. It is your understanding, Mr. Ruestow, that the term "standard" with reference to "agreement" has been used to refer to the document form 918, Exhibit 2—you might like to refer to the agreement.

A. That is the way I understand it. I have read the word a number of times.

The Court: That is what you assumed was being talked about when that phrase was used, is that it, "standard agreement"?

The Witness: Certainly when I have been on the stand before, yes.

The Court: All right.

By Mr. Dodds:

Q. Tell me, were license agreements issued by Hazeltine ordinarily in the form of a printed document like that alone, or were they in the form of a printed document with a number of amendatory letters?

Mr. McConnell: Well, I will object to this. If we are going to get into what licenses they have issued and the terms of them, I think we are entitled to have the
983 copies out of their files as to what they are.

Mr. Dodds: They have had all of those copies, your Honor.

Mr. McConnell: I know, but I object to your characterizing what they are with the oral testimony of a witness.

Mr. Dodds: These are documents and I am going to put them in evidence and show what they are.

The Court: I sustained the objection to the form of the question and I suggest that perhaps you have him identify these on Monday morning.

Mr. Dodds: All right, sir.

The Court: And prefacing my remarks this way, that I personally don't care when you get through with this lawsuit, but maybe those standing in line behind you do, are you in a position to give me a suggestion and not a commitment as to when it might conclude.

Mr. Dodds: I would expect to be through some time Monday, your Honor, with the counter-defendant's

984 case. I don't know about rebuttal.

Mr. McConnell: Well, I don't think there will be any more than a half a day of rebuttal at the most.

The Court: Am I going to be rewarded with a forensic display here at the conclusion of the—

Mr. McConnell: Well, I was going to suggest that—I know that your Honor is not very anxious to listen to lawyers in forensic displays.

The Court: I have never listened to you and I think that is a privilege that I should no longer deprive myself of, Mr. McConnell.

Mr. McConnell: I am perfectly willing to meet your Honor's suggestion.

The Court: That doesn't excuse you from writing a post-trial brief.

Maybe Mr. Curtis can just take the record and say that this is the post-trial brief of Mr. McConnell's.

Mr. Dodds: May I offer a suggestion, your Honor?

The Court: Yes.

985 Mr. Dodds: At least from Hazeltine's point of view, I think that the most satisfactory way would be to file post-trial briefs with exhibits which your Honor has not had the benefit of and then to have a final argument if you wish it after the briefs are in.

The Court: Well, while the evidence is fresh in my mind, I would like to, perhaps, hear something in regard to each of your theories as to what the evidence shows in regard to the question of conspiracy.

Mr. McConnell: I will be ready to argue.

The Court: I mean the proof of the conspiracy.

Mr. Dodds: Well, actually, your Honor, I think our pretrial did that. At the conclusion of the trial it will not be possible, I believe, immediately after the trial, to give transcript references to the testimony.

The Court: I understand that and I anticipate that—

986 Mr. Dodds: But I think our pretrial brief has stated our position fully. It is very simple. There is nothing but contractual relationships. I don't know that that could really be amplified very much. Your Honor hasn't had an opportunity of examining the documents themselves up to this time.

The Court: Unless you feel that some of the evidence is not what you anticipated it would be at the time you wrote the pretrial brief. I don't know what your feeling is in regard to that.

Well, we will go into that Monday.

I would say that I could safely tell those that follow that they might proceed at least by Wednesday morning of next week and possibly by Tuesday.

Mr. McConnell: Well, it has always been my experience, for what it is worth, that while the evidence is fresh in all of our minds, that a great deal of benefit can be gotten out of an oral argument, not only in the statement, but—

987 Mr. Dodds: Excuse me, could Mr. Ruestow be excused? He has to catch a train.

The Court: Yes.

The Witness: Thank you, your Honor.

Mr. McConnell: Questions that might be asked that are in the Court's mind could—

The Court: Well, it might be that at that time I could propound some questions and indicate to you what is bothering the Court at the time, which might help you in preparing your post-trial briefs.

Mr. Dodds: I think that would be very helpful, your Honor.

Mr. McConnell: I would appreciate an oral argument.

The Court: Well, then, I feel safe to say that you won't be here Wednesday.

Mr. McConnell: I think not, your Honor.

The Court: Which is cutting a three-week trial down pretty good.

Mr. McConnell: Although I think that if we are going to have any oral argument that I would want about an hour and a half.

988 The Court: I am not going to limit you. All right.

(Thereupon an adjournment was taken to 10:00 a.m., on Monday, February 24, 1964.)

989 * * (Caption—59-C-1847) * *

Before the Hon. Richard B. Austin,
Monday, February 24, 1964,
10:00 o'clock, a.m.

The trial was resumed pursuant to adjournment.

Present:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow.
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

990 The Clerk: Case on trial.

EDWARD A. RUESTOW, called as a witness on behalf of the plaintiff and counter-defendant, having been previously duly sworn, was examined and testified further as follows:

Direct Examination by Mr. Dodds (Continued).

Q. Mr. Ruestow, I believe at the close of your testimony we were discussing the Form 918 license, Exhibit 2, which has been referred to as the so-called "standard" license, and I should like to ask you whether in your experience you found that that license was generally issued to licensees alone or with amendatory side letters.

A. Oh, yes. In the great majority of the cases it was issued with various side letters.

Q. I show you several documents which I hereby identify as Plaintiff's Exhibits 52 through 55 for identification and ask you if you can identify those.

A. Yes.

Q. What are they?

991 A. They are correspondence between the plaintiff Hazeltine Research, Inc., and the Magnavox Company of Tennessee, and they were letters in connection with the 918 agreement.

Q. Would you look them over and just state briefly the subject matter to which those amendatory letters relate.

Mr. McConnell: Well, I object to that, if the Court please. The documents are the best evidence of what they state, what they relate.

The Court: That is true, but it may be that some part of these documents are of no consequence, and if there is something in here that Mr. Dodds wants to call my attention to, I am going to let this witness call my attention to it regardless of the fact that the document does speak for itself.

Mr. Dodds: It was no intention to modify the document, your Honor, it is just a question of briefing you without having it read through this. It is just generally the subject matter to which they relate.

The Court: This is sort of an abstract.

992 Mr. Dodds: Just an abstract.

The Witness: Shall I proceed?

The Court: Yes. The objection is overruled.

By the Witness:

A. The first page, which is Exhibit 52, has to do with the limitation of the 918 agreement previously issued to Magnavox, limiting it to the two patents, the Wilson patent and the Loughren patent, L-o-u-g-h-r-e-n.

The Court: That is the patent in suit?

Mr. Dodds: Yes, your Honor.

By the Witness:

A. The second document, Exhibit 53, as I recall, had to do with some accounting problem involving the sales of sets to distributors, or perhaps it was the fact that there were no distributors in the Magnavox case, something like that. I am not quite sure of the detailed facts.

The third document, Exhibit 54, as I recall, was an amendment of the first document, Exhibit 52; and in this case limited to license to the Loughren patent alone.

The last document, Exhibit 55, again has to do with
the problem to which I referred in connection with
993 the Exhibit 53 concerning the sales of sets to distributors.

994 Mr. Dodds: I should like to offer in evidence Plaintiff's Exhibits PL 52 to 55, the documents identified by the witness.

The Court: They may be received.

(The said documents so offered and received in evidence, were marked PLAINTIFF'S EXHIBITS NO. 52 to 55 inclusive.)

By Mr. Dodds:

Q. Mr. Ruestow, are you familiar with the agreements between Hazeltine Corporation and AGA, and Hazeltine Corporation and the General Electric Company Limited of England, pursuant to which Hazeltine Corporation acquired a right to certain of the inventions of those two companies?

A. Yes. I am familiar in a general way with the agreements.

Q. Did you make an investigation of the patents on the inventions which Hazeltine Corporation had acquired pursuant to those agreements?

A. I did.

Q. And did you find among those patents any
995 which, in the opinion of Hazeltine Research, or any of its offices, applied to commercial television or radio receivers?

A. I found none.

Q. To the best of your knowledge, did Hazeltine Research, Inc. ever send out any infringement warning letters with respect to any of the patents in those groups?

A. None was sent out during my period of time with Hazeltine, that I know of.

Q. You have heard Mr. Crotty testify about his discussions with you commencing in the fall of 1961, have you not?

A. Yes.

Q. Did you make any notes contemporaneously with those discussions?

A. Yes.

Q. I show you a document and ask if you can identify it? And this, for the purpose of identification, is Exhibit PL 62. Mr. Curtis was supplied with a copy of that.

Can you identify that document?

996 A. Yes, they are my handwritten notes.

The Court: May I interrupt for just a minute.

Mr. Dodds: Surely.

(The Court gave attention to other matters on the call, after which the following further proceedings were had herein:)

997 The Clerk: Case on trial.

By Mr. Dodds:

Q. Mr. Ruestow, you had just identified Plaintiff's Exhibit 62 for identification; would you just abstract briefly the subject matter of that series of notes?

Mr. McConnell: Well, I will object to his abstracting a series of notes.

The Court: Yes, the objection is sustained. He may—I assume that this is rebuttal testimony to Mr. Crotty, is that right? Is that what it is?

Mr. Dodds: In part, yes. It is partly our affirmative position and it is in part a rebuttal of Mr. Crotty's testimony.

The Court: Yes, but as I understand it, what you are asking for now—these are notes taken at the time of Crotty's conversation with him?

Mr. Dodds: That is right..

I will withdraw the question.

By Mr. Dodds:

Q. Will you please read the notes, Mr. Ruestow. They are not very long.

998 Mr. McConnell: I object to his reading his notes. If he wants to use notes, he has got to exhaust the witness' recollection of what he remembers.

The Court: That is exactly what my ruling was going to be, and your objection is sustained.

When I find out that he no longer remembers that conversation, he may use those notes, if they do refresh his recollection, for that purpose and for that purpose only, but there is no evidence yet that he does not remember it without the notes.

By Mr. Dodds:

Q. All right, Mr. Ruestow, will you tell your recollection of those discussions with Mr. Crotty, referring to Exhibit 62 only to the extent necessary to refresh your recollection as to specific dates or specific statements.

Mr. McConnell: Well, I object. He hasn't exhausted his recollection.

The Court: The objection is sustained. There is no evidence that he does not remember it without looking at a note, Mr. Dodds.

999 Mr. Dodds: Well, I said only to the extent necessary.

The Court: Well, let's find out whether it is necessary at all. Maybe if those are put back on the table he will remember it perfectly. I don't know what kind of recall this witness has.

By Mr. Dodds:

Q. All right, Mr. Ruestow, will you state what you remember of those discussions?

A. These discussions went on over a period of perhaps six months. I recall they started at a luncheon that I had with Mr. Crotty in the early fall of 1961. I recall it because it was a day that I was in this court for a calendar call because Mr. Dodds was away on vacation and I answered the calendar call, or perhaps it was a motion of some kind. I used the opportunity of coming to Chicago to have luncheon with Mr. Crotty to explore whether we could get together on a license agreement in the area of color television.

The Court: Do you remember what year, what month this was?

The Witness: I think I already indicated, your 1000 Honor, that it was the fall of 1961.

The Court: All right.

1001 By the Witness:

A. (Continuing.) and perhaps sometime around August.

Mr. Crotty, at that luncheon, indicated that he wished a license under only patents which he would select. He did not wish a package license, in other words.

I told him that we would certainly work out an agreement to give him whatever he wanted.

I think that is about all that I recall of that conversation. From there on I went home to think out the problem and made some conclusions of my own, and at a later date we had further conversations.

There was one in Little Neck at my office when he came to study the papers in our files for purposes of discovery in this case; pretty much the same sort of exploratory discussions happened then.

I recall he went over the list of some ten patents that I had identified as having application to the Zenith color television receivers.

1002 He indicated to me that some were not applicable.

I told him at some point in this long series of conversations, many of which were by telephone, that the old form of license agreement, namely, this 918 agreement, was no longer available, because we had decided to abandon it. I had decided to abandon it in my own mind at an early date, perhaps the date of our first conversation here in Chicago, and to recommend it to my superiors, which I did, in the memo to Mr. Wilson referred to earlier in my testimony, and immediately thereafter obtained his approval to junk the 918 form of license agreement and work out—

Mr. McConnell: Is this conversation now or are we talking about what he did with Mr. Wilson? If it is conversation with Mr. Wilson, I object to it.

The Court: Well, I think he indicates that the conversation with Wilson is indicated in that memoranda which is already in evidence, or letter, or whatever it is.

Mr. McConnell: Well, I am not clear whether he is
1003 talking about talk with Mr. Crotty now or whether he is off on some background.

Mr. Dodds: It is very clear that Mr. Ruestow was referring to that only to identify the period of time, the memo Defendant's Exhibit 23, which is dated November 20, 1961.

The Court: And after talking to Wilson, was anything conveyed to Crotty? I suppose that is the way to get back on the track here.

1004 By the Witness:

A. After talking with Wilson, Crotty and I had a series of telephone conversations concerning the papers which

I had offered—had given to him for purposes of discussion. Those were referred to earlier in the testimony.

I recall he objected to it strenuously and said that he would be far better off under the old 918 agreement, and I emphatically said that is no longer available.

Mr. Dodds: I might interject that the document to which the witness refers is Exhibit DX-12, for the record.

By the Witness:

A. (Continuing.) From there on, the discussions were largely by telephone, and they petered out because Mr. Crotty and I could not reach an agreement on—

Mr. McConnell: I object to this. This is not conversation. This is the witness' conclusion of what happened to the conversation— "It petered out."

The Court: I mean, this may be a summary of the
1005 conversation. I don't know. Maybe this is his best
recollection, and the time has now come to refresh it. I am taking this as a summary of the conversation. That's all.

By the Witness:

A. (Continuing.) I think that's about all I can say. It's my best recollection as to what happened.

By Mr. Dodds:

Q. Do you recall how long those conversations continued with Mr. Crotty?

A. Oh, up until about May of 1962.

Q. And do you recall what terminated those discussions?

A. Yes.

Q. Will you state what it was?

A. I asked—

Mr. McConnell: I object to him testifying. He can testify to what happened in the conversation. The Court will conclude what the effect of it is. Now, he is asking him to conclude what happened.

The Court: All right. Now, tell us about the last 1006 conversation you had with Crotty before there weren't any more conversations. Maybe that's the way to get at it.

By the Witness:

A. I recall asking Mr. Crotty to see me in his office in Chicago so that I could discuss with him what I was proposing to do; and that he said there was no use of having any further conversation so long as the prices that I had proposed were as high as I indicated by the document I had given him.

I said I would like to come anyway, and he indicated that there was no use. So that was the end of it.

By Mr. Dodds:

Q. During these conversations with Mr. Crotty, did you ever tell him that in order to get this $200,000 annual maximum which RCA had, that it would be necessary for Zenith to take a package license with respect to monochrome receivers?

A. What was the end of that—just the end of it.

Q. That it would be necessary for Zenith to take 1007 a package license with respect to monochrome receivers.

A. No. I never said any such thing.

Q. Did you state to Mr. Crotty that in order to get the benefit of this $200,000 maximum, that it would be necessary for Zenith to take a package license with respect to color television receivers?

A. No, I did not.

Q. I should like to refer to Exhibit DX-26 which is a memo of yours to Mr. Beam and Mr. MacFarland. Perhaps you would glance through that memorandum.

Do you recall—

Mr. McConnell: Before you go into that, counsel, may I ask: Did you identify those notes so we know in the record what you are talking about?

The Court: I don't think he ever used them to refresh his recollection.

Mr. Dodds: I never used them. And I assume that the Court would sustain an objection to their offer, so I didn't offer them.

The Court: I mean, apparently they weren't necessary. He didn't indicate his recolletion was exhausted. So that's why, had he sat up there and said, "Well, I don't"—well, all right, let's go on. 1008

1009 By Mr. Dodds:

Q. Are you familiar with that memorandum, Mr. Ruestow?

A. Yes. Defendant's Exhibit 26 you are talking about?

Q. Yes. I notice in there a number of references to the weak position, or the weakened position in monochrome. Now, were you referring to a weakened position in an absolute sense or in a relative sense? And if the latter, relative to what?

Mr. McConnell: I object to that question as leading and suggestive.

The Court: No. He has given him about three alternatives to pick out. He didn't tell him which one to choose.

By the Witness:

A. In a relative sense compared to the monochrome position of Hazeltine in earlier years.

By Mr. Dodds:

Q. Well, this weakened position you referred to, were you referring to the weakness of the patents, or to a number of patents, or to something else?

1010 A. A number of the patents.

Mr. Dodds: No more questions.

Cross-Examination by Mr. McConnell.

Q. Starting with last things first, your conversations with Mr. Crotty—and apparently you had conversations about old form 918—did you tell him what form 918 was?

A. No.

Q. You assumed he knew what it was; is that it?

A. I assumed he knew what it was, yes.

Q. And you assumed he knew what it was because you had already given him a copy of it, hadn't you?

A. I testified earlier that it was my recollection I hadn't given it to him.

Q. Well, you also said that you might be mistaken about that, didn't you, on cross-examination?

A. I did.

1011 Q. And you saw in the letter that Mr. Crotty wrote to you his reference to the fact that you had given him form 918, in that letter, within a few days of your conference; do you recall that?

A. I recall the letter, yes. You showed it to me earlier.

Q. In which he had made the statement he had it. And you read the letter, and you didn't reply to it; isn't that correct?

A. That is correct.

Q. Now, did that form 918 refer to color or did it refer to monochrome?

A. It refers to both.

Q. And you were talking to him at one time, at least, about form 918, weren't you?

A. To the extent I have already indicated, yes, that it was no longer available.

Q. Well, now, when did you tell him it was no longer available?

A. I would say my recollection is that I told him that in about January of 1962.

Q. So that up until that time, at least, it was available; is that right?

A. No. I didn't say that.

1012 Q. Well, you hadn't told him it wasn't available up until that time, had you?

A. No.

Q. I show you this document which is here in evidence as Defendant's Exhibit No. 15, which is a letter under date of March 20, 1963, written to Mr. Crotty by Mr. Ruestow, together with a schedule of license terms for television receivers. Did you write that letter and send it to Mr. Crotty?

A. Yes.

Q. On or about the date it bears?

A. Yes.

Q. Now, were those scheduled patents that are shown in the Exhibit to the letter, with the letter, entitled "Color Television Receivers, Specified Patents for Use in Color Television"? Was that with the letter?

A. Was that with the letter?

Q. Yes, was it with the letter.

A. Yes, yes. I did not—there were so many words there, I wasn't sure what your question was.

That was with the letter, yes. We are talking about

1013 Exhibit 15, Defendant's Exhibit—

Q. Yes. And you have there nine patents and an application which you have given percentage rates on?

A. Yes.

1014 Q. And you have also shown in your letter how much the maximums would be if you took those nine patents, didn't you?

A. There are provisions for maxima.

Q. Well, can't you answer my question?

Read the question to the witness.

A. Yes, read it back.

(Question read.)

By the Witness:

A. Yes, yes.

By Mr. McConnell:

Q. Now, it also had in it this provision, did it not:

"Until June 30th, 1966, all licenses covering both patents and patent applications for use in both color and monochrome television receivers shall be subject to an over-all maximum of $200,000."

A. Yes, it does.

Q. And that is the proposal that Mr. Crotty rejected, wasn't it? You just told us that he wanted no part of that; isn't that right?

A. That is not the document to which I was re-
1015 ferring when Mr. Dodds was examining me.

Q. Well, all right. Did he tell you he didn't want any part of this proposal at any time?

A. To my recollection, no.

Q. So he never rejected this; is that right?

A. I don't know what he did with it.

Q. Well, he didn't reject it to you?

A. No. There was—

Q. Now, what was the document you were referring to that he did reject in your conversation, which you said terminated all your negotiations with Mr. Crotty?

A. It was a document we identified earlier. I can't remember the exhibit number. I recall that—I believe it carries the date January of 1961.

Q. In other words, you said that that terminated all negotiations, his rejection of the one in 1961; is that it?

A. As of that time, yes.

Q. As of that time?

A. Yes.

Q. Well, then, you had negotiations later on, didn't
1016 you?

A. Not that I—I recollect no further negotiations.

Q. Look, you are still offering this on March 20, 1963, aren't you?

A. Yes.

Q. And you say — you never had an answer to that, whether it was rejected or whether it wasn't rejected; isn't that correct?

A. I never had an answer to it.

Q. All right. Now, going back to these documents which counsel took you over, as I understood your testimony, Exhibit No. 24, which was reference to your comments on Mr. Dodds' memorandum to Mr. Wilson—which is Exhibit No. 3; is that correct? Look at the documents and tell us. Don't look at those notes.

A. Exhibit 3? You are talking now about Exhibit 3?

Mr. McConnell: Read the question to the witness, please.

(Question read.)

By the Witness:

A. Yes.

1017 By Mr. McConnell:

Q. Now, can you tell us by looking at those two documents when you made up the notes in your handwriting, you said, which is Defendant's Exhibit No. 24? And would you mind putting those notes away.

A. When did I make up Exhibit 24?

Q. Yes.

A. Or at least the original of it. My very firm recollection is that I made them shortly after December 14, 1961.

1018 Q. Now, what time is that in reference to this talk you had with Mr. Crotty where you said that terminated all your negotiations at that time, you qualified it later?

A. Read that back, please.

(Question read.)

By the Witness:

A. This is earlier.

By Mr. Dodds:

Q. This is earlier?

A. Yes.

Q. How much earlier?

A. Several months.

Q. How many months?

A. I can't tell without reference to the notes that I made.

Q. Now, in your memorandum which you wrote, you say, some time after December 14th, or shortly after December 14, 1961—and, by the way, you just got through telling us you had this talk with Mr. Crotty in 1961, didn't you?

A. Yes.

Q. So that your talk with Crotty had to be before this memorandum, didn't it?

1019 Mr. Dodds: Your Honor, the witness didn't testify to anything of the sort. He testified it was after the draft of March 26, 1962.

Mr. McConnell: I am talking about what you brought out on your—

The Court: I remember what the witness said, but now he is changing his testimony, which I am not responsible for.

Mr. McConnell: I am going to take him back to his original testimony.

By the Witness:

A. Is there a question pending?

By Mr. McConnell:

Q. There certainly is.

Mr. McConnell: Will you read the question to the witness, please.

(Question read.)

By the Witness:

A. I think I have already indicated that my talks with Crotty extended over a period of six months. Some of it was before this Exhibit 24 and some was after.

By Mr. McConnell:

Q. No. Now, listen, Mr. Ruestow, I am referring 1020 to the talk where you said that Mr. Crotty had rejected your proposals and that terminated your negotiations. That is the way that you first told it. On cross you say it terminated them as of that time. Now, when was that?

A. I think I've already answered that.

Q. Was it prior to the time of your memorandum of December 1961?

A. I thought I had already answered that. It was later.

Q. You told us on your direct examination that it was in 1961, didn't you?

A. I think I told you on direct examination the talks began in 1961.

Q. All right, I guess the record will show what you testified to.

But, anyway, as late as 1961, in commenting on Mr. Dodds' proposal—I can't read those copies without glasses. I want to read this memorandum to you, which you made in December of 1961, referring to Mr. Dodds, under the title "Misuse Law."

You say:

1021 "He is wrong about the threat of Securit. Houston Kenyon, Phil LaFollette agree with me. Many others are worried. For instance, Page and Rathburn. Attorney General's report is out of date. With the new rambunctious Attorney General, R. Kennedy, raising hell in antitrust matters, GE troubles, common pricing." Then you say:

"My whole case hinges on above two points in which L.B.D. is in error."

L.B.D. is our friend over here, isn't it?

A. That is right.

1022 Mr. Dodds: Your Honor, I object to that on two grounds; in the first place, it is the exact duplication of what Mr. McConnell asked him when he called him as his witness and, secondly, it is not covered by the subject of the cross-examination.

The Court: Overruled.

By Mr. McConnell:

Q. (Reading.)

"I opened the possibility of higher income and got misuse off our backs. I must act now. Zenith is forcing me. I must either give them low rates to avoid misuse or raise the package rates."

Now, as late as December of 1961 Zenith was forcing you, is that right?

A. That is what I wrote.

Q. Well, is that—were you just writing fiction there in this memo?

A. No, I wasn't writing fiction, no.

Q. All right.

So that there was something going on between you
1023 and Zenith as late as December of 1961; will you
agree with me on that?

A. Yes.

Q. And you said:

"I must either give them low rates to avoid misuse or raise the package rates."

All right, did you do either of those two things?

A. No.

Q. Now, I call your attention to this comment that you made:

> "If I am forced to stick to the present agreement, Zenith will make me divide 1.35 per cent up among maybe eighty patents."

Were you talking about eighty patents as late as December of 1961?

A. Yes.

Q. And under the present agreement you had to divide 1.35 percent up among eighty patents. Now, what was the present agreement?

A. 918.

Q. 918? So as late as December of 1961 you still

1024 had 918 open for consideration, didn't you?

A. Open for consideration, yes, I was certainly considering it, yes.

Q. Now, you say:

> "Or if I offer the fifty per cent, eighty per cent, a hundred per cent deal, the pick to patents and zingo, we are right back in misuse."

That was your view at the time?

A. Yes.

Q. And you did offer it, didn't you?

A. I did not offer. I testified before.

Q. All right. The record will show you testified to, I assume.

Well, you had a proposal of fifty, eighty and a hundred per cent, didn't you?

A. In the past.

Q. What was that? Tell us what it was.

A. Much earlier—

Q. No, I didn't ask you how earlier it was, I asked you what it was.

A. What was the proposal?

Q. Yes.

1025 A. The proposal was in the area of monochrome television, where we had three patents and only three patents apparently in use in the industry. If a licensee wished to take one of them, he could have it for fifty per cent of the rate, .95 per cent in the 918 agreement; if he took two, he could have it for eighty per cent of that .95 figure; if he took three or more, he got the license for one hundred per cent of the .95 figure.

1026 Q. Well, he took his choice out of a number of patents, didn't he?

A. Three.

Q. Only three were offered to him?

A. Well, let me clarify that.

Q. Well, let me clarify it a little with another question. How many patents did you have in the package which he got if he paid 100 per cent?

A. If he paid 100 per cent?

Q. Yes.

A. I don't remember the number. There were—

Q. Well, your interrogatories say that it is 500, don't they?

A. It is in the hundreds, yes.

Q. Yes. He could pick out under this 50, 80 or 100 per cent any three of those 500, couldn't he?

A. Yes.

Q. All right.

And if he picked out three, he was paying 100 per cent, the same price that he would pay for the 500, isn't that correct?

1027 A. Yes.

Q. Now, you also made some comments on Exhibit

—Defendant's Exhibit 34-A, which purports to be a note sent by Mr. Dodds to Mr. MacFarland, who was then president of your company, and counsel took you over your Exhibit 27 as to what your comments were there, and I show you a document which is attached to this Exhibit 34-A and ask you whether or not—which is marked here as 34-B—and ask you whether or not that is in your handwriting?

A. Yes.

Q. And that is some more comment that you had on 34-A, isn't it?

A. Yes.

Q. All right.

And your comment on—wait, let me ask you this:

What was this proposal of Dodds? It is entitled "A draft of a new HRI license." Was that something Mr. Dodds was proposing to Mr. MacFarland as to be the new form of licensing?

A. Yes, as I understood it.

Q. And this is as late as January 24th, 1963, 1028 right?

A. If that is what the rate on there is, that is correct. I have forgotten the date.

Q. And here is your comment on it:

> "Still apt to be viewed for just what we intended a transparent attempt to force them into the package."

Now, who is the "we" you refer to?

A. The group that was working on the problem of drafting a new policy.

1029 Q. All right, now, who were they? Just tell us their names.

A. Mr. MacFarland, Mr. Dodds—

Q. Wait a minute, who is Mr. MacFarland?

A. Mr. MacFarland was then vice chairman and executive vice president of Hazeltine Corporation.

Q. All right. Mr. Dodds?

A. Mr. Dodds.

Q. What was he then?

A. Mr. Dodds was vice president of Hazeltine Corporation.

Q. The other people?

A. Mr. Westermann, myself, Mr. Diggins, and Mr. LaFollette.

Q. Mr. Westermann is the now president of this Hazeltine Company, isn't he?

A. That is correct.

Q. And Mr. LaFollette, who is he? A lawyer?

A. He is a lawyer, yes.

Q. So that is the "we" that you are talking about that intend an attempt to force them into the package?

The Court: Do you want an answer?

1030 Mr. McConnell: Yes. That was all one question, your Honor.

The Witness: Let me hear it back. I am sure—

The Court: I think the question is, is that the "we" that you were talking about, and I don't think you answered that question.

The Witness: That is the "we" we were talking about.

Mr. Diggins: Your Honor, I don't think that question is clear to the witness.

The Court: Well, if the witness doesn't think so, all he has to do is say so.

The Witness: Well, I didn't hear—I wasn't sure—

The Court: We had gone over a bunch of names and finally Mr. McConnell said, after this group of names, the identification of people involved, he said to you, "Is that the 'we' you were referring to?" Now, is your answer to that yes or no?

The Witness: Well, I have already—

Mr. Diggins: The statement in the letter is "We intended" something, your Honor, and I don't think 1031 it is clear.

The Court: All I know is that he has identified a bunch of people, and the summary question was, "Is that the 'we' that you were talking about?" And all I am trying to do is get an answer to that question. Was it or wasn't it? Yes or no?

Mr. McConnell: We got an answer to the question.

The Witness: We got an answer.

The Court: I don't know what he said, but I will read the record and find out.

Mr. McConnell: Well, he said that the "we" included these people. That is what he said. He said, "Yes" and Mr. Diggins doesn't like the answer, I guess, and I don't blame him.

1032 By Mr. McConnell:

Q. Now, you referred to AGA patents and General Electric Company patents in questioning by Mr. Dodds and said they weren't any good, and so forth; were they included in this package of five hundred and ten patents which you were offering as a package?

A. Yes.

Mr. McConnell: I haven't any further questions of this witness.

The Court: Anything further?

Redirect Examination by Mr. Dodds.

Q. You recall this letter of March 20, '63, comprising a proposal of a license royalty schedule which was sent to Mr. Crotty?

A. Yes.

Mr. Dodds: That is Exhibit 15, for the record.

By Mr. Dodds:

Q. Was that sent to Zenith alone, was it sent to a large number of licensees, non-licensees, or just to whom was that letter sent?

1033 A. It was sent to a large number of licensees and non-licensees, I would say perhaps two dozen.

Q. Now, during this period from November 20, 1961, which is the date of your memo to Mr. Wilson, Exhibit 23, until this proposal of yours to Mr. Crotty of March 20, 1962, which is Exhibit 12, and which Mr. Crotty found unacceptable, during that period, what form of license agreement, if any, with respect to color was generally offered to prospective licensees?

Mr. McConnell: I object to a general question of that kind. We can't try this case on some custom. The question is what—

The Court: Overruled.

By Mr. Dodds:

Q. Would you like the question back?

A. Yes, I would. It was rather complicated. I think I understand it, but I want to make sure.

The Court: First of all, is the premise right that this is March 20 of '62?

Mr. Dodds: Yes, your Honor, Exhibit 12 is dated March 20, '62.

Would you read the question back, please, Mr. Reporter?

1034 (The question was read.)

By the Witness:

A. There were none offered.

By Mr. Dodds:

Q. With respect to this fifty per cent, eighty per cent, one hundred per cent formula for one, two, or three patents respectively, about which you were interrogated, will you state whether the protection provided by all of the Hazeltine package or group of patents on monochrome receivers was, in your opinion, substantially the same or significantly different from those of the three principal patents on which the formula was based?

A. Oh, very significantly different. I think I tried to indicate that there were only three patents that we found of any substantial use in the industry. The others were just highly speculative as to whether they would ever be used and would ever turn out to be worth anything.

1035 By Mr. Dodds:

Q. Did I understand in the first part of your answer to say there was a significant difference?

A. Yes.

Q. Between the package and the three principal patents?

A. Yes.

Mr. Dodds: No more questions.

Recross-Examination by Mr. McConnell.

Q. When you went out to sell this package, did you tell these people that you were negotiating with that your patents weren't any good; all those 500 patents were no good except three?

A. I didn't tell them they were no good. I told them they were not in use, or I don't know whether I even told them that. I told them that here we had three patents that were the only ones we could see were in use.

Q. Did you tell that to Mr. Crotty?

A. I don't recall.

Q. This Exhibit No. 12, about which you were interrogated says, up at the top of it, that "This is a tentative draft for purposes of negotiation. It is not to be construed as an offer," 1036

Was it an offer?

A. It was not an offer. I have indicated before.

Mr. McConnell: All right. That's all I asked you. I have no more questions.

Mr. Dodds: No more questions.

The Court: Mr. Ruestow, did you say—or if you didn't, is it a fact that after 1955, you didn't charge royalties on radio receiver patents? They had run out or something?

The Witness: I don't believe I testified on that subject, your Honor.

The Court: Have you any knowledge as to whether or not other than in a package deal, that you charge royalties on radio receiver patents?

The Witness: If anyone decided they wanted to use any of our radio patents, we certainly would have made a license available.

The Court: Well, hadn't they about expired by that time, in 1955?

1037 The Witness: I think that is about the story. The important ones—

The Court: Did you ever charge anyone with infringement of a radio patent after 1955? Just radio.

The Witness: In the field of sound radio, or radio apart from television, I think you mean—

The Court: Radio apart from television.

The Witness: No.

The Court: All right.

The Witness: Not to my knowledge.

The Court: All right. I have no further questions.

The Witness: Not to my very best recollection.

The Court: All right. You can step down, I guess.

Mr. Dodds: No more questions.

The Court: All right.

(Witness excused.)

Mr. Dodds: Your Honor, Mr. Wright is here. He was going to be recalled, and he wanted to get away, so I 1038 would like to call Mr. Wright at this time.

The Court: All right.

1039 JOSEPH S. WRIGHT, called as an adverse witness by the plaintiff and counter-defendant, having been previously duly sworn, was examined and testified as follows:

Mr. McConnell: Would you state for the record, Mr. Dodds, how you are calling him.

Mr. Dodds: I am calling Mr. Wright as an adverse witness.

The Court: I assumed so. He has heretofore been sworn.

Direct Examination by Mr. Dodds.

Q. I believe when you were on the stand the other day, you undertook to get some export sales figures by years, 1950 to date, for England, Canada, Australia, and all other countries. Do you have those figures?

A. Mr. Dodds, I have gotten some figures that include all those export countries. I have not had any opportunity to really go over them to familiarize myself with them, but they are here in the courtroom.

1040 Could I have them, Mr. Stevenson.

The Court: We assume that you didn't stay in town to compile them yourself, Mr. Wright, and there is some evidence that you did.

The Witness: Yes. I have the papers here, Mr. Dodds.

By Mr. Dodds:

Q. May I see a copy?

A. Yes, sir.

Q. Is this one copy, or are these different—

A. This is an original, as far as I know.

The Court: Are there any copies there?

Mr. Stevenson: No, there are not, sir.

The Court: All right.

The Witness: I just saw those, I might add, just as court convened.

The Court: I understand that somebody compiled them for you while you were taking care of business out of the city.

By Mr. Dodds:

Q. You say these just go back to 1959?

A. Yes, sir. These were all the figures—I understand
Mr. Kaplan and the head of our export division tried
1041 to get figures going back as far as they could by this
morning. They went back from 1959, as I understand
it, through 1963.

The Court: Which is the period involved in the counter claim.

Mr. Dodds: The question was directed more—not directed within the scope of the counter-claim, but to indicate what was the relative change in exports as between the countries where they said they had difficulties and the countries where there were no patent difficulties. And I thought it would show that—

The Court: I thought the only countries really involved in this counter-claim, at least as far as the proof is concerned, were these three countries of which they claim they had difficulties.

Mr. Dodds: That right, your Honor. But the point was, we wanted to see whether or not there was any significant difference in the growth of their export business in those countries and in the countries where there was no patent difficulties.

1042 The Court: Well, assume there was or wasn't, what difference would that make to this lawsuit?

Mr. Dodds: Then I think there is a very strong inference that their lack of export sales to these countries was not due to the patent licenses, if their rate of growth was substantially the same in those countries as other countries where they had no patent problems.

Mr. McConnell: To get to that sort of a comparison, you would have to show that none of the countries had any restrictions on licensing. And that isn't so at all. We would just have three or four more lawsuits here to try.

The Court: I mean, I got an impression from the pleadings or something, or the briefs, that these three countries aren't the only three countries in which there are patent pools; isn't that true?

Mr. McConnell: That's right.

Mr. Dodds: I think that is true. But I think there
1043 are many countries in which there are none and never have been at all—South American countries, for example.

The Court: Well, I assume they don't have any in Swaziland or in Tanganyika.

Mr. McConnell: That's right; over in Africa, they don't have.

1044 The Witness: Well, Mr. Dodds, these are the figures, so far as I understand it, on our exports to all other countries besides Canada, including Ghana and Swaziland, and all the South American countries, and so forth, going back to 1959.

Now, it may be that they are still working, trying to find figures going back to 1959. I haven't had a chance to sit down and talk with them about that.

Mr. Dodds: Well, the point was, I thought it would be significant to show whether there was any difference in the patents between the countries where there was no patent situation and in those where there was supposedly patent difficulties.

Mr. McConnell: Now, if you get into that sort of a comparison. I am going to object to your evidence, unless you can show there were no pools. Because I'm prepared to show that you are in a pool in Sweden, in Scandinavian countries, in France, in Germany, Spain—

Mr. Dodds: You know that isn't so—

1045 Mr. McConnell: I don't know any such thing. For the purpose of convenience, we have picked out three countries to try this lawsuit on.

Mr. Dodds: Because those are the only countries where there are any pools of any sort.

Mr. McConnell: Now, that isn't so, and you know it isn't so.

The Court: Now, let's not get into this sideline activity. Let's get on with it.

I think they have done mighty well to come up with this.

Mr. Dodds: I would like, your Honor, for you to take these under advisement. Whether we need to offer these in evidence, I don't know.

The Court: All right.

By Mr. Dodds:

Q. Mr. Wright, with respect to your sales of television receivers in Canada, say from 1959 to date, do you know whether those sales are primarily in urban areas or rural areas?

1046 A. Mr. Dodds, I have never seen them broken down that way. I know we sell sets in the highly populated urban areas of Toronto and Montreal. We also sell them in the prairie provinces of the west.

Q. You don't know whether they are preponderantly in one area or the other?

A. No, sir. I can't help you on that at all.

Q. When did Zenith first commence the manufacture of color television receivers?

A. Well, the first manufacture for commercial offering for sale in any quantities was, as I recall it, in the fall of 1961. Of course, we had been making color television receivers going back to 1951, '2 and '3, but not for sale.

Q. I am talking about those offered for sale to the public.

The Court: The fall of '61 is the answer.

By Mr. Dodds:

Q. Now, do you know about how many sets were sold during 1961?

The Court: You mean where?

1047 Mr. Dodds: In the United States.

The Witness: You are talking about Zenith sales now?

Mr. Dodds: Yes.

The Witness: Or the industry sales?

By Mr. Dodds:

Q. No. The Zenith sales of color receivers in 1959, in round numbers—

A. In '61, now?

The Court: As I understand it, they didn't start until the fall of '61.

Mr. Dodds: I'm sorry, your Honor. I misspoke myself. '61.

By the Witness:

A. I would prefer to use rather round numbers, if we could. These statistics on color sales are rather closely guarded.

I would say we sold more than 20,000 in the fall of 1961.

By Mr. Dodds:

Q. Now, at Page 37 of Zenith's pretrial brief, there is an assertion—this assertion is made:

"Through the years Zenith made every effort to 1048 enter the English radio market. On each occasion, however, the pool threatened and harassed its distributors until they ceased buying Zenith products."

Now, do you know the names of any of those distributors that were "harassed" by the British pool?

A. I don't recall the names of them.

1049 Q. You don't recall the names of any of them?

A. No, sir.

Q. Do you recall what the particulars were? Did they bring infringement suits against them?

A. I recall that in a number of instances, our records show—and I went over those records some years ago—that when the distributors would talk to us about handling our goods over there, and then either went to the pool to find out what the circumstances would be or, they were invariably told that they could get no license to import, that they would be proceeded against—in those instances where they did buy receivers for import into Britain and resale, they were threatened by the pool and told to desist or they would be cited for infringement.

Mr. Dodds: I move to strike the answer in answer to the question, which was whether or not the pool brought any infringement actions against any of the Zenith distributors in England.

The Court: In view of the fact the answer was not 1050 responsive, and you asked the question, you have the right to strike the unresponsive answer. And it is stricken, and let's have a responsive answer.

The Witness: I'm not sure I understand the question.

The Court: Do you know of any infringement action that was taken by members of the pool—

Mr. Dodds: Against any Zenith distributors.

The Court: Against any Zenith distributors.

By the Witness:

A. Well, there were threats of infringement action, but I know of no actual litigation that was filed.

By Mr. Dodds:

Q. Now, at page 673 of the transcript, your answer to a question of Mr. McConnell was the following:

> "Mr. McConnell, at one point GE and RCA and the Telephone Company raised the same point, that it couldn't participate in any license from CRPL that 1051 permitted manufacture in the United States, but as soon as they settled the lawsuit that was all over and done with. They have themselves been importing goods up there from the United States for years, in large quantities."

Now, the question I want to ask, does the Telephone Company make or sell radio or television receivers, to the best of your knowledge?

A. Not in the United States, to my knowledge, I don't know whether their affiliate in Canada, Northern Electric, makes them or not.

Q. Well, do you know whether the Telephone Company has been exploiting radio or television receivers from the United States to Canada?

A. No, sir.

Q. You don't know that?

A. No, sir.

Q. In fact, your knowledge is that they haven't, isn't it?

A. I just don't know about them.

Q. Now, when did RCA and GE start to commence importation of radio and/or television receivers into Canada?

1052 A. I can't tell you when they started it, Mr. Dodds. I know it has been customary for many manufacturers who do have operations in Canada—and I believe we were told that at one point by somebody from CRPL; that this would be permissible if we took the pool license up there—to do the principal manufacturing in Canada and then supplement by importing certain models to Canada.

Mr. Dodds: Again, I move to strike the answer. I am only talking about RCA and Zenith.

The Court: The objection is sustained.

The answer is stricken.

By Mr. Dodds:

Q. I would like to know, again, if you know when RCA and GE began to import radio and/or teleivision receivers into Canada from the United States.

A. I don't know when they began; no, sir.

1053 Q. Do you know how many sets per year that they exported from the United States to Canada?

A. No, sir. I don't know that.

Q. Well, then, what was the source of your information for the statement which I have just quoted to you from the record?

A. The source of the information was evidence that we secured while we were—during the 1950's relating to the activities of RCA and GE in importing radio and television receivers into Canada from the United States.

Q. Well, now, you say during the 1950's. During what part of the 1950's?

A. I believe this information related to a period from about 1950 to 1955.

Mr. Dodds: Well, then, again I move to strike the answer, because the statement which I just quoted to you said that as soon as the lawsuit with Zenith was settled, which I believe the testimony was in September, 1958, they have been importing goods up there from the United States in large quantities.

By Mr. Dodds:

1054 Q. Now, I want to know what the basis of that statement is?

A. Well, I don't recall that I made the statement confined to the period of time after 1958.

The Court: Would you give them the page number, Mr. Dodds.

Mr. Dodds: 673.

The Court: Page 673.

By the Witness:

A. Well, Mr. Dodds, I would like to call your attention that the statement is in two paragraphs, and that my reference—

By Mr. Dodds:

Q. It is only one paragraph, as I see it.

A. Two sentences. My reference to "as soon as they settled the lawsuit that was all over and done with," was in reference to their argument that RCA and GE and the phone company had made that they couldn't participate in any license that permitted manufacture in the United States; in other words, that that argument was abandoned at the time of the lawsuit.

1055 Now, my subsequent statement—"They have themselves been importing goods up there from the United States for years, in large quantities"—was not meant to be limited to the period of time after the lawsuit.

Mr. McConnell: I object, then, to striking his answer. His answer was perfectly responsive.

The Court: The motion to strike is denied.

By Mr. Dodds:

Q. Then the second sentence to that paragraph, according to your testimony, has no relation to the first sentence?

A. The only relation it has to the first sentence was that it was illustrating that they themselves apparently didn't believe what they were telling us, that they couldn't permit imports into Canada because they had themselves been doing it for years.

Mr. Dodds: I again move to strike the answer. I asked a simple question, yes or no.

By Mr. Dodds:

Q. Is the second sentence related to the first sen-
1056 tence, or unrelated to it?

A. It is related to it in the way I stated, Mr. Dodds.

The Court: This is an explanatory answer, and this is his endeavor to explain in what way, if any, it is related to it.

By Mr. Dodds:

Q. I believe you testified, or one of your associates, that Zenith Radio Corporation received ten million dollars in damages from litigation with General Electric and Western Electric and RCA; is that correct?

A. Yes. There was some reference to that sum.

1057 Q. Now, did that payment cover damages suffered
by Zenith with respect to all foreign countries?

A. It is my recollection, Mr. Dodds, that at the time we settled this matter, that Mr. McConnell and I agreed that we would waive the damages that we had asked for loss of trade in other foreign countries, but that we insisted that we be compensated for the loss of trade that we had suffered in Canada.

And that was the figure, I believe untrebled, that was used. That is my recollection of it.

Q. Does your settlement agreement between Zenith and RCA reflect that, Mr. Wright?

A. No, sir. It has no reference to that—to any allocation of what the damages were for.

Q. Did the other parties—RCA and GE and Western Electric—agree to that allocation of all the damages to damages suffered in Canada?

A. Well, they agreed to pay the ten million dollars, which was our proposal—

Q. I don't think that is an answer to my question.
Did they agree to the allocation of all the damages
1058 to the damages suffered in Canada?

A. Apparently they did.

Q. What is your basis for saying that?

A. This was the proposition we put to them, and it was accepted by them.

Q. Not in writing, though.

A. It was settled—the settlement agreement was in writing, but there was no reference to this allocation in the agreement itself.

Q. So there was nothing in writing to show that they accepted that allocation?

A. I guess there isn't any specific allocation in the agreement, no.

Q. And still, so there is nothing in writing to show that the other parties, the adverse parties—RCA, GE, and Western Electric—accepted that allocation of damages?

Mr. McConnell: That is a matter of argument, your Honor.

Mr. Dodds: I just asked if there was any documentary evidence to show that. There is nothing argumentative about it.

The Witness: The settlement agreement is the only
1059 documentation I know of on the subject.

The Court: And that doesn't mention that allocation?

The Witness: That doesn't mention it, but they signed it.

The Court: I think he's proved it indirectly, and that's as good as you can do.

Mr. Dodds: I believe that's all the questions.

The Court: Anything further, Mr. McConnell?

Mr. McConnell: Yes, I have a few questions.

The Court: Let's finish up with him, and Mr. Wright can get back to his business.

The Witness: Thank you, your Honor.

Cross-Examination by Mr. McConnell.

Q. You were asked by Mr. Dodds about GE and RCA raising the point that they couldn't permit importation of American goods under their licenses. When did they raise that point?

A. I believe that was first raised to Zenith some-
1060 where in the late twenties, Mr. McConnell.

Q. Well, did they raise it in the lawsuit?

A. Yes, sir.

Q. That was one of the issues in the lawsuit, wasn't it?

A. Yes, sir; yes, sir.

Q. Now, after telling us that, after the lawsuit was settled, they did give Zenith a license to import without manufacturing in Canada, didn't they?

A. Yes, sir.

The Court: Import, using RCA patents, you mean?

Mr. McConnell: Using—they gave us a license under RCA. Well, let the witness tell it.

By Mr. McConnell:

Q. What license did they give?

A. They gave us a license under all their patents in the Dominion of Canada on radio and television receivers.

The Court: They is who?

The Witness: The Radio Corporation of America, the General Electric—

1061 The Court: I just wanted to be sure it wasn't the Canadian patent pool again. All right.

The Witness: (Continuing.) The General Electric Company and Western Electric, which is the patent arm of the telephone company. And these licenses had no restriction whatever as to where the goods might be manufactured.

1062 The Court: But they dealt only with patents of RCA, Western Electric and the Telephone Company?

The Witness: And General Electric, yes, sir.

The Court: General Electric. All right.

By Mr. McConnell:

Q. And weren't all of those patents in the Pool?

A. Yes, sir.

Q. Now, that came about because of the lawsuits, didn't it?

A. Yes, sir. I would assume so. That was one of the conditions that we insisted—that there be such a license granted to us.

Q. That was in the settlement too?

A. As part of the settlement of the case, yes, sir.

Q. That was part of the settlement, wasn't it?

A. Yes, sir.

Q. Now, going to this question that Mr. Dodds asked you about, you and I participated in those discussions, didn't we—in the settlement talks?

1063 A. Yes, sir.

Q. And with the attorneys for RCA, the attorneys for General Electric, and the attorneys for the Telephone Company?

A. Yes, sir.

Q. And they were pretty good attorneys, weren't they?

A. Yes, sir.

Q. Big law firms in New York?

A. Yes, sir.

Q. What were their firms, do you remember?

A. RCA was represented by Cahill, Reindell & Ohl, I guess it is now; Fish, Richardson & Neave, patent lawyers; and by Kirkland, Fleming here; and by Johnson, Thompson, Raymond & Mayer; at one point, by Adlai Stevenson.

The Telephone Company was represented by the—I believe it's Bushby, Ballentine—

Q. Dewey, Ballentine—

A. Dewey, Ballentine, Bushby & Palmer.

General Electric was represented by Simpson, Thatcher & Bartlett.

Q. Do you remember Whitney, North & Seymour?

A. Yes, sir.

1064 Q. President of the Bar Association, the American Bar Association?

A. Yes, sir.

Q. He was in those talks, wasn't he?

A. Yes, sir.

Q. Now, do you recall that prior to the settlement talks, the deposition had revealed that during the damage period which we were talking about, because of currency restrictions, no radio or television sets could be imported into England or Australia regardless of the Pool?

A. There was a period of time in there where there were import regulations based on currency in foreign exchange.

Q. And do you recall that we discussed that with our opponents in the settlement, and conceded that we couldn't prove damages for those countries during that period of time?

A. My recollection of it is that we felt we couldn't prove it for a portion of the period of time, at any rate.

Q. Well, do you recall that we ever got to a point in our settlement negotiations with Mr. Cahill and Mr. North, and Mr. Woods, where we were only talking about 1065 damages in Canada?

A. Yes, sir.

Q. And do you recall that the simple computation of single damages in Canada during the damage period amounted to the sum of ten million?

A. I do.

Q. And that was the figure that was used to settle this lawsuit, wasn't it, for our loss and damage?

A. Yes, sir.

Q. And it was after they had agreed to pay ten million for that damage that these three companies, at least, decided that they could license imports from the United States into Canada; is that right?

A. Yes, sir.

Q. In spite of any patent laws?

A. Yes, sir.

Q. And you remember that was discussed too in our settlement talks?

A. Yes, sir.

Mr. McConnell: That's all.

The Court: Anything further?

1066 Mr. Dodds: No further questions.

The Court: All right. We will take our morning recess.

(Witness was excused.)

(Thereupon, a short recess was taken.)

1067 Mr. Dodds: Your Honor, at this time I should like to offer in evidence a number of exhibits which are included in a binder, and I will go through those—

The Court: These 52 and 55 are not in the binder?

Mr. Dodds: They are in the binder, duplicates in the binder.

The Court: I will give you these back.

Mr. Dodds: I might go through them briefly and point out what they relate to, because these are not being offered through witnesses.

In this binder, Exhibits 36 and 37 are plaintiff's reply to defendant's counterclaim in the Zenith-RCA action in Delaware setting up the antitrust counterclaim.

Exhibits 38 to 43 are relevant papers in the RCA-Zenith litigation here in Chicago setting forth the nature of the antitrust charges. And you may recall that in previous colloquy, or in opening statements, reference was made to the widely different nature of the charges in those two actions, and these pleadings are put in there for that purpose. These pages are within the stipulation of ex-
1068 hibits to be offered.

The next four documents are documents in the United States antitrust action against General Electric, Westinghouse and Philips, and the copies in the judge's official binder are certified by the clerk of the Court of the Southern District of New York. They represent the complaint of the United States against these three companies, and they represent the final judgment. There were separate final judgments with respect to General Electric, Westinghouse and Philips.

And you might look at, for example, Exhibit 46, the Westinghouse judgment to which I think I advertised earlier. I think the section that is pertinent to our present argument is Paragraph IV on Page 3 in which it says that Westinghouse judgment to which I think I advertised into, adhering to, enforcing or claiming rights under any contract, agreement, understanding, plan or program with any other person which directly or indirectly restricts or prevents any manufacturer of home entertainment ap-
paratus in the United States from exporting any
1069 such apparatus from the United States into Canada.

The Court: You are offering this in support of your theory that this covered only relationships between the United States and Canada and didn't cover the world.

1070 Mr. Dodds: No, your Honor, it is broader than that. Let me finish it and I will tell you what it is offered for.

And sub-clause B:

> "Directing or causing or entering into any agreement with a foreign subsidiary of Westinghouse to take or actively consent to such subsidiary taking any action to restrict or prevent any manufacturer in the United States from exporting any home entertainment apparatus from the United States into Canada."

The important part is what follows:

> "The provisions of this Section IV shall not be construed to prohibit, without more patent license agreements or assignments and the patents of the three parties concerned still remain in the Canadian Radio Patents Limited."

The antitrust action was settled with expressed permission, and I believe the tenure of this—

Mr. McConnell: I object to an argument at this 1071 time on these documents. We are going to have an oral argument when we get through with this case.

The Court: What he is doing, and I think for the purpose of—and I will consider it an argument, but for the purpose of trying to explain to me why this is being offered at this time, I would like the explanation, and I don't accept, perhaps, your explanation, but at least I would like to know for what purpose it is offered.

Mr. Dodds: I agree that this is argument, but I think it is helpful to put these in place, and I believe there has been other testimony to the effect that the patents of these three concerns are still in the Canadian Radio Patents Limited.

I would like to know if defendant disputes the fact that the patents of those three concerns still are in the CRPL.

Mr. McConnell: They are in there with the qualification that they can't be used to stop imports from the United States into Canada; that is the way they are in there.

1072 The Court: Imports of Zenith only?

Mr. McConnell: Anybody.

The Court: All right.

Mr. Dodds: What is the basis for that qualification, Mr. McConnell?

Mr. McConnell: I will answer this in oral argument. I am going to do my arguing at one time, if I may.

Mr. Dodds: All right.

Now, the next Exhibit, 48, is a copy of the RCA-Zenith settlement agreement, which is the basis of this—it is offered by stipulation, and I think it is interesting to note paragraphs 2, 4 and 5 of that settlement agreement, and they are, as I read them, quite similar. These three paragraphs, 1—no, I am sorry, paragraph 2, I believe, outlines the license from RCA to Zenith and Rollins.

Paragraph 4 provides for a royalty free exchange of licenses between General Electric and Zenith and Rollins.

In paragraph 2 it provides for exchange of licenses between RCA and Zenith and Rollins.

1073 In paragraph 5 it provides an exchange of royalty free licenses between Western Electric and Zenith and Rollins; the point merely being that there were royalty free licenses going in both directions, that was a result of the royalty free exchange. It was not a one-sided capitulation by which RCA gave up everything and got nothing.

1074 I should also like to call attention to Paragraph 3 of the license which specifies certain royalties to be paid by each party to the other, and in brief it provides that RCA shall pay to Zenith royalties which will fall within the limits of 1.7 million to 2.1 million while Zenith will pay to RCA royalties falling within the limits of 2.8 million to 4.7 million; the amounts within those ranges to be settled by arbitration; so that it was not a completely one-sided agreement.

Now, the next exhibit, your Honor, is Exhibit 49, which is also in by stipulation, and this comprises Sections 66 to 73 of the Canadian Patent Act, which is now in force, which defines whatever there are in the way of restrictions upon and penalties for licensing of importation, and there are certain portions which I would like to read.

66, Paragraph 1:

> "The Commissioner may, at any time, by notice in
> writing addressed to the patentee of any patent speci-
> fied by him, or to his registered representative in
> 1075 Canada, and to every person who has a registered
> interest in such patent, require the patentee and such persons in respect of such specified patent to transmit and deliver to the Commissioner within 60 days from the date of such notice, or within such further time as the Commissioner may allow, a return stating:
>
> "(a) whether the patented invention is being worked on a commercial scale in Canada, and the place where and the name and address of the person by whom the patented invention is being so worked, and
>
> "(b) the reasons, if any, why such patented invention is not being worked on a commercial scale in Canada."

Then turning over to the next section, 67, Paragraph 1, this specifies what happens, the penalties consequent upon certain failures to work which are termed "abuses." You will notice the marginal title of this section is "abuse of rights under patents."

> 1076 "The Attorney General of Canada or any person
> interested may at any time after the expiration of

three years from the date of a grant of a patent apply to the Commissioner alleging in the case of that patent that there has been an abuse of the exclusive rights thereunder and asking for relief under this Act."

The next section is what amounts to such abuse:

"(2) The exclusive rights under a patent shall be deemed to have been abused in any of the following circumstances:

"(a) if the patented invention (being one capable
of being worked within Canada) is not being worked
within Canada on a commercial scale, and no satis-
factory reason can be given for such non-working, but
if an application is presented to the Commissioner on
this ground, and the Commissioner is of opinion that
the time that has elapsed since the grant of the patent
1077 has by reason of the nature of the invention or for
any other cause been insufficient to enable the inven-
tion to be worked within Canada on a commercial scale,
the Commissiner may make an order adjourning the
application for such period as will in his opinion be
sufficient for that purpose;

"(b) if the working of the invention within Canada on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by the patentee or persons claiming under him, or by persons directly or indirectly purchasing from him, or by other persons against whom the patentee is no aking or has not taken any proceedings for infringement;

"(c) if the demand for the patented article in
Canada is not being met to an adequate extent and
taking or has not taken any proceedings for infringe-
unreasonable terms;
1078 grant a license or licenses upon reasonable terms, the
trade or industry of Canada or the trade of any person

or class of persons trading in Canada, or the establishment of any new trade or industry in Canada, is prejudiced, and it is in the public interest that a license or licenses should be granted;

1079 "(e) if any trade or industry in Canada, or any person or class of persons engaged therein, is unfairly prejudiced by the conditions attached by the patentee, whether before or after the passing of this Act, to the purchase, hire, license, or use of the patented article, or to the using or working of the patented process;

(f) if it is shown that the existence of the patent, being a patent for an invention relating to a process—"

And I think that we can disregard that. We are not talking about process patents.

Subsection 3:

"It is declared with relation to every paragraph of subsection (2) that, for the purpose of determining whether there has been any abuse of the exclusive rights under a patent, it shall be taken that patents for new inventions are granted not only to encourage invention but to secure that new inventions shall so 1080 far as possible be worked on a commercial scale in Canada without undue delay."

Then the first portion of the second—

Mr. McConnell: Before you go on to sixty-eight, would you mind reading in the definition of "work on a commercial scale" which is found on the first page of the Patent Act. It is under (j).

Mr. Dodds: What section are you referring to, Mr. McConnell?

The Court: Under the definitions on page one.

Mr. McConnell: Page one.

The Court: I have read it, so it is not necessary, unless you want to put it in the record.

Mr. Dodds: Well, I will read it into the record:

> "Definitions:
>
> "(j) 'Work on a commercial scale' means the manufacture of the article or the carrying on of the process described and claimed in a specification for a patent, in or by a means of a definite and substantial 1081 establishment or organization and on a scale that is adequate and reasonable under the circumstances."

And there will be testimony on that, your Honor.

Going on to Section 68:

> "On being satisfied that a case of abuse of the exclusive rights under a patent has been established, the Commissioner may exercise any of the following powers as he may deem expedient in the circumstances:
>
> "(a) He may order the grant to the applicant of a license on such terms as the Commissioner may think expedient, including a term precluding the licensee from importing into Canada any goods the importation of which, if made by persons other than the patentee or persons claiming under him would be an infringement of the patent,—"

And then skipping on down to the bottom of the page:

> 1082 "In settling the terms of a license under this paragraph the Commissioner shall be guided as far as may be by the following considerations:
>
> "(i) he shall, on the one hand, endeavor to secure the widest possible user of the invention in Canada consistent with the patentee deriving a reasonable advantage from his patent rights."

Then I think we need not read any more, but Section 68(b) through (d) describe the penalties for acts which the Commissioner finds to be abuses of the patents, which in the last clause, Section (d) reads:

"if the Commissioner is satisfied that the objects of this section and section 67 cannot be attained by the exercise of any of the foregoing powers, he shall order the patent to be revoked, either forthwith or after such reasonable interval as may be specified in 1083 the order, unless in the meantime such conditions as may be prescribed in the order with a view to attain the objects of this section and section 67 are fulfilled, and the Commissioner may, on reasonable cause shown in any case, by subsequent order extend the interval so specified; but the Commissioner shall make no order for revocation which is at variance with any treaty, convention, arrangement, or engagement with any other country to which Canada is a party."

And there will be testimony showing the relationship of the treaty of Paris to that section.

1084 Now, Exhibit 51 is plaintiff's Interrogatory No. 8 to defendant and defendant's answer. This was filed in this case a considerable time ago, and I should like to read it because I think it relates to some of the proceedings which occurred at this trial, and Interrogatory No. 8 reads as follows:

"With respect to the allegations the plaintiff has participated in a combination and conspiracy in restraint of trade as set forth in Paragraph 13 of defendant's answer, specify and identify;

"a. Any documents and any correspondence on which defendant will rely at the trial in support of such allegations and the location and custody thereof;

"b. Any acts or omissions of plaintiff and each of its alleged co-conspirators other than becoming a party to the agreements referred to in Subparagraph (a) of this Paragraph 8 on which defendant will 1085 rely at the trial in support of such allegations, and specify the time, place and persons present when each of such acts occurred and the substance of what was done and said;

"c. The time and place at which, and the other circumstances under which, the alleged combination, conspiracy and restraint of trade took form;

"d. The time and place at which and the other circumstances under which plaintiff was inducted into the alleged combination and conspiracy in restraint of trade.

"Answer: Answering Interrogatory No.—"

And this is in answer to No. 7, which was incorporated by reference into his answer of Interrogatory No. 8.

"—defendant avers that it cannot identify the documents and other evidence on which it will rely at the trial in support of the allegations of Paragraphs 12 and 13 of its Answer until it has conducted pretrial 1086 discovery proceedings herein pursuant to the Federal Rules of Civil Procedure, and has thereby obtained from plaintiff and others access to the relevant documents and other evidence bearing on the issues. In the course of such discovery proceedings the details of plaintiff's patent misuse will certainly, defendants believe, be fully disclosed. Meanwhile, defendant is without knowledge of the specific details of such misuse and conspiracy."

Now, contrast that with the pretrial stipulation which is filed which comprises 13 pages of listed documentary exhibits on which defendant is relying; ten of those 13 pages are documents from Zenith's files. They are documents from the RCA-Zenith litigation, not from the Hazeltine files, and here in this answer to interrogatory they state that they don't know any of these things. We submit that the answer was not in good faith and that there has

been a deliberate suppression of discovery proceed-
1087 ings which would enable the plaintiff properly and
in good time to prepare for these issues.

As a matter of fact, in the pretrial stipulation finally entered into, it was provided that these papers would be made available 30 days before trial. They were actually made available to counsel for plaintiff about ten days before trial.

That concludes—there is, finally, a group of exhibits which represent some documents taken from the Zenith files. They were put in because of haste. We may or may not later withdraw them. I think they do not need any individual comment.

The Court: All right.

Mr. Dodds: Now I would like to call as my next witness Mr. Henderson.

1088 GORDON FRIPP HENDERSON, called as a witness on behalf of the Plaintiff and counter-defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodds.

Q. Would you identify yourself and your address?

A. I am a practicing lawyer in the City of Ottawa, Canada.

The Court: What is your first name?

The Witness: My first name is Gordon, Gordon Henderson, practicing law in the City of Ottawa in the firm of Gowling, MacTavish, Osborne and Henderson.

By Mr. Dodds:

Q. Would you give a brief resume of your education and experience?

A. I graduated from the University of Toronto in Arts in 1934, from the Osgood Hall Law School in 1937 and started to practice law in Ottawa with the firm I am now associated with in 1937, and from the time I graduated I started in a patent practice.

1089 Q. Are you a member of any bar, and if so, what?

A. Yes, I am a member of the bar of the Province of Ontario, as well as the bar of the Province of Quebec.

Q. Will you state whether or not you are Queen's Counsellor, and, if so, when you were so—

A. I was appointed a Queen's Counsel in January of 1952.

I should say that I joined the bar of the Province of Quebec in 1952 and the bar of the Province of Ontario in 1937.

Q. Are you engaged in any activities as a lecturer or editor and if so, will you state what those are?

A. Yes, since 1942 I have been the editor of the Canadian Patent Reporter, which is a series of reports devoted entirely to patent, trademark and copyright matters.

I have lectured at the Carlton University in Ottawa in public law since 1946 to 1963. I am now lecturing in patent law at Ottawa University, and I have been lecturing in patent law since 19—well, in the last four years,
1090 and I am now lecturing in patent law at that university.

Q. I show you a reproduction of the title page and Sections 66 through 73 of the—I believe it is known as the Patent Act of 1935, and ask you if you are familiar with that act.

A. Yes, I am, and I so identify this document.

Q. Is that the act which is currently in force in Canada?

A. There has been—it is now part of the revised statutes of Canada, 1952, Chapter 203; that is right.

Q. Have there been any amendments in that act since its original enactment in 1935?

A. Well, since the 1935 enactment there has been one change in Section 68, Subsection (d). The word "may" was changed to the word "shall" in that section. I think it is the third line of the copy you have handed me, and that change took place in the 1947 statutes. You will see that noted in the numbers at the bottom of the section, 1947, Chapter 23, Section 18 of the Statutes of Canada. That is the only change since 1935.

1091 Q. Is the effect of that change to tighten or relax the authority of the Commissioner to make rulings in the types of cases to which that applies?

A. It takes away the discretion and makes it mandatory—under our Interpretation Act, which is a statute of Canada, the word "shall" is mandatory and the word "may" is permissive; so by having changed from "may" to "shall" it is now mandatory in the Commissioner to follow the terms of this subsection rather than permissive. So it is tightened.

Q. Have you, in your practice, become familiar with these sections and with their interpretation by a Canadian court?

A. I am. I have appeared before the Commissioner of Patents and also before the Courts on appeals relating to these sections.

Q. Does this Act in your opinion contain any prohibition of importation?

A. Well, it creates risks if importation is carried out. In other words, there are sanctions if importation
1092 is carried out to the degree that it falls within either subsection (a) or subsection (b) of 47, subparagraph 1; so there are risks involved in importing patented articles into Canada.

Q. Is there any express or explicit prohibition against importation?

A. No.

The Court: And on whom do these risks fall?

The Witness: The patentee, sir.

By Mr. Dodds:

Q. The patentee or the patent owner?

A. The patentee is defined in the Act as the owner of the patent for the time being, that is under Section 2 you will see "patentee" is defined.

Q. Now, would you refer to the last clause of Section 68(d) which limits the authority of the Commissioner to make orders of revocation, and will you state what you know as to whether or not that authority has been limited and, if so, by what treaty and to what extent.

A. Yes.

Article 5—now, the name of the treaty escapes me
1093 because there have been so many revisions at various places; whether it is the Treaty of Paris, the treaty that was amended at Lisbon and then later at London, I don't want to be too certain on, but it is the international treaty relating to patents, and it is Article 5 of that treaty that contains a series of limitations in respect to the granting of exclusive licenses.

Q. I show you a volume of the journal at the patent office society for February 1959, which contains an article entitled "Convention of Paris for the Protection of Industrial Property of March 30, 1883, as revised at Lisbon October 30, 1958," and ask you if you can recognize that as the treaty to which you referred?

A. Yes, this is the treaty. I would identify the treaty as the Convention of Paris of 1883. This is the treaty to which I had reference.

1094 Q. And what limitations did that treaty place
upon the authority of the Commissioner of Patents of Canada to issue orders of revocation?

A. Well, there were several limitations. The first limitation was that the sanction of compulsory license must be unsuitable, that is, that it was not a remedy that relieved the mischief or relieved the abuse. That was one.

Another related to the time when a revocation could be put into effect; in other words, there was a limitation that the application for revocation, that is, the commencement of the proceedings for revocation could only take place after two years had elapsed from the compulsory license order.

Now, that—and I am expressing a personal opinion here, was somewhat—could be considered to be ambiguous, or might be considered to be ambiguous, in that it isn't too clear to me whether that meant if a compulsory license order had been granted or whether a compulsory license order had to be granted as a condition precedent to any revocation proceeding, but, in any event, there was
1095 this limitation of the two-year period.

Q. Do you recall whether there has been any decision of a Canadian court resolving that what you term "ambiguity"?

A. There is no decision of a Canadian court in this area.

Q. Do you know of any decision of a Canadian court which particularizes on what constitutes an abuse under the section of the Canadian Patent Act?

A. Yes, there are several cases relating to the abuse sections. The most recent case is that of Rodi and Wienenberger vs. Metalliflex, Limited, which is reported in the 1963 Exchequer Court Reports. That is the most recent case. The one immediately before that, that was reported in the Ontario courts on an appeal from the Commissioner was that of Gordon vs. Callwood. Both of these cases were decided by the same court, the Exchequer Court, Mr. Justice Thurlow in each case. There have been a series of them over the years. I have only given you the two most recent decisions of the Exchequer Court.

1096 Q. And what was the interpretation which those decisions placed upon this question of abuse of the patent rights?

A. Well, they dealt primarily with the first subparagraph, that is, Subparagraph (a) of Section 67, Subsection 1, and that is what we call our working section which requires that there be manufactured in Canada in a substantial and definite establishment to an adequate and reasonable extent. The word "adequate" is a word that has been indicated to be elastic in its connotation, and there has been some judicial expression in England on that point, and that is in the McKekni case where it was indicated that the manufacturer in Canada should be reasonably close to the demand for a patented article in our country.

The two Canadian cases to which I referred adopted that reasoning of the McKekni case, and that is to say that the manufacturer in Canada should be reasonably close, should bear a reasonable resemblance to the demand for the pattented article.

Q. To avoid abuse?

1097 A. To avoid abuse. In other words, if the manufacturer is not to that extent, then there has been an abuse under that paragraph.

Now, I shall say that this is a test given in the ordinary circumstances, in the ordinary case, without there being special difficulties. I am talking about the situation that normally occurs. If special circumstances arise, well, of course, they would have to be taken into consideration.

1098 By Mr. Dodds:

Q. Are you familiar with the policy of Canadian Radio Patents, Limited, which has been referred to herein as CRPL, with respect to the licensing of imports, importations from the United States?

A. Yes. I'm familiar with it from two standpoints. I am familiar with it from the standpoint of the Royal Commission investigation in patents a few years ago, because CRPL made a presentation to that Commission. Secondly, I am familiar with it from negotiations which I have recently had with CRPL relating to licensing to import.

Q. And from your experience, under what circumstances will CRPL grant licenses for importation?

A. They will grant a license to import when the article to be imported is not being manufactured in Canada by any—not manufactured in Canada. In other words, it is a type or kind of article which is not being manufactured in Canada.

Q. Could you give any example of articles of that
1099 type?

A. Yes, yes. Transistor radios—I am currently negotiating with CRPL relating to the importation of transistor radios. I am currently negotiating with CRPL on the importation of the television set which is—the five-inch screen, the little television set, and particularly television sets which have a screen size less than eight inches.

Q. Well, leaving out your current investigation, do you have any acquaintance with the policy of CRPL in the recent years, whether it is the same or different than that you have described?

A. Well, as far as I am aware in my associations with them, this has been their stated policy, and this has been the policy they have expressed to me in my negotiations. I'm trying to find a date, but certainly their stated policy about four years ago—I think that was the date when the presentation was made to the Royal Commission. My negotiations or discussions with them have dated for a period of two years.

1100 Q. These licenses you have described, are they for fixed periods or are they terminals; and if so, under what circumstances?

A. They are terminable in 60 days by either side. In other words, if it becomes apparent that a Canadian manufacturer will become interested in the particular field of the article concerned, then there is a termination clause which would enable CRPL to terminate on 60 days.

Mr. Dodds: Your Honor, one of the exhibits in the Plaintiff's binder of Exhibits, No. 50-A, are excerpts from a report of "Royal Commission on Patents, Copyrights, and Industrial Designs," subheading "Report on Patents of Invention," and I offer in evidence as Plaintiff's Exhibit 50 this copy of the report, legalized before the United States Consul in Ottawa, Exhibit 50.

And I will later offer in evidence the exhibits in the binder, 50-A, which are the exhibits—

Mr. McConnell: I haven't seen this document.

1101 Mr. Dodds: You have copies.

Mr. McConnell: Do you want to give us a chance to look at it over the recess?

The Court: I will defer ruling on it until you have looked at it, counsel.

Mr. McConnell: Thank you.

By Mr. Dodds:

Q. Now, Mr. Henderson, have you had any connection with the Royal Commission whose report I just referred to?

A. Yes, sir. I appeared as counsel for several companies that made submissions to the Royal Commission. At the time the Royal Commission first sat, I was president of the Canadian Patent Institute, and presented a brief of the Canadian Patent Institute to the Royal Commission.

When the Royal Commission set about to write the report, one of the members of the Royal Commission, through pressure of his office, was obliged to discontinue his activity and I was then asked to become legal technical adviser to the Commission during the writing of the report, and I so acted. But I had no participation in the actual writing. I was merely technical adviser to them on patent law.

1102 Mr. McConnell: I wonder if I could have a little cross-examination on voir dire, on that document, to see whether or not I have objection to it.

Mr. Dodds: Pardon? I didn't hear you.

The Court: Well, why don't you look at it during the noon hour and you can conduct your cross-examination this afternoon.

Mr. McConnell: All right, that's fine.

The Court: I'm not going to compel you to cross-examine this morning. There isn't enough time left anyway.

Mr. Dodds: Well, I am perfectly certain that counsel on the other side has been well aware of this report for many years. It is a report that is four years old, and the document is very well known among the patent profession both here and in Canada.

Mr. McConnell: Well, I don't mind you testifying of your own knowledge, but when you testify as to mine, I have serious objection. I have never seen this—

Mr. Dodds: I am not testifying at all. I'm just making a statement.

1103 By Mr. Dodds:

Q. Mr. Henderson, were you familiar with the purpose of the organization and the functioning of the Royal Commission?

A. Yes, sir.

Q. And what was its objective? What was the purpose of the commission?

A. The purpose of the commission was to examine the Canadian patent law and to make recommendations to the Government as to its change. When I say as to its change, I should put it better—as to its betterment. If this involved change, then to recommend change.

Q. What was the organization of the Commission? What was its membership? Where did they come from?

A. The membership of the Commission was as follows: The chairman of the Commission was Chief Justice Ilsey, who is the chief justice of the court in Nova Scotia; that is, he is the chief justice of the Superior Court of Nova Scotia. He was at that time; he still is.

Mr. W. W. Buchanan, Mr. William Buchanan was at the time of his appointment a member of the Tariff
1104 Board of Canada. During the deliberations of the
Commission, his term of office expired. He is now a private consultant in that field.

The third member was Mr. Guy Favreau who, at that time, was, I believe, associated with the Restrictive Trade Practices Commission. He later became Deputy Attorney General and, at the present moment, is now Attorney General of Canada.

He, however, because of the pressures of his office, was obliged to retire before the report was written. He did, however, sit with the Commission during its hearings.

Q. And how did the Commission function? Did it hear testimony, hear witnesses? What was its operation?

A. It entertained briefs and it heard submissions on those briefs. It did not engage counsel. It did have—I'm sorry; Mr. Leedlaw was associated with the Commission, but he did not act as counsel in the sense of asking questions. The Commission itself asked most of the questions of the persons who attended in support of the
1105 briefs. So they actually heard submissions and questioned those who were making submissions.

The Court: Maybe this might be a good time to break for lunch, Mr. Dodds.

(Whereupon, a recess was taken to 2:00 o'clock, p.m., of the same day, February 24, 1964.)

1106 * * (Caption—59-C-1847) *

Before the Hon. Richard B. Austin,
Monday, February 24, 1964,
2:00 o'clock, p.m.

The trial was resumed pursuant to recess.

Present:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

1107 The Clerk: Case on trial.

GORDON FRIPP HENDERSON, called as a witness on behalf of the Plaintiff and counter-defendant, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

Direct Examination by Mr. Dodds (Continued).

Q. I believe at the conclusion of the testimony this morning you had referred to the Royal Commission on patents, and so forth, its operations—I would like you to refer to Defendant's Exhibit 50, commencing at Page 90 of the report and ask you if you would say what that relates to and then read that portion into the record.

A. At Page 90 the Royal Commission dealt with the submissions made to the Royal Commission report on the operation and organization of Canadian Radio Patents Limited, and the recommendation of the Royal Commission on those submissions is found starting at Page 90.

Do I understand that you would like me to read what 1108 was stated by the Royal Commission in this area?

Q. If you would, please.

A. Under the heading "Canadian Radio Patents Limited" the following appears:

> "Public representations were made to the Commission by S. G. Waters Limited, a company engaged in the distribution of various kinds of household electrical appliances, that the structure and operation of Canadian Radio Patents Limited should be examined to determine whether that company offended the patent law insofar as it now prevails or ought to prevail in Canada, more particularly in reference to the utilization of a portfolio of patents to preclude the importation of certain articles into Canada. Similar representations were made by others.
>
> "Canadian Radio Patents Limited (hereinafter called CRPL) was incorporated in 1926 for the purpose of acting as a patent licensing agency. At the time of the presentation of its brief to this Commission it acted 1109 as the central patent licensing agency in the administration of patent rights in the radio, television and general electronic fields in respect of patents owned by its then five shareholders:
>
> "Canadian General Electric Company,
> "Canadian Westinghouse Company,
> "Northern Electric Company,
> "Canadian Marconi Company, and
> "Canadian Radio Manufacturing Company.
>
> "It also acted as licensing agent in Canada for RCA-Victor Company and Hazeltine Electronics Corporation. CRPL acquired from such companies a non-exclusive license with the right to grant sub licenses.
>
> "In its operation CRPL grants to any individual,

firm or corporation a license in respect of its portfolio of patents to manufacture in Canada radio and television receivers and certain electronic apparatus. In conjunction with such license it makes available to 1110 licensees general information relating to the manufacture of such equipment. CRPL sought to distinguish itself from a patent pool, which it defined as a company that acquired patents to be licensed only to the entities comprising the pool.

1111 "The evidence establishes that no one intending to carry on manufacturing operations in Canada was refused a license in respect of all patents contained in the portfolio. The license in respect to the manufacture of radio and television receivers requires the licensee to pay to CRPL a royalty on the basis of 3½ per cent of the manufacturer's net selling price. Various deductions permitted by the licensor in respect of such items as the cost of tubes, batteries, record changers and cabinets reduced the royalty to 2½ per cent of manufacturer's net selling price.

"The portfolio in respect of which CRPL had the right to grant licenses consisted of 5,000 patents, and in the absenec of a license from CRPL it is doubtful if anyone could sell in Canada a radio or television receiver.

"CRPL indicated that it does not grant a license 1112 to any importer of radio or television receivers, except in the limited situation where the type or kind of radio or television receivers sought to be imported is not manufactured by any radio or television receiver manufacturer in Canada. It is particularly in respect of the policy of CRPL in precluding importers from bringing into Canada radio and television receivers that the complaint was made to this Commission.

"It was stated to be the policy of CRPL to enforce

its patent rights against any person who sells in Canada an imported radio or television receiver which infringes any one or more of the patents in its portfolio except in the limited area where permission has been granted to import the apparatus which CRPL agrees is not of a type or kind made in this country. CRPL will tell anyone who submits to it a diagram showing the circuit and layout what patents, if any, would
1113 be infringed by the manufacture, use or sale of apparatus constructed according to such diagram.

"CRPL has granted to the Department of Defense production a license whereby an annual royalty is payable covering all electronic products under the defense program.

"CRPL expressed concern about the compulsory licensing provisions of the Canadian Patent Act in the event that it should grant a license to any person to import in circumstances where any manfacturing was carried out in Canada under a patent included in the portfolio which it administered. This concern did not relate to the grant of a non-exclusive compulsory license by the Commissioner of Patents on the payment of a reasonable royalty. CRPL was itself prepared to grant a license of such a nature.

"The concern manifested itself in relation to the
1114 possibility that an exclusive license would be granted on the operation of Sections 67(2), (b) and 68, (b) of the Act. The grant of an exclusive license to any Canadian manufacturer would operate contrary to the purpose of the licensing agency in making patents available to any manufacturer in Canada. It is the intention of the licensing agency in fulfilling its purpose to avoid the delays and expense incident to patent litigation in the radio receiver and television receiver maufacturing fields. CRPL stated that the royalties

would be used by it through its shareholders for the purpose of research or by CRPL directly in the purchase of other inventions to be licensed among its
1115 Canadian licensees. An exclusive license would, therefore, be contrary to a fundamental purpose of its existence.

"To avoid the risk of such a license CRPL sought to justify its refusal to grant a license to import in circumstances other than where a type of apparatus covered by a patent in its portfolio was not made in Canada. The recommendations which we propose will eliminate this risk. CRPL and any holder of a portfolio of patents will have the right but not the obligation to grant a license to import where the circumstances warrant, without fear of an exclusive license. The proposal made by the delegates of the International Convention at Lisbon that Article 5 of the Convention be amended to provide that a compulsory license be granted only on a nonexclusive basis in a proposal that we elsewhere in this report be made part of our law.

1116 "A second concern expressed by CRPL in its evidence before us related to the possibility of an order of revocation of one or more of the patents in its portfolio following a compulsory license application. Such a possibility flows from Section 68, subparagraph (d) of the Patent Act as it now exists. We do not believe that it is likely that the Commissioner of Patents would revoke a patent where the abuse was based on the facts that a license had been granted to import. If the abuse is importation on the payment of a royalty, an abuse of this nature would not be remedied by revoking the patent and permitting importation by anyone and without royal obligation. Such a course of action would not cure the mischief.

"CRPL as it is now organized and as it now operates does not appear to us to be illegal. It is not illegal to acquire a portfolio of patents either by 1117 way of ownership of the patents or by way of acquiring a right to grant licenses. The mere control of a sector of industry through the accumulation of patents is not in itself illegal.

"The complaint against CRPL is that it refuses to grant a license to import. In refusing to grant such a license CRPL was not going beyond its legal right when manufacture was taking place in Canada pursuant to licenses granted by it in this country at reasonable royalty rates.

"However, there is inherent in the accumulation of patents in respect of a sector of industry a possibility that the portfolio will be used to the public prejudice. When so used an abuse does exist in respect of which legislation must prescribe effective sanctions if the pool or licensing agency by monopolization through 1118 acquisition of patents seeks to assert the patents beyond the scope of the patent monopoly or for purposes in respect of which the patent is not adapted to be used or to assert the monopoly in such a way as to constitute a restraint of trade abuse of patents.

1119 "Sanctions which now exist will be found in the provisions of Sections 2 and 32 of the Combines Investigation Act and Section 411 of the Criminal Code. Section 30 of the Combines Investigation Act provides a civil remedy at the instance of the Attorney General. The nature of these remedies, which are dealt with elsewhere in this report, is not, in our opinion, sufficiently all-inclusive. We believe that where a pool or licensing agency in control of a portfolio, in practice, operates to the detriment of the public that a civil remedy ought to be available in the hands of an individual affected thereby. The remedy could take the form of a compulsory license with a reasonable royalty, a dedication of the patent, a royalty-free compulsory license or, in lieu of the above relief in compulsory license proceedings, relief of a similar nature by way of defense in a patent infringement action.

1120 "The evidence before the Commission did not indicate that the likelihood of the abuse by misuse of a patent portfolio was of such a nature as to justify the recommendation at this time of a sanction in addition to those now available other than a compulsory license at the instance of any person interested in the circumstances defined by section 30 of the Combines Investigation Act.

"The result flowing from the recommendation of the Commission is that a company holding a patent portfolio will have the right to grant a license to import in a proper case. The mere granting of a license to import will not in itself constitute an abuse that would give rise to the kind of compulsory license in respect of which CRPL expressed concern. Such a license could be granted. On the other hand, a company holding a patent portfolio is not obliged to grant a
1121 license to import where the patents are being commercially worked in Canada under conditions that do not constitute a misuse of patents."

Q. Mr. Henderson, is it your conclusion that the report of the Royal Commission approved the operations of CRPL?

A. Yes, sir. They found that their operation as stated to them did not offend any legal principle in Canada.

Q. Do you know of any legislation or official government—

The Court: They made no finding, though, as to whether they offended any legal principle of the United States?

The Witness: They made no—this was, as far as I am aware, not considered by them at all.

The Court: All right.

By Mr. Dodds:

Q. Do you know whether there has been any legislation or official government action subsequent to the issuance of this Royal Report which would modify or alter its findings?

A. No. I should point out that the Combines In-
1122 vestigation Act has undergone a change and the Crim-
inal Code has undergone a change. The provisions
of the Criminal Code have now been incorporated in the
Combines Investigation Act. But insofar as Section 30
of that Act is concerned, this has not resulted—there is
no change. Section 30 of the Combines Investigation Act,
which is specific to patents and not of general application,
is still as it was when they dealt with the matter, and the
Patent Act is as it was when they dealt with the matter.

1123 Q. Mr. Henderson, could you state what in your opinion are the risks which a patent owner incurs in granting licenses to import into Canada, articles covered by the patent which he owns? If there are different degrees of severity, you might indicate what they are and what the relative risks are.

A. Yes, the risk, of course, flows from what happens once the license is granted. In other words, the risk involved is the—flows from the fact of importation rather than the mere granting of the license. In other words, the granting of the license is one step in giving rise to the risk. The risk arises when importation does take place. And I will assume, for the purpose of my answer to you, that the license is an effective license, and importation arises after it. The first risk, in my opinion, is that any person interested—that is, any person who chooses to build an establishment to manufacture in Canada may seek to obtain a compulsory—a nonexclusive compulsory license for that purpose.

1124 Now, that in itself does not create a risk greater than CRPL would choose to undertake under its own operation. But the risk inherent in it is that CRPL loses its negotiating position relating to the terms of that license and especially the royalty rate. Because if an application is made by any person interested to manufacture, then the royalty will be fixed by the Commissioner of Patents pursuant to the Section that you have earlier mentioned.

So that the first risk, then, is that the Commissioner of Patents will fix the royalty if a compulsory license proceeding should be instituted and should be heard by the Commissioner.

I would expect that the spirit of the Act would give the Commissioner a guidance in favor of a lower royalty than I would be able to negotiate myself. This was the way I would look at it if I were advising a patentee, because the spirit of the Act is to encourage manufacture in Canada and I should think that in accordance with this spirit, I would expect a royalty rate lower than that which I perhaps could negotiate myself. I lose my freedom of negotiating by this step. 1125

Secondly, there is the risk of the exclusive license provision being invoked against me because, if the capital that has to be expended by the manufacturer in Canada is of such a magnitude that he can satisfy the Commissioner that he is entitled to an exclusive license, the Commissioner is empowered to grant that type of license. And on one occasion—I'm thinking of the Celotex versus Donnacona case, which is reported in the Exchequer Courts in 1959—he did grant such a license. It was modified slightly by the court, but the risk is there.

Thirdly, there is the risk of revocation which you have drawn attention to. The provision is there; the risk is there.

Now, you have asked me to comment on the relationship of the risks. Certainly, the first risk is the most realistic one in the sense that this is the likelihood in this area, I would think. There is, however, a real risk of an exclusive
license. I would think the revocation most unlikely.
1126 But the first risk is the risk that would most likely
arise. The next would be the exclusive and, lastly, revocation.

1127 Q. Mr. Henderson, would you advise a client of
yours having adequate financial resources, and owning an important group of patents to license the importation of articles covered by the patent, as being Canadian patents?

A. I would not.

Q. What would be your reasons for not? Because of these risks?

A. Well, because of these risks. I would prefer to negotiate my license for the purpose of obtaining a reasonable rate. And I would—in my opinion, the spirit of the Act is to create manufacture in Canada. And in my opinion—and it is my opinion that licensees should act in accordance with the spirit of the act. And this is the advice I would give.

Q. Notwithstanding these risks which you have described, can you state whether or not you know whether certain patent owners decide to take a chance and license importation anyway?

A. Well, yes. Risks have been undertaken in this area. I heard evidence this morning where licensing has taken place by people of Canadian patents, and licenses to im-
port have been granted. And I know that people
1128 have assumed this risk, the risk that I have outlined.

Q. Would you state, would you advise a client whose patents were perhaps of secondary importance, secondary to commercial or political considerations—would you advise him whether or not to assume the risks and license importation?

A. Well, I wouldn't want to answer that in the abstract. I would certainly want to consider the relative risks involved. I mean, this is a matter of which risk is the one I must assume. And I would have to balance my risks to see which is the more serious of the risks. And I would act in accordance with my analysis in that regard. In other words, if I have to assume some risk, I will assume the one that I think is least likely to cause me trouble.

Mr. Dodds: No further questions.

The Court: Mr. McConnell.

Cross-Examination by Mr. McConnell.

Q. Mr. Henderson, in your practice at the Patent 1129 Bar, have you represented the Hazeltine Corporation?

A. Me personally?

Q. Yes.

A. No, sir.

Q. Has your firm?

A. I would—I'm afraid I would think yes. But I'm sorry that I am pausing—

Q. Well, you know—

A. No, I don't know that they have. But I would think yes, but to be very frank with you, I can't positively say it, but I would expect they have, yes.

Q. They have also represented General Electric Company, haven't they?

A. Well, I personally represented General Electric on several occasions, yes.

Q. Well, what have you represented General Electric in?

A. I advised General Electric on a patent problem within the last two months.

Q. And you know that General Electric has directed this pool up there to license their patents for import, don't you?

A. I know nothing of the direction of the pool; 1130 no, sir.

Q. You don't know a thing about that?

A. I do not know the direction of the pool; no, sir.

Q. Well, do you know that they have authorized the license of their patents for import?

A. I have nothing of that, sir.

1131 Q. Have you ever—

A. Except what I heard this morning. I heard of this this morning.

Q. Have you represented this Pool?

A. When you say—put that to me, have I personally, I have not. My partner, Mr. Gowling, has for many years —or did for many years. He does not now.

Q. Well, your firm was general counsel for CRPL, wasn't it, for many many years?

A. That's what I just said. Mr. Gowling was the person in the firm that represented them and, certainly, my firm represented them for several years. That is quite right.

Q. Well, I am going to come back to your Royal Commission after awhile, on another phase of it.

But for the moment, what were you doing before the Commission? Who were you representing there?

A. When I appeared before the Commission, my primary responsibility was the Patent Institute of Canada.

At that time, I was the president of the Institute.

1132 Q. Did you represent any private clients?

A. I certainly did. I can't point to any I did, but

I feel reasonably certain I did. I was before the Commission many times.

Q. Were they members of the Pool?

A. No, sir. I cannot recall representing any member —any person who was a member of the Pool.

Q. Can you remember anybody that you did represent by name?

A. No, I cannot at this moment specifically point to any person. I represented—

Q. How long ago was it?

A. Oh, it was four to five years. And I represented a lot of people over the period of time. Bear in mind, this Commission endured for a long period of time, and it heard matters under copyright, patent, as well as industrial design. It endured for a long period of time.

Q. Well, I'm just going to ask you about CRPL, on that issue that you referred to when you read this matter into the record.

Now, did you represent anybody at all with reference to that issue?

1133 A. Well, my partner, Mr. Gowling, certainly did.

Q. He represented CRPL, didn't he?

A. Certainly.

Q. Certainly. And these things that the Commission was writing into the report, that was what you were trying to maintain there, weren't you—your law firm?

A. My law firm presented the submission on behalf of CRPL, and it certainly sought to say that CRPL was not doing anything that was illegal.

Q. That's right. You helped write the report, didn't you?

A. I did not help—I did not write the report. I participated in the deliberations, as I explained this morning. And I advised the Commission on the kind of thing that ought to be dealt with, and upon which a decision should be made.

As you will see, this report is written by Chief Justice Ilsey and Mr. Buchanan. I did not write the report.

1134 Q. Well, did you go down and go in conference with them when they were writing the report?

A. Yes, sir, I did.

Q. It took some period of time, didn't it? Two weeks, let's say?

A. Oh, it was longer than that.

Q. I think it was. Yes. Now, you told us this morning that this Patent Act in Canada had been amended so that these provisions—and you named them, under 68 and the various subsections—became one which the Commissioner no longer had any discretion about, but had to act on; is that right?

A. I did not say that.

Q. What did you say?

A. I said that there was one amendment made to Section 68, subsection (d) for Donald, where the word "may" had been changed to the word "shall"; that the word "shall" under our law is a mandatory word. Therefore, when that change was made in that subsection, that section became mandatory and did not become permissive.

1135 Q. All right.

A. I did not say anything about the general discretion of the Commissioner under the other sections of the Act.

Q. Well, let's see about that. You say that the change was made so that it reads "but the Commissioner shall make no order for revocation which is at variance with any treaty, convention, arrangement, or engagement with any other company of which Canada is a party." That is the only cause that is applies to; is that it?

A. It only applies to Section (d). I don't have it before me, but if you can provide me with a copy of the Act, my recollection is that the word "shall" in that section—what

I said was that the word "shall" was substituted in that section in 47.

Q. Well, your counsel is going to get you one.

A. Thank you.

Q. Now, let's go back into the history of this for a moment. Do you recall that there was a time prior to
1136 the 1923 amendment of the Canadian Patent Act, when a patent became invalid if goods were imported under it, into Canada?

A. Yes, sir. Prior to 1923, this was the law. It was the law in Canada, I believe, from 1869 to 1923.

Q. And that was changed, was it now by the amendment of 1923?

A. Yes, sir.

Q. Now, do you recall why it was changed in 1923?

A. Yes, sir. I was there, when you say recall. I can only tell you what is generally accepted to be the situation. And it is generally accepted to be the situation that Canada's import provisions were too restrictive to enable Canada to be a member of the Interational Convention. So we then changed our Act to comply—or, rather, not to comply, but to correspond with the 1907 British Act so that we then could become members of the Convention.

Q. Now, when you read the terms of that Convention, you left out in your testimony—I'm talking about—Article 5 (a) (1). You didn't read that. Now, is there any
1137 reason why you left that out?

A. Well, which Convention are you talking about, if I may ask. There is several revisions of the Convention.

Q. I'm talking about the treaty.

A. Well, which treaty? There are several treaties, as you well know.

1138 Q. Well, is the treaty of August 3rd, still in existence?

A. 1948? I'm not aware of the '48 revision. And I cannot tell you whether that—whether that is the one to which I was referring.

Q. All right. I'm reading from the Convention of the Union of Paris, of March 20th, 1883, for the protection of industrial property, revised at Brussels December 14th, 1900; at Washington June 2nd, 1911; at The Hague November 26, 1925; and at London June 2nd, 1934.

A. Well, I cannot—

Q. Is that what you were referring to this morning?

A. Yes, except the one I had this morning was also revised at Lisbon October 31, 1958.

Q. All right.

A. It contains that in italics. Now, I cannot tell you with assurance whether Canada adhered to the London revision or not. I believe we adhered to those revisions prior to the London revision.

Q. Well, we are going to relieve your mind on that before we get through.

1139 A. Thank you very much.

Q. Article V of the document I am reading from, which is the Official Gazette, published in Washington, United States Patent Office—(a)(1)—do you find such a section in the one that you were reading from this morning?

Mr. Dodds: 5(a)(1)?

The Witness: Yes, I do. Article V (a)(1) I have before me.

By Mr. McConnell:

Q. All right. I'm going to read it to you and I want to know why you omitted reading it this morning:

> "The introduction by the patentee into the country where the patent has been granted of objects manufactured in any of the countries of the union shall not entail forfeiture."

A. The reason I didn't read it is mine doesn't read that way, in the first place.

Q. How does yours read?

A. Mine reads that:

> "The importation by the patentee into the country 1140 where the patent has been granted of articles manufactured in any of the countries of the union shall not entail revocation of the patent."

I take it it is the same sense as you read—

Q. Well, you didn't read that either, did you?

A. I didn't read that—I didn't read any of this as I recall. I made certain comments on the convention, as I understood it, as it subsisted in Canada. I didn't read the text at all, as I recall.

Q. All right. Now, this convention which I have been asking you questions about is a treaty between the United States and Canada, is it not?

A. Well, I wouldn't have defined it so.

Q. You don't think it is a treaty?

A. I wouldn't have defined it in the words you used, as being a treaty limited to Canada and the United States, if that was your intent. It is a—

Q. Well, you are going to quibble with me as to whether other people are in it?

1141 A. Well, I'm not quibbling. I'm merely answering your question.

The question, as you put it to me, I interpreted it to be a treaty limited to these two countries. And it is not. It is a treaty which embraces a large number of countries.

Q. Well, I will rephrase it. Is it a country which includes these two countries, Canada and the United States?

A. Oh, yes. Well, particular revisions do. Certain revisions of the International Convention have been agreed to by Canada, and certain revisions of the convention have been agreed to by the United States.

The Court: How about Section 5(a)(1)?

The Witness: I don't know. I cannot answer that.

By Mr. McConnell:

Q. Well, will you go this far with me—that this convention is in the nature of a contract between the United States and Canada and other parties?

A. Well—it involves international obligations. In-
1142 sofar as international obligations are created—

Q. Can't you answer my question?

A. Well, I thought I was. I hadn't finished.

Q. All right. Go ahead.

A. (Continuing.) —that it creates international obligation (b), insofar as those obligations are created, it is a contract of that nature, creating international obligations, one country with the other.

Q. And the countries we are talking about here are the United States and Canada? You understand that?

A. They are two of the countries included in respect of those revisions to which both countries have adhered.

Q. Well, you don't know of any revision over what I have read to you, which you can quote here, do you?

1143 A. I have said that I—there have been revisions in London; there have been revisions in Lisbon, both of which were subsequent to, I believe, what you quote. Certainly the Lisbon one was.

Q. Well, you don't—

A. I'm not suggesting—

Q. You don't know any revision of this language, Article 5(a)(1), do you?

A. I don't even know whether Canada and the United States adhered to that revision, I have told you, Mr. McConnell. I don't know.

Mr. Dodds: It might be helpful if Mr. McConnell would state what date he is reading from. The witness identified the revision from which he is reading from. It would place it in terms of time.

The Court: I think Mr. McConnell started way out in the 1800's, and 1900, 1924, up to '48. That apparently is the last date—

Mr. McConnell: Your Honor is exactly right. I read it right into the record and, apparently, Counsel didn't listen to it; you did.

1144 The Court: As I understand, the last date you mentioned was '48.

Mr. McConnell: Yes, sir.

The Court: Lisbon was in '58, or something.

The Witness: Lisbon I believe was '58; that's right.

By Mr. McConnell:

Q. Well, have you got the Lisbon Treaty of '58?

A. I have the Lisbon Treaty of '58, October 31, '58.

Q. Were Canada and the United States signatories to that treaty?

A. I don't believe Canada was a signatory to the Lisbon Treaty.

Q. You don't think so?

A. I don't think so.

Q. Were they signatories to the one in 1948, the one I read to you here from the document I am using?

A. Well, I would much prefer if you can tell me the name of it. If it is Brussels, I believe we were. 1145 If it is London, I don't believe we were.

Q. I will very happy to tell you what it is. Revised at Brussels.

A. I believe we did. My recollection is that we did. I can't be positive on it.

Q. Now, in your Patent Act, Section 68(d), there is the caveat which you say is mandatory on the Commissioner, as follows:

> "But the Commissioner shall make no order for revocation which is at variance with any treaty, convention, arrangement, or engagement with any other country to which Canada is a party."

Now, would you say that Article 5(a)(1) is such?

A. Provided Canada has adhered to the revision in which that appears; yes, I would.

Q. Well, you just told me they adhered to the one in Brussels, and I read you from the Brussels one.

A. My answer still stands.

The Court: His answer is he thought they adhered to it, but he wasn't sure.

1146 By Mr. McConnell:

Q. Well, you thought it well enough to read from it into the evidence in this case, didn't you?

A. I though well enough of it to read what I thought was the then existing convention—

Q. Where did you get what you got on it? Up in Canada?

A. No. The first time I saw it was when I was in this courtroom.

Q. Somebody else gave it to you?

A. It was handed—I thought that was clear; it was handed to me by Counsel.

Q. Did he tell you what portions to read from?

A. No, sir, he did not.

Q. You made your own selection; is that it?

A. I didn't make a selection. I gave what I thought was a quick analysis of it, if you will recall. I didn't select parts to read from. I gave an analysis of those things that I thought were important.

Q. And you didn't think Article 5(a) (1) was important?

1147 A. Well, it didn't stick out in my mind as one of those that was—

Q. All right. You have answered my question.

A. All right.

Q. Now, getting to this Royal Commission report which you apparently engaged in on behalf of various people, and which your partner engaged ~~in~~ for CRPL, isn't it a fact that you were trying to give CRPL a whitewash at this time?

A. That I was—I was not trying to give a whitewash here—

Q. Well, was your partner?

A. My partner was representing CRPL to establish that they had not committed any illegal acts in Canada.

Q. This was not a judicial tribunal, was it?

A. No. It was a Royal Commission to investigate into the patent laws of Canada.

Q. To see whether or not they should make some recommendations. Were any of their recommendations carried out?

A. Not yet.

Q. When did they make them?

1148 A. The date is here, I believe. You will find it on the cover page, I believe.

Q. Well, I take it it was some time ago?

A. Oh, yes, several years ago.

Q. Nothing has happened.

A. Well, that isn't true. Something has happened.

Q. Well, have they changed any laws?

A. No. But this is being—I'm advised that the Secretary of State's Department is working on a proposed revision of the Act.

Q. You haven't seen any draft of that, have you?

A. I have not.

The Court: By several years, what do you mean—four. five, six?

The Witness: I'm sorry. I thought I could give your

Honor the exact date when this was submitted to the Minister. I would think it is three or four.

By Mr. McConnell:

Q. Well, that's good enough for me—three or four years—without getting the exact date, or do you want to get the exact date?

1149 A. Well, I would prefer to get it if I can.

Q. All right. You get it.

A. I thought it would be a matter of record. It isn't in this document, and I thought it would be.

The Court: That is the only document you had before you, so you apparently can't get it.

The Witness: That's right.

1150 A. No, I am sorry, I can't give you the exact date.

By Mr. McConnell:

Q. All right, we will try and get along without it, then. Now, referring to this report which apparently you had something to do with, and your partner, for CRPL, had quite a bit to do with it, apparently—

Mr. Dodds: Your Honor, I object to these characterizations. There has been no testimony that—

The Court: There is no jury in the box, Mr. McConnell. It is not necessary in this case to put it that way.

By the Witness:

A. I thought it was a matter of record on this report. The report was submitted on the 31st day of December, 1959.

By Mr. McConnell:

Q. Approximately four years, five years have gone by. Apparently Mohammed or somebody labored greatly and brought forth nothing to date, is that right?

1151 A. Well, you can characterize it as you see fit. I am told that they are working on it.

Q. In this report, under this heading that you read into evidence this morning, there is a statement that CRPL acted as a central patent licensing agency, and then it gives the names of the five shareholders, Canadian General Electric Company, Canadian Westinghouse Company, Northern Electric Company, Canadian Marconi Company, and Canadian Radio Manufacturing Company.

Now, do you know which ones of those companies manufactured either radio or television sets?

A. I do not.

Q. You don't know that Canadian General Electric Company manufactures radios or televisions?

A. I have no knowledge of their activities. That is to say, I have no personal knowledge of what they are actually making in Canada, and I have only acted for them on an isolated basis on particular subject matters. I am not—

Q. Well, your partner acted for them as their general counsel for many, many years, hasn't 1152 he?

A. Never as their general counsel. He has done work for them on patent matters, I feel certain, but he is not a general practitioner—I assume you are talking about Gowling, and he is not a general practitioner and he is not their general counsel nor, as far as I am aware, has he been.

Q. But he is their patent lawyer. He has represented the pool, hasn't he, throughout the years?

A. I have answered that three or four times, that he has represented CRPL, of course, for a long period of time and represented them at this hearing, that is, the hearing at which CRPL was represented before the Royal Commission.

Q. I show you a document which is introduced here in evidence as Defendant's Exhibit 135, which purports to be a notice to importers, vendors or users of radio and television receivers and other electronic equipment stating that—

A. Well, you say you are going to show it to me but I haven't seen it yet.

Q. You will get it in due course. Just be a
1153 little patient.

The Court: He will read it to you and then you can read it to yourself.

The Witness: That is fine. Thank you.

By Mr. McConnell:

Q. This following statement is contained in it:

> "Under the provisions of Section 46 of the Canadian Patent Act the owner of a patent and his legal representatives have the exclusive right, privilege and liberty of making, constructing, using and vending to others to be used the patented invention in Canadian Radio Patents Limited, in acordance with the requirements of Section 67, 68 of the Patent Act has licensed the following Canadian companies for the manufacture and sale in Canada of radio and television receivers."

Can you point out on that list of companies those that are members of this pool, the five companies that I have just read to you. See if you find their names on there.

1154 A. Oh, I see. What you would like me to do is compare this list with the list as stated in Page 1.

Q. Correct.

A. Well, I see Canadian Marconi Company; I see Canadian General Electric Company. It is called Limited in one case but Canadian General Electric Company in the other, so I see two of them. I see Canadian Westinghouse Company, that is three, Northern Electric, yes, four. I do not see Canadian Radio Manufacturing Company. That is the four of the five named that I see.

Q. All right.

Now, you told us this morning that you knew what the policy, the licensing policy of CRLP was and that, as I understood you to state it, the policy was not to license imports where there was manufacturing in Canada.

A. That is correct.

1155 Q. Now, imports that came in, in the electronics field, would represent competition to the owners of this pool, would it not?

A. Certainly.

Q. No question about it, is there?

A. I would have thought not.

Q. You don't have any antitrust laws up there in Canada, do you?

A. Well, that is not true.

Again, if you wish a straight matter of nomenclature, we don't call it "antitrust," we call it "Combines," and when I spoke of the Combines Act, that is our antitrust legislation, and it is criminal in nature and it is very well developed.

Q. Well, is a conspiracy among manufacturers to exclude competition, would that group of manufacturers be in violation of your law up there?

A. The words of the act would require that it likely operate to the detriment of the company or that there be an undue lessening of competition. In other words, you have put it in terms of—words that are not in accord-
1156 ance with our statutory requirements. There would have to be an undue lessening of competition, or there would have to be more than merely getting together. In other words, they would have to be conspiring to do an unlawful act or doing by unlawful means a lawful act.

Q. I am talking about conspiring to stop competition with these five manufacturers.

A. Well, are you asking me if this is a criminal offense.

Q. Yes.

A. I don't think it is, what they have done, no.

Q. You haven't any law that says you can—that is against your law to conspire to stop competition with these five companies, is that right?

A. Well, what—I am answering your question in the context of the existence of a patent right that is being asserted, and in my opinion the assertion of a patent right is not doing an unlawful thing. And when you use the word "conspire" I am using it in a non-technical sense
because, certainly, to assert a patent legitimately in
1157 accordance with the spirit of the Patent Act is not, in
my opinion, a criminal act.

Q. In Canada.

A. In Canada.

Q. You don't know whether conspiring by patent holders to stop competition with holders of the patent in manufacturing is or is not a criminal act in the United States?

A. I know nothing of the United States laws. I have trouble enough with my own.

1158 Q. That issue never was considered in any manner, form or suggestion in this hearing that you had before this—

A. That is not true. You will see that reference is made to Section 411 of the Criminal Code which then dealt with the subject matter that you are talking about. It also refers to Section 30 of the Combines Act, and Section 30 of the Combines Act is a section which enables the Attorney General to take civil proceedings to revoke a patent in the event—or cancel an agreement in the event there is an undue lessening in competition. That was considered, and you will see the report did consider this aspect of the matter, or that is that report—

Q. Well, it considered it in the aspect of whether you needed any more legislation, isn't that right?

A. And whether or not there had been any illegal act up to date.

Q. Well, there was nobody on trial up there, was there?

A. No, but that was considered. The report so states. It was considered.

1159 Q. And these recommendations and so forth are written by you, I take it, or—

A. Mr. McConnell, for the third time, they were not written by me.

Q. I know what you said.

A. No, I did not write the report. I did not write—

Q. All right, now, let me get to this statement in your report?

A. Not my report. I thought I had so stated.

Q. Well, the report.

A. Thank you.

Q. (Reading):

> "The portfolio in respect of which CRPL had the right to grant licenses consisted of 5,000 patents, and in the absence of a license from CRPL it is doubtful if anyone could sell in Canada a radio or television receiver."

Now, did you consider that subject before you wrote that into the report?

Mr. Dodds: I again object. He said that he never wrote anything in the report.

1160 The Court: Let's make it more semantically correct, Mr. McConnell.

Mr. McConnell: All right.

Pardon me, your Honor.

By Mr. McConnell:

Q. Was that considered?

Mr. McConnell: He was there. I guess that he ought to know.

By the Witness:

A. Of course they considered it. They have written it. They considered that aspect of the matter and they referred to it in the report.

By Mr. McConnell:

Q. And they had before them the benefit of whatever CRPL had submitted, is that right?

A. Of course.

Q. Now, do you know what proportion of the patents in that Pool were owned by General Electric?

A. No knowledge at all.

Q. You don't know how many of those patents belong to GE or Westinghouse?

A. No, I do not.

1161 Q. Or RCA?

A. I do not.

Q. Well, do you consider that a company like Zenith Radio exporting its sets into Canada is competition for the members of this pool?

A. You mean the sale of the sets in Canada? Is that—

Q. Do you think that is competition for the owners of this pool?

A. Well, I have already told you that I don't know the nature of their—the full scope of their activities. You have shown me their licensees. I am now assuming that they are manufacturing and selling sets and, certainly, if they are manufacturing and selling radio sets in Canada, your exportation into Canada is competition.

1162 Q. So this report then says that in the face of five thousand patents it would—

"—it is doubtful if anyone could sell in Canada a radio or television receiver."

Is that right?

A. That is what it says.

Q. And that would include the Zenith Radio Company, wouldn't it?

A. It would include anyone as at that time who sought to sell in Canada radio receiving sets, that is right.

Q. And you have told us that if Zenith is a competitor, if it doesn't manufacture, if there are manufacturers in Canada, then this pool will not license Zenith to import anything into Canada, isn't that right?

A. Will not license—they will not license the importation into Canada in respect of the type and kind of television set or radio set that is being made in Canada, that is correct.

The Court: When we say the type or kind, we are talking about home radio and home television sets.

1163 The Witness: Yes, this would include home radio and television sets, that is correct.

The Court: All right, I ust want to be sure that this wasn't the exception that is in there.

The Witness: No, this would include whatever is being made in Canada including that type and that kind of set.

The Court: All right.

By Mr. McConnell:

Q. Then you say, "It was stated—" or you object to that word.

The report says:

> "It was stated to be the policy of CRPL to enforce its patent rights against any person who sells in Canada an imported radio or television receiver which infringes any one or more of the patents in its portfolio except in the limited area where permission has been granted to import the apparatus which CRPL agrees is not of a type or kind made in this country."

1164 Is that what they arrived at?

A. It so states.

Q. The report?

A. The report so states.

Q. And that was CRPL's statement, wasn't it?

A. That is, CRPL made that submission.

Q. Made that submission, that that is what they were doing.

A. That is correct.

Q. Now, under that Zenith couldn't get a license to import at all unless they manufactured up there, could they?

A. Well, it depends what they sought to import. If they sought to import a small television set, by way of example, less than eight-inch, I presume they could.

Q. No, I am talking about seeking to import something that is competitive with the members of this Pool.

A. And something that is being made in Canada?

Q. Yes, by the Pool.

A. Then their stated policy is that they would not
1165 grant a license to import.

Q. Now, it says here:

> "CRPL expressed concern about the compulsory licensing provisions of the Canadian Patent Act in the event that it should grant a license to any person to import in circumstances where any manufacturing was carried out in Canada under a patent included in the portfolio which it administered. This concern did not relate to the grant of a non-exclusive compulsory license by the Commissioner of Patents on the payment of a reasonable royalty. CRPL was itself prepared to grant a license of such a nature."

Did they represent to that Commission that they were not concerned about that sort of a license?

A. They might have, because the report so states. I cannot—I was not present when they made their report or when they made their presentation, but I did certainly 1166 read their presentation and I have to say to you that I expect that this is what they said.

Q. Now, that is one of the risks that you said this morning that a patentee would assume if he licensed importation.

A. I was asked to advise my opinion, and in my opinion, I say there is a risk in that if you leave yourself open for an application for compulsory license you then allow an independent tribunal, if you will, the Commissioner of Patents, to fix the royalty. I would prefer to be in the position to negotiate that royalty myself rather than have the tribunal fix it in the situation which arises.

Q. All right. That is your concern.

A. That is correct, that is my concern. That is what I was asked.

Q. But I am asking you now if the matter about which CRPL represented they had no concern was the thing you were expressing concern about, namely, the compulsory licensing of a non-exclusory license by the Commission.

A. That is right. You mean where we are dealing 1167 with the same subect matter.

Q. Yes.

A. Yes, we were. In other words—

1168 Q. Dealing with that subect matter before the Commission, at least, CRPL represented that they were not concerned about that.

A. So I understand from that report, that is correct.

Q. So this concern that you brought into this hearing is some concern of your own?

A. It is my opinion.

Q. Yes.

A. It is the way in which I would advise my client, and this is what I was asked.

Q. Now, what they were afraid of, apparently, was something which was equivalent to a forfeiture of the patent, a revocation of it, is that right?

A. That is one of the things. The other was the exclusive license. They are put in that order, the exclusive license and then revocation, as I recall it.

Q. And the Commission says, in view of all the law up there and all you have talked about here, isn't this their opinion:

> "We do not believe that it is likely that the Commissioner of Patents would revoke a patent where
> 1169 the abuse was based on the fact that a license had
> been granted to import."

Isn't that the opinion of this Commission?

A. So it states insofar as revocation is concerned.

Q. Yes, and that is different from yours, isn't it? You said that revocation is one of the risks.

A. Of course, and I don't think they preclude it from being a possibility.

Q. No, but they say, "We do not believe that it is likely."

A. May I finish? They have said, and I so stated, that it was unlikely. Now, there were three risks, the non-exclusive, the exclusive and the revocation, and I thought I made it clear that in my opinion the revocation was unlikely. I thought that this was their views—this was their view as well. Now, I could be incorrect, but this is my recollection.

Q. Now, let me ask you this, you looked up the law on this subject, I take it.

A. Looked up the law on what subject?

1170 Q. On the subject of your testimony here in this court.

A. Well—

Q. On this Patent Act, and its sanctions and its caveats, and so forth.

A. I had hoped that I was familiar with it.

Q. All right.

Now, let me ask you this: Has any case in Canada revoked a license for importation?

A. No, I so stated this morning.

Q. Well, that isn't very much of a risk, then, is it?

A. The risk is there. When it is invoked, I don't know, but as you well know, Mr. McConnell, the laws that are present and exist can be invoked at any time. Just because they haven't been is no assurance that they are not going to be. I mean, it is there. It is a risk. I can't ignore it.

Q. Do you know of any instance wherein the Commissioner of Patents has invoked this Canadian Patent Law either for a compulsory non-exclusive license, for a compulsory exclusive license, or for a revocation of a 1171 license against RCA, General Electric, Westinghouse, or the Telephone Company?

Mr. Dodds: Your Honor, I object to the form of the question.

By Mr. McConnell:

Q. For permitting—

Mr. McConnell: Just let me finish, will you.

By Mr. McConnell:

Q. (Continuing.) —for permitting their patent to be used to import goods into Canada.

Mr. Dodds: Your Honor, I object to the form of the question because the Act does not permit the Commissioner of Patents to institute any sort of proceedings. He merely hears it upon the application of some other party.

The Court: The objection is overruled.

By the Witness:

A. I know of no compulsory license proceeding that has been taken against any of the companies that you mentioned. I am not aware of it.

By Mr. McConnell:

1172 Q. Or any of those three risks that you talked about this morning, none of those have been invoked, have they, by anybody?

A. Well, that is a different question. I am not sure of that. I can't say that—

Q. I didn't ask you that, I asked you whether you knew of it.

A. Mr. McConnell, may I finish, please.

Q. Go ahead.

A. —the compulsory license provisions constitute a spur to negotiated licenses. Now, I don't know and I can't tell you whether anybody has gone to any of these companies with a view to saying that by virtue of the existence of these sections you better negotiate with us, but this is the normal course. The normal course is, first, to seek to negotiate and if you can't negotiate then invoke these provisions, but the provisions are invoked for the purpose of negotiating a license nonetheless; so that I can't answer your question. I don't know whether anyone has sought to invoke them in that sense.

Q. All I asked you was whether you knew of any 1173 instance where anybody had invoked these provisions.

A. I just told you that I can't answer that.

Q. That is all I asked you.

A. I can't answer that.

1174 Q. Well, you can answer it. You told us you didn't know of any, didn't you?

The Court: Not in regard to all three, just in regard to the one.

The Witness: It would be in regard to the first one, quite right, your Honor. It would be in respect to a negotiated nonexclusive license which would not mean that it would ever come before the Commissioner of Patents. It would therefore not be public.

By Mr. McConnell:

Q. How about any of the other three that you talked about as risks? Do you know of any time that anybody has invoked any of those procedures?

A. I can't point to any, no. That doesn't mean that they haven't sought to use them for the purpose of negotiation.

Q. I didn't ask you that, I just asked you if you knew of any.

A. No, I don't.

Q. Now, this report goes on:

> "If the abuse is importation on the payment of a
> 1175 royalty, an abuse of this nature would not be remedies by revoking the patent and permitting importation by anyone and without royalty obligation. Such a course of action would not cure the mischief."

Now, what we are talking about here is a license to import on the payment of a royalty, isn't it?

A. Well, I don't know what we are talking about here.

Q. Aren't we talking about the refusal of CRPL to grant a license on the payment of a royalty to import sets into Canada?

A. Mr. McConnell, I am here to answer your questions. I do not know what the issues are in this case. I don't know what we are here to discuss.

Q. Well, you told us that you knew that CRPL would not grant such a license, didn't you?

A. Well, I have told you that CRPL will not grant a license where there is manufacture of the particular article in question. I have so stated, that is right.

Q. And they won't grant a license to import on
1176 payment of a royalty, will they?

A. In certain conditions. In those conditions—

Q. Well, you named the conditions.

A. That is right, but in those conditions they will not grant a license to import, where there is manufacture in Canada.

Q. Well, this Commission didn't think that that situation would justify any revocation, isn't that right?

A. That isn't what they said. They said they didn't think it would be a remedy that would be given; whether it justified it or not, they did not deal with it in the words that you used to me. They did not deal with it in terms of justification, they dealt with it in terms of it being a likelihood in terms of a remedy that would be given.

Q. Now, this Commission said further:

> "The result flowing from the recommendation of the Commission is that a company holding a patent portfolio will have the right to grant a license to import in a proper case."

1177 Did they recommend any legislation along that line?

A. Yes, sir, they did.

Q. What did they recommend?

A. They recommended that Canada should adhere to the Lisbon Convention, and that by adhering to the Lisbon Convention that there would then be a provision effected or legislation would be passed in Canada implementing that adherence whereby no exclusive license would be granted on a compulsory license application.

Q. Well, under their present Patent Act—

A. Who is "they"?

Q. You don't know who I am talking about?

A. Well, I want to be certain.

Q. Under the Canadian Patent Act, the one which we have been identifying here in evidence in this case, they had to conform to the Conventions and treaties, and the Commissioner had to, didn't he?

A. Well, these are two separate questions. There are occasions when domestic legislation is not in conformity with the convention. The disconformity has not been 1178 such as to force the particular country out. It is true that there is a moral obligation on the country to bring their legislation into conformity. I am saying that in answer to your first question.

Certainly as to your second question, any order of the Commissioner, if made contrary to a provision in the convention, it would be ineffective.

Q. And you agreed with me that the convention did provide that the introduction by the patentee into the country where the patent has been granted of objects manufactured in any of the countries of the union shall not entail forfeiture. You agreed with me on that, didn't you?

A. I agreed with you that a particular revision that you referred to, and that you read those words to me—and that you read those words to me, and I also agreed that words of like import were in the 1958 revision that I read, but I did not agree that Canada—

Q. Well—

A. I said I did not know whether Canada had adhered to the particular convention where those words appear. I just don't know.

1179 Q. Well, suppose they did. Assume they did adhere. Would that make any difference in your opinion?

A. Well, if they adhered then, of course, the Commissioner couldn't make an effective order which would be contrary to that provision.

Q. That is right. I am reading now from a document which is in evidence here, which is an allegation in a suit brought by the United States Government, one of the signatories to this convention which we have been talking about:

> "Beginning on or about November 15, 1926, and continuing thereafter to the date of the filing of this Com-

> plaint, the defendants, the co-conspirators and other persons to the plaintiff unknown, have engaged in an unlawful combination and conspiracy in restraint of the aforesaid foreign commerce in home entertainment apparatus in violation of Section 1 of the Sherman Act.
>
> "The defendants are continuing and threaten to and 1180 will continue the said offense unless the relief hereinafter prayed for in this complaint is granted.
>
> "The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants and co-conspirators to prevent, hinder and preclude the importation into Canada from the United States of home entertainment apparatus which could compete in the Canadian market with home entertainment apparatus manufactured in Canada by Canadian companies, including the Canadian subsidiaries or affiliates of each of the defendants."

Then they name these companies:

> "Canadian GE, Canadian Westinghouse, Northern, Canadian Marconi, and Standard, caused the incorporation of CRPL and caused all outstanding shares of CRPL to be issued to themselves, and on or about January 19, 1927, jointly authorized CRPL to sub-license 1181 Canadian patents owned or controlled by each of them, such licenses to be issued only upon the unanimous consent on the part of all the shareholders of CRPL.
>
> "Canadian GE, Canadian Westinghouse, Northern, Canadian Marconi, Standard and Rogers-Majestic and Canadian Philips hereinafter continued to authorize CRPL to sub-lease Canadian patents owned or controlled by each of them to at least December 6, 1957. By agreement and understanding effective to the date of the filing of this complaint GE since at least 1927 has authorized and continued to authorize Canadian GE to grant sub-licensing rights."

And that names the other companies that grant sub-licensing rights to CRPL, including RCA, and says:

> "Also, by an agreement effective to the date of the filing of this complaint Hazeltine granted to CRPL an exclusive license with a right to sub-license under
> 1182 the Hazeltine Canadian patents. CRPL acquired the Canadian counterpart patents of the United States Parker patents. Since 1927 CRPL has issued package licenses from time to time at a fixed and uniform royalty rate to Canadian companies engaged in the manufacture, distribution and sale of home entertainment apparatus. These said package licenses issued by CRPL have required the licensee to manufacture only in Canada and to refrain from importing home entertainment apparatus manufactured in the United States. CRPL has refused to license the import into Canada of home entertainment apparatus manufactured in the United States. CRPL has threatened to institute and has instituted patent infringement suits against dealers undertaking to sell in Canada home entertainment apparatus manufactured in the United States."

Is it your opinion that your Canadian Patent Act authorizes the refusal of license under that sort of conduct
1183 set forth in that complaint?

A. I am sorry, I would have to study that in much more detail to know the—to answer your question. There is so much in there, Mr. McConnell, that I am not going to answer off the cuff on a matter of that kind. I have given you my opinion as to what our Canadian Patent Act does, and you will have to assess it in relation to what has been said in that report. I would want to study a matter of that kind.

1184 Q. All right, do you consider it an abuse of your patent law for a group of manufacturers who combine together to refuse to license for import into Canada the products of an American company competing with them?

A. Mr. McConnell, I don't want to get into an international dispute, but I have to say to you that I do not think it an illegitimate aspiration of my country to consider that we should develop our manufacture.

Q. By conspiracy?

A. I didn't say conspiracy, I said to develop manufacturing. It is the stated policy of the Canadian Patent Act that this be done.

Now, I don't have to tell you that in the absence of some degree of—or some ability to license a group of patents it is unlikely that we would ever have had any Canadian manufacture, because there would have been too many patent suits against too many people; so to bring this group of patents together to enable them to be licensed to any one who wished to manufacture is not, in my opinion, a conspiracy. It is the use of patents for a legitimate
1185 object, a stated object of our Patent Act to manufacture in Canada.

Now, as long as this group of patents is made available for manufacture in Canada, I personally, as a Canadian, see nothing wrong in attempting to further that legitimate object, and that if it entails, if it entails, using the Canadian court and the Canadian patents to stop importation of United States sets, I cannot see anything wrong, as a Canadian, in that being done.

Q. All right, you state a different case than the one I put to you.

A. Well, as I saw it, it was a situation you were putting to me.

Q. The case I am putting to you is, assume Canadian companies, the counterparts of American companies, engage in a conspiracy in restraint of trade in which they use these patents in the manner as shown here by refusing importation, would you say that was an abuse of the importation provisions of the patent laws?

A. Well, let me say this to you—

1186 Q. Can't you answer my question?

A. Well, no, I can't, because you have got two different thoughts in there, and I am going to say to you that you have, in my humble opinion, two different concepts, and I want to keep these concepts clear.

Q. Well, I would like to see, first, if you can answer my question.

Mr. Connell: Will you please read the question to the witness?

The Court: I think that he said he couldn't.

The Witness: I can't answer it in those terms. I will seek to give you an answer.

By Mr. McConnell:

Q. If you can't answer my question, I will give you another one.

Is there anything in the patent laws in Canada which justifies Canadian companies from entering into a conspiracy with American companies to violate the antitrust laws of the United States?

A. Well, let me say this to you—

1187 Q. Can't you answer that yes or no?

A. Well, may I answer it?

As long as there is a conspiracy, I assume, and I have to assume on my terms the definition, because if I am talking conspiracy in different terms than you are, I want to be certain I am not answering at cross purposes.

Now, a conspiracy under—

Q. Well, now, let me define "conspiracy" for you.

A. May I finish?

Q. So that you can tell what I am talking about.

The Court: Let him finish his answer and if it is not responsive you can strike it, Mr. McConnell, but he is entitled to answer your question.

By Mr. McConnell:

Q. All right, go ahead.

By the Witness:

A. I am answering your question on the basis that a conspiracy is by very definition the doing of an unlaw-
1188 ful act, perhaps by legal means, or the doing of a lawful act by illegal means. Now, you have answered your question by saying that there is a conspiracy. As long as there is a conspiracy, there is an illegality, but you are assuming the existence of a conspiracy in your question to me. Now, certainly if there is a conspiracy the doing of the illegal act or the doing of the illegal act by illegal means, then the answer to your question is that it is wrongful in our country.

Q. All right.

A. But there must be the illegality.

Q. And if it is wrongful, then there is nothing in the Patent Act which proscribes the import of sets if it is kept out by this illegal means, is there?

A. If there is an illegal means under—if an illegal act has taken place then, of course, there are sanctions for the illegality in Canada.

1189 By Mr. McConnell:

Q. I have forgotten now whether you admitted that you knew that following this antitrust case, General Electric, RCA, Westinghouse and the telephone company directed this pool to license their patents for import from the United States?

A. I didn't say anything, because I wasn't asked. But I have heard evidence this morning to this effect. And it is generally known that there were steps taken by certain companies—the companies I do not know the details of—to enable importation to take place in favor of Zenith. This is generally known in the profession.

Beyond the general knowledge, I have no specific knowledge.

Q. You didn't know that that was occasioned because they were entering into a consent decree under the anti-trust laws?

A. I know that a consent decree has been entered into by certain companies in the United States as a result of action taken by your Attorney General. I do know that
such decrees—that there are decrees of this nature.
1190 I do not know the details. I did not represent any
of the Canadian companies.

Q. I think you said one of the risks that you were worried about, in your testimony this morning, of the three great risks, was the compulsory licensing?

A. Well, the three risks are under the general head of compulsory licensing, yes.

Q. Well, it was a compulsory exclusive license that you thought—

A. That was the second of the two risks; that is right.

Q. Now, what are the conditions under which compulsory exclusive licenses can be given?

A. Well, the ordinary situation that arises where an exclusive license would be given, in my opiion is where the capital investment was of such a magnitude or of such a nature that the Commissioner would consider that it was in the public interest to grant an exclusive license so that that capital, risk capital would be undertaken. And
if it could be established that the enterprise would not
1191 be undertaken in the absence of an exclusive position,
and that an abuse had taken place, then if is my
position the Commissioner would grant an exclusive license.

Q. Now, that is under 68(b), is it not?

A. That is right—

Q. Have you got the Act there before you?

A. I have it here. That is the authorization of an exclusive license. That is right.

Q. All right. Now, (b) says:

> "If the Commissioner is satisfied that the invention is not being worked on a commercial scale within Canada."

Now, there was a definition of commercial scale, wasn't there?

A. There is a definition under Section 2 of what is working on a commercial scale. It must be in a definite—

Q. Let's read it so we will have it before us:

> "2(j) Work on a commercial scale means the manufacture of the article or the carrying on of the process described in claim, in specification for a patent in or
> 1192 by means of a definite and substantial establishment or organization and on a scale that is adequate and reasonable under the circumstances."

Now, I showed you here a moment ago a notice—

A. I have it.

Q. You have it—where all those companies are licensed and manufacturing, according to the notice. Would that be a commercial working of the patent?

A. If—well, any manufacture in Canada would be working in Canada. Manufacture and sale in Canada is working in Canada.

Q. Well, you have a notice there coming from the Pool saying that all those licenses are working their patents by manufacturing.

A. Well, Mr. McConnell, there is nothing here giving the magnitude of their manufacture and sale.

Now, one must compare the magnitude of manufacture and sale in relation to the magnitude of importation before you can determine whether or not there has been 1193 adequate working on a commercial scale. But, certainly, any manufacture in Canada is some working in Canada.

1194 Q. Here is a statement which is made from the Pool in this document which is in evidence here. This is Defendant's Exhibit No. 138.

> "The above companies are working the patented inventions in Canada on a commercial scale and are prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms."

Does that constitute a working on a commercial scale within this definition 2(j), assuming it is true?

A. Well, that notice constitutes nothing.

Q. I know. But I am assuming it is true.

A. Well, then, certainly if they are manufacturing—assuming it is true, certainly they are working on a commercial scale in Canada. If this is what they say they are doing, and they are doing it, of course, it is working on a commercial scale.

Q. It constitutes all the manufacturers of practically all the electronic equipment in Canada.

A. I don't know that.

Q. You don't know that?

1195 A. No. But I would expect they are the largest ones. The ones that I looked at are certainly those that enjoy a favorable reputation in Canada. I would expect that if they are working on a commercial scale in Canada, they are working on a substantial basis.

Q. So the first condition, then, to this exclusive compulsory license is, "If the Commissioner is satisfied that the invention is not being worked on a commercial scale within Canada"?

A. Now, you have changed your concept, Mr. McConnell. Certainly the notice is dealing with some subject matter. There is nothing to indicate to me that there is an identity of the subject matter in the notice, and the particular invention that may be involved in this section. I don't know.

Q. Well, let's assume that they are.

A. Well, assume they are. If they are working on a commercial scale in Canada, then, of course, there would less likely be an exclusive license.

Q. Then we can forget about (b), can't we, because the first thing he has to find is to satify that the invention is not being worked on a commercial scale. 1196

A. If it is being worked on a commercial scale in Canada, then, certainly the risk in relation to an exclusive license is minimized.

Q. It is de minimus, isn't it?

A. I would have to know all the facts before I would say anything is de minimus. It is certainly minimized in principle. Whether it is de minimus, I would have to look at an individual case to see the facts of that case. I would have to know the figures, and then I would say whether it is de minimus. But certainly it is minimized.

Q. Let me ask you, if you were a pool representing manufacturers who are going to be met with the competition of the Zenith Radio in the home receiver field, would you feel that you had an unbiased view of how you were going to decide that question?

A. Do you mean if I am a party to a—

Q. Yes.

A. If I am a party, I have a point of view, certainly.

1197 Mr. McConnell: Certainly. I have no further questions.

The Court: Anything, Mr. Dodds?

Mr. Dodds: I have a couple.

Redirect Examination by Mr. Dodds.

Q. Mr. Henderson, to your knowledge, under Canadian law, is a treaty self-executing insofar as internal rights are affected?

A. Definitely not. An internal—this has geen clearly established in Canada that a treaty other than, of course, a treaty of peace—a treaty does not create civil rights among citizens in the country. It must be implemented by legislation.

Q. You described the Combines Act. In your opinion, does that proscribe combinations restricting competition among Canadian manufacturers, or competition between Canadian manufacturers on one hand, and importers on the other, or both?

A. Well, again, if it is using—one must look at what is being sought to be done.

1198 If it is being done to monopolize, if there is being an undue restraint of trade with a view to monopoly, without—this could give rise—or there is price-fixing or something of this nature, in a restraint of trade, this could give rise to an illegality.

But where there is—there is nothing that has happened in our Combines Act which, in my opinion, creates an illegality where manufacturers get together and put their patents in one single entity, and, then make those available to anyone who wishes to manufacture in the country. In other words, if these patents are available at a reasonable price, I do not think any change in our Combines Act has changed the position that has been made—that has been reported in our Royal Commission report.

1199 Q. Would the sale of radio and television receivers in Canada, as receivers manufactured in the United States—you might say, for example, Zenith receivers—would that constitute competition with Canadian manufacturers who are not members of CRPL?

A. Certainly.

Q. Do you know of any action within recent years bruoght by the Attorney General of Canada seeking revocation of a patent?

A. Well, there was I sought to—or a petition that I launched in the late '40's in the optical field, where I filed a petition, as I recall, because the licenses weren't being granted on reasonable terms.

We did this on behalf of the Attorney General. Now, the Attornye General isn't itself interested in a compulsory license. So with a view to giving relief that would be effected, we asked for revocation. That did not go to court. It did not proceed.

The matter that was sought to be changed was changed and, therefore, that application did not proceed. But I believe it was filed. I am speaking from long memory.
1200 I haven't checked it. I believe that was filed. Certainly I advised that it be filed.

Mr. Dodds: No further questions.

The Court: Anything further, Mr. McConnell?

Mr. McConnell: Yes.

The Court: Maybe we better take a recess.

Mr. McConnell: All right.

(A short recess was taken, after which the following further proceedings were had herein:)

Recross Examination by Mr. McConnell.

Q. Now, calling your attention again to 68 (d), this language "but the Commissioner shall make no order for revocation which is at variance with any treaty, convention, arrangement, or engagement with any other country to which Canada is a party."—Now, that is legislation, isn't it?

A. That is correct.

1201 Q. And you told Mr. Dodds that the treaty must be implemented by legislation. Doesn't that implement your treaty?

A. That doesn't implement a treaty. But what it does do is, it provides that the Commissioner cannot do something which is contrary to the treaty. Now, this may have the same effect. But what I am saying to you is, it puts a prescription insofar as the—upon the Commissioner insofar as he may act. It puts a limitation on his act.

Q. In other words, you have to go back to the treaty every time, and see whether he has acted against the perview and scope of that treaty?

A. That is correct.

Mr. McConnell: I have no further questions.

Mr. Dodds: No further questions.

The Court: Counsel, do you have in Canada any McConnell-type barristers practicing before the Queen's court?

The Witness: Yes, sir, I am one.

1202 The Court: You survived very well.

The Witness: Thank you, sir.

(Witness was excused.)

Mr. Dodds: I should like—first of all, your Honor, I think I failed formally to offer in evidence the Exhibits in the binder which I identified—most of them were by stipulation with the exception, I believe, of some that the witness identified. So I hereby offer them in evidence.

The Court: They have been read in evidence, so they might as well be received. They may be received.

Mr. Dodds: There is one additional item that has just come to my attention, which I should like to offer in evidence, and that is the published Annual Report of the Zenith Radio Corporation for 1962, which includes this statement on page 3:

"Profits of Zenith Radio Corporation of Canada Limited were again affected as a result of curbs instituted by the Canadian government. Its action in es-
1203 tablishing an exchange ratio which further discounted the Canadian dollar in relation to the U. S. dollar, and the imposition of additional tariffs presented serious obstacles to the Canadian operation."

I would like to offer that in evidence as Exhibit PL 62.

1204 The Court: It may be received.

(The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 62.)

Mr. Dodds: I should like to call as the next witness Mr. Stevenson of Zenith whom, you may recall, produced rather some large volume of figures the other day of which I asked an opportunity to look through.

WILLIS STEVENSON, recalled as an adverse witness by the Plaintiff and Counter-Defendant, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Stevenson, what was your accounting education and experience?

A. I was graduated from the University of Illinois in 1938 with a Bachelor of Science in Accounting with honors. I worked with the public accounting firm of Price Waterhouse & Company in Chicago from 1938 to 1949, with the exception of four years in Service. And I worked
1205 with Arthur Andersen & Company in the Chicago office from 1950 to 1952. Since 1952, I have been with Zenith Radio Coroporation.

Q. As between Zenith Radio Corporation and, I believe, a subsidiary, Zenith Sales Corporation, who carries the inventory of finished products such as radio and television receivers?

A. The unshipped products are carried by Zenith Radio Corporation.

Q. And the Zenith Sales Corporation has no inventory?

A. That's right.

Q. Now, will you turn to what I believe was a summary sheet, Exhibit 218.

Mr. McConnell: 220.

Mr. Dodds: I found it simplified my consideration—I numbered these pages consecutively. I guess the only way to compare it—this is the sheet entitled Zenith Radio Corp., Zenith Sales Corp., unit and dollar sales.

By the Witness:

A. All right. I have it.

By Mr. Dodds:

1206 Q. I am sorry. I guess that's not Exhibit 218. The way the papers were handed to me, I can't tell where 218 begins and ends.

A. I have the schedule you referred to.

Q. All right. Now, on Sheet 218, Exhibit 218, for the year 1962—maybe I should ask, first, with respect to Exhibit 218, do these figures represent factory shipments, I understand?

A. Yes.

Q. Now, on the other sheet that I identified—Zenith Radio Corp., Zenith Sales Corp., unit and dollar sales—that represents sales. Now, is that something different than shipments?

A. I thought this was the schedule you were referring to when you asked the first question. This schedule, unit and dollar sales, Zenith Radio Corporation and Zenith

Sales Corporation, represents shipments by the Zenith Radio Corporation and Zenith Sales Corporation.

Q. All right. Now, then, look for the year 1962 on this last sheet that you were referring to, domestic units for 1962. It gives the number 1,104,020. Do you find that?

A. Yes, I do.

1207 Q. Then, on 218, for 1962—

The Court: Will you let him know what 218 is.

By Mr. Dodds:

Q. Do you have 218? This is the Zenith share of domestic market.

A. Yes, sir.

Q. For 1962, it shows Zenith shipments of 1,104,967. Now, what accounts for the discrepancy between those two numbers?

A. Let me find this schedule. I don't know the reason for this discrepancy of about seven or eight hundred sets —about 900 sets.

Q. And if you refer on those same two sheets to the unit sales for 1960, on the Zenith Radio, Zenith sales sheet, I find 996,966.

A. Yes.

Q. And on the other sheet, I find 997,007.

A. Yes.

Q. Do you have a way of accounting for that discrepancy?

A. No, I can't account for the 41-set discrepancy.

1208 Q. Now, do you know, Mr. Stevenson, whether or not the Zenith receivers which are made for export to Canada come off the same production line as the U. S. sets?

A. I am not familiar enough with that to answer that question directly.

Q. Well, from an accounting standpoint, do you have separate accounts for the sets that come off that are going to be shipped to Canada, and those that are going to be sold in the United States?

A. Yes, we do.

Q. But you don't know whether they come off the same production line?

A. No, sir.

Q. Now, at page 782 of the transcript, you said:

> "I used reports"—

The question was:

> "Now, will you tell us what documents you used in making such a computation?"

You said.

> "I used reports prepared from the records of the 1209 company, prepared within the financial division, to show profits by production lines and by other divisions within the production lines."

Do you remember that testimony?

A. I don't remember that specifically.

Q. But you stand by it?

A. Yes.

Q. Well, what do you mean by "divisions within production lines"?

A. I don't think it is production lines. That's what threw me off. Product lines is, I believe, the term I used. Product lines is television, radio, hi-fi, and stereo, and color television. Those are the product ~~lines that~~ I was referring to.

The Court: Do you want to correct your testimony, then, to read products lines instead of production lines?

The Witness: Yes, product lines instead of production lines.

Mr. Dodds: Well, that threw me too.

The Court: All right.

1210 By Mr. Dodds:

Q. But if you prepared these returns to show profits by production lines, wouldn't you have to know what you are talking about, if you were talking about sets for Canada, and you worked on the production line? Wouldn't you have to know that the sets you were computing costs on came off this line, or the same line as some other equipment?

A. Well, we compute a standard cost for each product before it is put into process. And the standard cost for a Canadian set is different that the standard cost for a domestic set.

Q. Do you mean—I'm sorry. Continue.

A. In costing the sales that we made to Canada, we used the standard cost of sets which apply to Canadian production. Whether these come off of one line or another is not important. It is important—the thing is the standard cost of the sets as they have been precomputed.

Q. You say precomputed, before they go into production? Is that what I understood you to say?

A. Yes.

1211 Q. So these aren't actual cost figures—aren't actual realized cost figures then at all, are they?

A. Yes, they are, because any variance from that standard cost during the production cycle is spread to the set produced during the period in which they are produced.

Q. Well, I still don't quite understand that. If these standard costs are precomputed, and you say these are standard costs, how can they include actual costs?

A. Well, if you will go to another schedule within here, I will explain it to you.

Q. Yes.

A. It is a schedule called Summary of Profit Percentages applying to additional sales volume of Canada, U. K., and Australia.

Q. May I look. It is very hard to follow these diffeernt sheets.

Yes. Now, I have this. Now, will you explain?

A. The standard cost of Canadian sets for the material was this percentage of our sales dollar. To the ex-
1212 tent that the actual cost varied from the standard costs they have been taken up in the additional items on this profit and loss statement. For instance, if we had purchased material at other than the standard cost for this material, that variance has been taken up in the profit and loss under material price variance. And it therefore adjusts standard cost to actual cost.

1213 Q. Was this done after the end of the year?

A. It is done concurrently from month to month.

Q. Well, now, for example, the labor component, would that be the same for the Canadian sets as for the United States sets?

A. It probably is not, because there are some adjustments that are—some changes that are made in the domestic sets to comply with Canadian underwriters' requirements, and to the extent that adds labor, that added labor would be included in the labor content of these sets.

Q. Is that what you mean here by labor adjustment from standard plus 03, is that what you are talking about?

A. That could be part of it.

Q. What could be the rest of it?

A. Well, there are several labor accounts here, as you will note, labor standard, labor adjustment from standard, labor variance and labor—well, those three accounts would include any adjustment of the labor content for the
1214 Canadian portion.

Q. But outside of the variations due to the necessity of complying with the Canadian underwriters, the cost would be the standard, then, is that so?

A. That is true.

Q. Well, then, wouldn't that mean they would have to come off the same lines?

A. Not necessarily.

Q. You mean all the lines would have the same costs?

A. No. I say they wouldn't necessarily have to come off of the same line. There might be a line just for Canadian sets, or there might be lines doing both Canadian and domestic sets and later adjusted after they had come off the end of the line.

Q. Do the sales figures which you have given include stereo?

A. They do not.

Q. Do they include FM stereo receivers?

A. They do.

Q. All right.

Now, let's get to a question of definitions: How
1215 do you define "a fixed cost"? I think in several of these schedules you have used the terms "fixed" and "variable". Now, I just want to get on the same track.

A. I would define a "fixed cost" as one that would not increase with an additional volume of production.

Q. And how would you then definie "variable cost"?

A. A "variable cost" I would define as one that increases proportionately with an increase in production.

Q. So that any cost figure which varies directly with production would be a variable cost, is that right?

A. That is right.

1216 The Court: You said that a "fixed cost" would be one that did not vary with increased production?

The Witness: Yes, sir.

The Court: Would it also include one that did not vary with decreased production?

The Witness: Yes, sir.

The Court: So regardless of whether it is an increase or a decrease.

The Witness: Yes, sir.

The Court: All right.

By Mr. Dodds:

Q. This summary sheet that we were just looking at, Mr. Stevenson, to those figures taken from these annual sheets, Zenith Radio Corp. parent only, 1960, 1961 and so forth, is it just a—

A. What was your question.

Q. Were the figures on this sheet, summary of profit percentages and so forth, was that taken from these annual sheets?

A. Yes, they were.

Q. For the respective years?

A. Yes.

1217 Q. Well, now, let's consider again the 1962 which Zenith Radio Corp., parent only, 1962 finals—

A. Yes, I have the schedule.

Q. Now, these cost figures in dollars, how are those segregated from costs with respect to all other products and with respect to each other, for example, as between monochrome television and radio?

A. Well, it varies differently with each of the items that shows on this schedule.

Q. Well, take particularly what you might call an item such as advertising; how do you determine the allocation between, say, television and radio in these figures?

A. Well, in the case of advertising there is one element included there which is allocated on the basis of the product shipped, and that is co-op, advertising content.

The Court: What kind of—

The Witness: Co-op., cooperative advertising. At Zenith there is a specific amount of co-op. advertising al-
1218 lowed to a distributor with each set that he receives, and the provision of co-op. advertising that shows on this schedule included in advertising is allocated on that

basis. The balance of advertising expense is allocated on the sales dollar within the Canadian group of products.

By Mr. Dodds:

Q. Well, now, these figures, and particularly these percentages, are those composites for all types of TV and all types of radio?

A. Yes, they are.

Q. Now, would not the profit margins be greater on some types than on others?

A. Yes, it would be.

Q. Well, now, at page 784 of the transcript you were asked:

> "Now, what I am getting at is, how do you determine the profit? You must take cost figures and deduct that in some way from what you received. Is that the way you do it?'
>
> "A. Yes, the profits are determined by relating
> 1219 to every unit sold the costs which apply to that unit."

Now, is that strictly true if these costs are averaged over all types of television sets? It is not unit by unit then, is it?

A. It is unit by unit—

Q. It is actually on an overall basis, is it not?

A. No, it is not.

1220 Q. It is overall for a particular product, for example, monochrome television?

A. Within this classification of television that we have here and radio; some of these costs were built up on a unit basis. Those which can be applied directly to the unit and those which cannot be applied directly to the unit are allocated to the unit on some equitable basis. An instance of this would be a space charge in which one cannot say that a certain square foot of space should be allocated to a television set. These costs have to be allocated to units on some equitable basis.

Q. And I was coming to this question of space charge, which is one of the items. How do you allocate space charge, on a square foot basis, on the number of units, or how?

A. Space charge is included in our factory overhead accounts.

Q. So it is applied on a uniform basis to all products?

A. It is applied on two basis, one on a standard basis which has two elements and one is a percentage of
1221 the material content, and another factor is the content of labor within the set, and this allocation then goes to television or radio profit and loss on that basis. The balance which is overabsorbed or underabsorbed is spread to television and radio on the basis of the overhead allocated on the prior basis.

Q. So that there are several components in the question of space charge?

A. Yes.

Q. And some of them relate to the number of units or to the volume, one of the components?

A. Will you repeat that question, please?

Q. I say at least one of the components of space charge is related to the number of units or to the volume of the item, is that correct?

A. I don't understand what you mean by "one of the components of the space charge."

Q. You said the space charge was made up of several components, as I understood you to say.

A. Well, we have in our overhead accounts—we have depreciation, which is depreciation on not only space
1222 but on equipment and that is allocated with other overhead to products on the basis I have described.

Q. And one of those basis is on the term of the number of units, isn't it?

A. No, sir, it is on the basis of the material content and the labor content.

Q. Just those two items?

A. Within the units.

Q. Just those two items, material content and labor content?

A. Yes.

Q. Don't those vary with volume? In other words, if you build 10,000 receivers you have twice as much material and twice as much labor content as if you build 5,000, do you not?

A. Yes—well, that is true, but there is only so much to spread, and to the extent that you have more units and the same amount of overhead, it is spread thinner.

Q. Now, coming back again to the sheet which is marked Zenith Radio, Zenith sales unit in dollar sales, in which
you show the unit prices for domestic sets, export in
1223 Canada, those are, again, averages of all types of
television and radios, are they not?

A. That is true.

Q. Then if there was a difference in product mix in your sales, those figures would vary, would they not?

A. That is true.

1224 Q. Do you have any knowledge as to product mix as between urbans and rural areas of sales?

A. No, I don't.

Q. Now, let's come back again to the sheet Zenith Radio Corp., parent only, for 1962 finals. I call your attention under contribution to overhead, engineering direct and indirect. Now, the percentage I note is 1.67 for both television and radio. Does that mean that television and radio both have the same amount of engineering in them?

A. No, that means that we have allocated our engineering expense to radio and television on the same basis.

Q. And does that also apply to the item which is called "indirect administrative expense", which has the same percentages, 1.65?

A. That is true.

Q. And the same is true with respect to "legal expense", which in both instances is .43?

A. That is true.

Q. Well, then, doesn't that mean that actually those allocations are made on the basis of sales, of a dollar volume since it is exactly the same percentage in both col-
1225 umns?

A. For these accounts that you have mentioned we have found this the best way to distribute these expenses.

Q. Well, then, I would understand, according to your definition, that those should be considered variable expenses, if they are allocated on the basis of sales. I find over in the right-hand column that they are listed as fixed expenses. How do you account for that, the three items that I mentioned? Except for the last one, you have allocated only 25 percent to fixed and 75 percent to variable.

A. I don't think the way we have allocated these expenses has anything to do with whether they are fixed or variable.

Q. Well, I thought when you said, by your definition, that a variable cost is one that varied with sales and these costs, you say, are allocated on the basis of sales.

A. But that is two different things, Mr. Dodds.

Q. Will you explain? I don't quite follow that.

1226 A. We have a pool of engineering expenses which must be spread to products. Because they are spread on the basis of the sales dollar doesn't mean that they would increase or decrease as sales dollars increased or decreased.

Q. If that is the case, why do you allocate them on the basis of dollars?

A. Because we have found this is the best way to make our allocation.

Q. But you still say that even though you allocate them on the basis of sales dollars, you say that it is still not a variable cost which varies with sales dollars?

A. That is true.

Q. Actually, Mr. Stevenson, aren't all of these figures on the basis of a standard percentage of the sales dollar?

A. Of which ones are you referring to, Mr. Dodds?

Q. Well, let's take the three that I was talking about, for example.

A. What was your question?

Q. Aren't they actually the standard percentage of sales dollars?

1227 A. No, they are not a standard percentage, they are a percentage that was developed after the sales dollar was determined and the total engineering expense was determined, a percentage was arrived at which to use to spread these expenses to product lines.

The Court: Before we get into some new documents, perhaps we ought to defer until tomorrow.

Mr. Dodds: Good.

The Court: Is it still your guess that perhaps you will finish tomorrow? The only reason I ask is that I indicated to some cases following you that maybe they could go ahead on Wednesday, but I can just as well tell them that they can't.

Mr. Dodds: Well, I would think, your Honor, that as far as I can estimate I should think we would be through by tomorrow noon, unless there is extended cross-examination.

The Court: Do you plan, at this time, any rebuttal, Mr. McConnell?

Mr. McConnell: Just one short witness is all.

1228 The Court: Maybe we could have our arguments in the afternoon and that would be the end of the case tomorrow.

Mr. Dodds: I think it would be safer, perhaps to count on Wednesday afternoon, your Honor.

The Court: Well, I mean, we can always tell them that it will be Wednesday, whether it is 10:00 o'clock or 2:00 o'clock, but it will probably be Wednesday.

(Whereupon, an adjournment was taken to 10:00 o'clock, a.m., of the following day, Tuesday, February 25, 1964.)

1229 * * (Caption—59-C-1847) * *

Before the Hon. Richard B. Austin,
Tuesday, February 25, 1964,
10:00 o'clock, a.m.

The trial was resumed pursuant to adjournment.

Present:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

1230 The Clerk: Case on trial.

WILLIS STEVENSON, called as a witness by the Plaintiff and Counter-defendant for adverse examination, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

Direct Examination by Mr. Dodds (Continued).

Q. Mr. Stevenson, would you refer to the sheet "Summary of Factory Overhead by Expenses for 1962."

A. Yes, I have it.

Q. The first item on that, "Hourly Supervision," you have indicated as "Fixed."

Now, is it your position that if the production of television sets for Canada were increased five-fold, there would be no increase in hourly supervision?

A. I think that is right, substantially correct, yes.

Q. You mean the same number of supervisory personnel could handle five times the production?

A. Well, we are—the factory overhead—the item that
you are referring to, "Supervision Hourly," is the
1231 supervision for not only Canada but for domestic
and export production as well. The Canadian portion
of the—the amount of hourly supervision which would
apply to the Canadian production is a small part of this
amount.

Q. Well, Mr. Stevenson, my recollection was that you told the Court that you didn't know whether the Canadian sets came off the same production line as the United States sets or not. Isn't that true?

A. That is true.

Q. All right. So if you have a separate production line for the Canadian sets and increase that production five times, you will need no additional hourly supervision?

A. These would come off of the—if not the lines that are now used for Canadian production, they would come off of other lines in the plant.

Q. And would require no additional supervision?

A. I doubt it very much.

Q. You mean you could increase your production ca-
pacity five times, assuming now that you have sep-
1232 arate lines for Canadian sets, without increasing the
hourly supervision? That is a fairly low level of
supervision, is it not, hourly supervision?

A. The amount that we are talking about here?

Q. Well, I am talking about that hourly supervision are relatively junior personnel. The senior ones will be on a salary basis, would they not?

A. That is right.

Q. So is it your position that you could increase the capacity of a line by five times without increasing the junior supervisory personnel?

A. We are talking about here, I believe, a very small part of the total production which comes out of the plant.

The Court: You want the answer stricken as unresponsive?

Mr. Dodds: Yes, definitely.

The Court: The answer is stricken as unresponsive.

1233 Mr. Dodds: Read the question back, please.

The Court: Read the question, Mr. Reporter.

Try and give a responsive answer to the question that he is asking you.

(Question read.)

1234 By the Witness:

A. No, sir. That's wrong.

By Mr. Dodds:

Q. All right. Now, just as a basis for that, the first sheet—which is called sales and profits for 1962, and that's the year I'm talking about—I believe shows that Zenith claims a share of the Canadian market of 73,430 units, and actually sold 14,195. So there is approximately a five-to-one ratio; isn't that correct?

A. That's approximately right, on Canadian sets.

Q. Now, on this same sheet, let's take Item 2, Clerical Assembly, which you have assumed to be a fixed cost. And on this same assumption that these sets come off a separate production line, do you think you could increase the capacity of that line five times without adding any clerical help?

A. I think you have misread the title, Mr. Dodds. It is Clerical Hourly, not Clerical Assembly.

Q. Yes. That's what I understood.

1235 The Court: What's the difference between the two, or is there something else?

The Witness: Well, I had the impression he was referring to assembly labor. This is not—

By Mr. Dodds:

Q. No. This is clerical hourly. That is what I was referring to.

A. Yes, sir.

Q. My question was: On the assumption that these sets come off a separate production line, can you increase the capacity of that line five times without adding any hourly clerical help?

A. No, sir.

Q. Now, let's come down to the item which is entitled General Maintenance Labor. Now, I see that figure has been divided fifty-fifty between fixed and variable. Now, how did you arrive at that fifty-fifty split?

A. This was an educated opinion, sir.

Q. Was that your opinion?

A. It is the opinion of myself and our assistant controller and other people who are acquainted with the
1236 type of expense that goes into this—

Q. But did you make the decision of fifty-fifty, or who did make that decision?

A. I made that decision.

Q. And that was based on an estimate?

A. Yes.

Q. All right. Now, going back to the Item 3, which are Salaries, I believe that the detail—the fixed portion of those salaries, as I compute it, comes out at $3,604,708. Is that approximately right?

A. The fixed portion in 1962 is $3,375,249.

Q. That is Item 3. I'm talking about the sum of those three, the first three items.

A. That would be approximately correct, yes.

Q. Now, the detail of that is found over on, I guess it is, the second or third from the last sheets of the group that I have here under '62, where the detail of the third item is found; isn't that correct?

A. That's correct.

Q. So, now, let's consider some of these items. The
first item on the third from the last sheet is production
1237 administration. Now, again, on the assumption
that the Canadian sets come off a separate production
line, could you increase the capacity of that line by five
times without increasing the production administration?

A. Yes, sir, I believe so.

1238 Q. Well, how would you arrive at that decision?
What does a production administrator do?

A. Production administration is the salaried people who have control over the production of the whole plant.

Q. Do you mean there is only man for the plant?

A. No. There are several men involved.

Q. And how many production lines would each man handle?

A. They don't handle production lines. They administrate all production lines.

Q. Well, but there is several in the plant, so each one must be responsible for a certain number of lines.

A. No, sir. That is not the way the responsibility is divided. The responsibility for all lines goes to this group of people.

Q. You mean it is a sort of a committee that decides how these production lines work?

A. I wouldn't term it a committee, no, sir. I would
say that it is a group of men on a line basis who are
1239 organized on a line basis rather than a committee, who
supervise the production lines of the whole plant.

Q. Well, you mean that there is no administrator that supervises the production of a single line that is responsible for the production of a single assembly line?

A. Yes. We were talking about those people before.

Q. You mean they are not included in this group?

A. Not in this group.

Q. All right. Then the third item on this same sheet, for test equipment, which I see you have spread fifty-fifty between fixed and variable—and I should like to ask what was the basis of that division?

A. This is an educated opinion, sir.

Q. It was your opinion?

A. Yes, sir.

Q. Yes. All right. I suppose the same thing applies down—these numbers in the first column, what do you call those—control numbers or job numbers?

1240 A. These are responsibility center numbers.

Q. Center numbers. All right. Center number 3170 was a fifty-fifty split. Was that again your decision?

A. Yes, sir.

Q. And based on an estimate?

A. Yes, sir.

Q. Then in number 3200, that is the plant number two administration. And that you included as a fixed cost. Now, does that include the same type of administration as plant number one?

A. Yes, it does.

Q. Well, now, which plant produces these sets which go to Canada?

A. No one plant produces all of the parts that go into a Canadian set.

Q. Now, we have down here number 3260, production control administration. What does that comprise?

A. Production control is a department that is organized to control material within the plant, and to see that the material gets to the line in proper time for use.

1241 Q. Well, now, is that what is sometimes called quality control, or is that something different than that?

A. Quality control is diffeernt, sir.

Q. Well, on this same assumption that these Canadian sets come off a separate production line, is it your position that that could be increased five times without increasing the amount of production control administration?

A. Assuming they come off the same line, it is not true.

Q. I think you mean off of a separate line?

A. That's right. If they came off of a separate line, as you have assumed.

Q. Yes. Now, we have an item 3270 for contracts. Now, what does that item constitute?

A. 3270, contracts, is a department that is organized to handle government contracts.

1242 Q. It has nothing to do with the sales to distributors or dealers?

A. It has nothing to do with civilian production.

Q. I see. Well, I see now we come down to 3290, Quality Control. Now, what does that group do?

A. That group has the responsibility of spot-checking sets as they are produced in the plant, to determine the quality that is within the set.

Q. What would it do? Check every hundredth set, or every twentieth set, or every five hundredth set?

A. It is a variable amount, Mr. Dodds. I would say that the frequency is more often than one in a hundred. It is less than 90 out of a hundred.

Q. And, again, on the assumption that these Canadian sets come off a separate production line, if you increase the capacity five times, you would certainly have to increase the amount of the sampling, would you not?

A. That's possible, if they came off the same line.
1243 Yes, sir.

Q. You mean off a separate line.

A. Off a separate line.

Q. Now, turn to the next page. We have Item 3620, Requirement Controls. Now, what does that constitute?

A. Well, that is a department that is concerned with determining the requirements of the lines at any particular time, and determining—or seeing that they are filled.

Q. And on the same assumption that these Canadian sets are produced on a line separate than the U. S., if you increased the capacity of that line five times, wouldn't that item increase?

A. That's true.

Q. So let's come to the next one—material control. What does that constitute?

A. Material control is a department organized to control the inventory of parts and components within the plant.

1244 Q. Well, now, again, assuming that these sets are separately produced on a line, wouldn't that cost increase if you increase the production five times?

A. Not necessarily, sir. When we are talking about additional quantities, we are not necessarily talking about additional items. We control our inventory by items rather than by specific quantities. If we are controlling 1,000 or 1,500 or 2,000 it doesn't make too much difference.

Q. Well, now, you are talking about quality control of received components, are you not?

A. We are talking about material control, I believe, sir.

Q. All right, but received materials?

A. Yes, sir.

Q. Now, isn't that, again, on a sampling process? Don't you check one in a hundred or one in a given number in either exactly or something approximating a regularity established?

A. Not in material control, sir.

Q. You do not?

A. No.

1245 Q. Now, the next item is 3640, which is Scheduling. Now, what does that group do?

A. Scheduling has the responsibility of, on a routine basis, requesting materials from inventory to be moved to a particular spot in the plant for production.

Q. And, again, on the assumption that the Canadian sets come off of a separate line, isn't it going to involve more labor to keep this material moving if you have five times as much to move?

A. It may require some more, not five times, though.

Q. I notice that under Section 3900 we have another item of Quality Control; is that the same or different than the Quality Control Item 3450—not 3450, it is 3290.

A. I think that as you have gone down these sheets there have been many Quality Control accounts at different plants.

Q. So the same answer would apply with respect to Item 390 as would apply to Item 3290?

A. Yes, that is true.

1246 Q. And the next Item I find is 2110, Personnel, which is a pretty large item, because it was $280,000. Now, again, assuming that these Canadian sets are produced on a separate line, wouldn't there be more personnel involved in hiring, taking care of terminations and accessions for lines that had five times the amount of production?

A. I don't believe this would be a material factor, sir.

Q. There would be some variation. You couldn't expect the personnel people who handle the accessions and terminations for a line producing 14,000 sets to take care of personnel accessions and terminations producing 70,000 sets.

A. Well, that is right.

1247 Q. There is an item account, I believe it is 2200, Quality Assurance; what does that represent?

A. Quality Assurance is a department organized as a last step Quality Control department where finished sets are taken from the production line or from finished goods and tested.

Q. And so the same comment you have given with respect to items 3900 and 3290 would also apply to that item, would they not?

A. No, sir, they would not.

Q. All right, would you explain that answer.

A. With respect to Quality Assurance, there is no specific number of sets or specific percentage of sets that are tested by this department. They select these sets at random within the plant and test them without regard to the volume of sets going through the plant.

Q. All right.

Now, let's come down to Item 3262, Inventory Control; what does that department do?

A. Inventory Control, this is a plant 2 item which 1248 would be similar to our material control plant 1.

Q. So the same comments that you gave with respect to material control would apply to inventory control?

A. Yes.

Q. Yes.

I think if I recall correctly, Mr. Stevenson, you testified that you prepared the top sheet which shows the lost sales and lost profits, is that correct?

A. Yes, sir.

Q. Then you made the decision as to which items were to be considered as fixed cost and which variable cost?

A. That is right.

Q. Now, I notice in here, if I read these correctly, that all depreciation was considered to be a fixed cost.

A. That is correct.

Q. Now, again assuming that these Canadian sets come off a line separate from the U. S., to call depreciation a fixed cost, that must mean that the facilities for producing

14,000 Canadian sets are adequate to produce 70,000
1249 Canadian sets, is that correct?

A. Under the assumption, yes.

Q. Well, then, that would involve an assumption that the capacity which you had for producing these Canadian sets was four or five times present production, would it not?

A. Will you read that question again, please?

The Court: Read the question, Mr. Comeau.

(Question read.)

By the Witness:

A. What would?

Mr. McConnell: I object to that question, four or five times the production of what?

The Court: I assume Canadian production.

Mr. Dodds: I was speaking of the Canadian—

Mr. McConnell: I would assume—

Mr. Dodds: I thought the assumption was that the Canadian sets were being produced on a separate production line, and, then, as I say, if you could increase five times as many sets without increasing facilities, that must mean your production facilities have an idle capacity; in other
words, they were capable of producing about five
1250 times their present production, would it not?

The Witness: That is true.

By Mr. Dodds:

Q. Now, on the sheet near the back entitled "Summary of Factory Overhead Expenses for the year 1962," would you turn to that?

A. Yes, I have it.

Q. Now, let's consider Account No. 371, Depreciation. What is included in this Depreciation factor; facilities, buildings, equipment, and so forth?

A. That is right, sir.

Q. All buildings and all facilities?

A. I believe that is right, sir, all buildings and all facilities, all depreciable facilities.

Q. Now, how is this annual depreciation charge allocated among various products produced, such as monochrome TV, color TV, radios, hearing aids, how is it allocated?

A. It is allocated, as I explained yesterday, Mr. Dodds, through our method of allocating factory overhead to products on a combination of bases: The first is a percentage of the material content of the set; a second base
1251 is percentage of the labor content of the set, and for any over or under absorbed burden the balance is allocated on the basis of the total of the prior two.

Q. So, then, there are three components, first, on the basis of material content. Now, again—well, on any assumption, whether separate or the same lines, the material content of 70,000 sets is going to be five times the material content of 14,000 sets, isn't it?

A. That is right.

Q. And the labor content will be roughly in that same ratio, will it not?

A. That is right.

Q. And the third factor that I think you said was the dollar sales, yesterday, the under or over absorption.

A. No, I said the combination of the two that you have just named.

Q. I see.

A. The total of the two.

Q. All right. So that all three of these factors, then, vary with quantity; so how can you say that is a fixed charge?

A. I say it is a fixed charge because the deprecia-
1252 tion amount would not increase or decrease with the increase or decrease in the production.

1253 Q. Well, the factors that you have—for example, the overage and underage must, must it not, because if you apply a standard depreciation charge to the various items allocated, as you have suggested, and then there isn't enough, then you go back and add some more on, so the volume does change, doesn't it?

A. To the—let me go back a little bit, sir, if I may; with additional production the depreciation amount included in factory overhead would not increase, therefore, with an increase in production and an increased dollar material content or labor content in Canadian sets would bear a smaller percentage of the total factory overhead.

Q. But there would be some variation in quantity, would there not?

A. No, I don't believe so.

Q. You mean to say, Mr. Stevenson, that if you have a plant that is producing, for the sake of argument, a hundred thousand television sets, and you had a plant that is producing ten thousand radio sets with, maybe, a price ratio of ten to one, that you would allocate the same
1254 amount of depreciation to both those plants?

A. No, sir, I didn't say that.

Q. Well, I didn't think you did, but it seems to me that that is the sense of your testimony, that it is independent of the volume of production.

Mr. McConnell: Is that a question?

Because if it is, I am going to object to it.

The Court: I don't think it is a question.

By Mr. Dodds:

Q. I will ask if that statement is correct, Mr. Stevenson?

A. May I have that question again, please?

The Court: Read it, Mr. Comeau.

(The question was read.)

By Mr. Dodds:

Q. And then I asked you if that statement is correct.

A. The amount of depreciation allocated to an increased volume of production would be the same amount as would be allocated under a smaller volume of production.

Q. I don't think that quite answers the qeustion,
1255 Mr. Stevenson. I said under the assumption that I
had made, is my statement correct?

Mr. Dodds: Maybe you had better read back the statement again.

Mr. McConnell: I would suggest that you would save a little time if you would give a new question.

The Court: I suggest that you ask a new question that is less involved. Ask a question that definitely has a question mark on the end.

Mr. Dodds: Yes, Judge.

The Court: All right.

By Mr. Dodds:

Q. I believe in the preceding question and answer I
posed the question that if you assume one plant producing
a hundred thousand television sets at an average price
of $100 and another plant producing ten thousand radios
at a price of $10, would you allocate the same amount of
depreciation to those two plants, and I think your answer
was no. Then the next question is, since that is not true,
then, is not in fact a depreciation dependent at least in
1256 part upon the dollar volume of sales produced by a
given operation?

A. Not the dollar volume of the operation, Mr. Dodds,
it is dependent upon the material content of the sets sold
and the labor content of the sets sold.

1257 The Court: Wouldn't the dollar volume have some
relationship—

The Witness: There is some relationship there, sir.

The Court: I would think there would be quite a relationship.

Mr. Dodds: I think the witness previously answered that specific question, that when we went back to Material Controls and Labor Content that that did vary with volume.

By Mr. Dodds:

Q. Now, still on the same sheet, Mr. Stevenson, Item 372, Property Taxes, what taxes are included in that item?

A. I am not sure of the exact—

Q. Do you know whether they include personal property taxes?

A. I assume they do, but I am not sure.

Q. And Cook County has substantial personal property taxes, does it not?

A. That is your statement.

Q. And those would vary with the amount of inventory, would they not?

A. I assume they would.

1258 Mr. McConnell: If he knows. If he is an authority on tax law. I don't know whether he is or not.

Mr. Dodds: If he doesn't know, all he has to do is say so.

By the Witness:

A. I said that I assume they would. I don't know.

By Mr. Dodds:

Q. All right. Now, on that assumption, if you increased the volume of production of a line producing sets for Canada by five times, wouldn't you expect there would be a substantially larger inventory?

A. There would be some larger inventory, yes, sir.

Q. All right. Now, let's look at the item next, 373, Insurance; do you know what types of insurance are included in that account number?

A. Not the specific names of the insurance.

Q. Do you know whether it includes insurance on inventory?

A. I assume it does.

Q. All right.

1259 Now, let's look at the next item, 375, Utilities; I assume that is primarily electrical power, is it not?

A. Yes, I assume it is heat, light and power.

Q. So, again, on this assumption of a separate line for producing Canadian sets, if you had a line that produced five times as many sets, wouldn't it take an additional amount of power?

A. There would be some increase, yes, sir.

Q. Now, let's look at Item—back up, 368, the Annual Inventory; what does that represent?

A. This is the cost at the year end of taking a physical inventory.

Q. And, again, assuming that you have a separate production line for these Canadian sets, if you increase the volume five times, I think you have already indicated that there would be an increase in the inventory? Wouldn't there be an increase in the cost of this item?

A. Very little, sir.

Q. Pardon?

A. Very little.

Q. Well, there would be some. You mean, it 1260 wouldn't cost any more to take an inventory to produce 70,000 sets than to take an inventory of the material and components to produce 14,000 sets?

A. Very little difference, sir.

Q. Now, Item 901 is Space. How is that allocated to the different production items?

A. On the same basis as all of these other overhead accounts, which I explained before.

Q. My recollection is that your answers to my questions indicated that all of these overhead accounts are not based on the same formula, some on one and some on another.

A. The allocation to product lines, I believe is what you are referring to, is it not, to black and white television and to radio?

Q. Yes.

A. All of these overhead accounts are allocated as a total to product lines on the basis that I have described, which is a percentage of material content and a percentage of labor content, and the over or under absorbed burden on the total of those two.

1261 By Mr. Dodds:

Q. Now, let's look at Account 904, Data Processing. I notice there you have split fifty-fifty between fixed and variable. And I ssume that the basis for that split is the same as you previously testified as to other splits in certain of the other overhead items.

A. That's right.

Q. Now, let's turn back to the sheet entitled Zenith Radio Corp., Parent Only, 1962 Final, and account number—this doesn't have an account number. The account under Contribution to Overhead, Overhead, indirect administrative, what does that—what specific items of expense or cost are included in that item?

A. These costs include the top management group, the controller's group, the financial division, and I believe that is just about all—or credit department, as well.

Q. And Item 2, Sales Expense, to which you have distributed 25 per cent fixed, and 75 per cent variable, what does that item include?

A. This sales expense relates to Canada only on the books of the parent company. It relates to the parent
1262 company top management of the sales organization in Canada.

Q. In Canada.

A. Yes.

Q. Now, if this sales organization in Canada was charged with selling 70,000 sets per year instead of 14,000 sets, that would involve quite a number of additional contacts with dealers and distributors, would it not?

A. These contacts—I don't think it would involve substantially more than they are already making.

Q. You mean the sales force that you have in Canada could sell five times as many sets without any additional cost?

A. I'm sorry, sir. I believe I explained that this is the administration of that sales force, and not the sales force itself.

Q. All right. Now, I think that you testified that you had eliminated such cost items as one profit-sharing requirement provision.

A. Retirement.

Q. I am sorry, retirement provision. I misread.

1263 A. Yes.

Q. Now, these figures which you have offered purport to show that if you had this additional sales, you would have very materially increased profits in Canada. Wouldn't this item increase proportionately?

A. This item would have to be paid out of any profits that were attained.

Q. I don't believe I understood that.

A. This provision would be made from any additional profits that were made in Canada.

Q. So that the item would increase roughly proportionately with profits, would it not?

A. For the purpose of this computation, it would come from the lost profits which I have summarized on the schedule.

Q. Well, then, wouldn't it be a variable cost?

A. It would be variable, sir—

Q. That's the answer. If you want qualifications, suppose you let your counsel bring them out?

A. All right.

Mr. McConnell: Retirement fund?

Mr. Dodds: Profit-sharing retirement provision
1264 was the language Mr. Stevenson used at Page 85
of the record.

By Mr. Dodds:

Q. Now, in computing the lost sales and profits in England, have you generally followed the same formula that we have gone through in some detail for Canada?

A. Yes, sir.

Q. Now, there has been testimony previously that the British sets have to be somewhat different because of, among other things, the different standards in England. Wouldn't that involve—don't you think it is appropriate to eliminate engineering with respect to British sets?

A. I think it would be, sir.

1265 Q. You mean you can make all of these changes to
these sets—I think it has been testified to, for example, that Great Britain uses positive modulation versus negative modulation; they use a scanning frequency of 405 lines instead of 525 lines; they use an amplitude modulation for sound instead of a frequency modulation for sound. Those changes could all be done wthout any engineering?

Mr. McConnell: Wait a minute. If you are going to summarize the testimony, it was also testified by Mr. Kaplan that all the changes that were necessary to be made, the distributor could make in a back room with a screwdriver.

The Court: There is evidence that some distributor was able to take a monkey wrench and a screwdriver and—

Mr. Dodds: Mr. Kaplan also testified that that was on a single job basis, one by one, not on a production basis.

The Court: I understand. The objection is overruled,
because we are now talking about making the changes
1266 at the factory, on the production line.

Mr. Dodds: Right.

By Mr. Dodds:

Q. Would you answer the question?

A. May I answer it this way, sir: That these things are explored—the engineering requirements to change a domestic set to a British set are explored normally in our engineering department. And the answers to this problem, the engineering answer to this problem are available and have been available in the past.

Q. Now, Mr. Stevenson, according to figures you show here, Zenith Radio Corporation sold in Great Britain in four years 65 sets. Now, what is your basis for determining there wouldn't be any engineering to put those sets on a production basis?

Mr. McConnell: He just answered that question.

Mr. Dodds: No, he didn't.

The Court: If he thinks so, he can so state.

By the Witness:

A. I believe I answered the question before. May
1267 I repeat it this way. That over a period of years,
we have maintained contact with what the requirements of the British sets are, and our engineering department has investigated the changes required, and these answers are available, so that there would be no engineering, additional engineering required to make a U. K. set.

By Mr. Dodds:

Q. Did you make a personal investigation of anybody in your engineering department that no engineering would be required to put into production a television receiver meeting the British standards?

A. No, I did not personally do this.

Q. Now, the same formula you used for Canada and Great Britain, you also supplied in computing the asserted lost profits in Australia; is that correct?

A. Yes, sir.

Q. And did you make any check with your engineering department to determine whether there was any difference in the sets which would have to be sold in Australia which would require any engineering expense in order to
1268 put such sets into production?

A. I did not personally do that; no sir.

Mr. Dodds: And I think—what is rather obvious—that all of the items about which I have been quizzing Mr. Stevenson are items which in the sheets are indicated as fixed charges; therefore, they have been deducted in manufacturing costs in attempting to build up an actual profit of between four and a fraction and ten per cent up to around 20 per cent.

That's all the questions. Thank you.

The Court: Next, Mr. McConnell.

Mr. McConnell: I don't know about that last statement —what that was, whether it was an argument or evidence.

The Court: That's all of the questioning, a rather flowery closing of the examination.

Cross-Examination by Mr. McConnell.

Q. When you were taking over the computation with reference to Canada, you were taking over the computation of hourly supervisors which you have, as I under-
1269 stand it, in your schedule tabulated as a fixed charge.

A. Yes, sir.

Q. Now, Mr. Dodds has been talking about the production of 75,000 sets as compared with 14,000 sets actually produced. Can you tell us of your own knowledge whether or not Zenith has the capacity, without adding any other capacity out there, to produce 75,000 sets a year in addition—

A. It is my opinion they do, yes, sir.

1270 Q. Now, you have shown that as a fixed charge. Will you tell the Court why you have shown it as a fixed charge?

A. Yes, sir. The hourly supervision which we were talking about is the hourly supervision not only relating to the Canadian sets but to all sets produced. And I think as our schedule summarized here, in the case of television we are talking of over a million television sets each year rather than 14,000 as a base. And in the case of radio, it is an equal or larger number of radios.

This hourly supervision relates to the hourly supervision required for total factory production, and not just Canadian production.

Q. Using the computation that you have been using, your unit cost goes down, doesn't it, rather than increases with the additional production?

A. Yes, sir. With respect to the fixed items, the unit costs would go down. With respect to the variable items, the unit costs would remain the same.

1271 Q. Now, if you hadn't used a fixed cost, just used the costs as tabulated on present production, you would have a higher figure, would you not, for costs than you do now in your tabulation?

A. Yes, sir.

Q. And that's true of item two, is it—clerical help?

A. Clerical help is of the same nature; yes, sir.

Q. And is that also true of the salaries which you total up here at about $3,375,000?

A. In my opinion, it is; yes, sir.

Q. As you increase your production, the cost per unit goes down?

A. Yes, sir.

Q. And that's what you mean by a fixed cost, isn't it?

A. That's right.

Q. That's the way you define it in your direct?

A. Yes, sir.

Q. Now, throughout all of these questions, there
1272 has been the assumption that the Canadian sets are
produced on one assembly line. Do you know whether
or not that is a valid assumption, the way the plant is
operated?

A. I would say it is not a valid assumption as we normally operate. As I testified yesterday, I do not know that they are made on one line or several lines or mixed lines. But as Zenith operates, it would be normal to make Canadian sets not only on one line, but on any line that is available.

Q. Well, do you know whether or not components that go into radios and television sets that you sell are made on separate lines or all made together on the regular lines in the factory?

A. With respect to those that we manufacture ourselves, the large majority of components that go into a Canadian set or a U. S. set are made on the same line. There is no difference between these components, and they are used indiscriminately on either Canadian or U. S. sets.

Q. Now, you were asked about this profit sharing retirement fund. Let me ask you, isn't that a sharing of profit shown on your books?

1273 A. Yes, sir, it is. The provision is made from
profits actually realized during the year.

Q. Now, in the event that you did sell 75,000 sets as compared with the 14,000 sets actually sold, is there any adjustment made in your computation for that additional sharing of profit?

A. Yes, there is a provision made. The provision is that this expense has not been included as variable expenses because the profit to the extent that any additional profit is earned—a portion of that profit would have to be set aside. In this computation, I have come to a lost profit situation before having set aside any additional profit sharing contribution that would have to be made from those profits.

Q. What I'm getting at, that's not a cost item. That is a method of sharing the profits actually made; isn't that true?

A. Yes, sir.

Q. Just like dividends would be a method of sharing?

1274 A. Yes, sir.

Q. Now, this method allocating items between fixed and variable costs, is that a method that is set up and used in the ordinary course of business out at Zenith?

A. No, sir, it is not.

1275 Q. And who did you consult with in making that division?

A. I consulted with individuals in the financial division who have day to day contact with accounting for costs, to determine the nature of the expense accounts, the type of expenses that went into them, and from that information estimated the percentage of those expenses which would remain constant and those that would vary with additional volume.

Q. Well, is this estimate made in accord with your experience with the accountants at Zenith and in accord with sound accounting practice?

A. Yes, sir, it is.

Mr. McConnell: I have nothing further.

Redirect Examination by Mr. Dodds.

Q. Mr. Stevenson, in response to Mr. McConnell's question, you indicated that Zenith had the capacity to produce, say, an extra 55,000 sets, television sets, using round numbers, with its present facilities, without any increase in production facilities.

1276 That answer was based, was it not, on the assumption that those sets would be made on the same production lines as the U. S. receivers?

A. Yes. It is based on the assumption that where additional capacity would be required, that additional volume would be spread among the production lines available, whether they are Canadian or U. S.

Q. What percentage of the components in a Zenith television set are made by Zenith itself, in terms of dollars?

A. I have no answer to that. I don't know the answer.

Q. You don't have any idea?

A. No, sir.

Q. Well, do you have an idea of the magnitude? Is it 25%?

Mr. McConnell: I object to him guessing about it. If you want that, I can get that information for you from accurate sources.

Mr. Dodds: I just want to know whether this witness knows. He prepared the figures.

Mr. McConnell: He says he doesn't know.

1277 The Court: He can answer more definitely if he can. If he can't, he doesn't have to.

By the Witness:

A. I would say it is in the nature of 25%.

By Mr. Dodds:

Q. These profit figures which you developed in the materials, they are computed on the basis of total costs, not unit costs; isn't that correct?

A. They are based partly on unit costs and partly as allocation of general expenses to the products.

Q. And those are total costs rather than unit costs?

A. I would like to have your definition of total costs, sir.

Q. Well, all right. Let's look back at the sheet, Zenith Radio Corp., parent only, 1962 finals. Those figures, the headings Black and White—I assume that's television—and Radio, that is in terms of total dollars, not dollars per unit; isn't that correct?

A. That's right, sir.

Q. And it was on the basis of these figures of this
sheet that you computed the percentages which you
1278 attributed to be fixed percentages and, therefore,
deducted from the cost of additional production for
Canada; isn't that corrct?

A. That's true.

Q. Now, this profit sharing provision, I think you have indicated that as the profits go up the amount into that fund goes up. So that represents—that increase in the amount that goes into this fund—dollars that Zenith doesn't get. It may be a loss to Zenith employees, but it is not a loss to Zenith Radio Corporation; isn't that correct?

Mr. McConnell: That question is perfectly unintelligible to me.

The Court: I don't understand what that means. If I was going to ask it, I would ask it the other way.

Mr. Dodds: All right.

By Mr. Dodds:

Q. Let's just take some numbers. Sometimes it is helpful to take numbers.

Assume that the operations in respect to Canada
1279 increased from $100,000 to $200,000 before consider-
ing this profit sharing fund.

A. Yes, sir.

Q. Now, if you did that, the amount that would go into that fund would be doubled too, wouldn't it?

A. Yes, sir.

Q. And that doubled amount would represent dollars which Zenith Radio Corporation didn't get, wouldn't it?

A. That's right.

Q. So in the sense of your talking about the net results in profit of Zenith Radio Corporation, it would represent a decrease in profits; isn't that correct—the final net result of the dollars which Zenith Radio Corporation could put in its pockets?

A. That's right, sir.

1280 The Court: That's just the opposite of the way you asked the question.

Mr. Dodds: I believe I misstated myself. I thank you.

The Court: That's just the opposite.

Mr. Dodds: I think that is all the questions. Thank you.

Mr. McConnell: I just have a couple of questions.

Recross Examination by Mr. McConnell.

Q. This profit that we have been talking about, and the retirement fund, you have to get profit before you have anything to share; isn't that right?

A. Yes, sir. And I would like to explain this a little further, to the extent—

Q. You go right ahead and explain it.

A. (Continuing.) —to the extent that there would be profits coming from this additional business, or from the result of a lawsuit, or from many other reasons, that this money also would be shared with employees. So that 1281 it is not right to provide for this profit-sharing twice, first before—first to obtain a lost profit on these sales, and second on any moneys received as a result of the payment of this.

Q. That would just be chasing yourself around in a circle, wouldn't it?

A. Yes, sir.

Mr. McConnell: That's all I have.

The Court: Did any of the employees get part of this ten million dollars after what was left when the lawyers got through with it?

The Witness: I believe so, sir.

The Court: All right.

Mr. Dodds: Just one final question.

Mr. McConnell: I think the lawyers are employees, too.

Further Redirect Examination by Mr. Dodds.

Q. On this same profit-sharing provision, what you say may be true—that the provision for profit-sharing may not be included as a cost in determining what the profit on which this provision is based but, still, before the
1282 dollars that Zenith Radio puts in its pockets, that
amount that goes into that fund is deducted from the final profit computed without including that factor; isn't that correct?

A. I would like to have that question read, please.

(Question read.)

The Court: Can you answer that?

The Witness: No, sir. I don't understand that question.

The Court: I was going to listen with great interest if you could.

By Mr. Dodds:

Q. I will try again. I think I agreed that this provision for the retirement fund may not be included as a cost item in computing profit. I think that's what you testified, isn't it?

A. Yes.

Q. I agree with that.

Mr. McConnell: Well, you agree with it now after you heard his answer.

Mr. Dodds: I agreed right along. I always agreed, Mr. McConnell.

By Mr. Dodds:

Q. What I say is, therefore, excluding that factor,
1283 and computing your profit, after you have computed
the profit, at that time you have to deduct the amount
that goes into this fund before you determine how many
dollars Zenith puts in its pocket; isn't that true?

A. That's right.

Q. So that in the final analysis as to the dollars that Zenith earns as a profit and keeps, that is a factor; isn't that correct?

A. That's right.

Mr. Dodds: That's all.

Further Recross Examination by Mr. McConnell.

Q. Well, Mr. Stevenson, your schedules are designed to compute the profits lost, by virtue of what's happened up in Canada, what your lost profits are up in Canada; isn't that true?

A. Yes, sir.

Q. You are not concerned with who gets the profits.

A. That's right.

Mr. McConnell: That's all.

Mr. Dodds: I think maybe this can go on per-
1284 manently.

The Court: I feel like I'm at Wimbledon.

Further Redirect Examination by Mr. Dodds.

Q. You mean you are not concerned with how many final dollars Zenith Radio Corporation can retain? Isn't that what you are finally interested in?

A. We have to be concerned with two things, sir. If we had made these additional profits in these years, part of it would have gone to the profit-sharing fund, and part of it would have gone into Zenith's pocket. To the extent that there is any recovery of these lost profits, part of that money would go into the profit-sharing fund and part of it into Zenith's pockets.

A. Yes, sir.

Q. And they are not parties to this litigation, I think.

Mr. Dodds: That's all.

1285 The Court: You are excused, then, Mr. Witness.

(Witness excused.)

The Court: We will take our morning recess.

(A short recess was taken, after which the following further proceedings were had herein:)

1286 Mr. McConnell: If the Court please, we have had a long cross-examination and there was some direct on these two exhibits, Defendant's Exhibits 218 and 220. I offer them in evidence at this time, even though I am out of order.

The Court: Any objection?

Mr. Dodds: No objection.

The Court: They may be received.

(The said documents, so offered and received in evidence, were marked DEFENDANT AND COUNTER-PLAINTIFF'S EXHIBITS 218 and 220.)

Mr. Dodds: I will call as the next witness for the plaintiff Mr. Hartley.

MYRON R. HARTLEY, called as a witness on behalf of the Plaintiff and Counter-defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Hartley, would you state for the record your full name and residence.

A. Myron R. Hartley, Mt. Prospect, Illinois.

1287 Q. Would you state briefly your education and professional experience?

A. I received an A.B. degree from De Pauw University, Green Castle, Indiana, and an M.B.A. degree from the University of Chicago. I worked five years for the public accounting firm of Peat, Marwick, Mitchell & Co.,—

Q. Could you speak up just a little bit?

A. Three years for Arthur Anderson & Co., and since 1955 I have either been an individual practitioner or a partner in the firm of Smith and Harder.

Q. And what is your present professional connection?

A. I am a partner in the firm of Smith and Harder.

Q. Have you examined these group of papers which I show you comprising Defendant's Exhibits 218 and 220?

A. Yes, sir.

Q. I show you a sheet of paper and ask you if you can identify what that sheet is.

A. Yes, sir, this is a summary by years, 1960, 1961, 1962 and 1963, of the operating profit percentages 1288 shown in those work papers you just showed me.

Q. Does this sheet represent any computations or a transcription of figures, related figures, into one table?

A. It is a summary of the figures in there. It involves no computations.

Mr. Dodds: I should like to offer in evidence as Plaintiff's Exhibit 63 the sheet identified by the witness.

The Court: It may be received.

(The said document, so offered and received in evidence, was marked as PLAINTIFF AND COUNTER-DEFENDANT'S EXHIBIT 63.)

By Mr. Dodds:

Q. Mr. Hartley, did you make an investigation from published records of the financial returns of the Zenith Radio Corporation from 1958 to date?

A. Yes, sir.

Q. And did you determine in that investigation the net profit before taxes as a percentage of sales for that period?

1289 A. Yes, sir.

Q. And what did you find from that?

A. Well, we found that in 1958 the income before Federal income taxes represented 13.2 per cent of sales.

Q. And—

A. 19—do you want me to continue?

Q. For the succeeding years.

A. For 1959, the same percentage was 13.6 per cent; for 1960, it was 12.8 per cent; for 1961 it was 13.9 per cent; for 1962 it was 13.1 per cent.

Q. And did you check to see over that period what was the range of the total sales of Zenith Radio Corporation?

A. Yes, sir. I recall in 1958—I am not sure of these figures.

Q. Well, you are sure of the round figures?

A. I think it was 195 million dollars in sales in 1958.

Q. In 1962, do you recall what that was?

A. Three hundred and twenty-four, I think, 324 million.

Mr. Dodds: That is all.

1290 Mr. McConnell: No cross.

(Witness excused.)

The Court: Has this got a number, by the way, this exhibit?

Mr. Dodds: 63, your Honor, PL-63.

Your Honor, I am again in a somewhat embarrassing position. You will recall that counsel for the defendant called me as a witness and Mr. Diggins, with the approval of Court, deferred cross-examination until he could call me, and said that it would be all in one story. I should like to know whether or not my assuming the witness stand in this capacity should disqualify me from further participation in the case.

The Court: You did it in the patent case. I don't know why there would be any difference—

Mr. McConnell: There is no such contention here that he is disqualified.

The Court: All right. You may take the stand, Mr. Dodds.

1291 LAURENCE B. DODDS, called as a witness on behalf of the Plaintiff and counter-defendant, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. Diggins.

Q. Mr. Dodds, I don't know whether it is clear on the record, what is your occupation?

A. I am a practicing lawyer.

Q. And what is your relationship to the Hazeltine companies?

A. I am on a retainer as a consultant and I am a vice president of the parent corporation without any official assignments.

Q. And what proportion of your time do you spend on Hazeltine affairs?

A. Between 30 per cent and 40 per cent.

Q. Do you represent any other clients?

A. Yes, I do.

Q. And when you say 30 to 40 per cent, you are speaking of your working time?

A. I am speaking of working time, yes.

The Court: You are speaking of your time as a practicing lawyer.

1292 The Witness: Yes, your Honor.

The Court: All right.

By Mr. Diggins:

Q. Wasn't there a period of time when you were responsible for the licensing activities of Hazeltine?

A. There was one period of time when I was largely responsible for the licensing of the plaintiff in this company under the domestic patents and there was another period of time when I was largely responsible for the licensing in the foreign patents owned by the parent Hazeltine Corporation.

Q. Well, will you specify what those periods of time were, please?

A. Insofar as the domestic situation, there was a gradual transition period commencing about 1946, but I believe that I had substantially complete responsibility commencing about 1948 until 1960, when I gave up all of my administrative responsibilities with any of the Hazeltine companies.

As to foreign licensing, during the early part of the period I just mentioned, foreign licensing was handled 1293 almost entirely by Mr. Binns. Shortly before this retirement in the early—

The Court: Would you give us years rather than "the early time and the later time"?

By the Witness:

A. Roughly, from 1946 up until a period in the early fifties, where there was a transitional period, no sharp cutoff, shortly before Mr. Binns' retirement I gradually assumed more of the responsibilities for the foreign licensing, and I would say that I assumed them completely upon his retirement, which was about the middle fifties, until 1960, when I gave up my responsibilities with the Hazeltine companies.

By Mr. Diggins:

Q. So that there was about a five or six-year period, from '55 to '60, where you were responsible for licensing in both companies?

A. That is correct.

Q. Both United States and foreign?

A. That is right.

1294 Q. Now, just so that we will understand each other, throughout this examination, except where it becomes important, in referring to Hazeltine we understand that it includes the Hazeltine companies generally.

A. That is correct. There is a stipulation on the record that solely for the purposes of this action the plaintiff Hazeltine Research and the parent Hazeltine Corporation can be considered as a single entity.

Q. Now, Mr. Dodds, to your knowledge, has the Hazeltine Company ever refused to grant a license under a single patent for radio and television—radio or television?

A. From my experience, both personal and direct, and from familiarity with the records, I am confident that it never has.

Q. Anyone requesting a license under a single patent or any combination could obtain it?

A. I would have to qualify my answer to that because of the fact that up until, I think it was about 1958, no manufacturer of radio or television receivers ever made such a request, so it never was refused. Since that period 1295 there have been numerous negotiations for the granting of licenses under individual patents to manufacturers in the radio and television field, and as was testified in the earlier stages of this proceeding by Mr. Thomas, a group, I believe, of some seven, eight or nine companies do operate under a license of the single patent involved in this case.

Q. Now, there was some talk, I believe, yesterday, about a fifty, eighty, one hundred per cent royalty on three patents; will you explain the royalty formula on those individual patents for monochrome television?

A. Well, I think maybe it would help if we give the start: Up until about the first of 1958 Hazeltine owned a number of patents, some of which—one of which, at least, had been held by the Court of Appeals of this Circuit to broadly cover television receivers on the market, and there did not seem any occasion and there had been no requests for a license from the individual patents. With the expiration of that patent Hazeltine owned no patent
1296 which had to be used. Any patent which it had could be designed around. Whether a company wanted to license under a particular patent was either a question of engineering design preference or economics.

It seemed to me that under those circumstances that we should take the initiative and offer the licensees the opportunity of taking licenses under individual patents rather than the group of patents if they so elected.

We arrived at the formula of fifty per cent, eighty per cent, one hundred per cent of a rate for the group license on the basis, at that time, that there were only three or four Hazeltine patents in the monochrome television field of rather general application, and I had found, from my own investigation, that seldom did any television receiver use more than three of those patents at a time; therefore, it seemed to me that three patents represented substantially the total maximum worth of the group of patents in respect to monochrome television.

1297 The fifty, eighty, one hundred per cent formula was based on the provision that there are certain administrative costs that occur whether a licensee takes a license under one patent, two patents, or three patents. It is sort of like the same question of the incremental sales in Canada that we have been talking so much about. The increased number of licenses under an increased number of patents, I say, reduces the unit costs of administration per patent. The formula was discussed with outside counsel both in New York and in Chicago and it was considered to be an equitable formula and it was adopted and voluntarily offered to the licensees, some of whom accepted it and some of whom elected to continue under a license under the group of patents.

1298 Q. Now, speaking of 50, 80 and 100 per cent, that is 50, 80 and 100 per cent of what?

A. Fifty, eighty and a hundred per cent of the percentage royalty applicable to monochrome television receivers, which at the time was .95 per cent, that is slightly less than one per cent of the manufacturer's selling price, and with respect to monochrome there was a lump sum alternative payment of $50,000 per year, and the 50 per cent, 80 per cent, 100 per cent also applied to the lump sum payment; so that a license under a single patent had an annual lump sum payment of $25,000, under two patents $40,000, under three or more $50,000.

The Court: And is that 50, 80 and 100 per cent of this package 918?

The Witness: That is spelled out with respect to monochrome in the Form 918 license. It is the 50 per cent, 80 per cent and 100 per cent of the .95 per cent.

The Court: I understand, but it is 50, 80 and 100 per cent of the package deal represented by 918.

The Witness: That is correct, yes.

1299 The Court: All right, that is the question.

By Mr. Diggins:

Q. Mr. Dodds, you mentioned the fact a moment ago that there were three patents, or four, that were rather generally used; could you identify those?

A. I am not sure I can now because that was some years ago. I can identify some of them, not by numbers. One of the four was the patent in suit. Another patent was Patent 2,416,424, Wilson, on a ringing circuit for a horizontal oscillator, and that patent, some time after this formula was adopted, was in litigation with the Philco Company who found a reference which we thought was sufficiently close that we considered the patent non-enforceable.

The third patent involved a grounded grid amplifier circuit used in the tuner of the television receiver.

I don't recall the fourth.

Q. Well, now, Mr. Dodds, outside of those three or four patents there has been a lot of conversation here 1300 about this vast web of patents that you hold; has anyone, in considering monochrome, for the moment, anyone asked, apart from those who asked for the whole group, has anyone asked for individual licenses under those other patents, outside of those four.

A. No.

Q. Have you ever threatened or sued anyone under any of those patents other than the four?

A. No.

1301 The Court: That includes radio patents?

The Witness: I am speaking now of recent years, yes, your Honor. I think I mentioned earlier that since 1955 Hazeltine has collected no royalties on radio patents. And I can supplement, has made no threats of infringement or brought any suits in respect to radio patents.

The Court: In Canada or the United States.

The Witness: In Canada or the United States—maybe

I should qualify that: So far as I know about Canada, I personally have not—

The Court: I mean, to the best of your knowledge, no one has done it in regard to your patents.

The Witness: To the best of my knowledge, that is so. I am sure in the United States. I believe that is true in Canada.

By Mr. Diggins:

Q. In other words, as far as their economic impact, those patents didn't exist.

Mr. McConnell: I object to that as calling for a 1302 conclusion of the witness.

The Court: Yes, the objection is sustained to the form of the question.

By Mr. Diggins:

Q. Mr. Dodds, I show you a copy of Exhibit DX-7, a copy of a letter signed "Larry" to Mr. Jack Binns and dated August 8, 1951, and call your attention to the second paragraph on Page 2. Would you read that paragraph into the record?

A. I think it has been read into the record before, but I will read it again.

Q. I think it has, too, but I—

A. Redfield—this related to a conversation between myself and Mr. Redfield of Abco Manufacturing Company, and the paragraph in question reads:

> "Redfield urged that they be permitted to take a 'sample' of our license for a shorter period than five years to try it out and see if they like it. I said that the answer to that was absolutely no. Redfield then asked that we make a proposal to them based only on the patents on which we had warned them of infringe- 1303 ment, the royalties to be based on the use of these patents. I said that I would do so but that the rates

of royalty for such a license would probably be such as to exceed the $50,000 on their volume of business and that the license would necessarily contain some provision to insure against litigation as to the use of the licensed patents. I also said that we disliked that sort of arrangement as being one in which the licensee might be licensed at any given time under one group of patents while we would find it necessary to sue them on other patents and that such litigation would seriously impair the usefulness of the license. As the discussion progressed this suggestion pretty well dropped out of the picture."

Q. Now, Mr. Dodds, what happened after that letter? What were the subsequent events in connection with the ABCO situation?

A. Well, the negotiations of which in part are related in this letter collapsed. A suit was brought against 1304 ABCO in this court on a patent which has since expired. That patent was held valid and infringed by this Court and affirmed and held valid and infringed by the Court of Appeals of this Circuit. In that case Mr. John W. Craig, a vice president of ABCO, testified and he testified that they had never requested a license, that the inquiry was a purely hypothetical one. In that case there was an allegation of misuse of patents because of package licensing.

Based on the events related, in part, by this letter, that defense was rejected by this Court and it was rejected also by the Court of Appeals of this Circuit.

1305 Q. Now, that case was HRI against the ABCO Manufacturing Corporation, 227 F. 2d 137. Do you recall precisely what the Court said in dismissing the misuse defense?

A. No, I do not. I don't recall that. That is a published report.

Mr. McConnell: I object to what he recalls of it. If somebody said something which is relevant in this case and it is a court record, why, I think we are entitled to the record.

The Court: Well, I assume that he—

Mr. Diggins: I am speaking about the Court's opinion. However, instead of putting it in, we will call the Court's attention to it in our brief and with the appropriate quote.

By Mr. Diggins:

Q. You do recall the outcome of the decision?

A. The outcome of the decision was that that defense was rejected. The patents were held valid and infringed. An injunction was issued against ABCO Manufacturing Company, but it was settled by the payment of damages and interest for the preceding five years and the ac-
1306 ceptance of the then current license agreement.

Q. Now, Mr. Dodds, there has been a lot of discussion here in the courtroom about the hundreds of patents that Hazeltine holds in terrorem over the heads of some of these poor little companies. What part of those hundreds of patents are normally investigated, if you know, by a prospective licensee?

A. It has been my experience substantially none.

Mr. McConnell: I object to what is normal and customary and all the rest of it. The question is what they have been offering to us.

Mr. Diggins: I am asking him if he knows what is normal and customary and I think I have got a right to ask it.

The Court: The objection is overruled and the answer may stand. Let's get on with it.

By Mr. Diggins:

Q. Now, when a prospective licensee wants a license, how does this matter come to the attention of the
1307 Hazeltine Company?

A. Well, usually it comes in several ways: Perhaps the most usual way is that if a company is manufacturing television receivers and is not licensed an investigation will be made of the set.

The Court: By whom?

The Witness: By me or my associates.

The Court: The Hazeltine Company?

The Witness: By Hazeltine, yes.

By Mr. Diggins:

Q. In other words, is a set sent in to Hazeltine Research—

A. No, a set isn't sent in, but we get information about the sets from one source or another, make an investigation to determine what patents are applicable, and write a letter to the company and advise them that those patents are applicable, and it has been my experience in every instance that I have been involved in that the investigation by the prospective licensee is limited to the patents which are called to its attention.

Now, in addition to that there are some licensees, after they are licensed, that as a matter of routine check 1308 up periodically to see if they are getting their money's worth, and they send in information on sets and ask us to advise them. One company that used to do that very regularly was the Stromberg-Carlson Company. Most licensees, after they had taken a license, just forgot about it.

Mr. McConnell: I object to all of this. I can't see how we are bound by what he is doing over there carrying on his business.

The Court: This is a little background and you are not bound by it, but it does tend to explain this case a little better to me, and the objection is overruled. You are not bound by it.

1309 By the Witness:

A. I might state that as an example of this, I reviewed the 2,500 Exhibits which were selected by Counsel for the defendant in this case and just as a sample of that 2,500 perhaps two or three hundred related to the domestic licensing situation, and of those I counted a hundred and seven instances where detailed applications had been made of a small group of patents to a licensee or a prospective licensee's television receiver.

Q. Now, after Hazeltine has examined a company's circuit or set, a prospective licensee, have you ever brought a suit against that company on a patent which you didn't claim covered the set?

A. Clearly not.

Q. Now, there was some comment made earlier in the case—to what extent has the Hazeltine Company attempted to force licenses on manufacturers not using any Hazeltine patents?

A. To the best of my knowledge, no such attempt was ever made.

1310 Mr. McConnell: I object to that.

Mr. Diggins: That is a comment of Mr. McConnell's—

The Court: I don't recall any evidence that that was ever done. I think you are denying a bogey man that hasn't been raised.

Mr. McConnell: No.

The Court: I have no impression that they sued somebody that they didn't claim was infringing.

Mr. Diggins: I am never quite sure whether Mr. McConnell is testifying or not.

The Court: Well, of course, this is the only chief counsel that has been under oath. There has been some testimony not under oath from both sides.

Mr. McConnell: Well, I have been testifying from documents that are in evidence, if I have been testifying. What I am trying to say is that my testimony or my statements can be checked by the record in evidence, and I don't know how we can ever find out what this is all about. It would take—

1311 The Court: We have had the bogey man. Let's get on to something else.

By Mr. Diggins:

Q. Mr. Dodds, to what extent were you aware, if any, of the negotiations with the Zenith Company with respect to a monochrome television license?

A. I had personal negotiations with Mr. Crotty for a period of perhaps a month or two months prior to June 30, 1959, when their last license agreement expired, hopefully looking toward a renewal of that license, and that continued for a period, I think, of a few months after the termination of that license on June 30, 1959.

Q. Now, from that point on, what was your connection, if any, with negotiations with Zenith?

A. None.

Q. Not even as a consultant?

A. Not with negotiations with Zenith. I had consulted with people inside the Hazeltine companies.

Q. Well, now, during your connection with the negotiations with Zenith, a claim has been made, was 1312 Zenith charged with a suit for infringement if they didn't take the standard license?

A. Definitely not.

Q. If they didn't take the package license?

A. Definitely not.

Q. Did Zenith always have the power and the right to pick and choose what patents they wanted?

Mr. McConnell: I object to that. That is a question that the Court is going to determine on the whole misuse defense.

The Court: I would think that anything other than what he and Crotty said to each other, anything other than that would not be admissible from this witness. You may testify regarding anything said between he and Mr. Crotty regarding that subject matter, but beyond that he cannot go.

By Mr. Diggins:

Q. Mr. Dodds, has Hazeltine ever manufactured and sold commercial radio and television receivers?

1313 A. No.

Q. What is the business of HRI?

A. The business of HRI is exclusively research, development and licensing of patents on the inventions arising from that work.

Q. Are they in the manufacturing business any place in the world?

A. Hazeltine Research is not in the manufacturing business anywhere in the world.

1314 Q. Now, in the past thirty years, how many patent infringement suits have been filed by Hazeltine against dealers in radio and television apparatus?

A. Three.

Q. And who were those dealers?

A. The first one, I believe, was against Philco products, a wholly owned subsidiary of the Philco Corporation here in this Court.

The second one was involving Avco Manufacturing Company, the case which was previously referred to, in which their Chicago distributor was joined but which did not participate in the defense.

And the third is one now pending in the Western District of Virginia against the Firestone Tire and Rubber Company.

Q. Now, will you state the circumstances of those suits against dealers.

A. Well, I think I did state the first two. The circumstance of the last one was, this distributor was selected
because it was selling television sets of two unlicensed
manufacturers, and is was thought it would be a
1315 question of killing two birds with one stone rather
than bring separate suits against the two companies.
And the two companies have come in to defend the suit
under indemnity contracts.

The Court: This was then a device; the dealer was a device to get at the two companies?

The Witness: I'm sorry?

The Court: I say, the suit against the dealer was a device to get at the two companies?

The Witness: Right.

The Court: All right.

By Mr. Diggins:

Q. Now, you are famailar with all of the Hazeltine patent litigation for the past ten, fifteen years; is that correct?

A. Yes.

Q. How many patent infringement suits has Hazeltine lost since the General Motors suit in 1947?

A. None.

1316 Q. Now, to your knowledge—

A. Excuse me. I might perhaps qualify that last answer to this extent. There was a suit in which Hazeltine was not a party but in which it had an interest, a suit by a man by the name of Lewis, also against Avco Manufacturing, that was pending about the same time as this other suit to which we referred. In that case, the patent was held valid and infringed by this Court. The Court of Appeals found it valid but not infringed.

Q. Mr. Dodds, we have discussed the formal written contracts between Hazeltine and CRPL, GEC, and Neutrodyne of Australia, so I am not going to go into the formal contracts. They have been discussed ad nauseum.

Do you know, or to your knowledge, has there ever been any understanding, gentlemen's understanding, with respect to the prevention of exports from this country under Hazeltine, license to Hazeltine patents?

A. There never has.

Q. If any one of your licensees exported to any
1317 place in the world, could you sue him for infringement under your U. S. patent?

A. No. Well, I have to qualify that—No. The answer is still no. Yes.

Q. If any one of your licensees exported to any country in the world, could you sue him for breach of his U. S. license?

A. No.

Q. Now, Mr. Dodds, I am going to call your attention to Exhibit 24—D 24, 27, 30, 34B, and 35. I will eliminate 35. So it is DX 24, 27, 30 and 34B.

Now, it has been previously testified that those are handwritten notes of Mr. Ruestow, each one of those Exhibits; isn't that correct?

A. Would you name those again.

1318 Q. 24, 27, 30 and 34B.

A. Just a second. 30—

The Court: And 34B.

The Witness: Yes.

By Mr. Diggins:

Q. And I believe that is all of them. I intended to include all of the handwritten notes of Mr. Ruestow.

Mr. Dodds, to your knowledge—well, let me put it this way. When did you first become aware of those handwritten notes?

A. When Mr. Ruestow handed to me a file of personal papers which he kept in his desk in response to the discovery proceedings of defendant after this Court extended the discovery period up to May 22, 1963.

Q. They came to you, then, in connection with the discovery proceedings in this Court?

A. That is the first time I had seen any of those.

Q. Had you ever seen those at or about the time they were written, according to the testimony yesterday?

A. I say the first time I saw them was during the 1319 discovery proceedings which I just identified.

Q. To your knowledge, had anybody else in the company other than Mr. Ruestow ever seen them prior to the discovery proceedings?

Mr. McConnell: I object to that. He can't testify to what somebody else saw.

The Court: Objection sustained.

Mr. Diggins: I ask what he knew.

Mr. McConnell: I object to it.

The Court: It would be hearsay if he did know. The objection is sustained.

Mr. Diggins: If your Honor please, could I have a moment on that.

The Court: How would he know?

Mr. Diggins: Well, he might very well know, your Honor, that by seeing it on the man's desk, by having it reported back to him.

The Court: He just said that he never saw them until after May of 1963, didn't he?

Mr. Diggins: All right.

The Court: That's what he just said.

1320 By Mr. Diggins:

Q. To your knowledge, were those notes circulated in the Hazeltine Company?

Mr. McConnell: I object to that. He told us he never saw them.

The Court: He may answer that.

By the Witness:

A. I have no knowledge of anybody in the Hazeltine organization having seen these notes.

By Mr. Diggins:

Q. Now, I show you page 159 of the transcript, which is quoted from your testimony. I call attention to the top—the first question in quotation. Would you please—well, it has been read into the record.

What do you mean by "participate"?

The question reads:

> "The British Pool agreement, in which GEC and Hazeltine participate,"—

What do you mean by "participate" in your testimony?

A. Well, I think this was a quotation—

1321 Mr. McConnell: Let's read the whole thing. I don't know what he is talking about.

The Witness: I think this is a quotation from a document, an Exhibit.

Mr. McConnell: Can you tell us what the document is?

Mr. Diggins: You can follow it from the transcript. I am quoting fro mthe transcript, Mr. McConnell.

The Court: What page?

Mr. Diggins: Page 159.

The Court: Page 159.

The Witness: It was deposition Exhibit 40, but I do not believe it is a trial Exhibit. I think it was one not selected at a trial Exhibit.

Mr. McConnell: Well, let's get deposition 40—

The Witness: The deposition Exhibits are on the table.

Mr. Diggins: I don't see any point of going into the deposition Exhibits. This is what Mr. McConnell
1322 read into the record for a couple of days.

Mr. McConnell: Yes. But don't you think I am entitled to know what it is?

Mr. Diggins: I think you should know what it is before you read it into the record.

Mr. McConnell: I did. That's why I read it in. But I want to know what you are talkingabout now when you are examining this witness.

The Court: Doesn't the transcript indicate what it is, Mr. McConnell?

Mr. McConnell: No, it doesn't.

The Witness: It indicates on the preceding page—the questions refers to Exhibit 40, and it continues.

Mr. McConnell: You didn't give me the preceding page. You told me 159.

All right. Go ahead.

By Mr. Diggins:

Q. What do you mean by "participate"?

1323 Mr. McConnell: Well, I object to that, explaining what he means by a common, ordinary word that anybody in this courtroom knows what it is. Participate—you've got a dictionary; look it up.

Mr. Diggins: Mr. McConnell, you had a witness on the stand, and we tried to find out what pool meant. You have been shouting pool in here for days.

Mr. McConnell: I will tell you what pool is, and I'm going to tell you in great length in my oral argument.

The Court: Well, there is all sorts of way of participating in various things. If this is an objection to this question, the objection is overruled.

By the Witness:

A. What was meant here was, the share of the pool income which General Electric collected on behalf of General Electric and Hazeltine patents, and in which, indirectly, Hazeltine shared by way of its agreement with the General Electric Company.

The Court: Let me say that prior to the time you
1324 gave that explanation, I assumed that that is what you meant, so let's go on, because the other evidence clearly shows that that is what it was.

By Mr. Diggins:

Q. Now, Mr. Dodds, I call your attention to Pages 215 and 216 of the transcript, and I would like to know to what extent, and for what subjects—the word here refers to negotiations.

To what extent or what subjects did you, and I quote—

The Court: I would like to hear the quote.

Mr. Diggins: Your Honor, let me read the question. Let me read it into the record for the benefit of the Court:

> "I call your attention"—

This is reading from the Dodds deposition.

The Court: All right.

Mr. Diggins: (Reading.)

> "I call your attention to the statement quoted in the fourth paragraph of this letter:"

That's Deposition Exhibit 76, Defendant's Exhibit
1325 76.

> " 'It is our suggestion that Mr. Dodds, who is fully acquainted with our relationship with your company and, through you, with the Pools go to London to discuss the matter directly with oyu or whatever representative of your company will participate in the negotiations with the Pool.' "

Now—

The Court: Let me ask you if this is a letter to General Electric, Limited?

Mr. Diggins: This is a letter to General Electric Limited.

The Court: I mean, I would think it would be, but I would just like that verified.

Mr. Diggins: Yes. I am sorry, your Honor. I am trying to restrict this as much as possible. Maybe I'm doing too much.

The Court: Well, don't restrict it too much so that I don't understand what you are doing..

Mr. Diggins: I certtainly don't want to, your Honor.

1326 Mr. McConnell: And will you tell us who wrote it?

Mr. Diggins: The letter was written by Mr. Dodds.

Mr. McConnell: By whom? Mr. Binns, wasn't it, of the Hazeltine Company?

The Witness: No, it was not.

The Court: As I recall—and let me see how good my memory is—I think he wrote this letter for Mr. Binns to sign.

The Witness: For Mr. McDonald to sign. I wrote it for Mr. McDonald to sign.

Mr. Diggins: And it was addressed—

The Court: You dictated it and he put his name to it?

The Witness: Right.

Mr. Diggins: So in effect it was Mr. Dodds' letter.

The Court: That's the way I remember it.

Mr. Diggins: And at the bottom of Page 215, Mr. McConnell now states:

> "That was your statement, wasn't it? That was your statement that you were thoroughly familiar with
> 1327 the Pool and the relationship of General Electric with the Pool?
>
> "A. That was my statement which I wrote.
>
> "Q. You were suggesting that you make the trip to England to sit in on the negotiations. Now, I ask you this: Did you make such a trip?
>
> "A. I did."

By Mr. Diggins:

Q. Now, I want to ask, Mr. Dodds, on what subject and to what extent did you negotiate with the Pool?

1328 A. Well, directly I did not negotiate with the Pool at all. The Pool at the time was, as it has during its history, been run by a Pool committee. It had a permanent paid secretary, Mr. Topham. I did not negotiate with him.

Mr. McConnell: I want to object to this. This witness, a lawyer, is now going to tell your Honor what the legal effect of his conversations were. If he wants to ask him what conversations he had, and with whom, and what was said, all right. But he is getting out of his role as a witness now into his role as an advocate. And I object to it.

The Court: The objection is sustained to that part of the answer that starts to outline who runs the pool. I mean, you perhaps can testify that other than to General Electric, Limited, you didn't talk to anybody else in the Pool, if that is the fact.

By Mr. Diggins:

Q. To whom did you talk, Mr. Dodds?

A. Well, I talked to representatives of the General Electric Company primarily. There was one meeting, I believe—

1329 Mr. McConnell: I object to "primarily." That is his—

The Witness: I am qualifying it, Mr. McConnell, if you will let me finish.

The Court: He is about to put somebody else in.

Mr. McConnell: I know, and I know who it is, too.

The Court: Well, let's get it in the record, and then you will be happy.

By the Witness:

A. I also, in one of the meetings, included Mr. Dale-Harris, and Mr. Preston of Electric and Musical Industries, who, with General Electric, was also a member of the Pool.

The Court: I assume it is up to me, now, to determine whether he talked to the Pool when he talked to these two people.

Mr. McConnell: That's right. That is my objection exactly.

The Court: All right. Now we know who he talked to, and you make a note for your final argument that that is talking to the Pool, if you want to so advocate.

1330 By Mr. Diggins:

Q. Now, what I want to find out, what my original question was, on what subjects did you talk to, first of all, General Electric? That's GEC.

A. GEC I talked on two subjects; one, the prospective share of the Pool income which it would get on behalf of its patents and ours; and two, how that share would be divided between General Electric and Hazeltine.

Q. Did you negotiate with them on any other subject?

A. No.

The Court: Before we find out what he said to the other fellow, let's take our noon recess.

(Whereupon, a recess was taken to 2:00 o'clock, p.m. of the same day, February 25, 1964.)

1331 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—58-C-1847) * *

Before Honorable Richard B. Austin on February 25, 1964 at 2:00 o'clock p.m.

Trial resumed pursuant to recess.

Appearances:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

1332 The Clerk: Case on trial.

LAURENCE B. DODDS, called as a witness on behalf of the plaintiff and counter-defendant, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

Direct Examination by Mr. Diggins (Continued).

Q. Mr. Dodds, I believe we stopped with discussions with the people at General Electric Limited, GEC. Now, what subjects did you discuss with the representatives of the EMI Company on your trip to England, that is under discussion?

A. After joint meeting between representatives of the General Electric and EMI, to the best of my recollection, the only thing that was discussed was the amount of money which would be received for the Hazeltine and GEC patents. I cannot say positvely that no other subject was mentioned but, certainly, that represented substantially the entire discussion.

Q. Well, now, the quotation that I am asking you 1333 about was first in negotiations; what, if anything, other than money were you negotiating with the EMI and the GEC representatives?

A. Nothing.

Q. To your knowledge, did you talk to any other members of the so-called British Pool?

A. I am sure that I did not.

Q. So that your entire discussions were with representatives of those two companies?

A. That is correct.

Q. Did you enter into any negotiations with the British Pool or any member of the British Pool to keep the sets of Zenith Radio Corporation out of Great Britain?

A. Definitely not.

Q. Now, there is an ambiguity in the deposition which I would like to clear up, and it is from your deposition.

The Court: And the question is number what?

Mr. Diggins: The question is on page 139, and it is referring to the Canadian Radio Patents Limited, CRPL.

1334 The Court: All right.

By Mr. Diggins:

Q. And the question on page 140, a question by Mr. McConnell:

> "Q. They have had a contract—"

They referring to CRPL.

> "—have had a contract from 1943 to 1963, have they not?"

And your answer was:

> "They have, yes.
>
> "Q. During that time you have not been free to license your patents in Canada or anywhere else, have you?
>
> "A. Canada or anywhere else."

What effect has the CRPL had on your rights to license your patents anywhere other than Canada?

A. None.

The Court: The answer may stand. There is no controversy about that, is there?

Mr. McConnell: No.

1335 Mr. Diggins: It's just a punctuation here, and there was some discussion. I wanted to clear it up, your Honor.

The Court: It didn't clear up anything in my mind. That was my assumption, even though I don't remember that specific question.

By Mr. Diggins:

Q. You mentioned that the Neutrodyne Company in Australia was a subsidiary of Hazeltine; is that correct?

A. It is a partly-owned subsidiary. Hazeltine does own a controlling stock interest in Neutrodyne Proprietary, Limited.

Q. Now, what is the name of the so-called pool in Australia?

A. The present name is the Australian Radio Technical Services, Limited, popularly known as ARTS.

Q. Is Neutradyne a member of ARTS?

A. No.

Q. Has it ever ben a member of ARTS?

A. No.

Q. Now, Exhibit DX-203, which is a letter from Arthur Warner, managing director of Electronic Industries, 1336 Limited—now, who is Electronic Industries, Limited?

A. It is the owner of the minority interest of Neutrodyne Proprietary, Limited, and is one of the large manufacturers of electrical equipment in Australia.

The Court: And are they a member of the Australian Radio Technical Services—

The Witness: No.

The Court: All right.

By Mr. Diggins:

Q. And who is Mr. Warner? What relation does he have to Neutrodyne?

A. I believe he is managing director. Irrespective of what his official title was, he did manage Neutrodyne Proprietary, Limited.

Q. Sir Boss?

A. Yes.

Q. Now, in this letter DX-203, written by Mr. Warner to you, Mr. Warner states, and I quote:

> "You will appreciate that I am the only remaining person in the Pool who has been there since the Pool
> 1337 was first started, which gives me a standing in the Pool and an experience which exceeds that of the others around the table."

Now, is that statement correct?

A. I believe—

Mr. McConnell: I object to that. Whether it is correct or not, this man can't characterize evidence in this case.

Mr. Diggins: He certainly can characterize a fact. This is a man from a controlled company.

Mr. McConnell: Joint partners.

The Court: The objection is overruled. He may answer if he can.

By the Witness:

A. The statement is certainly technically and legally incorrect. I think it represents a loose use of language by a layman.

The Court: Or perhaps an inflated ego?

The Witness: Perhaps.

By Mr. Diggins:

Q. Mr. Dodds, does Hazeltine have any British patent covering TV receivers in Britain?

1338 A. Not that I know of.

Q. Will you explain the fact that there are important patents in this country and none in Britain?

A. That is due to the difference of standards of positive versus negative modulation; primarily because of the differences in signal, different types of circuits are used to best advantage in the two receivers.

Q. When you grant—when Hazeltine grants a license in this country, do your licensees secure the right to use your patents in all of their receivers, TV receivers?

A. Yes.

Q. The patents covered by the license?

A. Yes.

Q. Now, there was some discussion and some questions about the effect a license in this country might have in a patent controversy elsewhere.

Can you point out to me a provision—and I show you, for example, the Magnavox agreement. Can you—or, wait a minute. I will take DX-2.

I will ask yo uto tell me, referring to DX-2, are any of your foreign patents included in that agreement?

1339 A. All foreign patents are expressly excluded from the agreement by Article II, Section 3(b).

The Court: Can you tell me what DX-2 is?

The Witness: I'm sorry?

The Court: What is DX-2?

The Witness: This is a Form 918.

1340 The Court: All right.

Mr. Diggins: I'm sorry your Honor.

By Mr. Diggins:

Q. Now, Mr. Dodds, still referring to DX-2, the form 918 agreement, will you tell me whether the licensee admits the validity of any patents other than those listed in the license?

A. The pertinent clause is Article X, which is short, and I can read it:

> "The licensee during the term of this agreement admits the validity of and agrees that it will not voluntarily and knowingly, either directly or indirectly, aid or abet any attack upon the validity of the claims of any patent under which the licence is herein granted, and shall be enforced."

The Court: Isn't it the law without that clause being in there, that a licensee cannot attack the validity of a license?

The Witness: That is the general rule, your Honor, under United States versus Harvey Steel, but there are certain exceptions. And to avoid an argument, it is spelled out explicitly.

1341 The Court: All right.

By Mr. Diggins:

Q. Now, a licensee under that license—can you sue him for breach of contract for contesting the validity of your Canadian patent?

A. I believe not.

Q. Or a British patent?

A. I believe not.

Q. Or an Australian patent?

A. I believe not.

Q. Now, there has been discussion here about the Zenith-RCA suit, and I believe it was referred to the fact that there was a U. S. Pool between GE, RCA, Westinghouse, and perhaps some others. Was Hazeltine a member of that Pool?

A. No.

Mr. McConnell: I object to that. Whether they were or not is one of the things we are going to determine in the lawsuit.

The Court: I didn't know that was an issue in this lawsuit, some American Pool.

Mr. McConnell: Well, counterparts of these companies GE, Westinghouse—

1342 The Court: I thought he said he was talking about an American Pool.

Mr. Diggins: You have talked about an American Pool, Mr. McConnell. That's what I'm asking about.

Mr. McConnell: I'm not claiming there is a Pool in America, if that is what you are talking about.

Mr. Diggins: You certainly referred to it.

Mr. McConnell: I object to any question about it. What is the materiality?

The Court: I mean, I just wondered if during that portion of the hearing I wasn't here. I don't recall any conversation about an American Pool.

Mr. McConnell: We are talking about a conspiracy which involves a patent Pool in Canada, England and Australia. But some of the acts were done here, as I will develop in the argument.

Mr. Diggins: If it is understood that there has been no contention and there is no contention in this case about
1343 any domestic Pool, I'm perfectly willing to withdraw
any questions on it.

Mr. McConnell: I don't know of anything about a domestic Pool, do you?

The Court: I didn't hear about it. I thought it may have been one of my bad days.

Mr. McConnell. You are talking about the RCA domestic Pool I take it, and that issue is not being tried here. I did have an issue of that kind in the case down in Delaware.

Mr. Diggins: There were several times I didn't know what case we were trying here.

Mr. McConnell: Well, I don't have to persuade you of anything, my friend. The Court is the only person I'm interested in.

The Court: I mean, if there was a Pool, Hazeltine wasn't in it.

Mr. Diggins: All right. Let it go at that.

The Court: If there was a Pool.

1344 By Mr. Diggins:

Q. Now, there were questions about suits against a Zenith dealer in 1933. Will you comment on that.

A. I can comment on that, that at that time, it was shortly after one of the important Hazeltine patents had been sustained in litigation against the Atwater-Kent Company of Philadelphia. And after that time, suits were brought. I believe it was sustained by the Second Circuit Court of Appeals.

And after that time, certain other suits were brought in the same jurisdiction in which the patent had been sustained.

1345 Q. To your knowledge, have you sued any other Zenith dealers in the United States since that time?

A. We have not sued any Zenith dealers in the United States, certainly since 1934, when I became first associated with Hazeltine companies.

Q. You haven't harassed them?

A. We have not had any contact whatever with any Zenith dealer or distributor.

Mr. McConnell: Why don't you ask him if we weren't licensees until 1959.

The Court: I assume he is letting you have a little something for cross-examination.

Mr. Diggins: I am glad you brought that topic up. You reminded me.

By Mr. Diggins:

Q. Now, in your relations with the Zenith Company, what was the situation from 1934 to 1941?

A. In about 1934, I can't recall the exact date—I will
have to go back to explain it. It is my information that
some time in 1933 Hazeltine issued a license to Zenith on
a temporary basis because of the fact that it was
1346 proposed to work out a new form of license agreement.
In connection with that temporary license a so-called
"most favored nation" clause was given.

There was a dispute between the parties about the interpretation—

The Court: You don't expect me to know what that means, do you?

The Witness: Most favored nation clause?

The Court: Yes.

The Witness: The most favored licensee clause, just in general, at the sacrifice of accuracy, that if a patent owner later grants a license to another party under more favorable terms, the first party will get the benefit of the most favorable terms.

The Court: Now that you explained it, I know what you mean, but I certainly didn't under the phrase that you put in the record.

The Witness: I believe the—

Mr. McConnell: I object to this man testifying about
written contracts. If we had a contract with them, I sub-
mit that the best evidence would be that contract and
1347 not this man's recollection of it, and a lot of hearsay
along with it.

The Witness: It is not hearsay, Mr. McConnell, because I was engaged in part in that litigation.

Mr. McConnell: In what litigation?

The Court: The objection is overruled.

The answer may stand.

The Witness: Well, now, let's say that I don't think it is
material, actually, what the terms of the parties were. All
I was going to say is that there was a dispute between
the parties as to what the contract meant, as a result of
which an infringement suit was brought against Zenith
Radio Corporation in this court, and in that infringement
suit Zenith counterclaimed for a license involving their
interpretation of the most favored licensee clause. The
district court agreed with Zenith and held that they were
entitled to such license. Such a license was granted. The
Court of Appeals reversed and held that the license was
on the terms which Hazeltine had urged, and the
1348 Supreme Court denied certiorari. That litigation con-
tinued up until, I believe, 1941 some time, and during
that interval Zenith did not pay Hazeltine any royalties.

By Mr. Diggins:

Q. You say Zenith did not pay royalties during that period?

A. That is correct.

Q. So that is 1934 to 1941?

A. Approximately.

Q. Now—

Mr. McConnell: I think the statute of limitations bars that suit.

The Witness: We are not urging any suit.

Mr. McConnell: I object to going into all this back history of other litigation.

The Court: He said that this had some bearing on another question that he hasn't answered yet.

Mr. Diggins: If the Court please, one thing that this
has a bearing on that I would like to bring out, Mr. McCon-
nell in an aside just a few moments ago brought out
1349 the fact that Zenith was a licensee for a long period
of time.

1350 The Court: I think that is in the evidence.

Mr. Diggins: I want to bring out to the Court that Zenith was a non-paying licensee and had to be forced into payment by a Court action.

Mr. McConnell: Well, if we are going to try that lawsuit, we will be here for ten more days. I object to going into it. Whatever it was it is all water over the dam and hasn't anything to do with this lawsuit. If you want to try it, we will try it, but I don't want to try it at this stage.

Mr. Diggins: We are not endeavoring to try another lawsuit, your Honor, we are not endeavoring to do it. We want to bring out to this Court, however—

The Court: Well, I assume that if Zenith owed you any money that the Courts are available to compel them to pay whatever they owe you, and I assume with Counsel as astute as Mr. Dodds that Zenith did pay you the
1351 money, if they owed it to you.

Now, let's go on to something new.

By Mr. Diggins:

Q. Now, we were discussing the ARTS Pool in Australia. Mr. Dodds, do you know how many types of license ARTS has at the present time?

A. To the best of my information, they have at least two and possibly a third.

Q. Well, what about the two? What is a "B" license, or what is the difference between a "B" license and a standard license?

A. I don't know whether you can call either one or the other standard. They have two forms of license, one with a "B" suffix and one without. It is my information that the license form without the "B" is issued to manufacturers, ordinary, usual run of the mill manufacturers, and that the "B" form is issued to small assemblers, local assemblers.

Q. Is there any difference with respect to imports?

A. Yes, the—

1352 Mr. McConnell: Your Honor, I object to that unless —we asked him to produce every license that he had from this Pool and he produced one, 1958.

Mr. Dodds: Your Honor, that is a mistake. The record shows, and in Defendant's Exhibits there are some five different forms produced from our files—

Mr. McConnell: Wait a minute. I don't mean you haven't produced more than one license. I mean you produced one for 1958 as all the licenses you had. Now, I object to your hearsay statement about what these licenses are.

The Court: I think that the best evidence would be the licenses themselves.

By Mr. Diggins:

Q. Mr. Dodds, we were discussing the difference between the "B" license, and the other license, and I call your attention to Exhibits DX 193, which is a license form in blank by ARTS and Exhibit 194, which is headed license six "B", which is also a blank form of license by ARTS, and ask you if those were the two licenses

1353 you were referring to?

A. Those were two of the licenses that I was referring to. There are in the record additional license forms very like the license numbered six, and I believe also like the license six "B", Exhibits DX 193 and 194 respectively.

1354 Q. But those were the two licenses that you were referring to?

A. That is correct.

Q. So that when Mr. McConnell says that the agreements speak for themselves, those are the two that we will have do the speaking.

A. Those are two of those that we have. There are some other "B" licenses and there are some other licenses without the "B" also.

Q. But these are two?

A. These are two of them, yes.

Mr. Diggins: I believe that's all, your Honor.

Mr. McConnell: No cross-examination, your Honor.

The Court: All right.

(Witness excused.)

Mr. Dodds: Your Honor, that closes the evidence for the defendant on the counterclaim. We have some motions to strike that have been reserved. I think it would be preferable to wait until the close of the plaintiff's case—

The Court: I was going to suggest that what may be called closing argument here also incorporate your
1355 motions to strike. I am interested, of course, in hearing from both of you on the question of whether there has been a conspiracy proved and that, of course, is a vital thing in regard to whether your motions to strike will be sustained or overruled.

Mr. Dodds: That is quite acceptable. Thank you.

Then that closes the case for the defendant.

Thereupon the plaintiff and counter-defendant rested its case in chief.

The Court: Do you have some rebuttal?

Mr. McConnell: I have just one witness in rebuttal, your Honor, Mr. Scott.

Thereupon the defendant and counter-plaintiff, to further maintain the issues in its behalf, introduced the following further evidence in rebuttal to wit:

1356 CUTHBERT SCOTT, called as a witness by the defendant and counter-plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state you full name, please?

A. My name is Cuthbert Scott.

Q. And where do you live, Mr. Scott?

A. I reside in the City of Ottawa, Canada.

Q. And are you a member of the bar in Canada?

A. Yes, I am a member of the bar of the Province of Ontario, and I practice law in the City of Ottawa, where I have practiced since I was called to the bar.

Q. Where did you obtain your schooling?

A. I obtained the degree of Bachelor of Arts from the University of Montreal in the year 1925, and I then attended Osgood Hall Law School, which was, at that time, the only provincial law school in Ontario, and I was called after graduation from Osgood Hall in 1928, I was called to the bar, and I commenced my practice of law in general practice in the year 1928.

1357 Q. Will you tell us what firm connections you have had right down to date, giving us what your present connection is.

A. Yes, I went into a general practice firm composed of some f[illegible]r partners, and I conducted—was engaged initially in general practice, but almost from the beginning I began to be called upon to some extent in industrial property matters, that is, patents, trademarks and copyrights, because the firm with which I was employed was being called upon by clients, mostly United States clients, in connection with these matters, and this was turned over to me as a junior lawyer, and in that way I learned, I hope not at the expense of the clients, I learned something about the patent and trademark laws.

Q. Now, are you what is called a Queen's Counsel?

A. I am, sir, yes.

Q. How long have you been so?

A. I was made a Queen's Counsel in the year 1950.

Q. What is the name of your present firm?

A. My present firm is called Scott and Aylen.

1358 Perhaps I should explain that in the year 1952 the volume of my personal practice in patent and trademark matters had increased to such an extent that it didn't appear to have a proper place in a general practice firm, so I withdrew from the partnership in the year 1952. I was by myself for a short time and then I joined with Mr. Aylen and we formed the firm of Scott and Aylen, which is restricted—it is not restricted, but the practice is 85 or 90 per cent industrial property practice.

Q. And that includes patent and trademark matters?

A. Yes, Mr. McConnell.

Q. Now, have you some familiarity, gained through your practice and study of the laws in Canada, as to the terms and provisions of the Canadian Patent Act?

A. I have. Of necessity I have to be thoroughly familiar with the Canadian patent laws, including the Canadian patent statutes, and I appear in the Canadian courts and in the patent office in matters involving Canadian patent law.

1359 Q. Do you know something about the history of those patent laws?

A. Yes, I do, Mr. McConnell. I have made a study of the history of those laws fairly recently when I was asked to give evidence in this court, although, of course, I was generally familiar with the laws for years.

Q. Now, prior to 1923, was there a provision in the Canadian Patent Act which prevented the import of goods which were patented under the laws of Canada from the United States into Canada?

A. There was. There were two mandatory provisions, one was that when a patent was granted the patentee was required within two years from the date of the grant to manufacture in Canada, and that subsection went on to provide that if a patentee failed to do so the patent was, by operation of law, voided without any petition of revocation.

The second provision was that if the apparatus or subject matter of the patent was imported into Canada more than 12 months after the grant of the patent, the patent was automatically voided. In other words, the pat-
1360 entee was given a grace period of 12 months within
which to import the patented article to supply the demand.

Q. Now, was that situation changed in 1923?

A. It was. The Canadian patent—

Q. Tell us what happened in 1923?

A. I should perhaps explain that prior to 1923 Canada was not a signatory to the International Covention for the protection of industrial property, and Canada was, as will appear from what I have to say, was anxious to become a member of that community of nations and had applied in 1900, as early as 1900, for admission to the Convention, but it was pointed out that these mandatory provision in the Canadian Patent Act to which I referred rendered Canada ineligible for membership in the International Convention unless it was prepared to change its laws to accord with the tenets of the convention.

Q. Was that subject brought up in the debates on whether or not to pass this act of 1923?

A. Yes, it was.

I might perhaps explain that when the Canadian
1361 government decided to introduce a bill changing

these arbitrary voiding provisions of the Act, it was necessary to make some explanation in the House of Commons as to why these changes were desirable, or what were thought by the government of the day to be desirable.

1362 Q. I show you a report of the debates in the House of Commons in Canada with reference to discussion on this bill and ask you if you can identify any of that as a part of that debate and tell us who was making the remarks.

A. Yes. Mr. McConnell, you have handed me volume 3 of the debates of the House of Commons of the Dominion of Canada for the session of 1923. Those are the official debates, and the first word of explanation on the introduction of the bill to recast the Patent Act commences at page 2064 of this report, and the explanation was made by the Honorable G. A. Robb, who was at that time the Minister of Trade and Commerce, and he was moving the second reading of Bill Number 20 to amend and consolidate the Act relating to patents of invention.

Would you like me to read part of the explanation?

Q. Could you do that?

A. Yes.

"Mr. Robb: This Act has not been revised since
1903, about twenty years ago. A bill was introduced
1363 in 1920, but at that time, owing to other business and
the lateness of the session, the bill was not pressed.
The bill was again introduced in 1921 and it reached
its second reading. I understand the bill had at that
time been submitted by the government of the day to
the Canadian Manufacturers Association and different
public bodies interested, and that it had met with their
approval. But when it had reached its second reading
there was some objection from some individual manufactuerers and the bill was not pressed.

"Canada now desires to enter the Berne Convention so that we in Canada shall be on the same basis with all the world. Incidentally, I might say that Canada's cost for maintenance of the International Convention at Berne will run about $5,000 to $6,000 per year, and that the revenue from the patents branch is about $250,000 a year. The experience of the officer in the 1364 administration of that department has convinced them that certain amendments to this Act are very desirable in the interest of the Canadaian public generally. The more important provisions in the bill relate to the manufacture and importation of patent inventions, and they will be found in clauses 40 and 41. It is thought that the proposed improvements to the Act will enable Canada to join the International Berne Convention and will improve the condition generally of Canadian citizens in trade throughout the world."

Q. Now, subsequent to those debates, was there a new Patent Act passed?

A. Yes, there was, in the year 1923—well, this bill became law and constituted the patent Act of 1923.

1365 By Mr. McConnell:

Q. Now, were those provisions, those caveats against importation removed?

A. Both of those arbitrary provisions—or, I should say neither of the arbitrary provisions that apepared in the 1906 consolidation appeared in the 1923 Act. In place thereof, the Act provided that interested persons apply to the Commissioner of Patents for what was called a petition to supply, and the Commissioner, after hearing could call upon the patentee to make sure that the patented article would be available to the Canadian public. And that took the place of these arbitrary provision against importation and compelling a manufacturer within two years on pain of invalidation of the patent.

Q. Now, I call your attention to Article V-A(1) of the Convention which you referred to there in the debates.

A. Yes. I haven't a copy—

Q. You have no copy? I will give you a copy.

First, I want to ask you whether or not Canada is a
1366 signatory to that convention that I have given you?

A. Yes. Canada is—I am now looking at the Report of the Royal Commission on Patents which was entered as an exhibit yesterday, Defendant's Exhibit No. 221; is that correct? That's what it would appear to be.

And as Appendix D to that report, on Page 181, the Royal Commissioners have set out extracts from the Convention—not the complete Convention. And the extracts appear at Page 181 of the Royal Commission's report under the heading Article V-A.

Q. Wait a minute. I first want to find out whether Canada is a signatory to that.

A. Yes. Canada is a signatory to the Convention.

Q. And is the United States a signatory to the convention?

A. And the United States is a signatory. I might say that Canada became a signatory in 1935.

Q. All right. Now, you can turn to your section 5 (A) (1) and read it in the record, if you will, please.

1367 A. Article 5 (A), Subparagraph (1):

> "The importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail revocation of the patent."

Paragraph (2)—

Q. Now, wait a minute. I want to call your attention to the Patent Act there. I'm calling your attention now to Section 68 (d). Have you got your Patent Act there?

A. I have, sir, yes. Perhaps I should—it might assist to explain that after the 1923 Act, the next provision of the

Patent Act in Canada was 1935. And that is the act to which you are directing my attention.

Q. To which I am now calling your attention.

A. Yes.

Q. All right. I call your attention to Section 68, Subparagraph (d).

A. Yes.

Q. That has to do with the revocation of a patent, does it not?

1368 A. It has. And would you like me to read it?

1369 Q. Well, I am going to call this part of it to your attention.

A. Yes.

Q. It is the last clause. The first has to do with exercise of the foregoing powers which are referred to. A patent may be revoked, and then this qualifying clause which I am going to read to you:

> "But the Commissioner shall make no order or revocation which is at variance with any treaty, convention, arrangement, or engagement with any other country to which Canada is a party."

A. That is correct.

Q. Now, in your opinion, as a patent lawyer in Canada, is this Patent Act under that clause qualified by Section 5 (A) (1) of the Convention?

A. Yes, it is. And the proviso to Section 68 (d) is giving effect to Canada's obligation under Article 5 (A) (1) of the Convention.

Q. Now, in your opinion, would that clause in the Con-
vention prevent the Commissioner from revoking a li-
1370 cense because goods were imported under it from the
United States into Canada?

A. Well, I would put it this way, If I might: That the arbitrary provisions in Article 5 (A) (1) is modified somewhat in a later sub-paragraph of Article 5 that does permit revocation in certain circumstances; that is to say, after a compulsory license has been enforced for two years.

Q. All right. But supposing the Commissioner made an order revoking a patent simply because goods were imported from the United States into Canada. Would this Convention prevent such an order, in your opinion—

A. Yes. He would be powerless to make such an order.

Q. Now, you were here in the courtroom yesterday, I take it, when Mr. Henderson was testifying. And you recall he said that there were three risks involved in licensing importations—three risks to the patentee?

A. I remember that.

Q. By licensing importations from the United States
into Canada for sale under Canadian patents of any
1371 goods in commerce—do you remember that?

A. I remember that, yes.

Q. Now, I call your attention to clause 68 (b), in which there is a proviso for exclusive compulsory license. Will you tell us what an exclusive compulsory license would be?

A. Well, an exclusive license is, of course, a license that is exclusive to the licensee. An exclusive compulsory license is a compulsory license issued under the statutory powers which is exclusive to the extent that it virtually takes away the rights of the patentee. And that is explained elsewhere in the Act.

Q. All right. Now, I call your attention to provision 2, sub-paragraph (j), under the heading of Interpretation of this Act—that's back at the beginning of the Act, Mr. Scott.

A. Yes, Mr. McConnell.

Q. I call your attention to this definition:

> "'Work on a commercial scale' means the manufacture of the article or the carrying on of the process

> 1372 described and claimed in the specification for a patent, in or by means of a definite and substantial establishment of organization and on a scale that is adequate and reasonable under the circumstances.''

Now, I show you a document which was issued by Canadian Radio Patents Limited, and which is herein evidence as Defendant's Exhibit 138, which lists a number of manufacturers in Canada and provides:

> ''Under the provisions of Section 46 of the Canadian Patent Act, the owner of a patent and his legal representative have the 'exclusive right, privilege, and liberty of making, constructing, using, and vending to others to be used' the patented invention and Canadian Radio Patents Limited, in accordance with the requirements of Sections 67 and 68 of the Patent Act, has licensed the following Canadian companies for the manufacture and sale in Canada of radio and television receivers and other electronic equipment embodying in-
> 1373 ventions which it administers.
>
> ''The above companies are working the patented inventions in Canada on a commercial scale and are prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms.''

Now, assuming that those statements are true in this notice, would that constitute a working of the patent, a commercial working of the patent under Section 2 (j) of the patent?

A. May I see the Exhibit?

1374 Q. Yes, you may.

A. Well, assuming the truth of the statement in this public notice, I would take it that there is work on a commercial scale of the patents in question, as defined in Section 2 (j) of the Patent Act.

Q. All right.

A. And my reason, if I may, for saying so is that the notice states first, in the second paragraph of the notice—it says that "in accordance with the requirements of Section 67 and 68 of the Act," which is the sections we have been talking about, "has licensed the following Canadian companies for the manufacture and sale in Canada of radio and television receivers and other electronic equipment embodying inventions which it administers."

Then it lists 31 manufacturing companies which, presumably, according to this, are manufacturing in Canada.

And then it goes on to say—many of these companies are apparently very large companies—then it goes on to say:

> "The above companies are working the patented
> 1375 inventions in Canada on a commercial scale and are prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms."

So I would say that if this is true, they must be doing that, and in that case, they comply with—

Q. Do you recognize any of the companies on there as companies that you know that manufacture in Canada?

A. Yes, I would say most of them. For example—just to name a few, Canadian Admiral Corporation, Canadian General Electric, Canadian Marconi, Canadian Westinghouse; there is some that I don't know quite well; Electrical Products Manufacturing; Electronic Enterprises, Limited; Emerson Radio.

Q. They are all substantial—

A. Yes. Monarch Radio; Northern Electric, a very big company; Nordmende Phoenix, Ltd., a European company with a Canadian subsidiary, and so on.
1376 Yes, they appear to be substantial companies.

Q. All right. Now, going back for a moment to the provision in the Act as to exclusive compulsory licenses, will you look at your copy of the Act there?

A. Yes. That is in 68(b)?

Q. (b), correct. Now—

A. Would you like me to— .

Q. Let me ask you a question first. I quote—

The Court: From what?

Mr. McConnell: I'm going to tell you. 68(b), the first sentence.

The Court: All right.

By Mr. McConnell:

Q. The first sentence in 68(b) of the Patent Act:

> "If the Commissioner is satisfied that the invention is not being worked on a commercial scale within Canada".

Now, stopping right there, would you say from your knowledge of the patent law, and working with it and its various provisions and authorities under it, that that 1377 first sentence would constitute a condition precedent —that is, a finding that there was no commercial working of the patent as defined in the Act would be a condition precedent to the Commissioner issuing an exclusive compulsory license?

A. I would, without any hesitation. That's one of the conditions that must exist before he can consider the other conditions that are enumerated later in the section. That is the first one.

1378. Q. So, now, we have disposed of two of those three risks, have we not, that you heard Brother Henderson talking about?

A. Yes, I would think so.

Q. The third risk had to do with a non-exclusive license.

A. Yes.

Q. Now, under what conditions can the Commissioner issue a non-exclusive license?

A. Well, it should be remembered that before the Commissioner can take any action under the provisions of Section 67 of the Act, he has to find that there is what is called an abuse of the patent rights.

And in Section 67, subsection 2(a)(f), the six types of abuses contemplated by the Legislature when they enacted this provision are enumerated.

Q. All right. Now, you have examined those six years of abuses?

A. I have, yes.

Q. Now, in view of the fact that as we—and assuming that the facts are true in that notice, and that the patent
is being commercially worked by manufacture in Can-
1379 ada, in your opinion would there be any abuse as
defined all through Section 67 by importing goods from the United States into Canada under a Canadian patent?

A. I have no hesitation in giving it as my opinion that in the present circumstances, predicated on the notice that is filed as an Exhibit, and it is true, that there is no abuse on which the Commissioner could take any action on an application under Sections 67 and 68.

Q. Now, that is the non-exclusive compulsory license?

A. Yes.

Q. So that all three of those things we have dealt with; is that right?

A. Yes.

Mr. McConnell: You may cross-examine.

Cross-Examination by Mr. Dodds.

Q. On this question of abuse of the patent, you referred to a notice of CRPL, and you gave it as your opinion, I believe, that importation into Canada of radio and tele-
vision receivers would not be an abuse of the Ca-
1380 nadian patents, a license to import would not be an

abuse, under the circumstances set forth in that notice; is that correct?

A. That's right.

Q. And that opinion was based upon an assumption that the statements in that notice are true; is that correct?

A. That's correct, yes.

Q. And that if the statements in that notice are not true, then your opinion would not be valid?

A. Well, it would depend, Mr. Dodds, on the extent to which they are not true.

Q. Well—

A. I mean, I'm not trying to quarrel, but they can't be entirely false. It would be a matter of degree, I would think.

Q. Well, I refer to this statement particularly:

> "The above companies are working the patented inventions in Canada on a commercial scale and are pre-
> 1381 pared and willing to meet the public demand for the patented articles in Canada on reasonable terms."

Now, if that statement were untrue, then your opinion would no longer hold; is that true?

A. That is correct.

Q. Now, I should like to refer back to the Report of the Royal Commission to which you referred, and particularly to page 27. And I would like to read just two short passages and see if you have any reason to disagree with the statements there. Page 27, starting under Section 1:

> "Canada is a party to what is called 'The International Convention for the Protection of Industrial Property,' (to be referred to as "The International Convention'). That is the Union Convention of Paris, March 20, 1883 for the protection of industrial property, revised at Brussels on December 14, 1900; at Washington on June 2, 1911; at the Hague on No-

> vember 6, 1925; and at London on June 2, 1934. A
> conference for revision was held at Lisbon in Oc-
> 1382 tober 1958 and certain further revisions took place.
> Canada has not signed the Lisbon revised Conven-
> tion, but has the right to accede to it."

Then skipping to the next paragraph:

> "In appendix D are set out extracts of the more important provisions of the Convention relating to patents. In these extracts we have arranged the text of the Convention as revised at Lisbon so that changes over the London 1934 revision can be readily observed. Using the text of the London revision as a basis, the matter deleted from the text is enclosed in brackets and new matter added by the Lisbon Conference is italicized."

To the best of your knowledge, are those statements correct?

A. To the best of my knowledge, they are correct.

1383 Q. All right. Now, let's turn to Page 179 of the report, Mr. Scott—I'm sorry, it is Page 181, to Article V, to which you referred.

Mr. McConnell: I don't want to interrupt your cross, but I do want to ask one question for the record. The exhibit which you put in evidence does't contain that matter. Now, are you going to put this in evidence?

Mr. Dodds: This is a copy—I understood it is marked as Plaintiff's Exhibit No. 50. Now, if there is two copies that have different—

Mr. Curtis: Here is the copy you gave us.

Mr. Dodds: I beg your pardon. That is 50-A. 50 is the complete report, as a physical exhibit. 50-A was excerpts.

Mr. McConnell: Well, was it in evidence? That's all I want to know.

Mr. Dodds: It is in evidence, yes.

Mr. McConnell: All right.

By Mr. Dodds:

Q.. Now, Mr. Scott, I would like to read from 1384 Article V, Section A, and I would like to read it in accordance with instruction from Page 27, to give the text as it appeared before the Lisbon Conference. And would you check to make sure I'm reading it correctly. Article V-A(1):

> "The importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail revocation of the patent.
>
> '(2) Nevertheless, each country of the Union shall have the right"—

A. Excuse me. You are reading in the parenthesis.

Q. Yes. You see, the instructions on Page 27 said that the matter in parentheses was included in the London Conference and excluded in the Lisbon Conference, and the matter in italics was added by the Lisbon Conference.

A. Yes, I understand.

Q. So, Paragraph (2):

> "Nevertheless, each country of the Union shall have 1385 the right to take the necessary legislative measures to prevent the abuses which might result"—

A. I beg your pardon.

Q. (Continuing.):

> "—to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent; for example, failure to work.
>
> (3) These measures shall not provide for revocation of the patent unless the grant of compulsory licenses is insufficient to prevent such abuses."

Now, does that correspond to the text of the London Convention, to which Canada adhered?

A. Excuse me one minute. It is my understanding that I would have thought so. I haven't—I don't know the terms of the Convention to that extent.

Q. You will accept the statement in the Report of the Royal Commission, would you not?

A. Providing there isn't an error—no, I won't accept it—

Q. You will accept it subject to correction?

1386 A. There may be errors in it.

Q. You will accept it subject to error?

A. Yes.

Q. You have referred to it yourself, I believe, in your testimony.

A. I just referred to it because it was a convenient way. It was an exhibit. It was a convenient way of referring to Article V-A(1), because it was already an exhibit—

Q. And that is the same article to which I have been referring?

A. Yes.

Q. So we can assume it is correct?

A. And I assume it is correct. Of course, I haven't—if I may say, I haven't compared it with the official text of the Convention, wherever it is contained.

1387 Q. Now, Mr. Scott, you were here, I believe, when Mr. Henderson was testifying. And I would ask if you heard this question and answer, and I am referring to page 1095 of the transcript:

> "Q. Do you know of any decision of a Canadian court which particularizes on what constitutes an abuse under the section of the Canadian Patent Act?
>
> "A. Yes, there are several cases relating to the abuse section. The most recent case is that of Rodi and Weinenberger versus Metalliflex, Limited, which

is reported in the 1963 Exchequer Court Reports. That is the most recent case. The one immediately before that, that was reported in the Ontario Courts on an appeal from the Commissioner was that of Gordon versus Callwood. Both of these cases were decided by the same court, Exchequer Court, Mr. Justice Thurlow in each case. There have been a series of them over the years. I have only given you the two
1388 most recent decisions of the Exchequer Court.

"Q. And what was the interpretation which those decisions placed upon this question of abuse of the patent rights?

"A. Well, they dealt primarily with the first paragraph, that is, Subparagraph (a) of Sixty-seven, Subsection 1, and that is what we call our working section which requires that there be manufactured in Canada a substantial and definite establishment and adequate and reasonable extent." I see a slight error in transcription.

"Manufactured" should be "manufacture" without the "d" on the end.

"The word 'adequate' is a word that has been indicated to be elastic in its connotation, and there has been some judicial expression in England on that point, and that is in the McKekni case where it was indicated that the manufacturer in Canada"—that
1389 again should be "manufacture"—

"in Canada should be reasonably close to the demand for a patented article in our country.

"The two Canadian cases to which I referred adopted that reasoning of the McKekni case, and that is to say that the manufacture in Canada should be reasonably close, should bear a reasonable resemblance to the demand for the patented article.

"Q. To avoid abuse?

> "A. To avoid abuse. In other words if the manufacture is not to that extent, then there has been an abuse under that paragraph."

Now, that is a long paragraph. I would like to give it to you to let you read it, and then I should like to ask you some questions about it.

A. Yes. I remember Mr. Henderson saying this, and I think I am quite familiar with it.

Q. I have a simple question. Do you agree with it?

1390 A. Do I agree with what Mr. Henderson said?

Q. Yes.

A. Subject to this qualification: That the quotation from Mr. Justice Luxmore in the McKekni case was in Mr. Justice Thurlow's judgment obiter. Because of the facts before him in the Gordon-Johnson and Callwood case, there was no manufacture in Canada until the petitioner for compulsory license filed his petition. And the patentee quickly took steps to set up manufacture. And I haven't the reports in front of me, but if I remember, the holding of the Exchequer Court was that the first attempted manufacture in a patent that had been in existence for a number of years was obviously to defeat a compulsory license. Now, it is true, he did go on and quote it from Mr. Justice Luxmore in the McKekni case. But I would say in those cases it was obiter dicta.

In the Metallifex-Rodi-Wienneberger case, I would 1391 distinguish Mr. Justice Thurlow's statement on this to which you have directed my attention in the same way. In that, what happened there, the German manufacturer—West Germany—Rodi and Wienenberger, it is true, set up—stated by supplying the Canadian market from Germany. Then it set up a Canadian manufacturer, but the court found they had deliberately priced the Canadian made article so high that people were buying the article which the patentee was importing from Germany. So that with great respect to Mr. Henderson, I don't think that Mr. Justice Thurlow really had to consider what was adequate manufacture, because in neither case was there any manufacture in the strict sense.

1392 Q. With those qualifications you agree with Mr. Henderson's statement?

A. Yes.

Mr. Dodds' That is all.

The Court: Anything further?

Mr. McConnell: I have nothing further.

The Court: All right. Thank you, Mr. Scott.

(Witness excused.)

Mr. McConnell: That is all, your Honor. We have nothing further.

The Court: All right. Now, I assume that—I would like to work the rest of the afternoon, that is, up until 4:30, and then we will finish up in the morning.

Mr. McConnell: That is all right.

The Court: All right, the order of argument—

Mr. McConnell: I would like to have a few minutes to get my papers together.

The Court: We will take a recess.

Mr. Dodds: There is just one very small open item. Do you recall that Mr. Wright supplied some stacks of papers on production in different countries. I totaled
1393 them up last night and they all seemed to be in order
except Canada, and instead of showing a total production of some 30, 40 or 50,000 sets, it shows a total production of sixty-five. I think there was something missing there. That is still open, but I am sure it will be reconciled.

The Court: There seemed to be a discrepancy in the figures that he couldn't account for, but I didn't think they amounted to that.

Mr. Dodds: I think you are thinking of a different point.

This hasn't been before the court. I spoke to Mr. Curtis during the recess. I think there is something obviously missing and we don't know just yet what it is.

The Court: All right, let the Marshal know when you are ready to proceed.

(A short recess was taken, after which the following further proceedings were had herein:)

The Court: You may proceed.

1394 *Closing Argument on Behalf of Defendant and Counter-Plaintiff by Mr. McConnell.*

May it please the Court, Mr. Dodds—

Mr. McConnell: I want to say at the start of this argument, and I think that what I say is for all counsel, that I certainly have appreciated the courteous and attentive hearing that we received from this Court. When I say that I am sure that goes for all counsel, it does for myself, but I sincerely appreciate it.

We have traveled through a lote of territory. We have gone a long way with our proofs, and I can understand that in the haste that we have had to make that your Honor has not had a chance to see the documents and see the underlying documentary evidence upon which our position is founded, and without that, in many instances, I am quite sure that your Honor has wondered what in the world these people have been talking about.

Fundamentally, we have been talking about three conspiracies to restrain trade or restrain commerce between the United States, or a company in the United States, and foreign markets. And as I pointed out in my opening statement that, under Section 1 of the Sherman Act, is an express violation of the Sherman Act, and under the cases which I will briefly advert to in this argument and which we will more thoroughly explore in the brief, that is a per se violation, the cutting out, exclusion from the market, is a per se violation of the Sherman Act. And it makes no difference how that is done, whether it is done by perfectly legal actions standing alone, whether it is conduct that might be justified by an individual patentee dealing only with his own patents, or what might happen in other situations, I think I will be able to show have

1395

no bearing on what should happen and must happen under the applicable rules in the instant case.

1396 Now, there have been various diversions and various statements and various theories sort of tried on for size by my opponents in the course of this proceedings, and I am sure that your Honor has not been diverted by them and is not enamored of them, or is not thoroughly familiar as to their inapplicability to what I am about to address myself to; for example, the talk about selling something or renting something out in Nevada where it is legal to engage in gambling as compared with what has been presented by the evidence in this case.

In the old accepted term and old accepted form or thought of conspiracy, it was conspirators around a table in peaked hats with the shades drawn and conspiring in secret, and that definition doesn't quite fit the business conspiracies with which we have to deal in modern-day life. And our decisions have recognized that, and I am not going to argue law at this time, but just to have before your Honor, as I discuss these facts, what I am trying to accomplish and have been trying to accomplish throughout the hearing of this case, I want to call your Hon-
1397 or's attention to the Interstate Circuit case, which was the father of all of this law, which is a decision of the United States Supreme Court in 306 U. S. 208-226. There the Court said:

> "While the district court's finding of an agreement of the distributors among themselves is supported by the evidence, we think that in the circumstances of this case such agreement for the imposition of the restrictions upon subsequent-run exhibitors was not a prerequisite to an unlawful conspiracy. It was enough that, knowing that concerted action was contemplated and invited, the distributors gave their adherence to the scheme and participated in it."

Now, another diversion that has been raised in the course
of these proceedings is that Hazeltine doesn't manufac-
ture, that it is only licensing its patents in the only way
available to it and that, therefore, it doesn't make any
difference what happened as between the pools them-
1398 selves—if they weren't a stockholder in the pool then
we don't have to concern ourselves with that. Well,
now, it is very interesting, but on all of these antitrust
cases we have to refight, reargue, rework law which has
been settled many, many times before.

In United States against Paramount, 334 U. S., the Supreme Court said for distributors who didn't have any theatres, who said they had no motive to be in the conspiracy, who said that all they were doing was selling their film in the only way available to them the court disposed of that with this suggestion:

> "There is some suggestion on this as well as on other phases of the cases that large exhibitors with whom defendants dealt fathered the illegal practices and forced them on to defendants. But the District Court observed that circumstances if true do not help the defendants. For acquiescence in an illegal scheme is as much a violation of the Sherman Act as the creation and promotion of one."

1399 Now, with that I am going to leave the law and
get to a discussion of the facts in this case, which
establish, in my humble opinion, not just a prima facie case
of conspiracy but—ond, by the way, there hasn't been any
defense in this case at all, as I will develop—but an ab-
solutely conclusive, uncontrovertible finding, a showing of
a conspiracy to restrain this particular commerce .

The Court: Let me, at this point, suggest to you something that troubles the Court. Assuming that there has been proof of a canspiracy, the normal conspirators in such a conspiracy would be the members of the Pool themselves.

As I understand it, Hazeltine is not a member of any of the three Pools involved, and along the way, if you would address yourself to that, I would appreciate it.

Mr. McConnell: That is right, and—well, I will address myself to it. I am getting right to it in the course of this.

The Court: I am sure you will.

1400 Mr. McConnell: It comes under the heading of the case that I just read that acquiescence, going along with an illegal scheme and profiting from it with knowledge of its intent and purport puts you in the conspiracy whether or not you happen to be a stockholder or happen to be an original former of it or not. And the law is absolute conclusive on that subject.

Now, first, we start here with the Canadian Patent Pool, and in 1927, which was after the time when the Patent Act up there was changed so that importation was permitted, certain manufacturers joined together to create a Pool. Now, we have evidence here that they had among them, and they put into that Pool some 5,000 patents, and we had the finding of the Commission, which we heard about yesterday, that in the face of all of those patents and the threat of litigation which those patents could generate it was impossible, as a practical matter, for anybody to manufacture anything in the United States or any other foreign country and import and sell it into Canada without
1401 such risks that would discourage responsible people
from attempting it in the face of the activity of the Pool which was there described as enforcing their patents against anybody infringing them. It was also disclosed there, and the other evidence discloses it beyond peradventure, that no one who didn't manufacture in Canada could get a license from that Pool which controlled 5,000 of the patents which bracketed this entire field unless they did not import. You couldn't get a license no matter what you paid, no matter who you saw, you simply could not

bargain and obtain a license to import your product from the United States into Canada.

And we had Mr. Wright testify as to his attempts to obtain such a license. We had the testimony of Mr. Crotty who said he talked with Mr. Brian McConnell from the Pool, and Brian McConnell told him that, that they were infringing their patents up there, and yet they couldn't get
a license to do the business that Zenith was doing,
1402 namely, manufacture and exporting their sets into
Canada. It was impossible. And that is commerce between the United States and Canada which was being stopped and which was being interfered with by a group of manufacturers who were competitors.

1403 And I am going to point out by taking up these companies one at a time to show how they are counterparts of companies doing business in other sections of the world; Canadian General Electric, the wholly owned subsidiary of General Electric of the United States; the Radio Corporation was up there putting its patents into the Pool. They weren't a stockholder in the Pool, but they were in the conspiracy through putting their patents in the Pool. And, by the way, here we have this proceeding against RCA by the government with a consent decree which the Defendants put in evidence which shows that RCA, who never had any stock holding interest in the Pool in Canada, whose only participation was just like Hazeltine, of putting their patents in the Pool and in the manner preventing them from being licensed to any exporter from the United States into Canada so that they could sell the product in Canada, that was their participation in the Pool. And as the pleadings show, that is what they were charged with, and Hazeltine was named as a co-conspirator in that. That is what
they were charged with. That is what they pleaded
1404 guilty to and that is what they entered into a consent
decree on account of.

And the same charges were involved in the Zenith case. RCA puts its patents in the Pool, not that they were stockholders in the Pool. But we have five companies who own the stock of this Canadian Radio Patents Limited who not only pooled patents, but who cut off any competition in Canada against their respective manufacturing and sale of their products in Canada. They are the counterparts of American companies in all except one instance, and that is the instance of the Standard Company, which is a wholly owned subsidiary of the Philips Company of Holland, which is the largest electronic company in the world with the possible exception of General Electric.

The other members were Northern Electric, which is a producer of radios and televisions up there in Canada, which is a subsidiary of the American Telephone Company, an American company, wholly owned subsidiary.

1405 The Canadian Westinghouse Company, a wholly owned subsidiary of an American company.

There is the Philips Company and there is the Marconi Company, which was one of the largest electronic firms in the world arising originally out of the English Marconi Company. And those were the stockholders, and we don't have to speculate about these people getting together. We have in the evidence a copy of their memorandum agreement going way back to the formation of them on the 19th day of January, 1927.

The General Electric Company had 6,250 shares.

The Marconi Company had 6,250 shares.

The Westinghouse Company had 6,250 shares.

The Northern Company, the subsidiary of the American Telephone Company, had 6,250 shares.

And the Standard Company, the subsidiary of Philips, had 2,500 shares.

Now, under this agreement which is here in evidence

these companies pooled their patents and they signed
1406 it and they sealed it, and from the very beginning their manager and their people that ran it, and it was run largely by the General Electric Company, they refused to license anybody to import into Canada. And they were all producing companies and they were all excluding competitors from them to the use of these patents which they then owned.

After the original formation of it other companies came in with their patents, implemented it, built it up so that they controlled every patent that could be possibly used in this field against anybody who attempted to export their goods and sell them into Canada, and the Zenith Radio Company was completely and effectively and utterly stopped from doing a business which under the laws of this land, at least, they had a right to do free of any conspiracy, and here are the counterparts of American companies. It is inconceivable that these companies up there as just alter egos of American companies could be doing these things without the full sanction, knowledge and cooperation of their American parents.

1407 Now, that is the setup at the time we get interested in the Hazeltine Corporation. The Hazeltine Corporation first tried to do business or wanted to do business and get in this pool through Philco, and we have evidence in this record that they first had a transaction and a contract with Philco, and then that expired. And when it expired Mr. Binns, the president of the Hazeltine Company wanted to get into the pool, and he sat down and wrote a letter to Mr. MacFarland up in Toronto, who was a General Electric man running this pool, and said that he was now in a position where he could negotiate to put the Hazeltine patents in this pool.

Here we have a combine, not something we infer, something reduced—this is something that you hardly ever see in the world any more, conspirators sitting around a table —not only sitting around the table, but signing an agreement of their conspiracy, combining together to use their patents and implementing it by refusing to license, cutting off trade between that country and another country.

And here comes Hazeltine. They want to get in it.

1408 Now, Mr. Dodds has put on quite a performance here in this courtroom. The way he has described it in his statement to the Court and his interjections and his interpolations and his comments, you would think that he was just walking around with absolute naivity, not knowing anything that happened in this world, not knowing what happened up in Canada, not knowing there was anything that could be criticized about getting his patents in that pool.

With reference to England, he says that all he was trying to do was make some bucks for Hazeltine. Well, you can make bucks legitimately and you can make bucks illegitimately, and it is our contention that Hazeltine has been attempting to make these bucks illegitimately in the worst kind, the most vicious kind of a conspiracy, and that they went into it with their eyes wide open.

Now, I had Mr. Dodds on the stand in his deposition, and he gave me quite a runaround. And if your Honor will read that deposition you will see that I tried to pin him down to his knowledge of what he knew at the 1409 time that they entered into their contract in 1943, and I can't—I have got the transcript here, but I am not going to thumb through all of this to get these transcript references, but I remember it very well, because I examined him and I asked him what he knew at that time and he said he knew just what he knew before. And I said, "What was that," and he said, "Nothing."

Now, you would think that the man and his company got into this without any knowledge at all of what they were doing. He is absolutely naive. He hasn't any knowledge of what these things mean.

The trouble with it is that we had some documents. If we hadn't had any documents in this case, we would have been in real bad trouble.

But in 1940, three years before this company got into
this pool, and if they got their patents in it and if they
got money out of it, and if they received the receipts from
it, which were created by the pool, they certainly are in
it under any definition and any decision that I know
1410 about, and I am going to read the decisions and they
will be in our briefs, and there isn't any question
about the law, and I wouldn't assure your Honor so firmly
and absolutely with such definitiveness if I didn't know
that I was speaking the absolute truth on the law. There
isn't any question that if you get into that kind of a pool
with your patents you are in it, and it doesn't make any
difference how you got in, if you know about the scheme,
if you know what it is doing and you get in it for profit,
you are in it.

Now, did they know about it? Well, we don't have much trouble with that question. On May 2nd, 1940, a company by the name of Trav-Ler Radio and Television Corporation, by a Mr. Lempski wrote to the Hazeltine Corporation and they asked:

> "We have had a few inquiries from prospective
> customers in Canada. Please send us any information
> you have regarding Canadian patent rights. We would
> like to know if we can sell our merchandise and if
> there is any Canadian law which does or does not
> permit the sale of the same. Any information that
> 1411 you can supply us with in this regard will sincerely
> be appreciated.
>
> "Awaiting your early reply, we are
>
> "Trav-Ler Radio and Television Company."

1412 Now, here is the man who has been walking around in a fog. He didn't know anything. I couldn't get the time of day out of him of what his knowledge was of this pool in my cross-examination up to the time they got into this thing, and here is what he says—and he is laughing now, and in the deposition he said that he was in the pool, he knew about the pool and he was going to stay in the pool. Courts, laws mean nothing. He is going to be there and he is going to stay there, and he just gives an open challenge to the Court and to everybody that deals with him, that that is where he is, that is where he is going to be. He took the money out of it. He knew what they did, and it is perfectly all right with him. The more money that he gets out of it, the better off he is.

All right, what does he say? He doesn't know anything about it.

> "This is in answer to your letter of May 2nd with respect to Canada. A group of patents generally corresponding to those owned or controlled by Radio 1413 Corporation of America is vested in Canada in the Canadian Radio Patents Limited. This company has a number of licensees in Canada, and it is my understanding that they will not license sets for importation into their country. They are located at 159 Bay Street, Toronto. Perhaps you can write to them direct."

He didn't know anything about it. He knew what the organization was. He knew that they restricted their licenses so that nobody could import sets into Canada, and with his eyes wide open he and Mr. Binns, his president, entered into an agreement with the pool, and that agreement was executed on the second day of July, 1943, and is in evidence here as Defendant's Exhibit 118.

When I asked him on his cross, either his cross here—I think it was here in this court, "Who drew this document?"

The Court: I don't think you cross-examined him in this courtroom.

Mr. McConnell: All right, either in his deposition or in his cross-examination I asked him the question,
1414 "Who drew this document?"

And he said, "Canadian Radio Patents Limited."

So the language that I am going to read is theirs, and he joined into it, his company did, went forward with it, knew what the licenses were that they were issuing, and participated in it. "Participated" is a good word. We had a definition of "participation" from the witness, Mr. Dodds.

> "The licensor hereby grants to the licensee for the term of this agreement the exclusive, indivisible license with the right to license others to make within the Dominion of Canada license apparatus specified in Section 2 hereinafter and to sell said apparatus made by a licensee or its sublicensees to others for the uses specified in Section 2 hereinafter, and for resale for such uses. Said license to manufacture includes the right to make all or any of the separate parts and rights to have all or any of the separate parts made by others. But no license is granted to sell parts
> 1415 separately except as a bona fide repair of used license apparatus or replacement of worn-out or defective parts."

Pursuant to that, all of the patents which Hazeltine then had—and that was signed by Mr. Dodds, by the way. He was on there along with Mr. Binns. Canadian Radio Patents Limited was signed by Mr. Brophy and Mr. MacFarland.

Now, under this license he gave this pool an exclusive right to these licenses and to make sublicenses under them. And he knew at the time that he did it the kind of a license that they were going to make; that they were going to exclude imports.

Now, we have got here all of the licenses which they used from year to year, and there isn't a single one of them, after these people got in this pool, there isn't a single one of them which does not have a caveat against a license to import—every single one of those licenses.

1416 I am not going to read the early ones. Those licenses which are issued by the Pool provide:

> "Section 1. The licensor hereby grants to the licensee upon the terms and conditions hereinafter set forth a personal, indivisible, nontransferable and nonexclusive license only for the licensed apparatus hereinafter specified and defined, only as follows: To manufacture licensed apparatus in Canada and to sell or lease licensed apparatus so manufactured; and (b), to have licensed apparatus manufactured in Canada for the licensee and to sell or lease such licensed appartus so manufactured for the licensee subject to the payment of royalties thereon by the licensee as provided in Article III hereinof. Such licensed apparatus shall be deemed to be licensed under this agreement at the time of sale or lease by the licensee."

There was no other kind of license ever granted by 1417 that pool from the beginning of time down to date, from the beginning of the company in 1927—never—right down to the date of this lawsuit.

Just before this lawsuit, we had a call from Mr. McConnell, Brian McConnell, from up in Toronto, in which he asserted against us patents of Canadian Marconi, of the Philips Company, and of Hazeltine, and told us we had to have a license. What he was telling us was we couldn't import. We had to establish a factory up there and then apply for a license. We couldn't get a license to import. That was out.

But a very interesting thing in that offer—not only interesting from the fact that just prior to that Hazeltine had been out talking to Mr. Crotty, which they had been asserting their patents—they say they didn't threaten a lawsuit, but we got sued right after we didn't take their license. They were asserting a Hazeltine patent, a different one than the one the pool had, but the pools had the same one that is in suit here.

We have a lot of double talk here about whether
1418 the patents are the same because of different laws,
but the invention is the same. There is no dfference
in the invention. The specifications, the inventions are
exactly the same in the two countries. And I defy Mr.
Dodds to point out to the Courrt where the specifications
in the Canadian patent are any different or cover any
different invention than the specifications in the American
patent.

And they come to us and threaten us with suit. It is obvious it was a threatened suit. We got sued right after the talk. Mr. Crotty said that it was clear that he either took the license or he was going to get sued.

And then the Canadian people come at us again, too. And Hazeltine is in the pool up there and there is a very strong inference of the two things working together. But I don't have to prove that there was such. It is just a clear inference that arises from this record that the two things are working together, and with understanding. And
we have in this evidence complete cooperation between
Mr. Dodds, Hazeltine and the Pool. Whenever they
1419 wanted to sue somebody up in Canada for infringe-
ment, they called on Mr. Dodds to pick out the patents
which would be good for suit by the Pool—not by Hazel-
tine, but by the Pool.

1420 And then they were reporting, the evidence shows,
back to manufacturers, dealers, Canadian dealers,
showing how they kept out importers. They kept out

people who might cut prices or furnish competition to them up there, or might create an open or competitive market in this product. They report to them. The Pool goes and reports to these people, and those documents are all here in the evidence showing that the purpose of this pool was not just to realize the most from patents, or to cut out patent litigation—they have had plenty of patent litigation. The purpose of the pool, as shown by the documents throughout this whole Canadian documentary record, it to stop competition from any source against these people who had organized this Pool, who had put their patents into it, and who were maintaining and policing the entire industry.

And that was the situation which faced Zenith Radio Corporation when we brought our suit against RCA, General Electric and the Telephone Company, the American companies who were running the pool—not running it in Canada; they were running it right in the
1421 United States, and that's what the Government alleges, too, that the American counterparts are running through their alter egos up there in Canada, this situation.

Now, when we come down to how these people got in the pool—and I am speaking of Hazeltine now—Mr. MacFarlane came down from Canada, and they discussed this in New York, and they talked about their terms, and they talked about what they were going to get out of it and what the pool was going to pay them. And they knew, they hadn't the slightest doubt—nobody can read this record, it isn't completely naive, and not understand that these people—your Honor referred to this man as astute. Certainly he is astute. He has been all over the world in these pools. His footprints are all over; his fingerprints are all over the documents. He has been everywhere. He knows them inside and out.

And when he wrote that letter which he was examined on this morning, when they said that he knew the pools—it was supposedly written by Mr. Binns, but he dic-
1422 tated it; he was speaking from personal knowledge. He knew all about the pool.

It wouldn't take a very bright man to know what was going on in those pools. But he wanted some money for Hazeltine, and that was the easiest way to get it. And he went and not only got in because—in the movie cases, some of these people couldn't sell their films in any other way; they had to get in. That's what they said, and there was some evidenceto justify it. But these people went looking for this pool; they sought it out.

They set up the interviews in New York whereby they set down and entered it with full knowledge of what the pool was doing, and how they were doing it, and all the facts and circumstances.

There isn't a single fact in this record about this pool—as far as its makeup, who owned it, what patents were in it—that they didn't know at the time they went into it. And I asked Mr. Dodds on his deposition whether he knew they were in there, and whether he knew about the restrictions, and whether he went forward after the
1423 knowledge, and whether he took money from them after knowing that; and he said, yes, and he said he was in the pools, and he was going to stay in the pool.

1424 Now, there was another very interesting and very peculiar and very, I think, unique situation. I don't know where you will ever find it again in a lawsuit, but companies who had been in this Pool—RCA, General Electric, and the Telephone Company—after they had come to grips with our lawsuit, and after they had told us repeatedly that nothing could be done to the Canadian Radio Patent Pool, no licenses could be issued except on certain terms, and that was it would be import—no difficulty about it, when it came to the settlement of the lawsuit, about getting the license up there to import from them. But we were still subject and we were still left exposed—Marconi's patents, Philips of Holland patents, Hazeltine patents, thousands of patents.

Now, Mr. Dodds has put on quite an exhibition here about inconsequential or insignificant patents, he calls them. He would have your Honor believe—while we brought out that they have registered in the United States at least five hundred patents down through the last
1425 five or six years, and they are all in the Pool, they are all up there in Canada at the disposal of the Pool, and they are all electronic patents—he would have your Honor to believe that all of those patents which he always includes in his package license, and is included in the package license of the Pool—that they don't mean anything at all.

To a man who is trying to run a business, the threat of all those patents on his business, on his distributors, on the people that he does business with—they saw what the threat was in that Commission up there. As a practical matter, it is impossible to do business in the face of a thing like that. All they have got to do is write a letter like they wrote, and say they have the patents of the Pool—a notice to somebody you are trying to do business with, telling them they have the patents, and they have pooled their patents, and they have the power of the patents, to pick out any one or a dozen. You could keep a man in litigation for the next century.

1426 And we were sued on hundreds of patents at one time. I've been through this. I know what this means. You would never get through. There is no company on earth that can stand it, not one. We were about to go under and close our doors just from the course of litigation of patent after patent. And we would get up to the point of proving the patent invalid, and they withdraw it, and they put in another one.

Mr. Dodds knows that, and he sits here and trys to tell your Honor that they have no purpose in his portfolio. And he goes to the people, and that threat is implied in every offer he makes. This is the potential of this patent. "If we really want to give you the business, we have the power to do it; we have 510 patents."

You say they haven't any application, but some court will have to determine that. And the courts are open. And that is what this Pool was doing. The documentary evidence all the way through here shows they were harassing distributors, they were raising these points.

1427 Now, they are quiescent at the moment. They are all sitting back. They are sitting back like vultures on a fense waiting to see what happens in this Court. And if Zenith should lose this law suit, we would be sued from here to breakfast, and he knows it—this man knows it—with a big grin on his face which I think may come off before this thing is over. They are watching this litigation. Brian McConnell knew about the litigation.

1428 And how do the two things go together? You have heard the testimony. I am not going to go into the misuse. We will develop that in detail in our briefs. But it is perfectly clear the coercion that was involved in it. And it is perfectly clear where we were if we acknowledged the invention, that it was valid and so forth, what would we be able to say in Canada? They would be on us tomorrow. The threat is implied. They come to us and say, "You have to have a license. You have to come up here and manufacture," And they know we are not going to go up there and manufacture. They have been using that on us for years and years and years. We said we want to do our legitimate business, which is to make and import and send our sets into the markets of the world, which the antitrust laws in this country say we have a perfect right to do. And Mr. Dodds and his company isn't just up there absolutely encapsulated from any of our antitrust laws. He has been down in New York setting up 1429 these agreements; he's been operating on it. It is working back and forth across the border, and it is hooked up with this litigation, with the threat in this litigation following right up after Brian McConnell's trip down here to Chicago.

Now, I took Mr. Dodds all over this thing. Nobody can read this record—I say this with all due deference to your Honor—nobody can read this record and come to any other conclusion than Mr. Dodds knew all about this Pool. He has known all about it all along. He hasn't any objections to it. He thinks it is just one grand big idea, to stop trade between this country and Canada, and he is in it; he is profiting by it. He has put his patents in there at their disposal with the knowledge of what they are going to do with them, and he has helped them from time to time in litigation against Motorola; in other litigations. He has gone up there and helped them, to show what circuits they could use and what circuits they couldn't use. We have the documents, we have the letters, and so forth, all the way through.

1430 Now, what is the impact of that on our business?

We have never been able to import free of this Pool. We have now some licenses. We are asking this Court to enjoin the use of this license against us so that we can have a chance to obtain a license from Hazeltine under their patents to manufacture our goods and sell them in Canada under their Canadian licenses. We can't get it. There is no way we can get it,—unless through the courts, and we got it from the other companies by virtue of our lawsuit and our litigation when they capitulated, when they saw they had no defense to this thing.

Has your Honor heard any single defense except the patent law; any single defense to the fact that they did meet up there; that they were manufacturers; that they were suppressing competition; that this would necessarily suppress competition; that it was a legal consequence of their acts which they can't say they didn't intend? They knew; they knew how it was done; they saw how it was
1431 going forward; they knew all about the Zenith litigation; they knew all about it. They followed it and they knew the results of it, and they go forward with it right on as if nothing has ever happened.

1432 General Electric can get their patents out of the Pool under an exclusive license; RCA can get them out of the Pool; Westinghouse can get them out of the Pool; the Telephone Company can get them out of the Pool, and authorize and direct the Pool. Brian McConnell told us that they had directed him to issue licenses to import, but nobody else. What conclusion can you draw from that? They have to be in it; they have to be going along with it; they have to be conforming and acquiescing, and deriving profit from it. They went in it because this was a great way to levy tribute on the entire radio and television industry in Canada. And to get that right and that privilege, they put their patents in a Pool which was going to be used to stop commerce, and they knew it. And there isn't the slightest doubt in the whole wide world that they knew every single element of a conspiracy when they went in it, and they have known it ever since, and they have known the effect of it.

All right. This isn't something that caught up with
1433 somebody. They knew about our claim of being excluded from the time of the Zenith litigation. And we have heard the testimony of Mr. Wright and Mr. Kaplan, who are seasoned experienced executives of one of the largest most successful companies of the whole United

States, as to what happened—what the impact was. And they weren't just dreaming up something. They are dealink with a specific problem, and they cannot spend the money, they cannot do the things that are necessary to be done to develop their business the way they do here in the United States, in a free and open market, in the face of this Pool. Because as soon as they accumulate a large surplus of materials up there, warehouse them, get themselves into shape to do the kind of business that they do down here—to use an expression of Mr. Ruestow—zingo, the roof would fall in. We knew it; they knew it; this Commission up there knew it. They knew nobody of the size and caliber and integrity of the Zenith Radio could afford the risks that are involved to really go in there and develop their business until this impediment is done
1434 away with. And we are here in this Court asking
that this impediment to the commerce of the world be done away with under our antitrust laws.

The Court: How serious was the threat in regard to the radio business after 1955?

Mr. McConnell: The seriousness of the threat of the radio business is that you cannot sell radios alone. You have got to sell them in conjunction with an entire line. We have never had anybody say we are not going to enforce patents against you in the radio business. The Pool has never said that. There may very well be No Pool patents which they can win in a lawsuit on radio, but they haven't told that to us. They are telling us, "You take a license or else."

We are talking about this as our business and we can't sell anything without a full line of products. We are competing with companies that do have a full line of products, that have television, that have radio, and that have stereophonic instruments. And all of these things are pre-
1435 cluded by the Pool. Even though they say they don't

have any patents in their package license, they have radio patents. They take that under the theory that that is insurance. You are insured against what—what are you insured against? You are insured against litigation that they may bring.

1436 Now, this man asked Mr. Wright whether it would be good business to sue on a patent that was invalid. If you are an honest businessman, it wouldn't be good business. But the way they have operated these pools, the way Canadian Radio Patents Limited has operated it, to exclude competition from the whole world and divide up the world, why, of course, it is good business if you can accomplish it that way. This is an illegal activity. They don't have any of the presumptions of an honest business. They are excluding competition.

If you read these documents which we have got here—and we are going to put them in folders and give them to you—you will see that there isn't the slightest question in the world that the whole point and intent of this whole arrangement and setup and pool up there in Canada is to stop competition, and preserve that little market up there for themselves.

Now, how did—

The Court: You are suggesting that if somebody should be deterred by, perhaps, an empty threat, and if some-
1437 body is deterred by what is obviously an empty threat, why, there should be sanctions applied because of their naivete?

Mr. McConnell: I don't know how empty the threat is, and nobody can say that short of a court proceeding. We say this patent here is invalid. We have had a long hearing on it. We say it isn't valid at all, but we are being sued on it. We were threatened with suits on it. Nobody Knows whether these patents are valid until some court determines it.

The threat of litigation on 5,000 patents—I told your Honor, it wasn't any empty threat. We won a lawsuit down in Delaware on patents. We were sued on them. We won the patent suit, as far as we went with it, until the thing was settled. That didn't deter them from suing us. The Court held it didn't have any application to our set at all.

It wasn't an empty threat. It was a serious lawsuit and it cost us thousands and hundreds of thousands of dollars to defend it.

The Court: The particular patent that they sued on, they were collecting royalties from somebody on it
1438 at that time, weren't they?

Mr. McConnell: They weren't collecting any from us. And they said it applied to us, and it didn't. The Court held that it did not. It wasn't an empty threat, because while they had no merit in their position, it cost us in that proceeding almost a million dollars to defend it. That's coercion; that's the threat. That is a very serious threat to a man in business. And we win the patent case, and he knows we won it.

Mr. Dodds: One patent.

Mr. McConnell: That's the only one that was tried.

Mr. Dodds: Right.

Mr. McConnell: And we won it. And they were waiting in the alley and they were waiting in the corridors with patent after patent after patent. And we would get up to trial on one, and they would pull it out and put another one in. I'm not dreaming this up. This happened. That is the kind of a threat that we are up against. It is not empty at all.

Now, we haven't got a situation where we can go
1439 and bargain with an individual patent holder, or another one, or another one, and have them competing against us to give us a license. Not at all. They are all bound together.

And the cases which I will cite to you in our briefs, when we get to our briefs, are cases that hold that even in that situation you can't join one patent with another. And they cover—these licenses ran on not only patents that the pool had, but patents of applications, patents which they might have, patents which they didn't have but which they would have in the future, possibly, extending patent monopoly way beyond anything contemplated by any patent law, Canada or anywhere else.

1440 Now, what was the effect of that, coming to the damages which were created to our business? Your Honor has heard the testimony of Mr. Wright in the other proceeding, lawyers handling companies of international standing, lawyers who are of the highest standing in this country went over our books and records and our computations and paid us ten million dollars for our damages occasioned by being cut off from those markets. These people are not dealing with somebody that cannot be damaged, that is just trying to do business somewhere in the first instance. They are dealing with a company which has established itself and has shown that it is a competitor equipped to compete and has competed successfully with the best competition that this world offers. They are first in television and they are first, second or third in radio. We never did find out from the witnesses.

And that is the trade that is being intercepted and 1441 interrupted and interfered with. And we are asking that so far as Canada is concerned, we want damages for being excluded and we want an injunction to prevent them from using their patents in this Pool to prevent exports from the United States into Canada.

Now, as justification for this Canadian Pool, throughout their whole history they have told everybody that they can't license for importation. It has been a fraud from the beginning. It never was true from the time that this

company was first organized in 1927 and we have in evidence the opinions of the RCA Counsel who looked into it, went all over it, and came to the conclusion that it was not so, that that was not the law, that they couldn't justify it that way. But they went forward with it anyway for business reasons, because they were in it and they were getting revenue out of it and they kept their patents in it. But they recognized all the time that if anybody seriously challenged it they never in the world could maintain it, and those letters, the opinion of Ira Adams, the chief patent counsel of RCA, is in this evidence, in which he said
1442 as far back as—when was that, '23 or—

Mr. Curtis: '24.

Mr. McConnell: —1924, that you couldn't use a Patent Act to implement a Pool of this kind.

And they tried from time to time to get out and finally did get out, and the real conclusive piece of evidence in this that you don't have to do it that way is the fact that after they were challenged and after they had to pay damages for doing it that way, what did they do? In spite of all of their statements and protestations over the years that they were only enforcing or going and living up to Canadian patent laws, they directed the Pool, they directed it, not authorized them, they directed them to issue their licenses which were in the Pool for import. And we know that by their agent who came to us, Brian McConnell, who was their agent running the Pool and making that representation. There is no contrary evidence. They don't bring Brian McConnell down here to deny it. That
1443 is established in this evidence. There isn't anything to controvert it. That is the situation even after this lawsuit was in this Court.

1444 And Mr. Dodds says, "I am here. I stand here. I know the facts. I know all about it and I am going to stay right in the pool."

And he says that right in this proceeding.

Mr. Dodds: Mr. McConnell, that is the third time that you have repeated that and you know that it isn't so. Why do you keep saying that?

The Court: You will have an opportunity tomorrow to answer this, Mr. Dodds.

Mr. McConnell: I am not going to discuss the minutia of the damage proof so far as Canada is concerned at this time. I think that that can be developed in the briefs.

The Court: I think so.

Mr. McConnell: And I think that what your Honor wants from me on Canada is the conspiracy issue, and that is what I have attempted to do.

The Court: That is right.

Mr. McConnell: Now, we have had this talk all the way
through, that all we are dealing with here is foreign laws,
that we are not dealing with American laws. This is some-
thing way beyond the pale, way over here. These
1445 people have done this in another country and it
hasn't anything to do with what can be reached by the
laws of the United States. We haven't any problem on
the law with that.

The United States Supreme Court just recently in Continental Ore Company against Union Carbide Corporation, 370 U. S. 690 at page 704, the contention there was made that these acts took place in foreign lands and therefore this Court here couldn't reach them at all, couldn't do anything about it.

The Supreme Court first took up the question of how we should look at a conspiracy, and they say:

> "In cases such as this, plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each."

Now, Mr. Dodds and his co-counsel over here would have your Honor look at one little act that they did, and they get to talking about the minutia of their licensing 1446 agreements, as if they can insulate themselves by something they put in a contract, when they get into something knowing the full details of it and go forward with it. And the Supreme Court says that you can't deal with it that way, just looking at the individual act. You have got to look at the whole thing and see what the effect of it was and how they got into it and where they went with it and what they knew about it and whether they acquiesced in it or not, and the Court says:

> "The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole."

And they get to the foreign question:

> "Respondents say that American Banana Co. v. United Fruit Co., 213 U. S. 347, shields them from liability. This Court there held that an antitrust plaintiff could not collect damages from a defendant who had allegedly influenced a foreign government to seize plaintiff's properties. But in the light of later 1447 cases in this court respondents' reliance upon American Banana is misplaced. A conspiracy to monopolize or restrain the domestic or foreign commerce of the United States is not outside the reach of the Sherman Act just because part of the conduct complained of occurs in foreign countries."

And they cite a long list of cases in support of that contention.

The Court: Perhaps this would be a good time to break.

Mr. McConnell: All right, yes. Thank you.

The Court: We will recess until ten o'clock tomorrow morning.

(Whereupon, an adjournment was taken to 10:00 o'clock, a.m., of the following day, Wednesday, February 26, 1964.)

1448 * * (Caption—59-C-1847) * *

Before the Hon. Richard B. Austin,
Wednesday, February 26, 1964,
10:00 o'clock, a.m.

The trial was resumed pursuant to adjournment.

Present:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow.
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

1449 The Clerk: Case on trial.

The Court: You may continue.

Mr. McConnell: Thank you, your Honor.

In the course of my argument yesterday I was making the statement that Mr. Dodds has admitted that he knew the fact and he knew all about it and he was going to stay right in the pool, and he challenged me on that statement.

I am reading from Page 136 of the transcript in this case, which was the deposition of Mr. Dodds read into evidence:

> "Q. When did you find it out, whether you recall the date or not, did you look into it to find out whether or not you might be liable for being in the pool?
>
> "A. I am not quite sure how to answer it. I have been aware, of course, for a great many years, of this attack upon American companies who directly or indirectly participated in the Canadian Radio Patents Limited. I have tried to keep myself informed both of any 1450 litigation involving that subject matter or any proceedings in this country or abroad, and when I ac-

quired any particular bit of information I just do not recall. That's a long period of time.

"Q. You knew something was going on in the way of an attack by American companies against that pool, didn't you?

"A. Yes.

"Q. You had known that for a long time?

"A. Yes.

"Q. You still stayed in the pool?

"A. Most definitely, and we intend to continue to stay in the pool."

Now, I was discussing with your Honor the intent and purport of this pool up in Canada yesterday, and the evidence here shows that it doesn't faintly resemble a pool just to prevent patent litigation. I said, and the contention of the plaintiff here is, and the evidence supports the con-
tention, and the allegations are that this was a pool, a
1451 combination of manufacturers to prevent competition.
That is what motivated their activity and this patent angle of it was a means of implementing that conspiracy. We have in evidence here Defendant's Exhibit 141, which purports to be the minutes of a monthly meeting of the Quebec Radio and Television Distributors Association, held on Thursday, May 7, 1953, in Montreal, and present in that meeting were a number of individuals named in the document who were representing manufacturers in Canada. They are named, too, Northern Electric Company, Canadian General Electric Company, in the pool, members of the Pool, Electrical Products, National Carbon, Spartan of Canada, RCA Victor Company, Limited, whose patents
were in the pool, Canadian Marconi Company, Limited.
1452 In the course of that meeting, the minutes state, on
the subject of importation of sets into Canada—Mr. Brownlee, who was running the pool at that time, was up there. Under the subject of importation:

> "The chairman reported on action taken by Canadian Radio Patents Limited to halt the importation of non-licensed radio and television sets and complimented Mr. Brownlee for the excellent work which he was doing."

Mr. Brownlee being the man who was running the pool.

> "It was decided that members should clear all infractions through the secretary who would report immediately to Mr. Brownlee. The secretary was requested to write CRPL requesting information governing importation regulations as well as the details of what was necessary to qualify for a manufacturing license."

Now, that shows that the pool was working with manufacturers, distributors, retailers, to control that
1453 market up there against importation.

Then we have a letter on the letterhead of the Canadian General Electric Company, also a member of this pool, written to RCA-Victor Limited, also a member of the pool through having its patents in the pool—and, by the way, RCA Victor wasn't a stockholder in this pool. It had its patents in the pool. And your Honor will recall that the main thrust and drive of the Government's suit was against RCA as being a co-conspirator in this pool. An injunction was entered against them in the consent decree, and they were required to make their patents free of the restrictions of this pool as a result of that litigation.

So here we have one co-conspirator writing to another, and if there ever was any doubt about what was intended by this pool, this letter should end it. This was written quite a while ago, but it was after Hazeltine had its patents in the pool. It was written November 27, 1935, to Mr. Grimley, president of RCA Victor, on the letterhead of

Canadian General Electric, and written by Mr. Mac-
1454 Farland, their general solicitor, who was the man that was negotiating with Hazeltine, who had the negotiations with Hazeltine when Hazeltine went into the pool, which negotiations, the evidence shows, were conducted down in New York City. He says:

"Dear Mr. Grimley:

"Recently we have had applications from parties in Canada requesting the terms upon which we would grant them a license under our patents to import into Canada and sell power amplifier and power supply equipment mainly, I presume for installation in small rinks, fairgrounds, et cetera. In the past two or three years, we issued two or three licenses with a time cancellation clause under Canadian GE patents, but advised the parties that they took their own risk under Northern Electric patents. And some of these companies such as Belden International, Screen and Sound Service, and Wholesale Radio have possibly been selling some of this equipment. However, in view of our
1455 recent arrangements with your company, we would prefer to see business of this nature go through your company for distribution, either by ourselves on your distributing organization, insofar as such is permitted under our agreements with the other companies, and if the same does not constitute public address systems in which field Northern have exclusive rights.

"Under these circumstances, I would appreciate if you could tell us whether under your new setup with Northern covering the sound equipment field, you are enabled to sell public address systems and thus desire that no further amplifier licenses be granted.

"Confidentially, the recent inquiries have come from Radio Receptor and the Webster people in the United

States who, some time ago, also were anxious to come into the Canadian field but were dissuaded by us from doing so. On the other hand, if our respective com-
1456 panies are unable to benefit from a manufacturing standpoint, there may be no reason why these people should not be licensed."

1457 In other words, they weren't worried about whether or not there would be a misuse of their patent. If they weren't manufacturing it, if there wasn't any competition with them, why, sure, why not give them a license. It shows the whole intent of this thing. And here is writing from one co-conspirator to another that throws a beautiful light upon their intent, and their motives, and purport of the whole thing.

Now, we got from the files of this company a letter which was sent to Radio Corporation of America down in New York who, incidentally, are in the same position with reference to this Pool as Hazeltine. They weren't a stockholder. They had their patents in the Pool under the same arrangement, under a license with the right in Canadian Radio Patents Limited to grant sub-licenses.

Now, you have heard this talk about selling their patents. That wouldn't fool a nine year old boy. They had those licenses up there, and they were deriving revenue on
1458 quarterly payments all during the course of this. I'm not going to read the documents here that show their receipts, but they are in evidence showing they got receipts from the Pool. It didn't remotely resemble a sale of patents. It was a license.

They are trying to tell your Honor that they have sold and parted with all interest in their patents, which it just absolutely isn't so. And in our interrogatories, we asked who owned the counterparts of the American patents, and the answer that is given here in their formal answer to interrogatories is the Hazeltine Corporation—not the Pool, CRPL. So that is an obvious device to make your Honor think that they are not in it, not deriving profit from it, not participating in it, not going forward with it all the time.

Now, here is a person—a company in the same exact identical position as Hazeltine, and I assume they got this too—they must have. It was sent out to people in the
1459 same situation as they are; namely, the people that had patents in this Pool. We didn't get it out of their files, but it came out of the files of a co-conspirator. And this is a letter under date of November 6, 1946, at a time when they were in the Pool, when their patents were in the Pool, in which Mr. Maripole writes to Mr. Shackleford, who is the head of their patent department down in New York, and he says:

> "Enclosed is a copy of a memo which we received from Mr. Brownlee"—

and Mr. Brownlee is running the Pool—

> "of Canadian Radio Patents Limited together with a questionnaire. You will see that they asked us that we return one copy to them not later than Monday, November 18."

Then he asks him to fill this out. Now, in this questionnaire—and this is going to the patent holders. The way they have told it over the years, you would think that they had no option at all about what they could do. They
1460 just couldn't license anybody to import anything into Canada because of this absolute prohibition under the Canadian patent laws. And you heard it stated here by Mr. Dodds as if it was absolutely a prohibition which prevented anybody from bringing anything into Canada. So they sent out a questionnaire to their people and asked whether they are in favor of having licenses which manufacture in Canada along the lines of the buff-backed agreement, or favor importation on written approval of CRPL, or other.

Now, I don't know how they answered this questionnaire, but I assume the patent holders answered it and went of record in some way. We haven't been able to get the documents out of anybody's files as to what the answers were, but they didn't change their licensing practices after '46, after the questionnaire went out. And I assume that everybody knew about it, and went along with it, and authorized them to proceed in that way.

1461 Now, we have another document in this—and I am only skimming the surface of these documents. The idea that this is just a little innocuous pool up there to prevent litigation is really a laugh, because they were promoting any litigation they could against anybody that imported anything into that company up there, and the documents show it beyond peradventure.

Now, here is some advertising material which came out of the files of Canadian Radio Patents Limited. And it is sponsoring a nationwide advertising and publicity campaign "to sell Canadian-made radios for you."

Now, if it was just concerned with patents, what were they doing out in the retail trade carrying messages and advertising in newspapers all over the country, and circulating this all among the trade and asking for their cooperation? And they are furnishing the material which is to be published. And they say, "There is 4,343,084 advertising messages to help put a stop to importation of cheap, substandard imported radios. In every province in Canada, from Nova Scotia to British Columbia, large-size

1462 advertisements sponsored and paid for by Canadian Radio Patents Limited are helping to sell Canadian-made radios for you."

Is that just protecting and stopping litigation between patent holders? What are they trying to do? They are trying to protect the market of these people from competition, from companies like Zenith Radio.

"Daily newspapers, weekly newspapers in practically every city and town that is in close proximity to the United States border are covering these ads now. Their combined power gives a staggering total of 4,343,084 advertising messages to tell the story of Radio Patents Limited, the story of why consumers should not, may not import cheap, substandard models. You have probably seen these ads in your local papers. Tie up with them by putting up in your window the enclosed warning streamer, by telling your customers and friends about the dangers of the situation."

Then they go on and they set out here samples of the
advertising which they are going to supply the trade
1463 with. Obviously, an attempt to stop commerce with
a company here in the United States. And that is
exactly what our antitrust laws are designed to prevent.

Now, this is right down to date. Mr. Wright told you he had received a copy of this notice, which is Defendant's Exhibit No. 138, in the magazine Trade Builder for August, 1958. There was the advertisement, and then there was the notice. Well, they say they don't threaten any litigation. They state here that they are operating under the sections of the Canadian Patent Act. It names the companies which they have licensed to manufacture in Canada. And here is what they say:

> "Canadian Radio Patents Limited desires to inform
> importers, vendors, purchasers, or users of radio and
> television receivers and other electronic devices and
> equipment incorporating patent inventions owned or
> administered to Canadian Radio Patents Limited not
> manufactured and sold under license from Canadian
> Radio Patents Limited, that they will be held liable
> 1464 for patent infringement."

How are they going to hold them liable for patent infringement unless they sue them? This is a notice that goes out to the trade. Our distributor picks it up and sends it in to Mr. Wright, and they had the conversation about it in which your Honor has heard the testimony.

1465 It is going on right now. We haven't been sued up there, but we have been sued here and we have been sued on the Hazeltine patent by a Pool member.

And it is our contention, and the record bears me out, that this is implementing that same conspiracy, their suing us here in an attempt to force patents which are held in that Pool, and which Mr. Dodds admitted on the stand here yesterday, that the counterparts of them were in the Pool and that the licenses didn't give us any protection against a suit up there. And we can't get a license to import.

Now, as late as May 17, 1962, we have here in evidence a communication from the Pool, and bear in mind that under the law, once you are in a conspiracy the law is, there isn't any question about this law, if you are in a conspiracy you are liable for what anybody does in the course of that conspiracy. You get in it and it isn't just what you do with your one little patent, or this patent 1466 or that patent which you have in your portfolio, it is what that conspiracy does with all of the patents which they have under their command and disposal and utilization in working out the object of that Pool. And there isn't any question about that law. We have cited the law in our briefs.

Now, here we have a communication from our distributor, Mr. MacCuspie up in Nova Scotia, Ideal Electric Supply Company, and you will find in the evidence here that Mr. MacCuspie has been the target and object of attack from the very time be began up there. He has been in constant trouble with the Pool. And he sends us this communication which was sent to Electrical Distributors Limited, under date of May 17, 1962. This isn't any dark, dim, past history, this is something going on currently:

"Dear sir:

"We notice from an item appearing in the press that you have been appointed a regional distributor to market in Canada home entertainment products manufactured in the United States and bearing the
1467 trade name Motorola."

Another American company.

"Canadian Radio Patents Limited is an agency empowered to license the Canadian electronic patents of such firms of Philips Electronics Industries Limited, Canadian Marconi Company, Northern Electric Company Limited, Canadian Westinghouse Company Limited, Canadian General Electric Company Limited and Hazeltine Corporation. In addition, we own Parker Patent No. 457,328 entitled 'Television Receivers'"

They are asserting the 5,000 patent in that Pool, not pust television patents—radio patents, everything that applies to electronic devices of any kind, and radio is incorporated into all these television sets. All the television sets have a radio attached to them.

"Addison Industries Limited and Seabreeze Manufacturing Limited which made Motorola products in Canada were each licensed by Canadian Radio Patents Limited."

1468 Now, your Honor heard the testimony here by Mr. Kaplan that Motorola had quit manufacturing up there. They found that it wasn't profitable and they closed up and they quit.

"Although we have not, of course, had an opportunity to examine the circuits of any home entertainment products which you intend to market in Canada under your arrangement with Motorola, we would strongly suspect that television receivers would incorporate the inventions of at least the above-mentioned Parker patent and also Armstrong patent No. 44,177. FM radio receivers would almost certainly use the latter patent also. A close analysis of the circuits would probably disclose other inventions covered by patents which we are empowered to license."

Then they refer to the sections of the Canadian Patent Act, which we have had a lot of testimony about here in the course of this proceeding, and they say—it is the
1469 pool, it is written by Mr. McConnell. He is the president of the pool:

"From the foregoing you will see that licensing of imported products which hinder working of patent inventions in Canada on a commercial scale constitutes abuse of the exclusive rights granted under the patent or patents involved. Furthermore, such abuse can exist should the patentee or persons claiming under him fail to take action for infringement against an importer into Canada of a patent invention. At this point it seems fairly evident that importation of Motorola products incorporating our inventions would hinder the Canadian manufacture on a commercial scale of similar products. Accordingly, in order to comply with the intent of the Canadian Patent Act, we would not be prepared to license such imported products with the exception of patents of Canadian
1470 General Electric Company, Limited, and Canadian Westinghouse Company Limited."

Now, here are two of these conspirators who formed the pool up there, who couldn't see any way at all to grant a license to import anything because of these Canadian patent acts, and after they got in trouble with the United States Government and after our Zenith Litigation they found that it was very easy to do and obviously have instructed Mr. McConnell to offer a license to import.

But what good does that do you if you have got these other patents which are not so licensed?

"These we have been instructed to license—"

These are the Canadian Electric and the Canadian Westinghouse.

"These we have been instructed to license irrespective of the country or origin of the patented products."

Which shows the whole spurious nature of this patent law defense.

Now, they go on:

1471 "Accordingly, should importation of Motorola products take place, and should these be found to incorporate inventions covered by patents which we are empowered to license other than those of Canadian Westinghouse or GE,—"

They don't make any exceptions for Mr. Dodds' patents or his Hazeltine patents.

"—we will be forced to take whatever action they may deem necessary in order to protect our patents.

"I might point out that we initiated two cases in the Exchequer Court last year, one against a Canadian manufacturer, which was settled before coming to trial, and the second against an importer of German radio receivers. Judgment on the latter case was handed down in May 2nd of this year in favor of Canadian Radio Patents Limited.

"In closing, I wish to inform you that we should be most happy to issue a license to you to make or have made in Canada any equipment covered within the ambit of our patents."

1472 But no license to import.

In other words, Motorola had been up there, had tried to manufacture, found it wasn't productive of profit, wanted to produce and sell their sets free of the restrictions of the import restrictions of this pool and couldn't do it.

Now, we have heard a lot of talk here about we are dealing with patent rights, and there is something sacrosanct about patent rights. They can't be used in the pool, they have been sold, and all of this and that and the other things, and there is a lot of law cited in our briefs on that subject, and I think the leading case on it is United States v. National Lead Company, which was an opinion by Judge Rifkin, 63 Fed. Supp. 513, 523, which was affirmed in the Supreme Court of the United States in 332 U. S. 319. He says:

> "No citation of authority is any longer necessary to support the proposition that a combination of competitors which by agreement divides the world into exclusive trade dealers and suppresses competition
> 1473 among the members of the combination offends the Sherman Act."

And then in the National Lead case they said:

> "To have access to the patents of the combination, the stranger must not only have the consent of the member of the combination in whose territory he would operate, but he must adhere to the principles of the combination. The cornerstone of the system was a private regulation of international trade. The suppression of competition was the cement which held the superstructure in place. Whether the form of association they created be called a cartel, an international cartel, a patent pool or a technical and commercial cooperation is of little significance. It is a combination and conspiracy in restraint of trade and the restraint is unreasonable and as such it should be outlawed
> 1474 by Section 1 of the Sherman Act."

And then there is Judge Ryan's opinion in United States v. Imperial Chemical Industries, which also takes up patent rights and says that they cannot be utilized any more than any other device can. And any perfectly legal act that is utilized in the course of a conspiracy takes its tone and its flavor and its import and its content and the illegality of the illegal conspiracy, infects it from start to finish, beginning to end.

And this Court should bear in mind, also that patents rights are something granted, they are a right granted. They are not granted as a means of breaking other laws of a country that grants them. It is a conditional grant, and that is the whole basis of the misuse theory and the misuse defense in these cases, that the sovereign who grants the right will not permit the use of that right in derogation of other laws which have to do for the public interest to which the sovereign is dedicated and entitled to protect.

1475 Now, we have cited the New Wrinkle case in our brief which holds—we have heard from Mr. Dodds, why, he isn't manufacturing anything, all he has is some patents. An the Supreme Court in the New Wrinkle case said that it didn't make one bit of difference whether he manufactured or not, if he got in a conspiracy with his patents he was in it and responsible for everything that happened in the coarse of it, and it didn't make one iota of difference whether his particular interest in manufacture was protected or not, if he was joining and if he was aiding and abetting others who were conspiring to do that, and joining the plan with his eyes wide open, his patents are just as much bound as if he was a manufacturer. And there can't be any question about that law, and we have cited it all the way through our briefs.

Now, the impact on this thing in Canada is perfectly obvious, and if there was any doubt about it, it was com-

pletely put to rest by the exhibit which my opponent introduced in evidence here, a report from this Royal Commission where they had a man trying to give them a
1476 whitewash. The witness on the stnad, his partner, was up there trying to give him a whitewash, get something they could use in negotiations and so forth, with other people, and to implement their conspiracy, and they didn't succeed. Because in that report, right there in language that nobody can misunderstand, it says that they have 5,000 patents and in the face of those patents, as a practical matter, no one can import into Canada; that they enforce them, they implement them with infringement suits. And it is all in the report and it is all written out there, and it comes right from the mouth of CRPL in their own proceeding there in which they seek a whitewash from this Government agency.

That is the situation we face in Canada, and we faced it for a long, long time, and we thought that we got rid of it with the Zenith litigation and with a consent decree, but we haven't gotten rid of it and it is still on our backs, and it is being worked forward and backward up and down, and it is only that pool, its patents are used against us here, the patents here are used there. I am now
1477 passing on to England, where I will show that those patents likewise are involved, not only there but in the local situation here.

Now, in England we have a pool, and it is perfectly ridiculous for my opponent—I am going to read a letter here and a little later on—to say that he doesn't know what a pool is. He writes letters about the pool. He tells you what pools that he is in. He has been familiar with pools for a long, long time.

1478 They go over to England and they want to get in the Pool—and this case is not one that you have to infer from a lot of circumstantial evidence, this case is as strongly documented as any antitrust that is ever going to come into Court. This thing is absolutely documented from start to finish and from beginning to end. Why did they want to go over there and get in those Pools? Why did they want to go over there and make an agreement with English electric companies? We don't have to speculate about it.

Here is an agreement, executed on the 10th day of November, 1958, between the Hazeltine Corporation and the General Electric Company Limited, and Mr. Dodds' signature appears on it and Mr. Binns' and here is the recital in the agreement—this is Defendant's Exhibit No. 46:

> "Whereas by virtue of two agreements between the Corporation—"

The Corporation is Hazeltine and the Company is General Electric.

> "—dated respectively the 6th day of April, One thousand nine hundred and thirty-nine and the
> 1479 twenty-fourth day of July, One thousand nine hundred and forty-five the Company hold from the Corporation until the thirty-first day of December, One thousand nine hundred and forty-nine a sole and exclusive license (but not including the right to grant sub-licenses) under our present and future patents belonging to the Corporation relating to Receivers for broadcast radio and to television transmission and reception.
>
> "And Whereas by a further Agreement between the Corporation and the Company dated the sixth day of April, One thousand nine hundred and thirty-nine the Corporation granted to the Company rights inter-alia to utilize the said Patents for the purpose of securing entry as a Licensor into any British Wireless Pool which might be formed or otherwise to deal

with the said Patents by way of granting sub-licenses thereunder.

"And Whereas a British Wireless Pool was duly formed and the said rights were duly exercised by 1480 the Company and said further Agreement was by agreements between the Corporation and the Company dated the twenty-fourth day of July, One thousand nine hundred and forty-five—"

Extended for additional periods of three years and one year respectively. Then they go ahead and grant the further license to get them in the Pool.

1481 Now, we have here in evidence—these license agreements extend from time to time between Hazeltine and GEC with the expressed purpose of getting Hazeltine patents into the Pool.

Now, what do they get into, and did they know what they got into? I have here an Exhibit which is produced from their files, Exhibit F, which is here as Defendant's Exhibit 52. Now, if I ever saw in my life complete conspiratorial agreements in evidence to stop commerce between two nations, this is it. You just can't improve on it from a conspiracy standpoint.

Who it in it now? The British Thomson-Houston Company. That used to be, and probably was at this time, I think it was at this time, a subsidiary of American General Electric. Philips Electrical Industries; that is the Holland Company, which is the biggest electrical company in the world; General Electric Company, which is a terrific company. We have got in evidence here background information on these companies. They are giants. This whole 1482 thing is an octopus with tentacles all over the world and just completely ties up the whole electrical business everywhere.

I haven't had a chance to develop it in its world-wide aspects of that kind. I have left that part out because the individual Pools are so clear and so apparent and so well documented that we don't have to add frosting to the cake.

Then there is Marconi's Wireless Telegraph Company, the same company they had up there in Canada. These companies are the same, Philips, Marconi and EMI. And EMI, Electrical and Musical Industries Limited and its subsidiaries, the Gramophone company, the Columbna Graphophone Company and the Marconiphone Company Limited and all subsidiaries of any of them. And here they are, and they recite in here where the patents come from. The Philips patents come from the Hartford National Bank and Trust Company of Hartford, Connecticut.
A little side light on that; when the Germans came into
Holland the Philips Company sent all their patents
1483 over here to the United States, put all their applica-
tions in trust in Hartford so they couldn't be picked
up and utilized by the Germans.

But this just isn't over there. Here the patents are here and they are being put back into this Pool. And here we get down to the General Electric Company and its subsidiaries and the Hazeltine Corporation. These are the Pool members—and the Hazeltine Corporation.

And it talks about:

> "—all present and future patents of the British Isles originating with the following companies,"

naming the General Electric Company and the Hazeltine Corporation. They are in the Pool.

Now, what were the restrictions? And here is an agreement restricting trade, no question about it:

> "Unless otherwise agreed no licenses are hereby
> agreed to be granted to import Radio Apparatus into
> the United Kingdom or to deal in in the United
> 1484 Kingdom imported Radio Apparatus or Radio Ap-
> paratus containing imported component parts to an

extent exceeding in value 10% of the retail list price of such Radio Apparatus except in each case samples and experimental models for the use of the parties hereto."

1485 Here are manufacturers in England agreeing among themselves and with Hazeltine in it, agreeing among themselves not to license anybody from the United States or any other country to import radio receivers, and the later license agreements include television and everything that there is in this electronics line which we are talking about in this lawsuit, an agreement to do it. We aren't talking about what Hazeltine could do with its patents as an individual. We haven't that problem before us at all. The question is, can they, by a conspiracy of our competitors in world markets, and I say "our" competitors, I mean Zenith's competitors in world markets, can they shoulder to shoulder tie up and control and completely block our commerce in those markets? And if they do so, don't they come within the caveat of our American anti-trust laws? And the courts say that they do.

Then, here is the real one:

> "All matters appertaining to the granting and
> 1486 administration of licenses in pursuance of this clause eleven and to procuring other parties to join with the parties hereto in such licensing shall be decided by their Committee by a majority in voting value of the votes of those entitled to be represented on the Committee and the parties hereto undertake to comply with all such majority decisions."

Here are these manufacturers, competitors of ours, agreeing to be bound by the majority decision. And who is the majority? No one but EMI, the one that Mr. Dodds went over and talked to who had the controlling vote in this thing and have had the controlling vote from the very beginning. And the evidence is absolutely clear on it. He admitted it—I will get to their minutes of their meetings where they assert they have a majority of votes in that Pool.

And what is he talking to them about? He goes over there and he talks to EMI, not his agents, as he calls them, English Electric, he sits down with a majority interest
1487 in the Pool, the interest which can determine all the
conditions of the Pool pursuant to this agreement, and he negotiates his arrangements on points as to how much he is going to receive. And he is trying to tell your Honor here yesterday that they are just talking about the weather or something over there. He was in there trying to get more points for Hazeltine as against EMI and the other members of the Pool, and there isn't the slightest doubt in the world about what they were talking about. They were talking about their share of the take—how much take home money he was going to get for Hazeltine out of the patents joined with General Electric, a member of the Pool, a stockholder in the Pool, if you will, a signatory to the agreement, the original underlying agreements, and that is what he was talking about. And I am sure that he isn't going to fool your Honor into thinking that he was just over there enjoying the vacation time of England. He was there on business and he was there on illegal business
1488 and he was talking to the chief conspirator in that
Pool, which was EMI. They have run it from time immemorial. They had the RCA patents. They had the licensing of the RCA patents, and Mr. Dodds didn't know that. It is in the Pool agreements coming out of his file. It recites it, that EMI has all of the pre-1945 patents. He just couldn't remember about that at all when he was on the witness stand, and it is right in his own documents. They had the right to license those patents, all pre-1945 patents and all other patents by separate license agree-

ments which he got through EMI. And he told you that, how anybody in that Pool could get the license for nothing. Because RCA got gun shy, and they figured they were in hot water over in that Pool, and they had the Attorney General's Office breathing hot air on the back of their necks and they wanted to get away from that Pool as fast as they could, and they did everything that they could to get out of it and they didn't get out of it fast enough.

1489 Mr. Dodds and his company doesn't want to get out of it. They want to stay in it and they want to share in the take and the proceeds and the fruits of this conspiracy.

We have their output license from the very beginning of it. He told us here once that he didn't know anything about the A.5 pool. Well, then, lo and behold, it turns out that he makes an outline of the A.5 pool in his own handwriting He knew all about it, and in his notes he shows that there is no licensing of imports. He has that right in his—in these licenses there are hundreds of patents here that are referred to and the joinder of patents. And I want to turn to their restriction in their output license, if I can find it here. Four, and this is in every one of their licenses, right down to date—we have got them all there, and they come out of their files and he said somewhere that there wasn't anything after 1946 or something, and I will get to that:

> "4. The licensee agrees with the Grantor as follows:
>
> 1490 "(a) Not without the previous written consent of the Grantor—"

That is the pool members—it is the signatories, rather, grantors to the licenses.

> "Not without the previous written consent of the Grantor to sell any broadcast receiver or radiogramophone which has not been manufactured in the territory for which this license is granted."

This is way beyond any patent rights. They are agreeing not to handle it. These are the people who handle these products in England. They are agreeing not to handle them. It isn't just the license limits to it. This is an agreement when they join with this company:

> "No broadcast receiver or radiogramophone shall be deemed to have been so manufactured within the meaning of this license which incorporates imported components and accessories sold therewith, such as, for example, cabinets and valves and cathode ray tubes
> to an extent per broadcast receiver and/or radio-
> 1491 gramophone greater in value than 10 per cent of the
> retail selling price thereof."

Now, that restriction was pursuant to the pool agreement not to license any imports, obviously issued in pursuance of that, and we have that license restriction all the way through, all the way down. We get down to the license under the A.8 pool, which is the one in being now, defendant's Exhibit No. 70, here in evidence, and in the last one the restriction is limited to a license to manufacture and sell in Great Britain. No other license is granted in the last—same restriction all the way down to date. There never was a time in which they could license, and I am going to get some documents which illuminate that.

Now, I want to go back to Mr. Dodds and his discussions with reference to this pool. These are notes of discussions. This is something that occurred contemporaneously. This isn't something that is qualified by a witness who jumps in and off of the witness stand and puts on one hat as counsel and then takes that off and jumps onto the witness stand and testifies a little. I have never seen a case
where the only defense came from the mouth of the
1492 lawyer who was trying the case, never in my life. I
have been practicing law for 40 years and I have
never seen it before. It is absolutely unique. And it is

quite significant here, too, because in the Interstate Circuit case the Supreme Court commented on the fact that in the face of this tremendous documentary evidence case of conspiracy no responsible official of the company got on and denied the conspiracy, and you haven't heard Mr. Westermann get on this witness stand and deny this conspiracy. He was trying to give some explanations here about his misuse, but you never heard him get on there and deny they were in this conspiracy. This case is admitted, from top to bottom.

Here is Mr. Dodds, over there in England. There is a lot of this, but I am going to just get down to the main points that I am interested in and what he was doing over there. Now, here he was in a discussion not with General Electric but with EMI. On the 18th of November, 1955, we find Mr. L. B. Dodds along with Mr. Heather, a member of the pool, or his company is, Mr. Nalder, Mr. Cornock, and then Mr. E. P. Dale-Harris, and Mr. S. J. Preston
1493 of EMI. I know those gentlemen. I had them on the witness stand in the other case. They were very knowledgeable about everything that happened over there. Mr. Heather opened the discussion by saying—I am reading from Page 10 of Defendant's Exhibit 76-B, entitled "Discussions with EMI."

"First Meeting. Magnet House: 18th of November, 1952.

"Present:

Mr. T. W. Heather,
Mr. L. B. Dodds,
Mr. K. H. Nalder,
Mr. A. F. Cornock,
Mr. Dale-Harris, and
Mr. Preston.

"Mr. Heather opened the discussion by saying that Hazeltine and the GEC wished to act together—"

Buddies, right together.

"—and approached the question of co-operation with EMI in the most friendly spirit. They understood that the proposed scheme for the next pool was on the same general lines as for the past pool 1494 and the main point for consideration was, therefore, what was a fair basis for the assessment of holdings."

1495 The holdings they are talking about are the share of the Pool, the assessment of the value of the patents which are going in the Pool. That's what EMI, that's what General Electric, that's what Hazeltine were discussing.

"Mr. Preston said that TV design was now stabilized, and as it had in the past been necessary to bring actions against obdurate infringers, patents in force and available for action against infringers had been weighted heavily."

They weigh their patents on the basis of how much trouble they can cause, how many lawsuits they can bring, how important the lawsuits are.

"Mr. Heather then asked why the particular scaling now proposed had been adopted. It weighed very

heavily against potentially useful patents not actually in use at the moment, and he would like to know whether other probable members of the new Pool had
1496 accepted it. Mr. Dale-Harris said that he thought it irrelevant whether others had accepted this scale. Mr. Preston said that the scale was somewhat on a 'cut-and-try' basis, adopted after considering the results of a range of possible scales. Mr. Heather repeated that it put a very high weight on patents actually in use: The GEC and Hazeltine had been concerned by the facts that, (a) patents expire, (b) new ideas become important, and (c) licensees take a license partly as an insurance policy. It was not clear that the scale took care of these factors properly."

In other words, Mr. Heather and Mr. Dodds were taking the position they weren't given enough weight, due to the fact that they had a lot of patents somebody could get sued on.

"Mr. Dodds said that, in the U. S. A., a factor which markedly influenced licensees was not so much the
1497 existing patents as the potentialities of the licensor. He referred to color TV, saying that it would only be a question of time before it came in, and it was expected in about two years in the U. S. A.

"Hazeltine had worked out the compatible system, and believed that would have a dominant position when color was adopted. A possible way of dealing with this, would be to revalue holdings when color was adopted, but he was not really in favor of revaluation during the currency of a Pool. Mr. Preston said that he agreed with the two last comments, and added that, if revaluation were carried out, it would have to affect all licensors and EMI themselves considered they would still have a strong position—to which Mr. Heather replied that EMI had made a

change of scale now and might propose a further
change of scale when color came in. Mr. Dodds fur-
1498 ther pointed out that an adjustment would not affect
all parties equally, because not all had a long term
research program on color as Hazeltine had had.
Evaluation at one point per patent not in use did not
do justice to the future importance of color, and
Hazeltine's evaluation would increase more heavily
than that of RCA as color developed."

Just an innocent bystander this man.

1499 "Mr. Dale Harris said that EMI would prefer to discuss matters of this kind with companies individually and not to try to discuss them with two parties simultaneously. To this Mr. Heather replied that Hazeltine and the GEC were partners in the negotiations.

They are partners getting into this Pool. And he said it there, and Mr. Dodds didn't contradict him because they were partners. They are pooling their patents and they are sharing them fifty-fifty. What is a partnership?

"Mr. Preston said that he thought color was unlikely during the 'A.7' Pool. He also pointed out that EMI had had to give an undertaking to the BBC that their patents would be available to manufacturers".

Then they discussed the patents. Then Mr. Heather said —and they are talking about the points.

1500 "Mr. Heather thereupon asked how many points EMI expected members other than they would hold in the Pool, and on being told that it was expected that the non-EMI points would approximately equal the EMI points (so that the GEC-Hazeltine holdings would probably be about 6% of the Pool, on the existing evaluation) Mr. Heather said that so low a holding would call for very serious consideration. Mr. Dodds

said he was doubtful whether Hazeltine could consider that so small a holding was worth bothering about: As a newcomer to these Pool negotiations, he felt that the secrecy of the negotiations made cooperation difficult, though he realized the difficulty of having a discussion with fifteen parties round a table simultaneously. Mr. Dale-Harris said that experience had shown that round-table discussions with many parties was im-
1501 practicable—instancing the experience of the Marine Radar Pool."

Then they talk about whether the arrangements were rigid or not, and they come to the statement that they had not yet formulated a figure as to how many were in it, but they thought there would be seven or eight.

"Mr. Dodds said that GEC/Hazeltine had jointly had about sixteen per cent of the previous pool, and if color came in, the Hazeltine pointing should be very much greater; but violent fluctuations of participation were unsatisfactory to Hazeltine, since they depended on research and licensing and must be able to plan ahead. A licensor-group should therefore take a longer view. Hazeltine demands in Great Britain had always been very modest, whereas they had been about 30% in the U. S. A."

Then they had discussions further about the amounts, and they finally reach a figure. And that is over
1502 on page 16:

"Mr. Heather said that he did not feel it was necessary to argue specially about the relative positions of the GEC and EMI; but if it was desired that Hazeltine should be members, he felt it was necessary to come to meet them."

Should be members—and apparently they wanted them members, because they made an agreement.

> "Mr. Dale-Harris then said that he had heard from Mr. Schoenberg that, if the offer could be accepted at once, EMI would offer Hazeltine/GEC a holding in the ratio EMI:Hazeltine/GEC::100:17."
>
> "After a short withdrawal for consideration, Mr. Heather and Mr. Dodds told EMI that each would recommend his Company to accept this proposal."

Now, then, on page 17, it is stated:

> "The Pool points mentioned during the conversation were as follows:
>
> 1503 "EMI, 100;
> "MWT, 13½;
> "Philips, 25;
> "Hazeltine/GEC, 17;
> "Total, 155½."

And they entered into the agreement. Mr. Dodds came back to New York, or wrote to New York, or somehow from New York got the authorization to make the agreement and made it.

1504 Now, does your Honor think he can capsulate his conduct insulated by any such conduct as that when he sits down with a mapority member of a pool and agrees what his proportion shall be of the Hazeltine patents as related to the EMI patents? And EMI had been running that pool from donkey's age, and is still running it.

Then we have a letter here that came in after this meeting, Defendant's Exhibit 38-A, from Mr. Dodds to the General Electric Company, from Mr. Nalder. And in that letter he says:

> "Since you left England, I have had one or two conversations with Mr. Dale-Harris"—

Now, Mr. Dale Harris is with EMI, as I just pointed out—

> "on the telephone, and I received late last Friday an agreement for our signature whereby GEC becomes a

> Joining Party to the A.7 pool. In this agreement GEC represents that it can put into the Pool not only GEC's own patents but also those of Hazeltine and 1505 are allowed 12 points as against EMI's 100, but contemporaneously EMI will give us a covering letter agreeing to pay us out of their own share of the Pool, an amount equal to the additional amount to which GEC would be entitled by way of share in the Licensing Revenue Pool had the number of points alloted to GEC been 17 instead of 12. Mr. Heather informed Mr. Dale-Harris that if towards the other pool members EMI felt they could only justify allotting to GEC (and Hazeltine) 12 points, he would not object to this amount appearing in the formal agreement provided, of course, that EMI made up the total number to 17."

That is the way that was concluded. Now, Mr. Dodds wasn't over there for any other purpose than to negotiate a way to find his patents into the pool on a fixed percentage of the pool take. No one can read this evidence—with all due deference with respect to the Court—no one can 1506 read this evidence and come to any other conclusion.

And that's all we have to find under the applicable authorities—to find Hazeltine in this pool and charged with everything that this pool does.

Now, as an adjunct of this arrangement which they made with the pool, Hazeltine got the right to license General Electric Company's American patents. And there is a letter on that. And by the way, we have shown by our evidence here that Hazeltine's—that the GEC American patents taken out by Hazeltine were put in this package license which Mr. Dodds and Ruestow were around trying to sell to Zenith.

And here is a very significant statement that Mr. Dodds wrote, on Page 2 of the letter which is in evidence here as

Defendant's Exhibit 38-B, under the heading "USA License Agreement":

> "We are entirely agreeable to the reassignment of the patents and patent applications which we acquire under this agreement upon the termination of the
> 1507 agreement subject, however, to one possible exception. As you may know, it is the practice of Hazeltine to grant a standard five-year license under all of its present and future patent rights. These five-year licenses do not run concurrently but are staggered so that should the agreement between our companies be terminated for any reason, as of such date of termination we would have a number of licenses in existence in this country having periods of from one to five years to run. It might be quite embarrassing to cut off such licensees' rights in inventions derived from your company in the middle of their license period. Therefore, we should like to offer for your consideration the addition at the end of Clause 2 of this agrement of the following;
>
> " '. . . excepting non-exclusive rights which the corporation may have granted in conjunction with license rights under its own invention rights which may be outstanding upon the aforesaid termination.' "

1508 Then he goes on:

> "You understand that our License Agrements are very similar Pool license in that they are blanket licenses under all of our patent rights with no portion of the royalties specifically allocable to any patent or patents. Therefore, the patent rights which Hazeltine might acquire from your company under this Agreement would not represent a source of additional revenue to it."

Now, we have here in evidence Mr. Dodds' own analysis of these pools. I'm not going to refer to them here in this oral argument, because they are self-evident. He puts them in—he argues, A, not to sell imported receivers, and he has got that all through his analysis, and he makes an analysis of every pool agreement from the beginning of the thing over there, from the A.5 pool down to the A.8 pool.

Then on the question of what Mr. Dodds knew about pools, under his letter of July 2nd, 1948, to Mr. Hultman of the Swedish concern of Svenska Aktiebolaget
1509 Gasaccumulator in Stockholm, Sweden, which is in evidence as Defendant's Exhibit 115, he says:

> "We have always told our licensees in the United States that, while we could guarantee them no protection on their exports to foreign countries, as a matter of policy we would not collect a second royalty on sets exported to foreign countries where Hazeltine had complete control of its patent situation. In those countries where the Hazeltine patents are included in an industrywide pool, they are, of course, beyond our control and our licensees have to make their own arrangements with such pool."

He knew that any licensee had to go to that pool and try and get a license, and he knew that they couldn't get the license except on the pool's terms, which I have outlined and read over and over again to your Honor.

And then in his letter of August 29, 1950, to Mr. R. D. Brown of Philco, he says:

> "Dear Reynie"—

1510 Mr. R. D. Brown, who is in the patent department of Philco.

> "With reference to your inquiry as to the foregn countries in which Hazeltine patents are included in pools so that Hazeltine does not have control over

them, I have now obtained the information you requested.

> "At the present time the Hazeltine foreign patents are included in industry pools only in the following countries: England, Canada, Australia, New Zealand, and Sweden.
>
> "There are, however, negotiations pending which may result in the inclusion of Hazeltine patents in pools in France and Germany."

Now, as to the method in which this tool operates and
why the restrictions, we have in evidence a letter, Defend-
ant's Exhibit 91, to Mr. Shackleford of the RCA Company
in New York, from SMI. And EMI is the one that is in
this pool over there, and under the applicable law is a
co-conspirator with the Hazeltine Company. And this
1511 is written by Commander Mayer of EMI on the sub-
ject of EMI licensing, reporting on what he has found
out from Shoenberg of EMI.

1512 And he says—I'm reading from Page 3 of the document:

> "Shoenberg said that they could not agree to license foreign manufacturers to import into Great Britain, and he says this on the basis of his claim for exclusivity. In their view it would mean the immediate collapse of the whole licensing pool and of the revenue derived from it. They have always had to refuse to license imports from anywhere. British manufacturers are extremely jealous of importers, and although the Patent Act does not specifically support this attitude, there is no doubt that the old idea of patents giving a monopoly continues today and confirms a basis of a general licensing policy in Britain of using patents to build up trade and keep out cut-throat competition from foreign countries where prices may be cheaper."

Of course, anybody you are competing with, in any business, is cut-throat competition, improper competition. 1513 Anybody in one of these pools doesn't like competition, period. And that is the way we were kept out of Britain.

Now, we have got in this evidence letters from our distributors showing how they were harassed and so forth. And Mr. Wright testified that he went to the pool, he talked to the head of Pye Company, the chairman of the Board, and asked whether or not these restrictions were still in force and effect, and could be modified. Pye was in the pool. And he said no, no chance. And that's what we are facing in England. And those patents are worked into the package license here of the General Electric patents, at least, which Mr. Dodds has been running around trying to peddle here, there, hither and yon. And I'm sure he doesn't tell the people he is trying to deal with that, these patents are no good like he told your Honor; that there are 510 patents, and only four of them any good. That is the most ridiculous position I have ever heard taken in a lawsuit.

All right. So much for England. There again we are faced by absolute embargo. This is not a government 1514 embargo. We are not dealing with things erected by governments. We are dealing with things and agreements erected by our competitors, to prevent us from competing with them in the markets of this world. And that is the very thing that Section 1 of the antitrust laws of the United States is designed to prevent. And we are here, and we have every right to assert this.

You think the way Mr. Dodds talks that there was some reason why we can't assert the laws of this land in a situation like this. We haven't any apologies about our position. We are here to try to get our product in the avenues of trade of this world, and we are seeking and confidently asking on the basis of this record and the evidence that is before your Honor, and the applicable decisions, that that relief be granted.

This is a company that looms large in the industrial picture of this country. And if ever a company was entitled to the protection of the American laws, it is the Zenith Company.

Now, we have the same thing over in Australia. I
1515 am not going to spend too much time on Australia. The documents are here. We had the pooling agreements; they all say they can't import; they all have restrictions on import. Their output licenses have restrictions on importing.

There is one thing, however, with reference to it—well, there are a few things I want to refer to here. First, we find that we have the original agreement under which ARTS, the pool, was created. And it shows in the whereases where the patent rights are coming from:

> "Whereas, AWA owns or controls and will continue for the term of this Agreement to own or control for Australasia numerous patents relating to the field of radio purposes such rights including the right to grant sublicenses in Australasia in the field of radio purposes under the patents of Marconi's Wireless Telegraph Company, Limited of London, General Electric Company of America, Radio Corporation of America, and
> 1516 Telefunken, MBH of Germany"—

all of our old friends. We find them here—Western Electric Company, who was a defendant in the Zenith case, Electrical Research Products, Incorporated, of Delaware—all of our old friends here with their patents in this pool, including the Hazeltine Corporation.

1517 Now, we also have a little performance here—now you see it, now you don't. It's under this shell and that shell, and the shells keep moving around, and you don't know where you are, or whether he has patents, or whether he has them in the pool, or whether they are here or whether they are there. That is the confusion that my opponent here is trying to produce in this record, and I am sure he is going to fool this Court with that.

We get down to the end of the thing, and we find that he has some very illuminating correspondence. He has a partner over there. He doesn't call him a partner; he says they are stockholders in this Neutrodyne Company. And the Neutrodyne Company puts its patents into the pool. But the only patents that Neutrodyne has are the Hazeltine patents, and the only stockholders that Neutrodyne has is Hazeltine, 70 per cent, and Electronic Industries Limited, 30 per cent.

And Mr. Warner says—if I can find that letter—he
had some very pointed remarks to make about that.
1518 This didn't fool Mr. Warner any. He did what courts
always do. He looked just right through the fiction,
right to the substance of the matter to find out what was actually going on. He was talking in the realities of this situation. He wasn't wound up in any legal mumbo-jumbo about corporate entities and so forth, where they are all the same people.

"Dear Mr. Dodds"—

I'm reading from the letter of April 10, 1958—fairly recent—Defendant's Exhibit No. 203.

> "I have just returned from a meeting of the pool members at which certain verbal agreements were made."

You remember his counsel asked him whether there were any gentlemen's agreements anywhere? "No."

> "I have just returned from a meeting of the pool members at which certain verbal agreements were made, which I have no doubt will be put into operation, supported either by agreement between the parties or

that the parties will accept the minutes of the meeting as being the general authorization subject to any 1519 litigation being necessary, in which case more formal documents may be required."

They have agreements orally, awaiting to see if somebody sues them. And at that time, they think they can work out an agreement which will satisfy their defense in that lawsuit. That is the only inference you can draw from this letter.

He says:

"You will appreciate that I am the only remaining person in the pool which has been there since the pool was first started, which gives me a standing in the pool and an experience which exceeds that of others around the table."

His partner has been there from the beginning of it down to date. He isn't in it, and he has got this legal mumbo-jumbo he is going to use on the court.

"Generally, the division of the pool was based on the following factors:

"The patent strength of the member;

1520 "The power to support that strength with money and experience;

"The power to break up the other fellow's patent strength or to support it;

"The volume of payment to the pool by the licensor based upon his production of radio and television receivers (we are the strongest on this count);

"The prospects of future patents.

"The division determined upon was as follows:"

Now, this is the oral agreement; this is the real agreement. This is the one they made in that meeting which counsel says they don't have any such things.

"The division determined upon was as follows:
"Hazeltine, 21½ per cent of the gross receipts.
"EMI, 12 per cent;
"Philips, 22½ per cent;
"And the balance of 44 per cent to AWA and STC, out of which they pay the expenses of operating the
1521 pool—approximately 1 per cent."

So by the oral agreement of the conspirators, of which this man was there as a pool member, looking through all of this legal palaver, Hazeltine gets 21½ per cent of the gross receipts of this entire pool. Are they in it? I submit to your Honor on every decision that ever dealt with a pool question that they are in it. There is no way they can be held not to be in it. They have got their patents in it, and they have got 21½ per cent of the gross receipts. And he would have your Honor believe that all they are getting out of it is dividends on stock.

1522 Now, who is going to be fooled by that? I have come to the end of my argument on conspiracy, your Honor. I am not going to tax the patience of the Court with all the minutia of evidence on damages and the question of misuse. That all will be developed in the briefs. It is so clear, there is no defense to it. It is a matter of law. On that issue there is absolutely no defense. There is no defense to these conspiracy documents. The proofs are conceded. They are admitted.

There is practically, for all intents and purposes, a demure of the evidence, except the evidence they did put on strengthens the plaintiff's case. The documents on that Commission up there, which they are bound by—their evidence—shows the impact up in Canada. And the impact throughout the world is shown by the evidence that I have submitted here before your Honor.

I have argued and presented antitrust cases before, but never in my experience have I seen anything so completely, utterly, absolutely documented all the way through. 1523 Your Honor doesn't have to infer one single thing in this. All that has to be done is to give legal fact to the act of these conspirators, the documents they signed, and what they were doing in these various markets throughout the world, to find here a violation of Section 1 of our American Antitrust Act, the Sherman Act, and its corresponding concomitant provisions in the Clayton Act.

As I said at the beginning, your Honor has been very patient and very courteous, and I have appreciated your attention. Thank you.

The Court: Well, Mr. Dodds, I ask this solely for information. I want you to have whatever time you feel that you require to reply. And if you feel that the balance of the morning is not enough, then I will make some arrangements about calling off something that is supposed to start at 2:00 o'clock.

If you would like additional time this afternoon, I will give it to you.

Mr. Dodds: Well, your Honor, as far and as closely as I can estimate, I had thought about an hour and a half. Mr. McConnell had indicated to the Court that he would want about an hour and a half, but you see it has 1524 taken nearly two hours and a half. But I would estimate an hour and a half.

The Court: I understand.

Mr. Clerk, will you call the plaintiff and defendant, and tell them we will pick the jury tomorrow morning.

We will take our morning recess.

(A short recess was taken, after which the following further proceedings were had herein:)

1525 *Closing Argument on Behalf of Plaintiff and Counter-Defendant by Mr. Dobbs.*

Mr. Dodds: May it please the Court—

The Court: Mr. Dodds.

Mr. Dodds: It is not within my powers to treat the Court to the heights of forensic display of my amiable and gracious opponent, but I shall try to compensate in part by sticking to the facts, and particularly the facts of record, and leave the Alice in Wonderland tales to Louis Carroll.

Mr. McConnell has carefully shielded the Court from Zenith's documentary evidence, and I presume that that was by design. It permits him to speak very freely, uninhibited by the facts.

The misstatements in Mr. McConnell's closing statement are so numerous and so glaring that it is difficult to resist following their beckoning allure, but I believe that it would be more helpful to the Court to point out what the facts are rather than what the facts are not, and I shall 1526 reserve the comments on Mr. McConnell's statement until the conclusion of my own statement.

However, there are just two introductory comments that I think are appropriate; one is to call attention to the Court that these various documents from which Mr. McConnell was reading, with the exception of the correspondence from the Hazeltine files, are all unproved documents from the alleged co-conspirators which, under the Court's ruling, cannot be used to show a conspiracy, the existence of a conspiracy, but only the effects once the conspiracy is otherwise proved.

Mr. McConnell in his argument yesterday painted what seemed to use a rather ludicrous picture of Hazeltine, the plaintiff here, with a gross income of half a million dollars, intimidating Zenith, an industrial giant whose last annual report shows net sales of over 300 million, 600 times the size of Hazeltine.

Mr. McConnell points to the fact that Hazeltine has some 500 patents, and says that it can sue Zenith one by one on these 500 patents.

He also refers to the cost of litigation of one patent
1527 in Delaware as a million dollars. Using that figure,
it is not hard to figure out how long Hazeltine would last in bringing 500 suits at a million dollars apiece.

The situation is somewhat analogous, it strikes us, to that which your Honor may recall in international affairs a number of years ago when Russia claimed that Finland was threatening and intimidating it and used that as a pretext for attack.

Now, actually, there are just two basic issues before the Court for decision; one, has Hazeltine forced package licensing on the United States television industry, which if it has, would constitute a misuse of the patents and render them unenforceable; and, secondly, has Hazeltine conspired with certain foreign companies to restrict export of United States television receivers into their respective territories, and, if so, it is clear that that would constitute a violation of the antitrust laws.

Now, these two issues are completely and totally unrelated, and it is totally different evidence which will be
required in determining those issues. Mr. McConnell
1528 agreed to this at Page 622 in the record, admitting
that the package licensing of the Hazeltine patents, and I quote:

> "—didn't have anything to do with the over-all conspiracy."

1529 Now, let's talk about the U. S. licensing first, and
that falls naturally into two categories, monochrome and color, primarily on a historical basis because mono-

chrome television receivers were manufactured and licensed many years before color made its advent. Now, with respect to monochrome television receivers your Honor may recall the testimony of Mr. Thomas in the earlier stage that there was a large group of major television receiver manufacturers which were licensed under the single patent in suit, but that there were three that by election had a license under all of the Hazeltine patents, those being RCA, Admiral and Olympic.

And a typical license in respect to monochrome receivers was that of the Magnavox, which is the standard 918 form about which there was so much comment, Exhibit DX-2, plus a series of modifying letters, which were Exhibits PL-52 through 55, and you will recall that one of these modifying letters had the effect of doing three things, deleting sound radios and color television from the license, thus restricting it solely to monochrome television receivers; two, limiting the license to two enumerated pat-
1530 ents; and, three, reducing the lump sum payment from
$50,000 a year to $40,000 a year. That was PL-52.

The next modifying letter, PL-53, adjusted the royalty base because Magnavox sold directly to dealers without the intermediary of a distributor and therefore it assumed the cost and functions of a distributor. That was PL-53.

A third one, PL-54, limited the license to a single patent, the single patent in suit, and again reduced the royalties still further, reducing the lump sum a $25,000.

And the fourth letter, PL-55, represented a further adjustment of the royalty base because of sales to dealers and their cost of distributing, which they absorbed.

And these documents you will recall were introduced to negative the fact that there was any "standard" which all licensees had to take or leave. And the testimony was that virtually every license was non-standard in the sense that

there were modifying letters to meet the special needs
1531 of a particular licensee.

Now, there was some conversation about the 50 per cent, 80 per cent, 100 per cent formula, and whether that in itself constituted a misuse of the patents. And the testimony shows that that formula, after being arrived at, was offered voluntarily to holders of the package license, thereby permitting them to reduce their royalty obligations under the licenses even though they had contractual obligations at a higher rate.

The testimony also shows that Hazeltine never refused to grant a license under any one or more patents selected by a licensee or prospective licensee and that it never applied economic coercion to induce a licensee to accept the package but, on the contrary, voluntarily offered it the opportunity to do so, even though by contractual obligation it was not required.

And we submit that Hazeltine practices, and we are still talking about monochrome, are clearly within the sanction of the attorney general's committee report.

You may recall that that committee was appointed
1532 by the attorney general and comprised of some fifty-
odd very prominent antitrust lawyers in the United States. It had two co-chairmen; one was Judge Stanley Barnes, who was then assistant attorney general in charge of the antitrust division of the Department of Justice, and his co-chairman was Professor Oppenheim of the University of Michigan Law School, and that group investigated all facets of antitrust laws, and it had a chapter on patents and it had a subsection on package licensing, and I would like to ask the Court's indulgence to read a brief excerpt from that report at Page 239, and this is an official government publication set for sale by the Superintendent of Documents, Washington, D. C., and it came out in 1955:

"Package Licensing.

"A package license may include more than one or all of the licensor's patents. Packaging is frequently used to avoid troublesome questions of infringement, complex bookkeeping, the difficulty of determining which patents cover the present and future needs of
1533 the licensee, cost differences, and similar practical considerations.

1534 "A positive vice of this practice lies in its potential use to coerce the licensee to accept a license under one patent on condition of acceptance of a license under another, or the entire package. By analogy to 'tying clause' cases, the Supreme Court condemned this practice in *Ethyl Gasoline Corp.* v. *United States.*"

3 Then skipping a sentence, which was just a brief of that decision:

"And in *United States* v *Paramount Pictures,* this disapproval was extended to the analogous 'block booking' of copyrighted films. There the Supreme Court held illegal a refusal to license one or more copyrights unless another copyright is accepted. But the court was quick to add: 'We do not suggest that films may not be sold in blocks or groups, when there is no requirement, express or implied, for the purchase of more than one film.'

1535 "In *Automatic Radio Mfg. Co., Inc.* v. *Hazeltine Research, Inc.,* absent a requirement to accept a license on all patents or none, and absent the condition of acceptance of another and different license, the Supreme Court sanctioned a license of all of Hazeltine's patents and developments for royalty measured by a percentage of the licensee's sales of all equipment in the field of the license.

"We approve these decisions. Yet we think that the

> courts have properly distinguished a package license for reasons of convenience and made without coercion. Furthermore, we believe that strictures against package licensing should not be applied to frustrate good faith license offers. Package licensing should be prohibited only where there is refusal, after a request, to license less than a complete package. Additionally, the licensor should not be required to justify on any proportional basis the royalty rate for less than the
> 1536 complete package, so long as the rate set is not so disproportionate as to amount to a refusal to license less than the complete package."

And then skipping:

> "Moreover, where several 'per piece' licenses are requested and offered, the mere fact that the sum of the 'per piece' license royalties exceeds the package royalty rate should not of itself be considered a condition that all or no patents be taken, again, so long as the 'per piece' rate is not so disproportionate as to amount to a refusal to license less than the complete package."

We submit that there is no authority whatever for holding that practices followed by Hazeltine represent a misuse of the patents under the law.

1537 Zenith has cited in its pre-trial brief the American Security case which ended up in the Court of Appeals for the Third Circuit, but in that case the patent owner, who had a group of patents, was charging the same royalty whether you took one, two or the entire package.

It is not outlawed by the decision in Loews, the Supreme Court case cited in the pre-trial brief in which there was a refusal to quote individual rates of various motion picture films. So much for monochrome.

Now, let's take up color. Upon the advent of color television the license form 918, which we have discussed, was in use, and that was in 1958 that it was adopted. At that time only RCA was producing color sets, and only in very small quantity. Due to the recent exploration of a number of the Hazeltine patents which were important with respect to monochrome television, the royalty rates in monochrome had been progressively hammered down.

The Hazeltine color patents, on the other hand,
1538 were considered very important, and they represented
inventions coming out of an investment of several millions of dollars in research and development into color television.

So as other companies began to get into production of color television it was apparent that this form 918 would not serve as a basis for an equitable royalty return on color receivers. At about that time Mr. Ruestow wrote his memorandum to Mr. Wilson, that is Exhibit DX 23, recommending changes in licensing practice to get an equitable return on color, and at about that time the management concluded to abandon the use of license form 918 insofar as color television was concerned.

Concurrently, the legal personnel of Hazeltine assumed the task of hammering out a new license which would satisfy several conditions; first, it must assure a reasonable royalty return on the company's important color television patents in which it invested so much money; B, it must have a maximum or several maxima which would
meet the almost infinite resistance of the licensees to
1539 the industry to a license that had no ceiling. Certain
of the leading units in the industry absolutely refused as a matter of policy to consider any license that didn't have a ceiling in it.

Third, it must permit the licensee to select any one or more patents which it might choose, as it preferred, and yet at the same time also permit those who preferred a package license to have a package license, and this must be done without any discrimination between the groups.

And, lastly, it must avoid the pitfalls of the misuse doctrine of which all were aware. And that was a rather formidable task, and the testimony shows that the people struggling with this prepared numerous drafts. They were prepared and discarded, and prepared and discarded. There were numerous conferences. There was eminent outside counsel called in, Mr. Edward H. McDermott, the senior member of the firm of McDermott, Will and Emery here in
Chicago; Mr. W. Houston Kenyon of the firm of
1540 Kenyon & Kenyon of New York; Mr. Diggins, who is
of Counsel here.

As of the time of the filing of the counter-claim, the latest proposal superseding all of these preliminary drafts and attempts included a royalty schedule of the latter two licenses including a letter to Zenith here of March 20, '63, which is Exhibit DX 15 as modified by a supplement sent out two months later under date of May 20, '63, Exhibit DX 16, superseding all prior drafts. The testimony is that these offers were circulated both to licensees and non-licensees.

1541 The testimony is, also, that there was a further complication. Your Honor will recall testimony that there was an outstanding license at that time to RCA, which did include an over-all maximum of $200,000 per year.

Now, just as a practical business fact, it just isn't possible to license A at a royalty which is going to considerably exceed $200,000 a year when his competitor B has a license on which he only has to pay $200,000 a year; so these schedules, and all of the provisions which were offered, concluded the provision that these increased rates did not go into effect until June 30, 1966, after the commitments at the $200,000 rate had all expired. And that maximum of

$200000 per year during the interim period was offered to anyone, whether it had a package license or whether it had a license under a few patents.

Mr. Westermann testified to that at Pages 921 and 922 of the record, and Exhibit DX-37, which was a report of Mr. Ruestow's to the Board of Directors of Hazeltine included the statement that under the new plan no
1542 licensee would pay more than RCA, that is, the $200,000, during this interim period.

Furthermore, the testimony was that this offer, which was made up of a combination of these letters of March 20 and May 20, were not final offers, they were not take-it-or-leave-it offers, they were offers to negotiate. And as the court aptly characterized them at Page 923, they constituted the best offer that Hazeltine had that day, to which Mr. McConnell agreed.

Now, as of the filing of the counterclaim, two months after the first proposal, DX-15, and substantially concurrently with the second proposal, understandably no license had been granted, because ordinarily license negotiations extend over quite a period of haggling.

The story of this evolution was told by Mr. Westermann at Pages 899 to 930 of the record.

It is just difficult for us to see how that these birth pangs of a new license, even before birth, represent any actual effective misuse of the patents. So much for the allegation of the misuse of the domestic patents.

1543 We turn to the foreign arrangements. In earlier years Hazeltine Corporation made certain abortive attempts to license its patents abroad. It even set up a little company in England jointly with others called Hazelpat, and that agreement is Exhibit DX-41. That was in 1933.

In the early days it also licensed some small manufacturers in Canada and finally made a deal with the Philco

Corporation to use its patents in Canada. And contrary to Mr. McConnell's assertion, the arrangement with the Philco Company was not to get Philco in the pool. It was the basis of bringing suit against the pool members to force them to grant Philco a license.

Those early attempts of Hazeltine to exploit its foreign patents proved unsuccessful. They concluded that in order to do business in foreign countries it was necessary to do business the way they did it there.

And prior to the advent of Hazeltine in this foreign
licensing business, or attempts at foreign licensing
1544 business, there were already industrywide patent
pools set up in Canada, England and Australia. They
were set up for various reasons. McConnell says that
it was set up as a conspiracy to keep out importation.
There isn't any evidence of that. It was set up for, among
other reasons, because there were conflicting patents of
different companies that applied different parts to a set.
It was the infancy of the radio business and most manufacturers did not wnat to have to negotiate licenses with four
or five different patent holders. They preferred to negotiate one license and forget about it.

1545 Now, this talk, to return to Canada—and at the
outset, I should like to apologize for the denial of my
language at page 136 of the record, which I had honestly
forgotten, where I stated that Hazeltine was in the Pool
in Canada. That was an unfortunate choice of language,
but whether or not Hazeltine is or is not in the Pool will
be determined by the contractual documents which are in
evidence.

Now, in 1943 CRPL approached Hazeltine to negotiate for the acquisition of the rights under the Hazeltine patents, having smarted a bit by the suits brought by Philco against its members when Philco owned the rights to the Hazeltine-Canadian patents. That agreement, which is DX 118, and the extension, was still in force at the time of the filing of the counter-claim.

Now, the relevant clauses of that agreement are these, Article 3:

> "Licensor hereby grants to the licensee for the term of this agreement the exclusive and divisible license with a right to license others to make within the
> 1546 Dominion of Canada the licensed apparatus specified within Section 2 hereinafter and to sell said apparatus made by licensee or its sub-licensees to others for the uses specified in Section 2 hereinafter, and for resale for such uses."

The following language, I believe, is not relevant.

And then turning to Article 6 of the same agreement, which Mr. McConnell conveniently did not read, it says:

> "Licensee or any of its sublicensees may import into Canada apparatus which is commercially unsound or impracticable for a licensee or any of its sublicensees to manufacture unless it shall reasonably appear that such importation shall constitute grounds or part thereof for requiring the grant of compulsory licenses to others in accordance with the Canadian Patent Act under the patents of licensor, or grounds or part
> 1547 thereof for forfeiture in accordance with the Canadian Patent Act of licensors' patents, and licensee agrees and will require sub-licensees to agree to manufacture in Canada such proportion of their total licensed apparatus sold herunder as may from time to time be necessary to satisfy the requirements of the Patent Act in order to prevent the granting of compulsory licenses to others and in order to prevent the forfeiture of licensors' patents thereunder."

So there was no refusal to license importation. There was only a refusal in compulsory licenses or forfeiture as the provisions of the Canadian Act were from time to time interpreted by the Canadian courts.

Now, there is another factor. Mr. McConnell insists repeatedly over and over and over that we are prohibiting the importation in Canada. There was never any 1548 prohibition of importation into Canada. CRPL or Hazeltine are powerless to prohibit importation. All they can do is to refuse to license.

And if someone imports into Canada a piece of apparatus which is infringing, they take the same chance as if they were infringing in this country; they risk the possibility of an infringement suit.

There is not now and there never has been any prohibition, contractual or otherwise, of importation in Canada.

Now, in spite of what Mr. McConnell says, Hazeltine never was and is not now a member of CRPL. It has nothing to do with its policies. It has never attended any of the meetings of the directors or stockholders. It has no knowledge of them or of the management.

During a deposition of myself, I was asked who were the directors, who were the officers, and I honestly had to say that I didn't know and I never knew. I was never told. We weren't interested.

1549 Now, let's talk about this question of sale of patent rights. We earnestly submit, your Honor, that what we did was simply sell our rights. We might have sold some office furniture. I suppose CRPL couldn't do business if it didn't have furniture in an office, and we did sell them rights.

Now, I want to refer to the statute, Section 261, which says:

> "Subject to the provisions of this title patents shall have the attributes of personal property."

Now, obviously, our Congress cannot enact what the attributes of foreign patents are, but there is no evidence that foreign patents have attributes any different from domestic patents, and they have the attributes of personal property.

1550 Now, there are numerous authorities to the effect that the grant of an exclusive license where the grantor parts with his control over the patent is equal to a sale. Now, most of these decisions, your Honor, arise under an Internal Revenue law, strangely, because there is a section in there which says that the sale of a patent or patent rights shall constitute long-term capital gains rather than short-term capital gains if certain conditions are satisfied.

Now, the Internal Revenue Department for many years, didn't like that and refused to accept it, so there was a great deal of litigation. But the courts consistently held that the grant of an exclusive license for the grantor parting with control of the patent was a sale, legally, and provided the owner of the patent with capital gains privileges. And more recently, I don't recall the exact date, the Internal Revenue Code was amended to give specific effect to that.

Now, any use of these rights which Hazeltine has sold to CRPL can be only in Canada. A patent in any country is issued by the sovereign of that country and has 1551 effect only within the territorial boundaries of that country.

Any use of the Hazeltine Canadian patents can only be in Canada. The members of the CRPL are all Canadian companies.

As your Honor aptly suggested, perhaps they are conspiring under the Canadian law. We don't believe so, but even if they were, it would be a conspiracy in Canada under Canadian law and could have no extra territorial effect.

However, we have something on that. In the Exhibit PL-50, the report of the Royal Commission, at Page 92 appears this language:

> "CRPL, as it is now organized and as it now operates does not appear to us to be illegal. It is not illegal to acquire a portfolio of patents either by way of ownership of the patents or by way of acquiring a right to grant licenses. The mere control of a sector of industry—"

The Court: Doesn't that indicate that they consider the right to grant—acquiring the right to grant licenses may be different than ownership, because they use the
1552 word just before that, ownership or the right to grant licenses.

Mr. Dodds: I am sorry, I don't believe I can interpret beyond what is in the language. I understand it to mean either the ownership of a patent or the acquisition of the right to grant licenses.

The Court: All right.

Mr. Dodds: (Reading.)

> "The mere control over a sector of industry through the accumulation of patents is not in itself illegal. The complaint against CRPL is that it refused to grant a license to import. In refusing to grant such a license, CRPL was not going beyond its legal right when manufacture was taking place in Canada pursuant to licenses granted by it in this country at reasonable royalty rates."

Now, Mr. McConnell seeks to impugn the integrity of this Royal Commission, but as Mr. Henderson pointed out, the membership of the committee included some very
1553 eminent Canadians. There is certainly nothing of evidence in this case to impugn the integrity of that group.

And since the CRPL operates exclusively in Canada, it is very clear that it cannot possibly violate United States law. Moreover, as a pratical matter, the mere fact that Hazeltine patents are in CRPL has no practical effect on licensing importation one way or the other, because if Hazeltine owned those patents and continued to own them, it undoubtedly would feel constrained to administer them in the same way in order to avoid the risks about which Mr. Henderson testified the other day that naturally flowed by unrestricted license of importation.

1554 So much for the matter of law. Now, let's come to the facts. Let's assume arguendo; that Hazeltine's patents were involved in activities in Canada violative of the antitrust laws. That's only one string to the bull. Zenith must show that it was damaged by those activities.

So, thus, we believe that the evidence shows conclusively that Zenith has not lost any business due to the presence of the Hazeltine patents in the CRPL. This is for several reasons. They may have lost business, but not because of the Hazeltine patents in the CRPL.

First, as I mentioned previously, neither CRPL nor anyone can prevent or prohibit Zenith from importing sets into Canada. If the importing of sets infringes Canadian patents they can be sued the same as they can be here. Now, Mr. Crotty admited—and this at page 875 of the record—that he knew of no Hazeltine Canadian patent which he considered valid and covered any Zenith television receivers. So the risk, insofar as the Hazel-
1555 tine patents is concerned is no greater in importing into Canada than as selling them here. Further, as a matter of policy, Mr. Crotty testified—and this is at pages 873 and 874 of the record—that Zenith indemnifies its dealers and distributors against patent infringement. I don't think anyone will question that Zenith is a financially responsible organization. I can't imagine a little

dealer in Saskatchewan being concerned if Zenith indemnified it and undertook to come in and save it harmless from any patent infringement suit. [illegible] it received a summons in an infringement suit, it would merely hand it over to Zenith and say, "How about it?"

Furthermore, it is interesting that Mr. Crotty said that during his employment with Zenith—and that started in 1948—they had never had occasion to indemnify any Zenith dealer against infringement action. That is at pages 548 and 874 of the transcript.

Fourthly, Mr. Wright testified that the last time that
CRPL interfered with the importation of Zenith
1556 radios was in 1958. And I think the testimony has
shown—it is a little diffuse—that there haven't been
any effective radio patents—certainly Hazeltine hasn't had
any since 1955. And this lack of interference by CRPL
with respect to Zenith and its distributors and its dealers
is in spite of the fact that during that period, by Mr.
Stevenson's account, Zenith imported into Canada 57,000
television receivers and 157,000 radios.

Mr. Wright also testified—and this is at pages 707 to 709 of the record—that Zenith had made no attempt to market radios in Canada since 1958.

Now, they say, "Oh, we can't market radios without marketing television sets." I say that is a commercial problem, not a legal problem.

Now, Mr. Wright was reasonably frank when he ad-
mitted at pages 685 to 686 of the record that it would be,
and I quote "very difficult" to say what might have hap-
pened under different circumstances. And to estimate, as
he did, that Zenith, if licensed under the patents of
1557 Hazeltine, would achieve the same share of the market
as they have achieved here in the United States, hav-
ing built up that market and dealer organization since the

'20's is wild speculation. It is certainly not a sufficient basis on which any damages can be calculated.

1558 Moreover, Mr. Wright testified that Zenith of Canada—I won't go into the exact corporate title—a major distributor of Zenith's products, was never sued by CRPL for importation of radio or television receivers. That is at page 717 of the record. And I believe Mr. Crotty testified that Zenith of Canada was one of the major distributors of radio and television products there.

Moreover, your Honor, it just isn't credible that Zenith is so earnestly seeking a license under the Hazeltine Canadian patents, when it is so assiduously avoiding a license under the counterpart patents in the United States. Why is it that the Canadian Hazeltine patents are so valuable and the American Hazeltine patents so worthless? And the testimony in there are counterparts.

As has been suggested before, the evidence is quite clear that what Zenith really wants is to be able to appropriate somebody else's property without payment, even to the point of falsely accusing of illegal activity.

1559 Now, let's go to England. After the failure of the Hazelpat venture, the small company formed in '33, Mr. Binns—who was then the principal executive officer of Hazeltine—went to England. And he made an attempt to interest some concern in the promoting of the use of the valuable Hazeltine inventions. What resulted was called an informal "Heads of Proposed Agreement." That is DX 42, dated May 31, 1938. And I would like to read the pertinent clauses.

Paragraph 2 of this agreement reads:

> "GEC"—and that is the General Electric Company Limited—
>
> "to have the right to sue infringers under the British Hazeltine patents at its own cost, and to receive any recoveries arising therefrom. GEC will act in con-

> junction with Hazeltine in any infringement or revocation actions as far as possible and will consult with Hazeltine thereon.
>
> "Paragraph 3: GEC shall have complete freedom 1560 to use the British Hazeltine patents as a bargaining aspect in order to secure entry into the Pool as a licensor, or the use of the patents for the purpose of licensing third parties.

Those are the only clauses that say anything about granting: There is no restriction on the General Electric Company licensing importation. There is no restriction of any kind. Effectively, it is an exclusive license to the General Electric Company which, as I say, under the authorities represents a sale of certain rights in those patents by Hazeltine to General Electric Company.

The Court: Wasn't this renewed from year to year, though?

Mr. Dodds: Well, I'm coming to that, your Honor. That was shortly succeeded. This was an informal agreement of May 31, '38. That was shortly thereafter succeeded by an agreement which is DX 43B, an agreement dated April 6, 1939 but effective August 28, 1938, only a matter of a few months after the informal agreement.

1561 So let's look and see what that agreement says about what rights Hazeltine sold to General Electric Company. And we refer to paragraph 1 of that agreement; it says:

> "For the consideration hereinafter mentioned, the corporation"—

and that is Hazeltine—

> "hereby grants unto the company"—

and that is GEC—

> "the right to utilize the Hazeltine patents hereinbefore referred to for the purpose of securing entry as

> a licensor into any British Wireless Broadcast Pool which may be formed on such terms as the company may deem proper or otherwise to deal with said patents by way of granting sub-licenses thereunder and generally to utilize such rights for the purpose of consolidating the position of the company in the radio industry and carrying on business in radio and television."

1562 And paragraph 4 of this same agreement reads:

> "In the event of the company not entering a British Wireless Broadcast Pool as a licensor, they will confer with the corporation as to the division of any net income remaining to them as a result of the grants of sub-licenses under the Hazeltine patents."

Where is the restrictions? Where is the restrictions on importation? Where is the restrictions on anything? It is a sale of an exclusive right to General Electric Company of rights under the Hazeltine British patents without any restrictions whatever.

1563 Now, that agreement, the first formal agreement of 1938, has been renewed from time to time and is still in force. The renewals contain certain modifications which I believe are not material here. That was the basic substance of the agreement between Hazeltine Company and the General Electric Company, Limited.

The Court: But if it is a sale, don't they lose their right to modify?

Mr. Dodds: During the term of the agreement, they lose all control of the patents insofar as Great Britain is concerned, yes.

Now, as I have mentioned before, prior to the time of this agreement up to the present time, there has been an industrywide patent pool with respect to radio and television receivers. That's the way the British like to do business.

We may not agree with it, but that is the way they do business.

Now, after this first agreement, General Electric Company did negotiate with the pool, and it became a member of the pool. And it placed its own patents and Hazeltine's
patents at the disposal of the pool. And the pool
1564 agreements, of which the General Electric Company,
Limited, was a member—again, those have been renewed from time to time, and, you may recall, they were identified as the A.5 pools, the A.6 pools, the A.7 pools, and the current one is the A.8 pool. And that pool grants licenses to British radio and television manufacturers. And it is true that these licenses issued under the A.5, A.6, A.7 pools only explicity grant a license to manufacture in Great Britain. It is also true that the earlier licenses up through the A.7 did include a covenant on the part of the licensee not to sell imported apparatus without the consent of the pool. It was not an expressed prohibition, but merely required the consent of the pool, which, as your Honor will recall, was run by a committee.

It is also true that for quite a period of time the pool customarily refused to consent to the grant of such importation. For example, I just might refer to the clause in the A.7S and the A.7T agreement. The A.7S was an agreement relating to the licensing of radio and sound receivers. That is Exhibit DX-66, and—I am sorry—
1565 and A.7T was a corresponding license with respect to
television receivers. And the terms are substantially the same except for the different definitions and characterization of the apparatus that was licensed.

Now, in the A.7 license issued by the pool—incidentally, I would just like to interject: As I understood Mr. McConnell's presentation, he slipped back and forth frequently and readily between the pool agreements, that is, the agreements between the members of the pool; and the pool licenses, that is, the licenses issued by the pool to manufacturers. Those licenses also being issued to the members themselves, the members of the pool themselves took licenses under the pool patents.

So in this A.7S license, Exhibit 66, Clause 4(a) reads:

> "not without the previous written consent of the grantors to sell within the said territory and broadcast sound receiver which has not been manufactured in the territory for which this license is granted."

1556 However, let's take a look at the current license issued by the pool; that is, the A.8 pool. And we might look at DX-70, and that is the current pool license on sound. And DX-71 is the current pool license to manufacturers with respect to television. And, again, they are about the same except for a description of the apparatus licensed.

1567 Now, we find this document on its face states that it becomes effective on July 1, 1960, about three and a half years ago, and shall continue until June 30, 1964. Now, the clause which I quoted in the previous license has now been dropped out. That is not in there anymore. There is no—however, in the latest form, there is no express license to import, but there is no agreement not to import. I'm sure your Honor will understand the difference between the mere absence of a license to import, and an affirmative agreement in concert not to import. They are quite different things.

The Court: I agree.

Mr. Dodds: Furthermore, in this license, the current one, there is no restriction on importing an uninfringing apparatus. If a licensee imports infringing apparatus, and it infringes somebody's patent, he runs the same risk as in any other country—here and any other place. He can take or not as he elects.

Now, again, as in Canada, let's just assume arguendo, that Hazeltine is involved in activities violative of the antitrust laws. That still by itself does not entitle 1568 Zenith to any relief. It must show that in some way it is damaged by those activities. And we submit, and I shall review the evidence, that Zenith has not shown that any loss in business in England was due to the Hazeltine patents, for serveral reasons.

In the first place, I repeat—only because Mr. McConnell repeated it over and over again, apparently on the theory which I understand is a basic foundation of propaganda, that if an untruth is repeated often enough, people will begin to believe it—neither the Pool or anyone else can prevent Zenith from importing into Great Britain. If it imports sets into Britain which infringe British patents, it can be sued as here. But neither the Pool nor Hazeltine or anybody else has any power to prevent Zenith from importing sets to any place on this globe.

Point number two: The testimony is that at present, there is no Hazeltine British patent covering commercial television receivers. And the reason for that is, as we 1569 pointed out, the receivers sold in Britain are quite different from the United States because of the different standards. And the patent, for example, that it is being sued on in this case just isn't applicable to a system that uses positive modulation. I shouldn't say it isn't applicable. It is economically attractive; it isn't needed; and it is not used.

Mr. Wright admitted—and this is at page 719 to 720 of the record—that he had no knowledge of anv Hazeltine patent which would prevent importation of Zenith receivers, television receivers, and that he had no investigation of the subject made. There is no evidence that any such Hazeltine patent exists. As a matter of fact, it doesn't. Any impediment to the importation of television receivers into Great Britain was not as a result of Hazeltine's patents.

And whether Hazeltine patents are in the Pool or not does not in one iota affect any impediment to Zenith's importation of television receivers into Great Britain, as in Canada —I'm sorry, not as in Canada.

1570 But the third point is, as in Canada—I will just mention this and I won't discuss it again—Zenith gives its dealer indemnification which, in effect, eliminates concern on their part. And again, as in Canada, it is generally acknowledged that all troublesome radio patents have expired.

1571 Mr. Wright admitted—and this is at page 710 of the record — that Zenith had encountered no interference from the British Pool with respect to radios since 1958. Lastly, I think it was Mr. Kaplan, at page 816 of the record, that decided that if there were no impedimenta, Zenith might expect to achieve a quarter as much—a quarter as large a share of the market as they do in this country. You may recall that they had something—20% plus in this country. But due to difficulties of different standards, distance, building up dealers, distributors, he estimated that they might be expected to achieve a quarter as much, or about 5% of the British market. But he euphemistically termed this 25% share "somewhat arbitrary."

We submit it is not ~~any~~ rational basis on which damages could be computed, and for all of those reasons, we submit that even assuming for the sake of argument that Hazeltine's associations with the British Patent Pool constituted an illegal activity, Zenith has not shown any damages.

1572 Now, let's come to Australia. Now, there, Hazeltine has a partially owned subsidiary known as Neutrodyne Proprietary Limited. There is only one agreement, and quite an old agreement. It was signed or negotiated back in 1928.

There is no evidence as to the circumstances of the formation of Neutrodyne and the agreement with Hazeltine.

Unfortunately, there is no one in this country still alive who knows that. And I might just interject this, the rather caustic comment by Mr. McConnell about the fact that I took the witness stand in spite of the fact that he called me as a witness first, and I took the witness stand only to refute or to complete the questions which he asked—I think as has been previously pointed out, unfortunately, the only persons having familiarity with the Hazeltine foreign licensing situation up until the last two or three years were Mr. McDonald, Mr. Binns and Mr. MacFarland, who are all deceased.

The Court: Do you care to go to Australia at 2:00 o'clock rather than now?

1573 Mr. Dodds: Surely.

The Court: We will take our noon recess until 2:00 o'clock.

(Whereupon, a recess was taken until 2:00 o'clock p.m. of the same day, February 26, 1964.)

1574 * * (Caption—59-C-1847) * *

Before the Hon. Richard B. Austin.
Wednesday, February 26, 1964.
2:00 o'clock, p.m.

The trial was resumed pursuant to recess.

Present:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

1575 The Clerk: Case on trial.

Mr. Dodds: We had just proceeded down to Australia, and I mentioned the organization of the Neutrodyne Proprietary, Limited, which is 70 per cent owned by Hazeltine. There was an agreement between Hazeltine and Neutrodyne which established the rights which Hazeltine was to transfer to Neutrodyne, and that is DX-180, and this is a rather informal agreement, this 1928 agreement according to present standards, and it—in accordance with the U. S. practice, I gather from its drafting that it was prepared in Australia.

I would like to quote the actual grant, what was granted to Neutrodyne by that agreement, and it is odd in the sense that the grant appears to be in one of the recital clauses rather than in one of the numbered paragraphs, which reads:

> "And Whereas as the Hazeltine Corporation has agreed to give and to grant unto the Neutrodyne Company the sole and exclusive right and authority to

> grant non-exclusive, non-divisible, non-transferable, 1576 limited licenses under the above-recited letters patent to individuals, firms, partnerships and companies now engaged in or to be engaged in trading or dealing in or in the manufacture of radio receivers in the Commonwealth of Australia."

And there is, of course, no restriction whatever placed upon the nature and character of the licenses which Neutrodyne can grant under that agreement.

That agreement has been obsoleted in practice, though it has never actually been formally amended. The practice insofar as the granting clause is the same, but it so happens that that agreement refers to specifically enumerated patents, and in the meantime other patents covering Hazeltine inventions have flowed to Neutrodyne.

1577 Now, the first implementation of that agreement by way of exploitation of the Hazeltine invention in Australia was an agreement dated April 12, 1934 with ARTS, the Pool which was previously formed in Australia. So we might look at the Neutrodyne agreement with ARTS. And the granting clause in that agreement is paragraph 5 and it says:

> "In consideration of the premises and of the payment of Neutrodyne of the royalties hereinafter mentioned in manner hereinafter provided, Neutrodyne, except insofar as it may be unable to do so by reason of the terms, conditions, agreements, and covenants expressed and contained in existing agreements made between Neutrodyne and the other parties whose names and addresses are set forth in the third schedule hereto, hereby grants to ARTS for the term herein mentioned, the subject as hereinafter provided, the otherwise exclusive right and authority to grant sub-1578 licenses to third parties (hereinafter called licensees),

to use, manufacture and sell in the Commonwealth of Australia and/or Dominion of New Zealand and broadcast receivers as herein defined, the subject of the present and future letters patent owned or controlled by it, conditionally on such sub-licenses being non-assignable by ARTS or its licensees."

Again, no restrictions on importation. In fact, no restriction whatever, but effectively a sale of certain rights in the Neutrodyne Austrlian patents to ARTS for a period of years.

The Court: And that period is what, Mr. Dodds—I mean, approximately?

Mr. Dodds: My recollection was that it was originally for a limited period of years, subject to renewal from year to year, subject to cancellation by either party on certain notice, which has not been given. So that that agreement is still at least technically in effect.

1579 The Court: I mean, it is not a beginning of the world—

Mr. Dodds: No.

The Court: It is a kind of a conditional sales contract?

Mr. Dodds: Right.

The Court: All right.

Mr. Dodds: Now, there have been discussed here a series of licenses issued by the Pool ARTS to the Australian manufacturers. And those, as in Great Britain, bear a series of sequential numbers, only there happened to have been no number two. There is number one, three, five, six, and seven, I believe.

There also have been presented here forms 3B, 6B and 7B of whic hthe testimony is they were issued to local assemblers.

Now, the early form of these licenses issued by ARTS to the Australian radio industry—and, of course, there was no television at that time—followed rather closely the

forms followed by the British Pool. And they did contain a restriction against importation without the consent
of ARTS. For example, in the form 3 license, Num-
1580 ber 3—which is DX 189—clause 4(b) is a clause quite
similar to the clauses found in the British licenses,
licenses under the British licensing Pool, reading:

> "Not without the previous written consent of the grantor to sell or hire or offer or expose for sale or hire in the territory in which this license is granted any broadcast receiving apparatus or radio gramophone which has not been manufactured in the territory for which this license is granted.

1581 Now, the later forms, however, starting with No. 5
—which is DX-192—and is a license agreement which commenced January 1, 1951, and continued until June 30, 1953, and, in the following one, No. 6, DX-193, this restriction on importation was dropped. And it was continued only in the licenses to these local assemblers—Nos. 3-B, 6-B, 7-B. There is no 5-B in evidence. Whether there was at all, we don't know.

Also, there is testimony to the effect that the policy of ARTS has always been to license importation of both radio and television receivers. But there were other handicaps which limited importation to Australia, and I refer to DX-213, a letter from Mr. Klapp to Mr. A. T. Brown of International General Electric Company, Exhibit DX-213. And it discusses a number of things, and I read from Paragraph 4:

> "The economic wisdom of manufacturing in Australia may be open to question. But it is very certain that having once engaged in such manufacture and
> established a secondary industry employing thousands
> 1582 of Australians, no government would dare to remove
> altogether the duty at present applied to imported

receivers. The Skullen (Labor) Government in the early days of the depression in 1930 voted a total prohibition of the importation of radio receivers. And although this embargo was removed by the next government, the rate of duty was then set at such a figure as to amount almost to prohibition. As an example, we would instance a friend of the company who purchased a receiver in the United States for nine pounds and had to pay 37 pounds duty on entering Australia. Consequently, importation has been restricted to some special lines, such as auto receivers and somewhat novel and, consequently, expensive receivers advertised in American magazines, and specifically ordered by customers, or required by us as samples to illustrate the trend of American development.

1583 "At the present time, it is out of the question to consider the regular importation of receivers owing to the excessive landed costs, particularly on the lower-priced receivers (which represent the bulk of our sales), as the rate of duty is based upon the number of anode streams in the valves."

That means the number of vacuum tubes.

The Court: And the date of that is approximately what?

Mr. Dodds: That is dated April 23, 1935.

The Court: Thank you.

Mr. Dodds: So, again, as in the case of Canada and England, even if we were to assume arguendo, that Hazeltine were involved in activities in Australia which might be counter to the antitrust issues, again Zenith has not shown any loss in business has resulted due to any pressure or interference of the Hazeltine patents being in the ARTS Pool.

In the first place, as we pointed out before, neither

ARTS nor anyone else can prevent the importation.
1584 They can only decline to license it.

Secondly, ARTS' policy has consistently been to license importation. ARTS' licenses Nos. 5 and 6 do not prohibit importation.

Mr. Wright testified at Pages 713 and 714 that he had never made any attempt to build up radio business in Australia. And he testified further at Page 714 that Zenith had never asked ARTS for a license for either radio or television.

1585 The real basis for Zeniith's failure to export substantial volumes of radio or television receivers was the government prohibition and the prohibitive tariff of several hundred per cent. There is no evidence to what date, if any, that tariff was ameliorated. That probably accounts for the fact that in the four years of accounting for which Mr. Stevenson supplied figures—in four years, they exported fourteen receivers, television receivers, and forty-eight radio receivers—in four years—to Australia.

In summary, it is Hazeltine's position with respect to each of Canada, England, and Australia that the only concerted action constituting an impediment to importation, if any, was exactly what the court suggested—concerted action between the members of the Pools themselves, foreign companies in a foreign country, and whose actions are effective only in that country.

The only joint actions to which Hazeltine has been a party has been its contracts, bi-lateral contracts with the General Electric Company, the CRPL, and the Neu-
1586 trodyne Proprietary, although I think it can be easily assumed, because it is a controlled subsidiary, that that would extend also to the bi-lateral contracts between Neutrodyne Proprietary and ARTS, although Neutrodyne Proprietary was never a member of ARTS, but only granted a license to ARTS.

It seems to us that what Mr. McConnell has done is just to scream conspiracy over and over and over again ad nauseam, following the cardinal principal of propaganda, that if you repeat an untruth often enough, people will begin to believe it.

Finally, Hazeltine submits that the figures on which the asserted lost profits are based are subject to gross errors. Your Honor will recall that on cross-examination of Mr. Stevenson, who supplied the figures of DX 218 and 220, he admitted that many of the costs labelled fixed costs in fact varied with volume and were by his definition variable costs.

You will also recall that there was an uncertainty as
1587 to the total of the U. S. production figures on which
Zenith's share of the market was computed. And Mr. Stevenson, I believe it was, acknowledged that if the United States market were actually larger than the figures reported by the Electronic Industries Association, some of which were estimated, then Zenith's share would be an accordingly smaller per cent of that larger total.

The Court may also recall that there were some discrepancies, minor though they were, between the summary sheets and the detail sheets in terms of the numbers of receivers actually—I believe these were marked survey—market figures in Canada. These discrepancies cast some doubt on the accuracy of the whole set of figures.

Now, coming to comment on a number of Mr. McConnell's statements, at pages 1403, 1404, Mr. McConnell cites the RCA case all over again, but carefully neglects to mention that they represented entirely different factual situations.

There are in evidence here as Exhibit PL 36
1588 through PL 43 the pertinent pleadings in the RCA-
Zenith litigation cases in Delaware and here in Chicago. And you may recall, I believe in my opening statement, I read portions of those indicating the nature of the

actions which were charged against the defendants in those cases to which the present case has very little relationship.

At page 1406 of the transcript, Mr. McConnell asserts that the Canadian companies, members of the CRPL, are "just alter egos of American companies". Well, that may be his opinion, but there is certainly not an iota of evidence in this case to that effect.

1589 At Page 1407 of the transcript, the assertion is made that Hazeltine Corporation first tried to do business or wanted to do business and get in this pool through Philco. And that is contrary to the fact and to the record. Philco used the Hazeltine patent to sue the pool members and to force a license from the pool members, not to get into the pool.

Now, at page 1411 to page 1413, there is a reference to Exhibit DX 172, which constitutes correspondence between Trav-Ler Radio here in Chicago and Hazeltine. It is submitted that that is a brazen attempt to mislead the court. Mr. McConnell asserts that contrary to my deposition, that I knew all about the pool.

Referring to the letter which Hazeltine wrote in 1940, and which is quoted in part at page 1413 of the transcript, Mr. McConnell said:

> "He didn't know anything about it."

He meaning myself.

> "He knew what the organization was. He knew that they restricted their licenses so that nobody could import sets into Canada, and with his eyes wide open
> 1590 he and Mr. Binns, his president, entered into an agreement with the pool, and that agreement was executed on the 2nd day of July, 1943."

But the fact of the situation was that—and he alleged at about that point in the record that while Mr. Binns signed the letter, that I had written it. That is not a fact.

It was written and signed by Mr. Binns and, according to the evidence, it was several years before I personally had any connection with any of the foreign licensing of Hazeltine, and was completely unfamiliar with it.

It is true that the agreement with CRPL in 1943 I signed as Assistant Secretary. But that was just simply a formal act, an attestation of the principal signatures, but I did not sign it as a principal officer.

Again, he repeats this statement at page 1415 of the record:

> "And he knew at the time"—

That is, at the time of the signing of the license—

> "that he did it the kind of a license that they were
> 1591 going to make; that they were going to exclude imports."

And this is contrary to all of the evidence in the case and contrary to fact.

At page 1418 of the transcript, Mr. McConnell makes the assertion that the specifications of the patent in Canada and the counterparts in the United States are the same and, therefore, they cover the same. I believe your Honor will recall from the patent phase of this case that it was brought out without dispute that it is only the claims of a patent that determine what it covers, not the specification. And the cases on that point are cited in the brief in the patent phase of this issue.

The Court: It is your position that this—what you choose to call a sale to the Canadian Pool—was a revocable sale?—

Mr. Dodds: No. It was a sale which had an automatic termination date. But it was not—

The Court: But which required renewal?

Mr. Dodds: It required renewal to continue it in force.

The Court: I mean, it wasn't a sale of fee simple.

1592 Mr. Dodds: No. That's right. It was a sale of a complete license for a term of years. That's right. Some of these are perhaps not worth commenting on, except that they are so numerous, your Honor.

At page 1421 of the transcript, referring to me, he says:

> "He has been all over the world in these pools. His footprints are all over."

That is based on two trips to London.

The Court: Fingerprints, too, I think he said.

Mr. Dodds: That was on the documents. He didn't say the fingerprints were all over the world.

1593 Then at page 1423 of the record—1429, he makes the statement that:

> "He"—

meaning myself—

> "—has helped them"—

CRPL—

> "—from time to time in litigation against Motorola."

Well, there is no evidence to that effect, and it is not true. He makes the further statement on page 1429:

> "He"—

meaning myself—

> "—thinks it is just one grand big idea, to stop trade between this country and Canada."

That statement on its face makes no sense. Under the Hazeltine U. S. license agreement, if a set is made in the United States, Hazeltine collects a royalty whether it is sold here, in Canada, or Timbuktu. If it is exported to Canada, it loses nothing. The more exportation, the more royalties Hazeltine collects. So it is not any 1594 grand idea on the part of Hazeltine to stop trade between Canada and he United States.

On page 1430, Mr. McConnell states:

> "We are asking this court to enjoin the use of this"—

the word is license, but I think he means patent—

> "—against us so that we can have a chance to otbain a license from Hazeltine under their patents to manufacture our goods and sell them in Canada under their Canadian licenses.",

Now, this have a very hollow ring. There is not the slightest explanation about Zenith's anxiety for a license under Hazeltine's Canadian patent with its assiduous advoidance of a license under the corresponding patents in the United States.

On page 1434 of the transcript, the court asked Mr. McConnell:

> "How serious was the threat in regard to the radio business after 1955?
>
> "Mr. McConnell: The seriousness of the threat of the radio business is that you cannot sell radios alone.
> 1595 You have got to sell them in conjunction with an entire line."

And we submit that that is a commercial problem, not a legal problem.

1596 There is a surprising statement at the bottom, commencing at the bottom of Page 1441 of the transcript, the opinion of Ira Adams, the chief patent counsel of RCA, in this evidence in which he said as far back as 1924 that you couldn't use a Patent Act to implement a pool of this kind. But as it was brought out during the cross-examination of Mr. Wright, that opinion was 11 years before the present act of 1935. There is no evidence in this case what Canadian law was in 1924, but, in any event, we are not primarily concerned with events prior to 1935 when the present Patent Act became effective.

Again, Mr. McConnell refers repeatedly, in retrying the RCA case, that they gave as a result of the consent decree in the government antitrust action licenses under their Canadian patents, but he carefully avoids mentioning that there were very much more severe penalties in that decree than that. It also required royalty-free patents under all of your United States patents subject to certain limited exceptions, and this decree became, as a result of practices, entirely unrelated to the inclusion of their
1597 patents in CRPL. That was only a very minor incident.

Mr. McConnell made a statement in his statement this morning that patents were a grant, effectively a grant, a franchise from the government and, therefore, should be treated with a certain amount of sanctity because of that. But the authorities hold that patents are not a grant, they are not a franchise, they are a contract between the Government and the inventor.

And the Government says, "We will give you a right to exclude others from the use of your invention for a limited period in consideration of the disclosure of a new invention, which after the expiration of that limited period then enriches the technology and advances the progress of the useful art.

Mr. McConnell commented upon the fact that Mr. Westermann had not given any testimony with respect to the foreign license agreements of Hazeltine Corporation, but the simple answer to that is that Mr. Westermann was elected as an officer of Hazeltine Research and became interested in licensing at all only within the last year,
1598 and has had no contact or any familiarity whatever with the foreign licensing.

As I previously advised, the only individuals familiar with that time are deceased and no longer with us.

I believe that that concludes the closing argument for the plaintiff.

The Court: Thank you, Mr. Dodds.

1599 The Court: Would you care to respond or not, Mr. McConnell?

Mr. McConnell: Well, for about five minutes, if it won't bother you too much.

The Court: All right.

Final Argument On Behalf Of The Defendant And Counter-Plaintiff by Mr. McConnell.

I am not going to back over these facts and questions. We have argued them at great length.

I do want to point out just in closing that in viewing those proofs, we can't just take one contract as Mr. Dodds has attempted to do and say, "That is it."

In the case of Continental Ore Company against Union Carbide Corporation, 370 U. S. 690, the court said:

> "In cases such as this plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each.
>
> "The character and effect of a conspiracy are not
> 1600 to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole."

Now, I have developed the whole, the whole thing, the plan and the rest of it, and the agreements between the parties that they got into and all of that, and I am not going to go back and review that again.

I do want to say in closing, however, something that I did not touch on at all in my opening argument, and that is the question of damages.

In all of these situations, cases of this kind where a market has been destroyed, we have different rules of damage, and we are going to set out those cases in the briefs.

And in Rankin against Associated Gold Posters of the United States, which was a Court of Appeals decision in the Second Circuit, 42 F. 2d 150 and 155, which was followed in a very recent case by our Court of Appeals of the Seventh Circuit, 1960, 280 F. 2d 508, this rule of damages was allowed, and it is exactly the kind of proof that was
1601 offered here in this case:

> "In its proof of damages Rankin was permitted under objection and exception to show by the testimony of its treasurer and by a compilation he had made based on the net profits of the business in 1911, and from his knowledge of business conditions when free of defendant's unlawful interference, what he considered would have been the normal increase of this plaintiff's business from year to year. He was permitted to estimate, on this basis, its probable yearly earnings from July, 1913, to June 30th, 1918, and to explain how his figures were arrived at. The fact that this amount of the plaintiff's damages could not be expressed in exact figures did not make them speculative. There was no speculation as to the fact of actual damage. Its business had been seriously curtailed. The defendants had caused the damage and they cannot be permitted to escape liability because it is difficult for
> 1602 the plaintiff to express in terms of dollars the damages it has suffered. The evidence, while purely an estimate and introduced as such, was proof of a kind as definite and certain as the subject matter admitted. It had to do with what was never actually earned because of the defendants' wrongdoing. The witness testified from his knowledge of the business history, made his calculations upon what appears to be a reasonable basis, and the defendants had ample oppor-

tunity by cross-examination or the offer of their own evidence on the subject to discredit them and to show any fallacy in his reasoning or testimony.

"Whatever may be said of its weight, and that was entirely for the jury, we have no difficulty with its admissibility."

1603 Now, that same rule is applied in the Bigelow case. That is a case that I argued in the Supreme Court of the United States where the Court of Appeals here had reversed on the ground that the evidence was speculative, and the Supreme Court said where wrongdoers by conspiracy have destroyed a market they cannot complain if there is any uncertainty in the proof.

Now, in the instant case Mr. Dodds has offered no opposition evidence whatever. He hasn't brought anybody in here to testify as to what this company could or could not do in this market. Certainly such evidence would be available and it hasn't appeared. The only inference that we can draw from that is that nobody could dispute it.

Now, one further observation and then I am through. Mr. Dodds has treated this case as if we were dealing with Hazeltine alone. We have in evidence here the background of these companies, their parents, their subsidiaries, and the reach and scope of their operations throughout the world. It is put in evidence as background and it is 1604 in evidence, and that evidence shows that the companies up in Canada are owned by American companies, solely owned, wholly-owned subsidiaries. That evidence is here. We are dealing with the impact here of all these companies combined. We are not just dealing with the impact of one or two patents in the Hazeltine portfolio. We are dealing with the impact of a terrific conspiracy composed of the largest operating units in an entire industry, and it is a conspiracy designed to control an industry, and they are in it, and being in it, they are charged with whatever the conspirators did, not just what they may or may not do alone with their patents.

Now, the law will be developed in our briefs. I am not going to labor it any further here. I think that I developed completely our position in the argument this morning, and I thank your Honor for your patience.

The Court: Well, the Court will take under advisement the motion to strike with the assurance to Mr. Dodds that unless the Court is convinced by evidence other than that
evidence which you moved to strike at the time it was
1605 offered, you may look forward with anticipation to
my ruling.

It might be helpful to the Court if you, in not too great detail, set forth the documents, and, perhaps, by name the evidence that you consider should not have been received by the Court unless there was evidence regarding a conspiracy prior to the time that it was offered so that I will be able to catch it quickly.

Of course, in the two matters before me, the defense of misuse and then the counter-claim, there is a different burden as to each. I will await your suggestions at this time as to whether you want to take that in the normal fashion in which it is handled where you will perhaps have the opening brief and reply in regard to misuse, and, of course, you have the opening brief and reply in regard to your affirmative counterclaim.

Mr. McConnell: No question about that.

Mr. Dodds: I would think that the defense of misuse is an affirmative defense also.

The Court: That is right, so you have the burden on both of them.

Mr. McConnell: I would think so.

1606 The Court: All right, fine. I overlooked that factor.

Now, do you want to agree on some kind of a briefly schedule?

1607 Mr. Dodds: Your Honor, just one point before that.

The Court: Yes.

Mr. Dodds: In addition to these documents which were taken from the alleged co-conspirators' files, in the stipulation filed with the Court there was, in addition to that, a large group of documents, mostly correspondence, which was taken from Zenith's files, which I believe is not an alleged co-conspirator. Most of these are correspondence, letters, and the stipulation indicated that these could be offered and received in evidence subject to the following objections, and one of the objections was the receipt in evidence of those documents from the files of Zenith Radio Corporation which have not been proved. A few of them have been identified and have been proved by the testimony of Mr. Wright and Mr. Crotty, but the great bulk of them have not.

The Court: I assume another test is the question of relevancy.

Mr. Dodds: There is also reserved the question of relevancy, but I think that that would have to be argued
1608 on an individual basis, and I think we earlier agreed that perhaps that could be saved for the briefs, so that we wouldn't spend time arguing a great many things which are not going to be used. But on the question of competent evidence that, I think, applied to the group as a whole. These miscellaneous loose papers from the Zenith files which were not identified either by the addressor or addressee, with no opportunity to cross-examine, we submit, are just not competent evidence.

The Court: Well, of course, I am not quite sure what you are talking about at this time.

Mr. Dodds: Well, I say, it is mostly correspondence.

You will recall there is one that they called a bulk exhibit, a series of correspondence between Zenith and some of its dealers and distributors. They were not co-conspirators. There was nobody who identified any of that correspondence or the circumstances under which—

The Court: I ame sure there will be no contention that the distributors were co-conspirators.

Mr. McConnell: That isn't the theory upon which they are offered.

1609 The Court: I didn't think so. If it was, I wanted a further explanation that I haven't got now.

Mr. McConnell: No, there is no theory of that kind. The theory of that kind was that that is an exception to the hearsay rule that that is the reaction of the trade and shows our state of mind in dealing with the situation. We have plenty of authority on that. We will put it in our brief.

The Court: All right.

Mr. Dodds: Can we perhaps reserve a decision on that?

The Court: I will reserve all decisions on controversial matters that have not been passed on up to this time.

Now, in regard to a briefing schedule?

Mr. McConnell: Well, I would suggest—we have a long record here—I would suggest 30 days, if that is not too much, your Honor.

The Court: Oh, no.

Thirty, thirty and twenty, or what?

Mr. McConnell: That is all right. That would be very good.

1610 Mr. Dodds: That will be all right.

Now, there is one other point which is not greatly related, but it is in this case, and that is the plaintiff's reply brief on the infringement issues. We were served last week with a 68-page brief of defendant, and I believe that the time that is presently set calls for a reply brief in 15 days from that date last week.

The Court: You would like that extended?

Mr. Dodds: I would like that extended.

Mr. McConnell. We have no objection.

Mr. Dodds: Perhaps we can extend that and we file that concurrently with their filing their brief on these affirmative matters.

The Court: You want that reply brief extended 30 days from today, is that what you want?

Mr. Dodds: Yes.

The Court: All right, that will be the order. Be sure that the Clerk gets a memorandum of it so that the record will be straight.

Mr. McConnell: Now, physically, your Honor, a
1611 lot of documents have been identified here, and we
had intended—I noticed that Mr. Dodds did it with certain groupings of documents—we had intended to put those in folders with captions on them so that your Honor would have them there and know what category they fall into in the trial of this case, and we will do that within the next day or so. We will have those in your hands.

The Court: All right.

Mr. Dodds: Your Honor, there is one very small, minor item. You may recall that Mr. Wright produced in response to my request a sheaf of figures on export sales. In the first place, they are monthly totals and there is a great deal of information that is not necessary. I have just added up on an adding machine the export figures excluding the three years—Canada, Great Britain, and Australia. I gave a copy of that to Mr. Curtis this morning and it would much reduce the weight of the record if we could just insert those few figures than this big sheaf of documents.

Mr. McConnell: We want a chance to check those
1612 figures.

Mr. Dodds: Certainly.

The Court: Yes, but I would appreciate you gentlemen, if you could, agreeing on the figures that are relevant as far as this lawsuit is concerned and not compel the Court to go thumbing through all of these to find something.

Mr. McConnell: I agree.

Mr. Dodds: Perhaps we can raise a stipulation on that.

The Court: Two reasonable men should have no difficulty in arriving at that.

Mr. McConnell: I don't think we will.

The Court: And I don't anticipate that you will.

Mr. Dodds: Your Honor, there is just one very minor point. I hope that you won't think I am impertinent, but I would like to introduce the hardest working member of our team, Mrs. Dodds.

The Court: I know that there would have been times when you would have been lost in this trial if she had not been sitting there.

Mr. Dodds: All of the time.

1613 Again on behalf of the plaintiff, may I express appreciation.

(Which were all the proceedings had and testimony taken in the trial of the above-entitled cause on the days and dates aforesaid.)

1614 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

Certificate.

I hereby certify that the above and foregoing pages, numbered consecutively from 1 to 1613, inclusive, constitute a full, true and accurate transcript of the official shorthand notes taken at the trial of the above-entitled cause before the Honorable Richard B. Austin, one of the Judges of said Court, on February 17, 18, 19, 20, 24, 25, and 26, 1964.

Raymond J. Comeau,
Official Court Reporter, United States District Court Northern District of Illinois Eastern Division.

* * * * *

Volume III

INDEX.

DEFENDANT-COUNTERCLAIMANT'S EXHIBITS.

No. 1—Hazeltine Corporation Annual Report—1962.. 937
No. 2—License Agreement 955
No. 3—Memo—Dec. 14, 1961—Dodds to Wilson...... 985
No. 4—Memo—June 2, 1952—Shea to Dodds.......... 986
No. 5—Memo—March 4, 1949—Shea to Binns......... 998
No. 6—Memo—Dec. 30, 1949—Dodds to Binns........1000
No. 7—Letter Aug. 8, 1951—Dodds to Binns..........1002
No. 8—Letter June 23, 1959, Crotty to Dodds........1006
No. 9—Letter Oct. 13, 1959, Hazeltine to Zenith......1008
No. 10—Letter Oct. 25, 1961, Crotty to Ruestow......1010
No. 11—Letter Nov. 21, 1961, Crotty to Ruestow......1011
No. 12—License Agreement Draft......................1013
No. 13—Letter Apr. 16, 1962, Crotty to Ruestow.....1032
No. 14—Letter May 17, 1962, Crotty to Ruestow......1033
No. 15—Letter Mar. 20, 1963, Ruestow to Crotty.....1034
No. 16—Letter May 20, 1963, Ruestow to Crotty, and attached Supplemental Schedule 1039
No. 17—Letter May 29, 1963, Ruestow to Crotty......1043
No. 18—License Agreement—Form A...............1044
No. 22—Westermann Memo—Feb. 8, 1963...........1072
No. 23A—Memo—Ruestow to Wilson—Nov. 20, 1961..1080
No. 23-B—Memo 1087
No. 24—Ruestow longhand notes re: Dodds Memo...1089
No. 25—Memo—Ruestow to Swinyard—May 8, 1962..1093
No. 26—Memo—Ruestow to Beam—Jan. 1, 1963......1094
No. 27—Ruestow longhand notes......................1109

No. 28—Memo—Boos to Ruestow—Jan. 28, 1963......1111
No. 29—Memo—Ruestow to Beam—Feb. 15, 1963....1114
No. 30—Ruestow longhand notes—Mar. 10, 1963......1120
No. 31—Ruestow Report to H. C. Directors—Apr. 17, 1963 1125
No. 32—Notes on Hazeltine Patent Picture...........1127
No. 33A to E—Domestic Patent Licensing Plan Draft. —Feb. 25, 1963..................................1131
No. 34A—Memo—Dodds to McFarland—Jan. 24, 1963.1137
No. 34B—Ruestow longhand notes re: McFarland decision on License......................................1139
No. 35—Suit on color patents—three paragraphs.....1141
No. 36—Letter Mar. 4, 1963, McFarland to LaFollette, 1141
No. 37—Ruestow Report to H. C. Directors—March 20, 1963 1145
No. 38—Problems for Special Consideration.........1148
No. 38A—Letter Dec. 1, 1952, Nalder to Dodds.......1151
No. 38B—Letter Dec. 12, 1952, Dodds to Nalder......1155
No. 39A—Letter Apr. 17, 1958, Dodds to McDermott..1158
No. 39B—Letter May 6, 1958, McDermott to Dodds...1160
No. 41—HC—Hazelpat License 1161
No. 42—GES-HC "Heads of Proposed Agreement"..1165
No. 43—HC-GEC Agreement effective Aug. 28, 1938..1167
No. 44—HC-GEC Patent Agreement effective Aug. 28, 1938 1170
No. 45—HC-GEC Agreement, July 24, 1945, extending inter alia Agreements Exhs. 43 and 44 to Dec. 31, 1945 1172
No. 46—HC-GEC Agreement, Nov. 11, 1948, extending Agreement Exh. 43 to Dec. 31, 1952.................1176
No. 47—HC-GEC Agreement, Dec. 19, 1952, extending inter alia Agreement—Exh. 44 to Dec. 31, 1952, and modifies pool income allocation.....................1179

No. 48—HC-GEC Agreement, Feb. 27, 1953, extending "Service Agreement" to Dec. 31, 1957 1183
No. 49—HC-GEC Extension Agreement (Supplemental Agreement) to June 30, 1960 1187
No. 50—HC-GEC Extension Agreement of 1962 to June 30, 1964 1190
No. 51—British Pool Agreement—1939 1194
No. 52—British Pool Agreement—1948—A. 6 1205
No. 53—Agreement—Feb. 4, 1949, adding Standard Telephones and Cables Limited to A. 6 Pool 1223
No. 54—Agreement—Mar. 23, 1949, adding Murphy Radio Limited to A. 6 Pool 1228
No. 55—Agreement—June 16, 1949, adding E. K. Cole Limited to A. 6 Pool 1233
No. 56—Agreement—Mar. 3, 1950, adding A. C. Cossor Limited to A. 6 Pool 1237
No. 57—Agreement—Mar. 8, 1950, adding Cinema-Television Limited to A. 6 Pool 1243
No. 58—British Pool Agreement—1953—A. 7 1248
No. 59—Extension of A. 7 Pool Agreement to 1960 1271
No. 60—Extension of A. 7 Pool Agreement to 1964 1272
No. 61—License A—Marconi's Wireless Telegraph Company Limited 1277
No. 62—British License A. 4 (2nd Edition) 1287
No. 63—British License A. 5 1306
No. 64—Extension of A. 5 License to 1947 1320
No. 65—British License A. 6—dated Aug. 31, 1948 1322
No. 66—British Pool License A7-S 1333
No. 67—British Pool License A7S (2nd Edition) 1344
No. 68—British Pool License A7-T 1356
No. 69—British Pool License A7-T (2nd Edition) 1368
No. 70—British Pool License A8-S 1380
No. 71—British Pool License A8-T 1391

No. 72—Memo—Nov. 29, 1932, MacKenty to Schairer . 1402

No. 73—Letter June 11, 1951, Dodds to Cornock—re: Patents in Eire 1409

No. 74—Letter June 28, 1951, Cornock to Dodds 1411

No. 75—Dodds—Outline—A-6 License (British Pool) Nov. 9, 1949 1413

No. 76—Letter Oct. 30, 1952, MacDonald to Heather . . 1415

No. 76A—Letter Nov. 14, 1952, Dodds to Binns and MacDonald 1417

No. 76B—Cornock Notes of Discussions with HC—Nov. 13, 1952 1421

No. 77—Letter Feb. 8, 1954, Dodds to Macqueen 1438

No. 78A—Letter Feb. 12, 1954, Macqueen to Dodds . . 1440

DEFENDANT'S EXHIBIT NO. 1.

Hazeltine Corporation

Annual Report 1962

CONTENTS

2 HIGHLIGHTS
3 MANAGEMENT LETTER
4 OPERATIONS
12 CORPORATE AFFAIRS
13 MANAGEMENT
14 BALANCE SHEET
16 STATEMENT OF INCOME AND EARNED SURPLUS
17 ACCOUNTANTS' LETTER
18 DIRECTORS AND OFFICERS
19 FACILITIES
19 TRANSFER AGENT, REGISTRAR, STOCK LISTING

Little Neck, L. I., N. Y.

Highlights

- Sales volume increased in 1962 over 1961 by 15.7%, and net income by 28%.

- Hazeltine Electronics Division established its new Electro-Acoustic Systems Laboratory at Avon, Massachusetts which is expected to broaden the company's field of competency.

- Acquisition of an additional tract of approximately 25 acres by Wheeler Laboratories, Inc., a subsidiary of Hazeltine Corporation, adjacent to its property in Smithtown, Long Island in order to provide for future expansion.

- Work is progressing satisfactorily under the second phase Navy contract to coordinate electronic systems in initial ship design.

- Contracts were received for participation in the Orbiting Astronomical Observatory (OAO), the Eccentric Orbiting Geophysical Observatory (EOGO) and the NIMBUS Satellite programs.

- Other new contracts received included additional AN/APS-95 radar systems, additional AN/APX-46 transponders, spectrum analyzers, bright displays, experimental binary-video data converter, AN/APX-37 transponder, parametric amplifiers, sonobuoys and advanced radar displays.

- Hazeltine Technical Development Center, Inc. was merged into the parent company, Hazeltine Corporation, and as Hazeltine Electronics Division's Technical Development Center in Indianapolis, is continuing to grow.

- Election of Wilfred M. McFarland as Chairman of the Board of Directors and Richard L. Beam as President of Hazeltine Corporation.

Management Letter

To the Stockholders:

Gross income was $47,951,008 for the year 1962, up from $41,450,835 for 1961. Net income for 1962 was $2,006,300, equal to $1.28 per share on 1,568,363 shares outstanding, as compared with $1,568,078 or $1.00 per share last year on 1,568,029 shares. The percentage increases both in volume and net are noted in the Highlights of the year.

These results are in line with your Management's optimism as to future sales volume, earnings and growth. The last year has shown an improvement in efficiency through a better coordination of efforts and planning and a general improvement in personnel morale and confidence in the company's prospects.

During 1962, a new Electro-Acoustic Systems Laboratory was established to broaden your Company's competence in the field of anti-submarine warfare. A similar expansion in sales potential is expected elsewhere in command and control display systems, advanced radar systems, air traffic control and foreign markets.

Hazeltine Technical Development Center, Inc., a wholly-owned Indiana subsidiary, was merged into the parent corporation to achieve greater efficiency in operations,

After operating the company from June to October while the former Chairman of the Board and President was on sick leave, W. M. McFarland and R. L. Beam were elected Chairman of the Board and President, respectively, by the Board. The continued loyalty and support of the company's personnel, officers and directors in that interim period, as well as thereafter, is greatly appreciated.

Sincerely,

R. L. Beam

Wilfred M. McFarland
Chairman of the Board

Richard L. Beam
President

Operations

During the past five years, the electronics industry in the United States has experienced a number of significant changes particularly in the area of defense electronics. The shifting emphasis from manned aircraft to requirements for space vehicles, and in general a higher degree of specialization in the military have virtually eliminated the large production contracts similar to those received during World War II and the Korean Conflict. Current production contracts may include only two or three of a kind although the total dollar content can be extremely large. There also has been a noticeable decrease in sole source procurement and a corresponding increase in competitive bidding requirements, which increase the cost of obtaining new business without necessarily producing much real saving for the Government.

Current trends in military requirements and procurement have been closely followed and analyzed by your Company during 1962, as in previous years. Several organizational and conceptual changes were effected during the year as a result of this analysis. In order to continue to prosper it has been determined that it is necessary for Hazeltine to expand its fields of interest both in specific equipments and systems. It has also been recognized that more "in-house" development work must be undertaken in order to lead in "state-of-the-art" design work. In addition, the company's operating structure has been realigned in order to handle both the preparation of quotations and the performance of contracts in a more efficient manner consistent with the changing customer requirements.

Hazeltine Electronics Division

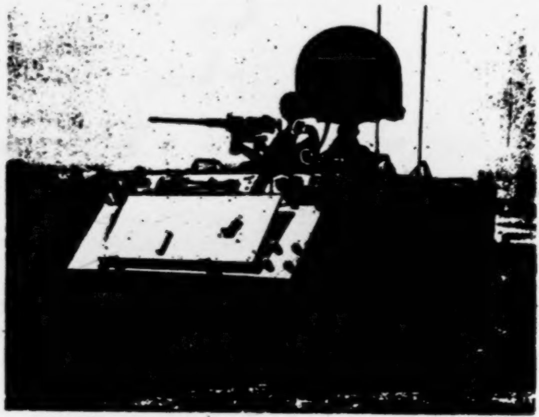
In order to increase efficiency and further delegate responsibilities, a regrouping of Departments was made in this Division, whereby three Divisional Senior Vice Presidents were elected respectively for operations, engineering and marketing. As the chief operating Division of Hazeltine, it was active on more than 175 projects during 1962. Most are in significant areas of the National Defense Program and some have potential for other applications. In addition, certain projects were significant in civil air traffic control both domestically and abroad.

Radar and Early Warning Systems — During 1962 additional orders were received for the AN/APS-95 Airborne Early Warning (AEW) radar which the company designed and produced in previous years. This equipment represents the most advanced airborne search radar employed in our Air Defense Program and has also proven versatile enough to be used in tracking the re-entry of Discoverer

satellites. Auxiliary items for this radar include additional displays and computers, orders for which were received from the Air Force during the year.

A new version of the AN/TPS-25 radar, which has received considerable publicity for the Army, was delivered during the year for evaluation for use in mobile Army troop carriers. This equipment has seen service in a number of Army areas and continues to be one of the most versatile weapons in the new Strikecom concept.

Studies in advanced radar techniques and system improvements, such as the Hazeltine-designed video accumulator and parametric amplifiers, are continuing. Contracts for versions of both types of these equipments in production quantities for incorporation in existing military and civil radar systems were received during the year.



A mobile version of Hazeltine's Combat Surveillance Radar.

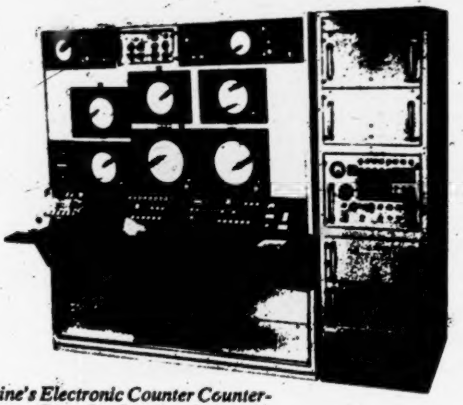
IFF Equipment — The AN/APX-46 airborne transponder which Hazeltine has designed in various configurations as a part of Identification Friend or Foe (IFF) systems, has been ordered in large quantities by the Air Forces of the United States, Canada, Australia, West Germany, Holland, Belgium, Italy and Switzerland, as well as by many United States aircraft companies. A transponder of earlier Hazeltine design, the AN/APX-37, is still being bought in quantity, while another version the AN/APX-35 is being produced in Japan under a know-how and technical assistance agreement. A new ground interrogator is being developed for the West German Government, which also should have a considerable market in the United States and elsewhere when it reaches the production stage.

Display Equipments and Systems — Changing technology has given potential enemies of the United States a capability of a rapid strike with very little advance warning. Detection and processing equipments such as SAGE and newer systems have been designed to provide a maximum of information in a minimum of time.

However, the utilization of this information in display equipments for rapid decision has lagged in development. This has resulted in the establishment within the Department of Defense of a new philosophy called "Command and Control" which will provide the top command echelons with the facility to make rapid decisions and to direct instantaneous counter measures of the Army, Navy and Air Force. For some time your Company has devoted efforts in this new field to the development of advanced display systems capable of providing this information in a simple and usable manner to the decision-makers. These efforts have led to development contracts with the Air Force during 1962 for a new military display system.

In addition to these new approaches, more conventional displays, which your Company has been producing for a number of years, continue to provide a significant portion of our business. Production contracts for PPI displays from the United States Navy and Air Force were received, and a development-production contract for bright displays was received from the Army. This latter equipment will be used with the NIKE-HERCULES missile system to enable the operator to observe technical information in brightly lighted display areas. New consoles and digital data handling equipment for the Small Ships Combat Data System (SSCDS) are being developed for the United States Navy, which have specific application in the anti-submarine warfare program.

ECM and Communications — In the company's efforts to expand its activities in the Electronic Counter Measures (ECM) field, the most significant advance during 1962 involved additional contracts received for ECCM (Electronics Counter-Counter Measures) consoles which are classified equipments used by the Army. Supplementary awards were received for TELEDAC, a device used to interpret signals from the Polaris missile, and EMATS (Emergency Message Automatic Transmission System) for delivery to Western Union Telegraph Company. Signal locating equipment and spectrum analyzers for the Army were also developed and delivered for further study and evaluation.



Hazeltine's Electronic Counter Counter-Measures Console developed for the U. S. Army.

Missile and Space Equipment — In addition to continued important space technological developments being conducted by Wheeler Laboratories and Hazeltine Research Corporation (referred to later in this report), Hazeltine received contracts during 1962 for participation in three specific space programs. Equipments and components are being designed and produced for use in the Orbiting Astronomical Observatory (OAO) and the Eccentric Orbiting Geophysical Observatory (EOGO) programs. These satellites are scheduled for launching in 1963 and 1964 by the National Aeronautics and Space Administration. The command control junction boxes are being produced for the OAO and plasma measuring devices are being designed for EOGO to help measure electron and proton density at various altitudes in semi-deep space. The third contract is a development program for NASA to study and build a working model of a television camera for both day and night viewing of the earth and its cloud cover from a NIMBUS satellite. This contract, received late in the year, involves the latest known techniques in the television camera field.

A significant study and design program is underway for a communication and data transmission system for a Deep-Space Instrumentation Facility (DSIF). Results of this study will involve a "breadboard" model suitable for evaluating communications to lunar and interplanetary projects such as the Surveyor, Mariner and Voyager.

Systems Programs — Work has continued during 1962 on the Coordinated Ships Electronics Design Project (CSEDP) under which Hazeltine is prime contractor to the Navy with Newport News Shipbuilding and Dry Dock Company, Sperry-Rand Corporation, Deco Electronics and Nortronics Division of Northrup Corporation as major subcontractors. This team has produced a design plan for a new guided missile destroyer escort complete with a modern integrated electronic system. This plan will be evaluated by the Navy's Bureau of Ships for future action.

Electro-Acoustic Systems Laboratory

In keeping with the planned growth and in anticipation of the expanding market in the fields of anti-submarine warfare and undersea technology, Hazeltine Electronics Division established an Electro-Acoustic Systems Laboratory in Avon,

Defendant's Exhibit No. 1.

HAZELTINE CORPORATION

Hazeltine's Electro-Acoustic Systems Laboratory, Avon, Massachusetts.

Massachusetts in mid-1962. This laboratory has been staffed with top-flight engineers with established reputations for successful accomplishment in these fields. In addition to the capability of designing and producing Sonar systems, this laboratory gives Hazeltine the added capability of design, development and production of transducers, which is the major key to successful participation in anti-submarine warfare programs.

Technical Development Center

To provide smoother operations and to increase efficiency, Hazeltine Technical Development Center, Inc., a wholly-owned subsidiary, was merged into Hazeltine Corporation and is now operating as a part of Hazeltine Electronics Division with its General Manager a Vice President of that Division reporting directly to the Divisional Executive Vice President.

Production on glide slope transmitters, which are a vital part of the Federal Aviation Agency's instrument landing system, began in 1962. These equipments will be installed at major airports throughout the country, to provide vertical guidance of aircraft making landings during conditions of marginal visibility. A total of 66 systems are on order. Work is continuing in support of the Government's improved air safety program in the area of airborne beacons and altitude reporting equipment. Designs which are under contract to Hazeltine primarily cover general aviation usage which should offer a large and increasing market in the future. In addition, designs for improved ground terminal equipment, which will operate in conjunction with these beacons have been developed. These devices are primarily intended to aid the air traffic controller in separating and identifying air traffic and in providing an adequate margin of safety in separation of aircraft in terminal areas. Close liaison has been maintained with the Federal Aviation Agency, including services of Hazeltine Technical Development Center's air traffic control specialists to assist their system design team in planning future implementation of the air traffic system.

The initial Hazeltine designed digital differential analyzer computer, SPEDAC, has been delivered to the Army's Flight Simulation Laboratory at White Sands Missile

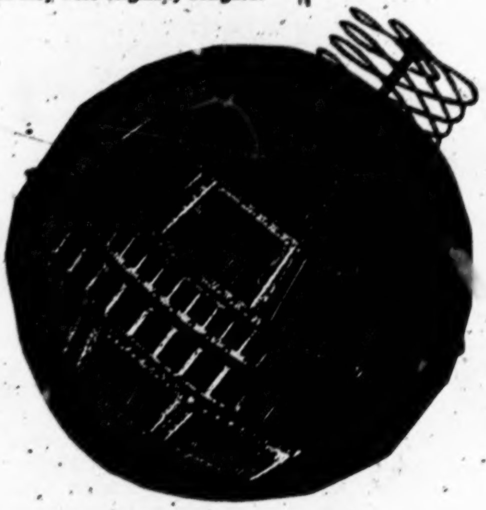
Range. Work is continuing toward improvements to SPEDAC and to develop the next generation of this type of computer.

Hazeltine International Division

Recognizing the importance of this Division, its Head was elected a Senior Vice President and its senior European representative an Assistant Vice President During its first full year as a Division of the company, it has embarked on projects in electronic identification and radar fields directly with the West German and other foreign governments and also with leading industrial firms in certain foreign countries. Some of the international programs may eventually have application in the domestic market in addition to those for which they were originally designed.

Wheeler Laboratories, Inc.

This wholly-owned subsidiary has continued its important contributions in the fields of advanced antennas and microwave component design. Its major contracts were received for new and continuing work with AT&T's Bell Telephone Laboratories. In anticipation of further expansion, it purchased an additional 25 acres adjoining its 12 acre plot in Smithtown, Long Island. It may be necessary in the early future to build an additional building on this new tract.



The Telstar's "Corkscrew" antenna conformation was designed for Bell Telephone Laboratories by Wheeler Laboratories, Inc.

Future application of LASER (Light Amplification by Stimulated Emission of Radiation) devices has been given considerable attention by this laboratory. An engineering group is conducting a study program which it is expected will produce results having potential in the field of space communications.

Wheeler has initiated a program on advanced techniques in the millimeter wave spectrum. These techniques will be used in future radar and communications systems.

This company not only designed the corkscrew shaped antenna for the first TELSTAR, but also antennas for the guidance system for the booster rocket used to place it in obrit.

Hazeltine Research, Inc.

√ In the last year the prospects of this subsidiary have received increased attention particularly because of the growing prospects of the color television market. Hazeltine Research, Inc. has a major patent position in color television on the basis of its many important patents which appear to cover color television receiver designs now on sale by substantially all manufacturers in the television receiver industry. The designs are essentially those invented by Hazeltine Research, Inc. in its pioneering work in color television during the last two decades and characterized by a prominent technical textbook author as "The Hazeltine Color System". Promising new developments in the field of black-and-white television have been contributed to the industry by this subsidiary, and the prospects of the newly developing field of UHF television are under study.

√ During 1962 negotiations with the industry have been pursued constantly to induce recognition of Hazeltine patents and the signing of income producing license agreements.

With a view to strengthening prospects, both as to income and the development of further important inventions, the staff has been expanded at all levels. Bernard D. Loughlin, one of "three architects of Color TV" according to FORTUNE Magazine of November 1955, has rejoined the Hazeltine organization as Vice President in charge of Research of Hazeltine Research, Inc. Samuel M. Thomas has been elected a Vice President and will lend his experience in commercial negotiations.

√ Litigation involving three television manufacturers and infringement of Hazeltine patents in the black-and-white television field is pending (the same as referred to in last year's Report). The previously reported claim against the United States Government for infringement of Hazeltine radar patents on significant military developments is also still pending.

√ *Domestic Patents*—Hazeltine Research, Inc. continues to be very active in the area of patent protection as a basis of income return on its research investments. As

of December 31, 1962 it owned approximately 501 United States patents and had approximately 109 applications for United States patents pending.

Foreign Patents — The interest of Hazeltine Research, Inc. in television patents and patent applications is substantially duplicated in many foreign countries through counterpart patents and applications, either owned by Hazeltine Corporation or sold in Europe on a contract basis as stated in last year's Report. Areas of major interest are: United Kingdom, all of Continental Europe, Canada and Australia.

Hazeltine Research Corporation

Through research and advanced development projects, this subsidiary plays a major role in Hazeltine's future growth.

Systems Research Department — The work of this Department reflects the significant technical achievements by this group of scientists and engineers who are making important progress in advancing the state-of-the-art in ballistic missile defenses, aerospace communications and space vehicle guidance. The value of the new research contracts entered into in 1962 exceeded those of the previous year partly as a result of company-sponsored studies during 1961.

The principal programs are (a) development of navigation and guidance techniques for space vehicles, (b) development of aerospace communication techniques and equipment, including Hazeltine's VERICODE synchronization processor for jam-resistant systems, and (c) further development of the company's superresolution and multidimensional resolution techniques and their application to surveillance, detection and discrimination radars.

Apparatus Research Division — Engineers in this Division are applying advanced techniques in developing unique electro-optical equipments for photo interpretation, photogrammetry, cartography and inter-planetary probes. Another group in the Division is making important contributions in the design of low-noise parametric amplifiers for extending the range of airborne radar systems and ground based search radars. They have demonstrated the use of parametric amplifiers for improving a radar system's capability to perform automatic processing of radar information.

The important work of this subsidiary is being conducted under contracts with agencies of the Department of Defense and Bell Telephone Laboratories, Inc.

D. Richman and V. J. Young were elected Vice Presidents of this subsidiary.

Corporate Affairs

Financial

Dividends — A cash dividend of $.20 per share was paid to stockholders in each quarter of 1962. This payment of $.80 per share for the year amounted to $1,254,624. As in 1961 no extra year-end stock dividend was paid.

Merger and State Qualifications — Hazeltine Technical Development Center, Inc. was merged into Hazeltine Corporation, and Donald M. Stuart, its General Manager, was elected a Vice President of Hazeltine Electronics Division. The Technical Development Center in Indianapolis, Indiana and the Electro-Acoustic Systems Laboratory in Avon, Massachusetts are operated as parts of Hazeltine Electronics Division. Hazeltine Corporation was additionally qualified to do business in Indiana and Massachusetts.

Purchasing Policies and Procedures — None of the company's officers or directors has any material financial interest in our suppliers or customers, although some may have minor stock holdings in their investment portfolios, and the same is true of members of the Procurement Department.

Honors

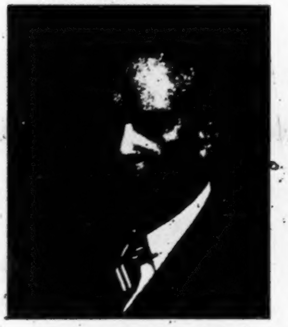
R. L. Beam was elected a Trustee of the National Security Industrial Association. H. A. Wheeler was appointed by the Department of Defense as a member of the Defense Science Board.

D. M. Stuart of Hazeltine Electronics Division's Technical Development Center received the 1962 Pioneer Award of the Professional Group on Aerospace and Navigational Electronics of the Institute of Radio Engineers. Tirey K. Vickers, also of the Technical Development Center received a Special Award from the Air Traffic Control Association for his substantial contributions in the new ATC techniques, standards and equipment.

Mrs. Katherine de Bruin, packaging designer in the manufacturing department was elected Vice President of the Eastern Section of the Society of Packaging and Handling Engineers.

Donald Richman of Hazeltine Research Corporation was inadvertently omitted from the list of Hazeltine engineers who last year became Fellows of the Institute of Radio Engineers.

Management



Wilfred M. McFarland, Chairman of the Board.

Changes and Additions

Hazeltine Corporation — At the October meeting of the Board of Directors, Wilfred M. McFarland was elected Chairman of the Board and Richard L. Beam, President and Chief Executive Officer. Carl DiMartino was elected an Assistant Vice President, and D. J. Conway an Assistant Treasurer.

In view of the many and important contributions to the welfare and growth of this company which proudly bears his name, it is regretfully noted that the nominations for the next Board of Directors do not include our revered Professor Alan Hazeltine, in deference to his wishes.

Hazeltine Electronics Division — J. W. Evans, R. K. Hellmann and J. F. Willenbecher were elected Senior Vice Presidents, and P. A. Baum, W. J. Flynn, J. L. Hammond, C. F. Knights, P. Nosal and W. S. Sturgeon were elected Assistant Vice Presidents. At the time of the merger of Hazeltine Technical Development Center, Inc., D. M. Stuart, General Manager of the Technical Development Center, was elected a Vice President. M. S. Wilson was appointed General Manager of the Electro-Acoustic Systems Laboratory in Avon, Massachusetts.

Hazeltine International Division — S. M. Thomas, General Manager of this Division was elected a Senior Vice President, and C. F. Feltham, Chief Engineer-Europe, an Assistant Vice President.

Hazeltine Research Corporation — D. Richman and V. J. Young were elected Vice Presidents.

Hazeltine Research, Inc. — B. D. Loughlin and S. M. Thomas were elected Vice Presidents.

Richard L. Beam, President.

Hazeltine Corporation *and Subsidiaries*

CONSOLIDATED BALANCE SHEET December 31, 1962

Assets		
Cash		$ 2,095,249
United States Government securities at cost plus accrued interest		1,690,567
Accounts receivable principally from Government and other contracts at final or preliminary prices		8,852,829
Costs incurred and advances to subcontractors on uncompleted contracts (Note 1)	$12,775,501	
Less progress payments for work performed	2,843,652	9,931,849
Total current assets		$22,570,494
Buildings and equipment at cost	$ 7,341,951	
Less provision for depreciation	4,520,191	2,821,760
Land at cost		313,263
Prepaid expenses, sundry receivables and miscellaneous		355,328
Patents, patent rights and inventions at cost, less provision for amortization		333,398
		$26,394,243

Liabilities		
Accounts payable		$ 1,576,096
Accrued expenses and taxes other than federal taxes on income		1,751,029
Payroll deductions for income and other taxes		341,024
Provision for federal taxes on income		1,642,612
Total current liabilities		$ 5,310,761
Capital		
Capital stock		
Authorized, 3,000,000 shares, no par value (88,100 shares reserved for stock options, Note 2) Issued, 1,568,363 shares		6,176,132
Earned surplus		
Appropriated	$ 1,536,915	
Unappropriated	13,370,435	14,907,350
		$26,394,243

(1) Costs incurred on uncompleted contracts are stated on the basis of accumulated costs, less the portion of such costs allocated to products delivered, but not in excess of estimated recoverable amounts. Costs allocated to products delivered are computed for each contract at the estimated cost based on the total estimated cost of the contract.

(2) Under the company's restricted stock option plan the number of shares of capital stock under outstanding options and the number of unoptioned shares available amounted to 75,409 and 13,025, respectively, at the beginning of the year. During the year options were granted for 10,300 shares, options for 3,423 shares were cancelled and options for 334 shares were exercised. At the end of the year there were 81,952 shares under outstanding options at prices ranging from $19.78 to $29.15 per share. Options with respect to 27,976 of such shares were exercisable at December 31, 1962, at which date there were 6,148 unoptioned shares under the plan.

(3) A substantial portion of the sales for the year 1962 is subject to price revision and renegotiation and any adjustments affect the liability for federal taxes on income. In the opinion of management no material adjustments will be required.

Hazeltine Corporation *and Subsidiaries*

Consolidated Statement of Income and Earned Surplus

For the Year Ended December 31, 1962

Gross income		$47,951,008
Costs applied to gross income	$40,711,977	
General and administrative expenses	2,981,731	43,693,708
		$ 4,257,300
Provision for federal taxes on income		2,251,000
Net income		$ 2,006,300
Unappropriated earned surplus:		
Balance at beginning of year		12,618,759
		$14,625,059
Dividends paid in cash		1,254,624
Balance at end of year		$13,370,435
Appropriated earned surplus:		
Reserve for patent infringement, replacement of government furnished equipment and possible losses in connection with future performance of contracts		
Balance at beginning and end of year		$ 1,241,915
Reserve for estimated amount of deferred compensation, net of taxes, payable at death or retirement contingent upon certain conditions		
Balance at beginning of year	$ 316,000	
Transferred to accrued expenses for liability upon retirement of covered employee	21,000	
Balance at end of year		295,000
Total appropriated earned surplus		$ 1,536,915
Total		$14,907,350

The above consolidated statement of income reflects a further refinement in classification of costs and expenses other than shown, for the first time, in the 1961 report. The net result is a reclassification of approximately $1,000,000 from general and administrative expenses to costs applied to gross income.

Provision for depreciation charged to costs and expenses amounted to $591,680.

SMITH AND HARDER
CERTIFIED PUBLIC ACCOUNTANTS
128 PARK AVENUE
NEW YORK 17

To the Board of Directors
Hazeltine Corporation

We have examined the consolidated balance sheet of Hazeltine Corporation and its wholly-owned subsidiaries as of December 31, 1962, and the related consolidated statement of income and earned surplus for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. Although we were unable to obtain confirmation of accounts receivable from the United States Government, we satisfied ourselves as to these amounts by other auditing procedures.

In our opinion, the accompanying consolidated balance sheet and consolidated statement of income and earned surplus present fairly the financial position of Hazeltine Corporation and its wholly-owned subsidiaries at December 31, 1962, and the results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Smith and Harder
Certified Public Accountants

February 8, 1963

Defendant's Exhibit No. 1.

Hazeltine

Hazeltine Corporation

DIRECTORS

WILFRED M. McFARLAND
Chairman

RICHARD L. BEAM
JENNINGS B. DOW
ALAN HAZELTINE

W. JOHN KENNEY
FREDERICK R. LACK
PHILIP F. LAFOLLETTE
HENRY REEVE

JOHN SLEZAK
HAROLD A. WHEELER
WEBSTER H. WILSON

OFFICERS

RICHARD L. BEAM
President

NEIL K. DIETRICH
Vice President

LAURENCE B. DODDS
Vice President

JENNINGS B. DOW
Vice President

THOMAS K. FOX
Vice President

DAVID WESTERMANN
Vice President and General Counsel

HAROLD A. WHEELER
Vice President

BERN BUDD, JR.
Secretary

BERTRAND J. TIFFANY
Treasurer

CARL DiMARTINO
Assistant Vice President

JAMES F. HARRIGAN
Director of Personnel
Assistant Vice President

WILFRED M. McFARLAND
Executive Vice President

ELSA T. RAMM
Assistant Vice President

OLGA J. OSTERLUND
Assistant Secretary

T. PRESTON WATERMAN
Assistant Secretary

DANIEL J. CONWAY
Assistant Treasurer

GEORGE M. BRANDEL
Assistant Controller

Hazeltine Electronics Division

RICHARD L. BEAM
Executive Vice President

JAMES W. EVANS
Senior Vice President

REINHARD K. HELLMANN
Senior Vice President

JAMES F. WILLENBECHER
Senior Vice President

WILLIAM KES
Vice President

DONALD M. STUART
Vice President

PETER A. BAUM
Assistant Vice President

WILLIAM J. FLYNN
Assistant Vice President

LOUIS GEROLD
Assistant Vice President

JOHN P. HANSEN
Assistant Vice President

CHARLES F. KNIGHTS
Assistant Vice President

GEORGE B. McCLELLAN
Assistant Vice President

PAUL NOBAL
Assistant Vice President

BURTON H. ROGERS
Assistant Vice President

WILLIAM S. STURGEON
Assistant Vice President

JOHN B. WINNINGHAM
Assistant Vice President

Corporation

Hazeltine International Division

Samuel M. Thomas
Senior Vice President and General Manager

Stanley U. North, Jr.
Assistant Sales Manager

Charles F. Feltham, Jr.
Assistant Vice President and Chief Engineer-Europe

David Westermann
Vice President

August Schomburg, Jr.
Assistant Sales Manager

Hazeltine Subsidiaries

Hazeltine Research Corporation, New York, *J. B. Dow, President*
Fairchild Drive, Plainview, L.I., New York

Hazeltine Research, Inc., Illinois
William O. Swinyard, Vice President (Chicago)
5445 West Diversey Avenue, Chicago 39, Illinois

Wheeler Laboratories, Inc., New York, *H. A. Wheeler, President*
122 Cutter Mill Road, Great Neck, L.I., New York

Hazeltine Facilities & Offices

Avon, *Massachusetts*
Chicago, *Illinois*
Dayton, *Ohio*
Floral Park, *(L.I.), N.Y.*
Garden City, *(L.I.), N.Y.*
Great Neck, *(L.I.), N.Y.*
Greenlawn, *(L.I.), N.Y.*
Indianapolis, *Indiana*
Little Neck, *(L.I.), N.Y.*
Plainview, *(L.I.), N.Y.*
Port Washington, *(L.I.), N.Y.*
Riverhead, *(L.I.), N.Y.*
Smithtown, *(L.I.), N.Y.*
Washington, *D.C.*

Transfer Agent & Dividend Paying Agent	**The Chase Manhattan Bank, *N.Y., N.Y.***
Registrar	**First National City Bank, *N.Y., N.Y.***
Listing	**New York Stock Exchange**

Exhibit B

DEFENDANT'S EXHIBIT NO. 2.

License Agreement
Between
Hazeltine Research, Inc.

and

....

918

License Agreement.

This License Agreement dated as of ...., ..., between Hazeltine Research, Inc., of Chicago, Ill., a corporation of Illinois (hereinafter called Licensor), and ...., of ...., a ...., (hereinafter called Licensee):

Witnesseth That:

Whereas, Licensor represents that it owns or has the right to grant licenses under the United States patents enumerated in Schedule A appended hereto and under the United States patents to issue on the patent applications enumerated in said Schedule A, appended hereto, and maintains laboratories with a staff of engineers, research men and inventors, and expects to file further patent applications and to obtain further United States patents important in the field of this Agreement; and

Whereas, licensees of Licensor are entitled to certain rights under the United States patents and patent applications set forth in Schedule B appended hereto, and

Whereas, Licensee desires a license under such patents issued and to be issued and under said applications;

Now, Therefore, in view of the premises and in consideration of the licenses herein granted and agreed to be granted, the mutual covenants and agreements herein contained and any releases executed concurrently herewith, it is agreed as follows:

Article I.

Definitions.

For the purposes of this License Agreement the following definitions shall apply:

Section 1. A "complete radio broadcast receiver" of sound or pictures means a complete apparatus fully equipped with tubes, in the condition in which it is to be sold to the ultimate purchaser for use and fully operative (except for any antenna not particularly designed and sold by Licensee to function with such receiver and except for a primary source of power, such as batteries or house wiring) for receiving radio broadcast signals and for converting them into audible or visual signals, one or both as the case may be.

Section 2. A "chassis of a radio broadcast receiver" of sound or pictures means a complete radio broadcast receiver in accordance with Section 1, less the cabinet or housing and which may also be less the tubes or speaker or both.

Section 3. A "complete carrier current receiver" of sound or pictures means a complete apparatus fully equipped with tubes in the condition in which it is to be sold to the ultimate purchaser for use and fully operative (except for a primary source of power, such as batteries or house wiring) for receiving signals transmitted over wires (such, for example, as power lines) and for converting such signals into audible or visual signals, one or both, as the case may be.

Section 4. "Pictures" means light images, shadows, reflections, and other visible reproductions, of the aspect or shape of animate or inanimate objects, or of drawings, writing, forms, and other graphic, printed and written matter of all kinds.

Section 5. "Tube" means an electron-discharge or semi-conductor device consisting of two or more electrodes and which is capable of changing the form of or controlling or modifying energy supplied thereto used for any purpose under this license.

Article II.

Licenses.

Section 1. Licensor hereby grants and agrees to grant under all United States Letters Patents of Schedule A and under all the United States Letters Patents to issue on the applications of Schedule A and under all other United States Letters Patent and applications with respect to which during the term hereof it shall have the right to grant licenses (but, in the case of patents and applications under which Licensor has or shall subsequently acquire a limited right to grant licenses for part or all of the field hereof, the licenses herein granted are subject to any limitations to which that right may be subject), and upon the terms and conditions hereinafter set forth and solely and only to the extent hereinafter specified and defined, a personal, indivisible, nontransferable and nonexclusive license to Licensee to manufacture at its factories the apparatus specified in Section 2 hereinafter and to sell or lease said apparatus manufactured by Licensee as a whole to others. The license to manufacture includes the right to make all or any of the separate parts and the right to have all or any of the separate parts made by others, but no license is granted to sell parts separately except for bona fide repair of used apparatus or replacement of worn-out or defective parts of used apparatus.

Section 2. The apparatus for which the said license is granted is as follows, the license in each case being limited to apparatus designed and intended primarily for use in homes, use for educational purposes, and private noncommercial use:

(a) Complete radio broadcast receivers of sound;
(b) Complete radio broadcast receivers of pictures (television);
(c) Chassis of radio broadcast receivers of sound;
(d) Chassis of radio broadcast receivers of pictures (television);
(e) Complete carrier current receivers of sound;
(f) Complete carrier current receivers of pictures;
(g) Combinations of the apparatus specified in (a) and (b) of this section; and
(h) Combinations of the apparatus specified in (c) and (d) of this section.

In the event any of the apparatus specified in the foregoing subsections (a), (b), (e), (f), and (g) is sold without, or shipped separately from, any one or more of its normal tube complement, such apparatus shall nonetheless be licensed and royalties shall be computed and paid thereon under the provisions of Article III hereof on the same basis as though such apparatus were sold and shipped with its normal tube complement.

Section 3. Nothing herein contained, and no act or acts hereunder, shall be construed as, or result in, conveying any license to Licensee, expressly or by implication, estoppel or otherwise:

(a) Under any Letters Patent which or rights under which are held by Licensor under an agreement such that Licensor can grant licenses only upon the payment of royalties or other consideration by Licensor to others; provided however, that Licensor will from time to time keep Licensee informed of all such agreements and that Licensee may at any time obtain rights under such agreements corresponding to the licenses herein granted, so far as such agreements permit, on engaging to pay Licensor any amounts which Licensor has to pay under such agreements because of Licensee's exercise of such rights;

(b) Under any patents of countries foreign to the United States;

(c) To manufacture or sell apparatus otherwise than in accordance with the express provisions of this License Agreement.

Article III.

Royalties.

Section 1. Licensee agrees to pay to Licensor upon each complete apparatus of any of the types identified in Article II, Section 2, sold or leased by Licensee during continuance of this license, royalties as follows:

(a) Upon apparatus of any of the types identified in subsections (a) and (e), a royalty of forty-five hundredths per cent. (0.45%) of Licensee's net selling price of said complete apparatus. In determining the net selling price of apparatus covered by this subsection 1(a), there may be deducted from the actual selling price thereof, in addition to any deductions provided hereinafter: (1) an amount corresponding to Licensee's manufacturing cost or purchase price of the mechanical portion of any electromechanical accessory apparatus such as electric clocks, electric phonograph apparatus, automatic record-changing apparatus, etc., if such be included, plus a mark-up of fifty per cent. (50%); and (2) an amount equal to Licensee's manufacturing cost or purchase price of the cabinet plus a mark-up of fifty per cent. (50%) less Twenty-two and 50/100 Dollars ($22.50). The term "manufacturing cost" as used herein shall be determined in accordance with the latest edition at the time of "Uniform Accounting Manual—Electrical Manufacturing Industry" issued by the National Electrical Manufacturers Association.

(b) Upon monochrome apparatus of any of the types identified in subsections (b), (f) and (g), a royalty of ninety-five hundredths per cent. (0.95%), and upon color apparatus of any of such types a royalty of one and thirty-five hundredths per cent. (1.35%); of Licensee's net selling price of said complete apparatus, determined as set forth in preceding subsection (a) of this section.

(c) Upon apparatus of the type identified in subsection (c) a royalty of nine-tenths per cent. (0.9%) of Licensee's net selling price of said apparatus less Licensee's actual cost of the tubes and speaker, or either of them, if sold therewith.

(d) Upon monochrome apparatus of any of the types identified in subsections (d) and (h), a royalty of one and nine-tenths per cent. (1.9%), and upon color apparatus of any of such types a royalty of two and seven-tenths per cent. (2.7%), of Licensee's net selling price of said apparatus less Licensee's actual cost of the tubes and speaker, or either of them, if sold therewith.

Provided, however, that the rates of royalty applicable to color apparatus shall be the same as those applicable to corresponding monochrome apparatus to and including June 30, 1959.

The net selling price on which royalty is computed in any case is the selling price before any deduction for cash discounts, or for any freight, advertising or other allowances but after deductions of manufacturer's excise taxes actually paid by Licensee directly to the taxing authority. Royalties shall be payable by Licensee hereunder with respect to licensed apparatus purchased from other licensees of Licensor in all respects as though such apparatus had been manufactured by Licensee itself under this Agreement except as otherwise provided in Section 6(d) of this Article III. Sales of licensed apparatus by Licensee to any other licensee of Licensor who is obligated to pay royalties to Licensor in respect thereof shall be reported by Licensee to Licensor as provided in Article IV, Section 2 hereof, but shall not be subject to the payment of royalties by Licensee.

Section 2. In order to insure to Licensor the full royalty payments contemplated under Section 1 of this Article, namely, royalty on selling prices to purchasers wholly independent of Licensee, it is agreed that, in the event that any apparatus is sold hereunder:

(1) To a corporation, firms or association which, or individual who, shall own or control directly or indirectly a controlling interest in Licensee by stock ownership or otherwise; or

(2) To a corporation, firm or association in which Licensee or stockholders of Licensee, or any subsidiary or parent or affiliated company of Licensee shall own or control directly or indirectly a controlling interest by stock ownership or otherwise; or

(3) To a corporation, firm, or association to which, or individual to whom Licensee sells exclusively or, which or who purchases exclusively from Licensee apparatus of the type licensed, either as a matter of general practice or under the provisions of any sales

agreement, arrangement, or understanding between the parties; or

(4) To a corporation, firm or association with which, or individual with who, Licensee or its stockholders or subsidiary or parent or affiliated companies shall have any agreement, understanding or arrangement (such as, among other things, an option to purchase stock or involving a division of profits or special rebates or allowances) without which agreement, understanding or arrangement, prices paid by such corporation, firm or association or individual for the apparatus sold hereunder would be higher than the price actually paid, or if such agreement, understanding or arrangement results in extending to such corporation, firm, association or individual lower prices for the apparatus sold hereunder than those charged to outside concerns buying similar merchandise from Licensee in similar amounts and under similar conditions;

then, and in any of such events, the royalties to be paid hereunder in respect of such apparatus shall be upon the net selling price, before cash discount, freight or advertising allowance or other similar deductions, at which such purchaser resells such apparatus to a purchaser wholly independent of itself and of Licensee, instead of upon the net selling price of Licensee; provided however, that Licensee shall not be obligated under this section to pay royalty upon selling prices of apparatus in excess of the standard price at which Licensee sells such apparatus to any wholly independent jobber or distributor.

Section 3. For royalty purposes under this Agreement, apparatus shall be considered to be sold or leased when billed out, or if not billed out then when delivered, shipped or mailed, or when paid for if paid for before delivered, shipped or mailed. If as a result of a price reduction established by Licensee or a return to Licensee of licensed apparatus previously sold by it, Licensee shall refund or credit to a customer part or all of such licensed apparatus, Licensee shall be entitled to a credit against royalties payable hereunder equal to the royalties on that part of the selling price so refunded or credited.

Section 4. In case the royalties accrued and paid by Licensee hereunder do not aggregate a minimum of Two Thousand Five Hundred Dollars ($2,500) for the fiscal license year ending

, and for each succeeding fiscal license year during the life of this Agreement, Licensee agrees within thirty (30) days of the end of each such year to make up the deficiency of the actual royalties paid to such minimum sum.

Section 5. Promptly after receipt of the final royalty report and payment of each fiscal license year, provided that Licensee shall have fully and faithfully performed all of its obligations hereunder, Licensor agrees to credit against future royalties due from Licensee (or, in the case of the final fiscal license year, to refund to Licensee) an amount equal to five per cent. (5%) of the royalties which Licensee has paid pursuant to Section 1 of this Article on sales made during such fiscal license year.

Section 6. By giving notice to Licensor at any time within six (6) months after the beginning of any fiscal license year that it desires and agrees to make a lump sum payment for such fiscal license year in accordance with and subject to the following terms and conditions in lieu of the royalties provided for by Section 1 of this Article, Licensee shall be released from the obligations of Section 1 of this Article for the balance of such fiscal license year except as hereinafter provided.

(a) The lump sum payment shall be Fifty Thousand Dollars ($50,000), which sum Licensee agrees to pay in quarterly instalments in advance. At the time of giving said notice, Licensee shall pay any deficiency in the royalties previously paid under Section 1 of this Article with respect to quarterly payments then due or may take as a credit against future quarterly payments any excess of such royalties previously paid.

(b) Except as provided in subsection (d) hereinafter, the apparatus to which this sum shall apply shall be all apparatus of any of the types identified in Article II, Section 2 of this Agreement which is sold or leased by Licensee during the fiscal license year with respect to which said notice is given and which is sold for resale under the trade marks or brand names specified under subsection (c).

(c) Licensee shall at the time of giving said notice designate all brand names and trade marks identified with Licensee's radio and television business under which all apparatus covered by this lump sum payment is to be marketed and agrees to use its best efforts to cause all such apparatus to have one of said brand names or trade marks permanently and conspicuously affixed thereto.

If Licensee finds that in the normal conduct of its business it is desirable to sell or lease apparatus under additional brand names or trade marks, it may apply to Licensor for permission to use additional specified trade marks or brand names, but apparatus sold or leased under such other trade marks or brand names shall not be covered by this lump sum payment unless said permission is granted in writing by Licensor.

(d) Apparatus manufactured for or sold to other radio or television manufacturers or other licensees of Licensor (except apparatus designed and intended for installation in automobiles, airplanes, and motor boats and manufactured for or sold to automobile manufacturers, airplane manufacturers, and motor boat

> manufacturers which may be licensees of Licensor) or manufactured by or purchased from other radio or television manufacturers or other licensees of Licensor is not included in the apparatus for which this lump sum is a payment in lieu of royalties.

Notwithstanding any prior provisions of this Section 6 or any prior election made by Licensee pursuant thereto, all licensed color television receiver apparatus sold on and after July 1, 1959, shall be excluded from the provisions of this Section 6 and royalties thereon shall be computed and paid in accordance with the provisions of Section 7 of this Article III.

Section 7. On and after July 1, 1959, if and when in any fiscal license year Licensee (a) shall have paid percentage royalties as specified in Section 1 of this Article III with respect to all licensed apparatus aggregating Fifty Thousand Dollars ($50,000) or (b) shall have elected the lump sum payment of Fifty Thousand Dollars ($50,000) specified in Section 6 of this Article III with respect to all licensed apparatus other than color television receiver apparatus, thereafter, in either of such events, royalties on licensed color television receiver apparatus shall be computed and paid at one-half the respective rates specified in Sections 1(b) and 1(d) of this Article III, until the total royalties paid or payable by Licensee for such fiscal license year with respect to all licensed apparatus shall have aggregated the sum of Seventy-five Thousand Dollars ($75,000); thereafter royalties on licensed color television receiver apparatus shall be computed at one-quarter the rates specified in Section 1(b) and 1(d) of this Article III for the remainder of such fiscal license year, all such royalties on color television receiver apparatus to be reported and paid monthly as provided in Article IV hereinafter.

Article IV.

Reports and Payments.

Section 1. Licensee agrees that it will keep records showing the production and the sales and leases of all apparatus upon which royalties are payable under Article III of this Agreement in sufficient detail to enable the royalties payable hereunder to Licensor to be determined, and generally to allow such investigation of all its operations hereunder and in connection herewith as may be necessary to determine Licensee's compliance with this Agreement and the accuracy of said records and the statements to be furnished hereunder. Licensee further agrees to permit Licensor's duly authorized representative, or at the option of Licensee a reputable certified public accountant designated by Licensor, to inspect such records at all reasonable times.

Section 2. On or before the last day of each month, and as of the last day of the preceding month, Licensee agrees to furnish Licensor with written statements over the signature of some officer of Licensee, (unless Licensee is operating entirely within the lump sum payment provisions of Article III, Section 6) in the form appended hereto and marked Exhibit 1.

The first of such statements shall be rendered not later than the last day of the month next following the month including the date of this License Agreement and shall cover the period from the date of this License Agreement to the end of the same month. The royalty prescribed herein shall be due and payable on the last day of each month upon all such apparatus sold or leased by Licensee during the preceding month, or, in the case of the first statement, the period covered thereby.

If in any such period no apparatus has been sold or leased on which royalty is payable under Article III, Section 1, a statement over the signature of some officer of Licensee to such effect shall be furnished to Licensor.

SECTION 3. Licensee agrees to pay interest to Licensor upon any and all amounts of royalties that are at any time overdue and payable to Licensor at the rate of 6 per cent. (6%) per annum from the date when such royalties are due and payable as provided herein.

SECTION 4. Licensor agrees not to disclose to a competitor of Licensee any confidential information relating to Licensee's business obtained by the Licensor under this Agreement, except when combined statistically with corresponding information of other licensees in such manner as to conceal said information, and except as it may be necessary to disclose the information in or in connection with any arbitration or litigation.

Article V.

Trade Mark and Patent Markings.

SECTION 1. Licensee agrees to use its best efforts to mark on all apparatus identified in Article II, Section 2, sold or leased by it under this license the word " ", or such other trade mark, trade name or brand name as Licensee shall from time to time specify in writing to Licensor. Such trade mark or trade or brand name shall be etched, stamped, or in some other permanent form affixed on every such piece of apparatus and, at election of Licensor, apparatus not bearing said word, name or trade mark is not licensed. Nothing in this section shall be construed to modify the restrictions of Article III, Section 6.

SECTION 2. Licensee agrees to comply with all requests of Licensor relative to patent marking reasonably required in order to comply with the constructive notice provisions of Patent Statutes, (U. S. Code, Title 35, Sec. 287). Until further notice, Licensee agrees to mark all licensed apparatus manufactured and sold or leased by it hereunder, in readily legible form, with the statement:

> "This apparatus is licensed under the United States patent rights of Hazeltine Research, Inc."

The marking required by this section shall be affixed to said licensed apparatus by attaching plates bearing the required marking or by affixing said marking on said apparatus in some other form equally permanent and, at election of Licensor, apparatus not bearing such marking is not licensed.

SECTION 3. Upon request of Licensor, Licensee agrees to supply to Licensor data sufficient to enable the parties to comply with preceding Section 2 of this Article V.

Article VI.

Waiver.

No waiver by Licensor, express or implied, of any breach of any term, condition or obligation of this Agreement by Licensee shall be construed as a waiver of any subsequent breach of that term, condition or obligation, or any other term, condition or obligation of the Agreement of the same or different nature.

Article VII.

Litigation.

Licensor agrees that it will bring and diligently prosecute such suits for infringement of the various patents under which licenses are herein granted as may in its judgment be reasonably necessary and prudent for enforcing those patents and preventing unlicensed competition in patented apparatus in the field of this license.

Article VIII.

Notices.

Any notice hereunder must be in writing and may be given by registered or certified letter and shall be deemed to have been given when such registered or certified letter, properly addressed, is mailed; if given otherwise than by registered or certified letter, it shall be deemed to have been given when delivered. If such notice is to be given to Licensor it shall be addressed to Licensor at its office, 5445 West Diversey Avenue, Chicago 39, Illinois; if given to Licensee it shall be addressed to Licensee at

Either party hereto may at any time by thirty (30) days' notice to the other designate any other address in place of those above given.

Article IX.

Term and Termination.

Section 1. Unless sooner terminated as herein provided, the license herein granted shall extend for a period of five (5) years from the effective date hereof and, unless Licensee shall have fully and faithfully performed all its obligations hereunder and shall have given six (6) months' written notice to Licensor prior to the end of such five (5) year period of its election to terminate such license, thereafter for an additional period of three (3) years.

Section 2. Licensor may, at its option, terminate this agreement, (a) on the failure of Licensee to render statements, to pay royalties or to make any other payments due under this Agreement or on Licensee's failure to comply with any other provision of this Agreement and on its failure to correct such default within ten (10) days after its attention has been called thereto; (b) at any time upon or during the bankruptcy, receivership or insolvency of

Licensee or the appointment of a receiver or trustee for its property, or upon or after an assignment for the benefit of creditors, or upon the filing of a petition, either voluntary or involuntary, for financial reorganization of Licensee or other adjustment of its indebtedness. Any such termination by Licensor shall be by notice in writing to Licensee, stating the reason for the termination and shall take effect ten (10) days after such notice is given.

Section 3. In the event of any default of Licensee identified in Section 2, subsection (a) of this Article, whether or not Licensor has terminated this Agreement in accordance with the provisions of said section, there shall thereupon become payable by Licensee the minimum royalty of Two Thousand Five Hundred Dollars ($2,500) specified in Article III, Section 4, for each calendar year during any portion of which Licensee shall be in default or for the prorated portion of any such calendar year including the date of commencement of this Agreement or the date of termination under the provisions of Section 1 of this Article, in case such date of commencement or termination shall be other than at the beginning or end, respectively, of a calendar year.

Section 4. All licenses shall cease on the date of termination. Apparatus manufactured during the life of the Agreement and on which royalty has been paid within thirty (30) days after the termination shall be licensed to be sold or leased in accordance with the terms and conditions hereof. Within thirty (30) days after the termination Licensee shall report and pay royalties as above provided.

Section 5. No termination of this Licensee Agreement for any cause shall release Licensee from any of the liabilities accruing to Licensor or rescind anything done or any payment or other consideration made or given to either party hereunder prior to the time such termination becomes effective. No failure on the part of Licensor to exercise any right of termination hereunder shall be construed to prejudice any subsequent right of termination.

Article X.

Validity.

Licensee, during the term of this Agreement, admits the validity of, and agrees that it will not voluntarily and knowingly either directly or indirectly aid or abet any attack upon the validity of, the claims of any patent under which the licenses herein granted shall be in force.

Article XI.

Complete Agreement.

This document, together with any supplements or modifications thereof signed by the parties, comprises the complete Agreement; neither Licensor nor Licensee has made any representations or warranties other than those set forth in this Agreement and such supplements or modifications, if any.

Article XII.

Successors and Assigns.

This Agreement shall inure to the benefit of the successors or assigns of Licensor, but neither this Agreement nor any of its benefits, nor the licenses, rights or privileges herein granted shall be directly or indirectly, by operation of law or otherwise, assigned, transferred, divided or shared by Licensee with any person, firm or corporation whatsoever, except successors or assigns to substantially the entire business of Licensee in apparatus of the type licensed, without the prior written consent of Licensor.

Article XIII.

Illinois Laws.

This Agreement is to be governed by and interpreted in accordance with the laws of the State of Illinois.

In Witness Whereof, the parties hereto have caused this instrument to be duly executed in duplicate.

Impress Corporate Seal Hazeltine Research, Inc.

By ....

President.

Attest:

....

Secretary.

(For Corporate Execution.)

Impress Corporate Seal ....

By ....

(Title)

Attest:

....

(Title)

(For Individual Execution.)

....L. S.

(Title)

....L. S.

(Title)

Witness:

....

State of .... } ss.:
County of .... }

On this .... day of ...., 19...., before me personally came ...., to me known, and who being by me duly sworn, did depose and say: that he is the .... of Hazeltine Research, Inc., one of the corporations described in and which executed the above instrument, and that he knows the seal of said corporation, and the seal affixed to said instrument is said corporate seal, and that it was so affixed by authority of the Board of Directors of the said corporation, and that he signed his name thereto by like authority.

....

Notary Public.

(For Corporate Acknowledgment.)

State of .... } ss.:
County of .... }

On this .... day of ...., 19....,
before me personally came ....,
to me known, and who being by me duly sworn, did depose and say: that he is the .... of ...., one of the corporations described in and which executed the above instrument, and that he knows the seal of said corporation, and the seal affixed to said instrument is said corporate seal, and that it was so affixed by authority of the Board of Directors of the said corporation, and that he signed his name thereto by like authority.

....,

Notary Public.

(For Individual Acknowledgment.)

State of .... }
County of .... } ss.:

On this .... day of ...., 19....,
before me personally came ....,
to me known, and known to me to be the person of such name who signed and sealed the foregoing instrument and who acknowledged the same to be .... free act and deed.

....
Notary Public.

Schedule A.

Hazeltine Research, Inc.

United States Letters Patent and Applications.

Patent No. Reissue	Patent Issued Original
Re. 22,112	Jan. 27, 1942
Re. 22,275	Sept. 8, 1942
Re. 22,302	Nov. 25, 1941

Patent No.	Issued	Patent No.	Issued
2,254,435	Sept. 2, 1941	2,271,203	Jan. 27, 1942
2,255,050	Sept. 9, 1941	2,271,964	Feb. 3, 1942
2,255,403	Sept. 9, 1941	2,273,163	Feb. 17, 1942
2,255,690	Sept. 9, 1941	2,273,709	Feb. 17, 1942
2,255,691	Sept. 9, 1941	2,276,488	Mar. 17, 1942
2,255,692	Sept. 9, 1941	2,277,192	Mar. 24, 1942
2,255,839	Sept. 16, 1941	2,277,850	Mar. 31, 1942
2,257,092	Sept. 30, 1941	2,278,159	Mar. 31, 1942
2,258,370	Oct. 7, 1941	2,279,543	Apr. 14, 1942
2,259,520	Oct. 21, 1941	2,280,139	Apr. 21, 1942
2,259,538	Oct. 21, 1941	2,280,181	Apr. 21, 1942
2,261,762	Nov. 4, 1941	2,280,187	Apr. 21, 1942
2,261,800	Nov. 4, 1941	2,280,191	Apr. 21, 1942
2,262,707	Nov. 11, 1941	2,283,106	May 12, 1942
2,263,667	Nov. 25, 1941	2,284,131	May 26, 1942
2,263,825	Nov. 25, 1941	2,284,219	May 26, 1942
2,264,018	Nov. 25, 1941	2,285,038	June 2, 1942
2,264,781	Dec. 2, 1941	2,285,957	June 9, 1942
2,264,782	Dec. 2, 1941	2,289,948	July 14, 1942
2,265,826	Dec. 9, 1941	2,290,517	July 21, 1942
2,265,848	Dec. 9, 1941	2,290,748	July 21, 1942
2,269,540	Jan. 13, 1942	2,291,277	July 28, 1942
2,269,570	Jan. 13, 1942	2,291,450	July 28, 1942
2,269,590	Jan. 13, 1942	2,292,765	Aug. 11, 1942
2,269,678	Jan. 13, 1942	2,293,233	Aug. 18, 1942
2,270,539	Jan. 20, 1942	2,294,182	Aug. 25, 1942
2,271,181	Jan. 27, 1942	2,294,820	Sept. 1, 1942

Patent No.	Issued	Patent No.	Issued
2,295,443	Sept. 8, 1942	2,401,007	May 28, 1946
2,295,816	Sept. 15, 1942	2,401,481	June 4, 1946
2,300,082	Oct. 27, 1942	2,402,058	June 11, 1946
2,300,451	Nov. 3, 1942	2,402,059	June 11, 1946
2,300,452	Nov. 3, 1942	2,403,252	July 2, 1946
2,300,942	Nov. 3, 1942	2,403,385	July 2, 1946
2,302,124	Nov. 17, 1942	2,403,727	July 9, 1946
2,302,619	Nov. 17, 1942	2,403,728	July 9, 1946
2,302,896	Nov. 24, 1942	2,403,729	July 9, 1946
2,303,184	Nov. 24, 1942	2,403,889	July 9, 1946
2,303,987	Dec. 1, 1942	2,403,890	July 9, 1946
2,304,091	Dec. 8, 1942	2,404,173	July 16, 1946
2,305,842	Dec. 22, 1942	2,404,238	July 16, 1946
2,308,375	Jan. 12, 1943	2,404,640	July 23, 1946
2,309,852	Feb. 2, 1943	2,404,939	July 30, 1946
2,312,687	Mar. 2, 1943	2,406,468	Aug. 27, 1946
2,313,952	Mar. 16, 1943	2,406,953	Sept. 3, 1946
2,316,317	Apr. 13, 1943	2,407,147	Sept. 3, 1946
2,321,478	June 8, 1943	2,407,169	Sept. 3, 1946
2,322,528	June 22, 1943	2,407,281	Sept. 10, 1946
2,324,548	July 20, 1943	2,407,282	Sept. 10, 1946
2,324,776	July 20, 1943	2,409,897	Oct. 22, 1946
2,327,248	Aug. 17, 1943	2,409,944	Oct. 22, 1946
2,333,806	Nov. 9, 1943	2,410,735	Nov. 5, 1946
2,335,983	Dec. 7, 1943	2,410,736	Nov. 5, 1946
2,336,555	Dec. 14, 1943	2,411,695	Nov. 26, 1946
2,343,263	Mar. 7, 1944	2,413,181	Dec. 24, 1946
2,343,561	Mar. 7, 1944	2,413,423	Dec. 31, 1946
2,343,745	Mar. 7, 1944	2,413,440	Dec. 31, 1946
2,343,825	Mar. 7, 1944	2,413,451	Dec. 31, 1946
2,347,064	Apr. 18, 1944	2,413,607	Dec. 31, 1946
2,347,529	Apr. 25, 1944	2,413,608	Dec. 31, 1946
2,384,717	Sept. 11, 1945	2,413,609	Dec. 31, 1946
2,388,001	Oct. 30, 1945	2,413,637	Dec. 31, 1946
2,395,615	Feb. 26, 1946	2,415,317	Feb. 4, 1947
2,396,831	Mar. 19, 1946	2,413,836	Jan. 7, 1947
2,396,865	Mar. 19, 1946	2,414,143	Jan. 14, 1947
2,397,607	Apr. 2, 1946	2,414,992	Jan. 28, 1947
2,397,746	Apr. 2, 1946	2,415,141	Feb. 4, 1947
2,398,694	Apr. 16, 1946	2,415,316	Feb. 4, 1947

Patent No.	Issued	Patent No.	Issued
2,415,318	Feb. 4, 1947	2,445,888	July 27, 1948
2,415,359	Feb. 4, 1947	2,446,405	Aug. 3, 1948
2,415,651	Feb. 11, 1947	2,446,613	Aug. 10, 1948
2,415,667	Feb. 11, 1947	2,446,829	Aug. 10, 1948
2,416,246	Feb. 18, 1947	2,447,309	Aug. 17, 1948
2,416,424	Feb. 25, 1947	2,447,316	Aug. 17, 1948
2,417,895	Mar. 25, 1947	2,447,375	Aug. 17, 1948
2,420,753	May 20, 1947	2,451,596	Oct. 19, 1948
2,421,136	May 27, 1947	2,454,042	Nov. 16, 1948
2,421,137	May 27, 1947	2,454,396	Nov. 23, 1948
2,421,138	May 27, 1947	2,454,865	Nov. 30, 1948
2,423,548	July 8, 1947	2,455,740	Dec. 7, 1948
2,425,102	Aug. 5, 1947	2,456,204	Dec. 14, 1948
2,425,585	Aug. 12, 1947	2,456,800	Dec. 21, 1948
2,426,429	Aug. 26, 1947	2,456,803	Dec. 21, 1948
2,426,454	Aug. 26, 1947	2,457,004	Dec. 21, 1948
2,426,460	Aug. 26, 1947	2,457,034	Dec. 21, 1948
2,428,427	Oct. 7, 1947	2,457,058	Dec. 21, 1948
2,429,513	Oct. 21, 1947	2,457,212	Dec. 28, 1948
2,429,519	Oct. 21, 1947	2,457,374	Dec. 28, 1948
2,429,726	Oct. 28, 1947	2,460,175	Jan. 25, 1949
2,430,296	Nov. 4, 1947	2,460,202	Jan. 25, 1949
2,431,762	Dec. 2, 1947	2,461,110	Feb. 8, 1949
2,431,989	Dec. 2, 1947	2,461,120	Feb. 8, 1949
2,431,990	Dec. 2, 1947	2,461,642	Feb. 15, 1949
2,432,026	Dec. 2, 1947	2,461,646	Feb. 15, 1949
2,432,057	Dec. 2, 1947	2,462,265	Feb. 22, 1949
2,432,275	Dec. 9, 1947	2,463,229	Mar. 1, 1949
2,432,349	Dec. 9, 1947	2,467,564	Apr. 19, 1949
2,433,698	Dec. 30, 1947	2,469,168	May 3, 1949
2,434,334	Jan. 13, 1948	2,469,174	May 3, 1949
2,437,493	Mar. 9, 1948	2,472,598	June 7, 1949
2,438,197	Mar. 23, 1948	2,474,576	June 28, 1949
2,438,795	Mar. 30, 1948	2,474,608	June 28, 1949
2,439,641	Apr. 13, 1948	2,475,344	July 5, 1949
2,439,663	Apr. 13, 1948	2,476,407	July 19, 1949
2,441,030	May 4, 1948	2,476,639	July 19, 1949
2,442,514	June 1, 1948	2,477,370	July 26, 1949
2,444,721	July 6, 1948	2,478,409	Aug. 9, 1949
2,444,741	July 6, 1948	2,481,852	Sept. 13, 1949

Patent No.	Issued	Patent No.	Issued
2,483,097	Sept. 27, 1949	2,526,233	Oct. 17, 1950
2,484,331	Oct. 11, 1949	2,526,267	Oct. 17, 1950
2,484,763	Oct. 11, 1949	2,527,664	Oct. 31, 1950
2,485,731	Oct. 25, 1949	2,531,215	Nov. 21, 1950
2,486,285	Oct. 25, 1949	2,532,736	Dec. 5, 1950
2,486,818	Nov. 1, 1949	2,533,912	Dec. 12, 1950
2,488,359	Nov. 15, 1949	2,540,012	Jan. 30, 1951
2,489,615	Nov. 29, 1949	2,540,560	Feb. 6, 1951
2,490,526	Dec. 6, 1949	2,542,825	Feb. 20, 1951
2,490,530	Dec. 6, 1949	2,544,531	Mar. 6, 1951
2,491,029	Dec. 13, 1949	2,547,648	Apr. 3, 1951
2,495,399	Jan. 24, 1950	2,548,436	Apr. 10, 1951
2,495,919	Jan. 31, 1950	2,549,578	Apr. 17, 1951
2,495,938	Jan. 31, 1950	2,550,486	Apr. 24, 1951
2,498,253	Feb. 21, 1950	2,553,263	May 15, 1951
2,499,576	Mar. 7, 1950	2,554,893	May 29, 1951
2,501,186	Mar. 21, 1950	2,556,607	June 12, 1951
2,501,834	Mar. 28, 1950	2,562,476	July 31, 1951
2,502,308	Mar. 28, 1950	2,564,578	Aug. 14, 1951
2,502,359	Mar. 28, 1950	2,570,805	Oct. 9, 1951
2,503,879	Apr. 11, 1950	2,572,725	Oct. 23, 1951
2,504,852	Apr. 18, 1950	2,574,253	Nov. 6, 1951
2,508,479	May 23, 1950	2,574,271	Nov. 6, 1951
2,511,595	June 13, 1950	2,575,571	Nov. 20, 1951
2,511,610	June 13, 1950	2,576,617	Nov. 27, 1951
2,511,611	June 13, 1950	2,576,642	Nov. 27, 1951
2,513,731	July 4, 1950	2,577,781	Dec. 11, 1951
2,513,761	July 4, 1950	2,577,782	Dec. 11, 1951
2,513,921	July 4, 1950	2,577,955	Dec. 11, 1951
2,513,936	July 4, 1950	2,579,338	Dec. 18, 1951
2,514,957	July 11, 1950	2,588,021	Mar. 4, 1952
2,517,951	Aug. 8, 1950	2,588,022	Mar. 4, 1952
2,518,736	Apr. 15, 1950	2,589,808	Mar. 18, 1952
2,519,209	Aug. 15, 1950	2,591,484	Apr. 1, 1952
2,519,524	Aug. 22, 1950	2,593,183	Apr. 15, 1952
2,521,945	Sept. 12, 1950	2,597,833	May 20, 1952
2,522,706	Sept. 19, 1950	2,606,974	Aug. 12, 1952
2,522,731	Sept. 19, 1950	2,609,460	Sept. 2, 1952
2,525,919	Oct. 17, 1950	2,609,492	Sept. 2, 1952
2,526,229	Oct. 17, 1950	2,609,496	Sept. 2, 1952

Patent No.	Issued	Patent No.	Issued
2,610,250	Sept. 9, 1952	2,708,239	May 10, 1955
2,611,029	Sept. 16, 1952	2,710,914	June 14, 1955
2,613,315	Oct. 7, 1952	2,711,529	June 21, 1955
2,613,316	Oct. 7, 1952	2,715,154	Aug. 9, 1955
2,614,212	Oct. 14, 1952	2,717,362	Sept. 6, 1955
2,616,039	Oct. 28, 1952	2,722,563	Nov. 1, 1955
2,617,928	Nov. 11, 1952	2,728,813	Dec. 27, 1955
2,618,703	Nov. 18, 1952	2,729,702	Jan. 3, 1956
2,623,166	Dec. 23, 1952	2,730,564	Jan. 10, 1956
2,624,837	Jan. 6, 1953	2,734,940	Feb. 14, 1956
2,633,527	Mar. 31, 1953	2,735,015	Feb. 14, 1956
2,637,028	Apr. 28, 1953	2,740,109	Mar. 27, 1956
2,637,807	May 5, 1953	2,743,311	Apr. 24, 1956
2,640,925	June 2, 1953	2,745,036	May 8, 1956
2,644,080	June 30, 1953	2,748,267	May 29, 1956
2,644,081	June 30, 1953	2,752,419	June 26, 1956
2,646,526	July 21, 1953	2,754,356	July 10, 1956
2,646,532	July 21, 1953	2,754,481	July 10, 1956
2,651,002	Sept. 1, 1953	2,756,337	July 24, 1956
2,652,194	Sept. 15, 1953	2,756,411	July 24, 1956
2,658,163	Nov. 3, 1953	2,757,571	Aug. 7, 1956
2,664,471	Dec. 29, 1953	2,759,993	Apr. 21, 1956
2,664,561	Dec. 29, 1953	2,760,108	Aug. 21, 1956
2,665,378	Jan. 5, 1954	2,760,165	Aug. 21, 1956
2,666,576	Jan. 19, 1954	2,761,132	Aug. 28, 1956
2,668,237	Feb. 2, 1954	2,763,717	Sept. 18, 1956
2,671,172	Mar. 2, 1954	2,765,363	Oct. 2, 1956
2,671,608	Mar. 9, 1954	2,770,686	Nov. 13, 1956
2,673,892	Mar. 30, 1954	2,773,929	Dec. 11, 1956
2,675,472	Apr. 13, 1954	2,773,930	Dec. 11, 1956
2,678,388	May 11, 1954	2,774,072	Dec. 11, 1956
2,678,389	May 11, 1954	2,774,867	Dec. 18, 1956
2,678,964	May 18, 1954	2,775,759	Dec. 25, 1956
2,686,910	Aug. 17, 1954	2,781,413	Feb. 12, 1957
2,691,073	Oct. 5, 1954	2,784,249	Mar. 5, 1957
2,697,744	Dec. 21, 1954	2,785,376	Mar. 12, 1957
2,702,837	Feb. 22, 1955	2,787,705	Apr. 2, 1957
2,703,389	Mar. 7, 1955	2,790,075	Apr. 23, 1957
2,705,778	Apr. 5, 1955	2,790,166	Apr. 23, 1957
2,707,206	Apr. 26, 1955	2,790,167	Apr. 23, 1957

Patent No.	Issued	Patent No.	Issued
2,793,247	May 21, 1957	2,831,997	Apr. 22, 1958
2,795,656	June 11, 1957	2,832,073	Apr. 22, 1958
2,800,608	July 23, 1957	2,833,851	May 6, 1958
2,802,909	Aug. 13, 1957	2,833,870	May 6, 1958
2,806,211	Sept. 10, 1957	2,837,638	June 3, 1958
2,807,661	Sept. 24, 1957	2,839,618	June 17, 1958
2,807,740	Sept. 24, 1957	2,841,641	July 1, 1958
2,810,780	Oct. 22, 1957	2,841,642	July 1, 1958
2,811,579	Oct. 29, 1957	2,841,643	July 1, 1958
2,812,444	Nov. 5, 1957	2,841,700	July 1, 1958
2,813,147	Nov. 12, 1957	2,841,782	July 1, 1958
2,814,035	Nov. 19, 1957	2,842,613	July 8, 1958
2,814,778	Nov. 26. 1957	2,844,758	July 22, 1958
2,819,333	Jan. 7, 1958	2,844,795	July 22, 1958
2,824,227	Feb. 18, 1958	2,845,480	July 29, 1958
2,826,735	Mar. 11, 1958	2,848,533	Aug. 19, 1958
2,827,564	Mar. 18, 1958	2,848,537	Aug. 19, 1958
2,829,250	Apr. 1, 1958	2,848,628	Aug. 19, 1958

Application Serial No.

17,294
224,723
243,216
280,456
300,650
339,145
345,563
345,564
355,637
359,734
368,067
381,580
384,488
384,560
387,283
387,853
388,519
402,841
406,131
420,225
422,058
422,915
423,746
423,998
424,565
431,383
435,339
435,474
435,566
437,470
439,285
445,106
445,550
446,301
446,834
446,939
447,762
447,763
453,236
466,252
467,466
469,942
471,340
473,914
473,915
473,916

Application Serial No.

475,138
476,938
477,316
484,279
484,531
484,612
487,567
491,760
496,141
496,171
496,172
498,077
498,918
500,792
500,904
502,643
507,248
511,852
513,345
514,341
514,343
516,349
517,614
518,162
525,043
526,506
527,899
527,914
530,029
530,490
535,066
535,085
540,428
540,523
548,345
551,708
552,442
552,443
552,871
553,139
558,526
560,313
560,412
567,134
567,135
567,503

Application Serial No.

570,347
574,465
580,599
580,600
583,305
598,846
612,555
612,556
616,056
616,057
617,038
617,039
617,040
617,041
617,042
619,145
619,912
620,123
622,702
622,703
623,279
623,565
627,877
630,241
630,370
633,323
634,959
635,329
635,330
635,331
636,133
636,198
636,199
637,708
639,577
639,578
642,133
649,348
652,577
652,578
652,974
654,421
656,039
662,199
662,516
662,517

Application Serial No.

662,518
667,190
670,697
675,858
678,190
679,234
679,281
679,580
679,730
681,674
686,551
689,671
704,633
704,770
715,829
725,063
742,462
743,396
746,115
749,275
750,192

Schedule B.

Miscellaneous United States Letters Patent and Patent Applications.

(Pursuant to limited rights acquired from their respective owners. Details upon request.)

Patent No.	Issued	Application Serial No.
2,254,721	Sept. 2, 1941	388,775
2,255,645	Sept. 9, 1941	472,403
2,257,272	Sept. 30, 1941	512,067
2,269,524	Jan. 13, 1942	561,206
2,288,486	June 30, 1942	636,970
2,294,328	Aug. 25, 1942	650,468
2,373,601	Apr. 10, 1945	735,821
2,425,454	Aug. 12, 1947	737,938
2,448,177	Aug. 31, 1948	744,384
2,456,422	Dec. 14, 1948	750,269
2,469,256	Apr. 26, 1949	
2,508,208	May 16, 1950	
2,509,269	May 30, 1950	
2,524,183	Oct. 3, 1950	
2,524,987	Oct. 10, 1950	
2,525,151	Oct. 10, 1950	
2,525,698	Oct. 10, 1950	
2,526,846	Oct. 24, 1950	
2,542,825	Feb. 20, 1951	
2,550,960	May 1, 1951	
2,557,686	June 19, 1951	
2,558,925	July 3, 1951	
2,573,558	Oct. 30, 1951	
2,658,146	Nov. 3, 1953	
2,675,423	Apr. 13, 1954	
2,730,716	Jan. 10, 1956	
2,735,938	Feb. 21, 1956	
2,743,441	Apr. 24, 1956	
2,747,181	May 22, 1956	
2,759,365	Aug. 21, 1956	
2,768,901	Oct. 30, 1956	
2,771,583	Nov. 20, 1956	
2,774,966	Dec. 18, 1956	
2,790,903	Apr. 30, 1957	
2,794,149	May 28, 1957	
2,825,837	Mar. 4, 1958	
2,841,644	July 1, 1958	

EXHIBIT I

SUMMARY OF ROYALTY DUE HAZELTINE RESEARCH, INC.

(LICENSEE)________________________ FOR MONTH OF________________________, 19______

TYPE OF APPARATUS	SALES AND LEASES		DEDUCTIONS			NET AMOUNT SUBJECT TO ROYALTY	ROYALTY	
	QUANTITIES	AMOUNT	EXCISE TAX PAID	ELECTRO-MECHANICAL ACCESSORY APPARATUS	CABINET		RATE (Percent)	DOLLARS
		$	$					
Sound broadcast receivers							0.45	
Television broadcast receivers								
Monochrome							0.95	
Color							1.35	
Combination sound and television broadcast receivers								
Monochrome							0.95	
Color							1.35	
Chassis of sound broadcast receivers					TUBES AND SPEAKER		0.9	
Chassis of television broadcast receivers								
Monochrome							1.9	
Color							2.7	
Combination chassis of sound and television broadcast receivers								
Monochrome							1.9	
Color							2.7	
Other licensed apparatus								
TOTAL								

It is hereby certified that the foregoing statement of royalty due from the Licensee to Hazeltine Research, Inc., for the period from ____________ to ____________, inclusive, has been prepared from the books of the Licensee by the undersigned or under his direction and that it is a true and correct statement to the best of his knowledge, information and belief.

________________________ ____________
(Title)

DEFENDANT'S EXHIBIT NO. 3.

Memorandum to Mr. W. H. Wilson December 14, 1961.
From L. B. Dodds—Personal and Confidential.
Subject—Prospective Hazeltine Royalty Income.

In accordance with your request I am setting forth below my views with respect to the present license position of HRI and the prospective royalty income which it can anticipate.

The question has very properly been raised as to whether or not it might be possible to modify the licensing program of HRI to increase its royalty income with respect to Color TV receivers in order to take advantage of what is believed to be the dominating patent situation which the company holds in that field. A consideration of what steps might be taken to implement this objective requires a review of the background of the HRI licensing program which has been carefully developed and planned over a period of more than twenty years.

A. Royalty Income.

It appears significant to review the HRI royalty income only for the post-World War II period during which royalties have been based preponderantly on television receivers while the pre-war income was based solely on radio receivers. Further, since we are considering the domestic license situation, only the domestic royalties appear relevant. The royalties in 1946, the first post-war year, amounted to $1,269M and increased to a peak in 1952 of $1,872M, at which time the entire industry, except Avco, was licensed and that company was later forced by successful litigation to take a license and to pay back royalties for its infringement. Due to circumstances related below, the royalty income thereafter progressively declined to $583M in 1960 and they may be somewhat less this year.

However, commencing about 1952, intense competition forced a severe concentration of the radio and TV industry from about 40 major companies to the 16 (Sup. 9) currently active*, although only one of the 24 casualties (Hoffman) occurred within the last few years. From this it may be concluded that the industry is fairly well stabilized. It seems probable that future casualties will be offset by newcomers such as Capehart, recently organized by the principals of Liberty Music Stores, but still a relatively small factor in the industry.

During the entire modern history of Hazeltine the license has always effectively had a ceiling on the royalties which any particular licensee paid in any given year. In 1934 this was established at $150,000 but at that time no more than three licensees ever qualified to pay this lump sum. Due to a series of unsuccessful patent infringement suits, the decision in the last of which was in 1947, this ceiling or lump sum payment (and the percentage royalty rate) was reduced in 1941 by 30 percent to $105,000 and in 1947 to $50,000, although this last reduction was accompanied by a decrease in the royalty rate from 1.05 to 0.95 percent. Upon expiration in 1959 of the basic Toulon patent, which was sustained in litigation against Avco, it developed that a number of companies were using only one or two Hazeltine patents and it became necessary to offer to the industry licenses under individual patents, with the result that the majority of the current licenses carry an effective ceiling of $25,000 per year.

About 1953, when royalty income was near its peak, namely $1,842M, the foregoing trend was anticipated and steps were then taken to increase the royalties on color TV receivers. As a practical matter it was not possible to increase royalties in new licenses granted so long as prior licensees had continuing commitments at the lower rate. For many years the Hazeltine license had carried a standard three year renewal option on the part of its licensee at the end of its initial term. The first step taken in 1954 to limit continuing commitments was to eliminate this three year renewal option. This meant that licenses then granted could not extend beyond 1959. Since the renewal options of several prior licensees extended to that date and beyond, it appeared that it would not be possible to increase the royalty rate on color prior to the end of 1960. The next step, taken in 1955, was to include in each new license a cut-off date on the license on color TV receivers of December 31, 1960, leaving Hazeltine free thereafter to negotiate whatever rights on color receivers the industry could be persuaded to pay. Due to a number of fortuitous circumstances, including the high casualty rate noted above, it became possible to advance the date on which the royalty rates on color TV receivers were increased as of July 1, 1958.

Royalty rates, as such, are discussed in the next section of this memo but it appears appropriate at this time to point out that the present effective maximum royalty in each license has been restored to its original amount of $150,000 per year which increases on July 1, 1963 to $200,000 per year.* At current rates this ceiling covers a licensee's production of about 50,000 sets per year. If the current predictions materialize that the production of color TV receivers will reach upwards of one million sets per year within the next few years, it would seem that the majority, if not all, of the 16 manufacturers mentioned might have a volume of the order of 50,000 sets to earn the ceiling royalty of $200,000 or a potential maximum royalty of $3 million, about 60 percent more than the peak royalties ever received in the past.

Moreover, Hazeltine has what is believed to be an important patent on monochrome TV receivers which is used in the great majority of the receivers now in the market and is the principal basis of currrently received royalties. This paetnt is now in litigation with Zenith and Firestone (on accout of Philco and Trav-Ler receivers). It continues in force until 1968 and, if sustained, will be a sonrce of substantial additional income, although licenses making the lump sum payment of $25,000 with respect to this patent have a partial offset in reduction of their royalties on color TV receivers.

B. Royalty Rates.

Again considering only the post-war period, the royalty rate on monochrome and color TV receivers was initially 1.05 percent (although there was no appreciable production of color TV receivers until 1955). In 1947, at the same time that the lump sum payment was reduced to $50,000 as mentioned above, the percentage rate was reduced to 0.95 percent, the rate still in effect. However, effective as of July 1, 1958 the basic rate on color TV receivers was increased substantially 50 percent to 1.35 percent at the same time that the overall ceiling was raised from $50,000 to $150,000. This percentage rate drops to 0.675 percent for royalties in excess of $50,000 per year and to a minimum of 0.3775 percent for royalties in excess of $75,000 per year. However, the effective increase in royalty rate is much greater than apparent. Due to the very low ceiling in effect for monochrome TV receivers, Hazeltine has received effectively an overall royalty of only about 0.1 percent so that the new rate is more than three times the rate previously received on monochrome TV receivers while the new ceiling is precisely three times the prior ceiling, and increases to four times the prior ceiling on July 1, 1963.

C. RCA.

It is believed that the RCA license situation is sufficiently different from that of Hazeltine to preclude making any meaningful comparison. Going back into History a bit, RCA sustained the basic DeForest patent on the oscillator in the United States Supreme Court in the late 30's. This circuit is used in virtually every sound and television receiver and, as a consequence every manufacturer became a licensee of RCA at that time. In corresponding point of time every important patent of Hazeltine that had been litigated had been invalided and only about 50 percent of the industry was licensed by Hazeltine. In addition, it is generally reported that RCA used its dominant commercial position, particularly in the tube field, in active support of its license position.

The momentum of the RCA license situation was such that after the war (when the oscillator patents had expired) the entire industry renewed their licenses, with the exception of Zenith and, later, Philco, which companies instituted vigorous litigation with RCA. The Hazeltine situation was different. Such a large segment of the industry had become accustomed to operating with out a Hazeltine license that it was possible to get them to accept licenses only after extensive litigation with Admiral and Philco (settled just before trial) and Avco. The disrespect for the Hazeltine license position even went so far that eight substantial licenses (though not the largest) organized to resist the license and stop paying royalties. As a result, Hazeltine precipitated litigation with Air King (CBS Electronics), Automatic Radio, DeWald, Olympic and Sentinel). All of these terminated favorably to Hazeltine after the validity of its license had been sustained by the United States Supreme Court in the Automatic Radio case.

While Hazeltine has never made a study of the RCA patents on television receivers, it is generally recognized that they have had rather comprehensive coverage of both monochrome and television receivers and some coverage of sound receivers. In the Zenith-RCA litigation there was involved 136 patents under the control of RCA. This is only natural since it is a matter of common knowledge that RCA consistently expended on R & D work in the radio and TV field sums of the order of 100 times those spent by Hazeltine. In addition, RCA held licensing rights in the radio and TV field under the patents of GE, Westinghouse, A. T. & T. and EMI of Great Britain, one of the early pioneers in the TV field. Therefore, it was only natural, even without the license pattern established prior to the war, that RCA could command higher royalty rates than Hazeltine.

Nevertheless, RCA's royalties on monochrome and TV receivers were not considerably greater than Hazeltine and sometimes less, which led to complaints from the Hazeltine licensees. RCA's last royalty rate (prior to the present royalty-free licenses to the industry) was 1⅛ precent against Hazeltine's 0.95 percent, but RCA permitted deduction from the royalty rates of the cost of all tubes in the receiver, including the cathode ray tube, while Hazeltine did not.

It is true that the RCA license had no express ceiling in it but RCA met this situation in the case of the larger licensees where the percentage royalties would amount to huge figures by deals according to which RCA paid huge sums for licenses under the patents of its licensees even though of no commercial importance. It is reported that this "kick-back" in the case of the last Philco license was $1 million. Moreover, it is reliably reported that the contest between Zenith and Philco with respect to the relative sizes of their "kick-backs" led to the Zenith litigation and later to the Philco litigation, which resulted in the complete destruction of the RCA license position and forced payment to Zenith of antitrust damages of $10 million and the grant to the entire industry of a royalty-free license. It was always the feeling of Mac, Jack and the writer that this absence of a ceiling in its license was a major contributing factor to its downfall.

The long history of licensing in the radio TV industry rather convincingly demonstrates that an attempt to license industry even at moderate rates without a ceiling results in royalties aggregating such large sums that the major units of industry are tempted to fight rather than to pay.

D. The Legal Problem.

Hazeltine, since its organization in 1924 and until very recently, offered licenses to the industry only under its whole group of patents. The writer is convinced that that is what the industry has always wanted and still wants, namely, complete freedom of design so that it does not have to worry about Hazeltine patents as they issue from week to week. This type of licensing has been termed "package licensing" or "block booking" by analogy to the practice of motion picture producers of booking a whole block of pictures. That is, an exhibitor had to take a certain number of Grade B pictures in order to get the Grade A pictures he wanted. The Supreme Court outlawed this practice in the Paramount Pictures case in 1948 and, while it has not passed upon the package licensing of patents, the opinion of the Patent Bar, shared by the writer, is that it would condemn a corresponding package licensing of patents.

However, there must be clearly kept in mind two basically different types of "package licenses" (1) mandatory and (2) voluntary. In such licenses of the first type the patent owner compels the licensee to take a license under all of his patents if he wants a license under any, or puts such conditions upon the grant of a license on a few patents as is equivalent to a refusal, e.g. he may charge the same royalty for a single patent as for the entire group. It is believed that it would be hazardous for Hazeltine to refuse to negotiate in good faith on a license on any of its patents that a licensee may want and Hazeltine has consistently done so, as evidenced by the many licenses now outstanding on single patents.

The second type of "package license" is that in which the licensor and the licensee want to deal on the basis of a package license and this is termed the voluntary type. Such an arrangement has never been criticized or invalidated in any court proceeding. This is the basis on which Hazeltine has consistently operated in the past in the radio and monochrome TV field and operates currently in the color TV field. I believe that it should continue to do so with the reservation that if any licensee wants to negotiate a license on one or more patents Hazeltine should do so. I am confident that such a practice would never result in any decision of illegality.

My confidence in the legality of Hazeltine's present practice is supported by the "Report of the Attorney General's National Committee to Study the Antitrust Laws", dated March 31, 1955. This National Committee comprised sixty-one lawyers of national prominence in the antitrust field and included as co-chairmen Judge Stanley N. Barnes, then Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and Professor S. Chesterfield Oppenheim of the University of Michigan Law School.

The Committee considered all aspects of the antitrust field and rendered a 393 page report. The Report has become somewhat of a "bible" in the antitrust field and, while it does not have the force of a statute, it is frequently cited and relied upon by the Federal Courts in their decisions. The Report contains one chapter "Patent-Antitrust Problems" of 38 pages. Pages 239-240, copies of which are attached, deal specifically with this problem of package licensing and are quite specific as to the recommendations of the Committee.

Court decisions have not to date imposed restrictions on package licensing beyond those recommended in the 1955 Report and it is considered extremely unlikely that they will do so. Hazeltine's present licensing practices fall well within these recommendations and it is believed that it would be a fundamental mistake to give up the many advantages of voluntary "package licensing".

Moreover, even if the Court should ever hold Hazeltine's licensing practices illegal, all that would be required to overcome the illegality would be for Hazeltine promptly to give up any practices condemned by the Court and to offer to its licensees licenses of the type approved by the Court. This right of a patent owner to "purge" itself of illegal practices has been repeatedly sustained by the Courts. In the unlikely event that a Court should ever order Hazeltine to give up all package licensing, the only result would be that Hazeltine would then be in the same position which it is proposed voluntarily to take now so that it would have lost nothing and gained much.

It has been suggested that a recent decision of the Court of Appeals of the Third Circuit (Philadelphia) in the American Securit case indicates that Hazeltine should change its license practices, but that was a case based on hard facts which the patent bar feels would not be followed by other Courts. In any event, in that case the patent owner insisted on the same royalty for a license under a single patent as for the entire group and this falls squarely within the condemnation of the attached Report. Moreover, the Court found that the patent owner in that case was in direct violation of an antitrust decree of another Court which, because of background circumstances, had enjoined it from granting licenses of this type. I am confident that the American Securit case has no bearing on Hazeltine's license practices.

E. Alternate Proposal.

Any license program should be based on a royalty rate yielding an optimum income. If the royalty rate is very small, naturally everyone in the industry will take a license but the total yield will be small. At the other extreme, if the royalty rate is ordinately high, only a few will pay it but the majority of the industry will refuse to pay and will elect to litigate and, again, the total yield will be small. The optimum rate then is that which is small enough so that it will be accepted by the great majority of the industry but large enough so that it still may be rejected by a few rugged individualists. It is the opinion of the writer that the present royalty rate structure is close to that optimum.

Nevertheless, should the Management come to the conclusion that Hazeltine is entitled to a gross royalty in excess of $3 million per year which is potentially realizable under the present license program, it is not helpful to criticize one proposal for increasing that royalty income without offering some alternative constructive suggestion. The only alternative which seems practical to the writer is to commence planning now to increase appropriately both the royalty rate and the lump sum payment at the earliest opportunity. Such an increase can be put into effect only after the expiration of Hazeltine's present license commitments. The license commitments to RCA (including the 3 year renewal) expires on June 30, 1966 and that to Sylvania on December 31, 1966. I believe the latter is the earliest date on which such a royalty increase can be put into effect. There are only two licenses which extend beyond the latter date—Admiral which gives December 31, 1967 and Magnavox which expires September 30, 1967. The Admiral license can be terminated by Hazeltine at any time it chooses for default in paying royalties and I believe it might be possible to "buy off" the commitment to Magnavox for the final nine months of its license.

It must be recognized that, as a practical matter, no plan can be put into effect now to increase the royalty rates paid by one company over those paid by its competitors. This is one point on which we can be sure—that a TV manufacturer will stand and fight to the last ditch. Any suggestion that Zenith, the largest unit in the industry, would enter into a license agreement requiring it to pay royalties at a rate higher than those paid by RCA is simply unrealistic. Therefore, it is suggested that this alternative method of raising royalty income, if decided upon, can be put into effect as soon as any other proposal and, hence, suffers nothing on a time basis.

Conclusion.

In brief, the Hazeltine license situation did not, like Topsy, just grow. It is the result of a careful plan over the years, inspired principally by the sage and mature advice of Mac and Jack. It would be foolish to take the position that it cannot be improved upon but it is earnestly suggested that any proposal for change be carefully examined to make certain that it is really a change for the better and not simply a change for the sake of change.

LBD:AMR L. B. Dodds.
Att.

Major TV Companies

Licensed	Unlicensed
Admiral	Emerson
Magnavox	G.E.
Muntz	Motorola
Packard-Bell	Olympic
RCA	Pacific Mercury
Setchell Carlson	Philco
Sylvania	Zenith
Warwick	
Wells-Gardner	

DEFENDANT'S EXHIBIT NO. 4.

Mr. L. B. Dodds June 2, 1952
No. 5686

R. Adm. D. F. J. Shea
H. R. I. v. Avco et al.
Civil Action 51 C 1640

W. O. Swinyard was with me in Craig's office on the occasion of our first visit with Crosley, 13 June 1950. As Craig stated it was in the nature of a general visit and nothing came of it. On my return I wrote on June 15th to Craig (Serial 2243b). Also on June 15th I set Redfield a copy of our new license agreement (Serial 2244b). Again, as stated, I wrote to John Craig on 28 July (Serial 3049). No answer.

On July 11 I phoned Redfield and in his absence talked to Hogan. I do not remember the conversation but his report covers what I would have suggested and I am sure he could not pull that out of the blue so it probably is substantially correct.

On August 2, 1951 I wrote memo on second Crosley visit (No. 4928). At the second conference in addition to Craig, Redfield and Hogan there were present Clement, Bass and Myers.

Prior to this assembly, during discussions with John Craig, I did not at any time say or infer that I had Avco by the tail and would make them pay. At no time did I feel or have I felt that to be the case and that is, to say the least, a sheer interpretation of his own.

Several times in the conference, I stated that "in our opinion" they were infringing and mentioned "alleged" infringement.

I did not give a negative answer to the question of granting a license under four patents. I distinctly remember saying I would have to consult you on that. I stated we liked to stick to our standard if possible but that I would discuss this with you. I remember telling you of this on the phone but it does not appear in my memo of 2 August because I kept that brief partly not to put some things in writing and partly because we had a meeting set up for 8 August, a week later.

As I have repeatedly told you I did not offer to buy back immunities for 50G. I said we might be willing to do so but that I could not and it would have to be taken up in New York.

Regarding Hazeltine signing up so many Redfield himself said we should be proud of that fact as it made it easier to go after the few left. I only stated that they were signed to help convince Craig it was a good package.

I think the above covers all points in which, if true, Craig's deposition would be prejudicial to Hazeltine and I shall be glad to testify as above.

With the exception of one out-and-out statement of having Avco "by the tail" I feel that all these points are shaded interpretations of what I said.

D. F. J. Shea.

DFJS:mel—encs.

cc—W. A. MacDonald—J. B. Dow
Jack Binns

DEFENDANT'S EXHIBIT NO. 5.

Confidential!

Memorandum to Mr. Jack Binns March 4, 1949
No. 817

From R. Adm. D. F. J. Shea

Subject Belmont—Stewart-Warner—Philco—Emerson—Next Move.

To date I have heard nothing from Dave Schultz.

I just talked to Bill Dunn on the telephone and he says that the engineers he released and those that left him have put him just about at the zero point. If he is cut any more he would need outside help. He says that for $55,000 he could hire several engineers. Dave Schultz seems to have the same idea. Bill says he knows our services are better now and he is neutral—if company policy says "Yes" it is agreeable with him—he is not active either way at present.

I recommend we study their circuits and if we can make a good enough case for litigation put it up to Dave Schultz that litigation will cost them so much for which they get no return, whereas the difference in cost between $55,000 and litngation gives them good services. From his reaction with Bill Grimditch I believe this is our only possible chance.

If we can make a case for litigation I suggest a letter from you or Mac to Dave Schultz stating that at last meeting in December it was agreed we would get together in Chicago in January and decide the matter and though I have tried to arrange a meeting it has not been done to date. Tell him we would appreciate his getting together as promised prior to our next directors' meeting, 30 March, to give us his final decision in the matter. Tell him that the officers of the company earnestly hope it will be favorable so that our long and friendly relations with them will not be interrupted, etc., etc.—see Motorola letter of 22 October and Philco letter of 19 November.

I am assuming that settlement of Crosley and Emerson cases is next in line after which you will be free to talk to Ben Abrams.

I also assume you are considering the next step reference Philco—whether we should see them again and start all over or whether litigation is in order.

Please advise reference Belmont as above or whether you want to hold off pending Emerson settlement, etc.

It might be that Sam Insull now wants our services to the extent that I might tackle him on a straight five-year present basis license stating we'll change later if possible—should I do this or do you think an extension of time would be better while we work on Emerson and possibly again on Philco?

I wrote Dave Schultz a letter from New York about 17 February (second letter) and am just waiting for him to make a move.

I will not tackle Sam Insull until your instructions are received.

In summation, I am sitting tight on all subject licensees pending receipt of further instructions either on 29 March or before if available.

D. F. J. Shea.

DFJS:mel

cc—W. A. MacDonald—J. B. Dow
L. B. Dodds

DEFENDANT'S EXHIBIT NO. 6.

Memorandum to Mr. J. Binns December 30, 1949

From L. B. Dodds

Subject Colonial

Confidential.

This morning I had an extended telephone conversation with Mr. A. L. B. Richardson, patent counsel for Sylvania, relative to a prospective license to Colonial which has been under consideration for some time. He stated categorically, and from my long acquaintance with him I am inclined to believe him, that he had been trying assiduously to bring this license matter to a final conclusion but that he had been unsuccessful. Reading between the lines of our several conversations, I am confident that he has attempted to sell our license to the Colonial management, both because he has a broader viewpoint with respect to patents and patent licenses because of his previous training and because Sylvania itself has established licenses in several fields and he feels that people who live in glass houses should not throw stones.

Richardson said that his difficulties were threefold. First, due to their technical and commercial problems and to the numerous changes in management personnel, he had not been able to get the proper group together for a serious coordinated discussion of the license situation. He had only had separate and isolated talks on different occasions with different individuals. Secondly, due to the fact that Colonial has operated at a considerable loss for a period of years, Mr. Lewis, the President, took a dim view of any arrangement which would further aggravate their financial position. Thirdly, Richardson said that he had been unable to get Mr. Lewis and others to consider the license situation from a "package" point of view. They insisted on breaking it down into its parts. They reported that they were unable to pay $50,000 per year for engineering assistance. They asked him whether he would recommend that they take a license under the peak detector patents which had been invalidated in the General Motors case and he said that with due regard to his responsibility, he could not recommend such a license. They asked the similar question with respect to the hexode modulator patents and he was forced to give a similar answer. They asked the same question with regard to the Toulon patent and he said that he would be forced to recommend to take a license if they used a circuit comparable to the Philco circuit in suit. Their current TV chassis does not use that circuit but they are in the process of redesigning it. His first information was that they were going to go to the Philco circuit but it appears now that the design is not crystalized.

Richardson assured me that he was still attempting to get the responsible management personnel together to consider the license from an overall viewpoint, that is, patent protection, freedom of design, engineering assistance, and freedom of litigation costs but that he could, of course, make no promises. I am confident that Richardson is working on the problem but the odds seem to be stacked against him. He stated that Colonial's new chief engineer was Norman Harvey who had previously been in charge of their Air Force research work at their Bayside laboratory. He said that obviously Harvey had not yet gotten his feet wet so that he had not quizzed him about the license from the engineering assistance viewpoint but that he intended to do so in the near future.

I will follow up on this matter from time to time. In view of the importance which has been attached to the peak detector patents in the several discussions, in case the Court of Appeals in Chicago should reverse the decisions of the District Court in the General Electric case that might be a persuasive factor.

L. B. Dodds.

LBD:mp

cc: Mr. W. A. MacDonald
Commodore J. B. Dow
R. Adm. D. F. J. Shea
Colonel J. K. Gowen, Jr.

DEFENDANT'S EXHIBIT NO. 7.

August 8, 1951

via Air Mail).

(Letterhead of Hazeltine Corporation, Washington 4, D. C.)

Dear Jack:

Thanks for your note of August 5th, including a draft reply to Adrian Murphy of CBS. As you suggest, I will turn it over to Mac and Art for their comments.

As I told you in my last note, we had a date with Redfield of Crosley in Cincinnati yesterday. However, a couple of days in advance he phoned me and suggested that I come alone so that Admiral Shea did not attend. Charlie Hogan whom you may recall was in our Patent Department fo a short time, sat in the discussion with Redfield.

Unfortunately, the discussion did not prove to be particularly fruitful. I reviewed again our "package" license story. Redfield said that they felt that their 1949 settlement of litigation with Hazeltine had materially aided us in building up our license situation. I told him that we did not believe that that was an important factor since Emerson had not made a similar settlement as was contemplated at that time. I told him that we probably would not have made the deal except that we expected Emerson to make the same deal and clean up the Delaware cases. As it was, the same group of patents was still in litigation in Delaware and there was not too much importance whether there were one or two parties arrayed on the other side.

Also, I told him that several of our new licensees had indicated that their principal motivations in taking our license had been our work on color television and our general successes in litigation. I pointed out the strange "coincidence" in the appreciation of our color TV work by Philco and G.E. shortly before their respective cases were to go to trial.

I then discussed with Hogan the merits of Patent 2,208,374—Lewis, sustained in the Admiral litigation; Re. 21,176—Wheeler on the scanning yoke, in view of the Consent Decree of Non-infringement in the Admiral case; Re. 22,055—Toulon, and Patent 2,547,648—Loughren, on the keyed A. G. C. Hogan appeared to get an entirely new picture of these patents and, in fact, admitted that he had not checked into the use of the Loughren keyed A. G. C. patent as to which we notified them of infringement on June 4th, since he had been advised by his engineers that they were using a somewhat different circuit.

Redfield urged that they be permitted to take a "sample" of our license for a shorter period than five years to try it out and see if they like it. I said the answer to that was absolutely no. Redfield then asked that we make a proposal to them based only on the patents on which we had warned them of infringement, royalties to be based on the use of these patents. I said that I would do so but that the rates of royalty for such a license would probably be such as to exceed the $50,000 on their volume of business and that the license would necessarily contain some provision to insure against litigation as to the use of the licensed patents. I also said that we disliked that sort of arrangement as being one in which the licensee might be licensed at any given time under one group of patents while we would find it necessary to sue them on other patents, and that such litigation would seriously impair the usefulness of the license. As the discussion progressed, this suggestion pretty well dropped out of the picture.

At this time Redfield and Hogan asked to be excused for a short time. They came back in about twenty minutes and said that they felt that any deal to be negotiated should give recognition to the following factors:

1. Both parties would lose by litigation and that neither party desired litigation.

2. The benefits to be derived from Hazeltine's color TV work were speculative both as to timing and usefulness.

3. There would be some "plus" in favor of Crosley and they would be subject to rather a strong sanction if Emerson and DuMont should accept Hazeltine licenses.

4. They believed that any basis of a deal should recognize the value of their present immunities and also the contingency that Hazeltine might lose in infringement litigation with them.

5. The advantage to Hazeltine of having Crosley as a licensee. (I de-emphasized that by pointing out that while, of course, it was an advantage to have any representative company as a licensee, I did not believe the advantage to Hazeltine in having Crosley as a licensee would be greater than that of any other company of comparable size.)

6. They would expect to be assured of the right to any more favorable settlement which Hazeltine might make with Emerson or DuMont.

In the light of the foregoing factors, Redfield then proposed a deal including the following elements:

1. Crosley to give up its present immunities except with respect to the patents specifically set out in the Delaware suits as to which there was a Consent Decree against them and also to give up the side letter entitling them to the same deal in the settlement of the Delaware litigation as we might give Emerson.
2. Crosley to release Hazeltine from all past claims of any nature.
3. Crosley to take a standard license.
4. Crosley to give Hazeltine an option to take a license under the Crosley patents, such license to terminate December 31, 1954.
5. Hazeltine to release Crosley for past infringement.
6. Hazeltine to pay Crosley "X" dollars.

I pointed out that actually the deal which he had outlined was a straightforward one except for the $64 question as to the value of "X". Mr. Redfield said his position was that the value of "X" should be somewhere between $50,000, which he said Admiral Shea had already offered them, and the $250,000 they felt it should be. I told him that the latter figure was of course complete nonsense, that in effect we would be exchanging immunities which are progressively expiring and finally expire in 1953, for larger immunities extending until 1956. I told him that personally I would not have recommended making "X" as high as $50,000 and was not sure that you would, but in any event I was certain that nobody in Hazeltine would approve of assigning any larger value to "X". Nevertheless, he wished me to discuss it with you and Admiral Shea which I said I would do.

It is my general impression that Crosley will take a Hazeltine license over Redfield's dead body unless it is for some rather nominal figure. However, I did get the impression that I was able ot create an increased respect for certain of the patents which they are using, particularly Toulon, and it is just possible that when he reviews the matter, as he promised to do, they might alter their opposition to the license.

Sincerely yours,

Larry.

cc: Admiral Shea

LBD:rbj

DEFENDANT'S EXHIBIT NO. 8.

June 23, 1959.

Mr. Larry B. Dodds,
President,
Hazeltine Research Corporation—Agent,
59-25 Littleneck Parkway,
Littleneck 62, New York.

Dear Larry:

Reflecting on our last conversation, I realize that there are one or two bits of information that I would like very much to receive from you.

In discussing the possibility of a license under less than all of the inventions subject to the licensing rights of Hazeltine, you stated that your Company had determined that it would issue such licenses but only on the following royalty terms. The royalty, if I recall correctly, is determined by the number of patents selected and is a percentage of the royalty payment required in your standard form of license. I believe the formula you employ is a payment of 50% of the standard royalty for a license under one patent, a paymnet of 80% for a license under two patents and a payment of 100% for a license under three or more patents. Am I correct in that understanding? Also, if

I am correct in the formula, will you advise as to whether or not all of the terms of the standard license agreement, copy of which you recently supplied to me, are applicable to the license under the lesser number of patents. I have in mind particularly the privilege of the licensee to elect as between unit royalty payments and a paid up royalty for a year. If such an election is available under the limited license, is the lump sum figure to be adjusted percentagewise in accordance with the formula stated or does that formula apply only in respect of unit royalty payments?

We considered the Loughren AGC patent in some detail and I am left with the impression that you believe the patent to dominate time-gated AGC if the time gating is accomplished by pulse modulation of the anode potential, recognizing that this may be achieved through the application of a periodic plate potential to the AGC tube. Is this the scope that you hold out for the patent; it will be helpful to me in my future studies to have your view on the scope that you purport for the Loughren claims.

I also ask that you be good enough to confirm for me the number of the RCA licensee bulletin on gated AGC that you tentatively designate as No. 962. Also, would it be convenient for you to cite the publication date of that bullein.

I will appreciate very much your answering these specific questions.

Yours very truly,

F. W. Crotty,
Vice President In Charge of Patents.

FWC/pc

DEFENDANT'S EXHIBIT NO. 9.

Hazeltine Research, Inc.,
5445 West Diversey Avenue,
Chicago 39, Illinois.
National 2-1582.

(Stamp) Received Oct. 15, 1959, Zenith Patent Department.

(Initialed) FWC 10/15/59.

Certified Mail Return Receipt Requested.

Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, Illinois.

October 13, 1959

Attention: Mr. Hugh Robertson,
Chairman of the Board.

Gentlemen:

You are no doubt aware, as a result of discussions between representatives of our companies, that your Hazeltine License Agreement in the home broadcast receiver field expired on June 30, 1959. In order to protect our rights under the notice provisions of the Patent Statutes, we must observe the formality of notifying you of any claims we may have on account of the infringement of Hazeltine patents by home broadcast receivers being manufactured and sold by your company.

An examination of your current line of receivers indicates that one or more of such receivers constitute infringements of the following Letters Patent owned by Hazeltine Research, Inc.:

Patent No.	Inventor
2,343,263	Okrent
2,547,648	Loughren

Your attention is called particularly to the following of your chassis, although it appears that other chassis manufactured and sold by your company may also constitute infringement of the above patents:

Chassis

16C20
16C21
16D21
16D21Q
16D25
16D25Q
17D20
17D20Q

We should like it clearly understood that the foregoing notice does not in any way foreclose further discussions with respect to the issuance of a license to your company under the Hazeltine patents as we stand ready at any time to grant your company a license on reasonable terms.

Will you kindly acknowledge this letter.

Very truly yours,

Hazeltine Research, Inc.
By W. O. Swingard,
Vice President.

cc: Mr. J. S. Wright
Mr. F. W. Crotty

DEFENDANT'S EXHIBIT NO. 10

October 25, 1961

Hazeltine Corporation,
Little Neck 62, New York.

Attention: Mr. E. A. Ruestow.

Dear Ed:

In our meeting of October 18 you supplied me with a list identifying the patents of Hazeltine which you thought might be employed in the color television receivers manufactured by Zenith. The patents so identified are as follows:

Patent No.	Inventor
2,547,648	Loughren
2,728,813	Loughlin
2,773,929	Loughlin
2,774,072	Loughlin
2,848,537	Richman
2,905,749	Loughlin
2,922,839	Richman
2,933,558	Richman
2,954,425	Richman

At the same time you supplied me with a copy of what I understand to be your standard form of license agreement bearing the numeral 918 on its frontispiece.

You will appreciate that it will take considerable effort on my part to examine these patents and their relation to the Zenith color television receiver and the purpose of this note is to suggest an assignment you might undertake concurrently.

If the results of my study confirm that one or more of these patents is employed in the Zenith apparatus, it will be necessary to determine the best course of procedure and it will be helpful to me in that determination to know whether or not there is any course available other than that offered by the standard license agreement identified above. In particular, can you advise me of the terms upon which individual licenses may be obtained under any of the identified patents.

Perhaps it will be expedient to have you visit in the near future and answer questions that may occur to me in the study of these patents. I suspect that questions will arise and I will suggest as early a meeting date as convenient to both of us.

Very truly yours,
F. W. Crotty,
Vice President In Charge of Patents.

/jal

DEFENDANT'S EXHIBIT NO. 11.

November 21, 1961

Hazeltine Corporation,
Little Neck 62, New York.

Attention: Mr. E. A. Ruestow.

Dear Ed:

There is really no need to remind you of the action, presently pending in the District Court for the Northern District of Illinois, instituted by you folks and charging infringement of a Hazeltine patent by monochrome receivers of our manufacture. The attitude expressed by the Court at the last status call indicates a need to complete discovery proceedings pronto.

At your suggestion, we have been working diligently in studying the list of some 9 Hazeltine patents which you have asserted to have application to the Zenith color receiver. The evaluation of these patents in relation to the prior art and to the circuitry of our color receiver has taken quite some time and I have asked in my letters of October 25 and November 1 if you would make known to me the basis upon which licenses may be obtained under each of those patents called to my attention.

I, of course, am fully aware of the Hazeltine standard license agreement and understand that a license is available through that instrument under, not only these selected patents, but also all of the patents subject to licensing, by Hazeltine. Since we obviously have no need for a license under all of the patents of your portfolio, I am most desirous of learning the terms upon which individual licenses may be obtained under any of those identified patents. This information is required in order to prepare for a further meeting with you on this whole question and I would like a letter of advice at your earliest convenience.

As I have indicated, the desire on the part of the Court to move its docket along leaves me with no alternative but to press for this information and, failing to receive it, pursue further discovery on our defenses in the litigation in the near future.

Very truly yours,

F. W. Crotty,
Vice President In Charge of Patents.

/jal

bcc: Mr. P. J. Curtis,
McConnell, Paschen & Curtis

DEFENDANT'S EXHIBIT NO. 12.

(Note: This is a tentative draft for purposes of negotiation and is not to be construed as an offer to Licensee until otherwise agreed by Licensor.)

(Hand written in margin:) The yearly max is $500,000 but RCA's max is between $150,000 and $200,000. Percentagewise this is 3.68% with 500,000 max but current license is 1.35% scaling down by ½ and then another ½.

License Agreement.

This License Agreement dated as of between Hazeltine Research, Inc., of Chicago, Illinois, a corporation of Illinois (hereinafter called Licensor), and .... of ...., a ....

(Hand written in margin:) Rec'd from EAR at Little Neck on 4/11/62 JM 4/16/62.

Witnesseth That

Whereas, Licensor represents that it owns or has the right to grant licenses under the United States patents enumerated in Schedules A and B appended hereto and under the United States patents to issue on the patent applications, if any enumerated in said Schedules A and B; and

Whereas, Schedule A is an attempt to compile all of Licensor's patents or applications pertaining to inventions presently thought to be in general use in commercial television receivers, and Schedule B is an attempt to compile all of Licensor's patents or applications pertaining to inventions thought to be potentially useful in commercial television receivers; and

Whereas, Licensor maintains laboratories with a staff of engineers, research men, and inventors, competent to render consulting and engineering services in the field of television receivers, and expects to file future patent applications and to obtain future United States patents important in the field of television receivers; and

Whereas, Licensee desires a license under certain of such patents, issued and to be issued on said applications, which it may elect as hereinafter provided;

Now, Therefore, in view of the premises and in consideration of the licenses herein granted and agreed to be granted, the mutual covenants and agreements herein contained, and any releases executed concurrently herewith, it is agreed as follows:

Article I.

Definitions.

For the purposes of this License Agreement the following definitions shall apply:

Section 1. The word "patent" will be deemed to refer either to a United States patent which is already issued or to a United States patent which may issue on an application for United States patent.

Section 2. A "complete television receiver" means a complete television apparatus fully equipped with tubes, in the condition in which it is to be sold to the ultimate purchaser for use and fully operative (except for any antenna not particularly designed and sold by Licensee to function with such receiver and except for a primary source of power, such as batteries or house wiring) for receiving television signals and for converting them into television pictures.

Section 3. A "chassis of a television receiver" means a complete television receiver in accordance with Section 1, less the cabinet or housing and which may also be less the tubes, equivalent semiconductor devices, or speaker.

Article II.

Licenses.

Section 1. Licensee at the signing of this Agreement has the right to make any of the following elections of patents to be within the scope of Section 3 of this Article II:

(Hand written in margin:) Why can't this be a yearly choice?

First Election: Any one or more of the patents of Schedule A.

Second Election: All of the patents of Schedule A.

Third Election: All of the patents of both Schedules A and B, and all future United States patents in the field of television receivers owned or controlled by Licensor.

If Licensee makes the Third Election as provided in the preceding paragraph, Licensee shall be entitled, without further compensation to Licensor, to such consultation and engineering services of Licensor's laboratories as Licensee may request; but Licensor will be obligated to render such consultation and engineering services only to the extent that they may be performed within Licensor's laboratories and within the capacity of its then-current staff and facilities, and only to the extent that in any one year the cost thereof plus 50% mark-up does not exceed 10% of the aggregate annual royalties paid by Licensee.

Section 2. Licensee hereby makes the ______________ Election of the preceding Section 1. If the First Election has been made, the following patents of Schedule A are hereby elected by Licensee:

Section 3. Licensor hereby grants and agrees to grant under all United States patents elected in accordance with the preceding Sections 1 and 2, and upon the terms and conditions hereinafter set forth and solely and only to the extent hereinafter specified and defined, a personal, indivisible, nontransferable and nonexclusive license to Licensee to manufacture at its factories complete television receivers and chassis of television receivers and to sell complete television receivers and chassis as a whole to others.

In the event any receiver or chassis specified in the foregoing is sold without, or shipped separately from, any one or more of its normal tube complements, such apparatus shall nonetheless be licensed and royalties shall be computed and paid thereon under the provisions of Article III hereof on the same basis as though such apparatus were sold and shipped with its normal tube complement.

Section 4. Nothing herein contained, and no act or acts hereunder, shall be construed as, or result in, conveying any licenses to Licensee, expressly or by implication, estoppel or otherwise:

(a) Under any patents other than those elected in accordance with the preceding Sections 1 and 2;

(b) Under any Letters Patent which or rights under which are held by Licensor under an agreement such that Licensor can grant licenses only upon the payment of royalties or other consideration by Licensor to others; provided however, that Licensor will from time to time keep Licensee informed of all such agreements and that Licensee may at any time obtain rights under such agreements corresponding to the licenses herein granted, so far as such agreements permit, on engaging to pay Licensor any amounts which Licensor has to pay under such agreements because of Licensee's exercise of such rights;

(c) Under any patents of countries foreign to the United States;

(d) To manufacture or sell apparatus otherwise than in accordance with the express provisions of this License Agreement.

Article III.

Royalties.

Section 1. Licensee agrees to pay to Licensor upon each licensed receiver or chassis sold by Licensee royalties as follows:

(a) If Licensee shall have made the First Election in accordance with Article II, Sections 1 and 2, Licensee will pay, as a royalty for each of the patents in Schedule A which Licensee shall have elected in accordance with Article II, Section 2, the percentage of the net selling price of each licensed receiver or chassis indicated in Schedule A for each patent so elected;

(Hand written in margin:) Ridiculous—requires payment for monochrome if only color pats. are chosen! Royalty obligation attaches if patents are used or not.

(b) If Licensee shall have made the Second Election in accordance with Article II, Sections 1 and 2, Licensee will pay, as a royalty, a percentage of the net selling price of each licensed receiver or chassis which is 90% of the aggregate of the percentages indicated for all patents in Schedule A; and the maxima indicated by Schedule A shall be reduced by 10%;

(Hand written in margin:) 10% discount if all are taken.

(c) If Licensee shall have made the Third Election in accordance with Article II, Sections 1 and 2, Licensee will pay, as a royalty, a percentage of the net selling price of each licensed receiver or chassis which is 115% of the aggregate of the percentages indicated for all patents in Schedule A, and the maxima indicated by Schedule A shall be increased by 15%.

(Hand written in margin:) 15% added cost to get the entire Haz. portfolio!

Section 2. Royalties shall be payable by Licensee hereunder with respect to licensed apparatus purchased from others in all respects as though such apparatus had been manufactured by Licensee itself under this Agreement. Sales of licensed apparatus by Licensee to any other licensee of Licensor who is obligated to pay royalties to Licensor in respect thereof shall be reported by Licensee to Licensor as provided in Article IV, Section 2 hereof, but shall not be subject to the payment of royalties by Licensee.

(Hand written in margin:) Not here for RCA selling color chassis to the industry.

Section 3. Net selling price on which royalty is computed is the net selling price before any deduction for cash discounts, or for any freight, advertising or other allowances but after deduction of the following:

(Handwritten in paragraph:) Setchell Carlson gets this.

(a) manufacturers excise taxes actually paid by Licensee directly to the taxing authority;

(b) an amount equal to Licensee's manufacturing cost or purchase price, plus a fifty percent (50%) mark-up, of any portions of a complete apparatus in the condition in which it is to be sold to the ultimate purchaser for use which are functionally not a part of a complete television receiver, such as cabinets, electric clocks, electric phonograph apparatus, automatic record changing apparatus, radio receivers distinct from the television sound apparatus, etc.

(Handwritten in margin:) tape recorder?

In the case of chassis of television receivers there shall be included in the net selling price an amount equal to Licensee's cost or purchase price, plus a fifty percent (50%) mark-up, of any equipment such as tubes, or equivalent semiconductor devices, speaker, and other equipment necessary to make the chassis a complete television receiver.

The term "manufacturing cost" as used herein shall be determined in accordance with the latest edition at the time of "Uniform Accounting Manual—Electrical Manufacturing Industry" issued by the Electronics Industries Association.

Section 4. Renegotiation of Royalty Percentages.

Licensor and Licensee recognize that the royalty percentages indicated by Schedule A are based on a present knowledge of the fair value of the corresponding patents as of the date of this Agreement and that the inclusion of patents in Schedule B reflects only present knowledge of their potential value. Therefore, it is agreed that on written notice from either party at any time after two years from the date of this Agreement, the parties will renegotiate to determine whether a different percentage royalty should be assigned to any patent of Schedule A specified in such notice to bring such percentage into line with the then-current fair value of the corresponding patent; and whether any patent in Schedule B specified in such notice or any future patent of Licensor should be transferred to Schedule A and assigned a percentage individual to it which reflects its then-current fair value. In the event of disagreement as to such percentage, the disagreement will be submitted to arbitration in accordance with Article V hereof.

*(Handwritten in margin:) Whose? Why do we want this? Get fair price at first plus favored national clause.

Section 5. Notwithstanding the foregoing, no royalties exceeding the annual maximum indicated for each individual patent in Schedule A shall be payable for such individual patent so long as any other licensee of the Licensor in the field of television receivers and chassis shall have the benefit of any provision establishing an annual maximum royalty under all of Licensor's patents lower than the aggregate of the maxima indicated by Schedule A.

(Handwritten in margin:) Totally unacceptable! Get usual favored national clause.

Section 6. In order to insure to Licensor the full royalty payments contemplated under Section 1 of this Article, namely, royalty on selling prices to purchasers wholly independent of Licensee, it is agreed that, in the event that any apparatus is sold hereunder:

(1) To a corporation, firm or association which, or individual who, shall own or control directly or indirectly a controlling interest in Licensee by stock ownership or otherwise; or

(2) To a corporation, firm or association in which Licensee or stockholders of Licensee, or any subsidiary or parent or affiliated company of Licensee shall own or control directly or indirectly a controlling interest by stock ownership or otherwise; or

(3) To a corporation, firm or association to which, or individual to whom, Licensee sells exclusively or which or who purchases exclusively from Licensee apparatus of the type licensed, either as a matter of general practice or under the provisions of any sales agreement, arrangement, or understanding between the parties; or

(4) To a corporation, firm or association with which, or individual with whom, Licensee or its stockholders or subsidiary or parent or affiliated companies shall have any agreement, understanding or arrangement (such as, among other things, an option to pur-

> chase stock or involving a division of profits or special rebates or allowances) without which agreement, understanding or arrangement, prices paid by such corporation, firm or association or individual for the apparatus sold hereunder would be higher than the price actually paid, or if such agreement, understanding or arrangement results in extending to such corporation, firm, association or individual lower prices for the apparatus sold hereunder than those charged to outside concerns buying similar merchandise from Licensee in similar amounts and under similar conditions;

then, and in any of such events, the royalties to be paid hereunder in respect of such apparatus shall be upon the net selling price, before cash discount, freight or advertising allowance or other similar deductions, at which such purchaser resells such apparatus to a purchaser wholly independent of itself and of Licensee, instead of upon the net selling price of Licensee; provided however, that Licensee shall not be obligated under this section to pay royalty upon selling prices of apparatus in excess of the standard price at which Licensee sells such apparatus to any wholly independent jobber or distributor.

Section 7. For royalty purposes under this Agreement, apparatus shall be considered to be sold when billed out, or if not billed out then when delivered, shipped or mailed. If as a result of a price reduction established by Licensee or a return to Licensee of licensed apparatus previously sold by it, Licensee shall refund or credit to a customer part or all of the selling price of such licensed apparatus, Licensee shall be entitled to a credit against royalties payable hereunder equal to the royalties on that part of the selling price so refunded or credited.

Section 8. In case the royalties accrued and paid by Licensee hereunder do not aggregate a minimum of Five

Thousand Dollars ($5,000) for any fiscal license year during the life of this Agreement, Licensee agrees within thirty (30) days of the end of each such year to make up the deficiency of the actual royalties paid to such minimum sum.

(Handwritten in margin:) Why pick up this old bone.

Article IV.

Reports and Payments.

Section 1. Licensee agrees that it will keep records showing the production and the sales of all apparatus upon which royalties are payable under Article III of this Agreement in sufficient detail to enable the royalties payable hereunder to Licensor to be determined, and generally to allow such investigation of all its operations hereunder and in connection herewith as may be necessary to determine Licensee's compliance with this Agreement and the accuracy of said records and the statements to be furnished hereunder. Licensee further agrees to permit Licensor's duly authorized representative, or at the option of Licensee a reputable certified public accountant designated by Licensor, to inspect such records at all reasonable times.

Section 2. On or before the last day of each month, and as of the last day of the preceding month, Licensee agrees to furnish Licensor with written statements over the signature of some officer of Licensee, in the form appended hereto and marked Exhibit 1.

(Handwritten in margin:) Not monthly reports—quarterly.

The first of such statements shall be rendered not later than the last day of the month next following the month including the date of this License Agreement and shall cover the period from the date of this License Agreement to the end of the same month. The royalty prescribed herein shall be due and payable on the last day of each month upon all such apparatus sold by Licensee during the preceding month, or, in the case of the first statement, the period covered thereby.

If in any such period no apparatus has been sold on which royalty is payable under Article III, Section 1, a statement over the signature of some officer of Licensee to such effect shall be furnished to Licensor.

Section 3. Licensee agrees to pay interest to Licensor upon any and all amounts of royalties that are at any time overdue and payable to Licensor at the rate of six percent (6%) per annum from the date when such royalties are due and payable as provided herein.

(Handwritten in margin:) No!

Section 4. Licensor agrees not to disclose to a competitor of Licensee any confidential information relating to Licensee's business obtained by the Licensor under this Agreement, except when combined statistically with corresponding information of other licensees in such manner as to conceal said information, and except as it may be necessary to disclose the information in or in connection with any arbitration or litigation.

(Handwritten in margin:) No because these can be brought by any one.

Article V.

Arbitration.

If appropriate demand is made by either party in writing, with respect to any controversy or claim arising out of or relating to this Agreement, such controversy or claim shall be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction.

(Handwritten in margin:) No! We're not to bind ourselves to arbitration!

Article VI.

Trade Mark and Patent Markings.

Section 1. Licensee agrees to use its best efforts to mark on all receivers or chassis sold by it under this license the word "______________", or such other trade mark, trade name or brand name as Licensee shall from time to time specify in writing to Licensor. Such trade mark or trade or brand name shall be etched, stamped, or in some other permanent form affixed on every such receiver or chassis and, at election of Licensor, apparatus not bearing said word, name or trade mark is not licensed.

(Hand written in margain:) Why this?

Section 2. Licensee agrees to comply with all requests of Licensor relative to patent marking reasonably required in order to comply with the constructive notice provisions of Patent Statutes (U. S. Code, Title 35, Sec. 287). Until further notice, Licensee agrees to mark all licensed receivers or chassis manufactured and sold by it hereunder, in readily legible form, with the statement:

> "This apparatus is licensed under (the) certain United States patent rights of Hazeltine Research, Inc."

The markings required by this section shall be affixed to said licensed receivers or chassis by attaching plates bearing the required markings or by affixing said marking on said receivers or chassis in some other form equally permanent and, at election of Licensor, receivers or chassis not bearing such markings are not licensed.

(Hand written in margain:) No plates.

Section 3. Upon request of Licensor, Licensee agrees to supply to Licensor data sufficient to enable the parties to comply with preceding Section 2 of this Article VI.

Article VII.

Waiver.

No waiver by Licensor, express or implied, of any breach of any term, condition or obligation of this Agreement by Licensee shall be construed as a waiver of any subsequent breach of that term, condition or obligation, or any other term, condition or obligation of the Agreement of the same or different nature.

Article VIII.

Litigation.

Licensor agrees that it will bring and diligently prosecute such suits for infringement of the various patents under which licenses are herein granted as may in its judgment be reasonably necessary and prudent for enforcing those patents and preventing unlicensed competition in patented apparatus in the field of this license.

Article IX.

Notices.

Any notice hereunder must be in writing and may be given by registered or certified letter and shall be deemed to have been given when such registered or certified letter, properly addressed, is mailed; if given otherwise than by registered or certified letter, it shall be deemed to have been given when delivered. If such notice is to be given to Licensor it shall be addressed to Licensor at its office, 5445 West Diversey Avenue, Chicago 39, Illinois; if given to Licensee it shall be addressed to Licensee at..............................

....

....

Either party hereto may at any time by thirty (30) days' notice to the other designate any other address in place of those above given.

Article X.

Term and Termination.

Section 1. Unless sooner terminatd as herein provided, the license herein granted shall extend for a period of five (5) years from the effective date hereof.

Section 2. Licensor may, at its option, terminate this Agreement, (a) on the failure of Licensee to render statements, to pay royalties or to make any other payments due under this Agreement or on Licensee's failure to comply with any other provision of this Agreement and on its failure to correct such default within ten (10) days after its attention has been called thereto; and (b) at any time upon or during the bankruptcy, receivership or insolvency of Licensee or the appointment of a receiver or trustee for its property, or upon or after an assignment for the benefit of creditors, or upon the filing of a petition, either voluntary or involuntary, for financial reorganization of Licensee or other adjustment of its indebtedness. Any such termination by Licensor shall be by notice in writing to Licensee, stating the reason for the termination and shall take effect ten (10) days after such notice is given.

(Hand written in margin:) Why not right of cancellation—in whole or part—in favor of licensee?

Section 3. In the event of any default of Licensee identified in Section 2, subsection (a) of this Article, whether or not Licensor has terminated this Agreement in accordance with the provisions of said section, there shall thereupon become payable by Licensee the minimum royalty of Five Thousand Dollars ($5,000) specified in Article III, Section 8, for each calendar year during any portion of which Licensee shall be in default or for the prorated portion of any such calendar year including the date of commencement of this Agreement or the date of termination under the provisions of Section 1 of this Article, in case such date of commencement or termination shall be other than at the beginning or end, respectively, of a calendar year.

Section 4. All licenses shall cease on the date of termination. Apparatus manufactured during the life of the Agreement and on which royalty has been paid within thirty (30) days after the termination shall be licensed to be sold or leased in accordance with the terms and conditions hereof. Within thirty (30) days after the termination Licensee shall report and pay royalties as above provided.

Section 5. No termination of this License Agreement for any cause shall release Licensee from any of the liabilities accruing to Licensor or rescind anything done or any payment or other consideration made or given to either party hereunder prior to the time such termination becomes effective. No failure on the part of Licensor to exercise any right of termination hereunder shall be construed to prejudice any subsequent right of termination.

Article XI.

Validity.

Licensee, during the term of this Agreement, admits the validity of, and agrees that it will not voluntarily and knowingly either directly or indirectly aid or abet any attack upon the validity of, the claims of any patent under which the license herein granted shall be in force.

(Hand written in margin:) Why this?

Article XII.

Complete Agreement.

This document, together with any supplements or modifications thereof signed by the parties, comprises the complete Agreement; neither Licensor nor Licensee has made any representations or warranties other than those set forth in this Agreement and such supplements or modifications, if any.

Article XIII.

Successors and Assigns.

This Agreement shall inure to the benefit of the successors or assigns of Licensor, but neither this Agreement nor any of its benefits, nor the licenses, rights or privileges herein granted shall be directly or indirectly, by operation of law or otherwise, assigned, transferred, divided or shared by Licensee with any person, firm or corporation whatsoever, except successors or assigns to substantially the entire business of Licensee in apparatus of the type licensed, without the prior written consent of Licensor.

Article XIV.

This Agreement is to be governed by and interpreted in accordance with the laws of the State of Illinois.

In Witness Whereof, the parties hereto have caused this instrument to be duly executed in duplicate.

Hazeltine Research, Inc.,
By ....
President.

(Corporate Seal)
Attest:
....
Secretary.

(For Corporate Execution.)

....
By ....
(Title)

(Corporate Seal)
Attest:
....
(Title)

(For Individual Execution.)

....L.S.
(Title)
....L.S.
(Title)

Witness:
....

State of
County of } ss:

On this day of 19 , before me personally came , to me known, and who being by me duly sworn, did depose and say: that he is the of Hazeltine Research, Inc., one of the corporations described in and which executed the above instrument, and that he knows the seal of said corporation and the seal affixed to said instrument is said corporate seal, and that it was so affixed by authority of the Board of Directors of the said corporation, and that he signed his name thereto by like authority.

....

Notary Public.

(For Corporate Acknowledgment)

State of
County of } ss:

On this day of 19 , before me personally came , to me known, and who being by me duly sworn, did depose and say: that he is the of one of the corporations described in and which executed the above instrument, and that he knows the seal of said corporation, and the seal affixed to said instrument is said corporate seal, and that it was so affixed to said instrument by authority of the Board of Directors of the said corporation, and that he signed his name thereto by like authority.

....

Notary Public.

(For Individual Acknowledgment)

State of
County of } ss:

On this day of 19 , before me personally came , to me known, and known to me to be the person of such name who signed and sealed the foregoing instrument and who acknowledged the same to be free act and deed.

....
Notary Public.

Schedule A.

Patent No.	Issued	Royalty (Percent)	Annual Maximum for Article III, Section 5
2,547,648	Apr. 3, 1951	.50	$ 50,000
2,728,813	Dec. 27, 1955	.25	35,000
2,773,929	Dec. 11, 1956	.50	75,000
2,774,072	Dec. 11, 1956	.50	75,000
2,848,537	Aug. 19, 1958	.10	15,000
2,905,749	Sept. 22, 1959	.50	75,000
2,922,839	Jan. 26, 1960	.10	10,000
2,933,558	Apr. 19, 1960	.25	25,000
2,954,425	Sept. 27, 1960	.50	75,000
		320	435,000
		.15	.15
		160	21750
		32	4350
		.480	65,250
		3.2	
		3.68	

DEFENDANT'S EXHIBIT NO. 13.

April 16, 1962

Hazeltine Corporation,
58-25 Little Neck Parkway,
Little Neck, Long Island,
New York.

Attention: Mr. Ed Ruestow

Dear Ed:

During my visit to Hazeltine last week, you gave me the draft of a license agreement pursuant to a previous meeting involving yourself and Mr. LaFollette.

The draft has been studied but I find it totally unacceptable, so much so that I do not think it can even serve as the basis of negotiation. In my judgment this draft does not reflect any significant change in the licensing practices of Hazeltine which we believe to be illegal and which we have attacked as illegal in the pending litigation.

Very truly yours,
Francis W. Crotty,
Vice President In
Charge of Patents.

/jal

DEFENDANT'S EXHIBIT NO. 14.

May 17, 1962.

Mr. Edward A. Ruestow,
Hazeltine Corporation,
Little Neck 62, New York.

Dear Ed:

Your letter of April 27 states you have explained that Hazeltine would license Zenith individually under patents which we select and under no circumstances would conditions be imposed forcing Zenith in any way to take licenses under any other patents but my experiences to date with both yourself and Dodds fail to bear this out.

You have supplied a list of nine patents which you say are used in our color receiver and you have suggested that licenses could be obtained under any or all of them but the terms of this sort of license have certainly not been made known to me. I am mindful of a document prepared by you in the form of a license draft but it bears on its face a statement that it is not to be constructed as an offer to license.

Moreover that instrument, whatever its intent and purpose may be, includes royalty rates that are so extreme in comparison with the Hazeltine standard license and other established royalty rates in the industry as to be totally unacceptable. I advised you of that conclusion some time ago.

In a 'phone conversation subsequent to your last letter you stated that it was your intention further to study the terms under which licenses may be acquired in respect of the nine patents that you say we use. I am not in agreement that a license under all of these patents is necessary nor am I aware of any other patents of Hazeltine that are of interest.

As matters now stand, I await your further advice.

Very truly yours,

Francis W. Crotty,
Vice President In Charge of Patents.

/jal

DEFENDANT'S EXHIBIT NO. 15.

HAZELTINE RESEARCH, INC.
5445 WEST DIVERSEY AVENUE
CHICAGO 39, ILLINOIS
NATIONAL 2-1882

RECEIVED
MAR 25 1963
Zenith Patent Department

March 20, 1963

Hazeltine Research, Inc.
vs. Zenith Radio Corporation
Defendant's Exh. No. 15
C.A. No.
59-C-1847

JLC
3/25/63

Zenith Radio Corporation
6001 Dickens Avenue
Chicago 39, Illinois

Attention: Mr. F.W. Crotty, Vice President

Gentlemen:

Enclosed is the new Schedule of Hazeltine Research, Inc.'s rates for licenses under its patents and patent applications for use in television receivers. Copies of this Schedule are being sent to all licensees and those who may be infringing one or more of such unlicensed patents or utilizing pending applications.

This Schedule is the result of many months of exhaustive review of our patent position, the state of the art and the industry, and study of applicable laws. We are confident that it is fair and reasonable, and both lawful and non-discriminatory.

We would appreciate your arranging a conference with us to the end that you may make your elections pursuant to such Schedule and enter into a license agreement under any unlicensed such patents or under such patent applications which you may be using or planning to use, and if you desire to negotiate to amend any existing licenses to take advantage of such Schedule.

May we hear from you at an early date.

Sincerely,

HAZELTINE RESEARCH, INC.

By E. A. Ruestow
Executive Vice President

Defendant's Exhibit No. 15.

HAZELTINE RESEARCH, INC.
5445 WEST DIVERSEY AVENUE
CHICAGO 39, ILLINOIS
NATIONAL 2-1585

RECEIVED
MAR 25 1963
Zenith Patent Department

SCHEDULES OF LICENSE TERMS FOR TELEVISION RECEIVERS

The following schedules of rates are hereby established to January 1, 1968 for licenses of U.S. domestic patents and patent applications on which Hazeltine Research, Inc. has the right to grant non-exclusive licenses for the sale of television receivers in the U.S. The base to which the stated percentages apply, and all other terms used herein, are as defined in Hazeltine Research, Inc.'s new standard license agreement now being prepared. The Licensor-Licensee relationship will be established only by the execution of that standard agreement. Where a licensee elects to take a license on one or more said patents or patent applications, but less than all the patents and patent applications as to which Hazeltine Research, Inc. has the right to grant non-exclusive licenses, then said rates are subject to reservation by the licensor of its right to enforce against infringement any of Hazeltine Research, Inc.'s patents and patent applications under which licensee has elected not to be licensed by Hazeltine Research, Inc.

(I). Color-Television Receivers

(A). Specified patents for use in color-television receivers.

			Percentage Rate	last rate
shunted [illegible]	(1).	2,774,072 - Loughlin	.90	.5
constant lumin.	(2).	2,773,929 - Loughlin	.30	.5
sync color killer	(3).	2,954,425 - Richman	.25	.5
matched [illegible]	(4).	2,905,749 - Loughlin	.10	.5
matrix 3 from 2	(5).	2,728,813 - Loughlin	.10	.25
keyed AGC	(6).	2,547,648 - Loughren	.05	.5
variable aperture	(7).	2,933,558 - Richman	.05	.25
2-mode sync	(8).	2,848,537 - Richman	.05	.10
ACC + 2 mode sync	(9).	2,922,839 - Richman	.05	.10
	(10).	Application Serial No. 359,734 - Richman	.05	
			1.90	3.20 plus .05 for applic 3.25

(B). Any one or more of patents or patent applications for use in color-television receivers, as to which Hazeltine Research, Inc. had the right to grant non-exclusive licenses on January 1, 1963 which are not specified in (A) above - at the rate of .05% each, or all such unspecified patents or patent applications for .25%.

(II). Monochrome Television Receivers

(A). Specified patents for use in monochrome television receivers.

		Percentage Rate	
(a).	2,547,648 - Loughren	.40	vs .05 for color
(b).	2,933,558 - Richman	.35	ditto

(B). Any one or more patents and patent applications for use in monochrome television receivers, as to which Hazeltine Research, Inc. had the right on January 1, 1963 to grant non-exclusive licenses which are not specified in (II), (A) above - at the rate of .025% each, or all such unspecified patents or patent applications for .125%

(III). Various combinations into groups, of which licensees may elect any one or more as shown in (A), (B), (C), (D) and (E) below, are offered due to the fact that, as the licensee broadens his freedom of design by being licensed under more patents, the effort and expense to the licensor decreases for monitoring, administering, and protecting all licensees from discrimination, and hence the benefit thereof may be passed on to any such licensees in estimated ratio to the extent of increased license coverage, provided this is balanced, by reasonable over-all annual group dollar minima and maxima as follows:

(A). For all patents and applications specified in (I), (A) above, a group rate of 1.65%, with an annual dollar group minimum of $100,000 and maximum of $275,000. vs 1.9% aggregate and no min or max.

(B). For all patents and applications covered by (I), (A) and (B) above, a group rate of 1.7%, with an annual dollar group minimum of $125,000 and maximum of $300,000. vs 2.15% aggregate and no min or max

(C). For all patents and patent applications for use in color-television receivers referred to in (I) and all such patents and patent applications which Hazeltine Research, Inc. may acquire the right to issue non-exclusive licenses during the period of the license agreement after January 1, 1963, a group rate of 1.75%, with an annual dollar group minimum of $135,000 and maximum of $310,000.

(D). For all patents referred to in (II) above a group rate of .75%, with an annual dollar group minimum of $40,000 and maximum of $75,000. vs .75% and no min or max, 2 max for, 2 pats under old std of lic. form

(E). For all patents referred to in (II) and all patents and patent applications for use in monochrome television receivers which Hazeltine Research, Inc. may acquire the right to issue non-exclusive licenses during the period of the license agreement after January 1, 1963, a group rate of .8%, with an annual dollar group minimum of $45,000 and maximum of $80,000.

(IV). In order to avoid any possible discrimination as between licensees due to rates under licenses already in effect on January 1, 1963, and for periods thereafter, all the rates provided in (I), (II) and (III) shall be subject to the following:

(A). Until June 30, 1966 all licenses covering both patents and patent applications for use in both color and monochrome television receivers shall be subject to an over-all maximum of $200,000.

(B). Until February 1, 1965, all licenses covering patents and patent applications for use only in monochrome television receivers shall be subject to over-all maximums as follows:

(1).	2,547,648 rate .40%	Dollar maximum per annum $25,000
(2).	2,933,558 rate .35%	Dollar maximum per annum $15,000
(3).	All monochrome patents owned on January 1, 1963 rate 1.0%	Dollar maximum per annum $50,000

(V). Any rates hereafter established to be effective after January 1, 1968 shall not be discriminatory as to substantially the same patents and patent rights and the same group thereof as applied to television manufacturers.

DEFENDANT'S EXHIBIT NO. 16.

(Stamp) Received May 28, 1963, Zenith Patent Department.

Hazeltine Research, Inc.
5445 West Diversey Avenue,
Chicago 39, Illinois,
National 2-1582.

May 20, 1963.

Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, Illinois.

Attention of Mr. E. W. Crotty, Vice President.

Gentlemen:

The Schedules of License Terms for Television Receivers as heretofore furnished to you with our letter of March 20, 1963 are hereby supplemented by adding a new paragraph (VI) to said Schedules as per the enclosed copy thereof.

The purpose of this new paragraph and the manner in which it works is believed to be self-explanatory, but the following examples may be illustrative:

(a). Any patent referred to in paragraphs I(A) and (B) of said Schedules having a rate of .05% has an annual maximum of $50,000 if elected alone, but where elected along with any one or more of said other patents then the total annual maximum is determined by adding the total of the percentage rates for such elected patents and finding in the table of paragraph (VI)(A) the maximum provided for the sum of the rates for the patents so elected.

(b). An election to take all such patents at the individual specified rates would produce a total annual dollar maximum therefor of $305,000. The difference between such an election from an election to take the group rate under paragraph (III)(B) of said Schedule is that, while under said (III)(B) the maximum would be $5,000 less, it would have a minimum of $125,000 per year, while the election of all said patents under the table provided in the new (VI) would not have any minimum but would have a $5,000 a year higher maximum.

(c). The table provides for all possible combinations of said patents which might be elected, with a reasonable dollar maximum for any such combination.

The purpose of this modification is, of course, not only to provide complete flexibility as to such elections, but also permit any Licensee complete freedom in his selection of patents as he deems needed without finding it necessary to take a larger number in order to obtain a reasonable annual dollar maximum.

We would appreciate hearing from you at an early date on said Schedules as hereby modified.

Very truly yours,

Hazeltine Research, Inc.,
By E. A. Ruestow,
Executive Vice President.

(VI) In order to afford any licensee complete freedom in his selection of patents as he deems needed without finding it necessary to take a larger number in order to obtain a reasonable dollar maximum, the following is provided:

(A) In the event of the election by licensee of one or more of the patents covered in paragraphs (I)(A) and (B) above, an annual dollar maximum for the patent or patents so elected by licensee shall be applicable. Said annual dollar maximum royalty shall be the amount indicated in the Table below corresponding to the "Sum of Percentage Rates" for said individual patent or patents so elected.

Said Table is as follows:

Sum of Percentage Rates for Individual Patents Elected	Applicable Annual Maximum	Sum of Percentage Rates for Individual Patents Elected	Applicable Annual Maximum
0.05	$ 50,000	1.10	$220,000
0.10	67,000	1.15	225,000
0.15	82,000	1.20	229,000
0.20	94,000	1.25	233,000
0.25	105,000	1.30	237,000
0.30	115,000	1.35	241,000
0.35	125,000	1.40	245,000
0.40	133,000	1.45	249,000
0.45	142,000	1.50	253,000
0.50	150,000	1.55	257,000
0.55	157,000	1.60	261,000
0.60	164,000	1.65	265,000
0.65	170,000	1.70	269,000
0.70	176,000	1.75	273,000
0.75	182,000	1.80	277,000
0.80	188,000	1.85	281,000
0.85	194,000	1.90	285,000
0.90	200,000	1.95	289,000
0.95	205,000	2.00	293,000
1.00	210,000	2.05	297,000
1.05	215,000	2.10	301,000
		2.15	305,000

(B) In the event of the election by licensee of one or more of the patents listed in paragraphs (II)(A) and (B) above, an annual dollar maximum for the patent or patents so elected by licensee shall be applicable. Said annual dollar maximum royalty shall be the amount indicated in the Table below corresponding to the "Sum of Percentage Rates" for said individual patent or patents so elected.

Sum of Percentage Rates for Individual Patents Elected	Applicable Annual Maximum	Sum of Percentage Rates for Individual Patents Elected	Applicable Annual Maximum
.025	$13,200	.450	$55,900
.050	18,600	.475	57,400
.075	22,800	.500	58,900
.100	26,400	.525	60,400
.125	29,500	.750	72,000
.350	48,400	.775	73,200
.375	51,100	.800	74,400
.400	52,800	.825	75,600
.425	54,400	.850	76,800
		.875	78,000

DEFENDANT'S EXHIBIT NO. 17.

Hazeltine Research, Inc.
5445 West Diversey Avenue
Chicago 39, Illinois
National 2-1582

May 29, 1963

Zenith Radio Corporation
6001 Dickens Avenue
Chicago 39, Illinois

Attention of Mr. F. W. Crotty, Vice President

Gentlemen:

With reference to the Schedules of license terms for television receivers furnished to you with our letter of March 20, 1963 and the supplement thereto furnished to you with our letter of May 20, 1963, enclosed herewith is a copy of the new standard License Agreement referred to therein.

We shall be pleased to discuss the matter with you further at your early convenience when you have had an opportunity to study the License Agreement.

Very truly yours,
Hazeltine Research, Inc.,
By E. A. Ruestow,
Executive Vice President.

(Stamp) Received June 4, 1963 Zenith Patent Department.

DEFENDANT'S EXHIBIT NO. 18.

License Agreement

Between

Hazeltine Research, Inc.

and

Form A

License Agreement.

This License Agreement dated as of ...., ..., between Hazeltine Research, Inc., of Chicago, Illinois, a corporation of Illinois (hereinafter called Licensor), and ...., of ...., a .... (hereinafter called Licensee):

Witnesseth That

Whereas, Licensor represents that it owns or has the right to grant licenses under the United States patents enumerated in Schedule A appended hereto and under the United States patents to issue on the patent applications enumerated in said Schedule A; and

Whereas, Licensor maintains laboratories with a staff of engineers, research men, and inventors, skilled in the art of television receivers, and expects to file future patent applications and to obtain future United States patents important in the art of television receivers; and

Whereas, Licensee has heretofore received a copy of Schedule B of license terms appended hereto and engaged in negotiations with Licensor with respect thereto and selected the hereinafter identified patents and applications under which Licensee desires to be licensed; and

Whereas, Schedule B distinguishes, in accordance with Licensor's considered judgment, specifically identified patents or applications of Licensor pertaining to inventions presently thought to be in general use in commercial television receivers, and patents or applications of Licensor not specifically identified pertaining to inventions thought to be potentially useful in commercial television receivers;

Now, Therefore, in view of the premises and in consideration of the licenses herein granted and agreed to be granted, the mutual covenants and agreements herein contained, and any releases executed concurrently herewith, it is agreed as follows:

Article I.

Definitions.

For the purposes of this License Agreement the following definitions shall apply:

Section 1. The term "patent rights" will be deemed to refer either to a United States patent which is already issued, or to an application for United States patent, or to a United States patent which may issue on an application for United States patent.

Section 2. The term "television receiver" means the complete, operable receiver, including the cabinet, the sound and picture reproducers and all tubes and/or equivalent semiconductor devices and components necessary for receiving signals from broadcast stations and converting them into television pictures and accompanying sound, in the condition in which such television receiver is to be sold to the ultimate purchaser for use and fully operative except for a primary source of power, such as batteries or house wiring. It excludes the following portions of a combination television set which do not participate in the foregoing function: electric clocks, phonograph apparatus, and radio sound receivers distinct from the television receiver sound apparatus. It also excludes antenna, not included in television receivers as manufactured or sold by Licensee.

Section 3. The term "combination television set" means a unit in the condition in which it is to be sold to the ultimate purchaser for use as above but which, in addition to a television receiver, includes additional portions such as electric clocks, phonograph apparatus, and radio sound receivers excluded in Section 2 immediately preceding.

Section 4. The term "chassis" means a television receiver lacking certain equipment necessary to make a complete television receiver as further defined in the second paragraph of Article II, Section 2 hereof.

Article II.

Licenses.

Section 1. Licensee hereby elects, for grant of a license in accordance with Section 2 of this Article II, the patent rights specified, or indicated by the paragraph of Schedule B referred to, as follows:

Section 2. Licensor hereby grants and agrees to grant upon the terms and conditions hereinafter set forth and solely and only to the extent hereinafter specified and defined, a personal, indivisible, nontransferable and nonexclusive license to Licensee to practice the inventions of all United States patent rights elected in accordance with the preceding Section 1 in the manufacture at its factories of television receivers and to sell or lease such television receivers as a whole to others.

In the event any television receiver specified in the foregoing is sold without, or shipped separately from, any necessary components, such as cabinet, tubes or equivalent semiconductor devices, speaker, or other equipment necessary to make a complete television receiver, such receiver chassis shall nonetheless be licensed and royalties shall be computed and paid thereon under the provisions of Article III hereof on the same basis as though such receiver were sold and shipped with those necessary components.

Section 3. Nothing herein contained shall authorize or license the manufacture or sale of television receivers otherwise than in accordance with the express provisions of this License Agreement, and nothing herein contained, and no act or acts hereunder, shall be construed as, or result in, conveying any licenses to Licensee, expressly or by implication, estoppel or otherwise under the following:

(a) any patent rights other than those elected and licensed in accordance with the preceding Sections 1 and 2 of this Article II;

(b) any patent rights which or rights under which are held by Licensor under an agreement such that Licensor can grant licenses only upon the payment of royalties or other consideration by Licensor to others;

(c) any patent rights of countries foreign to the United States.

Article III.

Royalties.

Section 1. During the term of this Agreement, Licensee agrees to pay to Licensor upon each television receiver manufactured, sold or leased by Licensee royalties as follows:

Section 2. (a) No sale or lease of any television receiver by Licensee to any other television manufacturer, and no sale or lease by Licensee of any television receiver purchased by Licensee from any other television manufacturer, shall be considered in determining whether Licensee's sales and leases have reached the point where royalties thereon amount to either the applicable annual maximum royalty or any applicable annual minimum royalty provided in Article III, Section 1 above.

(b) Royalties shall be payable by Licensee hereunder with respect to television receivers purchased or leased from others in all other respects as though such receivers had been manufactured by Licensee itself under this Agreement, notwithstanding any royalties, including any annual minimum or maximum royalty, paid by such others to Licensor.

Sales or leases of television receivers by Licensee to any other licensee of Licensor who is obligated to pay royalties to Licensor in respect thereof shall be reported by Licensee to Licensor as provided in Article IV, Section 2 hereof, but shall be subject to the payment of royalties by Licensee only to the extent that the royalty rate applicable hereunder exceeds the royalty rate applicable under Licensor's license to such other licensee.

Section 3. (a) Net selling price on which royalty is computed is the net selling price before any deduction for cash discounts, or for any freight, advertising or other allowances but after deduction of manufacturers' excise taxes actually paid by Licensee directly to the taxing authority.

(b) Where Licensee's net selling price of a television receiver is included in the net selling price of a combination television set, the net selling price of the television receiver shall be determined by deducting from the net selling price of the combination television set an amount equal to Licensee's manufacturing cost or purchase price, plus a fifty percent (50%) mark-up, of electric clocks, phonograph apparatus, and radio sound receivers distinct from the televiison receiver sound apparatus, and any other portions not within the term "television receiver".

(c) In the case of either a television receiver or a combination television set, there shall also be deducted an amount equal to Licensee's manufacturing cost or purchase price of the cabinet plus a mark-up of fifty percent (50%) less $22.50.

(d) Where Licensee's rental of a television receiver is included in the rental of a combination television set, the rental of the television receiver shall be determined as the portion of the rental of the combination television set allocable to the television receiver in accordance with the relative value of the television receiver established by subtracting from Licensee's total manufacturing cost or purchase price of the combination television set, plus a fifty percent (50%) mark-up, Licensee's manufacturing cost or purchase price of any portions of the combination television set not within the term "television receiver" plus a fifty percent (50%) mark-up.

(e) In the case of television receivers sold without, or shipped separately from, any necessary components, such as tubes or equivalent semiconductor devices, speaker, or other equipment other than the cabinet necessary to make a complete television receiver (e.g. chassis) there shall be included in the net selling price for the purpose hereof an amount equal to Licensee's manufacturing cost or purchase price, plus a fifty percent (50%) mark-up, of any such components or other equipment, if such components or other equipment are manufactured or purchased by Licensee. If such components or other equipment are not manufactured or purchased by Licensee the net selling price shall be increased for the purpose hereof to include an amount therefor equivalent to the fair market value of such components or other equipment plus a fifty percent (50%) mark-up.

In the case of television receivers sold without, or shipped separately from, the cabinet, there shall be included in the net selling price for the purpose hereof $22.50 therefor.

The term "manufacturing cost" as used herein shall be determined in accordance with the latest edition at the time of "Uniform Accounting Manual—Electrical Manufacturing Industry" issued by the National Electrical Manufacturers Association.

Section 4. In order to insure to Licensor the full royalty payments contemplated under Section 1 of this Article, namely, royalty on selling prices and rentals to purchasers and lessees wholly independent of Licensee, it is agreed that, in the event that any apparatus is sold or leased hereunder:

(1) To a corporation, firm or association which, or individual who, shall own or control directly or indirectly a controlling interest in Licensee by stock ownership or otherwise; or

(2) To a corporation, firm or association in which Licensee or stockholders of Licensee, or any subsidiary or parent or affiliated company of Licensee shall own or control directly or indirectly a controlling interest by stock ownership or otherwise; or

(3) To a corporation, firm, or association to which, or individual to whom, Licensee sells or leases exclusively or which or who purchases or leases television receivers exclusively from Licensee, either as a matter of general practice or under the provisions of any sales agreement, arrangement, or understanding between the parties; or

(4) To a corporation, firm or association with which, or individual with whom, Licensee or its stockholders or subsidiary or parent or affiliated companies shall have any agreement, understanding or arrangement (such as, among other things, an option to purchase stock or involving a division of profits or special rebates or allowances) without which agreement, understanding or arrangement, prices or rentals, paid by

such corporation, firm or association or individual for the television receivers sold or leased hereunder would be higher than the price or rental actually paid, or if such agreement, understanding or arrangement results in extending to such corporation, firm, association or individual lower prices or rentals for the television receivers sold or leased hereunder than those charged to outside concerns buying or leasing similar merchandise from Licensee in similar amounts and under similar conditions; or

(5) To another manufacturer which is not a licensee of Licensor;

then, and in any of such events, the royalties to be paid hereunder in respect to such television receivers shall be upon the net selling price, before cash discount, freight or advertising allowance or other similar deductions or rental at which such purchaser or lessee resells or leases such apparatus to a purchaser or lessee wholly independent of itself and of Licensee, instead of upon the net selling price or rental of Licensee; provided however, that Licensee shall not be obligated under this section to pay royalty upon selling prices or rentals of television receivers in excess of the standard price or rental at which Licensee sells or leases such television receivers to any wholly independent jobber or distributor.

Section 5. For royalty purposes under this Agreement, television receivers shall be considered to be sold when billed out, or if not billed out then when delivered, shipped or mailed. If as a result of a price reduction established by Licensee or a return to Licensee of licensed television receivers previously sold by it, Licensee shall refund or credit to a customer part or all of the selling price of such licensed television receivers, Licensee shall be entitled to a credit against royalties payable hereunder equal to the royalties on that part of the selling price so refunded or credited.

Article IV.

Reports and Payments.

Section 1. Licensee agrees that it will keep records showing the production and the sales or lease of all television receivers upon which royalties are payable under Article III of this Agreement in sufficient detail to enable the royalties payable hereunder to Licensor to be determined, and generally to allow such investigation of all its operations hereunder and in connection herewith as may be necessary to determine Licensee's compliance with this Agreement and the accuracy of said records and the statements to be furnished hereunder. Licensee further agrees to permit Licensor's duly authorized representative, or at the option of Licensee a reputable certified public accountant designated by Licensor, to inspect such records at all reasonable times.

Section 2. On or before the last day of each month, and as of the last day of the preceding month, Licensee agrees to furnish Licensor with written statements in form prescribed by Licensor over the signature of an officer of Licensee of all royalties due under this Agreement.

The first of such statements shall be rendered not later than the last day of the month next following the month including the date of this License Agreement and shall cover the period from the date of this License Agreement to the end of the same month. The royalty prescribed herein shall be due and payable on the last day of each month upon all such television receivers sold by Licensee during the preceding month, or, in the case of the first statement, the period covered thereby.

If in any such period no television reecivers have been sold or leased on which royalty is payable under Article

III, Section 1, a statement over the signature of an officer of Licensee to such effect shall be furnished to Licensor.

Section 3. Licensee agrees to pay interest to Licensor upon any and all amounts of royalties that are at any time overdue and payable to Licensor at the rate of six percent (6%) per annum from the date when such royalties are due and payable as provided herein.

Section 4. Licensor agrees not to disclose to a competitor of Licensee any confidential information relating to Licensee's business obtained by the Licensor under this Agreement, except when combined statistically with corresponding information of other licensees in such manner as to conceal said information, and except as it may be necessary to disclose the information in or in connection with any arbitration or litigation.

Article V.

Trade Mark and Patent Markings.

Section 1. Licensee agrees to use its best efforts to mark on all television receivers sold by it under this license the word "................................", or such other trade mark, trade name or brand name as Licensee shall from time to time specify in writing to Licensor. Such trade mark or trade or brand name shall be etched, stamped, or in some other permanent form affixed on every such television receiver and, at election of Licensor, television receivers not bearing said word, name or trade mark are not licensed.

Section 2. Licensee agrees to comply with all requests of Licensor relative to patent markings reasonably required in order to comply with the constructive notice provisions of Patent Statutes, (U.S. Code, Title 35, Sec. 287). Until further notice, Licensee agrees to mark all licensed television receivers manufactured and sold or leased by it hereunder, in readily legible form, with the statement:

"This apparatus is licensed under the United States patent rights of Hazeltine Research, Inc."

The marking required by this section shall be affixed to said licensed television receivers by attaching plates bearing the required marking or by affixing said marking on said television receivers in some other form equally permanent and, at election of Licensor, television receivers not bearing such markings are not licensed.

Section 3. Upon request of Licensor, Licensee agrees to supply to Licensor data sufficient to enable the parties to comply with the preceding Section 2 of this Article V.

Article VI.

Waiver.

No waiver by Licensor, express or implied, of any breach of any term, condition or obligation of this Agreement by Licensee shall be construed as a waiver of any subsequent breach of that term, condition or obligation, or any other term, condition or obligation of the Agreement of the same or different nature.

Article VII.

Litigation.

Licensor agrees that it will bring and diligently prosecute such suits for infringement of the various patents under which licenses are herein granted as may in its judgment be reasonably necessary and prudent for enforcing those patents and preventing unlicensed competition in patented television receivers in the field of this license.

Article VIII.

Notices.

Any notice hereunder must be in writing and may be given by registered or certified letter and shall be deemed to have been given when such registered or certified letter, properly addressed, is mailed; if given otherwise than by registered or certified letter, it shall be deemed to have been given when delivered. If such notice is to be given to Licensor it shall be addressed to Licensor at its office, 5445 West Diversey Avenue, Chicago 39, Illinois; if given to Licensee it shall be addressed to Licensee at .... Either party hereto may at any time by thirty (30) days' notice to the other designate any other address in place of those above given.

Article IX.

Term and Termination.

Section 1. Unless sooner terminated as herein provided, the license herein granted shall extend to January 1, 1968.

Section 2. Licensor may, at its option, terminate this Agreement, (a) on the failure of Licensee to render statements, to pay royalties or to make any other payments due under this Agreement or on Licensee's failure to comply with any other provision of this Agreement and on its failure to correct such default within ten (10) days after its attention has been called thereto; and (b) at any time upon or during the bankruptcy, receivership or insolvency of Licensee or the appointment of a receiver or trustee for its property, or upon or after an assignment for the benefit of creditors, or upon the filing of a petition, either voluntary or involuntary, for financial reorganization of Licensee or other adjustment of its indebtedness.

Any such termination by Licensor shall be by notice in writing to Licensee, stating the reason for the termination and shall take effect ten (10) days after such notice is given.

Section 3. All licenses shall cease on the date of termination. Television receivers manufactured during the life of the Agreement and on which royalty has been paid within thirty (30) days after the termination shall be licensed to be sold in accordance with the terms and conditions hereof. Within thirty (30) days after the termination Licensee shall report and pay royalties as above provided.

Section 4. No termination of this License Agreement for any cause shall release Licensee from any of the liabilities accruing to Licensor or rescind anything done or affect any payment or other consideration made or given to either party hereunder prior to the time such termination becomes effective. No failure on the part of Licensor to exercise any right of termination hereunder shall be construed to prejudice such right or any subsequent right of termination.

Article X.

Validity.

Licensee, during the term of this Agreement, admits the validity of, and agrees that it will not voluntarily and knowingly either directly or indirectly aid or abet any attack upon the validity of the claims of any patent rights under which the license herein granted shall be in force.

Article XI.

Complete Agreement.

This document, together with any supplements or modifications thereof signed by the parties, comprises the complete Agreement; neither Licensor nor Licensee has made any representations or warranties other than those set forth in or appended to this Agreement and such supplements or modifications, if any.

Article XII.

Successors and Assigns.

This Agreement shall inure to the benefit of the successors or assigns of Licensor, but neither this Agreement nor any of its benefits, nor the licenses, rights or privileges herein granted shall be directly or indirectly, by operation of law or otherwise, assigned, transferred, divided or shared by Licensee with any person, firm or corporation whatsoever, except successors to or assigns of substantially the entire business of Licensee in television receivers of the type licensed, without the prior written consent of Licensor.

Article XIII.

Illinois Laws.

This Agreement is to be governed by and interpreted in accordance with the laws of the State of Illinois.

In Witness Whereof, the parties hereto have caused this instrument to be duly executed in duplicate.

Hazeltine Research, Inc.
By ....
President.

(Corporate Seal)
Attest:
....
Secretary.

(For Corporate Execution.)

....
By ....
(*Title.*)

(Corporate Seal)
Attest:
....
(*Title.*)

(For Individual Execution.)

....L.S.
(*Title.*)
....L.S.
(*Title.*)

Witness:
....

State of ...., }
County of ...., } ss.

On this .... day of ...., 19........., before me personally came ...., to me known, and who being by me duly sworn, did depose and say: that he is the .... of Hazeltine Research, Inc., one of the corporations described in and which executed the above instrument, and that he knows the seal of said corporation and the seal affixed to said instrument is said corporate seal, and that it was so affixed by authority of the Board of Directors of the said corporation, and that he signed his name thereto by like authority.

....

Notary Public.

(For Corporate Acknowledgement.)

State of ...., } ss.
County of ...., }

On this .... day of ...., 19........, before me personally came ...., to me known, and who being by me duly sworn, did depose and say: that he is the .... of .... one of the corporations described in and which executed the above instrument, and that he knows the seal of said corporation, and the seal affixed to said instrument is said corporate seal, and that it was so affixed to said instrument by authority of the Board of Directors of the said corporation, and that he signed his name thereto by like authority:

....
Notary Public.

(For Individual Acknowledgment.)

State of ...., } ss.
County of ....}

On this .... day of ...., 19.........., before me personally came ...., to me known, and known to me to be the person of such name who signed and sealed the foregoing instrument and who acknowledged the same to be fr[illegible] act and deed.

....

Notary Public.

Schedule B.

Schedules of License Terms for Television Receivers.

The following schedules of rates are hereby established to January 1, 1968 for licenses of U. S. domestic patents and patent applications on which Hazeltine Research, Inc. has the right to grant non-exclusive licenses for the sale of television receivers in the U. S. The base to which the stated percentages apply, and all other terms used herein, are as defined in Hazeltine Research, Inc.'s new standard license agreement now being prepared. The Licensor-Licensee relationship will be established only by the execution of that standard agreement. Where a licensee elects to take a license on one or more said patents or patent applications, but less than all the patents and patent applications as to which Hazeltine Research, Inc. has the right to grant non-exclusive licenses, then said rates are subject to reservation by the licensor of its right to enforce against infringement any of Hazeltine Research, Inc.'s patents and patent applications under which licensee has elected not to be licensed by Hazeltine Research, Inc.

(I) Color-Television Receivers

(A) Specified patents for use in color-television receivers.

	Percentage Rate
(1) 2,774,072—Loughlin	.90
(2) 2,773,929—Loughlin	.30
(3) 2,954,425—Richman	.25
(4) 2,905,749—Loughlin	.10
(5) 2,728,813—Loughlin	.10
(6) 2,547,648—Loughren	.05
(7) 2,933,558—Richman	.05
(8) 2,848,537—Richman	.05
(9) 2,922,838—Richman	.05
(10) Application Serial No. 359,734—Richman	.05

(B) Any one or more of patents or patent applications for use in color-television receivers, as to which Hazeltine Research, Inc. had the right to grant non-exclusive licenses on January 1, 1963 which are not specified in (A) above—at the rate of .05% each, or all such unspecified patents or patent applications for .25%.

(II) Monochrome Television Receivers.

(A) Specified patents for use in monochrome television receivers.

	Percentage Rate
(a) 2,547,648—Loughren	.40
(b) 2,933,558—Richman	.35

(B) Any one or more patents and patent applications for use in monochrome television receivers, as to which Hazeltine Research, Inc. had the right on January 1, 1963 to grant non-exclusive licenses which are not specified in (II), (A) above—at the rate of .025% each, or all such unspecified patents or patent applications for .125%.

(III) Various combinations into groups, of which licensees may elect any one or more as shown in (A), (B), (C), (D) and (E) below, are offered due to the fact that, as the licensee broadens his freedom of design by being licensed under more patents, the effort and expense to the licensor decreases for monitoring, administering, and protecting all licensees from discrimination, and hence the benefit thereof may be passed on to any such licensees in estimated ratio to the extent of increased license coverage, provided this is balanced, by reasonable over-all annual group dollar minima and maxima as follows:

(A.) For all patents and applications specified in (I), (A) above, a group rate of 1.65%, with an annual dollar group minimum of $100,000 and maximum of $275,000.

(B.) For all patents and applications covered by (I), (A) and (B) above, a group rate of 1.7%, with an annual dollar group minimum of $125,000 and maximum of $300,000.

(C.) For all patents and patent applications for use in color-television receivers referred to in (I) and all such patents and patent applications which Hazeltine Research, Inc. may acquire the right to issue non-exclusive licenses during the period of the license agreement after January 1, 1963, a group rate of 1.75%, with an annual dollar group minimum of $135,000 and maximum of $310,000.

(D.) For all patents referred to in (II) above a group rate of .75%, with an annual dollar group minimum of $40,000 and maximum of $75,000.

(E.) For all patents referred to in (II) and all patents and patent applications for use in monochrome television receivers which Hazeltine Research, Inc. may acquire the right to issue non-exclusive licenses during the period of the license agreement after January 1, 1963, a group rate of .8%, with an annual dollar group minimum of $45,000 and maximum of $80,000.

(IV) In order to avoid any possible discrimination as between licensees due to rates under licenses already in effect on January 1, 1963, and for periods thereafter, all the rates provided in (I), (II) and (III) shall be subject to the following:

(A.) Until June 30, 1966 all licenses covering all patents and all patent applications for use in both color and monochrome television receivers shall be subject to an over-all annual maximum of $200,000.

(B.) Until February 1, 1965, all licenses covering patents and patent application for use only in monochrome television receivers shall be subject to over-all maximums as follows:

(1) 2,547,648 rate .40%	Dollar maximum per annum $25,000
(2) 2,933,558 rate .35%	Dollar maximum per annum $15,000
(3) All monochrome patents owned on January 1, 1963 rate 1.0%	Dollar maximum per annum $50,000 (without a minimum requirement)

(V) Any rates hereafter established to be effective after January 1, 1968 shall not be discriminatory as to substantially the same patents and patent rights and the same group thereof as applied to television manufacturers.

(VI) In order to afford any licensee complete freedom in his selection of patents as he deems needed without finding it necessary to take a largre number in order to obtain a reasonable dollar maximum, the following is provided:

(A) In the event of the election by licensee of one or more of the patents covered in paragraphs (I) (A) and (B) above, an annual dollar maximum for the patent or patents so elected by licensee shall be applicable. Said annual dollar maximum royalty shall be the amount indicated in the Table below corresponding to the "Sum of Percentage Rates" for said individual patent or patents so elected.

Said Table is as follows:

Sum of Percentage Rates for Individual Patents Elected	Applicable Annual Maximum	Sum of Percentage Rates for Individual Patents Elected	Applicable Annual Maximum
0.05	$ 50,000	1.10	$220,000
0.10	67,000	1.15	225,000
0.15	82,000	1.20	229,000
0.20	94,000	1.25	233,000
0.25	105,000	1.30	237,000
0.30	115,000	1.35	241,000
0.35	125,000	1.40	245,000
0.40	133,000	1.45	249,000
0.45	142,000	1.50	253,000
0.50	150,000	1.55	257,000
0.55	157,000	1.60	261,000
0.60	164,000	1.65	265,000
0.65	170,000	1.70	269,000
0.70	176,000	1.75	273,000
0.75	182,000	1.80	277,000
0.80	188,000	1.85	281,000
0.85	194,000	1.90	285,000
0.90	200,000	1.95	289,000
0.95	205,000	2.00	293,000
1.00	210,000	2.05	297,000
1.05	215,000	2.10	301,000
		2.15	305,000

(B) In the event of the election by licensee of one or more of the patents listed in paragraphs (II) (A) and (B) above, an anuual dollar maximum for the patent or patents so elected by licensee shall be applicable. Said annual dollar maximum royalty shall be the amount indicated in the Table below corresponding to the "Sum of Percentage Rates" for said individual patent or patents so elected.

Sum of Percentage Rates for Individual Patents Elected	Applicable Annual Maximum	Sum of Percentage Rates for Individual Patents Elected	Applicable Annual Maximum
.025	$13,200	.450	$55,900
.050	18,600	.475	57,400
.075	22,800	.500	58,900
.100	26,400	.525	60,400
.125	29,500	.750	72,000
.350	48,400	.775	73,200
.375	51,100	.800	74,400
.400	52,800	.825	75,600
.425	54,400	.850	76,800
		.875	78,000

Schedule A.

Hazeltine Research, Inc.

United States Letters Patent and Applications

Patent No.	Issued	Patent No.	Issued
2,411,695	Nov. 26, 1946	2,513,921	July 4, 1950
2,413,423	Dec. 31, 1946	2,513,936	July 4, 1950
2,447,309	Aug. 17, 1948	2,514,957	July 11, 1950
2,469,168	May 3, 1949	2,518,736	Aug. 15, 1950
2,485,731	Oct. 25, 1949	2,519,209	Aug. 15, 1950
2,488,359	Nov. 15, 1949	2,519,524	Aug. 22, 1950
2,495,938	Jan. 31, 1950	2,521,945	Sept. 12, 1950
2,498,253	Feb. 21, 1950	2,522,706	Sept. 19, 1950
2,499,576	Mar. 7, 1950	2,522,731	Sept. 19, 1950
2,501,834	Mar. 28, 1950	2,525,919	Oct. 17, 1950
2,503,879	Apr. 11, 1950	2,526,229	Oct. 17, 1950
2,511,595	June 13, 1950	2,527,664	Oct. 31, 1950
2,513,731	July 4, 1950	2,531,215	Nov. 21, 1950
2,513,761	July 4, 1950	2,540,560	Feb. 6, 1951

Patent No.	Issued	Patent No.	Issued
2,547,648	Apr. 3, 1951	2,759,993	Aug. 21, 1956
2,548,436	Apr. 10, 1951	2,760,108	Aug. 21, 1956
2,549,578	Apr. 17, 1951	2,763,717	Sept. 18, 1956
2,550,486	Apr. 24, 1951	2,765,363	Oct. 2, 1956
2,562,476	July 31, 1951	2,773,929	Dec. 11, 1956
2,564,578	Aug. 14, 1951	2,773,930	Dec. 11, 1956
2,570,805	Oct. 9, 1951	2,774,072	Dec. 11, 1956
2,576,617	Nov. 27, 1951	2,774,867	Dec. 18, 1956
2,577,955	Dec. 11, 1951	2,784,249	Mar. 5, 1957
2,609,460	Sept. 2, 1952	2,787,705	Apr. 2, 1957
2,611,029	Sept. 16, 1952	2,793,247	May 21, 1957
2,614,212	Oct. 14, 1952	2,800,608	July 23, 1957
2,618,703	Nov. 18, 1952	2,802,909	Aug. 13, 1957
2,624,837	Jan. 6, 1953	2,806,211	Sept. 10, 1957
2,633,527	Mar. 31, 1953	2,807,661	Sept. 24, 1957
2,646,526	July 21, 1953	2,807,740	Sept. 24, 1957
2,646,532	July 21, 1953	2,810,780	Oct. 22, 1957
2,651,002	Sept. 1, 1953	2,811,579	Oct. 29, 1957
2,658,163	Nov. 3, 1953	2,813,147	Nov. 12, 1957
2,664,471	Dec. 29, 1953	2,814,778	Nov. 26, 1957
2,673,892	Mar. 30, 1954	2,819,333	Jan. 7, 1958
2,678,388	May 11, 1954	2,831,997	Apr. 22, 1958
2,678,389	May 11, 1954	2,833,851	May 6, 1958
2,678,964	May 18, 1954	2,833,870	May 6, 1958
2,697,744	Dec. 21, 1954	2,841,641	July 1, 1958
2,702,837	Feb. 22, 1955	2,841,642	July 1, 1958
2,703,389	Mar. 1, 1955	2,841,643	July 1, 1958
2,705,778	Apr. 5, 1955	2,841,700	July 1, 1958
2,707,206	Apr. 26, 1955	2,842,613	July 8, 1958
2,715,154	Aug. 9, 1955	2,844,758	July 22, 1958
2,717,362	Sept. 6, 1955	2,844,795	July 22, 1958
2,722,563	Nov. 1, 1955	2,845,480	July 29, 1958
2,728,813	Dec. 27, 1955	2,848,533	Aug. 19, 1958

Patent No.	Issued	Patent No.	Issued
2,729,702	Jan. 3, 1956	2,848,537	Aug. 19, 1958
2,730,564	Jan. 10, 1956	2,851,517	Sept. 9, 1958
2,735,015	Feb. 14, 1956	2,853,548	Sept. 23, 1958
2,743,311	Apr. 24, 1956	2,853,602	Sept. 23, 1958
2,752,419	June 26, 1956	2,855,457	Oct. 7, 1958
2,754,356	July 10, 1956	2,855,571	Oct. 7, 1958
2,856,454	Oct. 14, 1958	2,927,204	Mar. 1, 1960
2,857,457	Oct. 21, 1958	2,929,025	Mar. 15, 1960
2,857,574	Oct. 21, 1958	2,931,946	Apr. 5, 1960
2,862,050	Nov. 25, 1958	2,933,558	Apr. 19, 1960
2,862,143	Nov. 25, 1958	2,933,642	Apr. 19, 1960
2,864,951	Dec. 16, 1958	2,934,598	Apr. 26, 1960
2,868,872	Jan. 13, 1959	2,936,332	May 11, 1960
2,874,211	Feb. 17, 1959	2,936,384	May 10, 1960
2,874,311	Feb. 17, 1959	2,941,072	June 14, 1960
2,875,273	Feb. 24, 1959	2,942,060	June 21, 1960
2,876,372	Mar. 3, 1959	2,943,142	June 28, 1960
2,877,293	Mar. 10, 1959	2,943,263	June 28, 1960
2,877,295	Mar. 10, 1959	2,943,270	June 28, 1960
2,882,336	Apr. 14, 1959	2,944,105	July 5, 1960
2,885,464	May 5, 1959	2,944,173	July 5, 1960
2,885,465	May 5, 1959	2,945,135	July 12, 1960
2,888,648	May 26, 1959	2,947,807	Aug. 2, 1960
2,890,270	June 9, 1959	2,947,953	Aug. 2, 1960
2,890,273	June 9, 1959	2,950,349	Aug. 23, 1960
2,890,381	June 9, 1959	2,951,897	Sept 6, 1960
2,892,021	June 23, 1959	2,954,425	Sept. 27, 1960
2,896,014	July 21, 1959	2,954,533	Sept. 27, 1960
2,897,266	July 28, 1959	2,968,767	Jan. 17, 1961
2,898,397	Aug. 4, 1959	2,969,470	Jan. 24, 1961
2,898,454	Aug. 4, 1959	2,976,350	Mar. 21, 1961
2,898,458	Aug. 4, 1959	2,976,351	Mar. 21, 1961
2,898,459	Aug. 4, 1959	2,976,359	Mar. 21, 1961

Patent No.	Issued	Patent No.	Issued
2,900,440	Aug. 18, 1959	2,976,409	Mar. 21, 1961
2,905,749	Sept. 22, 1959	2,980,795	Apr. 18, 1961
2,905,752	Sept. 22, 1959	2,987,572	June 6, 1961
2,905,854	Sept. 22, 1959	2,987,617	June 6, 1961
2,910,581	Oct. 27, 1959	2,988,592	June 13, 1961
2,910,658	Oct. 27, 1959	2,995,620	Aug. 8, 1961
2,912,572	Nov. 10, 1959	2,996,572	Aug. 15, 1961
2,914,606	Nov. 24, 1959	2,996,717	Aug. 15, 1961
2,922,033	Jan. 19, 1960	3,002,049	Sept. 26, 1961
2,922,839	Jan. 26, 1960	3,002,090	Sept. 26, 1961
2,924,651	Feb. 9, 1960	3,009,015	Nov. 14, 1961
2,925,527	Feb. 16, 1960	3,015,152	Jan. 2, 1962
2,927,151	Mar. 1, 1960	3,015,728	Jan. 2, 1962
3,015,763	Jan. 2, 1962	3,070,750	Dec. 25, 1962
3,017,576	Jan. 16, 1962	3,076,147	Jan. 29, 1963
3,020,339	Feb. 6, 1962	3,080,641	Mar. 12, 1963
3,038,027	June 5, 1962	3,081,420	Mar. 12, 1963
3,038,072	June 5, 1962	3,084,216	Apr. 2, 1963
3,043,909	July 10, 1962	3,086,173	Apr. 16, 1963
3,056,853	Oct. 2, 1962		

Re. 24,882—Sept. 27, 1960

Re. 25,284—Nov. 6, 1962

Application Serial No.
16,407
17,600
35,554
36,372
45,208
51,708
56,703
82,293
84,632
84,636
84,637
84,666
84,667
85,740
88,475
89,895
90,146

Application Serial No.
104,359
107,191
120,137
129,501
140,167
175,736
189,830
192,282
339,145
359,734
580,600
619,912
630,241
803,500
848,935
856,608

DEFENDANT'S EXHIBIT NO. 22.

February 8, 1963

D. Westermann

Tentative Rates, Etc. for Domestic Patent Licensing Program Worked Out In Meeting 2/7/63 by Messrs. Beam, Dodds, Ruestow and Westermann, for Further Consideration.

Monochrome.

There would be a basic charge of .15 of the television sets selling price for the fixed initial cost of issuing any license no matter how many patents are covered. This includes reserve for the obligation to sue infringers.

For each of the two basic monochrome patents (Loughren and Richman) (called the "monochrome" A package), the royalty would be .30. Hence, the total charge for either of them would be .45. Instead of a charge of .75 for both of them, the charge would be .65.

The lump sum or maximum for both of them would be $50,000, or $25,000 for either of them.

The package license charge for all other patents for monochrome use only (called the monochrome B Package) would be .15, in addition to the .15 basic fixed cost rate, or a $12,500 maximum or lump sum. Although either of the two above patents might be useful in color, its licensing at the above rates would be limited to monochrome.

Minimum royalty was not fixed as I recall but might be $3,000 and would not exceed that.

The strategy would be to offer only the A package in its entirety as Hazeltine's initial proopsal but there would be no resistance to any request for individual basic patent licensing or pricing.

All patents other than the two basic ones—called "insignificant patents"—would be offered only as the monochrome B package. An attempt is to be made not to license them at all. However, if it became necessary to license them because an applicant for the basic patents would not take them without such insurance against Hazeltine infringement, then the insignificant patent package would have to be available to any responsible manufacturer even if he did not take the basic patents, and the package rate of .15, or $12,500 maximum, would not be conditioned on his taking either of the basic patents.

In addition, if for reasons peculiar to his own requirements, a particular licensee desired any one or more but not all of this package of insignificant patents, they would be offered to him (assuming that we had already been obligated to license any of them as indicated above), but the rate for each patent would then be a custom made rate based and negotiated on his particular requirement (on the basis that, in an overall industry sense, the patents are virtually worthless separately), and the rate fixed would not have to have any direct relation to the package rate for this group of insignificant patents, except that it could not be prohibitive or arbitraily high or wholly disproportionate to its real value to the particular licensee, and probably could not exceed the .15 rate.

It would be contemplated that if the package of insignificant patents is taken by a licensee of one of the basic patents, for insurance purposes, it would also include rights under future Hazeltine patents during the life of the license.

It is contemplated that if any of the insignificant patents, or any future patent, turns out later to have real value, it will be added to the above basic patents, and would have a specific royalty assigned to it, and it would be included in the basic patent license package, and the package rate would be increased accordingly. Of course there is a ceiling above which the package rate for basic patents cannot go, just as a matter of what the traffic will bear, but that problem would have to be considered and solved at that time, if the package of insignificant patents had already been licensed, even the charging of a high rate for one of these patents, which might have become valuable, by adding it to the basic patent package, would have to take effect on expiration of the insignificant patent package license or licenses already issued: this is not a matter of law but of practicality in that the licensees would not accept any other approach.

Color.

The basic fixed charge would be .15 with a $3,000 minimum.

The rate for each of the two basic Loughlin patents would be .45, each with a lump sum or maximum of $54,540 each. The royalty for each of the other five patents in paragraph (7) of the Dodds' 1/24/63 memo would be .15 each, with a maximum or lump sum of $18,180. These seven patents would make up the color A package.

If a licensee took that package he would pay a royalty of 1.65 instead of 1.80.

The maximum for such package would be $200,000 at the present time. This is because RCA presently has us tied to a $150,000 rate which becomes $200,000 next June. This is too low. Hence the license would provide that, effective as of the date that we get out from under that $200,000 RCA maximum, the maximum would increase to $300,000 and the proportionate maximum for each of the seven separate patents would be increased accordingly.

There would be a royalty for all other patents, which is the 240 odd presently insignificant patents, and rights under future patents during the life of the license, of .25 as a package license rate, with a $27,000 lump sum or maximum. This would be the color B package.

The same strategy and principles with respect to the offering of patents, or the package of insignificant patents, or individual insignificant patents, as indicated above with respect to monochrome, would apply to color.

D. Westermann.

DW:cc

cc: R. L. Beam
W. M. McFarland
L. B. Dodds
F. A. Ruestow
P. F. LaFollette

Attachment to
Memo to File
February 8, 1963.

Monochrome Only.

	Rate	Lump Sum
Basic Charge	.15 or $3,000 minimum	
"A" Package		
Loughren Patent	.30	25,000
Richman	.30	25,000
Package	1.65	50,000
"B" Package	.15	12,500

(If B package is licensed at all, it will be available to all as a package, or by patents separately with separate royalty rates "custom made".)

Color Only

	Rate	Lump Sum
Basic Charge	.15 or $3,000 minimum	
"A" Package		
Loughlin	.45	54.540
Loughlin	.45	54,540
Loughren	.15	18,180
Loughlin	.15	18,180
Loughlin	.15	18,180
Richman	.15	18,180
Richman	.15	18,180
"A" Package Total	1.65	200,000

($200,000 to be increased to $300,000 when RCA "ceiling" lifted, and other lump sums to be adjusted.)

"B" Package	.25	27,000

(See comment above as to "B" offer—Same applies.)

Note: The two basic monochrome patents are also valuable to color. They were not an 2/7 included in the color "A" package. They should be. Rates and lump sums may have to be adjusted.

The above rates and lumps establish the system which all agree is safely free of "misuse". They may on further consideration have to be adjusted to be sure that the most valuable and most likely to be licensed will return full value to Hazeltine, bearing in mind that all licensees may not take the full color package at 1.65. This is a question of how to get the total income that the color position warrants.

E. A. R. Thoughts on 2-7-63 Plan.

1. We should aim at getting upwards of 1% on the average from whatever groupings various licensees choose.
   We should not entertain too much hope of their selecting the A package—they are cost conscious and will look for the lowest possible rate. (G. E. is thinking this way. Zenith, too. Besides, RCA has set the pattern with individual pricing.)

   This means individual prices must be collectively much higher than 1.65% because different licensees will select different groupings.

2. We are deluding ourselves about package philosophy. We have not met our aim of complete freedom from suit with A package. So I doubt anyone will buy either package—primarily because of added cost.
   Therefore, let us not tie our hands price-wise because of the hope they will buy package.

3. Let us not delude ourselves further by failing to recognize that these patents ultimately will have to come down to a price cheaper than the cost of avoiding them. G. E. forced the 2-3 matrix patent down from .50 to .15 on this basis—same in Japan with cathode matrix.
   By the same token, we should price each patent as high as justified by the cost of avoiding them.

4. Why can't we price individual maxima higher than proportion of RCA $200,000 on theory that individual handling is more costly. If they are going to select

small groups we are under no obligation to give them a deal proportioned to RCA's.

5. Our rates are very apt to be forced down toward much lower rates of people like RCA whose highest rate is 40 cents (About .13%) for one patent and whose lowest is 10 cents (.04%). This is the argument of Zenith and Warwick.

   If this happens we should be able to argue that there should be no maximum just as RCA has no maximum. Here is our excuse to get rid of the troublesome maxima.

Note: Unbracketed figures are Feb. 7 conference thoughts. Bracketed figures are suggested changes.

Color: (A package initial offer, individual figures only if asked—B package only if asked).

MAX. TILL RCA EXPIRES.

	Basic License fee	.15	(.15)		
	A. Package				
Both Zenith & RCA	1. Sh. Mono.	.45	(.75)	$ 54,500	($120,000)
	2. Const. Luminance	.45	(.25)	54,500	(40,000)
	3. DC Quadri	.15	(.50)	18,167	(80,000)
	4. 2-3 Matrix	.15	(.15)	18,167	(25,000)
	5. Matched Phosphor	.15	(.15)	18,167	(25,000)
	6. 2 Mode Sync	.15	(.15)	18,167	(25,000)
	7. Sync ACC-2 Mode Sync.	.15	(.15)	18,167	(25,000)
		1.80		$200,000	
	8. Keyed AGC		(.15)		(25,000)
	9. Aperture		(2.55)		
	10. Cathode Matrix (Patent Pending)				

(If whole A package is taken the Basic License Fee is deleted, i.e., A package rate becomes 1.65.)

B. Package		
(All others and future)	.25	27,000

* * * * *

Monochrome

					maximum	
Basic License fee	.15					
A. Package						
1. Keyed AGC	.30	(.475)	.65 as package	(.76)	25,000	(25,000)
2. Aperture	.30	(.475)			25,000	(15,000)
B. Package	.15				12,500	(12,500)

DEFENDANT'S EXHIBIT NO. 23A.

W. H. Wilson	November 20, 1961
E. A. Ruestow	Company Confidential

Special Report Requested by You.

The ending of this report is a proposal to raise HRI royalty demands to take advantage of HRI's strong patent position in color TV. It necessitates a withdrawal of HRI's present standard license offer which has been available to the industry for years.

The problem is very complex but centers around two major factors—one business, one legal.

1. Economic pressures in the industry for several decades have exerted incessant downward pressure on royalty income and resulted in a standard license agreement which is out of step with present conditions in the industry, particularly as regards color TV. Therefore, the present standard license threatens to result in far less color income than seems warranted by our patents in color.

2. New trends in the law (patent misuse) threaten to deprive us of the right to enforce our patents if we maintain our present standard license—unless we are willing to accept even lower royalties than we now ask.

History of HRI's present license.

The present standard license was tailored by several decades of adversity which ought not to control our new position in color TV. Yet industry is in effect utilizing this adversity to hold down our color income.

While I do not have all the historical facts, I am led to believe that adversities in litigation, a decade or two ago, forced us to accept a $50,000 maximum on the income from any one licensee. This was not too bad so long as there were many manufacturers in the industry I believe they may have numbered 20 or more at the beginning. Later, the entire market became concentrated in about half that number. Consequently, the $50,000 maximum became unfair to us.

About six years ago we attempted to break loose from this trap for color television by removing color from the $50,000 maximum. However, RCA promptly forced us to set a new maximum of $150,000 applicable to color; so too, Sylvania. Sylvania also forced us to make another reduction in our color rates, which others are beginning to demand.

It is important to realize that these income limitations were forced upon us because of our own embarrassments which no longer exist. They may have been that our patents in black-and-white were weakening or that color TV was not selling. Those reasons no longer exist—at least we have good hope that they will not exist in the future of color TV.

It is important, also, to realize that if the TV industry concentrates still more, as it could well do in color, the $150,000 maximum will be grossly out of line with the fair value of our color patents. If, for example, the industry concentrated in six manufacturers the income would be only $900,000. While the $150,000 maximum rises to $200,000 in 1964, this is slight help.

Fair Value and Income Targets for Color TV.

What is fair value seems to me to be far higher than the foregoing.

Our royalty income from the radio and black-and-white TV industry was almost $2,500,000 at its peak a few years ago. Rumor has it that RCA's annual royalty income was

$25,000,000 at the time—at least it was far higher than ours.

According to Fortune Magazine "quesstimate" in 1932, RCA collected nearly $3,000,000 royalties in radio royalties in 1927 and over $6,000,000 in 1928. According to the Government brief in the antitrust suit of 1930, RCA's royalty receipts were $7,000,000 in 1929. In these years industry wide sales of radio receivers were from 1.3 to 4.5 million receivers a year. We shall be calculating below on the basis of an annual market of 1,000,000 color receivers as a minimum. I doubt RCA's patent control then was better than ours in color now.

A single very minor patent in TV receivers of another company earned $500,000 annually around 1954. Yet we have perhaps as many as ten relatively major patents in color television.

A royalty of 5% of the cost of patented parts is a fair general standard. RCA collected 7½% of the cost of radio receivers in 1927, it was reduced to 5% in 1932, and later to 2¼%. I believe there never was a maximum royalty imposed in the license agreements.

These data, plus similar patent histories in other industries, lead me to the conclusion that our potential in color TV is far higher than our present license structure permits. Our rate on color is 1.35% and is cut to one quarter of this after $75,000 income, and now we are subject to a $150,000 maximum. I think therefore that we must now make a strenuous effort to cast off the shackles of our present license structure in preparation for the possibility that color TV in the next ten years will live up to even a small part of the wild market predictions being made by RCA.

Our target should be, at least, to restore HRI income to the $2,500,000 figure and keep open the possibility of its going far higher if color should really take over a major part of the market. We can not aim at such a target the way we are going now.

The Legal Problem (Patent "Misuse").

This, simply stated, is that we may not get ourselves in a position where we are forcing a licensee to take a license under all our patents in order to get those he wants. He must be free to make his own selection of those he wants without being blackmailed to recognize others. If we do this, the courts will not enforce our patents until we purge ourselves of this "misuse of patents". That can be a very disastrous penalty if we can not purge ourselves quickly, and it conceivably could take us six years to do so.

This legal problem is by no means new but it has assumed a more threatening nature in view of a recent court decision wherein a company was held to have misused its patents by telling a licensee he could have all patents or only one but that the rate was the same either way. This decision implies that the rate for one must be proportionally smaller than the rate for all in order to be legal.

This is precisely the situation with HRI. Zenith wants a license under only a few important patents of their own choosing. We will have to offer them at less than our present royalty rate for all, or run the risk of running afoul of the law and incurring a severe penalty. Yet we can not do this without driving our income down still further—and below fair value.

While I once minimized the threat in this "misuse" problem, I now take a more serious view of it. It is closely related to "antitrust" problems and, in view of political trends in Washington, I think this whole business is more apt to get worse than better during the profitable life of our color patents.

Conclusion.

It is for these reasons that I have come to the conclusion that we must withdraw our present standard license and offer a new one in its place even though the industry will be up in arms. The new agreement should raise rates and offer patents on an individual basis; and the rate for all must be greater than any aggregate of individual rates.

This conclusion solves both horns of the dilemma. It reverses the downward trend in our income, I hope, and it gets us off the hook of "patent misuse".

It will mean hard fighting but it will be fighting for a fairer return on our patents.

Proposal.

The following are my proposals of terms to be offered as a substitute for our present terms.

PROPOSED RATES APPLICABLE ONLY TO TV.

	Patent	Initial Rate % of Receiver Sales Price to Distributor	Cut Rate to ½ at Royalty Income of	Cut Rate to ¼ at Royalty Income of	Maximum until 12/31/63	Maximum from 12/31/63 to 12/31/66
1.	2,773,929 Constant luminance	.50	25,000 sets	50,000 sets		
2.	2,774,072 Shunted monochrome	.50	25,000 sets	50,000 sets	In these columns we will insert individual maxima adding up to the $150,000 maximum imposed by RCA and Sylvania until 12/31/63 and the $200,000 maximum from then to 12/31/66.	
3.	2,728,813 Two to Three Matrix	.25	25,000 sets	50,000 sets		
4.	D. 2196 Cathode Matrix	.25	25,000 sets	50,000 sets		
5.	2,848,537 Two Mode Sync	.20	25,000 sets	50,000 sets	They can be perhaps 100% higher considering the additional administrative burdens imposed by the new arrangement which Zenith is forcing on us.	
6.	2,945,425 DC Quadri for sync color kill or 2 mode sync	.40	25,000 sets	50,000 sets		
7.	2,922,839 Sync ACC+2 mode sync	.10	25,000 sets	50,000 sets		
8.	2,905,749 CRT with matched decay phosphors	[.10]*.50	25,000 sets	50,000 sets		
9.	2,547,648 Keyed AGC	[.10].475	25,000 sets	50,000 sets		
10.	2,933,558 Variable Aperture Sync Strip	.10	25,000 sets	50,000 sets		
	All HRI patents as a package	3.00	25,000 sets	50,000 sets		

The package is offered on the assumption that all other HRI TV patents have very little present market value. If any assume major market importance HRI, on 1 year's notice, shall have the right to negotiate an upward revision of the package rate to maintain the package rate always higher than aggregate individual rates—this to avoid the charge of "misuse".

* Figures in brackets struck in original copy.

The target of these terms is to produce our former maximum income of $2,500,000 if the color market rises to about 1,000,000 sets a year. This 1,000,000 set figure is arbitrary but based on the assumption we have long held that if color took over 10% to 15% of the current black-and-white TV market, 6 to 7 million sets a year, our income would be restored to former levels (RCA has predicted as many as 5,000,000 color sets sold annually in time). The current industry sales are guessed to be around 200,000 sets a year.

To illustrate the effect of this, suppose a major company chooses a group of the above patents amounting to 2% (Zenith clearly uses 1, 2, 3 and 6, I believe—others are probable). Then royalties will be as follows based on present sales to distributors of $350 for the lowest priced sets. Mass production will doubtless lower this but we may assume that the higher priced sets will keep these calculations up to something approaching the realities of the situation.

1st 25,000 sets	$ 175,000
next 25,000 sets	87,500
next 50,000 sets	87,500
Total for 100,000 sets (a fair target for the next few years)	$ 350,000

To visualize income at our 1,000,000 set industry wide target it is simpler to note that the royalty on 1,000,000 sets at the lowest rate is $1,750,000. Add this to the above and we have $2,100,000 which is getting near our target of restoring HRI income to former levels on a 1,000,000 set annual color market.

I am under no illusions—this will raise loud screams everywhere. But it is a fair, long range target considering my remarks about fair value above. We will be forced by our present licenses to be satisfied with less until they run out (the binds forced on us by RCA and Sylvania). The last two columns are designed to meet this and give Zenith the same deal until the RCA and Sylvania licenses expire. The point is that I would try to sell Zenith the idea that they get the same deal as RCA and Sylvania, provided they help us set the new pattern now for the time when the RCA and Sylvania licenses expire.

If any one wants to be tougher, I'm all for it. I think we've been getting a raw deal.

EAR:AMR E. A. Ruestow.

DEFENDANT'S EXHIBIT NO. 23-B.

The important aspect.

This plan sets a 2-3 million target from which we are free to work upward if color TV exceeds targets.

Present setup sets a highly optimistic maximum 2-3 million from which we can only work downward and undoubtedly will.

DEFENDANT'S EXHIBIT NO. 24.

1. We just can't base our calculations on the idea that the industry will stabilize at 16 manufacturers
   - ⓐ LBD says it has already dropped from 40 to 16
   - ⓑ Once he told me people were worried it might drop to 6.
   - ⓒ He calls it "a potential maximum" (p3) - Thats just what it is. We can only work downward from his $3M figure. Many of his 16 never did reach maximum in black + white - they were too small.

2. Misuse Law.

   He is wrong about ~~the~~ threat of Securit— Huston, Kenyon, Phil La Follette agree with me. Many others are worried (Page, Rathburn). Zenith subpoenas us now

   Attorney General's Report is out of date with a new. Rambunctious Attorney General — R Kennedy raising hell in AntiTrust matters - GE troubles - common pricing.

3. My whole case hinges on above 2 points in which LBD is in error. I open possibility of higher income + get misuse off our backs.

   I must act now. Zenith is forcing me. I must either give them low rates to avoid misuse or raise the package rate.

4. Anyway LBD confusedly comes around to my position in the end. (bottom p 8)

if we raise as he suggests, I can solve my Zenith problems. I just make the raise so high I get the same result as my program.

5. p3 – "additional income" from Loughren patent

"Only under my plan   not his

6. p4   He says our effective royalty is 0.1% for monochrome, 0.4% for color because of effect of the lump sums.

p. 5   But then he points out that RCA with no ceiling had an effective rate of $1\frac{1}{8}$ %

According to this their effective monochrome income was over 11 times ours

7 p5 – we kicked back to Olympic.

8. p5. It was not the absence of ceiling that brought RCA down

It was anti-trust shenanigans – in Europe Government Decree is good evidence of that

9. p9 "unrealistic" I answered this in my memo ← Besides they are using twice as many of our [illegible]

They asked for it. They forced whole ~~Securit~~ issue - ~~backing~~

These are my alibis

I'm squeezing them with their own shenanigans and greater use of our patents

If I am forced to stick to present agreement Zenith will make me divide 1.35% up among maybe 80 patents.

Or if I offer the 50% 80% 100% deal they pick 10 patents and zingo we are right back in misuse

I'm really in a box and the only way out is to break down the old walls

Defendant's Exhibit No. 24.

1. Based on 16 companies - 3M as max
∴ we can only work downward

1A Carry himself feared more concentration - why conclude it is stabilized

2. R.C.A - side deals as excuse for high income

— suggestion that they had more patents because of EMI & others
— I doubt that when you actually analyzed the sets there would more than ours in it.

4. — Misuse

Atty Gen Report

WHK opinion - a good representative of the patent bar

3. Zenith - won't pay more

they asked for it by ~~[illegible]~~
asking for individual licenses

they are trying to make us divide
75 patents into 1.35%

We have Securit as alibi.

DEFENDANT'S EXHIBIT NO. 25.

Mr. W. O. Swinyard

E. A. Ruestow

Warwick—Your Memo of May 4—No. 2961

May 8, 1962.

I have thought this over, too, and as far as I am concerned there never was any intent to give anybody a general $25,000 overall reduction. That's the flaw in Waggoner's thinking. At that time they were down to 1 patent and we were concerned only with monochrome. Since they were down to 1 patent we decided to cut their royalties in monochrome in half. (You remember, we had the formula that they paid the full rate if they used 3 patents, 80 percent if they used 2 patents and 50 percent if they used only 1. This is because we found only 3 patents in general use in monochrome at the time and nobody was thinking of color.)

Now with color they are back up to something like 6 patents and so the whole basis of our thinking several years ago is out the window.

I am going to stick to my guns and not let them get away with any such twisting of the plain meaning of the agreement, particularly since everybody else is seeing it our way. I will tell this to Axel after you have had time to reply to me just in case you see any mistake I have made.

E. A. Ruestow

EAR:AMR.

DEFENDANT'S EXHIBIT NO. 26.

Company Confidential

January 1, 1963.

R. L. Beam
W. M. McFarland
E. A. Ruestow

Status of HRI and Foreign Patent Operation

This is the first of quarterly reports on this subject recently suggested by W. M. McFarland to keep you informed.

H. R. I.

1962 Income—and its basis

Estimated gross royalty income for HRI is down about 10% from 1961. The rising prospects in color TV afford reason to believe this is the bottom of the decline from the peak of $1,872,000 in 1952. It is to be noted that the rate of decline has slowed up over the years as indicated by the following:

Year	Gross Royalties (thousands)
1951	1824
1952	1872
1953	1842
1954	1776
1955	1639
1956	1677
1957	1104
1958	886
1959	689
1960	622
1961	515
1962	466 (estimated)

The reasons for the decline are two:

(a) The running down of our monochrome patents (accentuated by failure to support research developing new ones);

(b) The slow emergence of a color TV market.

As to monochrome—we are now leaning essentially on only one patent (Loughren—Keyed AGC) with some small hope on another (Richman—Noise Immune Synchronization). Loughren earns a maximum of $25,000 a year from a number of licensees but it is difficult to induce new licensees under it because its validity and scope is being tested in litigation and infringers prefer to await the outcome. No specific income can be attributed to Richman as yet because it has certain weaknesses patent-wise which are in litigation and under Patent Office examination by way of a reissue application. For these reasons it is difficult to induce new licensees under Richman while its weaknesses are being thus tested.

As to color—about $67,400 (estimated) of the 1962 gross can be considered as an increase in color income due to the new-emerging color TV market. This came from rising newcomers in the market—Warwick ($43,000—estimated), Packard-Bell ($18,800—estimated) and Wells-Gardner ($5,600). As a measure of total income attributable to color TV, $125,000 of RCA's total of $150,000 can be attributed to color (the rest to monochrome) and added to the above $67,400 figure.

Remaining royalty income for 1962 came from various sources as—

BNC connector licensees—about $34,000, Printed Circuit Board licensees—about $3,000.

Specifics—Licensees
Non Licensees
Special Problems in Both Groups

Current licensees (TV only) are as follows (omitting a number of insignificant manufacturers):

RCA (monochrome and color)
Olympic (Siegler) (monochrome and color)
Warwick (monochrome and color)
Sylvania (monochrome and color)
Packard-Bell (monochrome and color)
Curtis-Mathes (monochrome and color)
Wells-Gardner (monochrome and color)
Conrac Div. of Giannini
  Controls Corp. (monochrome and color)
Westinghouse (monochrome only)
Magnavox (monochrome only)
Setchell-Carlson (monochrome only)
Admiral (monochrome and color—but see special problem
  below)

Significant non-licensees are as follows:

G. E.
Zenith
Philco
Trav-Ler
Motorola
Emerson

G. E. is under negotiation and favorably disposed to recognize our monochrome demands but matters are being delayed by the unsettled state of our policies in color TV; G. E. is also favorably disposed to our color position. Zenith continues adamant in its refusal to recognize our monochrome position and refuses to discuss color until we drastically reduce newly proposed royalty rates. (The whole Zenith picture is horribly complicated by the litigation with them). Philco and Trav-Ler are being sued on monochrome (Loughren for both, Richman for Philco) and so negotiations are not possible at the moment. Philco is not deep enough in color as yet and buys from RCA (see special RCA problem below) and so color is not a factor.

Trav-Ler is not in color yet. Motorola and Emerson are awaiting the outcome of our monochrome litigation and not deep enough in color to warrant action. (I believe they, too, buy from RCA).

The Special Problems

The RCA problem is the major one. RCA's license permits them to supply color sets to the entire industry under the umbrella of their $150,000 maximum royalty (increases to $200,000 July 1, 1963). This situation will last until June 30, 1966, the expiration date of the license. Many manufacturers are buying from RCA and so pay us nothing on color; those who do not buy from RCA but make their own complain that paying royalties to us puts them at a competitive disadvantage and that makes it difficult to sell them licenses. Some relief from this situation is in prospect since RCA plans to discontinue sales to other manufacturers by 1964. The net result of this situation is that RCA's per set royalty may be as low as 1/6% for 1962 (guessing they sold 300,000 of the 400,000 sets said to have been sold by the industry in 1962). This is far too low for our patent strength which could be worth as much as 1.75% (Dodd's figure). It is even lower than the ⅓% figure at which our existing licenses work out for licensee production over about 20,000 sets a piece (a very low production figure even at current sales volumes). The RCA problem will be worse than the 1/6% in 1963 since industry sales are estimated at anywhere up to 1,000,000 sets. The ⅓% figure is another problem discussed below).

Sylvania presents the same problem on paper since they have the same license as RCA. However, they are not now supplying the rest of the industry, nor even making many of their own.

The Warwick problem—Warwick like many others was cut from $50,000 to $25,000 per year several years ago because of our weakening monochrome position. Now that they have gone into color they complain vehemently that at least $12,500 of this cut is recouped because of the way our color rates were set up in their agreement on a reducing scale after we received a total of $50,000 royalties. They insist that the full $25,000 cut be preserved on an overall basis. We can justify the seemingly unfair situation for them and we can not accede without incurring the same loss of $12,500 with all other licensees. Since they are adamant we are heading toward an unpleasant fight—meaning litigation—and possible withholding of all their royalties. Besides, other licensees may adopt their position.

The Admiral problem—Admiral has been in default on its license for several years because of our weakened position in monochrome. Suit, when the timing was best, was authorized by our Management. Suit has been delayed for tactical reasons, the most important being the hope that when they went into color they could be persuaded to honor their license agreement retroactively for fear of being caught by our contemplated higher color royalties. The timing hinged on our decision about the new policy which is still up in the air. Time is running out and so the Admiral problem requires action right now. I propose to put the heat on them without further delay.

(Last minute note—Admiral made overtures of peace December 18, 1962 and I will see them right after the first of the year.)

The Setchell-Carlson problem—This once very faithful licensee has also defaulted because of our weakened monochrome position. They contemplate going into color in 1963. Therefore, I plan the same tactics as with Admiral.

Time is not pressing as much as with Admiral.

The problem in unlicensed monochrome—As indicated above, a number of manufacturers as Motorola, Emerson, and many smaller, are holding off taking a license until the outcome of our Zenith, Philco and Trav-Ler litigations. Therefore, little can be done to press them toward conclusions favorable to us at the moment.

Litigation

We are in monochrome litigation with Zenith, Philco and Trav-Ler for infringement of the Loughren and Richman patents. We have the usual 50-50 chances of winning. It will be at least two years before we have a final answer to the outcome of the litigation.

The Zenith litigation also involves the critical issues of misuse of patents and violation of the antitrust laws. The determination of these issues is vital to the future of HRI for reasons taken up below under the heading of future policy.

Future Policy

A little over one year ago I sent the attached memo, dated November 20, 1961, to W. H. Wilson. In brief, it outlines the dilemma, I think, HRI faces. This dilemma is (1) the fact that HRI has over the years worked itself into a license policy based on past misfortunes due to a weakening monochrome position which also affected adversely a strong color position; and (2) it also ran the risk of a serious legal attack on our policies due to a shift in the legal doctrine of misuse of patents. I proposed a complete change of policy which would solve both horns of the dilemma.

The matter was thoroughly debated and a new policy was approved. In essence the new policy provided for a rise in color royalties to match the real value of our color patent position and an abandonment of past licensing policies to avoid beyond doubt any charge of misuse of patents which could be very costly, if sustained, and even if it involved HRI in prolonged litigation, which is already the fact in the Zenith litigation. A defeat on the misuse issue could well deprive HRI of the right to enforce its color patents in the next four or five years which may well be the most lucrative years of these patents.

While the debate was settled last summer and I was authorized to open negotiations, the debate was revived several months ago and, as a consequence, it is impossible for me to negotiate further until the debate is again settled. An alternative license policy has now been proposed by L. B. Dodds.

It is my firm belief that the new policy I first suggested in my memo of November 20, 1961 to W. H. Wilson has been completely vindicated by the decision of the Supreme Court of the United States November 5, 1962 in the case of U. S. v. Loew's Incorporated. I continue in the belief that it would be bad business to risk a challenge of our policies on the issue any longer. The alternative proposal now under discussion does not solve the dilemma any better than that approved last summer. As a matter of fact, it establishes a maximum royalty from which we can only work downward whereas the policy approved last summer sets a royalty target from which we have freedom to work upward if, in the future, certain patents turn out to have increased value. (I so started in a memo to W. H. Wilson a year ago.)

In the foregoing context, it is well to revert to problems of our old license agreement exemplified by the RCA, Sylvania and Warwick problems alluded to above. They were caused by failure to think out soundly future effects —and warn us to think out future effects of current proposals rather than act on an ad hoc policy of momentary solutions to momentary problems| The situation on the old license agreement is as follows:

The old license agreement provides for a $50,000 maximum on monochrome—our weak area patent-wise. In color, our strong area, it provides for 1.35% royalty until $50,000 has been received from both monochrome and color; then color royalties are cut in half (.675%) until a total of $75,000 has been received from both monochrome and color; then color rates are again cut in half (.3375%).

It is to be noted that the .3375% rate is reached at very low production rates (about 20,000 sets) and so it is fair to ignore the higher 1.35% and .675% rates in the overall picture and consider the effective royalty to be about ⅓% —since production targets are already up to about 100,000 sets per licensee.

⅓% is far too low for our color patent strength.

Attrition of the foregoing license terms set in at an early stage as follows:

(a) RCA imposed a $150,000 overall maximum for both monochrome and color and this permitted them to supply all other manufacturers with sets for which we got no royalty. At production rates of 500,000 sets which they may reach in 1963, the color royalty to us gets down to around 1/10%—outrageously low. Besides those who make their own sets (Warwick) complain bitterly that those who buy from RCA (Westinghouse, Philco, Admiral and others) get off scot-free and thus enjoy competitive advantages.

(b) Sylvania got the same deal as RCA. But they added further attrition by forcing us to reduce the level at which color rates are first cut in half from $50,000 to $25,000. This means a net loss of $12,500 color royalties at low volume production ($6,250 at high volume production). This concession had to be extended to all other licensees as well.

(c) As time went on our monochrome patent position got worse and we were forced to cut monochrome royalty from a $50,000 maximum to a $25,000 maximum level. This created the Warwick problem discussed above, namely, that on an overall basis at least $12,500 of the monochrome cut appears to Warwick to be recouped when they start making color, i.e., they pay $12,500 more for color under the $25,000 monochrome deal than they do under the $50,000 monochrome deal ($18,500 more if not given the Sylvania color royalty cut). As previously indicated this result is not unfair because the original intent was that a licensee was not entitled to have his color rates cut in half until he had first paid us $50,000 ($25,000 under the Sylvania deal). But Warwick does not see it this way.

It should be noted that the Warwick problem is caused by a confusion between our weak monochrome position and our strong color position. This I tried to eliminate in the new policy.

In summary, the new policy must accomplish these things—

1. In the long range, get the royalty rate up from the horribly low rates of ⅓% (1/10% for RCA). Rates averaging up to 2 are fair for our strength in color.
2. Eliminate, or at least raise the maximum imposed by RCA to anticipate any further concentration of the industry in fewer and fewer licensees.
3. Provide for equal treatment of all licensees in the transition stage which will last for at least 5 years.
4. Get out from under the misuse problem without letting it force individual patent rates down to unfairly low figures as the proposed new policy alternative to that of last summer will do.

5. Take into account that we will be tied to the new license for many years and so must not rely on any vague hope of rectifying policy mistakes in any decision we make now during the next ten years.
6. Eliminate confusion between our weak monochrome position and our strong color position so the latter does not suffer from the former (Warwick problem).

Miscellaneous.

Also attached hereto is a copy of my memo of February 23, 1962 to W. H. Wilson on projection for HRI submitted per his request. It may help to complete my guesses for the future. Note the potential items of claims against the Government and on color broadcast stations mentioned on page 2 of this memo which I bring up to date as follows:

The radar claim against the Government will be pending for some time. They contend it is no good on the bulk of the equipment involved but admit limited infringement. Since their defense involves a matter of priority with respect to a Bell Labs. patent it may be wise to start a suit in the Court of Claims now while our witnesses are still available.

There is probably no hope for the Hirsch computer claim against the Government. The Government rejected it and I have yet to find evidence that the Government uses it—at least enough to justify a lawsuit.

Color Broadcast Stations—I am confident of reaching a license agreement with RCA at a royalty of at least 3% of the cost ($2,500) of the key units involved in broadcast stations. As an estimate of potential the average use of these units by perhaps a thousand stations in the United States might be 3 or 4 (a very wide guess). NBC in New York is said to use about 90, but, again, this is a guess. So the income potential is not large but I see considerable value in the deal as a specific recognition of our two basic color patents and the recognition of a royalty rate (3%) which should help to bolster our claims for high rates for them in the receiver field.

Operations of H. R. I. in Engineering and Research.

Expansion of HRI staff was authorized by W. H. Wilson early in 1962. My memo of April 30, 1962 outlining the plan approved by him is attached. It needs no further explanation other than that vigorous efforts are under way to implement it and that it is being slowed by personnel shortage. This means that new research is being delayed by the necessity of utilizing the small staff for current licensee service problems.

To: R. L. Beam, January 1, 1963.
W. M. McFarland.

Cost of Patent Department—with respect to HRI income.

I raised this question with W. H. Wilson last spring. He instructed Tiffany and me to consult and advise him. No conclusion was reached because of his illness.

The situation is this. Over the last eight years new organizations such as HRC, HTDC and Wheeler Labs. have added considerably to the tasks of the Patent Department and expanded its staff. The tasks include patent applications and infringement investigations from which HRI derives no benefit. Government contract work has also increased.

Yet under past policies HRI pays $150,000 a year for Patent Department costs, whereas I estimate about half of this is attributable to HRI income producing activities. HRI's net should therefore be higher to this extent.

I recommended that HRI's share of Patent Department costs be cut in half to give a more realistic picture of its earning capacity. Tiffany wishes to be consulted on this because he does not agree and I certainly want his story heard.

H. R. I. C.

HRIC is another problem for HRI in terms of HRI income.

HRI was established years ago to serve many west coast licensees. Now west coast HRI licensees have dwindled as well as the HRI income from those remaining—due to the demise of some as manufacturers and the above mentioned monochrome royalty cuts for those remaining. For example, west coast income has now dwindled to somewhere around $35,000 to $40,000—practically all from Packard-Bell. HRIC has consumed most all of this in billings to HRI for licensee services to Packard-Bell and others. So the west coast operation is unprofitable for HRI. It has been allowed to continue up to now only for fear the licensees, as Packard-Bell, would discontinue entirely if the HRIC laboratory were abandoned.

I have thought this problem through at length and come to the conclusion that HRIC should be abandoned unless a more profitable mode of operation can be devised. The work can be done in Chicago more profitably. The rising color television picture would keep Packard-Bell from discontinuing its license, I would hope.

Foreign Operations.

General Status with Respect to all Foreign Patents Monochrome TV.

As in the United States our position in monochrome television continues to dwindle everywhere. Whether we will be able to rebuild it to any degree is sheer guesswork at the moment and depends upon work now in process in

Chicago in such areas as DC restoration and UHF which has undergone a rebirth under Government pressure.

Since matters have been left in the hands of foreign associates, I do not know exactly what patents they are able to assert, except for AGA. AGA has recently been very successful in asserting the Loughren patent as indicated below.

Income—For 1962 we have a very substantial amount from AGA as you already know. Others are:

GEC	about	$ 3,300
Canada	about	46,000

> For the future I have no reliable guesses but some encouragement in the form of a letter from AGA saying that they have signed up the entire German and Austrian industries under our Loughren keyed AGC patent through 1966 and 1972, respectively, at a rate which on the basis of current production would produce about $200,000 annually (half of it would be ours).

Color TV.

There is no color income from abroad in prospect for the immediate future at the moment. No color market has yet developed abroad except one of small size in Japan.

For the long range future—there is a rebirth of keen interest in England and Europe. A substantial market is hoped for in three years which is a much shorter time than we previously hoped for.

Much hinges on whether England and Europe adopt the American NTSC System or the French SECAM System. We have just completed a study of our British color patents to estimate our patent strength for the two systems. We tentatively conclude that our potential strength is something like twice as great for NTSC as for SECAM.

Japan continues to be the leader abroad in color but we have no substantial patent position there. We may expect only a few thousand dollars there on what we have.

E. A. Ruestow.

EAR:AMR

Attachments.

DEFENDANT'S EXHIBIT NO. 27

1. You have made a judgement now as to the value of individual patents — just as I did.

So it is subject to the same criticisms as my policy

I made it for only 10 - you did it for all

2. What is worse you have forced yourself to price the vast bulk too low and will be stuck with it — my formula preserves freedom of action until we are sure of real value

Anyone might turn into a Toulon or Bowie which sustained whole package in the past. Suppose a 2% patent becomes a 40% patent we are asked for individually, then you have a 38% differential between it in package and cost alone (i.e. Gen. patents in this category)

3. If in future we make major inventions they automatically go into low priced category (Time use! my options)

---

4. Questionable that it baits them to take whole package

As soon as they see they can save money they will attempt to avoid as many as they can.

RCA has set the pattern in individual pricing its own

---

5. So what have we gained for the risk of misuse charge.

The whole thing is still apt to be viewed for just what we intended — a transparent attempt to force them into package.

---

6. I still believe we have set a figure (package rate from which we can only work down — whereas with freedom of action we may work up.

You have done nothing but cut my rates which I made high for bargaining

You set out to solve an economic problem — failed — AND ONLY created another

---

Bill's argument that they will not sign without complete freedom under all patents is unsound because

1. No one asks for it under the limited Lorenz[illegible] license
2. U.S. — present [illegible] negotiation — no such demand ✓
3. No asking it of RCA

1. We have individually priced after all.

   . . True But does it only basics

   If we must do it on them — why not all.

2. Still doesn't bait them to whole package

   They won't pay even the slight additional cost

   they will try law

3. So we hav~~ing~~ bought nothing for the risk of legal action — I must tie my hands on little ones.

Suppose ~~they~~ we come up with more big inventions.

Suppose They say they want only the little inventions
I we don't want Sh. Mono & CL.

Are we then priced too low on little ones.

little one might be a Bowie.

Haven't we set a figure from which we can only work down — instead of one from which we can work up.

How is "differential between price ~~cost~~ in package and price ~~cost~~ individually" justified by cost.

Where ① little one later becomes big and want big price later

② we want something new and big?

Defendant's Exhibit No. 27.

1. Problem was to make it attractive to take package so there would be no suits — without misuse

Misuse is still with us and Zenith will hang us.

Loew - affirms Securit

80 patents × 20%. = = 1600% -- a plain inducement to take package at 1.75.

More realisticly - 10 3yr patents plus 10 1yr is 20 x 20 = 400% :: 1.75%

a 3-fold increase over package rate can't justify on cost

Economic blackmail toward package
no matter how you slice it

Monochrome formula has no rate individual to each patent

Antitrust — personal actions against office

2. Why have lump sum — ties our hands if we invent something good

Diggins worried about it.

3. No provision to equate to old rates until old licenses expire
4. Charge for Service?
5. Why have chassis rate?
6. Why old $22.50 figure on cabinets?
7. Why 3 year extension?

In short:

1. This policy sets maximum from which we can only work downward. Whereas mine sets target from which we can work upward if future patents are of great value
2. Does not solve problem Wilson put to us — make it ✓ attractive to ~~sell~~ take package

Defendant's Exhibit No. 27.

Evidence - Bad Faith

Bad business economics

1. Many ~~prices~~ patents individually priced far above real value eg matrix .50 against .15

A. we will be forced to deny individual license on matrix
— they won't pay .50 when alternative costs half that.

Sure looks as though the 50¢ is being supported by weight of package

B. discourages use of matrix

C. Same thing will happen on all patents and we will end up with individual prices any way

2. All patents have plural prices depending on grouping chosen
.50 to .00c

this looks as though there is interdependence.

3. Average package $\doteq \frac{1}{30}$th of price individually

Obvious intent is to ~~[illegible]~~ push him to buy freedom from any litigation not individual patent

DEFENDANT'S EXHIBIT NO. 28.

January 28, 1963

Memorandum To E. A. Ruestow

From F. H. Boos, Jr.

Subject Dodds Proposed Schedule in Memo to McFarland
Dated January 24, 1963.

This is the memo I said I'd give you covering my thoughts on Dodd's proposed new schedule.

As I view it, the major change in this new schedule is the assignment of specific royalty rates, i.e., values, to specific patents. This was apparently done to meet the problem raised by Diggins in his draft report at page 46, in which he points out that specific values should be assigned to patents based on their relative importance in the package. It is now clear that both Diggins' and Dodd's viewpoints on the need for assigning specific values to specific patents are basically the same as yours. A comparison of Dodd's proposed rates with yours is shown in the chart attached to this memo.

It is interesting to note that Diggins had in mind a single package in his discussion about assigned values. Dodds, however, has proposed two packages—monochrome and color, in which the Loughren Keyed AGC and Richman Variable Noise Aperture patents respectively have two substantially different values, depending on which package is being considered. This shows that while Dodds has recognized the need for assigning specific values to avoid misuse, he has not really done so, i.e., avoided misuse, since on the very face of his schedule the values he assigns clearly have nothing to do with the real value of the patent, but are obviously aimed at coercing the licensee into taking a package license.

Consequently, I think Dodd's schedule is particularly bad in that it recognizes the problem of misuse by assigning specific values to specific patents, but fails to do anything in the way of avoiding it since the assigned values bear no relation to the worth of the patents to the licensee.

This tactic of relating all the royalty rates to a maximum package value gives rise to the most fundamental difference between Dodd's schedule and yours, keeping in mind that your schedule is based on the intrinsic value of the individual patents. With Dodd's schedule a maximum value is quickly reached, whereas with yours this is impossible to do, since yours is an open-ended schedule.

The significance of this is that your schedule is the only one that solves Diggins' problem which he raises in his report at pages 54 and 55. This is the one where Zenith accuses us of misuse by having charged them with infringement of enough patents to equal the maximum royalty rate in the standard license agreement (four patents).

The very same problem potentially exists in Dodd's new schedule, although the numbers are different, since his schedule permits the licensee to pick any eight patents in monochrome or any five patents in color and be over the respective maximum package rates.

True, it would be unlikely that any licensee would actually want, or use, this many patents as the situation is today, but, nevertheless, the possibility still exists and there is no allowance for any change in the situation within the next five or ten years. As a matter of fact with our newly established patent interest in black level stabilization, it is very possible that some manufacturer would soon want more than five patents in monochrome. In my opinion, your open-ended arrangement is the only one that avoids this problem.

/s/ F. H. Boos, Jr.

FHB:abt
att.

Comparison of per/patent royalty rates proposed by L. B. Dodds in memo to W. M. McFarland, January 24, 1963, with Schedule A proposed by E. A. Ruestow in draft agreement of September 10, 1962. Rates are percentage of unit selling price, (not percentage of package rate).

Monochrome Package (EAR does not propose separate monochrome package. Rates given for comparison only).

	LBD	EAR	LBD	EAR
	Individually		Together	
Keyed AGC	1.05	.5	1.575	1.00
Var. Noise Aper.	1.05	.5		
	Alone		With any other patent	
Others	.175	open for negotiation	.035	open for negotiation

Color Package

	LBD	EAR	LBD	EAR
	Individually		Together	
Const. Lum.	.70	.50	1.3225	1.00
Shunt. Mono.	.70	.50		
	Alone		With any other patent	
Keyed AGC	.35	.5	.175	.5
Var. Noise Aper.	.35	.25	.175	.25
2,728,813	.35	.25	.175	.25
2,905,749	.35	.50	.175	.50
2,954,425	.35	.50	.175	.50
Average	.35	.40	.175	.40
Others when selected	LBD—.035			
with any other patent	EAR—.004			

DEFENDANT'S EXHIBIT NO. 29.

Memorandum to R. L. Beam February 15, 1963.

From E. A. Ruestow

Subject License Policy

Enclosure A is a proposed revision of the plan worked out in conference of February 7, 1963 as a result of the conference of February 13, 1963. Mainly, it takes into account patents overlooked on February 7, 1963. While acceptable, I do not think it the best plan for us.

Enclosure B is my proposal for straight individual pricing which I think the best for us. I have done this primarily because I feel the Enclosure A does not accomplish our objective of devising a saleable package program, and that the attempt to do so accomplishes nothing more than to tie us up in an inflexible program which will hurt us price-wise if not otherwise. (I have tried innumerable ideas to make the package program attractive but all end in an economic-legal dilemma. Therefore I always return to the conclusion that the best thing to do is to forget the package philosophy as unworkable and unsaleable and to price individually just as RCA has done.) This will allow us more freedom of action price-wise—mainly in the direction of increasing individual rates over the individual rates forced upon us by the package philosophy.

My reasons are as follows:

1. We want to permit any one to use any single patent if and when he wants it. That's our business—to license inventions. We will, therefore, want to price it somewhere below the cost to him of ways of avoiding it. If we price it individually too high in the package plan we are stuck with the dilemma of disorganizing the whole plan to lower

it or of telling him we can offer it to him only at a higher cost than alternatives, in which case he can scream that we refuse to license except on outrageous terms designed to force him toward the package. Such accusations would be very bad for us.

Obviously if the package plan forces us to price individually too low, we have not gotten the most of our patent. The attempt to cram a number of patents into a package rate may well do just that.

In short, we are going to be forced ultimately to price at the real value of the patent vis-a-vis alternatives,—forced either by the licensee or by our own interests. G.E. forced the 2-3 matrix patent down from .50% to .15% on the basis that it was cheaper to avoid it—the same in Japan with cathode matrix where they actually went to circuit cheaper than our rate (we should have lowered it earlier).

2. My non-package plan permits freedom of pricing for the above purpose. The package plan does not, rather, it tends to force prices down in order to fit them into the package rate.

3. In any event, we are deluding ourselves with package philosophy—

A. Licensees are cost conscious and so will pay only for what they use. G.E., Warwick and Zenith are thinking that way.

B. No one demands the package in monochrome, i.e., complete freedom from suit. Why should they in color either? True, they will try to get it for nothing but they won't pay extra for it.

C. RCA has set the pattern of individual pricing. Everyone is thinking of it now because they pay only for what they use.

4. If 3 is true, why underprice ourselves by lowering individual prices to squeeze them into a package rate.

5. My non-package plan is based on the following premises:

A. Complete freedom of action to realize the highest market value of each patent.

B. The supposition that whatever grouping is chosen by the licensee can be priced upwards of 1% on the average for the different groupings which will be chosen. We have every reason to believe this average will be at least as good as our contemplated package rate because that, too, will be subject to the same economic pressures.

C. The individual maxima can be made to add up to more than RCA's $200,000 on theory that individual pricing is more costly to us. And if they are going to select small groups we are under no obligation to give them maxima proportioned to RCA's.

(This assumes we cease to offer the RCA deal to anyone from here on.)

D. Accordingly, my individual rates collectively add up to more than the package rate we previously thought about. This is on the theory that different groupings will sum up to somewhere around this package rate.

E. Our rates are very apt to be forced down toward much lower rates of people like RCA whose highest rate is 40 cents (about .13%) for one patent and whose lowest is 10 cents (.04%). This is the argument of Zenith and Warwick.

If this happens we should be able to argue that there should be no maximum just as RCA has no maximum. Here is our excuse to get rid of the troublesome maxima.

F. We are completely free to price new patents as they find use.

G. (My non-package plan is absolutely free of misuse. No one will be tempted even to make a phony issue of it to cause us expense and trouble in litigation—as Zenith is now doing to our great cost.)

EAR:AMR E. A. Ruestow.

Att.

cc: Messrs. WMMcFarland
PFLaFollette
DWestermann
LBDodds
(W.att.)

P.S. In short, I see the difference between A and B as this.

A may well start individual prices at rates below real market value. B is meant to start them above real market value so that we are assured of at least maintaining market value when the bargaining begins.

ENCLOSURE A—PACKAGE PLAN.

Note: Figures are Feb. 7 conference thoughts with suggested changes. Color (A package initial offer at 1.75%, individual figures offered only if asked and at indicated individual rates, plus basic license fee—B package offered only if asked.)

		Max. till 1966 when RCA expires		
	Basic license fee	.10%	$11,400	
	A Package			
both Zenith & RCA use these, remainder questionable	1. Sh. Mono. 2,774,072	.60%	68,600	Adds up to $200,000 Percentages add up to 1.75
	2. Const. Lum. 2,773,929	.30%	34,350	
	3. DC Quadri 2,954,425	.15%	17,250	
	4. 2-3 Matrix 2,728,813	.10%	11,400	
	5. Matched Phosphor 2,905,749	.10%	11,400	
	6. 2 Mode Sync 2,848,537	.10%	11,400	
	7. Sync ACC-2 Mode Sync. 2,922,839	.10%	11,400	
	8. Keyed AGC 2,547,648	.10%	11,400	
	9. Aperture 2,933,558	.10%	11,400	
	10. Cathode Matrix (Patent Pending)	.10%	11,400	

(If whole A Package is taken the Basic License Fee is deleted, i.e. A Package rate becomes 1.75%—same for maxima i.e. if A Package is taken the max. is $200,000 [can't make it less or RCA will change to A Package].)

B Package (All others and future)	.25%	$28,650

If A and B Packages are taken, max. is $200,000 (RCA figure).

* * * * * *

Monochrome			maximum
Basic License fee	.15%		$12,500
A Package			
1. Keyed AGC 2,547,648	.30%	.65% as package	$25,000
2. Aperature 2,933,558	.30%		25,000
B Package	.15%		$12,500

ENCLOSURE B—NON-PACKAGE PLAN.

	Color			Rate	Max. till RCA expires
both Zenith & RCA use these, remainder questionable	1.	Sh. Mono.	2,774,072	.70%	$120,000
	2.	Const. Lum.	2,773,929	.30%	40,000
	3.	DC Quadri	2,954,425	.50%	80,000
	4.	2-3 Matrix	2,728,813	.15%	25,000
	5.	Matched Phosphor	2,905,749	.25%	25,000
	6.	2 Mode Sync.	2,848,537	.15%	25,000
	7.	Sync ACC-2 Mode Sync	2,922,839	.15%	25,000
	8.	Keyed AGC	2,547,648	.50%	25,000
	9.	Aperture	2,933,558	.25%	25,000
	10.	Cathode Matrix (Patent Pending)		.25%	25,000

* * * * *

Monochrome				maximum
1.	Keyed AGC	2,547,648	.475%	$ 25,000
2.	Aperture	2,933,558	.475%	15,000

DEFENDANT'S EXHIBIT NO. 30.

3-10-63

1. Misuse

On non package deal – GE's choice was Sh. mono, CL, ~~Keyed~~ AGC, Matrix.
This adds to 1.35%. They probably will want Quadri, Match Phosphor which are .35
So they total 1.70%

Big guy — Suppose 200 000 sets (RCA will reach 500 000)
200,000 × 300 × .017 = $ 1,020,000

Little Guy — Suppose 20 000 sets. He pay 1/10 or $ 102 000

So both will ^have to^ take package because of minimum and max

Big Guy can then get fantastic advantage

If as big as RCA & he gets 500 000 sets for $ 310 000 [illegible]
While little guy gets his 20 000 sets for $ 102 000

Little guy thus pays roughly $ 5 per set
Big guy " " " $ .60 " " or less

Not only misuse but gross discrimination against little guy

Bad Faith stands out like sore thumb

What a thing to hand Zenith at this time. — they'll jump with glee.

All mularchy about savings — just pious words.

Like trying to sell all our military products at once

Threw out all my points to Webb except price

A. Max put us back in concentration bind

Confusion | "reasonable group minima which if elected ... would change the deal so that the comparison between individual and group rates could not be determined only by looking at the respective percentages since this would tend to discourage election of groups"

2. So what have we bought for these awful risks.

1. Misuse threat

2. destroyed staggering

3. Underpriced some

3. Sacred Cow "Staggering" thrown out.
This sacred cow is valid — packaging not
We are certainly with be ganged up on Jan 1 1968

4. Underpricing
"The Crystal ball" but this is pure crystal ball
in downwind sense

1 gun
special quadrior
N: these come under I.C. ~~new ideas (BDL at work on these)~~
d.c restoration

All priced horribly low too 1-1-68

5 Miscellaneous
Keyed AGC & [illegible], priced far higher in mono than color
Suppose new idea comes along useful in both color & mono
He pays .05 in color + .025 in mono
(Dollar difference much greater)

DEFENDANT'S EXHIBIT NO. 31.

Hazeltine Corporation.
Board of Directors Meeting

April 17, 1963.

Report submitted by E. A. Ruestow.

Report on HRI and HC Licensing Activities for the month ending April 17, 1963.

Litigation.

Zenith—Events of the last month in the Zenith litigation are of major interest. It appears to me that the war is spreading on all fronts into a full scale test of Hazeltine policy.

First, Zenith is filing a counterclaim for treble damages under the antitrust laws based on: (1) our alleged participation in an international conspiracy to block their foreign trade through interrelated patent pools in the United States, England, Europe, Canada and Australia; and (2) on alleged misuse of our United States patents, particularly in color, by forcing them into an illegal package license.

Second, Zenith proposed filing a counterclaim asking that our color patents be declared invalid and not infringed and non-enforceable because of the alleged antitrust and misuse offenses. This second counterclaim may be held in abeyance.

For our part, we moved to have the whole antitrust issue stricken from the case on the ground that it had nothing to do with the simple patent infringement action we brought. This looked very good at first but it may be frustrated by the Zenith counterclaims.

A Pre-Trial Conference was held two weeks ago with Judge Austin. In the course of it Zenith's counsel McConnell vehemently realleged Hazeltine's crimes and that they were part of the same crimes he and the Department of Justice conclusively pinned on RCA over the last 15 years. He claims he will prove the case from our own testimony which he has taken. It was mutually agreed, if the Judge overrules our motion, that the antitrust and misuse issues would be tried first for the reason that if Zenith proves correct all Hazeltine patents will be unenforceable and so there will be no need to consider their validity and infringement until we purge ourselves of the alleged crimes at some date in the future.

The essence of the misuse charge is that we have so arranged the economics of our licenses that they have no alternative but to take our package license, i.e., all our patents. They alleged that it will cost the $2,500,000 to license on a non-package basis and that this is the pressure which forces them to the package. Our packages cost $100,000 to $300,000 roughly by comparison.

I have the feeling that Judge Austin will let Zenith have its way in opening the whole misuse and antitrust issue wide open in the present litigation.

We will have another Pre-Trial Conference in May to work out matters further. So it is probable that we will not have a trial until the fall. Considering that, without doubt, there will be an appeal by the loser, the issue can not be expected to be resolved for several years.

Firestone—Judge Dalton has set this case for trial in June. It may take a year before we have a decision.

HRI Expansion.

The report on HRI expansion I referred to last month is now ready to submit to Management.

New Television License.

I have little to report on reactions of the industry to our new license terms. Many acknowledgments have been received but they indicate only that the terms are being studied. One vigorous protest came from Warwick. They characterize it as grossly unfair to raise rates. But that is exactly what I expected from my good friend, Bill Waggoner, since he vehemently thinks our present license unfair. He is just doing his job.

E. A. Ruestow.

DEFENDANT'S EXHIBIT NO. 32.

Notes on Hazeltine Patent Picture.

Present Patent Picture.

Hazeltine's present patent licensing activities are world wide. The U. S. activities are conducted by a wholly-owned subsidiary, Hazeltine Research, Inc., based in Chicago. Its principal income at present is derived from licensing the American television receiver industry under patents which resulted from its extensive research and development in that field. The entire receiver industry has been so licensed at various times, including as late as 1957, although Hazeltine's fortunes in that respect have declined recently due to expiration of important patents in black and white television. Since Hazeltine enjoys a dominant patent position with respect to the U. S. system of color television, it is hoped that its fortunes will be revived by the current, very hopeful, emergence of the color television market.

Hazeltine Research, Inc. also has income producing licensing programs in other technological areas, such as high frequency cable connectors, radio, and general electronic circuitry based on patents which arise from its various manufacturing and research activities mentioned elsewhere.

Outside the U. S., licensing activities counterpart to the foregoing are conducted under arrangements with companies in the countries involved. Throughout Europe they are conducted by Svenska Aktiebolaget Gasaccumulator (AGA) of Sweden which has derived considerable licensing income in the television and radio field and hopes to do a similar job in color television. In Great Britain, the same can be said for General Electric Co. Ltd., in Australia for Neutrodyne Ltd. (jointly owned by Hazeltine and Electronic Industries, Ltd.) and in Canada for Canadian Radio Patents Ltd. Programs also exist in Japan and Argentina.

Historical Patent Picture.

Historically, Hazeltine has been a unique company in the patent licensing field and has had an outstanding income record in the field. From its birth in 1924 until World War II, when it expanded into general electronics manufacture, mostly of military nature, its sole income was patent royalties based on research and development of home entertainment radio. This necessarily involved extensive know-how in patent soliciting, licensing, and litigation. This know-how and the patent organization to implement it is still intact. Hazeltine is, therefore, in an excellent position to exploit U. S. patents for companies which do not have the facilities and know-how for exploiting their inventions in America.

Hazeltine necessarily has been involved in extensive litigation to establish its patents at substantially all times during its thirty-seven year history. While that litigation obviously was not always successful, every litigation which it has brought since World War II has either been settled or decided favorably to Hazeltine.

Among the more important litigations brought by Hazeltine during this period may be mentioned following:

Defendant	Field	In Issue	Highest Court Involved	Result
Admiral Corp.	Television	Pat. 2,208,374	U. S. Court of Appeals	Patent held valid and infringed; license signed.
Air King Products Co.	Radio and Television	Validity of License	U. S. District Court	License held valid and delinquent royalties collected.
Amphenol-Borg Electric Corp.	High-Frequency Connectors	Pat. 2,540,012	U. S. District Court	Settled by license before trial.
Automatic Radio Mfg. Co. Inc.	Radio	Validity of License	U. S. Supreme Court	License held valid and delinquent royalties collected. Department of Justice unsuccessfully amicus curiae against Hazeltine.
Avco Mfg. Co.	Television	Pat. Re.22,055	U. S. Court of Appeals	Patent held valid and infringed; license signed.
Cage Electric Co. Inc.	High-frequency Connectors	Pat. 2,540,012	U. S. Court of Appeals	Patent held valid and infringed; license signed.
De Wald Radio Mfg. Corp.	Radio	Validity of License	N. Y. Supreme Court Appellate Division	License held valid; delinquent royalties collected.
General Electric	Radio	Pats. 1,951,685 2,041,273 2,080,646	U. S. Court of Appeals	Settled by license before trial; appeal on procedural questions.
Philco Corp.	Television	Pat. Re 22,055	U. S. District Court	Settled by license before trial.
Zenith Radio Corp.	Television	Pat. 2,547,648	U. S. District Court	Pending.

In many cases the litigation induced other companies to accept licenses rather than litigate. For example, the Amphenol and Daga litigations resulted in the acceptance of licenses by practically all manufacturers of the connector involved and the payment of substantial damages for prior infringement.

Without taking time for detailed accounting, the gross royalty income record of Hazeltine resulting from the foregoing can be estimated approximately as follows. This includes income from all sources, both within and outside the United States (exclusive of the share of the income retained by companies administering the licensing in countries outside the United States).

Year	Income
1960	$1,084,000
1959	747,000
1958	1,058,000
1957	1,237,000
1956	1,999,000
1955	1,919,000
1954	2,233,000
1953	2,238,000
1952	2,112,000
1951	1,943,000
1950	1,791,000

Royalty income from the domestic radio industry for the years 1926 to 1941 was slightly over $15,000,000. During World War II, the manufacture of civilian radio apparatus was prohibited, but the Government took a blanket license under the Hazeltine patents for military electronic equipment for a lump sum payment of $450,000 per year.

Hazeltine's legal costs in the foregoing have been kept to a minimum by its long standing policy of conducting all its patents affairs with attorneys on its own staff. Since 1947, this has included conduct of litigation. It is believed that this policy has not only increased net profit but also resulted in more successful management of patent problems because it permits the attorneys to acquire a more intimate knowledge of the technological fields involved.

DEFENDANT'S EXHIBIT NO. 33A.

Domestic Patent Licensing Plan Draft.

Any applicant would be offered by letter any or all of the following at the royalty rates indicated. Royalty rates are stated as a percentage of selling price of the licensee's total production of television receivers and chassis. There would be no maxima except where specifically indicated below for specific patents. No maxima for Color at all would apply beyond the date when the maxima under any Hazeltine Color license in effect January 1, 1963 ceases to apply.

Monochrome Only.

		Rate	Max.
Loughren—Keyed AGC	2,547,648	.475	$ 25,000
Richman—Noise Aperture	2,933,558	.285	$ 15,000
Any unspecified patent		.05	

Color Only.

Initial basic charge for any license to apply in addition to the individual percentage rates indicated below, but not in addition to any applicable maxima: .10.

Rates and Maxima for Individual Patents.

A

Loughlin—Shunted Monochrome	2,774,072	1.20	$160,000
Loughlin—Constant Luminance	2,773,929	.25	$ 30,000
Richman—D. C. Quadri	2,954,425	.20	$ 25,000
Loughlin—Matched Phosphor Tube	2,905,749	.05	$ 5,000
Loughlin—2-3 Matrix	2,728,813	.05	$ 5,000
Total		1.75	$225,000

B

Loughren—Keyed AGC	2,547,648	.05
Richman—Noise Aperture	2,933,558	.05
Richman—2 Mode Sync	2,848,537	.05
Richman—Sync ACC-2 Mode	2,922,839	.05
Richman—Cathode Matrix	Patent Pending	.05
		.25

C

Any unspecified Color patent.	.05

Rates for Monochrome Packages.

(1)	All specified patents.	.76
(2)	All unspecified patents.	.25
(3)	All patents.	1.01

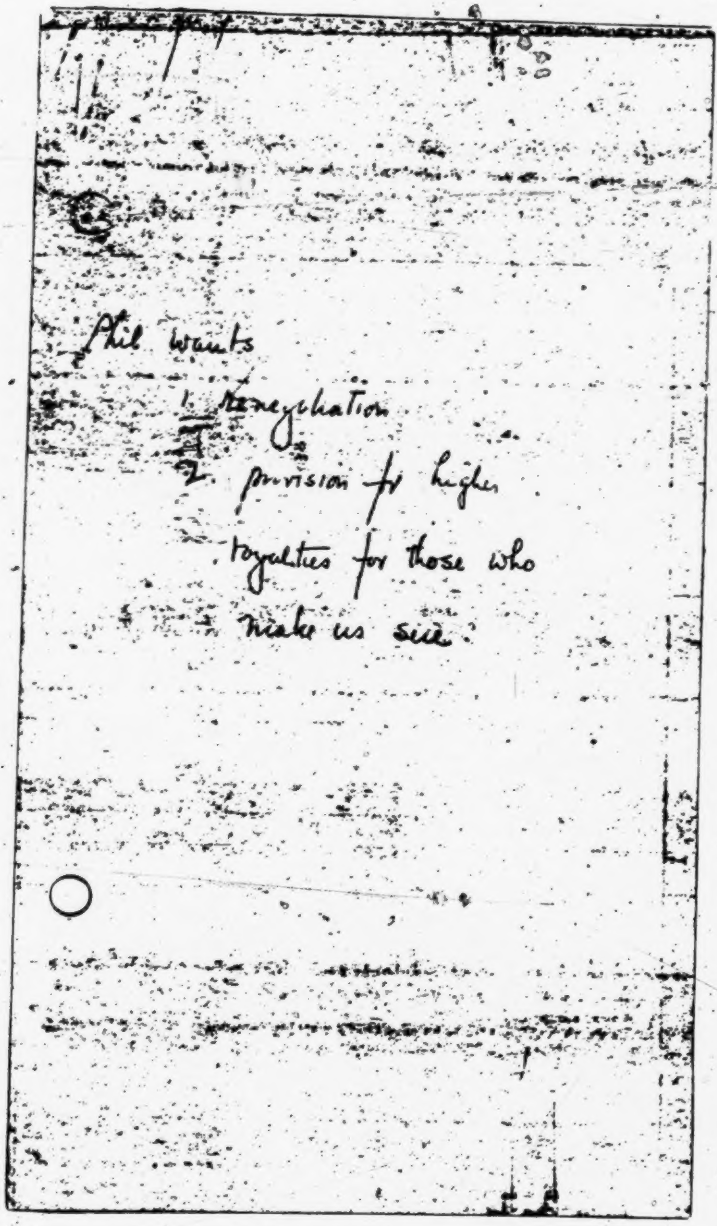
The foregoing Monochrome package rates do not reflect either a basic initial charge or any package discount. They are based on charges under existing licenses, in accordance with an established pattern, for the specific patents individually as indicated above. It is considered that this pattern of licensing is so well established that no substantial initial charge need be made. It should be borne in mind that these rates apply at this time and for several years to come to a much greater volume of total sales than will be true for Color. However, the maxima establish the actual realization from these patents and have been forced upon us and cannot be departed from at this late date as a practical matter.

Rates for Color Packages Including Basic Charge.

(1)	Package of patents listed under A. No package discount.	1.85
(2)	Package of patents listed under B. No package discount.	.35
(3)	All patents listed under A and B. This reflects a .10 package discount.	2.00
(4)	Package of all unspecified Color Patents including all future rights.	.35
(5)	Package of all Color patents including future rights. This reflects a .10 package discount.	2.25

The foregoing package discounts merely reflect that on the two largest packages, all specified Color, or all Color, the transaction is sufficiently large to consider the initial basic cost is being absorbed in the royalties charged. The practical purpose is to keep the total royalty rate from becoming a higher percentage of a licensee's television set selling price than will be bearable.

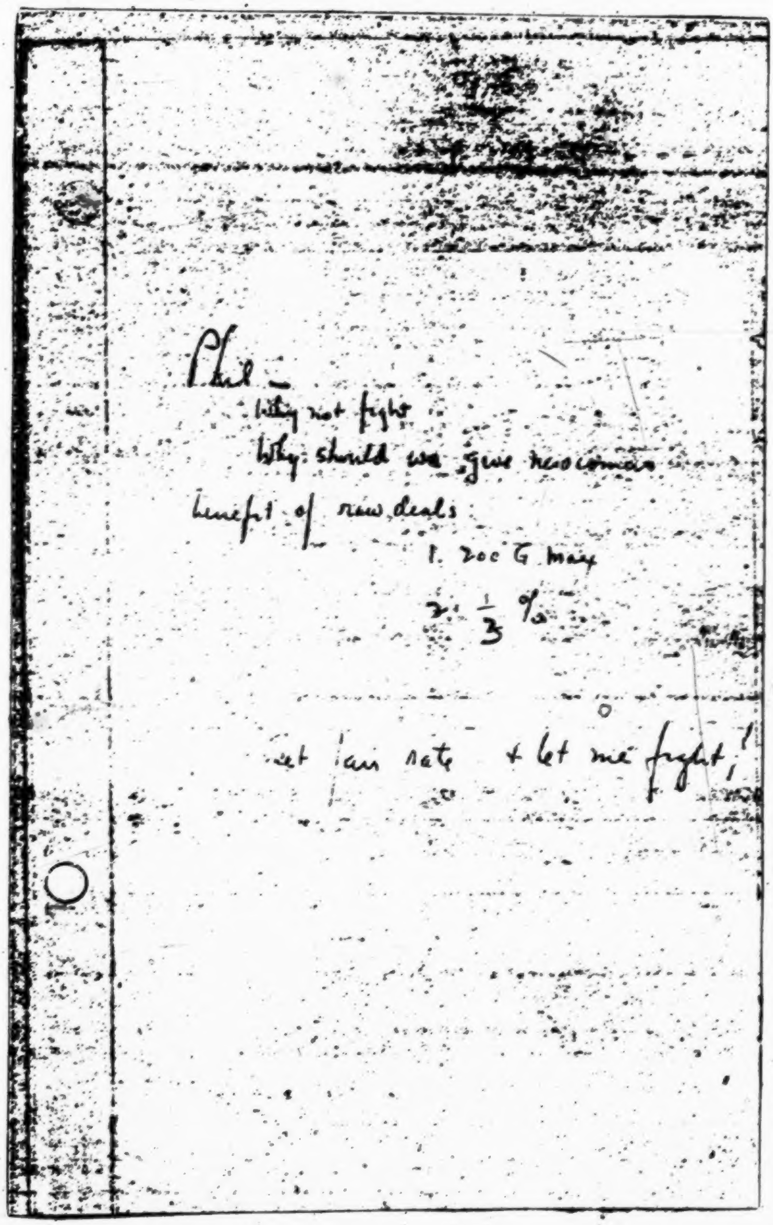
DEFENDANT'S EXHIBIT NO. 33-B.



Phil wants

1. renegotiation
2. provision for higher royalties for those who make us sue.

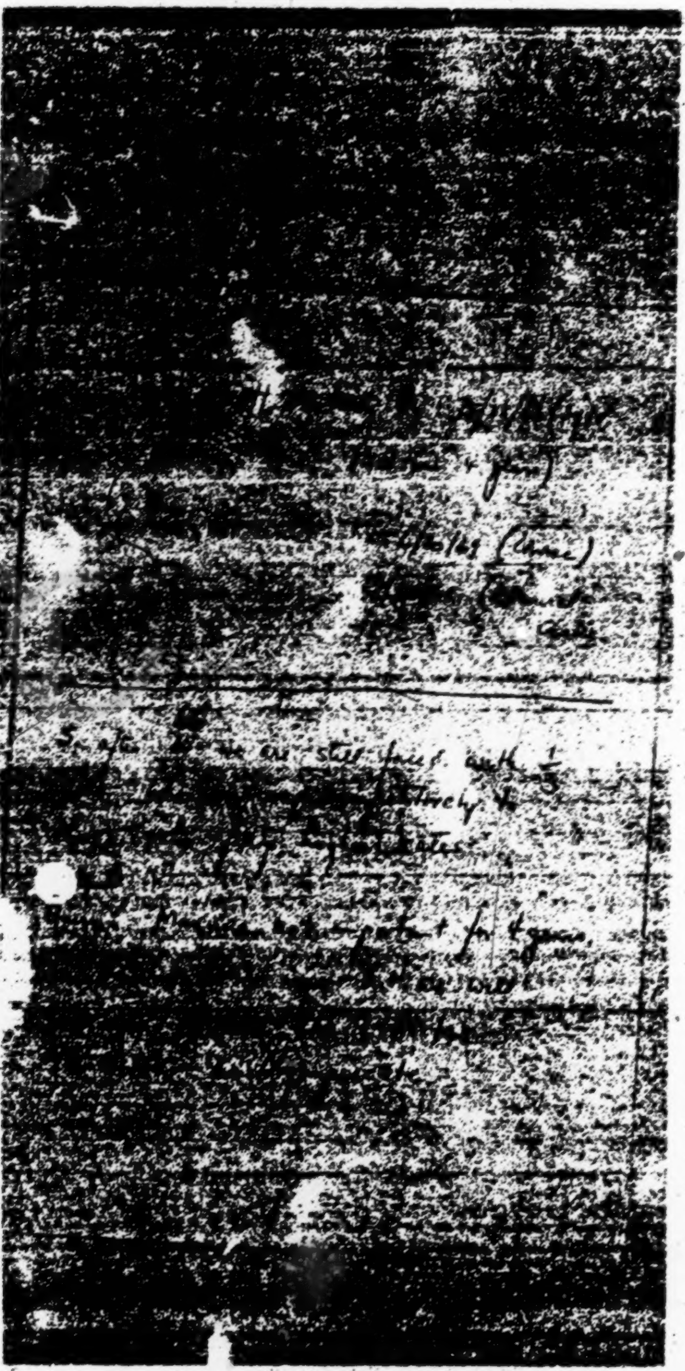
DEFENDANT'S EXHIBIT NO. 33-C.



Phil —
Why not fight
Why should we give newcomers
benefit of new deals
1. 200 G max
2. $\frac{1}{3}$ %

Set fair rate + let me fight!

DEFENDANT'S EXHIBIT NO. 33-D.



[Printed copy of this Exhibit on reverse side.]

PRINTED COPY OF DEFENDANT'S EXHIBIT NO. 33-D.

Max get off our back by 12/31/66 (Sylv)
(Less than 4 years)

⅓ rate not until 6/30/69 (Conrac)
12/31/68 (Admiral—
Curtis)

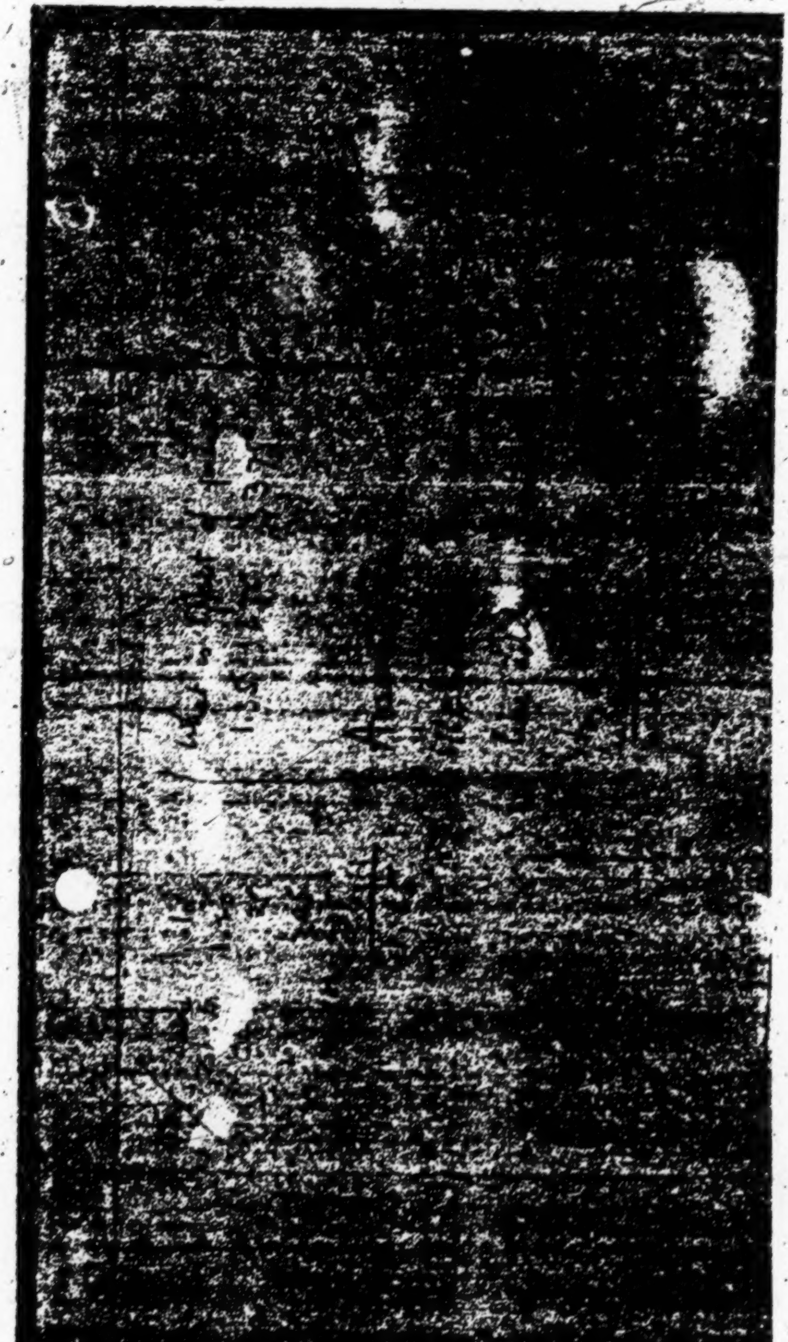
Say after 66 we are still faced with ⅓ rate
as handicap competitively to those who pay higher
rates.

Quiry: Maxima not important for 4 years.

Should we say no max but we will give you ⅓
rate til 12/31/68?

NO MAX—As Olympic etc.

DEFENDANT'S EXHIBIT NO. 33-E.



[Printed copy of this Exhibit on reverse side.]

PRINTED COPY OF
DEFENDANT'S EXHIBIT NO. 33-E.

— E /basic	.10
Sh. M.	1.20
CL	.25
L&M	.05
Royalty	.05
	1.65

What is effect of present
1.35 .675 .3375 rates?
Answer take either the RCA max or
something like adding up roughly
to a 1.35 .675 .3375 rate
without max
until others expire.

DEFENDANT'S EXHIBIT NO. 34A.

Mr. W. M. McFarland January 24, 1963.
L. B. Dodds

Draft—new HRI License Agreement.

As a result of a discussion between Mr. Ruestow and the writer with Mr. Diggins on January 22, 1963, I should like to modify the proposed schedule of royalty rates set forth in my memo to you of December 6, 1962 on this subject, as follows:

Monochrome TV Receivers.

(1) 60% of the monochrome package rate percentage, lump sum, and minimum annual royalty (for brevity hereinafter collectively called the "package rate") for either of the following patents:

2,547,648—Loughren—Keyed AGC
2,933,558—Richman—Noise Aperture

(2) 90% of monochrome package rate for both of the patents enumerated in election (1).

(3) 10% of monochrome package rate for any other patent alone.

(4) 2% of monochrome package rate for each additional patent (other than those enumerated in election (1) selected in conjunction with elections 1, 2 or 3.

(5) 40% of color package rate for either of the following patents:

2,773,929—Loughlin—Constant Luminance
2,774,072—Loughlin—Shunted Monochrome

(6) 75% of color package rate for both patents enumerated in election (5).

(7) 20% of color package rate for any one of the following patents alone:

2,547,648—Loughren—AGC
2,728,813—Loughlin—Color Matrixing Circuit
2,905,749—Loughlin—Matched Phosphor Tube
2,933,558—Richman—Noise Aperture
2,954,425—Richman—Quadricorrelator

(8) 10% of package rate for each of the patents enumerated in election (7) after the first patent or when taken in conjunction with either of the patents enumerated in election (5).

(9) 2% of color package rate for any other patent in conjunction with any one or more patents selected in accordance with elections (5), (6), (7) or (8).

In the light of our discussion of January 15th 1963, it is suggested that the package annual minimum royalty be set at $10,000 and that the foregoing schedule of percentages of package rate apply also to such minimum.

Mr. Diggins advises that his report and opinion will be forwarded in the next few days.

L. B. Dodds.

LBD:AMR

cc: R. E. Beam
E. A. Ruestow

DEFENDANT'S EXHIBIT NO. 34B.

34B

Still apt to be viewed — for
[illegible] what we intend it)
(— a transparent attempt
to fit them into the package. —
?

---

doesn't meet Diggins' objection
p. 54-55 — still open to
that criticism.

He has made keyed & aperture
less color than black & white
& so departs from Diggins p 46 criteria
that it be based on importance of patent.

Hazeltine Research, Inc.
vs. Zenith Radio Corporation
Defendant's Exh. No. 34B
C.A. No.
59-C-1847

DEFENDANT'S EXHIBIT NO. 35.

I. Formula—or License plan which clarifies and eliminates question of "misuse". Arbitration, periodically,—important not only on price but as additional protection against "Misuse".

II. HRI vs. Zenith—All legitimate steps before a final decree.

III. Friendly meetings with Joe and Crotty and if nothing materializes—commence forthwith suit on best color patent or patents.

DEFENDANT'S EXHIBIT NO. 36.

(Executive Use Only)

March 4, 1963
xxx-63 M59

Air Mail

Philip F. LaFollette, Esq.
Messrs. LaFollette, Sinykin, Doyle & Anderson
110 East Main Street
Madison, Wisconsin

Dear Phil:

Enclosed is copy of a complete schedule of patent license color and monochrome rates for (a) one electing to select one or more individual patents, and (b) a series of various combinations of either color or monochrome patents with an overall annual dollar minimum and maximum for each such group as to which the licensee might elect one or more thereof. For example, a licensee may (1) select individual patents and the individual rates, (2) do the same as (1) above as to either color or monochrome and as to the other which he did not select method (1) above, select one or more of the groups, (3) select only a group as to color or monochrome or (4) select one group for color and another group for monochrome.

This is largely the result of many months of my consideration of the various concepts of others on various aspects of what the industry would buy, the economic and business problems, legal considerations such as to "misuse" of patents and proper wording of clauses, existing status of licenses and negotiations, the internal individual differences and fluctuations of opinion on various points, and how to coordinate and balance all these points and positions into a final position which we would have to take.

It seemed to me early last week that we could wait no longer for agreement on a coordinated and balanced schedule, so my first draft of this schedule was issued last Thursday with copies to L. B. Dodds, E. A. Ruestow and D. Westermann and a meeting called for final action the next afternoon.

Thursday afternoon, Westermann raised two points which he felt were not solved by my first draft, namely,

(1). The only way my draft then provided for any discount for a group of monochrome patents was by virtue of a group including all color and monochrome patents. Of course, he was right on this, so in my second draft groups (III) (C) and (D) were added.

(2). He also felt it could be "misuse" if any more than inconsequential discounts for individual patent rates were offered by way of groupings. My first draft had contemplated this might be solved by agreeing on rates which would draw the two closer together but still leave the group discounts at a point where election of groups could be lawfully encouraged. His view based on his legal research was that this could not be done lawfully. Therefore, my second draft provided for (a) reasonable group minima which if elected by the licensee would change the deal so that the comparison between individual and group rates could not be determined only by looking at the respective percentages. Since this naturally would tend to discourage election of groups, reasonable maxima were also provided for each group. In the end this satisfied Westermann and Dodds and Ruestow also agreed. (Westermann and Ruestow conferred with Barney Loughlin Friday morning as to possible future developments in the art and we concluded from this we could make no other provision in the license agreement which would be helpful against the unknown future without destroying the "balance" of the schedule).

At the Friday afternoon meeting with Westermann, Dodds and Ruestow, a few minor additional changes and refinements were included by compromise, but also two major changes were accepted subject to your approval of my acceptance of point (2) below. These were as follows:

(1). At the start of the schedule provision was made that all rates, groups, minima and maxima were to be in effect only until January 1, 1968, regardless of the date of any new license. The purpose of this was to aid us in getting away from staggered effective dates, such as those which made paragraph (IV) of the schedule necessary. We know now that, while staggering effective dates was originally helpful, for some years now such has been a tremendous handicap in trying to change rates where the same was necessary or desirable due to changes in our patent position, the state of the industry, and the changing art. This seemed to me to be desirable and hence an acceptable change.

(2). The second change was the elimination of the renegotiation clause. This was important to me because it originally seemed to be valuable both as to resisting claims of "misuse" and as a psychological leverage. The other three conferees were firm in their objections, both because of non-belief in its value and also because it could be used to handicap the achievement of our avoidance of staggered effective dates as sought by change (1). My agreement in the end was reached because it seemed the only way in which general agreement could be obtained as to an overall coordinated and balanced schedule. However, my agreement was conditioned on your acceptance of this change since I had agreed with you to include the renegotiation feature. Please advise me promptly if you will accept this change, even though reluctantly as in my case.

It also was agreed as follows:

(A). That this schedule (which we all approved) would be (a) incorporated in a letter sent to all with whom we had or were attempting to negotiate licenses, (b) be made Schedule (A) of the appendix attached to all license agreements, and (c) a whereas clause would be added to the license agreement referring to such Schedule (A) and stating that the licensee had received the letter and made his elections and negotiated the license pursuant thereto.

(B). This schedule would be sent to Diggins requesting his approval this week. By telephone he will be requested to give us a letter of unqualified approval this week, and if he cannot so approve, he is to come to New York this week and orally review with us his objections.

(C). Ruestow would then write the new license agreement based on his last redraft of the old agreement, as to which Westermann and myself had spent a tremendous amount of time in reviewing and coordinating the provisions from Contract law experience; but that he would delete (a) any specific obligation to render engineering service and (b) the renegotiation clause, and (c) provide a new simple clause for the elections made by the licensee pursuant to Schedule (A) of the agreement.

(D). The conference with Zenith would be held as you suggested and if unsuccessful a new color suit would be filed against that company.

(E). As soon as we receive your decision, the letter will be sent as referred to above and negotiations begun. It is, of course, understood that if this schedule and approach proves unsaleable to the industry, we will review the situation and come up with something which may be different in one or more respects.

This is rather a long letter, but it is hoped it is complete, since we now seem to be on the track so as to be able to proceed full speed ahead. Please advice me promptly either by letter or telephone.

Best regards.

Sincerely,

WMM:fs
cc: L. B. Dodds
E. A. Ruestow
D. Westermann
R. L. Beam

DEFENDANT'S EXHIBIT NO. 37.

Hazeltine Corporation
Board of Directors Meeting

March 20, 1963

Report submitted by E. A. Ruestow

Report on HRI and HC Licensing Activities for the month ending March 20, 1963.
New Television License

A new schedule of television license terms has been worked out and is now being announced to the industry by letters to all manufacturers. It is in outline form for negotiation purposes and will be followed up with a formal standard contract, the first draft of which has already been written.

Without going into too much detail, the schedule provides roughly as follows:

1. An offer to license all patents individually at rates varying with their present estimated value.
2. An offer to license patents in three different groups in color and 2 groups in black and white—depending on the need of the licensee and ranging from all our patents, present and future, to those now needed only for color or only for monochrome.
3. If the groups are selected by any one color licensee he obligates himself to minimum annual royalties ranging from $100,000 to $135,000 and maximum annual royalties ranging from $275,000 to $310,000—the figures are much less if he is making only black and white receivers because of our weaker black and white position.
4. All rates are established only to January 1, 1968 although the license will have a 5 year duration.
5. Until the present RCA license expires June 30, 1966, no licensee making both color and black and white will pay more than RCA, i.e., $200,000 annually. If he is in black and white only, he will have a $50,000 maximum until February 1, 1965.
6. For the color licensee with small production (e.g. 20,000 sets annually), the schedule is so arranged that he will probably choose individual patents and pay close to the minimum of $100,000—again less for black and white.
7. The schedule has been approved unqualifiedly by outside and inside counsel from the legal standpoint.

State of the Color Market

You realize, of course, that our attention is directed mainly to the rising color market.

In this connection, I have an interesting summary from the trade press this month which you can take for what it is worth as someone's latest guess as to the state of the industry.

First and of utmost interest to us, it reports that RCA has announced that it will cease supplying the rest of the industry with color sets by the end of this year. This solves a difficult problem for us.

Secondly, it lists 19 manufacturers who are now making color or will do so this year. That list can be slightly over 20 because of well known omissions such as RCA. Of course, many of these, perhaps at least half of them, will have only small production and I suppose many will not withstand the long range competitive struggle.

At least it shows that many people want to get into the act.

The trade press (TV Digest March 18, 1963) also reports a survey of 14 leading TV manufacturers a few months ago. The consensus of opinion is that color set sales will increase in 5 years to between 2.2 and 2.5 million as against the 1962 figure of around 400,000. This far exceeds our previous guestimates.

Income

My crystal ball is no better than anyone else's. But on the basis of the foregoing, I am hoping for a considerable rise in HRI income in the next 2 or 3 years. If the rates I discussed hold up and these 20 manufacturers really get into the act as guessed, HRI income should go back to the $2 million level in 5 years.

• • • • •

I do not recall whether I mentioned a figure when I last reported AGA 1962 results. Anyway, I can now state that we received last week their check for $238,264.13 for 1962. This is a whopper compared to what we anticipated.

HRI Expansion

We in HRI are at work on a plan for expansion of HRI to keep it abreast of and ahead of technical changes in the television field. We foresee a number of realistic possible changes such as integrated circuits. I assure you we will Keep the plan well within income and time it to grow as income justifies. The plan will be presented to management shortly.

E. A. Ruestow.

DEFENDANT'S EXHIBIT NO. 38.

Problem For Special Consideration.

It is understood that several companies are actively engaged in research, a probable result of which will be that starting with production approximately two years hence an alternative color television set design involving the use of a single gun tube instead of the present three gun tube will be available: The result of such design would be that the key Hazeltine patents listed under A above would be of no importance to manufacturers using an alternate design. They would be in no danger of successful suit for infringement by Hazeltine under any of the patents listed in A above. However, there are approximately ten of the unspecified Hazeltine patents which would then become key patents in manufacturing television sets in accordance with the alternate design.

It is expected that any manufacturers negotiating with Hazeltine for production starting any time within the next two years would need a license under at least the Shunted Monochrome and Constant Luminance patents listed under A. They would therefore be paying a royalty of 1.55 ad if their production achieved any volume they would be paying a maximum of at least $190,000 a year. If any such manufacturer took the package of unspecified Color patents he would be paying a royalty rate of at least 2.00 and a maximum sale amounting to at least $190,000 if his production achieved any volume. Under the Hazeltine system of applying the royalty percentage to the selling price of the manufacturer's television sets regardless of what Hazeltine patents, if any, are used in the particular sets (in accordance with Hazeltine v. Automatic Radio) it would not make any practical difference in Hazeltine's income if he switched to the alternate single gun-tube television set design and used ten or so of the unspecified patents instead of the patents listed under A above.

However, a company which may not plan to go into Color production for another two years, and which according to its present planning might well produce Color sets starting more than two years hence using the alternate single gun design, could, under the foregoing licensing plan, obtain a real bargain from Hazeltine by immediately taking a license for only the package of unspecified Color patents for a total royalty of .35. This royalty would result in no payments to Hazeltine during the next two years and until his color production started. If then, he started producing Color sets in accordance with the alternate single gun design, he would only have to pay Hazeltine .35 for the key Hazeltine patents making his production possible, and he would have no use for the higher priced patents listed under A above. Some protection against this could be introduced into the above licensing plan by applying a flat sum maximum charge for the unspecified Color patents. However, in fairness to licensees taking the total package of Hazeltine Color patents its does not appear that this could exceed $20,000 bearing in mind that such licensees would already be paying a maximum of $20,000 in fairness to licensee taking the entire Hazeltine Color package.

Another form of protection would be to withhold all Hazeltine Color patents for the present except those specifically listed under A and B above. It is believed that at the present time the only real value in taking the unspecified patents for any licensee seriously applying for a license under patents under A and B above would be to obtain insurance against any danger of Hazeltine infringement action. It may be that one or more serious licensee will insist upon such protection and it may in such case be absolutely necessary to offer licenses under all Hazeltine Color patents, present and future. There has been one remark to the effect that there would be such a requirement, in a casual comment by Zenith counsel to Mr. Ruestow. RCA and Olympic have such licenses but as to RCA it should be remembered that in view of the low ceiling applied to it there was no reason for it not to take the entire package. Mr. Ruestow's negotiations with G. E. to date have not indicated that they would require a license under any patents other than specified patents indicated by them. In Monochrome, the present pattern is only to take the two basic patents and the licensees have not concerned themselves about insurance against Hazeltine infringement action on other patents, although that situation may not be fully comparable.

Of course if all of the patents are offered initially, and under subsequent technological developments certain Hazeltine patents become important for the single gun system, instead of the patents listed under A above, they could be offered at substantial rates to new comers, and they could be substituted at substantial rates for patents listed under A above under the provisions for reopening and renegotiation in the licenses.

* * * * *

Upon decision as to the licensing plan for rates, maxima, packages, etc. to be used, Messrs. Ruestow and Westermann will prepare a standard letter to be used to initiate discussions with any applicant for a license. It will list individual patents with rates, and maxima if applicable, and packages with package rates as indicated above, for selection as desired by the applicant.

Mr. Ruestow and Mr. Westermann will then review the Ruestow September 10, 1962 draft and will prepare a new draft license agreements to be based as closely as possible on that September 10, 1962 draft consistent with the plan decided upon. It is contemplated that the licensee agreement would contain only one schedule listing the patents actually selected. In the preamble there would be a recitation that the licensee had made the selection and agreed upon the rates, and any maxima applicable, on the basis of Hazeltine's letter dated ______, Serial ______, which would be the standard Hazeltine offer.

DEFENDANT'S EXHIBIT NO. 38-A.

(Letterhead of The General Electric Co., Ltd., Kingsway, London, W. C. 2.)

1st December, 1952.

L. B. Dodds, Esq.,
Hazeltine Corporation,
58-25, Little Neck Parkway,
Little Neck,
Long Island,
New York,
U. S. A.

Dear Mr. Dodds,

I hope that you have had a safe and enjoyable voyage home, and that the weather was not too rough. Since you left England, I have prepared three draft Agreements, putting into formal wording the effect of what was agreed when you were over here, as summarized in our letter of the 20th November.

I accordingly enclosed a copy of the new proposed Pool Agreement, Service Agreement and U. S. A. License Agreement, and should be most grateful to hear from you as soon as possible whether you find yourself in agreements with the wording. As far as possible, I have followed the set-up of the previous Agreements, but as arranged the new Agreements stand on their own feet, and are not expressed in the form of extensions of the previous Agreements, since it seemed to me—and I think you agreed when you were in England—that this was the simplest way of doing it, because by reference back to the old Agreements with their various extensions, it would make the matter extremely complicated. All three Agreements are expressed to operate as from the 1st January, 1953 and to terminate five years later viz: on the 31st December, 1957.

I would particularly ask you to check the address which I have given for Hazeltine. This, I think, follows what was set out in the last Extension Agreement which you recently approved, and which as a matter of fact is still before our Treasury for their final approval, which describes you as having your principal place of business at 58/25, Little Neck Parkway. Mr. Cornock is not certain whether Little Neck is your principal place of business, as he believes that your registered office is still Washington. Would you, therefore, be kind enough to carefully consider whether we have described your address correctly.

I think the drafts speak for themselves, but perhaps I should make a few comments.

Pool Agreement.

Since you left England, I have had one or two conversations with Mr. Dale-Harris on the telephone, and I received late last Friday, an Agreement for our signature whereby G. E. C. becomes a Joining Party to the A.7 Pool.

In this Agreement G. E. C. represents that it can put into the Pool not only G. E. C.'s own Patents but also those of Hazeltine and are allowed 12 points as against E. M. I.'s 100, but contemporaneously E. M. I. will give us a covering letter agreeing to pay to us out of their own share of the Pool, an amount equal to the additional amount to which G. E. C. would be entitled by way of share in the Licencing Revenue Pool had the number of points allotted to G. E. C. been 17 instead of 12. Mr. Heather informed Mr. Dale-Harris that if towards the other Pool Members, E. M. I. felt they could only justify allotting to G. E. C. (and Hazeltine) 12 points, he would not object to this amount appearing in the formal Agreement provided, of course, that E. M. I. made up the total number to 17.

The definition given to the words "radio apparatus" is the same as that appearing in the A.7 Pool. With regard to Clause 5, I have endeavoured to put in more formal wording the intention of the third paragraph of our letter of the 20th November. I did not find this Cause at all easy to draft, but I hope you will find yourself in agreement therewith.

You will find that in Clause 7 I have slightly elaborated what was covered in the penultimate paragraph in our letter of the 20th November, because since the operation of Clause 5 is dependent upon not only your 40% share of what we receive from the Pool, but the amount of income tax which you are able to claim a refund in respect thereof, the refund may be affected not only by a change of Laws, but also by your doing or failing to do something which might affect your being able to obtain that refund.

Service Agreement.

This follows so closely the original Agreement, that I hardly think it is necessary for me to make any comment thereon.

U. S. A. Licence Agreement.

This previously was made entirely dependent on the Service Agreement, but I think it really would be better to let it stand on its own feet, and run for the said agreed period of five years. I have slightly amended, but merely for clarity's sake, the set-up of this Clause 1, but I think in substance you will find it the same.

With regard to Clause 2, since it has been the practice—although it was not so specifically provided under the original Agreement—that the Patents which you apply for in respect of our inventions are subsequently assigned into your name when granted, it seemed to me desirable that one should provide that upon the termination of the Agreement, these Patents should be re-assigned to us if we so desire. I believe that Mr. Cornock will be communicating with you on the telephone, a further explanation about this point, it being one which we had some experience with in another direction.

I shall be grateful to hear from you as soon as possible, because when the text has been agreed between us, I shall then immediately apply to the British Treasury for permission to enter into these Agreements, and will have to submit copies to them, and I am sure that you would wish, if possible, to get them signed as near a date to the 1st January 1953 as can possibly be managed. Incidently, it may mean a slight revision to the recitals if the Agreement is signed before or after the 1st January 1953. For instance in the Pool Agreement in the first recital, one might have to say instead of "these Agreements will terminate on the 31st December 1952" that "these Agreements have terminated on the 31st December 1952".

With kind regards.

Yours sincerely,

K. H. Nalder

DEFENDANT'S EXHIBIT NO. 38-B.

Via Air Mail December 12, 1952.

Mr. K. H. Nalder,
The General Electric Co. Ltd.,
Magnet House, Kingsway,
London, W. C. 2, England.

Re: Hazeltine—G. E. C.
Draft Agreements

Dear Mr. Nalder:

This will acknowledge with thanks your letter of December 1, 1952, and the enclosed three draft Agreements covering the relationships between our companies for the duration of the A.7 Pool. I regret that this reply has been delayed by the fact that your letter arrived last week while I was in Chicago for the week.

Mr. Binns and I have carefully reviewed the three draft Agreements and find them generally quite satisfactory. There are just a few comments which I should like to offer for your consideration.

With respect to the address of Hazeltine, we believe that it would be preferable from the standpoint of our local taxation problems to refer to Hazeltine Corporation as "having a registered office at 821 National Press Building, Washington 4, District of Columbia, U. S. A." A considerable amount of our dealings in this country are through that office although we would prefer that you correspond with us here at Little Neck.

Pool Agreement

I can appreciate the difficulties you encountered in drafting the language of certain of the clauses of this Agreement but I believe you have stated very clearly and succinctly the substance of our letter of November 20, 1952.

In Clause 3 of this draft Agreement, I would suggest the following insertion at the beginning of the Clause:

> "During the continuance of this Agreement . . ."

The purpose of this insertion is to make certain that the immunity granted is limited to the period of the Agreement.

In Clause 7, I should like to suggest the rewording of line 1 as follows:

> "In the event of a failure to obtain the approval of the British Treasury to the payments specified in Clause 4 hereof or in the event of there being a change in the laws or regulations relating . . ."

The purpose of this insertion is that the grant of rights by Hazeltine to G. E. C. under Clause 1 is unconditional while the obligation of G. E. C. to make payments to Hazeltine under Clause 4 is conditional. Therefore, if the condition of Clause 4 should fail, obviously there should be an appropriate negotiated modification.

Service Agreement

Clause 1.(c) should be deleted. The general bulletin service there referred to was discontinued a number of years ago and since that time information has been supplied to our foreign associate companies, including your company, on an individual basis.

U. S. A. License Agreement

We are entirely agreeable to the reassignment of the patents and patent applications which we acquire under this Agreement upon the termination of the Agreement subject, however, to one possible exception. As you may know, it is the practice of Hazeltine to grant a standard five-year license under all of its present and future patent rights. These five-year licenses do not run concurrently but are staggered so that should the Agreement between our companies be treminated for any reason, as of such date of termination we would have a number of licenses in existence in this country having periods of from one to five years to run. It might be quite embarrassing to cut off such licensees' rights in inventions derived from your company in the middle of their license period. Therefore we should like to offer for your consideration the addition at the end of Clause 2 of this Agreement of the following:

> ". . . excepting non-exclusive license rights which the corporation may have granted in conjunction with license rights under its own invention rights which may be outstanding upon the aforesaid termination."

You understand that our License Agreements are very similar to the Pool License in that they are blanket licenses under all of our patent rights with no portion of the royalties specifically allocable to any patent or patents. Therefore, the patent rights which Hazeltine might acquire from your company under this Agreement would not represent a source of additional revenue to it.

We would not want to delay the completion of these Agreements by insisting upon this inclusion at this time if you consider it unequitable or if it is in any way in conflict with any commitments which your company might have. In such event, I suggest that the U. S. A. License Agreement be executed in its present form with the view of settling this particular point equitably at a later date.

Again, I should like to express our sincere appreciation of your prompt attention to these draft Agreements and your generous cooperation in this matter.

With kind regards.

Sincerely,

Vice President.

LBD:cf

DEFENDANT'S EXHIBIT NO. 39-A.

April 17, 1958.

E. H. McDermott, Esq.,
111 West Monroe Street,
Chicago 3, Illinois.

Re: Trav-Ler.

Dear Ed:

Enclosed is a letter of which I am sending a copy to Jack Cusack. A copy of this letter is not being sent to him for reasons which I am sure you will understand.

Mr. Friedman has learned (undoubtedly from a source I am sure we both know) about our temporary arrangements with Magnavox, RCA, and Packard-Bell and he takes the position that these are short-term licenses and, therefore, more favorable to the licensee than his five-year license. He also knows that Westinghouse has not taken a license or paid royalties since the expiration of its last license on June 30, 1957, and similarly that Emerson has not paid royalties since the expiration of its license on December 31, 1957. As you know, we are still negotiating with both of these concerns for a new license but Friedman brushes that aside and asserts that we are not doing anything about non-licensed manufacturers.

In addition to the factors mentioned in my other letter weighing in favor of suing promptly, there are also some factors which might favor postponement of such a suit. In the first place, Friedman now seems to be very much confused in his thinking, influenced no doubt by his intense animosity against RCA, and he may have calmed down before his license expires on June 30, 1959. This could be true, particularly if we are successful in selling our new license generally to the industry by that time.

Secondly, if we wait until after the termination of the license and are still unable to persuade him to pay up and take a new license we could then bring suit for such royalties and concurrently sue him for infringement. This double blow might be enough to persuade him to settle.

The third factor is that the RCA indictment is still fresh in everyone's mind and, as you know, Hazeltine was named as a co-conspirator. Admiral has raised the point whether or not Hazeltine is tarred by the same brush as RCA so that the Hazeltine license is made unenforceable. I am confident that there is no merit in this position and I believe that I satisfied Admiral in this respect, but there is still a possibility that this might be raised as a defense to a suit against Trav-Ler at this time. As time goes on this threat will probably diminish.

Therefore, if all possible, I would appreciate an opportunity of discussing this question with you before the H. R. I. meeting on May 6, say about 10:30 or 10:45. Would you let me know whether this would be convenient. Also, if you have any questions or if there are any additional factors which you would like, please let me know.

Sincerely,

President.

LBD:CBS

Enclosure

cc: W. O. Swinyard.

DEFENDANT'S EXHIBIT NO. 39-B.

(Letterhead of McDermott, Will & Emery, Chicago 3)

Mr. L. B. Dodds, President,
Hazeltine Research Corporation,
59-25 Little Neck Parkway,
Little Neck 62, New York.

May 6, 1958

Dear Larry:

Confirming our discussion at the directors' meeting this morning with reference to your letter of April 17th relative to the Trav-Ler matter, the consensus of opinion, with which I agree, appeared to favor tabling for the time being the bringing of a suit against this licensee.

Psychologically it was felt that our litigation position would be improved if we can sign up two or three additional licensees before instituting suit. Also, in view of Friedman's apparently deep resentment against RCA, there might be some advantage in letting a few months elapse before any suit, in the thought he might be less likely to urge in defense the co-conspirator allegations in the RCA indictment. Since any suit would be in the state courts where he might be given a jury trial, we might be harmed if the RCA indictment were brought to the jury's attention.

The Illinois courts are very congested so an early judgment is unlikely in any event.

I would suggest that we keep in touch with Trav-Ler's financial position. Should there by any indication of financial deterioration or should any new factors, emerge, we should be prepared to reconsider and, if advisable promptly bring suit.

All good wishes.

Cordially yours,

EHM:GL

Ed.

DEFENDANT'S EXHIBIT NO. 41.

An Agreement made the 5th day of September, One thousand nine hundred and thirty three Between Hazelpat Limited a Company incorporated in England and having its Registered Office at St. Michael's Alley Cornhill in the City of London (hereinafter called "Hazelpat") of the one part and the Hazeltine Corporation a Corporation organized and existing under the Laws of the State of Delaware in the United States of America and having its principal place of business at 15 Exchange Place Jersey City in the United States of America (hereinafter called "Hazeltine") of the other part.

Whereas Hazeltine are now and may in the future further become possessed of certain British Patents and Patent Applications in respect of Inventions relating to Wireless Reception and Apparatus (including Valves) for use in connection therewith which said Patent Protection Hazeltine are desirous of exploiting within the British Isles (as more particularly defined hereafter) for the purpose of obtaining Royalties therefrom.

Now It Is Hereby Agreed as follows:

1. In consideration of the sum of Five shillings now paid by Hazelpat to Hazeltine (the receipt whereof is hereby acknowledged) Hazeltine hereby grants to Hazelpat full and complete power and right to grant in the name and as the Agent of Hazeltine non-exclusive non-assignable licenses for the British Isles in respect of all British Letters Patent now owned or controlled by Hazeltine and all future British Letters Patent to which Hazeltine may become entitled or control during the period of these presents at Royalties to be determined by Hazeltine Provided Always that no such License shall be for a period extending beyond the First day of August One thousand nine hundred and

forty, Hazeltine further grant to Hazelpat the right to prosecute or continue all actions oppositions Petitions and like proceedings in the name of Hazeltine in connection with the Letters Patent or applications for Letters Patent within the scope of these presents against any parties resident or domiciled within the British Isles. No such License shall be granted nor such action or like proceeding be taken save upon the unanimous consent of all the Directors of Hazelpat Provided that the consent of the Directors of Hazelpat nominated by Hazeltine shall be deemed to have been given in any such case if and when a majority holding of the voting Capital Stock of Hazeltine shall be held by or on behalf of the Radio Corporation of America or the Marconi Gramophone Standard Pool.

2. All costs charges and expenses incurred within the British Isles in respect of the maintenance or renewal of any existing British Letters Patent or Application for Letters Patent owned or controlled by Hazeltine during the period of these presents and of applying for and obtaining any further Letters Patent within the scope of these presents shall be payable by Hazelpat but nothing herein contained shall interfere with or otherwise affect the liberty and/or authority of Hazeltine to take all such steps as in the opinion of Hazeltine are reasonably necessary to secure or maintain the grant of any Letters Patent hereunder.

3. All costs, charges and expenses incurred within the British Isles subsequent to June 8th 1933 in respect of any action opposition petition or like proceeding within the scope of these presents shall be borne by Hazelpat.

4. If Hazelpat shall after payment of any sums falling due under Clauses 2 and 3 hereof of current operating expenses and of any loans advanced to Hazelpat and a sum sufficient to provide all reasonable working capital and requirements be possessed of any cash balance the same

shall be paid over quarterly to Hazeltine in consideration of the grant of the power to grant licences contained in clause 1 hereof.

5. In the determination of the Royalties as contemplated in clause 1 hereof Hazeltine agree that the royalties reserved in licences hereunder granted by Hazelpat to either the Philco Radio and Television Corporation of Great Britain Limited or Majestic Electric Company Limited shall not exceed the lower of the following that is to say:

> (a) That reserved in the Contracts authorising the United States of America Affiliates of the said Companies to manufacture and sell similar apparatus on the same terms and conditions under the corresponding United States of America Patents.
>
> (b) That reserved in any licence to operate manufacture or sell similar apparatus under similar terms and conditions hereafter within the British Isles under the said Patents.

and Hazelpat agree to grant upon demand a License in the form adopted by Hazelpat as its uniform form to either or both of the said proposed licensees at the said Royalties.

6. If at any time Hazeltine shall be in default in payment of any sums to Hazelpat of a like character to sums paid by Philco Radio & Television Corporation of Great Britain Limited and/or Majestic Electric Company Limited Hazeltine hereby authorise Hazelpat to grant to Philadelphia Storage Battery Company and Grigsby-Grunow Company a good discharge and receipt for any sums for royalties due to Hazeltine on account of apparatus sold in the British Isles and which may be paid to Hazelpat instead of Hazeltine which in the aggregate shall not exceed the sum whereby Hazeltine is in default hereunder.

7. This Agreement and all matters relating thereto shall

be construed and take effect in accordance with the laws of England.

In Witness whereof the Companies parties hereto hath caused these presents to be executed in manner legally binding upon them respectively the day and year first above written.

The Common Seal of Hazelpat Limited was hereunto affixed in the presence of:

/s/ (illegible.)
Director,
/s/ (illegible.)
Director,
W. R. Paige,
(Seal.) *Secretary.*

The Common Seal of Hazeltine Corporation was hereunto affixed in the presence of:

/s/ (illegible.)
Director,
John R. Burns,
Director,
R. C. Keugeschiel,
(Seal.) *Secretary.*

Dated 5th September 1933.

Hazelpat Limited
and
Hazeltine Corporation.

Agreement.

Faithfull Owen & Fraser,
St. Michael's Alley,
E.C. 3

DEFENDANT'S EXHIBIT NO. 42.

Magnet House,
Kingsway, London, W. C. 2,
31st May 1938

Heads of Proposed Agreement.

1. G. E. C. to have royalty free license in Great Britain, Northern Ireland and Eire, for a period of Agreement for all present and future patents belonging to Hazeltine. If Hazeltine acquire patent rights from third parties (other than members or employees of their organization), G. E. C. shall be entitled to acquire similar rights under such patents on equitable terms. The rights granted to G. E. C. relate to receivers for broadcast radio and to television transmission and reception.
2. G. E. C. to have the right to sue infringers under the British Hazeltine Patents at its own cost and to receive any recoveries arising therefrom. G. E. C. will act in conjunction with Hazeltine in any infringement or revocation actions as far as possible, and will consult with Hazeltine thereon.
3. G. E. C. shall have complete freedom to use the British Hazeltine Patents as a bargaining asset in order to secure entry into the Pool as a Licensor, or the use of Patents for the purpose of licensing third parties.
4. The period of this Agreement shall be for five years from the 28th August 1938 or for the length of the new Pool to be formed in or after August 1938, whichever is the longer.
5. G. E. C. shall pay Hazeltine £5,000 per annum and 50% of the net income received by it from the Pool. If the G. E. C. enters a Pool on such terms as not to derive

an income therefrom, G. E. C. will pay to Hazeltine in each year, in addition to the £5,000 per annum, a sum equal to 10% of the difference between the said £5,000 and the royalty that would have been payable to the present Pool on the sale of sets in each such year had they been sold under the A.4 License, but such payment shall not exceed a maximum of £500.

6. If the G. E. C. does not succeed in entering the Pool as a Licensor, then G. E. C. will discuss with Hazeltine the division of any net income remaining to the G. E. C. as a result of the grant of any other Licenses under Hazeltine Patents.
7. During the above period the G. E. C. shall continue to receive service as at present but no charge shall be made to the G. E. C. for such service. In return the G. E. C. will inform Hazeltine of its inventions in the field of this Agreement and Hazeltine shall have the benefit of G. E. C.'s inventions for the field of this Agreement and shall be entitled (but subject to prior obligations of the G. E. C.) to file and prosecute in the U. S. A. applications for patents for such inventions. No payment shall be made by Hazeltine to G. E. C. in respect of the first ten patent applications filed by the former under this arrangement in each year, but Hazeltine shall pay to G. E. C. two hundred dollars in respect of each patent application in excess of ten filed by Hazeltine in any year. G. E. C. shall have a full licence in respect of any such inventions.
8. Philco have a licence under Hazeltine patents until 1940, and are thereafter entitled to a licence under Hazeltine patents on terms to be communicated to G. E. C.
9. The existing licence to Hazelpat Limited will be terminated on or before the 28th August 1938.

/s/ Jack Binns
/s/ G. W. Heather.

DEFENDANT'S EXHIBIT NO. 43.

(b) sub lic rts to GEC (effective 8/28/30 to 12/31/44).

An Agreement made the 6th day of April. One thousand nine hundred and thirty nine between the Hazeltine Corporation a Corporation duly organized and existing under the Laws of the State of Delaware in the United States of America and having its principal place of business at 15 Exchange Place Jersey City in the State of New Jersey United States of America (hereinafter called "the Corporation") of the one part and The General Electric Company Limited a Company incorporated in England and having its registered office at Magnet House Kingsway in the County of London (hereinafter called "the Company") of the other part.

Whereas the Company hold a sole and exclusive Licence from the Corporation under all present and future Patents belonging to the Corporation relating to Receivers for broadcast radio and to television transmission and reception as therein set out.

Now It Is Hereby Mutually Agreed between the parties as follows:

1. For the consideration hereinafter mentioned the Corportation hereby grant unto the Company the right to utilise the Hazeltine Patents hereinbefore referred to for the purpose of securing entry as a Licensor into any British Wireless Broadcast Pool which may be formed on such terms as the Company may deem proper or otherwise to deal with the said Patents by way of granting Sub-Licences thereunder and generally to utilise such rights for the pur-

pose of consolidating the position of the Company in the Radio Industry and carrying on business in radio and television.

2. This Agreement shall be deemed to take effect as from the Twenty eighth August One Thousand nine hundred and thirty eight and shall continue until the thirty first December One thousand nine hundred and forty four as consideration for the rights granted by the Corporation to the Company hereunder the Company will pay to the Corporation the sum of Fifteen thousand eight hundred and thirty three pounds in six annual installments of Two thousand five hundred pounds each and a final payment of Eight hundred and thirty three pounds.

3. In the event of the Company securing entry as a Licensor into any British Wireless Broadcast Pool the Company will pay to the Corporation as further consideration hereunder fifty per centum of the net income received by the Company from the Pool. If the Company enters a Pool on such terms as not to derive a net income therefrom the Company will pay to the Corporation in each year in addition to the amount provided for a sum equal to ten per centum of the difference between a sum of Five thousand pounds and the royalty that would have been payable to the expired Marconi Pool on the sale of sets in each year had they been sold under the A4 Licence of such Pool but such payment shall not exceed a maximum of Five hundred pounds.

4. In the event of the Company not entering such a British Wireless Broadcast Pool as a Licensor they will confer with the Corporation as to the division of any net in-

come remaining to them as a result of the grant of any Sub-Licences under the Hazeltine Patents.

In Witness whereof the parties hereto have executed these presents in manner legally binding upon them the day and year first above written.

The Common Seal of Hazeltine Corporation was hereunto affixed in the presence of:
(Signatures Illegible),
Directors,
(Signature Illegible),
(Seal) *Secretary.*

The Common Seal of the General Electric Company Limited was hereunto affixed in the presence of:
....,
....,
Directors,
....,
(Seal) *Secretary.*

DEFENDANT'S EXHIBIT NO. 44.

(d) lic to Haz (effective 8/28/38 to 12/31/44).

An Agreement made the 6th day of April. One thousand nine hundred and thirty nine between the Hazeltine Corporation duly organized and existing under the Laws of the State of Delaware in the United States of America and having its principal place of business at 15, Exchange Place, Jersey City in the State of New Jersey, United States of America (hereinafter called "the Corporation") of the one part and The General Electric Company Limited a Company incorporated in England and having its registered office at Magnet House, Kingsway in the County of London (hereinafter called "the Company") of the other part.

Whereas by an Agreement of even date herewith (hereinafter called "the Service Agreement") made between the parties hereto arrangements have been made for the Corporation to give to the Company technical service in connection with Sound Broadcast and Television Transmission and reception.

And Whereas in connection with such arrangements it has been further agreed between the parties hereto as follows:

1. Whilst the Service Agreement is in force the Company agrees to inform the Corporation from time to time of its inventions in connection with the subject of the Service Agreement and to give to the Corporation the benefit of such inventions for the field of that Agreement and the Corporation shall be entitled (subject to prior obligations of the Company) to file and prosecute in the United States of America Applications for Patents for such inventions. No payment shall be made by the Corporation to the Com-

pany in respect of the first ten Patent Applications filed by the Corporation in pursuance of this arrangement in each year but the Corporation shall pay to the Company Two hundred Dollars in respect of each Patent Application in excess of ten filed by the Corporation in any year. The Company shall have a free License in the United States in respect of any such inventions.

In Witness whereof the parties hereto have executed these presents in manner legally binding upon them the day and year first above written.

The Common Seal of Hazeltine Corporation was hereunto affixed in the presence of:
(Signatures Illegible),
Directors,
(Signature Illegible),
(Seal) *Secretary.*

The Common Seal of the General Electric Company Limited was hereunto affixed in the presence of:
....,
....,
Directors,
....,
(Seal) *Secretary.*

DEFENDANT'S EXHIBIT NO. 45

Dodds Dep. Ex. 132.

7/24/45 extension Agr F
(a) to 12/31/49
(b) to 12/31/47
(c) to 12/31/49
(d) to 12/31/47

Dated 1945

Hazeltine Corporation

and

The General Electric Company Limited

Agreement

Faithfull, Owens & Fraser,
St. Michael's Alley,
Cornhill.

An Agreement made the 24th day of July, One thousand nine hundred and forty five between Hazeltine Corporation a Corporation duly organized and existing under the Laws of the State of Delaware in the United States of America and having its principal place of business at 821 National Press Building Washington, D. C. United States of America (hereinafter called "the Corporation") of the one part and The General Electric Company Limited a Company incorporated in England and having its registered office at Magnet House, Kingsway in the County of London (hereinafter called "the Company") of the other part. Whereas on the Sixth day of April One thousand nine hundred and thirty nine, four Agreements were entered into between the Corporation and the Company relating to the following matters, videlicet:

(a) A License, from the Corporation to the Company under certain Letters Patent and the consideration to be paid therefor

(b) The right for the Company to utilize the above License in certain manners as therein set out for the consideration therein appearing

(c) An Agreement as to technical service to be given by the Corporation to the Company as therein set out for the consideration therein appearing

(d) An Agreement whilst the Agreement (c) was in force as to further information and benefits of certain further inventions all of which Agreements expired on the Thirty-first day of December One thousand nine hundred and forty four

And Whereas it has been agreed that all four such Agreements shall be revived and renewed as to Agreements (a) (c) and (d) for a further period of five years from the First day of January One thousand nine hundred and forty five and as to Agreement (b) for a further period of three years from the First day of January One thousand nine hundred and forty five and that the dates of payment of various sums falling due under the said agreements and therein made payable half yearly on the Twenty-eighth February and Twenty-eighth August in each year shall be altered from such dates to the Thirtieth June and Thirty-first December in each year.

Now Therefore It Is Agreed by and between the parties hereto as follows:

1. The above recited Agreement (a) shall be renewed as from the First day of January One thousand nine hundred and forty five for a further period of five years in the terms of the original Agreement (except as to the

termination therof) and for the same considerations (subject however at the present time to the provisions of Section 25 of the Finance Act 1941). With regard to paragraph 8 of such Agreement (a) it is noted that all outstanding Agreements between the therein mentioned Philco Radio & Television Corporation of Great Britain and the Corporation have expired and have not been renewed.

2. The above recited Agreement (b) shall be renewed as from the First day of January One thousand nine hundred and forty five for a further period of three years in the terms of the original Agreement (except as to the termination thereof and the consideration therein set out). The consideration for the renewal of such Agreement and of the rights granted thereby shall be the sum of Seven Thousand and Five Hundred Pounds to be paid by the Company to the Corporation in three annual instalments of Two thousand five hundred pounds each.

3. The above recited Agreement (c) shall be renewed as from the First day of January One thousand nine hundred and forty five for a further period of five years on the terms of the original Agreement (except as to the termination thereof).

4. The above recited Agreement (d) shall be renewed as from the First day of January One thousand nine hundred and forty five for a further period of three years on the terms of the original Agreement (except as to the termination thereof) and subject to the consent of the appropriate Government Department for a further two years thereafter making a period of five years in all.

5. All payments due under the above mentioned Agreements and which are expressed to fall due for payment half yearly on the Twenty-eighth February and Twenty-eighth August in each year shall be now payable on the Thirtieth June and Thirty-first December instead of in February

and August, any necessary adjustment being made due to such change of dates.

In Witness whereof the parties hereto haxe executed these presents in manner legally binding upon them the day and year first above written.

The Corporate Seal of Hazeltine Corporation was hereunto affixed in the presence of:

Illegible,
Illegible,
Illegible,
Directors.

Illegible,
Asst. Secretary.

The Common Seal of The General Electric Company Limited was hereunto affixed in the presence of:

J. B. Fletcher,
T. Wm. Stanley,
Directors.

Thos. Dyke,
Jr. Secretary.

DEFENDANT'S EXHIBIT NO. 46.

An Agreement made the 10th day of November One thousand nine hundred and forty-eight Between the Hazeltine Corporation a Corporation duly organized and existing under the Laws of the State of Delaware in the United States of America and having its principal place of business at 821 National Press Building, Washington D. C. United States of America (hereinafter called "the Corporation") of the one part and The General Electric Company Limited a company incorporated in England and having its registered office at Magnet House, Kingsway in the County of London (hereinafter called "the Company") of the other part

Whereas by virtue of two agreements between the Corporation and the Company dated respectively the sixth day of April One thousand nine hundred and thirty-nine and the twenty-fourth day of July One thousand nine hundred and forty-five the Company hold from the Corporation until the thirty-first day of December One thousand nine hundred and forty-nine a sole and exclusive license (but not including the right to grant sub-licenses) under all present and future Patents belonging to the Corporation relating to Receivers for broadcast radio and to television transmission and reception as therein set out.

And Whereas by a further Agreement between the Corporation and the Company dated the sixth day of April One thousand nine hundred and thirty-nine the Corporation granted to the Company rights inter alia to utilize the said Patents for the purpose of securing entry as a Licensor into any British Wireless Broadcast Pool which might be formed or otherwise to deal with the said Patent by way of granting sub-licenses thereunder.

And Whereas a British Wireless Broadcast Pool was duly formed and the said rights were duly exercised by the Company and the said further Agreement was by agreements between the Corporation and the Company dated the twenty-fourth day of July One thousand nine hundred and forty-five and the twenty-fifth day of June One thousand nine hundred and forty-eight extended for additional periods of three years and one year respectively and is due as a result thereof to expire on the thirty-first day of December One thousand nine hundred and forty-eight.

And Whereas the aforesaid British Wireless Broadcast Pool has terminated or is about to terminate and negotiations are now in progress for the formation of a new British Wireless Broadcast Pool (hereinafter referred to as "the New Pool").

Now It Is Hereby Mutually Agreed between the Parties as follows:

1. For the consideration hereinafter mentioned the Corporation hereby grant unto the Company the right to utilize the Hazeltine Patents hereinbefore referred to for the purpose of securing entry into the New Pool on such terms as the Company may deem proper or otherwise to deal with the said Patents by way of granting sub-licenses thereunder for the purpose of the New Pool.

2. As consideration for the rights granted by the Corporation to the Company hereunder the Company shall pay to the Corporation fifty per cent of all sums received by the Company from the New Pool by way of royalties upon the combined Patents of the Corporation and the Company in the said New Pool.

3. This Agreement shall be deemed to take effect as from the First day of January One thousand nine hundred and forty-nine and shall continue until the thirty-first day of December One thousand nine hundred and fifty-two.

4. In the event of the Company not entering the New Pool or of the New Pool not materialising the Corporation

and the Company will consult together to re-examine the position with a view of evolving a fresh arrangement.

In Witness whereof the parties hereto have executed these presents in manner legally binding upon them the day and year first above written.

The Corporate Seal of Hazeltine Corporation was hereunto affixed in the presence of:

John A. Harvey,
Assistant Secretary.

Hazeltine Corporation,
By Jack Binns,
President.

By Laurence B. Dodds,
Vice-President.

The Common Seal of The General Electric Company Limited was hereunto affixed in the presence of:

Illegible,
Director,

Illegible,
Director,

Illegible,
Asst. Secretary.

DEFENDANT'S EXHIBIT NO. 47.

Dated 1948

Hazeltine Corporation
—and—
The General Electric Co., Ltd.

Agreement

Draft III/22.9.52

This Agreement made the 19th day of Dec. One thousand nine hundred and fifty two Between Hazeltine Corporation a Corporation duly organized and existing under the laws of the State of Delaware in the United States of America and having its principal place of business at 58-25, Little Neck Parkway, Little Neck, Long Island, New York, United States of America (hereinafter called "the Corporation") of the one part and The General Electric Company Limited a Company incorporated in England and having its registered office at Magnet House Kingsway, in the County of London (hereinafter called "the Company") of the other part

Whereas four agreements were entered into between the Company and the Corporation on the 6th day of April 1939 relating to the following matters, namely:

(a) A licence from the Corporation to the Company under certain Letters Patent (hereinafter referred to as "the Licence Agreement")

(b) The right for the Company to utilise the Patents the subject of the said Licence for the purpose inter alia of securing entry into any British Wireless Broadcast Pool and for carrying on business in radio and television (hereinafter referred to as "the Pooling Agreement")

(c) Technical services to be given by the Corporation to the Company (hereinafter referred to as "the Service Agreement")

(d) The giving by the Company to the Corporation whilst the Service Agreement is in force of information as to and benefits of any inventions of the Company together with the right for the Corporation to file Patent Applications therefor in the United States of America (hereinafter referred to as "the Patent Agreement").

And Whereas the Licence Agreement, the Service Agreement and the Patent Agreement were by virtue of an agreement between the parties dated the 24th day of July 1945 extended for a period of five years so as to expire on the 31st day of December 1949 and the Pooling Agreement was extended for a period of three years so as to expire on the 31st day of December 1947.

And Whereas the Pooling Agreement was subsequently extended by agreements dated the 25th June 1948 and the 10th November 1948 so as to expire on the 31st day of December 1952.

And Whereas it is desired by the parties to extend the period of the Licence Agreement, the Service Agreement and the Patent Agreement so that they will expire contemporaneously with the Pooling Agreement.

And Whereas it has been agreed between the parties to modify the terms of the Pooling Agreement and Service Agreement in certain respects

Now It Is Hereby Agreed between the parties as follows:

1. The Licence Agreement, the Service Agreement and the Patent Agreement shall be renewed as from the 1st day of January 1950 for a further period of three years so as to expire on the 31st December 1952.

2. As from the 1st January 1950 the consideration to be paid by the Company to the Corporation under Clause 3

of the Service Agreement shall be reduced from £1500 per annum to the sum of £1000 per annum.

3. As from the 1st January 1950 the consideration to be paid by the Company to the Corporation under Clause 3 of the Licence Agreement shall be the sum of one thousand pounds per annum.

4. The sums payable by the Company to the Corporation under Clause 3 of the Pooling Agreement shall no longer be 50 per cent of the net income received by the Company from the Pool, but shall as from the 1st January 1950 be payable as follows:

(i) Up to the stage where in any calendar year the total net income received by the Company from the Pool together with the amount representing the British Income Tax which was deductable at source by the Licensees of the Pool amounts in total to £6000 the Company shall pay to the Corporation 50 per cent. of the total net income which the Company receives from the Pool:

(ii) Upon all net income received by the Company from the Pool in respect of any calendar year in excess of the stage to which the Corporation under the provisions of sub-clause (i) hereof is entitled to 50 per cent. no further payment shall be due to the Corporation during the stage where in respect of the calendar year in question the total net income received by the Company from the Pool together with the amount representing the British Income Tax which was deductable at source by the Licensees of the Pool amounts in total to more than £6000 and does not exceed £10,000:

(iii) Upon all net income received by the Company in respect of any calendar year in excess of the non-payment stage the subject of sub-clause (ii) hereof the Company shall pay to the Corporation 50 per cent. of such excess net income.

For the purposes of this Clause 4 the expression "net income" shall mean the Company's share of the gross amounts received by the Pool without deduction of royalty payments made by the Company to the Pool but less the Company's share of the expenses of running the Pool and less British Income Tax deducted or deductible from the Company's said share.

In Witness whereof the parties hereto have executed these presents in manner legally binding upon them the day and year first above written.

The Corporate Seal of Hazeltine
Corporation was hereunto affixed
in the presence of:—

By W. A. MacDonald,
President.

By L. B. Dodds,
Vice-President.

/s/ John K. Gower, Jr.,
Assistant Secretary.

The Common Seal of The General
Electric Company Limited was
hereunto affixed in the presence
of:—

/s/ F. Winstanley,
(Other 2 signatures illegible)
Directors.

....
Secretary.

DEFENDANT'S EXHIBIT NO. 48.

Exhibit G.

This Agreement is made the twenty seventh day of February One thousand nine hundred and fifty-three Between Hazeltine Corporation a Corporation duly organised and existing under the laws of the State of Delaware in the United States of America and having a registered office at 821 National Press Building Washington 4 District of Columbia United States of America (hereinafter called "the Corporation") of the one part and The General Electric Company Limited a Company incorporated in England and having its registered office at Magnet House Kingsway in the County of London England (hereinafter called "G. E. C.") of the other part

Whereas by various Agreements made between the Corporations and G. E. C. since One thousand nine hundred and thirty-nine G. E. C. obtained from the Corporation certain rights in Great Britain under the Corporation's Patents relating to Receivers for Broadcast Radio and to Television Transmission and Reception and these Agreements terminated on the Thirty-first day of December One thousand nine hundred and fifty-two

And Whereas the Parties hereto desire to enter into a new Agreement upon the terms hereinafter contained.

Now It Is Hereby Mutually Agreed between the Parties hereto as follows:

1. For the consideration hereinafter mentioned the Corporation hereby grants unto G. E. C. the sole right to utilise all present and future Patents belonging to the Corporation in Great Britain Northern Ireland the Isle of Man the Channel Islands and Eire in relation to Radio Apparatus (as hereinafter defined) to and for the purpose of enabling G. E. C. to secure entry into the A.7 Broadcast

Licensing Pool (hereinafter referred to as "the A.7 Pool") on such terms as G.E.C. may deem proper or otherwise to deal with the said Patents of the Corporation by way of granting sub-licenses thereunder for the purpose of the A.7 Pool it being understood that in the division of the Licensing Revenue between the Licensor Members of the A.7 Pool the number of points allotted (directly or indirectly) to G. E. C. in respect of its own Patents and the said Patents of the Corporation will be such that the ratio of G. E. C.'s points to the points allotted to Electric & Musical Industries Limited will be as Seventeen to One hundred.

2. The expression "Radio Apparatus" means Radio Broadcast Sound Receivers Radiogramophones Radio Broadcast Television Receivers and combinations of the foregoing with each other all for entertainment and education purposes only or of types normally supplied to the public for domestic use but does not include

(a) electron discharge devices or equivalent devices or lamps of any kind

(b) any broadcast relay apparatus provided however that the terminal units thereof shall be deemed Radio Apparatus

(c) materials or component parts (which expression does not include the items mentioned in (a) above sold separately (materials or component parts of Radio Apparatus are included in the term Radio Apparatus)

(d) television receivers adapted for producing a picture larger than thirty square feet

3. The Corporation hereby grants unto G. E. C. immunity from suit, in Great Britain Northern Ireland the Isle of Man the Channel Islands and Eire under all present and future Patents belonging to the Corporation for use in relation to Receivers for Broadcast Radio and to Television Transmission and Reception.

4. As consideration for the rights granted by the Corportation to G. E. C. hereunder G. E. C. shall (subject to the provisions of Clause 5 hereof and subject to approval of the British Treasury being first obtained) pay to the Corporation forty per cent of all sums received by the G. E. C. from the A.7 Pool by way of royalties upon the combined Patents of the Corporation and G. E. C. in the said Pool.

5. If for and in respect of any calendar year the total of the two under-mentioned sums namely (a) the sum to which the Corporation becomes entitled to receive from G. E. C. under the provisions of Clause 4 hereof and (b) the sum equivalent to the Refund (if any) of British Income Tax obtainable by the Corporation in respect of the amount payable to it by G. E. C. under the provisions of Clause 4 hereof amount to more than Five thousand pounds then payment from G. E. C. to the Corporation under the provisions of Clause 4 hereof shall cease from and for and in respect of the stage where the total of the said two sums exceeds Five thousand pounds up to and until the stage where the total of the said two sums would but for the provisions of this Clause 5 have otherwise reached the sum of Six thousand pounds and if the total of the said two sums exceed Six thousand pounds for and in respect of any calendar year then thereafter the provisions of Clause 4 shall re-apply for that calendar year but so that the relief afforded to G. E. C. between the Five thousand pounds stage and the Six thousand pounds stage shall not be taken away from it.

6. G. E. C. shall assist the Corporation to obtain under the Convention between Great Britain and the United States of America to avoid Double Taxation such refund of British Income Tax as may be claimable by the Corporation and the Corporation shall take all steps necessary to obtain such a refund in so far as the said Convention enables the Corporation to do so.

7. In the event of there being a change in the laws relating to the obtaining by the Corporation of a Refund of British Income Tax in respect of the sums due to the Corporation under the provisions of Clause 4 hereof or should the Corporation do or omit to do anything by reason of which the Corporation becomes debarred from obtaining a Refund of British Income Tax then the Corporation and G. E. C. shall discuss together the making of appropriate and equitable adjustments to this Agreement.

8. This Agreement shall be deemed to commence on the First day of January One thousand nine hundred and fifty-three and shall continue in force until the Thirty-first day of December One thousand nine hunderd and fifty-seven.

In Witness whereof the Parties hereto have executed these presents in manner legally binding upon them the day and year first above written.

The Corporate Seal of Hazeltine
Corporation was hereunto affixed
in the presence of:

By W. A. MacDonald,
President.

By Laurence B. Dodds,
Vice-President.

/s/ John K. Gower, Jr.,
Assistant Secretary.

The Common Seal of the General
Electric Company Limited was
hereunto affixed in the presence
of:

G. W. Heather,
(Other signature illegible),
Directors.

(Signature illegible),
Secretary.

DEFENDANT'S EXHIBIT NO. 49.

This Agreement is made the fourteenth day of November, One Thousand nine hundred and fifty-seven Between Hazeltine Corporation a Corporation duly organized and existing under the laws of the State of Delaware in the United States of America and having a principal place of busines at 59-25 Little Neck Parkway Little Neck 62 New York United States of America (hereinafter called "the Corporation") of the one part and The General Electric Company Limited a Company incorporated in England and having its registered office at Magnet House Kingsway in the County of London England (hereinafter called "G. E. C.") of the other part

Whereas this Agreement is intended to be read as supplemental to

(a) An Agreement dated the Twenty-seventh day of February One thousand nine hundred and fifty-three and made between the Corporation and G.E.C. relating to the right for the G.E.C. to utilize certain of the corporation's patents in connection with the A.7 Broadcast Licensing Pool (hereinafter referred to as "the Pool Agreement")

(b) An Agreement also dated the Twenty-seventh day of February One thousand nine hundred and fifty-three made between the Corporation and G.E.C. relating to technical service to be given by the Corporation to G.E.C. (hereinafter referred to as "the Service Agreement")

(c) An Agreement also dated the Twenty-seventh day of February One thousand nine hundred and fifty-three and made between the Corporation and G.E.C. relating to the right of the Corporation to use certain of G.E.C.'s inventions in the United States of America (hereinafter referred to as "the U. S. License Agreement")

And Whereas all the aforementioned three Agreements were expressed to continue in force until the Thirty-first day of December One thousand nine hundred and fifty-seven but it is now the desire of the Corporation and G.E.C. that the said three Agreements should not expire on the aforesaid date but should continue in force until the Thirtieth day of June One thousand nine hundred and sixty

Now It Is Hereby Mutually Agreed by and between the parties hereto as follows:—

1. Clause 8 of the Pool Agreement and Clause 2 of the Service Agreement shall be amended by cancelling the words "the Thirty-first day of December One thousand nine hundred and fifty-seven" wherever so appearing in the said two Clauses and substituting therefor the words "the Thirtieth day of June One thousand nine hundred and sixty"

2. The first recital and Clause 2 of the U. S. Licence Agreement shall be amended by cancelling the words "the Thirty-first day of December One thousand nine hundred and fifty-seven" wherever so appearing therein and substituting therefor the words "the Thirtieth day of June One thousand nine hundred and sixty" and the said Clause 2 shall be further amended by cancelling the words "the Thirty-first day of December One thousand nine hundred and sixty-three" and substituting therefor the words "the Thirtieth day of June One thousand nine hundred and sixty-six"

3. Save as varied by this Agreement the provisions of the Pool Agreement the Service Agreement and the U. S. License Agreement are hereby confirmed

In Witness whereof the parties hereto have executed these presents in manner legally binding upon them the day and year first above written

The Corporate Seal of Hazeltine Corporation was hereunto affixed in the presence of:—

(Seal)

By Phillip Fox La Follett,
President.

By Laurence Briggs Dodds,
Vice President.

Caroline B. Scott,
Assistant Secretary.

The Common Seal of The General Electric Company Limited was hereunto affixed in the presence of:—

(Seal)

G. W. Heather,
(Other signatures illegible),
Directors.

(Signature illegible),
Assistant Secretary.

Dated 14 November 1957.

Hazeltine Corporation
— and —
The General Electric Co. Ltd.

Supplemental Agreement.

DEFENDANT'S EXHIBIT NO. 50.

Dated .... 1961.

Hazeltine Corporation
and
The General Electric Co. Ltd.,

Supplemental Agreement

This Agreement is made the .... day of .... One thousand nine hundred and sixty-two Between Hazeltine Corporation a Corporation duly organized and existing under the laws of the State of Delaware in the United States of America and having a principal place of business at 59-25 Little Neck Parkway Little Neck 62 New York United States of America (hereinafter called "the Corporation") of the one part and The General Electric Company Limited a Company incorporated in England and having a registered office at Glen House Stag Place Victoria in London England (hereinafter called "G. E. C.") of the other part

Whereas this Agreement is intended to be read as supplemental to

(a) An Agreement dated the Twenty-seventh day of February One thousand nine hundred and fifty-three and made between the Corporation and G. E. C. relating to the right for the G. E. C. to utilize certain of the Corporation's patents in connection with the A.7 Broadcast Licensing Pool (hereinafter referred to as "the Pool Agreement")

(b) An Agreement also dated the Twenty-seventh day of February One thousand nine hundred and fifty-three made between the Corporation and G. E. C. relating to technical service to be given by the Corporation to G. E. C. (hereinafter referred to as "the Service Agreement")

(c) An Agreement also dated the Twenty-seventh day of February One thousand nine hundred and fifty-three and made between the Corporation and G. E. C. relating to the right of the Corporation to use certain of G. E. C.'s inventions in the United States of America (hereinafter referred to as "the U. S. License Agreement")

(d) An Agreement (hereinafter referred to as "the Supplemental Agreement" dated the Fourteenth day of November One thousand nine hundred and fifty-seven and made between the Corporation and G. E. C. relating to the extension of the aforementioned Three Agreements to continue in force until the Thirtieth day of June One thousand nine hundred and sixty and relating to certain modifications of the Pool Agreement, the Service Agreement and the U. S. License Agreement.

And Whereas the Pool Agreement, the Service Agreement and the U. S. License Agreement by the Supplemental Agreement were expressed to continue in force until the Thirtieth day of June One thousand nine hundred and sixty but it is now the desire of the Corporation and G. E. C. that the aforesaid Agreements should not be deemed to have expired on the aforesaid date but should subject to the modifications hereinafter stated continue in force until the Thirtieth day of June One thousand nine hundred and sixty four

Now It Is Hereby Mutually Agreed by and between the parties hereto as follows:—

1. Clause 1 of the Pool Agreement shall be amended by the deletion of the letters "A7" wherever they occur and the substitution therefor of the letters "A8" and by the deletion of the words "it being understood that in the division of the Licensing Revenue between the Licensor Members of the A7 Pool the number of points allotted (directly or indirectly) to G. E. C. in respect of its own

Patents and the Said Patents of the Corporation will be such that the ratio of G. E. C.'s points to the points allotted to Electrical and Musical Industries Limited will be as Seventeen to One Hundred''

2. Clause 4 of the Pool Agreement shall be amended by the deletion of the words ''Subject to provisions of Clause 5 hereof and'' and by the deletion of the letters ''A7'' and the substitution therefor of the letters ''A 8''

3. Clause 5 of the Pool Agreement shall be and is hereby cancelled

4. Clauses 6, 7 and 8 of the Pool Agreement shall be and are hereby respectively numbered Clauses 5, 6 and 7

5. Clause 7 (renumbered) of the Pool Agreement and Clause 2 of the Service Agreement shall be amended by cancelling the words ''the Thirtieth day of June One thousand nine hundred and sixty'' wherever so appearing in the said two Clauses and substituting therefor the words ''the Thirtieth day of June One thousand nine hundred and sixty four''

6. The first recital and Clause 2 of the U. S. License Agreement shall be amended by cancelling the words ''the Thirtieth day of June One thousand nine hundred and sixty'' wherever so appearing therein and substituting therefor the words ''the Thirtieth day of June One thousand nine hundred and sixty four'' and Clause 2 of the U. S. License Agreement shall further be amended by cancelling the words ''the Thirtieth day of June One thousand nine hundred and sixty six'' and substituting therefor the words ''the Thirtieth day of June One thousand nine hundred and seventy''

7. Clause 3 of the Service Agreement shall be amended by cancelling the words ''at the rate of £1,000 per annum'' and substituting therefor the words ''at the rate of £1 per annum''

8. Save as varied by this Agreement the provisions of the Pool Agreement the Service Agreement and the U. S. License Agreements are hereby confirmed

In Witness Whereof the parties hereto have executed these presents in manner legally binding upon them the day and year first above written.

The Corporate Seal of Hazeltine Corporation was hereunto affixed in the presence of:

By (Signature Illegible),
President.
(Signature Illegible),
Secretary,
By (Signature Illegible).
Vice President.

The Common Seal of the General Electric Company Limited was hereunto affixed in the presence of:

(Signature Illegible),
Director,
K. G. Smith,
Deputy Secretary.

DEFENDANT'S EXHIBIT NO. 51.

An Agreement made this .... day of .... One thousand nine hundred and thirty-nine between Electric and Musical Industries Limited having its registered office at B[illegible]yth Road, Hayes, Middlesex and Marconi's Wireless Telegraph Company Limited having its registered office at Marconi Offices, Electra House, Victoria Embankment, London, W. C. 2 and The Mullard Radio Valve Company Limited having its registered office at Spenser House, South Place Finsbury, London, E. C. 2 and N. V. Philips' Gloeilampenfabrieken of Eindhoven, Holland (hereinafter together called "the Pool Parties"), of the first part and The General Electric Company Limited having its registered office at Magnet House, Kingsway, London, W. C. 2 (hereinafter called "G E C") of the second part.

Whereas the Pool Parties have made arrangements among themselves (and with The British Thomson-Houston Company Limited so far as Radiogramophones are concerned) for the granting of licences for Radio Apparatus as hereinafter defined and

Whereas GEC represents that it is entitled to grant for the territory and period of this Agreement licenses for Radio Apparatus under its own patents and patents on inventions originating with the Hazeltine Corporation of America and licences for television receivers under patents on inventions originating with Radio-Aktiengesellschaft D. S. Loewe (hereinafter called "Loewe") and

Whereas the Pool Parties represent that one or more of them is entitled to grant for the territory and period of this Agreement licences for radio broadcast sound receivers and radio television receivers under patents on inventions originating with inter alia the Radio Corporation of America the General Electric Company of America (but in so far as the General Electric Company of America is concerned only patents which relate to radio devices as defined in the R. C. A./M. W. T. Agreement of November 21st, 1919) and Telefunken G. m. b. H. and

Whereas it has been agreed that GEC shall join on the terms and conditions herein appearing with the Pool Parties in the granting of licenses. Now It Is Hereby Agreed as follows:

(a) The expressions "Pool parties" and "GEC" shall be deemed to include the subsidiaries of the parties hereto wherever the context permits. A subsidiary shall mean any Company which during the period of this Agreement is directly or indirectly controlled by any of the parties hereto by reason of a majority of shareholding voting power or otherwise.

(b) The expressions "Radio Apparatus" when herein used shall mean radio broadcast sound receivers radio-gramophones radio television receivers and combinations of the foregoing with each other for private entertainment and education purposes only but does not include electronic discharge devices or lamps of any kind.

(c) The expression "Territory" when herein used shall mean Great Britain, Northern Ireland, Eire, Channel Islands and Isle of Man.

(d) The expression "Period of this Agreement" when herein used shall mean from August 29th, 1938 to December 31st, 1944.

(e) The expression "Licensing Revenue" when herein used shall mean the net revenue derived by the parties hereto or any of them from the granting of Licenses for Radio Apparatus within the period and territory hereof and if any other parties join with the parties hereto as hereinafter provided shall include the net revenue derived by such Joining Parties (or by the Parties hereto or any one or more of them) from the granting of licences under such Joining Parties' patent rights excluding however any revenue of such Joining Parties which by the terms of their joining shall have been agreed to be excluded from the licencing revenue. In calculating the said nett revenue there shall first be deducted the evpenses connected with the granting and administration of licences granted in pursuance of this Agreement including all expenses of carrying out the obligations of the parties hereto under such licences but not the expenses of obtaining or maintaining patents or costs or expenses of actions for infringements of patents.

(f) The "Patents" to which this Agreement shall apply are all patents within the territory under which and to the extent to which the parties hereto have or may have during the period of this Agreement the right to grant licences for Radio Apparatus. Among the patents of GEC are those on inventions originating with the said Hazeltine Corporation and on inventions originating with Loewe but as regards the latter GEC does not grant licences other than for use in Television receivers and does not grant licences under Eire patents originating with Loewe other than patents there obtained by registration of corresponding British Letters Patent.

2. GEC will join with the Pool Parties in Licensing the manufacture use sale and letting on hire of Radio Apparatus for the territory and period of this Agreement under the patents of the parties hereto and will share in the licensing revenue in the manner herein specified.

3. Licences granted in pursuance of Clause 2 hereof shall commence as from date not earlier than 28th August, 1938 and shall remain in force not later than 31st December, 1944.

4. The parties hereto will not grant separate licences for Radio Apparatus under their respective patents save that each party reserve the right to grant licences separately

under all or any of their own patents or patent rights in the following cases:

(i) Where the principal consideration is not the payment of royalties or commercial arrangements in relation to the supply purchase or sale of goods, and

(ii) In which and to the extent that E. M. I. and M. W. T. are obliged to grant licences for Television receivers in virtue of their now existing commitments to the BBC or the Postmaster General with regard to Television.

5. Each of the parties hereto undertakes during the period of this Agreement not to indemnify any person or company against (or to assist any person or company to avoid the consequences of) infringement occurring after August 28th, 1938 or against any claim for such infringement (within the scope of the licences reciprocally granted or agreed to be granted by the parties hereto by this Agreement) of any patent under which such party hereto is entitled to a licence hereunder provided however that this undertaking does not apply to any indemity or assistance in respect of goods supplied by such party hereto.

6. (a) The carrying out of licensing shall be in the hands of a Committee on which GEC shall be entitled to be represented with voting rights proportional to its share for the time being in the licensing revenue. If other parties (hereinafter called Joining Parties) shall join the parties hereto as co-licensors they may also be represented on the Committee but their voting rights shall not be greater than in proportion to their share of the licensing revenue.

(b) All matters appertaining to the granting and administration of licences in pursuance of this Agreement and to procuring other parties to join with the parties hereto in such licensing shall be decided by the Committee by a majority of voting value of those entitled to be represented on the Committee. The decisions of the Parties aforesaid and Joining Parties if any made in accordance with the same principle of proportional voting shall avail as decisions of the Committee and in the case of conflict with prior decision of the Committee shall override the latter. The parties hereto undertake to comply with such majority decisions.

(c) Subject as above provided the Committee shall among other things decide on the terms conditions period and scope (but within the scope of Radio Apparatus and within the period of this Agreements as above defined) of the licences to be granted in pursuance of this Agreement and/or by Joining Parties and the routine administration connected therewith and the terms and conditions on which other parties shall be invited or accepted as Joining Parties.

7. The Licensing Revenue shall during the period of this Agreement be divided and shared between the Parties hereto and any others entitled to share therein in such a manner that the share of GEC therein shall be 6% thereof until December 31st 1941 and shall thereafter if all the parties hereto unanimously agree be subject to revision but so that such share shall not in any event be less than 6% and failing unanimous agreement shall remain 6%. Provided that any share of the Licensing Revenue which may become payable to a future Joining Party in pursuance of the terms of his joining shall be contributed by the then existing Parties to the licening arrangements in proportion to their respective shares of the Licensing Revenue.

8. None of the parties hereto shall be obliged to take action for infringement of their respective patents nor to maintain any patents in force.

In the case of action for damages for infringement of letters patent of any of the Parties hereto by the manufacture use or sale of Radio Apparatus during the period of and within the territory of this Agreement those of the

Parties hereto and Joining Parties who shall have prior to the commencement of such action agreed to bear a share of the costs and expenses of such action in proportion to their share in the licensing revenue shall be entitled to share in the nett damages (after deduction of costs and expenses) recovered for such infringement in such action.

9. (a) Each of the Pool Parties hereby grants to GEC and GEC hereby grants to each of the Pool Parties non-exclusive non-transferable licences for the manufacture use and sale in the territory (but not for importation) of Radio Apparatus under their respective patents. Radio Apparatus which incorporates imported components to a value greater than 10% of the retail selling price of the apparatus shall be deemed to be imported unless otherwise agreed between the parties hereto.

(b) None of the licences referred to in sub-clause (a) above include any right to manufacture or supply Radio Apparatus except as the respective licensee's own apparatus or its subsidiaries' or parent Company's under a Trade Mark or Trade Name from time to time owned by any of them.

(c) All the lieences specified in (a) above shall be free of any rolyalty payment by the respective recipients, save as is provided in the next succeeding sub-clause (d).

(d) Whenever licences granted under this Cause 9 are based upon patent rights held by the licensing party under any agreement requiring the payment of royalties or other deferred payment measured by the use of the inventions the party accepting such licences shall while holding the same make payments measured by its use of the inventions at the same rate and upon the same terms as those required by such agreement.

No such payments shall be required in respect of patents for inventions originating with Hazeltine Corporation as distinct from future patents which may be acquired by the

Hazeltine Corporation from third parties on such terms that the G. E. C. while holding a licence under the same must make payments supplementary to the payments now due from G. E. C. to Hazeltine.

In the case of Loewe the Pool Parties shall during the subsistence of this Agreement jointly pay to G. E. C. £100. per annum and G. E. C. shall also receive from the Party or Parties accepting the said licences any royalty which may be due to Loewe in respect of any use of any patent contained in Part II of the Schedule to the Loewe-G. E. C. Agreement dated the 30th October 1935, a copy of which is attached hereto.

In the case of any patent in respect of which the said licences are subject to such payments or to any conditions or restriction the party hereto entitled to a licence thereunder may at any time accept refuse or surrender all or any of such licences.

(e) BTH and G. E. C. will grant to each other under their respective patents existing at the date hereof licences on the like terms and conditions but limited to radiogramophones and to the period from 28th August 1938 to 31st December 1941.

10. The parties hereto undertake not to contest or assist others to contest the validity of any Letters Patent under which they resepctively receive and continue to hold licences hereunder. Provided however that the parties hereto reserve the right to contest or assist others to contest the validity of any such Letters Patent in any proceedings relating to infringement committed outside the period of this Agreement or outside the scope of the licence granted under such Letters Patent under this Agreement and shall have the like right in any proceedings if the result of such contestation might affect the validity or scope of any patent owned by the party raising such contest or giving such assistance.

11. G. E. C. approves the A5 Licence form attached hereto (as amended in red and blue ink) and authorises Mr. F. C. Topham to sign and issue on behalf of G. E. C. Licenses in that form or any other form which may be decided upon by the Committee referred to in Clause 6 hereof.

This Agreement shall endure until the 31st December 1944, and shall then expire.

In Witness whereof Dr. Herman Francois van Walsem duly authorsed under the Constitution of N. V. Philips' Gloeilampenfabrieken has set his hand and the Common Seals of Electric and Musical Industries Limited, The General Electric Company Limited, Marconi's Wireless Telegraph Company Limited and The Mullard Radio Valve Company Limited have been hereunto affixed the day and year first above written.

For and on behalf of:
N.V. Philips'
Gloeilampenfabrieken

Signed by Dr. Herman Francois van Walsem for and on behalf of:
N. V. Philips'
Gloeilampenfabrieken in the presence of:

....

....

The Common Seal of Electric & Musical Industries Limited was hereunto affixed in the presence of:

....

....

The Common Seal of The General Electric Company Limited was hereunto affixed in the presence of:

....

....

The Common Seal of Marconi's Wireless Telegraph Company Limited was hereunto affixed in the presence of:

....

....

The Common Seal of The Mullard Radio Valve Company Limited was hereunto affixed in the presence of:

....

....

Part II of Loewe Schedule above referred to:

Patent No.	Patentees	Subject-matter	Special Conditions
251,170	Giebe and Scheibe	Method of making visible oscillations of piezo-electric crystals.	A non-exclusion License may be granted outside Germany at a royalty of 10% on every article sold; the Radio A. G. having a further right to exploit the Patent outside Germany by license or sale; proceeds of royalties or sale to be equally divided between Radio A. G. and Patentees.
261,040 Pat. of addition to 252,170	Giebe and Scheibe	Device for indicating and measuring the frequency of electrical oscillations.	
261,042 Pat. of addition to 252,170	Giebe and Scheibe	Piezo-electrical resonance relay.	
~~*358-051*~~	~~*Klug and Linckh*~~	~~*Method for recording changes in physical conditions.*~~	
~~*403,098*~~	~~*Klug and Linckh*~~	~~*Method of measuring the relative displacement of two or more points of a body.*~~	~~*The like conditions as last above*~~
~~*352,693*~~	~~*F. Skaupy*~~	~~*Improvements in Optical devices for television Picture Telegraphy or the like.*~~	~~*The Radio A. G. D. S. Loewe pays all renewal fees; if the Patent is exploited it must be by the parties jointly nett proceeds to be equally divided. There is no fixed royalty for user.*~~
~~*402,397*~~	~~*A. Kerr*~~	~~*Television Tube*~~	~~*The royalty, if any, does not exceed 5% of the nett invoice price of the component embodying the invention.*~~
420,752	E. Hudec	Braun Tube more particularly for Television purposes.	The Radio A. G. D. S. Loewe is entitled to user at a royalty of 1% on the nett invoice price of every tube incorporating the patent sold (in Germany or outside Germany).

Patent No.	Patentees	Subject-matter	Special Conditions
427,090	E. Hudec	Braun Tube more particularly for Television purposes.	The same conditions as above, but the royalty is 2%, subject to certain reductions if any applications for a group of seven Patents of which this is one are refused. This 2% (or reduced percentage) is in addition to the above 1%, where both sets of Patents are used.
10532/34	E. Hudec	Method of producing Braun Tubes controlled by light intensity.	
427,092.	F. Klingsporn	Piezo-Electric Cell.	The Radio A. G. D. S. Loewe has a licence outside Germany at a royalty of 10% on cost price of every cell sold which incorporates the invention. The Patentee is entitled to 20% of the nett proceeds of sub-licences granted by the Radio A. G.
431,068	K. Heegner	Crystal Oscillator.	The Radio A. G. is entitled to a licence outside Germany at a royalty of 7½% of the nett selling price of the apparatus (excluding cost of battery and mains supply but including indicating device where required). The Patentee is entitled to 50% of the nett proceeds of sub-licences granted by the Radio A. G.

DEFENDANT'S EXHIBIT NO. 52.

Exhibit F.

An Agreement made the 31st day of August 1948 Between Electrical and Musical Industries Limited having its registered office at Blyth Road Hayes Middlesex (hereinafter called "EMI") of the first part, and—

The British Thomson-Houston Company Limited having its registered office at Crown House Aldwych London W.C.2. (hereinafter called "BTH") of the second part, and—

Philips Electrical Industries Limited having its Head Office at Century House Shaftesbury Avenue London (hereinafter called "Philips") of the third part, and—

The General Electric Company Limited having its registered office at Magnet House Kingsway London W.C.2. (hereinafter called "GEC") of the fourth part, and—

Marconi's Wireless Telegraph Company Limited having its registered office at Electra House Victoria Embankment London W.C.2. (hereinafter called "MWT") of the fifth part.

Whereas (1) EMI represents that subject to the rights (if any) which the British Government may have in respect of patents arising out of Government Contracts it is and will be during the period of this Agreement entitled to grant or procure others to grant licences from 1st April 1948 until 31st December 1952 for Radio Apparatus as hereinafter defined under all present and future patents of the British Isles originating with the following companies namely:

Electrical And Musical Industries Ltd. and its subsidiaries (including:

The Gramophone Company Ltd.,
Columbia Graphophone Company Ltd. and
The Marconiphone Company Ltd.
and all subsidiaries of any of them)

And Whereas (2) EMI represents that subject to the rights (if any) which the U. S. A. Government may have in respect of patents arising out of Government Contracts it is and will be for the period from the 1st April 1948 to 31st December 1952 entitled to grant or procure others to grant licences for radio broadcast sound receivers and radio broadcast television receivers for entertainment and education (except in the naval military marine and aircraft fields) under all British Patents present and future on inventions made and conceived by the Radio Corporation of America prior to 1st January 1945.

And Whereas (3) EMI further represents that no licences for any part of the said period from 1st April 1948 to 31st December 1952 under the said patents originating with EMI or its subsidiaries have been granted to any third party for any of the said purposes except sundry non-exclusive licences of an unimportant character respecting sundry detail matters and sundry extensions of licences by the grantors of the so-called A.5. licences.

And Whereas (4) BTH represents that subject to the rights (if any) which the British Government may have in respect of patents arising out of Government Contracts it is and will be during the period of this Agreement entitled to grant or procure others to grant licences from 1st April 1948 to 31st December 1952 for Radio Apparatus as hereinafter defined under all present and future patents of the British Isles originating with the following companies namely:

The British Thomson-Houston Company Ltd.,
Associated Electrical Industries Ltd.
Metropolitan Vickers Electrical Company Ltd.
and the subsidiaries of any of them.

And Whereas (5) BTH further represents that no licences for any part of the said period from 1st April 1948 to 31st

December 1952 under any of the said patents have been granted to any third party for any of the said purposes except sundry extensions of licences by the grantors of the so-called A.5 licences.

And Whereas (6) BTH and EMI together represent that subject to the rights (if any) which the U. S. A. Government may have in respect of patents arising out of Government Contracts one or both of them are and will be for the period of this agreement entitled to grant or procure others to grant licences from 1st April 1948 to 31st December 1952 for Radio Apparatus as hereinafter defined under all present and future patents of the British Isles originating with the General Electric Company of America.

And Whereas (7) Philips represents that subject to the rights (if any) which the Netherlands U. S. A. and British Governments may have in respect of patents arising out of Government Contracts it is and will be during the period of this Agreement entitled to grant or procure others to grant licences from 1st April 1948 to 31st December 1952 for Radio Apparatus as hereinafter defined under all present and future patents of the British Isles originating with the following companies namely:

Philips Electrical Industries Ltd. and its subsidiaries (including Philips Electrical Limited (formerly Philips Lamps Ltd.) and The Mullard Radio Valve Co., Ltd.)

N. V. Philips Gloeilampenfabrieken of Eindhoven Holland and all companies owned or controlled by it to the extent of more than 50 per cent by shareholding voting power or otherwise either directly or indirectly and—

Hartford National Bank and Trust Company of Hartford Connecticut U. S. A. (in its capacity as Trustee under Indenture dated 25th August 1939) and all companies owned or controlled by it (in its said capacity) to the extent of more than 50 per cent as aforesaid including North American Philips Company Inc.

And Whereas (8) Philips further represents that no licence for any part of the said period from 1st April 1948 to 31st December 1952 under any of the said patents has been granted to any third party for any of the said purposes except sundry non-exclusive licences of an unimportant character respecting sundry detail matters and a non-exclusive licence to Western Electric Company Incorporated of U. S. A. under the conditions referred to in Clause 11(c) hereof and sundry extensions of licences by the Grantors of the so-called A.5. licences.

And Whereas (9) GEC represents that subject to the rights (if any) which the British and U. S. A. Governments may have in respect of patents arising out of Government Contracts it is and will be during the period of this Agreement entitled to grant or procure others to grant licences from the 1st April 1948 to 31st December 1952 for Radio Apparatus as hereinafter defined under all present and future patents of the British Isles originating with the following companies namely:

The General Electric Company Ltd. and its subsidiaries
and
The Hazeltine Corporation

And Whereas (10) GEC further represents that no licences for any part of the said period from 1st April 1948 to 31st December 1952 under any of the said patents has been granted to any third party for any of the said purposes except sundry extensions of licences by the Grantors of the so-called A.5. licences.

And Whereas (11) MWT represents that subject to the rights (if any) which the British Government may have in respect of patents arising out of Government Contracts it is and will be during the period of this Agreement entitled to grant or procure others to grant licences from the 1st April 1948 to 31st December 1952 for Radio Apparatus as hereinafter defined under all present and future patents of the British Isles originating with the following companies namely:

Marconi's Wireless Telegraph Company Ltd.
English Electric Company Ltd.
and the subsidiaries of either of them.

And Whereas (12) MWT further represents that no licences for any part of the said period from 1st April 1948 to 31st December 1952 under any of the said patents has been granted to any third party for any of the said purposes except certain non-exclusive licenses to Standard Telephones & Cables Limited, to the Marconiphone Company Limited and The Gramophone Company Limited and sundry extension of licences by the Grantors of the so-called A.5. licences.

And Whereas (13) it is the intention of the parties to grant to bona fide manufacturers in the British Isles patent licences in the field covered by this Agreement on a fair and equitable basis and that other parties shall be invited to join the parties hereto in contributing their patents and granting such licences as aforesaid.

Now It Is Agreed as follows:

1. For the purpose of this Agreement the following terms are defined as follows:

"Subsidiaries" means and includes any firm or company domiciled in the U. K. and at any time during the period of this Agreement owned or controlled by any of the parties hereto to the extent of more than 50 per cent by shareholding voting power or otherwise either directly or indirectly and in the case of BTH includes Associated Electrical Industries Ltd. and its subsidiaries and in the case of Philips includes N. V. Philips Gloeilampenfabrieken of Eindhoven Holland and Hartford National Bank and Trust Company of Hartford Connecticut U. S. A. (in its capacity as Trustee as aforesaid) and all companies owned or controlled by them or either of them to the extent of more than 50 per cent by shareholding voting power or otherwise including North American Philips Company Inc. and in the case of MWT includes The English Electric Company Ltd. and its subsidiaries.

"Radio Apparatus" means radio broadcast sound receivers radiogramophone radio television receivers and combinations of the foregoing with each other all for entertainment and education purposes only but does not include:

(a) electron discharge devices or lamps of any kind.

(b) apparatus for wired wireless (that is to say apparatus for relaying to one or more subsidiary receivers over wire by means of modulated electrical oscillations, radio signals received by a radio broadcast sound receiver or radio-gramophone)

(c) materials or component parts sold separately (Material or component parts which are actually incorporated in and form part of Radio Apparatus are included in the term Radio Apparatus)

(d) television receivers adapted for producing a picture larger than thirty square feet.

"British Isles" means Great Britain Northern Ireland Eire the Isle of Man and The Channel Islands.

2. Subject as hereinafter provided each of the parties hereby grants and agrees to grant to each of the others of them (who hereby accepts and agrees to accept) licenses (hereinafter referred to as the said licences) as hereinafter

described for Radio Apparatus as above defined, which said licences are only for Radio Apparatus used or intended for use for entertainment and education purposes and shall be non-exclusive and non-transferable and shall not include the power to grant sub-licences except to subsidiaries and except as hereinafter provided, Provided however that as BTH and EMI already hold licences under each other's patents in the field of Radio Apparatus no licences are hereby granted by BTH to EMI or vice versa.

3. The said licences shall begin as from 1st April 1948 and shall cease at 31st December 1952 Provided however that the parties hereto shall retain the right thereafter to dispose of stocks of Radio Apparatus then on hand.

4. The said licences shall be in respect of all present and future patents of the British Isles only under which and to the extent to which the parties respectively have or during the term of this Agreement may acquire the right to grant or procure the grant of such licences and which are applicable to the purposes for which the licences are granted and agreed to be granted but to the extent only to which such patents are so applicable.

5. Except as otherwise stated herein the said licences include the right to make use lease sell and otherwise deal in Radio Apparatus.

6. The said licences include the right to the licensee to have Radio Apparatus manufactured by others for the licensee or its subsidiaries for sale as the Radio Apparatus of the licensee or its subsidiaries under their respective trade marks or trade names but not otherwise. None of the said licences include any right to manufacture or supply Radio Apparatus except:

(i) as the apparatus of the licensee or its subsidiaries under their respective trade marks or trade names or—

(ii) for or to other parties who hold a licence from the licensing party hereto, in respect of the patent concerned, for the sale of such apparatus.

Provided however that in the event of any of the parties granting rights to third parties to supply Radio Apparatus under marks or trade name other than those belonging to such third parties or to manufacture for or supply to other parties not holding a licence as aforesaid then a similar right shall be given to and exercisable by the other parties hereto to manufacture for the same number of others and up to the same total quantity of Radio Apparatus.

7. Unless otherwise agreed no licences are hereby agreed to be granted to import Radio Apparatus into the United Kingdom or to deal in in the United Kingdom imported Radio Apparatus or Radio Apparatus containing imported component parts to an extent exceeding in value 10 per cent. of the retail list price of such Radio Apparatus except in each case samples and experimental models for the use of the parties hereto.

8. No licence is granted or implied under any foreign patents and the parties agree that if they are sued for infringement of a foreign patent corresponding to a patent under which they are licenced by this Agreement they will not rely on the defence that the alleged infringing Radio Apparatus is licensed under the foreign patent by virtue of this Agreement.

9(a). Wherever licences granted or agreed to be granted by any of the parties hereto to any other of them under the terms of this Agreement are based upon patent rights held by the licensing party hereto under any Agreement requiring the payment of royalties or other deferred payment measured by the use of the invention the party accepting such licences shall while holding the same make payments measured by its use of the inventions at the same rate and upon the same terms as those required by such

Agreements in addition to any royalties payable pursuant to any other clause of this Agreement. The parties respectively declare that no such payments are or shall be payable under this Clause 9 (a) in respect of the licences referred to in the recitals hereto.

9(b). Notwithstanding anything herein contained, nothing in this Agreement shall be deemed to apply to patent rights acquired hereafter by any of the parties hereto (otherwise than from one of its own employees or subsidiaries) on terms that require money payments not measured by use of the invention and not being fixed lump sum payments unless and until the parties hereto other than the acquiring party shall have agreed by majority in voting value (calculated as in the case of votes on the Committee) with the acquiring party on the recompense to be paid to the acquiring party to cover a fair share of its cost of acquisition. If such agreement is not reached within one month from the time that the acquiring party has notified the others of the patent rights in question and of the compensation requested by it (which notification the acquiring party shall give promptly) then the acquiring party may grant licences thereunder for Radio Apparatus independently of the parties hereto on such terms as it thinks fit but in such case it shall contribute to the licensing revenue the excess if any of the royalties received for such licences (within the field of Radio Apparatus) over the amount which is eventually determined by agreement as aforesaid or by arbitration as such fair share of cost of acquisition. Any of the parties hereto may at any time before such amount is agreed as aforesaid submit the question of such amount to arbitration by the London Court of Arbitration but any such arbitration shall have effect only for the purpose of determining the amount of contribution in respect of licences granted independently as above mentioned.

9(c). Such of the licences herein granted and agreed to be granted by any of the parties hereto to any other of them as are based upon patent rights which are subject to rights in favour of third parties are subject to the same limitations as the licensing rights of the grantor but the parties declare that there are no such limitations on their respective rights to grant the licences referred to in the first second fourth sixth and seventh recitals hereof with regard to the patents referred to therein.

10. The party entitled to receive licences hereunder based upon patent rights to subject of Clause 9 shall have the option at any time to accept or refuse or (so far as compatible with the relevant agreements) to surrender all or any of such licences.

11(a). The parties agree to join their efforts in order to license on reasonable terms bona fide manufacturers in the British Isles for the manufacture of Radio Apparatus in the British Isles and for the use and sale therein of Radio Apparatus so manufactured within the field of this Agreement and to share the revenue derived from such licences the whole on the following terms.

(b) Such licences shall commence as from a date not earlier than 1st January 1948 and shall remain in force not later than 31st December 1952 Provided however that they may include the right to dispose after 31st December 1952 of stocks then on hand or in process of manufacture.

(c) Each of the parties hereto reserves the right to grant licences separately under all or any of its own patents or patent rights in the following cases, namely:

(i) In cases where the principal consideration is not the payment of royalties or commercial arrangements in relation to the supply purchase or sale of goods and—

(ii) In cases in which and to the extent that they respectively are or may be obligated to grant licences for television receivers in virtue of their now existing or future commitments to the B.B.C. or to the Postmaster General with regard to Television.

(d) None of the parties hereto shall be obliged to take any action for infringement of their respective patents nor be deemed to warrant the validity thereof.

(e) Each of the parties undertakes during the continuance of this Agreement not to indemnify or to agree to indemnity any person firm or company against or assist any person firm or company to avoid the consequences of any claim for such infringement (within the scope of the licences granted or agreed to be granted by the parties hereto to each other by this Agreement) of any patent under which such party hereto is entitled to a licence hereunder provided however that this does not apply to goods supplied by such party hereto.

(f) For the purpose of facilitating the carrying out of this Clause 11 the parties will appoint a committee on which they shall be represented with voting rights proportional to the number of points allotted to them respectively by sub-clause (o) of this Clause 11, and it is contemplated that if other parties should join with the parties hereto as co-licensors they may also be represented on the committee but their voting rights thereon shall not be greater than in proportion to the number of points that shall have been allotted to them.

(g) All matters appertaining to the granting and administration of licences in pursuance of this Clause 11 and to procuring other parties to join with the parties hereto in such licensing shall be decided by the Committee by a majority in voting value of the votes of those entitled to be represented on the Committee and the parties hereto undertake to comply with all such majority decisions. The decisions of the parties hereto and Joining Parties (as hereinafter referred to) if any made in accordance with the same principle of proportional voting power shall avail as decisions of the Committee and in case of conflict with the prior decisions of the Committee shall override the latter. No such decisions of the Committee or of the parties hereto and Joining Parties if any which in any respect run contrary to or are inconsistent with any provisions of this Clause 11 shall be effective.

(h) Subject as above provided the Committee shall among other things decide on the terms conditions period and scope (but within the scope of Radio Apparatus as above defined) of the licences to be granted in pursuance of this Clause 11 by the parties hereto and/or by Joining Parties and the routine administration in connection therewith and the terms and conditions on which other parties shall be invited or accepted as Joining Parties.

(i) The Committee may appoint some person to carry on subject in every respect to the instructions given by the Committee from time to time the routine work in connection with the granting of licences under this Clause 11 and the collection of royalties payable under this Agreement.

(j) Such other persons firms or companies as may be decided by the Committee to be desirable as co-licensors shall be invited to join the parties hereto for the purpose of granting licenses for Radio Apparatus under the provisions of this Clause 11. The terms and conditions on which and the extent to which such others (herein referred to as "Joining Parties") agree to join the parties hereto as aforesaid shall be as may be decided by the Committee and each of the parties hereto shall comply with all the terms so decided except as otherwise herein provided. Such terms may include the grant of a licence within the scope period and territory of this Agreement to such Joining Parties under all or any of the patents of the parties hereto and/or a license from such Joining Parties to all the parties hereto. Every reasonable effort shall be made to include in the terms a licence for the scope period and territory of this Agreement from such Joining Party to the other parties to this Agreement and their respective subsidiaries free of all royalties other than those specified in sub-clause (n) hereof. Provided however that no Joining Party shall be entitled to a licenee from any party hereto to whom a similar licence from such Joining Party is not by the terms of his joining made available on the same terms as to the other parties hereto and provided further that if the terms of any such licence to any of the parties hereto would involve the payment by a party hereto of any royalty additional to that which would be payable by virtue of the terms of this Agreement then such party hereto may decline to accept such licence from the Joining Party and to grant any licence to the Joining Party, and in such case shall reserve its freedom to contest or assist others to contest the validity of such Joining Party's patents.

(k) None of the parties hereto shall be obliged to appear as grantors or co-grantors of the licences to be granted in accordance with decisions of the Committee but when a form of proposed licence has been decided on by the Committee each of the parties hereto shall within three weeks thereof indicate to EMI whether or not they wish to so appear. If any party does not so indicate to EMI that it wishes to so appear licences within the scope and territory and period of this Agreement under all the patents of the party not so wishing to appear may be granted by EMI in the said form and such party declining to appear cannot afterwards claim to have its name inserted as a co-grantor in licenses in the said form and if any party does so notify EMI that it wishes to so appear it cannot afterwards refuse to so appear in licences which the Committee decide shall be issued in such form.

(l) The expression "licensing revenue" wherever used in this Clause 11 means the net revenue derived by the parties hereto or any of them from the granting of licences within the scope territory and period of the licences referred to in this Clause 11 including the royalties contributed by the parties hereto as hereinafter provided and—if any other parties join with the parties hereto as above provided shall include the net revenue derived by such Joining Parties or by the parties hereto or one or more of them from the granting of licences under such Joining Parties' patent rights excluding however any revenue of such Joining Parties which by the terms of their joining shall have been agreed to be excluded from the licensing revenue. In calculating the net revenue there shall first be deducted the expenses connected with the granting and administration of such licences including all expenses of carrying out the obligations of the licensors under such licences but not expenses of obtaining or maintaining patents or costs or expenses of actions for infringement of patents.

(m) In the case of actions for damages for infringement of patents by the manufacture, use or sale of Radio Apparatus between 1st April 1948 and 31st December 1952 within the British Isles those of the parties hereto and Joining Parties who shall have prior to the commencement of such action agreed to bear a share of the costs and expenses of such action in proportion to the number of points allotted to them as herein referred to shall be entitled to share in the same proportion in the net damages (after deduction of costs and expenses) recovered for such infringement in such action.

(n) Each party hereto will in respect of the period from 1st April 1948 to 31st December 1952 contribute and pay to the licensing revenue royalties in respect of all Radio Apparatus sold let on hire or put into use by it during the said period whether utilising inventions the subject of patents or not, the said royalties to be calculated at the same rate or rates and on the same basis as are fixed by the Committee to be paid in similar circumstances (e.g. having regard to volume of business and the minimum royalties the licensee is prepared to guarantee etc.) by a licensee not a party to this Agreement less however such proportion (to represent such party's own patents) of the royalties so calculated as aforesaid as shall be equal to the proportion which the number of points allotted to the party bears to the total number of points allotted to all the parties and any Joining Parties provided always that if in respect of any year or portion of a year ending on the 31st December the gross royalties so payable by a party hereto (calculated as aforesaid and before deduction of income tax or of the said proportion) shall exceed the sum of £10,000. (or a proportionate amount in respect of any period less than a full year) then in respect of Radio Apparatus in excess of the Radio Apparatus on which the gross royalty amounts to £10,000. (or such proportionate amount as aforesaid) the rates of royalty so to be paid by a party hereto shall not exceed in the case of broadcast receivers and radio gramophones 0.01 per cent. and in the case of television receivers 0.02 per cent. of the net selling price.

(o) The licensing revenue shall be divided between the parties hereto and any Joining Parties in proportion to the number of points allotted to them respectively by this Agreement or by the terms of their joining. The number of points allotted to the parties hereto respectively is agreed to be as follows, namely:

To EMI	95 points
To BTH	5 points
To Philips	25 points
To GEC	30 points
To MWT	13½ points

12. Except as otherwise specified this Agreement shall remain in force until 31st December 1952 and shall then expire. Provided however that the royalties hereinabove provided to be paid by the parties hereto shall be payable on Radio Apparatus on hand at 31st December 1952 but sold thereafter.

13. If any party (hereinafter referred to as "the said party") hereto shall go or be put into liquidation otherwise than for the purpose of reconstruction or amalgamation or make any arrangement with its creditors generally then and in such case the parties hereto other than the said party shall be entitled forthwith by joint notice in writing to the said party to determine this Agreement and thereupon all the rights of the said party hereunder shall forthwith cease and determine but without prejudice to the remedy of the other parties hereto to sue for and recover any royalties then due provided that royalties received after such determination in respect of licenses granted in pursuance of this Agreement by the said party alone or with any other party to this Agreement to licensees not being parties to this Agreement shall continue to be divided between the parties hereto including the said party in the proportions herein provided.

14. The parties hereto undertake not to contest or assist others to contest the validity of any Letters Patent under which they respectively receive licences hereunder Provided however that each of them reserves the right to contest or assist others to contest the validity of any such Letters Patent in any proceedings relating to products other than those for which licences are by this Agreement agreed to be given and in any proceedings if the result of such contestation might affect the validity or scope of one of its own patents and provided further that nothing herein contained shall preclude any party hereto from contesting or assisting others to contest the validity of any Letters

Patent in respect of any alleged infringement occurring prior to 1st April 1948.

15. This Agreement and the rights and obligations thereunder shall not be assigned or transferred to any third party without consent in writing of all parties hereto.

16. Each of the parties hereto undertakes to procure all its subsidiaries as hereinbefore defined to comply with all the terms of this Agreement as if they were a part or department of the party of which they are subsidiaries.

17. No party will dispose of its rights in such a way as to diminish or restrict any of the licences or rights to which the other parties are entitled hereunder provided that nothing herein contained shall oblige any party to maintain any patents in force or to maintain in force any agreements with third parties other than such as are necessary to enable it to comply with its representations in the recitals to this Agreement.

18. No licences shall be granted by any party hereto for Radio Apparatus in the British Isles in respect of the period from 1st April 1948 to 31st December 1952 except in accordance with the decisions of the Committee or in the cases mentioned in Clause 11 (c) (i) and (ii).

19. The expressions "party" "parties" "other party" or "Joining Party" wherever used in this Agreement shall each of them so far as the context permits include the respective subsidiaries (as herein defined) or any of them respectively.

In Witness whereof the Common Seals of the parties hereto have been hereunto affixed the day and year first above written.

The Common Seal of Electric and
Musical Industries Limited was
hereunto affixed in the presence
of:

....

....

The Common Seal of The British Thomson-Houston Company Limited was hereunto affixed in the presence of:

....

....

The Common Seal of Philips Electrical Industries Limited was hereunto affixed in the presence of:

....

....

The Common Seal of The General Electric Company Limited was hereunto affixed in the presence of:

....

....

The Common Seal of Marconi's Wireless Telegraph Company Limited was hereunto affixed in the presence of:

....

....

DEFENDANT'S EXHIBIT NO. 53.

An agreement made this fourth day of February 1949 Between

Electrical and Musical Industries Limited having its registered office at Blyth Road, Hayes, Middlesex.

The British Thomson-Houston Company Limited having its registered office at Crown House, Aldwych, London, W.C.2.

Philips Electrical Company Limited having its head office at Century House, Shaftesbury Avenue, London.

General Electric Company Limited having its registered office at Magnet House, Kingsway, London, W.C.2.

Marconi's Wireless Telegraph Company Limited having its registered office at Electra House, Victoria Embankment, London, W.C.2. (hereinafter called "the parties to the August Agreement")

and

Standard Telephones and Cables Limited having its registered office at Connaught House, 63 Aldwych, London, W.C.2. (hereinafter called "STC")

Whereas by an agreement dated the Thirty-first day of August 1948 (hereinafter called "the August Agreement") the parties to the August Agreement have agreed to grant certain licences under their respective patents and to share revenue so derived as therein provided.

And Whereas STC is willing to join with the parties to the August Agreement in the granting of licenses and sharing of revenue as aforesaid

And Whereas STC represents (a) that subject to the rights (if any) which the British Government may have in respect of patents arising out of Government Contracts it is and will be during the period of this Agreement entitled to grant or procure others to grant licences from 1st April 1948 until 31st December 1952 for Radio Apparatus as defined in the August Agreement under all present and future patents of the British Isles originating with the following companies, namely:

Standard Telephones And Cables Limited
  and its subsidiaries (including:
    Kolster Brandes Limited
    Standard Telecommunication Laboratories
      Limited and all subsidiaries of any of them).

And Whereas (b) STC represents that subject to the rights (if any) which the U. S. A. or other foreign governments may have in respect of patents arising out of contracts with such governments it is and will be for the period from 1st April 1948 to 31st December 1952 entitled to grant or procure others to grant licences for the manufacture of radio apparatus as defined in the August Agreement under all present and future patents of the British Isles originating with the following companies:

International Standard Electric Corporation, U. S. A.
Federal Telephone And Radio Corporation, U. S. A.
Federal Telecommunication Laboratories, U. S. A.
Laboratoire Central De Telecommunications, France
  and all companies owned or controlled by the said
  companies.

And Whereas (c) STC further represents that no licences for any part of the said period from 1st April 1948 to 31st

December 1952 under the said patents of the British Isles originating with Standard Telephones and Cables Limited or its subsidiaries have been granted to any third party for any of said purposes except a non-exclusive licence to Marconi's Wireless Telegraph Company Limited and the Marconiphone Company Limited with respect to patents existing prior to 19th February 1945.

Now Therefore it is agreed by and between the parties hereto that the August Agreement shall be read and construed and have effect as if STC were also a party thereto and as if modified by the inclusion of:—

(a) the recitals herein by STC
and
(b) the words "To STC 20 points"

in the table in Clause 11(o)
and by the substitution of the figure £12,500 for the figure £10,000 where the latter appears in Clause 11(n).

In Witness whereof the Common Seals of the Parties hereto have been hereunto affixed the day and year first above written.

The Common Seal of Electric
and Musical Industries
Limited was hereunto affixed
in the presence of:

....

....

The Common Seal of The British
Thomson-Houston Company
Limited was hereunto affixed
in the presence of:

....

....

The Common Seal of Philips
Electrical Industries Limited
was hereunto affixed in the
presence of:

The Common Seal of The General
Electric Company Limited
was hereunto affixed in the
presence of:

The Common Seal of Marconi's
Wireless Telegraph Company
Limited was hereunto affixed
in the presence of:

The Common Seal of Standard
Telephones and Cables Limited
was hereunto affixed in the
presence of:

We, the undersigned companies being the parties to an Agreement dated the fourth day of February 1949 (supplemental to an agreement dated 31st August 1948) hereby agree that the said agreement dated 4th February 1949 shall be read and construed and have effect as if modified by the substitution of the figure £15,000 for the figure £12,500 where the latter figure appears in the said Agreement.

The British Thomson-Houston Company Limited,

....,

Secretary.

Electric & Musical Industries Limited,

....,

Secretary.

The General Electric Company Limited,

....,

Secretary.

Marconi's Wireless Telegraph Company Limited,

....,

Secretary.

Philips Electrical Industries Limited,

....,

Secretary.

Standard Telephones And Cables Limited,

....,

Secretary.

DEFENDANT'S EXHIBIT NO. 54

This Agreement is made the twenty-third day of March, one thousand nine hundred and forty-nine Between the British Thomson-Houston Company Limited, and Electric & Musical Industries Limited and The General Electric Company Limited and Marconi's Wireless Telegraph Company Limited and Philips Electrical Industries Limited and Standard Telephones and Cables Limited (hereinafter together called "the Grantors") of the one part and Murphy Radio Limited (hereinafter called "the Licensee") of the other part and is Supplemental to an Agreement of Even Date made between the same parties and known as "Licence A6".

Whereas the parties hereto have entered into the Licence A6 on the condition that it is subject to the variations, extension and modifications hereinafter appearing.

Now Therefore It Is Agreed that the said Licence A6 shall be read in conjunction with and as varied extended or modified by the following:

1. (a) The royalty rate referred to in Clause 4(c) of Licence A6 shall be reduced by the same percentage thereof as the percentage of the nett revenue to which the Licensee is entitled under Clause 4 of this Agreement.

(b) In the case of apparatus exported to countries outside the territory referred to in Clause 2(a) of Licence A6, the royalty shall be reduced by 50% in the case of complete apparatus and by 100% in the case of sets of component parts.

(c) The maximum amount of royalty payable, however, before deduction of Income Tax, in any year ending 31st December (or proportionately in respect of any period less than a full year) shall not exceed £15,000 less the amount of the reduction to which the Licensee is entitled under sub-clause (a) above, except that in respect of apparatus upon which royalty is payable under Licence A6 sold let on hire or put into use in any such year in excess of an amount upon which the royalty would amount to the said maximum the royalty upon broadcast receivers and radiogramophones shall be 0.01% and in respect of television receivers shall be 0.02% of the nett invoice prices respectively.

2. The Licensee will place exclusively into a licensing pool all present and future British and Eireann letters patent owned or controlled by the Licensee of the Licensee's subsidiaries for the purpose of granting licences for the manufacture use sale and letting on hire of Radio Apparatus which means radio broadcast sound receivers, radiogramophones, radio television receivers and combinations of the foregoing with each other all for entertainment and education purposes only but does not include:

(a) electron discharge devices or lamps of any kind.

(b) apparatus for wired-wireless (that is to say apparatus for relaying to one or more subsidiary receivers over wire by means of modulated electrical oscillations, radio signals received by a radio broadcast sound receiver or radiogramophone).

(c) materials or component parts sold separately (Materials or component parts which are actually incorporated in and form part of Radio Apparatus are included in the term "Radio Apparatus").

(d) television receivers adapted for producing a picture larger than thirty square feet.

and the Licensee grants and agrees to grant to each of the Grantors licences to make use sell and let on hire such Radio Apparatus under such patents without payment other than that payable to the Licensee under Clause 4 hereof and the Licensee further agrees that licences granted in the form of Licence A6 or such other form as may be agreed from time to time by the Pool Management Committee (within the scope of Radio Apparatus as defined) may include licenses under such patents without additional royalty thereunder.

3. It is agreed that Licence A6 as varied by this Agreement excepting Clauses 4 and 5 herein shall apply to all subsidiaries of the Licensee. Subsidiaries shall mean any firm or company domiciled in the territory referred to in Clause 2(a) of Licence A6 and at any time during the period of this Agreement owned or controlled by the Licensee to the extent of more than 50 per cent by shareholding voting power or otherwise directly or indirectly.

4. In consideration of the rights granted and agreed to be granted by the Licensee in Clause 2 hereof the licensing Pool will pay to the Licensee 4½% (four and a half per centum) of its nett distributable revenue (i.e. the gross revenue from licensing less all running expenses). It is understood, however, that the said 4½% is based on the retention by the said Grantors (viz The British Thomson-Houston Co. Ltd., Electric & Musical Industries Ltd., The General Electric Co. Ltd., Marconi's Wireless Telegraph Co. Ltd., Philips Electrical Industries, Ltd., and Standard Telephones and Cables Ltd.) of the remainder of the said nett revenue. In the case of any other party contributing licensing rights on terms which entitled it to a share of the said revenue (or to an amount related to such a share) such share shall be borne in proportion to their respective shares by all parties entitled to share in the said revenue.

5. The Licensee shall be invited to appoint a representative to the Pool Management Committee, which representative shall have voting power proportionate to the percentage of the revenue to which the Licensee is entitled in accordance with Clause 4 above.

6. It is understood that no Company or firm contributing patents to the Pool is under any obligation to take action for infringement under any patent.

7. Clause 7 of Licence A6 shall be deemed to be cancelled.

8. This Agreement shall remain in force so long as the Licence A6 remains in force and shall be co-terminous with it.

In Witness Whereof an Agent hereunto duly authorised has on behalf of the Grantors hereunto on their behalf set his hand and a Director of the Licensee hereunto duly authorised has hereunto on the Licensee's behalf set his hand the day and year first above written.

For and on behalf of:

The British Thomson-Houston Limited

Electric & Musical Industries Limited

The General Electric Company Limited

Marconi's Wireless Telegraph Company Limited

Philips Electric Industries Limited

Standard Telephones and Cables Limited

(Signed) F. C. Topham

For and on behalf of

Murphy Radio Limited

(Signed) F. B. Duncan

Director

Signed by Frank Charles Topham for and on behalf of the Grantors in the presence of

A. W. Mackenzie,
Marconi Offices,
Electra House,
Victoria Embankment,
London W. C. 2.

Signed by ....
A Director of and for and on behalf of Murphy Radio Limited in the presence of ....

DEFENDANT'S EXHIBIT NO. 55.

A-6 Pool Supplement

Exhibit J-1

This Agreement is made the Sixteenth day of June One thousand nine hundred and forty nine Between The British Thomson-Houston Company Limited and Electric & Musical Industries Limited and The General Electric Company Limited and Marconi's Wireless Telegraph Company Limited and Philips Electrical Industries Limited and Standard Telephones and Cables Limited (hereinafter together called "the Grantors") of the one part and E. K. Cole Limited (hereinafter called "the Licensee") of the other part and is Supplemental to an Agreement of Even Date made between the same parties and known as "Licence A6."

Whereas the parties hereto have entered into the Licence A6 on the condition that it is subject to the variations, extensions and modifications hereinafter appearing.

Now Therefore It Is Agreed that the said Licence A6 shall be read in conjunction with and as varied, extended or modified by the following:

1. (a) In case of apparatus exported to countries outside the territory referred to in Clause 2(a) of Licence A6 the royalty shall be reduced by 50% in the case of completed apparatus and by 100% in the case of sets of component parts.

(b) The maximum amount of royalty payable however before deduction of Income Tax, in any year ending 31st December (or proportionately in respect of any period less than a full year) shall not exceed £15,000 except that in respect of apparatus upon which royalty is payable under Licence A6 sold, let on hire or put into use in any such year in excess of an amount upon which the royalty would amount to the said maximum the royalty upon broadcast receivers and radiogramophones shall be 0.01% and in respect of television receivers shall be 0.02% of the nett invoice prices respectively.

2. The Licensee will place exclusively into a licensing pool all present and future British and Eireann Letters Patent owned or controlled by the Licensee or the Licensee's subsidiaries for the purpose of granting licences for the manufacture use sale and letting on hire of Radio Apparatus which means radio broadcast sound receivers, radiogramophones, radio television receivers and combinations of the foregoing with each other all for entertainment and education purposes only but does not include:—

(a) electron discharge devices or lamps of any kind
(b) apparatus for wired wireless (that is to say apparatus for relaying to one or more subsidiary receivers over wire by means of modulated electrical oscillations, radio signals received by a radio broadcast sound receiver or radiogramophone)
(c) materials or component parts sold separately (Materials or component parts which are actually incorporated in and form part of Radio Apparatus are included in the term "Radio Apparatus")
(d) television receivers adapted for producing a picture larger than thirty square feet

and the Licensee grants and agrees to grant to each of the Grantors (and to others who may now or in the future contribute patents to the said licensing pool for inclusion in the said Licence A6) licence to make use sell and let on hire such Radio Apparatus under such patents without payment other than that payable to the Licensee under Clause 4 hereof and the Licensee further agrees that licences granted in the form of Licence A6 or such other form as may be agreed from time to time by the Grantors (within the scope of Radio Apparatus as defined) may include licences under such patents without additional royalty thereunder.

3. It is agreed that Licence A6 as varied by this Agree-

ment excepting Clause 4 hereof shall apply to all subsidiaries of the Licensee. Subsidiaries shall mean any firm or company domiciled in the territory referred to in Clause 2(a) of Licence A6 and at any time during the period of this Agreement owned or controlled by the Licensee to the extent of more than 50 per cent by shareholding voting power or otherwise directly or indirectly.

4. In consideration of the rights granted and agreed to be granted by the Licensee in Clause 2 hereof the Grantors will pay to the Licensee in the form of a rebate of royalty in respect of each year ending 31st December of Licence A6 (and proportionately for the period 1st April to 31st December 1948) subject to such payment in any year not exceeding the royalty paid by the Licensee an amount equal to 2½% of the nett distributable revenue of the said licensing pool (i.e. the gross revenue from licensing less all running expenses) the said 2½% being based on the retention by The British Thomson-Houston Co. Ltd., Electric & Musical Industries Ltd., The General Electric Co. Ltd., Marconi's Wireless Telegraph Co. Ltd., Murphy Radio Ltd., Philips Electrical Industries Ltd. Pye Ltd., and Standard Telephones and Cables Ltd., of the remainder of the nett revenue. In the case of any further party contributing licensing rights on terms which entitled it to payment in a like manner or otherwise share in the said nett distributable revenue (or to an amount related to such sharing) such payment or sharing shall be borne in accordance with their respective proportions by all the parties entitled to participate in the said revenue and the said 2½% shall be reduced accordingly.

5. The parties hereto undertake not to contest or assist others to contest the validity of any letters patent under which they respectively receive licences by virtue of the Licence A6 and this Agreement. Provided however that each of them reserves the right to contest or assist others to contest the validity of any such letters patent in any pro-

ceedings relating to products other than those for which said licences are given.

6. It is understood that no Company or firm contributing patents to the said licensing pool is under any obligation to take action for infringement under any patent.

7. Clause 7 of Licence A6 shall be deemed to be cancelled.

8. This Agreement shall remain in force so long as the Licence A6 remains in force and shall be co-terminous with it.

In Witness Whereof an Agent hereunder duly authorised has on behalf of the Grantors hereunto on their behalf set his hand and a Director of the Licensee hereunto duly authorised has hereunto on the Licensee's behalf set his hand the day and year first above written.

For and on behalf of
The British Thomson-Houston Company Limited
Electric & Musical Industries Limited
The General Electric Company Limited
Marconi's Wireless Telegraph Company Limited
Philips Electrical Industries Limited
Standard Telephones and Cables Limited.
(Signed) F. C. Topham

For and on behalf of
E. K. Cole Limited
(Signed) E. K. Cole
Director

Signed by Frank Charles Topham for and on behalf of the Grantors in the presence of:

L. H. Waite,
Marconi Offices,
Electra House,
Victoria Embankment,
London, W. C. 2.

Signed by Eric Kirkham Cole,
A Director of and for and on behalf of E. K. Cole Limited in the presence of

Ernest Hey,
Chartered Patent Agent.

DEFENDANT'S EXHIBIT NO. 56.

This Agreement is made the Third day of March One thousand nine hundred and fifty Between the British Thomson-Houston Company Limited and Electric & Musical Industries Limited and The General Electric Company Limited and Marconi's Wireless Telegraph Company Limited and Philips Electrical Industries Limited and Standard Telephones and Cables Limited (hereinafter together called "the Grantors") of the one part and A. C. Cossor Limited (hereinafter called "the Licensee") of the other part and is Supplemental To An Agreement Of Even Date and made between the same parties and known as "Licence A6".

Whereas the parties have entered into the Licence A6 on the condition that it is subject to the variations extensions and modifications hereinafter appearing.

Now Therefore It Is Agreed that the said Licence A6 shall be read in conjunction with and as varied extended or modified by the following:

1. (a) In the case of apparatus exported to countries

outside the territory referred to in Clause 2 (a) of Licence A6 the royalty mentioned in Clause 4(c) of Licence A6 shall be reduced by 50% in the case of complete apparatus and by 100% in the case of sets of component parts as defined.

(b) After the gross royalty payable calculated at the figures mentioned in the said Clause 4(c) and the preceding subclause hereof in any year ending 31st December has reached £15,000 the royalty on nett turnover upon broadcast receivers and radiogramophones shall be reduced to 0.01% and upon television receivers to 0.02% subject to the provisions of the preceding sub-clause (a). It is understood that the foregoing does not in any way affect the requirements under Proviso (iv) of the said Clause 4(c).

2. The Licensee agrees to grant licences under all present and future British and Eireann Letters Patent owned or controlled or to be owned or controlled by Licensee or the Licensee's subsidiaries useful in the manufacture use sale and letting on hire of Radio Apparatus which means radio broadcast sound receivers, radiogramophones, radio television receivers and combinations of the foregoing with each other all for entertainment and education purposes only but does not include:

(a) electron discharge devices or lamps of any kind

(b) apparatus for wired wireless (that is to say apparatus for relaying to one or more subsidiary receivers over wire by means of modulated electrical oscillations, radio signals received by a radio broadcast sound receiver or radiogramophone or radio television receiver)

(c) materials or component parts sold separately (materials or component parts which are actually incorporated in and form part of Radio Apparatus are included in the term "Radio Apparatus")

(d) television receivers adapted for producing a picture larger than thirty square feet

and the Licensee grants and agrees to grant to each of the Grantors (and to others who may now or in the future contribute patents for licensing within the field of the said Licence A6) licences to make use sell and let on hire such Radio Apparatus under such patents without consideration to the Licensee other than that provided for under Clause 4 hereof and the Licensee further agrees that licences granted in the form of Licence A6 or such other form as may be agreed from time to time by the Grantors (within the scope of Radio Apparatus as defined) may include licences under such patents without additional royalty thereunder and that during the period of this Agreement no licences for such apparatus will be granted by the Licensee otherwise than as provided hereunder.

3. It is agreed that Licence A6 as varied by this Agreement excepting Clause 4 hereof shall apply to all subsidiaries of the Licensee. Subsidiaries shall mean any firm or Company domiciled in the territory referred to in Clause 2(a) or License A6 and at any time during the period of this Agreement owned or controlled by the Licensee to the extent of more than 50 per cent by shareholding voting power or otherwise directly or indirectly.

4. In consideration of the rights granted and agreed to be granted by the Licensee hereunder the Grantors will allow to the Licensee in respect of each year commencing the 1st January 1949 a rebate of 30% (thirty per centum) upon the Licensee's gross royalties calculated as aforesaid. The Licensee shall however have an option to change such rebate by giving one quarter's notice in writing at the end of any quarter subsequent to the date of this Agreement whereupon as from the date of expiry of such notice the Grantors will allow in lieu thereof a rebate upon

the Licensee's said gross royalties of an amount equivalent to 3% of the total nett revenue (i. e. the total gross royalties derived from the licensing of the said radio apparatus less all running expenses) for the then remaining period of this Agreement subject to any such changed allowance in respect of any year or period not exceeding the Licensee's said gross royalty for the same year or period. It is agreed that the said 3% if and when operative shall be related to the proportions now allotted collectively to the British Thomson-Houston Co. Ltd., Electric & Musical Industries Ltd., the General Electric Co. Ltd., Marconi's Wireless Telegraph Co. Ltd., Murphy Radio Ltd., Philips Electrical Industries Ltd., Pye Ltd., and Standard Telephones and Cables Ltd. In the case of any further party or parties granting licences on terms which entitle it or them to any allowance in a like manner or to any share in the said nett revenue (or to an amount related to such allowance or sharing) any such allowance or share shall be borne in accordance with the respective proportions by all parties entitled to participate in the said nett revenue and the said 3% if and when operative shall be reduced accordingly.

5. The parties hereto undertake not to contest or assist others to contest the validity of any letters patent under which they respectively receive licences by virtue of the Licence A6 and this Agreement. Provided however that each of them reserves the right to contest or assist others to contest the validity of any such letter patent in any proceedings relating to products other than those for which said licences are given.

6. It is understood that no company or firm contributing rights under its patents is under any obligation to take action for infringement under any patent.

7. Clause 7 of Licence A6 shall be deemed to be cancelled.

8. This Agreement shall remain in force so long as your Licence A6 remains in force and shall be co-terminous with it.

In Witness Whereof an Agent hereunto duly authorised has on behalf of the Grantors hereunto on their behalf set his hand and a Director of the Licensee hereunto duly authorised has hereunto on the Licensee's behalf set his hand the day and year first above written.

For and on behalf of:

The British Thomson-Houston Company Limited

Electric & Musical Industries Limited

The General Electric Company Limited

Marconi's Wireless Telegraph Company Limited

Philips Electrical Industries Limited

Standard Telephones and Cables Limited

(Signed) F. C. Topham.

Signed by Frank Charles Topham for and on behalf of the Grantors in the presence of:

A. W. Mackenzie,
Marconi Offices,
Electra House,
Victoria Embankment,
London, W. C. 2.

For and on behalf of:
A. C. Cossor Limited
(Signed) Henry Chisholm
Director.

Signed by Henry Chisholm
A Director of and for and on behalf of A. C. Cossor Limited in the presence of:

N. Sadler,
Cossor House,
Highbury Grove,
B.5.
Company Secretary.

DEFENDANT'S EXHIBIT NO. 57.

This Agreement is made the Eighth day of March One thousand nine hundred and fifty Between The British Thomson-Houston Company Limited and Electric & Musical Industries Limited and The General Electric Company Limited and Marconi's Wireless Telegraph Company Limited and Murphy Radio Limited and Philips Electrical Industries Limited and Pye Limited and Standard Telephones and Cables Limited (hereinafter together called "the Grantors") of the one part and Cinema-Television Limited (hereinafter called "the Licensee") of the other part and is Supplemental To An Agreement Of Even Date known as "the Licence A6" which is annexed hereto.

Whereas the parties have entered into the Licence A6 on the condition that it is subject to the variations extensions and modifications hereinafter appearing.

Now Therefore It Is Agreed that the said License A6 shall be read in conjunction with and as varied extended or modified by the following:

1. (a) In the case of apparatus exported to countries outside the territory referred to in Clause 2(a) of the Licence A6 the royalty payable by the Licensee shall be one half of the royalty mentioned in the Clause 4(c) of the Licence A6 in the case of complete apparatus and no royalty shall be payable in the case of sets of component parts.

(b) After the aggregate amount of the royalty paid by the Licensee (calculated at the figures mentioned in the said Clause 4(c) and the preceding sub-clause hereof) in any year ending 31st December (or proportionately in respect of any period less than a full year) has reached £15,000 (Fifteen thousand pounds) the royalty on nett turnover (as defined in the said A6 licence) upon broadcast receivers and radiogramophones shall be reduced to 0.01% and upon television receivers to 0.02% subject to reduction as set out in sub-clause (a) of this clause in the case of exported apparatus. It is understood that the foregoing does not in any way affect the requirements under proviso (iv) of the said Clause 4(c).

2. The Licensee agrees to grant licences under all present and future British and Eireann Letters Patents owned or controlled or to be owned or controlled by the Licensee or the Licensee's subsidiaries useful in the manufacture use sale and letting on hire of Radio Apparatus which means radio broadcast sound receivers, radiogramophones, radio television receivers and combinations of the foregoing with each other all for entertainment and education purposes only but does not include:

(a) electron discharge devices or lamps of any kind

(b) apparatus for wired wireless (that is to say apparatus for relaying to one or more subsidiary receivers over wire by means of modulated electrical oscillations, radio signals received by a radio broadcast sound receiver or radiogramophone)

(c) materials or component parts sold separately (Materials or component parts which are actually incorporated in and form part of Radio Apparatus are included in the term "Radio Apparatus")

(d) television receivers adapted for producing a picture larger than thirty square feet

and the Licensee grants and agrees to grant to each of the Grantors (and to any other persons or companies who may now or in the future during the currency of the Licence A6 contribute patents for licensing within the field of the Licence A6) licences but upon the same conditions and subject to the same restrictions as are set out in Clause 4(c)(v) of the Licence A6 to make use sell and let on hire in the territory referred to in Clause 2(a) of the Licence A6 such Radio Apparatus under such patents without consideration to the Licensee other than that provided for under Clause 4 hereof and the Licensee further agrees that licences granted in the form of the Licence A6 or such other form as may be agreed from time to time by the Grantors (within the scope of Radio Apparatus as defined) may include licences under such patents without additional royalty thereunder and that during the period of this Agreement no licences for such apparatus will be granted by the Licensee otherwise than as provided hereunder.

3. It is agreed that the Licence A6 as varied by this Agreement shall apply to and the licences thereby granted shall be deemed to be granted for the benefit of all subsidiaries of the Licensee including Bush Radio Limited. Subsidiaries shall mean any Company domiciled in the Territory referred to in Clause 2(a) of the Licence A6 and at any time during the period of this Agreement owned or controlled by the Licensee to the extent of more than 50 per cent by shareholding voting power or otherwise directly or indirectly.

4. In consideration of the rights granted and agreed to be granted by the Licensee hereunder the Grantors will allow to the Licensee in respect of each calendar year commencing with the 1st January 1949 (and proportionately for the period 1st April to 31st December 1948) a reduction of 53⅓% (fifty three and one third per centum) in the royalties payable by the Licensee in accordance with the Licence A6 as hereby modified.

5. The parties hereto undertake not to contest or assist others to contest the validity of any letters patent under which they respectively receive licences by virtue of the Licence A6 and this Agreement. Provided however that each of them reserves the right to contest or assist others

to contest the validity of any such letters patent in any proceedings relating to products other than those for which said licences are given.

6. It is understood that no company or firm contributing rights under its patents is under any obligation to take action for infringement under any patent.

7. Clause 7 of the License A6 shall be deemed to be deleted and of no effect.

8. The Licence A6 and this Agreement shall be read as one document and expressions defined in the Licence A6 shall bear the same meaning in this Agreement unless the context hereof otherwise requires.

In Witness Whereof an Agent hereunto duly authorised has on behalf of the Grantors hereunto on their behalf set his hand and a Director of the Licensee hereunto duly authorised has hereunto on the Licensee's behalf set his hand the day and year first above written.

For and on behalf of:

The British Thomson-Houston Limited

Electric & Musical Industries Limited

The General Electric Company Limited

Marconi's Wireless Telegraph Company Limited

Murphy Radio Limited

Philips Electrical Industries Limited

Pye Limited

Standard Telephones and Cables Limited

(Signed) F. C. Topham.

Signed by Frank Charles Topham for and on behalf of the Grantors in the presence of:

A. W. Mackenzie,
Marconi Offices,
Electra House,
Victoria Embankment,
London, W. C. 2.

For and on behalf of:
Cinema-Television Limited
(Signed) G. Darnley-Smith
Director

Signed by G. Darnley-Smith, A director of and for and on behalf of Cinema-Television Limited in the presence of:

C. C. Moore,
58, South Hill Rd.,
Bromley,
Kent.

DEFENDANT'S EXHIBIT NO. 58.

Exhibit H.

An Agreement made the Twelfth day of May 1953
Between

The British Thomson-Houston Company Limited having its registered office at Crown House Aldwych London W. C. 2. (hereinafter called "BTH") of the first part and

Cinema-Television Limited having its registered office at Albion House 59 New Oxford Street London W. C. 1. (hereinafter called "Cintel") of the second part and

Electric & Musical Industries Limited having its registered office at Blyth Road, Hayes Middlesex, (hereinafter called "EMI") of the third part and

The General Electric Company Limited having its registered office at Magnet House Kingsway London W. C. 2. (hereinafter called "GEC") of the fourth part and

Marconi's Wireless Telegraph Company Limited having its registered office at Marconi House Strand London W. C. 2. (hereinafter called "MWT") of the fifth part and

Murphy Radio Limited having its registered office at 62 Brook Street London W. 1. (hereinafter called "Murphy") of the sixth part and

Philips Electrical Industries Limited having its Head Office at Century House Shaftesbury Avenue London W. C. 2. (hereinafter called "Philips") of the seventh part and

Standard Telephones and Cables Limited having its registered office at Connaught House Aldwych London W. C. 2. (hereinafter called "STC") of the eighth part.

And Whereas (1) BTH represents:

(a) that subject to the rights (if any) which the British Government may have in respect of patents arising out of Government contracts it is and will be during the period of this Agreement entitled to grant or procure others to grant licences from 1st January 1953 to 31st December 1957 for Radio Apparatus as hereinafter defined under all present and future patents of the British Isles originating with the following companies namely:

The British Thomson-Houston Company Ltd.
Associated Electrical Industries Ltd.
Metropolitan Vickers Electrical Company Ltd.
and the subsidiaries of any of them.

(b) that no licences for any part of the said period from 1st January 1953 to 31st December 1957 under any of the said patents have been granted to any third party for any of the said purposes except a licence to EMI and licences to the A.6 licensees to sell stocks on hand at the expiry of the A.6 licences.

And Whereas (2) Cintel represents:

(a) that subject to the rights (if any) which the British Government may have in respect of patents arising out of Government contracts it is and will be during the period of this Agreement entitled to grant or procure others to grant licences from the 1st January 1953 to 31st December 1957 for Radio Apparatus as hereinafter defined under all present and future patents of the British Isles originating with Cintel, Bush Radio Limited and their subsidiaries;

(b) that no licences for any part of the said period from 1st January 1953 to 31st December 1957 under any of the said patents have been granted to any third party for any of the said purposes except licences to the A.6 licensees to sell stocks on hand at the expiry of the A.6 licences.

And Whereas (3) EMI represents:

(a) that subject to the rights (if any) which the British Government may have in respect of patents arising out of Government contracts it is and will be during the period of this Agreement entitled to grant or procure others to grant licences from 1st January 1953 until 31st December 1957 for Radio Apparatus as hereinafter defined under all present and future patents of the British Isles originating with the following companies namely:

Electric & Musical Industries Limited and its subsidiaries.

(b) that subject to the rights (if any) which the U. S. A. Government may have in respect of patents arising out of Government contracts it is and will be for the period from 1st January 1953 to 31st December 1957 entitled to grant or procure others to grant licences for radio broadcast sound receivers and radio broadcast television receivers for entertainment and education (except in the naval military marine and aircraft fields) under all British Patents present and future on inventions made and conceived by the Radio Corporation of America prior to 1st January 1945 and further entitled for the said period to grant licences to others (except EMI's subsidiaries) under other British Patents of Radio Corporation of America by means of a document identical with Exhibit "A" attached hereto.

(c) that it is and will be for the period from the 1st January 1953 to 31st December 1957 entitled to grant or procure others to grant licences for radio broadcast sound receivers and radio broadcast television receivers for entertainment and education under all British Patents present and future of Telefunken G. m. b. H.

(d) that no licences for any part of the said period from the 1st January 1953 to 31st December 1957 under the said patents originating with EMI or its subsidiaries have been granted to any third party for radio broadcast sound receivers and radio broadcast television receivers for entertainment and education except a licence to BTH and licences to the A.6 licensees to sell stocks on hand at the expiry of the A.6 licences, but EMI has given RCA and Telefunken an option to take a licence on standard terms.

And Whereas (4) GEC represents:

(a) that subject to the rights (if any) which the British and U. S. A. Governments may have in respect of patents arising out of Government contracts it is and will be during the period of this Agreement entitled to grant or procure others to grant licences from the 1st January 1953 to 31st December 1957 for Radio Apparatus as hereinafter defined under all present and future patents of the British Isles originating with the following companies namely:

The General Electric Company Ltd. and its subsidiaries and,

The Hazeltine Corporation.

(b) that no licences for any part of the said period from 1st January 1953 to 31st December 1957 under any of the said patents have been granted to any third party for any of the said purposes except licences to the A.6 licensees to sell stocks on hand at the expiry of the A.6 licences.

And Whereas (5) MWT represents:

(a) that subject to the rights (if any) which the British Government may have in respect of patents arising out of Government contracts it is and will be during the period of this Agreement entitled to grant or procure others to grant licences from the 1st January 1953 to 31st December 1957 for Radio Apparatus as hereinafter defined under all present and future patents of the British Isles originating with the following companies namely:

Marconi's Wireless Telegraph Company Limited
English Electric Company Limited and the subsidiaries of either of them.

(b) that it is and will be for the period from the 1st January 1953 to 31st December 1957 entitled to grant or procure others to grant licences for radio broadcast sound receivers and radio broadcast television receivers for entertainment and education under all British Patents present and future of Compagnie Generale de Telegraphie sans Fil and Societe Francaise Radio-Electrique of Paris subject to one year's notice of termination.

(c) that no licences for any part of the said period from 1st January 1953 to 31st December 1957 under any of the said patents referred to in (a) above has been granted to any third party for any of the said purposes except certain non-exclusive licences to Standard Telephones & Cables Limited to The Marconiphone Company Limited and The Gramophone Company Limited and licences to the A.6 licensees to sell stocks on hand at the expiry of the A.6 licences.

And Whereas (6) Murphy represents:

(a) that subject to the rights (if any) which the British Government may have in respect of patents arising out of Government contracts it is and will be during the period of this Agreement entitled to grant or procure others to grant licences from the 1st January 1953 to 31st December 1957 for Radio Apparatus as hereinafter defined under all present and future patents of the British Isles originating with Murphy and its subsidiaries;

(b) that no licences for any part of the said period from 1st January 1953 to 31st December 1957 under any of the said patents have been granted to any third party for any of the said purposes except licences to the A.6 licensees to sell stocks on hand at the expiry of the A.6 licences.

And Whereas (7) Philips represents:

(a) that subject to the rights (if any) which the Netherlands U. S. A. and British Governments may have in respect of patents arising out of Government contracts it is and will be during the period of this Agreement entitled to grant or procure others to grant licences from the 1st January 1953 to 31st December 1957 for Radio Apparatus as hereinafter defined under all present and future patents of the British Isles originating with the following companies namely:—

Philips Electrical Industries Limited and its subsidiaries N. V. Philips Gloeilampenfabrieken of Eindhoven Holland and all companies owned or controlled by it to the extent of more than 50 per cent by shareholding voting power or otherwise either directly or indirectly and

Hartford National Bank and Trust Company of Hartford Connecticut U. S. A. (in its capacity as Trustee under Indenture dated 25th August 1939) and all companies owned or controlled by it (in its said capacity) to the extent of more than 50 per cent as aforesaid including North American Philips Company Inc. and

Midland Bank Executor & Trust Company Limited (in its capacity as Custodian Trustee under Trust Deed dated 1st May 1939) and all companies owned or controlled by it (in its said capacity) to the extent of more than 50 per cent as aforesaid.

(b) that no license for any part of the said period from 1st January 1953 to 31st December 1957 under any of the said patents has been granted to any third party for any of the said purposes except sundry non-exclusive licences of an unimportant character respecting sundry detail matters and a non-exclusive licence to Western Electric Company Incorporated of U. S. A. under the conditions referred to in Clause 11 (c) hereof and licences to the A.6 licensees to sell stocks on hand at the expiry of the A.6 licences.

And Whereas (8) STC represents:

(a) that subject to the rights (if any) which the British Government may have in respect of patents arising out of Government contracts it is and will be during the period of this Agreement entitled to grant or procure others to grant licences from 1st January 1953 to 31st December 1957 for Radio Apparatus as hereinafter defined under all present and future patents of the British Isles originating with the following companies namely:—

Standard Telephones and Cables Limited and its subsidiaries (including Kolster Brandes Limited

Standard Telecommunication Laboratories Limited and all subsidiaries of any of them)

(b) that subject to the rights (if any) which the U. S. A. or other foreign governments may have in respect of patents arising out of contracts with such governments it is and will be for the period from 1st January 1953 to 31st December 1957 entitled to grant or procure others to grant licences for the manufacture of Radio Apparatus as hereinafter defined under all present and future patents of the British Isles originating with the following companies:—

International Standard Electric Corporation, U. S. A.

Federal Telephone and Radio Corporation, U. S. A.

Federal Telecommunication Laboratories, U. S. A.

Laboratoire Central De Telecommunications, France

and all companies owned or controlled by the said companies;

(c) that no licences for any part of the said period from 1st January 1953 to 31st December 1957 under the said patents of the British Isles originating with Standard Telephones and Cables Limited or its subsidiaries have been granted to any third party for any of said purposes except a non-exclusive licence to Marconi's Wireless Telegraph Company Limited and the Marconiphone Company Limited with respect to patents existing prior to 19th February 1945 and licences to the A.6 licensees to sell stocks on hand at the expiry of the A.6 licences.

And Whereas it is the intention of the parties to grant to bona fide manufacturers in the British Isles patent licences in the field covered by this Agreement on a fair and equitable basis and that other parties shall be invited to join the parties hereto in contributing their patents and granting such licences as aforesaid.

Now It Is Agreed As Follows:

1. For the purpose of this Agreement the following terms are defined as follows:

"Subsidiaries" means and includes any firm or company domiciled in the U. K. and at any time during the period of this Agreement owned or controlled by any of the parties hereto to the extent of more than 50 per cent by shareholding voting power or otherwise either directly or indirectly and in the case of BTH includes Associated Electrical Industries Limited and its subsidiaries and in the case of Philips includes also N. V. Philips' Gloeilampenfabrieken of Eindhoven Holland and Hartford National Bank and Trust Company of Hartford Connecticut U. S. A. (in its capacity as Trustee as aforesaid) and all companies owned or controlled by them or either of them to the extent of more than 50 per cent by shareholding voting power or otherwise including North American Philips Company, Inc. and in the case of MWT includes The English Electric Company Ltd. and its subsidiaries.

"Radio Apparatus" means radio broadcast sound receivers radiogramophones radio broadcast television receivers and combinations of the foregoing with each other all for entertainment and education purposes only or of types normally supplied to the public for domestic use but does not include

(a) electron discharge devices or equivalent devices or lamps of any kind

(b) any broadcast relay apparatus provided however that the terminal units thereof shall be deemed Radio Apparatus

(c) materials or component parts (which expression does not include the items mentioned in (a) above) sold separately (materials or component parts which are actually incorporated in and form part of Radio Apparatus are included in the term Radio Apparatus).

(d) television receivers adapted for producing a picture larger than thirty square feet.

"British Isles" means Great Britain Northern Ireland Eire and Isle of Man and the Channel Islands.

2. Subject as hereinafter provided each of the parties hereby grants and agrees to grant to each of the others of them (who hereby accepts and agrees to accept) licences (hereinafter referred to as the said licences) as hereinafter described for Radio Apparatus as above defined, which said licences are only for Radio Apparatus used or intended for use for entertainment and education purposes or being of types normally supplied to the public for domestic use and shall be non-exclusive and non-transferable and shall not include the power to grant sub-licences except to subsidiaries and except as hereinafter provided.

3. The said licences shall begin as from the 1st January 1953 and shall cease at 31st December 1957 Provided however, that the parties hereto shall retain the right thereafter to dispose of stocks of Radio Apparatus then on hand.

4. The said licences shall be in respect of all present and future patents of the British Isles only under which and to the extent to which the parties respectively have or during the term of this Agreement may acquire the right to grant or procure the grant of such licences and which are applicable to the purposes for which the licences are granted and agreed to be granted but to the extent only to which such patents are so applicable.

5. Except as otherwise stated herein the said licences include the right to make use lease sell and otherwise deal in Radio Apparatus.

6. The said licences include the right to the licensee to

have Radio Apparatus or parts thereof manufactured by others for the licensee or its subsidiaries for sale as or for incorporation in the Radio Apparatus of the licensee or its subsidiaries under their respective trade marks or trade names but not otherwise. None of the said licences include any right to manufacture or supply Radio Apparatus except

(i) as the apparatus of the licensee or its subsidiaries under their respective trade marks or trade names or

(ii) for or to other parties who hold a licence from the licensing party hereto, in respect of the patent concerned, for the sale of such apparatus.

Provided however that in the event of any of the parties granting rights to third parties to supply Radio Apparatus under trade marks or trade names other than those belonging to such third parties or to manufacture for or supply to other parties not holding a license as aforesaid then a similar right shall be given to and exercisable by the other parties hereto to manufacture for the same number of others and up to the same total quantity of Radio Apparatus.

7. Unless otherwise agreed no licences are hereby agreed to be granted to import Radio Apparatus into the United Kingdom or to deal in in the United Kingdom imported Radio Apparatus or Radio Apparatus containing imported component parts to an extent exceeding in value 10 per cent of the retail list price of such Radio Apparatus except in each case samples and experimental models for the use of the parties hereto.

8. No licence is granted or implied under any foreign patents and the parties agree that if they are sued for infringement of a foreign patent corresponding to a patent under which they are licensed by this Agreement they will

not rely on the defence that the alleged infringing Radio Apparatus is licensed under the foreign patent by virtue of this Agreement.

9(a) Wherever licences granted or agreed to be granted by any of the parties hereto to any other of them under the term of this Agreement are based upon patent rights held by the licensing party hereto under any Agreement requiring the payment of royalties or other deferred payment measured by the use of the invention the party accepting such licences shall while holding the same make payments measured by its use of the inventions at the same rate and upon the same terms as those required by such Agreements in addition to any royalties payable pursuant to any other clause of this Agreement. Any such payments shall not be deemed a part of the licensing revenue as defined in Clause 11 (1) hereof but shall accrue in whole to the licensing party hereto concerned. The parties respectively declare that no such payments are or shall be payable under this Clause 9(a) in respect of the licences referred to in the recitals hereto.

(b) Notwithstanding anything herein contained, nothing in this Agreement shall be deemed to apply to patent rights acquired hereafter by any of the parties hereto (otherwise than from one of its own employees or subsidiaries) on terms that require money payments not measured by use of the inventions and not being fixed lump sum payments unless and until the parties hereto other than the acquiring party shall have agreed by majority in voting value (calculated as in the case of votes on the Committee) with the acquiring party on the recompense to be paid to the acquiring party to cover a fair share of its cost of acquisition. If such agreement is not reached within one month from the time that the acquiring party has notified the other parties of the patent rights in question and of the compensation requested by it (which notification the acquiring party shall give promptly) then the acquiring party may grant licences thereunder for Radio Apparatus independently of the other parties hereto on such terms as it thinks fit but in such case it shall contribute to the licensing revenue the excess if any of the royalties received for such licences (within the field of Radio Apparatus) over the amount which is eventually determined by agreement as aforesaid or by arbitration as such fair share of cost of acquisition. Any of the parties hereto may at any time before such amount is agreed as aforesaid submit the question of such amount to arbitration by the London Court of Arbitration but any such arbitration shall have effect only for the purpose of determining the amount of contribution in respect of licences granted independently as above-mentioned.

(c) Such of the licences herein granted and agreed to be granted by any of the parties hereto to any other of them as are based upon patent rights which are subject to rights in favour of third parties are subject to the same limitations as the licensing rights of the grantor but the parties declare that except as referred to in the recitals hereof there are no such limitations on their respective rights to grant the licences referred to in the recitals hereof with regard to the patents referred to therein.

10. The party entitled to receive licenses hereunder based upon patent rights the subject of Clause 9 shall have the option at any time to accept or refuse or (so far as compatible with the relevant agreements) to surrender all or any of such licences.

11(a) The parties agree to join their efforts in order to licence on reasonable terms bona fide manufacturers in the British Isles for the manufacture of Radio Apparatus in the British Isles and for the use and sale therein of Radio Apparatus so manufactured within the field of this

Agreement and to share the revenue derived from such licences the whole on the following terms.

(b) Such licences shall commence as from a date not earlier than the 1st January 1953 and shall remain in force not later than 31st December 1957 Provided however that they may include the right to dispose after 31st December 1957 of stocks then on hand or in process of manufacture.

(c) Each of the parties hereto reserves the right to grant licences separately under all or any of its own patents or patent rights in the following cases namely:

(i) in cases where the principal consideration is not the payment of royalties or commercial arrangements in relation to the supply purchase or sale of goods and

(ii) in cases in which and to the extent that they respectively are or may be obliged to grant licences for television receivers in virtue of their now existing or future commitments to the B. B. C. or to the Postmaster General with regard to Television.

(d) None of the parties hereto shall be obliged to take any action for infringement of their respective patents nor be deemed to warrant the validity thereof.

(e) Each of the parties undertakes during the continuance of this Agreement not to indemnify or to agree to indemnify any person firm or company against or assist any person firm or company to avoid the consequences of any infringement occurring after the 31st December 1952 or any claim for such infringement (within the scope of the licences granted or agreed to be granted by the parties hereto to each other by this Agreement) of any patent under which such party hereto is entitled to a licence hereunder provided however that this does not apply to goods supplied by such party hereto.

(f) For the purpose of facilitating the carrying out of this Clause 11 the parties will appoint a Committee on which each party shall be entitled to appoint a representative and each of the parties shall have voting rights on the said Committee according to the number of votes hereby allotted to them respectively, namely Cintel 11 votes, EMI (representing for voting purposes both EMI and BTH) 100 votes, GEC 12 votes, MWT 13½ votes, Murphy 17 votes, Philips 25 votes, and STC 10 votes. If other parties should join with the parties hereto as co-licensors they also may be represented on the Committee but their voting rights thereon shall not be greater than in proportion to the number of points that shall have been allotted to them as referred to in sub-clause (o) of this Clause 11.

(g) All matters appertaining to the Granting and administration of licences in pursuance of this Clause 11 and to procuring other parties to join with the parties hereto in such licensing shall be decided by the Committee by a majority in voting value of the votes of those entitled to be represented on the Committee and the parties hereto undertake to comply with all such majority decisions. The decisions of a majority in voting value (as provided in sub-clause (f) of this clause) of the parties hereto and any Joining Parties (as hereinafter referred to) entitled to be represented on the Committee shall avail as decisions of the Committee and in the case of conflict with the prior decisions of the Committee shall override the latter. No such decisions of the Committee or of the parties hereto and Joining Parties if any which in any respect run contrary to or are inconsistent with any provisions of this Clause 11 shall be effective.

(h) Subject as above provided the Committee shall among other things decide on the terms conditions period and scope (but within the scope of Radio Apparatus as above defined and within the other limitations specified for the licences granted by the parties to each other) of the licences to be granted in pursuance of this Clause 11 by the parties hereto and/or by Joining Parties and the routine administration in connection therewith and the terms and conditions in which other parties shall be invited or accepted as Joining Parties.

(i) The Committee from time to time may appoint some person to carry on subject in every respect to the instructions given by the Committee from time to time the routine work in connection with the granting of licences under this Clause 11 and the collection of royalties payable under this Agreement.

(j) Such other persons firms or companies as may be decided by the Committee to be desirable as co-licensors may be invited to join the parties hereto for the purpose of granting licences for Radio Apparatus under the provisions of this Clause 11. The terms and conditions on which and the extent to which such others (herein referred to as "Joining Parties") agree to join the parties hereto as aforesaid shall be as may be decided by the Committee and each of the parties hereto shall comply with all the terms so decided except as otherwise herein provided. Such terms may include the grant of a licence within the scope period and territory of this Agreement to such Joining Parties under all or any of the patents of the parties hereto and/or a licence from such Joining Parties to all the parties hereto. Every reasonable effort shall be made to include in the terms a licence for the scope period and territory of this Agreement from such Joining Party to the other parties to this Agreement and their respective subsidiaries free of all royalties other than those specified in sub-clause (n) hereof.

Provided however that no Joining Party shall be entitled to a licence from any party hereto to whom a similar licence from such Joining Party is not by the terms of his joining made available on the same terms as to the other parties hereto and provided further that if the terms of any such licence to any of the parties hereto would involve the payment by a party hereto of any royalty additional to that which would be payable by virtue of the terms of this Agreement then such party hereto may decline to accept such licence from the Joining Party and to grant any licence to the Joining Party, and in such case shall reserve its freedom to contest or assist others to contest the validity of such Joining Party's patents.

(k) None of the parties hereto shall be obliged to appear as grantors or co-grantors of the licences to be granted in accordance with decisions of the Committee but when a form of proposed licence has been decided on by the Committee each of the parties hereto shall within three weeks thereof indicate to EMI whether or not they wish to so appear. If any party does not so indicate to EMI that it wishes to so appear licensor within the scope and territory and period of this Agreement under all the patents of the party not so wishing to appear may be granted by EMI in the said form and such party declining to appear cannot afterwards claim to have its name inserted as a co-grantor in licences in the said form and if any party does so notify EMI that it wishes to so appear it cannot afterwards refuse to so appear in licences which the Committee decide ~~shall~~ be issued in such form.

(l) The expression "Licensing Revenue" wherever used in this Clause 11 means the net revenue derived by the parties hereto or any of them from the granting of licences referred to in this Clause 11 including the royalties contributed by the parties hereto as hereinafter provided and if any other parties join with the parties hereto as above provided shall include the net revenue derived by such Joining Parties or by the parties hereto or one or more of them from the granting of licences under such Joining

Parties' patent rights excluding however any revenue of such Joining Parties which by the terms of their joining shall have been agreed to be excluded from the licensing revenue. In calculating the net revenue there shall first be deducted the expenses connected with the granting and administration of such licences including all expenses of carrying out the obligations of the licensors under such licences but not expenses of obtaining or maintaining patents or costs or expenses of actions for infringements of patents.

(m) In the case of actions for damages for infringement of patents by the manufacture use or sale of Radio Apparatus between 1st January 1953 and 31st December 1957 within the British Isles any of the parties hereto and Joining Parties who shall have prior to the commencement of such action agreed to bear a fraction of the costs and expenses of such action equal to the ratio between the number of points allotted to it as herein referred to and the total number of points allotted to all parties hereto and Joining Parties shall be entitled to share in the same ratio in the net damages (after deduction of costs and expenses) recovered for such infringement in such action.

(n) Each party hereto will in respect of the period from 1st January 1953 to 31st December 1957 contribute and pay to the licensing revenue royalties in respect of Radio Apparatus sold let on hire or put into use by it during the said period whether utilising inventions the subject of patents or not, the said royalties to be calculated at the same rate or rates and on the same basis as are fixed by the Committee to be paid in similar circumstances (e.g. having regard to volume of business and the minimum royalties the licensee is prepared to guarantee etc.) by a licensee not a party to this Agreement less however if the Committee so decide such proportion thereof as the Committee deems proper in respect of such party's own patents but not exceeding the proportion which the number of points allotted to the party bears to the total number of points allotted to all the parties and any Joining Parties.

(o) The Licensing Revenue shall be divided between the parties hereto and any Joining Parties in proportion to the number of points allotted to them respectively by this Agreement or by the terms of their joining. The number of points allotted to the parties hereto respectively is agreed to be as follows namely:—

Cintel	11 points
EMI (for itself and BTH)	100 points
GEC	12 points
MWT	13½ points
Murphy	17 points
Philips	25 points
STC	15 points

12. Except as otherwise specified this Agreement shall remain in force until 31st December 1957 and shall then expire (Provided however that the royalties herein provided to be paid by the parties hereto shall be payable on Radio Apparatus on hand at 31st December 1957 but sold thereafter.)

13. If any party (hereinafter referred to as "the said party") hereto shall go or be put into liquidation otherwise than for the purpose of reconstruction or amalgamation or make any arrangement with its creditors generally then and in any such case the parties hereto other than the said party shall be entitled forthwith by joint notice in writing to the said party to determine this Agreement and thereupon all the rights of the said party hereunder shall forthwith cease and determine but without prejudice to the remedy of the other parties hereto to sue for and recover any royalties then due provided that royalties received after such determination in respect of licences granted in pursuance of this Agreement by the said party alone or

with any other party to this Agreement to licensees not being parties to this Agreement shall continue to be divided between the parties hereto including the said party in the proportions herein provided.

14. The parties hereto undertake not to contest or assist others to contest the validity of any Letters Patent under which they respectively receive licenses hereunder Provided however that each of them reserves the right to contest or assist others to contest the validity of any such Letters Patent in any proceedings relating to products other than those for which licences are by this Agreement agreed to be given and in any proceedings if the result of such contestation might affect the validity or scope of one of its own patents.

15. This Agreement and the rights and obligations thereunder shall not be assigned or transferred to any third party without the consent in writing of all parties hereto.

16. Each of the parties hereto undertakes to procure all its subsidiaries as hereinbefore defined to comply with all the terms of this Agreement as if they were a part or department of the party of which they are subsidiaries.

17. No party will dispose of its rights in such a way as to diminish or restrict any of the licences or rights to which the other parties are entitled hereunder provided that nothing herein contained shall oblige any party to maintain any patents in force or to maintain in force any agreements with third parties other than such as are necessary to enable it to comply with its representations in the recitals to this Agreement.

18. No licences shall be granted by any party hereto for Radio Apparatus in the British Isles in respect of the period from 1st January 1953 to 31st December 1957 except in accordance with the decisions of the Committee or in the cases mentioned in Clause 11 (c) (i) (ii) and Recital No.

....

19. The expressions "party" "parties" "other party" or "Joining Party" wherever used in this Agreement shall each of them so far as the context permits include the respective subsidiaries (as herein defined) of any of them respectively.

In Witness Whereof the Common Seals of the parties hereto have been hereunto affixed the day and year first above written.

The Common Seal of The British Thomson-
Houston Company Limited was hereunto
affixed in the presence of: Seal

K. R. Hoxkirk
Director

A. S. Wilson
for Secretary
(duly authorized)

The Common Seal of Cinema-Television
Limited was hereunto affixed in the
presence of: Seal

C. C. Moore
Director

S. E. A. Pitman
Secretary

The Common Seal of Electric & Musical
Industries Limited was hereunto
affixed in the presence of: Seal

L. J. Brown
Director

F. T. (illegible)
Secretary

The Common Seal of The General Electric
Company Limited was hereunto
affixed in the presence of: Seal

T. W. Heather
Reg. C. Giggins
Directors
E. J. Cutts
Asst. Secretary

The Common Seal of Marconi's Wireless
Telegraph Company Limited was hereunto
affixed in the presence of: Seal

E. Crowe
J. ?. Woods
Directors
L. J. King (?)
Secretary

The Common Seal of Murphy Radio Limited
was hereunto affixed in the presence of: Seal

F. B. Duncan
E. W. Kent
Directors
W. Ross
Secretary

The Common Seal of Philips Electrical
Industries Limited was hereunto affixed
in the presence of: Seal

S. S. Eriks
John Venning
Directors
C. F. Cogwell
Secretary

The Common Seal of Standard Telephones
and Cables Limited was hereunto
affixed in the presence of:

....

....

In The Matter of Letters Patent No. 552,659 dated 27th March 1942 and granted to Hazeltine Corporation of 59-25, Little Neck Parkway, Little Neck 62, New York, United States of America, formerly of 15, Exchange Place, Jersey City, New Jersey, United States of America for "Colour Television Signal-Translating System."

and

In The Matter of an Application under Section 24 of the Patents Act 1949 for extension of term of the Letters Patent.

Faith, Owen & Fraser,
4, Paper Buildings,
Temple,
London, E.C.4.

DEFENDANT'S EXHIBIT NO. 59.

Marconi's Wireless Telegraph Company Limited,
Marconi House, Strand, London, W. C. 2.

23rd September, 1957.

The General Electric Co., Ltd.,
Magnet House,
Kingsway,
London, W. C. 2.

Dear Sirs,

Extension of Broadcast Pooling Agreements of May 12th, 1953 and October 29th, 1953.

All parties to the above agreements having verbally agreed that, subject to certain conditions, the period of the said agreements which ends on December 31st, 1957 shall be extended it is hereby confirmed as follows:

1. The said agreements shall expire on June 30th, 1960 and the words "December 31st 1957" wherever occurring shall be deemed to be so altered.
2. Effective from January 1st, 1958, the Licensing Revenue to be divided between the parties shall be divided between the parties in proportion to the revised number of points allotted to them respectively as under:

B. T. H. E. M. I.	90.060423
Cintel	11.000000
G. E. C.	10.807251
M. W. T.	12.158157
Murphy	21.725000
Philips	22.515106
Pye	21.725000
S. T. C.	13.509063
	203.500000

Yours faithfully,
(Signed) F. C. Topham.

We agree and accept the above.
(Original signed by Mr. T. W. Heather
For and on behalf of the
General Electric Co., Ltd.)

DEFENDANT'S EXHIBIT NO. 60.

(Letterhead of Marconi's Wireless Telegraph Company Limited, Marconi House, Strand, London, W. C. 2.)

13th September, 1960.

The General Electric Co. Ltd.,
Magnet House,
Kingsway,
London, W. C. 2.

Dear Sirs,

Broadcast Pooling Agreements of May 12th, 1953 (Main Agreement) and October 29th, 1953.

By Letters of Agreement dated 23-9-57 (Marconi's Wireless Telegraph Co. Ltd. 11-10-57) from all parties to the above Agreements and subject to certain conditions, the period of the said Agreements was extended to June 30th 1960.

Subject to the modifications and additions set out below the parties (other than the British Thomson-Houston Co. Ltd.) now agree to a further extension of the said Agreements to June 30th 1964 which shall come into effect as from July 1st, 1960 and the dates June 30th, 1960 (formerly December 31st, 1957) whenever occurring shall be read as June 30th, 1964.

1. The name "British Thomson-Houston Co. Ltd." wherever it occurs shall be deemed to be deleted together with all representations made by and references to that Company.
2. The name "Cinema-Television Ltd." wherever it occurs shall be deemed to be replaced by "Rank Cintel Ltd."

3. The representation made by Electric & Musical Industries Ltd. relating to the British Patents of the Radio Corporation of America in Recital (3)(b) shall be deemed to be deleted (together with Exhibit "A" referred to therein relating thereto) except in-so-far as it relates to patents on inventions made and conceived by the R. C. A. prior to January 1st, 1945.

4. The representation made by Marconi's Wireless Telegraph Co. Ltd. relating to the British Patents of Compagnie Generale de Telegraphie sans Fil and Societe Francaise, Radio-Electrique of Paris in Recital (5)(b) shall be deemed to have added "the Agreement from which these rights flow is subject to one year's prior notice of termination."

5. The references to "A6 Licences and Licensees" whenever occurring in the Recitals shall be deemed to read "A7 Licences and Licensees".

6. The following deletions and amendments shall be deemed to have been made to the main Agreement:

   (i) Clauses 2, 3, 4, 5, 6, 7, 9(a), 9(b), 10 and 11(n) relating to the Grant of Licences between the parties shall be deleted.

   (ii) Clause 8 shall read:

   "The parties agree that if they are sued for infringement of a foreign patent corresponding to a patent under which they are licensed pursuant to this Agreement they will not rely on the defense that the alleged infringing Radio Apparatus is licensed under the foreign patent pursuant to this Agreement."

   (ii) Clause 9(c) shall read:

   "Such of the licences herein agreed to be granted by the parties hereto in the form hereinafter referred to as Licences A8-S and A8-T as are based upon patent rights which are subject to rights in favour of third parties are subject to the same limitations as the licensing rights of the grantor but the parties declare that except as referred to in the recitals hereof there are no such limitations on their respective rights to grant the licences referred to in the recitals hereof with regard to the patents referred to therein.

(iv) Clause 11(b) shall read:

"Such licences shall be in the form of Licence A8-S and Licence A8-T attached hereto (or in such other form as may be agreed by the parties hereto as hereinafter provided), and each of the parties hereto agreed to accept Licences in such form in the event that it or any of its subsidiaries is engaged in the manufacture and/or sale of Radio Apparatus".

(v) Clause 11(e) shall read:

"Each of the parties undertakes during the continuance of this Agreement not to indemnify or to agree to indemnify any person firm or company against or assist any person firm or company to avoid the consequences of any infringement occurring after the 31st December 1952 or any claim for such infringement (within the scope of the licences agreed to be granted by the parties hereto in the form of Licenses A8-S and A8-T) of any patent under which such party hereto is entitled to a licence hereunder provided however that this does not apply to goods supplied by such party hereto".

(vi) Clause (11g) shall be read as if the following words,

> "Provided however that no variations shall be made in the terms and conditions of the said Licences A8-S and A8-T without the unanimous consent of the parties hereto except the British Thomson-Houston Co. Ltd. as at the 30th June 1960. Subject as aforesaid . . .".

were inserted after the words "majority decisions" in line 7 of that Clause.

(vii) Clause 11(j) shall read as if the words "sub-clause (n) hereof" were replaced by the words "the said Licenses A8-S and A8-T".

(viii) Clause 11(l) shall read as if the words "as hereinafter provided" in Line 5 were deleted.

(ix) The list of points set out in Clause 11(o) shall read:

E.M.I.	56½ points
Murphy	28½ points
Pye	28½ points
Philips	23½ points
S. T. C.	18½ points
G. E. C.	16½ points
Cintel	15 points
M. W. T.	13 points
	200

and the said Agreement of May 12th 1953 shall be read as modified accordingly.

The voting power of the Members of the Committee referred to in Clause 11(f) shall be modified in accordance with the foregoing.

(x) Clause 12 shall read as if the proviso to that Clause were deleted.

(xi) Clause 18 shall read as if the words "(3) (d) or for imports of such apparatus" were added after the words "Recital No."

7. It is agreed that if prior to June 30th 1964 a recognised public entertainment service of colour television is inaugurated in the United Kingdom the points values set out in paragraph 6(ix) above shall be re-examined with particular reference to patents applicable to the colour aspect of the said service. If, as a result of such re-examination the Committee agrees that it is fair and reasonable that a change should be made in the number of points allocated to the G. E. C. (or to any other Member having a specialized interest in colour) then such change shall be made with effect from the date of the inauguration of the said service.

Yours faithfully,

For and on behalf of
Electric & Musical Industries Limited.
The General Electric Company Limited.
Marconi's Wireless Telegraph Company Limited.
Murphy Radio Limited.
Philips Electrical Industries Limited.
Pye Limited.
Standard Telephones and Cables Limited.
F. C. Topham.

We agree and accept the above.

For and on behalf of
The General Electric Company Limited.
Illegible,
Director.

DEFENDANT'S EXHIBIT NO. 61.

Dated.................................192.........

Marconi's Wireless Telegraph Co.,
Limited

To

....

License

To use and exercise certain British Letters Patent for certain specific purposes as within in connection with the Broadcast Wireless Scheme.

License A.

An Agreement made the .... day of .... 192......... Between Marconi's Wireless Telegraph Company Limited having its registered office at Marconi House Strand London (hereinafter called "the Company") of the one part and .... of .... (hereinafter called "the Licensees") of the other part Whereas the Licensees claim to be bona fide British Manufacturers of Wireless Telegraphic and Telephonic apparatus and as such Manufacturers have applied to the Company to grant and the Company has agreed to grant to the Licensees such a Licence as is hereinafter expressed Now It is Hereby Agreed as follows:

1. The Company grants to the Licensees personally (but subject always to Clause 3(c) hereof) License to use and exercise all or any of the inventions the subject of the British Letters Patent now belonging to or controlled by the Company or in respect of which the Company

have power to grant Licenses or Sub-Licenses and specifically set forth in the First Schedule hereto and any other (if any) British Letters Patent which at the 15th December 1922 were owned or controlled by the Company or in respect of which the Company had power to grant Licenses or Sub-Licenses and not included in the said First Schedule but which are or may be useful to the Licensees for the specific purposes of this License and (subject always to Clause 3(c) hereof) to manufacture use sell or let on hire apparatus constructed in accordance with the inventions the subject of all or any of the said Letters Patent (which Letters Patent are hereinafter collectively called "the said Letters Patent") but only to the extent and for the purpose specifically defined and limited in the Second Schedule hereto such License to continue until determined or revoked as hereinafter provided and to be subject to the due performance and observance by the Licensees of the Agreements on their part and conditions herein contained.—

2. The Licensees agree with the Company as follows:

(a) Not to use or exercise or knowingly permit to be used or exercised any of the said Letters Patent for any purpose whatsoever other than the purpose specifically defined in the Second Schedule hereto and in particular not to use or exercise or knowingly permit to be used or exercised any of the said Letters Patent for any revenue earning purposes or for purposes of receiving broadcasting in relation in any manner to the service of any place of public entertainment or of any place in which any business requiring any License is conducted.

(b) Not to export or sell for export or knowingly permit to be exported any apparatus made hereunder.

(c) From time to time on request of the Company to furnish to the Company diagrams and/or samples of all apparatus for the time being manufactured hereunder.

(d) To attach in a prominent position to all apparatus made hereunder a plate bearing the words "This instrument is licensed under Marconi Patents for domestic or private use only in Gread Britain and must not directly or indirectly be turned to account for revenue earning purposes or knowingly be supplied for use or used in any place of public entertainment or in any place in which any business requiring any License is conducted."

(e) To cause to be printed or otherwise marked on their invoices to purchasers hirers or renters a notification that the apparatus sold hired or rented is only for reception of "Broadcasting" in Great Britain Ireland the Irish Free State the Channel Islands and the Isle of Man only for private and/or domestic or household use only and is not to be used for any commercial or revenue earning purpose.

(f) So far as is reasonably practicable to make the conditions of this License a condition of every sale or hire binding upon and observable by every purchaser or hirer of any apparatus made hereunder.

(g) During the subsistence of this License to pay to the Company by way of royalty the sum of Twelve Shillings and Six Pence in respect of each and every valve holder employed in all apparatus (including spare parts and renewals embodying a valve holder or valve holders) manufactured and/or sold by the Licensees for the purpose specifically defined and limited by the Second Schedule hereto.

(h) To keep proper accurate and separate accounts of everything necessary to ensure an accurate return to be made each quarter in conformity with any of the provisions of this License and to render such accounts within 15 days of each usual quarter day and to accompany each such account with a remittance in respect of the royalty thereby shown to be due.

(i) To permit the Company's Auditors if desired to inspect the books and accounts of the Licensees relative to this License and on the request of the Company to cause any quarterly return to be verified by the Statutory Declaration of the proper officer of the Licensees.

(j) To deposit with the Company if so requested on the execution hereof the sum of Fifty Pounds to be retained by the Company during the subsistence of this License by way of security for the due payment by the Licensees to the Company of all sums due or accruing due for royalty hereunder.

(k) Not at any time during the subsistence of this License to dispute or impeach or assist others to dispute or impeach the validity of any of the said Letters Patent.

(l) To manufacture in Great Britain and not elsewhere all apparatus required under this License.

(m) Not to assign transfer mortgage grant Sub-Licenses under or in any manner part with the possession or control of this License or of any part of it.

(n) Not to sell any valves other than valves manufactured by the M. O. Valve Company Limited or by persons firms or Companies duly licensed by the Company so long as the Manufacturers obtain supplies of the said valves in sufficient quantities to meet their reasonable requirements.

(o) During the subsistence of this License to pay to the Company the sum of Twelve Shillings and Six Pence in respect of each and every valve holder employed in all sets of component parts of apparatus manufactured and/or sold by the Licensees for the purpose specifically defined in and limited by the Second Schedule hereto (whether or not such apparatus is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent) and to provide with all such sets of component parts a plate bearing the wording set out in Clause 2(d) hereof for attachment by the Constructor to the instrument when completely assembled.

3. It Is Mutually Agreed as follows:

(a) His Majesty's Postmaster-General for the time being shall at all times determine the delimitation of "Broadcasting" and such determination shall be binding on the parties hereto.

(b) Either party may at any time by giving not less than twelve calendar months' notice in writing to the other determine this License so far as to prevent any future rights or obligations arising hereunder.

(c) Nothing herein contained shall authorise the Licensees to manufacture thermionic valves of any kind.

(d) During the subsistence of this License the Company will keep the Licensees fully indemnified from and against all actions proceedings claims and demands which may be made against the Licensees by any third party who establishes to the satisfaction of a Court of competent jurisdiction in England his right to restrain the user and exercise by the Licensees of any of the said Letters Patent in connection with the purpose of this license as specifically defined in the Second Schedule hereto on the ground that such user and exercise is an infringement of any legal rights or legal interests of such third party in such Letters Patent.

(e) The Company may assume at their own cost the defence of any such proceedings as are referred to in Sub-clause (d) of this clause and may defend compromise submit to judgment in abandon discontinue or otherwise dispose of the same as to the Company may seem expedient. If the Company shall fail within seven days of a request in that behalf in writing by the Licensees to assume such defense the Licensees shall be entitled to defend or to compromise or submit to judgment in the same and in any such case the Company shall hold the Licensees fully indemnified in respect of costs damages or charges in the same manner as if the Company had themselves assumed such defense.

(f) In this License the expression "place of public entertainment" means at present only a place of public entertainment now existing or which during the subsistence of this License may exist and at which entertainment tax is payable. If during the subsistence of this License entertainment tax should be abolished then thereafter the expression "place of public entertainment" in this License means only a place of public entertainment now existing or which during the subsistence of this License may exist of the character of those places of public entertainment at which at the present time entertainment tax is in fact payable.

4. Upon the determination or revocation of this License it shall be ascertained what (if any) sum remains due from the Licensees to the Company in respect of royalties and if the amount so due exceeds the said deposited sum of Fifty Pounds the excess shall be forthwith paid by the Licensees to the Company; and if the amount so due is less than the said deposited sum of Fifty Pounds the Company shall forthwith repay to the Licensees the difference between the amount so due and the said deposited sum of Fifty Pounds.

5. The Company may revoke this License upon the happening of any of the following events:

(a) If any royalty return or any royalty shown to be due is not rendered or is unpaid for fifteen days after the due date; or

(b) If there be any breach of any other of the agreements on the part of the Licensees herein contained and the same be not remedied made good or desisted from within seven days of notice in that behalf from the Company; or

(c) If the Licensee shall become bankrupt or compound with their creditors or (being a Company) shall go into liquidation whether voluntary or compulsory;

and any such revocation of this License shall be without prejudice to all claims of the Company against the Licensees for prior breaches of this License or otherwise.

In Witness whereof an Agent hereunto duly authorised has on behalf of the Company hereunto on its behalf set his hand and the Licensees have hereunto set their hands. A Director of the Licensees hereunto duly authorised has hereunto on the Licensees behalf set his hand the day and year first above written.

The Schedules above referred to.

First Schedule.

Patents which at 15th December 1922 stood in the name of or were controlled by the Company or in respect of which the Company had power to grant Licenses or Sub-Licenses.

British Patent	Grantee	Title
8,821/13	William Phillips Thomson (communicated by Gesellechaft for drahtlom Telegraphic m.b.H.)	A receiving arrangement for use in wireless telegraphy and telephony.
13,636/13	Marconi's Fireless Telegraph Co., Ltd. and C. S. Franklin.	Improvements in receivers for use in wireless telegraphy and telephony.
8,926/15	Marconi's Wireless Telegraph Co., Ltd. and G. M. Wright.	Improvements in wireless telegraph receivers.
127,013	L. N. Brillouin & G. A. Beauvais.	Improvements in or relating to receiving apparatus for wireless telegraphy.
127,014	L. N. Brillouin & G. A. Beauvais.	Improvements in or relating to telephone installations particularly for wireless telegraphy.
131,054	L. N. Brillouin.	Improvements in or relating to telephone installations particularly for wireless telegraphy.
131,055	L. N. Brillouin.	Improvements in or relating to telephone installations particularly for wireless telegraphy.
149,433	H. J. Round.	Improvements in thermionic receiving devices for wireless telegraphy and telephony.
159,984	H. J. Round.	Improvements in thermionic amplifiers and detectors.
147,147	British Thomson-Houston Co., Ltd. (Assignees of E. W. F. Alexanderson).	Improvements in and relating to wireless signalling systems.
147,148	British Thomson-Houston Co., Ltd., (Assignees of Dr. I. Langmuir of the General Electric Company of America).	Improvements in and relating to electron discharge devices.
151,346	British Thomson-Houston Co., Ltd., (a communication from General Electric Company of America).	Improvements in and relating to amplification of electric currents.
168,893	British Thomson-Houston Co., Ltd., (Assignees of Dr. I. Langmuir of the General Electric Company of America).	Improvements in and relating to electron discharge amplifiers.

Second Schedule.

To manufacture sell or hire on rental within Great Britain Ireland the Irish Free State the Channel Islands and the Isle of Man and not elsewhere Wireless Telegraphic or Telephonic apparatus only for the reception only of Broadcasting in Great Britain, Ireland the Irish Free State the Channel Islands and the Isle of Man and not elsewhere but only for private and/or domestic use or for the purposes of lectures or demonstrations in any Institution of a Charitable educational philanthrops or religious character such lectures or demonstrations not being open to the public generally and not being held for payment.

For and on behalf of Marconi's Wireless Telegraph Company Limited

Signed by ....
A Director of and for and on behalf of Marconi's Wireless Teleghaph Company Limited in the presence of
....

Director.

Signed by ....
the presence of
....

Signed by ....
A Director of and for and on behalf
of .... in
the presence of
....

For and on behalf of
....
Limited,
....
Director.

DEFENDANT'S EXHIBIT NO. 62.

Licence A.4 (2nd Edition).

An Agreement made the .... day of ...., 193....., Between The British Thomson-Houston Company Limited having its registered office at Crown House Aldwych W.C.2 and Electric and Musical Industries Limited having its registered office at Hayes Middlesex and Hazelpat Limited having its registered office at Jamaica Buildings St. Michael's Alley Cornhill London E.C.3 and Marconi's Wireless Telegraph Company Limited having its registered office at Marconi Offices Electra House Victoria Embankment London W.C.2 and Standard Telephones And Cables Limited having its registered office at Connaught House 63 Aldwych London W.C.2 and Western Electric Company Limited having its registered office at Bush House Aldwych London W.C.2 (hereinafter together called "the Grantors" which expression shall mean all the said companies except where used in connection with broadcast reeeiving apparatus as hereinafter defined in which case it shall mean only Electric & Musical Industries Limited Hazelpat Limited Marconi's Wireless Telegraph Company Limited and Standard Telephones & Cables Limited) of the first part and.................. of .... (hereinafter called "the Licensee") of the second part.

Whereas the Licensee claims to be a bona fide British Manufacturer of wireless broadcast reviewing apparatus and/or radiogramophones and as such manufacturer has applied to the Grantors to grant and the Grantors have agreed to grant to the Licensee a Licence under the Letters Patent and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed upon a basis agreed between the parties as being convenient Now It Is Hereby Agreed As Follows:—

1. (a) The expression "broadcast receiving apparatus when herein used shall mean apparatus which is designed to incorporate valves (whether or not equipped with the valves themselves) and which is designed to receive and translate (or to assist in such reception and translation) modulated electrical oscillations broadcast to the public for the sole purpose of sound reproduction. Such expression does not include valves or single components and does not include broadcast receiving apparatus combined with other apparatus dependent thereon either wholly or in part for its operation but does include battery eliminators as hereinafter defined (whether incorporated in broadcast receiving apparatus or independent thereof) and except for the purposes of Clause 4 (f) (i) any set of component parts as hereinafter defined for broadcast receiving apparatus.

(b) The expression "radiogramophone" when herein used shall mean a unitary instrument which is designed to incorporate valves (whether or not equipped with the valves themselves) and which is designed for the reproduction of sound through an electrically-operated loudspeaker alternatively from (a) apparatus designed for the reception and translation into sound of modulated electrical oscillations broadcast to the public and (b) apparatus (such as a turntable and pick-up) designed for the translation into sound of vibrations recorded on a sound record. Such expression does not include valves and does not include any radiogramophone combined with other apparatus dependent thereon either wholly or in part for its operation but does include a playing desk sold with broadcast receiving apparatus and capable of being used in combination therewith and battery eliminators as hereinafter defined when incorporated in a radogramophone and except for the purposes of Clause 4 (f) (iii) any set of component parts as hereinafter defined for a radiogramophone.

(c) The expression "set of component parts" for broadcast receiving apparatus or a radiogramophone respectively when herein used shall mean a number of component parts which are capable of being assembled so as substantially to constitute broadcast receiving apparatus or a radiogramophone respectively.

(d) The expression "battery eliminator" when herein used shall mean an apparatus which renders unnecessary the use of one or more batteries in the operation of broadcast receiving apparatus or a radiogramophone by facilitating the substitution therefor of electricity mains.

(e) The word "valve" (or "valves") when herein used shall be deemed where the context so admits to include inter alia a multiple valve a valve for rectifying electric current and other apparatus used in direct substitution for a valve.

(f) The expression "multiple valve" when herein used shall mean a valve designed to operate with more than one cathode-anode stream.

(g) The expression "place of public entertainment" when herein used shall mean a place of public entertainment now existing or which during the subsistence of this Licence may exist and at which entertainment tax is or shall be payable or would be payable but for any statutory exemption granted subsequent to August 28th 1933. If during the subsistence of this Licence entertainment tax should be abolished then thereafter the expression shall mean a place of public entertainment now existing or which during the subsistence of the Licence may exist of the character of those places of public entertainment at which at the present time entertainment tax is in fact payable or would be payable but for any statutory exemption granted subsequent to August 28th 1933.

(h) The expression "private or domestic use" as used herein shall be deemed to include also the manufacture and sale of broadcast receiving apparatus and radiogramophones to proprietors of for use in Public Houses Hotels Boarding Houses Restaurants Cafes Tea Houses and/or small Dance Halls (only) Provided that such are not attached to or do not form part of a theatre or cinema.

(i) The expression "selling" when herein used shall be deemed to include selling on the so-called hire-purchase system.

2. (a) The Grantors grant and agree to grant to the Licensees subject to the terms and conditions herein appearing a personal non-exclusive non-assignable Licence to use and exercise all or any of the inventions the subject of British Letters Patent applicable to broadcast receiving apparatus and radiogramophones respectively in respect of which and insofar as the Grantors of any of them respectively now have or may hereafter during the subsistence of this Licence have power to grant Licences or sub-Licences for the purposes and on the terms hereof (which Letters Patent are herein collectively called "the said Letters Patent") for the purposes of manufacturing using selling or letting on hire within Great Britain Northern Ireland Irish Free State the Channel Islands and the Isle of Man (a) broadcast receiving apparatus and (b) radiogramophones but in both cases only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public generally and not being held for payment) and not otherwise. Such Licence shall be deemed to have commenced on the 29th August 1933 and shall continue until 28th August 1938 unless previously revoked as hereinafter provided.

(b) The Licence hereby granted shall apply not only to the Licensee but to all Companies partnerships or businesses now or hereafter during the subsistence of this Licence directly or indirectly owned or controlled by the Licensee and engaged in any field of business to which this Licence is applicable. The Licensee hereby undertakes that all such sibsidiary Companies or businesses if separate legal entities will if required by the Grantors accept licences upon the same terms as this licence and the Grantors agree to grant such licences accordingly. Provided that the Licensee shall have the option from time to time of determining that this Licence and all separate licences if any granted to such subsidiary Companies or businesses formed by the Licensee for making or selling the products of the Licensee shall be purposes of computation of royalties be treated as one Licence. If the Licensee shall become directly or indirectly owned or controlled by a Company or Firm which does not hold or forthwith obtain a License from the Grantors upon the same terms as this Licence the Grantors shall be at liberty to revoke this Licence.

3. (a) Nothing contained herein shall be deemed to licence the Licensee to manufacture sell or let on hire (a) valves of any kind or (b) loudspeakers of any kind (except as part of a complete broadcast receiver or of a radiogramophone) or (c) television receiving apparatus.

(b) Nothing herein contained shall be deemed to license the Licensee to manufacture sell or let on hire any individual component part of broadcast receiving apparatus or a radiogramophone other than in and forming part of broadcast receiving apparatus or a radiogramophone.

(c) The Licence hereby granted shall not authorize the use or exercise of broadcast receiving apparatus or any radiogramophone for any purpose whatsoever other than the purposes herein set forth and in particular shall not authorise the use or exercise of any of the said apparatus by operating the same for revenue-earning purposes. Nor shall this Licence authorise the use or exercise of any of the said apparatus for purposes of receiving broadcasting or operating any radiogramophone in relation in any manner to the service of any place of public entertainment or of any place in which any business requiring any Licence from public authority is conducted (except insofar as such use is authorised under the definiton of "private and domestic" use) or for use with a microphone.

4. The Licensee agrees with the Grantors as follows:

(a) Not without the previous written consent of the Grantors to export or sell for export or knowingly permit to be exported any broadcast receiving apparatus or radiogramophones. Such consent shall be given unless the Grantors or any of them have definite commitments prohibiting the same, but any consent will not imply or grant licences under foreign patents.

(b) Not without the previous written consent of the Grantors to sell let or hire or put into use in the territory for which this Licence is granted any broadcast receiving apparatus or radiogramophone which has not been manufactured in the territory for which this Licence is granted.

(c) From time to time on the request of the Grantors to furnish to the Grantors diagrams and/or samples of all broadcast receiving apparatus and radiogramophones for the time being manufactured or sold by the Licensee.

(d) To attach or cause to be attached in a prominent position to all broadcast receiving apparatus and radiogramophones sold or put into use by the Licensee (or in the case of sets of component parts of such apparatus to supply for attachment by the constructor to the assembled apparatus) a plate indicating the number of valves (as hereinbefore defined but subject to the Provisos contained in Sub-Clauses (f) (i) to (iv) of this Clause) on which the royalty for such apparatus is payable and bearing the following words. With respect to broadcast receiving apparatus:— "No. .... This instrument is manufactured under a Licence granted by Electric & Musical Industries Limited, Hazelpat Limited, Marconi's Wireless Telegraph

Company Limited and Standard Telephones & Cables Limited in respect of their patents for the reception in Great Britain Northern Ireland Irish Free State the Channel Islands and the Isle of Man, of sound broadcast by wireless but only for private use and not for operation for any public or commercial or revenue earning purpose. N. B.—A Post Office Licence is necessary." With respect to radiogramophones:—"No. .... This instrument is manufactured under a Licence granted by the British Thomson-Houston Company Limited, Electric & Musical Industries Limited, Hazelpat Limited, Marconi's Wireless Telegraph Company Limited, Standard Telephones & Cables Limited and Western Electric Company Limited in respect of their patents for the reception in Great Britain Northern Ireland Irish Free State the Channel Islands and the Isle of Man of sound broadcast by wireless and for the reproduction in said countries of sound from records but only for private use and not for operation for any public or commercial or revenue-earning purpose. N. B.—A Post Office Licence is necessary." Such plates shall be obtained only from and shall be supplied by the Grantors at the lowest possible cost price to the Grantors and no such plate shall be removed from any apparatus to any other without the previous consent in writing of the Grantors and no apparatus shall be considered as duly franked hereunder unless such plate be attached thereto.

(e) So far as is reasonably practicable to make the conditions of this Licence a condition of every sale or hire binding upon and observable by every purchaser or hirer of any broadcast receiving apparatus or any radiogrammophone sold or put into use by the Licensee.

(f) Subject to any special terms of payment contained in any Schedule which may be attached to and form part of this Licence to pay to the Grantors by way of royalty:

(i) In respect of each and every broadcast receiving apparatus sold let on hire or put into use by the Licensee employing or designed to employ a valve or valves the sum of two shillings and sixpence in respect of each and every valve included or intended to be employed therein whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent Provided that in the case of multiple valves employed or intended to be employed in such broadcast receiving apparatus each and every cathode-anode stream contained therein shall be deemed to be one valve and the royalty shall be calculated accordingly.

(ii) In respect of each and every set of component parts for broadcast receiving apparatus sold let on hire or put into use by the Licensee employing or designed to employ a valve or valves the sum of one shilling and threepence in respect of each and every valve included or intended to be employed therewith whether or not such set of component parts embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent Provided that in the case of multiple valves included or intended to be employed with such set of component parts each and every cathode-anode stream contained therein shall be deemed to be one valve and the royalty shall be calculated accordingly.

(iii) In respect of each and every radiogramophone sold let on hire or put into use by the Licensee employing or designed to employ a valve or valves (a) the sum of two shillings and sixpence in respect of each and every valve employed or intended to be employed therein and in addition (b) the sum of two shillings and sixpence whether or not such radiogramophone embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent Provided that in the case of multiple valves employed or intended to be employed in such radiogramophone each and every cathode-anode stream contained therein shall be deemed to be one valve and the royalty shall be calculated accordingly.

(iv) In respect of each and every set of component parts intended for assembly into a radiogramophone sold let on hire or put into use by the License employing or designed to employ a valve or valves (a) the sum of one shilling and threepence in respect of each and every valve included or intended to be employed there with and in addition (b) the sum of two shillings and sixpence whether or not such set of component parts embodies or utilises or is designed or intended to embody or utilise any invention the subject of the said Letters Patent Provided that in the case of multiple valves included or intended to be employed with such set of component parts each and every cathode-anode stream contained therein shall be deemed to be one valve and the royalty shall be calculated accordingly.

Provided Always that under paragraphs (i) and (iii) of this Sub-Clause (f) and irrespective of the number of valves contained therein no royalty shall be payable in respect of a battery eliminator or mains rectifying valve or valves incorporated in and forming part of a complete broadcast receiver or radiogramophone and that in respect of each and every battery eliminator sold as a separate unit the royalty payable shall be the sum of one shilling and threepence and Provided Always that in respect of broadcast receiving apparatus or radiogramophones manufactured or sold by the Licensee which employ any of the said Letters Patent under which the Grantors or any of them may be liable to pay a royalty to a third party or share a royalty with a third party the Licensee shall pay to the Grantors an additional royalty of such amount as may be required to enable the Grantors out of the total royalties paid by the Licensee both to retain the royalties payable under paragraphs (i) to (iv) inclusive of this Sub-Clause (f) and to satisfy the terms of the Licence or Agreement under which royalty is or shall be payable by the Grantors or any of them. No additional liability under this proviso shall be imposed upon the Licensee by any modification of any existing agreement between the Grantors or any of them. The Grantors shall upon the request of the Licensee and the Licensee shall upon request of the Grantors permit the Grantors to examine free of charge diagrams and/or samples of broadcast receiving apparatus and radiogramophones manufactured or proposed to be manufactured by the Licensee and advise whether such apparatus embodies or utilises any invention the subject of any of the said Letters Patent under which the Grantors or any of them may be liable for royalty to a third party as hereinmentioned. The Grantors shall inform the Licensee of the amount of any such additional royalty and any such additional royalty shall be shown separately in the returns hereinafter mentioned.

(g) To keep proper and accurate and separate accounts of everything necessary to ensure an accurate return to be made each quarter in conformity with any of the provisions of this Licence showing separately the royalties payable under each of the paragraphs (i) to (iv) of the last preceding Sub-Clause (f) and to render such accounts within fifteen days of each 31st March 30th June 30th September and 31st December to such person as the Grantors may designate to the Licensee from time to time and to accompany each such account with a remitance in respect of the royalty thereby shown to be due. Should the Licensee fail to keep the accounts referred to in this Clause and be unable to provide any reasonable explanation for failure to do so the Grantors without prejudice to any other rights or remedies available to them may by notice in writing to the Licensee assess the amount of royalty estimated by them to be due and the amount of royalty so assessed shall be deemed to be due from the licensee in the absence of reasonable evidence to the contrary and shall be payable accordingly.

(h) To permit the auditors of the Grantors to inspect the books and accounts of the Licensee relative to this Licence and on the request of the Grantors to cause any quarterly return to be verified by the statutory declaration of the proper officer or auditors of the Licensee. Provided that the Licensee shall have the right to require that the auditor making such inspection shall be an independent auditor and that if the Licensee shall have failed to render accounts or if the accounts rendered by him are by such inspection shown to be inaccurate the Licensee shall pay the cost of such independent audit.

(i) To pay to the Grantors on the execution hereof and in advance each year during the period of this Licence the sum of £150 as minimum royalty for the yearly period which sum shall in no event be returnable.

(j) Not at any time during the subsistence hereof to dispute or impeach or assist others to dispute or impeach the validity of any of the said Letters Patent.

(k) Not to assign transfer mortgage grant Sub-Licenses under or in any manner part with the possession or control of this Licence or any part of it without the previous written consent of the Grantors.

5. During the subsistence of this Licence the Grantors will keep the Licensee fully indemnified against costs and damages arising in connection with all actions proceedings claims and demands which may be made against the Licensee by any third party who seeks to establish or establishes to the satisfaction of a court of competent jurisdic-

tion in England his right to restrain the user and exercise by the Licensee under the grant contained in this Licence of any of the said Letters Patent on the ground that such user and exercise is an infringement of any legal rights or legal interests of such third party in such Letters Patent provided always that the Grantors are immediately informed of the institution of such proceedings and are given full and complete rights to take over at their own cost and through their own Solicitors the defence of such proceedings if they so request and in that event the Licensee shall assist the Grantors in every reasonable manner but the Grantors shall be at liberty to compromise submit to judgment in abandon discontinue or otherwise dispose of the same as to them may seem expedient.

6. The Grantors may revoke this Licence upon the happening of any of the following events:

(a) If any royalty return or any royalty shown to be due is not rendered or is unpaid for thirty days after the preceding 31st March 30th June 30th September and 31st December and remains unrendered or unpaid for seven days after notice in that behalf from the Grantors or

(b) If there be any breach on the part of the Licensee of any other of the agreements herein contained and the same be not remedied made good or desisted from within seven days of notice in that behalf from the Grantors or

(c) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall go into liquidation whether voluntary or compulsory.

Any revocation of this Licence shall be without prejudice to all claims of the Grantors against the Licensee for outstanding royalties or prior breaches of this Licence or otherwise and also without prejudice to the provision of Clause 7 thereof.

7.(a) The Licensee agrees to grant to the Grantors or any of them personally upon request non-exclusive non-transferable licenses (but with the right to sub-license subsidiary or associated companies) to make use exercise and vend all or any of the inventions the subject of British Letters Patent applicable to broadcast receiving apparatus and/or a radiogramophone in respect of which and insofar as the Licensee has or shall hereafter have power to grant a Licence for the purposes of manufacturing using selling or letting on hire within Great Britain Northern Ireland Irish Free State the Channel Islands and the Isle of Man broadcast receiving apparatus and/or radiogramophones but only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the pubic generally and not being held for payment) and not otherwise.

(b) If any invention in respect of which any such licence is herein agreed to be granted by the Licensee comes within the scope of the claims of any Letters Patent in respect of which a Licence is granted or agreed to be granted hereunder by the Grantors then the Grantors or such of them as request a licence shall pay no royalty. If any such invention does not come within the scope as aforesaid then the Grantors or such of them as request a licence shall be entitled to such licence on payment of a royalty at a rate not exceeding the lowest rate paid by any licensee in respect of the same invention or if there is no other licensee then at a rate not exceeding 5% (five per cent) of the net selling price of the article manufactured in accordance therewith or (whether or not there is another licensee) not exceeding the rate paid by the Licensee to the Grantors hereunder whichever is the smaller.

(c) Any such Licence granted by the Licensee shall continue until the 28th August 1938 or for such other period as may be agreed upon.

In Witness Whereof an Agent hereunto duly authorized has on behalf of the Grantors hereunto on their behalf set his hand and the Licensee has hereunder set his hand.

A Director of the Licensee hereunto duly authorized has hereunto on the Licensee's behalf set his hand the day and year first above written.

For and on behalf of:
The British Thompson-Houston Company Limited
Electric and Musical Industries Limited
Hazelpat Limited
Marconi's Wireless Telegraph Company Limited
Standard Telephones and Cables Limited
Western Electric Company Limited

Signed by ....
for and on behalf of the Grantors
in the presence of
Signed by ....
in the presence of

For and on behalf of:
Limited

Limited.
Dire

Signed by ....
A Director of and for and on behalf of
in the presence of

Notes.

1. Licensees.

(a) whose royalty payments in any year ending September 30th are likely to exceed £1800 or

(b) who are prepared to guarantee in respect of any year ending September 30th a minimum royalty for that year of £500 or £4000 payable in each case by quarterly payments in advance may be entitled to the benefit of Schedule "A"

particulars of which will be issued to such Licensees on application.

2. With reference to Clause 2(a) the Licensee's attention is directed to the fact that Standard Telephones and Cables Limited is not in a position to grant licenses in respect of Loud Speakers incorporated in Broadcast Receiving Apparatus.

3. All returns, remittances and communications for the Grantors under this Licence should be addressed to Marconi's Wireless Telegraph Company Limited, Marconi Offices, Electra House, Victoria Embankment, London, W.C.2.

Schedule "A".

The Licence dated .... to which this Schedule is attached is to be deemed to be subject to the following terms and conditions which are to be deemed part of it.

1. Valve Basis.

(a) When the amount of royalty payable by the Licensee calculated upon the rates under and in accordance with Clause 4 sub-clause (f) paragraphs (i) to (iv) and the first proviso thereto inclusive (hereinafter called "the basic rates") during any year ending September 30th exceeds

£1,800, it shall be subject to a reduction for that year as per the following formula:

$$A=1{,}800\sqrt{X-0.8}$$

where A is the amount actually payable and X is the total amount in thousands of pounds calculated at the basic rates.

The royalty payable under this formula shall, however, never be less than one shilling per valve in the case of complete broadcast receiving apparatus and radiogramophones and sixpence per valve in the case of sets of component parts. The formula shall cease to apply when the royalty has been reduced to these rates, which rates shall continue to apply to all production thereafter ~~during~~ the agreed year.

(b) If in respect of any year ending September 30th the Licensee guarantee a minimum royalty of £500 payable in equal quarterly payments in advance, he shall, subject to such minimum, be entitled to a discount of 5% upon the amount of his liability for royalty payable under the basic rates provided that such discount shall not be in addition to any reduction obtainable under the formula given in sub-clause (a) above.

2. Turnover Basis.

If in respect of any year ending 30th September the Licensee guarantees a minimum royalty of £4,000 or £6,000 payable in equal quarterly payments in advance, he may elect, prior to the commencement of that year, or in the case of the year ending September 30th 1934 within a reasonable time after the date hereof, to pay royalty during such year, in accordance with the following formula:

$$A=10\sqrt{T}$$

where A is the amount payable and T is the turnover in pounds, the turnover being defined as the total of nett invoice price (irrespective of the actual cash received) on all apparatus sold upon which royalty would be payable under the above mentioned basic rates and inclusive of all parts (including valves, battery eliminators, loudspeakers, batteries, cabinets and so forth) sold as part of any complete instrument or set of component parts, and cash received in respect of hire of apparatus on rental as distinct from hire purchase.

Should the Licensee sell part or all of his products upon which royalty would be payable under the Licence through another company from which he is directly or indirectly entitled to trading profits he may if he is allowing exceptionally favourable terms to the selling company be required to substitute the nett turnover in those products by the selling company in place of his own invoice values to the said selling company.

Provided:

(i) That if the amount calculated in accordance with the formula $A=10\sqrt{T}$ in respect of any such year for which the licensee has guaranteed a minimum royalty payment of £4,000 does not amount to £4,000, then the Licensee shall pay, in respect of such year, in addition to the guarantee of £4,000 plus any surcharge which may become due in accordance with proviso (iii) below, the amount, if any, by which royalty calculated according to the formula specified in Clause 1(a) above—namely $A=1{,}800\sqrt{X-0.8}$—exceeds the sum of £4,000 plus any such surcharge.

(ii) That the amount payable shall not be less than 1.25% of T.

(iii) That should the gross revenue of the Grantors in respect of licensing within the same scope as the A.4 Licence (2nd Edition) of any of the said Letters Patent being inclusive of all amounts due to them from Licensees which may not subsequently be collected and inclusive also of all nett damages and other payments obtained from non-Licensees for the use within the same scope as the A.4 Licence (2nd Edition) of any of the said Letters Patent in respect of the period of the Licence, be less than £120,000 in any year ending September 30th there shall be a surcharge not exceeding 33⅓% or 25% on the amount payable by any Licensee guaranteeing the minimum payment of £4,000 or of £6,000 respectively. Such surcharge in aggregate shall be limited to an amount necessary to bring the said gross revenue up to £120,000.

(iv) That should the said gross revenue of the Grantors calculated as aforesaid be less than £70,000 in any such year the Licensee shall revert to the basic rates subject to the terms of Clause I of this Schedule but if the Licensee shall within three calendar months after receiving notice from the Grantors of such reversion refuse to accept the same then the Grantors shall have the option of continuing his Licence on the turnover basis or, alternatively, of revoking the Licence. This reversion shall not in any event operate prior to the year commencing the 1st October 1935.

3. The royalty of two shillings and sixpence per radiogramophone payable under Clause 4(f)(iii)(b) and 4(f)(iv)(b) of the Licence and any separate and additional royalty payable under the second proviso of Clause 4(f) of the Licence shall not be taken into account in any calculation of royalty payable on the alternative bases set out in Clauses 1 and 2 hereof but shall be paid in addition thereto.

4. In the case of the Licensee manufacturing any broadcast receiving apparatus and/or radiogramophones on contract (that is making for a third party for sale under the name or mark of such third party) the royalty payments hereunder shall be calculated separately on each individual contract instead of on the aggregate amount of all contracts.

In Witness Whereof an Agent hereunto duly authorized has on behalf of the Grantors hereunto on their behalf set his hand and the Licensee has hereunto set his hand.

A Director of the Licensee hereunto duly authorized has hereunto on the Licensee's behalf set his hand the .... day of ....

For and on behalf of:

The British Thomson-Houston Company Limited

Electric and Musical Industries Limited

Hazelpat Limited

Marconi's Wireless Telegraph Company Limited

Standard Telephones and Cables Limited

Western Electric Company Limited

Signed by ....
for and on behalf of the Grantors in
the presence of

Signed by ....
in the presence of:

For and on behalf of:

Limited.
Director.

Signed by ....
A Director of and for and on behalf
of
in the presence of

Second Edition.

License A.4.

Dated .... 193.........

The British Thomson-Houston Co. Ltd.
Electric and Musical Industries Ltd.
Hazelpat Limited
Marconi's Wireless Telegraph Co. Ltd.
Standard Telephones and Cables Ltd.
Western Electric Co. Ltd.

and

Licence.

To use and exercise certain British Letters Patent for certain specific purposes as within in connection with Wireless Broadcast Receiving Apparatus and/or Radiogramophones.

DEFENDANT'S EXHIBIT NO. 63.

Exhibit I

Licence A.5.

An Agreement made this .... day of ...., 19...... Between The British Thomson-Houston Company Limited having its registered office at Crown House Aldwych London W.C.2 and Electric and Musical Industries Limited having its registered office at Blyth Road Hayes Middlesex and The General Electric Company Limited having its registered office at Magnet House, Kingsway, London, W.C.2 and The Gramophone Company Limited having its registered office at Blyth Road Hayes Middlesex and Marconi's Wireless Telegraph Company Limited having its registered office at Marconi Offices Electra House Victoria Embankment London W.C.2 and Philips Lamps Limited having its registered office at Spencer House South Place Finsbury London E.C.2 (hereinafter together called "the Grantors" which expression shall mean all the said companies except where used in connection with broadcast receivers as hereinafter defined in which case it shall mean only the last-named four companies) of the first part and .... of

.... hereinafter called "the Licensee") of the second part

Whereas the Licensee has applied to the Grantors to grant and the Grantors have agreed to grant to the Licensee a Licence under their respective Patent rights and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed upon a basis agreed between the parties as being convenient Now It Is Hereby Agreed as follows:—

1(a). The expression "broadcast receivers" when herin used shall mean apparatus which is designed to incorporate valves (whether or not equipped with the valves themselves) and which is designed to receive and translate modulated electrical oscillations broadcast to the public for sound and/or television reception whether or not in the case of television reception such apparatus is in the same cabinet with or is adapted to be used with a radiogramophone. Such expression does not include valves or cathode ray tubes whether or not incorporated in the apparatus nor separate components but does include apparatus capable of being used for television reception when attached to apparatus for sound reproduction.

(b) The expression "radiogramophone" when herein used shall mean an instrument (whether or not in the same cabinet with or adapted to be used with apparatus for television reception) which is designed to incorporate valves (whether or not equipped with the valves themselves) and which may be used for the reproduction of sound through an electrically-operated loudspeaker alternatively from (i) apparatus designed for the reception and translation into sound of modulated electrical oscillations broadcast to the public and (ii) apparatus (such as a turntable and pick-up) designed for the translation into sound of vibrations recorded on a disc sound record. Such expression does not include valves or cathode ray tubes whether or not incorporated in the instrument nor separate components but does include playing desks designed for use in combination with broadcast receivers.

(c) The expression "selling" or "sold" when herein used shall be deemed to include selling or sales on hire-purchase systems.

2.(a). The Grantors grant and agree to grant to the Licensee subject to the terms and conditions herein appearing personal non-exclusive non-assignable licences to use and exercise all or any of the inventions the subject of

(i) the British and Irish Free State Letters Patent set out in the Schedule hereto so far as they are applicable to broadcast receivers and radiogramophones respectively; and

(ii) any other British and Irish Free State Letters Patent applicable to broadcast receivers and radiogramophones respectively in respect of which and insofar as the Grantors or any of them respectively now have or may hereafter during the subsistence of this Licence have power to grant Licences for the purposes and on the terms hereof

(which Letters Patent are herein collectively called "the said Letters Patent") for the purpose of manufacturing using selling or letting on hire within Great Britain Northern Ireland the Irish Free State the Channel Islands and the Isle of Man (a) broadcast receivers and/or (b) radiogramophones but in either case only for private or domestic use or for the purposes of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public generally) but not for revenue earning purposes or otherwise. This Licence shall be deemed to have commenced on .... and shall continue until 31st December 1941 unless previously determined as hereinafter provided.

(b) The Grantors will upon request furnish lists of patents (additional to those set out in the Schedule hereto) which in their opinion are of interest to Licensees generally for the purposes of this Licence and included in the said Letters Patent.

(c) Nothing contained herein shall be deemed to license the Licensee to manufacture use sell let on hire or otherwise deal in valves or cathode ray tubes of any kind nor to sell or let on hire separate components.

3. Notwithstanding the provisions of Clause 2(a) hereof the Licensee agrees and undertakes that all companies partnerships or businesses now or hereafter during the subsistence of this Licence directly or indirectly owned or controlled by the Licensee and engaged in any field of business to which this Licence is applicable shall be bound by and be subject to all the terms and conditions of this Licence.

4. The Licensee agrees with the Grantors as follows:—

(a) Not without the previous written consent of the Grantors to export or sell for export or knowingly permit to be exported any broadcast receivers or radiogramophones. Such consent shall be given unless the Grantors or any of them have commitments prohibiting the same but the Grantors decision shall be accepted as final and any consent will not imply or grant licences under foreign patents.

(b) Not without the previous written consent of the Grantors to sell let on hire or put into use any broadcast receiver or radiogramophone which has not been manufactured in the territory for which this Licence is granted. No broadcast receiver or radiogramophone shall be deemed to have been so manufactured within the meaning of this Licence which incorporates imported components and accessories sold therewith (such as for example cabinets and valves and cathode ray tubes etc.) to an extent per broadcast receiver and/or radiogramophone greater in value than 10 per cent. of the retail selling price thereof.

(c) To attach or cause to be attached in a prominent position to all broadcast receivers and radiogramophones sold let on hire or put into use by the Licensee a separate plate manufactured in accordance with a design approved and notified by the Grantors to the Licensee (who is hereby authorized to use the said design in accordance with this sub-clause (c) only) and carrying a serial number allocated by the Grantors and bearing the following words. With respect to broadcast receivers: "Royalty Plate. Great Britain, Northern Ireland, Irish Free State, Channel Islands and Isle of Man. This plate is issued by or with the authority of E.M.I., The G.E.C., The Gramophone Company, the Marconi Company, Murphy and Philips. Serial No. .... N.B.—A Post Office Licence is necessary." With respect to radiogramophones: "Royalty Plate. Great Britain, Northern Ireland, Irish Free State, Channel Islands and Isle of Man. This plate is issued by or with the authority of the B.T.H. Company, E.M.I., The G.E.C., The Gramophone Company, the Marconi Company, Murphy and Philips. Serial No. .... N.B.—A Post Office Licence is necessary." Such plates may be obtained from and upon request by the Licensee shall be supplied by the Grantors at cost price to the Grantors. No plates shall be disposed of or utilised by the Licensee except as herein provided and upon the termination of this Licence for any cause whatsoever all unused plates except those required under the first proviso of Clause 4 sub-clause (d) hereof shall be delivered up to the Grantors.

(d) To pay to the parties of the first part:—

In respect of all broadcast receivers and radiogramophones sold let on hire or put into use by the Licensee during the subsistence of this Licence whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent royalties upon the following scale based on the Licensee's nett turnover as hereinafter defined:—

On the first £40,000 (£0 to £40,000) nett turnover in each year ending December 31st......	6%
On the next £80,000 (£40,000 to £120,000) nett turnover in such year........................	3%
On the next £80,000 (£120,000 to £200,000) nett turnover in such year........................	1.5%
On the next £200,000 (£200,000 to £400,000) nett turnover in such year....................	.75%
On the excess over £400,000 nett turnover in such year..................................	1.875%

Nevertheless in respect of the period from the commencement of this Licence to the 31st December 1938 the rate of royalty payable by the Licensee on his nett turnover in such period shall be the average rate of royalty which would have been payable on the total nett turnover of the Licensee in the year ending 31st December 1938 had such total nett turnover been subject to the payment of royalty hereunder.

And In Addition a sum of two shillings and sixpence in respect of every radiogramophone: and a sum of five shillings in respect of every broadcast receiver intended for the reception of television.

The amounts payable according to this sub-clause (d) shall be ascertained and paid quarterly as provided in subclause (e) hereof.

The expression "nett turnover" where herein used shall mean the total of nett invoice prices (whether or not paid) of broadcast receivers and radiogramophones and of parts and accessories (such as for example valves cathode ray tubes batteries cabinets etc.) pertaining to such apparatus and sold as part of its equipment but less an agreed allowance of 20% of such invoice prices as representing valves and cathode ray tubes when included in such invoice prices In the case of apparatus let on hire as distinct from apparatus sold on hire purchase the amounts payable in respect of such hire (whether or not received) shall be deemed to be the nett invoice prices. In the case of apparatus put into use by the Licensee the invoice price shall be estimated as if a normal sale had been made.

Provided Always

(i) That royalty shall be payable upon all broadcast receivers and radiogramophones manufactured prior to but remaining unsold at the date of termination of this Licence and shall be calculated in accordance with the invoice prices current immediately prior to the date of such termination and royalty plates shall be attached thereto.

(ii) That in the event that the Licensee sells to any party referred to in Clause 3 hereof he shall if so requested by the Grantors substitute part of whole of the nett turnover of such party for the corresponding part or whole of his own nett turnover.

(iii) In the further event that the Licensee sells broadcast receivers or radiogramophones to any party referred to in Clause 3 hereof which performs further manufacturing or assembling operations on or makes additions to same then royalty shall be calculated upon the nett invoice price of the final products.

(iv) In the event that the Licensee manufactures broadcast receivers or radiogramophones for sale under the name or mark of a party other than a party referred to in Clause 3 the Licensee's turnover in respect of such manufacture shall if so requested by the Grantors be calculated separately in respect of each such first-mentioned party and treated as a separate nett turnover and appropriate separate royalty payments made.

(v) In respect of broadcast receivers or radiogramophones manufactured used sold or let on hire by the Licensee which employ any of the said Letters Patent under which the Grantors or any of them may be liable to pay a royalty to a third party or share a royalty with a third party the Licensee shall pay to the Grantors an additional royalty of such amount as may be required to enable to Grantors out of the total royalties paid by the Licensee both to retain the royalties payable hereunder and to satisfy the terms of the Licence or Agreement under which royalty is or shall be payable by the Grantors or any of them. The Grantors shall upon the request of the Licensee and the Licensee shall upon the request of the Grantors permit the Grantors to examine free of charge diagrams and/or samples of broadcast receivers and radiogramophones manufactured or proposed to be manufactured by the Licensee and advise whether such apparatus embodies or utilises any invention the subject of any of the said Letters Patent under which the Grantors or any of them may be liable for royalty to a third party as herein mentioned. The Grantors will from time to time notify the Licensee in writing of any of the said Letters Patent in respect of which additional royalty is payable by the Licensee as aforesaid and the amount of such royalty. Any such additional royalties payable hereunder shall be shown separately in the returns hereinafter mentioned. Nevertheless the Licensee may by giving notice in writing to the Grantors within two months of such notification by the Grantors elect to relinquish the Licence herein granted in respect of any such Letters Patent whereupon such Letters Patent shall be deemed for all purposes to be and to have been always excluded from this Licence.

(e) To keep accounts of everything necessary to ensure accurate returns of all apparatus the subject of royalty under this agreement being rendered quarterly to such person(s) as the Grantors may designate to the Licensee from time to time and to render such returns upon the forms supplied by the Grantors within one month of each 31st March 30th June 30th September and 31st December and to accompany each such return with a remittance for the royalty due. The Licensee shall show on each such return for the quarter in question

(i) the amount of the said "nett turnover" as defined in Clause (d); and

(ii) the amonut of the said nett turnover which represents radiogramophones whether or not combined with television receiving apparatus and the total number of such instruments; and

(iii) the fractions of the amount of the said nett turnover which respectively represent television receiving apparatus incorporating and not incorporating means for reproducing sound broadcast signals not accompanying television signals; and

(iv) The total number of instruments of all kinds intended for television reception whether or not combined with radiogramophones.

and shall show separately the like particulars in respect of the business of any of the controlled companies partnerships or businesses referred to in Clause 3 hereof.

(f) To pay to the Grantors interest upon all unpaid royalties at the rate of four per centum per annum as from the date or dates upon which any royalty shall have become payable in accordance with the provisions of sub-clause (e).

(g) To permit the auditors of the Grantors to inspect the books and accounts of the Licensee relative to this Licence and on the request of the Grantors to cause any quarterly return to be verified by the statutory declaration of the proper officer or auditor of the Licensee. Provided that the Licensee shall have the right to acquire that the auditor making such inspection shall be an independent auditor and that if the Licensee shall have failed to render accounts or if the accounts rendered by him are by such inspection shown to be inaccurate the Licensee shall pay the cost of such independent audit without prejudice to any other remedies or claims of the Grantors.

(h) Not at any time during the subsistence hereof directly or indirectly to dispute or impeach or to assist others to dispute or impeach the validity of any of the said Letters Patent nor the right of the Grantors or any of them to grant the Licences hereby granted and agreed to be granted.

(i) If so requested to pay to the Grantors on the execution hereof and in advance each year during the period of this Licence a minimum royalty calculated at the rate of £150 per annum which shall in no event be returnable.

(j) Not to assign transfer mortgage grant sub-licences under or in any manner part with the possession or control or benefit of this Licence or any part of it without the previous written consent of the Grantors.

5. For all purposes of this Agreement all broadcast receivers and/or radiogramophones manufactured sold let on hire or put into use by any of the companies partnerships or businesses referred to in Clause 3 above shall be deemed to have been manufactured sold let on hire or put into use by the Licensee who shall pay the royalties accordingly.

6. During the subsistence of this Licence and so long as no royalties shall be owing and unpaid hereunder the Grantors will keep the Licensee fully indemnified against costs and damages awarded in connection with all actions proceedings claims and demands which may be made against the Licensee by any third party who establishes to the satisfaction of a court of competent jurisdiction in England his right to restrain the user and exercise by the Licensee within the limits of the grants contained in this Agreement of any of the said Letters Patent on the ground that such user and exercise is an infringement of any lawful rights of such third party in such Letters Patent provided always that the Grantors are immediately informed of the institution of such proceedings and are given full and complete rights to take over at their own cost and in the name of the Licensee or other defendants and through their own Solicitors the defense of such proceedings if they so request and in that event the Licensee shall assist the Grantors in every reasonable manner but the Grantors shall be at liberty to compromise submit to judgment in abandon discontinue or otherwise dispose of the same as to them may seem expedient.

7. The Licensee agrees to grant to the Grantors or any of them personally upon request non-exclusive non-transferable licenees (but with the right to sublicence subsidiary or associated companies) to make use exercise and vend all or any of the inventions the subject of British and/or Irish Free State Letters Patent applicable to broadcast receivers or radiogramophones in respect of which and insofar as the Licensee has or shall hereafter have power to grant a licence for the purposes of manufacturing using selling or letting on hire within Great Britain Northern Ireland the Irish Free State the Channel Islands and the Isle of Man broadcast receivers or radiogramophones such licences to be at a reasonable rate of royalty having regard to the rate

of royalty payable to the Grantors by the Licensee hereunder to be settled by arbitration in default of agreement but in any case to be at a rate not exceeding the lowest rate paid by any licensee in respect of the same invention.

8. The Grantors may determine this Licence upon the happening of any of the following events:

(a) If any royalty return or any royalty payable is not rendered or is unpaid for thirty days after the preceding 31st March 30th June 30th September and 31st December and remains unrendered or unpaid for seven days after notice in that behalf from the Grantors, or

(b) If the royalty returns or payments in respect of any company partnership or business referred to in Clause 3 herein are not duly rendered or made, or

(c) If there be any breach on the part of the Licensee of any other of the terms or conditions herein contained and the same be not remedied made good or desisted from within seven days of notice in that behalf from the Grantors, or

(d) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall have a receiver appointed or go into liquidation whether voluntary or compulsory, or

(e) If any Company which at any time during the subsistence of this Licence controls the Licensee or is under the same control as the Licensee and is engaged in any field of business to which this Licence is applicable does not hold or at the request of the Grantors does not accept within one month of such request a license upon the same terms and conditions as are contained in this License.

Any determination of this License shall be without prejudice to all claims of the Grantors against the Licensee for outstanding royalties or prior breaches of this License or otherwise.

9. All returns remittances and communications for the

Grantors under this License shall until further notice by the Grantors be addressed and sent to Mr. F. C. Topham, Marconi Offices, Electra House, Victoria Embankment, London, W. C. 2, and all cheques made payable to Marconi's Wireless Telegraph Co., Ltd.

The Schedule Before Referred To

231420
231420
231421
345796
248731
250162
250931
256644
256967
260148
279808
283120
285020
287958
291014
293462
296829
303758
310284
312354
323823
340090
344373
352772
359168
361351
372155
378134
381847
381868
382316
382514
384583
388292
391521
392383
392801
393520
399068
400976
401990
402181
406629
404349
404401
405897
406895
409574
410619
413946
416302
417284
419441
420685
422349
422824
422906
423213
423685
423932
424714
424779
425553
425629
426893
427650
427913
429217
430507
431327
433996
433996
436403
437481
437726
438010
438506
438832
440199
440333
440337
440483
440494
441847
442682
442685
443423
443637
444178
445140
445543
445580
445763
446663
447828
448779
449177
449205
449533
450081
450136
450520
450664
450806
451204
451227
451227
452585
453261
453858
454996
454375
458655
459251
459568
460186
460675
461360
462323
462832
463254
463604
463625
464418
464946
465273
465593
465703
466020
466404
467263
467430
468994
470140
471737
471762
472739
472923
474386
474682
575028
475028
475420
478356
478511
478775
478815
479599
481731
481750
481858
483348
483504
484202
484412
487641
487687
487768
487953
488111
488294
488717
489094
490136
490225
490346
490400
490819
491063
493758
494734

In Witness Whereof an Agent hereunto duly authorised has on behalf of the Grantors hereunto on their behalf set his hand and the Licensee has hereunder set his hand.

A Director of the Licensee hereunto duly authorised has hereunto on the Licensee's behalf set his hand the day and year first above written.

For and on behalf of:

The British Thomson-Houston Company Limited

Electric and Musical Industries Limited

The General Electric Company Limited

The Gramophone Company Limited

Marconi's Wireless Telegraph Company Limited

Philips Lamps Limited

Signed by ....
for and on behalf of the Grantors
in the presence of:

Signed by ....
in the presence of:

For and on behalf of:

Limited

Director.

Signed by ....
A Director of and for and on behalf of:
in the presence of:

DEFENDANT'S EXHIBIT NO. 64.

A-5 License Extension

Exhibit I-1

Marconi's Wireless Telegraph Company Limited,
Marconi Offices,
Electra House,
Victoria Embankment,
London, W. C. 2.

(Date)

To: (Ref.) (No.)

Dear Sirs,

The Grantors now have pleasure in confirming that your Licence A.5. dated 21st February, 1939, as modified by letter P/T 31773 of the 17th September, 1941, is hereby further extended until the 31st December, 1947. All the terms and conditions of the said licence as modified by the said letter shall remain in full force and effect, so far as applicable, until the said 31st December 1947, subject, however, to the following amendments which shall come into effect on and from the 1st November 1945:

1. Sub-clause (a) of Clause 4 of the said Licence shall be deemed to be deleted. (It is to be noted that this deletion does not imply any extension, territorial or otherwise, of the rights granted and defined in the said Licence.)
2. Lines 7, 8 and 9 of Sub-clause (d) of Clause 4 of the said Licence shall be deemed to be deleted and replaced by the following:
   On the first £60,000 (£0 to £60,000) nett turnover in each year ending December 31st......4%
   On the next £60,000 (£60,000 to £120,000) nett turnover in such year........................3%

3. The List of Patents set out in the Schedule to the said Licence shall be deemed to be deleted and replaced by the Revised Schedule of Patents attached hereto.

Yours faithfully,

For and on behalf of:
The British Thomson-Houston Company Limited
Electric and Musical Industries Limited
The General Electric Company Limited
The Gramophone Company Limited
Marconi's Wireless Telegraph Company Limited
Philips Lamps Limited
(6d. Stamp.)
(Signed) F. G. Topham.

We agree and accept the above.
(A Schedule of Patents is attached.)

DEFENDANT'S EXHIBIT NO. 65.

Exhibit J

Licence A.6.

An Agreement made this 31st day of August 1948 Between The British Thomson-Houston Company Limited having its registered office at Crown House Aldwych London W. C. 2 and Electric & Musical Industries Limited having its registered office at Blyth Road Hayes Middlesex and The General Electric Company Limited having its registered office at Magnet House Kingsway London W. C. 2 and Marconi's Wireless Telegraph Company Limited having its registered office at Marconi Offices Electra House Victoria Embankment London W. C. 2 and Philips Electrical Industries Limited having its Head Office at Century House Shaftesbury Avenue London W. C. 2 and Standard Telephones and Cables Limited having its registered office at Connaught House Aldwych London W. C. 2 (hereinafter together called "the Grantors") of the first part and .... of .... (hereinafter called "the Licensee") of the second part.

Whereas the Licensee has applied to the Grantors to grant and the Grantors have agreed to grant to the Licensee a Licence under their respective patent rights and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed Now It is Hereby Agreed between the parties as follows:

1. (a) The expression "broadcast receivers" when herein used shall mean apparatus which is designed to incorporate valves (whether or not equipped with the valves themselves) and which is intended to receive and translate

modulated electrical oscillations broadcast for sound and/or television reception and which is of a type ordinarily sold to the public for domestic entertainment. In the case of television reception such apparatus may or may not be contained in the same cabinet as (or be adapted to be used with) a radiogramophone. Such expression shall include frequency conversion units for amplitude modulation or frequency modulation broadcast reception. Sets of component parts as hereinafter defined are also included.

(b) The expression "radiogramophone" when herein used shall mean an instrument (whether or not in the same cabinet with or adapted to be used with apparatus for television reception) which is designed to incorporate valves (whether or not equipped with the valves themselves) and which may be used for the reproduction of sound through an electrically-operated loudspeaker alternatively from

(i) apparatus intended for the reception and translation into sound of broadcast modulated electrical oscillations or

(ii) apparatus designed for the translation into sound of vibrations recorded on a sound record

and which is of a type ordinarily sold to the public for domestic entertainment. Such expression shall include sets of component parts as hereinafter defined.

(c) The expression "set of component parts" for broadcast receivers or radiogramophones respectively shall mean a number of component parts which are capable of being assembled so as substantially to constitute a broadcast receiver or a radiogramophone respectively.

(d) The expression "selling" or "sold" when herein used shall be deemed to include selling or sales on hire-purchase.

2. (a) The Grantors grant and agree to grant to the Licensee subject to the terms and conditions herein appearing personal non-exclusive non-assignable licences to use and exercise all or any of the inventions the subject of

> (i) The British Letters Patent set out in the Schedule hereto so far as they are applicable to broadcast receivers and radiogramophones respectively; and
>
> (ii) any other British and any Eireann Letters Patent applicable to broadcast receivers and radiogramophones respectively in respect of which and insofar as the Grantors or any of them respectively now have or may hereafter during the subsistence of this Licence have power to grant Licences for the purposes and on the terms hereof

(which Letters Patent are herein collectively called "the said Letters Patent") for the purposes of manufacturing broadcast receivers and/or radiogramophones within Great Britain Northern Ireland Eire the Channel Islands and the Isle of Man and of using selling or letting on hire such apparatus so manufactured.

This Licence shall be deemed to have commenced on and shall continue until 31st December 1952 unless previously determined as hereinafter provided.

(b) Nothing contained herein shall be deemed to license the Licensee under the said Letters Patent to manufacture use sell let on hire or otherwise deal in valves or cathode ray tubes or lamps of any kind nor to sell or let on hire separate components.

3. Notwithstanding the provisions of Clause 2(a) hereof the Licensee agrees and undertakes that all companies partnerships or businesses now or hereafter during the subsistence of this License directly or indirectly owned or controlled by the Licensee and engaged an any field of business to which is Licence is applicable shall be bound

by and be subject to all the terms and conditions of this Licence in the like manner as the Licensee.

4. The Licensee agrees with the Grantors as follows:—

(a) Not without the previous written consent of the Grantors to sell any broadcast receiver or radiogramophone which has not been manufactured in the territory for which this Licence is granted. No broadcast receiver or radiogramophone shall be deemed to have been so manufactured within the meaning of this Licence which incorporates imported components and accessories sold therewith (such as for example cabinets and valves and cathode ray tubes, etc.) to an extent per broadcast receiver and/or radiogramophone greater in value than ten percent of the retail selling price thereof.

(b) To cause to be attached in a prominent position to all broadcast receivers and radiogramophones sold let on hire or put into use by the Licensee a licence plate in accordance with a design and wording authorized and notified by the Grantors to the Licensee which plate shall be inscribed by the Grantors with a serial number allocated by the Grantors. Such plates may be obtained from the Grantors at cost price. No plates shall be disposed of by the Licensee except as herein provided and upon the termination of this Licence all unused plates except those required under the first proviso of Clause 4 sub-clause (c) hereof shall be delivered up to the Grantors.

(c) To pay to the Grantors:—

Royalties at the rate of 1½% (one and a half per centum) on the Licensee's nett turnover as hereinafter defined. The expression "nett turnover" where herein used shall mean the total of nett invoice prices (whether or not paid and before deduction of settlement discounts) of all broadcast receivers and radiogramophones sold let on hire or put into use by the Licensee during the subsistence of this Licence whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of the said Letters Patent including in such prices the prices of all parts and accessories (such as for example valves cathode ray tubes batteries cabinets etc.) normally incorporated in or forming part of complete broadcast receivers or radiogramophones and sold as part thereof but shall not include Purchase Tax or Customs Duties thereon. In the case of apparatus let on hire as distinct from apparatus sold on hire purchase the amounts payable in respect of such hire (whether or not received) or such other amount as may be mutually agreed shall be deemed to be the nett invoice prices. In the case of apparatus put into use by the Licensee the invoice price shall be estimated as if a normal sale had been made.

Provided Always

(i) That royalty shall be payable upon all broadcast receivers and radiogramophones manufactured prior to but remaining unsold at the date of termination of this Licence and shall be calculated in accordance with the invoice prices current immediately prior to the date of such termination and licence plates shall be attached thereto.

(ii) That in the event that the Licensee sells to any party referred to in Clause 3 hereof he shall if so requested by the Grantors substitute part or the whole of the nett turnover of such party for the corresponding part or whole of his own nett turnover.

(iii) In the further event that the Licensee sells broadcast receivers or radiogramophones to any party referred to in Clause 3 hereof which performs further manufacturing or assembling operations on or makes additions to same then royalty shall be calculated upon the nett invoice price of the final products.

(iv) In the event that the Licensee manufactures broadcast receivers or radiogramophones for sale under the name or mark of a party other than a party referred to in Clause 3 the Licensee's turnover in respect of such manufacture shall be shown and calculated separately in respect of each such first-mentioned party and treated as a separate nett turnover and royalty payments made accordingly.

(v) Any Letters Patent in respect of which the rights of the Grantors or any of them to grant licences as herein described may be subject to limitations or conditions stipulated by a third party or may involve liability to pay a royalty to a third party or share a royalty with a third party shall be deemed for all purposes to be and to have been always excluded from this Licence. The Grantors will however from time to time notify the Licensee in writing of any such Letters Patent and of any such limitations or conditions or payments stipulated by such a third party and if the Licensee gives notice in writing to the Grantors within two months thereof the Licensee may elect to take from such of the Grantors as have the right to grant the same, a Licence under such Letters Patent on the same terms and conditions as if such Letters Patent were included within this Licence provided the Licensee notifies in such election that he agrees to comply also with such limitations and conditions stipulated by a third party and to pay to the Grantors such additional royalty as may be required to enable the Grantors out of the total royalties paid by the Licensee both to retain the royalties payable under this Clause 4(c) and to satisfy the terms of the Licence or Agreement under which royalty is or shall be payable by the Grantors or any of them. Any such additional royalties payable hereunder shall be shown separately in the returns hereinafter mentioned.

(d) To keep accounts of everything necessary to ensure accurate quarterly returns of all apparatus the prices of which are included in the turnover under this agreement being rendered to such person as the Grantors may designate to the Licensee from time to time and to render such returns upon the forms supplied by the Grantors within one month of each 31st March 30th June 30th September and 31st December and to forward within fourteen days after the end of the said one month a remittance for the royalty due. If so requested by the Grantors the Licensee shall show separately thereon the particulars required in respect of the businesses of any of the controlled companies partnerships or businesses referred to in Clause 3 hereof.

(e) To pay to the Grantors upon all royalties unpaid after the expiry of fourteen days of the date or dates upon which returns are due according to the terms of the preceding sub-clause (d) interest at the rate of four per centum per annum.

(f) To permit auditors appointed by the Grantors to inspect the books and accounts of the Licensee relative to this License and on the request of the Grantors to cause any quarterly return to be verified by the statutory declaration of the proper officer or auditors of the Licensee. Provided that the Licensee shall have the right to require that the auditor making such inspection shall be an independent auditor and that if the Licensee shall have failed to render accounts or if the accounts rendered by him are by such inspection shown to be inaccurate the Licensee shall pay the cost of such independent audit without prejudice to any other remedies or claims of the Grantors.

(g) Not at any time during the subsistance hereof directly or indirectly to dispute or impeach or to assist others to dispute or impeach the validity of any of the said Letters Patent within the field of this Licence nor the right of the Grantors or any of them to grant the Licences hereby granted and agreed to be granted.

(h) Not to assign transfer mortgage grant sub-license under or in any manner part with the possession or control or benefit of this Licence or any part of it without the previous written consent of the Grantors.

5. For all purposes of this Agreement all broadcast receivers and/or radiogramophones manufactured sold let on hire or put into use by any of the companies partnerships or businesses referred to in Clause 3 above shall be deemed to have been manufactured sold let on hire or put into use by the Licensee who shall pay the royalties accordingly.

6. During the subsistence of this Licence and so long as no royalties shall be owing and unpaid hereunder the Grantors will keep the Licensee fully indemnified against costs and damages awarded in connection with all actions proceedings claims and demands which may be made against the Licensee by any third party who establishes to the satisfaction of a court of competent jurisdiction in England his right to restrain the user and exercise by the Licensee within the limits of the grants contained in this Agreement of any of the said Letters Patent on the ground that such user and exercise is an infringement of any lawful rights of such third party in such Letter Patent provided always that the Grantors are immediately informed of the institution of such proceedings and are given full and complete rights to take over at their own cost and in the name of the Licensee or other defendants and through their own Solicitors the defence of such proceedings if they so request and in that event the Licensee shall assist the Grantors in every reasonable manner but the Grantors shall be at liberty to compromise submit to judgment in abandon discontinue or otherwise dispose of the same as to them may seem expedient.

7. The Licensee agrees upon request to grant to the Grantors or to any one or more of them upon reasonable terms non-exclusive non-transferable licences (but with the right to sub-license subsidiary or associated companies)

to make use exercise and vend all or any of the inventions the subject of British and/or Eireann Letters Patent applicable to broadcast receivers or radiogramophones in respect of which and insofar as the Licensee has or shall hereafter have power to grant a licence for the purposes of manufacturing using selling or letting on hire within Great Britain Northern Ireland Eire the Channel Islands and the Isle of Man broadcast receivers or radiogramophones.

8. The Grantors may determine this Licence at any time by notice in writing to the Licensee upon the happening of any of the following events:

(a) If any royalty return or any royalty payable is not rendered or is unpaid for thirty days after the due dates and remains unrendered or unpaid for seven days after notice in that behalf from the Grantors, or

(b) If the royalty returns or payments in respect of any company partnership or business referred to in Clause 3 herein are not duly rendered or made, or

(c) If there be any breach on the part of the Licensee of any other of the terms or conditions herein contained and the same be not remedied made good or desisted from within seven days of notice in that behalf from the Grantors, or

(d) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall have a receiver appointed or go into liquidation whether voluntary or compulsory, or

(e) If any Company which at any time during the subsistence of this License controls the Licensee or is under the same control as the Licensee and is engaged in any field of business to which this Licence is applicable does not hold or at the request of the Grantors does not accept within one months of such request a Licence upon the same terms and conditions as are contained in this Licence.

Any determination of this Licence shall be without prejudice to all claims of the Grantors against the Licensee for outstanding royalties or prior breaches of this Licence or otherwise.

9. Until further notice all returns remittances and communications for the Grantors under this Licence should be addressed and sent to Mr. F. C. Topham, Room 517, Electra House, Victoria Embankment, London, W. C. 2. and all cheques made payable to Marconi's Wireless Telegraph Co., Ltd.

The Schedule Above Referred To

377622
381847
381868
391521
392383
392456
397763
398882
400976
401990
402181
402629
405897
406895
410478
410619
412813
414051
414819
415009
415101
419441
420065
522824
522906
423685
423932
424221
425553
425629
427901
435816
436403x
436940
437016
437726
438506
441847
442695
446663
449205
449242
449533
450081
450806
452965
455375
456450
457485
457510
458585
459251
461228
462536
463253
464349
464970
466020
466516
469791
471103
471398
472502
472739
472923
473427
474682
475490
475728
476874
477765
478775
478815
479113
480839
483348
483650
483732
487880
489094
489231
490150
490525
490819
491063
491728
493758
493843
495016
496874
498577
501760
502310
502615
505490
505867
507239
507641
508377
509234
509426
510919
511847
514170
515361
515362
515364
515427
516252
516385
516801
518378
520374
520460
521330
521356
521409
521984
522227
522443
522637
523883
524547x
524548x
524550o
527602
528179
528310
529383
530620
530701
531102
531448
534104
534531
535500
536153
537738
538369
542032
543035
547949
548421x
549865
553357
555403
555491
555601
561459
562513
563569
566835
568672
573032
595307
605122

---

x These patents have been lapsed by Hazeltine.

o This patent to be lapsed by Hazeltine.

In Witness Whereof an Agent hereunto duly authorised has on behalf of the Grantors hereunto on their behalf set his hand and the Licensee has hereunder set his hand.

A Director of the Licensee hereunto duly authorised has hereunto on the Licensee's behalf set his hand the day and year first above written.

For and on behalf of:

The British Thomson-Houston Company Limited

Electric & Musical Industries Limited

The General Electric Company Limited

Marconi's Wireless Telegraph Company Limited

Philips Electrical Industries Limited

Standard Telephones and Cables Limited

Signed by ....
for and on behalf of the Grantors
in the presence of:

Signed by ....
in the presence of ....

For and on behalf of:

Limited

Director.

Signed by ....
A Director of and for and on behalf of ....
in the presence of:

DEFENDANT'S EXHIBIT NO. 66.

Exhibit K.

Licence A7-S. (ound.)

An Agreement made this .... day of .... One thousand nine hundred and fifty .... Between The British Thomson-Houston Company Limited having its registered office at Crown House, Aldwych London W.C.2 and Cinema-Television Limited having its registered office at Albion House 59 New Oxford Street London W.C.1 and Electric & Musical Industries Limited having its registered office at Blyth Road Hayes Middlesex and The General Electric Company Limited having its registered office at Magnet House Kingsway London W.C.2 and Marconi's Wireless Telegraph Company Limited having its registered office at Marconi House Strand London W.C.2 and Murphy Radio Limited having its registered office at 62 Brook Street London W.1 and Philips Electrical Industries Limited having its Head Office at Century House Shaftesbury Avenue London W.C.2 and Pye Limited having its registered office at Radio Works Cambridge and Standard Telephones And Cables Limited having its registered office at Connaught House Aldwych London W.C.2 (hereinafter together called "the Grantors") of the first part and.................................. of .... (hereinafter called "the Licensee") of the second part

Whereas the Licensee has applied to the Grantors to grant and the Grantors have agreed to grant to the Licensee a Licence under their respective patent rights and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed Now It Is Hereby Agreed between the parties as follows:—

1. (a) The expression "Broadcast Sound Receivers"

when herein used shall mean apparatus (whether or not equipped with electron discharge devices or equivalent devices) which is intended to receive and translate electrical oscillations modulated by sound signals not associated with vision signals which are broadcast to the public and which is intended for use for entertainment or education purposes or is of a type normally supplied to the public for domestic use Provided However that such expression shall include:—

(i) the following apparatus combined therewith or sold for combination therewith namely apparatus intended for the reproduction of sound from records (radio-gramophones) frequency conversion units frequency modulation reception units and signal boosting apparatus.

(ii) broadcast sound receiving apparatus of the kind supplied by a broadcast sound relay service as the subscribers' terminal units.

(iii) sets of component parts as hereinafter defined.

Provided Further that the expression "Broadcast Sound Receivers" shall Not include:—

any broadcast relay apparatus other than the terminal units referred to as included under item (ii) above, or

any apparatus combined with or sold for combination with television receiving apparatus.

(b) The expression "set of component parts" shall mean a number of component parts and/or assembled units which are capable of being put together so as substantially to constitute a Broadcast Sound Receiver.

(c) The expression "subsidiaries" where herein used shall mean companies partnerships or businesses now or hereafter during the subsistence of this Licence directly or indirectly owned or controlled by the Licensee and domiciled within the said territory and engaged in any field of business to which this Licence is applicable.

(d) The expression "selling" or "sold" when herein used shall be deemed to include sales on hire-purchase.

2. (a) The Grantors grant and agree to grant to the Licensee subject to the terms and conditions herein appearing personal non-exclusive non-assignable licences to use and exercise all or any of the inventions the subject of any British and any Eireann Letters Patent applicable to Broadcast Sound Receivers in respect of which and insofar as the Grantors or any of them respectively now have or may hereafter during the subsistence of this Licence have the right to grant Licences for the purposes and on the terms hereof (which Letters Patent are herein collectively called "the said Letters Patent") for the purposes of manufacturing Broadcast Sound Receivers within Great Britain Northern Ireland Eire the Channel Islands and the Isle of Man (hereinafter called "the said territory") and of using selling or letting on hire such Broadcast Sound Receivers so manufactured hereunder. The Licence to manufacture shall include a licence to have Broadcast Sound Receivers manufactured for the Licensee by others but only for sale under the trade marks of trade names of the Licensee.

(b) The Licence shall be deemed to have commenced on January 1st, 1953 and shall continue until December 31st, 1957 unless previously determined as hereinafter provided.

(c) Nothing contained herein shall be deemed to license the Licensee under the said Letters Patent to manufacture sell or let on hire:—

(i) electron discharge devices or equivalent devices or lamps of any kind.

(ii) materials or component parts for sale separately (materials or component parts—other than items included in 2(c) (i) above—which are actually incorporated in or form part of Broadcast Sound Receivers are included in this Licence).

(iii) any apparatus not included within the expression "Broadcast Sound Receivers".

(d) Any licences herein granted or agreed to be granted under any Letters Patent in respect of which the rights of the Grantors or any of them to grant licences are subject to limitations shall be subject to the same limitations. Licences under patent rights derived by any of the Grantors from third parties under agreements which require the payment of royalties or other deferred payments based on the use of the inventions or acceptance of terms or conditions other than those herein contained are excluded from the licences herein granted. But (so far as any of the Grantors have the right to grant the same) the Licensee may obtain licences as described in Clauses 2(a) and 2(b) hereof under such patent rights by signifying to the Grantors, within two months after receiving from the Grantors notice of such royalties terms and conditions, and in such manner as they may require his acceptance of such terms and conditions and his agreement to pay to the Grantors such additional royalty or deferred payment as aforesaid as may be required to enable the Grantors out of the total royalty paid by the Licensee both to retain the royalties payable under Clause 4(c) hereof and to pay the royalty or other deferred payment based on the Licensee's use of the inventions which is or may be required by such agreements to be paid by the Grantors or any of them to such third parties. Any such additional royalties payable hereunder shall be shown separately in the returns hereinafter mentioned.

3. Notwithstanding the provisions of Clause 2(a) hereof the Licensee agrees that for the purposes of this Agreement all subsidiaries shall be deemed to be parts or depart-

ments of the Licensee and the Licensee undertakes full responsibility hereunder on their behalf accordingly.

4. The Licensee agrees with the Grantors as follows:—

(a) Not without the previous written consent of the Grantors to sell within the said territory any Broadcast Sound Receiver which has not been manufactured in the territory for which this License is granted. No Broadcast Sound Receiver shall be deemed to have been so manufactured within the meaning of this Licence which incorporates imported components to an extent per Broadcast Sound Receiver greater in value than ten per cent of the retail list price thereof. The Licensee will if so requested furnish information as to the value of any such imported and incorporated components.

(b) To cause to be attached in a prominent position to all Broadcast Sound Receivers sold let on hire or put into use by the Licensee a licence plate in accordance with a design and wording authorised and notified by the Grantors to the Licensee which plate shall bear a serial number allocated by the Grantors. Such plates may be obtained from the Grantors at cost price. No plates shall be disposed of by the Licensee except as herein provided and upon the termination of this License all unused plates except those required under proviso (i) of Clause 4 sub-clause (c) hereof shall be delivered up to the Grantors for destruction.

(c) To pay to the Grantors:—

Royalties at the rate of ½% (one half per centum) on the Licensee's nett turnover as hereinafter defined. The expression "nett turnover" where herein used shall subject to Provisos (ii) and (iii) hereof mean the total of nett invoice prices (whether or not paid and before deduction of settlement discounts) of all Broadcast Sound Receivers hereunder manufactured by or for the Licensee during the subsistence of this Licence and sold let on hire or put into use by the Licensee whether or not such Broadcast Sound

Receivers embody or utilise or are designed or intended to embody or utilise any invention the subject of any of the said Letters Patent including in such prices the value of everything (for example cabinets valves and batteries) normally incorporated in or forming part of complete Broadcast Sound Receivers and sold as part thereof but shall not include Purchase Tax or Customs Duties thereon. In the case of Broadcast Sound Receivers let on hire as distinct from those sold on hire-purchase and in the case of Broadcast Sound Receivers put into use by the Licensee the royalty payable in respect of such Broadcast Sound Receivers shall be the same as if a normal sale had been made at the time of hiring or putting into use and for that purpose the nett invoice price for inclusion in the Licensee's nett turnover shall be deemed to be the normal selling price. If the normal selling price cannot readily be ascertained a figure shall be mutually agreed but failing such agreement then the said selling price shall be decided in accordance with the provisions of Clause 5 hereof.

The aforementioned royalty rate shall be reduced by 50% (fifty per centum) in respect of all Broadcast Sound Receivers exported from the said territory. No Licence is granted or implied hereunder under any patent granted outside the said territory.

When the total of the royalties computed in accordance with this sub-clause (c) in respect of any year commencing January 1st on Broadcast Sound Receivers manufactured by or for the Licensee for ultimate supply to the final customers under the name or mark of the Licensee and as the Licensee's receivers reaches £1,000 (One thousand pounds) then the rate of royalty payable under this sub-clause (c) upon the subsequent nett turnover of the Licensee in respect of such Broadcast Sound Receivers supplied in that year shall be reduced to 0.02% (nought point nought two per centum).

Provided Always That:

(i) Royalty shall be payable upon all Broadcast Sound Receivers manufactured prior to but remaining unsold at the date of termination of this Licence and shall be calculated in accordance with the nett invoice prices and royalty rate current immediately prior to the date of such termination and licence plates shall be attached thereto.

(ii) In the event that the Licensee manufactures for and supplies Broadcast Sound Receivers to a party holding a similar licence from the Grantors that part of the nett turnover of the Licensee the party hereto in respect of such supplies shall be excluded from the Licensee's nett turnover for the purpose of computing the royalties payable hereunder by the Licensee.

(iii) In the event that the Licensee manufactures for and supplies Broadcast Sound Receivers to a party not being a party hereto and not holding a similar licence from Grantors for re-sale or letting on hire under a name or mark other than that of the Licensee then that part of the nett turnover of the Licensee relating thereto shall be shown and calculated separately in respect of each such other party. When the Licensee's royalties in respect of such supplies to any one such other party have reached £1,000 (One thousand pounds) in respect of any year commencing January 1st then the royalty rate for all further part of the nett turnover of the Licensee relating to that same other party for the same year shall be reduced to 0.02% (nought point nought two per centum).

If any such other party performs or has performed (for example on a chassis) further manufacturing or assembling operations on or makes additions to the said Broadcast Sound Receivers that part of the Licensee's nett turnover relating thereto shall be calculated upon the nett invoice prices of the final products or where these prices cannot be ascertained upon prices to be mutually agreed between the parties hereto. If the parties fail to reach agreement by the date at which payment of royalties in respect of such Broadcase Sound Receivers would normally have been due hereunder the prices shall be decided in accordance with the provisions of Clause 5 hereof and the Licensee's nett turnover in respect of such manufacture shall be calculated upon the prices so decided.

(d) To keep accounts of everything necessary to ensure accurate quarterly returns of all apparatus the prices of which are to be included in the net turnover under this agreement being rendered to such persons as the Grantors may designate to the Licensee from time to time and to render such returns upon the forms supplied by the Grantors within one month of each 31st March 30th June 30th September and 31st December and to forward within fourteen days after the end of the said one month a remittance for the royalty due.

(e) To pay to the Grantors upon all royalties unpaid after the expiry of fourteen days of the date or dates upon which returns are due according to the terms of the preceding sub-clause (d) an additional royalty equal to four per cent per annum on such unpaid royalties until the same have been paid.

(f) To permit auditors appointed by the Grantors to inspect all the books and accounts relative to this Licence at any time during the period hereof or within six months after the termination thereof and on the request of the Grantors to cause any quarterly return to be verified by the statutory declaration of the proper officer or auditors of the Licensee. Provided that the Licensee shall have the right to require that the auditor making such inspection shall be an independent auditor and that if the Licensee shall have failed to render accounts or if the accounts rendered by him are by such inspection shown to be inaccurate the Licensee shall pay the cost of such independent audit without prejudice to any other remedies or claims of the Grantors,

(g) Not to contest or assist others to contest the validity of any Letters Patent under which the Licensee receives licences hereunder. Provided however that the Licensee reserves the right to contest or assist others to contest the validity of any such Letters Patent in any proceedings relating to products other than those for which licences are by this agreement agreed to be given and in any proceedings if the result of such contestation might affect the validity or scope of one of the Licensee's own patents.

(h) Not to assign transfer mortgage grant sub-licences under or in any manner part with the possession or control or benefit of this Licence or any part of it without the previous written consent of the Grantors.

5. In the event of the failure of the parties to agree as to what is the normal selling prices as referred to in Clause 4(c) or the prices of the final products as referred to in Clause 4(c) Proviso (iii) then any such prices to be used as the basis for calculating royalties payable shall be fixed by reference to the Director for the time being of The Radio Industry Council or his nominee acting as a valuer but not as an arbitrator.

6. The Licensee agrees upon request to grant to the Grantors or to any one or more of them upon reasonable terms non-exclusive non-transferable licences (but with the right to sub-license subsidiary or associated companies) to make use exercise and vend all or any of the inventions the subject of British and/or Eireann Letters Patent applicable to Broadcast Sound Receivers in respect of which and insofar as the Licensee has or shall hereafter have the right to grant a licence for the purposes of manufacturing

using selling or letting on hire Broadcast Sound Receivers within the said territory.

7. The Grantors may determine this Licence at any time by notice in writing to the Licensee upon the happening of any of the following events:

(a) If any royalty return or any royalty payable is not rendered or is unpaid for thirty days after the due dates and remains unrendered or unpaid for seven days after notice in that behalf from the Grantors, or

(b) If there be any breach on the part of the Licensee of any other of the terms or conditions herein contained and the same be not remedied made good or desisted from within seven days of notice in that behalf from the Grantors, or

(c) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall have a receiver appointed or go into liquidation whether voluntary or compulsory, or

(d) If any Company which at any time during the subsistence of this Licence controls the Licensee or is under the same control as the Licensee and is engaged in any field of business to which this Licence is applicable does not hold or at the request of the Grantors does not accept within one month of such request a Licence upon the same terms and conditions as are contained in this Licence.

Any determination of this Licence shall be without prejudice to all claims of the Grantors against the Licensee for outstanding royalties or prior breaches of this Licence or otherwise.

8. Until further notice all returns remittances and communications for the Grantors under this Licence should be addressed and sent to Mr. F. C. Topham, Room 419, Marconi House, Strand, London, W.C.2 and all cheques made payable to Marconi's Wireless Telegraph Co. Ltd.

In Witness Whereof an Agent hereunto duly authorized has on behalf of the Grantors hereunto on their behalf set his hand and the Licensee has hereunder set his hand.

A Director of the Licensee hereunto duly authorised has hereunto on the Licensee's behalf set his hand the day and year first above written.

For and on behalf of:
The British-Thomson-Houston Company Limited,
Cinema-Television Limited,
Electric & Musical Industries Limited,
The General Electric Company Limited,
Marconi's Wireless Telegraph Company Limited,
Murphy Radio Limited,
Philips Electrical Industries Limited,
Pye Limited,
Standard Telephones and Cables Limited.

Signed by .... for and on behalf of the Grantors in the presence of:

Signed by ....
in the presence of:

For and on behalf of:

....
Limited.

....
Director.

Signed by ....
A Director of and for and on behalf of .... in the presence of:

DEFENDANT'S EXHIBIT NO. 67.

Exhibit N.

CBS 5/3/54

Licence A-7S. (2nd Edition)

An Agreement made this .... day of .... One thousand nine-hundred and fifty .... between the British Thomson-Houston Company Limited having its registered office at Crown House Aldwych London W.C.2 and Cinema-Television Limited having its registered office at Albion House 59 New Oxford Street London W.C.1, and Electric & Musical Industries, Limited, having its registered office at Blyth Road Hayes Middlesex and The General Electric Company Limited having its registered office at Magnet House Kingsway London W.C. 2 and Marconi's Wireless Telegraph Company Limited having its registered office at Marconi House Strand London W.C. 2 and Murphy Radio Limited having its registered office at 62 Brook Street London W. 1 and Philips Electrical Industries Limited having its Head Office at Century House Shaftesbury Avenue London W.C. 2 and Pye Limited having its registered office at Radio Works Cambridge and Standard Telephones and Cables Limited having its registered office at Connaught House Aldwych London W.C. 2 (hereinafter together called "the Grantors") of the first part and ....

of ....

....

(hereinafter called "the Licensee") of the second part

Whereas the Licensee has applied to the Grantors to grant and the Grantors have agreed to grant to the Licensee a Licence under their respective patent rights and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assesed Now It Is Hereby Agreed between the parties as follows:—

1. (a) The expression "Broadcast Sound Receivers" when herein used shall mean apparatus (whether or not equipped with electron discharge devices or equivalent devices) which is intended to receive and translate electrical oscillations modulated by sound signals not associated with vision signals which are broadcast to the public and which is intended for use for entertainment or education purposes or is of a type normally supplied to the public for domestic use Provided However that such expression shall include:—

(i) the following apparatus combined therewith or sold for combination therewith namely apparatus intended for the reproduction of sound from records (radiogramophones) frequency conversion units frequency modulation reception units and signal boosting apparatus.

(ii) broadcast sound receiving apparatus of the kind supplied by a broadcast sound relay service as the subscribers' terminal units.

(iii) sets of component parts as hereinafter defined. Provided Further that the expression "Broadcast Sound Receivers" shall Not include:—

any broadcast relay apparatus other than the terminal units referred to as included under item (ii) above, or

any apparatus combined with or sold for combination with television receiving apparatus.

(b) The expression "set of component parts" shall mean a number of component parts and/or assembled units which are capable of being put together so as substantially to constitute a Broadcast Sound Receiver.

(c) The expression "subsidiaries" where herein used

shall mean companies partnerships or businesses now or hereafter during the subsistence of this Licence directly or indirectly owned or controlled by the Licensee and domiciled within the said territory and engaged in any field of business to which this Licence is applicable.

(d) The expression "selling" or "sold" when herein used shall be deemed to include sales on hire-purchase.

2. (a) The Grantors grant and agree to grant to the Licensee subject to the terms and conditions herein appearing personal non-exclusive non-assignable licences to use and exercise all or any of the inventions the subject of any British and Eireann (or Channel Islands) Letters Patent applicable to Broadcast Sound Receivers in respect of which and insofar as the Grantors or any of them respectively now have or may hereafter during the subsistence of this Licence have the right to grant Licences for the purposes and on the terms hereof (which Letters Patent are herein collectively called "the said Letters Patent") for the purposes of manufacturing Broadcast Sound Receivers within Great Britain Northern Ireland Eire the Channel Islands and the Isle of Man (hereinafter called "the said territory") and of using selling or letting on hire such Broadcast Sound Receivers so manufactured hereunder. The Licence to manufacture shall include a licence to have Broadcast Sound Receivers manufactured for the Licensee by others but only for sale under the trade marks or trade names of the Licensee.

(b) The Licence shall be deemed to have commenced on January 1st, 1953 and shall continue until December 31st, 1957 unless previously determined as hereinafter provided.

(c) Nothing contained herein shall be deemed to license the licensee under the said Letters Patent to manufacture sell or let on hire:—

(i) electron discharge devices or equivalent devices or lamps of any kind.

(ii) materials or component parts for sale separately (materials or components parts—other than items included in 2(c) (i) above—which are actually incorporated in or form part of Broadcast Sound Receivers are included in this Licence).

(iii) any apparatus not included within the expression "Broadcast Sound Receivers."

(d) Any licences herein granted or agreed to be granted under any Letters Patent in respect of which the rights of the Grantors or any of them to grant licences are subject to limitations shall be subject to the same limitations. Licenses under patent rights derived by any of the Grantors from third parties under agreements which require the payment of royalties or other deferred payments based on the use of the inventions or acceptance of terms or conditions other than those herein contained are excluded from the licences herein granted. But (so far as any of the Grantors have the right to grant the same) the Licensee may obtain licenses as described in Clauses 2(a) and 2(b) hereof under such patent rights by signifying to the Grantors, within two months after receiving from the Grantors notice of such royalties terms and conditions, and in such manner as they may require his acceptance of such terms and conditions and his agreement to pay to the Grantors such additional royalty or deferred payment as aforesaid as may be required to enable the Grantors out of the total royalty paid by the Licensee both to retain the royalties payable under Clause 4(e) hereof and to pay the royalty or other deferred payment based on the Licensee's use of the inventions which is or may be required by such agreements to be paid by the Grantors or any of them to such third parties. Any such additional royalties payable hereunder shall be shown separately in the returns hereinafter mentioned.

3. Notwithstanding the provisions of Clause 2(a) here-

of the Licensee agrees that for the purposes of this Agreement all subsidiaries shall be deemed to be parts or departments of the Licensee and the Licensee undertakes full responsibility hereunder on their behalf accordingly.

4. The Licensee agrees with the Grantors as follows:

(a) Not without the previous written consent of the Grantors to sell within the said territory any Broadcast Sound Receiver which has not been manufactured in the territory for which this Licence is granted. No Broadcast Sound Receiver shall be deemed to have been so manufactured within the meaning of this Licence which incorporates imported components to an extent per Broadcast Sound Receiver greater in value than ten per cent of the retail list price thereof. Licensee will if so requested furnish information as to the value of any such imported and incorporated components.

(b) To cause to be attached in a prominent position to all Broadcast Sound Receivers sold let on hire or put into use by the Licensee, a licence plate in accordance with a design and wording authorized and notified by the Grantors to the Licensee which plate shall bear a serial number allocated by the Grantors. Such plates may be obtained from the Grantors at cost price. No plates shall be disposed of by the Licensee except as herein provided and upon the termination of this Licence all unused plates except those required under proviso (i) of Clause 4 subclause (c) thereof shall be delivered up to the Grantors for destruction.

(c) To pay to the Grantors:—

Royalties at the rate of ½% (one half per centum) on the Licensee's nett turnover as hereinafter defined. The expression "nett turnover" where herein used shall subject to Provisos (ii) and (iii) hereof mean the total of nett invoice prices (whether or not paid and before deduction of settlement discounts) of all Broadcast Sound Receivers hereunder manufactured by or for the Licensee during the subsistence of this Licence and sold let on hire or put into use by the Licensee whether or not such Broadcast Sound Receivers embody or utilise or are designed or intended to embody or utilise any invention the subject of any of the said Letters Patent including in such prices the value of everything (for example cabinets valves and batteries) normally incorporated in or forming part of complete Broadcast Sound Receivers and actually include) as part thereof [at the time of sale] but shall not include Purchase Tax or Customs Duties thereon. In the case of Broadcast Sound Receivers let on hire as distinct from those sold on hire-purchase and in the case of Broadcast Sound Receivers put into use by the Licensee the royalty payable in respect of such Broadcast Sound Receivers shall be the same as if a normal sale had been made at the time of hiring or putting into use and for that purpose the nett invoice price for inclusion in the Licensee's nett turnover shall be deemed to be the normal selling price. If the normal selling price cannot readily be ascertained a figure shall be mutually agreed but failing such agreement then the said selling price shall be decided in accordance with the provisions of Clause 5 hereof.

The aforementioned royalty rate shall be reduced by 50% (fifty per centum) in respect of all Broadcast Sound Receivers exported from the said territory. No Licence is granted or implied hereunder under any patent granted outside the said territory.

When the total of the royalties computed in accordance with this sub-clause (c) in respect of any year commencing January 1st on Broadcast Sound Receivers manufactured by or for the Licensee for ultimate supply to the final customers under the name or mark of the Licensee and as the Licensee's receivers or exported reaches £1,000 (One thousand pounds) then the rate of royalty payable under this sub-clause (c) upon the subsequent nett turnover of the Licensee in respect of such Broadcast Sound Receivers supplied in that year shall be reduced to 0.02% (nought point nought two per centum).

Provided Always That

(i) Royalty shall be payable upon all Broadcast Sound Receivers manufactured prior to but remaining unsold at the date of termination of this Licence and shall be calculated in accordance with the nett invoice prices and royalty rate current immediately prior to the date of such termination and licence plates shall be attached thereto.

(ii) In the event that the Licensee manufactures for and supplies Broadcast Sound Receivers to a party holding a similar licence from the Grantors that part of the nett turnover of the Licensee the party hereto relating to such supplies shall be excluded from the Licensee's nett turnover for the purpose of computing the royalties payable hereunder by the Licensee.

(iii) In the event that the Licensee manufactures for and supplies Broadcast Sound Receivers to a party (in the said territory) not being a party hereto and not holding a similar licence from the Grantors for re-sale or letting on hire under a name or mark other than that of the Licensee then that part of the nett turnover of the Licensee relating thereto shall be shown and calculated separately in respect of each such other party. When the Licensee's royalties in respect of such supplies to any one such other party have reached £1,000 (One thousand pounds) in respect of any year commencing January 1st then the royalty rate for all further part of the nett turnover of the Licensee relating to the same other party for the same year shall be reduced to 0.02% (nought point nought two per centum).

If any such other party performs or has performed (for example on a chassis) further manufacturing or assembling operations on or makes additions to the said Broadcast Sound Receivers that part of the Licensee's nett turnover relating thereto shall be calculated upon the nett invoice prices of the final products or where these prices cannot be ascertained upon prices to be mutually agreed between the parties hereto. If the parties fail to reach agreement by the date at which payment of royalties in respect of such Broadcast Sound Receivers would normally have been due hereunder the prices shall be decided in accordance with the provisions of Clause 5 hereof and the Licensee's nett turnover in respect of such manufacture shall be calculated upon the prices so decided.

(d) To keep accounts of everything necessary to ensure accurate quarterly returns of all apparatus the prices of which are to be included in the nett turnover under this agreement being rendered to such person as the Grantors may designate to the Licensee from time to time and to render such returns upon the forms supplied by the Grantors within one month of each 31st March 30th June 30th September and 31st December and to forward within fourteen days after the end of the said one month a remittance for the royalty due.

(e) To pay to the Grantors upon all royalties unpaid after the expiry of fourteen days of the date or dates upon which returns are due according to the terms of the preceding sub-clause (d) an additional royalty equal to four per cent per annum on such unpaid royalties until the same have been paid.

(f) To permit auditors appointed by the Grantors to inspect all the books and accounts relative to this Licence at any time during the period hereof or within six months after the termination thereof and on the request of the

Grantors to cause any quarterly return to be verified by the statutory declaration of the proper officer or auditors of the Licensee. Provided that the Licensee shall have the right to require that the auditor making such inspection shall be an independent auditor and that if the Licensee shall have failed to render accounts or if the accounts rendered by him are by such inspection shown to be inaccurate the Licensee shall pay the cost of such independent audit without prejudice to any other remedies or claims of the Grantors.

(g) Not to contest or assist others to contest the validitiy of any Letters Patent under which the Licensee receives licences hereunder. Provided however that the Licensee reserves the right to contest or assist others to contest the validity of any such Letters Patent in any proceedings relating to products of a kind other than Broadcast Sound Receivers and in any proceedings if the result of such contestation might affect the validity or scope of one of the Licensee's own patents.

(h) Not to assign transfer mortgage grant sub-licences under or in any manner part with the possession of control or benefit of this Licence or any part of it without the previous written consent of the Grantors.

5. In the event of the failure of the parties to agree as to what is the normal selling prices as referred to in Clause 4(c) or the prices of the final products as referred to in Clause 4(c) Proviso (iii) then any such prices to be used as the basis for calculating royalties payable shall be fixed by reference to the Director for the time being of The Radio Industry Council or his nominee acting as a valuer but not as an arbitrator.

6. The Licensee agrees upon request to grant to the Grantors or to any one or more of them upon reasonable terms non-exclusive non-transferable licences (but with the right to sub-license subsidiary or associated companies) to

make use exercise and vend all or any of the inventions the subject of any British Eireann or Channel Islands Letters Patent applicable to Broadcast Sound Receivers in respect of which and insofar as the Licensee has or shall hereafter have the right to grant a licence for the purposes of manufacturing using selling or letting on hire Broadcast Sound Receivers within the said territory.

7. The Grantors may determine this Licence at any time by notice in writing to the Licensee upon the happening of any of the following events:—

(a) If any royalty return or any royalty payable is not rendered or is unpaid for thirty days after the due dates and remains unrendered or unpaid for seven days after notice in that behalf from the Grantors, or

(b) If there be any breach on the part of the Licensee of any other of the terms or conditions herein contained and the same be not remedied made good or desisted from within seven days of notice in that behalf from the Grantors, or

(c) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall have a receiver appointed or go into liquidation whether voluntary or compulsory, or

(d) If any Company which at any time during the subsistence of this Licence controls the Licensee or is under the same control as the Licensee and is engaged in any field of business to which this Licence is applicable does not hold or at the request of the Grantors does not accept within one month of such request a Licence upon the same terms and conditions as are contained in this Licence.

Any determination of this Licence shall be without prejudice to all claims of the Grantors against the Licensee for outstanding royalties or prior breaches of this Licence or otherwise.

8. Until further notice all returns remittances and communications for the Grantors under this Licence shall be addressed and sent to Mr. F. C. Topham, Room 419, Marconi House, Strand, London, W.C.2 and all cheques made payable to Marconi's Wireless Telegraph Co. Ltd.

In Witness Whereof an Agent hereunto duly authorised has on behalf of the Grantors hereunto on their behalf set his hand and the Licensee has hereunder set his hand.

A Director of the Licensee hereunto duly authorised has hereunto on the Licensee's behalf set his hand the day and year first above written.

Signed by ....
for and on behalf of the
Grantors in the presence of:

For and on behalf of:
The British Thomson-Houston Company Limited.
Cinema-Television Limited.
Electric & Musical Industries Limited.
The General Electric Company Limited.
Marconi's Wireless Telegraph Company Limited.
Murphy Radio Limited.
Philips Electrical Industries Limited.
Pye Limited.
Standard Telephones and Cables Limited.

Signed by ....
in the presence of:

....

Signed by ....
a Director of and for and on
behalf of ....
in the presence of ....

For and on behalf of:

....

Limited.

....

Director.

DEFENDANT'S EXHIBIT NO. 68.

Licence A7—T.

An Agreement made this .... day of ...., One thousand nine hundred and fifty .... Between The British Thomson-Houston Company Limited having its registered office at Crown House, Aldwych London W.C.2 and Cinema-Television Limited having its registered office at Albion House 59 New Oxford Street London W.C.1 and Electric & Musical Industries Limited having its registered office at Blyth Road Hayes Middlesex and The General Electric Company Limited having its registered office at Magnet House Kingsway London W.C.2 and Marconi's Wireless Telegraph Company Limited having its registered office at Marconi House Strand London W.C.2 and Murphy Radio Limited having its registered office at 62 Brook Street London W.1 and Philips Electrical Industries Limited having its Head Office at Century House Shaftesbury Avenue London W.C.2 and Pye Limited having its registered office at Radio Works Cambridge and Standard Telephones and Cables Limited having its registered office at Connaught House Aldwych London W.C.2 (hereinafter together called "the Grantors") of the first part and .... of .... (hereinafter .... called "the Licensee") of the second part

Whereas the Licensee has applied to the Grantors to grant and the Grantors have agreed to grant to the Licensee a Licence under their respective patent rights and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed Now It Is Hereby Agreed between the parties as follows:—

1(a). The expression "Television Receivers" when herein used shall mean apparatus (whether or not equipped with electron discharge devices or equivalent devices) which is intended to receive and translate electrical oscillations modulated by vision and associated sound signals which are broadcast to the public and which is intended for use for entertainment or education purposes or is of a type normally supplied to the public for domestic use Provided However that such expression shall include:—

(i) the following apparatus combined therewith or sold for combination therewith namely apparatus intended for the reception and translation of electrical oscillations modulated by sound signals which are broadcast to the public but are not accompanied by vision signals (hereinafter referred to as "sound only receiving apparatus") apparatus intended for the reproduction of sound from records (hereinafter referred to as "gramophone apparatus") and signal boosting apparatus.

(ii) television receiving apparatus of the kind supplied by a broadcast television relay service as the subscribers' terminal units.

(iii) sets of component parts as hereinafter defined. Provided Further that the expression "Television Receivers" shall Not include:—

any broadcast relay apparatus other than the terminal units referred to as included under item (ii) above, or

Television Receivers adapted for producing a picture larger than 30 square feet.

(b) The expression "set of component parts" shall mean a number of component parts and/or assembled units which are capable of being put together so as substantially to constitute a Television Receiver.

(c) The expression "subsidiaries" where herein used

shall mean companies partnerships or businesses now or hereafter during the subsistence of this Licence directly or indirectly owned or controlled by the Licensee and domiciled within the said territory and engaged in any field of business to which this Licence is applicable.

(d) The expression "Selling" or "sold" when herein used shall be deemed to include sales on hire-purchase.

2. (a) The Grantors grant and agree to grant to the Licensee subject to the terms and conditions herein appearing personal non-exclusive non-assignable licences to use and exercise all or any of the inventions the subject of any British and any Eireann Letters Patent applicable to Television Receivers in respect of which and insofar as the Grantors or any of them respectively now have or may hereafter during the subsistence of this Licence have the right to grant Licences for the purposes and on the terms hereof (which Letters Patent are herein collectively called "the said Letters Patent") for the purposes of manufacturing Television Receivers within Great Britain Northern Ireland Eire the Channel Islands and the Isle of Man (hereinafter called "the said territory") and of using selling or letting on hire such Television Receivers so manufactured hereunder. The Licence to manufacture shall include a licence to have Television Receivers manufactured for the Licensee by others but only for sale under the trade marks or trade names of the Licensee.

(b) The Licence shall be deemed to have commenced on January 1st, 1953 and shall continue until December 31st, 1957 unless previously determined as hereinafter provided.

(c) Nothing contained herein shall be deemed to license the Licensee under the said Letters Patent to manufacture sell or let on hire:

(i) electron discharge devices or equivalent devices or lamps of any kind.

(ii) materials or component parts for sale separately (materials or component parts—other than items included in 2(c)(i) above—which are actually incorporated in or form part of Television Receivers are included in this License).

(iii) any apparatus not included within the expression "Television Receivers".

(d) Any licences herein granted or agreed to be granted under any Letters Patent in respect of which the rights of the Grantors or any of them to grant licences are subject to limitations shall be subject to the same limitations. Licences under patent rights derived by any of the Grantors from third parties under agreements which require the payment of royalties or other deferred payments based on the use of the inventions or acceptance of terms or conditions other than those herein contained are excluded from the licences herein granted. But (so far as any of the Grantors have the right to grant the same) the Licensee may obtain licences as described in Clauses 2(a) and 2(b) hereof under such patent rights by signifying to the Grantors, within two months after receiving from the Grantors notice of such royalties terms and conditions, and in such manner as they require his acceptance of such terms and conditions and his agreement to pay to the Grantors such additional royalty or deferred payment as aforesaid as may be required to enable the Grantors out of the total royalty paid by the Licensee both to retain the royalties payable under Clause 4(c) hereof and to pay the royalty or other deferred payment based on the Licensee's use of the inventions which is or may be required by such agreements to be paid by the Grantors or any of them to such third parties. Any such additional royalties payable hereunder shall be shown separately in the returns hereinafter mentioned.

3. Notwithstanding the provisions of Clause 2(a) hereof the Licensee agrees that for the purposes of this Agreement all subsidiaries shall be deemed to be parts or departments of the Licensee and the Licensee undertakes full responsibility hereunder on their behalf accordingly.

4. The Licensee agrees with the Grantors as follows:

(a) Not without the previous written consent of the Grantors to sell within the said territory any Television Receiver which has not been manufactured in the territory for which this License is granted. No Television Receiver shall be deemed to have been so manufactured within the meaning of this Licence which incorporates imported components to an extent per Television Receiver greater in value than ten per cent of the retail list price thereof. The Licensee will if so requested furnish information as to the value of any such imported and incorporated components.

(b) To cause to be attached in a prominent position to all Television Receivers sold let on hire or put into use by the Licensee a license plate in accordance with a design and wording authorised and notified by the Grantors to the Licensee which plate shall bear a serial number allocated by the Grantors. Such plates may be obtained from the Grantors at cost price. No plates shall be disposed of by the Licensee except as herein provided and upon the termination of this Licence all unused plates except those required under proviso (i) of Clause 4 sub-clause (c) hereof shall be delivered up to the Grantors for destruction.

(c) To pay to the Grantors:

Royalties at the following rates:

On the Licensee's nett turnover as hereinafter defined of Television Receivers which incorporate both sound only receiving apparatus and gramophone apparatus 2%

On the Licensee's nett turnover as hereinafter defined of Television Receivers which incorporate either sound only receiving appartus or gramophone apparatus but not both 2½%

On the Licensee's nett turnover as hereinafter defined of all other Television Receivers 3%

The expression "nett turnover" where herein used shall subject to Provisos (ii) and (iii) hereof mean the total of nett invoice prices (whether or not paid and before deduction of settlement discounts) of all Television Receivers hereunder manufactured by or for the Licensee during the subsistence of this Licence and sold let on hire or put into use by the Licensee whether or not such Television Receivers embody or utilise or are designed or intended to embody or utilise any invention the subject of any of the said Letters Patent including in such prices the value of everything (for example cabinets valves and cathode ray tubes) normally incorporated in or forming part of complete Television Receivers and sold as part thereof but shall not include Purchase Tax or Customs Duties thereon. In the case of Television Receivers let on hire as distinct from those sold on hire-purchase and in the case of Television Receivers put into use by the Licensee the royalty payable in respect of such Television Receivers shall be the same as if a normal sale had been made at the time of hiring or putting into use and for that purpose the nett invoice price for inclusion in the Licensee's nett turnover shall be deemed to be the normal selling price. If the normal selling price cannot readily be ascertained a figure shall be mutually agreed but failing such agreement then the said selling price shall be decided in accordance with the provisions of Clause 5 hereof.

The aforementioned royalty rates shall be reduced by 50% (fifty per centum) in respect of all Television Receivers exported from the said territory. No Licence is granted or implied hereunder under any patent granted outside the said territory.

When the total of the royalties computed in accordance with this sub-clause (c) in respect of any year commencing January 1st on Television Receivers manufactured by or for the Licensee for ultimate supply to the final customers under the name or mark of the Licensee and as the Licensee's receivers reaches £25,000 (Twenty five thousand pounds) then the rates of royalty payable under this sub-clause (c) upon the subsequent nett turnover of the Licensee in respect of such Television Receivers supplied in that year shall be reduced to 0.02% (nought point nought two per centum).

Provided Always That

(i) Royalty shall be payable upon all Television Receivers manufactured prior to but remaining unsold at the date of termination of this Licence and shall be calculated in accordance with the nett invoice prices and royalty rates current immediately prior to the date of such termination and licence plates shall be attached thereto.

(ii) In the event that the Licensee manufactures for and supplies Television Receivers to a party holding a similar licence from the Grantors that part of the nett turnover of the Licensee the party hereto in respect of such supplies shall be excluded from the Licensee's nett turnover for the purpose of computing the royalties payable hereunder by the Licensee.

(iii) In the event that the Licensee manufactures for and supplies Television Receivers to a party not being a party hereto and not holding a similar licence from the Grantors for re-sale or letting on hire under a name or mark other than that of the Licensee then that part of the nett turnover of the Licensee relating thereto shall be shown and calculated separately in respect of each such other party. When the Licensee's royalties in respect of such supplies to any one such other party have reached £25,000 (Twenty five thousand pounds) in respect of any year commencing January 1st then the royalty rates for all further part of the nett turnover of the Licensee relating to that same other party for the same year shall be reduced to 0.02% (nought point nought two per centum).

If any such other party performs or has performed (for example on a chassis) further manufacturing or assembling operations on or makes additions to the said Television Receivers that part of the Licensee's nett turnover relating thereto shall be calculated upon the nett invoice prices of the final products or where these prices cannot be ascertained upon prices to be mutually agreed between the parties hereto. If the parties fail to reach agreement by the date at which payment of royalties in respect of such Television Receivers would normally have been due hereunder the prices shall be decided in accordance with the provisions of Clause 5 hereof and the Licensee's nett turnover in respect of such manufacture shall be calculated upon the prices so decided.

(d) To keep accounts of everything necessary to ensure accurate quarterly returns of all apparatus the prices of which are to be included in the nett turnover under this agreement being rendered to such person as the Grantors may designate to the Licensee from time to time and to render such returns upon the forms supplied by the Grantors within one month of each 31st March 30th June 30th September and 31st December and to forward within fourteen days after the end of the said one month a remittance for the royalty due.

(e) To pay to the Grantors upon all royalties unpaid after the expiry of fourteen days of the date or dates upon which returns are due according to the terms of the preceding sub-clause (d) an additional royalty equal to four per centum per annum on such unpaid royalties until the same have been paid.

(f) To permit auditors appointed by the Grantors to inspect all the books and accounts relative to this Licence at any time during the period hereof or within six months after the termination thereof and on the request of the Grantors to cause any quarterly return to be verified by the statutory declaration of the proper officer or auditors of the Licensee. Provided that the Licensee shall have the right to require that the auditor making such inspection shall be an independent auditor and that if the Licensee shall have failed to render accounts or if the accounte rendered by him are by such inspection shown to be inaccurate the Licensee shall pay the cost of such independent audit without prejudice to any other remedies or claims of the Grantors.

(g) Not to contest or assist others to contest the validity of any Letters Patent under which the Licensee receives licences hereunder. Provided however that the Licensee reserves the right to contest or assist others to contest the validity of any such Letters Patent in any proceeding relating to products other than those for which licences are by this Agreement agreed to be given and in any proceedings if the result of such contestation might affect the validity or scope of one of the Licensee's own patents.

(h) Not to assign transfer mortgage grant sub-licences under or in any manner part with the possession or control or benefit of this License or any part of it without the previous written consent of the Grantors.

5. In the event of the failure of the parties to agree as to what is the normal selling prices as referred to in

Clause 4(c) or the prices of the final products as referred to in Clause 4(c) Proviso (iii) then any such prices to be used as the basis for calculating royalties payable shall be fixed by reference to the Director for the time being of The Radio Industry Council or his nominee acting as a valuer but not as an arbitrator.

6. The Licensee agrees upon request to grant to the Grantors or to any one or more of them upon reasonable terms non-exclusive non-transferable licences (but with the right to sub-license subsidiary or associated companies) to make use exercise and vend all or any of the inventions the subject of British and/or Eireann Letters Patent applicable to Television Receivers in respect of which and insofar as the Licensee has or shall hereafter have the right to grant a licence for the purposes of manufacturing using selling or letting on hire Television Receivers within the said territory.

7. The Grantors may determine this Licence at any time by notice in writing to the Licensee upon the happenting of any of the following events:—

(a) If any royalty return or any royalty payable is not rendered or is unpaid for thirty days after the due dates and remains unrendered or unpaid for seven days after notice in that behalf from the Grantors, or

(b) If there be any breach on the part of the Licensee of any other of the terms or conditions herein contained and the same be not remedied made good or desisted from within seven days of notice in that behalf from the Grantors, or

(c) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall have a receiver appointed or go into liquidation whether voluntary or compulsory, or

(d) If any Company which at any time during the subsistence of this Licence controls the Licensee or is under the same control as the Licensee and is engaged in any field of business to which this Licence is applicable does not hold or at the request of the Grantors does not accept within one month of such request a Licence upon the same terms and conditions as are contained in this Licence.

Any determination of this Licence shall be without prejudice to all claims of the Grantors against the Licensee for outstanding royalties or prior breaches of this Licence or otherwise.

8. Until further notice all returns remittances and communications for the Grantors under this Licence should be addressed and sent to Mr. F. C. Topham, Room 419, Marconi House, Strand, London, W.C.2 and all cheques made payable to Marconi's Wireless Telegraph Co., Ltd.

In Witness Whereof an Agent hereunto duly authorized has on behalf of the Grantors hereunto on their behalf set his hand and the Licensee has hereunder set his hand.

A Director of the Licensee hereunto duly authorised has hereunto on the Licensee's behalf set his hand the day and year first above written.

For and on behalf of:

The British Thompson-Houston Limited

Cinema-Television Limited

Electric & Musical Industries Limited

The General Electric Company Limited

Marconi's Wireless Telegraph Company Limited

Murphy Radio Limited

Philips Electrical Industries Limited

Pye Limited

Standard Telephones and Cables Limited

Signed by ....
for and on behalf of the Grantors
in the presence of ....

Signed by ....
in the presence of:

For and on behalf of:

....

Limited,

....

Director.

Signed by ....
A Director of and for and on behalf
of .... in
the presence of:

DEFENDANT'S EXHIBIT NO. 69.

Exhibit M

Licence A7—T. (2nd Edition)

An Agreement made this .... day of .... One thousand nine hundred and fifty .... Between The British Thomson-Houston Company Limited having its registered office at Crown House Aldwych London W.C.2 and Cinema-Television Limited having its registered office at Albion House 59 New Oxford Street London W.C.1 and Electric & Musical Industries Limited having its registered office at Blyth Road Hayes Middlesex and The General Electric Company Limited having its registered office at Magnet House Kingsway London W.C.2 and Marconi's Wireless Telegraph Company Limited having its registered office at Marconi House Strand London W.C.2 and Murphy Radio Limited having its registered office at 62 Brook Street London W.1 and Philips Electrical Industries Limited having its Head Office at Century House Shaftesbury Avenue London W.C.2 and Pye Limited having its registered office at Radio Works Cambridge and Standard Telephones And Cables Limited having its registered office at Connaught House Aldwych London W.C.2 (hereinafter together called "the Grantors") of the first part and .... of .... (hereinafter called "the Licensee") of the second part

Whereas the Licensee has applied to the Grantors to grant and the Grantors have agreed to grant to the Licensee a Licence under their respective patent rights and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed Now It Is Hereby Agreed between the parties as follows:—

1. (a) The expression "Television Receivers" when

herein used shall mean apparatus (whether or not equipped with electron discharge devices or equivalent devices) which is intended to receive and translate electrical oscillations modulated by vision and associated sound signals which are broadcast to the public and which is intended for use for entertainment or education purposes or is of a type normally supplied to the public for domestic use Provided However that such expression shall include:—

(i) the following apparatus combined therewith or sold for combination therewith namely apparatus intended for the reception and translation of electrical oscillations modulated by sound signals which are broadcast to the public but are not accompanied by vision signals (hereinafter referred to as "sound only receiving apparatus") apparatus intended for the reproduction of sound from records (hereinafter referred to as "gramophone apparatus") [frequency conversion units frequency modulation reception units] and signal boosting apparatus.

(ii) television receiving apparatus of the kind supplied by a broadcast television relay service as the subscribers' terminal units.

(iii) sets of component parts as hereinafter defined. Provided Further that the expression "Television Receivers" shall Not include:—

any broadcast relay apparatus other than the terminal units referred to as included under item (ii) above, or

Television Receivers adapted for producing a picture larger than 30 square feet.

(b) The expression "set of component parts" shall mean a number of component parts and/or assembled units which are capable of being put together so as substantially to constitute a Television Receiver.

(c) The expression "subsidiaries" where herein used

shall mean companies partnerships or businesses now or hereafter during the subsistence of this Licence directly or indirectly owned or controlled by the Licensee and domiciled within the said territory and engaged in any field of business to which this Licence is applicable.

(d) The expression "selling" or "sold" when herein used shall be deemed to include sales on hire-purchase.

2. (a) The Grantors grant and agree to grant to the Licensee subject to the terms and conditions herein appearing personal non-exclusive non-assignable licences to use and exercise all or any of the inventions the subject of any British [handwritten insert: and any] Eireann or Channel Island Letters Patent applicable to Television Receivers in respect of which and insofar as the Grantors or any of them respectively now have or may hereafter during the subsistence of this Licence have the right to grant Licences for the purposes and on the terms hereof (which Letters Patent are herein collectively called "the said Letters Patent") for the purposes of manufacturing Television Receivers within Great Britain Northern Ireland Eire the Channel Islands and the Isle of Man (hereinafter called "the said territory") and of using selling or letting on hire such Television Receivers so manufactured hereunder. The Licence to manufacture shall include a licence to have Television Receivers manufactured for the Licensee by others but only for sale under the trade marks or trade names of the Licensee.

(b) The Licence shall be deemed to have commenced on January 1st, 1953 and shall continue until December 31st, 1957 unless previously determined as hereinafter provided.

(c) Nothing contained herein shall be deemed to license the Licensee under the said Letters Patent to manufacture sell or let on hire:—

(i) electron discharge devices or equivalent devices, or lamps of any kind.

(ii) materials or component parts for sale separately (materials or component parts—other than items included in 2(c) (i) above—which are actually incorporated in or form part of Television Receivers are included in this Licence).

(iii) any apparatus not included within the expression "Television Receivers".

(d) Any licences herein granted or agreed to be granted under any Letters Patent in respect of which the rights of the Grantors or any of them to grant licences are subject to limitations shall be subject to the same limitations. Licences under patent rights derived by any of the Grantors from third parties under agreements which require the payment of royalties or other deferred payments based on the use of the inventions or acceptance of terms or conditions other than those herein contained are excluded from the licences herein granted. But (so far as any of the Grantors have the right to grant the same) the Licensee may obtain licences as described in Clauses 2(a) and 2(b) hereof under such patent rights by signifying to the Grantors, within two months after receiving from the Grantors notice of such royalties terms and conditions, and in such manner as they require his acceptance of such terms and conditions and his agreement to pay to the Grantors such additional royalty or deferred payment as aforesaid as may be required to enable the Grantors out of the total royalty paid by the Licensee both to retain the royalties payable under Clause 4(c) hereof and to pay the royalty or other deferred payment based on the Licensee's use of the inventions which is or may be required by such agreements to be paid by the Grantors or any of them to such third parties. Any such additional royalties payable hereunder shall be shown separately in the returns hereinafter mentioned.

3. Notwithstanding the provisions of Clause 2(a) hereof the Licensee agrees that for the purposes of this Agreement

all subsidiaries shall be deemed to be parts or departments of the Licensee and the Licensee undertakes full responsibility hereunder on their behalf accordingly.

4. The Licensee agrees with the Grantors as follows:—

(a) Not without the previous written consent of the Grantors to sell within the said territory any Television Receiver which has not been manufactured in the territory for which this Licence is granted. No Television Receiver shall be deemed to have been so manufactured within the meaning of this Licence whic incorporates imported components to an extent per Television Receiver greater in value than ten per cent of the retail list price thereof. The Licensee will if so requested furnish information as to the value of any such imported and incorporated components.

(b) To cause to be attached in a prominant position to all Television Receivers sold let on hire or put into use by the Licensee a licence plate in accordance with a design and wording authorized and notified by the Grantors to the Licensee which plate shall bear a serial number allocated by the Grantors. Such plates may be obtained from the Grantors at cost price. No plates shall be disposed of by the Licensee except as herein provided and upon the termination of this Licence all unused plates except those required under proviso (i) of Clause 4 sub-clause (c) hereof shall be delivered up to the Grantors for destruction.

(c) To pay to the Grantors:—

Royalties [on the Licensee's nett turnover as hereinafter defined] at the following rates:—

[On the first £150,000 (£1 to £150,000) of nett turnover in each year ending December 31st........	3%
On the next £150,000 (£150,001 to £300,000) of nett turnover in each such year or part thereof....	2½%
On all subsequent nett turnover in each such year or part thereof	2%

The above rates shall be reduced by 33⅓% in respect of that portion of the Licensee's nett turnover which shall relate to television receivers incorporating both sound only receiving apparatus and gramophone apparatus and 16⅔% in respect of that portion of the Licensee's nett turnover which shall relate to television receivers incorporating sound only receiving apparatus or gramophone apparatus but not both.]

The expression "nett turnover" where herein used shall subject to Provisos (ii) and (iii) hereof mean the total of nett invoice prices (whether or not paid and before deduction of settlement discounts) of all Television Receivers hereunder manufactured by or for the Licensee during the subsistence of this Licence and sold let on hire or put into use by the Licensee whether or not such Television Receivers embody or utilise or are designed or intended to embody or utilise any invention the subject of any of the said Letters Patent including in such prices the value of everything (for example cabinets valves and cathode ray tubes) normally incorporated in or forming part of complete Television Receivers and actually included as part thereof at the time of sale but shall not include Purchase Tax or Custom Duties thereon. In the case of Television Receivers let on hire as distinct from those sold on hire-purchase and in the case of Television Receivers put into use by the Licensee the royalty payable in respect of such Television Receivers shall be the same as if a normal sale had been made at the time of hiring or putting into use and for that purpose the nett invoice price for inclusion in the Licensee's nett turnover shall be deemed to be the normal selling price. If the normal selling price cannot readily be ascertained a figure shall be mutually agreed but failing such agreement then the said selling price shall be decided in accordance with the provisions of Clause 5 hereof.

The aforementioned royalty rates shall be reduced by 50% (fifty per centum) in respect of all Television Receivers exported from the said territory. No Licence is granted or implied hereunder under any patent granted outside the said territory.

When the total of the royalties computed in accordance with this sub-clause (c) in respect of any year commencing January 1st on Television Receivers manufactured by or for the Licensee for ultimate supply to the final customers under the name or mark of the Licensee and as the Licensee's receivers [or exported] reaches £25,000 (Twenty five thousand pounds) then the rates of royalty payable under this sub-clause (c) upon the subsequent nett turnover of the Licensee in respect of such Television Receivers supplied in that year shall be reduced to 0.02% (nought point nought two per centum).

Provided Always That

(i) Royalty shall be payable upon all Television Receivers manufactured prior to but remaining unsold at the date of termination of this Licence and shall be calculated in accordance with the net invoice prices and royalty rates current immediately prior to the date of such termination and the licence plates shall be attached thereto.

(ii) In the event that the Licensee manufactures for and supplies Television Receivers to a party holding a similar licence from the Grantors that part of the nett turnover of the Licensee the party hereto relating to such supplies shall be excluded from the Licensee's nett turnover for the purpose of computing the royalties payable hereunder by the Licensee.

(iii) In the event that the Licensee manufactures for and supplies Television Receivers to a party in [the said territory] not being a party hereto and not holding a similar licence from the Grantors for re-sale or letting on hire under a name or mark other than that of the Licensee then that part of the nett turnover of the Licensee relating thereto shall be shown and calculated separately in respect of each such other party. When the Licensee's royalties in respect of such supplies to any one such other party have reached £25,000 (Twenty five thousand pounds) in respect of any year commencing January 1st then the royalty rates for all further part of the nett turnover of the Licensee relating to that same other party for the same year shall be reduced to 0.02% (nought point nought two per centum).

If any such other party performs or has performed (for example on a chassis) further manufacturing or assembling operations on or makes additions to the said Television Receivers that part of the Licensee's nett turnover relating thereto shall be calculated upon the nett invoice prices of the final products or where these prices cannot be ascertained upon prices to be mutually agreed between the parties hereto. If the parties fail to reach agreement by the date at which payment of royalties in respect of such Television Receivers would normally have been due hereunder the prices shall be decided in accordance with the provisions of Clause 5 hereof and the Licensee's nett turnover in respect of such manufacture shall be calculated upon the prices so decided.

(d) To keep accounts of everything necessary to ensure accurate quarterly returns of all apparatus the prices of which are to be included in the nett turnover under this agreement being rendered to such person as the Grantors may designate to the Licensee from time to time and to render such returns upon the forms supplied by the Grantors within one month of each 31st March, 30th June, 30th September and 31st December and to forward within fourteen days after the end of the said one month a remittance for the royalty due.

(e) To pay to the Grantors upon all royalties unpaid after the expiry of fourteen days of the date or dates upon which returns are due according to the terms of the preceding sub-clause (d) an additional royalty equal to four per centum per annum on such unpaid royalties until the same have been paid.

(f) To permit auditors appointed by the Grantors to inspect all the books and accounts relative to this Licence at any time during the period hereof or within six months after the termination thereof and on the request of the Grantors to cause any quarterly return to be verified by the statutory declaration of the proper officer or auditors of the Licensee. Provided that the Licensee shall have the right to require that the auditor making such inspection shall be an independent auditor and that if the Licensee shall have failed to render accounts or if the accounts rendered by him are by such inspection shown to be inaccurate the Licensee shall pay the cost of such independent audit without prejudice to any other remedies or claims of the Grantors.

(g) Not to contest or assist others to contest the validity of any Letters Patent under which the Licensee receives licenses hereunder. Provided however that the Licensee reserves the right to contest or assist others to contest the validity of any such Letters Patent in any proceeding relating to products [of a kind other than Television Receivers] (other than those for which Licensee are by this Agreement agreed to be given) and in any proceedings if the result of such contestation might affect the validity or scope of one of the Licensee's own patents.

(h) Not to assign transfer mortgage grant sub-licenses under or in any manner part with the possession or control or benefit of this License or any part of it without the previous written consent of the Grantors.

5. In the event of the failure of the parties to agree as to what is the normal selling prices as referred to in Clause 4(c) or the prices of the final products as referred to in Clause 4(c) Proviso (iii) then any such prices to be used as the basis for calculating royalties payable shall be fixed by reference to the Director for the time being of The Radio Industry Council or his nominee acting as a valuer but not as an arbitrator.

6. The Licensee agrees upon request to grant to the Grantors or to any one or more of them upon reasonable terms non-exclusive non-transferable licences (but with the right to sub-license subsidiary or associated companies) to make use exercise and vend all or any of the inventions the subject of [any] British and/or Eireann [or Channel Islands} Letters Patent applicable to Television Receivers in respect of which and insofar as the Licensee has or shall hereafter have the right to grant a licence for the purposes of manufacturing using selling or letting on hire Television Receivers within the said territory.

7. The Grantors may determine this Licence at any time by notice in writing to the Licensee upon the happening of any of the following events:

(a) If any royalty return or any royalty payable is not rendered or is unpaid for thirty days after the due dates and remains unrendered or unpaid for seven days after notice in that behalf from the Grantors, or

(b) If there be ayn breach on the part of the Licensee of any other of the terms or conditions herein contained and the same be not remedied made good or desisted from within seven days of notice in that behalf from the Grantors, or

(c) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall have a receiver appointed or go into liquidation whether voluntary or compulsory, or

(d) If any Company which at any time during the subsistence of this Licence controls the Licensee or is under the same control as the Licensee and is engaged in any field of business to which this Licence is applicable does not hold or at the request of the Grantors does not accept within one month of such request a Licencee upon the same terms and conditions as are contained in this Licence.

Any determination of this Licence shall be without prejudice to all claims of the Grantors against the Licensee for outstanding royalties or prior breaches of this Licence or otherwise.

8. Until furthe rnotice all returns remittances and communications for the Grantors under this License shall be addressed and sent to Mr. F. C. Topham, Room 419, Marconi House, Strand, London, W.C.2 and all cheques made payable to Marconi's Wireless Telegraph Co., Ltd.

In Witness Whereof an Agent hereunto duly authorised has on behalf of the Grantors hereunto on their behalf set his hand and the Licensee has hereunder set his hand.

A Director of the Licensee hereunto duly authorised has hereunto on the Licensee's behalf set his hand the day and year first above written.

For and on behalf of:

The British Thompson-Houston Company Limited.
Cinema-Television Limited.
Electric & Musical Industries Limited.
The General Electric Company
Marconi's Wireless Telegraph Company Limited.
Murphy Radio Limited.
Philips Electrical Industries Limited.
Pye Limited.
Standard Telephones and Cables Limited.

Signed by ....
for and on behalf of the Grantors
in the presence of:

....

Signed by
in the presence of:

....

For and on behalf of:

....
Limited.

....
Director.

Signed by

....
a Director of and for and on behalf of
in the presence of:

....

DEFENDANT'S EXHIBIT NO. 70.

Licence A8-S.

An Agreement made this.................................day of................ One thousand nine hundred and sixty.................. Between Electrical & Musical Industries Limited having its registered office at Blyth Road Hayes Middlesex and The General Electric Company Limited ~~having its~~ registered office at Magnet House Kingsway London W.C.2 and Marconi's Wireless Telegraph Company Limited having its registerd office at Marconi House Strand London W.C.2 and Murphy Radio Limited having its registered office at 62 Brook Street London W.1 and Philips Electrical Industries Limited having its Head Office at Century House Shaftesbury Avenue London W.C.2 and Pye Limited having its registered office at Radio Works Cambridge and Rank Cintel Limited having its registered office at Albion House 59 New Oxford Street London W.C.1 and Standard Telephones and Cables Limited having its registered office at Connaught House Aldwych London W.C.2 (hereinafter together called "the Grantors") of the first part and.. of .... hereinafter called "the Licensee") of the second part

Whereas the Licensee has applied to the Grantors to grant and the Grantors have agreed to grant to the Licensee a Licence under their respective patent rights and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed Now It Is Hereby Agreed between the parties as follows:—

1. (a) The expression "Broadcast Sound Receivers" when herein used shall mean apparatus (whether or not equipped with electron discharge devices oar equivalent devices) which is intended to receive and translate electrical

oscillations modulated by sound signals not associated with vision signals which the broadcast to the public and which is intended for use for entertainment or education purposes or is of a type normally supplied to the public for domestic use Provided However, that such expression shall include:

(i) The following apparatus combined therewith or sold for combination therewith namely apparatus intended for the reproduction of sound from records (radio-gramophones) frequency conversion units frequency modulation reception units and signal boosting apparatus.

(ii) Broadcast sound receiving apparatus of the kind supplied by a broadcast sound relay service as the subscribers' terminal units.

(iii) sets of component parts as hereinafter defined. Provided Further that the expression "Broadcast Sound Receivers" shall Not include:—

any broadcast relay apparatus other than the terminal units referred to as included under item (ii) above, or

any apparatus combined with or sold for combination with television receiving apparatus.

(b) The expression "set of component parts" shall mean a number of component parts and/or assembled units which are capable of being put together so as substantially to constitute a Broadcast Sound Receiver.

(c) The expression "subsidiaries" where herein used shall mean companies partnerships or businesses now or hereafter during the subsistence of this Licence directly or indirectly owned or controlled by the Licensee and domiciled within the said territory and engaged in any field of business to which this Licence is applicable.

(d) The expression "selling" or "sold" when herein used shall be deemed to include sales on hire-purchase.

2. (a) The Grantors grant and agree to grant to the License subject to the terms and conditions herein appearing personal non-exclusive non-assignable licences to use and exercise all or any of the inventions the subject of any British Eireann or Channel Islands Letters Patent applicable to Broadcast Sound Receivers in respect of which and insofar as the Grantors or any of them respectively now have or may hereafter during the subsistence of this Licence have the right to grant Licences for the purposes and on the terms hereof (which Letters Patent are herein collectively called "the said Letters Patent") for the purposes of manufacturing Broadcast Sound Receivers within Great Britain Northern Ireland Eire the Channel Islands and the Isle of Man (hereinafter called "the said territory") and of using selling or letting on hire such Broadcast Sound Receivers so manufactured hereunder. The Licence to manufacture shall include a licence to have Broadcast Sound Receivers manufactured for the Licensee by others but only for sale under the trade marks or trade names of the Licensee.

(b) The Licence shall be deemed to have commenced on July 1st, 1960, and shall continue until June 30th, 1964 unless previously determined as hereinafter provided.

(c) Nothing contained herein shall be deemed to license the Licensee under the said Letters Patent to manufacture sell or let on hire:—

(i) electron discharge devices or equivalent devices or lamps of any kind.

(ii) materials or component parts for sale separately (materials or component parts—other than items included in 2(c) (i) above—which are actually incorporated in or form part of Broadcast Sound Receivers are included in this Licence).

(iii) any apparatus not included within the expression "Broadcast Sound Receivers".

(d) Any licences herein granted or agreed to be granted under any Letters Patent in respect of which the rights of the grantors or any of them to grant licences are subject to limitations shall be subject to the same limitations. Licences under patent rights derived by any of the Grantors from third parties under agreements which require the payment of royalties or other deferred payments based on the use of the inventions or acceptance of terms or conditions other than those herein contained are excluded from the licences herein granted. But (so far as any of the Granters have the right to grant the same) the Licensee may obtain licences as described in Clauses 2(a) and 2(b) hereof under such patent rights by signifying to the Grantors, within six months after receiving from the Grantors notice of such royalties terms and conditions, and in such manner as they may require his acceptance of such terms and conditions and his agreement to pay to the Grantors such additional royalty or deferred payment as aforesaid as may be required to enable the Grantors out of the total royalty paid by the Licensee both to retain the royalties payable under Clause 4(b) hereof and to pay the royalty or other deferred payment based on the Licensee's use of the inventions which is or may be required by such agreements to be paid by the Grantors or any of them to such third parties. Any such additional royalties payable hereunder shall be shown separately in the returns hereinafter mentioned.

3. Notwithstanding the provisions of Clause 2(a) hereof the Licensee agrees that for the purposes of this Agreement all subsidiaries shall be deemed to be parts or departments of the Licensee and the Licensee undertakes full responsibility hereunder on their behalf accordingly.

4. The Licensee agrees with the Grantors as follows:—

(a) To cause to be attached in a prominent position to all Broadcast Sound Receivers sold let on hire or put into use by the Licensee a licence plate in accordance with a design and wording authorised and notified by the Grantors to the Licensee which plate shall bear a serial number allocated by the Grantors. Such plates may be obtained from the Grantors at cost price. No plates shall be disposed of by the Licensee except as herein provided and upon the termination of this Licence all unused plates except those required under proviso (i) of Clause 4 subclause (b) hereof shall be delivered up to the Grantors for destruction.

(b) To pay to the Grantors:—

Royalties at the rate of 0.2% (nought point two per centum) on the Licensee's nett turnover as hereinafter defined. The expression "nett turnover" where herein used shall subject to Provisos (ii) and (iii) hereof mean the total of nett invoice prices (whether or not paid and before deduction of settlement discounts) of all Broadcast Sound Receivers hereunder manufactured by or for the Licensee during the subsistence of this Licence and sold let on hire or put into use by the Licensee whether or not such Broadcast Sound Receivers embody or utilise or are designed or intended to embody or utilise any invention the subject of any of the said Letters Patent including in such prices the value of everything (for example cabinets valves and batteries) normally incorporated in or forming part of complete Broadcast Sound Receivers and actually included as part thereof at the time of sale but shall not include Purchase Tax or Customs Duties thereon. In the case of Broadcast Sound Receivers let on hire as distinct from those sold on hire-purchase and in the case of Broadcast Sound Receivers put into use by the Licensee the royalty payable in respect of such Broadcast Sound Receivers shall be the same as if a normal sale had been made at the time of hiring or putting into use and for that purpose the nett invoice price for inclusion in the Licensee's nett turnover shall be deemed to be the normal selling price. If the normal selling price cannot readily be ascertained a figure shall be mutually agreed but failing such agreement then the said selling price shall be decided in accordance with the provisions of Clause 5 hereof.

The aforementioned royalty rate shall be reduced by 50% (fifty per centum) in respect of all Broadcast Sound Receivers exported from the said territory. No Licence is granted or implied herunder under any patent granted outside the said territory.

Provided Always that

(i) Royalty shall be payable upon all Broadcast Sound Receivers manufactured prior to but remaining unsold at the date of termination of this Licence and shall be calculated in accordance with the nett invoice prices and royalty rate current immediately prior to the date of such termination and licence plates shall be attached thereto.

(ii) In the event that the Licensee manufactures for and supplies Broadcast Sound Receivers to a third party holding Licence A8-S that part of the nett turnover of the Licensee relating to such supplies shall be excluded from the Licensee's nett turnover for the purpose of computing the royalties payable hereunder by the Licensee.

(iii) In the event that the Licensee manufactures for and supplies Broadcast Sound Receivers to a third party in the said territory not holding Licence A8-S and such third party performs or has performed (for example on a chassis) further manufacturing or assembling operations on or makes additions to the said Broadcast Sound Receivers that part of the Licensee's nett turnover relating thereto shall be calculated upon the nett invoice prices of the final products of such third party or where these prices cannot be ascertained upon prices to be mutually agreed between parties hereto. If the parties fail to reach agreement by the date at which payment of royalties in respect of such Broadcast Sound Receivers would normally have been due hereunder the prices shall be decided in accordance with the provision of Clause 5 hereof and the Licensee's nett turnover in respect of such manufacture shall be calculated upon the prices so decided.

(c) To keep accounts of everything necessary to ensure accurate quarterly returns of all apparatus the prices of which are to be included in the nett turnover under this agreement being rendered to such persons as the Grantors may designate to the Licensee from time to time and to render such returns upon the forms supplied by the Grantors within one month of each 31st March 30th June 30th September and 31st December and to forward within fourteen days after the end of the said one month a remittance for the royalty due.

(d) To pay to the Grantors upon all royalties unpaid after the exipry of fourteen days of the date or dates upon which returns are due according to the terms of the preceding sub-clause (c) and additional royalty equal to four per centum per annum on such unpaid royalties until the same have been paid.

(e) That the Grantors may upon the request of and only upon such request supply to H. M. Inspector of Texas information relative to the gross and nett amounts of all Royalties paid to the Grantors and Income Tax deducted therefrom by the Licensee.

(f) To permit auditors appointed by the Grantors to inspect all the books and accounts relative to this Licence at any time during the period hereof or within six months after the termination thereof and on the request of the Grantors to cause any quarterly return to be verified by the statutory declaration of the proper officer or auditors of the License. Provided that the Licensee shall have the right to require that the auditor making such inspection shall be an independent auditor and that if the Licensee shall have failed to render accounts or if the accounts rendered by him are by such inspection shown to be inaccurate the Licensee shall pay the cost of such independent audit without prejudice to any other remedies or claims of the Grantors.

(g) Not to contest or assist others to contest the validity of any Letters Patent under which the Licensee receives licences hereunder. Provided however that the Licensee reserves the right to contest or assist others to contest the validity of any such Letters Patent in any proceedings relating to products other than Broadcast Sound Receivers and in any proceedings if the result of such contestation might affect the validity of scope of one of the Licensee's own patents.

(h) Not to assign transfer mortgage grante sub-licences under or in any manner part with the possession or control or benefit of this Licence or any part of it without the previous written consent of the Grantors.

5. In the event of the failure of the parties to agree as to what is the normal selling prices as referred to in Clause 4(b) or the prices of the final products as referred to in Clause 4(b) Proviso (iii) then any such prices to be used as the basis for calculating royalties payable shall be fixed by reference to the Chairman for the time being of The British Radio Equipment Manufacturers' Association, or his nominee acting as a valuer but not as an arbitrator.

6. The Licensee agrees upon request to grant to the

Grantors or to any one or more of them upon reasonable terms non-exclusive non-transferable licences (but with the right to sub-license subsidiary or associated companies) to make use exercise and vend all or any of the inventions the subject of any Britich Eireann or Channel Islands Letters Patent applicable to Broadcast Sound Receivers in respect of which and insofar as the Licensee has or shall hereafter have the right to grant a licence for the purposes of manufacturing using selling or letting on hire Broadcast Sound Receivers within the said territory.

7. The Grantors may determine this Licence at any time by notice in writing to the Licensee upon the happening of any of the following events:—

(a) If any royalty return or any royalty payable is not rendered or is unpaid for thirty days after the due dates and remains unrendered or unpaid for seven days after notice in that behalf from the Grantors, or

(b) If there be any breach on the part of the Licensee of any other of the terms or conditions herein contained and the same be not remedied made good or desisted from within seven days of notice in that behalf from the Grantors, or

(c) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall have a receiver appointed or go into liquidation whether voluntary or compulsory, or

(d) If any Company which at any time during the subsistence of this Licence controls the Licensee or is under the same control as the Licensee and is engaged in any field of business to which this Licence is applicable does not hold or at the request of the Grantors does not accept within one month of such request a Licence upon the same terms and conditions as are contained in this Licence.

Any determination of this Licence shall be without prejudice to all claims of the Grantors against he Licensee for outstanding royalties or prior breaches of this Licence or otherwise.

8. Until further notice all returns remittances and communications for the Grantors under this Licence shall be addressed and sent to Mr. F. C. Topham, Room 419, Marconi House, Strand, London, W. C. 2, and all cheques made payable to Marconi's Wireless Telegraph Co., Ltd.

In Witness Whereof an Agent hereunto duly authorised has on behalf of the Grantors hereunto on their behalf set his hand and the licensee has hereunder set his hand

a Director of the Licensee hereunto duly authorised has hereunto on the Licensee's behalf set his hand the day and year first above written.

For and on behalf of:

Electric & Musical Industries Limited
The General Electric Company Limited
Marconi's Wireless Telegraph Company Limited
Murphy Radio Limited
Philips Electrical Industries Limited
Pye Limited
Rank Cintel Limited
Standard Telephone and Cables Limited

Signed by ....
for and on behalf of the Grantors in
the presence of:

....

Signed by ....
in the presence of:

....

For and on behalf of:

Limited

Director

Signed by

a Director of and for and on behalf of:

in the presence of:

Licence A8—T.

Dated ....19..........

Electric & Musical Industries Ltd.
The General Electric Co. Ltd.
Marconi's Wireless Telegraph Co. Ltd.
Murphy Radio Limited.
Philips Electrical Industries Ltd.
Pye Limited.
Rank Cintel Limited.
Standard Telephones and Cables Ltd.

and

....

Licence

To use and exercise certain Letters Patent for certain specific purposes as within in connection with Television Receivers.

DEFENDANT'S EXHIBIT NO. 71.

Licence A8—T.

An Agreement made this .... day of .... One thousand nine hundred and sixty .... Between Electric and Musical Industries Limited having its registered office at Blyth Road Hayes Middlesex and The General Electric Company Limited having its registered office at Magnet House Kingsway London W. C. 2 and Marconi's Wireless Telegraph Company Limited having its registered office at Marconi House Strand London W. C. 2 and Murphy Radio Limited having its registered office at 62 Brook Street

London W. 1 and Philips Electrical Industries Limited having its Head Office at Century House Shaftesbury Avenue London W. C. 2 and Pye Limited having its registered office at Radio Works Cambridge and Rank Cintel Limited having its registered office at Albion House 59 New Oxford Street London W. C. 1 and Standard Telephones and Cables Limited having its registered office at Connaught House Aldwych London W. C. 2 (hereinafter together called "the Grantors") of the first part and ....

of ....

(hereinafter called "the Licensee") of the second part

Whereas the Licensee has applied to the Grantors to grant and the Grantors have agreed to grant to the Licensee a Licence under their respective patent rights and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed Now It Is Hereby Agreed between the parties as follows:—

1. (a) The expression "Television Receivers" when herein used shall mean apparatus (whether or not equipped with electron discharge devices or equivalent devices) which is intended to receive and translate electrical oscillations modulated by vision and associated sound signals which are broadcast to the public and which is intended for use for entertainment or education purposes or is of a type normally supplied to the public for domestic use Provided However that such expression shall include:—

(i) the following apparatus combined therewith or sold for combination therewith namely apparatus intended for the reception and translation of electrical oscillations modulated by sound signals which are broadcast to the public but are not accompanied by vision signals (hereinafter referred to as "sound only receiving apparatus") apparatus intended for the reproduction of sound from records (hereinafter referred to as "gramophone apparatus") frequency conversion units frequency modulation reception units and signal boosting apparatus.

(ii) television receiving apparatus of the kind supplied by a broadcast television relay service as the subscribers' terminal units.

(iii) sets of component parts as hereinafter defined. Provided Further that the expression "Television Receivers" shall Not include:—

any broadcast relay apparatus other than the terminal units referred to as included under item (ii) above, or

Television Receivers adapted for producing a picture larger than 30 square feet.

(b) The expression "set of component parts" shall mean a number of component parts and/or assembled units which are capable of being put together so as substantially to constitute a Television Receiver.

(c) The expression "subsidiaries" where herein used shall mean companies partnerships or businesses now or hereafter during the subsistence of this Licence directly or indirectly owned or controlled by the Licensee and domiciled within the said territory and engaged in any field of business to which this Licence is applicable.

(d) The expression "selling" or "sold" when herein used shall be deemed to include sales on hire-purchase.

2. (a) The Grantors grant and agree to grant to the Licensee subject to the terms and conditions herein appearing personal non-exclusive non-assignable Licences to use and exercise all or any of the inventions the subject of any British Eireann or Channel Islands Letters Patent applicable to Television Receivers in respect of which and insofar as the Grantors or any of them respectively now have or may hereafter during the subsistence of this Licence have the right to grant Licences for the purposes and on the terms hereof (which Letters Patent are herein collectively called "the said Letters Patent") for the purposes of

manufacturing Television Receivers within Great Britain Northern Ireland Eire the Channel Islands and the Isle of Man (hereinafter called "the said territory") and of using selling or letting on hire such Television Receivers so manufactured ereunder. The Licence to manufacture shall include a licence to have Television Receivers manufactured for the Licensee by others but only for sale under the trade marks or trade names of the Licensee.

(b) The Licence sall be deemed to have commenced on July 1st, 1960, and shall continue until June 30th, 1964 unless previously determined as hereinafter provided.

(c) Nothing contained herein shall be deemed to licence the Licensee under the said Letters Patent to manufacture sell or let on hire:—

(i) electron discharge devices or equivalent devices or lamps of any kind.

(ii) materials or component parts for sale separately (materials or component parts—other than items included in 2(c) (i) above—which are actually incorporated in or form part of Television Receivers are included in this Licence).

(iii) any apparatus not included within the expression "Television Receivers".

(d) Any licences herein granted or agreed to be granted under any Letters Patent in respect of which the rights of the Grantors or any of them to grant licences are subject to limitations shall be subject to the same limitations. Licenses under patent rights derived by any of the Grantors from third parties under agreements which require the payment of royalties or other deferred payments based on the use of the inventions or acceptance of terms or conditions other than those herein contained are excluded from the licences herein granted. But (so far as any of the Grantors have the right to grant the same) the Licensee may obtain licences as described in Clauses 2(a) and 2(b) hereof under such patent rights by signifying to the Grantors, within six months after receiving from the Grantors notice of such royalties terms and conditions, and in such manner as they require his acceptance of such terms and conditions and his agreement to pay to the Grantors such additional royalty or deferred payment as foresaid as may be required to enable the Grantors out of the total royalty paid by the Licensee both to retain the royalties payable under Clause 4(b) hereof and to pay the royalty or other deferred payment based on the Licensee's use of the inventions which is or may be required by such agreements to be paid by the Grantors or any of them to such third parties. Any such aditional royalties payable hereunder shall be shown separately in the returns hereinafter mentioned.

3. Notwithstanding the provisions of Clause 2(a) hereof the Licensee agrees that for the purposes of this Agreement all subsidiaries shall be deemed to be parts or departments of the Licensee and the Licensee undertakes full responsibility hereunder on their behalf accordingly.

4. The Licensee agrees with the Grantors as follows:—

(a) To cause to be attached in a prominent position to all Television Receivers sold let on hire or put into use by the Licensee a licence plate in accordance with a design and wording authorized and notified by the Grantors to the Licensee which plate shall bear a serial number allocated by the Grantors. Such plates may be obtained from the Grantors at cost price. No plates shall be disposed of by the Licensee except as herein provided and upon the termination of this Licence all unused plates except those required under proviso (i) of Clause 4 sub-clause (b) hereof shall be delivered up to the Grantors for destruction.

(b) To pay to the Grantors:—

Royalties on the Licensee's nett tunrover as hereinafter defined at the rate of 0.5% (nought point five per centum).

The expression "nett turnover" where herein used shall subject to Provisos (ii) and (iii) hereof mean the total of nett invocie prices (whether or not paid and before deduction of settlement discounts) of all Television Receivers hereunder manufactured by or for the Licensee during the subsistence of this Licence and sold let on hire or put into use by the Licensee whether or not such Television Receivers embody or utilise or are designed or intended to embody or utilise or any invention the subject of any of said Letters Patent including in such prices the value of everything (for example cabinets valves and cathode ray tubes) normally incorporated in or forming part of complete Television Receivers and actually included as part thereof at the time of sale but shall not include Purchase Tax or Customs Duties thereon. In the case of Television Receivers let on hire as distinct from those sold on hire-purchase and in the case of Television Receivers put into use by the Licensee the royalty payable in respect of such Television Receivers shall be the same as if a normal sale had been made at the time of hiring or putting into use and for the purpose the nett invoice price for inclusion in the Licensee's nett turnover shall be deemed to be the normal selling price. If the normal selling price cannot readily be ascertained a figure shall be mutually agreed but failing such agreement then the said selling price shall be decided in accordance with the provisions of Clause 5 hereof.

The aforementioned royalty rate shall be reduced by 50% (fifty per centum) in respect of all Television Receivers exported from the said territory. No Licence is granted or implied hereunder under any patent granted outside the said territory.

Provided Always That

(i) Royalty shall be payable upon all Television Receivers manufactured prior to but remaining unsold at the date of termination of this Licence and shall be calculated in accordance with the nett invoice prices and royalty rates current immediately prior to the date of such termination and licence plates shall be attached thereto.

(ii) In the event that the Licensee manufactures for and supplies Television Receivers to a third party holding Licence A8-T that part of the nett turnover of the Licensee relating to such supplies shall be excluded from the Licensee's nett turnover for the purpose of computing the royalties payable hereunder by the Licensee.

(iii) In the event that the Licensee manufactures for and supplies Television Receivers to a third party in the said territory not holding Licence A8-T and such third party performs or has performed (for example on a chassis) further manufacturing or assembling operations on or makes additions to the said Television Receivers that part of the Licensee's nett turnover relating thereto shall be calculated upon the nett invoice prices of the final products of such third party or where these prices cannot be ascertained upon prices to be mutually agreed between the parties hereto. If the parties fail to reach agreemnt by the date at which payment of royalties in respect of such Television Receivers would normally have been due hereunder the prices shall be decided in accordance with the provisions of Clause 5 hereof and the Licensee's nett turnover in respect of such manufacture shall be calculated upon the prices so decided.

(c) To keep accounts of everything necessary to ensure accurate quarterly returns of all apparatus the prices of whcih are to be included in the nett turnover under this agreemnt being rendered to such person as the Grantors may designate to the Licensee from time to time and to render such returns upon the forms supplied by the Grantors within one month of each 31st March 30th June 30th September and 31st December and to forward within fourteen days after the end of the said one month a remittance for the royalty due.

(d) To pay to the Grantors upon all royalties unpaid after the expiry of fourteen days of the date or dates upon which returns are due according to the terms of the preceding sub-clause (c) and additional royalty equal to four per centum per annum on such unpaid royalties until the same have been paid.

(e) That the Grantors may upon the request of and only upon such request supply to H. M. Inspector of Taxes information relative to the gross nett amounts of all Royalties paid to the Grantors and Income Tax deducted therefrom by the Licensee.

(f) To permit auditors appointed by the Grantors to inspect all the books and accounts relative to this Licence at any time during the period hereof or within six months after the termination thereof and on the request of the Grantors to cause any quarterly return to be verified by the statutory declaration of the proper officer or auditors of the Licensee. Provided that the Licensee shall have the right to require that the auditor making such inspection shall be an independent auditor and that if the Licensee shall have failed to render accounts or if the accounts rendered by him are by such inspection shown to be inaccurate the Licensee shall pay the cost of such independent audit without prejudice to any other remedies or claims of the Grantors.

(g) Not to contest or assist others to contest the validity of any Letters Patent under which the Licensee receives licences hereunder. Provided however that the Licensee reserves the right to contest or assist others to contest the validity of any such Letters Patent in any proceedings relating to products other than Television Receivers and in any proceedings if the result of such contestation might affect the validity or scope of one of the Licensee's own patents.

(h) Not to assign transfer mortgage grant sub-licences under or in any manner part with the possession or control or benefit of this Licence or any part of it without the previous written consent of the Grantors.

5. In the event of the failure of the parties to agree as to what is the normal selling prices as referred to in Clause 4(b) or the prices of the final products as referred to in Clause 4(b) Proviso (iii) then any such prices to be used as the basis for calculating royalties payable shall be fixed by reference to the Chairman for the time being of The British Radio Equipment Manufacturer's Association or his nominee acting as a valuer but not as an arbitrator.

6. The Licensee agrees, upon request to grant to the Grantors or to any one or more of them upon reasonable terms non-exclusive non-transferable licences (but with the right to sub-license subsidiary or associated companies) to make use exercise and vend all or any of the inventions the subject of any British Eireann or Channel Islands Letters Patent applicable to Television Receivers in respect of which and insofar as the License has or shall hereafter have the right to grant a licence for the purposes of manufacturing using selling or letting on hire Television Receivers within the said territory.

7. The Grantors may determine this Licence at any time by notice in writing to the Licensee upon the happening of any of the folowing events:—

(a) If any royalty return or any royalty payable is not rendered or is unpaid for thirty days after the due dates and remains unrendered or unpaid for seven days after notice in that behalf from the Grantors, or

(b) If there be any breach on the part of the Licensee of any other of the terms or conditions herein contained and the same be not remedied made good or desisted from within seven days of notice in that behalf from the Grantors, or

(c) If the License shall become bankrupt or compound with his creditors or (being a company) shall have a receiver appointed or go into liquidation whether voluntary or compulsory, or

(d) If any Company which at any time during the subsistence of this Licence controls the License or is under the same control as the Licensee and is engaged in any field of business to which this Licence is applicable does not hold or at the request of the Grantors does not accept within one month of such request a Licence upon the same terms and conditions as are contained in this Licence.

Any determination of this Licence shall be without prejudice to all claims of the Grantors against the Licensee for outstanding royalties or prior breaches of this Licence or otherwise.

8. Until further notice all returns remittances and communications for the Grantors under this Licence shall be addressed and sent to Mr. F. C. Topham, Room 419, Marconi House, Strand, London, W.C.2, and all checques made payable to Marconi's Wireless Telegraph Co., Ltd.

In Witness Whereof an ~~Agent~~ hereunto duly authorized has on behalf of the Grantors hereunto on their behalf set his hand and the Licensee has hereunder set his hand a Director of the Licensee hereunto duly authorised has hereunto on the Licensee's behalf set his hand the day and year first above written.

Signed by ______________________ for

____

and on behalf of the Grantors in the presence of:

Signed by ______________________

in the presence of:

For and on behalf of:

Electric & Musical Industries Limited.
The General Electric Company Limited.
Marconi's Wireless Telegraph Company Limited.
Murphy Radio Limited.
Phlips Eelectrical Industries Limited.
Pye Limited.
Rank Cintel Limited.
Standard Telephones and Cables Limited.

Signed by ....

....

a Director of and for and on behalf of
in the presence of:

For and on behalf of

....
Limited.

....
Director.

Licence A8-T.

Dated ....19...............

Electric & Musical Industries Ltd.
The General Electric Co. Ltd.
Marconi's Wireless Telegraph Co. Ltd.
Murphy Radio Limited.
Philips Electrical Industries Ltd.
Pye Limited.
Rank Cintel Limited.
Standard Telephones and Cables Ltd.
and

Licence

To use and exercise certain Letters Patent for certain specific purposes as within in connection with Television Receivers.

DEFENDANT'S EXHIBIT NO. 72.

MacKenty, Exh. 1 4/9/57 LRP

Copies to Mr. O'Callaghan, Mr. Morton.

November 29th, 1932.

Mr. Otto Schairer,
Radio Corporation of America,
570 Lexington Avenue,
New York.

Dear Mr. Schairer,

I have read thoroughly and with both interest and admiration the various documents which determine the future relationship of the Radio Group. I note that we are instructed to alter within a specified time certain of our foreign arrangements. I do not concern myself here with the Traffic Agreements which we have. I assume those will be handled by the Communication companies.

As I see it, there are four agreements which we have with foreign companies, which the Government might criticise, viz: Philips, Marconi, Telefunken and S. E. M. The policy for the first has been carefully worked out and I am waiting for confirmation of this policy on the part of G. E. and Westinghouse, before getting too deeply involved.

Marconi Agreement.

P D 6027.

The Radio Corporation granted exclusive rights in the field of "original radio purposes" to the Marconi Company in the Agreement of November 21st, 1919 and as amended February 10th and October ......th, 1921. The General Electric Company had previously given, according to Section 3 of the Recitals of said Agreement, all its radio rights to B. T. H., and B. T. H., with certain reservations as set forth in sub-divsion B of Article Three of said Agreement, assented to the granting of the exclusive license under G. E. patents to the Marconi Company. These G. E. rights presumably passed to the B. T. H. Company under the contract between G. E. and B. T. H., dated May 26th, 1905.

It may be of incidental interest to note here that when the new Agreement of April 1st, 1919 (which replaces the 1905 Agreement) between I. G. E. and B. T. H. was entered into, "radio purposes" was excluded from such Agreement and it was not until November 16th, 19...... that a new contract between I. G. E. and B. T. H. was signed which included "radio purposes" retroactively to the beginning of the April 1st, 19[illegible] Agreement.

In view of these circumstances I therefore bring up the question as to whether or not, since exclusive licenses were entered into separately, first by G. E. and B. T. H., and secondly by R. C. A. and Marconi—in which latter Agreement for the purpose of convenience the B. T. H. Company assented to the passing of the G. E. rights to Marconi,—the Government may not object to the present Agreement.

P D 6028.

In view of this, and I bring it to your attention for the purpose of discussion with your Counsel, the Marconi Agreement might be considered as two separate grants of exclusive licenses, the second of which, by virtue of the action of a company outside the jurisdiction of the U. S. Government, vested exclusively in one foreign party the rights of two domestic concerns. Accordingly, the Government might feel that there is no necessity for changing the Marconi contract. It should also be noted that the exclusive distributorship to the Marconi Company was granted only on the part of the Radio Corporation.

If, on the other hand, this view is not concurred in by those who will decide this question, we have a rather difficult problem before us.

The simplest and most direct procedure would probably be to attempt to apply the Neave formula to the Marconi Agreement and ask Marconi and E. M. I.—the latter really being the largest beneficiary under the Agreement—to accept an alteration of the license from R. C. A., so that R. C. A. might grant non-exclusive licenses to American manufacturers to import into the British Isles goods manufactured in the U. S. This immediately, however, brings up several problems.

P D 6029.

We might be able to agree, as we have planned to do in the other Agreement, to pay over to Marconi or E. M. I. in toto any license fees collected from such American manufacturers for the right to import such goods. However, this might be very detrimental to the British Patent Pool which, as you know, is composed of Standard, Marconi, and E. M. I., which has a present policy of not licensing for importation and which, in addition, would not want the Radio Corporation licensing American manufacturers, under its patents at appreciably lower rates than those charged by the Pool. I think we would, therefore, have to agree in altering these licenses, either that the rate of royalties for RCA patents should be set by Marconi's or, if it is possible to obtain it, by mutual agreement between Marconi and R. C. A., and in default of agreement, by arbitration. It must be kept in mind at all timees that any change in the Marconi contract affects not only the Marconi Company but inasmuch as it is the foundation for several other agreements,—E. M. I., Standard, and others.

E. M. I. has not been so vitally concerned about the proposed provision for granting licenses to American manufacturers to import, because according to the Marconi Agreement we would not have been in the position to do so until 1945, but if we now ask Marconi to alter the Agreement so that we can do this immediately, then E. M. I.'s position as regards the proposed new agreement for England may undergo some alterrations. They might, for instance, inasmuch as we have already set the price of 1% with the privilege of granting licenses to American manufacturers after 1945, with certain penalties upon us, ask

(1) that the royalty rate be lowered,

or

(2) that the penalties upon us for granting licenses to American manufacturers be more severe.

I have naturally not discussed this point with them, but as soon as they learned of the new arrangements in the States and read the newspaper reports of the Consent

Decree, they asked whether or not we intended to request an alteration in the Marconi Agreement. In view of this I do not think we can consumate the English Agreement until we do decide whether or not the Marconi Agreement must be altered, and if it must be altered, it also appears to me that either the alteration must come before the new English Agreement, or at least the principles of such alteration must be well understood.

I realize that this complicates our English situation considerably, but inasmuch as all the parties over here know that we may have to change the Marconi Agreement, I believe we should attack the problem at the earliest possible date and I hope that you will be able to advise me shortly as to whether alterations will be necessary, and if so, whether the above brief outline in any way meets your views.

Telefunken Agreement.

In the Telefunken Agreement, Radio Corporation grants exclusive licenses to Telefunken for Germany in the old "radio field", and certain non-exclusive licenses for other territories, which I believe need not concern us here. There is, I believe, in our files and in the files of the G. E. Company, documentary evidence to prove that our grants to the Telefunken Company comprise also the G. E. patents, inasmuch as these for the strictly "original purpose" radio field had not previously been granted by G. E. to A. E. G. As to whether or not Westinghouse gave us their rights for the purpose of passing them on to Telefunken I have not been able to determine. Neither Mr. MacConnach's files nor the files of the Westinghouse Company disclose any documentary evidence to this effect, although certain memoranda written in 1921 indicate that this was the intent of the parties at the time. In addition, in this Agreement, R. C. A. appoints Telefunken its exclusive agent for Germany, and furthermore, there is a letter dated October 22nd, 1921, with which you are doubtless familiar, and which I believe may be embarrassing to us.

If the Government desires us to alter this Agreement the problem is not so complex as in the English situation, but the temper and character of the parties involved may render it equally difficult. We can again apply the Neave formula as regards our reserving rights to license American manufacturers to import, but again we are faced with the present policy of Telefunken and the Funkverband not to license American manufacturers to import, and I doubt very much if the promise of paying over royalties collected from such American manufacturers for importing rights would satisfy the Germans. Furthermore, the Germans pay us no service charge or royalty and we therefore have no basis to work from on the question of a penalty for granting such licenses.

P D 6032.

We may therefore have to consider a more complicated way of getting around this question, the first of which coming to my mind is that the present Agreement be cancelled and in its stead the three members of the Radio Group negotiate and execute separately exclusive license agreements for the old radio field, between R. C. A. and Telefunken, G. E. and A. E. G., Westinghouse and Siemens Halske. As you know, Siemens Halske and A. E. G. own Telefunken 50/50 and I think the Germans could re-arrange the rights within Germany outside our control, to suit themselves. It might be even simpler if such licenses took the form of an actual sale of patents, present and future, rather than the form of exclusive licenses, although I do not know whether or not this makes any difference.

We can then, as a separate issue, trade as planned, our manufacturing information in all fields with Telefunken, and perhaps exchange non-exclusive licenses, reserving to ourselves the right to grant licenses to American manufacturers to import in the "extended purpose" field. It does not appear to be necessary at this time that G. E. and Westinghouse should be parties to such Agreement, and it would certainly simplify the matter if they did not care to be.

There may be other ways of solving this problem, and I expect to meet Mr. Minor during the coming week and will explore their possibilities with him.

P D 6033.

I realize that there is no extreme hurry about the Telefunken situation, as there may be in the English question, because no other agreements are contingent upon the alteration of the Telefunken Agreement. However, if the agreement must be changed and if you want me to do it, I do not believe that a discussion of the question is out of place at this time.

Belgian Agreement.

The Belgian Agreement was entered into on May 15th, 1926. In this Agreement the G. E., dealing with its own rights, rights of Radio Corporation and Westinghouse, granted under such rights exclusive licenses to S. E. M. S. E. M. in turn later granted, we understand exclusively, the radio set rights to S. B. R., and the valve rights to M. B. L. E. The Agreement has in general been unsatisfactory, and we have received very little income out of it. It runs until Januaery 1st, 1945.

The I. G. E. last Spring told me that it had some ideas for the alteration of the S. E. M. contract and that S. E. M. itself in their opinion might be receptive to certain alterations. Therefore, rather than propose any definite solution at this time for the S. E. M. Agreement, in the event that the problem of alteration schould arise I will first discuss the matter with the I. G. E. people in Paris and then transmit my views to you later.

With kind regards,

P D 6304.

Faithfully yours,

J. G. Mackenty.

JGM/.

DEFENDANT'S EXHIBIT NO. 73.

(Written in margin.) See also Aga 1951 Routine file for corres, re Aga's filing in this count.

June 11, 1951.

Original,
Via Air Mail.

Mr. A. F. Cornock,
Patent Department,
The General Electric Co. Ltd.,
Wembly, England.

Re: Hazeltine Patents in Eire.

Dear Mr. Cornock:

Under the terms of the Agreements between our companies identified as (a) and (b), your company is given the exclusive license under the Hazeltine patents in the specified field for the territory of "Great Britain, Northern Ireland, and Erie", together with the right to include such patents in the British Pool. Subsequently, as you know, we granted somewhat similar rights to Svenska Aktiebolaget Gasaccumulator with respect to Continental Europe.

Unfortunately, due to an ambiguity in our Agreement with Svenska Aktiebolaget Gasaccumulator, for which I accept complete responsibility, they interpreted our Agreement to give them rights with respect to Eire and in fact have filed several applications there on our behalf. These applications were handled in ordinary routine and did not come to my personal attention until just now.

As you know, we have the responsibility under our Agreements for filing and prosecuting the Hazeltine patents in Great Britain and also, I suppose, with respect to Eire. However, up to the present time we ourselces have not filed any applications in Eire as we did not suppose that th[illegible] market for radio and television apparatus there justified it. We are wondering whether or not you have taken any steps to exploit the Hazeltine rights in Eire. It is my impression that the A-6 Pool and the licenses thereunder do not extend to Eire.

In view of the foregoing conflict, which we very much regret, we would like to inquire what your reaction would be to deleting Eire from the territory of our Agreement. If it is a matter of no considerable consequence to your company, such an amendment of our Agreements would resolve our embarrassment. On the other hand, if you do attach any importance to the exploitation of the Hazeltine inventions in Eire, I am sure we would have no great difficulty amending our Agreement with Svenska Aktiebolaget Gasaccumulator to clear up this confusion.

We would appreciate your conclusion on this matter at your early convenience.

Sincerely yours,

....

Vice President.

LBD:rbj

DEFENDANT'S EXHIBIT NO. 74.

(Letterhead of G. E. C. Patent Dpartment, Research Laboratories of the General Electric Company, Ltd., Wembley.)

28th June 1951.

Air Mail

L. B. Dodds, Esq.,
Hazeltine Corporation,
58-25, Little Neck Parkway,
Little Neck, N. Y.,
U. S. A.

Hazeltine Patents in Eire.

Dear Mr. Dodds:

As promised in my letter of June 15th, I have had a word with Mr. Macqueen about the difficulties you have run into in Eire, and have re-read our Agreement with the Members of the A.6 Pool, and the A.6 Licence, to see exactly what our commitments are.

Under our main Agreement with the Pool, which is dated the 31st August 1948 and of which I sent you a copy recently, we make the following representations and give the following undertakings:

(a) Recital (9) states that we have the right to grant or procure the grant of licences from the 1st April 1948 to the 31st December 1952 under all present and future patents of the British Isles originating with the Hazeltine Corporation or our own Company;

(b) Recital (10) states that no licences have been granted (within the Pool scope) under such patents during the relevant period (except for extensions of the A.5 Licence);

(c) Clause 1 defines the "British Isles" to include Eire;

(d) Clause 18 provides that no licences shall, during the period of the Agreement, be granted by any Party except in accordance with the decisions of the Management Committee of the Pool.

Under the A.6 Licence, the Grantors grant to each Licensee a licence which covers any patents in respect of which they may have rights in Eire—this being the effect of the latter half of Clause 2(a)—which licence includes manufacture, use and sale of licensed apparatus.

You will see from this that we are very heavily committed as regards Eire, and that the licences already granted by the A.6 Pool do extend to that country—even though I cannot off-hand recollect the grant of a licence to any actual Eireann manufacturer (if any such exists). Moreover, we haveing initially assured the other Pool Members that we had the rights, as set out above, you will appreciate how difficult it would be to go back to them at this late stage and say that we had not got them.

You say at the end of your letter that you think you would have no great difficulty in amending your Agreement with Aktiebolaget Gasaccumulator to clear up the conflict, and in the circumstances we should be most grateful if you would do so. I am extremely sorry to have to ask you to deal with the matter in this way, because the last thing we should want to do, would be to fail to help on any point where it was possible for us to be helpful; but I feel we are so heavily committed in this particular matter that there is no other solution.

Yours sincerely,

A. F. Cornock.

DEFENDANT'S EXHIBIT NO. 75.

November 9, 1949

Outline—A-6 License (British Pool).

Grantors—BTH, EMI, GEC, Marconi, Philips, Standard Telephones.

1. Definitions
   - (a) Broadcast receivers
   - (b) Radiogramophone
   - (c) Set of component parts
   - (d) Selling or sold
2. (a) Grantors grant to Licensee non-assignable non-exclusive licenses to use the inventions;
     - (i) Patents set out in Schedule
     - (ii) All other patents under which Grantors have the power to grant licenses
   - (b) No license re tubes or components
3. Licensee undertakes that its subsidiary companies will be bound by the Agreement
4. Licensee agrees:
   - (a) Not to sell imported receivers
   - (b) To apply serially-numbered license plates
   - (c) To pay royalty of 1½% of net sales of licensed apparatus whether or not it uses any licensed patents; provided
     - (i) Royalty payable on apparatus unsold at termination
     - (ii) If licensee sells to a controlled company, royalties on purchasers net selling price
     - (iii) If licensee sells to a controlled company which performs additional work, royalties on final net selling price

(iv) If licensee sells unler trademark of another party (other than a controlled company) royalties thereon to be reported and paid separately.

(v) Licenses under patents involving an obligation of the Grantors to pay royalties.

(d) To keep records and make reports and payments.
(e) To pay interest at 4% on delinquent royalties
(f) To permit Grantors' auditors to inspect its books
(g) Not to attack directly or indirectly the validity of the licensed patents
(h) Not to assign or divide the license without consent.

5. All apparatus sold by controlled companies of Licensee deemed to be sold by Licensee who is obligated for royalties

6. Grantors hold Licensee harmless from patent infringement claims.

7. Licensee agrees to grant non-exclusive licenses under its patents to Grantors, upon request, upon reasonable terms.

8. Grantors may terminate the license by notice:
(a) Royalties delinquent for 30 days.
(b) Royalties of controlled companies not paid.
(c) Breach of other conditions by Licensee
(d) Bankruptcy of Licensee
(e) Any company which controls Licensee or is under same control as Licensee and refuses to operate under license

Any termination without prejudice to Grantors' claims against Licensee

9. Address for notices and remittances.

(Schedule of Licensed Patents.)

LBD:meb

DEFENDANT'S EXHIBIT NO. 76.

(Letterhead of Hazeltine Corporation, Washington 4, D. C.)
Via Air Mail

October 30, 1952

Mr. Thomas W. Heather, Director
General Electric Co. Ltd.
Magnet House, Kingsway
London, W. C. 2, England

Re: Hazeltine—GEC Agreements

Dear Mr. Heather:

This will acknowledge with thanks your letter of October 24, 1952, containing a very complete report of operations under the A-5 and A-6 Pools and negotiations toward the formation of what, I would suppose, would be the new A-7 Pool.

At the outset, I should like to express our sincere appreciation of your very able management of this joint venture. We are most gratified at the results of the Pool operations to date.

Answering your specific inquiries, we would appreciate it if you would transmit directly to us the check covering our portion of the Pool income for the period ending December 31, 1949, when you have received the necessary permission. We very much appreciate your offer to prepare the tax refund claim forms for this same period as you did for the earlier period and we would also like to have you file the claim on our behalf, as you suggest.

Coming now to the negotiations toward the formation of the new Pool and your suggestion that there should be a modification of the agreement between our companies with respect to te division of Pool income, we consider these matters of very considerable importance and of such a character that they are difficult to resolve by correspondence. It is our suggestion that Mr. Dodds, who is fully acquainted with our relationships with your company and, through you, with the Pools, go to London to discuss the matter directly with you or whatever representative of your company will participate in the negotiations with the Pool. We should also like you to consider the question as to whether it would be helpful for Mr. Dodds to join with your representative in such Pool discussions.

Unless you have some definite objection to the foregoing proposal, would you kindly cable the period which you think would be most appropriate for Mr. Dodds' trip. As I believe you know, Mr. Knox McIlwain, our Chief Consulting Engineer, expects to be in London during the period November 5 to November 20, with the possible exception of a few days in Stockholm and Paris. If it would be at all convenient, it might be of assistance if Mr. McIlwain were available during Mr. Dodds' stay in London. If necessary, Mr. McIlwain's visit there might be extended for a reasonable period. We would also appreciate knowing who in your company is conducting the negotiations with the Pool.

With kind regards.

Sincerely,

President

WAM:Def

DEFENDANT'S EXHIBIT NO. 76A.

Mount Royal Hotel
Marble Arch
London, W. 1
Telegrams: Mounroy, Wesdo, London.
Telephone: Mayfair 8040

Friday, November 14.

Dear Jack and Mack:

Please accept this joint report as actually I have been under some pressure since arrival. The trip over was pleasant and uneventful after they finally decided what they wanted to do. We were already to land at Shannon—having filled out numerous forms including one that we weren't carrying any hoof & mouth disease in our hip pockets—when the Captain announced a change of plans—we were proceeding direct to London which we promptly did. We made the flight non-stop in 12 hours 15 min.

Cornock, Chapple and Heather's assistant, a Mr. Bome, met us at the airport and took us to the hotel to get settled. In the afternoon they returned with copies of the TV and sound receiver diagrams they had examined. We had a general discussion of the pool situation and then Chapple took us to an ancient Inn in Southwalk for dinner and then drove us on a quick tour o the principal points of interest to help us get oriented.

The next day (Wednesday) I spent analysing the receiver diagrams against our patents. It was quite a job as their circuits are quite different from ours in nearly all stages, so I had to study them quite carefully. However, I was forced to agree with their finding that we had no patents covering their current TV or sound sets with the possible exception of the Wheeler hexode patent which has expired but as to which an application for prolongation on account of war loss is pending. Of 19 TV sets examined, 3 definitely use it and 12 possibly use it in a pentode mixer which is quite different from anything I have seen. I spent some time with Knox on Wednesday afternoon studying it but we concluded that a definite answer could only be given by some measurements. (Incidentally Knox was very optimistic over the prospective results of the I. A. T. S. Conference—but probably has reported directly.)

Thursday morning I met early with Cornock to discuss some of my findings and get answers to some of my questions and then we went to a meeting at 10:30 in Heather's office attended also by Mr. Nadler, their general counsel. Heather outlined the Pool discussions to date. The proposal is to include the same members except B. T. H., which is being dropped. E. M. I. Philips and Marconi have already made a three-party Agreement complete except for the allocation of percentages. I was given a copy confidentially. It follows rather closely the A-6 Pool and is for five years. It provides for the addition of other "joining parties." One point of difference is that the £15,000 royalty ceiling for members has been removed. A few of the larger companies exceeded this figure during the A-6 pool but not very much.

Heather said that the British industry favored a single pool license and that the members also did, so it was only a question of terms. There appear to be no significant patents in force on sound receivers and the proposal is to license them at a nominal royalty or at a small lump sum of £500/yr. It is expected that royalties on TV will be the same or possibly increased. E. M. I. apparently has about 12 patents of some importance in TV receivers (including RCA and Telefunken). Marconi (including English Electric) are believed to have no patents of value and Philips' patents are believed to be of only marginal value.

The system of point appraisal described by Heather has been changed to a scale of 100 instead of 5, the value for each patent corresponding roughly to the % of TV sets in which it is used, with a minimum of 1 pt. Sound pats are given ¼ the value of TV patents. On this basis, the allocation of points proposed by EMI was:

EMI-1796
Marconi-?
Philips-?
G. E. C.-180
Hazeltine-35

On this basis about 10% of the pool would go to G. E. C. Hazeltine vs. 16% in the last pool.

On the basis of these facts, it was obviously extremely important to establish use of the hexode patents in TV sets which might add nearly 100 pts to our share. This involved two factors (1) getting an extension, which had seemed to have become same point % that we had in the last Pool but agreed that we might have to recede slightly as the situation appears much more unfavorable than I anticipated. However, we will not recede unless it firmly appears that no deal can otherwise be made.

To proceed on the two factors above, we arranged a meeting that afternoon with Lowry (Owen has not been in the office since last spring) in which Chapple joined. It appeared that our application wasn't getting anywhere so we decided to consider all possible moves, even though frivolous, in an attempt to revive it. Two suggestions came out of it that seemed promising (1) Join G. E. C. as a party on the ground that we are really engaged in a joint venture. This would eliminate the troublesome point that Haz. received payments from G. E. C. during the War period. (2) Amend the application to show that the loss in TV was even greater than in sound. That is a long story which I'll defer for an oral report. This discussion lasted until late afternoon and during the time we made an appointment for today with James Mould, Q. C., who has been in direct charge of the prolongation proceedings. Cornock says he has had more experience in such proceedings thn anyone else in London. We met with him today and he was most receptive to both proposals. Cornock is to gather the necessary evidence.

On the question of the pentode mixer being covered by the hexode patent, Cornock said he would request his technical people to make the necessary tests, I am going out to the Laboratories in Wembly Monday to review this phase and tie up some other loose ends preparatory to our conference on Tuesday morning. We are also meeting again with Heather early Tuesday morning for a last review before our session with E. M. I. The G. E. C. people have certainly been 100% cooperative and have dropped almost everything else for the duration of my stay in order to accomplish as much as possible.

Incidentally, Cornock said that they had independently evaluated their own patents and reached an answer within a few points of that by E. M. I. They are now checking the evaluation of the E. M. I. patents.

Please excuse this long wheeze which I jotted down principally as a record to date which is much more complete than I can dictate on my return.

Heather has applied for approval of our extension agreement but agreed to defer remitting further funds until 1953.

The weatherman, with his usual perversity, has scorned all predictions—it has been cool, sunny & pleasant since our arrival.

Best regards to all.

Larry

DEFENDANT'S EXHIBIT NO. 76-B.

7A10/8/8 7A10/8(f)

Strictly Confidential

Broadcast Licensing and Hazeltine Arrangements: November, 1952.

Notes of Discussions with Hazeltine Corporation (Mr. L. B. Dodds) and E. M. I.

I. General Discussion on Co-operation and Pooling.

Magnet House: 13th November, 1952.

Present: Mr. T. W. Heather
Mr. L. B. Dodds
Mr. K. H. Nalder
Mr. A. F. Cornock

A. Mr. Heather having welcomed Mr. Dodds, the draft Continuation Agreement (continuing all existing Hazeltine/G. E. C. Agreements to the 31st December, 1952—with certtain adjustments) was referred to. Mr. Dodds said that he agreed the draft and the contents of our letter of the 7th November, 1952: he would drite and confirm this. Mr. Nalder said that Treasury consent to the new draft had been applied for.

B. Mr. Heather then outlined the state of negotiations in Great Britain for the formation of an "A.7" Broadcast Licensing Pool to succeed the existing A.6 Pool on the 1st January, 1953: he said that E. M. I., Marconi and Philips had completed an agreement to collaborate in licensing from the 1st January 1953 to the 31st December 1957, and he believed the Trade would wish to have licensing arrangements in being. A copy of the E. M. I./M. W. T./Philips Pooling Agreement (omitting Point allocations) was handed to Mr. Dodds with a copy of a Note on the variations from the A.6 Pooling Agreement. Mr. Heather said that, in principle, the G. E. C. wished to be licensor members of the Pool and would like to know if Hazeltine also wished to join it, either alone or (as the G. E. C. would hope) jointly with the G. E. C. Mr. Dodds replied that Hazeltine would like, in principle, to row in with the G. E. C.

It was noted that under the Points evaluation system adopted in the E. M. I./M. W. T./Philips Agreement, T/V patents used "universally" by manufacturers (other than the patentee) were awarded 100 points and patents used by a lesser number of manufacturers were awarded fewer points pro rata, while unused patents were awarded 1 point: sound patents were awarded 25 points if used universally and fewer points pro rata if less used, unused patents being awarded ¼ point. On this system, E. M. I./M. W. T./Philips had agreed E. M. I.'s points at 1796 (the points of the others being unknown), while G. E. C. points would be approximately 180 and Hazeltine's approximately 35. It was guessed that the total number of points for all likely licensor members would probably be 2400/2500. The fairness of the pointing system was discussed—the following main points being made.

E. M. I. had been allotted a large number of points on patents (already granted war loss extensions) due to expire in about 2-years' time. Mr. Dodds said that Colour T/V was expected in the U. S. A. in the reasonably near future, Hazeltine's patent position being very important (the U. S. "rule of thumb" estimate of relative contributions to Colour being:

R. C. A. : Hazeltine : Others :: 50 : 40 : 10), and he therefore would not like to accept so low a Hazeltine share as 35 points if Color was likely in Great Britain in the reasonably near future. It was estimated in the U. S. A. that a Color receiver would cost not more than [30% written in] more than a black-and-white, and that probably 80% of receivers would accept colour (compatible system)—though not 80% of transmissions would be in colour. Capital expenditure to convert transmitter to Colour was not great, the main expenditure being on studios for Colour. In reply to Mr. Heather, he said that conversion units for back-and-white receivers (to give colour reproduction) were not ["attractive" written in]. Mr. Heather said he thought that the adoption of Colour in Great Britain would take more than 3-years, but the method of evaluating pointing to allow for potentialities needed consideration by Hazeltine-G. E. C.: apart from this, the G. E. C.'s first impression was that the proposed pointing system was not unreasonable or unfair (from the G. E. C.'s position as manufacturers) when viewed broadly. It was agreed that, for tability, the 5-year duration proposed for the new Pool was about right; and Mr. Nalder pointed out that, this being so, Colour would not be introduced much before the end of the Pool, but that the present pointing system should put Hazeltine in a favourable position in the next Pool if the pointing scheme were not then altered: should one, therefore, ask for an undertaking that the same system would be adopted in the next Pool, or should one try to make an ad hoc deal with E. M. I.?

Mr. Heather then said that a stage had been reached at which direct discussion by Hazeltine-G. E. C. (as partners) with the other present Parties was needed. It was arranged by telephone to have a discussion with Mr. Preston and Mr. Dale-Harris of E. M. I. at Magnet House on November 18th. It was agreed that grounds for asking for a higher pointing were:

(a) Colour potentialities,

(b) Possible extension of Hazeltine Patent No. 436940 (Mixers) and potential use in T/V,

(c) Recognition of need for stability of income for a research organization such as Hazeltine.

It was agreed to see Solicitors and Counsel as early as possible regarding extension of the Mixer patent.

C. As between Hazeltine and the G. E. C., it was agreed that they wished to act in concert in licensing, discussion of division of income to be deferred. The G. E. C. would like the Service Agreement to continue at £1,000 p.a.: this also was agreed.

As regards the former licence from Hazeltine covering manufacture by the G. E. C. under Hazeltine patents, Mr. Cornock asked whether it was really equitable, now that the G. E. C. paid substantial royalties to the Pool in which Hazeltine participated in drawing its share of Pool income, that the G. E. C. should also continue to pay royalties direct to Hazeltine in addition. On this, Mr. Heather asked whether Hazeltine had obtained much benefit from its rights in G. E. C. patents in the U. S. A. Mr. Dodds replied that the position there was rather the reverse of the position in Great Britain—namely, that whilst Hazeltine patents were not much used in Great Britain, not much use was made of the G. E. C.'s inventions in the U. S. A. He added that Hazeltine did not license tube or component manufacturers in the U. S. A. (as to do so might create difficulties about implied licences under their circuit patents), and Hazeltine might therefore not be obtaining as much benefit from G. E. C. patents as might otherwise have been possible. The general sense of the discussion was that the G. E. C. would not continue to pay Hazeltine a direct royalty for the use of Hazeltine patents in Great Britain, apart from Hazeltine's share of Pool income.

D. Mr. Heather then asked whether there would be any benefit from making the field of the arrangements wider.

Mr. Dodds said that Hazeltine had had a fairly substantial revenue from commercial radio in the U. S. A. and had wondered whether revenue in that field could be obtained from Great Britain and whether they should join with the G. E. C. or with some other Company in Great Britain in regard to the commercial field.

Mr. Cornock reminded the meeting of the position regarding the Radio Navigation Aids Pool, where the G. E. C. had previously advised Hazeltine that it did not seem that they would benefit from putting their patents in the hands of the G. E. C. for pooling, and added that while there had been past discussions about the formation of a similar Pool covering Aircraft Radio those discussions appeared to have come to a standstill.

II. Extension of Patent No. 436940.

a) Discussion with Messrs. Faithfull Owen & Fraser

Jamaica Building: 13th November, 1952.

Present: Mr. M. Lowry
Mr. L. B. Dodds
Mr. W. J. C. Chapple
Mr. A. F. Cornock.

Mr. Lowry said that the patent expired in 1949 and that one main difficulty in getting a useful period of extension was that the Patent Office contended that the lump sum paid (in instalments) by the G. E. C. for Hazeltine rights should be treated as income distributed over the war years, thus reducing the apparent loss to Hazeltine attributable to the War. Mr. Dodds raised the question whether the application could be put on the basis that the entry into the Pool was a joint venture by Hazeltine and the G. E. C. in which the G. E. C. had an undivided half-share in the equitable rights in the patent, payments between the parties then being a mere transfer of money from one pocket to another and not affecting the loss suffered by the parties jointly. This led to a discussion whether the G. E. C. could now claim consideration as exclusive licensees (under Section 25 of the Patents Act, 1949), about which there were felt to be serious technical difficulties, and in discussion on the point that the war had delayed the building of additional television stations, that only when there was more than one station was the mixer patent needed in T/V sets, and that the effect of the war had therefore been completely to do away with the potential use of the patent for T/V.

It was arranged that these points should be put to Mr. James Mould Q. C. in conference on the following day.

(b) Consultation with Mr. James Mould Q. C.

Mr. R. G. Lloyd.

New Court, Temple: 14th November, 1952.

Present: Mr. James Mould Q. C.
Mr. R. G. Lloyd
Mr. L. B. Dodds
Mr. M. H. Lowry
Mr. A. F. Cornock

Mr. Lowry and Mr. Dodds outlined the suggestions made on the previous day:

(1) Co-ownership of equitable interest in Patent No. 436940;
~~(2) Loss of G. E. C. as Licensees:~~
(3) Frustration of T/V use by deferment of building of extra stations owing to war.

In the course of the discussion Mr. Lloyd asked whether an extension in respect of T/V only (with possible free licence to Sound users, as in Smith, Garnett and Randall's Patent, 67 R. P. C. 170) would be acceptable. Mr. Dodds and Mr. Cornock said that such an outcome would be fully satisfactory.

Mr. Mould pointed out that a complete change of the basis of the application (e. g. from loss by Hazeltine as patentees to loss by G. E. C. as licensees) would probably be impermissible: the question of argument about G. E. C. loss should, however, be further considered. A draft of evidence regarding the T/V loss should be prepared in a form suited to support (a) an extension of T/V rights only, in respect of which there was a total loss, (b) a "lumped" extension covering both T/V and Sound aspects. The effect of some form of joinder of G. E. C. upon both footing (a) and footing (b) above should then be considered.

Mr. Lowry pointed out that the provision of a London-Birmingham television channel (believed to be co-axial cable) was under discussion before the outbreak of war. Mr. Cornock said he would arrange for the provision of evidence to be looked into.

III. Discussions on "A.7" Pool.

Magnet House: 17th November, 1952

Present: Mr. T. W. Heather
Mr. L. B. Dodds
Mr. A. F. Cornock

Mr. Dodds outlined the position regarding extension of the Mixer patent in the light of recent advice—viz. (a) an extension of more than 3½-years now seemed not unlikely, at least in respect of T/V, (b) the extent of present use was debatable and would be investigated.

Mr. Heather, in the light of this, suggested that one should not, in the forthcoming discussions with E. M. I. attack the general nature of the Pooling arrangement, but should argue about the method of evaluating patents. Mr. Dodds said he was generally of the same view, but felt that Pool voting by a majority of points holding was objectionable and might also be criticised. Mr. Heather said the point had been noted, but one was conscious that this method had not in the past led to difficulties in practice; and Mr. Cornock reassured them that the majority vote applied only to a limited number of matters and could not compel the bringing of infringement actions by a patentee or be used to alter the participations of Pool Parties.

this method had not in the past led to difficulties in prac-

Mr. Heather then asked whether, in discussion, one should: (i) attack the method of pointing; or (ii) the detailed evaluations on the present method of pointing. Mr. Cornock said that while details of E. M. I's own evaluation could be criticised to some extent, he felt that an attack on (i) would be necessary to produce any effect—though he doubted whether Mr. Preston and Mr. Dale-Harris would consider themselves free to discuss this, as Mr. Shoenberg objected to discussing arrangements with two parties jointly, though prepared to discuss with each separately. Possible modes of attack would be (a) to criticise the "gamma" of the points scale (as having produced a result obviously not representative of the disadvantage the Pool would suffer if G. E. C. and Hazeltine were not included), and (b) also to argue the potentialities (put forward at the previous meeting) of Colour and F. M.

Mr. Dodds said that Hazeltine might take the attitude that if the result was to be that given by the present gamma, they might prefer to stay out of the Pool till Colour came into use.

After further discussion, in the course of which it was felt that the securing of a change of gamma might have undesirable future repercussions, and that an argument for revaluation if Colour or F. M. were adopted was less desirable than the adoption of the attitude that the present pointing did not do justice to Hazeltine/G. E. C., Mr. Heather summed up the proposed opening for the discussion with E. M. I. as follows:—

(1) Hazeltine and the G. E. C. intended to operate together:

(2) Mr. Dodds had visited England to take part in joint discussions as the matter was of great importance to Hazeltine:

(3) The Parties wished to co-oprate—but on an equitable basis.

E. M. I. would then be asked to justify their scheme by stating its merits and how it was expected to work out, and it would be pointed out to them that it did not do jusice to Hazeltine's potentialities or the value of acquiring rights in their inventions as an insurance policy.

Mr. Dodds then asked whethr the G. E. C. would be interested in rights in Hazeltine patents for commercial purposes. Mr. Heather said it was not at present very clear whether the G. E. C. would be interested or not, since the G. E. C. did not concern itself with radio navigation. Its commercial interests were V. H. F. and U. H. F. for point-to-point communication, and there was also work in the Post Office field. Other Government work was subject to quite separate considerations.

Mr. Dodds then asked if there was any possibility of the Pool's setting up an engineering service. Mr. Heather said that he thought there was no real chance, because of:—(a) the difference of industrial outlook as compared with the U. S. A., (b) probable opposition from E. M. I., and (c) staffing difficulties.

IV. Discussions with E. M. I.

A. 1st Meeting.

Magnet House: 18th November, 1952.

Present: Mr. T. W. Heather
Mr. L. B. Dodds
Mr. K. H. Nalder
Mr. A. F. Cornock
Mr. E. P. Dale-Harris
Mr. S. J. Preston.

Mr. Heather opened the discussion by saying that Hazeltine an dthe G. E. C. wished to act together and approached the question of co-operation with E. M. I. in the most friendly spirit. They understood that the proposed scheme for the next Pool was on the same general lines as for the past Pool and the main point for consideration was, therefore, what was a fair basis for the assessment of holdings. They would therefore like to know the basis for E. M. I.'s proposed method of scaling holdings. Mr. Preston said that T/V design was now stabilised, and as it had in the past been necessary to bring Actions against obdurate infringers, patents in force and available for action against infringers had been weighted heavily.

Mr. Heather then asked why the particular scaling now proposed had been adopted. It weighed very heavily against potentially useful patents not actually in use at the moment, and he would like to know whether other probable members of the new Pool had accepted it. Mr. Dale-Harris said that he thought it irrelevant whether others had accepted the scale. Mr. Preston said that the scale was somewhat on a "cut-and-try" basis, adopted after considering the results of a range of possible scales. Mr. Heather repeated that it put a very high weight on patents actually in use; the G. E. C. and Hazeltine had been concerned by the facts that, (a) patents expire, (b) new ideas become important, and (c) licencees take a licence partly as an insurance policy. It was not lear that the scale took care of thes factors properly.

Mr. Dodds said that, in the U. S. A., a factor which markedly influenced licensees was not so much the existing patents as the potentialities of the licensor. He referred to Colour T/V, saying that it would only be a question of time before it came in, and it was expected in about 2-years in the U. S. A. Hazeltine had worked out the compatible system, and believed they would have a dominant position when Colour was adopted. A possible way of dealing with this, would be to re-value holdings when Coluor was adopted, but but he was not really in favour of revaluation during the currency of a Pool. Mr. Preston said that he agreed with the two last comments, and added that, if revaluation were carried out, it would have to affect all licensors and E. M. I. themselves considered they would still have a strong position—to which Mr. Heather replied that E. M. I. had made a change of scale now and might propose a further change of scale when Colour came in! Mr. Dodds further pointed out that an adjustment would not affect all parties equally, because not all had had a long-term research programme on Colour as Hazeltine had had. Evaluation at 1 point per patent not in use did not do justice to the future importance of Colour, and Hazeltine's evaluation would increase more heavily than that of R. C. A. as Colour developed.

Mr. Dale-Harris said that E. M. I. would prefer to discuss matters of this kind with companies individually and not to try to discuss them with two parties simultaneously. To this Mr. Heather replied that Hazeltine and the G. E. C. were partners in the negotiations.

Mr. Preston said that he thought Colour was unlikely during the "A.7" Pool. He also pointed out that E. M. I.

had had to give an undertaking to the B. B. C. that their patents would be available to manufacturers, and he thought that others in a dominant position would probably have to do the same.

Mr. Heather said that the G. E. C. had had a certain participation in the past, and a reduction of participation in the next Pool needed to be justified. Moreover, suppose the Mixer patent were extended for 5-years, shortly after the formation of the Pool, what adjustment would the formula have provided for this important patent which would then be in existence at the date of issue of new Pool licences? This led to further discussion about the evolution of formulae for Pool pointing, in the course of which Mr. Dodds said that the formula could only be a first approximation and would need adjustment to take care of potentialities and "intangibles". Mr. Preston suggested that, if practicable, a revaluation might be made if Colour was adopted, while Mr. Dodds suggested that it would be better to try to make an allowance for potentialties at the present time—Mr. Cornock pointing out that some subjective judgments were inevitably incorporated tacitly into any fromula which was not impossibly complicated, so that there was no logical inconsistency in making an allowance for Hazeltine's potentialities.

Mr. Preston then said that it appeared that the approximate evaluation so far made was unsatisfactory to Hazeltine and the G. E. C., and the matter reduced itself to the question whether the latter wanted to suggest some other figure. Mr. Heather thereupon asked how many points E. M. I. expected members other than they would hold in the Pool, and on being told that it was expected that the non-E. M. I. points would approximately equal the E. M. I. points (so that the G. E. C.-Hazeltine holding would probably be about 6% of the Pool, on the existing evaluation) Mr. Heather said that so low a holding would call for very serious consideration. Mr. Dodds said he was doubtful whether Hazeltine could consider that so small a holding was worth bothering about; as a newcomer to these Pool negotiations, he felt that the secrecy of the negotiations made co-operation difficult, though he realised the difficulty of having a discussion with 15 parties round a table simultaneously. Mr. Dale-Harris said that experience had shown that round-table discussions with many parties were impracticable—instancing the experience of the Marine Radar Pool. He could not give names of the other parties as not all had yet signed.

Mr. Heather asked whether the arrangements were rigid or whether there was room for negotiation, to which Mr. Preston replied that there was not much room for elasticity because of their commitments to other parties, and (on Mr. Heather's saying that the present proposal looked completely unattractive on the face of it) Mr. Dale-Harris asked what share Hazeltine/G. E. C. would want. Mr. Heather said they had not yet formulated a figure, as they had preferred to have a talk with E. M. I. first. In reply to Mr. Cornock, Mr. Dale-Harris said that the expected number of licensors was 7 or 8.

Mr. Dodds said that G. E. C./Hazeltine had jointly had abut 16% of the previous Pool, and if Colour came in, the Hazeltine pointing should be very much greater; but violent fluctuations of participations were unsatisfactory to Hazeltine, since they depended on research and licensing and must be able to plan ahead. A licensor-group should therefore take a longer view: Hazeltine demands in Great Britain had always been very modest, whereas they had about 30% in the U. S. A.

Mr. Heather and Mr. Dodds then said that they would like to join in pooling but they doubted whether the present picture was sufficiently attractive and therefore asked whether some form of accommodation could be found. Recognising the difficulty of modifying the formula, Mr. Heather asked whether there was any possibility of a deal between Hazeltine/G. E. C. and E. M. I. Mr. Dale-Harris said this would have to be referred to Mr. Shoenberg.

After a short discussion of the likelihood or otherwise of the introduction of Colour in Great Britain—in the course of which Mr. Preston said that he believed that only Hazeltine and the R. C. A. had done any real work on Colour—Mr. Dale-Harris and Mr. Peterson left the meeting.

There was then a discussion of the form of counter-proposal that might be made to E. M. I. Finally, Mr. Heather rang up Mr. Preston saying that the present proposals appeared inequitable and unattractive and that a share of about 11% appearde to be the least which would be attractive. It was arranged that there should be a further talk with E. M. I. on November 20th.

Turning to the question of G. E. C.-Hazeltine arrangements in the light of the morning's discussion, it was agreed that the G. E. C. wished to continue the Service Agreement, and that the G. E. C.'s royalty payments to the Pool would provide an equitable return (assuming Hazeltine/G. E. C. were accorded terms which justified Hazeltine's patents being placed in the Pool) for the G. E. C.'s own use of Hazeltine patents. The patent Agreement (Agreement (d)) would also be continued if both G. E. C. and Hazeltine became members of the Pool. It was further felt that if the point participation were about 10% of the Pool, a 60:40 division of income between G. E. C. and Hazeltine would be about fair. Mr. Dodds said that if Hazeltine's share were less than 4%, and Colour television came in, they would want to review the position.

In the alternative, if Hazeltine and G. E. C. were not both in the Pool, the G. E. C. would like to continue the Service Agreement at £1,000 p.a. and would like the right to use Hazeltine patents, and would be prepared to continue Patent Agreement (d). Mr. Dodds said that if this state of affairs arose, Hazeltine would probably not want to grant G. E. C. a formal manufacturing licence but would then undertake not to sue the G. E. C. for infringement.

There was also discussion of an arrangement by which if Hazeltine received £5,000 on account of Pool income (including refunds of British Income Tax, if any) further payments should be suspended until Hazeltine "income" reached £6,000 from the Pool—to allow the G. E. C. to recoup the £1,000 p.a. paid under the Service Agreement.

B. 2nd Meeting.

Magnet House: 20th November, 1952.

Present: Mr. T. W. Heather
Mr. L. B. Dodds
Mr. K. H. Nalder
Mr. A. F. Cornock
Mr. E. P. Dale-Harris
Mr. S. J. Preston

Mr. Heather said that Mr. Dodds would be returning to America very soon, and the situation, as it appeared initially, did not seem satisfactory. He had no special comments of a general nature to make on the G. E. C.'s position, but he felt that Hazetine's position, as non-manufacturers, was special. He was surprised at the large number of points likely to accure to members other than E. M. I. Hazeltine and the G. E. C. Two suggestions had occurred to him, (i) the allocation of a reasonable number of points to Hazeltine in view of their circumstances, or (ii) a pecial arrangement outside the formal points evaluation to meet the Hazeltine position. E. M. I. then stated that M. W. T., Philips, Cinetel and Murphy had agreed to join them: they had not yet settled with S. T. C.—nor with

Pye, but Pye had played only a subsidiary part in the previous Pool and were only expected to do the same in the new Pool. Similarly, not much was expected from Ekco or Cossor.

Mr. Heather said that he did not feel it was necessary to argue specially about the relative positions of the G.E.C. and E. M. I.; but if it was desired that Hazeltine should be members, he felt it was necessary to come to meet them.

Mr. Dale-Harris then said that he had heard from Mr. Shoenberg that, if the offer could be accepted at once, E. M. I. would offer Hazeltine/G. E. C. a holding in the ratio.

E. M. I. : Hazeltine/G. E. C. :: 100:17

instead of the 100:12 approximately computed previously —it being expected that the total Pool parties' points would be about 200.

After a short withdrawal for consideration, Mr. Heather and Mr. Dodds told E. M. I. that each would recommend his Company to accept this proposal.

Mr. Dale-Harris then said that it was hoped that the income of the Pool would be of the same order as for the A.6 Pool, though the basis for computing royalty would probably be different. He hoped, therefore, that a Committee Meeting of licensor members would meet very soon to discuss proposals for new licensing terms. He thought that other potential licensors were thinking of a royalty of the order of 3%, though he hoped that an even higher figure might be possible. He promised to send Mr. Nalder a draft Agreement covering membership of the Pool, on the same lines as the Agreement with Cinetel.

The Pool points mentioned during the conversation were as follows:—

E. M. I.	100
M. W.T.	13½
Philips	25
Hazeltine/G. E. C	17
	155½

V. Hazeltine-G. E. C. Arrangements.

Magnet House, 20th November, 1952.

Present: Mr. T. W. Heather
Mr. L. B. Dodds
Mr. K. H. Nalder
Mr. A. F. Cornock.

The remaining details of the Hazeltine-G. E. C. arrangements were discussed.

Mr. Heather then said that the G. E. C.'s broad consideration was that if the G. E. C.'s percentage participation in the Pool was equal to their percentage of the market, they had the equivalent of a free licence, and they did not want to fall below this. Mr. Modds said that, on the figure so far given, it would appear that G. E. C./Hazeltine would have 8½% of the Pool, and if this income were divided 60:40, this would give Hazeltine about 3½% of the Pool: he would have liked 4%, but he felt that 3½% was near enough, and he agreed that the G. E. C. should recoup its royalty payments.

It was finally agreed that the division should be:

Hazeltine: G. E. C. : 40:60

—subject to final confirmation by the Management of the respective companies. A letter authorising the G. E. C. to put Hazeltine patents into the Pool was drafted, and subsequently signed on behalf of the Parties after confirmation of acceptance by the Companies.

DEFENDANT'S EXHIBIT NO. 77.

Air Mail.

February 8, 1954.

Mr. M. M. Macqueen,
The General Electric Co. Ltd.,
Magnet House,
Kingsway, London, W. C. 2,
England.

Dear Mr. Macqueen:

It was with considerable pleasure that I learned that you and some of your associates would be coming over next month and that I would have an opportunity of meeting you personally. This rather sparked me into writing and thanking you for the material with respect to the A-7 Pool which you kindly gave Mr. Loughren when he was over there last Fall.

The pressure of some rather urgent litigation at that time prevented me from reviewing these new Pool documents, but both Mr. Binns and I have now had an opportunity to do so and, as might be expected, a few questions have arisen.

It occurred to us that perhaps it would be simpler for you to answer our questions when you are here next month than to take the trouble to write an extended letter.

The following are some of the points which we would like to discuss with you:

1. The number of points allotted to B. T. H., Cinema Television, Murphy, Pye, and S. T. C.
2. The total number of points now allocated to all members of the Pool.
3. Whether or not the Committee has taken any action under paragraph 11(n) of the basic Pool Agreement to reduce the royalties of the Pool members.

4. Are there any arrangements between the Pool members, or between any Pool member and an outsider, other than those spelled out in the Pool Agreements.
5. Is there any practical significance to the Committee from the standpoint of the Pool members, since it appears that E. M. I. permanently enjoys a majority of the votes on the Committee.
6. Could you give any estimate of the number of Licensees having business volumes which will reach the £25,000 royalty ceiling in the Television License Agreement. Also, do you have any estimate of what the net Pool income may be for the year 1953.

It may be also that other background information or details on the operation of the Pool will occur to you which may be of interest to us and which we can discuss during your visit.

I know that Mr. Binns has been in touch with Mr. Heather and Mr. Marriott. I am not certain whether you will be arriving or leaving at the same time, but if there is anything at all that we can do in the way of arrangements here, I hope that you will call on us.

With kind regards,

Sincerely,

....

Vice President.

LED:Z

cc: Mr. J. Binns

DEFENDANT'S EXHIBIT 78-A.

(Letterhead of The General Electric Co. Ltd., Magnet House, Kingsway, London, W.C. 2.)

12th February, 1954.

L. B. Dodds, Esq.
Hazeltine Corporation,
58-25 Little Neck Parkway,
Little Neck, L. I.,
New York.

Dear Mr. Dodds,

Thank you very much for your letter of the 8th February. I look forward to discussions with you on the Pool policy, both in long and short term. I will also arm myself as best I can with the specific points mentioned in your letter.

With some of my colleagues, I am sailing on the Queen Elizabeth, leaving on the 13th March. I have a good deal in common with Mr. Marriott and the others in the matters in which they will be interested, and to that extent I will work in with any arrangements which Mr. Marriott may make.

I look forward to our meeting.

Kind regards,

Yours truly,

(Illegible)

INDEX.

PAGE
No. 78B—Memo, Dodds to File Apr. 5, 1954, re: conference with Macqueen Apr. 2, 1954 1441
No. 79—Dodds—License Abstracts of all Hazeltine foreign agreements (earliest Sept. 30, 1948) 1444
No. 80—Letter June 22, 1954, Dodds to Macqueen, re: A7 Pool 1459
No. 81—Letter May 8, 1956, Cornock to Dodds, re: Broadcast Licensing Pool 1461
No. 82—Letter Sept. 25, 1957, Cornock to Dodds re: Broadcast and TV Licensing Pool 1466
No. 83—Letter Apr. 7, 1960, Dodds to Macqueen 1468
No. 84—Letter Apr. 13, 1960, Macqueen to Dodds 1469
No. 85—Letter Apr. 19, 1960, MacDonald to Macqueen 1471
No. 86—Letter June 14, 1960, Macqueen to Dodds 1472
No. 87—Letter Oct. 9, 1946, Dodds to Hultman re: Scandinavian Patent Pool 1474
No. 88—Letter Dec. 14, 1954, Dodds to Laczay re: RCA 1476
No. 89—Letter May 28, 1956, Dodds to Cornock re: Broadcast License Pool—G. B. 1477
No. 90—Letter June 21, 1948, Binns to Paterson 1483
No. 91—Letter Nov. 17, 1949, Mayer to Shackelford re: EMI Licensing (LM-517) 1484
No. 92—Memo—Jan. 2, 1950, Mayer to Shackelford re: EMI Licensing (LM-554) 1490
No. 93—Letter Oct. 29, 1952, MacDonald to Heather re: Hazeltine—GEC Agreements 1497

No. 94—Letter Dec. 13, 1926, Shoenberg to Sarnoff..1499
No. 95—Letter Sept. 18, 1933, Topham to Western Electric Ltd. re: Hazelpat Limited..................1501
No. 96—Letter Jan. 21, 1948, Binns to Macqueen.....1504
No. 97—Letter Feb. 23, 1951, Cornock to Owen re: Hazeltine Corporation..........................1506
No. 98—Letter Dec. 15, 1948, Birney to Shackelford..1511
No. 99—Hazeltine British Patents Corresponding to U. S. Patents, etc.—Apr. 26, 1960..................1512
No. 100—Letter March 31, 1931, to Klugh............1512
No. 101—Letter Nov. 13, 1933, Thompson to Topham.1515
No. 101A—Letter Dec. 7, 1934, Rothermel to Zenith...1517
No. 102—Letter May 28, 1936, Toubkin to Zenith.....1518
No. 103—Letter Nov. 9, 1936, Toubkin to Zenith......1523
No. 104—Letter Mar. 5, 1937, Toubkin to Zenith......1527
No. 105—Letter Mar. 8, 1937, Toubkin to Weldon....1533
No. 106—Letter Mar. 31, 1937, Duke to Toubkin......1535
No. 107—Letter June 25, 1937, Toubkin to Zenith....1536
No. 108—Letter Sept. 3, 1937, Weldon to Toubkin....1541
No. 109—Letter Aug. 3, 1938, Topham to Thompson..1545
No. 110—Letter Dec. 21, 1938, Topham to Thompson..1547
No. 111—Letter Dec. 12, 1933, Canadian Marconi to MacDonald..................................1549
No. 112—Bulk Exhibit—Correspondence etc., between Zenith and Ramsey..............................1559
No. 113—Bulk Exhibit—British market inquiries re: Zenith equipment..............................1594
No. 114—Bulk Exhibit—Licenses to Zenith from RCA; Western Electric; General Electric; and Canadian General Electric..............................1607
No. 115—Letter July 2, 1948, Dodds to Hultman re: Sentinel..1634
No. 116—Letter Aug. 29, 1950, Dodds to Brown......1636

No. 117—Memorandum of Agreement—Jan. 19, 1927—Canadian General Electric, et al. 1637
No. 118—Memorandum of Patent Licenses Agreement—July 2, 1943—HC and CRPL 1645
No. 118A—Statement of Account—dated June 26, 1957 1666
No. 118B—Statement of Account—dated Oct. 21, 1957 1668
No. 118C—Statement of Account—dated June 8, 1959 1670
No. 119—Letter Mar. 19, 1963, extending CRPL and Sealandair Agreements of 1943 to Dec. 31, 1963 1672
No. 120—CRPL "Output" License 1927 1673
No. 121—CRPL "Output" License 1929 1677
No. 122—CRPL "Output" License 1938 1691
No. 123—CRPL "Output" License 1721
No. 124A—Letter Jan. 17, 1952, Brownlee to Birchard 1745
No. 124B—CRPL Licnse—1951 1746
No. 124C—CRPL License 1807
No. 124D—CRPL Supplementary Agreement 1831
No. 125—Memo—Mar. 30, 1944—MacKenty to Committee on International Activities 1834
No. 126—Letter Aug. 2, 1948, Shackelford to Coe 1837
No. 127—LBD notes re: Canadian Agreement 1839
No. 128—Letter Apr. 6, 1943, Dodds to Macfarlane 1841
No. 129—CRPL General Survey—April 1955 1844
No. 130—CRPL Warning Notice 1861
No. 131—CRPL Warning Notice—1929 1865
No. 132—CRPL Warning Notice—1930 1866
No. 133—CRPL Warning Notice 1867
No. 134—CRPL Warning Notice—1955 1868
No. 135—CRPL Warning Notice—1950 1870

No. 136—CRPL Warning Notice—1950 1873
No. 137—CRPL Warning Notice—1955 1876
No. 138—CRPL Warning Notice—1958 and letters . . . 1879
No. 139—CRPL General Survey—December 1953 . . . 1883

DEFENDANT'S EXHIBIT NO. 78-B.

Memorandum To File April 5, 1954
From
Subject

L. B. Dodds

Conference with M. M. Macqueen of GEC on April 2, 1954

This memo is to record the substance of a discussion between Mr. Binns and the writer with Mr. Macqueen of GEC. The memo will be limited to information supplied by Mr. Macqueen and will not attempt to cover the various subjects about which Mr. Macqueen inquired.

The starting point of the discussion was the numbered subjects contained in my letter of February 8, 1954, to Mr. Macqueen and these subjects will be covered in the same order.

1, 2—The numbers of points allotted to the various members of the A-7 Pool as at the end of January, 1954, are as follows:

Company	Voting Power	Revenue Points
E. M. I./B. T. H.	100	100
Cintel/Bush (J. Arthur Rank)	11	11
G. E. C.	12	12
M. W. T.	13½	13½
Murphy	17	17
Philips	25	25
S. T. C.	10	15
Ferranti	—	1½
Pye	5½	10
E. K. Cole	—	2
	194	207
Philco	—	4 (under negotiation)

3—The Committee has not, to date, taken any action under paragraph 11(n) of the basic Pool Agreement to reduce the rate of royalty paid by the Pool members.

4—Mr. Macqueen knew of no "under the table" arrangements between the Pool members or between any Pool member and an outsider.

5—Mr. Macqueen feels that the Committee does have a practical significance from the viewpoint of the Pool members, in spite of the fact that EMI permanently holds a majority of the votes on the Committee. He said that it has been Shoenberg's cardinal policy always to go along with any fair proposal of the Committee members so long as the Committee does not suggest anything which would impair EMI's own investment. It is Shoenberg's view that EMI has the major patent investment in the industry and that he must protect it against any "ganging up" by the other members of the Pool which would in any way seriously affect EMI's patent position.

6—There are 12 firms in England doing about 80% of the television business, each of which has a volume such that it will reach the maximum £25,000 royalty ceiling in the television license agreement. The remaining 20% of the television business is scattered among a number of smaller companies. Mr. Macqueen said that the principal television sets now on the market in England were a 14" table model having an average manufacturer's selling price of £31 (which he thought represented about 70% of the TV receiver sales), and a 17" table model having a manufacturer's selling price of £38. He gave an estimate of the A-7 Pool income, based upon two assumptions: (a) that the TV business continues approximately on the 1953 level of one million sets per year, (b) that the three outstanding nonlicensed firms will accept a Pool license, namely, Cossor, Ferguson*, and Plessey. On the foregoing assumptions,

---

* Owned by Thorne Electrical Industries, which has a lamp agreement with Sylvania.

Macqueen estimates Pool income at £450,000 gross per year, before taxes. Based on joint Hazeltine-GEC take of approximately 8% of the Pool income and the 60-40 disposition between GEC and Hazeltine, respectively, this should yield to Hazeltine approximately £12,000 per year.

Mr. Macqueen was asked whether there appeared to be any objection in failing to pay renewal taxes on Hazeltine patents having no present or prospective used and expiring within the period of the A-7 Pool. Allowing these patents to lapse might effect a substantial saving in renewal taxes. Mr. Macqueen saw no objection to this procedure and made a note to check it with respect to their own operation.

It was agreed that the writer would supply Mr. Macqueen with the following information:

1. The numbers of British patents which may have issued on the Hazeltine Constant Luminance and Shunted Monochrome developments, or other important color cases.
2. Attempt to obtain from RCA information as to the duration of their patent agreement with EMI.
3. Numbers of any Hazeltine British patents which may be of utility in FM receivers in view of the proposed FM sound broadcasting system for England.
4. Copies of the current RCA licenses applicable to home receivers, communications, and tubes.

L. B. Dodds.

LBD:Z

cc: Mr. J. Binns

DEFENDANT'S EXHIBIT NO. 79.

September 30, 1948
LBD:AA

License Abstracts.

Outline.

British Pool Agreement—1948.

Parties	Patent Groups Included
E. M. I.	E. M. I.
	Gramophone Co.
	Columbia Graphophone
	Marconiphone
	R. C. A. (inventions made prior to 1945)
B. T. H.	B. T. H.
	A. E. I.
	Metropolitan Vickers
	G. E. (U. S. A.)
Philips	Philips Electrical Industries
	N. V. Philips Gloe.
	Hartford National Bank
G. E. C.	G. E. C.
	Hazeltine
Marconi	Marconi
	English Electric

1. Definitions: subsidiaries (conventional)—Radio apparatus—radio broadcast receivers, radiogramophones, radio television receivers and combinations of the foregoing for entertainment and education purposes, excluding tubes, carrier current apparatus, parts and components, television receivers for pictures larger than 30 sq. ft.

2. Each party grants licenses to and accepts licenses from each other party (except B. T. H. and E. M. I. have already cross licensed each other).

3. Licenses extend from April 1, 1948 to December 31, 1952.

4. Licenses under all present and future British patents of parties to extent of their rights to grant them.

5. Licenses to make, use, sell, lease or otherwise deal in.

6. Licenses include right to have apparatus made by others for sale under licensee's name, exclude the right to market apparatus except:

(i) Apparatus of the licensee under its name
(ii) To other licensees of any licensee party

In case any party grants rights to third parties under still other names or grants rights to non-licensees, each of other parties shall have similar rights.

7. No licenses granted for importation of sets nor of components exceeding in value 10% of retail list price.

8. No license under foreign patents; if any party is sued under corresponding foreign patent, agrees not to set up this license in defense.

9(a). Any licenses granted under acquired patent rights requiring payment of royalties to others may require licensee to pay same royalty.

9(b). Licenses under patent rights acquired for other compensation—reimbursement of party.

9(c). Licenses under patents subject to rights in favor of third parties correspondingly restricted.

10. Each party entitled to licenses under 9(a), 9(b), and 9(c) has option to refuse or surrender at any time.

11(a). Parties agree to cooperate to license British radio industry.

11(b). Such licenses to date not earlier than January 1, 1948 and extend not longer than December 31, 1952.

11(c). Each party reserves right to grant licenses separately under its own patents:

(i) Where principal consideration is not royalties or commercial trade in licensed apparatus

(ii) Where there are commitments re television receivers to B. B. C.

11(d). No obligation on any party to bring infringement suits.

11(e). Each party agrees not to indemnify others against patents of other parties or to assist in attack on such patents.

11(f). Parties to appoint a Committee to exploit Agreement; voting rights proportional to allotted points under 11(o).

11(g). Majority vote of Committee shall be decisive unless inconsistent with this Agreement.

11(h). Committee to decide terms of industry licenses and conditions on which other parties may join.

11(i). Committee to appoint a pool manager.

11(j). Conditions for adding "Joining Parties"

11(k). No party obligated to appear as grantor of pool license but must notify E. M. I. and such notice is irrevocable.

11(l). "Licensing revenue" defined as gross revenue received by Pool less costs of administration.

11(m). In case of infringement suits on Pool patents, those parties joining shall bear expenses and share recoveries in proportion to their allocated points.

11(n). Each party to pay royalty on all licensed apparatus (irrespective of patent use) at same rate as pool licenses reduced by a percentage equal to ratio of its allocated points to total allocated points; provided that when royalties of any party exceed £10,000 per year (or pro rated part) the royalty is reduced to 0.01% for radios and combinations and 0.02% for television receivers.

11(o). Points allocated:

E.M.I.—95 points
B.T.H.— 5 points
Philips—25 points
G.E.C.—30 points
M.W.T.—13½ points

12. Agreement to extend to December 31, 1952 except that royalties shall be payable on apparatus on hand on December 31, 1952.

13. Agreement may be cancelled with respect to any party becoming bankrupt, etc.

14. Admission of validity limited to field and term of Agreement.

15. Agreement not assignable.

16. Each party responsible for its subsidiaries.

17. No party to impair its rights extended under this Agreement; no obligation to maintain its patents in force.

18. No licenses to be granted by any party inconsistent with this Agreement.

19. "Party" to include subsidiaries.

A—5 License (Pool) Britain

Thompson-Houston, Electric & Musical Industries, G. E. C., Marconi, Philips Lamps.

re broadcast receivers for sound and television and electric phonographs—non commercial use

2—Pool grants to licensees personal, non-exclusive, non-assignable licenses under (i) patents listed in a schedule; (ii) any other British patent insofar as the grantors or any of [illegible]hem now have or may hereafter during the term of the license have power to grant licenses for the purpose and term hereof.

(b) Grantor to furnish patent lists on requests.

3—binds licensee's subsidiaries.

4—licensee

a—not to export without written consent of grantor b—not to use equipment, without written consent of grantor, if not made in licensed territory

c—observe patent marking requirements

d—pay royalties

e—keep accounts

f—pay interest on ovedue royalties

g—permit book audits

5—use of subject equipment by licensee's subsidiaries

6—grantor to indemnify licensee for patent infringements.

7—licensee to grant to grantors licenses under patent in connection with which former has power to license.

8—grantors rights to terminate license for:

a—default in royalty

b—default (re subsidiaries)

c—breach by licensee of terms of agreement

d—bankruptcy etc. of licensee

e—associate of licensee refusing to accept a license

November 9, 1949

Outline—A-6 License (British Pool).

Grantors—BTH, EMI, GEC, Marconi, Philips, Standard Telephones

1. Definitions

(a) Broadcast receivers

(b) Radiogramophone

(c) Set of component parts

(d) Selling or sold

2. (a) Grantors grant to Licensee non-asignable non-exclusive licenses to use the inventions;

(i) Patents set out in Schdule

(ii) All other patents under which Grantors have the power to grant licenses

(b) No license re tubes or components

3. Licensee undertakes that its subsidiary companies will be bound by the Agreement.

4. Licensee agrees:

(a) Not to sell imported receivers.

(b) To apply serially-numbered license plates

(c) To pay royalty of 1½% of net sales of licensed apparatus whether or not it uses any licensed patents; provided

(i) Royalty payable on apparatus unsold at termination

(ii) If licensee sells to a controlled company, royalties on purchasers net selling price

(iii) If licensee sells to a controlled company which performs additional work, royalties on final net selling price.

(iv) If licensee sells under trademark of another party (other than a controlled company) royalties thereon to be reported and paid separately.

(v) Licenses under patents involving an obligation of the Grantors to pay royalties.

(d) To keep records and make reports and payments.

(e) To pay interest at 4% on delinquent royalties

(f) To permit Grantors' auditors to inspect its books.

(g) Not to attack directly or indirectly the validity of the licensed patents

(h) Not to assign or divide the license without consent

5. All apparatus sold by controlled companies of Licensee deemed to be sold by Licensee who is obligated for royalties.

6. Grantors hold Licensee harmless from patent infringement claims.

7. Licensees agrees to grant non-exclusive licenses under its patents to Grantors, upon request, upon reasonable terms.

8. Grantors may terminate the license by notice:

(a) Royalties delinquent for 30 days.

(b) Royalties of controlled companies not paid.

(c) Breach of other conditions by Licensee.

(d) Bankruptcy of Licensee.

(e) Any company which controls Licensee or is under same control as Licensee and refuses to operate under license.

Any termination without prejudice to Grantors' claims against Licensee.

9. Address for notices and remittances.

(Schedule of Licensed Patents.)

LBD:mel

February 4, 1954
LBD:Z

Outline

British A-7 Pool Agreements.

I. E.M.I—Marconi—Philips Agreement of 8/1/52.

1. Definitions—"subsidiaries"—"Radio apparatus"—radio and TV broadcast receivers and phonographs for domestic entertainment and educational purposes, exculding:

(a) tubes and lamps.

(b) broadcast relay apparatus (except terminal units).

(c) materials and components sold separately.

(d) TV receivers with display larger than 30 sq. ft.—"British Isles".

2. Each party grant to each other party (who agrees to accept) nonexclusive licenses for Radio Apparatus.

3. Licenses granted under (2) extend 1/1/53 to 12/31/57.

4. Licenses granted under (2) under present and future patents.

5. Licenses include right to make use, lease, sell and otherwise dispose of radio apparatus.

6. Licenses include right of licensee to have radio apparatus made by others in whole or in part but only for sale under licensee's own trade-marks or to other licensees; certain exceptions if any party licenses a third party including the right to sell under nonowned trade-marks.

7. No license granted to import radio apparatus or to deal in such apparatus containing imported components exceeding in value 10% of the retail list price.

8. No license granted under any foreign patents and parties agree not to plead this license in defense of infringement suits under corresponding foreign patents.

9(a). Provision re later-acquired patents requiring payment of royalties to third parties.

9(b). Provisions re later-acquired patents requiring payments other than royalties to third parties.

9(c). Licenses granted hereunder limited to same extent as licensing rights of grantor.

10. Reservation of the right to refuse any or all of the licenses specified in Clause 9.

11(a). Agreement for joint effort to license the radio industry and share income on the following terms:

11(b). Licenses to be dated on and after 1/1/53 and terminate on or before 12/31/57.

11(c). Each party reserves the right to grant licenses separately:

(i) Where consideration is not payment of royalties or commercial purchase or sale of goods.

(ii) In fulfillment of existing commitments to B.B.C. or Postmaster General re television.

11(d). No obligation on any party to bring infringement suits and no warranty of validity.

11(e). Undertaking not to indemnify third parties nor to assist them in avoiding the consequences of infringement.

11(f). Formation of operating Committee in which parties having voting rights proportional to their point allocation under Clause 11(o).

11(g). Decisions of Committee based on a majority of votes entitled to vote shall be binding on parties unless inconsistent with the provisions of this Clause 11.

11(h). Committee to decide on terms, conditions, period, and scope of the licenses to be granted; the terms on which other parties join; and routine administration.

11(i). Committee to appoint Pool manager.

11(j). Other parties to be invited to join on terms decided by Committee; every reasonable effort to include in such terms a license from joining party of same character as granted hereby. Reciprocal license rights between joining party and present parties. Provisions re license rights requiring additional payments to joining parties.

11(k). Each party to notify E.M.I. whether it wishes to appear as co-grantor in licenses to be granted by Pool and such decision is thereafter binding upon it.

11(l). Definition of net licensing revenue.

11(m). Re suits for infringement occurring during the period of the agreement, any party agreeing to pay pro rata costs of suit (on basis of point allocation) shall share in net recoveries on the same basis.

11(n). Each party to pay same royalties as nonmember licensees except that the Committee may reduce the royalty of each member by a percentage equal to its percentage point allocation.

11(o). Pool income to be divided in proportion to point allocation. Allocation between parties:

E.M.I.	—100 points
M.W.T.	—13½ points
Philips	— 25 points

12. Agreement to run until 12/31/57, but royalties to be payable hereunder on apparatus in stock at termination and sold thereafter.

13. Option to terminate with respect to any party becoming insolvent, etc.

14. Agreement not to attack, or assist others to attack, validity of any licensed patents except in proceedings involving apparaus other than the type licensed.

15. Agreement nonassignable by any party without consent of others.

16. Each party undertakes compliance of subsidiaries.

17. No party to diminish rights granted by disposal, except that no party obligated to maintain any patents in force nor maintain any third party agreements in force except in compliance with representations in recitals.

18. No party to grant licenses for radio apparatus during period of Agreement except in accordance with terms of Agreement.

19. Term "party" to include its subsidiaries.

II. E.M.I.—G.E.C. Agreement of 12/2/52.

1. G.E.C. to join E.M.I., M.W.T., and Philips in above Pool Agreement under same terms and conditions:

(a) G.E.C. a party to the Agreement.

(b) Recitals of this Agreement incorporated by reference.

(c) Clause 11(o) amended to recite G.E.C.—12 points.

2. Modifying letter of same date—as between E.M.I., and G.E.C., G.E.C.'s point allocation increased to 17.

III. A-7—License (Television).

(Grantors B.T.H., Cinema-TV, E.M.I., G.E.C., M.W.T., Murphy, Philips, Pye, Standard Cables).

1(a). Definition of television receivers; includes:

(i) in combination with TV receivers, sound receivers, phonograph apparatus, and boosters.

(ii) TV terminal receiver units of TV relay service.

(iii) sets of component parts

—Does not include

(i) broadcast relay apparatus except terminal receiver units.

(ii) TV receivers giving pictures larger than 30 sq. ft.

1(b). Definition of "set of component parts".

1(c). Definition of subsidiaries.

1(d). Definition of "selling" or "sold".

2(a). Grant of license under all present and future patents of grantors to manufacture, sell, etc., TV receivers, including right to have TV receivers made by others, but only for sale under licensee's trade-marks.

2(b). Term of license from 1/1/53 to 12/31/57.

2(c). No license granted re:

(i) tubes.

(ii) components sold separately.

(iii) any apparatus other than TV receivers.

2(d). Licenses granted subject to limitations on grantors' rights. Provision re licenses requiring payment of royalties to third parties.

3. Licensee undertakes compliance with license by subsidiaries.

4. Licensee agrees:

(a) Not to sell any TV receiver not made in territory of Agreement—i.e, incorporating imported components of a value exceeding 10% of the retail list price.

(b) To attach to each receiver a license plate specified by grantors.

(c) To pay royalties:

—On comibined radio-phonograph—TV receivers	2 %
—On combined radio or phonograph and TV receivers	2½%
—On all other TV receivers	3 %

—Definition of royalty base ("net turnover").

—Royalty rates 50% less re exported receivers.

—After total royalties in any year exceed £25,000, royalty rate drops to 0.02%.

—Provided that:

(i) Royalties payable re receivers made prior to but sold after termination of license.

(ii) Sales to another licensee excluded.

(iii) In the event of sales to a nonlicensee for sale under name other than licensee's, royalties on such sales to be computed separately and £25,000 change-over point to apply separately to such sales.

—In event such nonlicensee purchaser performs additional operations on set, royalties to be computed on purchaser's net invoice prices, or if unavailable, determined by Clause 5.

(d) Accounting and payment provision — quarterly returns.

(e) Interest at 4% on delinquent royalties.

(f) Inspection of royalty records.

(g) No contest of validity except re nonlicensed products or except as it might affect licensee's own patents.

(h) No assignment or sublicense without consent of grantors.

5. In event of failure to agree on third party's selling prices under clause 4 (c) (iii), reference to a valuer.

6. Licensee agrees to grant licenses to grantors under licensee's patents on reasonable terms.

7. Grantors may terminate license:

(a) For failure to pay royalties

(b) Other breach of license

(c) Bankruptcy, etc. of licensee

(d) In event a nonlicensee engaged in licensed business acquires control of licensee or is under common control with licensee

8. Address of grantors.

IV. A-7 License—Sound Receivers

This License is identical with the A-7 television License except that in each instance the term "broadcast sound receivers" replaces "television receivers" and except for the following differences:

1(a). Definition of "broadcast sound receivers"; includes:

- (i) Combinations with phonographs, frequency converters, FM reception units and boosters
- (ii) Terminal receivers of broadcast relay systems
- (iii) Sets of component parts

Does not include:

- Broadcast relay apparatus other than terminal receivers
- Combination with TV receivers

4(c). Royalty at the rate of ½% on Licensee's net sales After total royalties of £1,000 in any year, the royalty rate drops to 0.02%. This £1,000 limit is also included in 4(c) (iii) as the cutoff point of separately determined royalties on sales to third party nonlicensees.

June 22, 1954

Abstract of A7-S License (British Pool)

(2nd Edition—No change in substance)

Grantors—BTH, Cinema-TV, EMI, GEC, MWT, Murphy, Philips, Pye, STC.

1. Definitions
   - (a) Broadcast receivers
   - (b) Set of component parts
   - (c) Subsidiaries
   - (d) Selling or sold

2. Licenses

(a) Nonassignable, nonexclusive license re broadcast sound receivers

(b) Term—1/1/53 to 12/31/57

(c) No license re

- (i) tubes or lamps
- (ii) materials or parts sold separately
- (iii) anything other than broadcast sound receivers

(d) Licenses subject to any limitations on Grantors' rights and, in case of license rights requiring payments to third parties, subject to payment of such additional royalties by Licensee

3. Licensee assumes responsibility re its subsidiaries

4. Licensee agrees:

(a) Not to sell imported receivers except by permission

(b) To apply serially numbered license plates

(c) To pay royalties of ½% of licensee's net selling price (reduced by 50% in case of export sales) up to £1,000 in any calendar year and thereafter at the rate of 0.02%, provided:

- (i) Royalty payable on apparatus unsold at termination
- (ii) No royalties on apparatus sold to another Pool licensee
- (iii) Re apparatus sold to nonlicensee for resale, royalties computed separately with separate £1,000 per year point at which royalties drop to 0.02% in event purcaser performs additional operations or adds to such apparatus, royalties computed on purchasers resale price, on agreed price, or price determined by evaluer under para. 5

(d) To keep records and make quarterly reports and payments

(e) To pay interest at 4% on delinquent royalties

(f) To permit Grantors' auditors to inspect its books

(g) Not to attack or assist others in attacking the validity of the licensed patents in the field of the agreement

(h) Not to assign, encumber, or divide the license without consent

5. Royalty-base prices in dispute to be determined by the Director of the Radio Industry Council

6. Licensee agrees, upon request, to grant nonexclusive licenses under its patents to Grantors upon reasonable terms

7. Grantors may terminate by notice in the event:

(a) Royalties delinquent 30 days after 7 days' notice from Grantors

(b) Breach of other conditions by licensee not remedied 7 days after notice

(c) Bankruptcy, etc. of licensee

(d) Any company controling, or controlled by, licensee and engaged in the broadcast sound receiver field without a license from Grantors

Any termination without prejudice to Grantors' claims against licensee

8. Address for notices and remittances.

June 22, 1954.

Abstract of A7-T License (British Pool)

(Same as A7-S License except in substitution of "Television Receivers" for broadcast sound receivers throughout and except Para. 4(c) below)

4(c)—(First Edition)

To pay royalties as follows:

On TV receivers with sound receivers and phonographs 2%

On TV receivers with sound receivers or phonographs 2¼%

On "straight" TV receivers 3%

Foregoing royalties reduced 50% on export sales

After royalties of £25,000 in any year, royalty drops to 0.02%

(Same provisos as in para. 4(c) of A7-S License)

4(c)—(Second Edition)

To pay royalties as follows:

On first £150,000 sales per year 3%
On second £150,000 sales per year 2¼%
On all subsequent sales 2%

The foregoing rate are reduced 33⅓% re TV receivers including sound receivers and phonographs and 16⅔% re TV receivers including sound receivers or phonographs

(Other provisions essentially the same as in para. 4(c) of the First Edition, above.)

DEFENDANT'S EXHIBIT NO. 80.

Air Mail

June 22, 1954

Mr. M. M. Macqueen
The General Electric Co. Ltd.
Magnet House
Kingsway, London, W. C. 2
England

Dear Mr. Macqueen Re: A7 Pool Licenses

Belatedly I have had an opportunity of reviewing the A7-S and A7-T Licenses of both the first and second editions. Copies of the first edition were sent by Mr. Cornock last September, while you will recall that you left copies of the second edition with me during your visit in April.

It would appear to me that the provisions of the two editions of the Licenses are essentially the same, except for paragraph 4(e) setting forth the royalty rates. As to this, I note that the royalty rates specified in the second edition are somewhat more favorable than in the first edition. I have assumed that the second edition has replaced the first edition and that in fact all of the Pool licensees have the advantage of the lower royalty rates enumerated in the second edition. I would appreciate your confirmation of this fact and I would like to know whether any of the manufacturers actually signed the first edition of the license and, if so, whether those licenses were replaced by the second edition, or handled in some other manner.

The foregoing is probably a relatively unimportant point, but from time to time we do receive inquiries from various concerns as to the royalty rates in various of the foreign countries and so we try to keep reasonably well informed.

With kind regards,

Sincerely,

Vice president

LBD:Z

DEFENDANT'S EXHIBIT NO. 81.

(Letterhead of The General Electric Co. Ltd., Patent Department Research Laboratories, Wembley, England.)

AFC/7A10/8/8,
7A10/8(f)

Air Mail

8th May, 1956.

L. B. Dodds, Esq.,
Hazeltine Corporation,
58-25, Little Neck Parkway,
Little Neck, L. I.,
New York,
U. S. A.

Broadcast Licensing Pool: Great Britain.

Dear Mr. Dodds,

The present Broadcast Licensing Pool in Great Britain will, as you will remember, expire on the 31st December 1957. We have from time to time discussed the position with Mr. Heather and Mr. Macqueen to weigh up the way it has been developing, as you will know from your talks with them during the last two or three years; and at the end of a discussion last Friday Mr. Heather asked me to write to you to summarise the picture as it appears to us at present and to ask for the views and comments of the Hazeltine Corporation. Since the best tactics might be conditioned by the strength of E. M. I. in the next Pool, this letter begins by setting out the considerations that lead us to think that E. M. I. are likely still to have the strongest individual position in the next Pool.

(a) We assume that the next Pool will probably last for five years. It is unlikely that Colour T/V broadcasts will, at the earliest, come into being before half the life of the next Pool has expired; and when Colour broadcasts have begun, Colour receivers will not, at most, account for more than half the value of the turnover in T/V, and probably substantially less. Colour will, at most, therefore not account for more than one-quarter of the revenue of the next Pool.

(b) E. M. I.'s own earlier patents on T/V (i.e. patents not arising from R. C. A.) have been the main patent strength of the present Pool. The more important of these patents are due to expire within 12-18 months unless extended. E. M. I. express themselves as fairly confident of getting several (say two or three) years' further extension of these patents (on the ground of belated loss resulting from the war). The possibility of such extension seems to us somewhat speculative though not imposible.

(c) If these earlier E. M. I. patents are extended, E. M I.. will retain their present hold on Monochrome T/V receivers and (since these patents will also be used in Colour T/V receivers) will be in a strong position on Colour. If these E. M. I patents are not extended, no one will have a strong position on Monochrome T/V; and E. M. I. will, unless they secure renewed rights under R. C. A. patents, probably not have a particularly strong position on Colour T/V receivers.

(d) From the foregoing assessment, two points appear to us to emerge:—

(i) E. M. I.'s position in the financially-dominant section of the next Pool (viz. Monochrome) will be at least as good as that of others (and will be equal to their present position if their patents are extended),

(ii) E. M. I.'s position in the "minority" section of the next Pool (viz. Colour) will probably be markedly weaker unless either their patents are exended or they make new arrangement with R. C.A.

On this summing up, and giving the necessary weighting to the Monochrome situation, we feel it is still E. M. I., and not some other Company, that one should regard as the main target for any negotiations.

The other broad factor that affects the matter, is the question of R. C. A.'s position. Such information as we at present have, can be summarised by saying:—

(e) We know that E. M. I.'s present agreement with R. C. A. ends in 1960. We also know that, even under the present agreement, E. M. I. cannot grant direct licences under R. C. A. patents—though R. C. A. do grant licences, without additional royalty, to Pool licensees nominated by E. M. I. R. C. A. have in this way, and also by their arrangements for supplying technical information, been pressing themselves into increasingly direct contact with the Pool's licensees.

The inferences we draw from this are: firstly, that the balance of probability is that E. M. I. will, in future, not have more control over R. C. A. patents than in the present Pool; and, secondly, that R. C. A. may contemplate putting their patents direct into the next Pool rather than through E. M. I.—though this second point is (so far as we are concerned) pure speculation.

There is one technical point in the colour field I might mention here. There is discussion at present whether chrominance should be controlled by signals lying inside or outside the band controlling luminance—E. M. I. at present using their influence in the direction of control outside the luminance band. We ourselves do not know whether this is a pointer towards their assessment of their probable future patents rights or not; but I mention the matter in case you have any infromation which makes the point seem to you to be significant, either in relation to your interests or E. M. I.'s.

(f) The whole trend of recent years, in pooling in Great

Britain, has been to share Pool revenues according to some "points" system. It is improbable that any other method of allocating shares will be adopted for the next Broadcast Pool: the only room for manoeuvre is likely to concern the relative weighting of patents actually in use at the beginning of the Pool and those which might come into use at a later stage of the life of the Pool.

It is, as you know, our hope and belief that Hazeltine and the G. E. C. will again find themselves working together in the next Pool. Our general assessment of the position and our views about possible tactics are as follows:—

On the foregoing assessment of E. M. I.'s position, a reasonable course, basically, would be to make an approach to Mr. Shoenberk on the footing that it would be reasonable to expect that E. M. I. would be found to have a larger share of the next Pool than any other individual company and that we should like to have a preliminary talk with him about licensing arrangements. Since the G. E. C. is on its home territory, such an approach might well come from us on our joint behalves; but Mr. Shoenberg has already approached you once, and may do so again, and Mr. Heather therefore raised for consideration the question whether an opening move on these lines might be made by Hazeltine on our joint behalves, instead of its being made by the G. E. C.

Whichever of us is to make the move, there is a preliminary point to be settled; namely, since we do not know what R. C. A's position will be (and this may greatly affect E. M. I.'s position), ought one to sound R. C. A. on the matter before approaching Mr. Shoenberg, or should one treat the R. C. A. question as one of the first points to be raised with Mr. Shoenberg during the talk with him? (We could, of course, raise the question with Commander Mayer over here, or you might raise it with the R. C. A. on your side of the Atlantic, whichever seems more convenient, if it is decided to try to obtain further information before trying to discuss the position with Mr. Shoenberg.)

If you agree that an approach to Mr. Shoenberg is the right course, there is, at least in principle, the question whether one should try to propose a different basis for setting up a new Pool. As you will have gathered from our comment (f) above, we do not feel that, in actuality, a different basis is within the bounds of practicability, a "points" system being too firmly established. The only change that is likely to be possible, is one regarding the weighting of patents; and a discusison of weighting would grow naturally out of the more general discussion and would not call for the preliminary tactical discussion (between you and us) that would be desirable if one were going to try to propose a radically different basis for pooling.

We have tried, rather lengthily, to analyse the various considerations that seem to us material in considering present tactics. We shall, as you will have gathered, value any comments or suggestions you may care to make when you have had an opportunity to consider them.

With best personal regards,

Yours sincerely,

A. F. Cornock.

DEFENDANT'S EXHIBIT NO. 82.

(Letterhead of The General Electric Co. Ltd., Patent Department Research Laboratories, Wembley, England.)
AFC/7A10/8/8

Air Mail

25th September, 1957

Laurence B. Dodds, Esq.,
Hazeltine Corporation,
59-25, Little Neck Parkway,
Little Neck, 62,
New York,
U. S. A.

Broadcast and Television Licensing Pool

Dear Larry,

Very many thanks indeed for your confirmatory letter of September 16th about the extension of the Pool. Mr. Nalder has put in the application for Treasury permission, and all that remains for me to do at the moment, to bring your information fully up to date, is to confirm that all the Members of the Pool duly confirmed, at the last Meeting, their concurrence in the extension on the terms previously set out to you.

As regards the points in the second paragraph of your letter, it is quite clear there is no misunderstanding between us. The terminology I used for referring to the Agreements between us, was that used by Mr. Nalder on the "cover sheets" of the copies he sent me in 1953. The 1939 Agreements were consolidated in the way you describe, when Mr. Nalder re-drafted them at the end of 1952; and I confirm that the G. E. C. will be happy to extend the three subsisting G. E. C.-Hazeltine Agreements in the way your letter sets out.

Topham considers that the extended licences should be accepted by the Trade without any real difficulty; and since he is the person in most direct contact with licensees and hears such grumbles and complaints as they wish to make, he should be in as good a position as anyone to forecast the Trade's reception of the proposals. On the face of it, his view seems to me to be reasonable. The modifications in royalty rates should go some way towards mollifying those of the medium and smaller licensees who have considered themselves rather hardly used in the past, so that the chances that they will decline to extend their licences has been reduced: about half of the large licensees (whose royalty payments reach the quasi-ceiling) will accept licences, since they are Members of the Pool; and it does not seem likely that the concessions to the smaller licensees will cause the remaining large licensees to stage a strike—since, even on modified figures, the "insurance policy" obtained by taking a licence is better value than the gamble of fighting infringement actions when they are in fact using at least a few of the patents under which the Pool is willing to license them. Of course one can always meet the man who thinks that if he is cussed enough he will manage to get something more; but we do ourselves consider that the revised licensing proposals are inherently reasonable and that reason will ultimately prevail in this instance. All in all, therefore, we ourselves think that Topham has weighed up the position correctly. We should begin to have a fair picture of the Trade reactions in about two months' time, and I will try to let you know as soon as we have a Pool Meeting which gives us a preliminary idea of how the picture is shaping.

With the best of regards,

Yours,

Arthur.

DEFENDANT'S EXHIBIT NO. 83.

Air Mail April 7, 1960.

M. M. Macqueen, Esq.,
Managing Director—Radio Group,
The General Electric Company Limited,
Magnet House,
Kingsway,
London, W.C.2. England.

Dear Monti:

This will acknowledge and thank you for your letter of March 30, 1960, suggesting discussions with respect to the new Broadcast Pool.

Unfortunately, there seems to have been some misunderstanding as to my status. I am continuing with Hazeltine but on a part-time basis and gradually transferring some of my responsibilities to my associate, Mr. E. A. Ruestow. However, in view of the fact that you have taken up the matter with Mr. MacDonald, I would prefer not to make any definite plans without consulting him. He is, at the present, on an extended trip and will not be back for another ten days or so.

Consequently, on the assumption that Mr. MacDonald will probably want me to represent Hazeltine in these discussions, and perhaps also my associate Mr. Ruestow, I thought it might be well perhaps to set up some tentative time schedule. Would you let me know what time would be most convenient for you or, perhaps more properly, what times would be inconvenient for you.

I think it would be helpful also if you could get one of your people to send me copies of circuit diagrams of current British television receivers. Mr. Cornock was kind enough to do this at the time of the last Pool renewal and thus enabled us to get a better feel of the picture ahead of time.

With kind regards.

Sincerely,

....

Vice President.

LBD:CBS

cc: W. A. MacDonald

DEFENDANT'S EXHIBIT NO. 84.

Air Mail

(Letterhead of The General Electric Company Limited, Magnet House, Kingsway, London W. C. 2.)

L. B. Dodds, Esq.,
Hazeltine Corporation,
58-25 Little Neck Parkway,
Little Neck, L. I.,
New York

13th April, 1960.

Dear Larry,

Many thanks for your letter of the 7th April, and particularly for clarifying your own position in the Hazeltine Corporation: this is welcome news.

Since I wrote to you a tentative plan has been produced by the Pool Manager, and Mr. Chapple and I have discussed this with him. This new plan involves many changes, affecting both licensors and licensees, and as I see it, it will put both the GEC and Hazeltine in a less favourable position, and at this juncture, I have not encouraged the Pool to think that it will have our ready acceptance. In any case, we would have to have your agreement before making any commitment which would involve your Company.

In the meantime, Mr. Chapple and I have had an interesting discussion with three people representing the R.C.A. international licensing interests: they have made their position quite clear.

I am going away after Easter on a short holiday, and will be back in London on Monday 9th May: Mr. Chapple is also going away, and will not be available until a week later. If, therefore, it were possible for you and/or Mr. Ruestow to visit us during the week commencing 16th May, that would be convenient to us. If, however, it would suit you better to make the suggested visit in the prior week, Mr. Chapple has offered to break his holiday in order to facilitate our discussions. It may well be, however, that the later date will suit you better.

In the meantime, Mr. Chapple is arranging to send you the circuit diagrams which you ask for.

Kind regards,

Yours sincerely,

Monti

DEFENDANT'S EXHIBIT NO. 85.

April 19, 1960,

XXX-60-M110

M. M. Macqueen, Esq.,
The General Electric Company Limited,
Magnet House,
Kingsway,
London, W.C.2, England.

Dear Monti,

In reply to your letter of March 30, 1960, Mr. Dodds, although on a part-time basis, continues as a Director and Officer and has cognizance of the Hazeltine patent rights abroad.

Mr. Dodds is gradually transferring certain of his responsibilities to Mr. E. A. Ruestow although it will be some time before Mr. Ruestow is fully familiar with the background picture in Great Britain and other foreign countries. Hence I believe Mr. Dodds should participate in the considerations of the new License Pool.

I have suggested to Mr. Dodds that he communicate with you directly to arrange a mutually convenient discussion of the new Pool.

Cordially,

W. A. MacDonald,
Chairman of the Board.

WAM:BAM

cc: L. B. Dodds

DEFENDANT'S EXHIBIT NO. 86.

(Letterhead of The General Electric Company Limited,
Magnet House, Kingsway, London W. C. 2.)

Temple Bar 8000 Our Reference Your Reference
Extension 186 M.M.M.

L. B. Dodds, Esq.,
Hazeltine Corporation,
58-25 Little Neck Parkway,
Little Neck, L. I.,
New York.

14th June, 1960.

Dear Larry:

I hope your return trip to USA was comfortable and uneventful, and that your following vacation gave you and Mrs. Dodds all the pleasure you anticipated. We enjoyed having you over here, except that time was too short.

I have finally accepted an increase of 1½ points above the basis we discussed, making our total 16½ points. I also enclose a copy of Mr. Topham's letter giving effect to this.

You may be interested to know that ST & C, EMI and Philips each contributed ½ point.

We will send you a copy of the revised licence agreement and any other documentation later.

Kind regards,

Yours sincerely,
Monti,
Managing Director-Radio Group.

Copy Letter.

From:—F. C. Topham,
Marconi's Wireless Telegraph Co., Ltd.,
Marconi House, Strand,
London, W.C.2.

P/T 54075

8th June, 1960.

Dear Mr. Macqueen,

A 8 Pool

Further to my letter P/T 54057 of 2nd June, enclosing a draft of a proposed Pooling Agreement. The points to be allotted to each member have been now finally agreed. Will you please, therefore, insert the following values in the said draft:—

EMI	56½
Murphy	28½
Pye	28½
Philips	23½
STC	18½
GEC	16½
Cintel	15
MWT	13
	200

Yours sincerely,

(signed) F. C. Topham.

DEFENDANT'S EXHIBIT NO. 87.

October 9, 1946.

Re: Scandinavian Patent Pools.

Mr. B. Avellan-Hultman,
Aga-Baltic A B,
Stockholm-Lidingo,
Sweden.

Dear Mr. Hultman:

Thank you very much for the complete reports contained in your letters of August 23rd, and September 19th, 1946, on the progress of your negotiations relative to the Scandinavian Patent Pools. We believe the progress that you have made toward the settlement of the division of proceeds of the pools and the royalties to be paid by pool members is most encouraging and are in full accord with the steps which you have taken. We have also reviewed the draft sublicense which you forwarded and find it quite satisfactory in form.

We believe that the decision of R.C.A. relative to its participation in these pools in the Scandinavian countries is unfortunate and legally unsound, but apparently they are firmly committed to it. Recently I checked with Dr. Shackelford, their foreign license administrator, as to the basis of their conclusions and as to their plans for exploiting their patents in the several countries. He said that he had had only a brief time with Mr. Sarnoff since his return, but confirmed their position as Mr. Sarnoff explained it to you.

Dr. Shackelford said that, while he was not in agreement, their general counsel was of the firm conviction that participation in such pools would constitute violation of our Anti-Trust Laws. However, their attitude is due in part to the diversity of their operations in the radio field including manufacturing, patent licensing, broadcasting, and commercial communications, and to the fact that they have been subjected to repeated investigations by Congressional committees and the Department of Justice for suspected violations of the Anti-Trust Laws. As a result, they have developed a rather strong phobia with respect to anti-trust matters. Dr. Shackelford said that they had not finally determined what they would do with their foreign patent rights but that he would let me know when they had reached a decision.

Very truly yours,

....

Vice-President.

LBD:CBS

DEFENDANT'S EXHIBIT NO. 88.

December 14, 1954.

(Written in margin.) See Radio Let file for Complaint—taken from TV Digest Nov. 20/54.

Original by Air Mail
Mr. Tibor de Laczay
29, rue du Faubourg St. Honoré
Paris 8, France.

Dear Mr. Laczay: Re: RCA

Thank you for your letter of December 3, 1954, telling of your conversation with Commander Mayer of RCA. In accordance with your request, I am enclosing a copy of the complete Complaint filed by the Department of Justice against RCA.

You will note that several of the charges against RCA, such as paragraphs 50(a), 50(d), 51, 52, 53, 54, 58(a) and 58(b), apply to our licensing system equally to RCA's.

While, as you say, our Supreme Court specifically approved some of these practices of which the Department of Justice complains, they have never acceded to that ruling and apparently will continue to press for its modification. We ourselves are very much concerned at this action against RCA and its possible reaction on our own license situation.

I will, of course, keep you posted of further developments.

Sincerely yours,

....

Vice President.

LBD:CBS
Enclosure

DEFENDANT'S EXHIBIT NO. 89.

Original by Air Mail

May 28, 1956.

Company Confidential
A. F. Cornock, Esq.
Patent Department
The General Electric Company, Ltd.
Wembley, England.

Re: Broadcast License Pool—Great Britain

Dear Mr. Cornock:

This is in reply to your letter of May 8, 1956, and it has been somewhat delayed because I wanted an opportunity, before answering, to sound out RCA with respect to their present and prospective relationships with EMI and the Pool. By coincidence, your letter arrived on the very day on which I had a note on my calendar to write you on the subject. We too have, from time to time, discussed possible approaches to the negotiation of the next Pool. Perhaps the best method of answering your letter would be to comment on the several lettered paragraphs in the same order, followed by some additional comments in numbered paragraphs.

(a) Your evaluation of the relative contribution of color TV to the next Pool seems to be entirely reasonable; at least we have no evidence which would lead to a different conclusion.

(b) With respect to the extension of the EMI patents, am I to understand that they have already gotten one extension and are asking for a further extension? Do you know whether or not EMI has already applied for these extensions? I recall our own single experience of this type relating to Patent No. 436,940 and Patent No. 437,016, in which we finally got a 5-year extension but, by the time the extension was allowed, the extension period had virtually expired. In all events, we agree with your conclusion to the effect that such extension of EMI patents is, at most, speculative.

(c) I assume, from your comments, that RCA also has no significant position in monochrome TV.

(d) Again, we are in agreement that EMI should be considered as the dominant element in the new Pool, in the absence of a clear shift to some other company, because of the momentum of its established position if for no other reason.

(e) As suggested above, I did discuss with Mr. M. E. Karns, who succeeded Dr. B. Shackelford as Director of the International Licensing Division of RCA, the RCA/EMI Agreement. He confirmed the fact that that Agreement terminates at the end of 1960, and said further that no approach had been made on either side with respect to its extension. He said also that their decision as to whether or not to extend the EMI Agreement would be delayed as long as possible in view of an antitrust suit which the Government brought against them. There have been extensive negotiations between RCA and Government lawyers with respect to a settlement of the suit to avoid a protracted and diverting trial. They were quite unsuccessful in reaching an acceptable settlement with Mr. Stanley N. Barnes, Assistant Attorney General of the United States in charge of the Anti-trust Division. However, some weeks ago, Mr. Barnes was elevated to the Federal Court of Appeals and I rather gathered that RCA is somewhat more hopeful in reaching a settlement with his successor. In any event, since RCA's license activities abroad are one of the targets of the antitrust suit, they want to avoid changing the status quo if at all possible until a settlement is reached or negotiations finally break down.

I told Mr. Karns that it seemed to me that RCA had three alternatives (1) extend the EMI Agreement for another two years, (2) attempt to license the Pool licensees separately, or (3) to join directly in the Pool. Mr. Karns said his own present inclination would be to extend the EMI deal for two years and he thought probably the lawyers would not object since it would not create any new situation and since that extension would be really necessary to enable EMI to get any value from the RCA patents during the initial three-year period of the next Pool. He also said that he had no desire to attempt to negotiate licenses separately with all of the licensees of the Pool and that he was confident their lawyers would not permit him to join the Pool directly. So, by the process of elimination, it seems most likely that RCA will extend its arrangement with EMI.

Incidentally, Mr. Karns said that they had recently entered into a cross-licensing and technical know-how exchange with EMI in the color TV field only and for their own use of the respective parties with no sublicensing rights. I was interested in this as I thought there might be some rift between the two companies because of RCA's recent cancellation of its arrangement with EMI in the phonograph record field and the substitution of Decca for its representative in this field. Mr. Karns believed that if there were any disaffection between the companies it was confined to this particular record field. Our conclusion from all of this is that there is a strong probability that EMI will continue to have control of the RCA patents for the duration of the new Pool.

Your comment with respect to the efforts of EMI to establish color TV standards in which the chrominance information is outside the luminance band is most interesting. This tends to explain their conduct of certain demonstrations to some 100 delegates from twenty countries to C. C. I. R. (International Radio Consultative Committee to the International Telecommunication Union) with which you may be familiar. Our Mr. C. J. Hirsch, Chairman of the United States Delegation, attended these demonstrations in Great Britain, The Netherlands, and France. The BBC put on an excellent color TV demonstration following U. S. standards, but the EMI demonstration, using the same standards (chrominance within the luminance band), was startlingly poor. This action was interpreted by Mr. Hirsch as an attempt to delay the decision of Great Britain on color standards. Frankly, I do not know their purpose. We do not believe that the system they are pushing would avoid our principal patents in the color TV field, namely, No. 689,356 covering constant luminance, and No. 689,821 covering shuntex monochrome. It also seems quite doubtful whether the system EMI is pushing would avoid RCA's patents on mixed highs and related circuits, although I have not studied the claims of the RCA British patents in this field.

(f) We agree that the distribution of the shares of the Pool revenue probably will be determined on the basis of a point system and believe that that is reasonably acceptable but that there should be two modifications (1) some weighting factor with respect to patents not now in use but which most probably will go into use during the term of the Pool (e.g., color TV) and (2) some differentiation among patents now in use between those dominating in character which the licensees have to use and those of the "gadget" variety which a licensee uses only because he is free to do so at no additional cost; we believe the former should be weighted at 4 to 5 times the latter.

Coming now to three additional points:

(1) As to an approach to EMI, we have some preference for a joint approach but do not wish to press it if you believe that another approach is better or if the time

factor mitigates against it. It so happens that Mr. Binns is going on a vacation cruise this summer which will leave him in London August 3-16. We realize that this period includes the Bank Holiday so that some of the people important to the negotiations may be away. However, it occurred to him that perhaps at least some of the principals, such as yourself, Mr. Heather, Mr. Macqueen, and Mr. Shoenberg might be in London during some part of the period so that discussions might be at least initiated. If it would be helpful, I am prepared to go over somewhat later, say in September or October, during which I hoped that some progress toward agreement might be reached. It so happens that we have some rather serious license problems in this country which will be coming up during the spring and early summer of next year. These matters are of such importance that we believe it inadvisable to count on any extended absence from the country then and we believe that the Pool negotiations should not be deferred until the late summer or fall of next year, except those dealing with the settling of final details. I would appreciate your views as to whether it would be premature for me to plan a trip over this fall and any other suggestions you might have with respect to a time schedule of negotiations.

(2) Since you have reached the conclusion that no one will have a strong position with respect to monochrome TV in the new Pool unless the EMI patents are extended, do you believe that it may become necessary for the Pool to reduce its royalties with respect to monochrome receivers. If so, would it not be possible, as a partial offset, to increase the royalty rate with respect to color TV, which, of course, would become effective only as and when color TV reaches the commercial stage. In this country RCA has a different royalty rate on color receivers (1¾%) than on monochrome receivers (1¼%) and we ourselves are considering establishing different royalty rates in these two fields.

(3) As to the current situation in Great Britain, could you supply me with copies of circuit diagrams of typical current monochrome TV receivers? Also, if you happen to have a list of important RCA and EMI patents relating to monochrome and color TV receivers, I would very much appreciate a copy. If there is any information along this line which I can supply you, please let me know. For example, RCA has been engaged in this country in a number of infringement suits involving its television patents. We thought them probably to be those which RCA considered to be most important commercially. If this list would be helpful, I think we could probably get from RCA the numbers of the corresponding British patents.

I reciprocate your apologies for the length of this letter but will plead the distance between us and the importance of the subject.

With kind regards.

Sincerely,

Vice President.

LBD:CBS

cc: Mr. J. Binns.

DEFENDANT'S EXHIBIT N. 90.

June 21, 1948

Sir Clifford Paterson, Director
Research Laboratories of the
General Electric Company, Ltd.
Wembley, England

Dear Sir Clifford:

Thank you very much for your letter of May 31, 1948, enclosing a copy of your letter of the same date to our Mr. Crotty and dealing with the question of assignment of certain of the inventions of your company to Hazeltine.

I have taken up this matter with Mr. Dodds and we are very gratified with your assurances that your initial decisions as to whether or not any case should be assigned to Hazeltine are not necessarily irrevocable. What we were seeking to accomplish was merely this; that in case any of these inventions should find utility in home broadcast or television receivers, we should like to be able, if required, to enforce the patents in that field. From that standpoint, it would be easier, of course, if the patents were assigned to Hazeltine at the time of their issuance and it was with that in mind that Mr. Crotty had been anxious to obtain a definite decision with respect to some of the cases which were about to issue as patents. However, from your letter, I gather that in case any such unlicensed use of the inventions in our field should arise, you would be willing to assign the patents to us at least temporarily to enable us to enforce them in this country in our field.

Conversely, it goes without saying, that we stand ready at all times to take whatever steps might be helpful to you to aid you in maintaining your position in these inventions in fields outside of the scope of our Agreement, insofar as we are in a position to do so.

We very much appreciate your letter clarifying this situation for us.

With kind regards.

Sincerely,

....

President.

JB:Daa

DEFENDANT'S EXHIBIT NO. 91.

LM-517

17 November 1949

To: Dr. B. E. Shackelford, New York.

Subject: E.M.I. Licensing.

Ref: (a) My LM-503 dated 10 Nov. 1949
(b) My LM-506 dated 11 Nov. 1949
(c) My LM-505 dated 11 Nov. 1949

1. Further to ref. (a) and our exchange of radiograms, I visited Shoenberg at his place in the country near Eastbourne where he is spending this week. Dale Harris was also there, and we proceeded to discuss a number of points connected with the proposed agreements.

2. Regarding the sub-licensing agreement, Shoenberg objects to paying any minimum and sees no reason for its inclusion. He says we are sharing in the benefits of a licensing arrangement and if, for example, the pool should cease to exist, why should EMI be obliged to pay a minimum for a non-exclusive license when there might not be enough receipts to justify it. He feels that RCA should also share with EMI the risks involved in licensing. If we

insist he might be agreeable to a very small minimum, and when pressed mentioned perhaps £2,000/£3,000. He was agreeable to a percentage but not to a figure as high as 40 per cent. He spoke of the 25 per cent. which he had offered, but after further discussion said he could not agree to recommend to his Board more than one-third. It would therefore appear that I could negotiate for this figure for the percentage (which is within the latitude provided) if we are willing to eliminate the minimum or make it so low as to have little significance.

What are your views?

3. Shoenberg confirmed and expanded on what I have already said in ref. (b) concerning his views on the exchange of the results of research. We discussed this matter at some length and he said that McGee and White reported that RCA had shown them nothing which we would not have shown to anyone else, and he mentioned Dr. Jolliffe's refusal to give information on the new small camera tube. Of course Shoenberg said that had any RCA people visited EMI after the talk in April, he would have been willing to show him everything EMI had. I explained the situation and said that I thought the only satisfactory way in which an exchange of this kind could work is by goodwill on both sides and by the value of the contributions which the research personnel concerned are able to exchange with each other. Shoenberg agreed that there is nothing one can write which would force an exchange of what one side might be unwilling to give. However, he explained that in this matter it was a question of what was available to his competition, and his interest primarily was to ensure that EMI was in no worse position than Marconi in regard to the exchange of the results of research. I told him I thought this would be the case, particularly if his men continued to hold the high regard which our people had for EMI research. Shoenberg would like Dr. Jolliffe's

draft letter reworded in some way, which we did not go into, to assure this equivalent treatment of EMI. The actual words in our agreement with MWT on this subject are as follows:

Article II.

> "Section 5. RCA shall make available in the United States to MWT and its subsidiaries, upon a non-exclusive basis, and MWT shall make available in the United Kingdom to RCA Photophone Limited or other subsidiary designated by RCA, upon the same basis, the results of research relating to Contract Apparatus carried on by RCA and its subsidiaries or by MWT and its subsidiaries, respectively. Research personnel of RCA and its subsidiaries shall be made available in the United States to MWT and its subsidiaries and research personnel of MWT and its subsidiaries shall be made available in the United Kingdom to RCA Photophone Limited or other subsidiary designated by RCA, for visits and general discussion of research, in each case upon a non-exclusive basis."

What are your views?

4. By virtue of his claim for exclusivity under the pre-1945 RCA British patents and in order to safeguard the operation of the pool, Shoenberg previously had asked for the conditions mentioned in paragraph 16 of ref. (a). On the basis of your radiogram of 11 November, I told him that I thought our lawyers might be agreeable to a clause not to offer more favorable terms, but I felt sure that to require us to pay into the pool any receipts that might be obtained outside would not be acceptable for legal reasons. After much discussion on this matter it was suggested that as an alternative RCA might agree to:

(a) accept from EMI the difference between the sub-licensing receipts payable by EMI to RCA and the amount received by RCA for licenses granted outside the pool;

(b) not to make available or offer license terms at a lower rate than that obtainable from the pool.

On this point Shoenberg agreed that it need not be exactly the same rate and perhaps three-quarters of the rate would be satisfactory, i.e. about 1 per cent. (pool rate is 1½ per cent.). It is important in his view that it should be more attractive for a manufacturer to take a license with the pool, and he points out that this would also be to RCA's interest and advantage.

In this connection he also raised the question of our license arrangement with Pye, and I explained as per the General's radiogram to Fisk. Shoenberg is concerned lest Pye should be in a position, through having a license from RCA, of not joining in any future pool. However, he takes comfort from his conviction that EMI after all possesses exclusive rights under all RCA's British patents on pre-1945 inventions, and he trusts that Pye has not gained the impression from RCA that by their agreement Pye obtain a license under those patents.

5. Another aspect of this matter is the question of imports raised by Article II, Section 2(e) of the draft sub-licensing agreement which states:

> "That EMI shall not restrict any licensee (by written agreement or otherwise) in regard to exports or imports to or from any country."

Shoenberg said that they could not agree to license foreign manufacturers to import into Great Britain, and he says this on the basis of his claim for exclusivity. In their view it would mean the immediate collapse of the whole licensing pool and of the revenue derived from it. They have always had to refuse to license imports from anywhere. British manufacturers are extremely jealous of importers, and although the Patent Act does not specifically support this attitude, there is no doubt that the old idea of patents giving a monopoly continues today and confirms a basis of a general licensing policy in Britain of using patents to build up trade and keep out cutthroat competition from foreign countries where prices may be cheaper.

If one looks at the Patent Acts, the current Act which expires this year only provides for compulsory licensing if the domestic manufacturer can show that the demands of the home market are not being met. The new Act, which is designed to encourage exporters, provides that a compulsory license can be obtained if the domestic manufacturer is not meeting the demands of the export market. Nothing is said about importers, and by implication it may be argued that the New Act supports the policy of discouraging importers. This is a big subject which I will not discuss further here except to say that it would certainly be a tricky business in the radio field to import into the U.K. in the face of an adverse patents situation.

It is certainly unlikely, therefore that a satisfactory license from the pool would be obtainable for foreign-manufactured sets imported into the U.K.

Would it be possible to delete Section 2(e)?

6. With regard to the conditions of Article II, it is doubtful whether they [illegible] the licenses granted by the pool, and EMI would be unwilling to commit themselves to the conditions for anything more than the licenses under RCA's British patents which would be made available by the proposed sub-licensing agreement. In carrying out the conditions, therefore, it would probably be necessary to have a separate licensing form for the RCA patents (which, according to EMI, would not include those for which they claim they already have licensing rights).

7. Another major point which Shoenberg brought up was their need to find some means of earning dollars which Fisk raised and which I mentioned in ref.(c), and for convenience repeat here:

> "On this point he (Fisk) said, for example, that whereas RCA would be receiving something for sub-licensing in the U.K., EMI was getting nothing for similar rights in the United States and Canada, and he was very much afraid that the Government people were going to be asking him why it was EMI could not earn some dollars for their patents. I explained, and he knew, that we considered the sub-licensing rights under his patents in the United States were part of the deal and a contribution towards the greater value of our patent situation in relation to that of EMI. Moreover, that we obtained no added income because of those rights, although, of course, as he said, it naturally strengthens our overall position. Nevertheless, Sir Ernest asked that we should give some thought to this matter. I said I did not see how we could help him, but that I thought there were still opportunities for them to earn dollars by the sale of inexpensive television receivers in the United States, and we discussed this matter briefly."

Shoenberg spoke of his difficulties in convincing his people that RCA's proposals were intended as a genuine desire to come to an agreement with EMI, and said that it would help him enormously both with his people and with the Government if he could show that EMI got something for sub-licensing rights under their U.S. patents.

What are your views?

8. With regard to MOV, we discussed the draft very briefly and Shoenberg said he thought the percentage was too high. I countered by saying that we had already reduced it from 3 per cent., and took the opportunity of saying that after consideration we proposed not to include transmitting tubes, and for that reason I would be able to meet him on the matter of the minimum since he had also thought that on the high side. Shoenberg raised no objection to this, but pointed out that the turnover figures which he had given would be appreciably less by exclusion of the transmitting field, but was unable to say by how much.

It was left that we should later discuss the matter further with him and some of the MOV people.

9. We did not discuss further Australasia, nor did I raise the matter of the Photophone field. Having made his major points Shoenberg became rather tired, and we adjourned with the idea that I should call him sometime next week when he expects to be back in London.

The key of the situation is the question of exclusivity, which is discussed separately. If it appears likely that there is going to be some appreciable delay in advising me of your views on the several points herein raised, I should like to be informed immediately.

C. G. Mayer.

cc: Dr. B. F. Shackelford.
Dr. C. B. Jolliffe.

DEFENDANT'S EXHIBIT NO. 92.

2 Jan. 1950

To: Dr. B. E. Shackelford, New York.

Subject: E. M. I. Licensing.

Ref.: (a) Yr. Ltr. dated 15 Dec. 1949 (EMI Sub-Licensing, re my LM-535)
(b) Yr. Ltr. dated 15 Dec. 1949 (EMI Cross-Licensing, re my LM-540)
(c) Yr. Ltr. dated 16 Dec. 1949 (EMI Sub-Licensing, re my LM-538)
(d) Yr. Ltr. dated 16 Dec. 1949 (EMI Sub-Licensing, re my LM-539)
(e) Your radiogram dated 29 Dec. re my LM-542.
(f) My LM-362 dated 6 Dec. 1948.
(g) Yr. Ltr. dated 22 Nov. 1949 (EMI Claims to Licensing Rights).

1. Thank you for your letters, and I fully understand your remarks that these are privileged documents for my own use for negotiation purposes.

2. I met again with Shoenberg and Dale Harris today (30 Dec. 1949) and carried on our discussions. Without going into the several points of detail previously raised, it seems that we have reached an impasse on fundamental issues which will have to be circumvented before we can make any further progress.

It all hinges on the matter of exclusivity concerning pre-1945 RCA inventions, which has been discussed at some length in our past correspondence. You have already noted that Shoenberg considers that the important thing is not the question of exclusivity as such, but how it expresses itself in the proposed agreements. While on this point I would add that, as requested in ref. (a), I told him that RCA intends to continue to make its patents non-exclusively available to all responsible parties who may apply for such licenses.

The present state of our negotiations is as follows:

Sub-Licensing Agreement.

3. Shoenberg is prepared to arrange for a separate licensing contract in regard to post-1945 RCA patents which incorporates the non-restrictive conditions proposed by RCA, and recognizes that RCA is entitled to license direct.

Shoenberg is not prepared to agree that pre-1945 RCA inventions can be included in either of the above licensing arrangements. He claims that these are already included in the existing pool agreement under the conditions imposed by the contracts.

The two major difficulties arising out of the pool agreement are (see enclosure to ref. (f)):

(a) Article 7 which states "Unless otherwise agreed no licenses are hereby agreed to be granted to import radio apparatus into the United Kingdom or to deal in in the United Kingdom imported radio apparatus or radio apparatus containing imported component parts to an extent exceeding in value 10 per cent of the retail list price of such radio apparatus except in each case samples and experimental models for the use of the parties hereto".

(b) Article 18 which states "No license shall be granted by any party hereto for radio apparatus in the British Isles in respect of the period from 1 April 1948 to 31 December 1952 except in accordance with the decisions of the Committee or . . ."

With respect to (b), Shoenberg says it is understood by all members of the pool that the RCA patents can be regarded just as EMI patents, i.e. that they will not be available except through the pool.

Thus, Shoenberg cannot agree that any license under RCA patents included in the present pool license can be made available except through the pool. In his view, to agree otherwise would have the effect of "busting" the pool.

4. In response to your query, I have to confirm that there is a maximum royalty figure provided in the pool agreement, as indicated in para. 11(n) of the "Terms of the Agreement" enclosed with ref. (f).

I am informed that the only changes in this document are the addition of Standard Telephones & Cables as one of the grantors, and the increase in the maximum royalty figure from £10,000 as stated, to £15,000.

In addition to this agreement and to the A6 license, I understand that there are three side clauses which can be added (copies of which have been promised):

(a) to provide for half the royalty rate for exported sets;

(b) to waive the royalty entirely on the export of sets of parts, and

(c) to provide for the maximum royalty.

With regard to (o), I was told that so far it has not been included in an agreement with any manufacturer who has not put patents into the pool. It appears that there are manufacturers, Ferranti and Ekco were mentioned, who have put their patents into the pool for a consideration, but who are not parties to the pool agreement.

5. Shoenberg is prepared if necessary to consider a separate license contract for pre-1945 RCA inventions provided that (a) the restriction as regards imports into the U. K. remains, and (b) the royalty rate which RCA charges for direct licensing can be agreed and not changed without EMI agreement.

6. Shoenberg cannot and will not understand our insistence upon invoking an interpretation of Section 9 of the 1935 Agreement a sregards exclusivity in pursuing our claim that restrictions may not be imposed in licensing under RCA's patents. He thinks we are chasing the shadow for the substance, and pressing a case for ideology where it is not necessary.

He says that he is still anxious to come to an arrangement with us even though we have nothing to contribute pre-1945 which EMI does not already have. He is willing to give us a share of the licensing receipts on the basis of the proposed 10-year agreement and the value of our post-1945 patents. He considers that there need not be any necessity for the pre-1945 patents (inventions) to be mentioned in either the A6 pool license nor in a direct license issued by RCA.

7. The direct license available from RCA could be a non-exclusive license under post-1945 patents, and could

include the non-restrictive conditions. The present pool agreement says nothing about EMI having exclusive rights: it states that for the period from 1 April 1948 to 31 December 1952 EMI "is entitled to grant or procure others to grant licenses . . . under all British patents present and future on inventions made and conceived by RCA prior to 1 January 1945."

8. Since the British pool agreement and the resulting license contracts are matters over which RCA has no control because EMI possesses and has possessed for many years the right to grant sub-licenses under pre-1945 RCA inventions, Shoenberg does not see how RCA can be criticised from the point of view of the Sherman Act for the restrictive conditions which are contained in the existing British licensing arrangements.

If RCA has already made commitments in its licensing agreements with others with regard to pre-1945 RCA inventions, Shoenberg says this need be no hindrance to arriving at some satisfactory arrangement.

9. Looked at in Shoenberg's way the vexed question of exclusivity arises only indirectly. The proposed draft sub-license agreement does not directly differentiate between pre-1945 and post-1945 patents, which are defined in the draft as "patents owned by RCA and/or its subsidiaries during the term of this agreement, with respect to which and to the extent to which, and subject to the conditions under which, RCA shall have the rgiht to grant rights to EMI during the term of this agreement". The need for the interpretation of this definition may never arise. The draft agreement might then be acceptable, subject to waiving of the minimum, and a provision that if RCA makes available to others a rate less than an agreed percentage RCA would give EMI a proper reduction, and some other minor changes.

Cross-License Agreement.

10. EMI have now realized more completely that the effect of Article II is to take away (by Section 1) their entire sub-licensing rights because of cancellation of the 1935 Memorandum. It is this section rather than Section 2 which terminates any rights EMI has by the contentious Section 9 clause of the 1935 Agreement, and this appears to be borne out by ref. (g).

By the 1935 Memorandum EMI had sub-licensing rights in the EMI fields for reception and transmission. Section 2 of Article II seems to leave them only with a non-exclusive license for themselves, because of the effect of Section 1. The proposed draft sub-license agreement would restore and extend the sub-licensing rights (non-exclusively), but EMI would lose any rights they may have had to sub-license in the EMI field of transmission. If so, this does not seem to be in line with your remarks in para. 8 of ref. (g).

11. Shoenberg wonders whether it is necessary or desirable to cancel the 1935 Agreement if by so doing it causes an embarrassment with respect to the restrictions imposed by licensing through the pool in the U. K.

For the same reasons as outlined for the draft sub-licensing agreement, Shoenberg refused to agree that Article III of the proposed draft cross-license agreement represents our residual rights under the 1935 Agreement, and so we are back again to the interpretation of Section 9 (1935).

12. In regard to granting RCA an option to sell in the entertainment field in the U.K., Shoenberg regards this as a license to import, which he claims he cannot do without "busting" the pool. Nor does he wish television transmitters to be included (along with Photophone and occasional sales of Engineering Products) as a matter of right

for RCA to sell in Great Britain without the payment of additional royalty for EMI patents, as outlined in para. 5 of ref. (b). Shoenberg wishes to consider this question further.

13. In this connection I would like to query whether your para. 5 should not also require the right to manufacture as well as sell, in order to cover more fully the potential activities of Photophone Ltd.

14. Shoenberg also desires to think over whether the provision relating to samples should be included in the agreement.

15. Shoenberg would prefer to include dielectric heating, broadly to widen the scope of the agreement.

Exchange of Research.

16. In accordance with your radiogram of 5 December, I advised Shoenberg that the decision had been made not to contact research exchange beyond Dr. Jolliffe's letter, etc. His reaction was that this represented a refusal to give EMI the same exchange of information as we were willing to give to [Illegible] (see para. 3 of L.-517). Schoenberg thinks that it might perhaps be better not to have the kind of "accidental" exchange provided for in the letter. Courtesy visits and discussions could take place by arrangement from time to time as might be desired.

Interdependence of Agreements.

17. The question was also raised as to the interdependence of the various draft proposals on each other. Shoenberg said he was prepared to discuss each agreement separately, although in passing he mentioned that our decision as regards exchange of research might in the final analysis affect his desire to come to some agreement.

C. G. Mayer.

cc: Herewith.

DEFENDANT'S EXHIBIT NO. 93.

Letter from Mr. MacDonald
To Mr. Heather—GEC

Draft 10/29/52
LBD:cf

Re: Hazeltine—GEC Agreements

This will acknowledge with thanks your letter of October 24, 1952, containing a very complete report of operations under the A-5 and A-6 Pools and negotiations toward the formation of what, I would suppose, would be the new A-7 Pool.

At the outset, I should like to express our very sincere appreciation of your very able management of this joint venture. We are most gratified at the results of the Pool operations to date. I will write you separately with respect to the disposition of the accounts to date as well as the handling of the further tax refund claims.

Coming now to the negotiations toward the formation of the new Pool, we want to assure you that we would be most happy to continue our joint participation with you in the Pool and authorize you to advise the Pool that our patents will be available through your company for inclusion in the Pool, subject to certain fundamental understandings;—

(Should there be an annual revaluation of the point system?)

1. That the allocation of Pool shares to your company and ours jointly is satisfactory to both of us. We believe that this joint share should be increased. Although we note that you feel that the Hazeltine patent situation may have been weakened during the term of the A-6 Pool, we believe this to be true also with respect to the patent holdings of the other Pool members.

2. That the licenses to be granted under the new Pool carry a rate of royalty no less than the licenses under the A-6 Pool.

3. That the term of the new Pool be for five (5) years.

With respect to the division of the proceeds of the Pool between your company and ours, we accept the principle that our share may be less than the 50-50 split applicable to the A-6 Pool. However, we would prefer deferring the negotiation of this point until we have had an opportuinty of reviewing the actual facts. Mr. Dodds has written Mr. Cornock requesting information on the British television receivers which he has examined to enable us to check the relevance of the Hazeltine British patents to current receiver designs in Great Britain. We are confident that we can reach a fair settlement with you as to the division of Pool proceeds on an amicable basis.

With respect to the EMI proposal that the allocation of proceeds among the Pool members should be on the basis of an evaluation of the individual patents of the several Pool members, limiting the value placed on any given patent within a range of from 1 to 5 points, we feel that such an evaluation system may be helpful as one factor in arriving at an allocation, but we are not in agreement that it can fairly be used as the sole factor in arriving at a final allocation. For example, Hazeltine has what we believe to be a completely dominating position in the field of color television, which may reach a commercial stage within the term of the next Pool. If any minor improvement patent having even a slight commercial use or having a probable prospective use were allotted one point, we believe that certain of our basic patents in the color television field should be allotted a great many times five points.

We are pleased to learn that you would like a continuation of the License Agreement and Service Agreement and would, of course, be glad to continue them.

Summarizing, then, our position is generally as follows:

1. We would prefer to join with your company in an agreement with the new Pool.

2. We agree in principle to a reduction in Hazeltine's share of the net income from the joint venture but we are not in a position at this time to make any definite proposal in this respect.

We would appreciate your general reaction to the foregoing discussion which, we regret, is somewhat indefinite at this time.

With kind regards.

Sincerely,

DEFENDANT'S EXHIBIT NO. 94.

(Letterhead of Marconi's Wireless Telegraph Company, Ltd., Marconi House, Strand, London, W.C.2.)

13th December 1926

David Sarnoff Esq.,
The Radio Corporation of America,
233, Broadway,
New York.

re Freed-Eiseman Radio Corporation.

Dear Mr. Sarnoff,

I have your letter of the 29th November, and in the first place I would like to assure you that the report in the "New York Times" is—like the famous report of the death of Mark Twain—"very much exaggerated" and altogether premature. The facts are as follows:—

Freed-Eiseman Radio Limited applied to us for a license, and we sent them our usual form of license agreement (a printed copy of which is hereto attached for your information), and at the same time asked that they should deposit the necessary security, and also sign an undertaking not to import, the licence being only for manufacture in this country.

They have signed the Licence Agreement, but have not sent the security nor signed the undertaking not to import. We therefore wrote them on the 7th December asking for the omissions to be made good. Up to this date, therefore, they are not licensed.

You will see in Clause 2, para. (1) of the printed Licence that the licensee undertakes "to manufacture in Great Britain and not elsewhere *all* apparatus required under this licence."

In addition to the above, we call upon our licensees to sign a separate undertaking not to import.

You are perfectly right in your assumption that we should not knowingly assist any company to sell in England under the protection of our patents apparatus manufactured in the United States infringing your patents. Of course, it is sometimes very difficult indeed to check importation because so many importers manage to get past our patents by dealing in components, and it is not easy to draw the line so as to mark off where the component ends and the assembled instrument begins, but we are doing our best to rope in those who are trying to dodge us by resorting to components.

Again, as a matter of policy we generally prefer to give a licence without investigating too meticulously into these matters, unless indeed the offence is open and glaring, because once a firm is bound to us as our licensee he cannot question the validity of our patents, and it becomes very much easier to deal with him.

You may take it that I shall always be very glad to help you in any way possible in cases such as the above that you may bring to my notice, and if there is anything further I can do in this matter, please let me know.

With kindest regards,

Yours sincerely,

I. Shoenberg.

P. S. As it is rather a delicate matter to give information about a prospective licensee which, in the ordinary course, we should not do, I would ask you to be kind enough to regard the above information as being strictly confidential. If you would wish to publish it in any way, I should be obliged if you would first consult me.

Am. Enc.

DEFENDANT'S EXHIBIT NO. 95.

(Letterhead of Marconi's Wireless Telegraph Company Limited, Victoria Embankment, London, W.C.2.)

18th September, 1933.

Messrs. Western Electric Co. Ltd.,
Bush House,
Aldwych,
London,
W.C.2.

Hazelpat Limited.

Dear Sirs,

We have pleasure in advising you formally, that arrangements have been concluded whereby the present and future British patent rights of Hazelpat Limited are added to the A.4 Licence. These rights cover those of the Hazeltine Corporation and those originating from the Philco Radio & Television Corporation of Great Britain Limited and

Majestic Electric Company Limited. The following is a brief summary of the arrangements in question, insofar as they may affect the existing Pools and the A.4 Licence.

1. Hazelpat will have a representative on the respective Committees of the Broadcast and Radiogram Pools.

2. Hazelpat will receive 10% of the total divisible profits arising from the Broadcast and Radiogram Pools, with a guaranteed minimum (total) of £5,000 per annum.

3. The revenue from existing licences under Hazelpat's patent rights will be paid into the Pools. Such licences will, however, be cancelled where possible, except in the cases of Philco and Majestic.

4. The Pools will pay to Hazelpat 10% of the respective royalties paid by Philco and Majestic under their licences mentioned in (6) below.

5. Members of the Pools are to have a free Licence under Hazelpat's patents.

6. Philco and Majestic will each take as from September 1st 1933 the A.4 Licence, subject to the under mentioned proviso, but there licenses are to be treated as one licence for the purpose of calculating royalties.

7. Referring to the negotiations which are proceeding with the R.M.A., Philco and Majestic are to have the benefit of any arrangement which may emerge including the payment of royalty on a percentage basis subject to the income from the Pools reaching a certain figure.

8. Philco and Majestic may import up to May 31st next a total of 35,000 sets subject to the same royalties as if they had been manufactured in England.

Acceptance of the A.4 Licence will not restrict Philco and Majestic from importing in any year after May 31st 1934 sets incorporating a number of valveholders not exceeding 10% of the number of valveholders incorporated in receiving sets sold in Great Britain in such year, and subject to the same royalty. If the sets imported exceed the said 10% then the royalty payable on such excess shall be doubled for the next 5% and so on progressively.

9. No Licence is granted to Philco or Majestic for valves. Members of the Pools shall, subject to six months' notice and to certain other limitations, be free to take action for infringement in respect of any unlicensed valves used in the future.

The agreement also provides for the cessation of existing litigation and for a settlement in respect of receiving sets and valves imported and sold up to August 31st last.

We shall be glad if you will kindly advise us formally whether you are in agreement with the described arrangements, which agreement would, of course, include your appropriate participation in the payments to be made under paragraphs (2) and (4) above.

The matter is urgent as it is proposed that on behalf of the Pools, we should public a short statement in the next issues of the "Broadcaster" and "Wireless Trader" respectively. Perhaps you will let us know also, at your early convenience, whether you agree this procedure.

Yours faithfully,

F. C. Topham.

DEFENDANT'S EXHIBIT NO. 96.

January 21, 1948.

Mr. M. M. MacQueen
The General Electric Co., Ltd.
Magnet House
Kingsway
London W.C.2, England

Dear Mr. MacQueen:

Please accept my sincere thanks for your letter of December 11, 1947 and the report of your Patent Department which was enclosed with it. The possibility of my being able to visit England this year is very remote. If, in your opinion, the situation should become urgent enough to require it, I will try and arrange matters here so that I can come over.

Irrespective of my availability, I think we can proceed to develop the situation by correspondence. From your letter and the report, I gather there is an excellent possibility the Pool will be renewed, consequently, we should first consider the matter from that point of view.

We are in full accord with the final paragraph of your letter and therefore we agree that you should be in the position of stating unequivocally that you are exploiting the Hazeltine patents under the provisions of Paragraph 2 of the Hazeltine-General Electric Company renewal agreement of July 24, 1945. This will enable you to continue your discussions with the other Pool members as the owner of a "complete package of rights" consisting of the GEC and Hazeltine groups of patents.

We now come to your proposal for the distribution of the royalty income which will materialize from GEC's combined share in the event the Pool is established. From your letter, I take it that you are in agreement with the recommendation made in the report of your Patent Department—namely, that GEC and Hazeltine should share equally in the royalty income from the Pool. All in all, we think this is a very fair arrangement. We agree that in view of the many uncertainties that no attempt should be made at this time to establish a fixed sum as an annual guarantee to Hazeltine.

Under the circumstances, you may, therefore, consider this letter as your authority to proceed with the Pool negotiations with the assurance that Hazeltine Corporation will agree that you have the exclusive rights under its British patents for such purpose in consideration of Hazeltine receiving one half of GEC's royalty income from the Pool derived as a result of the combined contribution of GEC and Hazeltine patent rights to the Pool.

We are doing this fully convinced that you will use every endeavor to secure the highest possible share in the Pool in your negotiations with the other members. The formal agreement putting this understanding into effect can be drafted at a more convenient date. This can either be in a comprehensive single document (depending upon Fearnley Owen's advice on the tax matter) or as a supplemental agreement to the existing documents. I cannot foresee any difficulty on this score, whichever way is most desirable.

In the event a new Pool fails to materialize, our desire would be to work with you if at all possible. Therefore, we could reexamine the whole matter if such a contingency should arise.

We all wish you success in your negotiations with the Pool. We feel that the Pool is the best solution for Great Britain, particularly if it will extend its services by establishing either an engineering service or a technical information service—preferably both.

I sincerely trust that Mr. Heather has completely recovered. All of us in Hazeltine wish you and all in GEC a most happy, prosperous and healthful New Year. We also hope that Britain has seen the worst of the trial that have beset her and that she is now on a smooth highway to prosperity.

With every good wish

Yours very sincerely,
Hazeltine Corporation,
President.

JB:OJO

DEFENDANT'S EXHIBIT NO. 97.

G. E. C. Patent Department,
Research Laboratories of the
General Electric Company, Ltd.,
Wembley.

23rd February, 1951.

Confidential.

Fearnley Owen, Esq.,
Messrs. Faithfull, Owen & Fraser,
St. Michael's Alley,
Cornhill,
E.C.3.

Hazeltine Corporation.

Dear Mr. Owen,

You have written several times about various matters connected with the Hazeltine Corporation, and I am exceedingly sorry that a reply has been so long delayed. May I begin with the matter raised in the copy-letter from Mr. Binns enclosed with your letter of November 13th, where he asks about the Pool position, as it is the simplest to deal with.

I am enclosing spare copies of the following Agreements, as it may save you the trouble of making further copies. (I believe Mr. Lowry may have the copies we supplied in connection with certain Hazeltine's applications for extension, but they may all have been lodged with the Patent Office, leaving none on his file).

1. Main Pooling Agreement; 31st August, 1948.

Parties: E.M.I.
B.T.H.
Philips
G.E.C.
Marconi

This is the basic Agreement, running until the 31st December, 1952. The relative shares of the Parties are set out in Clause 11(o); but they are in effect modified by a confidential arrangement between E.M.I. and the G.E.C. whereby they pay us (from their share of Pool income) such sum as brings our share up to 33/30ths of that provided for in the document. (The actual present consolidated shares, after inclusion of other Parties, is given later in this letter).

2. Addition of S.T.C.: 4th February, 1949.

By this Agreement, S. T. C. became licensor members of the Pool, being allocated 20 Points holding.

3. Modification Agreement: Effective date, 4th February, 1949.

Parties: E.M.I.
B.T.H.
Philips
G.E.C.
Marconi
S.T.C.

Agreement No. 3 provides that, instead of £25,500. the quasi-limit shall be £15,000.

4. Pye Supplement: 16th March, 1949.

Pye having taken an A.6 Licence, they are by this Agreement admitted as Licensor members with a share equal to 6.75/195.25 of total net Pool revenue received by:

E.M.I.
B.T.H.
Philips
G.E.C.
Marconi
S.T.C.
Pye

5. Murphy Supplement: 23rd March, 1949.

Murphy are admitted, similarly, as Licensor members, with a share equal 4½% of the total share of net Pool revenue received by:

E.M.I.
Marconi
B.T.H.
S.T.C.
Murphy
Philips
G.E.C.

6. E. K. Cole Supplement: 16th June, 1949.

E. K. Cole Ltd. are similarly admitted with a share equal to 2½% of the total net share of revenue received by:

E.M.I.
B.T.H.
G.E.C.
Marconi
Philips
Murphy
Pye
S.T.C.
E.K. Cole

7. Cossor Supplement: 3rd March, 1950.

A. C. Cossor, Ltd. are similarly admitted with a share equal to 3% of the total net share of revenue received by:

E.M.I.
B.T.H.
G.E.C.
Marconi
Murphy
Philips
Pye
S.T.C.
Cossor

8. Cinema-Television Supplement: 8th March, 1950.

C.-T. Ltd. puts its patents at the disposal of the Pool for licensing purposes in consideration of a reduction of 51.⅓%. in the standard rate of royalty which it would otherwise have to pay to the Pool.

I believe the effect of this somewhat complicated series of Agreements is this. Let X be the net amount receivable by "the Eight Parties":

E.M.I.
B.T.H.
GEC.
Marconi
Murphy
Philips
Pye
S.T.C.

then Cole and Cossor are respectively to receive:

$$\frac{2.5}{97.5} X \quad \text{and} \quad \frac{3}{97} X$$

according if I be the total net Pool revenue,

$$I = X + \frac{2.5}{97.5} X + \frac{3}{97} X$$

whence $X = I : (1 + \frac{2.5}{97.5} + \frac{3}{97}) = 0.946\ I$, approximately.

Similarly if "the Six Parties":

E.M.I.
B.T.H.
G.E.C.
Marconi
Philips
S.T.C.

receive Y as their part of the net revenue, Murphy is to receive $\frac{4.5}{95.5} Y$ and Pye to receive $\frac{6.75}{195.25} Y$, so that:

$$X = Y + \frac{4.5}{95.5} Y + \frac{6.75}{195.25} Y = 1.082\ Y, \text{ approximately}$$

whence:

$$Y = 0.924\ X = 0.875\ I, \text{ approximately.}$$

The sum Y is then divided between the six parties in proportion to their points allocations, as follows:

	Points	Relative %.	Share of Revenue, I
E.M.I.	95	50.40	0.441 I
B.T.H.	5	2.65	0.023 I
Philips	25	13.26	0.116 I
G.E.C.	30	15.92	0.139 I
Marconi	13½	7.16	0.063 I
S.T.C.	20	10.61	0.093 I
	188½	100.00	0.875 I

Then finally, as mentioned above, the confidential adjustment between E.M.I. and G.E.C. (of which the remaining Parties are unaware) is to be made.

As regards Mr. Binns' enquiry about the success of the Pool in attracting licensees, I can only give a somewhat general answer. The present position is that about 90 manufacturers have taken licences, that the Pool is keeping a careful watch on the activities of non-licensees, that an infringement action is in progress against Sobell Industries Ltd., and that other infringement actions are contemplated —Counsel's advice having been taken in regard to at least one such Action. The expenses of these proceedings are being divided among the licensors in proportion to their respective shares of Pool revenue. Broadly, therefore, my understanding of the position is that the majority of manufacturers of any importance have taken licences; and you will see that the Pool is being active in its steps to stop infringement. I hope this summary will give Mr. Binns the information he wants; but if he wants more than this, I will ask Mr. Topham and try to supplement it.

I hope to be able to write to you within the next week about the new Agreement.

Yours sincerely,

(Sgd.) A. F. Cornock.

DEFENDANT'S EXHIBIT NO. 98.

Received Dec. 1948. B. E. Shackelford

Marconi's Wireless Telegraph Company Limited,
Marconi Offices,
Electra House,
Victoria Embankment,
London, W.C.2.

Air Mail
Surface Mail
15th December, 1948.

Dr. B. E. Schackelford,
Director, License Department,
R.C.A. International Division,
745 Fifth Avenue,
New York 22, N.Y.,
U.S.A.

EXT/MD/1260

Dear Dr. Shackelford,

In reply to your letter of December 2nd regarding the British Broadcasting Receiver Pool, I have pleasure in informing you:—

1. After considerable discussion within the Pool, it has been decided to begin operation of the new Pool without a maximum for either patent holders or licensees. This is the present procedure.

2. The licence from the patent holders of the Pool is exclusive in the sense that no patent contributor to the Pool can license outside the Pool for the field of the Pool. See outline sent by Mr. Mayer & older "New Pool Agreement 8/31/48 EMI, BTH, Philips, GEC, MWT, EMI, 184.

I hope that the foregoing provides the information you desire.

Yours sincerely,
D. Birney,
External Relations Division.

DEFENDANT'S EXHIBIT NO. 99.

Hazeltine British Patents Corresponding to U.S. Patents of Interest in Current Receivers (Not Color)

U.S. Patent	British Patent
2,463,229	593,393
2,547,648	623,431
2,784,249	697,819

DEFENDANT'S EXHIBIT NO. 100.

8, Queen's Gate, S. W. 7. London, England.

March 31st. 1931.

Mr. Paul B. Klugh,
The Zenith Radio Corporation,
Thirty-six Twenty Iron Street,
Chicago,
U. S. A.

Dear Mr. Klugh,

I was very interested indeed to receive your letter of March 10th. replying so promptly to my suggestion with regard to the marketing of your sets in this Country.

The details you enclosed of your new sets are most interesting and if circumstances allowed I think they would go extraordinarily well in this Country.

It is a curious thing, however, that between the time I wrote you originally and this present letter a complete change has come over the situation of this side in regard to the import of Foreign Radio Apparatus.

Perhaps it would be useful to you to know the exact position so far as I can ascertain it at the moment when you can judge for yourself whether it it worth while giving the matter any further thought at all.

There is no doubt whatsoever in my mind that your sets would sell in good quantities in this Country and moreover your price is right, as allowing for a discount of not less than 50% and 10% and adding freight and duty they would sell here at prices that are competitive with British sets of considerably less efficiency. So far so good but the deciding factor is that of Licences.

Up to quite recently there seemed to be no real difficulty about getting into this market. Majestic, Philco, Peerless, Crosley and other have got in with apparent ease and the two former have sold amazingly well and apparently without the holders of the Radio Patent here taking any action. That, however, was due to the fact that there was a fight between the two groups claiming the rights under these Patents. (a). The Marconiphone Group including H.M.V. who, as you know, are the English Associates of the Victor Company and, therefore, really controlled by R.C.A. and (b) Standard Telephones and Cables who are a subsidiary company of the International Tel. & Tel.

Within the last week or ten days the quarrel has been finally patched up I believe and the Patents pooled so that a joint Licence is now being issued to everybody by the two groups above-mentioned.

My relations with Group (b) are most friendly and intimate and I approached them with regard to this matter when I was informed that under the new arrangements no Foreign sets would be permitted to come into this Country unless the Manufacturers controlled a British Company and/or manufactured to some extent in this Country which points to the fact that ordinary import is likely to be barred completely. Whether they could substantiate that attitude eventually in a Court or not, there is no doubt that they could obtain an Injunction pending legal action.

They base their claim to control the situation on the possession of the Patents relating to the super-heterodyne circuit, the smoothing circuit and push-pull amplification. As all these are absolutely necessary for the modern set it seems that they have got a strong hold on the situation.

In view of the position outlined in this letter, therefore, it looks to me as though there is no possibility of your getting into this market at all unless you get control of a British Company. That, of course, is not impossible as owing to the bad times recently experienced here there are one or two firms with quite good reputations and with good factories who, owing to lack of capital, have found themselves in difficulties. One of them is, of course, the Burndept Company which is the oldest Radio Manufacturing Company in this Country and I believe the whole of their assets, Factory, Premises, Land, Plant, Machinery, Inventory, Debtors could be purchased for a quarter of a million dollars. The Company is at present capitalised at ¾ million dollars. Probably you will think this far too expensive a method of gettin ginto the market and it may be that that view is the right one. There is no doubt, however, that Majestic and some of the others who are already in and are taking out Licences will do very considerable business in this Country from now onwards.

I hope this information will interest you and if you think it worth while carrying it any further I shall be only too glad to give you any further details you require.

Perhaps you would be so good as to address any further communication to me C/o. The Royal Automobile Club, Pall Mall, S.W.1. as my home address may shortly be changed.

With best wishes, believe me,

Your sincerely,

Illegible.

DEFENDANT'S EXHIBIT NO. 101.

November 13, 1933.

Mr. F. C. Topham, Asst. General Mgr.,
Marconi's Wireless Telegraph Co., Ltd.,
Electra House,
London, W. C. 2, England.

My dear Mr. Topham:

Thank you very much for your letter of October 31, reference P/T 24876, in which you have explained the current situation regarding the Patent Pool.

You have indicated that when the percentages have been fixed and the licenses issued you will send me full particulars. I appreciate this very much and will look forward to the receipt of same when you are in a position to release them.

With kindest personal regards and best wishes, I am

Yours very truly,

Zenith Radio Corporation,
S. T. Thompson.

STT:S

(Letterhead of Marconi's Wireless Telegraph Company Limited, Victoria Embankment, London, W. C. 2.)

31st October 1934.

S. T. Thompson, Esq.,
The Zenith Radio Corporation,
6001, Dickens Avenue,
Chicago, U. S. A.

Future Licensing.

Dear Mr. Thompson,

In reply to your letter ref. STT:S of the 18th inst. I am afraid that I am still not in a position to give you definite news. Although the old Pool expired on August 28th last, no new licence has yet been issued, but it is well under way.

It may be taken as certain, however, that whatever the final form of licence may be, there will be no licensing of imports—except in the sense that some percentage of imported components may be incorporated in an English manufactured instrument.

As soon as the above percentage has been fixed and the licence issued, I will send you full particulars.

With kindest regards,

Yours sincerely,

Marconi's Wireless Telegraph Co., Ltd.,
F. C. Topham,
Assistant General Manager.

T/PM

DEFENDANT'S EXHIBIT NO. 101-A.

(Letterhead of R. A. Rothermel, Ltd., Canterbury Road,
London, N. W. 6.)

December 7th, 1934.

Zenith Radio Corporation,
3620 Iron Street,
Chicago, Ill., U. S. A.

Attention of Mr. Hefter.

Dear Sirs,

We are in receipt of your letter of the 20th ultimo: in regard to your radio products.

To be quite frank, we do not see any possibility of marketing your product in Gt. Britain under the present licence and patent situation. To be sure, American sets are being sold here, but it is a boot-leg proposition, run by the East end Jews who can afford to take chances which people who operate in legitimate business cannot do.

I suppose after your rather unfortunate experience of having Zenith sets made in this country, you would not care to consider another proposition along the same lines. You, unfortunately, fell into the wrong hands, but if a similar arrangement can be made with a firm like ourselves I have no doubt but that today Zenith sets would be one of the largest selling lines in Gt. Britain.

May I suggest that in sending out printed matter in the future you will see that the price list corresponds to the leaflet which you send out. I find described in the leaflet the following models which are not mentioned in the price list: 870 - 861 - 850 - 845 - 827 - 825 - 871 - 829, and I find quite a number of items mentioned in the price list which are not detailed in the letflet. Furthermore, you do not mention any export discounts and even though I assume that these are 50-16%, there is nothing to show that this is correct.

We are always glad to hear from you and only wish there was some way to market your very attractive products in Gt. Britain.

Yours very truly,
R. A. Rothermel Limited,
R. A. Rothermel,
Director.

R/MB

DEFENDANT'S EXHIBIT NO. 102.

(Letterhead of J. Toubkin, Manchester, 3.)

28th May, 1936.

Messrs. Zenith Radio Corporation,
Export Dept., 3620, Iron Street,
Chicago, Illinois,
U. S. A.

Dear Sirs,

I beg to thank you for your letter of the 14th May with reference to our negotiations with Messrs. Marconi and have pleasure in handing you herewith a further reply, which we have received this morning, also the specimen of the agreement form.

As you will observe, they would not allow the importation of components in excess of 7½% of the retail selling value, which is, of course, approximately 15% of the import price. I believe that even although this makes matters a little difficult, it should still be possible to handle the job satisfactorily. We should, of course, have to have the cabinets and loudspeakers made in this country, which would present no difficulties at all, and we could import the chassis complete, and if necessary have the mains transformers wound here. I am sure they would not be particularly keen as regards the actual proportion, and even if 25% were imported, there would be no trouble at all, and on that basis we ought to be able to handle the matter with a minimum of parts being manufactured here. It is, of course, most important that the chassis should arrive here as complete as possible.

I should like to mention for your guidance that the Pool has now made a determined drive during the last month or so against all importers of American receivers, and under the circumstances, I am afraid it is going to be absolutely impossible for me to handle your receivers any longer unless such an arrangement can be arrived at. The fact is a lot of my customers have already been threatened, and I expect trouble any day. It is not only the fact that they are attacking individual customers, but the fact that they will immediately advertise in the trade papers to the effect that the Pool has obtained an injunction against the undermentioned firms for handling "Zenith" receivers, and such an advert would immediately kill the trade of "Zenith" receivers in the whole of Great Britain as it has done in cases of other receivers as, for instance, "Emersons", etc. This is bound to happen within the next week or two, and under the circumstances, I am very pessimistic indeed about the future.

It is, therefore, most imperative and important that you give this matter your very careful consideration and decide what to do immediately. There is also a very bright side to the proposal of manufacturing here, namely the fact that at least three or four of the largest manufacturers in this country have decided to discontinue supplying wholesalers and to supply direct to the trade only. This would assist us in so far that we have already been approached by some very large wholesalers, who used to run British sets only and who have now been left out of it and who would be prepared to undertake distributor-ships in various towns and districts on a basis of placing a substantial contract right away. I believe I am safe in saying that with a reasonable amount of advertising and considering the goods could be sold as "Made in England" and that they are licensed with the Pool, we could, without fear or exaggeration, take it for granted that our sales would be 10-fold of what they have been last year.

I must, however, point out again that it is extremely important to have this matter settled without delay, and I, therefore, hope to hear from you at the earliest possible moment.

I must repeat again that our works have exceptionally good facilities and plenty of room for testing, handling and assembling such receivers at an absolute minimum of expense, as our overhead is extremely low, and this part of the business, therefore, would present no difficulty.

Trusting to hear from you,

Yours faithfully,

(Illegible.)

MT/NC

(Letterhead of Marconi's Wireless Telegraph Company,
Limited London, W. C. 2.)

26th May, 1936

Please Address the Company and Refer to P/T 17655

Turnpress Limited,
Cornwall Street,
Openshaw,
Manchester, 11.

Dear Sirs,

We acknowledge with thanks the receipt of your letter of the 25th instant, and have noted contents.

In accordance with your request we have pleasure in enclosing herewith a copy of the A4 Licence (Second Edition) together with Schedule A for your information.

We regret, however, that we cannot give you any permission, temporary or otherwise, to sell complete imported instruments employing patents controlled by any Member of the British Licensing Pool. The Licence we should be willing to consider granting to you or to any other English Company would relate only to manufacture in this country. Any such grant would be subject to approval by other Members of the British Licensing Pool, and also to your acceptance of conditions such as those set out below and which would be incorporated in the Licence if and when issued.

"(a) Manufacture will be undertaken in a factory situated in the territory for which the A4 License is granted, and, for the purposes of your A4 Licence agreement no Broadcast Receiving Apparatus or Radiogramophones shall be deemed to have been manufactured within the said territory which incorporate or include imported components and accessories sold therewith to a greater extent per apparatus than that incorporated in the like apparatus by Licensees holding an A4 Licence who are Members of the Radio Manufacturers' Association or in any event, which incorporate or include imported components and accessories sold therewith to an extent greater in value than 7½% of the retail selling price (within the said territory) of the complete apparatus.

(b) You will when requested by the Grantors render to them a statement certifying whether or not the Broadcast Receiving Apparatus and/or Radiogramophones sold by you have been manufactured in the territory for which the A4 Licence is granted in the manner specified in Clause (a) above.

(c) In the event of any dispute in respect of any apparatus sold by you the Grantors shall be entitled to obtain actual figures showing the extent of imported components and accessories incorporated or included in the said apparatus. Either party so desiring shall be at liberty to appoint an independent auditor or other person to ascertain the figures as aforesaid, to whom you will give every assistance and facility.

(d) In the event of any such dispute as aforesaid, the onus of proof that the apparatus has been manufactured in accordance with the terms of your A4 Licence shall be on you."

When issuing any Licence as above, it would be accompanied by a further letter from the Pool making clear that no rights whatever were contemplated or granted in respect of imported apparatus and that in the event of import occurring, the Pool would take such action as it thought fit.

Perhaps you will advise us in due course whether you desire to proceed with the matter of a Licence upon the lines as indicated above.

Yours faithfully,

M/W. F. C. Topham.

DEFENDANT'S EXHIBIT NO. 103.

(Letterhead of J. Toubkin, Manchester, 3.)

9th. November, 1936.

Per R. M. S. "Queen Mary".

Ref.—cvm/ep.

Messrs. Zenith Radio Corporation,
Export Department,
3620, Iron Street,
Chicago, Illinois,
U. S. A.

Dear Sirs,

I beg to thank you for your letter of the 27th. October in reply to my letter of the 22nd. September and note what you say on the question of supplying me with chassis assemblies only minus speakers and tubes. Since then, I have further considered the matter of increasing the sales of your "Zenith" radios in this country and beg to say that the above does not interest me any more, but the two alternatives do.

One I have already written you about, namely your Company has certainly a lot of influence in the States with the Hazeltine Corporation, and also other corporations as the R. C. A., who hold the patents. It is an easy matter for you to use your influence with those Patent Corporations and their connections in England, (companies with whom they have interchange of patents and other working arrangements) to arrange a trial period, during which they should allow you to sell your radio receivers in this country without requiring to pay any royalties at all. Surely you are fully aware that Philco have been selling their American-made radios in this country for three years without paying one penny royalty, this by arrangement with the Hazeltine Corporation, and nobody dared to attack them or do anything about it. It is only during the last twelve months that they have commenced manufacturing in this country and use some sort of licencing plates, also by arrangement with the Hazeltine Corporation. All I ask you to do is use your influence with those companies to allow you such a probation period. I feel sure that you can do that, and if you get a twelve months clear run in this country with your receivers without being interfered with by Patent Pools, etc., you will see what a tremendous sale we could establish for your products. Furthermore, I have no doubt that once you have got such an arrangement, you could extend it for perhaps another twelve months, and if that is so, it would give us two years, and in the meantime, lots of things can happen.

I cannot help feeling that except for writing long letters, when it comes down to actual assistance and support, I get none at all from you, and I feel that I am not being backed up at all. Surely you are aware that I represent other American manufacturers in this country for other products as vacuum cleaners, washing machines, etc., amongst them some of the largest companies in the United States, and I must again repeat that the amount of support I get from you compares most unfavourably with any of the other companies, in fact I get none at all. What is the use of writing me about the Belmont Radio Co. securing a good sale in England? All they have done is they have registered a small £100 company and the whole thing can fall over any day if the licensing pool cares to press them to adhere to the regulations. This is not the correct way of building up a business, and the way I suggested above is the only way. If we get twelve or eighteen months' run, you might decide to manufacture here, or alternatively we might jointly do the assembly of American-made chassis here, and might build up a substantial business.

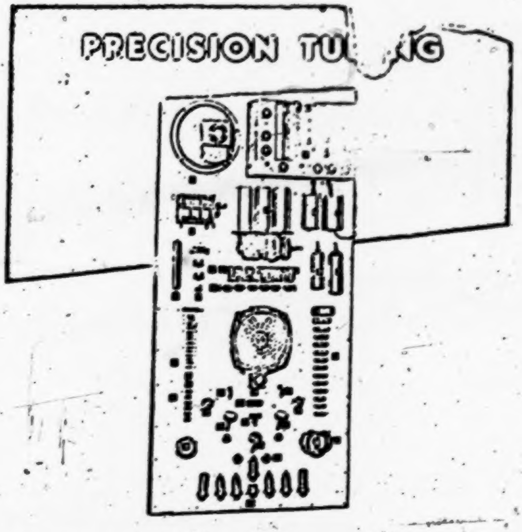
I want you, however, to reply to this matter immediately—never mind waiting for semi-annual Directors' meetings, which are not very helpful.

My second alternative would be to import kits of parts. Now by kits of parts I mean something similar to the kit, as per illustration and description herewith, manufactured by Ultramar Radio Corporation. You will observe that they supply the chassis with the transformer mounted in position and all the tube sockets in position but not wired up. They also supply the whole coil unit completely wired up and aligned, which is a very important point. Now why I am interested in this proposition is the fact that whereas the Pool holds certain patents covering the manufacture of radio receivers, there is nothing at all in any of the patents to prevent you from selling kits of parts, particularly if the tube sockets are not wired, because most of the patents are on the tube circuits. I would be prepared to purchase from you the 5 and 8-tube receivers in large quantities in similar kit form to the description herewith enclosed, except minus the tubes. Now what is there difficult about the proposition I am making to you? What is there impossible about it? All I want you to do is to supply me a certain number of chassis and transformers, a certain number of speakers, a certain number of coil units, a certain number of gang condensers, a certain number of dial assemblies, etc., etc., etc., which are all your standard products, and if it is too much trouble, you do not even need to make them up in kit form. I will have them boxed in kit form here. All I want is the set of parts. Now you do not need to manufacture anything special for me. Those parts are going through your works every minute of the day. All you have to do is to take off a certain number from every line. Now is it possible for me to get an intelligent reply to this, my second proposition, within a reasonable time, preferably in 1936? Is it possible for me to get from you a price for a 5-tube and 8-tube all-wave kit of parts minus tubes, and if not, could you show a reason why it is not possible for you to do so? Being manufacturers ourselves, we fully appreciate the great point in having standardised production in as far as it is possible, and, therefore, any amendments in the set manufacture, which we might introduce, we appreciate would be very disturbing. We cannot possibly, however, appreciate what would be the difficulty of supplying me with kits of parts by merely taking away from every line a certain number of components.

Again—can we hope for an early and speedy reply to this matter or is it too much to expect?

Yours faithfully,

MT/NC. M. Toubkin.



Radio Kits—Nos. 801-802

The radio kits illustrated above contain all the materials required, except cabinet, to build our Models 801 and 802 and all parts are an exact duplicate of the parts used in those models in our production.

The Coil Unit No. 5 is supplied completely assembled, tested and aligned.

The Chassis pan is supplied with all tube sockets, lugs and terminal strips properly riveted.

The Kits are so arranged, with all parts properly tested and matched, that any radio manufacturer or radio mechanic can produce the above models with the same precision and performance as our own production.

We supply complete instructions and drawings covering all the operations from the assembling of all parts to the aligning and tuning of the sets after built.

25 30

CCURATE AND

DEFENDANT'S EXHIBIT NO. 104.

Hazeltine Research, Inc.
vs. Zenith Radio Corporation
Defendant's Exh. No. 104
C.A. No.
59-C-1847

(RCA France Exp)

TELEPHONES:
BLACKFRIARS
9348 (TWO LINES)
TELEGRAMS:
TOUBKIN MANCHESTER

J. Toubkin

MANUFACTURER & IMPORTER OF ELECTRICAL SPECIALITIES

LONDON OFFICE:
130 HIGH HOLBORN W.C.1
TELEPHONE: HOLBORN 5907
TELEGRAPHIC ADDRESS
TOUBKIN WESTCENT LONDON

REFRIGERATORS
WASHING MACHINES
ELECTRICAL ACCESSORIES
ELECTRIC HAIR CLIPPERS

TRADE MARKS

FLASH LAMPS
BULBS, BATTERIES
RADIO RECEIVERS & ACCESSORIES
CYCLE ACCESSORIES

FARADAY HOUSE, TODD STREET,
MANCHESTER,3.

5th.March,1937.

EXPORT DEPT.

Order 3/15/37

Messrs. Zenith Radio Corporation,
3620, Iron Street,
CHICAGO,Illinois,
U.S.A.

Dear Sirs,

I should be glad if you will please ship to Southampton at your very earliest the following goods:-

1 only "Zenith" Radio model 5S126, A.C., 220 volt.
2 only " " " 7D126, AC/DC., 220 volt.
1 only " " " 7D127, AC/DC., 220 volt.
1 only spare mains transformer for a 9-valve "Zenith" receiver, 220 volt, A.C., 50 cycles, probably last year's model.
1 only each spare volume control, tone control and wave-change switch with shafts for the models 6B129 and 6B164 and 7D126.
1 dozen speaker plugs.

3178

3/16/37 KR

PO entered 3/16/37 KR

Trusting you will give this your immediate attention,

Yours faithfully,

J. Toubkin

MT/MC.

L

England

1461

Zenith -
[illegible] Ex 4
[illegible] Inference Ex 7

TELEPHONES
BLACKFRIARS
5540 (TWO LINES)
TELEGRAMS
TOUBKIN MANCHESTER

J. Toubkin

MANUFACTURER & IMPORTER OF ELECTRICAL SPECIALITIES

LONDON OFFICE:
130 HIGH HOLBORN W.C.1
TELEPHONE HOLBORN [illegible]
TELEGRAMS [illegible]
TOUBKIN [illegible] LONDON

TRADE MARKS

REFRIGERATORS
WASHING MACHINES
ELECTRICAL ACCESSORIES
ELECTRIC HAIR CLIPPERS

FLASH LAMPS
BULBS, BATTERIES
RADIO RECEIVERS & ACCESSORIES
CYCLE ACCESSORIES

FARADAY HOUSE, TODD STREET,
MANCHESTER,3

18th.March,1937.

PER S.S."HANSA".

Messrs. Zenith Radio Corporation,
3620, Iron Street,
CHICAGO,Illinois,
U.S.A.

EXPORT DEPT.

Mr Bryant
See what
could be done
[illegible] with
Hazeltine

Dear Sirs,

This will acknowledge receipt of your cable of the 16th. informing me that you are in a position to offer me a $5.00. allowance on your AC/DC range of long-wave receivers and that you wanted me to cable my March requirements immediately. I regret, however, that since writing to you last, certain developments have been taking place here, which have been causing me a great deal of inconvenience and trouble, and, in short, I have been again tackled by the Licensing Pool of British Patents in connection with their patent rights. As this matter appears to be serious at the present moment, I have been compelled to cable you to-day, requesting you to suspend all shipments for the time being until I should be in a position to settle the trouble with them. If the trouble cannot be settled satisfactorily, then, of course, I am afraid I should have to dis-continue running American receivers until the patent situation changes.

You will appreciate, of course, that after having handled your lines for five or six years and having built up quite a name for same, I feel very sorry indeed that such a situation should develop, and I must, therefore, appeal to you again and revert back to my communication of about ten days ago, when I requested you to use your influence through the American Association and see if you cannot obtain permission from the English Licensing Pool for you to import a number of sets until you have decided whether or not you care to manufacture same in England. I feel sure you must have quite a pull with the Hazeltine Corporation, which controls a number of patents in this country, and if you arrange it in the States with this particular Corporation, then I should experience no trouble at all in future. Would you kindly give this matter your early attention, and oblige.

2662

Yours faithfully,

J. Toubkin

MT/HC.

Sent [illegible]

Hazel[illegible]
Miss Chicago

13-1

2642

Defendants' Exhibit No. 104.

RECEIVED AT
3804 S. ASHLAND AV
TEL. LAF. 2683
STANDARD TIME INDICATED ON THIS MESSAGE

Postal Telegraph
THE INTERNATIONAL SYSTEM
Commercial Cables
All America Cables
Mackay Radio

This is a full rate Telegram, Cablegram or Radiogram unless otherwise indicated by signal in the check or in the address.

DL	DAY LETTER
NL	NIGHT LETTER
NM	NIGHT MESSAGE
LCO	DEFERRED CABLE
NLT	NIGHT CABLE LETTER
	RADIOGRAM

Zenith-del Mercado Ex. 8
RCA-France Ex 7

Form 16

AB7 12 CABLE=B MANCHR 1045 A MAR 18 1937

1937 MAR 18 AM 7 29

LC ZENITHRAD, (ZENITH RADIO CORP=
1381 WEST 5ST) CHICAGOILL=

OWING RENEWED PATENT TROUBLES PLEASE SUSPEND FURTHER SHIPMENTS=
TOUBKIN.

3/18/37
Living
Please note'
Duke
3/18/37
FK. J
no action # 3117

Telephone Your Telegrams to Postal Telegraph
2641

Defendant's Exhibit No. 104.

LINN: — BE SURE THAT THIS PARTS ORDER IS SHIPPED BY PARCEL POST.
ALSO, CANCEL ORDER #3178.

A V DUKE

notified Louis 4/1/37 to ship
pp – P/o 38876
4/1/37 L

1459

March 31, 1937

Mr. Julius Toubkin
Faraday House, Todd Street
Manchester, 3, England

Dear Mr. Toubkin:

With further reference to your letter of March 5th and our acknowledgment copy of order #3178 which was mailed to you under date of March 16th, we have now cancelled this order in accordance with the instructions received from you by cable.

We are, however, having the parts referred to in your letter of March 5th sent forward to you by parcel post as we are sure that you are in need of them.

Yours very truly,
ZENITH RADIO CORPORATION

A. V. Duke
Assistant Manager
Export Division

AVD:EP

Defendant's Exhibit No. 104.

England

1460

(2638; 2640. 2641)

Zenith–[illegible] Ex. 8
RCA-France Ex 7

TELEPHONES:
BLACKFRIARS
6345 (TWO LINES)
TELEGRAMS:
TOUBKIN MANCHESTER

J. Toubkin

LONDON OFFICE
130 HIGH HOLBORN W.C.1
TELEPHONE: HOLBORN [illegible]
TELEGRAMS: [illegible]
TOUBKIN WESTCENT LONDON

MANUFACTURER & IMPORTER OF ELECTRICAL SPECIALITIES

REFRIGERATORS
WASHING MACHINES
ELECTRICAL ACCESSORIES
ELECTRIC HAIR CLIPPERS

TRADE MARKS

FLASH LAMPS
BULBS. BATTERIES
RADIO RECEIVERS & ACCESSORIES
CYCLE ACCESSORIES

FARADAY HOUSE, TODD STREET,
MANCHESTER, 3.

3rd. April, 1937.

PER S.S. "EUROPA".

Messrs. Zenith Radio Corporation,
3620, Iron Street,
CHICAGO, Illinois,
U.S.A.

Ref:-JT:KE.

Export Dpt.

Dear Sirs,

In reply to your favour of the 19th. March with reference to my cable informing you of the renewed troubles, which I have been having with the Patent Pool, I note that there is a further shipment clearing from New York and beg to say that the position is not so tragic that I should not be able to accept them, and it will be quite in order for you to let same go forward, also the 25 console receivers, models 8A154 and 8A157, about which I have written to you last week.

It is, however, quite clear that even although I might be in a position to settle this particular trouble in the near future, it is going to be a very costly business indeed, and if the Patent Pool insists upon the damages, which they require at the moment, I should probably have to pay them as much as I have ever been able to make on the "Zenith" receivers, which you will agree is not so very satisfactory.

You will, no doubt, be interested as to the future, and I must confess that the position is by no means bright. The Patent Pool is now making a determined effort to stop all importations of American receivers, and although it might not be possible for them to do so, they certainly will be in a position to make it so uncomfortable for everybody concerned that most importers will drop out.

I am not in a position yet to tell you what my own plans for the future are likely to be, because the trouble with the Patent Pool has not yet been settled, but I shall not fail to keep you posted.

I cannot help but repeat what I have already written to you on a number of occasions during the last three or four years, namely that I feel you are not doing your share in helping me in this matter. You have, no doubt, very good connections with the Hazeltine Corporation and other powers in U.S.A., who control patents, and if you were to use your influence, as Philco and Pilot and the others have done in years gone by, you could make life much easier for me, and what is more, secure a ten-fold business to the one, which I am doing at the present moment. You are now moving into much larger premises, and you are going to increase your output. Are you not at all interested in securing a larger share of the British business? Is it possible for you to interest yourself in this matter or don't you intend even to try?

Trusting to hear from you, I beg to remain,

Yours faithfully,
J. Toubkin

JT/KC.

2638

2639

DEFENDANT'S EXHIBIT NO. 105.

(Letterhead of J. Toubkin, Manchester, 3.)

8th. March, 1937.

Export Dept.

Mr. James F. Weldon,
Messrs. Zenith Radio Corporation,
3620, Iron Street,
Chicago, Illinois,
U. S. A.

Dear Mr. Weldon,

I note from the circular letter of the 25th. February that you have been appointed Export Manager of the Zenith Radio Corporation and should like to take this opportunity of congratulating you upon this promotion.

You will naturally be most anxious to expand your export trade and will, of course, look to me to do my quota. I feel, however, that having been in the radio trade for some time, you will be aware of the patent situation in England and also aware of the fact that we are labouring under very great difficulties in this country, and it is, in fact, surprising that we have sold the quantity of sets we have done without getting ourselves into too much trouble. You will, therefore, also appreciate that any publicity stunts and drives that you might suggest to all your other distributors overseas, generally speaking could not apply in this country, as discretion is probably one of the most important features of our sales campaign.

I should, however, like to touch on a point, about which I have written to your company a few times before but do not appear to have received any satisfaction at all. You are surely fully aware that Zenith Radio Corporation is very highly placed in the American Association of Radio Manufacturers, in fact I thought that Mr. MacDonald was the President of that Association, and as that Association has working arrangements with the British counter-part, namely the R. M. A. (Radio Manufacturers Association), I feel sure it would have been possible for you, if you would have tried, to obtain permission from the British Association or from some of its more important members like Mullard, who run their own licensing system under some patents, which they possess, to allow you to sell sets in this country during a probation period to enable you to decide whether or not you care to manufacture here at a later date. It is, of course, no secret that such permission has been granted before to "Philco", who imported for four or five years before they ever thought of manufacturing in this country. It has also been granted to "Pilot" and "Belmont", and I feel sure that the important connections that Zenith Radio Corporation possesses should enable them to obtain similar facilities. Whether or not you will decide in two or three years to manufacture here is a matter, which you do not need to worry about at the present moment. If the market is really important, as I believe it to be and as we might prove to you if we have an opportunity of selling sets here without fear of trouble in connection with the patents, then, of course, you might find it useful at a later stage to either manufacture or, what is more probable, assemble American-made components into chassis here and build them into British cabinets, thus fully utilising the materials and components manufactured by yourselves, and if you decide against it, well at least we would have had an opportunity of a few years peaceful trading of a very much larger volume without fear of any patent complications.

I should like you to give this matter your careful consideration and see if you can assist us in any direction.

Trusting to hear from you,

Yours faithfully,

MT/NC. (Signature illegible.)

DEFENDANT'S EXHIBIT NO. 106.

Linn: Be sure that this parts order is shipped by Parcel Post. Also, cancel order #3178.

A. V. Duke.

March 31, 1937

Mr. Julius Toubkin
Faraday House, Todd Street
Manchester, 3, England

Dear Mr. Toubkin:

With further reference to your letter of March 5th and our acknowledgment copy of order #3178 which was mailed to you under date of March 16th, we have now cancelled this order in accordance with the instructions received from you by cable.

We are, however, having the parts referred to in your letter of March 5th sent forward to you by parcel post as we are sure that you are in need of them.

Yours very truly,

Zenith Radio Corporation,
A. V. Duke,
Assistant Manager, Export Division.

AVD:EP

DEFENDANT'S EXHIBIT NO. 107.

(Letterhead of J. Toubkin, Manchester, 3.)

25th. June, 1937.

Messrs. Zenith Radio Corporation,
Export Department,
3620, Iron Street,
Chicago, Illinois,
U. S. A.

Dear Sirs:

This will acknowledge receipt of your cable of the 17th. inst., requesting me to let you know as to what is the exact position in regard to the Patent situation in connection with radio receivers, and that furthermore you have been approached by another firm in connection with the distribution of your receivers.

I beg to confirm having replied to you that there is no change at all in the position and that I am awaiting further developments. I should like to explain that I cannot, of course, prevent you from appointing somebody else as your distributors, but it must be quite clear to you that any other firm will be liable to encounter the same troubles and difficulties as we have done and from that point of view there does not appear to be much reason for a change.

I have not yet definitely decided to dis-continue running your receivers and, in fact, I am now awaiting details of your 1938 programme and will then endeavour to do further business with you on similar lines as we have done during the last few years. I need hardly add that it means continuing building on sand and that there is no solid foundation to such a business at all and it is not possible to build up the sale of your receivers in this country on the scale, which they warrant, unless there is a radical change in the whole position, and such a change can only be affected by your co-operation either by obtaining a licence through the R. C. A. to allow you to provisionally handle American-made receivers in this country, or alternatively for you to decide to build or assemble sets in this country on similar lines to Philco, Pilot, etc.

There is nothing that I can usefully add to the above, as the situation has been made clear to you already on several previous occasions, and under the circumstances, I hope to hear from you in the near future, giving details of your new programme, also stating whether or not you are prepared to assist me by negotiating through the R. C. A. with the Marconi Pool.

Yours faithfully,

(Signature illegible.)

MT/NC.

June 22, 1937.

Mr. Julius Toubkin
Faraday House, Todd Street
Manchester 3, England

Dear Sir:

We are pleased to confirm our cable of June 17th reading as follows:

> "Have Just Received Cable From English Organization Anxious to Handle Distribution Stop Have Restrictions Been Removed."

To which you replied:

> "Restrictions Position Unchanged Awaiting Developments."

While we are sorry that the conditions have not changed, we are considerbaly enthused over the increased activity pertaining to the distribution of our line. It is quite evident that the work that you have started has shown what could be accomplished if the market were open.

We have every reason to believe that you will keep us fully advised regarding further changes in the present day situation.

With our best personal regards, we wish to remain

Your very truly,

Zenith Radio Corporation,
James F. Weldon,
Manager, Export Division.

jfw/ep

(Form of Postal Telegraph.)

C 9 Cable—N Manchr 1230 Jun 19 1937
LC Zenithrad—
Chicago—

Restrictions Position Unchanged Awaiting Developments—
Toubkin .730A

July 3, 1937.

Entwistle
16A Queen Street
Blackpool, England

Gentlemen:

On June 15th you wired us as follows:

> "Require Sales Distribution Your Product For British Isles Cable if Open and Details You Require."

Please pardon our delay in not answering your cable at an earlier date. This has been due to the fact that we have never had so many of our foreign distributors visiting our factory. For your information, the writer has not been at his desk for more than one day in the past fortnight.

In your cable you indicate that you are axious to handle the sale of our product in the British Isles. At the present time, we do have selling arrangements for our products in your territory, but we have found that our business has fallen off due to the fact that the basic radio patents are controlled by the British radio manufacturers. Our distributor has informed us that they are exercising their option in restricting the importation of American manufactured radio receivers. Up to this time our company has not expressed any interest in the reduction of our radio receivers in Great Britain.

Unless conditions are changed, we do not believe that it would be possible for us to make any arrangements with you that would be helpful. Up to the present time we have not received any information from you regarding the confirmation of your cable, but it would be good for us to know if the patent restrictions have been removed.

Trusting that you will favor us with this information, we wish to remain.

Cordially yours,

Zenith Radio Corporation,
James F. Weldon,
Manager, Export Division.

JFW:WP

cc: J. Toubkin, Manchester, England

(Form of Postal Telegraph.)

S 23 Cable MXDGP—N Blackpool NFT Jun 15 1937

NLT Zenithrad. (Zenith Radio Corpn)—
Chicago—

Require Sales Distribution Your Product for British Isle Cable if Open and Details You Require—

Entwistle 16 A Queen St Blackpool. 736A 16A.
.ZR S2 C736A 25 Mag Thnx R2ZR 836A Sal Tks.

DEFENDANT'S EXHIBIT NO. 108.

Mr. Julius Toubkin
Faraday House, Todd Street
Manchester 3, England

September 3, 1937.

Dear Mr. Toubkin:

We have received a letter from—

Albert Bennett
4, Humberstone Drive
Leicester, England

which is dated August 24th and indicates that he is quite interested in receiving information on our line. We suggest that you contact him, even though he has written to us indicating that he is anxious to act as our exclusive distributor.

During the past few weeks we have been receiving countless letters, such as this, and only yesterday we had a telephone call from one of the managing directors of an English organization, indicating that he found ways of avoiding the patent troubles which are causing you considerable inconvenience. In this conversation he indicated that he would be in a position to place an order for approximately 1,000 receivers should we give him the exclusive distribution of our line in the United Kingdom only.

It is needless to remind you that we felt that if any move such as he indicated, could be accomplished, that you would find means of doing so. We shall be interested in receiving your further comments and orders.

It was pleasing to note your recent letter indicating that your shipments will start on a regular schedule very soon.

Sincerely yours,

Zenith Radio Corporation,
James F. Weldon,
Manager, Export Division.

jfw/ep

(Letterhead of J. Toubkin, Manchester, 3.)

13th. September, 1937.

Sep. 22 Rec'd.

Mr. Weldon,
Messrs. Zenith Radio Corporation,
Export Department,
6001, Dickens Avenue,
Chicago, Illinois,
U. S. A.

Dear Mr. Weldon:

I am obliged for your favour of the 3rd. September, covering inquiries, which you have received from time to time from England in connection with your products.

There can be, of course, no doubt that in the last five years, during which we have been running your line in Great Britain, we have certainly sold many thousands of sets and have made it fairly well-known, and you are, therefore, likely to receive quite a number of inquiries, although you will agree with me that most of the inquiries, which you have passed on to me, were almost exclusively from private people, which goes to prove that the trade and wholesalers are well covered and need not apply to you direct.

I was very much interested to read your remarks about a telephone call, which you had from an English organisation stating that they are in a position to overcome the patent difficulty and would be prepared to contract for quite a large number of sets. I do not know who the people are and, of course, I cannot venture any guesses as to what their method of overcoming the patent situation might be, but I do venture to suggest that considering we have been importing American receivers since 1927, namely ten years, we have learned as much as possible about the patent situation and do not believe that there is any other firm, who will know more or find any better ways of dealing with it than we have up till now. There is, of course, no doubt about it that if we really wanted to, we could have, last year, sold at least twice as many set as we have done. We have found it, however, advisable to restrict the sales to such dealers and wholesalers as could handle the line with discretion because, knowing the patent situation, we are fully aware that should the Patent Pool actually tackle the "Zenith" receivers as such, then "Zenith" will be finished in Great Britain forever and ever.

To explain that, I should like to point out that once the Pool goes after a particular make of American receiver and decides that no such sets should ever be imported, they have a fairly good method of doing so and they couple with that method also a fairly extensive campaign in the trade papers, advertising that particular make and stating that such and such dealers have had an injunction obtained against them for selling that particular make, and once such an advert appears in the paper, you can be sure that no dealer in Great Britain will ever handle the receiver again.

I do not know whether you know the working of the law in this country, but until such time as a particular receiver has been advertised as infringing the Pool patents, although it does infringe patents, if the Pool should prosecute a dealer, he will probably get away with a very small fine (damages—judgment against him) but once it has been published in all the papers that an injunction has already been obtained against a particular make, shall we say "Zenith", and if a dealer will continue selling same after it has been published and will then be sued by the Patent Pool, the damages against him might run in thousands of pounds and can easily ruin him. You will, therefore, appreciate how careful one has to be to see that the sets are sold to dealers, who know how to handle same with discretion so as we do not get the Pool going wholeheartedly against us and publishing such announcements in the trade papers.

I have no doubt that, as I mentioned before, the sale could be very much increased, and I, myself, could sell easily a few thousand sets, but I did not feel that the risk involved justified it. I feel rather that I should limit the sales for the time being to a reasonable number per annum, doing what I consider a fairly fair turnover and ensuring, at the same time, as much as it is possible to ensure, of course, that we should strike no trouble, and that we shall be able to continue for a number of years to come, until such time as either the patent situation would alter or you might feel that you yourself might do something different by way of British distribution. That would mean some radical change in your general policy, either manufacturing or assembling here or some working arrangement with the Pool. I will not, of course, presume to advise you, but I am quite convinced that no useful purpose will be served by merely changing your distributors, even although I have no doubt you can find somebody, who will undertake to sell more than I do, because I feel sure that this will have to be paid for in some way or other. If you think different, however, as I always maintained and still maintain, much as I should hate to lose your distribution, I should certainly not dream of standing in your way if you can find anybody, who can guarantee a much larger turnover.

As to the actual patent situation, let me assure you—nothing at all has altered, and I need hardly point out that people like Ferguson, Pilot, Philco and Belmont would not have gone to the trouble and expense of establishing large factories here if there would have been a possible change of avoiding trouble.

Your faithfully,

NT/NC. Illegible.

DEFENDANT'S EXHIBIT NO. 109.

(Letterhead of Marconi's Wireless Telegraph Company Limited, London, W. C. 2.)

3rd August, 1938.

Please Address the Company and Refer to P/T 24585

S. T. Thompson, Esq.,
Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago,
U. S. A.

Dear Mr. Thompson,

Thank you for your letter, reference STT:S, of July 13th last. My apology is due for this belated reply but I have only just returned from holidays.

I was very interested to learn that you have now joined up with the Zenith Radio Corporation.

I am afraid there is little news to give you regarding licensing. As you know the present Pool comes to an end on August 28th next, and no arrangements have yet been made for either a continuation of the present licence or the formation of a new Pool. Talks have occurred, but at the time of writing have been without conclusive result.

As regards import, while it will be obvious from the above that I can say nothing definite as to the policy any new Pool might adopt the indications are that the policy will not be changed, and that no licences will be issued to importers, I repeat, however, that this is only an indication.

With kindest regards,
Yours sincerely,
Marconi's Wireless Telegraph Co., Ltd.
F. C. Topham,
Assistant General Manager.

T/W.

Defendant's Exhibit No. 109.

July 13, 1938

Mr. F. C. Topham
c/o Marconi Wireless
Electra House
London, England

My dear Mr. Topham:

You perhaps will be interested to know that I have resigned from my association with Mr. Goldberg and joined the Zenith Radio Corporation in Chicago.

The purpose of this letter is to inquire as to the status of the present patent pool arrangements. There have been rumors in the English trade papers to the effect that your pool group is considering licensing the imports of radio receivers.

I would appreciate a line from you advising that the current situation is: (1) as it relates to the probable continuance of the pool and on what basis, and (2) whether provision will be made in the new agreements for licensing of imports.

I trust that this letter finds you well and that your country and ours will be on the pick-up soon.

With warmest personal regards, I am.

Sincerely yours,

S. T. Thompson

STT:S

DEFENDANT'S EXHIBIT NO. 110.

(Letterhead of Marconi's Wireless Telegraph Company Limited, London, W. C. 2.)

21st December, 1938.

Please Address the Company and Refer to P/T 25287

S. T. Thompson, Esq.,
Zenith Radio Corporation,
6001, Dickens Avenue,
Chicago,
U. S. A.

Dear Mr. Thompson,

According to my promise I am now sending you a copy of the A.5 Licence. You will see that it varies in many respects from the A.4, but I think you will find the document self-explanatory, so there is perhaps no need for me to comment. Of course, if there are doubtful points, please let me know.

With kind regards,

Yours very truly,
F. G. Topham

T/PM

Correction to A-5 English license agreement—

In the February 18th issue of the Wireless & Electrical Trader, on page 216, appears an article to the effect that patent Nos. 444,543 and 485,580 should have read 445,543 and 445,580. Patent No. 447,828 should be added.

Defendant's Exhibit No. 110.

LICENCE A.5.

Dated 19

The British Thomson-Houston Co. Ltd.
Electric and Musical Industries Ltd.
The Gramophone Company Limited
Marconi's Wireless Telegraph Co. Ltd.
Philips Lamps Limited

AND

Licence

To use and exercise certain Letters Patent for certain specific purposes as within in connection with Broadcast Receivers and or Radio-gramophones.

[illegible] Ltd., Printers, [illegible] Place, W.1

Defendant's Exhibit No. 110.

LICENCE A.S.

An Agreement made this day of 19

BETWEEN THE BRITISH THOMSON-HOUSTON COMPANY LIMITED having its registered office at Crown House Aldwych London W.C.2 and ELECTRIC AND MUSICAL INDUSTRIES LIMITED having its registered office at Blyth Road Hayes Middlesex and THE GRAMOPHONE COMPANY LIMITED having its registered office at Blyth Road Hayes Middlesex and MARCONI'S WIRELESS TELEGRAPH COMPANY LIMITED having its registered office at Marconi Offices Electra House Victoria Embankment London W.C.2 and PHILIPS LAMPS LIMITED having its registered office at Spencer House South Place Finsbury London E.C.2 (hereinafter together called "the Grantors" which expression shall mean all the said companies except where used in connection with broadcast receivers as hereinafter defined in which case it shall mean only the last-named four companies) of the first part and

of

(hereinafter called "the Licensee") of the second part

WHEREAS the Licensee has applied to the Grantors to grant and the Grantors have agreed to grant to the Licensee a Licence under their respective Patent rights and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed upon a basis agreed between the parties as being convenient NOW IT IS HEREBY AGREED as follows:—

1. (*a*) The expression "broadcast receivers" when herein used shall mean apparatus which is designed to incorporate valves (whether or not equipped with the valves themselves) and which is designed to receive and translate modulated electrical oscillations broadcast to the public for sound and/or television reception whether or not in the case of television reception such apparatus is in the same cabinet with or is adapted to be used with a radiogramophone. Such expression does not include valves or cathode ray tubes whether or not incorporated in the apparatus nor separate components.

(*b*) The expression "radiogramophone" when herein used shall mean an instrument (whether or not in the same cabinet with or adapted to be used with apparatus for television reception) which is designed to incorporate valves (whether or not equipped with the valves themselves) and which may be used for the reproduction of sound through an electrically-operated loudspeaker alternatively from (i) apparatus designed for the reception and translation into sound of modulated electrical oscillations broadcast to the public and (ii) apparatus (such as a turntable and pick-up) designed for the translation into sound of vibrations recorded on a disc sound record. Such expression does not include valves or cathode ray tubes whether or not incorporated in the instrument nor separate components but does include playing desks designed for use in combination with broadcast receivers.

(*c*) The expression "selling" or "sold" when herein used shall be deemed to include selling or sales on hire-purchase systems.

2. (*a*) The Grantors grant and agree to grant to the Licensee subject to the terms and conditions herein appearing personal non-exclusive non-assignable licences to use and exercise all or any of the inventions the subject of

(i) the British and Irish Free State Letters Patent set out in the Schedule hereto so far as they are applicable to broadcast receivers and radiogramophones respectively; and

(ii) any other British and Irish Free State Letters Patent applicable to broadcast receivers and radiogramophones respectively in respect of which and insofar as the Grantors or any of them respectively now have or may hereafter during the continuance of this Licence have power to grant Licences for the purposes and on the terms hereof

(which Letters Patent are herein collectively called "the said Letters Patent") for the purpose of manufacturing using selling or leasing on hire within Great Britain Northern Ireland the Irish Free State the Channel Islands and the Isle of Man (a) broadcast [illegible] (b) [illegible] for private or domestic use or for [illegible] or [illegible] in any institution of a charitable educational

philanthropic or religious character (such lectures or demonstrations not being open to the public generally) but not for revenue earning purposes or otherwise. This Licence shall be deemed to have commenced on and shall continue until 31st December 1941 unless previously determined as hereinafter provided.

(*b*) The Grantors will upon request furnish lists of patents (additional to those set out in the Schedule hereto) which in their opinion are of interest to Licensees generally for the purposes of this Licence and included in the said Letters Patent.

(*c*) Nothing contained herein shall be deemed to license the Licensee to manufacture use sell let on hire or otherwise deal in valves or cathode ray tubes of any kind nor to sell or let on hire separate components.

3. Notwithstanding the provisions of Clause 2(*a*) hereof the Licensee agrees and undertakes that all companies partnerships or businesses now or hereafter during the subsistence of this Licence directly or indirectly owned or controlled by the Licensee and engaged in any field of business to which this Licence is applicable shall be bound by and be subject to all the terms and conditions of this Licence.

4. The Licensee agrees with the Grantors as follows:—

(*a*) Not without the previous written consent of the Grantors to export or sell for export or knowingly permit to be exported any broadcast receivers or radiogramophones. Such consent shall be given unless the Grantors or any of them have commitments prohibiting the same but the Grantors decision shall be accepted as final and any consent will not imply or grant licences under foreign patents.

(*b*) Not without the previous written consent of the Grantors to sell let on hire or put into use any broadcast receiver or radiogramophone which has not been manufactured in the territory for which this Licence is granted. No broadcast receiver or radiogramophone shall be deemed to have been so manufactured within the meaning of this Licence which incorporates imported components and accessories sold therewith (such as for example cabinets and valves and cathode ray tubes etc.) to an extent per broadcast receiver and/or radiogramophone greater in value than 10 per cent. of the retail selling price thereof.

(*c*) To attach or cause to be attached in a prominent position to all broadcast receivers and radiogramophones sold let on hire or put into use by the Licensee a separate plate manufactured in accordance with a design approved and notified by the Grantors to the Licensee (who is hereby authorised to use the said design in accordance with this subclause (*c*) only) and carrying a serial number allocated by the Grantors and bearing the following words. With respect to broadcast receivers: "Royalty Plate. Great Britain, Northern Ireland, Irish Free State, Channel Islands and Isle of Man. This plate is issued by or with the authority of E.M.I., The Gramophone Company, the Marconi Company and Philips. Serial No............ N.B.—A Post Office Licence is necessary." With respect to radiogramophones: "Royalty Plate. Great Britain, Northern Ireland Irish Free State, Channel Islands and Isle of Man. This plate is issued by or with the authority of the B.T.H. Company, E.M.I., The Gramophone Company, the Marconi Company and Philips. Serial No............... N.B.—A Post Office Licence is necessary." Such plates may be obtained from and upon request by the Licensee shall be supplied by the Grantors at cost price to the Grantors. No plates shall be disposed of or utilised by the Licensee except as herein provided and upon the termination of this Licence for any cause whatsoever all unused plates except those required under the first proviso of Clause 4 sub-clause (*d*) hereof shall be delivered up to the Grantors.

(*d*) To pay to the parties of the first part:—

In respect of all broadcast receivers and radiogramophones sold let on hire or put into use by the Licensee during the subsistence of this Licence whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent royalties upon the following scale based on the Licensee's nett turnover as hereinafter defined:—

On the first £40,000 (£0 to £40,000) nett turnover in each year ending December 31st 6%

On the next £80,000 (£40,000 to £120,000) nett turnover in such year 3%

On the next £80,000 (£120,000 to £200,000) nett turnover in such year 1.5%

On the next £200,000 (£200,000 to £400,000) nett turnover in such year ... ... .75%

On the excess over £400,000 nett turnover in such year 1.875%

Nevertheless in respect of the period from the commencement of this Licence to the 31st December 1938 the rate of royalty payable by the Licensee on his nett turnover in such period shall be the average rate of royalty which would have been payable on the total nett turnover of the Licensee in the year ending 31st December 1938 had such total nett turnover been subject to the payment of royalty hereunder.

[illegible] demonstrators now being open to [illegible] purposes or otherwise. The Licensee [illegible] as hereinafter provided.

[illegible]

AND IN ADDITION a sum of two shillings and sixpence in respect of every radiogramophone; and a sum of five shillings in respect of every broadcast receiver intended for the reception of television.

The amounts payable according to this sub-clause (*d*) shall be ascertained and paid quarterly as provided in sub-clause (*e*) hereof.

The expression "nett turnover" where herein used shall mean the total of nett invoice prices (whether or not paid) of broadcast receivers and radiogramophones and of parts and accessories (such as for example valves cathode ray tubes batteries cabinets etc.) pertaining to such apparatus and sold as part of its equipment but less an agreed allowance of 20% of such invoice prices as representing valves and cathode ray tubes when included in such invoice prices. In the case of apparatus let on hire as distinct from apparatus sold on hire purchase the amounts payable in respect of such hire (whether or not received) shall be deemed to be the nett invoice prices. In the case of apparatus put into use by the Licensee the invoice price shall be estimated as if a normal sale had been made.

PROVIDED ALWAYS

(i) That royalty shall be payable upon all broadcast receivers and radiogramophones manufactured prior to but remaining unsold at the date of termination of this Licence and shall be calculated in accordance with the invoice prices current immediately prior to the date of such termination and royalty plates shall be attached thereto.

(ii) That in the event that the Licensee sells to any party referred to in Clause 3 hereof he shall if so requested by the Grantors substitute part or whole of the nett turnover of such party for the corresponding part or whole of his own nett turnover.

(iii) In the further event that the Licensee sells broadcast receivers or radiogramophones to any party referred to in Clause 3 hereof which performs further manufacturing or assembling operations on or makes additions to same then royalty shall be calculated upon the nett invoice price of the final products.

(iv) In the event that the Licensee manufactures broadcast receivers or radiogramophones for sale under the name or mark of a party other than a party referred to in Clause 3 the Licensee's turnover in respect of such manufacture shall if so requested by the Grantors be calculated separately in respect of each such first-mentioned party and treated as a separate nett turnover and appropriate separate royalty payments made.

(v) In respect of broadcast receivers or radiogramophones manufactured used sold or let on hire by the Licensee which employ any of the said Letters Patent under which the Grantors or any of them may be liable to pay a royalty to a third party or share a royalty with a third party the Licensee shall pay to the Grantors an additional royalty of such amount as may be required to enable the Grantors out of the total royalties paid by the Licensee both to retain the royalties payable hereunder and to satisfy the terms of the Licence or Agreement under which royalty is or shall be payable by the Grantors or any of them. The Grantors shall upon the request of the Licensee and the Licensee shall upon the request of the Grantors permit the Grantors to examine free of charge diagrams and/or samples of broadcast receivers and radiogramophones manufactured or proposed to be manufactured by the Licensee and advise whether such apparatus embodies or utilizes any invention the subject of any of the said Letters Patent under which the Grantors or any of them may be liable for royalty to a third party as herein mentioned. The Grantors will from time to time notify the Licensee in writing of any of the said Letters Patent in respect of which additional royalty is payable by the Licensee as aforesaid and the amount of such royalty. Any such additional royalties payable hereunder shall be shown separately in the returns hereinafter mentioned. Nevertheless the Licensee may by giving notice in writing to the Grantors within two months of such notification by the Grantors elect to relinquish the Licence herein granted in respect of any such Letters Patent whereupon such Letters Patent shall be deemed for all purposes to be and to have been always excluded from this Licence.

(*e*) To keep accounts of everything necessary to ensure accurate returns of all apparatus the subject of royalty under this agreement being rendered quarterly to such person(s) as the Grantors may designate to the Licensee from time to time and to render such returns upon the forms supplied by the Grantors within one month of each 31st March 30th June 30th September and 31st December and to accompany each such return with

a remittance for the royalty due. The Licensee shall show on each such return for the quarter in question

(i) The amount of the said "nett turnover" as defined in Clause 4(*d*); and

(ii) The amount of the said nett turnover which represents radiogramophones whether or not combined with television receiving apparatus and the total number of such instruments; and

(iii) The total number of instruments of all kinds intended for television reception whether or not combined with radiogramophones.

and shall show separately the like particulars in respect of the businesses of any of the controlled companies partnerships or businesses referred to in Clause 3 hereof.

(*f*) To pay to the Grantors interest upon all unpaid royalties at the rate of four per centum per annum as from the date or dates upon which any royalty shall have become payable in accordance with the provisions of sub-clause (*e*).

(*g*) To permit the auditors of the Grantors to inspect the books and accounts of the Licensee relative to this Licence and on the request of the Grantors to cause any quarterly return to be verified by the statutory declaration of the proper officer or auditors of the Licensee. Provided that the Licensee shall have the right to require that the auditor making such inspection shall be an independent auditor and that if the Licensee shall have failed to render accounts or if the accounts rendered by him are by such inspection shown to be inaccurate the Licensee shall pay the cost of such independent audit without prejudice to any other remedies or claims of the Grantors.

(*h*) Not at any time during the subsistence hereof directly or indirectly to dispute or impeach or to assist others to dispute or impeach the validity of any of the said Letters Patent nor the right of the Grantors or any of them to grant the Licences hereby granted and agreed to be granted.

(*i*) Notwithstanding the provisions of Clause 4 sub-clause (*h*) hereof the Licensee shall have the right to oppose within the statutory period mentioned in Section 11 of the Patents and Designs Act 1907 the grant of any patent of the Grantors the acceptance of which has been advertised by the Comptroller of Patents.

(*j*) If so requested to pay to the Grantors on the execution hereof and in advance each year during the period of this Licence a minimum royalty calculated at the rate of £150 per annum which shall in no event be returnable.

(*k*) Not to assign transfer mortgage grant sub-licences under or in any manner part with the possession or control or benefit of this Licence or any part of it without the previous written consent of the Grantors.

5. For all purposes of this Agreement all broadcast receivers and/or radiogramophones manufactured sold let on hire or put into use by any of the companies partnerships or businesses referred to in Clause 3 above shall be deemed to have been manufactured sold let on hire or put into use by the Licensee who shall pay the royalties accordingly.

6. During the subsistence of this Licence and so long as no royalties shall be owing and unpaid hereunder the Grantors will keep the Licensee fully indemnified against costs and damages awarded in connection with all actions proceedings claims and demands which may be made against the Licensee by any third party who establishes to the satisfaction of a court of competent jurisdiction in England his right to restrain the user and exercise by the Licensee within the limits of the grants contained in this Agreement of any of the said Letters Patent on the ground that such user and exercise is an infringement of any lawful rights of such third party in such Letters Patent provided always that the Grantors are immediately informed of the institution of such proceedings and are given full and complete rights to take over at their own cost and in the name of the Licensee or other defendants and through their own Solicitors the defence of such proceedings if they so request and in that event the Licensee shall assist the Grantors in every reasonable manner but the Grantors shall be at liberty to compromise submit to judgment or abandon discontinue or otherwise dispose of the same as to them may seem expedient.

7. The Licensee agrees to grant to the Grantors or any of them personally upon request non-exclusive non-transferable licences (but with the right to sub-licence subsidiary or associated companies) to make use exercise and vend all or any of the inventions the subject of British and or Irish Free State Letters Patent applicable to broadcast receivers or radiogramophones in respect of which and insofar as the Licensee has or shall hereafter have power to grant a licence for the purposes of manufacturing using selling or letting on hire within Great Britain Northern Ireland the Irish Free State the Channel Islands and the Isle of Man broadcast receivers or radiogramophones such licences to be at a reasonable rate of royalty having regard to the rate of royalty payable to the Grantors by the Licensee hereunder to be settled by arbitration in default of agreement but in any case to be at a rate not exceeding the lowest rate paid by any licensee in respect of the same invention.

8. The Grantors may determine this Licence upon the happening of any of the following events:—

(a) If any royalty return or any royalty payable is not rendered or is unpaid for thirty days after the preceding 31st March 30th June 30th September and 31st December and remains unrendered or unpaid for seven days after notice in that behalf from the Grantors, or

(b) If the royalty returns or payments in respect of any company partnership or business referred to in Clause 3 herein are not duly rendered or made, or

(c) If there be any breach on the part of the Licensee of any other of the terms or conditions herein contained and the same be not remedied made good or desisted from within seven days of notice in that behalf from the Grantors, or

(d) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall have a receiver appointed or go into liquidation whether voluntary or compulsory, or

(e) If any Company which at any time during the subsistence of this Licence controls the Licensee or is under the same control as the Licensee and is engaged in any field of business to which this Licence is applicable does not hold or at the request of the Grantors does not accept within one month of such request a licence upon the same terms and conditions as are contained in this Licence.

Any determination of this Licence shall be without prejudice to all claims of the Grantors against the Licensee for outstanding royalties or prior breaches of this Licence or otherwise.

9. All returns remittances and communications for the Grantors under this Licence shall until further notice by the Grantors be addressed and sent to Mr. F. C. TOPHAM, Marconi Offices, Electra House, Victoria Embankment, London, W.C.2, and all cheques made payable to Marconi's Wireless Telegraph Co., Ltd.

IN WITNESS WHEREOF an Agent hereunto duly authorised has on behalf of the Grantors hereunto on their behalf set his hand and the Licensee has hereunder set his hand.

A Director of the Licensee hereunto duly authorised has hereunto on the Licensee's behalf set his hand the day and year first above written.

SIGNED by for and on behalf of the Grantors in the presence of	For and on behalf of THE BRITISH THOMSON-HOUSTON COMPANY LIMITED. ELECTRIC AND MUSICAL INDUSTRIES LIMITED. THE GRAMOPHONE COMPANY LIMITED. MARCONI'S WIRELESS TELEGRAPH COMPANY LIMITED. PHILIPS LAMPS LIMITED.
SIGNED by in the presence of	
SIGNED by A Director of and for and on behalf of in the presence of	For and on behalf of LIMITED. Director.

THE SCHEDULE BEFORE REFERRED TO

231420
231421
243018
245796
248731
250931
260148
279808
283120
285020
287958
291014
296829
303758
310284
323823
340090
344373
352772
359168
361351
372155
381847
381868
382316
382514
384583
388292
392383
392801
393520
399068
400976
401990
402181
402629
404349
405897
406895
409574
410619
413946
416302
417284
419441
420685
422349
422824
422906
423213
423685
423932
424714
424779
425553
425629
426893
427650
427913
431327
433996
437726
438010
438506
440333
440337
440483
441847
442682
443637
444178
444543
445763
446663
448779
449177
449535
450081
450520
450664
450806
451204
451664
452585
452965
453261
455375
458655
459535
460186
462323
463254
463604
463625
464418
465593

Defendant's Exhibit No. 110.

THE SCHEDULE *(continued).*

465703
466404
467263
467430
468994
470140
471737
472739
472923
474386
474682
475420
475728
478511
478775
479599
481731
481858
484202
485580
487687
487768
488111
488294
489094
490136
490225
490346
490400
490819
491063
493758

DEFENDANT'S EXHIBIT NO. 111.

Canada
England
Australia p1,2,3

TELEGRAPHIC ADDRESS MARCONI MONTREAL

PLEASE ADDRESS ALL COMMUNICATIONS
P.O. BOX [illegible]

TELEPHONE MARQUETTE [illegible]

CANADIAN MARCONI COMPANY
(LIMITED LIABILITY)

TELEGRAMS
"Via Marconi"
"Via Empiradio"
TO EUROPE
ASIA
AFRICA
AUSTRALIA
INDIA
SOUTH AMERICA
AND SHIPS AT SEA

RADIO APPARATUS
MANUFACTURERS OF BROADCAST TRANSMITTERS
RADIOTELEPHONE AND RADIOTELEGRAPH
TRANSMITTERS AND RECEIVERS
FOR MARINE, LAND AND AIRCRAFT USE
RADIO DIRECTION FINDING EQUIPMENT
MARCONI RADIO RECEIVING SETS
R V C RADIOTRONS
CONTRACTORS TO CANADIAN AND NEWFOUNDLAND GOVERNMENTS
HEAD OFFICE MARCONI BLDG
211 ST SACRAMENT ST

BRANCHES
VANCOUVER, B.C.
TORONTO, ONT.
HALIFAX, N.S.
ST. JOHN'S, NFLD.
WORLD WIDE AFFILIATIONS

EXHIBIT 2
In the [illegible]
RCA vs. Zenith et al
Exam'n of [illegible]
Date [illegible]

MONTREAL
December 12, 1933.
REF: C/[illegible]

Hazeltine Research, Inc.
vs. Zenith Radio Corporation
Defendant's Exh. No. 111 } C.A. No. [illegible]

Commander E.J. McDonald, Jr.,
President,
Zenith Radio Corporation,
3620 Iron Street,
Chicago, U.S.A.

Dear Sir:-

Immediately upon my return to Montreal I made further inquiries with regard to the exportation of radio receivers from Canada to the United Kingdom.

As outlined to you in our conversation, our inability to handle export business was peculiar to this Company. However upon close investigation, I find that every radio manufacturing company in Canada is in a similar position. It appears that the body which governs the manufacture and sale of radio receiving sets in Great Britain are using drastic means to eliminate the importation of radio receivers whether from a foreign country or from their colonies. American radio manufacturers wishing to enjoy the privilege of unstricted sale of radio receivers in Great Britain must establish a manufacturing plant there.

I have been informed through a reliable source that imported sets now being sold in England are being handled through the smaller wholesale outlets, who experience difficulty in arranging for the sale of these sets through the better retail outlets.

Z-127150

Defendant's Exhibit No. 111.

Com.E.J.McDonald,Jr. -2-

This condition exists due to the manufacturers in England having secured practically all of the best wholesale outlets, who in turn are supplying the high class or desirable retail trade. It is my understanding that both the wholesale and retail trade have been advised against handling imported sets if it is their desire to continue selling British made products.

The two companies referred to as being in a position to export from Canada to Great Britain have, I understand, an arrangement with the parties concerned in England, whereby they are allowed to export sets until such time as arrangements have been completed for the establishment of their own factory in England.

With regard to exporting from Canada to Australia, New Zealand and European companies, I am informed that the situation very closely parallels that of Great Britain, except that in the majority of cases arrangements have to be made with the controlling group regarding royalties and licenses.

In view of the above conditions, I trust that favourable consideration will be given to our company for at least the manufacture of automobile radio receivers, to meet the requirements of the Ford Motor Car Company and the Hudson-Essex Motor Car Company in Canada.

As outlined to you during our conversation, I feel that an equitable arrangement could be worked out with you for the manufacture and sale of your complete line of receivers in Canada, and I will look forward to a further discussion along these lines whenever sufficient information is available regarding the 1934 production.

I wish to take this opportunity of thanking you and your associates for the very courteous interview which was accorded me during my visit to Detroit.

Yours very truly,

Canadian MARCONI Company,

ASSISTANT SALES MANAGER.

IN.

2-12741

2799

DEFENDANT'S BULK EXHIBIT NO. 112.

September 14, 1961.

Mr. A. R. Ramsay,
United Mercantile Company, Ltd.,
13-14 Queen Street, Mayfair,
London W. 1, England.

Dear Mr. Ramsay:

The information in this letter and also the enclosed material will tend to deal with your possibly introducing Zenith television in The United Kingdom, in the very near future. Although this information is of a very technical nature, I believe that some of the enclosed materials will be of some help to you.

In order to convert to CCIR standards it would be necessary for you to have a minimum amount of conversion and test equipment on hand. We know that you already have a well equipped service department to deal with radios, and the majority of this equipment can be used in conjunction with testing and converting television receivers. In addition to this equipment, you must have a TV-FM signal generator and the proper type of oscilloscope as well.

Enclosed you will find a specification manual covering a "Simpson" model 479 FM-TV Signal Generator. The price of this unit is $375.00, f.o.b. Chicago, and is available only for operation on 105/125 volts. However, there should be no difficulty in using a stepdown transformer for your requirements. Also enclosed is a specification sheet covering model 675A "Hickok" oscilloscope. The price of this instrument is $248.00 cash, f.o.b. Another specification sheet covering the "Hickok"-model 615 Sweep Generator, priced at $253.00 each, f.o.b., is enclosed.

Finally, optional conversion equipment manufactured by B & K manufacturing company and offered by Empire Exporters of New York City. You may perhaps be interested in model 1076-ES "Television Analyst". As I say, this is strictly optional equipment but can be definitely used to good advantage in converting television receivers for operation on CCIR standards. This and the other equipment mentioned above can be obtained directly from us as a special favor. In other words, we would purchase the unit from the suppliers and ship it to you in the manner desired. However, you are not bound to buy any of this equipment and can perhaps obtain the proper equivalence of English manufacture. All of this information is strictly for your technical assistance.

Enclosed also is a copy of our latest "CCIR" Conversion instruction data. An additional copy of our transformer specification chart covering television receivers and phonographs for your general information only.

All of the necessary parts covering the CCIR conversion can be obtained directly from us. The parts cost for each unit amounts only to approximately $2.00 to $3.00 each, less the cost of the necessary stepdown transformer. We assume you will obtain your own transformers locally at a more favorable price.

Once you have entered the television market, we shall be glad to convert a television receiver, or two, to operate on your local CCIR standards. These sample instruments would contain the necessary replacement parts and would be tagged and marked in order that your local technicians have a good look at the changes involved.

As this letter is of a general nature, I hope that the enclosed paraphernalia will be of some technical assistance to you and your staff. When you are ready to request additional aid, please do not hesitate to write further.

Thank you,

Best personal regards.

Sincerely yours,
W. Semonoff,
International Division.

WPS/afg
Airmail
Enclosure

(Letterhead of United Mercantile Company, Ltd.,
Mayfair, London, W. 1.)

28th March, 1962.

Mr. J. A. Miguel, Jnr.;
Vice-President,
Zenith Sales Corporation,
International Division,
6001 Dickens Avenue;
Chicago 39,
Illinois.

Dear Mr. Miguel,

With reference to our exchange of cables regarding information on colour T.V. for the B.B.C. I would like to advise you of the following.

Yesterday I had a long conversation with Mr. H. C. Nichols who is the Head of the Planning and Installation Department of the B.B.C. (He used to work for several years in London with Dr. Szegho of Rauland.)

There are two matters which really are of great interest to us.

1. Stereo F.M. Transmissions—The B.B.C. has now decided to go ahead with final tests on the Zenith system

and they are waiting for the return of Dr. Philips after his visit to your factory and station.

In connection with the tests which they will be carrying out they need a number of our phonographs incorporating Multiplex as well as receivers with Multiplex.

While I have all the details on the phonographs we have no details regarding receivers and particularly the new one which I believe is number 1035 (I have seen it being assembled in Plant 5). Also we do not have many details on the MH910.

I will be obliged if you would kindly advise me as soon as possible:—

a) What would be the price for the new 1035. $98.20.

b) Whether the MH910 can work only in conjunction with other FM receivers or if it is a self-contained unit requiring only additional speaker. $48.47.

All the phonographs and the receivers which we shall be supplying to the B.B.C. against their order we shall have to invoice ~~at~~ practically cost which is the usual procedure with all the manufacturers here and as they may be getting a release from Customs du~~ties I~~ wonder whether on receipt of our order your people can put in the step down transformers.

2. Television—Although the Pilkington Committee's report has not yet been published it is definite that the C.C.I.R. system is coming into operation and the channels allocated to Great Britain by C.C.I.R. are in the U.H.F. band. As far as I know (but without any definite certainty) the channels allocated are channels 44, 33, and some others for various areas which means that all the receivers will have to be fitted with U.H.F. channels.

The B.B.C. would also like to order a few of the black and white television sets if you could arrange to have them converted to C.C.I.R. standard and they are sending in a few days all the technical details as far as frequencies are concerned.

Experimental transmissions are definitely starting in July but the actual public transmissions will be known only after the report is published.

3.—Colour Television—The B.B.C. is experimenting very seriously with colour television and there is a fair chance that the Pilkington Committee will recommend it if not for immediate operation it will be for the near future.

At present the B.B.C. has purchased approximately 30 receivers from R.C.A. with which they are experimenting and they have substituted the R.C.A. tube with a new Mullard tube with according to the B.B.C. gives a better quality picture.

They are extremely interested if Rauland will be coming out shortly with their own tube but although I have seen various things in the Rauland plant in the experimental stage these were shown to me in confidence and I could not express any views to the B.B.C.

What the B.B.C. would like to know from you is:—

a) To receive as much as possible technical information both on the transmissions and receiving side, circuits of your colour television sets, servicing instructions, etc., etc.

b) whether you will be willing to convert to C.C.I.R. standards some of your colour receivers as R.C.A. have done for them.

I believe that we are approaching a very exciting new stage in our business here and I am trying to co-operate with the B.B.C. as much as possible.

Looking forward to your very early reply.

With kindest regards.

Yours sincerely,

A. R. Ramsay.

(Letterhead of United Mercantile Company Ltd. Mayfair,
London, W. 1.)

Ref: ARR/MS/9026

19th April, 1962.

W. P. Semonoff, Esq.,
Zenith Sales Corporation,
International Division,
6001 Dickens Avenue,
Chicago 39,
Illinois.

Dear Mr. Semonoff,

I refer to your letter of the 14th September, 1961 in which you gave me various details of test equipment required for conversion to C. C. I. R.

I have written today a letter to Mr. Miguel and sent him primarily technical details of the system which will be used in England, and as soon as Mr. Gorbunoff will have a chance to study it we shall know whether the test equipment as suggested by you previously will be sufficient.

When I am in Chicago in May I will have an opportunity to talk with Mr. Gorbunoff and see if there is any other test equipment which would be advisable to have as I am quite prepared to spend a little more money if it can save us time and trouble in the future.

In the catalogue which you sent to me from B & K I notice that they have a model 960 transistor radio analyst and I would be obliged if you could kindly order for us one and ship it as soon as possible.

With knidest regards.

Yours sincerely,

A. R. Ramsay.

April 26, 1962

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
13-14 Queen Street—Mayfair
London W. 1, England

Reference: ARR/MS/9018

Dear Adam:

Your letter dated April 19, enclosing various details regarding the proposed 625 line television system in England, is receiving our full attention.

I have passed this information along to A .Gorbunoff so that he may immediately study this material and give you complete answers and assistance. Just as soon as I get a report from him we will pass it on to you.

We have also noted your arrival in Chicago for the convention.

Kindest regards,

R. M. Carstens
Assistant Sales Manager.

RMC/afg

Air Mail

(Letterhead of United Mercantile Company Ltd. Mayfair, London, W. 1.)

Ref: ARR/MS/9898

1st August, 1962.

Mr. John A. Miguel, Jr.,
Vice-President,
Zenith Sales Corporation,
International Division,
6001 Dickens Avenue,
Chicago 39,
Illinois.

Dear Mr. Miguel,

Well we had our first "Convention", it was a miniature thing comparing to yours but nevertheless I hope it will lead to bigger things and will promote more and more Zenith in this country.

Yesterday at noon we had the press and we have shown them the film on the 2G arm, gave them a demonstration in a similar was as it was done in Chicago (mounted turntables for comparison) and gave them all the details.

I am enclosing specimen of hand-out which also comprised literature, photographs, etc., etc.

The response was above expectation because nearly 60 magazines, B. B. C., Free Europe radio and others turned up, also the Assistant Commercial Attache of the U.S. Embassy was present as well as a representative of the U. S. Trade Center in London.

The first notices in the newspapers have already appeared and we shall send you all the cuttings and you will notice that the really important thing is not so much the 2G arm but the short mention I made on the televisions and the few sets we had on display.

This 625 business is a very great thing in England and I think we have a fair chance and as far as colour is concerned we have a very good chance.

At 6 o'clock we had dealers and their salesmen and more than 40 people turned up.

Again we gave them the film, demonstration, pep talk, spec book, and literature, etc,, etc. and naturally a decent supper.

Everybody seemed to be very impressed and happy.

We have put a lot of effort into this first venture and also it cost a lot of money and it also cost me 3 lbs. in weight, but I am not sorry because it was a real big Zenith day.

No doubt we shall have to make similar affairs in future when we come up with new things and the only thing which depresses me is the fact that this great expense which we are carrying cannot be taken in the co-operative scheme while in fact it is 100% publicity for Zenith.

As you know advertising in this country is so fantastic that we cannot afford it and therefore whenever I get a few notices in the newspapers and the name Zenith mentioned it is worth a lot of money to us.

Going back to the subject of T. V. sets it is quite clear now that if we want to do a real business of it we must have a reasonably priced 19". As you know we took a sample of the K2108 and I would like to have your opinion whether it would be advisable to have a lower model to get the price down without making the conversion too difficult.

As far as colour is concerned I have few orders placed already although up to now I did not receive from you forces on colour instruments and we cannot make even approximate calculations.

As far as the changer is concerned we can build up a very nice market in selling the changer as a competent and here again I would like to get from you prices on the four models but we are at a certain disadvantage because while radios and phonographs are paying 20% import duty changers are subject to 33⅓% which inflates the price.

I hope that you will pleased at what we have done and with kindest regards.

Yours sincerely,

(Signature illegible.)

August 3, 1962.

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
13-14 Queen Street—Mayfair
London W. 1, England

Dear Mr. Ramsay:

Thanks kindly for your letter of July 30th, No. 9883.

The amendment for letter of credit CDC710 has been received, and is presently being processed. Regarding the new letter of credit, this should be valid for at least 60 days in order to cover all of the materials involved. Upon receipt of this new credit, I will effect a majority part shipment of your orders.

You will be pleased to know that the conversion of the color televisions is not in the works. We will certainly keep you advised as this initial project moves forward. The same will apply as to price.

I am glad to hear that everything reached you in good condition. In the future, all of the large TV-radio-phono combinations will be crated in order to avoid possible damage.

As you know, we are very anxious to receive your report regarding the performance of the black and white television receivers you now have on hand. This is the first and most important point, since we cannot proceed to convert any of the present television receivers until we have a definite answer from you as to performance, channel overlapping, etc.

The most important news in this letter will be, of course, the fact that our outside source has agreed to convert all of your black and white television receivers for a cost of $20.00 each. In addition to this outside labor charge will be the cost of parts involved in the conversion. All in all, these parts should amount to approximately $6.00 per instrument. As requested in my cable, upon receiving your cable acceptance of this conversion cost, we will immediately proceed to transfer the instruments to the outside service shop for this work. This special conversion rate will apply for any future black and white television receivers that you may wish to have converted. Best personal wishes.

W. P. Semonoff,
International Division.

WPS/jm

airmail

ZENITH
THE WORLDS FINEST RADIO
AND STEREOPHONIC EQUIPMENT

SOLE DISTRIBUTORS FOR U.K.
UNITED MERCANTILE COMPANY LTD.
SOVEREIGN HOUSE, 13-14 QUEEN STREET, MAYFAIR, LONDON, W.1
Telephone: GROsvenor [illegible] Telegrams: [illegible], London, Telex Telex No.: [illegible]
DIRECTORS • [illegible]

Christen[illegible]
Pls fil[illegible] [illegible]
Engineering answer
possible assistance

Ref: ARB/MS/9019
19th April, 196[illegible].

John A. Miguel, Jnr., Esq.,
Vice President,
Zenith Sales Corporation,
International Division,
6001 Dickens Avenue,
Chicago 39,
Illinois.

Dear Mr. Miguel,

We have now received from the B.B.C. a summary of proposed specification for the 625 line system in England and you will notice that it is intended to operate in the U.H.F. band.

The frequencies which were allocated to the B.B.C. are quoted in the summary but we have not yet got the frequencies which the I.T.A. (the commercial channel) will be using, nor do we have any details of additional channels which will be opened up in future. These details should be available as soon as the Pilkington Report is published which is expected soon after Easter.

I am sending you two copies of the proposed specification as well as two technical memorandums of the B.B.C. which may be of interest to your technical people but what we are primarily concerned with is how difficult and complicated will be the conversion to your instrument s to the proposed system. What is also of greatest importance to us is to receive from you as soon as possible a recommendation of any test equipment which we will require to do the modifications.

I do not know what are the frequencies used in the U.S.A. in the UHF band but maybe we will be lucky and they will be the same as proposed by the B.B.C. and they will at least save us the adjustment of the frequency strips.

/We have

- 2 -

Ref: ARR/MS/9018
19th April, 1962.

We have in stock for demonstration purposes one 19" portable model H2231 and I wonder whether it would be possible for Mr. Gorbunoff to prepare for us an instruction of all the necessary parts required so that we can try to convert this set to the required standard. Naturally it will need a UHF tuner.

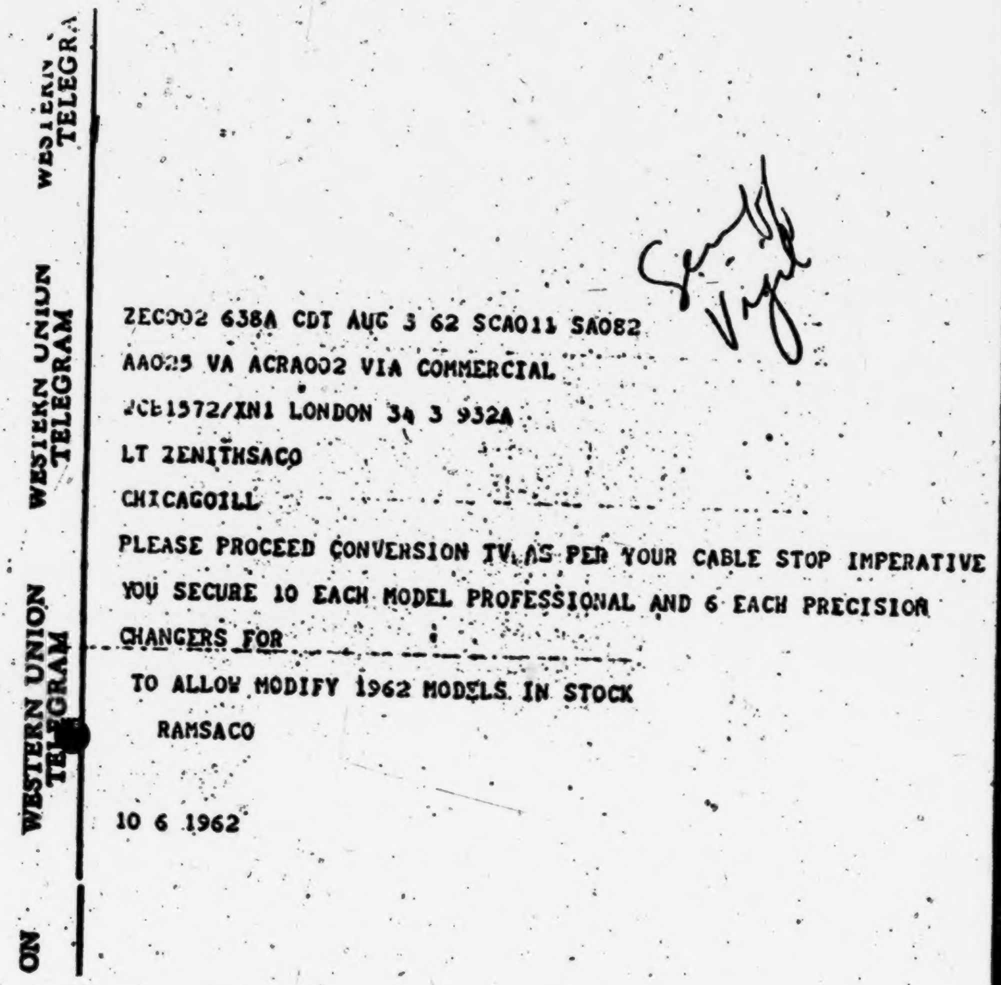
When I am in Chicago we shall then be able to discuss in detail all the procedures for future as now there is no doubt whatsoever that the 625 line system is coming to Britain.

Noted
JH

I am taking this opportunity to confirm that I will be coming over to Chicago with my Wife on the 22nd May on the Pan American flight from London and I will be obliged if you would kindly ask your office to reserve for us a double bedroom at the Edgewater Beach Hotel.

Looking forward to seeing you soon.

Yours sincerely,



WESTERN UNION TELEGRAM

Send Virgil

ZEC002 638A CDT AUG 3 62 SCA011 SA082
AA025 VA ACRA002 VIA COMMERCIAL
ZCE1572/XN1 LONDON 34 3 932A
LT ZENITHSACO
CHICAGOILL

PLEASE PROCEED CONVERSION TV AS PER YOUR CABLE STOP IMPERATIVE YOU SECURE 10 EACH MODEL PROFESSIONAL AND 6 EACH PRECISION CHANGERS FOR
TO ALLOW MODIFY 1962 MODELS IN STOCK

RAMSACO

10 6 1962

Defendant's Bulk Exhibit No. 112.

WESTERN UNION

[illegible]

CLASS OF SERVICE	
FULL RATE	
CABLE LETTER (LT)	X
PRESS	
FULL RATE WILL APPLY UNLESS OTHERWISE INDICATED	

$
S
E

INTERNATIONAL COMMUNICATIONS

CABLEGRAM

W. P. MARSHALL, PRESIDENT

W/U
ALL AROUND THE WORLD

NO. WDS.-CL. OF SVC.	CASH NO.	CHARGE TO THE ACCOUNT OF
		9201-203

SENDER MUST SPECIFY ROUTE
MARK "W. U. CABLES" HERE

TIME FILED

To RAMSACO TELEX 8-2- 19 62

LONDON ENGLAND Via COMMERCIAL

REYURLET 9883 LAST PARAGRAPH OUR OUTSIDE SOURCE AGREES CONVERT B & W TELEVISIONS AT TWENTY DOLLARS EACH PLUS COST OF PARTS APPROX. SIX DOLLARS EACH STOP CAN PROCEED TO CONVERT IMMEDIATELY OUTSTANDING B & W ORDER UPON RECEIPT YOUR CABLE ACCEPTANCE

ZENITHSACO

MPS/afg

PHONED IN AT 3:35

Send the above message subject to the conditions, rules and regulations of The Western Union Telegraph Company set forth in its tariffs on file with the Federal Communications Commission.

Defendant's Bulk Exhibit No. 112.

WESTERN UNION

INTERNATIONAL COMMUNICATIONS

CABLEGRAM

W. P. MARSHALL, PRESIDENT

ALL AROUND THE WORLD

CLASS OF SERVICE	
RATE	
CABLE LETTER (LT)	X
PRESS	
FULL RATE WILL APPLY UNLESS OTHERWISE INDICATED	

NO. WDS.-CL. OF SVC.	CASH NO.	CHARGE TO THE ACCOUNT OF	TIME FILED
		9201-203	

SENDER MUST SPECIFY ROUTE MARK "W. U. CABLES" HERE

To RAMSACO TELEX 8-2- 19 62

LONDON ENGLAND Via COMMERCIAL

REYURLET 9883 LAST PARAGRAPH OUR OUTSIDE SOURCE AGREES CONVERT B & W TELEVISIONS AT TWENTY DOLLARS EACH PLUS COST OF PARTS APPROX. SIX DOLLARS EACH STOP CAN PROCEED TO CONVERT IMMEDIATELY OUTSTANDING B & W ORDER UPON RECEIPT YOUR CABLE ACCEPTANCE

ZENITHSACO

MPS/afg

PHONED IN AT 3:35

Send the above message subject to the conditions, rules and regulations of The Western Union Telegraph Company set forth in its tariffs on file with the Federal Communications Commission.

9

August 7, 1962.

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
13-14 Queen Street—Mayfair
London W. 1, England

Dear Mr. Ramsay:

Thanks kindly for your letter of August 1st, No. 9900. As yet, we have not received anything about the Zenith "big-day", and I am looking forward to seeing the photographs, etc. that you will be sending to Mr. Miguel.

Although it is quite obvious that you will be able to sell a nice number of the new changers, it is suggested that you do not readily offer these to your trade because they are not available at the present time. I realize that many of your past customers will want the new arm on their older phonographs, but we cannot offer this because as yet no policy has been set by Management.

For your own confidential information, it will be possible to modify the older stereo "Professional" changer by adding the new "2G" arm and "pop up" brush feature. The complete arm assembly and other linkages must be changed and the base plate for the older changer must be plugged and three new holes added for the brush. At the present time, the arms and several of the other parts are not available, and no pricing has been set. This decision is again pending with Management, and I will let you know the outcome as quickly as possible. I will say that this operation can only be done by a qualified engineer and not by an ordinary worker if the changer is to operate properly. And again, a special jig will have to be made in order to properly drill the three holes necessary for the mounting of the brush on the old changer. All of this work is well known to us at the present time, but I would suggest that you hold back until a definite decision has been reached here in Chicago.

Concerning your "P.S.", as I told you previously, the color TV sets are presently in the works to be converted, and I will keep you advised as the work progresses. I know that you want these sets as quickly as possible, and we are doing our very best in this regard.

I have also written a separate order covering 24 assorted colors of the Royal 50K portable radio, and will include these on one of your future air consignments, along with parts. They will be packed separately as requested.

In regard to your letter of August 3rd, No. 9930, the black and white television sets have already gone forward to our outside source for CCIR British conversion. The invoicing of this labor charge will be done separately on an "EP" along with the parts. It will not be included in the total price of the television receiver on our general instrument invoice.

Once again, there are no changers available at the present time for your potential component customers. However, please be assured that you will receive enough changers to make the switch in your "MH" line of phonographs that are in your own and dealer's stocks at the present time. Mrs. Vigil is handling this, and will be writing to you further regarding the quantities, etc.

Your question as to whether or not the "stereo Professional" can be mounted in a pan on runners is well taken. However, I once again urge you not to make any serious remarks to your customers, since I believe the component changer will be offered with its own stand or "pan". The latest Micro-Touch "stereo Professional" changers are adaptable and will fit into the older pan as was used in our previous lines. However, I understand that these pans and runners are definitely not available and will not be offered in the future. Again, please retard your anxiety and try to keep this new component changers a mystery to your trade until such time as it is actually available, etc. I readize that there is a great amount of interest in England, but we are experiencing the same type of reaction here in the States.

Regarding your question to Mr. Gorbunoff, I believe I can answer this by saying that our normal CCIR conversion instructions will have the necessary information for Australia, New Zealand, etc. I will send you several copies of the normal CCIR instructions as soon as they become available. This should be within the next 10 days.

Regarding the conversion instructions for the British CCIR system, these are presently in the works, but are not expected to become available for several weeks, at least until some definite answers are known to us. For instance, we are still awaiting your answer regarding the performance of the present black and white sets that you have on hand.

I also have your letter of August 2nd, No. 9909, regarding the few changers that arrived with a broken part. Please be assured that all departments concerned are well aware of this packaging error. The necessary changes have been made in order to correct this breakage. Meanwhile, I have advised Mrs. Vigil to replace, no charge, 3 of the part number 43-556 that were damaged. These are being sent to you via airmail.

I trust this will cover most of the points brought out in your recent letters. I might finish by adding that our credit department has requested that I once again ask you for payment of your open account items that are presently approximately $3300.00. An answer in this respect will be appreciated.

Another thing, kindly return all of the glass slides that I sent you for your press conference. Did you decide to use them? And if so, do you feel they were of any assistance in your presentations?

Best personal regards.

Sincerely,

W. P. Semonoff,
International Division.

WP/jm

airmail

(Letterhead of United Mercantile Company Ltd.,
London, W. 1.)

Ref: ARR/MS/9900

1st August, 1962.

W. P. Semonoff, Esq.,
Zenith Sales Corporation,
International Division,
6001 Dickens Avenue,
Chicago 39, Illinois.

Dear Wally,

The big Zenith day is over now and we are back to normal work and no doubt Mr. Miguel will show you what we have done.

It is quite obvious now that we shall be able sell quite large quantities of changers as a component as well as we shall have to change all the changers on the instruments on the H line which we have in stock. Also a number of customers who have purchased phonographs in the last year and have the professional changer will want the new one.

That poses a certain problem because while we can do all the jobs easily ourselves we shall be left with a number of professional changers with the ordinary arm.

We have examined the new changer carefully and it appears that the only modification is the attachment for the brush and holder for the new arm and we wonder whether we cannot do this modification ourselves here if you supply us with the necessary parts. Or alternatively whether it would be worthwhile to send the changers to the States so that your factory can change the top plate for the new one with the attachment.

With kindest regards.

Yours sincerely,

Illegible.

P. S. Please send us all the colour T. V. sets as quickly as you can—that is really important.

Also please send us by air with the next consignment of spares etc., 24 assorted Royal 50—it is important that these 24 units are packed in a completely separate parcel.

Illegible.

Defendant's Bulk Exhibit No. 112.

ZENITH

THE WORLD'S FINEST RADIO
AND STEREOPHONIC EQUIPMENT

SOLE DISTRIBUTORS FOR U.K.

UNITED MERCANTILE COMPANY LTD.

SOVEREIGN HOUSE · 13-14, QUEEN STREET · MAYFAIR · LONDON, W.1.
TELEPHONE: GROSVENOR 4801-6 · TELEGRAMS: RAMSACO LONDON TELEX · TELEX [illegible]

DIRECTORS
A. R. RAMSAY
G. H. SALMON

Ref: ARR/MS/9909
2nd August, 1962.

W.P. Semonoff, Esq.,
Zenith Sales Corporation,
International Division,
6001 Dickens Avenue,
Chicago 39,
Illinois.

Dear Mr. Semonoff,

I would be obliged if you would kindly advise the Engineering and Packing Designers that they must do something about protecting the new changers from damage.

Out of the four units which we have received and which were packed additionally in a outer carton three part number 43-556 were damaged.

This part is a plastic moulding and fixes into the counter balance part of the arm with two little screws.

In all three cases the plastic moulding was broken off.

With kindest regards.

Yours sincerely,

AUG 6 1962
J. A. [illegible], JR.

Jan 1st this
the same
part that
was damaged
on the way
P.R.

Defendant's Bulk Exhibit No. 112

MES HELLER

Mr Sarnoff –
This breakage also occurred
during the shipment – even
before shipment. An
important and, I
think successful,
correction has
been made
and is in
production. You
can get details
from Wagenhals
Young

E WORLD'S FINEST RADIO
D STEREOPHONIC EQUIPMENT

SOLE DISTRIBUTORS FOR U.K.
UNITED MERCANTILE COMPANY LTD
[illegible] HOUSE · 13-14, [illegible] STREET · MAYFAIR · LONDON, W 1
[illegible] GROSVENOR 4000 · TELEGRAMS: [illegible] LONDON TELEX · [illegible]
DIRECTORS [illegible]

RECEIVED
AUG 7 1962
J. A. [illegible], JR.

W.P. [illegible]
Zenith Sales C[illegible]
International [illegible]
6001 Dickens Avenue
Chicago 39
Illinois

D[illegible]

If this
same
that
it
was
damaged
on the
way
P.R.

THE WORLD'S FINEST RADIO
AND STEREOPHONIC EQUIPMENT

SOLE DISTRIBUTORS FOR U.K.
UNITED MERCANTILE COMPANY LTD
SOVEREIGN HOUSE · 13-14, QUEEN STREET · MAYFAIR · LONDON, W.1
TELEPHONE: [illegible] · TELEGRAMS: [illegible] LONDON TELEX · TELEX [illegible]
DIRECTORS
[illegible]
[illegible]

RECEIVED
AUG 7 1962
J. ... MICHEL, JR.

Ref: AED/MS/9909
... August, 1962.

W. P. S...
Zenith S...
Internat...
6001 D...
Chicago 39,
Illinois.

Dear Mr. S...

This was fixed directly after "show model" production was completed. In fact, shipment was stopped at that time, too.
8/6/62

...ing and
...oods

Is this the same part that damaged a tooling
P.R.

(Letterhead of United Mercantile Company, Ltd.,
London, W. 1.)

Ref: ARR/MS/9930

3rd August, 1962.

W. P. Semonoff, Esq.,
Zenith Sales Corporation,
International Division,
6001 Dickens Avenue,
Chicago 39, Illinois.

Dear Wally,

I confirm my cable of today in which I asked you to go ahead with the conversions on the T. V. sets at the cost quoted.

I would be obliged if this item is invoiced separately and not included in the total price of the T. V. on your invoice.

It was with great regret that I heard that no changers will be available for a few months because as a result of our promotion we have created a considerable interest among private users, hi fi specialists, and some manufacturers and I believe that a substantial business could be created.

Please let me know more exactly when could we expect any deliveries but I hope that you will manage to get for us at least the small quantity mentioned by me which we need to replace the units in stock and with some dealers.

Could you also find out for us whether the De Luxe or Custom Professional can be mounted on a pan and runners as used in the SFF and SFD line. I need this information for one of the high class manufacturers in England who makes up special cabinets but buys all the components from outside sources.

If it is possible to do so could Mrs. Vigil quote us a price for the complete pans and runners and whether they are available.

I have also a technical question to ask and I hope that Mr. Gorbunoff will be able to advise us.

It concerns the CCIR sets for countries such as Australia, New Zealand, etc., we get occasionally people interested and I understand that we would have to use the VHF strips but can he let us know whether the British proposed CCIR system that the 8 Mc channel width and 6 Mc intercarrier can be used successfully on the ordinary CCIR with 7 Mc and 5.5 Mc respectively.

If not we would like to have instructions from him what should we do to modify the sets.

In any case I believe that very shortly you will be sending us conversion instructions to the British CCIR system which we have not received yet.

With kindest regards.

Yours sincerely,

Illegible.

August 15, 1962.

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
13-14 Queen Street—Mayfair
London W. 1, England

Dear Mr. Ramsay:

Many thanks for your letter of August 8, No. 99[illegible].

I note your remarks concerning the two additional television receivers that you wish to have converted and included with your next "SEA" consignment.

Two television receivers will be included. However, we can not furnish the model K2214 already converted because we do not have any special transformers available for operation on your particular voltages. I have therefore taken the liberty by substituting the model K2214 with a model K2228L since this model will facilitate conversion and the addition of the necessary transformers.

For your information, in the space command series we will not be able to furnish any sets for your area in the following models:

K2211J
K2213L
K2214F and J

The main reason being that we do not have any space command transformers available for 220 operation. However, on the higher end of the line starting with the model K2228 we can easily convert these sets without much difficulty. Kindly keep this in mind when ordering in the future. I trust that the change to the model K2228L will be acceptable by you since I have already transferred this to our outside source for conversion to CCIR.

We have taken note of your information regarding the transmissions that were expected to start in several days. Alex Gorbunoff has thoroughly examined your information and has therefore ordered some ~~UHF~~ strips to be used in the sets that we are presently converting. As you know, we would greatly appreciate your keeping us advised regularly as to the results of these trial transmissions, as they occur.

Best personal regards.

Sincerely,

W. P. Semonoff,
International Division.

WPS/dc

Airmail

October 9, 1962.

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
13-14 Queen Street—Mayfair
London W. 1, England

Dear Adam:

Thank you for your letter of September 28th, No. 10897. As requested, we will not obtain any of the baluns for you since, as you say, you can probably obtain them cheaper locally.

I am glad to know that BBC has started your local testing and that the Zenith receivers are operating satisfactorily. We should like to know exactly what adjustments you had to make in order to bring in the best possible picture.

Yes, the man that is converting all of your sets definitely does have all of the necessary signal generators, oscilloscopes, etc. In fact, he has quite an elaborate setup and can convert simultaneously on two independent sort-of "production line" basis. This work is definitely not done theoretically! I have personally examined his premises and work.

Please keep your comments floating to us regarding the performance of the Zenith receivers. Also, an exact technical description of any fine adjustments that had to be made, etc. With this information, we will be in a much better position to offer a better converted set.

Best personal regards.

Sincerely,
W. P. Semonoff,
International Division.

WPS/jm
airmail

(Letterhead of United Mercantile Company Ltd.,
London, W. 1.)

Ref: ARR/MS/10397

28th September, 1962.

W. P. Semonoff, Esq.,
Zenith Sales Corporation,
International Division,
6001 Dickens Avenue,
Chicago 39, Illinois.

Dear Wally,

Regarding the baluns as per your letter of the 26th inst. in future we shall be having the sets for U. K. converted to the 75 ohms impedence.

For the moment I would not bother to send us any baluns as we can get them locally and probably cheaper that from the States.

I am taking this opportunity to mention that the B. B. C. have now started the tests but they are only putting on a test card and sound and generally I would say that the sets are well converted although some of them may need very slight adjustment which is understandable.

As a matter of interest I wonder how your man is converting these sets. Does he have all the necessary instruments? Or is it done purely theoretically?

With kindest regards.

Yours sincerely,

Illegible.

(Letterhead of United Mercantile Company Ltd.,
London, W. 1.)

Ref: ARR/MS/10712

8th November, 1962

Mr. John A. Miguel, Jnr.,
Vice President,
Zenith Sales Corporation,
International Division,
6001 Dickens Avenue,
Chicago 39, Illinois.

Dear Mr. Miguel,

No doubt you are interested how things are shaping in this pre Christmas period.

As far as phonographs are concerned business is quite good and all the 1962 models are sold out and when I say sold out I mean that there are none with the dealers as in most cases the dealers only order against specific orders they have.

As you can see I have managed now to estimate pretty well.

As far as radios are concerned we are selling a few portables such as the Royal 650's and Royal 675's and naturally the Royal 1000D's and we have good hopes for the Royal 3000 but business for the small pocket size radios such as the Royal 50 and Royal 125, etc., is extemely slow. The reason is that the market is flooded with all kinds of British and foreign cheap stuff.

Regarding television the tests have started on the U. H. F. 625 lines and the sets converted by you proved very good indeed except for one or two with remote control when the sound is a little out of frequency. Also the picture is extremely good.

Nobody knows yet when the regular transmissions will start and until such time naturally we cannot start marketing but we are getting acquainted more and more with the T. V. business and the servicing side. In fact, we are getting all the test instruments from you next week.

I am enclosing a list published by Electrical and Radio Trading which will give you all the prices of radios and T. V.'s which are available in the U. K. and which may be of interest to you for your records.

I am also enclosing an article which appeared on stereo FM for the daily clip sheet.

While on the subject of stereo FM we are getting more and more enquiries about it as great interest has been created by the test transmissions and on several occasions we have sold some separate tuners which are mainly required for experimental purposes.

I feel that we can create quite a good market as far as tuners are concerned but what we would like is some descriptive literature and I wonder if anything is anticipated as it seems probable that Zenith will enter the components market from what I can guess from various press comments.

With kindest regards.

Yours sincerely,

Illegible.

DEFENDANT'S BULK EXHIBIT NO. 113.

April 4, 1958.

Mr. Ricardo M. Argerich
Embajada De La Republica Argentina,
9, Wilton Crescent, London, S. W. 1, England

Dear Sir:

Many thanks for your inquiry of January 25, 1958, received in this office March 31, 1958, relative to Zenith Radio alarm clocks.

In response to your request we are enclosing the 1958 radio brochure and our respective export price list SPRA-108.

All clock radios are designed for normal 115 volts 60 cycles operation, however, with the use of a 50 cycle clock rotor and the 220/110 stepdown transformer the complete line can be utilized on either current as supplied in London or Buenos Aires.

We trust that the enclosed as well as the foregoing answers your questions in full and we will look forward to being of further serivce to you at a later date.

Yours very truly,

H. L. Grimm,
International Division.

HLG/ct
Encls.
Air Mail

Embajada de la Republica Argentina.
9, Wilton Crescent, London, S. W. 1.

Tel.: Belgravia 3717-8.

25th January 1958.

The Secretary,
Zenith Radio Corporation,
International Division,
Chicago 39,
Illinois.

Dear Sir,

I should be very grateful if you would furnish me with pamphlets of radios with alarm clocks which can be used in London and Buenos Aires.

Yours faithfully,

/s/ R. Argerich
Ricardo M. Argerich
Agregado

London—50-210V

B. Aires 50-210V

November 21, 1958

Mr. Ezra Suleiman
Whittinghaus College
Surrenden Road
Brighton 6, Sussex
England

Dear Sir:

We acknowledge and thank you very kindly for your recent inquiry and in response thereto, are pleased to enclose complete radio line brochure and applicable export courtesy price list.

Complete details are included in the attached brochure, prices of batteries and accessories for the various transistor models outlined on page seven along with our terms of payment.

If you feel definitely interested in one of the sets, please advise and we will be more than pleased to extend the total estimated CIF quotation.

We take this opportunity to thank you for the interest shown in Zenith products and trust we may have the privilege of being of further service.

Yours very truly,

H. L. Grimm
International Division

HLG:ca

Airmail

enc.

Ezra Suleiman
Whettingehame College
Surrenden Rd.
Brighton 6.

Zenith Radio Corp.
Chicago 39,
Illinois.

Dear Sir,

I would be very grateful if you could send full information of your Zenith Radios. I am particularly interested in the Royal 200 Royal 800 and Royal 500D. I have noticed your advertisement in 'The Newsweek', but you omit the price.

Thanking you in anticipation.

Yours faithfully

E. Suleiman

By Air Mail

(Postmark) Brighton & Hope, Sussex

16 Nov. 1958

To:—Zenith Radio Corp.
Chciago 39,
Illinois
U.S.A.

Sender's name and address: Ezra Suleiman, Whittingehaus College, Surrenden Rd. Brighton 6 Sussex Eng.

An air letter should not contain any enclosure: if it does it will be surcharged or sent by ordinary mail.

December 30, 1958

Mr. David Brookes
50 Brook Vale
Waterloo
Liverpool 22, England

Dear Mr. Brookes:

We acknowledge and thank you very kindly for your recent inquiry and in response thereto are pleased to enclose our latest radio line brochure as well as individual brochure on Zenith's Royal "1000" Thansoceanic radio.

The latter model, that is the Royal "1000," is also manufactured in a second unit designated as the Royal "1000D." They are identical with the exception that the Royal "1000D" contains a ninth waveland covering 150-400 KC, utilized in Europe as a long waveband, in the United States as a CAA weather navigation band.

We take this opportunity to thank you very kindly for your interest in Zenith's products and sincerely trust that we may have the pleasure of being of further service.

Yours very truly,

H. L. Grimm
International Division

HLG:ca

Airmail

enc.

(Stamp) Received Dec. 19, 1958. J. A. Miguel, Jr.

Zenith Radio Corp.
50 Brook Vale,
Waterloo,
Liverpool 22
England.

Dear Sir,

I would be very grateful if you could send me any leaflets on your outstanding radios, the Royal 1000, and the new 9-band Royal 1000D. Any other information on other Zenith radios would be appreciated also.

Yours faithfully,

Mr. David Brookes.

March 30, 1959

Dr. David C. Rogers
50 Sandridge Road
Melksham, Wiltshire, England

Dear Mr. Rogers:

Thank you very much for your inquiry of March 14. To acquaint you with our entire television line, we are enclosing a folder describing all models including those equipped with the exclusive Zenith Space Command, remote control TV tuning.

Zenith's Space Command is not an extra cost accessory nor is it available as an individual separate unit. Zenith's Space Command is a built-in feature on all models of the present line bearing the 3000 and 4000 model numbers.

Thank you for your interest.

Very truly yours,

N. D. Olson, Jr.
International Division.

NDO/ak

Air Mail

Encl.

50 Sandridge Road,
Melksham,
Wiltshire

14-3-59

Dear Sir or Madam,

I am writing to ask you about your wonderful Zenith Space Command Tuner.

I saw an advertisement in the National Geographic Magazine 1956 which my grandad gave me I am afraid it does not say how much it costs. So, I would be very grateful indeed (if you are not too busy) if you would send me a letter telling me how much the TV Tuner would cost in English money, and also give me some more details about it. If you would please send me a letter could you send it to this address.

David C. Rogers
50 Sandridge Road,
Melksham,
Wiltshire,
England.

Yours Sincerely

D. Rogers

June 16, 1959

Winter Trading Co. Ltd.
Winter House
95-99, Ladbroke Grove W. 11
England

Attention: Mr. H. Winter
Managing Director

Gentlemen:

We thank you for your letter of May 30 in which you applied for our distribution franchise for the United Kingdom in view of recent changes in the British import and exchange restrictions.

We appreciate your interest in our products very much, however, we have received within the last couple of weeks numerous inquiries of similar nature from interested parties in your country and we are at present investigating several firms, as well as the general market conditions for electronic products in the United Kingdom.

We shall be pleased to revert back to your inquiry as soon as we have accumulated certain informative material and, in the meantime, we remain,

Yours very truly,

Walter R. Peirels
Assistant Sales Manager
International Division

WRP/ag

Airmail

2110.1

Defendant's Bulk Exhibit No. 113.

(Letterhead of Winter Trading Co. Ltd., 95-99, Ladbroke Grove, W. 11, England.)

Export Division Our. Ref: HW/VIG

30th May, 1959.

Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, Illinois.

Dear Sirs,

We are approaching you with a view to asking you whether we may introduce your equipment on to the British market. The name Zenith is well-known in this country and we feel that a reasonable amount of business can be done, due to the waiving of import restrictions and the freer importation of goods from the United States. There should be a chance to establish your merchandise in the British Market, and we wonder whether it would be possible for you to grant us the sole distribution for your equipment.

In case our Company is not familiar to you, may we inform you that we are large importers and distributors of Continental, Japanese and British radio receiving components. We are the sole distributors in this country for the famous Max Braun Radio Receivers of Frankfurt, Germany, we import receivers from the Hitachi and Victor Companies of Japan and we feel sure that we could do ample justice to your products in the United Kingdom. References from the above are at your disposal, and our bankers are the Westminster Bank Limited and Barclays Bank Limited.

We have twenty representatives attached to this Company (not agents), four branches spread over the south of

England and are well-introduced with dealers and wholesalers everywhere.

Looking forward with interest to hearing from you,

Yours faithfully,

Winter Trading Co. Ltd.,
H. Winter,
Managing Director.

Z 110 1
Z 110 2

September 17, 1959.

Mr. D. W. Wedderspoon,
109 Jermyn Street,
London, S. W. 1, England.

Dear Mr. Wedderspoon:

Mr. Donald Harley of our New York Display Salon has advised us that you are interested in receiving a list of our radios together with the tube and transistor complement of each. Enclosed are service manuals for our various portable radios and table radios. You will find the information that you have requested is incorporated in these service manuals.

If we can be of further service, please let us know.

Yours very truly,

R. M. Carstens,
Sales Supervisor.

RMC/cl

Air-Mail

(Encl.)

Interocean Advertising Corporation
666 Fifth Avenue Judson 2-2242
New York 19, N. Y.

September 4, 1959.

Mr. John A. Miguel, Vice President, Export,
Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, Illinois.

Dear Mr. Miguel:

Attached is a copy of a letter presented to me yesterday by Mr. D. W. Wedderspoon who visited our New York Display Salon. I personally conducted him on a tour of the Salon and went through the radio line in which he was principally interested.

Mr. Wedderspoon requested a list of all our radios and the tube and transistor complement of each. We have no such information available here, so I pass this request along to you for your handling.

His address is: 109 Jermyn Street, London S. W. 1, England.

Sincerely yours,

Interocean Advertising Corp.
Donald J. Harley
Manager, Display Salon

DJH:ac

Attach.

P.S. Mr. & Mrs. Edward I. M-Khouri from Lebanon were into the Salon yesterday and were most pleased with their visit. They are on their way to Chicago. Also in recently Bert Fantocci, Distr in Florence, Italy. Don.

(Letterhead of United Mercantile Company Ltd.,
London, S.W.1.)

Ref: ARR/GS/3156

4th August, 1959

Mr. Donald J. Harley,
Manager—Display Salon,
Interocean Advertising Corporation,
666 Fifth Ave,
New York 19, N. Y.

Dear Mr. Harley,

This is to introduce Mr. D. W. Wedderspoon, the managing Director of Dale Electronics Limited, who is visiting the U. S. A. on a business trip.

Mr. Wedderspoon is very interested in the Zenith range of goods and we shall be most obliged if you will kindly extend to him your usual courtesy and arrange for him to be shown around your Showroom.

Thanking you.

Yours sincerely,

for United Mercantile Company, Ltd.
A. R. Ramsey Signed)
Director

DEFENDANT'S BULK EXHIBIT NO. 114.

License Agreement, dated September 26, 1957, by and between Radio Corporation of America, a corporation of the State of Delaware, having an office in the RCA Building, 30 Rockefeller Plaza, New York, New York (hereinafter referred to as RCA), Zenith Radio Corporation, a corporation of the State of Illinois, having an office at 6001 West Dickens Avenue, Chicago, Illinois, and The Rauland Corporation, a corporation of the State of Illinois, having a principal place of business at 4245 North Knox Avenue, Chicago, Illinois (collectively hereinafter referred to as Zenith).

In consideration of the premises, the licenses granted herein by each party to the other, and the agreements, covenants and conditions herein contained, the parties hereby agree each with the other as follows:

Article I.

Definitions.

For the purposes of this License Agreement the following definitions shall apply:

Section 1. "Broadcast receiving set" means a receiving set of a type (other than theater television and theater facsimile types) designed primarily for the reception of broadcast signals representative of pictures, news, music, speeches, sermons, advertising, entertainment, educational and similar matter, or any of them, or combinations of any of them, for the purpose of entertainment or instruction. "Broadcast signals" means signals transmitted by means of electromagnetic waves, variations or impulses radiated through space and intended for the general public.

Section 2. "Theater television and theater facsimile types" means picture broadcast receiving sets of types designed primarily for use in theaters or other places of public entertainment where an admission or entertainment charge is made.

Section 3. A "color television broadcast receiving set" means a television broadcast receiving set capable of reproducing a picture embodying two or more chromatic colors. "Chromatic colors" means colors such as reds, greens, blues, purples, yellows and browns, as distinguished from the achromatic colors—black, white and grays.

Section 4. A "monochrome television broadcast receiving set" means a television broadcast receiving set which is not capable of reproducing a picture embodying two or more chromatic colors.

Section 5. "Pictures" means light images. shadows, reflections, photographs and other visible reproductions of the aspect or shape of animate or inanimate objects or of drawings, writings, forms and other graphic, printed or written matter of all kinds.

Section 6. "Electrical phonograph" means apparatus of a type designed primarily for use in homes for the reproduction of sound, either directly or in conjunction with a sound broadcast receiving set and/or a monochrome television broadcast receiving set, from a sound record used in or in connection with such apparatus, to be heard in the immediate vicinity of the apparatus, in which such record gives rise to or controls an electric current or electromotive force in such a way that the variations of the electric current or electromotive force correspond in some way to the recorded sounds, and the electric current or electromotive force directly or indirectly brings about the production of sound either from said apparatus or from said broadcast receiving set.

Section 7. "Electron tube" means a device comprising two or more electrodes and an envelope which is to any extent evacuated or contains gas, vapor or liquid under any degree of pressure, which device operates by the passage of an electric current through the vacuum, gas or vapor contained within the envelope, including gas or vapor produced from such liquid, to change the form of, control or modify energy supplied thereto. The term shall not be deemed to include X-ray tubes or devices such as fluorescent or other gas-filled lamps, the primary purpose of which is to furnish illumination in the visible, infrared or ultraviolet region.

Section 8. A "receiving tube" means an electron tube of the type generally used in broadcast radio and/or monochrome television receivers but does not include cathode ray tubes.

Section 9. A "color tube" is an electron tube of the cathode ray type which is capable of producing or reproducing a visual color image embodying two or more chromatic colors.

Section 10. "Subscription service" means a service embodying signals which are transmitted in coded or scrambled form requiring correction or decoding in a receiving unit in order to effect intelligible reproduction of the message represented by such signals.

Section 11. "Subsidiary" means a corporation in which a party hereto now or hereafter during the term of this license Agreement owns in excess of fifty per cent of the stock having the right to vote for the election of directors.

Article II.

Licenses.

Section 1. Subject to the terms and conditions of this License Agreement, each party and its subsidiaries hereto grant and agree to grant to the other and its subsidiaries a personal, indivisible, nontransferable and non exclusive, royalty-free license to manufacture, use and sell the Apparatus hereinafter specified in Section 2 of this Article II. The license to manufacture includes the right to have Licensed Apparatus made for each party hereto for sale by and under the trade name of such party, but shall not include any right by implication or otherwise to have Licensed Apparatus made for any person, partnership or company which is not a subsidiary of a party hereto, nor shall such right be deemed to include any sublicensing right.

These licenses are granted under all the United States and foreign letters patent issued prior to September 1, 1957 covering inventions relating to, or useful in, Licensed Apparatus, or in the manufacture thereof, owned by each party hereto and its subsidiaries or by others, with respect to which and to the extent to which, and subject to the conditions under which, the parties hereto and their subsidiaries shall have the right to grant the licenses herein granted and agreed to be granted under this License Agreement; except that no licenses are herein granted under any United States or foreign letters patent owned or controlled by General Electric Company or Western Electric Company, Incorporated.

Section 2. Subject to the provisions of Section 3 of this Article II, such licenses are granted for the following apparatus (sometimes referred to herein as "Licensed Apparatus"):

(a) complete monochrome television broadcast receiving sets including accompanying sound, if any;

(b) complete sound broadcast receiving sets;

(c) complete electrical phonographs;

(d) combinations of any two or all of the kinds of apparatus specified in subparagraphs (a), (b) and (c) of this Section 2.

(e) receiving tubes; and

(f) cathode ray tubes for use in monochrome television broadcast receiving sets.

Section 3. Anything in this License Agreement to the contrary notwithstanding, no license is herein granted, and no act or acts of manufacture or sale hereunder shall be construed as or result in conveying any license expressly or by implication, estoppel or otherwise, under or with respect to:

(a) Letters Patent with respect to which either party can grant licenses only upon the payment of royalties or other consideration; or

(b) Letters Patent claims relating to the structure or manufacture of batteries; or

(c) Color television broadcast receiving sets and/or electron tubes for use in such sets including color tubes; or

(d) Letters Patent claims relating to subscription services.

Article III.

Term.

This License Agreement shall commence on September 1, 1957 and shall continue in force until January 1, 1963.

Article IV.

Miscellaneous Provisions.

Section 1. This License Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges all prior discussions and negotiations between them, and neither of the parties shall be bound by any conditions, definitions, warranties or representations with respect to the subject matter hereof, other than as expressly provided herein or as duly set forth on or subsequent to the date hereof in writing and signed by the party to be bound thereby or by a proper and duly authorized officer of such party.

Section 2. It is understood and agreed that no estoppel to contest the validity of any patent licensed herein shall survive the term of this License Agreement or extend to the use of any such patent in respect of apparatus other than Licensed Apparatus.

Section 3. This License Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto.

In Witness Whereof, RCA, Zenith and Rauland have duly executed this License Agreement under seal and/or have caused it to be duly executed in their names by their proper officers thereunto duly authorized.

Attest: John R. Cannon, *Secretary.*	[Seal]	Radio Corporation of America, By John L. Burns, *President.*
Attest: Karl E. Hassel, *Secretary.*	[Seal]	Zenith Radio Corporation, By E. F. McDonald, Jr., *President.*
Attest: Karl E. Hassel, *Secretary.*	[Seal]	The Rauland Corporation, By E. N. Rauland, *President.*

State of New York,
County of New York. } ss.

On the 26th day of September, 1957, before me personally came John L. Burns, to me known, who, being by me duly sworn, did depose and say that he resides in Greenwich, Connecticut; that he is President of Radio Corporation of America, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed to said instrument by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Alma K. Folmsbee,
Notary Public.

Alma K. Folmsbee
Notary Public, State of New York
No. 31-6351000
Qualified in New York County
Commission Expires March 30, 1958.

State of Illinois,
County of Cook. } ss.

On the 24th day of September 1957, before me personally came E. F. McDonald, Jr., to me known, who, being by me duly sworn, did depose and say that he resides in Chicago, Illinois; that he is President of Zenith Radio Corporation, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed to said instrument by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Edith B. O'Connor,
Notary Public.

State of Illinois, }
County of Cook. } ss.

On the 24th day of September, 1957, before me personally came E. N. Rauland, to me known, who, being by me duly sworn, did depose and say that he resides in Evanston, Illinois; that he is President of The Rauland Corporation, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed to said instrument by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Edith B. O'Connor,
Notary Public.

Agreement.

It is the agreement and understanding of the undersigned that the releases exchanged between them pursuant to paragraph 1 of the Agreement for Settlement of Litigations of September 9, 1957 do not release or affect any of the obligations or undertakings contained in the said Agreement for Settlement of Litigations.

Attest: Karl E. Hassel, *Secretary.*	Zenith Radio Corporation, By Joseph A. Wright, *Vice President.*
Attest: A. J. Franczak, *Asst. Secretary.*	The Rauland Corporation, By Karl E. Hassel, *Secretary.*
Attest: John G. Cannon, *Secretary.*	Radio Corporation of America, By Robert R. Weiner, *Vice President.*
Attest: John W. Beamer, *Attesting Secretary.*	General Electric Company, By Ray W. Luebbe, *Vice President.*

General Electric Company

-and-

Zenith Radio Corporation and
The Rauland Corporation

License Agreement

Dated, September 27, 1957

License Agreement.

This License Agreement, dated as of the 1st day of January, 1947 and effective as of that date, but actually executed on the 27th day of September, 1957, by and between General Electric Company, a corporation of the State of New York having a principal place of business at Syracuse, New York (hereinafter called General) on the one hand, and Zenith Radio Corporation, a corporation of the State of Illinois, having a principal place of business at Chicago, Illinois and The Rauland Corporation, a corporation of the State of Illinois, having a principal place of business at Chicago, Illinois (hereinafter collectively called Zenith) on the other hand:

Witnesseth That:

Whereas, General has the right to grant licenses or sublicenses under various United States and foreign patents on inventions relating to Licensed Apparatus as defined herein, and is presently engaged in the manufacture, use and sale of such Licensed Apparatus;

And, Whereas, Zenith has the right to grant licenses or sublicenses under various United States and foreign patents on inventions relating to Licensed Apparatus, and is likewise presently engaged in the manufacture, use and sale of such Licensed Apparatus;

Now, Therefore, in consideartion of the premises, the licenses granted herein, and the agreements, covenants, and conditions herein contained, the parties have agreed as follows:

Article I.

Definitions.

As used in this Agreement:

Section 1. "Patents" means and is limited to all patents of the United States and of foreign countries, relating to or useful in Licensed Apparatus, or in the manufacture thereof, excepting patents of Canada, which issued on or before September 1, 1957 with respect and to the extent to which either party hereto has, prior to the termination of this agreement, the right to grant licenses or sublicenses without payment of royalties or other consideration to any third party, but only for the period of such right.

Section 2. "Controlled Company" means a corporation in respect of which one of the parties hereto owns or controls, directly or indirectly, more than fifty percent of the outstanding stock entitled to vote for the election of directors or persons performing similar functions, but any such company shall be deemed to be a controlled company only so long as such control exists.

Section 3. "Licensed Apparatus" means and is limited to the following:

(a) Complete radio broadcast receiving sets, complete monochrome television broadcast receiving sets, and complete electrical home phonographs and combinations of electrical home phonographs with complete radio and/or monochrome television broadcast receiving sets.

(b) Electron tubes of the character used in Licensed Apparatus as defined in subsection (a) of this Section 3 (whether sold as part of Licensed Apparatus or sold separately) comprising two or more electrodes, within an envelope which is to any extent evacuated or contains gas, vapor or liquid under any degree of pressure, and in which electrical conduction takes place through evacuated space, or through gas or vapor, and which is capable of changing the form of, controlling, or modifying energy supplied thereto; but excluding electric lamps, X-ray devices and other devices for generating, controlling or modifying electromagnetic waves, variations or impulses shorter than 0.1 millimeter in wave-length for other than communication purposes.

Article II.

Licenses Granted.

General and Zenith each grants and agrees to grant to the other under its patents, as defined herein, a nonexclusive, fully-paid license to make, have made, use, lease, sell or otherwise dispose of Licensed Apparatus during the term of this agreement.

Article III.

Limitations and Scope of Licenses.

Section 1. The Licenses herein granted are personal and non-assignable except that:

(a) The licenses herein granted shall inure to and be binding on any wholly-owned subsidiaries and successors of the parties hereto; and

(b) Either party hereto may extend the licenses herein granted to any of its controlled companies, present and future, during the term of this agreement, provided that such controlled company shall accept such licenses in writing and grant to the other party to this agreement, under the patents with respect and to the extent to which such controlled company may have the right to grant licenses, licenses of the same scope and character and for the same term as the license which it receives through this agreement.

Article IV.

Miscellaneous Provisions.

Section 1. Nothing contained in this agreement shall be construed as:

(a) A warranty or representation by the granting party as to the validity or scope of any of its patents; or

(b) A warranty or representation that anything made, used, leased, sold or otherwise disposed of hereunder is or will be free from infringements of any patents other than those under which and to the extent to which licenses are in force hereunder; or

(c) An obligation to bring or prosecute actions or suits against third parties for infringements; or

(d) An obligation to furnish any manufacturing or technical information or know-how; or

(e) Conferring any right to use, on licensed apparatus or in publications, advertising or other publicity, any trademark, trade name or symbol, or any contraction, abbreviation or simulation thereof; or

(f) Creating any obligations on the part of either party to acquire any patent rights under the inventions of its employees or others, or to file any patent applications on any inventions, or to maintain any patent or patent application; or

(g) Conveying any license expressly or by implication, estoppel or otherwise, with respect to (1) color television broadcast receiving sets, or color tubes, (2) any patent claims relating to "subscription service" which, for the purposes of this agreement, shall mean a service embodying signals which are transmitted in coded or scrambled form requiring correction or decoding in a receiving unit in order to effect intelligible reproduction of the message represented by such signals.

Section 2. Each party to this agreement, for itself and for any others to whom licenes may be extended under the terms hereof, admits the validity of each patent under which it is licensed hereunder only within the scope of its licenses hereunder and only so long as such licenses remain in force.

Section 3. This license agreement sets forth the entire agreement and understanding between the parties as to the subject matter of this agreement and supersedes, cancels and merges all prior agreements, negotiations, commitments, writings and discussions between them in respect to such subject matter other than the agreement between General and The Rauland Corporation dated September 24, 1952, and the agreemnts referred to in Section 4 of this Article IV; and neither of the parties shall be bound by any conditions, definitions, warranties or representations with respect to the subject matter of this agreement, other than as expressly provided in this agreement, or as duly set forth on or subsequent to the effective date hereof in writing and hand-signed by a proper and duly authorized officer of the party to be bound thereby.

Section 4. The parties hereto mutually agree that all obligations of General to pay royalties to Zenith, to pay amortization fees to Zenith, and to render reports to Zenith under the terms of the following two prior agreements shall be suspended from the date of the execution hereof until the termination of this agreement:

(a) Agreement dated December 29, 1945, relating to United States Letters Patent 2,465,827, issued March 29, 1949;

(b) Agreement dated January 1, 1949, relating to United States Letters Patent Numbers 2,511,143, 2,559,037 and 2,611,879.

Section 5. This license agreement shall be construed, interpreted and applied in accordance with the laws of the State of New York.

Article V.

Term and Termination.

This agreement and all rights and licenses herein granted shall continue in force from the effective date hereof through December 31, 1962 and shall then completely terminate.

In Witness Whereof, the parties have caused these presents to be signed by their respective duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested.

Zenith Radio Corporation,
Francis W. Crotty,
Vice President-Patents

Attest:
Karl E. Hassel

The Rauland Corporation,
By Karl E. Hassel,
Secretary.

Attest:
A. J. Franczak

General Electric Company,
By H. R. Mayers,
General Patent Counsel.

Attest:
John W. Beamer,
Attesting Secertary.

Canadian General Electric Company, Limited

- and -

Zenith Radio Corporation and The Rauland Corporation

License Agreement.

Dated, September 27, 1957.

License Agreement.

This License Agreement, dated as of the 1st day of January, 1947, and effective as of that date, but actually executed on the 27th day of September, 1957, by and between Canadian General Electric Company, Limited, a company incorporated under the laws of Canada, and having its head office at 214 King Street, West, in the City of Toronto and Province of Ontario, Canada, (hereinafter called Canadian General) on the one hand, and Zenith Radio Corporation, a corporation of the State of Illinois, having a principal place of business at Chicago, Illinois and The Rauland Corporation, a corporation of the State of Illinois, having a principal place of business at Chicago, Illinois (hereinafter collectively called Zenith) on the other hand

Witnesseth That:

Whereas, Canadian General has the right to grant licenses or sublicenses under various Canadian Patents on inventions relating to Licensed Apparatus as defined herein, and is presently engaged in the manufacture, use and sale of such Licensed Apparatus;

And, Whereas, Zenith has the right to grant licenses or sublicenses under various Canadian patents on inventions relating to Licensed Apparatus, and is likewise presently engaged in the manufacture, use and sale of such Licensed Apparatus;

Now, Therefore, in consideration of the premises, the licenses granted herein, and the agreements, covenants, and conditions herein contained, the parties have agreed as follows:

Article I.

Definitions.

As used in this Agreement:

Section 1. "Patents" means and is limited to all patents of Canada relating to or useful in Licensed Apparatus or in the manufacture thereof which issued on or before September 1st, 1957, with respect and to the extent to which either party hereto has, prior to the termination of this Agreement, the right to grant licenses or sublicenses without payment of royalties or other consideration to any third party, but only for the period of such right.

Section 2. "Controlled Company" means a corporation in respect of which one of the parties hereto owns or controls, directly or indirectly, more than fifty percent of the outstanding stock entitled to vote for the election of directors or persons performing similar functions, but any such company shall be deemed to be a controlled company only so long as such control exists.

Section 3. "Licensed Apparatus" means and is limited to the following:

(a) Complete radio broadcast receiving sets, complete monochrome television broadcast receiving sets, and complete electrical home phonographs and combinations of electrical home phonographs with complete radio and/or monochrome television broadcast receiving sets.

(b) Electron tubes of the character used in Licensed Apparatus as defined in subsection (a) of this Section 3 (whether sold as parts of Licensed Apparatus or sold separately), comprising two or more electrodes, within an envelope which is to any extent evacuated or contains gas, vapor or liquid under any degree of pressure, and in which electrical conduction takes place through evacuated space, or through gas or vapor, and which is capable of changing the form of, controlling, or modifying energy supplied thereto; but exclusing electric lamps, X-ray devices and other devices for generating, controlling or modifying electromagnetic waves, variations or impulses shorter than 0.1 millimeter in wave-length for other than communication purposes.

Article II.

Licenses Granted.

Canadian General and Zenith each grants and agrees to grant to the other under its patents, as defined herein, a non-exclusive, fully-paid license to make, have made, use, lease, sell or otherwise dispose of Licensed Apparatus during the term of this Agreement.

Article III.

Limitations and Scope of Licenses.

Section 1. The Licenses herein granted are personal and non-assignable except that:

(a) The licenses herein granted shall inure to and be binding on any wholly-owned subsidiaries and successors of the parties hereto; and

(b) Either party hereto may extend the licenses herein granted to any of its controlled companies, present and future, during the term of this agreement, provided that such controlled company shall accept such licenses in writing and grant to the other party to this agreement, under the patents with respect and to the extent to which such controlled company may have the right to grant licenses, licenses of the same scope and character and for the same term as the licenses which it receives through this Agreement:

Article IV.

Miscellaneous Provisions.

Section 1. Nothing contained in this Agreement shall be construed as:

(a) A warranty or representation by the granting party as to the validity or scope of any of its patents; or

(b) A warranty or representation that anything made, used, leased, sold or otherwise disposed of hereunder is or will be free from infringements of any patents other than those under which and to the extent to which licenses are in force hereunder; or

(c) An obligation to bring or prosecute actions or suits against third parties for infringments; or

(d) An obligation to furnish any manufacturing or technical information or know-how; or

(e) Conferring any right to use, on Licensed Apparatus or in publications, advertising or other publicity, any trademark, trade name or symbol, or any contraction, abbreviation or simulation thereof; or

(f) Creating any obligations on the part of either party to acquire any patent rights under the inventions of its employees or others, or to file any patent applications on any inventions, or to maintain any patent or patent application; or

(g) Conveying any license expressly or by implication, estoppel or otherwise, with respect to (1) color television broadcast receiving sets, or color tubes, (2) any patent claims relating to "subscription service" which, for the purposes of this agreement, shall mean a serivce embodying signals which are transmitted in coded or scrambled form requiring correction or decoding in a receiving unit in order to effect intelligible reproduction of the message represented by such signals.

Section 2. Each party to this Agreement, for itself and for any others to who licenses may be extended under the terms hereof, admits the validity of each patent under which it is licensed hereunder only within the scope of its licenses hereunder and only so long as such licenses remain in force.

Section 3. This License Agreement sets forth the entire agreement and understanding between the parties as to the subject matter of this Agreement and supersedes, cancels and merges all prior agreements, negotiations, commitments, writings and discussions between them in respect to such subject matter; and neither of the parties shall be bound by any conditions, definitions, warranties or representations with respect to the subject matter of this Agreement, other than as expressly provided in this Agreement, or as duly set forth on or subsequent to the effective date hereof in writing and hand-signed by the proper and duly authorized officers of the party to be bound thereby.

Section 4. This License Agreement shall be construed, interpreted and applied in accordance with the Laws of the Province of Ontario, Canada.

Article V.

Term and Termination.

This Agreement and all rights and licenses herein granted shall continue in force from the effective date hereof through December 31, 1962, and shall then completely terminate.

In Witness Whereof, the parties have caused these presents to be signed by their respective duly authorized officers and their respective corporate seals to be hereunto affixed.

Zenith Radio Corporation,
Francis W. Crotty,
Vice President—Patents.

The Rauland Corporation,
Karl E. Hassel,
Secretary.

Canadian General Electric Company, Limited,
(Signature illegible)
President.

H. K. Thompson,
Secretary.

License Agreement.

On this 9th day of September, 1957, Western Electric Company, Incorporated, a New York corporation (hereinafter referred to as "Western"), Zenith Radio Corporation, an Illinois corporation, having an office at 6001 West Dickens Avenue, Chicago, Illinois (hereinafter referred to as "Zenith") and The Rauland Corporation, an Illinois corporation, having an office at 4245 North Knox Avenue, Chicago, Illinois (hereinafter referred to as "Rauland"), agree as follows:

Article I.

Grant of Licenses.

Section 1. Western grants and agrees to grant to Zenith and Rauland, severally, under Western's patents personal, indivisible, nontransferable and nonexclusive royalty-free licenses for the following equipments: electrical non-recording phonographs, radio broadcast sound receivers, radio broadcast television receivers, and combinations of any two or all of the foregoing, and electron tubes adapted for use in such apparatus.

Section 2. Zenith and Rauland grant and agree to grant to Western and to American Telephone and Telegraph Company, a New York corporation (hereinafter referred to as "American"), severally, under patents of Zenith and Rauland personal, indivisible, nontransferable and nonexclusive royalty-free licenses for equipments useful in furnishing common carrier communications services. "Common carrier communications services" are defined as services furnished to the public (including services limited to a particular customer or class of customers) for compensation.

Section 3. The licenses granted and agreed to be granted in Sections 1 and 2 of this Article I do not include licenses for color television receivers nor for cathode-ray image-reproducing devices specifically adapted for use in color television receivers, nor licenses under claims of patents, which claims relate particularly to secrecy communication systems or services. "Secrecy communication systems and services" are defined as systems and services in which intelligence signals representing programs distributed to the public are scrambled and broadcast or otherwise transmitted in a form requiring unscrambling in a receiving unit in order to effect intelligible reproduction of the intelligence represented by such signals.

Section 4. The licenses granted in Sections 1 and 2 of this Article I for the equipments therein specified are licenses to make, have made, use, lease and sell such equipments. Such licenses include the rights to maintain such equipments, to practice methods and processes involved in the use of such equipments and to make and have made, to use and have used, and to maintain machines, tools, instrumentalities and materials, and to use and have used methods and processes, in so far as such machines, tools, instrumentalities, materials, methods and processes are involved in or incidental to the development or the manufacture of such equipments, the term "manufacture" including installation, testing and repair. Such licenses do not extend to any other instrumentality or combination or to any method or process involved in the use of such equipments in combination with any other instrumentalities.

Section 5. All licenses herein granted shall be effective as of January 1, 1947, and, except as provided in Article III hereof, shall terminate on January 1, 1963.

Section 6. "Western's patents" means all United States and foreign patents issued prior to September 1, 1957 (including those which have expired), with respect to which Western, American or any of their respective subsidiaries, now has the right to grant the licenses and rights which are herein granted by Western, to the extent to which any such company has the right to grant such licenses and rights.

Section 7. "Patents of Zenith and Rauland" means all United States and foreign patents issued prior to September 1, 1957 (including those which have expired), with respect to which Zenith, Rauland, or any of their respective subsidiaries, now has the right to grant the licenses and rights which are herein granted by Zenith and Rauland, to the extent to which any such company has the right to grant such licenses and rights.

Section 8. The grants of the licenses granted hereunder to Zenith and Rauland include the right to grant sublicenses within the scope of such licenses to their respective subsidiaries. The grants of the licenses granted hereunder to Western and American include the right to grant sublicenses within the scope of such licenses to their respective associated companies. Such right of Zenith, Rauland, Western or American may be exercised at any time during the period for which such a license granted hereunder to Zenith, Rauland, Western or American, as the case may be, continues in force. Any sub-licenses granted under this Section 8 to any present subsidiary or to any present associated company may be made effective, retroactively, as of January 1, 1947, and any sub-licenses to any future subsidiary or any future associated company may be made effective, retroactively, as of the date when such company became a subsidiary or an associated company.

Article II.

Miscellaneous Provisions.

Section 1. Nothing contained in this agreement shall be construed as:

(a) a requirement to maintain any patent in force; or

(b) an admission by any grantee of the validity of any patent except within the scope and period of the licenses thereunder; or

(c) a warranty or representation by any grantor as to the validity or scope of any patent; or

(d) a warranty or representation that any manufacture, use, lease or sale hereunder will be free from infringement of patents other than those under which and to the extent to which licenses are in force hereunder; or

(e) an agreement to bring or prosecute actions or suits against third parties for infringement; or

(f) an obligation to furnish any manufacturing or technical information; or

(g) conferring any right to use, in advertising, publicity or otherwise, any trade-mark, trade name or name, or any contraction, abbreviation or simulation thereof; or

(h) conferring by implication, estoppel or otherwise upon any grantee hereunder any license or other right under any patent, except the licenses and rights expressly granted hereunder to such grantee; or

(i) permitting the assignment of this agreement or of any licenses or rights hereunder, in whole or in part.

Section 2. Any notice hereunder shall be deemed to be sufficiently given or rendered when sent by registered mail and if given or rendered to Zenith or Rauland, addressed to Zenith or Rauland at their offices as above specified or, if given or rendered to Western addressed to Western Electric Company, Incorporated, at 195 Broadway, New York 7, New York, or in either case at such changed address as any party shall have specified by written notice.

Section 3. This license agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto.

Article III.

Termination and Cancellation.

Section 1. Licenses and rights hereunder with respect to equipments made, leased, sold or put into use hereunder prior to any termination under the provisions of this Article III or of Section 5 of Article I hereof shall survive such termination.

Section 2. (a) Every sub-license granted hereunder by a party hereto or American shall terminate with the termination or cancellation of the license under which it is granted.

(b) When a sublicensee's relationship to a party hereto or American, changes so that such a sublicensee is no longer a subsidiary of Zenith or Rauland, or an associated company of American or Western, as the case may be, any licenses and rights granted hereunder to such a sublicensee shall terminate, but licenses and rights acquired by any party hereto or by American under the patents of such sublicensee shall not be affected by such termination.

Section 3. By written notice of Western, Zenith, and Rauland or either of them may cancel the licenses for any specified equipment granted hereunder to it or them under Western's patents, and by written notice to Zenith or

Rauland, Western or American may cancel the licenses for any specific equipment granted hereunder to it under the notified party's patents, each such cancellation to be effective as of the date of giving of said notice. Cancellation of any license by any party under the provisions of this section shall not affect any license or right granted to any other party hereunder.

Article IV.

Construction.

The construction and performance of this agreement shall be governed by the law of the State of New York.

Article V.

General Definitions.

Section 1. A "subsidiary" is a company the majority of whose stock entitled to vote for election of directors is now or hereafter controlled by the parent company either directly or indirectly, but any such company shall be deemed to be a subsidiary only so long as such control exists.

Section 2. (a) "Associated companies of Western" are subsidiaries of Western.

(b) "Associated companies of American" are companies in the United States which are now parties to patent license and service contracts with American relating to the furnishing by them of public communication service by telephone in the United States or between the United States and other countries, the respective subsidiaries of each such company and subsidiaries of American other than Western and its subsidiaries. "Public communication service" means communication service furnished to the public (including service limited to a particular customer or class of customers) for compensation.

In Witness Whereof, the parties hereto have caused these presents to be executed by their duly authorized officers as of the day and year first above-written.

Western Electric Company, Incorporated,
By R. W. Gorenell,
Patent License Manager.

Attest:
J. H. Wood,
Secretary.

Zenith Radio Corporation,
By Francis W. Crotty,
Vice-President,-Patents.

Attest:
Karl E. Hassel,
Secretary.

The Rauland Corporation,
By Karl E. Hassel,
Secretary.

Attest:
A. J. Francjak,
Asst. Secretary.

DEFENDANT'S EXHIBIT NO. 115.

July 2, 1948.

Mr. B. A. Hultman,
Svenska Aktiebolaget Gasaccumulator,
Stockholm-Lidingo,
Sweden.

Dear Mr. Hultman:

Sentinel Radio Corporation, one of our good licensees in this country, has just sent us a copy of a cable received by their export manager, reading as follows:

> "Dr. Paul Jenny claiming represent Hazeltine and their Swedish connection threatening sue our distributor claiming patent infringement."

This cable raises a question of policy of rather serious import to our license situation in this country so that we believe that you and we should arrive at some definite policy on the matter.

We have always told our licensees in the United States that, while we could guarantee them no protection on their exports to foreign countries, as a matter of policy we would not collect a second royalty on sets exported to foreign countries where Hazeltine had complete control of its patent situation. In those countries where the Hazeltine patents are included in an indutry-wide pool they are, of course, beyond our control and our licensees have to make their own arrangements with such pool.

Prior to the war, such patent pools existed in most of the countries into which our licensees exported so that there was no problem. Apparently, the converse is now true in many European countries.

Therefore, we suggest the following policy for your consideration and want you to feel free to offer any counter-proposals, if this policy does not fit in with your general licensing strategy:

1. In each country in which no industry-wide pool exists, it is suggested that license negotiations, or in any event threat of litigation, be initially confined to local manufacturers and importers of unlicensed sets, temporarily bypassing importers of sets of Hazeltine licensees in this country. For your information, there is attached a list of the pricipal unlicensed United States manufacturers, with most of whom we are in litigation as to whose sets you may have complete freedom of action.

2. If the pressure of other licensees or other circumstances indicate the advisability of negotiating with, or threatening suit against, an importer of United States licensed sets, it is suggested that you communicate with us in an effort to find some way of handling the situation without impairing our relations with our United States licensees.

3. If and when substantially the entire industry in any given country has been licensed, excepting only one or more importers of United States licensed sets, we might be able to work out an arrangement whereby you can bring such importers into your license situation and advise us of the royalties paid so that we can make some adjustment with our United States licensee.

In any event, if feasible, we would appreciate your requesting Dr. Jenny to defer any further efforts to license the importer of the Sentinel receivers until after we have arrived at a definite policy with respect to such matters.

The matter is of some urgency so that we would appreciate your views at your earliest convenience.

Very truly yours,

Vice-President.

LBD:AA

Att.

DEFENDANT'S EXHIBIT NO. 116.

August 29, 1950.

Mr. R. D. Brown, Jr., Manager
Patent Department
Philco Corporation
Philadelphia, Pennsylvania

Dear Reynie:

With reference to your inquiry as to the foreign countries in which Hazeltine patents are included in pools so that Hazeltine does not have control over them, I have now obtained the information you requested.

At the present time the Hazeltine foreign patents are included in industry pools only in the following countries: England, Canada, Australia, New Zealand, and Sweden.

There are, however, negotiations pending which may result in the inclusion of Hazeltine patents in pools in France and Germany.

I trust this will give you the information you need.

With kind regards.

Sincerely,

Vice-President.

LBD:rbj

DEFENDANT'S EXHIBIT NO. 117.

MEMORANDUM OF AGREEMENT made this 19th day of January, 1937:

Hazeltine Research, Inc.
vs. Zenith Radio Corporation
Defendant's Exh. No. 117

BY AND BETWEEN:

Zenith
EXHIBIT 1
In: [illegible]
[illegible]
Commissioner

CANADIAN GENERAL ELECTRIC COMPANY, LIMITED hereinafter called the General Company;

CANADIAN MARCONI COMPANY (Limited Liability), hereinafter called the Marconi Company;

CANADIAN WESTINGHOUSE COMPANY, LIMITED, hereinafter called the Westinghouse Company;

NORTHERN ELECTRIC COMPANY, LIMITED, hereinafter called the Northern Company; and

STANDARD RADIO MANUFACTURING CORPORATION, LIMITED, hereinafter called the Standard Company;

(all of the foregoing Companies being Corporations of the Dominion of Canada).

WHEREAS the said General, Marconi, Westinghouse, Northern and Standard Companies are the sole shareholders, respectively, in Canadian Radio Patents, Limited, a corporation organized under the laws of the Dominion of Canada (hereinafter referred to as the Patents Company), their holdings being respectively as follows:

General Company	6250 shares
Marconi Company	6250 shares
Westinghouse Company	6250 shares
Northern Company	6250 shares
Standard Company	2500 shares, and

WHEREAS the Patents Company is empowered to issue Sub-licenses under certain Canadian patents in which any of the parties hereto may be interested otherwise than as shareholders in the said Patents Company; and

WHEREAS the Patents Company has power to enter suits for infringement upon patents under which it is licensed and to join the name or names of the parties hereto as Plaintiffs; and

WHEREAS from time to time the Patents Company may require further working capital for the conduct of its business;

NOW THEREFORE THIS INDENTURE WITNESSETH, that in consideration of the premises and of the mutual covenants and agreements herein entered into, the parties hereto mutually agree each with the other as follows:

1. THAT no license shall be granted by the Patents Company except with the unanimous consent of the parties hereto or their representatives upon the Board of Directors present at a meeting of the Board convened for that purpose:

2. THAT the name of any of the parties hereto will not be joined as party in any infringement or impeachment action commenced by the Patents Company except with the written consent of the said party so joined:

3. THAT from time to time as working capital is required by the Patents Company each of the parties hereto will subscribe for stock in the Patents Company or loan to the Patents Company any such amounts as are required for the conducting of its business. All said subscriptions for stock or moneys loaned shall be made by the parties hereto in proportion to the stock in the Patents Company held by said parties respectively.

4. THE parties hereto agree to consent to the assignment by any of the other parties to this Agreement of the stock held by it in the Patents Company, but only to the successors to or assigns of substantially the entire good will and Radio business of said parties, respectively. In the case of the Northern Company, the Western Electric Company, Incorporated, a Corporation of the State of New York, United States of America, or its nominee, may at any time be substituted for the Northern Company, as the holder of stock in the Patents Company to which transfer the parties hereto will give their consent:

- 3 -

5. THAT the notices calling any meeting of the Board of Directors or shareholders of the Patents Company will contain the agenda of all important matters to be determined at said meeting.

6. THAT the Board of Directors of the Patents Company shall be forthwith enlarged to provide for two Directors representing each of the respective parties hereto and an additional Director who shall be counsel for the time being of the Patents Company in patent matters, thus making said Board of Directors so constituted to be composed of eleven members in all, with a quorum of five members. Each of the parties hereto shall so vote its stock in the Patents Company to secure the election of the two Directors designated by each of them respectively for representation on the Board of Directors of the Patents Company. At meetings of the Board of Directors only one Director representing each of the Parties hereto shall vote, and, in the absence of representation on behalf of any of the parties hereto at any meeting of the Board of Directors, the said counsel of the patents Company, if so instructed, may vote for said party not otherwise represented at the meeting.

7. THAT the Patents Company shall from time to time defray the travelling expenses of members of the Board of Directors for attendance at meetings or for any special purpose for which their attendance or service may be required.

8. THAT each of the parties hereto shall from time to time vote the stock held by it or them in the said Patents Company, and will make, do, execute all such documents, assurances, steps, acts, matters and things as may be reasonably required for the proper carrying into effect of the intent of this Agreement.

9. THAT this Agreement shall enure to the benefit and be binding upon the respective successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their respective corporate seals at the hands of their Officers duly authorized in that behalf.

SIGNED, SEALED and DELIVERED
In the presence of:

CANADIAN GENERAL ELECTRIC COMPANY, LIMITED.

............A. E. Dyment.................
Chairman

........W. H. Nesbitt...................
Secretary.

CANADIAN MARCONI COMPANY (Limited Liability)

........Milton L. Hersey...............
President.

Gertrude Bolan

........A. D. MacCallum..............
Acting Secretary

CANADIAN WESTINGHOUSE COMPANY, LIMITED.

.........Paul J. Myler..................
President

G. Thrasher

........W. S. Sprague...................
Secretary.

NORTHERN ELECTRIC COMPANY, LIMITED.

........P. F. Sise.......................
President.

C. Taylor

........Clement Say.....................
Secretary.

STANDARD RADIO MANUFACTURING CORPORATION, LIMITED.

........A. S. Rogers....................
President.

........Samuel Rogers...................
Secretary

ESB.

PATENTS OWNED BY CANADIAN GENERAL ELECTRIC CO. LTD.

1.	241,183	June 24, 1924	Rice	Amplification of Small Currents.
2.	208,583	Feb. 15, 1921	Alexanderson	Selective Tuning Systems.
3.	264,867	Nov. 23, 1926	Langmuir	System of Amplifying Variable Currents.

Power Supply & Amplifier Units.

220,761	July 11, 1922	Hull	Method of & means for obtaining Constant Direct Current Potentials.
224,464	Nov. 29, 1921	White	Circuit connections of Electron Discharge Apparatus.
198,076	Mar. 9, 1920	Langmuir	Method of & means for controlling Electric Current.
263,962	Aug. 31, 1926	Rice & Kellog	System for Amplifying.
196,248	Jan. 13, 1920	Langmuir	Amplification of Variable Currents.

Patents owned by Western Electric Company, Incorporated and Northern Electric Company, Limited.

209,777	Mar. 22, 1921	Watson	Vacuum Tube Filament & Plate Compensation.
213,999	Oct. 25, 1921	Arnold	Gaseous Repeaters.
274,699	Jan. 25, 1927	Hartley	Electric Circuits.
183,276	Mar. 26, 1918	Nichols	Vacuum Tube Circuits.
183,273	Mar. 26, 1918	Mathes	Circuits for Electric Discharge Devices.

Power Supply & Amplifier Units.

220,067	Apr. 25, 1922	Arnold	Thermionic Amplifier.
209,332	Feb. 22, 1921	Scriven	Vacuum Tube Apparatus.
183,273	Mar. 26, 1918	Mathes	Circuits for Electric Discharge Devices.
188,899	Jan. 21, 1919	Heising	Circuit Connections of Electron Discharge Apparatus.

Patents owned by Canadian Westinghouse Co. Ltd.

216,221	Mar. 7, 1922	Armstrong	Wireless Receiving System

Patents owned by Canadian Marconi Company

179,505	Oct. 9, 1917	Round	Continuous Electrical Oscillations.
187,905	Dec. 3, 1918	Franklin	Receivers for Wireless Telephony .

Defendant's Exhibit No. 117.

Patents owned by Rogers Majestic Corporation Ltd. (formerly Standard Manufacturing Corporation Limited).

159,794	Dec. 29, 1914	DeForest	Amplifying & Reproducing Sounds.
169,322	May 9, 1916	DeForest	Wireless Receiving Systems.
220,235	May 2, 1922	DeForest	Radio Signalling Systems.
174,261	Jan. 9, 1917	DeForest	Wireless Telegraph & Telephone Systems.
218,468	May. 9, 1922	DeForest	Selective Audion Amplifier.
218,230	May 2, 1922	Logwood	Oscillation Generator Syst...
218,242	May 2, 1922	DeForest	Amplifying Pulsating Electric Currents.
218,673	May 9, 1922	DeForest	Audion Circuit.

Power Supply & Amplifier Units.

31,800 —	Jan 8, 1918	DeForest	Telephone & Telegraph Systems.

Patents owned by Canadian Radio Patents Limited.

251,045	Jly. 21, 1925	Cardwell	Variable Air Condensers.

CANADIAN MARCONI COMPANY PATENTS.

195,097	Dec. 23, 1919	Brillouin & Beauvais	Resistance Coupled Amplifier.
196,751	Feb. 3, 1920	Brillouin	" " "
99,603 —	Mar. 22, 1921	Brillouin	" " "
216,800	Mar. 7, 1922	Round	Cascade Amplifier.
243,200	Sept.23, 1924	Round & Williams	Neutralizing Method
248,333	Mar. 3, 1925	Round	Loudspeakers.
259,208	Feb. 16, 1926	Round	"
261,163	May 25, 1926	Round	"
263,022	Jly. 27, 1926	Round	"
264,026	Aug. 31, 1926	(Mott (Maurer	Geared Condenser.
263,223	Aug. 31, 1926	Williams	Non-oscillating valve circuit.
265,332	Oct. 26, 1926	Williams	Audio Transformer
265,641	Nov. 2, 1926	Williams	Variable Condenser

266,298	Nov. 30, 1926	Clough	Transformer Choke Coils, etc.
266,322	Nov. 30, 1926	Clough	Variable Inductance.
266,553	Dec. 7, 1926	Clough	Variable Inductance.
268,239	Feb. 8, 1927	Threlkeld Butterfield	Anti-inductive Aerial.
270,832	May 10, 1927	Round Robb	Loud Speaker Diaphragm.
270,353	May 10, 1927	Round	Diaphragm for Acoustic Instruments.
272,007	Aug. 9, 1927	McLachlan	Loud Speaker.
273,026	Aug. 9, 1927	Williams	Valve circuit with grid-negative voltage from resistance in plate circuit
285,342	Dec. 6, 1928	Wright	H. F. Transformer.
288,507	Dec. 11, 1928	Hodgson	Anti-static Aerial.
288,531	Dec. 11, 1928	Williams	Anti-distortion Amplifier.
288,903	Dec. 25, 1928	Round	Neutralised Multivalve Amplifier.
289,026	Apr. 23, 1928	Wright Smith	Neutralised Circuits.
291209	Jly. 16, 1929	Wright	H. F. Transformer Improvement.
293,520	Sept. 24, 1929	Round Rust	Loudspeaker

PATENTS OF THE CANADIAN WESTINGHOUSE CO.

218,322	Mar. 7, 1922	E. H. Armstrong	Wireless Receiving Systems, for Continuous Waves.
219,181	May 2, 1922	"	Receiving High Frequency Oscillations.
227,540	Jan. 2, 1923	"	Signalling System

PATENT OF THE NORTHERN ELECTRIC CO.

180,003	Jan. 12, 1918	Colpitts	Push-Pull Circuit.

1644

DEFENDANT'S EXHIBIT NO. 118.

Memorandum of Patent License Agreement made in duplicate this second day of July, A. D. 1943, between

Hazeltine Corporation, of the City of Washington in the District of Columbia, (hereinafter called the "Licensor") Of The First Part

—and—

Canadian Radio Patents Limited, of the City of Toronto, Province of Ontario, a private company organized under the laws of the Dominion of Canada, (hereinafter called the "Licensee") Of The Second Part.

Witnesseth That

Whereas the Licensor represents that it owns or has the right to grant exclusive licenses under various patents and applications for patents of the Dominion of Canada for inventions useful in licensed apparatus as hereinafter speci~~fied and~~ defined, ~~and~~ maintains laboratories with a staff of engineers, research and inventors, and expects to file further patent applications and to obtain further patents of the Dominion of Canada important in the fields of this agreement; and

Whereas the licensee desires an exclusive license in the field hereinafter mentioned with the right to grant sub-licenses under such patents issued and to be issued and under said applications;

Now Therefore, in view of the premises and in consideration of the licenses herein contained and agreed to be granted, the mutual covenants and agreements herein contained, the parties hereto agree as follows:—

Article I.

Definitions.

For the purposes of this agreement, the following definitions shall apply:—

Section 1

A "Radio Broadcast Receiver" means apparatus by means of which electric currents, waves or impulses of radio frequency originating at a radio broadcast transmitter are employed to produce vibrations or effects which are audible or visible.

Section 2

A "Complete Radio Broadcast Receiver" for sound and/or picture reception means a complete apparatus fully equipped with tubes, in the condition in which it is to be sold to the ultimate purchaser for use and fully operative (except for any antenna not particularly designed and sold by Licensee or its sub-licensees hereunder, to function with such receiver and except for a primary source of power, (such as batteries or house wiring) for receiving radio broadcast signals and for converting them into audible and/or visual signals.

Section 3

A "Chassis of a Radio Broadcast Receiver" for sound and/or picture reception means a complete radio broadcast receiver of sound and/or pictures in accordance with Section 2, less cabinet or housing, tubes and speakers.

Section 4

"Picture Reception" is the art of receiving at another point than the point of transmission, by means of electricity, magnetism or electro-magnetic waves, variations or impulses, the aspect or shape of things, including pictures, whether still or moving, drawings, writings, forms and other graphic, printed and written matter of all kinds.

Section 5

"Complete Electrical Phonograph" means apparatus for the reproduction of sound either directly or in conjunction with a radio receiving set, from sound records used in or in connection with such apparatus, to be heard in the immediate vicinity of the apparatus, in which such record gives rise to or controls an electric current or electromotive force in such a way that the variations of the electric current or electro-motive force correspond in some way to the recorded sounds, and the electric current or electromotive force directly or indirectly brings about the production of sound either from said apparatus, or from said radio receiving set, and also, when furnished as parts thereof, apparatus for making sound records for use in or in connection with such electrical phonograph for the private entertainment or instruction of the maker of such records.

Section 6

A "Chassis of an Electrical Phonograph" means a complete electrical phonograph in accordance with Section 5 less cabinet or housing, tubes, speakers, turntables, motors, pickups and mechanical record changing equipment.

Section 7

"Tube" means a device comprising an envelope which is to any extent evacuated or contains gas or vapor under any degree of pressure, and a number of electrodes between two or more of which conduction of electricity through the vacuum or condensed gas or vapor may take place.

Section 8

"Patents" means letters patent and applications for letters patent and rights in, to or under letters patent and applications for letters patent and patentable inventions.

Section 9

All money values mentioned in this agreement are in Canadian funds.

Article II.

Patents Included In This Agreement.

Section 1

The patents with respect to which licenses and other rights are herein granted and agreed to be granted to the Licensee are all present and future patents of the Dominion of Canada relating or applicable to or useful in the manufacture of licensed apparatus as specified in Article III, Section 2, hereof, which the Licensor owns or at any time during the continuance of this agreement may own or with respect to which the Licensor now has or at any time during the continuance of this agreement may have the right to grant such licenses or other rights.

In the case of patents under which the Licensor has or shall subsequently acquire a limited or conditional right to grant for part or all of the fields hereof, the licenses herein granted are subject to any limitations and conditions to which that right may be subject. [Handwritten note: "Omit".]

Section 2

A patent shall be considered to be valid for the purposes of this agreement unless its pertinent claims shall have been declared invalid by a decree of a court of competent jurisdiction of last resort or by a lower court of competent jurisdiction from whose decree no appeal has been taken within the time allowed by law.

Article III.

Licenses.

Section 1

The Licensor hereby grants to the Licensee, for the term of this agreement, the exclusive and divisible license, with the right to license others, to make within the Dominion of Canada the licensed apparatus specified in Section 2 hereinafter, and to sell said apparatus made by Licensee or its sub-licensees to others for the uses specified in Section 2 hereinafter, and for resale for such uses. Said license to manufacture includes the right to make all or any of the separate parts and the right to have all or any of the separate parts made by others, but no license is granted to sell parts separately except as a bona fide repair of used licensed apparatus or replacement of worn out or defective parts of used licensed apparatus.

Section 2

The apparatus for which the said exclusive license and right are granted is as follows: The use in each case is limited to use in homes, use for educational purposes and private non-commercial use:—

(a) Complete radio broadcast receivers for sound reception;
(b) Complete radio broadcast receivers for picture reception;
(c) Chassis of radio broadcast receivers for sound and/or picture reception;
(d) Complete electrical phonographs;
(e) Chassis of electrical phonographs;
(f) Combination of the apparatus specified in (a), (b) and (d) of this Section or of any two or more of them.

Section 3

Nothing herein contained, and no act or acts hereunder, shall be construed as, result in, conveying any license or other right to Licensee or its sub-licensees, expressly or by implication, estoppel or otherwise for the manufacture of tubes:—

(a) Under any patents which or rights under which are held by Licensor under an agreement such that the Licensor can grant licenses only upon the payment of royalties or other consideration by the Licensor to others. Provided, however, that the Licensor will from time to time keep the Licensee informed of all such agreements and that the Licensee may at any time obtain licenses under such agreements corresponding to the licenses herein granted, so far as such agreements permit, on engaging to pay to the Licensor any amounts which the Licensor has to pay under such agreements because of Licensee's exercise of such licenses:

(b) Under any patents of countries other than the Dominion of Canada:

(c) To make or sell apparatus otherwise than in accordance with the express provisions of this license agreement.

Article IV.

Royalties.

Section 1

Licensee agrees to pay to Licensor the royalties as hereafter set forth on all complete apparatus of the type specified in Article III, Section 2, sold by Licensee and any of its sub-licensees under patents owned or controlled by Licensee and under which it has granted licenses during the continuance of this agreement:

(a) With respect to gross sales at factory invoice prices billed on apparatus specified in Section 1 to the aggregate amount of $8,000,000 in any twelve (12) month period ending December 31st of any year and until the amount of royalties paid hereunder to the Licensor for said period shall equal the sum of $35,000, a royalty of 1½% of the Licensee's or its sub-licensees' "computed factory invoice price" as hereinafter defined (before cash discounts, royalties, freight, advertising allowances or other similar deductions are made) of the chassis portion of such apparatus.

(b) With respect to gross sales at factory invoice prices billed on apparatus specified in Section 1 in an aggregate amount in excess of $8,000,000 for any twelve (12) month period ending December 31st of any year, and until the total amount of royalties (inclusive of royalties paid under (a)) paid hereunder to the Licensor for any such period shall equal the sum of $45,000, a royalty of ¾ of 1% of the Licensee's or its sub-licensees' "computed factory invoice price" as hereinafter defined (before cash discounts, royalties, freight, advertising allowances or other similar deductions are made) of the chassis portion of all such apparatus. Thereafter, no further royalties shall be payable to the Licensor for any such period.

Section 2

For the purposes of assessing royalties, the "computed factory invoice price" of the chassis portion of the licensed apparatus shall be obtained by taking that proportion of the factory invoice price of the licensed apparatus, which the manufacturing cost of the chassis (not including loudspeakers, tubes and cabinets) as herein defined, including the usual overhead burden, incoming transportation charges, customers and excise duties, and other standard charges, bears to the total manufacturing cost of the licensed apparatus sold by the licensee or its sub-licensees. All development and research expenses relating to apparatus licensed hereunder shall be considered for the purposes of this agreement a part of the cost of the chassis portion of the licensed apparatus but all federal, provincial or municipal sales and excise taxes are to be deducted in determining the computed factory invoice price for royalty purposes,

Section 3

In computing the amount upon which royalties are payable, credit may be taken by the Licensee or its sub-licensees for all licensed apparatus sold which are returned by the customers to the Licensee or its sub-licensees and credit allowed therefor.

For the purpose of determining royalty payments hereunder, the licensed apparatus shall be deemed to be sold within the meaning of this agreement when billed or consigned or, if not billed or consigned, when shipped or delivered.

Section 4

In order to insure to the Licensor full royalty payments contemplated under Section 1 of this Article, viz., royalty on selling prices to purchasers wholly independent of the Licensee or any of its sub-licensees, it is agreed that in the event the licensed apparatus is sold hereunder:—

(1) To a corporation, firm or association in which or individual who shall own or control directly or indirectly a controlling interest in Licensee or any of its sub-licensees by stock ownership or otherwise; or

(2) To a corporation, firm or association in which the Licensee or any of its sub-licensees or stockholders of the Licensee or any of its sublicensees, or any subsidiary or parent or affiliated company of the Licensee or any of its sub-licensees shall own or control directly or indirectly a controlling interest by stock ownership or otherwise; or

(3) To a corporation, firm or association to which or individual to whom the Licensee or its sub-licensees sells exclusively or which or who purchases exclusively from the licensee or any of its sub-licensees apparatus of the type licensed, either as a matter of general practice or under the provision of any sales agreement, arrangement, or understanding between the parties; or

(4) To a corporation, firm or association with which or individual with whom Licensee or any of its sub-licensees or its stockholders or subsidiary or parent or affiliated companies shall have any agreement, understanding or arrangement (such as, among other things, an option to purchase stock or involving a division of profits or special rebates or allowances) without which agreement, understanding or arrangement, prices paid by such corporation, firm, association or individual for the licensed apparatus sold hereunder would be higher than the price actually paid, or if such agreement, understanding or arrangement results in extending to such corporation, firm, association or individual lower prices for the licensed apparatus sold hereunder than those charged to outside concerns buying similar merchandise from the Licensee or any of its sub-licensees in similar amounts and under similar conditions;

then, and in any of such events, the royalties to be paid hereunder in respect of such licensed apparatus shall be based upon the net selling price, before cash discount, freight or advertising allowance or other similar deductions, at which such purchaser resells such apparatus to a purchaser wholly independent of itself and of Licensee or any of its sub-licensees instead of upon the net factory invoice price of Licensee or any of its sub-licensees, provided, however, that Licensee or any of its sub-licensees shall not be obligated under this section to pay royalty upon factory invoice price at which Licensee or any of its sub-licensees sells such licensed apparatus to any wholly independent jobber or distributor.

Article V.

Reports and Payments.

Section 1

During the term of the agreement, Licensee will maintain suitable and proper records of the sale of all apparatus subject to royalty hereunder and will render to the Licensor on or before the last day of May, August, November, and February, respectively, of each year of the term hereof a written report in duplicate of all such licensed apparatus which has been sold during the three calendar months ending with the last preceding March, June, September and December, respectively, and will at the time of each such report pay to the Licensor the full amount of royalty therein shown to be due under the provisions of Article IV hereof. Said records shall be open during regular business hours for examination to the extent necessary to verify such reports by any duly authorized representative of the Licensor.

Section 2

The Licensee shall not be liable to the Licensor for any delay in remitting royalties withheld by any sub-licensee by reason of a bona fide dispute as to whether the same are properly payable, if it shall use its best efforts to collect with reasonable promptness the amount of such royalties properly due.

Section 3

The Licensee agrees, except with respect to royalties referred to in Section 2 above, to pay interest to the Licensor upon any and all amounts of royalties received from its sub-licensees and that are at any time overdue and payable to the Licensor at the rate of five per cent per annum from the date when such royalties are due and payable as provided in this agreement.

Section 4.

The Licensor agrees not to disclose to any competitor of the Licensee or of its sub-licensees any confidential information relating to the Licensee's or its sub-licensees' business obtained by the Licensor under this agreement except to such extent as the Licensor may be required to disclose such information by judicial, governmental or other competent authority.

Section 5.

Licensee shall deduct and pay, from remittances due to Licensor for royalties and engineering assistance due under this agreement, any and all Canadian Government taxes in force at the time of the remittance, and applicable to said royalties and engineering assistance.

Article VI.

Compliance with Canadian Patent Act.

Licensee or any of its sub-licensees may import into Canada apparatus which it is commercially unsound or impracticable for Licensee or any of its sub-licensees to manufacture, unless it shall reasonably appear that such importation shall constitute grounds or part therof for requiring the grant of compulsory licenses to others in accordance with the Canadian Patent Act under the patents of Licensor, or grounds or part thereof for forfeiture in accordance with the Canadian Patent Act of Licensor's patents; and Licensee agrees and will require its sub-licensees to agree to manufacture in Canada such proportion of their total licensed apparatus sold hereunder as may from time to time be necessary to satisfy the requirements of the Canadian Patent Act in order to prevent the granting of compulsory licenses to others and in order to prevent the forfeiture of Licensor's patents thereunder.

Article VII.

Patent Marking and Trade Marks.

Section 1.

The Licensee will require its sub-licensees to mark on all apparatus sold by them under this license such trade mark, trade name, brand name or identification insignia as the sub-licensee shall have from time to time given notice hereunder to the Licensee being the property of the sub-licensee and duly registered as such in the Patent Office of the Dominion of Canada. Such trade mark, trade or brand name, or identification insignia shall if feasible be etched, stamped or in some permanent form affixed in a conspicuous place upon every such apparatus; and any apparatus not bearing such identification, name or trade mark is not licensed hereunuder.

Section 2.

Licensee agrees to have marked on all licensed apparatus manufactured and sold by Licensee and/or its sub-licensees hereunder the word "Patented" followed by the years of the grants of the patents which are, in the opinion of the Licensee, involved in such apparatus, or such other patent marking as otherwise may be required under the provisions of the Patent Act of the Dominion of Canada.

Article VIII.

Litigation.

Section 1.

The Licensee is authorized, subject to the limitations contained in this agreement, to take the necessary legal steps to restrain and to secure compensation for all infringements of the Licensor's patents coming within the scope of this agreement an dto oppose the revocation of any of said patents or the grant thereunder of compulsory licenses in conflict with the license herein granted, and to that end to bring or defend legal action in its own name, or, with the consent in writing of the Licensor, which consent will not unreasonably be withheld, jointly with the Licensor, whose name may be added as co-plaintiff or co-defendant for such purposes. The Licensee will meet and defray any and all expenses in any such action prosecuted or defended by the Licensee and will fully indemnify the Licensor for any damages, costs and expenses which it may sustain or be called upon to pay by reason of its name being added as a party to such proceeding. All damages, profits or other recoveries obtained from infringers of the said patents within the fields of this license, whether such recoveries concern infringement either before or after the date of this agreement shall belong to the Licensee.

Provided, however, that the Licensor shall be given by the Licensee prompt and full notice of any such proposed action and the Licensor shall have the right if it so desires to participate in any such legal proceedings or the prosecution or defence thereof by its own counsel and to approve of the strategy and procedure adopted, which approval will not be unreasonably withheld, such participation to be at its own expense; in the event that only the rights or interests of the Licensor outside of the license herein granted may be affected, the Licensor shall conduct the said litigation at its own expense. Also, the Licensor shall have the right at its own expense to bring and conduct litigation which it deems necessary to protect its patent situation, subject to the right of the Licensee to approve of the strategy and procedure adopted, which approval will not be unreasonably withheld.

Section 2.

The Licensor agrees that it will co-operate with the Licensee in said enforcement of patents and prevention of unlicensed competition in patented apparatus, including the furnishing of statistical and technical information and other facts relating to such enforcement and prevention; provided that such co-operation shall be at the cost of the Licensee and shall not unreasonably interfere with any of the Licensor's operations.

Article IX.

Engineering Information and Technical Assistance.

From time to time, without charge, the Licensor agrees to give to the Licensee, exclusively for Canada, for distribution to its sub-licensees, all general technical reports, data and information relating to licensed apparatus which are circulated generally to the licensees of the Licensor in the United States. In addition, upon the termination of the present war, the Licensor agrees to make available (for Canada) exclusively to the Licensee and its sub-licensees as the Licensee may designate engineering service of the type customarily made available by Licensor to its United States Licensees upon the following basis:

> Licensor will provide Licensee or its sub-licensees, without charge, up to one hundred (100) man hours of engineering assistance for each Five Thousand Dollars ($5,000) in royalties received per year and will provide additional engineering assistance as available at the rate of Thirteen Dollars and Fifty cents ($13.50) per man hour, settlement to be made after the close of each twelve month period ending December 31st.

Article X.

Prosecution of Patent Applications.

The Licensor agrees that as soon as it is reasonably possible after the execution of this agreement it will transmit to the Licensee a statement of all patents and applications for patents of the Dominion of Canada now owned or controlled by Licensor or under which Licensor has the right to grant licenses, under which licenses will pass to the Licensee under this agreement, and that in every case hereafter as soon as is reasonably possible after the filing by it or on its behalf of a U. S. patent application (if licenses under a corresponding Canadian application would pass to the Licensee under this agreement), it will transmit promptly a copy of such application to the Licensee with or without claims as Licensor may elect. In the event an application is filed by the Licensor in the U. S. Patent Office and, if for good and sufficient reasons a corresponding Canadian application is not filed within nine months after the filing of the United States application, the Licensee shall have the right of filing said Canadian application at its own expense, in which event the Licensor will authorize the issuance of the patent in the name of the Licensee and will supply Licensee with all necessary documents to enable Licensee to obtain and maintain patent protection thereon.

The Licensor, during the life of this agreement, will prosecute in the Canadian Patent Office at its own expense the patent applications filed by it and coming within the scope of this agreement to the same extent and with the same care as is exercised with regard to other appliactions owned by the Licensor.

Article XI.

Communication of Improvements and Patent Information.

(a) The Licensor shall from time to time forthwith and fully communicate and disclose to the Licensee any improvement or improved practice which it now owns or uses or which it may in the future make, develop or acquire on or in connection with or in any way relating to any of the inventions covered by any of the patents, the subject of or included under this agreement and shall without charge permit the Licensee, during the continuance in force of this agreement, by itself or its sub-licensees, to make, construct, use and vend the same throughout the Dominion of Canada.

(b) Nothing contained in this agreement shall require or permit the furnishing of any information or its use, or the doing of any act, by either party for itself or for or through others, in such manner as to violate, contravene or otherwise cause incurrence of penalties under any law, regulation, order, rule of, or condition imposed by a governmental authority acting in the United States or Canada and having jurisdiction or control of the subject matter involved or of a party hereto. Each of the parties hereto agrees to conform to, and to cause others deriving through it to conform to, such restrictions on the use of information and facilities which the party furnishing the same shall reasonably impose to save itself, and those in privity with it, harmless under any such law, regulation, order, rule or condition. The parties will co-operate in obtaining from the governmental authorities concerned lawful release or exemptions from restrictions imposed by such laws, regulations, orders, rules or conditions, to permit the exercise of the rights and the performance of the obligations provided in this agreement.

(c) Licensee undertakes that it will not transmit or disclose outside the Dominion of Canada information relative to patent applications forwarded to Licensee and will use its best efforts to similarly enjoin its sub-licensees.

Article XII.

Release for Past Infringement.

The Licensor hereby releases the Licensee and its sublicensees, its and their vendees from all or any claims arising out of any infringement of any of the letters patent of the Dominion of Canada under which a license is granted or agreed to be granted by this agreement, which infringement may have taken place prior to the date of this agreement to the extent that the act or acts constituting such infringement would have been licensed had this agreement been in force at the time of the occurrence of such act or acts.

Article XIII.

Notices.

Any notice hereunder must be in writing and may be given by registered letter and shall be deemed to have been given when such registered letter, properly addressed, is mailed; if given otherwise than by registered letter, it shall be deemed to have been given when delivered. If such notice is to be given to Licensor, it shall be addressed to Licensor at its office, 821 National Press Building, Washington, D. C.; if given to Licensee, it shall be addressed to Licensee at 159 Bay Street, Toronto, Ontario. Either party hereto may at any time by thirty (30) days' notice to the other designate any other address in place of those above given.

Article XIV.

Term & Termination.

Section 1.

Unless sooner terminated as herein provided, this agreement shall continue in force for a period of ten (10) years from the effective date hereof and, if Licensee shall have fully and faithfully performed all its obligations hereunder, thereafter for an additional period of ten (10) years, unless Licensee shall have given six months' notice to the Licensor prior to the end of the first ten-year period of its election to terminate this agreement.

Provided, however, with respect to patents owned or controlled by the Licensor during the period or periods of the continuance of this agreement, the license herein granted to Licensee and, at Licensee's option, the sub-licenses granted hereunder by Licensee, shall continue in force in accordance with the terms of this agreement until the ends of the terms of said patents with respect to apparatus which at the termination of said period or periods have been manufactured or are in process of manufacture or for which firm orders have been received prior to said termination.

Section 2.

Licensor, at its option, may terminate this agreement (a) in case at the end of any twelve (12) months' period ending December 31st of any year, the royalty payments hereunder accruing to Licensor for that period are less than Fifteen Thousand Dollars ($15,000) and unless within thirty (30) days after the end of the accounting period provided for in Article V, Section 1, the Licensee of its own motion pays to Licensor an additional sum of money equal to the difference between the accrued royalties and Fifteen Thousand Dollars ($15,000); (b) on the failure of Licensee to render statements, to pay royalties or to make any other payments due under this agreement; (c) or Licensee's failure to comply with any other provision of this agreement; (d) at any time upon or during the bankruptcy, receivership or insolvency of Licensee or the appointment of a receiver or trustee for its property, or upon or after an assignment for the benefit of creditors. Any such termination by Licensor shall be by notice in writing to Licensee, stating the reason for the termination and, unless such default or failure has been rectified in the meantime, said termination shall take effect thirty (30) days after such notice is given.

Section 3.

No termination of this agreement for any cause shall release Licensee from any of the liabilities hereunder accruing to Iicensor or rescind anything done or any payment or other consideration made or given to either party hereunder prior to the time such termination becomes effective. No failure on the part of Licensor to exercise any right of termination hereunder shall be construed to prejudice any subsequent right of termination.

Section 4.

Notwithstanding anything to the contrary herein contained, Licensor hereby waives the provision as provided in this Article XIV relating to minimum royalty payments for the period during which manufacture of the apparatus licensed hereunder is controlled by governmental action to such an extent that sales of licensed apparatus have not been made to the extent necessary to entitle Licensor to the minimum royalties otherwise payable hereunder.

Article XV.

Successors and Assigns.

Neither this agreement nor the licenses, rights or privileges herein granted shall be directly or indirectly, by operation of law or otherwise, assigned, transferred, divided or shared by Licensee (except with its sub-licensees) with any person, firm of corporation whatsoever, without the written consent of the Licensor but such consent shall not be unreasonably withheld. This agreement shall inure to the benefit of the successors or assigns of the Licensor, but neither the agreement nor the licenses, rights or privileges herein granted shall inure to the benefit of the successors, assigns or any legal representatives of the Licensee without the written consent of the Licensor having first been obtained, but such consent shall not unreasonably be withheld.

Article XVI.

This agreement is to be governed by and interpreted in accordance with the laws of the Dominion of Canada.

Article XVII.

The parties hereto hereby agree to execute and deliver with reasonable promptness such other instruments and perform all such acts as may be reasonably necessary for carrying out the provisions and purposes of this agreement.

In Witness Whereof, the parties hereto have caused this instrument to be executed in duplicate by their proper officers thereunto duly authorized and their corporate seals to be hereto affixed as of the day and year first above written.

Hazeltine Corporation,
(sgd) Jack Binns,
President.

Witness:

(sgd) Laurence B. Dodds,
Assistant Secretary.

Canadian Radio Patents Limited,
(sgd) R. M. Brophy,
President.

Witness:

(sgd) J. C. Macfarlane,
Secretary.

DEFENDANT'S EXHIBIT NO. 118-A.

Canadian Radio Patents Limited
200 St. Clair Ave. West
Toronto

June 26th, 1957

Mr. J. Binns
Hazeltine Corporation
59-25 Little Neck Parkway
Little Neck 62, N. Y.

Dear Mr. Binns:

We enclose herewith our cheque in the amount of twenty-three thousand, one hundred eighty-one dollars and eight cents ($23,181.08) covering royalties due Hazeltine Corporation totalling $27,271.85 less the 15% Canadian Government withholding tax.

This payment is in accordance with the Hazeltine-Canadian Radio Patents Limited License Agreement dated July 2, 1943, and the Sealandair-Canadian Radio Patents Limited patent right assignment dated January 10, 1956, and covers the period January 1st to March 31st, 1957.

Payment in the amount of $4,090.77 covering the 15% withholding tax has been forwarded to the Receiver General of Canada.

Attached is a statement of account showing the calculation of royalties payable, tax withheld and payment enclosed.

Yours very truly,

B. McConnell,
President.

BM/nb

Encls.

Defendant's Exhibit No. 118A.

Canadian Radio Patents Limited

Statement of Account at March 31, 1957.
Hazeltine Corporation
59-25 Little Neck Parkway
Little Neck 62, N. Y.

Royalties payable on sale of Radio and Television receivers.	
Shareholders and RCA Victor Co. Ltd.	
141,401 units at 10¢ per unit	$14,140.10
337 units at 5¢ per unit	16.85
C. R. P. L. licensees	
124,899 units at 10¢ per unit	12,489.90
One quarter of the $25,000.00 annual maixmum royalty in accordance with the Sealandair—CRPL patent right assignment	625.00
Total Royalties due Hazeltine Corporation	$27,371.85
Less 15% Canadian Government withholding Tax	4,090.77
Payment enclosed herewith	$23,181.08

DEFENDANT'S EXHIBIT NO. 118-B.

Canadian Radio Patents Limited
200 St. Clair Ave. West
Toronto

October 21st, 1957

Mr. L. B. Dodds
Hazeltine Corporation
59-25 Little Neck Parkway
Little Neck 62, N. Y.

Dear Mr. Dodds:

We enclose herewith our cheque in the amount of seventeen thousand one hundred ninety-three dollars and ninety-two cents ($17,193.92) covering the balance of royalties due Hazeltine Corporation for the year 1957.

Attached is a statement of account for the year 1957 showing royalties payable, previous payments, tax withheld and payment enclosed.

Yours very truly,

B. McConnell,
President.

BM/nb

Encls.

Statement of Account.

Year 1957.

Maximum Royalty for year 1957.

Hazeltine—CRPL License Agreement	$45,000.00	
Sealandair—CRPL Assignment	2,500.00	$47,500.00
Less Payments		
June 26, 1957 to Hazeltine Corp. by cheque #1110	$23,181.08	
June 26, 1957 to Receiver General of Canada by cheque 1111	4,090.77	27,271.85
Balance of Royalties due Hazeltine Corp. for the year 1957		$20,228.15
Less 15% Canadian Government Tax withheld		3,034.23
		$17,193.92

Payment enclosed herewith

DEFENDANT'S EXHIBIT NO. 118-C.

Canadian Radio Patents Limited
200 St. Clair Ave. West
Toronto

June 8, 1959

Mr. L. B. Dodds, Vice President,
Hazeltine Corporation,
59-25 Little Neck Parkway,
Little Neck 62, New York.

Dear Mr. Dodds:

We enclose here CRPL statement of account and cheque payable to Hazeltine Corporation in the amount of $13,415.13 covering royalties payable for the three months ending March 31, 1959.

Our cheque in the amount of $2,367.37 covering tax withheld at source is being forwarded to the Receiver General of Canada.

Please acknowledge receipt of the enclosed cheque and statement.

Yours very truly,

D. H. Gareau,
Secretary-Treasurer.

DHG:jm

Canadian Radio Patents Limited.

Statement of Account as at March 31, 1959

With

Hazeltine Corporation

Royalties payable on sale of radio and television receivers	
Shareholders and RCA Victor Co. Ltd.	
109,771 units at 10 cents per set	$10,977.10
24 units at 5 cents per set	1.20
CRPL Licensees	
41,792 units at 10 cents per set	4,179.20
One quarter of the $2,500.00 annual maximum royalty in accordance with the Sealandair-CRPL patent right agreement	625.00
	$15,782.50
Less: 15% Canadian Government tax withheld	2,367.37
Payment enclosed herewith	$13,415.13

DEFENDANT'S EXHIBIT NO. 119.

Hazeltine Corporation
Little Neck 62, New York

Cable
Neutrodyne

Faculty 1-2300
Teletype-NY 4-791

March 19, 1963

Canadian Radio Patents Limited
200 St. Clair Ave. West
Toronto
Ontario, Canada

Re: Patent License Agreement, dated July 2, 1943 between Hazeltine Corporation and Canadian Radio Patents Limited;

Patent License Agreement, dated July 2, 1943 between Hazeltine Corporation and Sealandair Patents Limited (assigned to Canadian Radio Patents Limited).

Attention of Mr. B. McConnell, President.

Gentlemen:

This letter is to record a further agreement between our two Companies that the termination date of the above Agreements is hereby extended to December 31, 1963.

Would you please indicate your acceptance of this understanding by signing below and returning the duplicate enclosed copy to us.

Very truly yours,
Hazeltine Corporation,
By W. H. McFarland,
Executive Vice President,

(Corporate Seal)

Accepted:
Canadian Radio Patents Limited,
By B. McConnell,
President,

Jennifer (Illegible),
Secretary-Treasurer.

(Corporate Seal)

DEFENDANT'S EXHIBIT NO. 120.

Memorandum of Agreement made in duplicate this .... day of .... A. D. 1927:

By and Between:

Canadian Radio Patents Limited, a Corporation organized under the laws of the Dominion of Canada, and having its head office and principal place of business at the City of Toronto, in the Province of Ontario, hereinafter called the "Licensor" of the First Part; and ....

.... of the Second Part:

Whereas the Licensor is presently a Licensee for the purpose hereinafter set forth, with power to grant sub-licenses under the Canadian patents set forth in the Schedule attached hereto, and has agreed to grant to the Licensee a non-exclusive license to manufacture and sell thereunder, radio receiving sets to be used only for the non-commercial reception of public radio telephone broadcasting:

1. Now Therefore This Agreement Witnesseth that for and in consideration of the sum of Ten Thousand Dollars ($10,000.00) of lawful money of Canada paid upon execution hereof by the Licensee to the Licensor, receipt whereof is hereby acknowledged, and of the covenants and agreements contained herein the Licensor hereby grants to the Licensee, subject to the terms and conditions and to the performance of the obligations hereinafter set forth, a non-exclusive license under the Canadian patents set out in the Schedule attached hereto, during the full term of the said patents, and all re-issue of extensions thereof, to manufacture and sell radio receiving sets to be used only for the non-commercial reception of public radio telephone broadcasting:

2. The Licensee covenants with the Licensor to pay to the Licensor a royalty of ten per cent (10%) on the invoice price of all radio receiving sets as sold by it which embody

any of the inventions described in any of the said patents; such royalty to be payable quarterly on the fifteenth days of January, April, July and October in each year, commencing with the 15th day of April, 1927, covering in each case the three months period ending on the first day of the month referred to.

3. The Licensee shall keep faithful and true account of all radio receiving sets sold by it and of the invoice price thereof, and for the purpose of determining the amount of royalty payable from time to time, the Licensor shall have the right to employ a chartered accountant to examine the books of the Licensee, and the Licensee shall give to any such chartered accountant full access to all books and papers which the said accountant shall require to inspect for the said purpose:

4. The license hereby granted is assignable by the Licensee only to its successors or assigns, of substantially the entire good will and business of the said Licensee, but is in all other respects personal and non-transferable:

5. The Licensee shall mark all radio receiving sets sold or offered for sale by it in the manner required by the provisions of the Patent Act, and by affixing thereto a notice reading—"Licensed by Canadian Radio Patents Limited".

6. In the event the Licensee shall fail to pay to the Licensor the royalties referred to in the preceding paragraphs, or shall otherwise fail to observe the covenants herein contained, or in the event that the Licensee shall become bankrupt or insolvent, or if a receiver or liquidator shall be appointed to administer its affairs, the Licensor may, at its option and without prejudice to any of its other legal and equitable rights and remedies under this Agreement, by thirty days notice in writing particularly specifying the breach, terminate the license herein given or granted, or of the rights of the Licensee hereunder, unless

the Licensee within such period of thirty days shall have rectified each breach; in which case this license contract shall continue as though no such notice had been given. The deposit in the registered mails of a postpaid envelope addressed to the last known Post Office address of the Licensee, and containing any such notice, shall constitute due and sufficient service of such notice as to the date of such deposit.

7. Unless this Licensee Contract shall terminate as provided in the foregoing section, the license hereby granted shall extend and continue throughout the term of the herein referred to Canadian Letters Patent latest in date, and any re-issue or extension thereof, under which the Licensee is herein licensed. The termination of this License Contract for any reason whatsoever shall not relieve the Licensee of any obligations due to the Licensor at the date of such termination.

8. Should the license fees payable hereunder in any calendar year amount to less than Ten Thousand Dollars ($10,000.00) and should the Licensee continue to refuse or fail to pay to the Licensor the difference between the license fees so payable and the sum of Ten Thousand Dollars ($10,000.00) the Licensor may after ten days notice in writing to the Licensee demanding payment of such difference, cancel this license but without discharging the Licensee from its obligations to pay the license fees then payable.

9. The Licensee shall not import or cause to be imported directly or indirectly, into the Dominion of Canada, radio receiving sets manufactured or sold under this license during any one calendar year having an invoice price (including freight and duty) in the aggregate or more than One Hundred Thousand Dollars ($100,000.00).

10. The term invoice price used herein when applied

to radio receiving sets imported into Canada shall include customs duty and freight to the point of entry into Canada.

In Witness Whereof the Parties Have Signed.

Signed, Sealed & Delivered
In the presence of:..

Canadian Radio Patents Limited,

....
President.

....
Secretary.

Schedule.

Canadian Patents
of

Canadian General Electric Company, Limited.

1. Rice	241138
2. Alexanderson	208583
3. Langmuir	244847

Western Electric Company, Incorporated.

1. Mathes	183275
2. Mathes	209777
3. Arnold	213999
4. Hartley	174690
5. Nichols	183276

Canadian Westinghouse Company, Limited.

1. Armstrong	216321

Canadian Marconi Company.

1. Round	179703
2. Franklin	187793

Standard Radio Mfg. Corporation Limited.

1.	De Forest	159794
2.	De Forest	169332
3.	De Forest	174361
4.	De Forest	218235
5.	De Forest	218468
6.	De Forest	218238
7.	De Forest	218242
8.	De Forest	218473

DEFENDANT'S EXHIBIT NO. 121.

Canadian Radio Patents Limited

and

....

License Agreement.

Radio Receiving Sets, Canada.

Memorandum of License Agreement made in duplicate this .... day of ...., A. D., 1929.

Between:

Canadian Radio Patents Limited,

a corporation organized under the laws of the Dominion of Canada, and having its Head Office at the City of Toronto, in the Province of Ontario, hereinafter called the "Licensor," .... of the First Part:

—and—

....

a corporation organized under the laws of .... and having its Head Office at the city of .... in the Province of ...., hereinafter called the "Licensee," .... of the Second Part:

Whereas the Licensor represents that it owns or has the right to grant licenses under various Letters Patent of the

Dominion of Canada, set forth in Schedule "A" hereto annexed, relating to or useful in the manufacture of radio receiving sets, as hereinafter defined.

And Whereas the Licensee desires to make lawful use of some or all of the inventions covered by said Canadian Letters Patent, and to that end desires to acquire the licenses herein expressed.

Now Therefore in consideration of the premises and of the license granted herein by the Licensor to the Licensee and of the mutual covenants herein contained it is agreed as follows:

1. The Licensor hereby grants to the Licensee, for the terms of this agreement, under all of the Letters Patent of the Dominion of Canada set forth in Schedule "A" attached hereto, but only upon the terms and conditions and for the uses hereinafter specified, a personal indivisible, non-transferable and non-exclusive license to manufacture complete radio receiving sets, (including power supply units and power amplifier units when used as integral parts of said sets, all as herein defined), at its factory located at .... in the........................ of ...., and not elsewhere without the written permission of the Licensor; and to sell only in the Dominion of Canada complete radio receiving sets so manufactured, but only for the non-commercial reception of public radio telephone broadcasting. The License hereby granted does not include any license to sell any part or parts of a radio receiving set as distinguished from the complete set or any machine, appliance or material or any part thereof.

The Licensor has no license under the Canadian Letters Patent set forth in Schedule "A" in the field of electrical phonograph reproduction or in the field of production, projection or reception, either directly or by electric current waves or impulses, of still or motion pictures or of motion pictures synchronized with sound recorded on films or grooved records, its license and the license herein granted being only for the manufacture, use and sale of radio receiving sets to be used only for the non-commercial reception of public radio telephone broadcasting.

The licensor does not own or control or possess rights under any patents for the manufacture and/or sale of vacuum tubes, and nothing herein contained shall be construed as conferring upon the Licensee, either expressly or by implication, estoppel or otherwise, any license to manufacture or sell any apparatus or article except in accordance with the express provisions of this agreement.

The Licensor has no patents or patent rights or licenses under patents whatsoever in foreign countries, and nothing herein contained shall be construed as conferring upon the Licensee, either expressly or by implication, estoppel or otherwise, any license under any patents of countries other than the Dominion of Canada.

2. For the purpose of this agreement the following terms are defined, namely:—

(a) "Radio Receiving Set"—means a radio receiver embodying one or more input circuits tuned or which can be tuned to substantial resonance with the radio frequency of the signal to be received, or coupled to a circuit or circuits so tuned or which can be so tuned; one or more devices for relaying or for amplifying such signals at the said radio frequency; one or more output circuits tuned or which can be tuned to substantial resonance with the radio frequency of the signal to be received or coupled to a circuit or circuits so tuned or which can be so tuned; a single detecting device for directly converting the signals so received and so relayed or amplified from said radio frequency into audio frequency signal currents, and if employed, one or more devices with their associated circuits for amplifying such audio frequency current. In any even the term "Radio Receiving Set" shall not for the purpose of this agreement include the so-called superhetrodyne or super-regenerative receivers or parts therefor.

The said term "Radio Receiving Set" shall be understood to cover the whole of the component parts of the complete radio receiving apparatus as sold to the using public in Canada, that is to say, as including a case or cabinet containing the wiring and electrical devices and including power supply units and power amplifier units as herein defined if and when used as an integral part of said radio receiving set; and any other device which is normally built in or forms part of said radio receiving set as sold to the using public in Canada, but not as including the renewable batteries or tubes.

(b) "Power Supply Unit"—means apparatus adapted to take not exceeding 300 watts of electric current from an ordinary electrical power distributing system (such as an electric filter circuit) and to transform, rectify, electrically filter and/or otherwise convert or modify the current so received and to deliver one or more electric currents having such characteristics as to be suitable for operating a radio receiving set, power amplified unit and/or loud speaker.

(c) "Power Amplifier Unit"—means apparatus adapted to receive signal energy from the output of a radio receiving set and to deliver electric currents varying in accordance with the received signals, but of greater energy, suitable for the operation of a loud speaker.

(d) "Public Radio Telephone Broadcasting"—means the broadcasting by radio telephony of sounds of music, news, speeches, sermons, advertising and entertainment, educational and similar matter for reception by the general public.

(e) "Non-commercial Reception"—means and is limited to the reception for private entertainment and instruction in homes and also in other places where no charge is made directly or indirectly for admission or for the privilege of listening.

(f) "Superhetrodyne"—means utilizing the conversion of incoming signal modulated high-frequency electrical oscillations, by combination with other high-frequency electrical oscillations, into signal modulated oscillations of a different frequency lower than said incoming oscillations but in the ultra audible range, amplifying said last mentioned oscillations and detecting the signal modulations thereof.

(g) "Super-regenerative" means the method of amplifying oscillatory eletrical energy in which the output of a repeater is regeneratively associated with the input therof to the extent of the regenerative effect being periodically varied independently of the variations in the energy to be amplied, in such manner as to increase amplification due to said repeater.

(h) The term "Chassis" or "Chassis Portion" shall be understood to cover the whole of the radio receiving set, including all electrical and wiring devices, power amplifier and power supply equipment, if such equipment forms an integral part of the said receiving set, but not including the cabinet, renewable batteries or tubes.

3. The Licensee hereby agrees to pay to the Licensor a royalty of ten per cent (10%) of the Licensee's invoice price, as hereinafter defined (before cash discount, freight, royalty or advertising allowances or similar deductions are made), of the chassis portion of all radio receiving sets licensed and sold under this agreement, plus ten per cent (10%) of a fixed nominal invoice valuation of Ten Dollars ($10.00) for the cabinet portion of said radio receiving set as sold to the using public in Canada.

For the purpose of assessing royalties, the invoice price of the chassis portion of a complete radio receiving set shall be ascertained by taking that proportion of the invoice price of the complete radio receiving set as sold to the using public in Canada, which the manufacturing costs of the chassis, including the usual overhead burden and other standard charges, bears to the total manufacturing cost of the complete radio receiving set including overhead burden and other standard charges as herein defined. The invoice price of the complete radio receiving set, for purposes of royalty, as herein referred to, shall not be less than the "list" or generally advertised Canadian retail selling price of the complete radio receiving set, less the standard Canadian domestic wholesalers' discount allowed by the Licensee, which discount for purposes of said royalty shall not be greater than 50-10-5%.

In computing royalty payments in respect of licensed apparatus hereunder there shall be deducted from such invoice price of said radio receiving set, (if originally included in said invoice price), the Licensee's invoice price of the vacuum tubes which have been purchased by the Licensee for sale with such said radio receiving set. In no case, however, shall the invoice price of vacuum tubes so deducted be greater than the standard list price of such vacuum tubes less the Licensee's standard or recognized discount to domestic wholesale distributors on complete radio receiving sets, if the Licensee shall sell such apparatus to distributors, or Licensee's discount on complete radio receiving sets to dealers, if the Licensee shall sell such apparatus to dealers.

In order to insure to the Licensor the full royalty payments contemplated hereunder, the Licensee covenants that in the event that any radio receiving set licensed hereunder shall be sold either—(1) to a corporation, firm or association which, or individual who, shall own a controlling interest in the Licensee by stock ownership or otherwise, or (2) to a corporation, firm or association in which the Licensee or its stock-holders shall own a controlling interest by stock ownership or otherwise, the royalty to be paid hereunder in respect of such radio receiving set shall be based upon the invoice price at which such purchaser re-sells said radio receiving set, rather than upon the invoice price of the Licensee.

4. The Licensee within twenty days (20) after and as of the first day of each month during the term of this agreement shall furnish the Licensor with a written statement, in form satisfactory to the Licensor, specifying the total number and invoice price thereof of radio receiving sets sold under this agreement by the Licensee during the preceding month, or that part of the preceding month during which this agreemnt shall have been in force, also specifying the Licensee's invoice prices with respect to all types of said radio receiving sets, the type or model number and the trade or brand name, and also specifying the vacuum tubes and other apparatus sold in such licensed set, and the deduction to be made from the Licensee's invoice price in respect thereof in accordance with the provisions of Article 3 hereof. A similar statement shall be rendered within twenty days (20) after and as of the date of the termination of this agreement covering the period from the end of the preceding month to the date of the termination of this agreement. The royalty prescribed herein shall be due and payable on the said twentieth day of each month during the term of this agreement, and on the twentieth day following the termination of this license upon all such radio receiving sets sold by the Licensee during the respective period covered by the statement above mentioned.

The amount required to bring the aggregate royalty payment for any calendar year, or part thereof that this agreement shall be in force, upon the amount of the minimum royalty payable for such year or part thereof that this agreement shall be in force, up to the amount of the minimum royalty payable for such year or part of year as in Clause Eight hereof provided, shall be due and payable on the tenth day of January next following such calendar year or part of year, or as the case may be, on the tenth day following the date of the termination of this agreement.

Radio Receiving Sets shall be deemed to be sold within the meaning of this agreement when the radio receiving set has been billed to any vendee, consignee or user, or if not billed when it has been shipped, delivered or consigned to any vendee, consignee or user.

5. The Licensee shall keep full, true and accurate books of account and records of all business done under the license granted by this agreement, in sufficient detail to enable the Licensor to ascertain what license fees or royalties are due hereunder. The said books and records shall particularly show the number by types of sets made and sold by the Licensee, and the Licensee's invoice price thereon for each type or model (before cash discounts, freight, royalty, advertising allowances or similar deductions have been made). The Licensee's said books of account and records, including information or records concerning cost of materials and manufacturing data shall be open to the inspection of the Licensor or its duly authorized representative at all times, in order to substantiate cost percentages or invoice prices used by the Licensee in computing royalty payments hereunder, and generally the Licensee shall allow such investigations of the Licensee's business and operation in connection with this agreement as may be necessary to determine the accuracy of the Licensee's accounts, records, reports and payments hereunder.

6. The Licensee shall affix in a conspicuous place on all radio receiving sets manufactured and sold by the Licensee under the terms of this agreement, a license notice bearing the corporate name of the Licensee and the inscription, namely:—"Licensed by Canadian Radio Patents Limited only for the non-commercial reception of public radio telephone broadcasting; Patented 1914, 1916, 1917, 1918 1919, 1920, 1921, 1922, 1924, 1925, 1926," etc., or as otherwise may be required under the provisions of the Patent Act of the Dominion of Canada.

The Licensee shall, unless otherwise permitted by the Licensor, mark all radio receiving sets manufactured and sold by the Licensee under the terms of this agreement with its own trade-name or trade-mark, and will also observe any reasonable requirements which the Licensor, by notice in writing to the Licensee, may propose for the purpose of preventing the use of said sets otherwise than in accordance with the licenses hereby granted.

All said markings and inscriptions required herein shall be of a prominent, fixed and permanent character displayed in such manner that dealers and wholesale and retail purchasers and users may see the same at the time of purchase and sale, and the Licensee's circulars, price lists and catalogues referring to said radio receiving sets shall also contain the same marking inscriptions or notices.

7. In the event of failure by the Licensee at any time during the continuance in force of this agreement, to render any of the statements called for herein upon any of the prescribed dates or to pay all of the royalties required hereunder when due or to comply with any of the other obligations of this Agreement, or in the event that the Licensee shall make an assignment for the benefit of its creditors, or voluntarily or involuntarily be declared a bankrupt, or if a receiver or liquidator shall be appointed to administer its affairs, the Licensor may at its option, and without prejudice to any of its other legal and equitable rights and remedies under this Agreement, by ten days' notice in writing particularly specifying the breach, terminate the license herein given or granted, and the rights of the Licensee hereunder, unless the Licensee within the said period of ten days shall rectify such breach, in which case this License Agreement shall continue as though no such notice had been given. The deposit in the post-office of a registered post-paid envelope addressed to the last known place of business of the Licensee and containing any such notice, shall constitute due and sufficient service or delivery

of such notice as of the date of such deposit. No such cancellation shall release the Licensee from any of the liability accruing to the Licensor hereunder prior to the time such cancellation becomes effective. No failure on the part of the Licensor to exercise its rights of cancellation hereunder for any one or more defaults shall be construed to prejudice its rights of cancellation for any subsequent default.

8. The Licensee further agrees to pay to the Licensor, for each and every calendar year during the time that this agreement shall remain in force, a minimum royalty of Ten Thousand Dollars ($10,000.00) per annum. In case this agreement shall be in force for only a part of any calendar year, the minimum royalty for each year and the amount of sales to which the minimum royalty applies shall be prorated to cover such part of such year as this Agreement shall be in force. Should the license fee payable hereunder for any calendar year amount to less than the said Ten Thousand Dollars ($10,000.00) the Licensor, notwithstanding anything in this agreement to the contrary, may upon failure of the Licensee to pay the difference between the said license fee as payable and the said minimum royalty required, cancel this license by ten days' notice in writing to the Licensee, but such cancellation shall not release the Licensee from its obligations to pay the royalty on the sales of radio receiving sets manufactured by it prior to the time of cancellation.

9. The Licensee covenants that it will, within the scope of this agreement, fully comply with the provisions of the Patent Act of the Dominion of Canada requiring the manufacture of said radio receiving sets mainly within the Dominion of Canada for the satisfaction of the reasonable requirements of the public; but in no event whatsoever shall the Licensee during any calendar year import or cause to be imported directly or indirectly into the Dominion of Canada, radio receiving sets, as herein defined, having an aggregate invoice price of more than $200,000.

The term "Invoice Price" herein when applied to radio receiving sets which may be imported into Canada shall include custom duties, and freight to the point of clearance within Canada. In any event the price of said imported radio receiving sets upon which royalties shall be calculated, shall be not less than the Licensee's standard price to Canadian domestic wholesalers laid down in Canada, and not less than 50-10-5% off the list or advertised retail selling price to the consumer in Canada of the complete radio receiving set as defined in Article 2, Clause A, Paragraph 2 hereof.

10. Until written notice of change of address is served by either party upon the other, any notice or request with reference to the subject matter of this agreement shall be deemed to have been sufficiently given when, if given to the Licensor, it shall be addressed to Canadian Radio Patents Limited, at its office, 212 King Street West, in the City of Toronto, and when, if given to the Licensee it shall be addressed to the Licensee at its office, and in either case sent by registered mail.

11. Neither this Agreement or any of its benefits shall be directly or indirectly assigned, transferred, divided or shared by the Licensee with any person, firm or corporation whatsoever, without the written consent of the Licensor. This Agreement and the License hereby granted shall terminate unless otherwise agreed in writing by the Licensor, upon any attempt by the Licensee to assign the same or upon the acquisition directly or indirectly of a controlling interest by stock ownership or otherwise in the Licensee by any other corporation, firm or person not holding a like license for radio receiving sets from the Licensor. The Licensee agrees to permit the authorized representatives of the Licensor to examine the stock register books of the Licensee at any time upon reasonable notice. This Agreement shall enure to the benefit of the successors and assigns

of the Licensor, but shall not enure to the benefits of the successors and assigns or legal representatives of the Licensee, without the written consent of the Licensor.

12. Unless sooner terminated as hereinabove provided, this Agreement shall continue in force to the end of the term of the latest patent now or hereinafter included in this license, insofar as concerns the patent or patents then in force. The termination of this license for any reason whatsoever shall not relieve the Licensee from any of its liabilities accruing prior to such termination. The expression "term of this agreement" or similar expression, wherever used herein shall be deemed to be the period during which this Agreement shall remain in force as herein provided.

13. The License Agreement between the parties hereto, or their predecessors in title, dated .... A. D. 192........, is hereby cancelled and terminated.

14. This License Agreement, except as otherwise provided, shall be deemed to have been in full force and effect as of and from the First Day of April, A. D. 1929.

In Witness Whereof the parties hereto have caused these presents to be executed by their proper officers thereunder duly authorized, and their corporate seal to be hereunto affixed as of the day and year first above written.

Witness:

....,
President,

....,
Secretary,

....,

Witness:

....,
President,

....,
Secretary.

SCHEDULE "A".

RADIO RECEIVING SET LICENSE, CANADA.

A. Patents owned by Canadian General Electric Company, Limited.

1. 241,138	June 24, 1924	Rice	Amplification of Small Currents.
2. 208,583	Feb. 15, 1921	Alexanderson	Selective Tuning Systems.
3. 244,847	Nov. 25, 1924	Langmuir	System of Amplifying Variable Currents.

Power Supply and Amplifier Units.

1. 220,741	July 11, 1922	Hull	Method of and means for obtaining Constant Direct Current Potentials.
2. 214,464	Nov. 29, 1921	White	Circuit connections of Electron Discharge Apparatus.
3. 198,076	Mar. 9, 1920	Langmuir	Method of and means for controlling Electric Current.
4. 263,962	Aug. 31, 1926	Rice & Kellogg	System for Amplifying.
5. 196,145	Jan. 13, 1920	Langmuir	Amplification of Variable Currents.

B. Patents owned by Western Electric Company Incorporated and Northern Electric Company Limited.

1. 209,777	Mar. 22, 1921	Mathes	Vacuum Tube Filament and Plate Compensation.
2. 213,999	Oct. 25, 1921	Arnold	Gaseous Repeaters.
3. 174,690	Jan. 23, 1917	Hartley	Electric Circuits.
4. 183,276	Mar. 26, 1918	Nichols	Vacuum Tubes Circuits.
5. 183,275	Mar. 26, 1918	Mathes	Circuits for Electric Discharge Devices.

Power Supply and Amplifier Units.

1. 218,067	April 25, 1922	Arnold	Thermionic Amplifier.
2. 208,862	Feb. 22, 1921	Scriven	Vacuum Tube Apparatus.
3. 183,275	Mar. 26, 1918	Mathes	Circuits for Electric Discharge Devices.
4. 188,399	Jan. 21, 1919	Heising	Circuit Connections of Electron Discharge Apparatus.

C. Patents owned by Canadian Westinghouse Company Limited.

216,321	Mar. 7, 1922	Armstrong	Wireless Receiving System.

D. Patents owned by Canadian Marconi Company.

1. 179,703	Oct. 9, 1917	Round	Continuous Electrical Oscillations.
2. 187,793	Dec. 3, 1918	Franklin	Receivers for Wireless Telephony.

E. Patents owned by Rogers Majestic Corporation Limited (formerly Standard Radio Manufacturing Corporation Limited).

1. 159,794	Dec. 29, 1914	DeForest	Amplifying and Reproducing Sounds.
2. 169,332	May 9, 1916	DeForest	Wireless Receiving Systems.
3. 218,235	May 2, 1922	DeForest	Radio Signalling Systems.
4. 174,361	Jan. 9, 1917	DeForest	Wireless Telegraph and Telephone Systems.
5. 218,468	May 9, 1922	DeForest	Selective Audion Amplifier.
6. 218,238	May 2, 1922	Logwood	Oscillation Generator Systems.
7. 218,242	May 2, 1922	DeForest	Amplifying Pulsating Electric Currents.
8. 218,473	May 9, 1922	DeForest	Audion Circuit.

Power Supply and Amplifier Units.

1. 181,500	Jan. 8, 1918	DeForest	Telephone and Telegraph Systems.

Patent owned by Canadian Radio Patents Limited.

251,845	July 21, 1925	Cardwell	Variable Air Condensers.

DEFENDANT'S EXHIBIT NO. 122.

Brownlee X-7d

MEMORANDUM OF PATENT LICENSE AGREEMENT made in duplicate this day of , A.D. 1928.

BETWEEN:

CANADIAN RADIO PATENTS LIMITED,

a corporation organized under the laws of the Dominion of Canada and having its Head Office and principal place of business at [illegible] Bay Street, in the City of Toronto, in the Province of Ontario, hereinafter called the "Licensor",

OF THE FIRST PART;

—and

a corporation also organized under the laws of the Dominion of Canada and having its Head Office and principal place of business at in the City of , in the Province of hereinafter called the "Licensee",

OF THE SECOND PART

WHEREAS the Licensor represents that it owns or controls or otherwise has the right to grant licenses under various letters patent of the Dominion of Canada including the patents listed in Schedules A and B attached hereto, relating to or useful in the manufacture of radio receiving sets as hereinafter defined

AND WHEREAS the existing patent license agreement dated the day of , A.D. , between the Licensor and the Licensee relating to the manufacture of radio receiving sets as therein defined did license the Licensee only in respect to the inventions embodied in the letters patent set forth in Schedule A attached hereto.

AND WHEREAS since the date of the said existing license, the Licensor has acquired the ownership of or the right to grant licenses under the various letters patent enumerated in Schedule B annexed hereto.

AND WHEREAS the Licensee has been engaged in the business of manufacturing and selling radio receiving sets which may embody certain of the inventions claimed in the said letters patent set forth in Schedule B and has invested substantial sums of money in the said business and given employment to many people.

AND WHEREAS the said radio receiving sets which may embody the inventions claimed in the said patents in Schedule B set forth, are now in the hands of agents, and vendors of the Licensee for resale and use, and the Licensee desires to obtain not only for itself but also for its agents, vendors and users a release of any possible claim arising out of the manufacture, use and sale of said radio receiving sets.

[illegible]

And whereas the Licensee desires definite assurance by way of license that it will not be deprived of the use and benefit of the inventions claimed by the letters patent referred to in Schedule B, desiring such assurance at this time in order that it may more effectively make plans for the future conduct of its business.

And whereas the Licensor has agreed to grant to the Licensee a license under said letters patent herein set forth upon the terms and conditions hereinafter mentioned and in consideration of the payment of the royalties herein reserved and assessed upon a basis agreed between the parties as being equitable, having regard to the nature and manner of use of the inventions hereinafter referred to.

And whereas the Licensor and the Licensee have agreed with each other as hereinafter set forth

Now therefore in consideration of the premises and of the license granted herein by the Licensor to the Licensee and the mutual covenants herein contained the parties hereto agree as follows:—

ARTICLE I.

Definitions.

For the purposes of this agreement the following definitions shall apply:—

(a) *"Radio Receiving Set"* means complete apparatus (but not separate parts thereof except for repair or replacement in apparatus licensed hereunder) advertised as such and saleable to the using public as such, including, when demonstrating essential parts thereof, a cabinet, loudspeaker, thermionic tubes, battery eliminator apparatus for detecting, amplifying or modifying electric currents or electro-magnetic waves, variations or impulses, and apparatus for converting electric currents into sound for the non-commercial reception of public radio telephone broadcasting.

(b) *"Public Radio Telephone Broadcasting"* means the broadcasting by radio telephony of sounds of music, news, speeches, sermons, advertising and entertainment, educational and similar matter for reception by the general public.

(c) *"Non-Commercial Reception"* means and is limited to the reception for private entertainment and instruction in homes and in other places where no charge, other than government license fees, is made directly or indirectly for admission or for the privilege of listening.

(d) *"Chassis or Chassis Portion"* means the whole of the radio receiving set, including all electrical, radio, wiring, amplifying and loudspeaker devices, but not including the cabinet or thermionic tubes.

(e) *"Thermionic Tube"* means a device, comprising two or more electrodes and an envelope which is to any extent evacuated or contains gas or vapour or liquid under any degree of pressure and is capable of changing the form of or controlling or modifying energy supplied thereto, used for any purpose under this license.

(f) *"Cabinet"* means the case or enclosure in which the radio receiving set is encased, including all escutcheons and fittings therefor, but not including any part, device or thing which is utilized in the operation of the receiver by the user.

(g) *"Electrical Phonograph"* means apparatus for the reproduction of sound from grooved sound records or film sound records used in or in connection with such apparatus (but does not include apparatus for the amplification of or transmission to, or reception at other points, of sound reproduced from such records), to be heard in the immediate vicinity of the apparatus, in which such record gives rise to or controls an electric current or electromotive force in such a way that the variations of the electric current or electromotive force correspond in some way to the recorded sounds and the electric current or electromotive force directly or indirectly brings about the production of sound from the apparatus, and also when furnished as parts thereof apparatus for making sound records for use in or in connection with such electrical phonographs.

(h) *"Patents"* means letters patent and applications for letters patent and rights by license or otherwise, to or under letters patent and applications for letters patent and patentable inventions.

ARTICLE II.

Licenses.

Section 1.

Upon the terms and conditions hereinafter set forth and solely and only to the extent and for the uses hereinafter specified and defined, the Licensor hereby grants and agrees to grant to the Licensee for the term of this agreement under all of the letters patent of the Dominion of Canada set forth in Schedules A and B attached hereto relating or applicable to or useful in the manufacture of radio receiving sets, a personal, indivisible, non-transferable and non-exclusive license to manufacture radio receiving sets as herein defined at its factories within Canada, and not elsewhere without previous written permission obtained from the Licensor and to sell only in the Dominion of Canada radio receiving sets so manufactured by the Licensee, but only for the non-commercial reception of public radio telephone broadcasting. The license to manufacture includes the right to make all or any of the separate parts, not including thermionic tubes, and the right to have all or any of the said separate parts made by others for the Licensee, but does not include the right to sell, except to another Licensee of the Licensor or except for service or replacement purposes, any part or parts of a radio receiving set, nor to have said parts assembled as radio receiving sets except in the Licensee's factories as above defined.

Section 2.

Nothing herein contained and no act or acts of manufacture or sale hereunder shall be construed as, or result in, conveying any license to the Licensee expressly or by implication, estoppel or otherwise,

(a) For the manufacture or sale of thermionic tubes, electrical phonographs, recording or reproducing apparatus of still or motion pictures or of motion pictures synchronized with sound recorded on films or grooved records or otherwise;

(b) Under any patent of countries other than the Dominion of Canada whether or not such foreign patent corresponds to any patent of the Dominion of Canada under which licence is granted herein;

(c) To manufacture or sell apparatus otherwise than in accordance with the expressed provisions of this licence agreement.

ARTICLE III.

ROYALTIES.

SECTION 1.

The Licensee shall pay to the Licensor a royalty of ten per cent. (10%) of the Licensee's invoice price as hereinafter defined (before any discounts, freight, royalties, advertising allowances or other similar deductions are made) of the chassis portion of all radio receiving sets licensed and sold under this agreement.

SECTION 2.

For the purposes of assessing royalties, the invoice price of the chassis portion of the radio receiving set shall be obtained by taking that proportion of the invoice price of the radio receiving set, which the manufacturing cost of the chassis (including loudspeakers) as herein defined, including the usual overhead burden, incoming transportation charges, customs and excise duties, and other standard charges, bears to the total manufacturing cost of the radio receiving set sold by the Licensee and/or as herein defined, including overhead burden and all standard charges. All radio receiving set development, research, chassis and/or speaker assembly, test and inspection labour and expense shall be considered, for the purpose of this agreement, a part [illegible] cost of the chassis portion of the radio receiving set.

SECTION 3.

The invoice pr[illegible] set for the purpose of assessing the royalties due hereunde[illegible]'s total manufacturing cost of the radio receivi[illegible] and all standard charges plus a mark-up of fifty per c[illegible] mark-up as from time to time shall be approved by the Li[illegible]y shall be payable upon either the invoice price as provided in this Section 3 or upon the Licensee's actual invoice price, whichever is greater.

SECTION 4.

In determining the invoice price of the chassis portion (as herein defined) of a radio receiving set, items not included in said chassis portion of the radio receiving set and not manufactured by the Licensee but purchased from outside suppliers shall be included in the total cost of the radio receiving set for the purpose of

this computation at the purchase price only (including any incoming transportation charges and customs and excise duties paid thereon) and shall not include any further additions thereto.

SECTION 5.

In computing the amount upon which royalties are payable, credit may be taken by the Licensee for all radio receiving sets previously sold which are returned by customers to the Licensee and credit allowed therefor, but credit shall not be taken by the Licensee for any other deduction, allowance or credit, which may have been granted or allowed to its customers, without the written consent of the Licensor.

For the purpose of determining royalty payments, radio receiving sets shall be deemed to be sold within the meaning of this agreement when billed or consigned or if not billed or consigned, when shipped or delivered.

SECTION 6.

The royalty prescribed herein shall be due and payable on the twentieth (20th) day of each month followng that in which the radio receiving set was sold, and on the twentieth (20th) day following the termination of this license upon all such radio receiving sets sold by the Licensee subsequent to the period covered by the last report made by the Licensee to the Licensor.

Without in any way prejudicing, impairing or waiving any of the rights granted herein to the Licensor, including right of cancellation or termination, interest may be charged and shall be payable by the Licensee on all overdue royalty payments at the rate of six per cent. (6%) per annum from the due date of payment thereof until such overdue payments have been made in cash.

SECTION 7.

Upon default of payment of royalties by the Licensee for any monthly period, and if in the opinion of the Licensor the financial responsibility of the Licensee so warrants, the Licensor shall forthwith at its option and without in any way prejudicing or relinquishing any rights granted to it hereunder, have the right to thenceforth require payment of accruing or accrued royalties from the Licensee by way of transfer or assignment to said Licensor of such portion of the sales price of radio receiving sets payable to the Licensee as may be necessary to satisfy the royalty in respect to such sales or accrued royalties previously owing to the Licensor, or, in the alternative, the Licensor may require payment by the Licensee daily or weekly, as it may desire, of royalties with respect to radio receiving sets licensed under this agreement.

SECTION 8.

In order to insure to the Licensor the full royalty payments contemplated hereunder, the Licensee covenants that, in the event that any radio receiving set licensed hereunder shall be sold directly or indirectly either (1) to a corporation, firm or association which, or individual or group who, shall directly or indirectly

control the Licensee by stock ownership, exclusive sales or supply contract, or otherwise, or (2) to a corporation, firm or association which the Licensee or stockholders of the Licensee, or any company controlled by the Licensee shall directly or indirectly control by stock ownership, exclusive sales or supply contract, or otherwise, or (3) to a corporation, firm or association controlled directly or indirectly by stock ownership, exclusive sales or supply contract, or otherwise by any corporation, firm or association which, or individual or group who, shall directly or indirectly control the Licensee by stock ownership, exclusive sales or supply contract, or otherwise, or (4) to a corporation, firm or association which, or individual or group who, shall be so affiliated, by any means whatsoever, with the Licensee as to impair, discourage or prevent arm's length dealings between such corporation, firm, association, individual or group and the Licensee, the royalties to be paid hereunder in respect of such radio receiving sets shall, at the option of the Licensor, be based upon the invoice price at which the last of such purchasers resells said apparatus, rather than upon the invoice price of the Licensee.

ARTICLE IV.

Records and Reports.

Section 1.

The Licensee shall keep full, true and accurate books of account and records of all radio receiving sets manufactured and/or sold under the license granted by this agreement, in sufficient detail to enable the Licensor to ascertain what royalties are due hereunder. The said books of account and records shall particularly show the number and types of sets made and sold by the Licensee and the Licensee's invoice price thereon for each type or model (before cash discounts, freight, royalty, advertising allowances or similar deductions have been made).

The said books of account and records, including information or particulars concerning cost of materials and manufacturing data, shall be open to the inspection of the Licensor or its duly authorized representative at all reasonable times in order to substantiate proper compliance with the provisions of this agreement.

The Licensee shall allow such investigations generally of its radio receiving set business by the Licensor or its duly authorized representative and upon request shall furnish the Licensor with such information as may be necessary to determine the accuracy of all statements required by this license to be furnished to the Licensor and to verify the Licensee's compliance with the terms and conditions of this license agreement.

Section 2.

The Licensee shall simultaneously with the payment of royalties as prescribed in Article Three, Section Six, being twenty (20) days after and as of the first (1st) day of each month during the term of this license, furnish to the Licensor a royalty report in the form prescribed by the Licensor, specifying as to each model or type

of radio receiving set sold by the Licensee during the preceding month or that part of the preceding month during which this license shall have been in force,

(a) The Licensee's model number or type designation.
(b) The Licensee's brand or trade name.
(c) The total number sold during the preceding month.
(d) The Licensee's selling or invoice price before any deductions.
(e) The nature of any deductions made.
(f) The cost ratio referred to in Article Three, Section Two, expressed in percentage.
(g) Minimum invoice price for royalty purposes as provided in Article Three, Section Three hereof.
(h) The amounts of royalties payable thereon as provided in Article Three hereof.
(i) And in general setting out all sales of radio receiving sets and the computation of all amounts of royalties payable thereon in accordance with the provisions of this agreement.

A similar statement shall be rendered within twenty (20) days after and as of the date of the termination of this license covering the period from the end of the preceding month to the date of the termination of this agreement. The first royalty payment and accompanying report shall be due on , and shall cover the month commencing

SECTION 2.

The Licensor agrees not to disclose to a competitor of the Licensee any confidential information relating to the Licensee's business obtained by the Licensor by reason of this agreement except when combined statistically with corresponding information obtained from other Licensees in such manner as to conceal said information, and except as it may be necessary to disclose the information in or in connection with any arbitration or litigation.

ARTICLE V.

COMPLIANCE WITH CANADIAN PATENT ACT.

SECTION 1.

The Licensee shall manufacture the radio receiving sets licensed under [illegible] agreement to the fullest possible extent within the Dominion of Canada so that the reasonable requirements of the Canadian public for the licensed [illegible] in Canada may be adequately met on reasonable terms and in such manufacture [illegible] employ good material and workmanship and shall conduct its [illegible] manner as to maintain a good reputation for such radio receiving [illegible] erally the Licensee shall manufacture said licensed radio receiv[illegible] fully comply with the provisions of the Patent Act of the Domin-

In no event whatsoever, without the written consent of the Licensor, shall the Licensee import or cause to be imported directly or indirectly into the Dominion of Canada radio receiving sets as herein defined, radio receiving set chassis, partially assembled radio receiving set chassis or assembled portions thereof. The aforesaid permission will not be unduly withheld provided said importation is deemed necessary or expedient by the Licensor, and further provided that in the opinion of the Licensor such importation does not constitute failure to fulfill the requirements of the Patent Act of the Dominion of Canada with respect of any of the patents scheduled in this agreement.

ARTICLE VI.

Patent Marking and Trade Marks.

Section 1.

The Licensee shall affix in a conspicuous place on all radio receiving sets manufactured and or sold by the Licensee under the terms of this agreement, a [illegible] notice bearing the corporate or trade name of the Licensee, with the inscription namely

"Licensed by Canadian Radio Patent Limited only for the non-commercial reception of public radio telephone broadcasting; Patented 1921-22-23, etc.", or such patent marking as otherwise may be required under the provisions of the Patent Act of the Dominion of Canada.

Section 2.

The Licensee agrees to mark on all radio receiving sets sold by it under this license, the word or words , or such other trade mark, trade name, brand name or identification insignia as the Licensee shall from time to time have given notice hereunder to the Licensor that the Licensee has adopted, said means of identification being the property of the Licensee and duly registered as such in the Patent Office of the Dominion of Canada. Such trade mark, trade or brand name or identification, insignia shall, if feasible, be etched, stamped or in some other permanent form affixed in a conspicuous place upon every such radio receiving set and any radio receiving set not bearing such identification, name or trade mark is not licensed hereunder.

Section 3.

All said marks, inscriptions or identification insignia required herein shall be of a prominent, fixed and permanent character and displayed in such manner that distributors, jobbers, dealers and retail purchasers or users may see and recognize the same at the time of purchase and sale and the Licensee's catalogues, circulars and price lists referring to said radio receiving sets shall also contain the same means of identification.

The Licensee further agrees to include in any and all such catalogues, circulars or price lists of the Licensee, advertising said licensed radio receiving sets, the

statement, "Licensed under patents of Canadian Radio Patents Limited." The Licensee will also observe any reasonable requirements which the Licensor by notice in writing to the Licensee may impose for the purpose of preventing the use of said radio receiving sets otherwise than in accordance with the license hereby granted.

ARTICLE VII.

VALIDITY OF PATENTS—LITIGATION.

SECTION 1.

The Licensee shall not by act or omission impair the validity of any letters patent, the subject of or included under the license of this indenture. Should any of such letters patent be revoked, repealed or declared void by reason of any act or omission of the Licensee, the life of the letters patent in question shall nevertheless as against the Licensee be deemed to continue for all the purposes of this indenture.

The admission of validity implied in the acceptance of the license hereunder is limited to the scope, field, and period for which such license is granted, or agreed to be granted.

SECTION 2.

The Licensor agrees that it will bring and diligently prosecute such suits for infringement of the various patents under which licenses are herein granted, as may in its judgment be reasonably necessary and prudent for enforcing said patents and preventing unlicensed competition in the field of this license.

SECTION 3.

The Licensee agrees that it will co-operate with the Licensor in said enforcement of patents and prevention of unlicensed competition in said patented radio receiving sets and parts, including the furnishing of statistical and technical information and other facts relating to such enforcement and prevention policy, provided that such co-operation shall be at the cost of the Licensor and shall not unreasonably interfere with any of the operations of the Licensee.

ARTICLE VIII.

RELEASES.

The Licensor hereby releases the Licensee, its agents and vendees from all or any claims arising out of any past infringement of any of the letters patent of the Dominion of Canada set forth in Schedule B herein which may have taken place prior to the date of this agreement to the extent that the act or acts constituting such infringement would have been licensed had this agreement been in force at the time of the occurrence of such act or acts.

ARTICLE IX.

NOTICES.

Until written notice of change of address is given by either party to the other by registered letter properly addressed, any notice or request with reference to the subject matter of this agreement shall be deemed to have been sufficiently given when, if given to the Licensor, it shall be addressed to Canadian Radio Patents Limited at its office at 130 Bay Street, Toronto, and when, if given to the Licensee, it shall be addressed to , and in either case sent by prepaid registered mail.

ARTICLE X.

TERM AND TERMINATION.

SECTION 1.

This license shall be effective as of , 1938, and unless sooner terminated as herein provided, shall continue in force until December 31st, 1944, at which time it shall expire provided, however, with respect to patents set forth in Schedules A and B hereto owned or controlled by the Licensor on December 31st, 1944, said license shall continue in force until the end of the terms of said scheduled patents with respect to radio receiving sets which on December 31st, 1944, have been manufactured or are in process of manufacture or for which firm orders have been received prior to December 31st, 1944, and on which royalty has been paid within twenty (20) days after the termination of this license.

SECTION 2.

In the event of failure of the Licensee at any time during the continuance of this agreement to render any of the statements called for herein upon any of the prescribed dates or to pay all of the royalties required hereunder when due or in the event at the end of any twelve (12) months' period ending December 31st of any year the royalty payments accruing to the Licensor hereunder are less than Ten Thousand Dollars ($10,000.00) for said twelve (12) months' period and the Licensee has not voluntarily paid to the Licensor an additional sum of money equal to the difference between the accrued royalties for said twelve (12) months' period and Ten Thousand Dollars ($10,000.00) or upon failure of the Licensee to comply with any of the other obligations of this agreement, the Licensor may, at its option and without prejudice to any of its other legal and equitable rights and remedies under this agreement, by ten (10) days' notice in writing particularly specifying the breach or failure of the Licensee, terminate the license herein granted and all rights of the Licensee hereunder unless such breach or failure has been rectified within the said period of ten (10) days.

Should the Licensee at any time make an authorized assignment for the benefit of its creditors or voluntarily or involuntarily be declared a bankrupt or be wound up or if a receiver or liquidator shall be appointed to administer its affairs, this agreement shall automatically and without notice become cancelled and termin-

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

21

ated as of the date of such assignment or as of the date upon which a custodian, receiver, trustee or liquidator is appointed.

The deposit in the Post Office at Toronto of a registered postpaid envelope addressed to the last known place of business of the Licensee containing any notice provided for in this clause shall constitute due and sufficient service or delivery of such notice as of the date of such deposit.

No cancellation or termination of this license shall affect any of the other legal and equitable rights and remedies of the Licensor under this agreement nor shall any cancellation or termination release the Licensee from any liability accruing to the Licensor hereunder prior to the time such cancellation or termination become effective. No failure on the part of the Licensor to exercise its rights of cancellation hereunder for any one or more defaults shall be construed to prejudice its rights of cancellation for any subsequent default.

Section 3.

The license agreement relating to radio receiving sets between the parties hereto or their predecessors in title, dated the day of , A.D. [illegible], together with subsequent modifications thereto shall be cancelled and terminated as of the day of , 1935, and the Licensee is hereby relieved of all obligations accruing thereunder after the said date except the payment of royalties accruing up to the said , 1935, which accrued payment of royalties shall be deemed an obligation under this indenture, and the rights and obligations of the parties hereto with reference to radio receiving sets sold from and after said date shall be those specified in this agreement.

ARTICLE XI.

Sublicenses or Assigns.

Section 1.

Neither this agreement nor any of its benefits shall be directly or indirectly assigned, transferred, divided or shared by the Licensee with any person, firm or corporation whatsoever without the written consent of the Licensor.

Section 2.

This agreement and the license hereby granted shall terminate unless otherwise agreed in writing by the Licensor, upon any attempt by the Licensee to assign the same or upon the acquisition directly or indirectly of a controlling interest by stock ownership or otherwise in the Licensee by any other corporation, firm or person not holding a license for radio receiving sets from the Licensor or upon the acquisition directly or indirectly by the Licensee of a controlling interest by stock ownership or otherwise in any other corporation, firm or business engaged in the manufacture and/or sale of radio receiving sets not holding a like license from the Licensor, which acquisition by the Licensee, in the opinion of the Licensor, constitutes a sublicense or sharing of the benefits of this agreement.

For the purpose of verifying compliance with the provisions of this Section the Licensee agrees to permit the authorized representatives of the Licensor to examine the share or stock register books of the Licensee at any time within business hours, upon reasonable notice.

This license agreement shall enure to the benefit of the successors and assigns of the Licensor but shall not enure to the benefit of the successors and assigns or any legal representatives of the Licensee without the written consent of the Licensor.

ARTICLE XII.

FURTHER ASSURANCES.

The parties hereto hereby agree to execute and deliver with reasonable promptness such further instruments and perform all such acts as may be reasonably necessary for carrying out the provisions and purposes of this agreement.

IN WITNESS WHEREOF the parties hereto have caused these presents to be executed by their proper officers thereunto duly authorized, and their corporate seals to be hereto affixed, as of the day and year first above written.

Witness: CANADIAN RADIO PATENTS LIMITED,

....

President.

....

Secretary.

Witness:

....

President.

....

Secretary.

2205.

Patents whose
expire [illegible] till after
1 Aug. 1938 [illegible] 18 years — those
filed [illegible] 17 years

— all expire [illegible]

SCHEDULE "A"

PATENT No.	INVENTOR	ISSUE DATE
241,128	Rice	June 24, 1924
208,583	Alexanderson	Feb. 15, 1921
244,847	Langmuir	Nov. 25, 1924 (now expired)
220,761	Hull	July 11, 1922
214,404	Whife	Nov. 29, 1921
198,076	Langmuir	Mar. 9, 1920
263,962	Rice & Kellogg	Aug. 31, 1926
196,145	Langmuir	Jan. 13, 1920 (now expired)
209,777	Mathes	Mar. 22, 1921
213,999	Arnold	Oct. 25, 1921
174,660	Hartley	Jan. 23, 1917 (now expired)
183,276	Nichols	Mar. 26, 1918 (now expired)
183,275	Mathes	Mar. 26, 1918 (now expired)
218,087	Arnold	April 25, 1922
208,862	Scriven	Feb. 22, 1921
188,389	Heising	Jan. 21, 1919 (now expired)
216,321	Armstrong	Mar. 7, 1922
179,703	Round	Oct. 9, 1917 (now expired)
187,783	Franklin	Dec. 3, 1918 (now expired)
159,794	DeForest	Dec. 29, 1914 (now expired)
169,332	DeForest	May 9, 1916 (now expired)
218,225	DeForest	May 2, 1922
174,361	DeForest	Jan. 9, 1917 (now expired)
218,468	DeForest	May 9, 1922
218,238	Logwood	May 2, 1922
218,342	DeForest	May 2, 1922
218,473	DeForest	May 9, 1922
181,909	DeForest	Jan. 8, 1918 (now expired)
251,845	Cardwell	July 21, 1925

I have not [illegible]

SCHEDULE "B"

PATENT No.	INVENTOR	ISSUE DATE
209,618	DeForest	March 22, 1921
209,619	DeForest	March 22, 1921
218,882	DeForest	May 23, 1922
214,581	DeForest	November 18, 1924
218,236	DeForest	May 2, 1922
218,237	DeForest	May 2, 1922
208,841	Alexanderson	February 22, 1921
209,308	Alexanderson	March 8, 1921
212,366	Langmuir	July 5, 1921
302,517	Carlson	July 29, 1930
198,803	Langmuir	March 30, 1920
208,839	White	February 22, 1921
208,846	Alexanderson	February 22, 1921
209,517	Hull	March 15, 1921
209,518	Hull	March 15, 1921
223,528	Hull	September 12, 1922
253,495	Carlson	September 8, 1925
296,847	Carlson	January 21, 1930
304,765	Carlson et al	October 14, 1930
208,836	Langmuir	February 22, 1921
218,201	Armstrong	May 2, 1922
216,322	Armstrong	March 7, 1922
229,607	Hogan	March 13, 1923
283,743	Beers	October 2, 1928
266,314	Beers	December 7, 1926
268,561	Beers	February 22, 1927
275,647	Landon	November 22, 1927
282,314	Beers	August 7, 1928
283,742	Beers	October 2, 1928
296,632	Bolseley	January 14, 1930
301,407	Brown	June 24, 1930
304,337	Beers	October 7, 1930
226,902	Kendall	December 5, 1922
237,840	Levy	February 12, 1924
203,986	Colpitts	September 14, 1920

PATENT NO.	INVENTOR	ISSUE DATE
235,090	Levy	November 6, 1923
298,713	Whittle et al	March 25, 1930
285,342	Wright	December 4, 1928

251,654	Logwood	July 14, 1925
256,501	Clark	December 22, 1925
256,503	Weinberger	December 22, 1925
258,413	Lacault	February 23, 1926
258,839	Goldsmith	March 9, 1926
266,568	Kroger	December 7, 1926
271,243	Weinberger	May 31, 1927
276,694	Churchw[illegible]	December 27, 1927
[illegible]	Batsell	February 7, 1928
287,050	Van Dyck	February 5, 1929
289,013	Beane et al	April 23, 1929
295,395	Weinberger	December 3, 1929
298,694	Goldsmith et al	March 25, 1930
301,927	Goldsmith et al	July 8, 1930
301,930	Moulton	July 8, 1930
305,496	Ballantine et al	November 4, 1930
308,562	Posthumus	February 10, 1931
309,734	Roberts	March 24, 1931
311,563	Roberts	May 19, 1931
313,101	Ballantine	July 7, 1931
314,045	Roberts	August 4, 1931
314,633	Posthumus	August 25, 1931
319,519	Holst et al	February 2, 1932
316,387	Braden	October 20, 1931
320,871	Peterson	March 22, 1932
324,379	Dickey	July 19, 1932
325,011	Braden	August 9, 1932
325,181	Roberts	August 16, 1932
326,620	Hollerith	October 4, 1932
326,972	Van Dyck et al	Oct. [illegible]

Patent No.	Inventor	Issue Date
327,116	Bol et al	Oct. 25, 1932
327,121	Beers	Oct. 25, 1932
329,875	Hull	Jan. 24, 1933
329,871	Hull	Jan. 31, 1933
330,774	Oosterhuis et al	Mar. 7, 1933
332,708	Bol et al	May 23, 1933
332,926	Roberts	May 30, 1933
332,927	Miessner	May 30, 1933
335,277	Roberts	Aug. 29, 1933
339,090	Roberts	Jan. 30, 1934
339,426	Miessner	Feb. 13, 1934
343,808	Hull	July 31, 1934
344,276	Black	Aug. 28, 1934
348,342	Ballantine	Feb. 19, 1935
349,792	Franke	Apr. 23, 1935
303,380	Thompson	Sept. 2, 1930
320,413	Roberts	Mar. 8, 1932
325,013	Roberts	Aug. 9, 1932
331,516	Dyksterhuis	Apr. 4, 1933
332,713	Carlson	May 23, 1933
337,171	Miessner	Nov. 14, 1933
338,038	Miessner	Dec. 19, 1933
338,039	Miessner	Dec. 19, 1933
345,400	Black	Oct. 16, 1934
348,343	Ballantine	Feb. 19, 1935
348,507	Ballantine	Feb. 26, 1935
348,508	Goldsmith	Feb. 26, 1935
348,696	Posthumus et al	Mar. 5, 1935
348,697	Posthumus et al	Mar. 5, 1935
350,751	Posthumus et al	June 4, 1935
350,919	Posthumus et al	June 11, 1935
351,715	Carlson	July 16, 1935
352,677	Farnham	Aug. 27, 1935
352,679	Posthumus	Aug. 27, 1935
352,808	Grimes	Sept. 3, 1935
352,947	Barton	Sept. 10, 1935
353,108	Roberts	Sept. 17, 1935

PATENT NO.	INVENTOR	ISSUE DATE
353,234	Roberts	Sept. 24, 1935
353,236	Black	Sept. 24, 1935
354,126	Hull	Nov. 12, 1935
354,127	Van der Pol et al	Nov. 12, 1935
356,033	Grimes	Feb. 18, 1936
359,280	Barton	July 21, 1936
360,664	Grimes et al	Sept. 22, 1936
360,813	Krueger	Sept. 29, 1936
361,108	Snow	Oct. 13, 1936
361,109	Barden	Oct. 13, 1936
361,289	Mathes	Oct. 20, 1936
361,384	Barden	Oct. 27, 1936

252,388	Harrison	Aug. 4, 1925
257,883	Nicolson	Jan. 26, 1926
284,621	White	Nov. 6, 1928
288,711	Harrison	April 9, 1929
294,817	Thurlas	Nov. 12, 1929
316,174	Giles	Oct. 13, 1931
324,865	Wegel	Aug. 2, 1932
335,125	Bostwick	Aug. 22, 1933
248,306	Thomas	Mar. 31, 1925
267,886	Mallory	Jan. 18, 1927
272,494	Slepian et al	July 19, 1927
301,420	High	June 24, 1930
301,422	High	June 24, 1930
321,094	High et al	Mar. 29, 1932
324,[illegible]	High	July 19, 1932
329,908	Carlisle et al	Jan. 31, 1933
340,212	High	Mar. 20, 1934
341,451	Hoxie	July 3, 1934
263,953	Kellogg	Aug. 31, 1926
263,961	Kellogg	Aug. [illegible]
[illegible]	Zimmerman	Oct. [illegible]
[illegible]	Kellogg	Dec. 12, [illegible]

Defendant's Exhibit No. 122.

PATENT NO.	INVENTOR	ISSUE DATE
289,303	Guedon	April 15, 1930
329,908	Carlisle	Jan. 31, 1933
253,963	Round	Sept [illegible]2, 1925
263,022	Round	July 27, 1926
270,553	Round	May 10, 1927
293,330	Round et al	Sept 24, 1929
302,269	Linsell	July 22, 1930
218,469	DeForest	May 9, 1922
218,471	DeForest	May 9, 1922
276,293	Ringel et al	Dec 13, 1927
276,295	Minton	Dec 13, 1927
257,075	Wegel	Jan. 5, 1926
259,441	Hessing	Mar 30, 1926
267,240	Wente	Feb 12, 1929
293,032	Smythe et al	Sept. 10, 1929
300,628	Schlenker	May 27, 1930
321,487	Thuras	April 12, 1932
325,033	Schlenker	Aug 9, 1932
327,515	Flanders et al	Nov. 8, 1932
341,465	Kalin	Sept. 4, 1934
266,517	Hanna	Dec. 7, 1926
272,157	Conrad	July 5, 1927
290,783	Goldsborough	June 25, 1929
301,421	Hanna	June 24, 1930
305,176	High	Oct 28, 1930
323,981	Slepian	July 5, 1932
324,710	Hanna	Aug 2, 1932
335,125	[illegible]	Aug 29, 1933
380,216	[illegible]	Mar [illegible], 1941
258,793	[illegible]	Mar 9, 1926
263,960	[illegible] et al	Aug 31, 1926
265,506	[illegible]	Nov 2, 1926
294,209	[illegible]	Oct 29, 1929
298,631	[illegible]	Mar 25, 1930
248,353	[illegible]	Mar. 31, 1925
261,154	Round	May 25, 1926
270,532	Round et al	May 10, 1927

Patent No.	Inventor	Issue Date
273,007	McLachlan	Aug. 9, 1927
298,642	Round	Mar. 25, 1930
323,254	Round	June 14, 1932
218,470	DeForest	May 9, 1922
252,165	Herdman	July 28, 1925
276,294	Minton	Dec. 13, 1927
276,681	Shapiro	Dec. 27, 1927
292,812	Minton	Sept 3, 1929
290,327	Minton et al	April 30, 1929
316,784	Ringel	Nov. 3, 1931
316,786	Ringel	Nov. 3, 1931
326,596	Wolff	Oct. 4, 1932
332,711	Wolff	May 23, 1933
336,482	Wolff et al	Oct. 17, 1933
341,979	Quinby	May 29, 1934
347,563	High	Jan. 15, 1935
298,841	Hanna	April 1, 1930
273,707	Minton et al	Sept. 6, 1927
293,603	Bruijnes et al	Oct. 1, 1929
302,353	Vermeulen et al	July 22, 1930
307,943	Larsen	Jan. 20, 1931
308,738	Vermeulen	Feb. 17, 1931
322,340	Tyrrell	May 10, 1932
322,912	Vermeulen et al	May 31, 1932
323,[illegible]	Mulder	June 14, 1932
[illegible]	Williams	Aug. 2, 1932
326,[illegible]	Zwikker	Oct. 18, 1932
331,1[illegible]	Van Urk et al	Mar. 21, 1933
332,709	Bartelink	May 23, 1933
332,712	Holst	May 23, 1933
339,704	Dijksterhuis	Feb. 27, 1934
316,785	Ringel	Nov. 3, 1931
322,325	Wolff	May 10, 1932
332,706	Goldsmith et al	May 23, 1933
336,481	Weinberger et al	Oct. 17, 1933
337,834	Ringel	Nov. 28, 1933
347,380	Ballantine	Jan. 8, 1935

PATENT No.	INVENTOR	ISSUE DATE
356,967	Creager	July 7, 1936
352,676	Dijksterhuis	Aug 27, 1935
293,183	De Jongh	Sept. 17, 1929
298,696	Vermeulen	Mar 25, 1930
307,205	Vermeulen et al	Dec. 30, 1930
308,560	Holst et al	Feb. 10, 1931
308,887	Holst et al	Feb. 24, 1931
322,711	Holst et al	May 24, 1932
322,913	Holst et al	May 31, 1932
324,804	Urk et al	Aug 2, 1932
326,763	Filippo	Oct 11, 1932
326,970	Zwikker	Oct. 18, 1932
332,707	Van Lis	May 23, 1933
332,710	Van Urk	May 23, 1933
339,269	Vermeulen et al	Feb. 6, 1934
341,980	Van Urk	May 29, 1934

218,985	Dubilier	May 23, 1922
232,135	Brigham	June 19, 1923
233,360	Brigham	Aug 17, 1923
256,910	Dubilier	Jan 5, 1926
264,638	Van Deventer	Sept 28, 1926
266,337	Nyman	Nov 13, 1926
267,406	Dubilier	Jan 11, 1927
267,408	Dubilier	Jan 11, 1927
267,410	Edenburg	Jan 11, 1927
267,450	Nyman	Jan 11, 1927
240,611	Vawter	Jan. 3, 1924
248,110	Coursey	Mar. 31, 1925
252,942	Houck	Aug 25, 1925
275,307	Grier	Nov. 15, 1927
275,698	Houck	Nov. 22, 1927
276,124	Dubilier	Dec. 6, 1927
277,815	Andrewes	Feb. 7, 1928
283,382	Warren	Sept. 24, 1929

Patent No.	Inventor	Issue Date
220,926	Dubilier	Apr. 1, 1922
224,573	Dubilier	Oct. 10, 1922
226,038	Dubilier	Nov. 14, 1922
231,531	Dubilier	June 5, 1923
231,532	Dubilier	June 5, 1923
238,091	Vawter	Feb. 26, 1924
249,379	Dubilier	May 5, 1925
251,907	Dubilier	July 21, 1925
256,911	Dubilier	Jan. 5, 1926
256,929	Houck	Jan. 5, 1926
258,804	Dubilier	Mar. 16, 1926
258,805	Dubilier	Mar. 16, 1926
260,814	Dubilier	May 18, 1926
260,815	Dubilier	May 18, 1926
260,877	Vawter	May 18, 1926
262,008	Horton	June 22, 1926
262,457	Dubilier	July 6, 1926
265,307	Van Deventer	Oct. 26, 1926
266,816	Dubilier	Dec. 21, 1926
266,894	Van Deventer	Dec. 21, 1926
266,898	Vawter	Dec. 21, 1926
267,407	Dubilier	Jan. 11, 1927
267,507	Dubilier	Jan. 11, 1927
276,125	Dubilier	Dec. 6, 1927
276,126	Dubilier	Dec. 6, 1927
277,423	Dubilier	Jan. 24, 1928
277,572	Dubilier	Jan. 31, 1928
283,306	Weiss	Sept. 25, 1928
283,790	Fried	Oct. 2, 1928
283,791	Nyman	Oct. 2, 1928
283,792	Katzman	Oct. 2, 1928
283,947	Dubilier	Oct. 9, 1928
283,948	Dubilier	Oct. 9, 1928
284,284	Heiny	Oct. 23, 1928
288,717	Kevelson	Jan. 22, 1929
288,718	Nyman	Jan. 22, 1929
288,719	Edenburg	Jan. 22, 1929

18

[illegible]

Patent No.	Inventor	Issue Date
286,720	Eisenberg	Jan. 22, 1929
286,722	Hauck	Jan. 22, 1929
286,723	Hauck	Jan. 22, 1929
286,724	Fried	Jan. 22, 1929
287,369	Nyman	Feb. 19, 1929
287,370	Dubilier	Feb. 19, 1929
287,371	Eisenberg	Feb. 19, 1929
287,531	Fried	Feb. 26, 1929
287,532	Nyman	Feb. 26, 1929
287,533	Dubilier	Feb. 26, 1929
287,534	Dubilier	Feb. 26, 1929
287,742	Dubilier	Mar. 5, 1929
287,743	Nyman	Mar. 5, 1929
287,744	Weiss	Mar. 5, 1929
288,691	Mountford	April 9, 1929
288,692	Menut	April 9, 1929
289,331	Dubilier	April 13, 1929
292,399	Nyman	Aug. 20, 1929
293,383	Dubilier	Sept. 24, 1929
294,555	Nyman	Nov. 5, 1929
294,556	Dubilier	Nov. 5, 1929
294,557	Dubilier	Nov. 5, 1929
294,558	Dubilier	Nov. 5, 1929
294,559	Dubilier	Nov. 5, 1929
294,561	Dubilier	Nov. 5, 1929
294,562	Fried	Nov. 5, 1929
294,563	Weiss	Nov. 5, 1929
299,261	Nyman	April 15, 1930
300,814	Dubilier	Sept. 29, 1930
256,912	Dubilier	Jan. 5, 1926
266,856	Nyman	Dec. 21, 1926
273,708	Aull	Sept. 6, 1927
273,709	Van Deventer	Sept. 6, 1927
274,101	Dubilier	Oct. 4, 1927
275,505	Van Deventer	Nov. 15, 1927
275,506	Werner	Nov. 15, 1927
276,123	Dubilier	Dec. 6, 1927

Patent No.	Inventor	Issue Date
279,321	Dubilier	April 10, 1928
294,560	Dubilier	Nov 3, 1929
321,914	Nyman	April 26, 1932
322,326	[illegible]in	May 10, 1932
230,088	[illegible]ifford	April 3, 1923
254,640	Chamberlain	October 12, 1925
271,985	Newman	June 28, 1927
255,552	Chamberlain	November 17, 1925
347,241	Aceves	January 1, 1935
290,246	Bast	June 11, 1929
197,782	Rice	Mar. 2, 1920
201,453	White	June 29, 1920
202,095	Rice	July 20, 1920
202,290	White	July 27, 1920
202,293	Hull	July 27, 1920
202,798	White	Aug. 10, 1920
205,941	Hull	Nov. 23, 1920
209,312	Goldsmith	Mar. 8, 1921
209,314	Langmuir	Mar. 15, 1921
214,467	Hull	Nov. 29, 1921
220,732	Dunham	July 11, 1922
223,519	Bradbury	Sept. 12, 1922
223,520	Bradbury	Sept. 12, 1922
223,542	Alexanderson	Sept. 12, 1922
229,144	Becker	Feb. 27, 1923
229,456	Langmuir	Mar. 6, 1923
235,433	Hull	Nov. 6, 1923
244,940	Prince	Dec. 2, 1924
256,780	Warner	Dec. 29, 1925
262,976	Warner	July 27, 1926
281,106	Barton	June 19, 1928

Patent No.	Inventor	Issue Date
281,107	Kellogg	June 19, 1928
282,311	Barton	Aug. 7, 1928
282,312	Barton	Aug. 7, 1928
295,527	Kendal	Dec. 10, 1929
296,387	Bierworth	Jan. 7, 1930
296,847	Carlson	Jan. 21, 1930
297,801	Burrill	Feb. 18, 1930
298,835	Thompson	Apr. 1, 1930
299,535	Kendal	Apr. 22, 1930
299,538	Bradbury	Apr. 22, 1930
299,539	Bradbury	Apr. 22, 1930
299,540	Thompson	Apr. 22, 1930
299,722	Kendal	Apr. 29, 1930
300,128	Carlson	May 13, 1930
302,517	Carlson	July 29, 1930
304,763	Kinman	Oct. 14, 1930
304,765	Allen et al	Oct. 14, 1930
305,152	Kellogg	Oct. 22, 1930
305,417	Brown	Nov. 4, 1930
305,855	Byrnes	Nov. 18, 1930
305,856	Taylor	Nov. 18, 1930
306,538	Cornell	Dec. 9, 1930
306,946	Bradbury	Dec. 23, 1930
306,951	Thompson	Dec. 23, 1930
307,390	Alexanderson	Jan. 6, 1931
309,485	Austin	Mar. 17, 1931
311,485	Carlson et al	May 19, 1931
311,486	Carlson et al	May 19, 1931
311,902	Bedford	June 2, 1931
313,962	Bradbury	Aug. 4, 1931
317,220	Kellogg	Nov. 17, 1931
320,773	Amsden	Mar. 22, 1932
323,877	Carlson	July 5, 1932
324,098	Carter	July 12, 1932
331,273	Carlson	Mar. 28, 1933
337,307	Carlson	Nov. 21, 1933
340,012	Allen	Mar. 13, 1934

25

PATENT NO.	INVENTOR	ISSUE DATE
340,884	Baker	April 17, 1934
343,128	Robinson	July 17, 1934
343,125	Carlson et al	July 17, 1934
345,633	Becker	Oct. 30, 1934
347,161	Cornell	Jan. 1, 1935
349,988	Whelan	April 16, 1935
350,882	Gardiner	June 11, 1935
353,330	Laxton	Oct. 1, 1935
353,823	Carlson	Nov. 5, 1935
354,764	Simmonds	Mar. 24, 1936
361,812	Lord	Nov. 17, 1936
362,549	Newton	Dec. 15, 1936
363,477	Warner	Jan. 19, 1937
367,703	Becker	Aug. 3, 1937

209,804	Brillouin	Mar. 22, 1921
213,185	Wright	Aug. 30, 1921
216,500	Round	Mar. 7, 1922
216,501	Round	Mar. 7, 1922
216,502	Round	Mar. 7, 1922
236,182	Round	Dec. 4, 1923
243,180	Round & Willans	Sept. 23, 1924
258,394	Willans & Stanley	Feb. 23, 1926
268,236	Clough	Feb. 8, 1927
268,290	Round	Feb. 8, 1927
273,036	Willans	Aug. 9, 1927
273,037	Franklin & Green	Aug. 9, 1927
285,342	Wright	Dec. 4, 1928
285,551	Willans	Dec. 11, 1928
285,903	Round	Dec. 25, 1928
289,024	Wright & Smith	Mar. 19, 1929
296,391	Green	Jan. 7, 1930
304,181	Green	Sept. 23, 1930
309,880	Round	Mar. 24, 1931
317,226	Barrow	Nov. 17, 1931

29

Patent No.	Inventor	Issue Date
324,318	Round	July 19, 1932
324,909	Round & Turner	Aug. 9, 1932
329,031	Mathieu & Isted	Jan. 3, 1933
330,173	Plebanski	Feb. 14, 1933
332,009	Keall	April 25, 1933
332,297	Mathieu	May 9, 1933
335,069	Green	Aug. 22, 1933
336,279	Argyle	Oct. 10, 1933
336,280	Hodgson	Oct. 10, 1933
337,478	Turner	Nov. 28, 1933
339,351	Kemp & Kemp	Feb. 13, 1934
345,171	Watts	Oct. 9, 1934
345,350	Rust & O'Neill	Oct. 16, 1934
345,816	Hinton	Nov. 6, 1934
347,525	Rust	Jan. 15, 1935
351,160	Linsell	June 25, 1935
352,161	Stokes	Aug. 6, 1935
352,765	Rust	Sept. 3, 1935
353,778	Linsell	Oct. 29, 1935
355,753	Linsell	Feb. 4, 1936
355,754	Linsell	Feb. 4, 1936
362,732	Rust & O'Neill	Dec. 22, 1936
366,058	Rust	Mar. 17, 1[illegible]
366,804	Keall	June 15, 1937
366,805	Wright & Rust	June 15, 1937
370,955	Plebanski	Jan. 4, 1938

255,965	Falkner	December 1, 1925
272,198	Marsteller	July 5, 1927
296,630	Jarvis	January 14, 1930
301,424	Brindley	June 24, 1930
301,[illegible]	Landon	July 8, 1930
301,965	Landon	July 8, 1930
302,982	Landon	August 12, 1930
304,558	Landon	October 7, 1930

PATENT No.	INVENTOR	ISSUE DATE
305,881	Roth	November 18, 1930
306,288	Chubb	December 2, 1930
306,858	Beers	December 23, 1930
316,509	Landon	October 27, 1931
321,632	Landon	April 19, 1932
321,846	Beers	April 26, 1932
322,464	Sateren	May 17, 1932
324,744	Landon	August 2, 1932
326,155	Landon	September 20, 1932
326,343	Forbes	September 27, 1932
326,524	Beers	October 4, 1932
327,439	Beers	November 8, 1932
327,440	Bartin	November 8, 1932
329,309	Kerrigan	January 24, 1933
331,840	Koch	April 18, 1933
331,842	Lapurt	April 18, 1933
222,287	Slepian	Aug. 15, 1922
227,540	Armstrong	Jan. 2, 1923
231,884	Phillippi	June 12, 1923
237,436	Slepian	Jan. 29, 1924
237,437	Slepian	Jan. 29, 1924
237,438	Slepian	Jan. 29, 1924
241,769	Batsel	July 29, 1924
241,837	Little	July 29, 1924
241,838	Little	July 29, 1924
244,360	Hengstenberg	Nov. 11, 1924
244,361	Reynders	Nov. 11, 1924
244,362	Nyman et al	Nov. 18, 1924
266,315	Marsteller	Dec. 7, 1926
268,366	Conrad	Feb. 22, 1927
276,081	Davis	Dec. 6, 1927
282,355	Robinson	Aug. 7, 1928
283,907	Roth	Oct. 9, 1928
286,634	Beers	Jan. 14, 1929
291,608	Brown	June 24, 1929
292,882	Batsel	Aug. 12, 1929
307,886	Brindley	Jan. 20, 1931

Patent No.	Inventor	Issue Date
308,675	Richards	Feb. 17, 1931
321,082	Bruce	Mar. 29, 1932
321,412	Boddie	April 12, 1932
323,891	Forbes	July 5, 1932
324,751	Clement	Aug. 2, 1932
325,303	Landes	Aug. 23, 1932
326,337	Robinson et al	Sept. 27, 1932
332,[illegible]	Sateren	June 20, 1933
337,[illegible]	Kimmell	Dec. 19, 1933
338,[illegible]	Staunton	Jan. 16, 1934
340,280	Davis	Mar. 20, 1934
344,069	Aalborg	Aug. 21, 1934
344,895	Beers	Sept. 18, 1934
346,844	Beers	Dec. 18, 1934
354,256	Osborn et al	Nov. 19, 1935
354,262	Knowles	Nov. 19, 1935
364,419	Stephens	May 2, 1937
364,909	Lyle	Mar. 23, 1937
366,901	McGahan	June 22, 1937
366,902	Smith	June 22, 1937

199,896	Johnson	May 4, 1920
207,231	Kendall	Jan. 4, 1921
207,980	Van der Bijl	Jan. 25, 1921
208,863	Arnold	Feb. 22, 1921
209,776	Haddock	Mar. 22, 1921
211,036	Crisson	Apr. 26, 1921
211,650	Carson	May 17, 1921
211,918	Heising	May 24, 1921
212,188	Curtis	May 31, 1921
217,344	Curtis	Mar. 28, 1922
218,011	Heising	Apr. 25, 1922
218,931	Wilson	May 23, 1922
226,477	Casper	Nov. 21, 1922
245,886	DeCoutouly	Jan. 6, 1925

29

PATENT No.	INVENTOR	ISSUE DATE
248,243	Scriven	Mar. 31, 1925
250,245	Fritz	June 2, 1925
251,288	Farrington	June 30, 1925
254,163	Blattner	Dec. 8, 1925
265,020	Whiting	Oct. 12, 1926
265,745	Anderson	Nov. 9, 1926
266,15[illegible]	Ceccarini	Nov. 23, 1926
270,203	Marrison	Apr. 26, 1927
270,205	Ohl	Apr. 26, 1927
270,783	Holden	May 17, 1927
277,425	Campbell	Jan. 24, 1928
280,405	Ryan	May 22, 1928
295,194	Whittle	Nov. 26, 1929
302,171	Ceccarini	July 15, 1930
307,770	Rittenhouse	Jan. 13, 1931
319,332	Budenbom	Jan. 26, 1932
319,333	Budenbom	Jan. 26, 1932
330,585	Gargan et al	Feb. 28, 1933
333,980	Bruce	July 11, 1933
343,097	Conrad	Aug. 14, 1934

244,432	Rogers	Nov. 11, 1924
265,021	McCullough	Oct. 12, 1926
269,101	McCullough	Mar. 15, 1927
296,032	McCullough	Dec. 24, 1929
312,382	McCullough	June 16, 1931
250,714	Rogers	June 16, 1925
264,960	Rogers	Oct. 12, 1926
269,205	Rogers	Mar. 22, 1927
338,047	Parker	Dec. 19, 1933
368,836	Parker	Sept. 21, 1937
209,618	DeForest	Mar. 22, 1921
212,037	DeForest	May 31, 1921
216,359	Gowen	Mar. 7, 1922

Defendant's Exhibit No. 122.

PATENT NO.	INVENTOR	ISSUE DATE
216,380	Gowen	Mar. 7, 1922
216,381	Gowen	Mar. 7, 1922
217,813	DeForest	April 18, 1922
218,236	DeForest	May 2, 1922
218,239	Logwood	May 2, 1922
218,240	Logwood	May 2, 1922
218,241	Logwood	May 2, 1922
218,243	DeForest	May 2, 1922
218,472	DeForest	May 9th, 1922
218,883	DeForest	May 23, 1922
218,884	DeForest	May 23, 1922
218,885	DeForest	May 23, 1922
218,886	DeForest	May 23, 1922
231,326	DeForest	May 22, 1922
231,327	DeForest	May 22, 1923
231,328	DeForest	May 22, 1923
231,329	DeForest	May 22, 1923
231,331	DeForest	May 22, 1923
231,332	DeForest	May 22, 1923
231,669	DeForest	May 29, 1923
232,646	DeForest	July 10, 1923
236,175	DeForest	Dec. 4, 1923
237,838	DeForest	Feb 12, 1924
241,[illegible]	DeForest	June 24, 1924
241,135	DeForest	June 24, 1924
241,310	Gowen	July 8, 1924
241,381	DeForest	Nov. 18, 1924
241,656	DeForest	Nov. 18, 1924

DEFENDANT'S EXHIBIT NO. 123.

Agreement dated as of the .... day of .... A.D. ....
Between:

Canadian Radio Patents Limited

a corporation organized under the laws of Canada and having its Head Office and principal place of business at 200 St. Clair Avenue West, in the City of Toronto, in the Province of Ontario, hereinafter called the Licensor,

- and -

.... a corporation also organized under the laws of Canada, and having its Head Office and principal place of business at .... in the City of .... in the Province of ...., hereinafter called the Licensee.

Whereas the Licensor owns or has the right to grant licenses under various Canadian Letters Patent for inventions relating to or useful in the manufacture of Licensed Apparatus as hereinafter specified and defined;

And Whereas the Licensee desires the right to make lawful use of inventions covered by said Canadian Letters Patent and to that end desires to acquire the license herein granted;

Now, Therefore, In Consideration of the premises and of the license granted herein by the Licensor to the Licensee and the mutual covenants herein contained, the parties hereto agree as follows:

Article I.

Definitions.

For the purposes of this Agreement the following definitions shall apply:

(a) "Broadcast receiving sets" means a receiving set of a type (other than theater television and theater facsimile types) designed primarily for the reception of broadcast signals representative of pictures, news, music, speeches, sermons, advertising, entertainment, educational and similar matter, or any of them or combinations of any of them, for the purpose of entertainment or instruction. "Broadcast signals" means signals transmitted by means of electro-magnetic waves, variations, or impulses and intended for the general public, including without limiting the generality thereof such signals for subscription television and other subscription services.

(b) "Theater television and theater facsimile types" means picture broadcast receiving sets of types designed primarily for use in theaters or other places of public entertainment where an admission or entertainment charge is made.

(c) A "colour television broadcast receiving set" and a "colour picture broadcast receiving set" means, in each case, a broadcast receiving set capable of reproducing a picture embodying two or more chromatic colours. Chromatic colours means colours such as reds, greens, blues, purples, yellows, and browns, as distinguished from the achromatic colours—black, white and grays.

(d) A "monochrome television broadcast receiving set" and a "monochrome picture broadcast receiving set" means, in each case, a broadcast receiving set which is capable of reproducing a picture but is not capable of reproducing a picture embodying two or more chromatic colours.

(e) "Picture" means light images, shadows, reflections, photographs and other visible reproductions of the aspect or shape of animate or inanimate objects or of drawings, writings, forms and other graphic, printed or written matter of all kinds.

(f) "Electron tube" means a device comprising two or more electrodes and an envelope is to any extent evacuated or contains gas, vapor or liquid under any degree of pressure, which device operates by the passage of an electric current through the vacuum, gas or vapor contained within the envelope, including gas or vapor produced from such liquid, to change the form of, control or modify energy supplied thereto.

(g) A "transistor" is an active transducer which depends for its operation on the conduction of current in a semi-conductor or insulator, and which is adapted to perform functions analogous to functions of an electron tube. The term "transistor" as used herein, shall not be deemed to include a transducer, which depends for its operation on the conduction of current by electrons emitted into a vacuum, gas or vapor. Each "transistor" shall be deemed to include, as a part thereof, all permanently attached supporting members, cooling members and isolating or protecting structures, materials or housings for the semiconductor or insulator or its terminals, but shall not include circuits or other elements, devices or components (including other transistors) associated with the semi-conductor or insulator or its terminals.

(h) A "transducer" is a device by means of which energy can flow from one or more transmission systems to one or more other transmission systems and an "active transducer" is a transducer in which the energy supplied to the one or more other systems is not obtained exclusively from the energy available from the one or more first systems.

(i) A "semi-conductor" is a material (which may contain impurities or other imperfections) having an electrical conductivity, at room temperature, between that of metals commonly used for the conduction of current and that of insulators, and in which the electrical empedance of the material can be altered by the application of potentials, radiations or other energy of intensities which are not sufficiently great to alter permanently the structure of the material.

(j) "Cabinet" means not only that portion of Licensed Apparatus which is external to, permanently houses, and protects, and is designed to improve the appearance or saleability of the remaining portions thereof in the form and condition in which such apparatus is advertised (if at all) by Licensee, and is normally intended to be sold at retail to the ultimate user.

(k) "Automobile receiving set" means a complete broadcast receiving set of a type designed primarily for installation and use in automobiles.

(l) "Repair parts" means parts (other than electron tubes and transistors or semi-conductor devices) used to replace defective or worn out parts of a similar type thereafter to be discarded, for the purpose of repairing Licensed Apparatus.

Article II.

License.

Section 1

The Licensor hereby grants to the Licensee, upon the terms and conditions hereinafter set forth, a personal, indivisible, non-transferable and non-exclusive license, only for the Licensed Apparatus hereinafter specified and defined, and only as follows:

(a) to manufacture Licensed Apparatus in Canada and to sell or lease Licensed Apparatus so manufactured and

(b) to have Licensed Apparatus manufactured in Canada for the Licensee and to sell or lease such Licensed Apparatus so manufactured for the Licensee subject to the payment of royalties thereon by the Licensee as provided in Article III hereof. Such Licensed Apparatus shall be deemed to be licensed under this Agreement at the time of sale or lease by the Licensee.

Section 2

Subject to the reservations and conceptions specified in Section 3 o fthis Article II, this license is granted under all the Canadian Letters Patent covering inventions used in, relating to, or useful in, Licensed Apparatus, or in the manufacture thereof, owned by the Licensor or under which and to the extent to which the Licensor is empowered to grant licenses by Canadian Marconi Company, Montreal, Hazeltine Corporation, Little Neck, New York, U. S. A., Northern Electric Company Limited, Montreal and Philips Electronics apparatus shall, for the purposes of this Agreement, be referred to as "Licensed Apparatus".

(a) complete monochrome television broadcast receiving sets and other complete monochrome picture broadcast receiving sets, including in each case accompanying sound if any;

(b) complete color television broadcast receiving sets and other complete color picture broadcast receiving sets, including in each case accompanying sound if any;

(c) complete sound broadcasting receiving sets;

(d) complete combinations of apparatus of any of the kinds specified in sub-paragraphs (a) to (c) inclusive of this Section 2, and complete attachable apparatus of a type adapted for changing apparatus of a kind specified in any of such sub-paragraphs (a) to (c) inclusive into any such combinations;

(e) complete separate converters, adapters and auxiliary picture viewing devices, in each case of a type adapted for use with apparatus of any of the kinds specified in this Section 2 of this Article II, including without limiting the generality thereof, converters for amplitude modulation (AM), frequency modulation (FM), higher or lower frequencies and/or color, adapters for monochrome reception from color transmissions, slave units and supplementary picture viewing apparatus;

(f) complete separate remote, time and preselective control devices of types adapted for controlling the operation of apparatus of a kind specified in sub-paragraphs (a) to (e) inclusive of this Section 2 of this Article II;

(g) automobile receiving sets, complete except for one or more of the following: (1) cabinets, (2) parts used for the assembly of such sets in cabinets or other permanent housings, or (3) external remote control heads and external flexible shafts connected to said remote control heads, provided such sets are in the form and condition in which they are normally intended for assembly by vendees or users in cabinets or other permanent housings not furnished by or obtained through the Licensee. Any of the foregoing excepted items may be omitted, but if included in or sold with such automobile receiving sets then such items shall be deemed parts thereof; and

(h) apparatus of a kind specified in any of sub-paragraphs (a) to (f) inclusive of this Section 2 of this Article II, other than automobile receiving sets, complete except for cabinets and parts user for the assembly of such apparatus in cabinets or other permanent housings.

Each apparatus specified in sub-paragraphs (a) to (f) inclusive of this Section 2 of this Article II, in order to constitute Licensed Apparatus, shall be completely manufactured apparatus, complete with cabinet or cabinets, and in the form and condition in which it is advertised (if at all) by Licensee and is normally intended to be sold at retail to the ultimate user.

Without limiting the generality of the provisions of this Section 2 of this Article II, and to the extent necessary to comply therewith, Licensed Apparatus shall include the following:

(1) the devices, circuits and conductors by means of which electromagnetic waves and the picture or sound signals impressed thereon are intercepted, picked up, converted, conducted, selected, detected, translated, rectified, modified, amplified, projected, and made visible or made audible, as the case may be; and

(2) the devices by means of which electrical currents, derived from primary sources are conducted, converted, rectified, or otherwise modified for energizing such devices, circuits and conductors; and

(3) any cabinets, housings, supporting structures, assembly materials, operating, indicating and controlling devices, circuits and conductors; and

(4) any associated sound recording or reproducing apparatus and any other parts, devices and appurtenances which are embodied or enclosed in, or are mounted on, attached to, or constitute parts of, the apparatus specified in this Section 2 of this Article II or the cabinet thereof, or which enable remote control of its operation.

Section 3

Anything in this Agreement to the contrary notwithstanding, no license is herein granted, and no act or acts of manufacture, sale or lease hereunder shall be construed as or result in conveying any license to the Licensee or others, expressly or by implication, estoppel or otherwise under or with respect to:—

(a) Letters Patent claims relating to the structure or manufacture of electron tubes, transistors, semiconductors, incandescent lamps and other light sources, batteries; or

(b) Letters Patent of any country other than Canada; or

(c) Unassembled apparatus or parts thereof, other than repair or replacement parts for use in Licensed Apparatus; or

(d) Any device or any method or process of manufacture upon which the Licensee is not required to pay royalties pursuant to the provisions of this Agreement; or

(e) Processed materials and methods relating to the manufacture of such materials.

Section 4

The Licensor shall not assert any Letters Patent, owned by it or under which it has the right to grant licenses to others, against any vendee or user of Licensed Apparatus specified in sub-paragraphs (g) and (h) of Section 2 of this Artile II, on account of the assembly by such vendee or user of such Licensed Apparatus in cabinets or other permanent housings not furnished by or obtained from the Licensee.

Article III.

Royalties.

Section 1

The Licensee shall pay royalties to the Licensor upon all Licensed Apparatus sold or leased by it during the term of this Agreement at the following rates and in each instance upon net amounts determined as provided in Section 2 of this Article III;

(a) 1.4% upon all Licensed Apparatus specified in sub-paragraphs (a) and (g) of Section 2 of Article II comprising monochrome picture (including television) broadcast receiving sets, including combinations of such apparatus with apparatus specified in sub-paragraph (c) of Section 2 of Article II;

(b) 2.0% upon all Licensed Apparatus specified in sub-paragraphs (b) and (g) of Section 2 of Article II comprising colour picture (including television) broadcast receiving sets, including combinations of such apparatus with apparatus specified in sub-paragraphs (a) and (c) of Section 2 of Article II;

(c) 1.0% upon all Licensed Apparatus specified in sub-paragraphs (c) and (g) of Section 2 of Article II comprising only sound broadcast receiving sets;

(d) The rate of royalty upon all Licensed Apparatus specified in sub-parargaph (d) of Section 2 of Article II, comprising complete attachable apparatus of a type adapted for changing apparatus of a kind specified in sub-paragraphs (a) to (c) inclusive of Section 2 of Article II, into combinations, shall be at the same rate as that which applies to the type of combination of Licensed Apparatus resulting from such change;

(e) The rate of royalty upon all Licensed Apparatus specified in sub-paragraphs (e) and (f) of Section 2 of Article II shall be at the same rate as that which applies to the Licensed Apparatus of the type which results from the conversion or adaptation or of the type to be controlled;

(f) The rate of royalty upon all apparatus specified in sub-paragraph (h) of Section 2 of Article II shall be double the rate which would be applicable to such apparatus if sold completely installed in cabinets or other permanent housings;

(g) Upon any Licensed Apparatus sold for export and actually exported from Canada and not returned for use therein, the rate shall in each case be one-half the rate specified for such apparatus in sub-paragraphs (a) to (f) inclusive of this Section 1.

No royalties shall be payable upon repair parts as hereinbefore defined.

Section 2.

The base for the computation of royalties thereunder shall be the Licensee's genuine selling price at which customers are billed in the usual course of business for Licensed Apparatus, as packed for shipment to customers and including all packing material and boxes, cartons, crates, and all contents thereof, without any deductions other than those applicable as hereinafter in this Section

2 of this Article III specified. Such royalties shall be computed and paid on net amounts determined by making only the following deductions, and no others, from the Licensee's said selling price of such Licensed Apparatus sold by it:

(a) Deduction for Sales and Excise Taxes:

Canadian Government Sales and Excise Taxes which are actually paid by the Licensee on Licensed Apparatus sold by the Licensee, but only if and to the extent the amounts of such taxes are included in the Licensee's selling prices thereof.

(b) Tube, Transistor, Semi-Conductor and Battery Deduction:

The Licensee's net purchase prices (including inward freight only) of electron tubes, transistors, semi-conductors and/or battries purchased by the Licensee for use in Licensed Apparatus, if the Licensee has included in its selling prices of such Licensed Apparatus an amount at least equal to such net purchase prices for such tubes and/or batteries. In cases where Licensed Apparatus is obtained as provided in sub-paragraph (b) of Section 1 of Article II hereof, the deduction for such tubes or batteries shall not exceed the lowest amount which the Licensee is then currently paying for similar tubes or batteries for use in Licensed Apparatus manufactured by the Licensee or the fair market value thereof, whichever shall be lower. In the event the Licensee manufactures batteries for use in Licensed Apparatus, the deduction for such batteries shall not exceed the lowest prices at which the Licensee currently sells similar batteries to third persons or the fair market value thereof, whichever shall be lower.

(c) Cabinet Deduction:

Any amount of the Licensee's manufacturing cost or purchase price (including inward freight only) of the cabinet which is in excess of Thirty Dollars ($30.00).

(d) Automatic Record Changer Deduction:

The Licensee's cost or net purchase price (including inward freight only) of automatic record changers manufactured or purchased by the Licensee for use in Licensed Apparatus.

(e) Clock Mechanism Deduction:

The Licensee's cost or net purchase price (including inward freight only) of clock mechanisms manufactured or purchased by the Licensee for use in Licensed Apparatus.

Section 3.

The base for the computation of royalties on Licensed Apparatus which is leased shall be the Licensee's genuine selling price of identical or substantially identical apparatus. If no apparatus identical or substantially identical to the leased Licensed Apparatus is sold by the Licensee, the base for the computation of royalties shall be the value of said Licensed Apparatus as established for the payment of Canadian sales tax. If no value is established for sales tax payments, the base for the computation of royalties shall be a fair market value established by the Licensee and approved by the Licensor.

Section 4.

For the purpose of determining royalty payments, Licensed Apparatus shall be deemed to be sold or leased within the meaning of this Agreement when billed or consigned or when delivered, shipped or mailed, whichever first occurs.

Section 5.

In computing the amount upon which royalties are payable, credit may be taken by the Licensee for all Licensed Apparatus previously sold which is returned by customers to the Licensee and credit allowed therefor, but credit shall not be taken by the Licensee for any other deduction, allowance or credit, which may have been granted or allowed to its customers, without the written consent of the Licensor.

Section 6.

The Licensee's net selling prices, for the purpose of computing royalties payable hereunder on Licensed Apparatus consigned, shall be the consignee's selling prices before any allowance or deduction whatsoever (other than those allowances and deductions specified in Section 2 of this Article III) except the Licensee's selling commissions to the consignee.

Section 7.

Sales of Licensed Apparatus, by the Licensee to any other licensee of the Licensor who is licensed by the Licensor to manufacture and sell or lease such apparatus and who is obligated to pay royalties to the Licensor in respect thereof, shall be reported by the Licensee to the Licensor but shall not be subject to the payment of royalties by the Licensee. The Licensee shall report all of its sales of Licensed Apparatus referred to in sub-paragraph (b) of Section 1 of Article II hereof, and shall pay royalty thereon, in all respects as though such apparatus had been manufactured by the Licensee itself under this Agreement.

Section 8.

In order to insure to the Licensor the full royalty payments contemplated hereunder, the Licensee covenants that, in the event that any Licensed Apparatus shall be sold directly or indirectly either (1) to a corporation, firm or association, which, or individual or group who, shall directly or indirectly control the Licensee by stock ownership, exclusive sales or supply contract, or otherwise, or (2) to a corporation, firm or association which the Licensee or stockholders of the Licensee, or any company controlled by the Licensee shall directly or indirectly control by stock ownership, exclusive sales or supply contract, or otherwise, or (3) to a corporation, firm or association controlled directly or indirectly by stock ownership, exclusive sales or supply contract, or otherwise by any corporation, firm or association which, or individual or group who, shall directly or indirectly control the Licensee by stock ownership, exclusive sales or supply contract, or otherwise, or (4) to a corporation, firm or association which, or individual or group who, shall be so affiliated, by any means whatsoever, with the Licensee as to impair, discourage or prevent arm's length dealings between such corporation, firm, association, individual or group and the Licensee, the royalties to be paid hereunder in respect of such Licensed Apparatus shall, at the option of the Licensor, be based upon the invoice price at which the last of such purchasers resells said apparatus, rather than upon the invoice price of the Licensee.

Section 9.

The royalties prescribed herein shall be due and payable on the twentieth (20th) day of each month following that in which any Licensed Apparatus is sold or leased hereunder.

Without in any way prejudicing, impairing or waiving any of the rights granted herein to the Licensor, including right of cancellation or termination, interest may be charged and shall be payable by the Licensee on all overdue royalty payments at the rate of six per cent (6%) per annum from the due date of payment thereof until such ovedue payments have been made in cash.

Section 10.

Upon default of payment of royalties by the Licensee for any monthly period, and if in the opinion of the Licensor the financial responsibility of the Licensee so warrants, the Licensor shall forthwith at its option and without in any way prejudicing or relinquishing any rights granted to it hereunder, have the right to thenceforth require payment of accruing or accrued royalties from the Licensee by way of transfer or assignment to said Licensor of such portion of the sales price of Licensed Apparatus payable to the Licensee as may be necessary to satisfy the royalties in respect to such sales or accrued royalties previously owing to the Licensor, or, in the alternative, the Licensor may require payment by the Licensee daily or weekly, as it may desire, of royalties with respect to Licensed Apparatus sold under this Agreement.

Article IV.

Records and Reports.

Section 1.

The Licensee shall keep full, true and accurate books of account and records of all Licensed Apparatus manufactured and/or sold under the license granted by this Agreement, in sufficient detail to enable the Licensor to ascertain what royalties are due hereunder. The said books of account and records shall particularly show the number and types of Licensed Apparatus made and sold by the Licensee and the Licensee's invoice price thereof for each type or model (before cash discounts, freight, royalty, advertising allowances or similar deductions have been made).

The said books of account and records shall be open to the inspection of the Licensor or its duly authorized representative at all reasonable times in order to substantiate proper compliance with the provisions of this Agreement and such authorized representative may make such copies and take such extracts from said books of account and records as he may deem necessary.

The Licensee shall allow such investigations by the Licensor or its duty authorized representatives generally of the Licensee's business in Licensed Apparatus and upon request shall furnish the Licensor with such information as may be necessary to determine the accuracy of all statements required by this license to be furnished to the Licensor and to verify the Licensee's compliance with the terms and conditions of this Agreement.

Section 2.

The Licensee shall simultaneously with the payment of royalties as prescribed in Article III, not more than twenty (20) days after and as of the first (1st) day of each month during the terms of this Agreement, furnish to the Licensor a written royalty report (in substantially the form of Exhibit A attached hereto and made a part hereof(specifying exactly the total number of Licensed Apparatus sold or leased by the Licensee during the preceding month or that part of the preceding month during which this License shall have been in force. Said royalty reports shall show the Licensee's selling prices with respect to all such apparatus, each deduction claimed as provided in Section 2 of Article III hereof, whether such apparatus was sold or leased for use in Canada or for export therefrom, and the amounts of royalties payable thereon as provided in Article III hereof. The first royalty payment and accompanying report shall be due on .... and shall cover the period commencing .... to .... inclusive.

Section 3.

The Licensor agrees not to disclose any confidential information relating to the Licensee's business obtained by the Licensor by reason of this Agreement except when combined statistically with corresponding information obtained from other licensees in such manner as to conceal said information, and except as it may be necessary to disclose the information in or in connection with any arbitration or litigation.

Article V.

Patent Marking and Trade Marks.

Section 1.

The Licensee shall affix in a conspicuous place on all Licensed Apparatus manufactured and/or sold or leased by the Licensee under the terms of this Agreement, a license notice bearing the corporate or trade name, brand name or identification insignia of the Licensee, with the inseription, namely:

"Licensed by Canadian Radio Patents Limited" together with such patent marking as may be required under the provisions of the Canadian Patent Act.

Section 2.

The Licensee shall notify the Licensor from time to time of each trade mark, trade name, brand name or identification insignia applied to Licensed Apparatus manufacturned by or for the Licensee and sold or leased by it. Such trade mark, trade name, brand name or identification insignia shall, if feasible, be etched, stamped or in some other permanent form affixed in a conspicuous place upon every such Licensed Apparatus and any Licensed Apparatus not bearing such identification, name or trade mark is not licensed hereunder.

Section 3.

All said marks, inscriptions or identification insignia required herein shall be of a prominent, fixed and permanent character and displayed in such manner that distributors, jobbers, dealers and retail purchasers or users may see and recognize the same at the time of purchase and sale and the Licensee's catalogues, circular, and price lists referring to said Licensed Apparatus shall also contain the same means of identification.. The Licensee further agrees to include any and all such catalogues, circulars or price lists of the Licensee, advertising said Licensed Apparatus, the statement "Licensed by Canadian Radio Patents Limited".

Article VI.

Validity of Patents.

The admission of validity implied in the acceptance of the license hereunder is limited to the scope, field and period for which such license is granted, or agreed to be granted.

Article VII.

Notices.

Until written notice of change of address is given by either party to the other by registered letter properly addressed, any notice or request with reference to the subject matter of this Agreement shall be deemed to have been sufficiently given when (1) if given to the Licensor, it shall be enclosed in a registered postpaid envelope addressed to the Licensor at its office at 200 St. Clair Avenue West, Toronoto 7, Ontario and deposited in any Post Office in the place where the head office of the Licensee is located and service or delivery of such notice shall be deemed to have taken place as of the date of such mailing; (2) if given to the Licensee, it shall be enclosed in a registered postpaid envelope addressed to the Licensee at the last known address of the Licensee and deposited in any Post Office at Toronto, Ontario, and service or delivery of such notice shall be deemed to have taken place as of the date of such mailing.

Article VIII.

Term and Termination.

Section 1.

This Agreement shall be effective as of ....

and, unless cancelled as hereinafter provided, shall remain in force until July 2, 1963. Either party hereto may cancel this Agreement at any time upon sixty (60) days written notice to the other party to that effect.

Section 2.

The license herein granted and agreed to be granted by the Licensor shall cease, except as herein otherwise specifically provided, upon the cancellation or termination of this Agreement.

Section 3.

In the event of failure of the Licensee at any time during the continuance of this Agreement to render any of the statements called for herein upon any of the prescribed dates or to pay all of the royalties required hereunder when due or upon failure of the Licensee to comply with any of the other obligations of this Agreement, the Licensor may, at its option and without prejudice to any of its other legal and equitable rights and remedies under this Agreement, by ten (10) days' notice in writing to the Licensee particularly specifying the breach or failure of the Licensee, terminate the license herein granted and all rights of the Licensee hereunder unless such breach or failure has been rectified within the said period of ten (10) days.

Should the Licensee at any time make an authorized assignment for the benefit of its creditors or voluntarily or involuntarily be declared a bankrupt or be wound up or if a receiver or liquidator shall be appointed to administer its affairs and shall not be discharged within five (5) days after his appointment, this Agreement shall automatically and without notice become cancelled and terminated as of the date of such assignment or as of the date upon which a custodian, receiver, trustee or liquidator is appointed.

No cancellation or termination of this license shall affect any of the other legal and equitable rights and remedies of the Licensor under this Agreement nor shall any cancellation or termination release the Licensee from any liability accruing to the Licensor hereunder prior to the time such cancellation or termination became effective. No failure on the part of the Licensor to exercise its rights of cancellation or termination hereunder for any one or more defaults shall be construed to prejudice its rights of cancellation or termination for any subsequent default.

Article IX.

Successors or Assigns.

Section 1.

Neither this Agreement nor any of its benefits shall be directly or indirectly assigned, transferred, divided or shared by the Licensee with any person, firm or corporation whatsoever without the written consent of the Licensor.

Section 2.

This Agreement and the License hereby granted shall terminate unless otherwise agreed in writing by the Licensor, upon any attempt by the Licensee to assign the same.

For the purpose of verifying compliance with the provisions of this Section the Licensee agrees to permit the authorized representatives of the Licensor to examine the share or stock register books of the Licensee at any time within business hours, upon reasonable notice.

This License Agreement shall enure to the benelt of the successors and assigns of the Licensor but shall not enure to the benefit of the successors and assigns or any legal representatives of the Licensee without the written consent of the Licensor.

In Witness Whereof the parties hereto have caused these presents to be executed by their proper officers thereunto duly authorized, and their corporate seals to be hereto affixed, as of the day and year first above written.

Canadian Radio Patents Limited,

....

President,

....

Secretary.

....

President,

....

Secretary.

STATEMENT OF ROYALTY DUE CANADIAN RADIO PATENTS LIMITED

LICENSEE FOR THE MONTH OF 19

TYPE OF APPARATUS		DEDUCTIONS (Per Unit)											
Name. (Art. II Sec. 2) Model No. No. tubes No. transistors	SELLING PRICE (Per Unit)	SALES TAX PAID	EXCISE TAX PAID	COST OF TUBES	COST OF TRANS	COST OF BATT.	CABINET OVER $[illegible].00	RECORD CHANGER and/or CLOCK	*NET PRICE FOR ROYALTY (Per Unit)	ROYALTY RATE (Art. II Sec. 1)	ROYALTY PER UNIT	TOTAL UNIT SALES	TOTAL ROYALTY

*Please report under main type headings of Radio Receivers, Television Receivers, Electrical Phonographs, etc., with sub-heading of Domestic or Export. Show total unit sales and total royalty for each of these sub-headings and main Headings in the last two columns.

TOTAL - ALL LICENSED APPARATUS

Certified to be a true and correct statement of our sales of Licensed Apparatus during the period designated above.

Signed . . . .

Date . . . .

DEFENDANT'S EXHIBIT NO. 124A.

Canadian Radio Patents Limited.
Toronto.

January 17, 1952.

Mr. Bruce L. Birchard,
Patent Department,
Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, Ill.,
U. S. A.

Dear Mr. Birchard:

Further to our letter of September 12th, 1951, I am enclosing copy of the standard output license agreement that is now being used by Canadian Radio Patents Limited in Canada.

The Canadian patents listed in Schedule "A" are those covering inventions originating with such companies as General Electric, Westinghouse, Northern Electric, Marconi, Rogers (including Philips), RCA and certain patents owned by CRPL. We also have the right to extend licenses under the Canadian patents of Philco and Hazeltine Corporation and no additional royalty is charged for these rights. The reason that we did not include the Hazeltine Canadian patents in this particular list is that our present arrangement with Hazeltine terminates before the five-year initial term of the output license that we are now offering although we do have rights to extend our present arrangement with Hazeltine until 1963.

If there are any further details that you wish with respect to the CRPL license and licensing policy, please do not hesitate to call upon us.

We note that Zenith Radio Corporation of Canada Limited (Windsor, Ontario) has indicated that it will be showing hearing aids, radios, television and FM receivers at the forthcoming International Trade Fair in Toronto, June 2nd to June 13th, 1952.

Yours very truly,
(Signature illegible),
Secretary-Treasurer.

SDB/NC
encl.

DEFENDANT'S EXHIBIT NO. 124B.

Canadian Radio Patents Limited

—and—

....

License Agreement

Radio Broadcast Receiving Sets
—and—
Electrical Phonographs

1951.

Agreement dated as of the .... day of ...., A. D. 19...... Between:

✓ Canadian Radio Patents Limited,

a corporation organized under the laws of the Dominion of Canada and having its Head Office and principal place of business at 159 Bay Street, in the City of Toronto, in the Province of Ontario, hereinafter called the "Licensor",

.... Of The First Part:

—and—

.... a corporation also organized under the laws of the Dominion of

Canada and having its Head Office and principal place of business at ____________________, in the City of ____________, in the Province of ____________, hereinafter called the "Licensee", ____________________ ____________________Of The Second Part:

Whereas the Licensor represents that it owns or otherwise has the right to grant licenses under various Letters Patent of ahe Dominion of Canada as for inventions relating to or useful in the manufacture of Licensed Apparatus as hereinafter specified and defined;

And Whereas the Licensee desires to make lawful use of same or all of such inventions covered by said Letters Patent of the Dominion of Canda and to that end desires to acquire the license herein granted;

Now, Therefore, In Consideration of the premises and of the license granted herein by the Licensor to the Licensee and the mutual covenants herein contained, the parties hereto agree as follows:

Article I.

Definitions.

For the purpose of this Agreement, the following definitions shall apply:

(a) "Broadcast" or "Broadcasting" means the transmission or dissemination by radio of pictures, news, music, speeches, sermons, advertising, and matter of an entertaining, educational ar similar nature, or any of them, or combinations of any of them, for reception by the general public.

(b) "Non-commercial use" means and is limited to use for private entertainment and instruction in homes and also in other places where no charge is made directly or indirectly for admission or for the privilege of entertainment or instruction.

(c) "Homes" means all places of residence, permanent or temporary.

(d) "Pictures" means light images, shadows, reflections, and other visible reproductions, of the aspect or shape of animate or inanimate objects, or of drawings, writings, forms, and other graphic, printed or written matter of all kinds.

(e) "Radio broadcast receiving set" mean apparatus by means of which electric currents, waves or impulses of radio frequency originating at a radio broadcast transmitter are employed to produce variations or effects which are audible or visible.

(f) "Radio tube" means a device comprising two or more electrodes and an envelope which is to any extent evacuated or contai~~ns~~ gas, vapor or liquid under any degree or contains gas, vapor or liquid under any degree of pressure, and operates by electronic discharge or ionization to change the form of, control or modify energy supplied thereto.

(g) "Cabinet" means only that portion of Licensed Apparatus which is external to, permanently houses, and protects, and is designed to improve the appearance or saleability of the remaining portions thereof in the form and condtion in which such apparatus is advertised (if at all) by the Licensee, and is normally intended to be sold at retail to the ultimate user.

(h) "Electrical phonograph" means appartus for the reproduction of sound either directly or in conjunction with a radio broadcast receiving set, from sound records used in or in connection with such apparatus, to be heard in the immediate vicinity of the apparatus, in which such record gives rise to or controls an electric current or electro-motive force in such a way that the variations of the electric current or electro-motive force correspond in some way to the recorded sounds, and the electric current or electro-motive force directly or indirectly brings about the production of sound either from said apparatus, or from said radio broadcast receiving set.

(i) "Automobile radio broadcast receiving set" means a complete radio broadcast receiving set for the reception of sound broadcasting only designed, adapted and sold especially for installation and use in automobiles.

(j) "External remote control head and external flexible shafts" means devices designed to be fastened to a part of an automobile remote from the location of the remainder of an automobile radio broadcast receiving set, having one or more dials and/or one or more associated controls for switching, or tuning, or varying the volume, sensitivity or tone, and electrical and mechanical cables for connecting the controls to the controlled elements of such automobile radio broadcast receiving set.

(k) "Licensed apparatus" means apparatus of the kinds and only in the form and condition, and only for the uses specified under subsections (a) to (j) inclusive of Section 2 of Article II and as such sub-sections are amplified and modified by the last two paragraphs of said Section 2 of Article II.

Article II.

License.

Section 1

The Licensor hereby grants to the Licensee under all of the Letters Patent of the Dominion of Canada identified or enumerated in Schedule "A" attached hereto and made a part hereof and upon the terms and conditions hereinafter set forth, a personal, indivisible, non-transferable and non-exclusive license, only for the Licensed Apparatus hereinafter specified and defined, and only as follows:

(a) To manufacture within the Dominion of Canada and to sell the Licensed Apparatus so manufactured, and

(b) To have Licensed Apparatus manufactured within the Dominion of Canada for the Licensee and to sell such apparatus so manufactured for the Licensee subject to the payment of royalties thereon by the Licensee as provided in Article III hereof. Such apparatus shall be deemed to be licensed under this Agreement at the time of sale by the Licensee.

Section 2.

Subject to the reservations and exceptions specified in Section 2 of Article II, said license is granted for non-commercial use of the following apparatus only in the manner or manners hereinafter specified (such apparatus for such uses constituting and being referred to in this Agreement as "Licensed Apparatus")

(a) Complete radio broadcast receiving sets for sound only;

(b) Complete radio broadcast receiving sets for pictures only, including television and facsimile pictures;

(c) Complete electrical phonographs for use otherwise than in combination or in connection with apparatus in the field of wire telephony;

(d) Complete combinations of apparatus for two or more of the uses specified in sub-paragraphs (a), (b) and (c) of this Section 2, and complete attachable apparatus for converting Licensed Apparatus of sub-paragraphs (a), (b) or (c) into such combinations for the respective uses therein specified;

(e) Separate remote, time or preselective control devices, for controlling the operation of any of the apparatus specified in sub-paragraphs (a), (b), (c) or (d) of this Section 2;

(f) Apparatus specified in sub-paragraphs (a), (b), (c), (d) or (e) of this Section 2, other than automobile radio broadcast receiving sets, for the respective uses therein specified, complete except for cabinets and parts used for the assembly of such apparatus in cabinets or other permanent housings; and

(g) Automobile radio broadcast receiving sets, complete except for one or more of the following:—(1) cabinets, (2) parts used for the assembly of such sets in cabinets or other permanent housings, or (3) external remote control heads and external flexible shafts connected to said remote control heads, provided such sets are in the form and conditions in which they are normally intended for assembly by vendees or users in cabinets or other permanent housings not furnished by or obtained through the Licensee. Any of the foregoing excepted items may be omitted but, if included in or sold with such automobile radio broadcast receiving sets, then such items shall be deemed parts of Licensed Apparatus.

(h) Apparatus for converting radio broadcast receiving sets of the kind specified in sub-paragraph (a) of this Section 2 (or any combination which includes such a set) designed to receive amplitude modulated broadcasting, into apparatus adapted to receive frequency modulated broadcasting;

(i) Apparatus for converting radio broadcast receiving sets of the kind specified in sub-paragraph (a) of this Section 2 (or any combination which includes such a set) into radio broadcast receiving sets of the kind specified in sub-paragraph (d) of this Section 2;

(j) Complete electrical sound recording apparatus, either separately or in combination with apparatus specified in sub-paragraphs (a) and (c) of this Section 2, for use in homes for making sound records of entertainment and educational matter for the private use of the maker.

Each Licensed Apparatus specified in sub-paragraph (a), (b), (c), (d), (e), (h), (i) and (j) of this Section 2 shall be completely manufactured apparatus, complete with cabinet or cabinets, and in the form and condition in which it is advertised (if at all) by the Licensee and is normally intended to be sold at retail to the ultimate user.

Without limiting the generality of the provisions of this Section 2, and to the extent necessary to comply therewith, Licensed Apparatus shall include the following:— (1) the devices, circuits, and conductors by means of which radio broadcast frequencies, and sound waves or picture signals impressed thereon in the cases of broadcast receiving sets and apparatus specified in sub-paragraphs (a), (b), (d), (f), (g) (h) and (i) of the Section 2, and recorded sounds in the case of eletrical phonographs specified in sub-paragraphs (c) and (d) of this Section 2, and sounds to be recorded in the case of sound recording apparatus specified in sub-paragraph (j) of this Section 2, are intercepted, picked up, converted, conducted, selected, detected, translated, rectified, modified, amplified, projected and made audible or made visible or recorded, as the case may be; (2) the devices by means of which electrical currents derived from primary sources are conducted, converted, rectified or otherwise modified for energizing such devices, circuits and conductors; (3) all cabinets, housings, supporting structures, assembly materials, operating, indicating and controlling devices, circuits and conductors; and (4) also all other parts, devices and appurtenances which are emobdied or enclosed in, mounted on, attached to, or constitute parts of, the foregoing apparatus, or which enable remote control of its operation.

Section 3

Anything in the Agreement to the contrary notwithstanding, no license is herein granted, and no act or acts of manufacture or sale hereunder, shall be construed as, or result in, conveying any license to the Licensee or others, expressly or by implication, estoppel, or otherwise under or with respect to:—

(a) Letters Patent of the Dominion of Canada other than those listed in Schedule "A" hereto and those added to said Schedule "A" from time to time by the Licensor; or

(b) Letters Patent claims relating to the structure or manufacture of radio tubes, batteries, incandescent lamps or other light sources, motion picture projectors, sound recording apparatus except as provided in sub-paragraph (j) of Section 2 of Article II or to sound or picture records or record blanks; or

(c) Letters Patent of any country other than the Dominion of Canada; or

(d) Unassembled apparatus or parts thereof, other than repair or replacement parts for use in Licensed Apparatus; or

(e) Any device or any method or process of manufacture upon which the Licensee is not required to pay royalties pursuant to the provisions of this Agreement.

Section 4

The Licensor shall not assert any Letters Patent, owned by it or under which it has the right to grant licenses to others, against any vendee or user of Licensed Apparatus specified in sub-paragraphs (f) and (g) of Section 2 of this Article II, on account of the assembly by such vendee or user of such apparatus in cabinets or other permanent housings not furnished by or obtained from the Licensee, provided that such apparatus is not sold and/or used by such vendee or user contrary to the license herein granted to the Licensee.

Article III.

Royalties.

Section 1

The Licensee shall pay the Licensor royalties at the following rates upon all Licensed Apparatus sold by it during the term of this Agreement covered by, or made under, any unexpired Letters Patent of the Dominion of Canada now or hereafter issued under which a license is granted hereunder to the Licensee:—

(a) Upon Licensed Apparatus specified in sub-paragraphs (a), (b), (c), (d), (e), (g), (h), (i) and (j) of Section 2 of Article II sold for use in the Dominion of Canada, royalties at the rate of three and one-half per cent (3½%) of net amounts determined as provided in Section 2 of this Article III; and

(b) Upon Licensed Apparatus specified in sub-paragraphs (a), (b), (c) (d), (e), (g), (h), (i), and (j) of Section 2 of Article II sold for export and actually exported from the Dominion of Canada and not returned for use therein, royalties at the rate of one and three-quarters per cent (1¾%) of net amounts determined as provided in Section 2 of this Article III; and

(c) Upon Licensed Apparatus specified in sub-paragraph (f) of Section 2 of Atricle II sold for use in the Dominion of Canada, royalties at the rate of seven per cent (7%) of net amounts determined as provided in Section 2 of this Article III; and

(d) Upon Licensed Apparatus specified in sub-paragraph (f) of Section 2 of Article II sold for export and actually exported from the Dominion of Canada and not returned for use therein, royalties at the rate of three and one-half per cent (3½%) of net amounts determined as provided in Section 2 of this Article III.

No royalties shall be payable upon repair or replacement parts sold by the Licensee for use in Licensed Apparatus.

Section 2

The base for the computation of royalties thereunder shall be the Licensee's genuine selling prices at which customers are billed in the usual course of business for Licensed Apparatus, as packed for shipment to customers and including all packing material and boxes, cartons, crates and all contents thereof, without any deductions other than those applicable as hereinafter in this Section 2 specified. Such royalties shall be computed and paid on net amounts determined by making only the following deductions, and no others, from the Licensee's said selling price of such Licensed Apparatus sold by it:—

(a) Deduction for Sales and Excise Taxes:—
Dominion Government Sales and Excise Taxes which are actually paid by the Licensee on Licensed Apparatus sold by the Licensee, but only if and to the extent the amounts of such taxes are included in the Licensee's selling prices thereof.

(b) Tube and Battery Deduction:—
The Licensee's net purchase price (including inward freight only) of radio tubes and/or batteries purchased by the Licensee for use in Licensed Apparatus, if the Licensee has included in its selling prices of such Licensed Apparatus an amount at least equal to such net purchase prices for such tubes and/or batteries. In cases where Licensed Apparatus is obtained as provided in sub-paragraph (b) of Section 1 of Article II hereof, the deduction for such tubes or batteries shall not exceed the lowest amount which the Licensee is then currently paying for similar tubes or batteries for use in Licensed Apparatus manufactured by the Licensee or the fair market value thereof, whichever shall be lower. In the event the Licensee manufactures batteries for use in Licensed Apparatus, the deduction for such batteries shall not exceed the lowest prices at which the Licensee currently sells similar batteries to third persons or the fair market value thereof, whichever shall be lower.

(c) Cabinet Deduction:—
Any amount of the Licensee's manufacturing cost or purchase price of the cabinet which is in excess of Thirty Dollars ($30.00).

(d) Automatic Record Changer Deduction:—
The Licensee's cost or net purchase price (includ-

ing inward freight only) of automatic record changers manufactured or purchased by the Licensee for use in Licensed Apparatus.

Section 3

The rates of royalty provided for in Section 1 of this Article III, and the bases to which such rates shall be applicable, are accepted and recognized by the parties hereto as a reasonable and convenient measure of the fair value of the license granted herein.

Previous license agreements of the Licensor with the Licensee or others, including methods of, and provisions for, determining royalties involving higher rates and diminution of the bases through allowance of various deductions for cabinets and other items heretofore claimed or allowed under such previous license agreements, have resulted in accounting and other difficulties and expenses. It is, among other reasons, for the purpose of simplification and the reduction of such expenses and such other difficulties that the reduced rates of royalty and the enlarged royalty bases herein provided for have been adopted by the parties in lieu of the royalty rates and royalty bases of such previous license agreements.

Section 4

For the purpose of determining royalty payments, Licensed Appparatus shall be deemed to be sold within the meaning of this Agreement when billed or consigned or when delivered, shipped or mailed, whichever first occurs.

Section 5

In computing the amount upon which royalties are payable, credit may be taken by the Licensee for all Licensed Apparatus previously sold which is returned by customers to the Licensee and credit allowed therefor, but credit shall not be taken by the Licensee for any other deduction, allowance or credit, which may have been granted or allowed to its customers, without the written consent of the Licensor.

Section 6

The Licensee's net selling prices, for the purpose of computing royalties payable hereunder on Licensed Apparatus consigned, shall be the consignee's selling prices before any allowance or deduction whatsoever (other than those allowances and deductions specified in Section 2 of this Article III) except the Licensee's selling commissions to the consignee.

Section 7

Sales of Licensed Apparatus, by the Licensee to any other licensee of the Licensor who is licensed by the Licensor under Letters Patent of the Dominion of Canada to manufacture and sell such apparatus and who is obligated to pay royalties to the Licensor in respect thereof, shall be reported by the Licensee to the Licensor but shall not be subject to the payment of royalties by the Licensee. The Licensee shall report all of its sales of Licensed Apparatus referred to in sub-paragraph (?) of Section 1 of Article II hereof, and shall pay royalty thereon, in all respects as though such apparatus had been manufactured by the Licensee itself under this Agreement.

Section 8

In order to insure to the Licensor the full royalty payments contemplated hereunder, the Licensee covenants that, in the event that any Licensed Apparatus shall be sold directly or indirectly either (1) to a corporation, firm or association which, or individual or group who, shall directly or indirectly control the Licensee by stock ownership, exclusive sales or supply contract, or otherwise, or (2) to a corporation, firm or association which the Licensee or stockholders of the Licensee, or any company controlled by the Licensee shall directly or indirectly control by stock ownership, exclusive sales or supply contract, or otherwise, or (3) to a corporation, firm or association controlled directly or indirectly by stock ownership, exclusive sales or supply contract, or otherwise by any corporation, firm or association which, or individual or group who, shall directly or indirectly control the Licensee by stock ownership, exclusive sales or supply contract, or otherwise, or (4) to a corporation, firm or association which, or individual or group who, shall be so affiliated, by any means whatsoever, with the Licensee as to impair, discourage or prevent arm's length dealings between such corporation, firm, association, individual or group and the Licensee, the royalties to be paid hereunder in respect of such Licensed Apparatus shall, at the option of the Licensor, be based upon the invoice price at which the last of such purchasers resells said apparatus, rather than upon the invoice price of the Licensee.

Section 9

The royalties prescribed herein shall be due and payable on the twentieth (20th) day of each month following that in which any Licensed Apparatus is sold hereunder.

Without in any way prejudicing, impairing or waiving any of the rights granted herein to the Licensor, including right of cancellation or termination, interest may be charged and shall be payable by the Licensee on all overdue royalty payments at the rate of six per cent (6%) per annum from the due date of payment thereof until such overdue payments have been made in cash.

Section 10

Upon default of payment of royalties by the Licensee for any monthly period, and if in the opinion of the Licensor the financial responsibility of the Licensee so warrants, the

Licensor shall forthwith at its opinion and without in any way prejudicing or relinquishing any rights granted to it hereunder, have the right to thenceforth require payment of accruing or accrued royalties from the Licensee by way of transfer or assignment to said Licensor of such portion of the sales price of Licensed Apparatus payable to the Licensee as may be necessary to satisfy the royalties in respect to such sales or accrued royalties previously owing to the Licensor, or, in the alternative, the Licensor may require payment by the Licensee daily or weekly, as it may desire, of royalties with respect to Licensed Apparatus sold under this Agreement.

Article IV.

Records and Reports.

Section 1

The Licensee shall keep full, true and accurate books of account and records of all Licensed Apparatus manufactured and/or sold under the license granted by this Agreement, in sufficient detail to enable the Licensor to ascertain what royalties are due hereunder. The said books of account and records shall particularly show the number and types of Licensed Apparatus made and sold by the Licensee and the Licensee's invoice price thereon for each type or model (before cash discounts, freight, royalty, advertising allowances or similar deductions have been made).

The said books of account and records shall be open to the inspection of the Licensor or its duly authorized representative at all reasonable times in order to substantiate proper compliance with the provisions of this Agreement and such authorized representative may make such copies and take such extracts from said books of account and records as he may deem necessary.

The Licensee shall allow such investigations by the Licensor or its duly authorized representatives generally of the Licensee's business in Licensed Apparatus and upon request shall furnish the Licensor with such information as may be necessary to determine the accuracy of all statements required by this license to be furnished to the Licensor and to verify the Licensee's compliance with the terms and conditions of this license agreement.

Section 2

The Licensee shall simultaneously with the payment of royalties as prescribed in Article III, twenty (20) days after and as of the first (1st) day of each month during the term of this Agreement, furnish to the Licensor a written royalty report (in substantially the form of Exhibit I attached hereto and made a part hereof) specifying exactly the total number of Licensed Apparatus sold by the Licensee during the preceding month or that part of the preceding month during which this license shall have been in force. Said royalty reports shall show the Licensee's selling prices with respect to all such apparatus, each deduction claimed as provided in Section 2 of Article III hereof, whether such apparatus was sold for use in the Dominion of Canada or for export therefrom, and the amounts of royalties payable thereon as provided in Article III hereof. The first royalty payment and accompanying report shall be due on ...., and shall cover the month commencing ...., and shall also include a statement of all Licensed Apparatus sold by the Licensee between ...., and the date of this Agreement and the Licensee shall pay to the Licensor royalty thereon, at the time of such report in the same amount as if this Agreement had been in force and effect at the time of said sale.

Section 3

The Licensor agrees not to disclose any confidential information relating to the Licensee's business obtained by the Licensor by reason of this Agreement except when combined statistically with corresponding information obtained from other Licensees in such manner as to conceal said information, and except as it may be necessary to disclose the information in or in connection with any arbitration or litigation.

Article V.

Compliance With Canadian Patent Act.

The Licensee shall manufacture and sell the Licensed Apparatus in Canada to such extent and in such manner as to fully comply with the provisions of the Patent Act of the Dominion of Canada. In the event that failure of the Licensee to manufacture within the Dominion of Canada in accordance with the provisions of the Canadian Patent Act is cited in a complaint before the Canadian Commissioner of Patents by a third party or third parties as an abuse of the rights under any Letters Patent the subject of the license of this indenture, the Licensee will be promptly notified by the Licensor and shall, at Licensee's expense, offer a defense within the time allowed (in the name of the Licensor or others if such is deemed necessary or advisable) to such complaint before the Commissioner of Patents. In the event that the Licensee fails to offer a defense to such complaint or that such complaint shall be finally sustained in spite of any defense offered as aforesaid, then the Licensor shall have the right to terminate this Agreement, together with the license rights granted hereunder, by thirty (30) days' written notice given by the Licensor to the Licensee.

Article VI.

Patent Marking and Trade Marks.

Section 1

The Licensee shall affix in a conspicuous place on all Licensed Apparatus manufactured and/or sold by the Licensee under the terms of this Agreement, a license notice bearing the corporate or trade name of the Licensee, with the inscription, namely:—

> "Licensed by Canadian Radio Patents Limited—
> Patented 1933-1951 inclusive".

or such patent marking as otherwise may be required under the provisions of the Patent Act of the Dominion of Canada.

Section 2

The licensee shall notify the Licensor from time to time of each trade mark, trade name or identification insignia applied to Licensed Apparatus manufactured by or for the Licensee and sold by it. Such trade mark, trade name, brand name or identification insignia shall, if feasible, be etched, stamped or in some other permanent form affixed in a conspicuous place upon every such Licensed Apparatus and any Licensed Apparatus not bearing such identification, name or trade mark is not licensed hereunder.

Section 3

All said marks, inscriptions or identification insignia required herein shall be of a prominent, fixed and permanent character and displayed in such manner that distributors, jobbers, dealers and retail purchasers or users may see and recognize the same at the time of purchase and sale and the Licensee's catalogues, circulars and price lists referring to said Licensed Apparatus shall also contain the same means of identification. The Licensee further agrees to include in any and all such catalogues, circulars or price lists of the Licensee, advertising said Licensed Apparatus, the statement "Licensed by Canadian Radio Patents Limited".

Section 4.

The Licensee shall observe any reasonable requirements and make any reasonable changes in, or additions to, the above notices and other notices and in the manner of applying the same, which the Licensor, by notice in writing to the Licensee, may require.

Article VII.

Validity of Patents.

The admission of validity implied in the acceptance of the license hereunder is limited to the scope, field and period for which such license is granted, or agreed to be granted.

Article VIII.

Notices.

Until written notice of change of address is given by either party to the other by registered letter properly addressed, any notice or request with reference to the subject matter of this Agreement shall be deemed to have been sufficiently given when (1) if given to the Licensor, it shall be enclosed in a registered postpaid envelope addressed to the Licensor at its office at 159 Bay Street, Toronto 1, Ontario, and deposited in any Post Office in the place where the head office of the Licensee is located and service or delivery of such notice shall be deemed to have taken place as of the date of such mailing; (2) if given to the Licensee, it shall be enclosed in a registered postpaid envelope addressed to the Licensee at the last known address of the

Licensee and deposited in any Post Office at Toronto, Ontario, and service or delivery of such notice shall be deemed to have taken place as of the date of such mailing.

Article IX.

Term and Termination.

Section 1.

This Agreement shall be effective as of ...., and, unless sooner cancelled or terminated in accordance with the provisions herein contained, shall remain in force for a period of one year and shall continue thereafter from year to year, provided, however, that the Licensor or the Licensee may, as of any time on or after the expiration of one year from the said date, terminate this Agreement by three months' notice in writing to the other to that effect.

Section 2.

The license herein granted and agreed to be granted by the Licensor shall cease, except as herein otherwise specifically provided, upon the cancellation or termination of this Agreement except that, as to Licensed Apparatus manufactured under said license, or for which firm orders shall have been received prior to such cancellation or termination, said license shall continue in full effect, subject to the other terms and conditions hereof, to the ends of the term of the Letters Patent under which said license is herein granted and agreed to be granted.

Section 3.

In the event of failure of the Licensee at any time during the continuance of this Agreement to render any of the statements called for herein upon any of the prescribed dates or to pay all of the royalties required hereunder when due or upon failure of the Licensee to comply with any of the other obligations of this Agreement, the Licensor may, at its option and without prejudice to any of its other legal and equitable rights and remedies under this Agreement, by ten (10) days' notice in writing to the Licensee particularly specifying the breach or failure of the Licensee, terminate the license herein granted and all rights of the Licensee hereunder unless such breach or failure has been rectified within the said period of ten (10) days.

Should the Licensee at any time make an authorized assignment for the benefit of its creditors or voluntarily or involuntarily be declared a bankrupt or be wound up or if a receiver or liquidator shall be appointed to administer its affairs and shall not be discharged within five (5) days after his appointment, this Agreement shall automatically and without notice become cancelled and terminated as of the date of such assignment or as of the date upon which a custodian, receiver, trustee or liquidator is appointed.

No cancellation or termination of this license shall affect any of the other legal and equitable rights and remedies of the Licensor under this Agreement nor shall any cancellation or termination release the Licensee from any liability accruing to the Licensor hereunder prior to the time such cancellation or termination because effective. No failure on the part of the Licensor to exercise its rights of cancellation or termination hereunder for any one or more defaults shall be construed to prejudice its rights of cancellation or termination for any subsequent default.

Article X.

Successors or Assigns.

Section 1.

Neither this Agreement nor any of its benefits shall be directly or indirectly assigned, transferred, divided or shared by the Licensee with any person, firm or corporation whatsoever without the written consent of the Licensor.

Section 2.

This Agreement and the license hereby granted shall terminate unless otherwise agreed in writing by the Licensor, upon any attempt by the Licensee to assign the same. For the purpose of verifying compliance with the provisions of this Section the Licensee agrees to permit the authorized representatives of the Licensor to examine the share or stock register books of the Licensee at any time within business hours, upon reasonable notice.

This licensee agreement shall enure to the benefit of the successors and assigns of the Licensor but shall not enure to the benefit of the successors and assigns or any legal representatives of the Licensee without the written consent of the Licensor.

Article XI.

Further Assurances.

The parties hereto hereby agree to execute and deliver with reasonable promptness such further instruments and perform all such acts as may be reasonably necessary for carrying out the provisions and purposes of this Agreement.

In Witness Whereof the parties hereto have caused these presents to be executed by their proper officers thereunto duly authorized, and their corporate seals to be hereto affixed, as of the day and year first above written.

Canadian Radio Patents Limited,

....

President,

....

Secretary,

....

President,

....

Secretary.

STATEMENT OF ROYALTY DUE CANADIAN RADIO PATENTS LIMITED

LICENSEE

FOR THE MONTH OF

		DEDUCTIONS								
TYPE OF APPARATUS ([illegible]ef Description including Model No., Type and No. of Tubes)	LICENSEE'S SELLING PRICE (Per Unit)	SALES TAX PAID	EXCISE TAX PAID	TUBE AND BATTERY COST	CABINET COST IN EXCESS OF $30	COST OF AUTOMATIC RECORD CHANGER	NET SELLING PRICE FOR ROYALTY PURPOSES	ROYALTY PER UNIT	NO. OF UNITS SOLD	TOTAL ROYALTY

TOTAL

Certified to be a true and correct statement of our sales of Licensed Apparatus during the period designated above.

Signed

Date

3011

Defendant's Exhibit No. 124B.

SCHEDULE "[illegible]" to License Agreement dated as of January 1, 1947, between
Canadian Radio Patents Limited and

~~[illegible]~~
SCHROTER ELECTRONICS LIMITED

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
293,772	Oct. 1/29	Zimmerman	Sound Reproducing Apparatus
294,269	Oct. 29/29	Rice	Loudspeakers
295,527	Dec. 10/29	Kendall	Electrical Apparatus
295,530	Dec. 10/29	Robinson	Electrical Apparatus
295,748	Dec. 17/29	Kellogg	Loudspeakers
296,307	Jan. 7/30	Bierwirth	Amplifying Electrical Energy
296,847	Jan. 21/30	Carlson	Radio Apparatus
297,600	Feb. 18/30	Carter	High Frequency Signalling System
297,601	Feb. 18/30	Burrill	Amplifying systems
298,631	Mar. 25/30	Zimmerman	Speech Current Apparatus
298,632	Mar. 25/30	Byrnes	Oscillation Generator
298,835	Apr. 1/30	Thompson	Shielding System
299,303	Apr. 15/30	Guedon	Apparatus for Producing Sound
299,306	Apr. 15/30	Clark	High Frequency Producing System
299,535	Apr. 22/30	Kendall	Sound Reproducing Apparatus
299,538	Apr. 22/30	Bradbury	High Frequency Amplifying Circuits
299,539	Apr. 22/30	Bradbury	Amplifying Systems
299,540	Apr. 22/30	Thompson	Amplifying Apparatus
299,722	Apr. 29/30	Kendall	Electrical Apparatus
299,930	May 6/30	Young et al.	Pick-up Devices
300,128	May 13/30	Carlson et al	Amplifying Systems
300,362	May 20/30	Alexanderson	Transmission of Pictures
300,363	May 20/30	Bissiri	Transmission of Pictures
302,517	July 29/30	Carlson	Tuning of High Frequency Circuits
304,381	Sep. 30/30	Kell	Transmission of Pictures
304,763	Oct. 14/30	Kitman	Amplifying Systems
304,765	Oct. 14/30	Allen et.al	Radio Signalling Apparatus
305,152	Oct. 22/30	Kellogg	Electrical Systems
305,417	Nov. 4/30	Brown	Controlling Current Supply
305,854	Nov. 18/30	Andrews	Amplifying System
305,855	Nov. 18/30	Byrnes	Electrical Apparatus
305,856	Nov. 18/30	Taylor	Amplifier
306,538	Dec. 9/30	Cornell	Supply Circuits
306,946	Dec. 23/30	Bradbury et al	Radio Frequency Amplification
306,951	Dec. 23/30	Thompson	Sound Amplifier
307,380	Jan. 6/31	Alexanderson	Stabilization of Tuned Radio Frequency Amplifiers
307,382	Jan. 6/31	McLamore	High Frequency Electrical Apparatus
307,384	Jan. 6/31	Barton	Condenser Microphone
307,385	Jan. 6/31	Crippen	Condenser Microphone
307,667	Jan. 13/31	Tripp	Oscillation Generators
307,668	Jan. 13/31	Dome	Oscillation Generators
308,325	Feb. 3/31	Kellogg	Reproducers
308,326	Feb. 3/31	Hillner	Sound Reproducing Devices
308,514	Feb. 10/31	Kell	Transmission of Pictures
308,520	Feb. 10/31	Berduke	Sound Reproducing and Recording
309.483	Mar. 17/31	Hull	Amplifying System

Schedule "A" - Page 2.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
309,485	Mar. 17/31	Austin	Sound Reproducers
309,487	Mar. 17/31	McArthur	Signal Transmitting
309,488	Mar. 17/31	McArthur	High Frequency Detectors
310,116	Apr. 7/31	Kendall	Apparatus for Producing Sound
310,118	Apr. 7/31	Taylor	Stylus for Pickups
311,271	May 12/31	O'Kabe	Extra Short Wave Generating Device
311,485	May 19/31	Carlson et al	High Frequency Amplifying Apparatus
311,486	May 19/31	Carlson et al	Electrical Signal Amplifying Apparatus
311,902	June 2/31	Bedford	Amplifiers
312,561	June 23/31	Alexanderson et al	Amplifying Electrical Impulses
313,729	July 28/31	Whelan	Amplifying Electrical Impulses
313,962	Aug. 4/31	Bradbury	Volume Control
314,198	Aug. 11/31	Byrnbe	Crystal Controller Oscillators
314,567	Aug. 25/31	Kell	Transmission of Pictures
314,568	Aug. 25/31	Robinson	Sound Pickup-Mirror Type
314,570	Aug. 25/31	Labus	Transmission of Facsimile
316,706	Nov. 3/31	Kell	Transmission of Pictures
317,220	Nov. 17/31	Kellogg	Electrical System
318,655	Jan. 5/32	McSheen	Phonograph Turntable Drive
319,252	Jan. 26/32	Lynn	Signal Systems
320,773	Mar. 22/32	Asmden	Electrical Filters
322,259	May 10/32	Bird	High Frequency Signalling System
322,652	May 24/32	Douglas	Signalling System
323,249	June 14/32	Langmuir	Picture Transmission Apparatus
323,460	June 21/32	Burton	Phonograph - Plural Turntable Unit
323,877	July 5/32	Carlson	Automatic Volume Control
324,098	July 12/32	Carter	High Frequency Signalling System
324,100	July 12/32	Kell	Transmission and Reception of Pictures
324,309	July 19/32	Young	Picture Receiving Apparatus
324,509	July 26/32	Ellis	Piezo-electric devices
325,298	Aug. 23/32	Young	System for Producing Music
325,299	Aug. 23/32	Carlson	Musical Instrument
325,710	Sep. 6/32	Bedford	Diaphragm for Loudspeakers
326,698	Oct. 11/32	Farley	Vapor Electric Amplifiers
328,445	Dec. 13/32	McArthur	High Frequency Magnetron Apparatus
328,446	Dec. 13/32	DeWalt	Electron Discharge System
329,908	Jan. 31/33	Carlisle et al	Translating Device
330,500	Feb. 28/33	Moore	Picture Transmitting System
330,501	Feb. 28/33	Kendall	Transmission and Reception of Pictures
330,502	Feb. 28/33	Del Valle	Film Phonograph
331,086	Mar. 21/33	Carlson	Indicating Control Means
331,087	Mar. 21/33	Hull	Pick-up Device
331,091	Mar. 21/33	Gardiner	Amplifier
331,270	Mar. 28/33	Hitchcock	Transmission of Pictures
331,272	Mar. 28/33	Kell	Television Receiver
331,273	Mar. 28/33	Carlson	Electrical Signal Amplifiers
331,447	Apr. 4/33	Hall	Phonograph Drive
333,909	July 11/33	Bedford	Sound Recording and Reproducing
337,307	Nov. 21/33	Carlson	Oscillator Coupling Circuit
338,151	Dec. 26/33	Garrett	Control System for Radio Receivers
340,012	Mar. 13/34	Allen	Superheterodyne Receivers
340,924	Apr. 17/34	Baker	Amplifying System
340,926	Apr. 17/34	Jones et al	Tuning Indicator

2291

Schedule "A" - Page 3.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
341,789	May 22/34	De Reemer	Radio Phonograph Switch
342,080	June 5/34	Kellogg	Sound Distribution System
343,128	July 17/34	Robinson	Relaying or Amplifying Circuits
343,135	July 17/34	Carlson et al	Signal Limiting Devices
343,136	July 17/34	Wistrup	Variable Radio Tuning Control
343,930	Aug. 14/34	Scheldorf	Portable Loudspeakers
344,204	Aug. 28/34	Langmuir	Electron Discharge Apparatus Circuit
345,633	Oct. 30/34	Becker	Multi-Range Receiving System
347,161	Jan. 1/35	Cornell	Voltage Amplifier and Detector Circuits
348,439	Feb. 26/35	[illegible] et al	Cathode Ray Photographic Apparatus
348,442	Feb. 26/35	McArthur	Polyphase Oscillation Generators
348,450	Feb. 26/35	Alexanderson	Television Receivers
349,405	Apr. 9/35	Taylor	Radio Receiving Apparatus
349,568	Apr. 16/35	Whelan	Volume Control System
350,862	June 11/35	Gardiner	Grid Connection for Tubes
351,020	June 18/35	Meahl	Piezo-electric oscillation Generators
351,809	July 23/35	Dobke	Electrical Oscillation Circuits
351,813	July 23/35	Lenz	Electric Discharge Devices
351,815	July 23/35	Tonks	Super-regenerative Receiver
352,324	Aug. 13/35	Alexanderson	System of Transmitting Intelligence
352,755	Sep. 3/35	Carter	Diversity Reception System
353,328	Oct. 1/35	Tregenza	Radio Apparatus
353,330	Oct. 1/35	Saxton	Static Reducing System
353,923	Nov. 5/35	Carlson	Radio Signalling Apparatus
356,764	Mar. 24/36	Simmonds	Signalling System
360,017	Aug. 25/36	Dome	Amplifier
360,932	Oct. 6/36	Fitch	Resistance Capacitance Coupled Amplifier
360,933	Oct. 6/36	Kaar	Electron Discharge Amplifier
361,085	Oct. 13/36	Fitch	Resistance Capacitance Coupled Amplifier
361,225	Oct. 20/36	Gunther	Super-regenerative Receiver
361,514	Nov. 3/36	Gardiner	Diversity Factor Receiving Systems
361,812	Nov. 17/36	Lord	Power Supply System
362,349	Dec. 15/36	Newton	Control Means for Signal Transmitting System
362,954	Dec. 29/36	Alexanderson	Sound Reproducing Apparatus
363,477	Jan. 18/37	Warner	Radio Signalling Apparatus
364,149	Feb. 16/37	Arey	Indicating Instruments
366,271	May 25/37	Dome	Measuring Systems
366,895	June 22/37	Arey	Shadow Tuning Instrument
367,702	Aug. 3/37	Weir	Amplifier Circuit
367,703	Aug. 3/37	Becker	High Frequency Circuit
367,704	Aug. 3/37	Downey	Electron Discharge System
367,706	Aug. 3/37	Lynn	High Frequency Amplifier
367,707	Aug. 3/37	Lyman	Uniform Impedance Filter
368,199	Aug. 24/37	Mehlgans	Electron Discharge Device
368,201	Aug. 24/37	Roder	Coupling Means
373,660	May 10/38	Fyler	Receiving System
375,763	Aug. 16/38	Brown	Noise Suppressor Circuit
376,205	Sep. 6/38	Nelson	Volume and Bass Tone Compensation Control Device
376,206	Sep. 6/38	Fyler	High Frequency Receiver
376,404	Sep. 13/38	Cottrell	Signalling System
376,831	Oct. 4/38	Cottrell	Signalling System
376,944	Oct. 11/38	Robinson	High Frequency Receiving Apparatus

Schedule "A" - Page 4.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
376,979	Oct. 11/38	Beggs	Automatic Fidelity Control
377,910	Nov. 29/38	Downey	Frequency Determining Means
377,911	Nov. 29/38	Hobart	High Frequency Oscillator
378,396	Dec. 20/38	Gunther	Tuning Apparatus
378,400	Dec. 20/38	Fyler	Operating Point Control for Thermionics Devices
379,242	Jan. 31/39	Suits	Tuning Apparatus
379,372	Feb. 7/39	Tonks	High Frequency Oscillator
379,373	Feb. 7/39	Langmuir	High Frequency Oscillator
380,310	Mar. 12/39	Stevenson	Phonograph Drive
380,577	Apr. 4/39	Becker	Radio Receivers
383,054	Aug. 1/39	Dome	Antenna and Coupler Systems
383,225	Aug. 8/39	Beggs	Selectivity Control
385,844	Dec. 26/39	Delbord	Means for Tuning Radio Receiving Systems
385,847	Dec. 26/39	Becker	High Frequency Receiving System
385,852	Dec. 26/39	Mead	Oscillation Generator
385,864	Dec. 26/39	Dome	Control Circuit
385,963	Dec. 26/39	Thomas	High Frequency Signal System
387,078	Feb. 27/40	Wechsung	Band Filtering Device
387,079	Feb. 27/40	Rice	High Frequency Oscillator
387,511	Mar. 19/40	Goggs	Automatic Selectivity Control
388,350	Apr. 30/40	Hahn	Automatic Fidelity Control
388,352	Apr. 30/40	Hutchings	Electric Discharge Devices
388,509	May 7/40	Dome	Automatic Bias Control
389,124	June 7/40	Mayer	Equivalent Capacitance Network
389,125	June 7/40	Thompson	Amplifier
389,422	June 18/40	Andrews	Temperature Compensated Oscillator
389,705	July 2/40	Delvaux	Control for Signalling System
389,866	July 9/40	Lyman	Coupling Transformer
389,867	July 9/40	Beggs	Radio Receiving Apparatus
389,869	July 9/40	Fyler	High Frequency Receivers
390,129	July 23/40	Mayer	Automatic Selectivity Control
390,806	Aug. 20/40	Fyler	Oscillation Generators
390,807	Aug. 20/40	Meahl	Oscillator
391,228	Sep. 10/40	Dome	Delayed Automatic Volume Control
391,229	Sep. 10/40	Dome	Supply Circuit for Television System
391,346	Sep. 17/40	Robinson	High Frequency Receiving Apparatus
392,159	Oct. 29/40	Monke	Signal System
392,446	Nov. 12/40	Hobart, Jr.	High Frequency Apparatus
393,034	Dec. 10/40	Jensen	Super-regenerative Detector Current
393,215	Dec. 17/40	Dome	Amplifier Muting Circuit
393,328	Dec. 24/40	Kaar	Signal Receiving System
393,336	Dec. 24/40	Dome	High Voltage Supply Circuit
393,479	Dec. 31/40	Lyman	Indicating Devices
393,483	Dec. 31/40	Koller et al	Control Device
393,658	Jan. 7/41	Shofstall	Signal System
393,911	Jan. 14/41	Hobart	High Frequency Apparatus
394,656	Feb. 18/41	Fyler	High Frequency Circuits
395,594	Apr. 1/41	Dome	Allwave Antenna Coupler
395,599	Apr. 1/41	Hahn	Ultra Short Wave Devices
395,706	Apr. 8/41	Root	Silent Tuning
395,978	Apr. 22/41	Beck	Dial Indicator
396,913	June 3/41	Beggs	Radio Receiver

Schedule "A" - Page 3.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
397,086	June 10/41	Thompson	Amplifying System
398,263	July 29/41	Shofstall	Signalling Systems
399,318	Sep. 10/41	Cage	Electron Beam Tubes
399,479	Sep. 23/41	Root	Amplifier
401,476	Dec. 16/41	Root	Amplifier
401,624	Dec. 23/41	Shofstall	Automatic Volume Control System
401,625	Dec. 23/41	Norgaard	Electronic Voltage Regulator
401,774	Dec. 30/41	Dome	Television Intermediate Frequency Separation Circuit
401,775	Dec. 30/41	Fyler	Amplifier
401,777	Dec. 30/41	Dome	Amplifier
402,892	Feb. 17/42	Metcalf	Electric Discharge Device
403,467	Mar. 17/42	Moyer	Controlling Apparent Resistance
403,774	Mar. 31/42	Shofstall	Control Circuit
403,777	Mar. 31/42	Gardiner	Electronic Voltage Regulator
404,503	May 5/42	Dome	Electron Discharge Circuits
404,504	May 5/42	Goldman	Amplifier
404,660	May 12/42	Dome	Deflecting System of Cathode Ray Device
405,454	June 16/42	Root	Amplifier Coupling Circuit
405,455	June 16/42	Dome	Thermionic Amplifier
405,767	June 30/42	Thomas et al	High Efficiency Amplifier
405,768	June 30/42	Norgaard	Deflecting Circuit
405,905	July 7/42	Dolvaux	Protecting System
406,184	July 21/42	Mynall	Magnetic Focusing of Cathode Ray Tubes
406,352	July 28/42	Forstrom	Drive Mechanism
406,818	Aug. 18/42	Fyler	Signal Receiving System
407,504	Sep. 22/42	Dome	Automatic Background Control for Television
407,509	Sep. 22/42	Dome	Television Receiver
408,090	Oct. 20/42	McArthur	Electrical Discharge Device
408,225	Oct. 27/42	Beckner	Electrical Translating Circuit
408,226	Oct. 27/42	E anson	Television Scanning
408,227	Oct. 27/42	Root	Audio Frequency Amplifier
408,228	Oct. 27/42	Thomas	Electron Discharge Amplifier
408,229	Oct. 27/42	Dome	Noise Limiting Circuit
408,809	Nov. 2[illegible]/42	Gardiner	Oscillator
408,810	Nov. 24/42	Root	Amplifying System
408,974	Dec. 1/42	Gardiner	Voltage Regulator Circuit
409,155	Dec. 8/42	Goldman	Automatic Frequency Control
409,1[illegible]	Dec. 8/42	Worcester	Amplifiers
409,319	Dec. 15/42	Gardiner	Voltage Regulator
409,445	Dec. 15/42	Gardiner	Amplifier Power Supply
409,923	Jan. 12/43	Dome	Muting Control
409,924	Jan. 12/43	Root	Amplifier
409,927	Jan. 12/43	Shea	High Frequency Receiver
410,084	Jan. 19/43	Brown	Automatic Gain Controlled Amplifier
410,211	Jan. 26/43	Root	Amplifier System
410,509	Feb. 9/43	Dome	Automatic Frequency Control
410,975	Mar. 9/43	Bartelink	Synchronizing System
410,976	Mar. 9/43	Fyler	Control Circuits
410,977	Mar. 9/43	Dome	Harmonic Transmission System
411,102	Mar. 16/43	Leeds	Parasitic Oscillation Elimination
411,242	Mar. 23/43	Thomas	Ultra High Frequency System
411,243	Mar. 23/43	Norgaard	Amplifier Coupling Circuit
411,422	Mar. 30/43	Arsy	Magnetic Structure

2044

Schedule "A" - Page 6.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
411,423	Mar. 30/43	Deerhake	Frequency Converstion System
412,229	May 9/43	Moe	Television Synchronizing System
412,230	May 4/43	Bartelink	Image Transmission System
412,559	May 18/43	Deerhake	Television Apparatus
412,560	May 18/43	Dome	Amplifying System
412,562	May 18/43	Fyler	Noise Limiting Circuits
413,494	June 29/43	Root	Multiband Tuning System
413,495	June 29/43	Worcester	Converter Circuit
414,557	Aug. 17/43	Brown	Automatic Amplification Control
414,558	Aug. 17/43	Brown	Automatic Amplification Control
416,267	Nov. 9/43	Norgaard	Wide Band Amplifier
416,876	Dec. 7/43	Mayer	Superheterodyne Receiver
417,955	Jan. 25/44	Maynard	Resistance Networks for Amplifiers
417,956	Jan. 25/44	Kenefake	High Frequency Communication System
418,401	Feb. 15/44	Shea	Radio Receiver
418,514	Feb. 22/44	Bachman	Tone Control Means
419,010	Mar. 14/44	Root	Feedback Circuit
419,011	Mar. 14/44	Dome et al	Television Synchronizing System
419,013	Mar. 14/44	Dodger	Variable Inductance Device
419,540	Mar. 14/44	Yevian	Oscillation Generator
420,778	June 13/44	Maynard	Frequency Variation Response Networks
420,780	June 13/44	Baldwin	Frequency Measuring Device
420,781	June 13/44	Downey	Calibrating Device
421,233	July 4/44	Fyler	Electron Discharge Oscillation Generator
421,505	July 18/44	Dome	Tuning Indication System
422,093	Aug. 15/44	Mayer	Shielding for High Frequency Switches
422,205	Aug. 22/44	Alexanderson	Television System
422,454	Sep. 5/44	Brown et al	Control System
422,999	Oct. 3/44	Fyler	Electron Discharge Amplifiers
423,000	Oct. 3/44	Kenefake	Diode Rectifier Circuits
423,001	Oct. 3/44	Maynard	Radio Receiver
423,002	Oct. 3/44	Maynard	Voltage Indicating Circuit
423,403	Oct. 24/44	Worcester Jr.	Push Pull Circuit
423,767	Nov. 14/44	Foster	Electric Switch Mechanism
424,474	Dec. 19/44	Austin	Frequency Response Control Circuit
424,481	Dec. 19/44	Ford et al	Voltage Regulator
424,816	Jan. 2/45	Forstrom	Tuning Arrangement for Signalling System
424,819	Jan. 2/45	Boggs	Electric Discharge Device
424,923	Jan. 9/45	Dome	Noise Balancing
425,060	Jan. 16/45	Lyman	Synchronizing Pulse Separating System
425,061	Jan. 16/45	Root	Multi-band Receiving Circuit
425,062	Jan. 16/45	Norgaard	Wide Band Coupling for Transmission
425,182	Jan. 23/45	Van Billiard	Tuning System
425,547	Feb. 13/45	Wilcox	Electric Circuit
425,548	Feb. 13/45	Fyler	Gain Control Circuit
425,938	Mar. 6/45	Hamann	Rectifier for Portable Radios
426,199	Mar. 20/45	Summerhayes	High Frequency Coupling
427,168	May 1/45	Fancher	Carrier Wave Frequency Converter
428,505	July 3/45	Foster	High Frequency Transformer
429,268	Aug. 7/45	Bartelink	Multivibrators
429,385	Aug. 14/45	Root	Radio Receiver
429,386	Aug. 14/45	Downey	Crystal Oscillator Circuit
429,387	Aug. 14/45	Vrooman	Receiver Desensitizing Circuit

2095

Schedule "A" - Page 7.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
430,652	Oct. 16/45	Kaister	Decoupling Units
430,655	Oct. 16/45	Maxwell	Amplifier
431,168	Nov. 13/45	Deerhake	Remote Gain Control for Video Amplifiers
431,169	Nov. 13/45	Bachman	Hum Reducing Systems
431,170	Nov. 13/45	Kenefake et al	Signal Transmission System
431,353	Nov. 20/45	Maxwell	Electron Discharge Amplifier
431,356	Nov. 20/45	Lyman	Frequency Modulation Receiver
431,625	Dec. 4/45	Lyman	Sawtooth Wave Generator
431,627	Dec. 4/45	Downey	Oscillator Circuit
431,628	Dec. 4/45	Dome	Television Signal Translating Circuit
431,629	Dec. 4/45	Devine	Background Noise Suppressor
431,782	Dec. 11/45	Dome	Thermionic Amplifier
432,262	Jan. 1/46	Dome	Frequency Modulation Receiver
432,795	Jan. 29/46	Miner	Signal Reproducing Apparatus
433,000	Feb. 12/46	Worcester, Jr.	Noise Suppression Circuits
433,383	Mar. 5/46	Bachman	Tone and Volume Control Means
433,776	Mar. 26/46	Campbell	Noise Suppression Circuits
433,777	Mar. 26/46	Hansen	Cathode Ray Deflecting Means
434,046	Apr. 9/46	Aicher	Electrodes and their Fabrication
435,597	July 2/46	Young	High Frequency Receivers
435,598	July 2/46	Manke	Electric Coupling System
435,697	July 9/46	Hausz	Apparatus for Converting Sound to Frequency Modulated Currents
435,698	July 9/46	Shea	Mutual Coupling
435,931	July 23/46	Austin	Mounting Means
437,592	Oct. 29/46	Gurewitsch	Ultra High Frequency Filter
437,593	Oct. 29/46	Korneke	Carrier Current Control System
438,011	Nov. 19/46	Lyman	Television Apparatus
294,290	Oct. 29/29	Mathieu	Cumulative Feeder Arrangement
295,945	Dec. 24/29	Wright; Smith	High Speed Signalling System using Light Sensitive Cell
295,946	Dec. 24/29	Smith	Multi-Stage Amplifier
295,947	Dec. 24/29	Trump	Amplifier for use with Repeater
296,391	Jan. 7/30	Green	Circuit with Negative Reactance to Compensate for Self-Inductance of Connecting Wire
297,055	Jan. 28/30	Green	Aerial Feeder System
297,056	Jan. 28/30	Conroy; Letts	Amplifier Eliminating A.C. Hum
297,268	Feb. 4/30	Conroy; Letts	Amplifier in which the Valves are heated by A.C.
297,777	Feb. 25/30	Wright	Method of Combining Signals in Multiple Aerial Receiving System
297,778	Feb. 25/30	Wright	Circuit for use with Light Sensitive Cells
298,641	Mar. 25/30	Wright; Smith	Ignition Screening System
298,642	Mar. 25/30	Round	Loudspeaker
298,836	Apr. 1/30	Round; West	Broadcasting Echo System
300,950	June 10/30	Franklin; Whistlecraft	Non-Interfering Ignition System
301,861	July 22/30	Linsell	Diaphragm for Loudspeaker
302,518	July 29/30	Round	Screen Grid Valve with Additional Electrode

Schedule "A" - Page 8.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
302,519	July 29/30	Whistlecroft	Radio Bearing Indicator
302,774	Aug. 5/30	Franklin	Valve with Reduced Inter-Electrode Capacity
303,528	Sep. 2/30	Franklin	Aerial System for Long Distance Short Wave Signalling
303,529	Sep. 2/30	Franklin	Aerial System Comprising Plurality of Multi-Conductor Elements
303,817	Sep. 9/30	Wright	Transformer for Valve Filament Supply Circuit
304,181	Sep. 23/30	Green	Wheatstone Bridge Amplifying System
304,383	Sep. 30/30	Wright; Smith; Davis	Picture Telegraphy
304,384	Sep. 30/30	Round	Low Voltage Valve having Large Power Output
304,768	Oct. 14/30	Franklin	Aerial System Comprising Parabolic Reflectors
304,769	Oct. 14/30	Franklin	Aerial System Comprising a Plurality of Coupled Aerials
304,770	Oct. 14/30	Round	Picture Telegraphy
304,771	Oct. 14/30	Slee	Direction Finder
304,772	Oct. 14/30	Brown	Feeder Distribution Box
306,282	Dec. 2/30	Franklin; Green	Directive Aerial System
306,293	Dec. 2/30	Franklin	H.F. Feeder for Aerial System
307,145	Dec. 30/30	Smale	Time Control Device
307,400	Jan. 6/31	Round	Gramophone Pick-Up
307,875	Jan. 20/31	Wright	Frequency Control for Picture Telegraphy
307,876	Jan. 20/31	Wright	Facsimile Transmitter
308,112	Jan. 27/31	Wright; Smith	Photo Electric Cell Circuit for Picture Telegraphy
308,113	Jan. 27/31	Wright; Smith	Picture Telegraphy
308,114	Jan. 27/31	Wright	Drive for Facsimile Telegraphy
308,115	Jan. 27/31	Wright	Drive for Facsimile Telegraphy
308,673	Feb. 17/31	Round	Four-Electrode Valve
308,674	Feb. 17/31	Round	Carbon Microphone
309,027	Mar. 3/31	Franklin	Short Wave Length Aerial
309,028	Mar. 3/31	Franklin;Green	H.F. Coupling Device
309,029	Mar. 3/31	Franklin	Aerial System
309,030	Mar. 3/31	Franklin	Directional Aerial and Feeder System
309,234	Mar. 10/31	Wright;Smith	Aircraft Directional Receiving System
309,235	Mar. 10/31	Mathieu	Voice Controlled Radio Telephone Switching Means
309,690	Mar. 24/31	Round	Resistance-Capacity Coupled Amplifier
310,127	Apr. 7/31	Green	Directive Aerial System
310,128	Apr. 7/31	Smale	Double Slip Undulator
310,627	Apr. 21/31	Conroy; Letts	Gramophone Pick-Up
312,571	June 23/31	Wright	Time Period Device Independent of Temperature Variation
313,456	July 21/31	Smale	Limit Stop for Telegraphic Relays, Recorders, etc.
313,970	Aug. 4/31	Mathieu	Multiple Heterodyne Receiver
314,801	Sep. 1/31	Round	Screen Grid Valve
315,021	Sep. 8/31	Round	Four-Electrode Valve
315,225	Sep. 15/31	Eckersley	Aerial System
315,885	Oct. 6/31	Linsell	Gramophone Pick-Up
316,304	Oct. 20/31	Ewen	Compensation for Temperature Changes in Tuned Circuits
316,709	Nov. 3/31	Plebanski	Modulation System
317,005	Nov. 10/31	Ewen	Power Supply for Valves

3077

165

Schedule "A" - Page 9.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
317,226	Nov. 17/31	Barrow	Rejector Circuit
317,227	Nov. 17/31	Wright; Smith; Whistlecroft	Aeroplane Ignition System
317,228	Nov. 17/31	Wright	Coupling Device
317,418	Nov. 24/31	Mathieu	Automatic Regulating Device
318,041	Dec. 15/31	Mathieu	Regulating Device
319,806	Feb. 16/32	Wright; Rust	Microphone Coupling Device
320,137	Mar. 1/32	Plebanski	Filter
320,138	Mar. 1/32	Carr; Whistlecroft	Aircraft Telephone and Speaking Tube System
320,139	Mar. 1/32	Round	Carbon Microphone
320,786	Mar. 22/32	Wells	Absorber Modulation System
321,207	Apr. 5/32	Franklin; Robb; Golding	Fluid Cooled Valve
321,843	Apr. 26/32	Franklin	Valve with Solid Ribbed Control Electrode
321,844	Apr. 26/32	Lunnon	Adjustable Feed Back Transmitter Circuit
322,055	May 3/32	Woods	Direction Finder Aerial
322,056	May 3/32	C.G. Kemp; L.G. Kemp	Push Pull Frequency Multiplier
322,462	May 17/32	Franklin	H.F. Control
322,463	May 17/32	Mathieu	High Speed Transmitter
322,658	May 24/32	Furnival; Bubb	D.F. Beacon
322,844	May 31/32	Round	Portable Receiver
323,254	June 14/32	Round	Loudspeaker
323,685	June 28/32	Linsell	Electrostatic Temperature Corrector
323,686	June 28/32	Lunnon	Absorber Keying System
324,120	July 12/32	Woods	D.F. for operation over a Plurality of Wavelength Ranges
324,121	July 12/32	Eckersley	Short Wave D.F.
324,122	July 12/32	Mathieu; Puckle	Multiplex Transmission
324,123	July 12/32	Plebanski	Antistatic Receiver
324,318	July 19/32	Round	Cascade Amplifier
324,736	Aug. 2/32	Hodgson	Telegraph and Telephone Transmitter
324,957	Aug. 9/32	Round	Microphone
324,958	Aug. 9/32	Eckersley	Short Wave D.F.
324,959	Aug. 9/32	Round; Turner	H.F. Amplifier
325,719	Sep. 6/32	Franklin; Witt	Temperature Compensated Oscillator Circuit
326,153	Sep. 20/32	Franklin	Transmitting Valve with Flexible Grid Support
327,434	Nov. 8/32	Letts	High Speed Switching for Radio Telephony
327,435	Nov. 8/32	Wells	Beam Aerial
328,035	Nov. 29/32	Rust	Transformer Winding
328,452	Dec. 13/32	Green	H.F. Transmitter
329,031	Jan. 3/33	Mathieu; Isted	Automatic Gain Control
329,482	Jan. 17/33	Högelsberger	Directional Aerial
329,793	Jan. 31/33	Tweed	Facsimile Transmission with Conductive Message Form
329,794	Jan. 31/33	Smith	Facsimile Transmission and Reception Synchronizing
329,795	Jan. 31/33	Witt; Franklin	S.W. Oscillation Generator
330,172	Feb. 14/33	Hodgson	Microphone Transformer
330,173	Feb. 14/33	Plebanski	Automatic Control Device
330,897	Mar. 14/33	Round	Carbon Microphone
331,455	Apr. 4/33	Appleton	Alarm Device
331,640	Apr. 11/33	Brett	Glow Discharge Lamp

Schedule "A" - Page 10.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
331,641	Apr. 11/33	Ditcham	Modulation System
332,000	Apr. 25/33	Keall	Amplifier Output Control
332,296	May 9/33	Parkin	Multi-Range Wave Meter
332,297	May 9/33	Mathieu	Superheterodyne Receiver
334,469	Aug. 1/33	Round	Long Wave Aerial
335,060	Aug. 22/33	Green	H.F. Oscillating or Amplifying Circuit
336,279	Oct. 10/33	Argyle	Superheterodyne Receiver
336,280	Oct. 10/33	Hodgson	Oscillation Generator
336,281	Oct. 10/33	Brett	Glow Discharge Tube
337,478	Nov. 28/33	Turner	L.F. Amplifier
337,479	Nov. 28/33	Wells	Shielded Transmitting and Receiving Aerials
337,633	Dec. 5/33	Round	Modulation System
337,807	Dec. 12/33	Round	H.F. Amplifier
337,985	Dec. 19/33	Wells	Feeder System
337,986	Dec. 19/33	Appleton	Oscillation Generator
338,660	Jan. 16/34	Linsell	Gramophone Pick-up and Reproducer
338,841	Jan. 23/34	O'Donovan	Thermostatic Relay for Rectifier Protection
339,041	Jan. 30/34	Hills	Automatic Alarm Device
339,212	Feb. 6/34	Thompson;Conroy	Remote Control Device
339,351	Feb. 13/34	C.G. Kemp; L.G. Kemp	Superheterodyne Receiver
339,825	Mar. 6/34	Puckle	Substitute for Chokes in Ultra S.W. Transmitters and Receivers
339,826	Mar. 6/34	Brett	Ultra H.F. Oscillator
339,827	Mar. 6/34	Landale	Self-oscillating Rectifier Circuit
340,021	Mar. 13/34	Wright	Cable Telegraph and Telephone Transmission System
340,927	Apr. 17/34	Rust	Modulation System
341,653	May 15/34	Brett Herriott	Glow Discharge Lamp and Method of Cooling
341,795	May 22/34	Davis; Quick	Lighting of Signal Lamps at Air Fields
341,954	May 29/34	Robinson	Field-less Inductance Coil
342,082	June 5/34	Rust	Constant Impedance Network for Frequency Correction
342,595	June 26/34	Parkin	Electro-chemical Telegraph Recorder
342,770	July 3/34	Dowsett	Television Scanning
342,771	July 3/34	Dowsett	Facsimile and Television News Bulletin Transmission and Reception
342,772	July 3/34	Dowsett;Cadzow	Television Scanning with Cathode Ray Tube
342,773	July 3/34	Dowsett; Levin	Television Multiple Scanning
342,774	July 3/34	Dowsett;Walker	Television Scanning
342,775	July 3/34	Dowsett;Cadzow	Television with Cathode Ray Tube
342,776	July 3/34	Dowsett	Television Reception
342,777	July 3/34	Cadzow	Television Reception
342,778	July 3/34	Levin;Walker	Television Mirror Wheel
342,779	July 3/34	Dowsett;Walker	Facsimile and Television Synchronising
342,962	July 10/34	Dowsett;Walker; Levin	Television Scanning
342,963	July 10/34	Dowsett; Plaistowe	Television Transmission and Reception with Optional Vertical or Horizontal Scanning
342,964	July 10/34	Dowsett; Plaistowe	Television D.F. System
342,965	July 10/34	Dowsett;Cadzow	Television Transmission and Reception without Scanning
342,966	July 10/34	Dowsett;Walker	Television Scanning

2099

162

Schedule "A" - Page 11,

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
342,967	July 10/34	Dowsett;Walker	Television News Bulletin Transmission and Reception
343,138	July 17/34	Kemp; Walker; Goodenough	Television Reception Amplifier
343,361	July 24/34	Dowsett;Levin; Plaistowe	Television Scanning
344,877	Sep. 25/34	Ditcham	H.F. Modulated Carrier Wave Transmitter
345,036	Oct. 2/34	Plaistowe	Amplifier Coupling System
345,037	Oct. 2/34	Wells; Green	S.W. Directional Aerial
345,171	Oct. 9/34	Witts	Tunable Band Pass Filter
345,349	Oct. 16/34	Linsell	Receiver for use adjacent an Internal Combustion Engine
345,350	Oct. 16/34	Rust;O'Neill	Super-regenerative Receiver
345,649	Oct. 30/34	Linsell	Aircraft D.F. Transmission Aerial
345,650	Oct. 30/34	Parkin;Webb	Wave Meter
345,651	Oct. 30/34	Bird	Dummy Load and Impedance Matching Device
345,652	Oct. 30/34	Rust	Negative Resistance Oscillation Generator
345,653	Oct. 30/34	Ditcham	Modulated Carrier Wave Transmitter
345,816	Nov. 6/34	Hinton	Tunable Resonant Circuit
345,982	Nov. 13/34	Dowsett;Kemp	Television D.F. Reception
345,983	Nov. 13/34	Lunnon;Trump	Modulated Carrier Wave Transmitter
345,984	Nov. 13/34	Price	Modulation System dealing with Wide Range of Frequencies
345,985	Nov. 13/34	Rust; Brett	Valve with Input-output Electrode Self-capacity Eliminated
346,343	Nov. 27/34	Wright; Brett	Photophone System
346,504	Dec. 4/34	Linsell	Visual Information System for Navigation
347,006	Dec. 25/34	Green	H.F. Circuit
347,007	Dec. 25/34	Plebanski	Modulated Carrier Wave Transmitter
347,169	Jan. 1/35	Wassell	H.F. Transmitter
347,523	Jan. 15/35	Franklin	S.W. Directional Aerial
347,524	Jan. 15/35	Herriott	Liquid-cooled Glow Discharge Lamp
347,525	Jan. 15/35	Rust	Frequency Selective Circuit for Broadcast Reception
347,684	Jan. 22/35	Ditcham	Modulated Carrier Wave Transmitter
347,685	Jan. 22/35	Ditcham	Modulated Carrier Wave Transmitter
347,686	Jan. 22/35	Ditcham	Modulated Carrier Wave Transmitter
348,159	Feb. 12/35	Quilter	Modulated Carrier Wave Transmitter
348,160	Feb. 12/35	Murphy	Two-way Telephone Terminal Equipment
348,466	Feb. 26/35	Round	Amplification Control
348,467	Feb. 26/35	Lunnon;Wassell	Absorber Modulation and Keying System
348,468	Feb. 26/35	Woods	Directional Receiver and D.F.
348,469	Feb. 26/35	Mathieu	"Skeleton" Transmission Reflector Aerial System
348,826	Mar. 12/35	Green; Robb	H.F. Amplifier and Oscillation Generator
348,827	Mar. 12/35	Green	Multi-Valve Amplifier
349,573	Apr. 16/35	Smith; Tweed	Constant Frequency Periodic Device
349,743	Apr. 23/35	Dowsett;Cadzow	Television D.F. System
349,744	Apr. 23/35	Franklin;Green	Liquid-cooling System for H.F. Valves
350,079	May 7/35	Brett	Kerr Cell
350,080	May 7/35	Dowsett;Kemp	Television Transmission Multiple Scanning
350,081	May 7/35	Dowsett; Goodenough	Television Scanning Mirror Wheel Adjustment
350,402	May 21/35	Linsell	Ultra Short Modulated Carrier Wave Transmitter
350,403	May 21/35	Ladner	Cathode Ray Tube with Plurality of Deflect[illegible] Means

Schedule "A" - Page 12.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
350,705	June 4/35	Mathieu	Ultra Short Wave Transmitter
350,706	June 4/35	Green	S.W. Beam Aerial
350,707	June 4/35	Rust	Wheatstone Bridge Modulation System
350,708	June 4/35	Rust	Negative Resistance Oscillation Generator
350,709	June 4/35	Wassell	Piezo-electric Crystal Oscillation Generator
350,710	June 4/35	Mathieu	Ultra Short Wave Receiver
350,711	June 4/35	Mathieu	Two-way Telephone System
351,160	June 25/35	Linsell	Automatic Gain Control for Superheterodyne Receiver
351,673	July 16/35	Dowsett	Television Reception Scanning
351,674	July 16/35	Dowsett	Television Multiple Scanning
351,675	July 16/35	Plaistowe	Television Transmission and Reception Synchronizing
351,676	July 16/35	Witte	Multiplex Modulated Carrier Wave Transmission
351,677	July 16/35	Appleton; Plaistowe	Television Reception Circuit with Modulated Arc Light Source
352,158	Aug. 6/35	Dowsett;Walker	Television D.F. System
352,159	Aug. 6/35	Ditcham	Modulated Carrier Wave Transmitter
352,160	Aug. 6/35	Herriott	Kerr Cell
352,161	Aug. 6/35	Stokes	Push-pull Amplifier
352,475	Aug. 20/35	Walker	Television Transmission and Reception Synchronizing
352,476	Aug. 20/35	Plebanski	Directional Aerial and Receiving System
352,765	Sep. 3/35	Rust	Band Pass Filter
353,191	Sep. 24/35	Dowsett;Walker	Television Amplifier
353,192	Sep. 24/35	Smith;Eckersley	Television D.F. System
353,193	Sep. 24/35	Best	Absorber Type H.F. Transmitter
353,194	Sep. 24/35	Brett	Glow Discharge Tube
353,195	Sep. 24/35	Ladner	Modulation of Magnetron Oscillation Generator
353,196	Sep. 24/35	Parkin	Oscillation Generator
353,197	Sep. 24/35	Collings	Voltage Measuring and Indicating Device (Modulation)
353,198	Sep. 24/35	Dowsett;Walker	Television D.F. Transmission
353,776	Oct. 29/35	Linsell	S.W. Receiver
353,777	Oct. 29/35	Dowsett; Goodenough	Facsimile and Television Reception Circuit
353,778	Oct. 29/35	Linsell	Super-regenerative Modulated Carrier Wave Receiver
353,779	Oct. 29/35	Dowsett;Levin	Television Receiver
353,927	Nov. 5/35	Dowsett;Walker	Television Scanning
354,522	Dec. 3/35	Dowsett;Walker; Cadzow	Television D.F.
354,652	Dec. 10/35	Wilson; Murphy	Secret Radio Telephone Transmitter
354,653	Dec. 10/35	Dowsett;Cadzow	Cathode Ray Television Transmitter
354,793	Dec. 17/35	Bunham	Cathode Ray Tube
355,028	Dec. 31/35	Davis	H.F. Carrier Wave Transmission System for Television, etc.
355,752	Feb. 4/36	Ditcham	Modulated Carrier Wave Transmitter
355,753	Feb. 4/36	Linsell	Automatic Volume Control
355,754	Feb. 4/36	Linsell	Uni-controlled Receiver with Ferro-magnetically Cored Inductances
356,766	Mar. 24/36	Plebanski	Modulation and Keying System
356,767	Mar. 24/36	Tringham	Modulation Monitoring
357,285	Apr. 21/36	Smith	Cathode Ray Facsimile Transmission and Reception

2101

169

Defendant's Exhibit No. 124B.

Schedule "A" - Page 13,

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
357,286	Apr. 21/36	Young	Time Period Device
357,422	Apr. 28/36	Dowsett;Walker	Television Transmission and Reception
357,930	May 19/36	Mathieu	Ultra Short Carrier Wave Transmitter
358,938	July 7/36	Wassell	Two-way Radio Telephone System
361,359	Aug. 27/36	Wright	Filter Circuit and Resistance Unit
361,360	Aug. 27/36	Privett	Valve Cooling System
362,378	Dec. 8/36	Davis; Green; Hall	Fluid-cooled H.F. Amplifier
362,580	Dec. 15/36	Benham; Young	Cathode Ray Tube
362,752	Dec. 22/36	Rust; O'Neill	Variably Tunable Band Pass Circuit
363,162	Jan. 5/37	Linsell	S.W. Transmitter
363,163	Jan. 5/37	Walker;Benham	Cathode Ray Television Receiver
363,814	Feb. 2/37	Stewart	Supply Circuit for Photo-electric Cells, etc.
363,815	Feb. 2/37	Young	Indirectly Heated Electron Emitting Cathode for Cathode Ray Tube
363,816	Feb. 2/37	Myers	Light Controlling Device for Television Receivers
364,296	Feb. 23/37	Rust	Telegraphone System for Production of Echo Effects in Broadcasting Studios
364,905	Mar. 23/37	Eckersley	Fading Elimination
365,201	Apr. 6/37	Levin	Television Scanning using Telephoto Lenses
365,808	Apr. 4/37	Franklin	Directional Receiving System giving Visible Directional Indications
365,976	Apr. 11/37	Rust	Screened Tuned Circuit Unit
365,977	Apr. 11/37	Mathieu	Directional Transmitter and Aerial Feeder System for Navigation Purposes
366,658	June 8/37	Rust	H.F. Oscillator for Homodyne and Self-tuning Receivers
366,779	June 15/37	Goodenough	Amplifier for use with Kerr Cell
366,803	June 15/37	Rust;Brailsford	Remotely controllable Superheterodyne Receiver
366,804	June 15/37	Keall	Amplifier and Oscillation Generator
366,805	June 15/37	Wright; Rust	Tuned Oscillation Generator
368,518	Sep. 7/37	Trump	Automatic Grid Bias for Modulated Carrier Wave Transmitter
369,731	Nov. 9/37	Young	Cathode Ray Television Receiver Modulation Circuit
370,374	Dec. 7/37	Keall	Modulated Carrier Wave Frequency Multiplier
370,512	Dec. 14/37	Murphy	Single Side Band Receiver
370,955	Jan. 4/38	Plebanski	Selective Band Pass Amplifier
370,983	Jan. 4/38	Ditcham	Modulated Carrier Wave Transmitter
371,131	Jan. 11/38	Young; Myers	Cathode Ray Tube with Interposed Controlling Electrode
371,457	Jan. 25/38	Dowsett;Walker	Television Scanning using Cylindrical Lenses
371,458	Jan. 25/38	Dowsett;Cadzow	Cathode Ray Television Reception
372,769	Mar. 29/38	Smith	D.F. System using Insulated Metal Mast
372,770	Mar. 29/38	Rust; Tweed	Telegraphone Recording Device
372,918	Apr. 5/38	Whistlecroft	Aircraft Aerial Earthing Switch
373,935	May 24/38	Banks	Saw-tooth Wave Impulse Generator
374,203	June 7/38	Rust	Microphone Circuit
374,204	June 7/38	Rust	Cable System for Television Transmission
374,205	June 7/38	Banks	Saw-tooth Wave Oscillation Generator
374,371	June 14/38	Parkin	Crystal Arrangement providing Continuously Variable Frequency
374,542	June 21/38	Ditcham	Modulated Carrier Wave Transmitter

2102

110

Schedule "A" - Page 14.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
374,543	June 21/38	Clough	Automatic Signal Generating System for Navigation
374,544	June 21/38	Rust	Aerial Lead-in for Short or Longer Wave Reception
374,545	June 21/38	Young	Cathode Ray Tube
374,546	June 21/38	Brett; Wright	Electron Beam Valve and Automatic Gain Control Circuit
374,547	June 21/38	Kemp	Cathode Ray Television Reception using plurality of small Light Sources and associated Photo-electric Cells
374,548	June 21/38	Witts	Superheterodyne Receiver Image Frequency Suppression
375,317	July 26/38	Myers; Goodenough	Light Valve for Reproduction of Large Television Pictures
375,318	July 26/38	Wassell; Wykes	Two-way Telephone System with Automatic Blocking
375,482	Aug. 2/38	Rust; Brett	Electron Beam Valve
376,834	Oct. 4/38	Murphy	Terminal Arrangement for Two-way Telephone System
376,835	Oct. 4/38	Rust; Tweed	Telegraphone Recording or Pick-up Device
376,945	Oct. 11/38	Murphy	Control Circuit for Two-way Telephone System
377,147	Oct. 18/38	Bell	Multi-vibrator Circuit suitable for Television Synchronization and other purposes
377,148	Oct. 18/38	Bell	Oscillation Generator
377,365	Nov. 1/38	Rust; Murphy	Tunable H.F. Amplifier
377,409	Nov. 1/38	Brett	Electron Beam Valve
377,410	Nov. 1/38	Rust	Gang-controlled Receiver
377,411	Nov. 1/38	Wright	Homodyne Receiver
377,683	Nov. 15/38	Wright	Impulse Generator
377,684	Nov. 15/38	Brett	Piezo-electric Crystal mounted in Container filled with Hydrogen
377,685	Nov. 15/38	Walden	Modulated Carrier Wave Transmitter
377,686	Nov. 15/38	Kemp; Plaistowe	Television D.F. System
377,687	Nov. 15/38	Rust	Band Pass Filter
377,937	Nov. 29/38	Wright	Distortionless Amplifier
378,544	Dec. 27/38	Clough; Green	Modulated Carrier Wave Transmitter
379,894	Mar. 7/39	Witt	H.F. Concentric Cable
381,397	May 16/39	Cockerell	Amplitude Modulation of Television and Like Signals
381,537	May 23/39	Wright	Cathode Ray D.F. Reception
382,229	June 20/39	Wright	Homodyne Receiver
382,450	July 4/39	Banks	Cathode Ray Television Transmission
382,583	July 11/39	Myers	Television Reception Translating Device
383,226	Aug. 8/39	Wright	Homodyne Receiver
383,227	Aug. 8/39	Dowsett; Cadzow	Projection of large Television Image
383,321	Aug. 8/39	Murphy	Band Pass Filter
383,322	Aug. 8/39	Wright	Homodyne Receiver
383,819	Sep. 5/39	Rust	I.F. Amplifier
383,820	Sep. 5/39	Ditcham	Modulated Carrier Wave Transmitter
383,821	Sep. 5/39	Ditcham	Modulated Carrier Wave Transmitter
383,822	Sep. 5/39	Green	Modulated Carrier Wave Transmitter
384,243	Sep. 26/39	Myers; Cadzow	Cathode Ray Tube Oscillograph
384,244	Sep. 26/39	Bean	Insulator for Concentric Cable

2103

Defendant's Exhibit No. 124B.

Schedule "A" - Page 15.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
384,245	Sep. 26/39	Plebanski	H.F. Reaction Amplifier
384,339	Sep. 26/39	Benham	Magnetron Oscillation Generator
384,783	Oct. 24/39	Young	Time Base and Switching Circuit
384,824	Oct. 24/39	Appleton	Inductance Coil
384,967	Nov. 7/39	Banks	Cathode Ray Deflection
384,968	Nov. 7/39	Dowsett;Walker	Television Transmission and Reception Combined Horizontal and Vertical Scanning
384,969	Nov. 7/39	Linsell	Receiver for Television and Sound Signals
384,970	Nov. 7/39	Linsell	Television Receiver with Protected Cathode Ray Tube
384,971	Nov. 7/39	Plebanski	D.F. Receiver with Cathode Ray Tube Indicator
385,884	Dec. 26/39	Wright	Cathode Ray Tube Television Reproduction
385,964	Dec. 26/39	Wright	Homodyne Receiver
386,461	Jan. 23/40	Wright	Homodyne Receiver
386,462	Jan. 23/40	Wright	Homodyne Receiver
386,585	Jan. 30/40	Smith	Equisignal Radio Beacon
386,586	Jan. 30/40	Keall	Automatic Frequency Control
386,698	Feb. 6/40	Dowsett;Walker	Kerr Cell
386,699	Feb. 6/40	Banks	Cathode Ray Tube
386,968	Feb. 20/40	Wright	Back-coupled Oscillation Generator
386,969	Feb. 20/40	Rust	Remote Tuning Control and Feeder for Reception
386,970	Feb. 20/40	Bell	Regenerative Oscillation Generator
387,225	Mar. 5/40	Young	Cathode Ray Deflection
387,226	Mar. 5/40	Walden	Beat Frequency Oscillation Generator
387,227	Mar. 5/40	Kemp	Television D.F. System for Blind-flying Aircraft Landing
387,228	Mar. 5/40	George	Oscillation Generator
387,752	Apr. 2/40	Wright;Brett	Electron Gun for Cathode Ray and Electron Beam Tubes
387,875	Apr. 9/40	Linsell	Television Receiver for Reception from Transmitters with different Scanning Line Frequencies
387,876	Apr. 9/40	Clough; Green	Series Modulation
387,877	Apr. 9/40	Clough; Green	Series Modulation
387,878	Apr. 9/40	Rust	Automatic Frequency Control
387,962	Apr. 9/40	Ditcham	Modulated Carrier Wave Transmitter
388,367	Apr. 30/40	Kemp	Blocking Oscillator and Time Base Circuit
388,517	May 7/40	Linsell	Cathode Ray Television Receiver with Tuning Indicator
388,518	May 7/40	Davis; Green; Hall	Valve Arrangement for S.W. Transmitter
388,519	May 7/40	Plebanski	Frequency Mixing and Modulating Circuit
388,520	May 7/40	Clough	A.C. Amplifier
388,521	May 7/40	Banks	Electron Multiplier and Amplifier
388,951	May 28/40	Rust; Ramsay	Tuning Arrangement for Aerial and Receiver in Combination with H.F. Cable
389,128	June 4/40	Beanland	Automatic Gain Control
389,432	June 18/40	Myers	Piezo-electric H.F. Voltmeter
389,433	June 18/40	Brailsford	Manual and Automatic Gain Control
389,580	June 25/40	Keall	Wide Range Amplifier
389,581	June 25/40	Keall	Automatic Modulation Monitoring
389,582	June 25/40	Fewings	Saw-tooth Wave Oscillation Generator
389,583	June 25/40	Falloon	Direct-reading Cathode Ray D.F. System
390,320	July 30/40	Wright; Rust	Remote Tuning Control and H.F. Cable

2184

172

Schedule "A" - Page 16.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
390,321	July 30/40	Kemp; Mason	Kerr Cell
390,322	July 30/40	Brailsford; O'Neill	H.F. Variable Artificial Line
390,323	July 30/40	Keall	Automatic Frequency Control
390,813	Aug. 20/40	Young	Cathode Ray Tube
390,814	Aug. 20/40	Wright	Homodyne Receiver
390,815	Aug. 20/40	Witts	Automatic Tone Control
390,816	Aug. 20/40	Plebanski	Directional Receiving System
390,817	Aug. 20/40	Wells	Half Wave Aerial
391,480	Sep. 24/40	Witts	H.F. Oscillation Generator
391,537	Sep. 24/40	Kemp	Time Base Circuit
391,626	Oct. 1/40	Rust	Variable Reaction Circuit
391,627	Oct. 1/40	Brailsford	Cathode Heating - Elimination of "hum" or "ripple"
391,710	Oct. 1/40	Rust; Keall	Reflex Reception Circuit
392,032	Oct. 22/40	Brett	Gas-filled Cathode Ray Tube
392,307	Nov. 5/40	Rust	Crystal Bridge-type coupling Circuit
392,394	Nov. 5/40	Mathieu	Directional Transmitting System for Navigation
392,455	Nov. 12/40	Smith	D.F. Receiving System
392,456	Nov. 12/40	Linsell	Television Receiver
392,583	Nov. 10/40	Dowsett; Walker	Television Transmitter
393,486	Dec. 31/40	Franklin	S.W. Transmission Aerial
393,487	Dec. 31/40	Franklin	Aerial Feeder System
394,252	Jan. 28/41	Plebanski	Modulated Carrier Wave Transmitter
394,407	Feb. 4/41	Banks	High Fidelity Microphone
394,537	Feb. 11/41	Ditcham	Modulated Carrier Wave Transmitter
394,538	Feb. 11/41	Keall; Smith	Crystal mounted in Evacuated Envelope
395,982	Apr. 22/41	Keall	Automatic Frequency Control
396,182	Apr. 29/41	Brett; Banks	Cathode Ray Tube for Television Reception
396,341	May 6/41	Keall	Regulation of Grid Bias for Direct-coupled Amplifiers
396,342	May 6/41	Keall	Low Frequency Amplifier
396,343	May 6/41	Goodenough	Band Pass Filter
396,488	May 13/41	Banks	Electron Multiplier
396,489	May 13/41	Banks	Electron Multiplier
396,490	May 13/41	Rust; Levin	Tuning Indicator and Scale
397,254	June 17/41	O'Neill	Modulated Carrier Wave Receiver
397,255	June 17/41	Davis; Robb; Craymer	Variable Inductance for S.W. Transmitter
397,424	June 24/41	Clough	H.F. Modulation
398,109	July 22/41	Robb	H.F. Concentric Cable Connection System
398,110	July 22/41	Keall	Frequency Multiplying Circuit
398,268	July 29/41	Armstrong	Receiver with Controllable Reaction
398,413	Aug. 5/41	Smith	D.F. Aerial System
398,414	Aug. 5/41	Sturley	Noise Suppression Circuit
398,579	Aug. 12/41	Levin	Cathode Ray Tube
398,580	Aug. 12/41	Levin	Cathode Ray Tube
398,581	Aug. 12/41	Smith; Green	D.F. Aerial System
399,002	Sep. 2/41	Wassell	Modulated Carrier Wave Transmitter of Suppressed Carrier Type
399,003	Sep. 2/41	Brett	Mechanico-electrical Translator
399,160	Sep. 9/41	Bpett	Electron Beam Tube for generating Ultra H.F. Oscillations
399,480	Sep. 23/41	Kemp; Fewings	Synchronizing Signal Separation Circuit

Defendant's Exhibit No: 124B.

Schedule "A" - Page 17.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
400,234	Oct. 28/41	Linsell	Ultra H.F. Modulation
400,235	Oct. 28/41	Plaistowe; Fewings	Time Base Circuit
400,417	Nov. 4/41	Clough	Beacon Control System
400,617	Nov. 11/41	Falloon	D.F. Pulse Generator
400,618	Nov. 11/41	Keall; Rust	Automatic Selectivity and Frequency Control
400,811	Nov. 18/41	Rust;Goodenough	Multi-stage Amplifier
400,812	Nov. 18/41	George	H.F. Telegraph Transmitter
400,813	Nov. 18/41	Linsell	Superheterodyne Receiver
400,956	Nov. 25/41	Banks	Grid-controlled Electron Multiplier
402,003	Jan. 6/42	Guanella	Phase and Polarity Reversing Network
402,177	Jan. 13/42	Guanella; Lattmann	Automatic Fine Tuning System
402,178	Jan. 13/42	Guanella; Lattmann	Automatic Fine Tuning System
402,328	Jan. 20/42	Wright	Electron Beam Valve Oscillator
403,060	Feb. 24/42	Bell	Frequency Divider
403,202	Mar. 3/42	Myers	Cathode Ray Tube for Television Reception
403,339	Mar. 10/42	Wright; Brett; Rust	Electron Beam Amplifier
403,340	Mar. 10/42	Brett	Electron Multiplier
403,341	Mar. 10/42	Linsell	Electron Multiplier
403,476	Mar. 17/42	Twatt	Modulated Carrier Wave Transmitter
403,625	Mar. 24/42	Banks	Electron Multiplier
404,067	Apr. 14/42	Wassell;Cranon	Remote Control
404,229	Apr. 21/42	Young	Grid Construction
404,668	May 12/42	Rust; Brett	Electron Beam Amplifier
404,669	May 12/42	Brett	Electron Beam Valve
404,670	May 12/42	Bell	Low "Noise" Level Valve
404,832	May 19/42	Banks	Temperature-responsive Variable Reactance
405,632	June 23/42	Wright	Navigation-Aiding System
405,633	June 23/42	Brailsford	Automatic Frequency Control
405,634	June 23/42	Brett; Smith	Electron Beam Valve
405,779	June 30/42	Brett	Electron Beam Valve
406,500	Aug. 4/42	Cockerell	D.F. Receiver with Cathode Ray Indicator
406,501	Aug. 4/42	Plaistowe	Apparatus for Detecting Aircraft
406,502	Aug. 4/42	Furnival;Witt	Orientator for D.F. Reception
406,679	Aug. 11/42	Rust;Brailsford	I.F. Amplifier and Filter
407,270	Sep. 8/42	Rust	Low Loss H.F. Coil
407,529	Sep. 22/42	Rust;Goodenough	Adjustable Band Pass Filter
407,530	Sep. 22/42	Rust;Brailsford	Negative Resistance Circuit
407,676	Sep. 29/42	Green	Oscillation Generator and Amplifier
407,811	Oct. 6/42	Myers	Cathode Ray Tube Electron Multiplier
408,097	Oct. 20/42	Van de Velde	Colour Television Receiver
408,233	Oct. 27/42	Tringham	Modulated Carrier Wave Television Transmitter
408,234	Oct. 27/42	Clough; Green	Floating Carrier Transmitter
408,235	Oct. 27/42	Moodey;Staines	Floating Carrier Transmitter
408,236	Oct. 27/42	Plebanski	Side Band Suppression System
408,237	Oct. 27/42	Clough	Modulator Circuit
408,814	Nov. 24/42	Ramsay	Remotely-controllable Tuning
409,620	Dec. 29/42	Rust; Brett	Electron Beam Valve
409,621	Dec. 29/42	Rust; Brett	Electron Beam Valve
409,784	Jan. 5/43	Falloon	Phase-difference Measurement
411,105	Mar. 16/43	Brett	Electron Beam Oscillator Valve
412,399	May 11/43	Kemp	Visually-indicating D.F.

Schedule "A" - Page 18.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
412,400	May 11/43	Wassell	Multi-valve Telegraph Transmitter
412,565	May 18/43	Rust	H.F. Reaction Receiver Circuit
412,726	May 25/43	Banks	Electron Multiplier Circuit
412,727	May 25/43	Böhm	Directional Aerial System
412,728	May 25/43	Böhm.	Directional Aerial System
413,190	June 15/43	Ditcham	Modulated Carrier Wave Transmitter
413,664	July 6/43	Rust; Keall	Automatic Frequency Control
413,953	July 20/43	Guanella	Distance Measurement System
414,250	Aug. 3/43	Guanella	D.F. employing Two Antennae
414,433	Aug. 10/43	Fewings	Saw-tooth Wave Oscillation Generator
414,434	Aug. 10/43	Smith; Forbes	Navigation-aiding Receiver giving Visual and Aural Indications
414,567	Aug. 17/43	Brailsford	Automatic Gain Control
414,568	Aug. 17/43	Wells; Ladner	Aerial Feeder System
414,569	Aug. 17/43	Robb; Furnival; Witt	Equisignal Beacon Aerial System
414,684	Aug. 24/43	Clough	Multiphase Rectifier Circuit
414,685	Aug. 24/43	Plaistowe	Television Receiver
414,686	Aug. 24/43	Cockerell	D.F. Receiving System employing Visual Indication
415,288	Sep. 21/43	Falloon	Directional Transmission and Reception
415,599	Oct. 5/43	Cockerell	Radiogoniometer
415,745	Oct. 12/43	Böhm	Directional Aerial
415,746	Oct. 12/43	Cockerell	D.F. Receiver
416,135	Nov. 2/43	Witt; Ro[illegible]	Equi-signal Beacon
416,136	Nov. 2/43	Brett	Electron Beam Relay
417,815	Jan. 18/44	Plaistowe	Television Reception Synchronizing Signal Separation
417,984	Jan. 25/44	Robinson	Flexible H.F. Cable
417,985	Jan. 25/44	Keall	Multi-stage Amplifier
417,986	Jan. 25/44	Plaistowe	Delay-compensating means for Television Transmitters
419,306	Mar. 28/44	Levin	Television Reproducer Tube
421,109	June 27/44	Clough	Absorber Keying Circuit
421,241	July 4/44	Green	H.F. Transforming Network
422,102	July 15/44	Zepler	Filter and Decoupling Circuit
422,103	July 15/44	Banks	Electron Multiplier
422,611	Sep. 12/44	Cockerell	D.F. Receiver
422,893	Sep. 26/44	Benjamin	Seal for Screw Heads
423,110	Oct. 10/44	Jordan	Baked Enamel Finish
424,460	Dec. 19/44	Bubb	Split Reed Synchronous Vibrator
426,483	Apr. 3/45	Telfer	Variable Volume Control
426,920	Apr. 3/45	Rust;Goodenough	Band Pass Filter
429,556	Aug. 21/45	Polydoroff	Insulated Inserts for Magnetic Cores
430,380	Oct. 2/45	Banks	Electron Multiplier Circuits
430,907	Oct. 30/45	Guanella & Lattmann	Tuning Indicator
432,251	Jan. 1/46	Green	Radio Signalling Apparatus
432,325	Jan. 15/46	Moon	Device for Measuring Angles
433,889	Apr. 2/46	Apperley	High Speed Telegraph Systems
433,895	Apr. 2/46	Green	Carrier Wave Transmitter
436,355	Aug. 13/46	Benjamin	Rocker Arms and Bearings
436,499	Aug. 20/46	Rust	Discriminator Circuits for use in A.F.C. Systems

2187 9

[illegible] - Page [illegible]

[illegible]

Radio [illegible] Apparatus
Device for Measuring Angles
[illegible]
[illegible]
[illegible]
[illegible]

Schedule "A" - Page 19.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
436,500	Aug. 20/46	Guanella	Electrical Oscillations Translating System
436,501	Aug. 20/46	Hyde	Rotation Indicator for Rotatable Spindles
437,213	Oct. 1/46	Fowings	Television Synchronizing Impulse Separator Circuits
438,209	Nov. 26/46	Moon	Lighting of the Scales of Indicating Instruments
439,186	Jan. 14/47	Young	Heat Transferring Means for Thermionic Discharge Apparatus
[illegible]7,694	Mar. 5/29	Skellett; Zworykin	Frequency Responsive Crystal Relays
290,783	June 25/29	Goldsborough	Pressure-Distributing Devices
294,492	Nov. 5/29	Piersol	Oscillation Generators
296,[illegible]	Jan. 14/30	Jarvis	Amplifying System
296,632	Jan. 14/30	Belsley	Signalling System
296,634	Jan. 14/30	Beers	Connecting Device
298,841	Apr. 1/30	Hanna	Vibratory Systems
301,408	June 24/30	Brown	Amplifying System
301,420	June 24/30	High	Loudspeakers
301,421	June 24/30	Hanna	Loudspeakers
301,422	June 24/30	High	Translating Device
301,424	June 24/30	Brindley	Current Distribution System
301,425	June 24/30	Davis	High Frequency Radio Circuit
301,651	July 1/30	Hitchcock	Oscillation Generators
301,864	July 8/30	Landon	Coupling System
301,865	July 8/30	Landon	Radio Receiving System
301,866	July 8/30	Zworykin	Oscillation Generators
302,982	Aug. 12/30	Batsel	Radio Receiving Systems
302,984	Aug. 12/30	Landon	Amplifying System
304,557	Oct. 7/30	Beers	Radio Receiving System
304,558	Oct. 7/30	Landon	Amplifiers
305,170	Oct. 28/30	High	Devices for Producing Sound from Varying Electric Currents
305,861	Nov. 18/30	Roth	Automatic Station Selectors
306,288	Dec. 2/30	Chubb	Radio System
306,545	Dec. 9/30	Brindley	Radio Circuit
306,955	Dec. 23/30	Beers	Amplification Systems
306,956	Dec. 23/30	Whitten; Goldsborough	Television System
307,885	Jan. 20/31	Brindley	Signalling Systems
308,675	Feb. 17/31	Richards	Radio Tube Socket
310,129	Apr. 7/31	Rentschler; Henry	System for Amplifying feeble Electric Currents
312,139	June 9/31	Curtis;Boddie	Signalling Systems
315,208	Sep. 15/31	Brown	Signalling Systems
316,509	Oct. 27/31	Landon	Amplifying Systems
318,452	Dec. 29/31	Trouant	Systems of Television
319,063	Jan. 19/32	Goldsborough	Control Systems
319,065	Jan. 19/32	Zworykin	Facsimile-Transmission Systems
321,033	Mar. 29/32	Bruce	Radio Apparatus
321,034	Mar. 29/32	Cole; High	Sound Producing Devices
321,638	Apr. 19/32	Landon	Audio-Frequency Amplifiers
321,646	Apr. 26/32	Beers	Amplifiers

2108

Schedule "A" - Page 20.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
322,270	May 10/32	Bokovoy;Harness	Regulators
322,464	May 17/32	Sateren	Electric Wave Amplifiers
323,884	July 5/32	Slepian	Loudspeakers
323,891	July 5/32	Forbes	Radio Receiving Systems
324,321	July 19/32	High	Sound Producing Device
324,323	July 19/32	Kisey	Picture Transmission Devices
324,740	Aug. 2/32	Hanna	Sound Producing Devices
324,744	Aug. 2/32	Landon	Radio Amplifier
324,751	Aug. 2/32	Clement	Vertical Loudspeaker
325,303	Aug. 23/32	Landon	Radio Receiving Systems
325,304	Aug. 23/32	Zworykin;Kisey	Facsimile Receivers
326,154	Sep. 20/32	Conrad	Television Apparatus
326.155	Sep. 20/32	Landon	Amplifying Systems
326,337	Sep. 27/32	Robinson	Systems of Reception for Modulated Wave Telegraphy and Telephony
326,343	Sep. 27/32	Forbes	Reactor
326,524	Oct. 4/32	Beers	Volume Control System for Amplifiers
327,439	Nov. 8/32	Beers	Amplifiers
327,440	Nov. 8/32	Barton	Amplifier
329,227	Jan. 10/33	Zworykin	Wireless Picture Transmissions
329,599	Jan. 24/33	Kerrigan	Radio Apparatus
329,796	Jan. 31/33	Davis	Television System
329,908	Jan. 31/33	Carlisle; Pierson	Translating Devices
331,840	Apr. 18/33	Koch	Radio Receiving Systems
331,842	Apr. 18/33	Laport	Push Pull Amplifiers
333,386	June 20/33	Sateren	Thermionic Amplifiers
335,225	Aug. 29/33	Seabert	Energy Translating Devices
335,844	Sep. 19/33	Zworykin	Facsimile Transmission System
337,990	Dec. 19/33	Kimmell	Prevention of Secondary Modulation in Radio Receivers.
338,661	Jan. 16/34	Staunton	Radio Apparatus
340,212	Mar. 20/34	High	Electrical Translating Device
340,216	Mar. 20/34	High	Loudspeakers
340,220	Mar. 20/34	Ballard	View Transmission Systems
340,239	Mar. 20/34	Davis	Signalling Systems
344,069	Aug. 21/34	Aalborg	Tuning Devices
344,695	Sep. 18/34	Beers	Amplifying Systems
346,347	Nov. 27/34	Iams	Undirectional Scanning
346,844	Dec. 18/34	Beers	Electric Amplifier
346,846	Dec. 18/34	Moty	Automatic Volume Control
348,162	Feb. 12/35	Carlisle	Facsimile Printer
349,913	Apr. 30.35	Plott	Facsimile System
354,262	Nov. 19/35	Knowles	Converters
364,419	Mar. 2/37	Stephens	Cone-Horn Combination
364,909	Mar. 23/37	Lyle	Electrical Systems
366,901	June 22/37	Johan	Shadow Tuning Indicators
366,902	June 22/37	Smith	Shadow Tuning Indicators
369,221	Oct. 12/37	Beard	Crystal Holders
373,802	May 17/38	Burnside	Variable Inductance
376,561	Sep. 20/38	Beard	Crystal Holders
378,934	Jan. 17/39	Kinn	Crystal Control Circuit
380,191	Mar. 21/39	Farley	Tuning Means for Short Wave Receiver
384,418	Oct. 3/39	Little	Frequency Stabilizing Devices
387,231	Mar. 5/40	McNeal	Antenna Coupling Device for Five Meter Receiver

2109

Defendant's Exhibit No. 124B.

Sc[illegible] - "[illegible]" - Page 21.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
387,879	Apr. 9/40	Davis	Polyphase Oscillator
388,046	Apr. 16/40	Conrad	Receiving System
389,281	June 11/40	Clark	Method of Reducing Quartz Crystal Activity
389,293	June 11/40	Bock	Compact Tuning Devices
391,788	Oct. 8/40	Seibert	Compensated Condensers
397,258	June 17/41	Gough	Constant Regulation Transformers
397,431	June 24/41	Rambo	High Frequency Coupling Condenser
399,632	Sep. 30/41	Ellis	Compensators
400,958	Nov. 25/41	Johnson	Direct Current to Alternating Current Convertors
408,535	Nov. 10/42	Tuomey	Conversion Systems
410,838	Mar. 2/43	Eitel;Hunter	Phonograph Record Player
412,243	May 4/43	Ballard	View Transmission Systems
432,281	Jan. 1/46	Bock	Variable Inductors
434,866	May 21/46	Bartholy	Remote Controls
313,268	July 14/31	Barone;Isler	Attachment for Condenser
319,721	Feb. 9/32	Barone	Distribution System
312,421	June 16/31	Bohner	Signal Blocker
312,423	June 16/31	Bohner	Distribution System
316,406	Oct. 20/31	Bohner;Trogner	Anti-capacity Switch
328,722	Dec. 20/32	Bohner	Phase Multiplier
330,085	Feb. 7/33	Boljohn	Radio Receiving System
357,666	May 5/36	Butler; Weston	Transformer Construction
392,655	Nov. 19/40	Butler	Radio Network System
392,656	Nov. 19/40	Butler	Radio Change-over System
303,007	Aug. 12/30	Cassell	H.F. Receiving System
316,407	Oct. 20/31	Cassell	Discharge Tube Adapter Switch
324,211	July 12/32	Cassell	Radio Receiver Tuning
326,812	Oct. 11/32	Chromy	Lamp Socket
302,326	July 22/30	Cohen	Radio Receiving System
295,207	Nov. 26/29	Crossley	Piezo Electric Crystal Apparatus
295,208	Nov. 26/29	Crossley	Control Circuit for Electron Tubes
295,209	Nov. 26/29	Crossley	Piezo Electric Crystal Oscillator
295,210	Nov. 26/29	Crossley	Preparation Piezo Crystals
295,212	Nov. 26/29	Crossley	Piezo Crystal Control Apparatus
295,213	Nov. 26/29	Crossley	Piezo Crystal Apparatus
295,214	Nov. 26/29	Crossley	Radio Amplifying System
295,215	Nov. 26/29	Crossley; Rudolph	Piezo Electric Crystal Apparatus
295,226	Nov. 26/29	Mirick;Crossley	Piezo Electric Crystal Apparatus
301,312	June 17/30	Crossley	Piezo Electric Crystal Apparatus
302,105	July 15/30	Crossley;Taylor	H .F. Oscillation System
305,887	Nov. 18/30	Crossley	Piezo Electric Crystal Apparatus
309,924	Mar. 31/31	Crossley	Electron Tube Thermostatic Control System
316,744	Nov. 3/31	Crossley	Piezo Crystal Controlled Oscillation System
307,508	Jan. 6/31	Culver	Television System
311,757	May 26/31	Culver	Photoelectric Cell System
315,110	Sep. 8/31	Culver	H.F. Generator with Photo Cell
316,827	Nov. 3/31	Culver	Radio Receiving System
375,746	Aug. 16/38	Curtis	Radio Reception System
378,755	Jan. 10/39	Curtis	Radio Reception System

Schedule "A" - Page 22.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
385,134	Nov. 14/39	Curtis	Radio Tuning System
387,810	Apr. 2/40	Curtis	Piezo Crystal Holder
392,955	Dec. 3/40	Curtis	Radio Receiver Circuit
392,956	Dec. 3/40	Curtis	Radio Receiver Circuit
398,656	Aug. 12/41	Curtis	Wide Range Transformer
301,298	June 17/30	Davis	Television System
308,589	Feb. 10/31	Davis	Signalling System (Power Supply)
318,751	Jan. 5/32	Davis	Television System (Screen)
325,201	Aug. 16/32	Davis	Glow Discharge Device
327,522	Nov. 8/32	Davis	Indicator System for Frequency Control Systems
327,523	Nov. 8/32	Davis	Frequency Adjusting Unit
327,521	Nov. 8/32	Davis	Radio Receiver Dial Arrangement
292,050	Aug. 6/29	Davis	Transformer System
302,319	July 22/30	Davis	Radio Selective Signalling System
297,139	Jan. 28/30	Duncan, Jr.	Broadcasting System
297,360	Feb. 4/30	Duncan, Jr.	Broadcasting System
300,575	May 27/30	Duncan, Jr.	Filter Circuit
300,799	June 3/30	Duncan, Jr.	Wired Radio System
304,441	Sep. 30/30	Duncan, Jr.	Radio Broadcasting System
306,613	Dec. 9/30	Duncan, Jr.	Wired Radio System
309,118	Mar. 3/31	Duncan, Jr.	Polyphase Electron Tube Generator
315,111	Sep. 8/31	Duncan, Jr.	Electrical Distribution System
315,113	Sep. 8/31	Duncan, Jr.	Actuating Means for Electron Discharge Tube
315,985	Oct. 6/31	Duncan, Jr; Trogner	Discharge Tube Adapter Switch Actuating Means
317,910	Dec. 8/31	Duncan, Jr.	Adapter between Radio Tube and Socket
319,539	Feb. 2/32	Duncan, Jr.	Filter System
320,239	Mar. 1/32	Duncan, Jr.	Discharge Tube Adapter
329,700	Jan. 24/33	Duncan, Jr.	Radio Broadcasting System
335,301	Aug. 29/33	Duncan, Jr.	Receiving System
393,582	Dec. 31/40	Duncan, Jr.	Transmission System for Radio Programs
292,417	Aug. 20/29	Gebhard	Vacuum Tube Rectifier
301,294	June 17/30	Gebhard	Radio Coupling Circuit
301,297	June 17/30	Gebhard	Inductance System
301,299	June 17/30	Gebhard	Inductance Coil
301,300	June 17/30	Gebhard	Condenser Construction
302,323	July 22/30	Gebhard;Rudolph	Electron Tube Mounting
305,890	Nov. 18/30	Gebhard	Tube Temperature and Loss Indicating Device
308,590	Feb. 10/31	Gebhard	Inductance System
308,591	Feb. 10/31	Gebhard;Rudolph	Condenser System
308,593	Feb. 10/31	Gebhard	Inductance System
310,481	Apr. 14/31	Gebhard	Condenser System
312,014	June 2/31	Gebhard;Rudolph	Coupling Condenser System
312,422	June 16/31	Gebhard	Temperature Regulation for Signalling Devices
314,289	Aug. 11/31	Gebhard	Inductance System
314,290	Aug. 11/31	Gebhard	Inductance System
314,291	Aug. 11/31	Gebhard	Adjustable Inductance Coil
314,292	Aug. 11/31	Gebhard	Inductance System
314,293	Aug. 11/31	Gebhard	Adjustable Inductance and Coupling System
314,294	Aug. 11/31	Gebhard	Inductance System
314,295	Aug. 11/31	Gebhard	Adjustable Inductance System
314,296	Aug. 11/31	Gebhard	Inductance Changing System
314,297	Aug. 11/31	Gebhard	Adjustable Inductance System
316,403	Oct. 20/31	Gebhard	Temperature Regulation for Frequency Controlled Devices

Schedule "A" - Page 23.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
316,404	Oct. 20/31	Gebhard, Mayer	Temperature Control for H.F. Transmitter
316,405	Oct. 20/31	Gebhard	Temperature Regulation for Frequency Controlled Devices
317,433	Nov. 24/31	Gebhard	Piezo Crystal Controlled Oscillator
339,904	Mar. 6/34	Gerns	Loudspeaker Resonator
370,871	Dec. 28/37	Goshaw	Television Transmission System
319,722	Feb. 9/32	Green	Terminal Clip Connector
306,816	Dec. 16/30	Harrison	P.E. Crystal System
326,624	Oct. 4/32	Harrison	Inductance Tuning Circuit
326,625	Oct. 4/32	Harrison	Inductance Tuning Circuit
326,626	Oct. 4/32	Harrison	Inductance Tuning Circuit
306,215	Dec. 2/30	Hentschel	A.C. Amplitude Control Method
310,038	Apr. 7/31	Hentschel	P.E. Crystal Apparatus
320,645	Mar. 15/32	Hentschel	Tube Circuit
325,199	Aug. 16/32	Herdman	Magnetostructive Light Valve
317,098	Nov. 10/31	Hotopp, Jr.	Radio Transmission System
332,942	May 30/33	Hotopp, Jr.	Radio Receiving System
336,013	Sep. 26/33	Hotopp, Jr.	Radio Receiving System
336,669	Oct. 24/33	Hotopp, Jr.	Wired Radio Receiving System
340,092	Mar. 13/34	Hotopp, Jr.	Radio Receiving System
308,357	Feb. 3/31	Hough	Picture Transmission System
306,817	Dec. 16/30	Hough	Phonograph for Wired Radio Receivers
307,509	Jan. 6/31	Hough	Colour Projection System
313,845	July 28/31	Hough	Network System for Stations
316,182	Oct. 13/31	Hough	P.E. Crystal Scanning System
316,183	Oct. 13/31	Hough	Motion Picture Television System
316,185	Oct. 13/31	Hough	Facsimile System
321,704	Apr. 19/32	Hough	Polyphase Photoelectric System
322,352	May 10/32	Hough	Program Tuning Apparatus
322,353	May 10/32	Hough	Photosensitive Device
327,705	Nov. 15/32	Hough	Selective Tuning Device
335,134	Aug. 22/33	Hough	Picture Transmission Reception
295,216	Nov. 26/29	Hund	Method of Producing Oscillations from Piezo Electric Plates
295,231	Nov. 26/29	Hund	P.E. Crystal Housing
295,233	Nov. 26/29	Hund	Piezo Electric Crystal Oscillator System
295,234	Nov. 26/29	Hund	Piezo Electric Plate
300,574	May 27/30	Hund	Condenser Microphone
301,894	July 8/30	Hund	Preparing Piezo Electric Plates
311,756	May 26/31	Hund	Photoelectric Cell
313,324	July 14/31	Hund	Cascade Amplifier
317,097	Nov. 10/31	Hund	Photoelectric Cell Detector System
329,701	Jan. 24/33	Hund	Frequency Muliplication System
336,014	Sep. 26/33	Hund	Gaseous Discharge Tube
336,016	Sep. 26/33	Hund	Discharge Tube Detector Circuit
366,349	May 25/37	Hund	Feed Back Oscillator
374,019	May 24/38	Hund	Amplifier Circuit
381,205	May 2/39	Hund	Gaseous Discharge Tube
326,813	Oct. 11/32	Hyland	Thermostat
327,324	Nov. 8/32	Hyland	Tube Power Supply
327,323	Nov. 8/32	Hyland	Thermostatic Control for Vibratile Element
327,706	Nov. 15/32	Hyland	Radio Direction Finding System
327,707	Nov. 15/32	Hyland	Variable Resistance Coupling System
308,196	Jan. 27/31	Levine	Wave Filter Circuit
295,219	Nov. 26/29	Mayer	Frequency Control Circuit

Schedule "A" - Page 24.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
295,223	Nov. 26/29	Mirick	Piezo Electric Crystal Holder
295,229	Nov. 26/29	Mirick	Piezo Electric Crystal Holder
295,411	Dec. 3/29	Nicolson	Piezo Electric Crystal Unit
302,106	July 15/30	Nicolson	Loudspeaker
329,699	Jan. 24/33	Nicolson	Loudspeaker
295,221	Nov. 26/29	Owens	Crystal Calibrator Circuit
295,232	Nov. 26/29	Owens;Worrall	Universal Crystal Controlled Calibrator
296,729	Jan. 14/30	Powell	Radio Receiver Circuit
302,325	July 22/30	Powell	Super-Het Receiver
320,647	Mar. 15/32	Reifel	Light Ray Oscillation Generator
327,144	Oct. 25/32	Rowe	Radio Receiving System
314,687	Aug. 25/31	Scheibell	Light Ray Oscillation Generator
316,408)	Oct. 20/31	Scheibell	Carrier Current Transmission
Re.352,971)	Sep. 10/35		
315,984	Oct. 6/31	Scheibell	P.E. Crystal Holder
318,752	Jan. 5/32	Scheibell	Thermally Operated Control System
295,206	Nov. 26/29	Taylor	Piezo Electric Crystal Control Circuit
295,211	Nov. 26/29	Taylor;Crossley	Method ofManufacture of P.E. Crystals
295,218	Nov. 26/29	Taylor	Radio Receiver
301,301	June 17/30	Taylor	H.F. Oscillator
301,302	June 17/30	Taylor	Frequency Multiplication System
306,313	Dec. 2/30	Taylor	Fading Reduction Circuit
306,314	Dec. 2/30	Taylor	Radio Receiving System
306,315	Dec. 2/30	Taylor;Young	Radio Receiving System
313,994	Aug. 4/31	Taylor;White	Radio Receiver with Shock Proof Mounting for Tubes
308,195	Jan. 27/31	Terman	Tube Circuit
330,604	Feb. 28/33	Terman	Inductance Coil
295,230	Nov. 26/29	Trogner	P.E. Crystal Holder
295,235	Nov. 26/29	Trogner	H.F. Tuning System
308,592	Feb. 10/31	Trogner	Wave Changer System
311,141	May 5/31	Trogner	Remote Control Radio Receiving System
311,142	May 5/31	Trogner	Remote Control Radio Receiving System
312,891	June 30/31	Trogner	Variable Inductance Device
313,566	July 21/31	Trogner	Remote Control System
315,761	Sep. 29/31	Trogner	Tube Adapter
317,099	Nov. 10/31	Trogner	Tube Life Indicator
322,141	May 3/32	Trogner	Remote Control System
326,042	Sep. 13/32	Trogner	Clock and Radio System
327,914	Nov. 22/32	Trogner	Radio Receiving System
353,263	Sep. 24/35	Trogner	Power Load Controlling System
353,264	Sep. 24/35	Trogner	Remote Switching Controlling System
402,837	Feb. 10/42	Trogner	Radio Relay Control System
316,184	Oct. 13/31	Vermillien	Television Scanner Equipment
314,180	Aug. 11/31	Walker	Temperature Control for Vibratile Element
356,187	Feb. 25/36	Weston	Carrier Current Transmission System
295,222	Nov. 26/29	Worrall	Crystal Controlled Calibrator
295,224	Nov. 26/29	Worrall	Harmonic Frequency Selector & Amplifier Circuit
295,225	Nov. 26/29	Worrall	Harmonic Frequency Selector & Amplifier Circuit
295,228	Nov. 26/29	Worrall	P.E. Crystal Holder
303,428	Aug. 26/30	Young	Push Pull Frequency Doubler
303,429	Aug. 26/30	Young	Radio Receiving System
304,440	Sep. 30/30	Harrison	H.F. Oscillator
304,442	Sep. 30/30	Harrison	H.F. Generator Circuit
324,403	July 9/32	Reifel	Television Transmission System

Schedule "A" - Page 85.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
293,603	Oct. 1/29	Bruynes; Van Urk	Loudspeaker Diaphragm Mount
296,033	Dec, 24/29	McCullough	Amplification of Electrical Currents
296,212	Dec. 31/29	Holst; Oosterhuis	Rectifier Filter Circuit
296,215	Dec. 31/29	Oosterhuis;Unk	Radio Receiver Circuit
298,695	Mar. 25/30	Vermeulen	Loudspeaker
298,696	Mar. 25/30	Groeneveld	Amplifying Transformer
298,697	Mar. 25/30	Van der Hoeven	H.F. Tube Exhaust
301,244	June 17/30	Bol	Radio Cabinet
301,929	July 8/30	Holst	Kerr Cell System for Television
302,353	July 22/30	Vermeulen; Van Urk	Microphone or Loudspeaker Magnet System
302,355	July 22/30	Dykstorhuis; Groeneveld	Magnet Wire Transformer
304,828	Oct, 14/30	Dykstorhuis	Current Supply System for Discharge Tubes
307,205	Dec. 30/30	Vermeulen; Van Urk; Hermans	Magnet System for Conversion of Electrical Oscillations to Mechanical
308,175	Jan. 27/31	Van der Pol	Multi Vibrator
308,562	Feb. 10/31	Posthumus	Resistance-Coupled Amplifier
308,738	Feb. 17/31	Vermeulen	Magnet System for Oscillator Conversion
308,897	Feb. 24/31	Holst;Van Urk; Vermeulen	Oscillation Conversion Device
308,898	Feb. 24/31	Vermeulen; Van Urk	Oscillation Conversion Device
311,562	May 19/31	Bol;Morel	Radio Receiver
312,188	June 9/31	Van der Mark; Van der Pol	Frequency Divider
314,663	Aug. 25/31	Church	Grounding Fitting
322,711	May 24/32	Holst; Oosterhuis	Loudspeaker
322,912	May 31/32	Vermeulen; Van Urk; Loman	Loudspeaker
322,913	May 31/32	Holst;Van Lis; Shepherd; Hendrik	Loudspeaker.
323,302	June 14/32	Mulder	Telephone or Microphone Magnet System
323,538	June 21/32	Dykstorhuis	Power Supply Control System
325,564	Aug. 30/32	Van de Ven	Radio Tube Gain Control
326,763	Oct. 11/32	Filippo	Loudspeaker Diaphragm
326,969	Oct. 18/32	Zwikker	Loudspeaker Diaphragm
326,970	Oct. 18/32	Zwikker	Loudspeaker Diaphragm
327,116	Oct. 25/32	Bol;Posthumus; Unk; Morel	Radio Receiver
327,117	Oct. 25/32	Posthumus;Gogh	Non-Oscillating H.F. Amplifier
327,118	Oct. 25/32	Timmer	Amplifying System
327,873	Nov. 22/32	Van der Pol; Van der Mark	Frequency Transformation Circuit
328,121	Nov. 29/32	Van der Pol	Process of Eliminating [illegible] in a Discharge Device
329,094	Jan. 3/33	Nordlohne	Frequency Increasing Circuit
329,095	Jan.. 3/33	Van der Pol; Van der Mark	Resistance Coupled Amplifier

2114

Schedule "A" - Page 26.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
329,096	Jan. 3/33	Oosterhuis	Tube Heater Circuit
329,101	Jan. 3/33	Tellegen	Amplifier Control Circuit
330,229	Feb. 14/33	De Jong	Wire Coil Winding Method
330,230	Feb. 14/33	Posthumus	Detector Circuit
330,231	Feb. 14/33	Posthumus	Detector Circuit
330,568	Feb. 28/33	Rogers; Parker	Thermionic Tube Sockets
330,961	Mar. 14/33	Alexander; Oosterhuis	Battery Eliminator Filter Circuit
331,152	Mar. 21/33	Van Urk;Pesseken	Electrodynamic Loudspeaker
331,516	Apr. 4/33	Dyksterhuis	Push Pull Amplifier
331,518	Apr. 4/33	Dyksterhuis	Tone Control
331,519	Apr. 4/33	Posthumus; Weyers	Superheterodyne Radio Receiver
331,894	Apr. 18/33	Tellegen	Screen Grid Tube Circuit
332,046	Apr. 25/33	Parker	Light Modulation Systems
332,707	May 23/33	Van Lie	Voice Coil Supporting Device
332,708	May 23/33	Bol; Rinia	Tuning Circuit for Predetermined Frequency
332,709	May 23/33	Dartelink	Magnet System for Acoustical Devices
332,710	May 23/33	Van Urk	Acoustical Device
332,712	May 23/33	Holst	Loudspeaker
332,924	May 30/33	Nordlohne; Minnen	Short Wave Amplification Circuit
332,925	May 30/33	Vermeulen; Van Urk	Electromagnetic Pick-up Device
333,091	June 6/33	Van Steenis	Electrode Support
333,270	June 13/33	Timmer	Amplifier Circuit
333,273	June 13/33	Parker	Thermionic Tube Positioning and Identifying Means
333,631	June 27/33	Dyksterhuis	Transmitter Circuit
333,806	July 4/33	Dyksterhuis	Amplifier Tube Coupling Circuit
333,807	July 4/33	Alexander	Cage for Screening Coils
334,538	Aug. 1/33	Groeneveld; Van der Pol	Oscillation Amplifying System
334,539	Aug. 1/33	Klinkhamer	Voltage Transforming System
335,447	Sep. 5/33	Strutt	Transmitter and Receiver Alarm Device
336,636	Oct, 24/33	Emmens; Van Geel; Claassen	Electrolytic Condenser
337,006	Nov. 7/33	Rinia	Shielded Coil System
337,167	Nov. 14/33	Bol	Method of Producing a Shielded Inductance Coil
337,168	Nov. 14/33	Posthumus	H.F. Coupling Transformer
337,176	Nov. 14/33	Stammler	Conductor Carrier or Spacer
338,047	Dec. 19/33	Parker	Tuning Indicators for Radio Receivers
338,202	Dec. 26/33	Tellegen	Antenna Coupling
338,365	Jan. 2/34	Posthumus	H.F. Transformer
338,552	Jan. 9/34	Van der Mark	Synchronising System
338,725	Jan. 16/34	Unk	Radio Receiver
338,730	Jan. 16/34	Posthumus; Weyers	Cascaded Amplifier
339,249	Feb. 6/34	Vermeulen; Van Urk	Magnet System for Acoustical Devices
339,702	Feb. 27/34	Groeneveld	Antenna Circuit
339,704	Feb. 27/34	Dyksterhuis	Electro Dynamic Loudspeaker
339,879	Mar. 6/34	Nordlohne	Push Pull Amplifier

I 115 123

Schedule "A" - Page 27.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
340,444	Mar. 27/34	Van Gessel; Van Wyk	Method of Producing Composite Wire
341,980	May 29/34	Van Urk	Electro Dynamic Acoustical Device
342,819	July 3/34	Van der Mark	Radio Receiver
343,198	July 17/34	Van der Pol; Posthumus; Tellegen	I.F. Band Amplifier Circuit
343,199	July 17/34	Van der Pol	Method of Making Coil Core
343,200	July 17/34	Alexander	Radio Receiver Circuit
343,201	July 17/34	Zechach	Wire Unwinding Machine
343,436	July 24/34	Jonker; Van Gessel	Indirectly Heated Cathode Discharge Device
344,111	Aug. 21/34	Posthumus	Amplifier
344,112	Aug. 21/34	Tellegen	Convertible Band Pass Radio Receiver
344,113	Aug. 21/34	Veldhuyzen	Amplifier Coupling System
344,115	Aug. 21/34	Timmer	Amplifier Circuit
345,081	Oct. 2/34	Van der Pol; Van der Mark	Frequency Reducing System
346,014	Nov. 13/34	De Boer; Van Geel	Condenser Construction
346,224	Nov. 20/34	De Boer; Brandsma	Condenser-Rutile Powder Dielectric
346,235	Nov. 20/34	Bienfait; Van Zwet	Electric Conductor
347,372	Jan. 8/35	Jonker; Albright	Repeater Circuit
347,894	Jan. 29/35	Van der Pol; Alexander	R.F. Filter
348,065	Feb. 5/35	Veldhuyzen	Screen Grid Detector Circuit
348,693	Mar. 5/35	De Lange	Stacked Condenser Assembly
348,694	Mar. 5/35	Rinia	Wave Repeater System
348,696	Mar. 5/35	Posthumus; Weyers	H.F. Band Filter
348,697	Mar. 5/35	Posthumus; Weyers	Superheterodyne Radio Receiver
348,698	Mar. 5/35	Posthumus; Weyers	I.F. Amplifier Circuit
348,700	Mar. 5/35	Van Geel; Emmens	Electrolytic Condenser
348,702	Mar. 5/35	Van Lyf	Radio Dial Illumination
349,623	Apr. 16/35	Posthumus; Weyers	I.F. Amplifier Circuit
350,464	May 21/35	De Lange	Condenser Manufacture
350,730	June 4/35	Tellegen	H.F. Coupling Network
350,751	June 4/35	Posthumus; Weyers	Superheterodyne Radio Receiver
350,919	June 11/35	Posthumus; Weyers	I.F. Amplifier Circuit
352,675	Aug. 27/35	Weyers	Band Pass Filter
352,676	Aug. 27/35	Dyksterhuis	Electrodynamic Loudspeaker
352,679	Aug. 27/35	Posthumus	Radio Receiver
353,109	Sep. 17/35	Van der Pol; Veldhuyzen	Differential Condenser
353,235	Sep. 24/35	Alexander Van der Pol	High Frequency Disturbance Filter

2116

Schedule "A" - Page 28.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
353,981	Nov. 5/35	Six	Method of Reducing Hysteresis into Coil Core
354,127	Nov. 12/35	Van der Pol; Weyers	Superheterodyne Radio Receiver
354,562	Dec. 3/35	Van Slooten	Radio Receiver Circuit
354,701	Dec. 10/35	Van der Mark	Radio Receiver Circuit
356,297	Mar. 3/36	Van Geel;Emmens	Dry Plate Rectifier
356,298	Mar. 3/36	Van Geel;Emmens	Electrode System for Dry Plate Rectifier
356,299	Mar. 3/36	Emmens;Van Geel	Method of Carbonizing Iron
356,478	Mar. 10/36	Van de Riet	Audio Frequency Amplifier Circuit
357,647	May 5/36	Van Geel;Straub	Electrolytic Condenser
357,648	May 5/36	Van Bruggen; Claassen	Method of Making High Ohmic Resistance
360,661	Sep. 22/36	Straub;Lemmens	Electrolytic Condenser
360,662	Sep. 22/36	Rotter	Selector Circuit in Antenna Circuit
360,812	Sep. 29/36	Alexander	Radio Receiver
361,110	Oct. 13/36	Houwink	Radio Receiver Casing
362,053	Nov. 24/36	Alexander; Van der Pol	Radio Receiver
362,783	Dec. 22/36	Emmens	Alternating Voltage Rectifier
362,784	Dec. 22/36	Van Geel; De Boer	Electrolytic Condenser
363,360	Jan. 12/37	Dykstehuis	Loudspeaker or Microphone Actuating Member
364,317	Feb. 23/37	Tellegen	Circuit Coupling Device
364,318	Feb. 23/37	Van Arkel; Van Embden	Electrolytic Condenser
364,442	Mar. 2/37	Klinkert	Method of Manufacturing Wire Grids
366,925	June 22/37	Van Loon	High Ohmic Resistance
367,440	July 20/37	Van der Pol; Posthumus	Amplifying System
368,215	Aug. 24/37	Vollenbroek	Variable Resistance Device
368,836	Sep. 21/37	Parker	Variable Couplers for Electrical Systems
370,633	Dec. 21/37	Leithäuser	Frequency Tuning Scale
370,958	Jan. 4/38	Weber; Ploos van Amstel	Electric Resistance Material
372,133	Mar. 1/38	Tellegen; Bouman;Rinia	Receiver Gain Control Circuit
372,285	Mar. 8/38	Mouncheens	Receiver Gain Control Circuit
373,068	Apr. 12/38	Van Geel;Emmens	Assymetrically Conductive Electrode System
374,819	July 5/38	Dykstehuis	Wave Range Changer
375,368	July 26/38	De Boer	Assymetric Electrode System
375,369	July 26/38	De Boer; Van Geel	Assymetric Electrode System
375,593	Aug. 9/38	Horowitz	Radio Tuning Device Drive
375,898	Aug. 23/38	Van Slooten	Noise Suppressor Circuit
376,530	Sep. 20/38	Strutt	Superheterodyne Radio Receiver
376,635	Sep. 20/38	De Schrevel	Electric Resistance
377,570	Nov. 8/38	Oosterhuis	Radio Tuning Control
377,649	Nov. 15/38	Markus;Strutt	Radio Receiver
377,653	Nov. 15/38	Tellegen	Radio Receiver Circuit
377,654	Nov. 15/38	Van Loon;Rinia	Wide Frequency Range Amplifier
377,830	Nov. 22/38	Alexander	Power Supply System
377,916	Nov. 29/38	Rinia	Multi-Range Tunable Circuit
377,919	Nov. 29/38	Pagliari	Radio Tuning Indicator
[illegible]	Dec. 13/38	Tellegen	Multi-Range Tunable Circuit

Schedule "A" - Page 29.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
378,565	Dec. 27/38	Van Geel; Emmens	Assymetric Electrode Device
378,909	Jan. 17/39	Wirix	Multi Stage Audio Frequency Amplifier
378,910	Jan. 17/39	Posthumus	Amplifier Tube and Circuit
378,913	Jan. 17/39	Van Slooten	Tone Control Device
380,318	Mar. 28/39	Posthumus	Relay Circuit for Selective Reception
380,396	Mar. 28/39	Van Loon	Radio Remote Tuning Device
380,680	Apr. 11/39	Van Loon	Radio Tuning Control
380,724	Apr. 11/39	Van Minnen; Nordlohne	Frequency Amplifier and Multiplier
380,727	Apr. 11/39	Rinia; Spoor	H.F. Coupling Element
380,731	Apr. 11/39	Weyers	Radio Receiver Tuning Indicator
380,849	Apr. 18/39	Van Loon	Tuning Circuit
381,004	Apr. 25/39	Van Loon	Tuning Circuit
381,005	Apr. 25/39	Van Loon	Tuning System
381,047	Apr. 25/39	Weyers	Local Oscillator Circuit
381,051	Apr. 25/39	Dyksterhuis; Van Slooten	Circuit for H.F. Oscillations
381,304	May 9/39	Niclassen	Electron Discharge Tube
381,305	May 9/39	De Boer; Van Geel	Assymetric Electrode System
381,775	May 30/39	Bouwers	Electron Discharge Tube
381,776	May 30/39	Timmer	Photoelectric Current Amplifying System
381,777	May 30/39	Van der Ven; Van der Mark; Tellegen	Rectifying and Amplifying Coupling Arrangement
381,778	May 30/39	Van Minnen; Nordlohne	Amplifying Arrangement
381,780	May 30/39	Van Loon; Bouman	Tunable Amplifier
382,342	June 27/39	Tellegen; Vries; Bakker	Amplifying Device and Circuit
382,392	June 27/39	Weyers	Amplifier Intermediate Frequency
382,394	June 27/39	Tellegen	Band Filter Circuit
382,540	July 4/39	Posthumus; Weyers	Superheterodyne Receiver
383,155	Aug. 1/39	Posthumus	Amplifying Device
383,585	Aug. 22/39	Alexander	Inverter Device
384,161	Sep. 19/39	Vollenbroek; Horowitz	Radio Tuning Dial
384,193	Sep. 19/39	Tellegen	Electrical Impedance System
386,630	Jan. 30/40	Tellegen; Peek; Hepp; Henrisues	Noise Suppression Circuit
386,631	Jan. 30/40	Van Slooten	Selectivity Control Circuit
386,994	Feb. 20/40	Van Gogh	Amplifying Circuit
387,176	Feb. 27/40	Van Loon	Tone Control Device
387,553	Mar. 19/40	De Lange	Low Capacity Condenser
387,581	Mar. 19/40	Timmer	Push Pull Amplifier Circuit
387,928	Apr. 9/40	Dyksterhuis	Radio Casing Construction
387,929	Apr. 9/40	Van Geel	Electrode Structure and Composition
388,241	Apr. 23/40	Broos	Low Frequency Amplifier
389,486	June 18/40	Below; Mechnow	Band Pass Filter
389,487	June 18/40	Van der Ziel	Amplifying System
389,811	July 2/40	Eaglesfield; Archer	Sawtooth Oscillator
389,812	July 2/40	Vels; De Groot	Low Frequency Amplifier.

2118

186

Schedule "A" - Page 30.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
390,743	Aug. 13/40	Holst; Van Geel	Electrode System for Amplification Detection
390,744	Aug. 13/40	Van Loon	Radio Tuning Indication Circuit
390,745	Aug. 13/40	Van der Mark; De Vries	Amplification Circuit
390,746	Aug. 13/40	Weyers	Wave Band Pass Filter
390,747	Aug. 13/40	Van Ingen-Schenau	Selectivity Circuit
390,892	Aug. 20/40	Busse	Television System
391,543	Sep. 24/40	Henriques; Tellegen	Radio Interference Elimination
391,544	Sep. 24/40	Van Geel	Rectifying or Controlling Electrode System
391,545	Sep. 24/40	Tellegen	Superheterodyne Receiving Circuit
391,546	Sep. 24/40	Knoe	Relay Control Device
392,396	Nov. 5/40	Tellegen; Van Loon	Tuned Amplifier Circuit
392,397	Nov. 5/40	Cornelius	Regenerative Radio Receiver
392,398	Nov. 5/40	Posthumus	Frequency Changer
392,527	Nov. 12/40	Kipperman; Lembeck	Condenser Manufacture
392,676	Nov. 19/40	Jonker	Discharge Device and Circuit
392,970	Dec. 3/40	Jonker; Van Overbeek	Discharge Tube and Circuit
392,971	Dec. 3/40	[illegible]	Volume Control Circuit
393,272	Dec. 17/40	De Lussanet de la Sabloniere	Amplifying Circuit
393,429	Dec. 20/40	Busse; Van der Mark; Venis	Sweep Oscillator Circuit
394,342	Jan. 28/41	Van der Mark	Oscillation Generator
394,345	Jan. 28/41	Horowitz	Variable Condenser
394,733	Feb. 18/41	Van Slooten	Radio-Phonograph
395,776	Apr. 8/41	Vivie	Condenser Construction
396,098	Apr. 22/41	Cramwinckel	Ultra Short Wave Radio Receiver
396,273	Apr. 29/41	Verbeek; Tellegen	Amplifier Circuit
396,274	Apr. 29/41	Rinia	H.F. Amplifying Arrangement
396,438	May 6/41	Richards	Rectifying and Amplifying Circuit
396,439	May 6/41	Six	Degenerative Amplifier Circuit
396,986	June 3/41	Bouwers	Television Receiving System
397,826	July 8/41	McNamara	Oil Well Drill
397,836	July 8/41	Van Overbeek	Electron Discharge Device
398,481	Aug. 5/41	Eaglesfield	Television Receiver Circuit
399,525	Sep. 23/41	Pasma	Vacuum Tube Oscillator
399,526	Sep. 23/41	Haantjes; Tellegen	Oscillation Circuit
399,527	Sep. 23/41	Bulk	Cord Drive Tensioning Device
399,986	Oct. 14/41	Meyer	Degenerative Feedback Amplifier
401,015	Nov. 25/41	Tellegen	Receiving Circuit
401,053	Nov. 25/41	Hiensch; Lips	Mechanical Wiring System for Radio Receiver Parts
401,868	Dec. 30/41	Kroes	Tuning Shaft Construction
401,869	Dec. 30/41	Knoe	Tuning Shaft Construction
401,870	Dec. 30/41	Dykstorhuis; Groenenberg; Timmerman; Vivie	Push Button Arrangement

2119

Schedule "A" - Page 31.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
402,061	Jan. 6/42	Van Slooten	Oscillation Generator
402,225	Jan. 13/42	Tellegen; Henriques	Receiver Noise Control Circuit
402,269	Jan. 13/42	Hiensch	Thermoplastic Electrical Connector
402,391	Jan. 20/42	De Boer	Television Projection System
402,537	Jan. 27/42	Van Ingen- Schenau	Degenerative Amplifier
402,664	Feb. 3/42	Van Loon	Volume Control Circuit
402,665	Feb. 3/42	Strutt; Van der Ziel	Ultra Short Wave Rectifying Circuit
402,666	Feb. 3/42	Oosterhuis	Noise Suppression Circuit
402,667	Feb. 3/42	Jonker	Radio Distortion Visual Indicator
402,668	Feb. 3/42	Tellegen;Jonker	Indicator and Control for Sound Intensity
402,669	Feb. 3/42	Praam	Superheterodyne Receiver
402,670	Feb, 3/42	Neeteson	Negative Feedback Amplifier
402,707	Feb. 3/42	Van Eldik	Amplifier Circuit
402,799	Feb. 10/42	Weyers	Superheterodyne Receiver
402,800	Feb. 10/42	Van Loon	Tuning Control Circuit
402,801	Feb. 10/42	Hiensch;Lips	Method for Making Electrical Connections
402,943	Feb. 17/42	Strutt	Circuit for Amplifying Electrical Oscillation
402,944	Feb. 17/42	Van Geel	Electrode System
402,945	Feb. 17/42	Alexander	Vibratory Inverter
402,946	Feb. 17/42	Alma;Jonker	Electronic Tube Circuit
402,947	Feb. 17/42	Tellegen; Van Weel	Receiver Circuit Arrangement
402;948	Feb. 17/42	Haantjes; Tellegen	Superheterodyne Circuit
402,949	Feb. 17/42	Eaglesfield	Thermionic Valve Circuit
402,957	Feb. 17/42	Eeseling; Van Geel	Blocking Layer Electrode System
402,997	Feb. 17/42	Alexander; Kuperus	Inverter-Transformer Apparatus
403,658	Mar. 24/42	Verbeek	Power Transformer
403,659	Mar. 24/42	Tellegen; Henriques	Distortion Reducer for Amplifying System
403,661	Mar. 24/42	Hepp	Cathode Ray Control Apparatus
403,662	Mar. 24/42	Schrack	Radio Chassis
403,977	Apr. 7/42	Boers	H.F. Oscillation Generator
404,560	May 5/42	Richards; Kerkhof	Amplifier
404,561	May 5/42	Hepp	Amplifier
404,562	May 5/42	Groeneveld	Amplifier
404,959	May 26/42	De Stefani	Dispensing Apparatus
405,674	June 23/42	De Boer;Jonas	Nickel Alloy Electrode
405,959	July 7/42	Bouman;Clark	Amplifier Volume Control
406,097	July 14/42	Hepp	Wide Band Amplifier
407,144	Sep. 1/42	Hepp	Sawtooth Current Circuit
408,579	Nov. 10/42	Spoor; Rinia; Van Yzeren	Variably Damped Tuned Circuit
408,580	Nov. 10/42	Van Loon	Control Shaft Construction for Tuning
408,581	Nov. 10/42	Eaglesfield	Frequency Changer Network
408,884	Nov. 24/42	Van der Mark	Television Receiver
409,365	Dec. 15/42	De Gier; Kruithof; Penning	Cathode Ray Distortion Correction System

2130

Schedule "A" - Page 32.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
409,373	Dec. 15/42	De Gier	Cathode Ray Tube
409,999	Jan. 12/43	Horowitz; Knoe	Tuning Shaft Adjusting Mechanism
410,000	Jan. 12/43	Vivie	Inductance Tuning Arrangement
411,514	Mar. 30/43	Missel	Superheterodyne Receiver
411,949	Apr. 20/43	Van Ingen-Schenau	Degenerative Feedback Circuit
412,117	Apr. 27/43	Horowitz; Van Lammeren; Knoe	Automatic Tuning Arrangement
412,118	Apr. 27/43	Kuperus	Tuning Arrangement
412,119	Apr. 27/43	Rinia	Automatic Tuning Arrangement
412,456	May 11/43	Van Loon	Push Button Tuning Control Shaft
414,518	Aug. 10/43	Baumgartner	Tube Circuit for Tuning Indicator
415,503	Sep. 28/43	Van Lammeren	Control Shaft Construction
41[illegible],653	Oct. 5/43	Richards; Rinia	Deflection Apparatus for Electron Beams
417,068	Dec. 14/43	Rinia; vander Ven	Voltage Regulator
418,437	Feb. 15/44	Van der Heem	Inductance Coil Adjusting Method
420,828	June 13/44	Van Slooten; Volz	Low Frequency Amplifier
421,153	June 27/44	Broos	Circuit for Volume Control
421,154	June 27/44	Broos	Circuit for Tone Control
436,131	July 30/46	Brand	Push Button Control Switches
443,563	Aug. 5/47	Brand	Electronic Sound Generators
443,765	Aug. 19/47	Fisher	Means for Suppression of Noise in Communication Systems
295,790	Dec. 17/29	Trube	Electric Coupling System
297,622	Feb. 18/30	Wheeler	Wheatstone Bridge Filter
297,623	Feb. 18/30	MacDonald	Wave Signalling System
304,244	Sep. 23/30	MacDonald	Wave Signalling System
305,466	Nov. 4/30	Trube	Electric Coupling System
308,143	Jan. 27/31	MacDonald	Shielding for Radio-Frequency Amplifiers
309,061	Mar. 3/31	MacDonald	Coupling System
311,936	June 2/31	Wheeler	Radio Coupling System
311,937	June 2/31	Pressley	High Frequency Transformer
315,255	Sep. 15/31	Wheeler	Push-Pull Amplifier
315,256	Sep. 15/31	Wheeler	Push-Pull Amplifier
315,257	Sep. 15/31	Wheeler	Push-Pull Amplifier
315,258	Sep. 15/31	Wheeler	Thermionic Amplifier
320,580	Mar. 15/32	Wheeler	Electric Coupling Circuits
320,819	Mar. 22/32	Wheeler	Electric Coupling Circuit
320,820	Mar. 22/32	Wheeler	Coupling System
320,821	Mar. 22/32	Wheeler	Electric Coupling Circuits
323,083	June 7/32	MacDonald	Electrical Coupling Circuit
323,718	June 28/32	MacDonald	Wave Signalling System
325,994	Sep. 13/32	Harnett	Electric Coupling Circuits for Thermionic Valve Circuits
327,098	Oct. 25/32	MacDonald	High-Frequency Transformer
327,650	Nov. 15/32	Johnson	High-Frequency Coupling System
328,074	Nov. 29/32	Wheeler	Wave Signalling System
330,021	Feb. 7/33	MacDonald	Superheterodyne Receiver
330,023	Feb. 7/33	Wheeler	Peak Detector
333,943	July 11/33	Wheeler	Radio Receiving Apparatus
336,966	Nov. 7/33	Johnson	Radio Receiving Apparatus
337,335	Nov. 21/33	Wheeler	Double Band Receiver
337,336	Nov. 21/33	Johnson	Noise Suppressor

Defendant's Exhibit No. 124B.

Schedule "A" - Page 33.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
340,047	Mar. 13/34	Wheeler	Selective Circuits
340,950	Apr. 17/34	Johnson	Radio Receiver
341,962	May 29/34	Wheeler	Tuning Indicator
343,402	July 24/34	Whitman	Oscillator
353,671	Oct. 22/35	Harnett	Modulation Circuit
353,951	Nov. 5/35	Wheeler	Amplifier
353,952	Nov. 5/35	Wheeler	Superheterodyne Radio Receiver
355,345	Jan. 14/36	Johnson	Coupling System
355,922	Feb. 11/36	Huxtable	Radio Tuning and Selectivity Control
361,479	Oct. 27/36	Johnson	Detector Circuit
361,721	Nov. 10/36	Swinyard	Sound Reproducing Apparatus
363,210	Jan. 5/37	Lewis	Short Wave Convertor
364,178	Feb. 16/37	Johnson	Superheterodyne Receiver
368,126	Aug. 17/37	Case	Multiband Receiver
370,215	Nov. 30/37	Wheeler	Visual Resonance Indicator
370,522	Dec. 14/37	Case	Wave Signal Receiver
372,126	Mar. 1/38	Case	High Frequency System
372,127	Mar. 1/38	Johnson	Variable Inductance Tuning Device
372,173	Mar. 1/38	Harnett	Coupling System
372,282	Mar. 8/38	Wheeler	Wave Signalling System
372,426	Mar. 15/38	Wheeler	Radio Receiver
372,592	Mar. 22/38	Harnett	High Frequency Coupling System
372,744	Mar. 29/38	Wheeler	Automatic Amplification Control
372,745	Mar. 29/38	Johnson	Radio Receiver
373,680	May 10/38	Wheeler	Simplified Selective Circuits
373,779	May 17/38	Wheeler	Radio Receiver
374,219	June 7/38	Case	Radio-Frequency Inductance Unit
374,221	June 7/38	Case	Feedback Circuits
374,508	June 21/38	Lyons	Coupling System
374,509	June 21/38	Johnson	Wave Signalling System
374,719	June 28/38	Wheeler	Wave Signal Collecting System
374,720	June 28/38	Wheeler	Band-Pass Filter
374,721	June 28/38	Case	Oscillation System
374,722	June 28/38	Wheeler	Coupling System
375,047	July 12/38	Wheeler	High-Frequency Signalling System
375,284	July 26/38	Wheeler	Electron Discharge Device
375,336	July 26/38	Case	Coupling System
375,337	July 26/38	Wheeler	Band-Pass Filter
376,082	Aug. 30/38	Farrington	Wave Signalling System
376,168	Sep. 6/38	Harnett	Superheterodyne Receiver
376,850	Oct. 4/38	Lyons	Coupling System
376,997	Oct. 11/38	Wheeler	Signal Selecting System
376,998	Oct. 11/38	Farrington	Selectivity Control
377,661	Nov. 15/38	Wheeler	Feedback Circuits
377,662	Nov. 15/38	Wheeler	Feedback Circuits
379,726	Feb. 28/39	MacDonald	Signal Selecting System
380,032	Mar. 14/39	Barber	Coupling System
381,558	May 23/39	Wheeler	Amplifier System
381,702	May 30/39	Lewis	Television Apparatus
381,703	May 30/39	Lewis	Television Apparatus
381,704	May 30/39	Huxtable	Wave Signalling System
384,134	Sep. 19/39	Lewis	Electric Wave Generator
384,284	Sep. 26/39	Cavein	Periodic Voltage Generator
384,561	Oct. 10/39	Johnson	Tone Control

2162

190

Schedule "A" - Page 34.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
385,097	Nov. 14/39	Lewis	Periodic Voltage Generator
385,905	Dec. 26/39	Wheeler	Vacuum Tube
387,127	Feb. 27/40	Case	Automatic Frequency Control
387,[illegible]28	Feb. 27 /40	Loughren	Fidelity Control
3[illegible]29	Feb. 27/40	Wheeler	Automatic Signal Interference Control
3[illegible]532	Mar. 19/40	Wheeler	Automatic Frequency Control for Oscillation Systems
387,646	Mar. 26/40	Wheeler	Band-Pass Selector
388,082	Apr. 16/40	Case	Signal Translating System
388,225	Apr. 23/40	Farrington	High-Frequency Oscillator
388,544	May 7/40	Farrington	Variable Selectivity Radio Receiver
389,321	June 11/40	Cavein	Television Receiving Apparatus
389,617	June 25/40	Cavein	Cathode-Ray Tube Scanning System,
389,618	June 25/40	Case	Adjustable Inductance
389,619	June 25/40	Cavein	Broad Band Amplifier
389,620	June 25/40	Case	Automatic Tuning Arrangement
389,735	July 2/40	Wheeler	Phase-Correcting Low-Pass Filter
390,202	July 23/40	Wheeler	Oscillator Modulator
390,670	Aug. 13/40	MacDonald	Tuning and Selectivity Control
390,964	Aug. 27/40	Cavein	Transformer for Band-Pass Selector
391,100	Sep. 3/40	Wheeler	Feedback Amplifier Filter
391,807	Oct. 8/40	Freeman	Frequency-Responsive Network
392,782	Nov. 26/40	Hershey	Signal-Translating System
392,909	Dec. 3/40	Lewis	Modulated-Carrier Signal-Translating System
393,087	Dec. 10/40	Wheeler	Band-Pass Filter
393,733	Jan. 7/41	Lewis	Television Combining Amplifier
393,944	Jan. 14/41	Wheeler	Tapered Band Width Dead-End Filter
393,945	Jan. 14/41	Wheeler	Tunable Selector of Uniform Band Width
394,099	Jan. 21/41	Case	Duplex Vacuum-Tube Repeater
394,426	Feb. 4/41	Hergenrother	Cathode-Ray Signal-Generating Tube
394,818	Feb. 25/41	Lyons	Selectivity and Fidelity Control
395,157	Mar. 11/41	Farrington	Stabilized Tuned System
395,622	Apr. 1/41	Wheeler	Frequency Selective Network
396,205	Apr. 29/41	Wheeler	Periodic Wave Repeater
396,206	Apr. 29/41	Harnett	Periodic Wave Repeater
396,518	May 13/41	Hazeltine	Electron Discharge Device
396,519	May 13/41	Hazeltine	Frequency Conversion System
396,520	May 13/41	Wheeler	Uniform Impedance Network
396,521	May 13/41	Wheeler	Antenna
396,812	May 27/41	Curtis	Remote Control Wave Signal Receiver
396,813	May 27/41	Curtis	Remote Control Receiver
397,119	June 10/41	Lewis	Band-Pass Selector System
397,648	July 1/41	Farrington	Band-Pass Selector System
398,293	July 29/41	Wheeler	Amplifier System
398,294	July 29/41	Cavein	Tunable Band-Pass Selector
398,523	Aug. 5/41	Wheeler	Radio-Frequency Inductance Unit
398,731	Aug. 19/41	Wilson	Periodic Wave Generator
398,732	Aug. 19/41	Wheeler; Farrington	High-Frequency Tunable System and Apparatus
399,959	Oct. 14/41	Lewis	Television Scanning System
399,960	Oct. 14/41	Wilson	Scanning-Wave Generator Synchronizing System
400,321	Oct. 28/41	Wheeler	Oscillator-Modulator System
400,995	Nov. 25/41	Curtis	Homodyne Receiver
401,170	Dec. 2/41	Wheeler	Periodic Wave Generator
401,649	Dec. 23/41	Cavein	Periodic Wave Generating System
402,364	Jan. 20/42	Freeman	Vacuum Tube with Substantially Constant Interelectrode Capacitance

2123

.191

Defendant's Exhibit No. 124B.

Schedule "A" - Page 35.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
404,265	Apr. 21/42	Rado	Frequency Changing System
404,388	Apr. 28/42	Wilson	Periodic Wave Repeater
404,389	Apr. 28/42	Farrington	Combination Amplitude-Modulation-Frequency-Modulation Receiver
404,449	Apr. 28/42	Wheeler	Emission Valve Modulation System
404,535	May 5/42	Wheeler	Band-Pass Filter, including Trap Circuit
404,880	May 19/42	Wilson	Automatic Control of Television Receiving Systems
404,881	May 19/42	Freeman	Ultra-High-Frequency Signal-Translating Stage
405,295	June 9/42	Wheeler	Saw-Tooth Wave Generator
406,379	July 28/42	Wheeler	Periodic Wave Generator
406,704	Aug. 11/42	Wilson	Electric Timing System
406,971	Aug. 25/42	Hergenrother	Electron Multiplier Tube
407,289	Sep. 8/42	Freeman	Frequency-Modulated Carrier-Signal Translating System
407,436	Sep. 15/42	Jones	Electric Power Transmission Circuit
407,437	Sep. 15/42	Wheeler	Carrier-Signal Frequency-Detector System
407,560	Sep. 22/42	Wilson	Periodic Saw-Tooth Wave Repeater
407,561	Sep. 22/42	Case	Signal-Translating System
408,553	Nov. 10/42	Lewis	Signal Generating System
408,698	Nov. 17/42	Cawein	Television Synchronizing and Control System
408,699	Nov. 17/42	Lewis	Television Synchronizing and Control System
408,700	Nov. 17/42	Wilson	Television Signal-Translating System
408,701	Nov. 17/42	Wilson	Periodic Wave Repeater
409,282	Dec. 8/42	Wheeler	Television Broadcast System
409,347	Dec. 15/42	Freeman	Television Receiving Apparatus
409,348	Dec. 15/42	Wheeler	Television Synchronizing System
409,659	Dec. 29/42	Loughren	Television Signal Translating System
410,244	Jan. 26/43	Lewis	Synchronizing and Background Control for Television Receivers
410,245	Jan. 26/43	Cawein	Television Synchronizing System
410,246	Jan. 26/43	Case	Carrier-Signal Receiver
410,247	Jan. 26/43	Hershey	Frequency Detector and Control Voltage Supply
410,745	Feb. 23/43	Wheeler; Freeman	Carrier-Signal Receiver
411,634	Apr. 6/43	Wheeler	Modulated-Carrier Signal Receiver
411,635	Apr. 6/43	Freeman	Automatic Control System for Carrier-Wave Signal Receivers
411,785	Apr. 13/43	Loughren	Television Broadcast System
411,786	Apr. 13/43	Wilson	Video-Frequency Signal-Translating System
411,787	Apr. 13/43	Case	Antenna System for Modulated-Carrier Signal Receivers
412,436	May 11/43	Okrent	Amplitude-Limiting Signal-Translating Channel
412,597	May 18/43	Wilson	Frequency-Modulation Television Signal Receiver
412,914	June 1/43	Wilson	Video-Frequency Signal-Translating System for Television Receivers
413,217	June 15/43	Wilson	Multiplex Signal-Translating System
413,218	June 15/43	Hergenrother	Vacuum Tube and Method of Manufacture Thereof
413,362	June 22/43	Tyson	Carrier-Signal Selector Network
414,462	Aug. 10/43	Wheeler	Television Broadcast System
414,591	Aug. 17/43	Smith	High Voltage Power Supply System
414,918	Aug. 31/43	Hergenrother	Cathode Ray Signal Reproducing Unit
415,113	Sep. 7/43	Case	Adjustable Inductance
416,756	Nov. 30/43	Malling	Inter Tube Intermediate Frequency Coupling System

2124 .192

Schedule "A" - Page 36.

CANADIAN PATENT	DATE	INVENTOR	SUBJECT
416,757	Nov. 30/43	Wilson	Colour Television Signal Translating System
417,575	Jan. 4/44	Case	Carrier Signal Detector
417,690	Jan. 11/44	Wheeler	Band Pass Selector
417,691	Jan. 11/44	Hergenrother	Signal Generating System
417,692	Jan. 11/44	Hergenrother	Cathode Ray Tube
417,843	Jan. 18/44	Wheeler	Television Carrier Signal Receiver
418,466	Feb. 15/44	Case	Signal Translating System
422,479	Sep. 5/44	Wheeler	Television Receiver
425,442	Feb. 6/45	Loughren	Television Broadcasting System
424,233	Dec. 5/44	Malling	High-Frequency Signal-Translating System
430,163	Sep. 18/45	Loughren	Television Broadcasting System
436,096	July 30/46	Robinson	Electrical Condenser
439,327	Jan. 21/47	Curtis	Radio-Frequency Carrier-Signal Limiting System
439,889	Feb. 25/47	Wilson	Television Scanning System
440,932	Apr. 22/47	Harnett	High-Frequency Signal Generator
441,077	Apr. 29/47	Loughren	Signal-Generating System
441,703	May 27/47	Lawrance	Ultra-High-Frequency Signal-Translating Apparatus
442,610	July 11/47	Loughlin	Phase-Modulation System
442,611	July 1/47	Lewis	System for Determining the Position of an Object in Space
442,612	July 1/47	Nechamkin	Process for Black Finishing Metals
294,555	Nov. 5/29	Nyman	Insulation for Condenser
294,556	Nov. 5/29	Dubilier	Electrical Condenser Unit
294,557	Nov. 5/29	Dubilier	Electrical Condenser
294,558	Nov. 5/29	Dubilier	Electrical Condenser
294,559	Nov. 5/29	Dubilier	Electrical Condenser
294,560	Nov. 5/29	Dubilier	Electrical Condenser
294,561	Nov. 5/29	Dubilier	Electrical Condenser
294,562	Nov. 5/29	Fried	Electrical Condenser Casing
294,563	Nov. 5/29	Weiss	Process for Treating Electrical Condensers
294,564	Nov. 5/29	Dubilier	Electrical Condenser
294,565	Nov. 5/29	Dubilier	Electrical Condenser
298,068	Mar. 4/30	Dubilier	Multiple or Built Up Electrical Condenser
299,261	Apr. 15/30	Nyman	Electrical Insulation
314,656	Sep. 25/31	Powell	Method and Apparatus for Remotely Controlling Radio Receiving Systems
315,101	Sep. 8/31	Cotter	Automatically Operated Pickup Switches
321,914	Apr. 26/32	Nyman	Electrical Device
322,326	May 10/32	Nyman	Electrical Condenser System
329,791	Jan. 31/33	Bludworth	Electric Control Apparatus
329,792	Jan. 31/33	Bludworth	Remotely Controlled Radio and Phonograph Systems
332,533	May 16/33	Manson et al	Remote Control System
341,930	Mar. 29/33	Wuerfel	Radio Circuit
344,454	Sep. 8/34	Curtis et al	Radio Tuning Apparatus
347,241	Jan. 1/35	Roovee	Tone Control
360,814	Sep. 29/36	Dubilier	Electrical Condenser
372,814	Mar. 29/38	Bond	Noise Suppressors for Radio
374,016	May 24/38	Curtiss	Tone Compensated Volume Control
375,675	Aug. 9/38	Curtiss	Tone Control

2125

193

DEFENDANT'S EXHIBIT NO. 124-C.

Agreement dated as of the .... day of ....
A. D. .... Between:

Canadian Radio Patents Limited,

a corporation organized under the laws of Canada and having its Head Office and principal place of business at 200 St. Clair Avenue West, in the City of Toronto, in the Province of Ontario, hereinafter called the Licensor,

and

.... a corporation also organized under the laws of Canada, and having its Head Office and principal place of business at .... in the City of .... in the Province of ...., hereinafter called the Licensee.

Whereas the Licensor owns or has the right to grant licenses under various Canadian Letters Patent for inventions relating to or useful in the manufacture of Licensed Apparatus as hereinafter specified and defined;

And Whereas the Licensee desires the right to make lawful use of inventions covered by said Canadian Letters Patent and to that end desires to acquire the license herein granted;

Now, Therefore, In Consideration of the premises and of the license granted herein by the Licensor to the Licensee and the mutual covenants herein contained, the parties hereto agree as follows;

Article I.

Definitions.

For the purposes of this Agreement the following definitions shall apply:

(a) "Broadcast receiving set" means a receiving set of a type (other than theater television and theater facsimile types) designed primarily for the reception of broadcast signals representative of pictures, news, music, speeches, sermons, advertising, entertainment, educational and similar matter, or any of them or combinations of any of them, for the purpose of entertainment or instruction. "Broadcast signals" means signals transmitted by means of electro-magnetic waves, variations or impulses and intended for the general public, including without limiting the generality thereof such signals for subscription television and other subscription services.

(b) "Theater television and theater facsimile types" means picture broadcast receiving sets of types designed primarily for use in theaters or other places of public entertainment where an admission or entertainment charge is made.

(c) A "colour television broadcast receiving set" and a "Colour picture broadcast receiving set" means, in each case, a broadcast receiving set capable of reproducing a picture embodying two or more chromatic colours. Chromatic colours means colours such as reds, greens, blues, purples, yellows, and browns, as distinguished from the achromatic colours—black, white and grays.

(d) A "monochrome television broadcast receiving set" and a "monochrome picture broadcast receiving set" means, in each case, a broadcast receiving set which is capable of reproducing a picture but is not capable of reproducing a picture embodying two or more chromatic colours.

(e) "Pictures" means light images, shadows, reflections, photographs and other visible reproductions of the aspect or shape of animate or inanimate objects or of drawings, writings, forms and other graphic, printed or written matter of all kinds.

(f) "Electron tube" means a device comprising two or more electrodes and an envelope which is to any extent evacuated or contains gas, vapor or liquid under any degree of pressure, which device operates by the passage of an electric current through the vacuum, gas or vapor contained within the envelope, including gas or vapor produced from such liquid, to change the form of, control or modify energy supplied thereto.

(g) A "transistor" is an active transducer which depends for its operation on the conduction of current in a semi-conductor or insulator, and which is adapted to perform functions analogous to functions of an electron tube. The term "transistor" as used herein, shall not be deemed to include a transducer, which depends for its operation on the conduction of current by electrons emitted into a vacuum, gas or vapor. Each "transistor" shall be deemed to include, as a part thereof, all permanently attached supporting members, cooling members and isolating or protecting structures, materials or housings for the semi-conductor or insulator or its terminals, but shall not include circuits or other elements, devices or components (including other transistors) associated with the semi-conductor or insulator or its terminals.

(h) A "transducer" is a device by means of which energy can flow from one or more transmission systems to one or more other transmission systems and an "active transducer" is a transducer in which the engery supplied to the one or more other systems is not obtained exclusively from the energy available from the one or more first systems.

(i) A "semi-conductor" is a material (which may contain impurities or other imperfections) having an electrical conductivity, at room temperature, between that of metals commonly used for the conduction of current and that of insulators, and in which the electrical impedance of the material can be altered by the application of potentials, radiations or other energy of intensities which are not sufficiently great to alter permanently the structure of the material.

(j) "Cabinet" means only that portion of Licensed Apparatus which is external to, permanently houses, and protects, and is designed to improve the appearance or saleability of the remaining portions thereof in the form and condition in which such apparatus is advertised (if at all) by Licensee, and is normally intended to be sold at retail to the ultimate user.

(k) "Automobile receiving set" means a complete broadcast receiving set of a type designed primarily for installation and use in automobiles.

(l) "Repair parts" means parts (other than electron tubes and transistors or semi-conductor devices) used to replace defective or worn out parts of a similar type thereafter to be discarded, for the purpose of repairing Licensed Apparatus.

Article II.

License.

Section 1

The Licensor hereby grants to the Licensee, upon the terms and conditions hereinafter set forth, a personal, indivisible, non-transferable and non-exclusive license, only for the Licensed Apparatus hereinafter specified and defined, and only as follows:

(a) to manufacture Licensed Apparatus in Canada and to sell or lease Licensed Apparatus so manufactured and

(b) to have Licensed Apparatus manufactured in Canada for the Licensee and to sell or lease such Licensed Apparatus so manufactured for the Licensee subject to the payment of royalties thereon by the Licensee as provided in Article III hereof. Such Licensed Apparatus shall be deemed to be licensed under this Agreement at the time of sale or lease by the Licensee.

Section 2

Subject to the reservations and exceptions specified in Section 3 of this Article II, this license is granted under all the Canadian Letters Patent covering inventions used in, relating to, or useful in, Licensed Apparatus, or in the manufacture thereof, owned by the Licensor or under which and to the extent to which the Licensor is empowered to grant licenses by Canadian Marconi Company, Montreal, Hazeltine Corporation, Little Neck, New York, U. S. A., Northern Electric Company Limited, Montreal and Phlips Electronics Industries Ltd., Toronto, individually. The following apparatus shall, for the purposes of this Agreement, be referred to as "Licensed Apparatus".

(a) complete monochrome television broadcast receiving sets and other complete monochrome picture broadcast receiving sets, including in each case accompanying sound if any;

(b) complete color television broadcast receiving sets and other complete color picture broadcast receiving sets, including in each case accompanying sound if any;

(c) complete sound broadcast receiving sets;

(d) complete combinations of apparatus of any of the kinds specified in sub-paragraphs (a) to (c) inclusive of this Section 2, and complete attachable apparatus of a type adapted for changing apparatus of a kind specified in any of such sub-paragraphs (a) to (c) inclusive into any such combinations;

(e) complete separate converters, adapters and auxiliary picture viewing devices, in each case of a type adapted for use with apparatus of any of the kinds specified in this Section 2 of this Article II, including without limiting the genearality thereof converters for amplitude modulation (AM), frequency modulation (FM), higher or lower frequencies and/or color, adapters for monochrome reception from color transmissions, slave units and supplementary picture viewing apparatus;

(f) complete separate remote, time and preselective control devices of types adapted for controlling the operation of apparatus of a kind specified in sub-paragraphs (a) to (e) inclusive of this Section 2 of this Article II;

(g) automobile receiving sets, complete except for one or more of the following: (1) cabinets, (2) parts used for the assembly of such sets in cabinets or other permanent housings, or (3) external remote control heads and external flexible shafts connected to said remote control heads, provided such sets are in the form and condition in which they are normally intended for assembly by vendees or users in cabinets or other permanent housings not furnished by or obtained through the Licensee. Any of the foregoing excepted items may be omitted, but if included in or sold with such automobile receiving sets then such items shall be deemed parts thereof; and

(h) apparatus of a kind specified in any of sub-paragraphs (a) to (f) inclusive of this Section 2 of this Article II, other than automobile receiving sets, complete except for cabinets and parts used for the assembly of such apparatus in cabinets or other permanent housings.

Each apparatus specified in sub-paragraphs (a) to (f) inclusive of this Section 2 of this Article II, in order to constitute Licensed Apparatus, shall be completely manufactured apparatus, complete with cabinet or cabinets, and in the form and condition in which it is advertised (if at all) by Licensee and is normally intended to be sold at retail to the ultimate user.

Without limiting the generality of the provisions of this Section 2 of this Article II, and to the extent necessary to comply therewith, Licensed Apparatus shall include the following:

(1) the devices, circuits and conductors by means of which electro-magnetic waves and the picture or sound signals impressed thereon are intercepted, picked up, converted, conducted, selected, detected, translated, rectified, modified, amplified, projected,

and made visible or made audible, as the case may be; and

(2) the devices by means of which electrical currents, derived from primary sources are conducted, converted, rectified, or otherwise modified for energizing such devices, circuits and conductors; and

(3) any cabinets, housings, supporting structures, assembly materials, operating, indicating and controlling devices, circuits and conductors; and

(4) any associated sound recording or reproducing apparatus and any other parts, devices and appurtenances which are embodied or enclosed in, or are mounted on, attached to, or constitute parts of, the apparatus specified in this Section 2 of this Article II or the cabinet thereof, or which enable remote control of its operation.

Section 3

Anything in this Agreement to the contrary notwithstanding, no license is herein granted, and no act or acts of manufacture, sale or lease hereunder shall be construed as or result in conveying any license to the Licensee or others, expressly or by implication, estoppel or otherwise under or with respect to:—

(a) Letters Patent claims relating to the structure or manufacture of electron tubes, transistors, semi-conductors, incandescent lamps and other light sources, batteries; or

(b) Letters Patent of any country other than Canada; or

(c) Unassembled apparatus or parts thereof, other than repair or replacement parts for use in Licensed Apparatus; or

(d) Any device or any method or process of manufacture upon which the Licensee is not required to pay royalties pursuant to the provisions of this Agreement; or

(e) Processed materials and methods relating to the manufacture of such materials.

Section 4

The Licensor shall not assert any Letters Patent, owned by it or under which it has the right to grant licenses to others, gainst any vendee or user of Licensed Apparatus specified in sub-paragraphs (g) and (h) of Section 2 of this Article II, on account of the assembly by such vendee or user of such Licensed Apparatus in cabinets or other permanent housings not furnished by or obtained from the Licensee.

Article III.

Royalties.

Section 1

The Licensee shall pay royalties to the Licensor upon all Licensed Apparatus sold or leased by it during the term of this Agreement at the following rates and in each instance upon net amounts determined as provided in Section 2 of this Article III:

(a) 1.4% upon all Licensed Apparatus specified in sub-paragraphs (a) and (g) of Section 2 of Article II comprising monochrome picture (including television) broadcast receiving sets, including combinations of such apparatus with apparatus specified in sub-paragraph (c) of Section 2 of Article II;

(b) 2.0% upon all Licensed Apparatus specified in sub-paragraphs (b) and (g) of Section 2 of Article II comprising colour picture (including television) broadcast receiving sets, including combinations of such apparatus with apparatus specified in sub-paragraphs (a) and (c) of Section 2 of Article II;

(c) 1.0% upon all Licensed Apparatus specified in sub-paragraphs (c) and (g) of Section 2 of Article II comprising only sound broadcast receiving sets;

(d) The rate of royalty upon all Licensed Apparatus specified in sub-paragraph (d) of Section 2 of Article II, comprising complete attachable apparatus of a type adapted for changing apparatus of a kind specified in sub-paragraphs (a) to (c) inclusive of Section 2 of Article II, into combinations, shall be at the same rate as that which applies to the type of combination of Licensed Apparatus resulting from such change;

(e) The rate of royalty upon all Licensed Apparatus specified in sub-paragraphs (e) and (f) of Section 2 of Article II shall be at the same rate as that which applies to the Licensed Apparatus of the type which results from the conversion or adaptation or of the type to be controlled;

(f) The rate of royalty upon all apparatus specified in sub-paragraph (h) of Section 2 of Article II shall be double the rate which would be applicable to such apparatus if sold completely installed in cabinets or other permanent housings;

(g) Upon and Licensed Apparatus sold for export and actually exported from Canada and not returned for use therein, the rate shall in each case be one-half the rate specified for such apparatus in sub-paragraphs (a) to (f) inclusive of this Section 1.

No royalties shall be payable upon repair parts as hereinbefore defined.

Section 2

The base for the computation of royalties thereunder shall be the Licensee's genuine selling price at which customers are billed in the usual course of business for Licensed Apparatus, as packed for shipment to customers and including all packing material and boxes, cartons, crates, and all contents thereof, without any deductions other than those applicable as hereinafter in this Section 2 of this Article III specified. Such royalties shall be computed and paid on net amounts determined by making only the following deductions, and no others, from the Licensee's said selling price of such Licensed Apparatus sold by it:—

(a) Deduction for Sales and Excise Taxes:—

Canadian Government Sales and Excise Taxes which are actually paid by the Licensee on Licensed Apparatus sold by the Licensee, but only if and to the extent the amounts of such taxes are included in the Licensee's selling prices therof.

(b) Tube, Transistor, Semi-Conductor and Battery Deduction:—

The Licensee's net purchase prices (including inward freight only) of electron tubes, transistors, semi-conductors and/or batteries purchased by the Licensee for use in Licensed Apparatus, if the Licensee has included in its selling prices of such Licensed Apparatus an amount at least equal to such net purchase prices for such tubes and/or batteries. In cases where Licensed Apparatus is obtained as provided in sub-paragraph (b) of Section 1 of Article II hereof, the deduction for such tubes or batteries shall not exceed the lowest amount which the Licensee is then currently paying for similar tubes or batteries for use in Licensed Apparatus manufactured by the Licensee or the fair market value thereof, whichever shall be lower. In the event the Licensee manufactures batteries for use in Licensed Apparatus, the deduction for such batteries shall not exceed the lowest prices at which the Licensee currently sells similar batteries to third persons or the fair market value thereof, whichever shall be lower.

(c) Cabinet Deduction:—
Any amount of the Licensee's manufacturing cost or purchase price (including inward freight only) of the cabinet which is in excess of Thirty Dollars ($30.00).

(d) Automatic Record Changer Deduction:—
The Licensee's cost or net purchase price (including inward freight only) of automatic record changers manufactured or purchased by the Licensee for use in Licensed Apparatus.

(e) Clock Mechanism Deduction:—
The Licensee's cost or net purchase price (including inward freight only) of clock mechanisms manufactured or purchased by the Licensee for use in Licensed Apparatus.

Section 3

The base for the computation of royalties on Licensed Apparatus which is leased shall be the Licensee's genuine selling price of identical or substantially identical apparatus. If no apparatus identical or substantially identical to the leased Licensed Apparatus is sold by the Licensee, the base for the computation of royalties shall be the value of said Licensed Apparatus as established for the payment of Canadian sales tax. If no value is established for sales tax payments, the base for the computation of royalties shall be a fair market value established by the Licensee and approved by the Licensor.

Section 4

For the purpose of determining royalty payments, Licensed Apparatus shall be deemed to be sold or leased within the meaning of this Agreement when billed or consigned or when delivered, shipped or mailed, whichever first occurs.

Section 5

In computing the amount upon which royalties are payable, credit may be taken by the Licensee for all Licensed Apparatus previously sold which is returned by customers to the Licensee and credit allowed therefor, but credit shall not be taken by the Licensee for any other deduction, allowance or credit, which may have been granted or allowed to its customers, without the written consent of the Licensor.

Section 6

The Licensee's net selling prices, for the purpose of computing royalties payable hereunder on Licensed Apparatus consigned, shall be the consignee's selling prices before any allowance or deduction specified in Section 2 of this Article III) except the Licensee's selling commissions to the consignee.

Section 7

Sales of Licensed Apparatus, by the Licensee to any other licensee of the Licensor who is licensed by the Licensor to manufacture and sell or lease such apparatus and who is obligated to pay royalties to the Licensor in respect thereof, shall be reported by the Licensee to the Licensor but shall not be subject to the payment of royalties by the Licensee. The Licensee shall report all of its sales of Licensed Apparatus referred to in sub-paragraph (b) of Section 1 of Article II hereof, and shall pay royalty thereon, in all respects as though such apparatus had been manufactured by the Licensee itself under this Agreement.

Section 8.

In order to insure to the Licensor the full royalty payments contemplated hereunder, the Licensee covenants that, in the event that any Licensed Apparatus shall be sold directly or indirectly either (1) to a corporation, firm or association which, or individual or group who, shall directly or indirectly control the Licensee by stock ownership, exclusive sales or supply contract, or otherwise, or (2) to a corporation, firm or association which the Licensee or stockholders of the Licensee, or any company controlled by the Licensee shall directly or indirectly control by stock ownership, exclusive sales or supply contract, or otherwise, or (3) to a corporation, firm or association controlled directly or indirectly by stock ownership, exclusive sales or supply contract, or otherwise by any corporation, firm or association which, or individual or group who, shall directly or indirectly control the Licensee by stock ownership, excusive sales or supply contract, or otherwise, or (4) to a corporation, firm or association which, or individual or group who shall be so affiliated, by any means whatsoever, with the Licensee as to impair, discourage or prevent arm's length dealings between such corporation, firm, association, individual or group and the Licensee, the royalties to be paid hereunder in respect of such Licensed Apparatus shall, at the option of the Licensor, be based upon the invoice price at which the last of such purchasers resells said apparatus, rather than upon the invoice price of the Licensee.

Secion 9

The royalties prescribed herein shall be due and payable on the twentieth (20th) day of each month following that in which any Licensed Apparatus is sold or leased hereunder.

Without in any way prejudicing, impairing or waiving any of the rights granted herein to the Licensor, including right of cancellation or termination, interest may be charged and shall be payable by the Licensee on all overdue royalty payments at the rate of six per cent (6%) per annum from the due date of payment thereof until such overdue payments have been made in cash.

Section 10

Upon default of payment of royalties by the Licensee for any monthly period, and if in the opinion of the Licensor the financial responsibility of the Licensee so warrants, the Licensor shall forthwith at its option and without in any way prejudicing or relinquishing any rights granted to it hereunder, have the right to thenceforth require payment of accruing or accrued royalties from the Licensee by way of transfer or assignment to said Licensor of such portion of the sales price of Licensed Apparatus payable to the Licensee as may be necessary to satisfy the royalties in respect to such sales or accrued royalties previously owing to the Licensor, or, in the alternative, the Licensor may require payment by the Licensee daily or weekly, as it may desire, of royalties with respect to Licensed Apparatus sold under this Agreement.

Article IV.

Records and Reports.

Section 1

The Licensee shall keep full, true and accurate books of account and records of all Licensed Apparatus manufactured and/or sold under the license granted by this Agreement, in sufficient detail to enable the Licensor to ascertain what royalties are due hereunder. The said books of account and records shall particularly show the number and types of Licensed Apparatus made and sold by the Licensee and the Licensee's invoice price thereof for each type or model (before cash discounts, freight, royalty, advertising allowances or similar deductions have been made).

The said books of account and records shall be open to the inspection of the Licensor or its duly authorized representative at all reasonable times in order to substantiate proper compliance with the provisions of this Agreement and such authorized representative may make such copies and take such extracts from said books of account and records as he may deem necessary.

The Licensee shall allow such investigations by the Licensor or its duly authorized representatives generally of the Licensee's business in Licensed Apparatus and upon request shall furnish the Licensor with such information as may be necessary to determine the accuracy of all statements required by this license to be furnished to the Licensor and to verify the Licensee's compliance with the terms and conditions of this Agreement.

Section 2

The Licensee shall simultaneously with the payment of royalties as prescribed in Article III, not more than twenty (20) days after and as of the first (1st) day of each month during the term of this Agreement, furnish to the Licensor a written royalty report (in substantially the form of Exhibit A attached hereto and made a part hereof) specifying exactly the total number of Licensed Apparatus sold or leased by the Licensee during the preceding month or that part of the preceding month during which this License shall have been in force. Said royalty reports shall show the Licensee's selling prices with respect to all such apparatus, each deduction claimed as provided in Section 2 of Article III hereof, whether such apparatus was sold or leased for use in Canada or for export therefrom, and the amounts of royalties payable thereon as provided in Article III hereof.

The first royalty payment and accompanying report shall be due on .... and shall cover the month commencing .... and shall also include a statement of all Licensed Apparatus sold by the Licensee between .... and the date of this Agreement and the Licensee shall pay to the Licensor royalty thereon, at the time of such report in the same amount as if this Agreement had been in force and effect at the time of said sale.

Section 3

The Licensor agrees not to disclose any confidential information relating to the Licensee's business obtained by the Licensor by reason of this Agreement except when combined statistically with corresponding information obtained from other licensees in such manner as to conceal said information, and except as it may be necessary to disclose the information in or in connection with any arbitration or litigation.

Article V.

Patent Marking and Trade Marks.

Section 1

The Licensee shall affix in a conspicuous place on all Licensed Apparatus manufactured and/or sold or leased by the Licensee under the terms of this Agreement, a license notice bearing the corporate or trade name, brand name or identification insignia of the Licensee, with the inscription, namely:

"Licensed by Canadian Radio Patents Limited"

together with such patent marking as may be required under the provisions of the Canadian Patent Act.

Section 2

The Licensee shall notify the Licensor from time to time of each trade mark, trade name, brand name or identification insignia applied to Licensed Apparatus manufactured by or for the Licensee and sold or leased by it. Such trade mark, trade name, brand name or identification insignia shall, if feasible, be etched, stamped or in some other permanent form affixed in a conspicuous place upon every such Licensed Apparatus and any Licensed Apparatus not bearing such identification, name or trade mark is not licensed hereunder.

Section 3

All said marks, inscriptions or identification insignia required herein shall be of a prominent, fixed and permanent character and displayed in such manner that distributors, jobbers, dealers and retail purchasers or users may see and recognize the same at the time of purchase and sale and the Licensee's catalogues, circulars, and price lists referring to said Licensed Apparatus shall also contain the same means of identification. The Licensee further agrees to include in any and all such catalogues, circulars or price lists of the Licensee, advertising said Licensed Apparatus, the statement "Licensed by Canadian Radio Patents Limited".

Article VI.

Validity of Patents.

The admission of validity implied in the acceptance of the license hereunder is limited to the scope, field and period for which such license is granted, or agreed to be granted.

Article VII.

Notices.

Until written notice of change of address is given by either party to the other by registered letter properly addressed, any notice or request with reference to the subject matter of this Agreement shall be deemed to have been sufficiently given when (1) if given to the Licensor, it shall be enclosed in a registered postpaid envelope addressed to the Licensor at its office at 200 St. Clair Avenue West, Toronto 7, Ontario and deposited in any Post Office in the place where the head office of the Licensee is located and service or delivery of such notice shall be deemed to have taken place as of the date of such mailing; (2) if given to the Licensee, it shall be enclosed in a registered postpaid envelope addressed to the Licensee at the last known address of the Licensee and deposited in any Post Office at Toronto, Ontario, and service or delivery of such notice shall be deemed to have taken place as of the date of such mailing.

Article VIII.

Term and Termination.

Section 1

This Agreement shall be effective as of .... and, unless cancelled as hereinafter provided, shall remain in force until July 2, 1963. Either party hereto may cancel this Agreement at any time upon sixty (60) days written notice to the other party to that effect.

Section 2

The license herein granted and agreed to be granted by the Licensor shall cease, except as herein otherwise specifically provided, upon the cancellation or termination of this Agreement.

Section 3

In the event of failure of the Licensee at any time during the continuance of this Agreement to render any of the statements called for herein upon any of the prescribed dates or to pay all of the royalties required hereunder when due or upon failure of the Licensee to comply with any of the other obligations of this Agreement, the Licensor may, at its option and without prejudice to any of its other legal and equitable rights and remedies under this Agreement, by ten (10) days' notice in writing to the Licensee particularly specifying the breach or failure of the Licensee, terminate the license herein granted and all rights of the Licensee hereunder unless such breach or failure has been rectified within the said period of ten (10) days.

Should the Licensee at any time make an authorized assignment for the benefit of its creditors or voluntarily or involuntarily be declared a bankrupt or be wound up or if a receiver or liquidator shall be appointed to administer its affairs and shall not be discharged within five (5) days after his appointment, this Agreement shall automatically and without notice become cancelled and terminated as of the date of such assignment or as of the date upon which a custodian, receiver, trustee or liquidator is appointed.

No cancellation or termination of this license shall affect any of the other legal and equitable rights and remedies of the Licensor under this Agreement nor shall any cancellation or termination release the Licensee from any liability accruing to the Licensor hereunder prior to the time such cancellation or termination became effective. No failure on the part of the Licensor to exercise its rights of cancellation or termination hereunder for any one or more defaults shall be construed to prejudice its rights of cancellation or termination for any subsequent default.

Article IX.

Successors or Assigns.

Section 1

Neither this Agreement nor any of its benefits shall be shared by the Licensee with any person, firm or corporation whatsoever without the written consent of the Licensor.

Section 2

This Agreement and the License hereby granted shall terminate unless otherwise agreed in writing by the Licensor, upon any attempt by the Licensee to assign the same. For the purpose of verifying compliance with the provisions of this Section the Licensee agrees to permit the authorized representatives of the Licensor to examine the share or stock register books of the Licensee at any time within business hours, upon reasonable notice.

This License Agreement shall enure to the benefit of the successors and assigns of the Licensor but shall not enure to the benefit of the successors and assigns or any legal representatives of the Licensee without the written consent of the Licensor.

In Witness Whereof the parties hereto have caused these presents to be executed by their proper officers thereunto duly authorized, and their corporate seals to be hereto affixed, as of the day and year first above written.

Canadian Radio Patents Limited,

....,

President.

....,

Secretary.

....,

President.

....,

EXHIBIT A OF LICENSE AGREEMENT DATED AS OF .... BETWEEN CANADIAN RADIO PATENTS LIMITED AND

....

STATEMENT OF ROYALTY DUE CANADIAN RADIO PATENTS LIMITED

LICENSEE FOR THE MONTH OF 19

TYPE OF APPARATUS Name (Art.II Sec. 2) Model No. No. Tubes No. Transistors	SELLING PRICE (Per Unit)	SALES TAX PAID	EXCISE TAX PAID	COST OF TUBES	COST OF TRANS.	COST OF BATT.	CABINET OVER $30	RECORD CHANGER and/or CLOCKS	NET PRICE FOR ROYALTY (Per Unit)	ROYALTY RATE (Art.III Sec.1)	ROYALTY PER UNIT	TOTAL UNIT SALES	TOTAL ROYALTY
									TOTAL ALL LICENSED APPARATUS				

Please report under main type headings of Radio Receivers, Television Receivers, Electrical Phonographs, etc., with sub-headings of Domestic or Export. Show total unit sales and total royalty for each of these sub-headings and main headings in the last two columns.

Certified to be a true and correct statement of our sales of Licensed Apparatus during the period designated above.

Signed ....

Date ....

DEFENDANT'S EXHIBIT NO. 124-D.

Supplementary Agreement dated and effective as of the ________ day of ____________________, 1958

Between

Canadian Radio Patents Limited

whose address is 200 St. Clair Avenue West, Toronto, Ontario, Canada (hereinafter called the Licensor),

— and —

whose address is ____________________
____________________(hereinafter called the Licensee).

Whereas by an Agreement dated ____________ 19____ between the parties hereto (hereinafter called the Main Agreement), the Licensee acquired from the Licensor a license under those patents owned by the Licensor or under which the Licensor is empowered to grant licenses by Canadian Marconi Company, Hazeltine Corporation, Northern Electric Company Limited or Philips Electronics Industries Limited;

And Whereas the Licensee now requests that said Main Agreement be augmented to include a license also under those Canadian Letters Patent owned by RCA Victor Company Limited or Radio Corporation of America;

And Whereas the Licensor is willing to modify the Main Agreement in accordance with this request;

Now Therefore, it is mutually agreed that:

1. Effective as of the date hereof and for so long as this Supplementary Agreement shall remain in effect the Main Agreement is amended as follows:

(a) Lines 1 to 10 inclusive of paragraph 1, Section 2, Article II, are deleted and replaced by:

"Subject to the reservations and exceptions specified in Section 3 of this Article II, this license is granted under all the Canadian Letters Patent covering inventions used in, relating to, or useful in, Licensed Apparatus, or in the manufacture thereof, owned by the Licensor or under which and to the extent to which the Licensor is empowered to grant licenses by Canadian Marconi Company, Montreal, Hazeltine Corporation, Little Neck, New York, U. S. A., Northern Electric Company Limited, Montreal, Philips Electronics Industries Ltd., Toronto, and by Radio Corporation of America, New York City, New York, U.S.A., as well as RCA Victor Company Limited, Montreal. The following apparatus shall, for the purposes of this Agreement, be referred to as 'Licensed Apparatus'."

(b) Sub-paragraphs (a), (b) and (c) of Section 1, Article III are cancelled and the following is substituted therefor—

"(a) 2.3% upon all Licensed Apparatus specified in sub-paragraphs (a) and (g) of Section 2 of Article II comprising monochrome picture (including television) broadcast receiving sets, including combinations of such apparatus with apparatus specified in sub-paragraph (c) of Section 2 of Article II;

(b) 3.25% upon all Licensed Apparatus specified in sub-paragraphs (b) and (g) of Section 2 of Article II comprising colour picture (including television) broadcast receiving sets, including combinations of such apparatus with apparatus specified in subparagraphs (a) and (c) of Section 2 of Article II;

(c) 1.45% upon all Licensed Apparatus specified in sub-paragraphs (c) and (g) of Section 2 of Article II comprising only sound broadcast receiving sets, when such Licensed Apparatus does not use any transistors;

(c'.) 1.9% upon all Licensed Apparatus specified in sub-paragraphs (c) and (g) of Section 2 of

Article II comprising only sound broadcast, receiving sets when such Licensed Apparatus uses one or more transistors.''

2. Unless cancelled or terminated as hereinafter provided this Supplementary Agreement shall remain effective until July 2nd, 1963. Either party hereto may cancel this Supplementary Agreement at any time upon sixty (60) days' written notice to the other party to that effect. In any event this Supplementary Agreement shall terminate concurrently with the termination of the Main Agreement.

In Witness Whereof the parties hereto have caused these presents to be executed by their respective duly authorized officers.

Canadian Radio Patents Limited

....

....

....

....

DEFENDANT'S EXHIBIT NO. 125.

(Letterhead of Radiomarine Corporation of America, New York 13.)

March 30, 1944.

Committee on International Activities:

Gentlemen:

There is attached a copy of a Memorandum on the Licensing and Patent Situation in Canada, for discussion at the next meeting of the Committee on International Activities, which will be held on April 6, 1944.

Faithfully yours,
J. G. MacKenty

Mr. Frank M. Folsom, Chairman
Mr. David Sarnoff
Mr. J. D. Cook
Mr. B. Gardner
Mr. DeWitt Millhauser
Mr. John P. Royal
Mr. Otto S. Schairer
Mr. William A. Winterbottom

Memorandum on the Licensing and Patent Situation in Canada.

In 1924 RCA granted exclusive licenses to Canadian General Electric Company, Limited (CGE) and Canadian Westinghouse Company, Limited (CW) for the radio field in general except tubes, and received in consideration therefor certain royalties. CGE is substantially wholly owned by General Electric Company in the United States, and CW by Westinghouse Electric and Manufacturing Company and Westinghouse Air Brake.

In 1923 CGE, CW, Northern Electric Company, Limited, The Bell Telephone Company of Canada (in which American Telephone and Telegraph Company is heavily interested), Canadian Marconi Company, and Rogers-Majestic Corporation Limited cross licensed each other in the radio and in other fields. In 1927 these companies, with the exception of Bell, formed a patent licensing organization known as Canadian Radio Patents, Limited (CRPL), for the purpose of granting licenses to the industry for broadcast receivers under their patents.

In 1929 RCA purchased the Victor Talking Machine Company of the United States and acquired thereby all of the stock of the Victor Talking Machine Company of Canada Limited (now RCA Victor Company Limited). It then became necessary for RCA to reacquire licenses under its own patents, in view of the exclusive licenses which it had granted to CGE and CW in 1924, and to acquire licenses under the patents of the other large interests in Canada.

During an interim period of several years, RCA Victor made radio receivers under CGE's license, sold them to CGE and repurchased Victor brand receivers from CGE. This arrangement was not satisfactory. Accordingly, in 1935 RCA entered into cross license agreements with these companies and with Canadian Radio Patents, Limited. Under these arrangements RCA acquired for itself and for RCA Victor Company Limited non-exclusive licenses to manufacture practically all apparatus in the radio field, with the exception of tubes. The other companies acquired licenses from RCA for the radio field and for their normal fields of business. CRPL acquired the right to grant sublicenses for radio broadcast receivers under RCA's patents, and RCA received free licenses from CRPL for broadcast receivers under the patents of CRPL, which comprised all the patents of its owners. With respect to apparatus other than broadcast receivers RCA Victor is obligated to pay 3% royalty to CGE and CW.

All the Canadian agreements to which RCA is a party will expire at the end of this year, and it will be necessary to enter into new cross license agreements with the larger patent owners in Canada and to make licenses available under RCA's patents to the rest of the radio industry in Canada, most of which is now licensed by Canadian Radio Patents, Limited under agreements expiring at the end of this year.

In the past ten years, RCA's patent position has greatly increased in importance to the point where today RCA owns nearly 80% of the important radio patents in Canada, CGE approximately 10%, CW somewhat less than 6%, Northern Electric 4% and Canadian Marconi less than 1%.

This new situation indicates that RCA's future patent and license relationships in Canada should be quite different from those which existed in the past. Consideration is now being given to a plan whereby RCA will enter into separate cross license agreements with each of the Canadian patent owners, in which recognition would be given to the difference in value of the respective patent situations. A plan is also under consideration whereby RCA will grant licenses under its patents directly to the present licensees of Canadian Radio Patents, Limited, rather than continue the right of that organization to grant licenses under RCA's patents.

This plan would procure for RCA Victor the patent rights necessary to enable it to proceed without restrictions on its engineering and commercial activities in the radio field in Canada, and should also obtain for RCA royalty income for the use by others of its inventions.

March 27, 1944.

J. G. MacKenty

DEFENDANT'S EXHIBIT NO. 126.

August 2, 1948

Mr. Conway P. Coe,
Radio Corporation of America,
30 Rockefeller Plaza,
New York, N. Y.

Dear Mr. Coe:

The arrangements whereby CRPL has been able to license Canadian home receiving set manufacturers under RCA patents have been somewhat different at different times in the last few years, and may be indicated as follows:

1. From 1935 to January 1, 1945, CRPL, through Canadian General Electric Company, Limited and Canadian Westinghouse Company, Limited, had the right to license and did license Canadian manufacturers in this field. These rights included both sound and television.
2. From January 1, 1945 to December 31, 1946, CRPL licensed Canadian manufacturers under RCA patents by virtue of an agreement with RCA Victor Company, Limited.
3. Since January 1, 1947, there has been no formal arrangement whereby CRPL would be in a position to license under RCA patents. However, since the then point of disagreement had to do with the inclusion or exclusion of television and since no television receivers were being built in Canada, CRPL has proceeded informally to license the Canadian manufacturers, and RCA and RCA Victor Company, Limited have acquiesced in this action as shown by the payment and acceptance of the royalties provided in an

unsigned form of agreement which was to have covered the year 1947. In 1946, RCA Victor Company, Limited received $50,453.26 and in 1947, $77,946.27. RCA Victor Company, Limited retained 10% of the above amount for expenses involved in negotiation and handling.

For the last several years, all interested parties have spent a great deal of time in trying to arrive at a working basis. It now appears possible to continue licensing through CRPL, RCA to receive an as yet undetermined percentage, but not less than 20% of the net after expenses. The remaining 80% is to be divided by CRPL among its five member companies.

We would like to continue on the same basic plan, obtaining the best arrangements with CRPL that are found possible. The alternative, I believe, is a complete breakdown in the Canadian license situation with the consequent harmful effect upon the U. S. domestic situation.

Mr. Heffernan has advised that if this arrangement has the approval of the Patent Policy Committee or of the Foreign Licensing Sub-committee or of yourself, the Law Department will interpose no objection.

Yours very truly,

B. E. Shackelford
Director License Department.

cc Mr. J. V. Heffernan
Mr. Meade Brunet
Mr. F. R. Deakins
Mr. J. G. MacKenty

DEFENDANT'S EXHIBIT NO. 127.

Letter to MacFarlane – Sec Treas CRPD J.F. [illegible]
copy to Lenore

1. Exclusive agreement for Canada for 10-year period with option for further 10 year term.

2. Covers all present and future patents.

3. Engineering service for royalties paid. – Home sets only – after war

4. Exclusive license for Radio Receiving Set for Home
Television " " "
Elec. Phonograph " " "

Royalties

5. Domestic field 1-1/2% chassis portion max. $35,000.00 to 8,000,000 sales – then 3/4% to 45,000 – min. $15,000.00 } After war only.
Complete apparatus less deductions.

6. Commercial field 2% complete apparatus less deductions. max. $2,500.00

7. War Purposes 1/2% max. $10,000.00
1/7 of what Sealanders gets from Gov't.

DX 8U
193

Hazeltine Research, Inc.
vs. Zenith Radio Corporation } C.A. No. 59-C-1857
Defendant's Exh. No. 127

3. To include all general technical information sent to licensees plus a service agreement at X dollars per man day.

8 Litigation – If brought at instance of C.R.P. – expenses and to benefit of C.R.P.; if brought at instance of Hazeltine, at expense of Hazeltine. In either case Haz right to participate [illegible]

9. Patents to be solicited by Hazeltine.

6 } 7 } Minimums are not firm guarantees but give right to cancellation.

5 } 6 } 7 } Royalties payable on apparatus of CRP's licensees including members.

Canadian Licensees of CRP:
12 – CGE
Canadian Westinghouse
Rogers-Majestic
Northern Electric
Stanley
S W
Sparton
Addison
Electrohome

CRP licenses expire in 1944.

Check ABK pat. matters.

1951685
1913604
2022514
2111483
Re17749

DEFENDANT'S EXHIBIT NO. 128.

April 6, 1943.

J. C. Macfarlane, Secretary-Treasurer,
Canadian Radio Patents Limited,
159 Bay Street,
Toronto,
Canada.

Dear Mr. Macfarlane:

This letter is to confirm the substance of discussions yesterday morning between yourself, Messrs. Lanoue and Fotheringham of Northern Electric, and Mr. Binns and the writer of Hazeltine Corporation relative to the proposed License Agreements from Hazeltine Corporation to Canadian Radio Patents Limited and Sealandair Limited under the Canadian patents of Hazeltine Corporation.

It was informally agreed by those present, subject to confirmation by their respective principals, that the License Agreements would include the following general provisions:

(1) The License Agreements will be exclusive for Canada for a ten-year period with an option on the part of the licensees to renew for a further ten-year term.

(2) The licenses will cover all Canadian patents and applications owned by Hazeltine Corporation or under which it shall have the right to grant licenses during the term of the licenses.

(3) Hazeltine Corporation will furnish to Canadian Radio Patents Limited for distribution to its licensees all general technical reports relating to broadcast receivers which are circulated generally to its licensees in the United States and, in addi-

tion, will, after the war, make available to Canadian Radio Patents Limited and its licensees a limited engineering service at a rate to be agreed upon.

(4) There will be two licenses, one to Canadian Radio Patents Limited for home radio receivers, home television receivers, and home electric phonographs, and a license to Sealandair Limited in all other communication fields.

(5) The royalty under the license to Canadian Radio Patents Limited in the home set field will be at the rate of 1½% of the selling price of the chassis portion of the receivers involved, as determined by the formula included in the licenses issued by Canadian Radio Patents Limited, payable on apparatus sold by the members and licensees of Canadian Radio Patents Limited up to a maximum of Thirty-Five Thousand Dollars ($35,000) per year, which shall be applicable to gross sales billed by such members and licensees to the amount of Eight Million Dollars ($8,000,000). With respect to sales in excess of Eight Million Dollars ($8,000,000), the rate of royalty shall be ¾% of the selling price of the chassis portion of the receiver, with a final maximum of Forty-Five Thousand Dollars ($45,000) per year. In case the royalties under this license fall below a minimum value of Fifteen Thousand Dollars ($15,000) in any year, Hazeltine Corporation shall have the right to cancel the license.

(6) The license in the so-called commercial field, which will include all fields except that of the home set field, will be at the rate of 2% of the selling price of the complete apparatus less deductions for auxiliary apparatus or accessories not necessary for the functioning of the apparatus, with a maxi-

mum royalty of Twenty-Five Hundred Dollars ($2,500) per year.

(7) For the duration of the war, it is understood that Canadian Radio Patents Limited and Sealandair Limited will include the Hazeltine Corporation Canadian patents in the group under which it is negotiating a license with the Canadian Government and that Canadian Radio Patents Limited will pay Hazeltine Corporation one-seventh (1/7) of what Canadian Radio Patents Limited and Sealandair Limited receive from the Canadian Government.

(8) It is understood that Hazeltine Corporation's Canadian patents will continue to be solicited by Hazeltine.

(9) It is understood that Canadian Radio Patents Limited shall have the right to bring litigation for the enforcement of the Hazeltine Corporation Canadian patents at its expense and for its benefit. Hazeltine Corporation shall also have the right to bring suits considered necessary for the protection of its patent situation at its expense and for its benefit. In either case Hazeltine shall have the right to participate in the suits through counsel and to approve of the strategy and procedure.

Will you please confirm the foregoing outline and advise us when you have obtained the necessary approvals so that appropriate steps may be taken to convert the understanding into formal contracts.

Very truly yours,

Hazeltine Corporation,

By ....

Vice-President.

LBD:PC

cc: Mr. A. J. R. Lanoue

DEFENDANT'S EXHIBIT NO. 129.

Canadian Radio Patents Limited.

General Survey

April 1955

Confidential Copy for H. M. Turner

CONTENTS.

General

PAGE

Review of Industry 2
Future Sales 3
Colour Television 5
Canadian Admiral Corporation Limited 5
Motorola Canada Limited 6
Philco Corporation of Canada Limited 7
Hazeltine 8
RCA Victor Company Limited 9
Reduced Royalty Rates 10
Future Royalty Income 12
Activities of Patent Representatives 12
Department of Defence Production 13
Royal Commission On Patents, Copyrights, Trade Marks And Industrial Designs 13

Schedules of Royalty Collections and Payments

Schedule No. 1—CRPL Gross Income Since Incorporation 14
Schedule No. 2—CRPL Net Royalties Years 1945-1954 15
Schedule No. 3—Summary Of Licensees' Total Royalties From Incorporation To December 31, 1954 16
Schedule No. 4—Average Royalty Per Unit 19
Schedule No. 5—Comparison Of Royalty-Paying Licensee's Sales To Industry Sales (Radio Receivers Only) 20

Schedule No. 6—Comparison Of Royalty-Paying Licensees' Sales To Industry Sales (Television Receivers Only) 21
Schedule No. 7—Licensees' Gross Royalties By Months (Jan. 1947 to Dec. 1954) 22
Schedule No. 8—1954 Royalty Collections and Licensees' Average Royalty Per Unit 23
Schedule No. 9—Dividends 24

Industry Statistics

Schedule No. 10—Manufacturers' Production Sales And Year End Inventory of Radio Reecivers In Canada (From DBS Reports) 25
Schedule No. 11—Canadian Manufacturers' Monthly Sales Of Radio Receivers 26
Schedule No. 12—Canadian Sales Of Radio Receivers By Types (Indicated As Percentage Of Total Yearly Sales) 27
Schedule No. 13—Canadian Television Dollar Value Sales (From RTMA Years 1949-1954) By Months 28
Schedule No. 14—Total Television Unit Sales Years 1949-1954 By Months 29
Schedule No. 15—Total Television Unit Sales By Provinces Years 1949-1954 30
Schedule No. 16—Total Television Unit Sales Years 1949-1954 By Areas 31
Schedule No. 17—Television Unit Sales By Types 1954 32
Schedule No. 18—Radio Receiver Sales By Areas Years 1946-1954 33
Schedule No. 19—Radio Receiver Sales By Types Years 1946-1954 34
Schedule No. 20—Radio Receiver Sales By Areas Year 1954 By Months 35
Schedule No. 21—Radio Receiver Sales By Types Year 1954 By Months 36
Schedule No. 22—Radio Receiver Sales By Types And Areas Year 1954 37

Schedule No. 23—Television Receiver Factory Production, Distributor Sales, Factory and Distributor Inventories—13 Months Ending December 31, 1954 38
Schedule No. 24—Home Radio And Combination Receivers Factory Production — Distributor Sales, Factory And Distributor Inventories—13 Months Ending December 31, 1954............ 39
Schedule No. 25—Auto Radio Receiver Factory Production—Distributor Sales, Factory And Distributor Inventories—13 Months Ending December 31, 1954 40
Schedule No. 26—Portable Radio Receiver Factory Production—Distributor, Sales, Factory and Distributor Inventories—13 Months Ending December 31, 1954 41
Schedule No. 27—Importation Of Radio Receivers Years 1938 to 1954 42
Schedule No. 28—Monthly Exports Of Canadian-Made Radio Receivers Years 1947 to 1954.....43, 44
Schedule No. 29—Exports of Canadian-Made Radio Receivers By Countries Years 1951 to 1954 ....45, 46, 47
Schedule No. 30—Radios Sold By Factories In The United States—Factory Sales And Sales Value Of Radio Sets—1922 to 1954 48
Schedule No. 31—Television Sets Sold By Factories In The United States—1946 to 1954 49

Licenses Issued and Licenses Cancelled

Alphabetical List Of Postwar Licensees 50

Status of Radio and Television Receiver Licensees

Active Licensees 51
Cancelled Licensees 60
Special Licensing Arrangements 72

Canadian Radio Patents Limited
200 St. Clair Ave. W.
Toronto.

General Survey—April 1955.

This is the sixth of a series of post-war General Surveys prepared for the confidential information of the Directors of Canadian Radio Patents Limited. The last Survey was dated December 1953 and covered a two-year period in which the first Canadian television stations were opened and the dollar volume of television receiver sales surpassed radio receiver sales for the first time. The Survey gave the facts about the arrangement negotiated with the Department of Defence Production whereby, commencing on April 1st 1951, payments of $500,000 a year are made to the Company acting as agent for the shareholder companies and RCA Victor. Purchase of the Louis Parker Canadian Patent No. 457,328, relating to Intercarrier Sound, at a price of $375,000 payable in seven annual installments of $50,000 each and a final payment of $25,000 in the eighth year, was another highlight of the December 1953 Survey and, although final figures for 1953 were not available at the time that that Survey was printed, it was then obvious that the 1953 gross royalty income would be more than double the $493,741 gross for 1952 and would exceed the $1,000,000 mark for the first time in the history of the Company (without inclusion of the annual $500,000 DDP payment).

The present Survey is designed to bring up-to-date the general information contained in the previous Surveys and to cover, in particular, special activities of the Company and a report on the progress of the industry since December 1953. Some new statistical information has been added, combining information available through the

Radio-Television Manufacturers Association of Canada, the Dominion Bureau of Statistics, and from the royalty reports made to the Company.

Review of Industry.

The rapid growth of television sales with resulting increased royalty income to the Company has continued since the last Survey, with the number of television receivers sold in Canada during the year 1954 reaching approximately 635,000 compared with 365,000 sold in 1953 and 146,000 in 1952. DBS figures show sale of 624,000 television receivers in 1954, but do not include the approximately 10,000 imported units on which the Company obtained settlements from Canadian distributors in the course of its actions to prevent infringement of its patent rights. While television receiver sales in 1954 increased by 70% over 1953, Canadian radio receiver sales decreased approximately 20% with 556,000 units sold as compared with 700,000 units in 1953. Here again, DBS totals show only 487,000 radios sold in 1954 and 620,000 in 1953, but from information available to the Company through royalty reports, it is apparent that some of the smaller companies are not reporting to DBS and our 556,000 and 700,000 totals are more accurate. The radio receiver dollar volume in 1954 was down approximately 30% from 1953 due to an increasing percentage of radio sales being directed to lower price receivers and a very definite effect on sales of large radio and radio-phonograph combinations, as television broadcasts became available in new territories.

At the time of the December 1953 Survey there were only five television stations operating in Canada. These consisted of the CBC, operating in Toronto, Montreal, and Ottawa, and private stations operating in Sudsbury and London. The number of outlets increased rapidly during 1954 so that by the year-end there was a total of twenty-two television stations in operation in Canada, six CBC and sixteen private stations with an estimated coverage of over 80% of the population.

Despite the large volume of television receivers sold in 1954, it is apparent that due to the highly competitive nature of the business and the tendency to over-produce, a large number of receivers were probably sold at little or no profit to the manufacturers. During the year a total of nine licensees of the Company went into bankruptcy or discontinued production of radio and television receivers. In the same period the industry attracted a similar number of newcomers with the result that the number of manufacturers is now still substantially the same as it was at the time of the December 1953 Survey. Details of individual company failures and new licensees entering the field are covered in the final section of this Survey.

The high volume of television receiver sales in Canada in 1954 was accompanied by sharp reductions in price with the result that, discounting the 15% excise tax differential, Canadian television receiver prices in most instances are now substantially below the prices at which corresponding United States models could be imported and sold in Canada. This situation, combined with favourable results from patent infringement actions commenced in the Exchequer Court of Canada by the Company against importers such as North Star, Wamac, Faucher and Onassis has resulted in a sharp reduction in importation activities. For the past two or three months the Company has not received any reports of unlicensed imported television receivers being offered for sale in Canada.

Future Sales.

In attempting to analyze future markets for television and radio receivers in Canada one favorite theory is that a pattern similar to that experienced in the United

States will be followed, but with Canada lagging several years behind the United States due to the initial delay in getting Canadian television stations into operation. United States television receiver sales reached a peak of 7,300,000 units in 1950 and have maintained a fairly constant rate of about 6,500,000 units per year since that time. On this basis Canadian sales may also reach a peak of between 700,000 and 800,000 sets in 1955 or 1956 and may then level off at between 600,000 and 700,000 units per year after the peak is reached. Sales are presently running at about 10% of the United States volume but this is somewhat higher than the percentage of United States sales normally experienced in Canadian sales of any consumer product and it is therefore possible that this more favourable ratio to United States sales will continue only until such time as the Canadian market is saturated in a more normal proportion to the United States market. At present there are over 35,000,000 television receivers in the United States and less than 1,500,000 in Canada. It might be said that Canada is at the moment lagging at least 500,000 units behind the United States in terms of proportionate saturation.

Television sales in the first quarter of 1955 were approximately 45 per cent over the corresponding period in 1954, and it appears that the industry's top estimate of 750,000 sets will be sold before the year end. Manufacturers' and distributors' inventories are somewhat lower than they were a year ago, but are building up each month and it remains to be seen whether or not the second and third quarters will see a repetition of last year's dumping.

Canadian radio receiver sales do not appear to be maintaining as high a proportion to United States sales as would be expected. In the United States a steady 12,000,000 unit per year pace is being maintained, despite television sales but Canadian volume is less than 1/20th of this. The reason for these sales appears to be due to more active United States promotion of clock radios, portables, motor car radios, and small receivers for various rooms in the house.

Colour Television.

Colour television receivers have not as yet become a major factor in the United States and it appears that their cost and complexity will cause their entry into the Canadian market to be made gradually. However, colour receivers with their larger dollar value will be produced and sold eventually, and may account for 10% of Canadian television sales by 1956 or 1957. From the standpoint of the Company's operations more patent problems will develop with the advent of colour but most of the research work in this field is being done by companies with which the Company has patent licensing arrangements and it is therefore likely that the Company's patent position will be quite strong in the colour television field.

Canadian Admiral Corporation Limited.

The December 1953 Survey gave details of the settlement made with Canadian Admiral Corporation Limited covering clearance for Admiral under the patents owned or administered by the Company for three years ending December 31, 1954, upon payment of $475,000. The final $200,000 of this amount was paid by Admiral in 1954, in ten monthly installments of $20,000 each, commencing in January and completed in October. When negotiations were recommenced with the representatives of Canadian Admiral for patent clearance from January 1, 1955, we were informed that Admiral obtained clearance under the Canadian patents of RCA Victor as part consideration of an arrangement made between Admiral Corporation and RCA in the United States. RCA has now confirmed that this arrangement was made, and that Admiral has a royalty free license under the RCA Canadian patents, in return for RCA Victor having Canadian rights under any patents to issue on the production line "automation" work that Admiral claims to have developed in the United States. It is fairly obvious that the entire arrangement was made without consulting the Canadian RCA Victor representatives and the royalty free license to Canadian Admiral was probably included in the United States arrangement by RCA as an added incentive to sign up Admiral in the United States. This situation is somewhat disturbing, but the Company is proceeding on the basis of offering Admiral a license under all of the patents owned or administered by the Company, except those of RCA, and has offered such a license at royalty rates equal to 75% of the standard rates.

Motorola Canada Limited.

The license agreement made with Motorola Canada Limited expired June 30, 1954. Motorola declined to renew the agreement because it felt that it should receive some consideration for its own patent rights which included a Fyler patent on fly-back transformers in television receivers. Motorola had placed most Canadian companies under notice of infringement of the Fyler patent in early 1952. Negotiations with Motorola continued in the final six months of 1954 and a settlement was made on the basis of Motorola paying $75,000 for patent clearance to December 31, 1954 and in return the Company obtaining clearance to the same date under all Canadian patents of Motorola, including the right to extend this clearance to the shareholder companies, to RCA Victor and to the Company's licensees. It was estimated that total Motorola royalties for the last six months of 1954 would have been approximately $105,000 so that in effect Motorola was paid about $30,000 for full clearances under its Canadian patents to December 31,

1954. No extension of the arrangement beyond December 31, 1954 has as yet been arranged with Motorola but negotiations are underway and it is felt that some recognition should be given to the Motorola Canadian patent position along the general lines of the settlement made for the last six months of 1954. In the United States Motorola has received similar recognition from RCA in the form of payments for rights under Fyler and other Motorola patents. Motorola was one of the last companies to finalize arrangements with RCA in the recent re-signing activities and it is understood that Motorola was the first United States licensee to obtain a "selective" license from RCA under which it has taken licenses only for specific RCA United States patents, rather than for the entire RCA group.

Philco Corporation of Canada Limited.

Although the Company was not party to any agreement with Philco Corporation, the five shareholder companies did individually enter into a "Heads of Agreement" with Philco in 1944 which gave Philco a royalty free license under the patents of the individual shareholder companies, and gave the Company the right to extend licenses under the Philco Canadian patents to any of its licensees agreeing in turn not to assert their patents against Philco. Since Philco also had a separate clearance under the Canadian patents of RCA for the ten years ending December 31, 1954, Philco was in that period licensed under all of the patents administered by the Company except the Parker patent and the Hazeltine patents. The "Heads of Agreement" with Philco was for ten years and for further five year periods unless terminated on twelve months written notice. In December 1953 the parties to the "Heads of Agreement" executed an amendment which eliminated the automatic extension and set the expiration date at December 31, 1954. The Company carried on negotiations with Philco representatives during 1954 and in February 1955 the President was authorized to offer Philco a licensing arrangement in accordance with which Philco would be required to sign a standard Output License and pay royalties, but in return would receive an amount from the Company equal to the amount of royalties paid by Philco. Under such an arrangement the Company would be out of pocket by the amount of the RCA share (about 25%) of the royalties collected from Philco and Philco would be receiving a royalty free license under all of the patents owned or administered by the Company. In return the Company would have the right to include Philco patents in licenses granted to its other licensees. Philco had previously asked for full share ownership in the Company on the same basis as the other five shareholder companies, and has not as yet replied to the company's latest proposal.

Hazeltine.

The Company's agreement with Hazeltine on domestic radio and television provides for a basic royalty of 1½% on all licensed receivers sold in Canada, but the agreement also includes an annual maximum of $45,000. Calculations have indicated that on the percentage royalty basis the $45,000 maximum would be reached even if only a few hundred thousand receivers were sold in any one year and the Company has therefore developed, with the approval of Hazeltine, a simplified procedure for pro-rating the Hazeltine payments over all receivers sold in any one year. A basic rate of 10¢ per receiver is deposited in a special Hazeltine account by the Company for each receiver on which it collects royalty and similar 10¢ per unit payments are made by RCA Victor and by each of the shareholder companies on the receivers they sell. Payments from this account are made quarterly to Hazeltine and when the $45,000 is reached (usually by the end of the third quarter) payments into the special account are discontinued for the balance of that year. At the end of the year the $45,000 is divided by the overall total number of receivers sold to determine the actual Hazeltine royalty per unit and the adjustments are made so that the $45,000 is pro-rated between the participants. The actual Hazeltine royalty has worked out to 8.28¢ per unit in 1946; 5.25¢ in 1947; 7.76¢ in 1948; 6.42¢ in 1949; 5.92¢ in 1950; 8.47¢ in 1951; 6.55¢ in 1952; 4.22¢ in 1953, and 3.91¢ in 1954.

The Hazeltine engineering bulletins distributed by the Company are of considerable value and many of the licensees have taken advantage of the arrangement whereby they may have their new models examined and reported on by the Hazeltine laboratory at Chicago. These services come within the provisions of the license that the Company has with Hazeltine at no additional cost.

The initial term of the Company's license agreement with Hazeltine was for ten years from July 1, 1944 and provided for automatic extension for another ten year period unless cancelled by notice in writing twelve months in advance of the initial termination date. This termination could have been requested in July 1953 if the Company had wished that the arrangement be discontinued. After due consideration the Board authorized continuation of the Agreement for the additional ten year period and no notice of termination was filed in 1953.

Arrangements are now being made to have the Hazeltine Agreement in the non-domestic receiver fields assigned from Sealandair to the Company. This agreement has a $2,500 per year maximum.

RCA Victor Company Limited.

In the years 1947 to 1951 inclusive the Company paid RCA Victor 20% (25% less 20% of said 25% for agency fee) of the Company's gross royalty collections less the amount of the royalty-paying licensee share of the Hazeltine royalties.

For the years 1952, 1953 and 1954 the Company acted as licensing agent for RCA and collected royalties on its behalf at the following rates:

1. On radio receivers, amplifiers and electric phonographs (on which the Company collected 3½% less deductions) RCA received 0.9%.

2. On television receivers (Company's royalty rate 3½%) and an apparatus listed in the Company's Grey-backed license at 4%—RCA received 1½%.

3. On apparatus listed in the Grey-backed license at 4½%—RCA received 1½%.

From the amounts payable to RCA according to the above, the Company retained 25% as its agency fee.

This agency arrangement was to continue at these rates to December 31, 1955 but the Company had insisted on a clause in the agreement whereby RCA agreed that if it reduced its United States royalty rates it would reduce its Canadian royalty rates proportionately. Effective January 1, 1955 RCA reduced its United States royalty rates for radio receivers using vacuum tubes by about 50%, for black and white television by about 28%, and for commercial equipment by 25%. As a result of the above noted clause, the Company's agreement with RCA was amended effective January 1, 1955 so that RCA will now receive 0.45% for radio, 0.9% for black and white television and 1.0% for the various types of apparatus previously listed in the Grey-backed license at 4% and 4½%. The RCA rates on colour television and transistorized radios remain the same as before (1½% and 0.9%) and the Company will continue to withhold its 25% agency fee.

When finalizing these amendtments, the term of the agreement with RCA was extended to December 31, 1958.

Reduced Royalty Rates.

During 1954, consideration was given to the matter of royalty reductions. It was proposed that, effective January 1, 1955, new forms of licenses would be offered to the licensees giving clearance to use all of the patents owned or administered by the Company in the fields covered and for the life of the licenses. This would eliminate the specific lists of patents previously attached as an appendix to the licenses and would be along the lines of the licenses issued in the United States by Hazeltine. It was also proposed that the new licenses would include reduced royalty rates of approximately 50% for radio receivers and 28% for televsion, and would at the same time incorporate a new simplified royalty calculation designed to eliminate the deductions that have been used for many years, covering cost of tubes and batteries, cost of record changers and cost of cabinets in excess of $30. For these changes to be effective it was necessary to get approval of RCA. After considerable discussion, RCA agreed to reduce its royalties on radio receivers and on black and white televsion in proportion to the reductions proposed by the Company but refused to agree to the further reductions in royalty rates required if the simplified tax-only deduction was introduced for colour television. The Company was therefore obligated to retain the present system of deductions and to simply reduce the royalty rates on radio receivers by 50% (from 3½% to 1¾%) and on black and white television receivers by 28% (from 3½% to 2½%). RCA agreed that under the terms of its agreement with the Company it was obligated to go along with these reductions since similar reductions had been made in the United States but it refused to reduce its rates for transistorized radios and for colour television and it was, therefore, necessary to leave the rates for these products at 3½%. In the commercial and broader scope fields where royalty rates of

4% and 4½% were formerly utilized, RCA agreed to reductions that made it possible to reduce the Company's rates to 3% effective January 1, 1955. A new deduction for the cost of clock mechanisms was added and licenses incorporating these changes were prepared and distributed to the Directors early in 1955. Actual issuance of these licenses has been held up at the request of our solicitor Mr. E. Gordon Gowling on the basis that he has some suggestions on wording that he wishes to be considered. In the meantime, all of the licensees have been informed of the reduced royalty rates and monthly payments are being made on the new basis by all except Motorola and Admiral.

Future Royalty Income.

In view of the royalty rate reductions introduced on January 1, 1955, it is estimated that the Company's gross royalty income from domestic receivers will be about one third lower in 1955 than 1954 but as the larger dollar volume colour television receivers come into the picture in future years, the domestic receiver royalties may again exceed the $1,000,000 gross established in 1953 and 1954. A determined effort will be made in 1955 to offset the drop in domestic royalties by increased activity in the fields of Hi-Fi, communications equipment and in other phases of electronics from which very little royalty income is now being collected by the Company.

Activities of Patent Representatives.

Due to the number of complex problems coming before the Company within the past year, meetings of the patent representatives of the shareholder companies have been held more frequently and the patent men have been particularly active in examining circuit diagrams for infringements and reporting on adversely held patents. The Company has recently been approached by International Telephone and Telegraph and by Raytheon Corporation with respect to the possibility of the Company either acting as their patent licensing agent or including their Canadian patents in the licenses issued by the Company. Nothing definite has as yet been established but indications are that, as more activity occurs in the so-called broader fields, the patent situation will become more complex and the Patent Committee will be called upon to participate to an even greater extent in the work of the Company.

Department of Defence Production.

The terms of the agreement between the Company and Her Majesty referred to on the first page of this Survey provide for a yearly review of the dollar value of the electronic portion of the defence program to ensure that the payment of $500,000 royalties is justified. The figures for the Government's fiscal year ended March 31, 1955 were recently reviewed by the Company and officials of the Department of Defence Production and the payment was approved for the fourth consecutive year. When received, the $500,000 will be divided 25% to RCA and the balance in equal amounts to Canadian General Electric, Canadian Westinghouse, Canadian Marconi and Canadian Radio Mfg. Corporation.

Royal Commission on Patents, Copyrights, Trade Marks and Industrial Designs.

During 1954, a Royal Commision under the chairmanship of the Right Honorable J. L. Ilsley, was set up to investigate the Canadian Patents, Copyrights, Trade Marks and Industrial Design laws, and in September a written Brief was submitted on behalf of the Company by the President. In October the Company's solicitor E. Gordon Gowling, Q.C. and the President appeared before the Commission to give further details of the Company's operations and to reply to questions on the Brief. It is not expected that the findings of the Royal Commission will be available until the end of 1955, but the general feeling is that the Company's Brief was satisfactorily received and it is not expected that the Commission will recommend any major changes to the Patent Act that might affect the Company's operations.

DEFENDANT'S EXHIBIT NO. 130.

CANADIAN RADIO PATENTS, LIMITED

[illegible]
[illegible]
[illegible] 130 } [illegible]

Sponsors Nation-Wide
Advertising–Publicity
Campaign...

CRPL

TO SELL "*Canadian-Made*" RADIOS FOR YOU!

WARNING!

Be Sure Your Radio is Canadian Made...is Safe to Operate...Complies with the Canadian Electrical Code...is Licensed under Canadian Patents.

Use of an imported radio may make you liable for damages for infringement of Canadian patents . . . may endanger your life and property through fire and shock hazards . . . may be illegal under Provincial Electrical requirements.

Fire and Shock Hazard

Only Canadian-made radios safeguard you from fire and shock hazards.

Because cheap imported radios do not embody ordinary safeguards required by law in Canada, they constitute very definite fire and shock hazards. Working parts are connected directly to the main power supply, thus, touching working parts may result in a bad shock, even death. Lack of safeguards, too, causes these radios to heat up, sometimes to start fires.

Contrary to Canadian Electrical Code

Only Canadian-made radios can be relied upon to contain standard safety devices.

Because they don't embody standard safety devices, imported radios are for the most part in contravention of the Canadian Electrical Code, under which all Canadian manufacturers operate. Provincial Electrical requirements make it possible for you to be penalized on a count of simply owning a substandard radio.

Infringement of Canadian Patent Rights

Only Canadian-made, Canadian-sold sets are licensed under the basic patents of Canadian Radio Patents, Limited.

Use of radios manufactured and purchased outside the Dominion of Canada may constitute an infringement of Canadian patent rights. Infringement of patent rights, naturally, makes the owner liable to legal action.

Unsatisfactory in Operation

Only Canadian-made radios can be relied upon to operate efficiently in Canada.

Cheap imported models have proven definitely unsatisfactory in operation in Canada, all claims of the manufacturers to the contrary. No radio, unless it is made to meet requirements and conditions in Canada will operate efficiently in this country. In addition, the cheap, inefficient parts used in some of these sets do not meet the requirements of the Canadian Electrical Code. The result is Canadian receivers, meeting all these requirements, are definitely superior.

No Trade-In Value

Only Canadian-made radios have an equitable trade-in value.

Because Canadian dealers are not permitted by law to sell substandard radios, as are most of the imported models, Canadian radio dealers cannot afford to give trade-in allowances on imported models.

No Servicing . . . No Effective Guarantee

Only Canadian-made sets are sold in this store . . . which is always ready to carry out the manufacturer's guarantee. . . .

Obviously a dealer in a foreign country cannot effectively carry out a guarantee on a receiver used in Canada. Nor can the owner of an imported set readily obtain substandard parts for replacement when necessary.

Don't be misled by stories of wonderful bargains. Imported radios are seldom bargains at any price. If you must economize on the purchase of your radio, buy a first-class, used model manufactured by a reputable Canadian concern. Reconditioned models of fine Canadian radios, far superior in all respects to the cheap, imported ones, can be procured at low prices that are equally as good bargains as the lowest priced new cheap, imported receivers seem to be.

BUY YOUR RADIO HERE AND BE SAFE!

Defendant's Exhibit No. 130.

Newspapers from Coast-to-Coast Carry the Tremendous Total of

4,343,084 ADVERTISING MESSAGES

TO HELP PUT A STOP TO IMPORTATION OF CHEAP, SUBSTANDARD, IMPORTED RADIOS

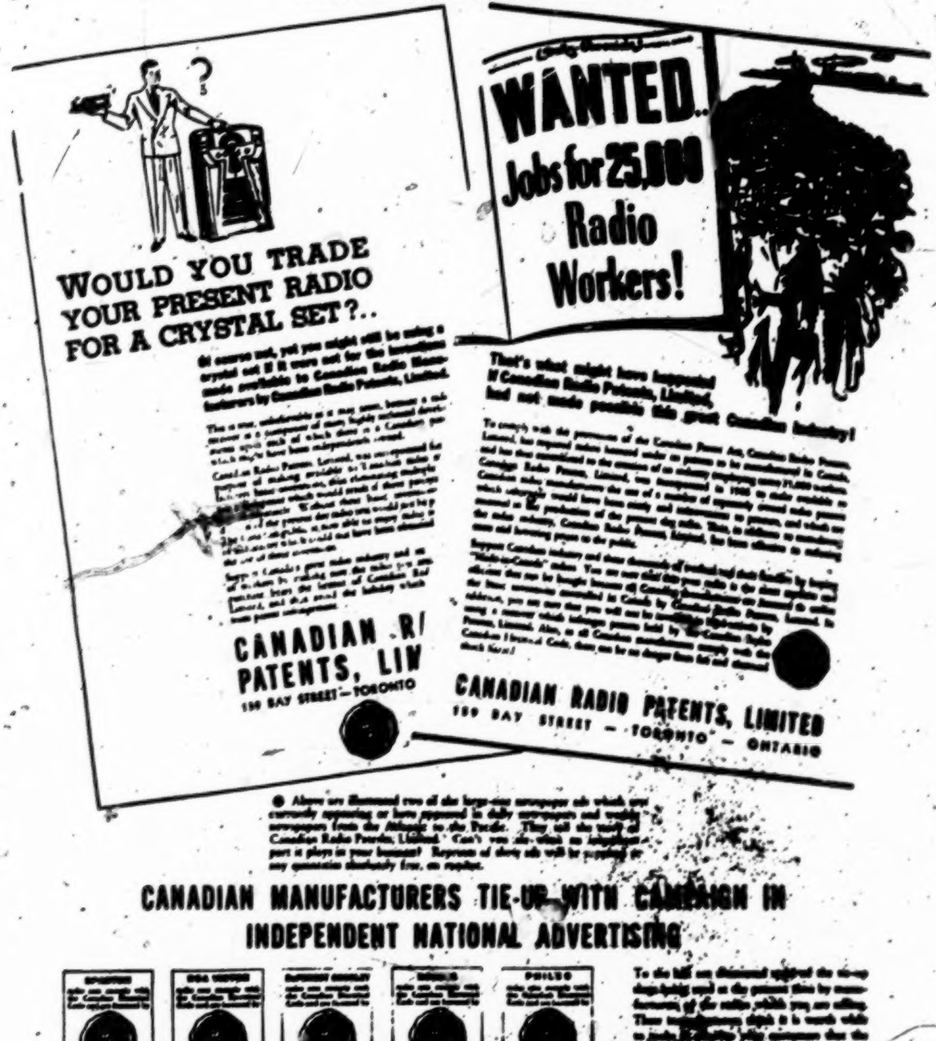
In every province in Canada from Nova Scotia to British Columbia, large-size advertisements sponsored and paid for by Canadian Radio Patents, Limited, are helping to sell Canadian radio for you. Daily newspapers, weekly newspapers, in practically every city and town that is in close proximity to the United States border are carrying these ads now—their combined power gives the staggering total of 4,343,084 advertising messages to tell the story of Canadian Radio Patents, Limited—the story of why consumers should not, may not, import cheap, substandard models! You've probably seen these ads in your local paper. Tie up with them by putting up in your window the enclosed "Warning" streamer — by telling your customers and friends about the dangers of this situation.

Thousands of words of Newspaper Publicity Back Up Advertising to Pound Over Disadvantages of Bringing in Imported Radio Models

Editors are co-operating splendidly in this campaign by opening up their columns to news items about the shock and fire hazards of imported sets to owners, about infringement liabilities, about illegal ownership under the electrical code. Tell your newspaper friends your story about how unsatisfactory cheap, imported sets are. They'll probably want to publish it—if you'd like a publicity release already prepared to hand over to your paper, drop us a line. We'll be glad to send you one free. We will also send you free on request, reprints of the actual advertisements.

See illustrations on next page ➡

HERE ARE SAMPLES OF THESE LARGE-SIZE, HARD-HITTING ADS!



WOULD YOU TRADE YOUR PRESENT RADIO FOR A CRYSTAL SET?..

Of course not, yet you might still be using a crystal set if it were not for the inventions made available to Canadian Radio Manufacturers by Canadian Radio Patents, Limited.

[illegible]

CANADIAN R
PATENTS, LIM
159 BAY STREET—TORONTO

WANTED.. Jobs for 25,000 Radio Workers!

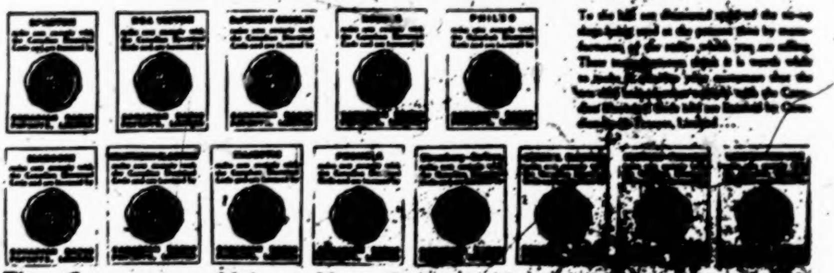
That's what might have happened if Canadian Radio Patents, Limited, had not made possible this great Canadian Industry!

[illegible]

CANADIAN RADIO PATENTS, LIMITED
159 BAY STREET — TORONTO — ONTARIO

● Above are illustrated two of the large-size newspaper ads which are currently appearing or have appeared in daily newspapers and weekly newspapers from the Atlantic to the Pacific. They tell the work of Canadian Radio Patents, Limited. Can't you also [illegible] part it plays in your business? Reprints of these ads will be supplied in any quantities absolutely free, on request.

CANADIAN MANUFACTURERS TIE-UP WITH CAMPAIGN IN INDEPENDENT NATIONAL ADVERTISING



[illegible]

This Campaign is Helping You—Support it!

This campaign means more radio sales for you [illegible] foreign models. It's helping you—why not help it? One of the most important things you can do is simply

Tack off the "Warning" window streamer on the next page and other [illegible]

35

DEFENDANT'S EXHIBIT NO. 131.

Announcement

WE desire to announce that under the patents controlled by Canadian Radio Patents Limited, for the manufacture and sale in Canada of Radio Receiving Sets to be used only for the non-commercial reception of public radio telephone broadcasting, licenses have been reserved or granted to the following:—

Hazeltine Research, Inc.
vs. Zenith Radio Corporation
Defendant's Ex. No. 131
C.A. No. 59-C-[illegible]

1. Canadian General Electric Co., Ltd., Toronto, Ont.
2. Canadian Westinghouse Co., Ltd., Hamilton, Ont.
3. Northern Electric Co., Ltd., Montreal, Que.
4. Canadian Marconi Company, Montreal, Que.
5. Standard Radio Mfg. Corp., Ltd., Toronto, Ont.
6. DeForest Radio Corporation, Ltd., Toronto, Ont.
7. King Quality Products, Ltd., Toronto, Ont.
8. Stromberg-Carlson Telephone Mfg. Co. of Canada, Ltd., Toronto, Ont.
9. Temple Canadian Ltd., Toronto.
10. Grimes Radio Corporation, Ltd., Kitchener, Ont.
11. Federal Orthosonic Co., Ltd., Bridgeburg.
12. The Westrite Radio Ltd., Toronto.
13. Canadian Brandes, Ltd., Toronto, Ont.
14. Freshman Freed-Eisemann Radio Corporation, Toronto.
15. American Bosch Corporation, Springfield, Mass.
16. McLagan-[illegible], Ltd., Stratford, Ont.
17. [illegible] Radio Limited, Toronto, Ont.
18. Stewart-Warner Speedometer Corporation, Chicago, Ill.
19. Philco Products Co., Ltd., Toronto.
20. Malcolm & Hill Ltd., Kitchener, Ont.
21. Brunswick-Balke-Collender Co. of Canada, Toronto.
22. Canadian National Carbon Co., Ltd., Toronto.

Any other manufacturers of Radio Receiving Sets sold in Canada embodying the following features:—

(a) Regenerative or feed back circuits,
(b) Tuned radio frequency sets having a plurality of stages of tuned radio frequency amplification used with vacuum tubes,
(c) Grid leak arrangement comprising a condenser shunted by a high resistance,
(d) The neutralization of inter-electrode capacity in an amplifying stage.

are infringers of the patents controlled by Canadian Radio Patents Limited. Among these patents are the following:—

[illegible]	[illegible]	Franklin	[illegible]	DeForest	174,361
[illegible]	[illegible]	DeForest	179,794	DeForest	200,235
[illegible]	[illegible]	DeForest	182,132	DeForest	200,465
[illegible]	[illegible]	Marlow	182,275	DeForest	200,236
[illegible]	[illegible]	Marlow	200,777	DeForest	200,242
[illegible]	[illegible]	Arnold	213,503	DeForest	198,673
[illegible]	[illegible]				

In the maintenance of its property rights it is the duty of Canadian Radio Patents Limited, to see that its patents are respected. Therefore, notice is given to manufacturers, purchasers or users, of infringing Radio Receiving Sets that they will be held liable to Canadian Radio Patents Limited, on account of such infringement.

Canadian Radio Patents Limited
Head Office - - 212 King Street West
TORONTO

CRPL
260

DEFENDANT'S EXHIBIT NO. 132.

Announcement

WE desire to announce that under the patents controlled by CANADIAN RADIO PATENTS LIMITED, for the manufacture and/or sale in Canada of Radio Receiving Sets to be used only for the non-commercial reception of public radio telephone broadcasting, licenses have been reserved or granted to the following:—

For A. C. or D. C. Batteryless and Battery Operated Sets

Canadian General Electric Co., Ltd., Toronto, Ont. (General Electric).
Canadian Westinghouse Co., Ltd., Hamilton, Ont. (Westinghouse).
Northern Electric Co., Ltd., Montreal, P.Q.
Canadian Marconi Co., Montreal, P.Q. (Marconi)
Rogers-Majestic Corporation, Ltd., Toronto, Ont. (Rogers-Majestic)
American-Bosch Magneto Corporation, Springfield, Mass. (Bosch)
Brunswick Radio of Canada, Limited, Toronto, Ont. (Brunswick)
Canadian National Carbon Co., Ltd., Toronto, Ont. (Eveready)
Canadian Brandes, Ltd., Toronto, Ont. (Kolster)
DeForest Radio Corporation, Ltd., Toronto, Ont. (DeForest Crosley)
Freshman Freed-Eisemann Radio Ltd., Toronto, Ont. (Freed-Earl)
Fada Radio Ltd., Toronto, Ont. (Fada)
Grimes Radio Corporation, Ltd., Kitchener, Ont. (Grimes)
H. M. Kipp & Company, Limited, Toronto, Ont. (Mercury)
Malcolm & Hill, Ltd., Kitchener, Ont. (Atwater Kent)
Mohawk Radio, Ltd., Toronto, Ont. (Lyric)
Philco Products Co., Ltd., Toronto, Ont. (Philco)
Silver-Marshall of Canada Limited, Toronto, Ont. (Silver)
Sonora Radio Corporation of Canada, Ltd., Toronto, Ont. (Sonora)
Stewart-Warner Corporation, Belleville, Ont. (Stewart-Warner)
Steinite Radio of Canada Ltd., Windsor, Ont. (Clarion)
Stromberg-Carlson Telephone Mfg. Co. of Canada, Ltd., Toronto, Ont. (Stromberg-Carlson)
Sparton of Canada, Ltd., London, Ont. (Sparton)
Temple Radio Limited, Toronto, Ont. (Temple)
Williams Piano Company, Limited, Oshawa, Ont. (Williams-King)

[illegible] Research, Inc.
vs. Zenith Radio Corporation
Defendant's Exh. No. 132

In the maintenance of its property rights it is the duty of Canadian Radio Patents Limited to see that its patents are respected. Therefore, notice is given that manufacturers, purchasers or users of radio receiving sets which infringe any patents owned or controlled by Canadian Radio Patents Limited (particulars of said patents will be given on application), will be held liable to Canadian Radio Patents Limited on account of said infringement.

Canadian Radio Patents Limited
Head Office - - 212 King Street West
TORONTO

CRPL
201

DEFENDANT'S EXHIBIT NO. 133.

Hazeltine Research, Inc.
vs. Zenith Radio Corporation
Defendant's Exh. No. 133

C.A. No.
[illegible]

NOTICE

To Importers, Vendors or Users of Radio and Television Receivers

WE wish to bring to your attention that Canadian Radio Patents Limited is a central patent licensing agency administering various important Canadian patents of invention relating to radio and television receivers.

While under the provisions of Section 45 of the Canadian Patent Act, the owner of a patent and his legal representatives have the "exclusive right, privilege and liberty of making, constructing, using and vending to others to be used" the patented invention, Canadian Radio Patents Limited, however, in accordance with the requirements of Section 65 and 66 of the Patent Act, has licensed the following Canadian companies for the manufacture and sale in Canada of radio and television receivers embodying said inventions:—

Addison Industries Limited
Canadian Admiral Corporation Limited
Canadian Aviation Electronics Limited
Canadian General Electric Company Limited
Canadian Marconi Company
Canadian Radio Manufacturing Corporation Limited
Canadian Westinghouse Company Limited
Chisholm Industries Limited
~~[illegible] Television Corporation~~
Cossor (Canada) Limited
Crosley Radio and Television Limited
Davis Electronics Manufacturing Corpora~~tion Limited~~
Deseronto Electronics Limited
Dominion Electrohome Industries Limited
Electrical Products Manufacturing Company Limited
Emerald Television Corporation
Hallicrafters (Canada) Limited, The
Industrial Radioelectric Enterprise Limited
~~Jewel Radio Company of Canada~~, The
Manning Radio Limited
Measurement Engineering Limited
Monarch Radio Manufacturing Company
Motorola Canada Ltd.
Northern Electric Company Limited
Philco Corporation of Canada Limited
~~Provincial Distributing Board~~
Pye Canada Limited
~~Radiolectric Manufacturing Company~~
RCA Victor Company Limited
Research Industries Limited
Sparton of Canada Limited
Stark Electronic Instruments Limited
Stewart-Warner Corporation of Canada Limited
~~Stromberg-Carlson Company Limited~~
Superb Electric Industries Limited
Thorcraft Limited
~~Transvision-Television~~ (Canada) Limited
~~Telton Electronics Limited~~
United Television Company Limited.

The above companies are working the patented inventions in Canada on a commercial scale and are prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms.

Canadian Radio Patents desires to inform importers, vendors, purchasers or users of radio or television receivers which infringe patent rights owned or administered by Canadian Radio Patents Limited and are not manufactured by any of the Canadian companies listed above, that they will be held liable to Canadian Radio Patents Limited on account of said infringement.

Canadian Radio Patents Limited will be glad to furnish upon application full particulars and information in respect to the patents that it owns or administers relating to radio and television receivers.

CANADIAN RADIO PATENTS LIMITED

159 BAY STREET TORONTO, CANADA

DEFENDANT'S EXHIBIT NO. 134.

October 4th, 1955.

Mr. W. A. Steiger,
Manager, Patent Department,
Westinghouse Electric Corp.,
3 Gateway Center,
P. O. Box 2278,
PITTSBURGH 30, Pa.

Dear Bill:

I am attaching a photostatic copy of a notice which appeared in a Canadian magazine, Trade Builder, for September 1955. Similar notices appear in Canadian trade magazines from time to time. I thought this might be of interest to you.

Yours very truly,

B. McC[illegible],
Assistant Secretary.

McC:gm
Enc.

Cw 664

Defendant's Exhibit No. 134.

NOTICE

To Importers, Vendors or Users of Radio and Television Receivers

WE wish to bring to your attention that Canadian Radio Patents Limited is a central patent licensing agency administering various important Canadian patents of invention relating to radio and television receivers.

While under the provisions of Section 46 of the Canadian Patent Act, the owner of a patent and his legal representatives have the "exclusive right, privilege and liberty of making, constructing, using and vending to others to be used" the patented invention, Canadian Radio Patents Limited, however, in accordance with the requirements of Sections 67 and 68 of the Patent Act, has licensed the following Canadian companies for the manufacture and sale in Canada of radio and television receivers embodying said inventions:—

Addison Industries Limited
Booth Industries
Canadian Admiral Corporation Limited
Canadian Aviation Electronics Limited
(DuMont)
Canadian General Electric Company Limited
Canadian Marconi Company
Canadian Radio Manufacturing Corporation
Limited
Canadian Westinghouse Company Limited
Chisholm Industries Limited
Cossor (Canada) Limited
Crosley Radio and Television Division,
Moffats Ltd.
Crystal Radio of Canada Ltd.
Dominion Electrohome Industries Limited
Dominion Watch Case Limited
Electrical Products Manufacturing Company
Limited.
Emerson Radio of Canada Ltd.
Hackbusch Electronics Limited
Hallicrafters (Canada) Limited, The
Lilac Radio & Record Players
Lyness Electronics Reg'd
McKinnon Industries Limited (The)
Measurement Engineering Limited
Monarch Radio Manufacturing Company
Motorola Canada Ltd.
Northern Electric Company Limited
Philco Corporation of Canada Limited
Philips Industries Limited
Pye Canada Limited
Racine Mfg. Co. Ltd.
RCA Victor Company Limited
Radio Communications Equipment &
Engineering Ltd.
Research Industries Limited
Rogers Majestic Radio Corporation
Limited
Shelborn Industries (Canada) Ltd.
Sparton of Canada Limited
Stark Electronic Instruments Limited
Stewart-Warner Corporation of Canada
Limited
Sylvania Electric (Canada) Ltd.

The above companies are working the patented inventions in Canada on a commercial scale and are prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms.

Canadian Radio Patents desires to inform importers, vendors, purchasers or users of radio or television receivers which infringe patent rights owned or administered by Canadian Radio Patents Limited and are not manufactured by any of the Canadian companies listed above, that they will be held liable to Canadian Radio Patents Limited on account of said infringement.

Canadian Radio Patents Limited will be glad to furnish upon application full particulars and information in respect to the patents that it owns or administers relating to radio and television receivers.

CANADIAN RADIO PATENTS LIMITED

200 ST. CLAIR AVENUE WEST TORONTO 7, CANADA

Use or sale of radio and television receivers not approved under the Canadian Electrical Code is illegal in most Provinces.

Ch 66

DEFENDANT'S EXHIBIT NO. 135.

Brownlie
Exh
11

CANADIAN RADIO PATENTS LIMITED
159 BAY STREET
TORONTO

Hazeltine Research, Inc.
vs. Zenith Radio Corporation
Defendant's Exh. No. 135
C.A. No. 59-C-1847

November 23, 1950.

MEMORANDUM TO CRPL BOARD OF DIRECTORS

With removal of import restrictions on radio and television receivers as of January 1, 1951, it is to be expected that infringing receivers may appear on the Canadian market and, in order to protect the rights of CRPL and its licensees, Mr. Macfarlane and I have proceeded in accordance with the general authority received at the last CRPL Board of Directors' meeting and have arranged for insertion of the attached full page notice in the November issues of the two principal radio trade publications - Radio Video Electrical Trade Builder and Radio-Television & Appliance Sales.

Our present plans are to run such notices in each of these trade papers two or three times over the next six months and, since the wording may be changed from month to month, we would appreciate any suggestions as to additions or changes that we might incorporate in future issues of the notice.

Several hundred reprints of the attached notice have been obtained and these are now being distributed to the Canadian Radio Patents Limited licensees and other interested parties.

Brownlie
Secretary-Treasurer.

SDB/MC

CRPL
217

Defendant's Exhibit No. 135.

[illegible]

NOTICE

To Importers, Vendors or Users of Radio and Television Receivers

---

WE wish to bring to your attention that Canadian Radio Patents Limited is a central patent licensing agency administering various important Canadian patents of invention relating to radio and television receivers.

While under the provisions of Section 45 of the Canadian Patent Act, the owner of a patent and his legal representatives have the "exclusive right, privilege and liberty of making, constructing, using and vending to others to be used" the patented invention, Canadian Radio Patents Limited, however, in accordance with the requirements of Section 65 and 66 of the Patent Act, has licensed the following Canadian companies for the manufacture and sale in Canada of radio and television receivers embodying said inventions:—

Addison Industries Limited
Arcan Corporation Limited
Canadian Admiral Corporation Limited
Canadian Aviation Electronics Limited
Canadian General Electric Company Limited
Canadian Marconi Company
Canadian Radio Manufacturing Corporation Limited
Canadian Westinghouse Company Limited
Chisholm Industries Limited
Cossor (Canada) Limited
Crosley Radio and Television Limited
Crystal Radio of Canada Ltd.
Dominion Electrohome Industries Limited
Electrical Products Manufacturing Company Limited
Emerald Television Corporation
Heckbusch Electronics Limited
Hallicrafters (Canada) Limited, The
Lifco Radio & Record Players
Lynox Electronics Reg'd
Manning Radio Limited
McKinnon Industries Limited (The)
Measurement Engineering Limited
Monarch Radio Manufacturing Company
Motorola Canada Ltd.
Northern Electric Company Limited
Philco Corporation of Canada Limited
Pye Canada Limited
Racine Mfg. Co. Ltd.
RCA Victor Company Limited
Radio Communications Equipment & Engineering Ltd.
Research Industries Limited
Shelborn Industries (Canada) Ltd.
Sparton of Canada Limited
Stark Electronic Instruments Limited
Stewart-Warner Corporation of Canada Limited
~~Superb Electric Industries Limited~~
Sylvania Electric (Canada) Ltd.

The above companies are working the patented inventions in Canada on a commercial scale and are prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms.

Canadian Radio Patents desires to inform importers, vendors, purchasers or users of radio or television receivers which infringe patent rights owned or administered by Canadian Radio Patents Limited and are not manufactured by any of the Canadian companies listed above, that they will be held liable to Canadian Radio Patents Limited on account of said infringement.

Canadian Radio Patents Limited will be glad to furnish upon application full particulars and information in respect to the patents that it owns or administers relating to radio and television receivers.

CANADIAN RADIO PATENTS LIMITED

200 ST. CLAIR AVENUE WEST. TORONTO 7. CANADA

[illegible]

CRPL 221

DEFENDANT'S EXHIBIT NO. 136.

Canadian Radio Patents Limited
150 Bay Street
Toronto

November 23, 1950.

In view of the removal of the import controls as of January 1, 1951, the attached notice is being inserted in the principal Canadian radio trade publications as a means of protecting the rights of Canadian Radio Patents Limited and its licensees.

All licenses issued by CRPL have been on the basis of compliance with the requirements of the Canadian Patent Act relative to manufacture in this country and since such licenses have been freely granted to all applicants interested in the employment of Canadian labour and the working of the patents in Canada, it is our intention to protect the rights of CRPL and its Licensees by instituting legal action against any unlicensed and infringing radio or television receivers offered for sale in this country.

Reprint of the attached notice appearing in the November issues of Radio Video Electrical Trade Builder and Radio-Television & Appliance Sales are available from the CRPL office upon request.

S. D. Brownlee,
Secretary-Treasurer

SDB/NC

Memo sent to: J. R. Longstaffe
D. Lou Harris
T. S. Farley
W. H. Furneaux
R. Randall
F. W. Radcliffe
F. R. Deakina
W. H. Jeffery
S. L. Capell
J. R. Duggan (Jewel Radio)

Notice

To Importers, Vendors Or Users of Radio and Television Receivers.

We wish to bring to your attention that Canadian Radio Patents Limited is a central patent Licensing Agency administering various important Canadian patents of invention relating to radio and television receivers.

While under the provisions of Section 45, of the Canadian Patent Act, the owner of a patent, and his legal representatives have the "exclusive right, privilege and liberty of making constructing, using and vending to others to be used" the patented invention, Canadian Radio Patents Limited, however, in accordance with the requirements of Sections 65 and 66 of the Patent Act, has licensed the following Canadian companies for the manufacturers and sale in Canada of radio and television receivers embodying said inventions:—

Addison Industries Limited
Brand and Millon Limited
Cam Radio Products Limited
Canadian Admiral Corporation Limited
Canadian General Electric Company Limited
Canadian Marconi Company
Canadian Radio Manufacturing Corporation Limited
Canadian Westinghouse Company Limited
Chisholm Industries Limited
Cossor (Canada) Limited
illegible Electronics Limited
Dominion Electronics Industries Limited
Electrical Products Manufacturing Company Limited
Manning Radio Limited
Mastervision Corporation Limited
illeglible Engineering Limited
Monarch Radio Manufacturing Company
Northern Electric Company Limited
Northern Tool & Gauge Limited
Philco Corporation of Canada Limited

Pye Canada Limited
RCA Victor Company Limited
Research Industries Limited
Sparton of Canada Limited
Stark Electronic Instruments Limited
Stewart-Warner-Alemite Corp. of Canada Limited
Stromberg-Carlson Company Limited
Tele-King Television Company of Canada
Thorks Leon Radio Products
Transvision-Television (Canada) Limited
Williams, Norman & Company of Canada Limited

The above companies are working the patented inventions in Canada on a commercial scale and are prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms.

We would particularly draw to your attention that while various brands of radio receiving sets may be manufactured and licensed under Letters Patent in the United States, such sets, if imported into or sold in Canada, may, however, still be an infringement of corresponding letters patent owned and/or controlled in the Dominion of Canada by Canadian Radio Patents Limited, unless said sets are merchandised by or through our licensees, (including their distributors and dealers) above mentioned.

In the maintenance of its property rights it is the duty of Canadian Radio Patents Limited to see that its patents are respected. Therefore, notice is hereby given that any manufacturer, vendor, purchaser or user of radio receiving sets which infringe any of the patents owned and/or controlled by Canadian Radio Patents Limited, (particulars of said patents will be given on application) will be held accountable to Canadian Radio Patents Limited on account of such infringement.

Yours very truly,
Canadian Radio Patents Limited
Geo. H. Brooke
Manager.

DEFENDANT'S EXHIBIT NO. 137.

**Trade
Radio-TV-Appliances
Builder**

**(Letterhead of Hugh C. MacLean Publications Limited,
Toronto 1, Ontario.)**

March 14t, 1955.

**Canadian Radio Patents Limited,
200 St. Clair Avenue West,
Toronto, Ontario.**

Attention: Mr. C. Harris.

Dear Cowan;

Thank you for your letter of March 11th authorizing the Notice advertisement for insertion in our April Television Number and enclosing copy for us to follow.

We shall be glad to set the advertisement and submit proof for your approval, returning the original copy to you as you requested when it has served our purpose.

In addition we shall be glad to run 500 reprints of the advertisement and deliver them to you in the course of time.

With kindest regards, I am

Yours very truly,

**Trade Builder
John T. Rochford**
Business Manager

JTR/jl

Patents . . . and Radio in Canada.

The Modern Radio Receiver is the outcome of intensive research by many inventors whose basic patents essential to its construction were separately owned prior to 1926, and licenses for their use had to be obtained from each owner.

In that year Canadian Radio Patents, Limited was organized to make these independently-owned and necessary patents available to manufacturers in Canada through a central channel with the minimum of cost.

The effect has been to stimulate Canadian manufacture by facilitating the issuing of licenses and by insisting that the provisions of the Canadian Patent Act providing for manufacture in Canada be carried out, thus contributing materially to the development of an industry now employing some twenty-five thousand workers.

All Canadian manufacturers are licensed to use patents owned by Canadian Radio Patents, Limited, and as sale or use of sub-standard sets is unlawful in all Provinces, Canadian Manufacturers must also comply with the safety requirements of the Canadian Electrical Code.

Canadian-made radios are, therefore, safe from fire and electric shock hazards actually present in many cheap imported sets, and the purchaser, having complied with the law both as regards patents and requirements of the Electrical Code, is free from the possibility of legal actions.

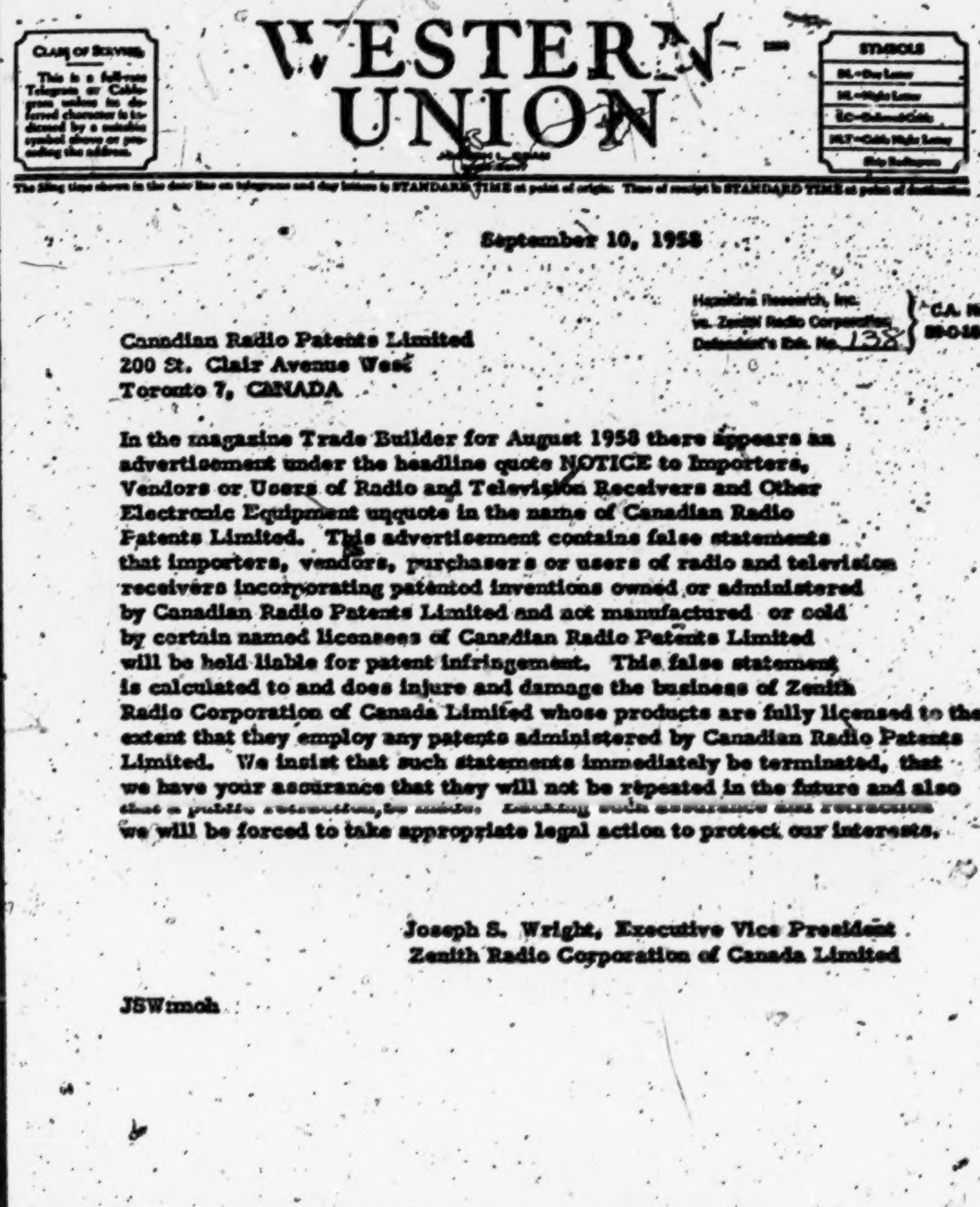
CRPL—Cut

Canadian Radio Patents, Limited
159 Bay Street—Toronto—Ontario

[illegible] CONDITIONS

[illegible]

DEFENDANT'S EXHIBIT NO. 138.



CLASS OF SERVICE

This is a full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

WESTERN UNION

SYMBOLS
DL=Day Letter
NL=Night Letter
LC=Deferred Cable
NLT=Cable Night Letter
Ship Radiogram

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

September 10, 1958

Hazeltine Research, Inc.
vs. Zenith Radio Corporation
Defendant's Exh. No. 138
C.A. No. 59-C-1847

Canadian Radio Patents Limited
200 St. Clair Avenue West
Toronto 7, CANADA

In the magazine Trade Builder for August 1958 there appears an advertisement under the headline quote NOTICE to Importers, Vendors or Users of Radio and Television Receivers and Other Electronic Equipment unquote in the name of Canadian Radio Patents Limited. This advertisement contains false statements that importers, vendors, purchasers or users of radio and television receivers incorporating patented inventions owned or administered by Canadian Radio Patents Limited and not manufactured or sold by certain named licensees of Canadian Radio Patents Limited will be held liable for patent infringement. This false statement is calculated to and does injure and damage the business of Zenith Radio Corporation of Canada Limited whose products are fully licensed to the extent that they employ any patents administered by Canadian Radio Patents Limited. We insist that such statements immediately be terminated, that we have your assurance that they will not be repeated in the future and also that a public retraction, be made. Lacking such assurance and retraction we will be forced to take appropriate legal action to protect our interests.

Joseph S. Wright, Executive Vice President
Zenith Radio Corporation of Canada Limited

JSW:mch

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

Defendant's Exhibit No. 138.

011/8/58

NOTICE

To Importers, Vendors or Users of Radio and Television Receivers and Other Electronic Equipment

Canadian Radio Patents Limited is a central patent licensing agency administering various important Canadian patents of invention relating to radio and television receivers and other electronic equipment.

Under the provisions of Section 46 of the Canadian Patent Act, the owner of a patent and his legal representatives have the "exclusive right, privilege and liberty of making, constructing, using and vending to others to be used" the patented invention and Canadian Radio Patents Limited, in accordance with the requirements of Section 67 and 68 of the Patent Act, has licensed the following Canadian companies for the manufacture and sale in Canada of radio and television receivers and other electronic equipment embodying inventions which it administers.

- Addison Industries Limited
- [illegible] Television Associates Limited
- Canadian Admiral Corporation Limited
- Canadian General Electric Company Limited
- Canadian Marconi Company
- Canadian Westinghouse Company Limited
- [illegible] Industries Limited
- Cossor (Canada) Limited
- Crystal Radio of Canada Limited
- Dominion Electrohome Industries Limited
- Dominion Watch Case Limited
- Electrical Products Manufacturing Company Limited
- Electronic Enterprises Limited
- Emerson Radio of Canada Limited
- Hackbusch Electronics Limited
- Hallicrafters (Canada) Limited, (The)
- [illegible] Radio Limited
- McCurdy Radio Industries Limited
- McKinnon Industries Limited (The)
- Measurement Engineering Limited
- Monarch Radio Manufacturing Company
- Nordmende Phoenix Ltd.
- Northern Electric Company Limited
- Philco Corporation of Canada Limited
- Philips Electronics Industries Ltd.
- Prichard, J. R.
- [illegible] Limited
- Pye Canada Limited
- RCA Victor Company Limited
- Radio Communications Equipment & Engineering Limited
- Research Industries Limited
- Robert Bosch (Canada) Limited
- Rotor Electric Company Limited
- Seabreeze Manufacturing Limited
- [illegible] Industries (Canada) Limited
- Sparton of Canada Limited
- Stark Electronic Instruments Limited

The above companies are working the patented inventions in Canada on a commercial scale and are prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms.

Canadian Radio Patents Limited desires to inform importers, vendors, purchasers or users of radio and television receivers and other electronic devices and equipment incorporating patented inventions owned or administered by Canadian Radio Patents Limited and not manufactured or sold under license from Canadian Radio Patents Limited, that they will be held liable for patent infringement.

Canadian Radio Patents Limited will be glad to furnish, upon application, full particulars and information in respect to the patents that it owns or administers relating to radio and television receivers and other electronic devices and equipment.

CANADIAN RADIO PATENTS LIMITED

200 ST. CLAIR AVENUE WEST TORONTO 7, CANADA

Defendant's Exhibit No. 138.

CANADIAN RADIO PATENTS LIMITED
200 ST. CLAIR AVE. WEST
TORONTO

9-17-58

September 16, 1958.

Mr. J. S. Wright,
Executive Vice President,
Zenith Radio Corporation of Canada Limited,
1470 The Queensway,
Toronto 14, Ontario.

Dear Mr. Wright:

I acknowledge your telegram of September 10th and regret that you feel obliged to take exception to the advertisement of our company which appeared in the August issue of Trade Builder.

I gather that you may be dealing directly with some patentees concerning licensing arrangements in this country. However you are no doubt aware of my discussion with Mr. Kiely of your company regarding the Canadian patent situation in the electronics field. He very kindly furnished me with circuit diagrams of your sets now appearing on the Canadian market and from a preliminary inspection of these diagrams it appears that you are using inventions covered by patents which we administer and under which we are informed you are not licensed. For example there is Armstrong patent number 441,777 which is owned by Canadian Marconi Company.

It would obviously be to our mutual advantage to avoid any misunderstanding with respect to these matters. With this in view I shall be very pleased to meet you or other officers of your company at your convenience. If you expect to be in Toronto in the near future please call me and I will make myself available

Although your telegram is signed on behalf of Zenith Radio Corporation of Canada Limited I observe that it originated in Chicago. I am therefore sending this letter to your Chicago office and forwarding a copy to your Canadian address.

Yours very truly,

B. McConnell

B. McConnell
President

Defendant's Exhibit No. 138.

ZENITH RADIO CORPORATIC
OF CANADA, LTD.

TELEVISION -- RADIO -- HIGH FIDELITY -- HEARING AIDS

1470 THE QUEENSWAY TORONTO 18 CLIFFORD 5-2324

I. Cratty

Jal

September 23, 1958

RECEIVED
SEP 24 1958
Zenith Patent Department

Mr. B. McConnell, President
Canadian Radio Patents Limited
200 St. Clair Ave. West
Toronto, Ontario, Canada

Dear Mr. McConnell:

I have your letter of September 16, 1958 in reply to my telegram of September 10.

Your letter completely ignores the advertisement in the August issue of "Trade Builder" which was the subject of my telegram, unless your statement that Zenith receivers make unlicensed use of patents you administer can be interpreted as meaning that you intend to continue to employ such statements in the future.

If that is the case, then there is certainly no misunderstanding between us--nor is there any useful purpose to be served either by a conference or further correspondence on the subject.

We are thoroughly familiar with Armstrong Patent No. 411,777 which is the Canadian counterpart of a U. S. patent which has never been considered in our industry as having any validity. This patent has been universally ignored, has never been adjudicated as valid and has no valid application to our apparatus.

You say you gather that we may be dealing directly with some patentees regarding licensing arrangements in Canada. I find it very difficult to believe that you are really uninformed about the cross licenses under all their Canadian patents between Zenith and Radio Corporation of America, General Electric, Canadian General Electric and Western Electric as well as Zenith's other direct licenses on important Canadian radio and television receiver patents.

You actively participated in the litigation which resulted in these licenses, and must be well aware that the activities of Canadian Radio Patents Limited in stopping our Canadian business in past years was at the very heart of the substantial claim for damages which was settled at the same time the licenses were granted.

Under the circumstances, we feel shocked that you would publish statements such as those in your advertisement in the August "Trade Builder" and I must insist on your assurance that they have been stopped and will not be resumed.

Circulation of such statements is directly and seriously damaging to our business and unless it is stopped we shall be required to take immediate steps to protect our rights.

Will you please advise me promptly as to your intentions regarding continued Publication of these statements?

Very truly yours,

Joseph S. Wright, Exec. Vice President

DEFENDANT'S EXHIBIT NO. 139.

Canadian Radio Patents Limited.

General Survey

December 1953

Confidential Copy

for

H. M. Turner

— Index —

General

PAGE

—Industry progress and highlights of Company's operations since last survey (December 1951).. 1-6
—Hazeltine Arrangement 7
—RCA Victor Arrangement.......................... 8

Schedules of Royalty Collections and Payments

Schedule No. 1—CRPL Income since Incorporation 10
Schedule No. 2—Royalties (licensees) since Incorporation........................... 11
Schedule No. 3—Average Royalty per Receiver.. 13
Schedule No. 4—Percentage Licensees Radio Receivers Sales to Industry Sales............. 14
Schedule No. 5—Percentage Licensees Television Receiver Sales to Industry Sales.............. 15
Schedule No. 6—Licensees Gross Royalties by months (January 1947—October 1953)......... 16
Schedule No. 7—1952 Royalty Collections and Licensees' Average Royalty per Unit............ 17
Schedule No. 8—1953 Royalty Collections and Licensees' Average Royalty per Unit............ 18
Schedule No. 9—Dividends........................ 19

Industry Statistics

Schedule No. 10—Manufacturers' Production—Sales and Inventory of Radio Receivers 1925—July 31, 1953 22
Schedule No. 11—Canadian Manufacturers' Monthly Sales of Radio Receivers Jan. 1937—July 1953 23
Schedule No. 12—Canadian Sales of Radio Receivers by Types expressed as a percentage of total yearly sales 24
Schedule No. 13—Radio Receiver Sales by Types 1946 to 1952 25
Schedule No. 14—Radio Receiver Sales by Areas 1946 to 1952 28
Schedule No. 15—Radio and Receiver Dollar Value Sales 1946 to 1952 30
Schedule No. 16—Television Receiver Sales by Types 1949 to 1952 31
Schedule No. 17—Television Receiver Sales by Areas 1949 to 1952 32
Schedule No. 18—Television Receiver Dollar Value Sales 1949 to 1952 33
Schedule No. 19—Radio Receiver Sales by Areas and Types January 1 to October 31, 1953 34
Schedule No. 20—Television Receiver Sales by Areas and Types—January 1 to October 31, 1953 35
Schedule No. 21—Importation of Radio Receivers 36
Schedule No. 22—Radio Receiver Exports 1947 to July 31, 1953 37
Schedule No. 23—Radio Receiver Exports by Countries 39
Schedule No. 24—Yearly Sales of Radio Receivers in United States 42
Schedule No. 25—Yearly Sales of Television Receivers in United States 43

Licenses Issued, Cancelled and Pending

Alphabetic List of Postwar Licensees 44
Cancelled Licensees 44
Applications Pending 45
Special Arrangements 45

Trade Names
Identification of Receiver Trade Names Currently in Use 46
Manufacturers of Stencil Receivers 47
Principal Purchasers of Stencil Receivers—Trade Names 47

Reports on Status of All Licensees (1945-1953)
Active Licensees 48
Cancelled Licensees 59
Application Pending 65
Special Arrangements 66

Canadian Radio Patents Limited
159 Bay Street
Toronto

General Survey—December 1953

This is the fifth of a series of General Surveys prepared for the confidential information of the Directors of Canadian Radio Patents Limited.

The four previous Surveys in this service were dated June 1948, June 1949, April 1950 and December 1951. The present Survey is designed to bring up to date the general information contained in the reports and schedules of the previous Surveys and to outline in particular the activities of the Company and the progress of the industry in the past two years. A number of new schedules have been added to this Survey to give more information on television, which has now taken over from radio as the leading income producer for the Company.

At the time of the December 1951 Survey, the industry was passing through a difficult period in which sales of radio and TV receivers were stifled by severe credit purchase regulations (one third down and balance in twelve months) and heavy sales and excise tax rates (10% and

25% respectively) initiated by the Government as a means of restraining sales of certain consumer products with the intention of diverting materials and manpower to the defence program. Actually the electronic portion of the defence program was mostly in the engineering and development stages in 1951 and the expected shortages of critical materials for consumer products failed to materialize. The Government finally removed the consumer credit controls and lowered the excise tax to 15% in April 1952 and sales of both radio and television receivers commenced to pick up immediately. This relief combined with the opening of the first Canadian television stations in Toronto and Montreal in September 1952 resulted in the boom in TV sales that had been expected to commence in 1951. TV sales for 1952 totaled about 150,000 units compared with 40,000 in 1951 and 30,000 in 1950. It is interesting to note that radio receiver sales didn't suffer to any great extent with the rise in TV and a total of 550,000 radios were sold in 1952 compared with 557,000 in 1951.

The Company's gross royalty income in 1951 was $336,744, only about three thousand dollars above the 1950 gross, but in 1952 the gross royalty collections were up 47% and almost reached the half million dollar mark ($493,741).

The industry awaited announceemnt of the 1953 Budget with considerable misgivings because of reports that a $15 per year license fee would be applied to television receivers to finance the CBC's TV operations. Strong representations against the proposed TV license were made by industry representatives and, fortunately for TV sales, it was not applied. However the 1953 Budget provided that CBC would receive the money derived from the 15% excise tax on radio and television receivers and tubes. At the same time the $2.50 per year radio license fee was eliminated.

Removal of the threat of a heavy annual license fee on television was important to the industry but many fear that the definite earmarking of the radio and TV excise returns for CBC will mean that these taxes will remain when excise taxes are eventually lowered or removed from motor cars and other consumer products. On the other hand the Government probably feared that it would be criticized by the majority of the country, still without TV, if it had given CBC its grants from general revenue at this time. In another year television will be available to about 80% of the population and the thinking may be quite different. It appears logical that the CBC should eventually be subsidized from general revenue rather than from the excise on specific products.

—3—

Television has finally come into its own this year. Sales of TV receivers in 1953 should reach about 375,000 units, 2½ times the 150,000 sold in 1952. TV sales in October (the latest month for which we have full report) reached a new monthly high of 60,000 units and for the first time the number of television receivers sold exceeded the number of radios sold in the same month. Despite this fact radio receaver sales continue strong and should reach about 600,000 units by the year end, an increase of about 10% over 1952.

The sharp uprise in television sales will result in the Company's 1953 gross royalty income more than doubling that of 1952 and totalling over one million dollars for the first time in the history of the Company.

At the present time there are five TV stations operating in Canada, the CBC station in Toronto, Montreal and Ottawa and private stations in Sudbury and London.

Within a few weeks CBC will open a second station in Montreal and a station in Vancouver. By December 1954 there should be at least fifteen, and possibly twenty, TV stations in Canada. CBC will open stations in Winnipeg (April 1954) and in Halifax (summer of 1954). Private stations will open in Hamilton (February 1954), Quebec City (May 1954), Rimouski (May 1954), St. John (March 1954), Kitchener (September 1954), Regina (May 1954), Edmonton (November 1954), Calgary (December 1954) and Kingston (October 1954). Licenses have also already been issued for private TV station operations in Sidney, Port Arthur, Sherbrooke, Saskatoon and Windsor and it is possible that some or all of these will be in operation within the next year, although they have not as yet announced tentative opening dates (as indicated in brackets after other cities).

With all of these new TV markets opening, many of the industry experts are estimating that television receiver sales in 1954 will exceed 500,000 units. However, it should be kept in mind that most of these new TV areas are relatively small compared with the Toronto and Montreal areas that have absorbed most of the receivers sold to date and that a half million television receivers in one year would be considerably higher than the total arrived at by applying the conventional 5% comparison figure to the biggest TV year in the U. S. (7,500,000 in 1950). U. S. TV sales have never again reached their 1950 peak, despite the fact that hundreds of new stations and market areas have opened and it is possible that the Canadian peak may have been reached this year or will be reached next year, at somewhat less than 500,000. Radio unit sales will probably continue to hold at approximately the 1953 level and it would appear that the industry can continue to sell between five and six hundred thousand radio receivers per year, with volume concentrated on motor car sets, small personal radios, clock sets and portables. It was interesting to note that this year the percentage increase in radio receiver sales compared with 1952 was actually higher in the Province of Ontario where the greater volume of television receivers were sold than in the provinces that did not have TV.

At the time the December 1951 Survey was prepared, the broader scope "Grey-backed" license was being sent out to all Canadian companies engaged in electronic production, and particularly to those companies not already licensed in the receiver field but becoming active in electronic work for the defence program. As a result of this activity by the Company the Department of Defence Production's Committee on Patents and Royalties was made aware of the electronic patents owned or administered by the Company and negotiations were commenced for a direct license with the Government. The Company received special authority to act as agent for the five shareholder companies and for RCA Victor in this matter, and, as a result of numerous discussions and appearances before the DDP Patent and Royalties Committee, an agreement was signed in March of this year providing for payments of $500,000 per year by the Government to cover clearance under the patents for all products of the electronic portion of the defence program. An initial payment of $1,000,000 was received this year on behalf of the shareholder companies and RCA to cover the two Government fiscal years April 1 1951 to March 31 1952 and April 1 1952 to March 31 1953. The agreement provides for review of the situation each year and indicates that if the value of the electronic orders for the defence program remains substantially the same, the $500,000 per year payments will be continued. In its capacity as agent, the Company has recently discussed the current year's program with the chairman and secretary of the DDP Committee and it is expected that the next $500,000 payment will be made before March 31, 1954.

With the recent sharp rise in television sales, particularly in the sixty cycle areas such as Montreal, the Company has been faced with increased activity in sales of unlicensed receivers imported from the United States. Duty free importation of television receivers by returning Canadian tourists was completely eliminated by a regulation brought down at the time of the 1953 Budget but customs regulations permit imports of TV receivers on which the 20% duty, 10% sales tax and 15% excise taxes are paid. Within the past six months several cases of dealers importing quantities of unlicensed U. S. TV receivers, such as Arvin, TravLer and Olympic, have come to the attention of the Company. In all such cases letters have been sent out advising the importers of the patent rights of the Company. These warning letters are usually effective in stopping the infringement but in a few recent cases it has been necessary to start actions in the Exchequer Court. The legal firm of Gowling, MacTavish, Osborne and Henderson have been used in these cases and the patent representatives of the shareholder companies have been very helpful in examining the circuits of unlicensed receivers purchased as evidence and in preparing reports of the patents utilized therein. So far, all such cases have been settled before getting down to trial, by the defendant

—6—

agreeing to discontinue the importation and paying damages on the unlicensed receivers sold.

Canadian Admiral Corporation discontinued royalty payments to the Company as of September 1st 1952 and for several months it appeared that a patent suit would be necessary. However, after lengthy negotiations, a settlement was reached on the basis of Canadian Admiral Corporation paying the Company a total of $475,000 as royalty clearance for the period January 1st 1952 to December 31st 1954. $275,000 of this amount has already been paid by Admiral and under the terms of the settlement the balance of $200,000 will be paid in ten monthly instalments of $20,000 each, commencing in January 1954.

The patent strength of the Company in the television field was greatly increased this year by purchase of the L. W. Parker Canadian patent No. 457,328 relating to inter-carrier sound. This invention is of basic importance and is used in all TV receivers, accounting for a saving of several dollars per set at manufacturing level. The patent still has 13 years life. Purchase price was $375,000, payable in 7 annual instalments of $50,000 each and a final payment of $25,000 in the eighth year.

Within the past year the Company has been approached by patent representatives of both International Telephone and Telegraph (which includes Federal and Farnsworth) and Motorola, to consider the possibility of the Company acting as agent in licensing others to operate under their Canadian patents. The value of these adversely held groups of Canadian patents are under study by the patent representatives of the shareholder companies and no decision has as yet been made in the matter. The patent representatives have held several meetings since the last Survey and are now engaged in bringing up to date the patent evaluation reports and studying the Canadian patents of Philco, Pye and others not presently included in the output licenses issued by the Company.

Hazeltine.

The Hazeltine-CRPL license provides for a basic royalty of 1½% on receivers sold in Canada, but the license also includes an annual maximum of $45,000. Calculations have indicated that on the percentage royalty basis the $45,000 maximum would be reached even if only a few hundred thousand receivers were sold in any one year and and the Company has therefore developed, with the approval of Hazeltine, a simplified procedure for pro-rating the Hazeltine payments over all receivers sold in any one year. A basic rate of 10% per receiver is deposited in a special Hazeltine account by the Company for each receiver (or electric phonograph) on which it collects royalty and similar 10¢ per unit payments are made by RCA Victor and by each of the shareholder companies on the receivers they sell. Payments from this account are made quarterly to Hazeltine and when the $45,000 is reached (usually by the end of the third quarter) payments into the account are discontinued for the balance of that year. At the end of the year the $45,000 is divided by the overall total number of receivers sold to determine the actual Hazeltine royalty per unit and adjustments are made so that the $45,000 is pro-rated between the participants. The actual Hazeltine royalty has worked out to 8.28¢ per unit in 1946; 5.25¢ in 1947; 7.76¢ in 1948; 6.426597¢ in 1949; 5.020409¢ in 1950; 8.47¢ in 1951 and 6.55¢ in 1952.

The company's licensees report that the Hazeltine engineering services distributed by the Company are of considerable value and many of the licensees have taken advantage of the opportunity of having new models examined and reported on in the Hazeltine laboratory at Chicago. These services come within the provisions of the license that the Company has with Hazeltine at no additional cost.

The initial term of the CRPL-Hazeltine License Agreement was for ten years from July 1st 1944 and provided for automatic extension for another ten year period un-

less cancelled by notice in writing twelve months in advance of the initial termination date. Thus termination would have to have been made in July of this year if the Company had wished that the arrangement be discontinued. After due consideration the Board authorized continuation of the Agreement for the additional ten year period and no notice of termination was filed.

RCA Victor

In the years 1947, 1948, 1949, 1950 and 1951 the Company paid RCA Victor for use of its Canadian patent 20% (25% less 20% of said 25% for agency fee) of the Company's gross royalty collections less the amount of the royalty-paying licensee share of the Hazeltine royalties. Under a new arrangement finalized in 1951 and effective for the years 1952-1955 inclusive the Company collects royalties for RCA at the following rates:

1. On apparatus listed in the Company's Output License Agreement (except television and facsimile receivers) for which the Company's royalty rate is 3½%—RCA receives 0.9%.
2. On apparatus listed in the Output License for which the Company's royalty rate is 4%, and for television and facsimile receivers on which the Company's royalty rate is 3½%—RCA receives 1¼%.
3. On apparatus listed in the Output License for which the Company's royalty rate is 4½%—RCA receives 1½%.

Where the Company provides one half royalty rates for export and double regular rates for "chassis only" RCA receives one half or double its regular rate as the case may be.

From the royalties collected for RCA at the above rates, the Company retains 25% as its agency fee and transmits the balance to RCA before taxes.

—9—

Schedules Nos. 1-9

Schedule No. 1 on page 10 shows total income received by the Company from incorporation to September 30, 1953 ($7,490,813.49). The "Interest Earned" column in this Schedule represents interest from bonds and bank accounts. "Miscellaneous" income mainly represents income received from settlement of claims against licensed and unlicensed parties or, as in 1946, represents profit from sale of bonds. The tabulation at the end of the Schedule shows payments to Hazeltine and RCA Victor, Royalties Earned for the years 1945 to 1952 inclusive and for the first 9 months of 1953.

Schedule No. 2 on pages 11 & 12 lists the royalties received from licensees from incorporation to September 30, 1953.

Schedule No. 3 on page 13 shows the average unit royalty for each year since incorporation and the average unit royalty on radio sets and television sets from 1949 to September 30, 1953 inclusive.

Schedule No. 4 on page 14 is a comparison of royalty-paying licensees' radio sales to total industry radio sales.

Schedule No. 5 on page 15 is a comparison of royalty-paying licensees' television sales to total industriy television sales.

Schedule No. 6 on page 16 shows the licensees' gross royalties 1947 to October 31, 1953 by months.

Schedule No. 7 on page 17 shows each licensee's 1952 sales in units, the amount of royalty paid and the average royalty per unit.

Schedule No. 8 on page 18 shows each licensee's sales in units and amount of royalty paid during the first nine months of 1953 and the average royalty per unit.

Schedule No. 9 on page 19 shows the dividend paid to shareholder companies since incorporation.

Schedule No. 1

INC

CRPL INCOME SUBS [illegible] CORPORATION

Year	Gross Royalties	Interest Earned	Miscellaneous	Total
1927-8	$ 553,376.46	$ 3,280.18	$ -	$ 556,656.64
1929	637,533.50	8,148.43	-	645,681.93
1930	781,785.53	14,535.39	-	796,320.92
1931	504,909.88	25,791.20	-	530,701.08
1932	140,404.23	23,262.58	10,000.00	173,666.81
1933	148,399.75	17,197.05	16,500.00	182,096.80
1934	133,361.45	12,468.43	1,901.30	147,731.18
1935	170,442.11	11,861.75	2,375.00	184,678.86
1936	219,851.41	8,922.87	2,109.13	230,883.41
1937	215,555.28	9,788.52	-	225,343.80
1938	187,792.72	10,167.75	1,767.00	199,727.47
1939	162,725.55	9,734.57	76.00	172,536.12
1940	188,821.17	10,169.66	-	198,990.83
1941	179,109.75	10,823.23	-	189,932.98
1942	99,042.70	12,264.22	-	111,306.92
1943	1,329.33	8,132.21	-	9,461.54
1944	776.60	6,309.52	-	7,086.12
1945	* 5,189.91	6,156.63	-	11,346.54
1946	*222,989.85	1,219.31	6,260.00	230,469.16
1947	*383,294.86	2,261.97	-	385,556.83
1948	*240,678.28	2,451.03	-	243,129.31
1949	*271,659.04	6,469.22	-	278,128.26
1950	*333,852.79	7,680.17	1,000.00	342,532.96
1951	*336,744.80	9,225.10	-	345,969.90
1952	*493,741.15	8,653.57	-	502,394.72
1953(to Sept 30)	*602,313.72	6,188.68	-	608,502.40
	$7,195,701.82	$253,123.24	$41,988.43	$7,490,813.49

* From gross royalties collected in the years 1945-1953 inclusive, payments were made to RCA Victor and to Hazeltine in accordance with the arrangements referred to in the General section of this Survey. The resulting Royalties Earned for these years are indicated below:-

	1945	1946	1947	1948	1949	1950	1951	1952	(to Sept 30) 1953
Gross Royalties	$5,189.91	$222,989.85	$383,294.86	$240,678.28	$271,659.04	$333,852.79	$336,744.80	$493,741.15	$602,313.72
Less Pay't to RCA	1,297.48	57,747.46	71,354.59	44,846.25	51,224.07	63,792.19	63,611.15	115,990.65	142,026.73
Less Pay't to Haz.	678.75	16,379.85	19,594.13	16,447.01	15,538.68	14,891.85	14,093.46	15,177.87	21,427.27
Royalties Earned	$3,213.68	$148,862.54	$292,346.14	$179,385.02	$204,896.29	$255,168.75	$259,040.19	$362,572.63	$438,859.72

CGE-3-56

Schedule No. 2

SUMMARY OF LICENSEES' ROYALTIES FROM INCORPORATION TO SEPTEMBER 30, 1953

Licensee	Total to Dec.31, 1947	1948	1949	1950	1951	1952	1953 Total to Sep.30/53	Total to Sep.30/53
Addison Industries Ltd.	$ 117,952	$ 17,021	$ 15,662	$ 16,219	$ 17,228	$ 32,227	$ 32,218	$ 248,527
American Bosch	129,472	-	-	-	-	-	-	129,472
Bock, Samuel A.	41	-	-	-	-	-	-	41
Brand & Millen	32,533	12,058	19,905	18,446	12,996	1,225	433	97,596
Broadmer Co. Ltd.	481	759	69	27	-	-	-	1,336
Brunswick Radio	81,155	-	-	-	-	-	-	81,155
Canadian Admiral Corp. Ltd.	37,306	27,782	43,418	83,043	75,768	90,053	-	357,371
Canadian Aviation Electronics Ltd.	-	-	-	-	-	4,083	27,205	31,288
Canadian Brandes (Kolster)	135,821	-	-	-	-	-	-	135,821
Canadian National Crabon	51,298	-	-	-	-	-	-	51,298
Chisholm Industries Ltd.	756	2,909	3,191	6,552	4,756	6,453	2,199	26,816
Coronet Television Corp.	-	-	-	-	10,205	37,083	29,732	77,020
Crosley Radio and Television Ltd.	-	-	-	-	1,680	48,285	76,161	126,126
Crystal (formerly Jewel) Radio	-	-	-	4,108	8,635	14,223	23,526	50,492
De Forest Corp.	505,313	-	-	-	-	-	-	505,313
Deseronto Electronics Ltd.	-	-	3,582	6,799	2,765	7,807	2,242	23,195
Dominion Electrohome Industries	570,692	61,916	70,806	69,487	62,277	74,521	92,759	1,002,458
Dubeau & Freres	907	-	-	-	-	-	-	907
Electrical Products Mfg. Co.	4,513	16,144	22,061	27,976	25,730	26,715	39,083	162,222
Electronic Leaders Inc.	-	-	-	-	-	-	1,755	1,755
Emerald Television	-	-	-	-	-	-	969	969
Fada Radio Ltd.	104,010	-	-	-	-	-	-	104,010
Federal Radio	23,441	-	-	-	-	-	-	23,441
Freshman-Freed	45,610	-	-	-	-	-	-	45,610
General Motors Ltd.	26,491	74	123	796	8,397	6,216	11,781	53,878
Grigsby-Grunow	15,584	-	-	-	-	-	-	15,584
Hallicrafters Canada Ltd.	-	-	-	-	-	9,447	35,611	45,058
Hermes Radio	1,592	533	-	-	-	-	-	2,125
Hudson Motors	3,521	-	-	171	1,317	1,220	587	6,816
Kennedy, Colin B.	8,643	-	-	-	-	-	-	8,643
King Quality	61,321	-	-	-	-	-	-	61,321
King, H. H. & Co.	28,725	-	-	-	-	-	-	28,725
La Salle Radio	3,997	-	-	-	-	-	-	3,997
Malcolm & Hill	156,010	-	-	-	-	-	-	156,010
Manning Radio	-	-	758	227	124	143	22	1,274
Measurement Engineering	570	533	35	17	11	-	-	1,166
Moffats Limited	39,042	13,082	15	1	-	-	-	52,140
Mohawk Radio	133,545	-	-	-	-	-	-	133,545
Monarch Radio Mfg. Co.	4,857	2,009	2,507	2,888	3,140	2,365	1,014	18,780
Motorola Canada Ltd.	-	-	-	-	-	34,791	116,199	150,990

CGE-3-57

Schedule No. 2 cont'd.

Licensee	Total to Dec.31, 1947	1948	1949	1950	1951	1952	1953 Total to Sep.30/53	Tot. Sep.30/53
Industrial Radioelectric Ent. Ltd.	$ -	$ -	$ -	$ -	$ -	$ 543	$ 1,105	$ 1,648
Meteor Television Ltd.	-	-	-	-	-	99	-	99
Murphy Bros.	-	-	-	-	68			68
McLagan Erla Co.	25,000	-	-	-	-	-	-	25,000
Nash Motors of Canada Ltd.	-	-	-	-	618	941	308	1,867
Northern Tool & Gauge	-	-	522	-	-	-	-	522
Northland Radio	21,426	-	-	-	-	-	-	21,426
Philco Corporation	1,036,239	-	-	-	-	-	-	1,036,239
Pye Canada Ltd.	-	-	2,300	5,666	8,078	12,271	7,610	35,925
Radiolectric Mfg. Ltd.	-	-	-	-	-	-	299	299
Research Industries Ltd.	243	673	1,410	570	481	806	167	4,350
S. Smith (Radiomobile) Ltd.	-	-	-	-	1,334	2,234	343	3,911
Silver Marshall	19,541	-	-	-	-	-	-	19,541
Sonora Corporation	55,306	-	-	-	-	-	-	55,306
Sparton of Canada Ltd.	426,501	25,667	20,631	19,355	16,681	28,675	28,315	565,825
Splitdorf Electric	31,873	-	-	-	-	-	-	31,873
Stark Electronic Instruments	30	42	-	-	-	-	-	72
Steinite Co.	21,805	-	-	-	-	-	-	21,805
Stewart-Warner Corp.	424,332	22,970	30,102	22,199	38,282	23,134	31,813	592,832
Stromberg-Carlson Co. Ltd.	349,039	29,058	25,131	28,454	20,790	10,317	176	462,965
Superb Electric	-	-	-	-	-	-	2,185	2,185
Temple Radio Ltd.	41,200	-	-	-	-	-	-	41,200
Thorcraft Ltd.(formerly Thorkelson)	-	251	636	437	259	98	17	1,698
Transvision-Television (Canada) (formerly General Radio)	2,433	5,600	5,600	5,499	1,661	1,389	3,999	26,181
Triton Electronics Ltd.	-	-	-	-	-	-	77	77
United Television Co. Ltd.	-	-	-	-	-	-	7,980	7,980
Venus Television Ltd.	-	-	-	-	-	4,776	799	5,575
Wemac Distributors	2,107	1,599	17	-	-	-	-	3,723
Williams Piano Co.	59,919	-	-	-	-	-	-	59,919
Workrite Radio	34,256	-	-	-	-	-	-	34,256
Miscellaneous	40,260	-	-	-	-	-	-	40,260
Shareholder Companies(Stencil Sales)	-	-	3,179	14,916	13,465	11,602	23,664	66,826
Total	$4,916,709	$240,440	$271,660	$333,653	$336,746	$493,742	$602,313	$7,195,703

CGE-3-58

Schedule No. 3

ROYALTY PER UNIT
1927 - 1953 (to Sept. 30)

Year		Average Royalty per Unit*	Radio Only	TV Only
1927	-	$ 7.62		
1928	-	7.22		
1929	-	5.47		
1930	-	4.41		
1931	-	2.83		
1932	-	1.98		
1933	-	2.05		
1934	-	2.51		
1935	-	2.51		
1936	-	2.35		
1937	-	2.17		
1938	-	1.75		
1939	-	1.18		
1940	-	1.11		
1941	-	1.13		
1942	-	1.26		
1943	-	-		
1944	-	-		
1945	-	.77		
1946	-	1.00		
1947	-	1.06		
1948	-	1.12		
1949	-	1.12	1.05	5.36
1950	-	1.32	1.11	5.73.
1951	-	1.65	1.25	6.16
1952	-	2.07	1.12	5.45
1953(to Sept. 30)	-	1.99	1.09	5.30

* Includes radio receivers, electric phonographs and television receivers.

OGE-3-59

Schedule No. 4

COMPARISON OF ROYALTY-PAYING LICENSEES' SALES TO INDUSTRY SALES (RADIO RECEIVERS ONLY)

Year	Total Canadian Sales	Royalty-Paying Licensees' Sales	% Royalty-Paying Licensees' Sales to Industry Sales
1931	286,122	172,612	60.3%
1932	133,454	62,058	46.5
1933	130,493	56,900	43.6
1934	168,830	51,954	30.8
1935	190,289	67,712	35.6
1936	248,191	93,097	37.5
1937	264,209	98,496	37.3
1938	251,166	108,206	43.1
1939	370,568	137,601	37.1
1940	442,933	169,495	38.3
1941	399,556	158,358	39.6
1942	209,163	78,883	37.7
1943	-	-	-
1944	-	-	-
1945	-	-	-
*1946	588,602	221,904	37.7
1947	899,866	356,840	39.4
1948	621,117	207,463	33.4
1949	763,140	231,868	30.3
1950	765,703	233,743	30.5
1951	583,487	179,661	30.8
1952	599,879	174,176	29.0
1953 (to Sept.30)	482,271	233,319	48.4
	8,399,039	3,094,346	32.9

* Prior to 1946, the sales of Philco Corporation were in the royalty-paying licensees' column. Philco sales are now in total sales column and affect the percentages accordingly.

CGE-3-60

Schedule No. 5

COMPARISON OF ROYALTY-PAYING LICENSEES' SALES TO INDUSTRY SALES (TELEVISION RECEIVERS ONLY)

Year	Total Canadian Sales	Royalty-Paying Licensees' Sales	% Royalty-Paying Licensees' Sales to Industry Sales
1949	8,237	4,340	52.68%
1950	29,872	11,992	40.14
1951	43,025	18,008	41.85
1952	147,924	51,539	34.84
1953 (to Sept.30)	263,333	65,133	24.73
	492,391	151,012	30.67%

CGE-3-61

Schedule No. 6

LICENSEES' GROSS ROYALTIES BY MONTHS
(JANUARY 1947 TO OCTOBER 1953)

	DOLLARS						
	1947	1948	1949	1950	1951	1952	1953
January	30,359	17,424	19,288	15,885	31,441	19,900	67,022
February	33,111	17,743	15,230	20,059	37,902	23,872	71,525
March	28,690	17,099	19,627	26,195	48,833	22,677	92,344
April	31,069	20,246	23,205	24,150	46,980	26,320	68,395
May	25,767	16,485	20,353	22,833	16,613	35,352	63,878
June	24,957	9,776	19,984	23,774	13,539	31,993	56,825
July	16,972	6,693	13,061	23,816	14,903	39,278	40,796
August	24,510	20,304	20,979	23,266	19,787	57,649	52,262
September	29,431	25,175	23,761	37,717	25,103	41,109	89,266
October	41,713	29,093	28,373	40,192	28,595	50,402	116,557
November	56,568	32,468	34,832	40,659	25,182	67,679	
December	40,148	28,172	32,966	35,307	26,852	77,511	
Total	$383,295	$240,678	$271,659	$333,853	$335,730	$493,742	$718,870

CGE-3-62

Schedule No. 7

1954 ROYALTY COLLECTIONS
AND
LICENSEES' AVERAGE ROYALTY PER UNIT

(Radio and Television Receivers, Electric Phonographs)

Licensee	Units	Gross Royalties	Licensee's Average Royalty per Unit
Addison Industries Ltd.	9,324	$ 32,227.	$ 3.46
Canadian Admiral Corp Ltd.	20,733	90,053	4.34
Can. Aviation Electronics Ltd.	487	4,083	8.38
Chisholm Industries Ltd.	2,695	6,453	2.39
Coronet Television Corp.	8,533	37,083	4.35
Crosley Radio & Television Ltd.	34,182	48,285	1.41
Crystal (Jewel) Radio Co.	16,377	14,223	.87
Deseronto Electronics Ltd.	10,776	7,807	.72
Dominion Electrohome Industries	32,267	74,521	2.31
Electrical Products Mfg. Co.	17,894	26,715	1.49
Electronic Leaders Inc.			
Emerald Television			
General Motors Ltd.	4,144	6,216	1.50
Hallicrafters(Canada) Ltd.	4,265	9,447	2.22
Hudson Motors	813	1,220	1.50
Industrial Radioelectric Ent.Ltd.	62	543	.88
Manning Radio	3	143	47.67
Measurement Eng. Ltd.			
Monarch Radio Mfg. Co.	3,496	2,365	.68
Motorola (Canada) Ltd.	21,173	34,791	1.64
Nash Motors	627	941	1.50
Provincial Distributing			
Pye (Canada) Ltd.	5,159	12,271	2.38
Radiolectric Mfg. Ltd.			
Research Industries Ltd.	265	806	3.04
Sparton of Canada Ltd.	13,509	28,675	2.12
Stewart Warner Corp.	19,589	23,134	1.18
Stromberg Carlson Co.	7,181	10,317	1.44
Superb Electric			
Thorcraft Ltd.	93	98	1.05
Transvision Television Ltd.	1,518	1,389	.92
Triton Electronics			
United Television Co. Ltd.			
Venus Television Ltd.	1,074	4,776	4.45
Brand & Millen		1,225	-
Meteor Television Ltd.	17	99	5.82
S. Smith Radiomobile	1,489	2,234	1.50
Shareholder Cos.	2,198	11,602	5.28
	239,943	$493,742.	$ 2.06

CGE-3-6

Schedule No. 8

1953 ROYALTY COLLECTIONS
AND
LICENSEES' AVERAGE ROYALTY PER UNIT

January 1 1953 to September 30 1953
(Radio and Television Receivers, Electric Phonographs)

Licensee	Units	Gross Royalties	Licensee's Average Royalty per Unit
Addison Industries Ltd.	9,072	$ 32,218.	$ 3.55
Brand and Millen		433	
Canadian Admiral Corp. Ltd.			
Can. Aviation Electronics Ltd.	3,266	27,205	8.33
Chisholm Industries Ltd.	914	2,199	2.41
Coronet Television Corp.	7,712	29,732	3.86
Crosley Radio & Television Ltd.	41,183	76,161	1.85
Crystal (formerly Jewel) Radio	33,024	23,526	.71
Deseronto Electronics Ltd.	3,297	2,242	.68
Dominion Electrohome Ind.	36,271	92,759	2.56
Electrical Products Mfg. Co.	24,888	39,083	1.57
Electronic Leaders Inc.	330	1,755	5.32
Emerald Television	113	969	8.58
General Motors	7,254	11,781	1.62
Hallicrafters (Canada) Ltd.	14,362	35,611	2.48
Hudson Motors	391	587	1.50
Industrial Radioelectric Ent. Ltd.	152	1,105	7.27
Manning Radio	2	22	11.00
Measurement Engineering			
Monarch Radio Mfg. Co.	1,629	1,014	.62
Motorola (Canada) Ltd.	67,764	116,159	1.71
Nash Motors	205	308	1.50
Provincial Distributing			
Pye (Canada) Ltd.	2,598	7,610	2.93
Radioelectric Mfg. Ltd.	70	299	4.27
Research Industries Ltd.	46	167	3.63
Sparton of Canada Ltd.	9,682	28,315	2.92
Stewart Warner Corp.	24,135	31,813	1.32
Stromberg Carlson Ltd.	34	176	5.18
Superb Electric	386	2,185	5.66
Thorcraft Ltd.	19	17	.89
Transvision Television Ltd.	6,798	3,999	.59
Triton Electronics	44	77	1.75
United Television Co. Ltd.	1,607	7,980	4.97
Venus Television Ltd.	179	799	4.46
S. Smith Radiomobile	79	343	4.34
Shareholder Cos.	4,655	23,664	5.08
	302,161	$602,313.	$ 1.99

CGE3-64

Schedule No. 7

DIVIDENDS

The dividends paid to shareholder companies since incorporation have amounted to $3,966,875.00. Details of the amounts paid individual shareholder companies are shown in the following Schedule:-

DIVIDENDS DECLARED

Dividend No.	Date	C. G. E.	Marconi	Northern	C. W. C.	Can. Radio	Total
1	Jan/28	$ 40,625.00	$ 40,625.00	$ 40,625.00	$ 40,625.00	$ 16,250.00	$ 178,750.00
2	Feb/29	40,625.00	40,625.00	40,625.00	40,625.00	16,250.00	178,750.00
3	Dec/29	75,000.00	75,000.00	75,000.00	75,000.00	30,000.00	330,000.00
4	Mar/30	62,500.00	62,500.00	62,500.00	62,500.00	25,000.00	275,000.00
5	Dec/30	93,750.00	93,750.00	93,750.00	93,750.00	37,500.00	412,500.00
6	Dec/31	62,500.00	62,500.00	62,500.00	62,500.00	25,000.00	275,000.00
7	Mar/33	53,125.00	53,125.00	53,125.00	53,125.00	21,250.00	233,750.00
8	Feb/34	31,250.00	31,250.00	31,250.00	31,250.00	12,500.00	137,500.00
9	Mar/35	37,500.00	37,500.00	37,500.00	37,500.00	15,000.00	165,000.00
10	Feb/36	37,500.00	37,500.00	37,500.00	37,500.00	15,000.00	165,000.00
11	Feb/37	37,500.00	37,500.00	37,500.00	37,500.00	15,000.00	165,000.00
12	Feb/38	37,500.00	37,500.00	37,500.00	37,500.00	15,000.00	165,000.00
13	Feb/39	14,062.50	14,062.50	14,062.50	14,062.50	5,625.00	61,875.00
14	Mar/40	14,062.50	14,062.50	14,062.50	14,062.50	5,625.00	61,875.00
15	May/42	14,062.50	14,062.50	14,062.50	14,062.50	5,625.00	61,875.00
16	Jan/43	37,500.00	37,500.00	37,500.00	37,500.00	15,000.00	165,000.00
17	Feb/44	14,062.50	14,062.50	14,062.50	14,062.50	5,625.00	61,875.00
18	Feb/46	42,187.50	42,187.50	42,187.50	42,187.50	16,875.00	185,625.00
19	Nov/47	31,250.00	31,250.00	31,250.00	31,250.00	31,250.00	156,250.00
20	Dec/48	18,750.00	18,750.00	18,750.00	18,750.00	18,750.00	93,750.00
21	Dec/49	18,750.00	18,750.00	18,750.00	18,750.00	18,750.00	93,750.00
22	Jan/51	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	125,000.00
23	Dec/51	18,750.00	18,750.00	18,750.00	18,750.00	18,750.00	93,750.00
24	Dec/52	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	125,000.00
		$882,812.50	$882,812.50	$882,812.50	$882,812.50	$435,625.00	$3,966,875.00

CGE-3-65

INDUSTRY STATISTICS

Schedules Nos. 10 to 25 inclusive on the following pages provide general statistical information relating to the Canadian radio and television industry.

Schedule No. 10 on page 22, shows the manufacturers yearly production sales and year-end inventories. These figures were taken from the Dominion Bureau of Statistics reports and include both the dollar value of factory production and the selling prices to the Consumer (including sales and exciseTaxes).

Schedule No. 11 on page 23 shows the monthly sales of radio receivers in Canada from January 1937 to July 1953 as taken from the Dominion Bureau of Statistics reports.

Schedule No. 12 on page 24 shows the sale of radio receivers by types, expressed as a percentage of the total yearly sales.

Schedules Nos. 13, 14, 15, 16, 17, 18, 19 and 20 are taken from the Radio-Television Manufacturers Association statistical reports and show the member Companies' radio and television domestic sales.

Schedule No. 13 on pages 25 to 27 shows the radio receiver unit sales by types for years 1946 to 1952 inclusive.

Schedule No. 14 on pages 28 and 29 shows the radio receiver unit sales by areas for years 1946 to 1952 inclusive.

Schedule No. 15 on page 30 shows the radio receiver dollar value of sales for years 1940-1953 inclusive.

Schedule No. 16 on page 31 shows the television receiver sales by types for years 1949 to 1952 inclusive.

Schedule No. 17 on page 32 shows the television receiver sales by areas for years 1949 to 1952 inclusive.

Schedule No. 18 on page 33 shows the television receiver dollar value of sales for years 1949 to 1952 inclusive.

Schedule No. 19 on page 34 shows the radio receiver set sales by areas and types for the year 1953 to October 31.

Schedule No. 20 on page 35 shows the television set sales by areas and types for the year 1953 to October 31.

CGE-3-66

Schedule No. 21 on page 36 indicates the importation of radio receivers both duty-paid and duty-free (returning Canadian Tourists) from the United States.

Exports of Canadian made radio receivers by months for the years 1947 to July 1953 are shown on Schedule No. 22 on pages 37 and 38 and exports by countries for the years 1947 to July 1953 are shown on Schedule 23 on pages 39, 40 and 41.

For general comparison purposes, Schedule No. 24 and 25 on pages 42 and 43 showing the yearly sales of radio and television receivers in the United States has been included in this survey.

CGE-3-6

Schedule No. 10

MANUFACTURERS' PRODUCTION, SALES AND YEAR-END INVENTORIES OF RADIO RECEIVERS IN CANADA

(From Dominion Bureau of Statistics Reports)

	P R O D U C T I O N			* S A L E S			INVENTORY
Year	Units	Value (at Factory Prices)	Average Unit Value (at Factory Prices)	Units	Total List Price Value	Average Unit List Price	At Dec. 31 Units
					$	$	
1925	48,531	$ 2,278,292.	$46.95				
1926	42,430	2,253,098.	53.10				
1927	47,500	3,748,022.	78.92				
1928	81,032	7,486,127.	92.36				
1929	150,050	15,904,148.	105.99	185,000			
1930	170,082	19,196,936.	112.80	223,228			25,852
1931	291,711	18,555,710.	63.60	286,122			34,521
1932	121,468	6,808,877.	56.05	133,454			32,175
1933	112,272	4,401,313.	39.20	130,493			13,039
1934	188,710	8,196,238.	43.43	167,177			34,387
1935	191,293	9,493,399.	49.62	190,289	16,513,520.00	86.78	35,909
1936	253,896	11,388,173.	44.85	247,920	22,175,833.00	89.45	40,299
1937	269,247	11,096,717.	40.43	265,855	22,629,506.00	85.12	67,162
1938	242,721	8,801,981.	36.29	251,259	19,877,777.00	79.11	57,038
1939	348,507	8,078,130.	24.90	370,568	20,005,519.00	53.99	40,530
1940	485,010	11,268,339.	23.23	438,976	23,551,572.00	53.65	97,379
1941	386,372	9,215,304.	23.85	399,596	23,283,944.00	58.27	50,123
1942	177,149	4,062,401.	22.93	209,163	14,404,236.00	68.86	13,665
1943	979	18,840.	19.24	22,201	(Not available)		(not available)
1944	-	-	-	595	(Not available)		(not available)
1945	50,317	979,173.	19.46	44,343	(Not available)		(not available)
1946	603,199	15,759,724.	26.12	508,320	28,849,115.00	57.62	16,599
1947	844,276	33,081,220.	39.23	836,419	60,399,221.00	72.21	108,174
1948	639,493	25,411,443.	39.74	596,467	49,351,338.00	82.74	104,452
1949	791,051	29,411,911.	37.18	724,517	53,629,786.00	75.92	109,033
1950	820,772	33,497,785.	40.81	758,619	59,159,854.00	77.98	145,198
1951	628,395	29,635,311.	47.16	574,232	51,452,212.00	89.60	199,301
1952	567,758	22,178,020.	39.06	568,884	50,125,290.00	88.11	198,215
1953	396,126	(not available)		338,302	29,570,818.00	87.23	250,039

* Does not include export.

CGE-3-68

- 23 -

Schedule No. 11

CANADIAN MANUFACTURERS' MONTHLY SALES OF RADIO RECEIVERS
(From Dominion Bureau of Statistics Reports)

	1937	1938	1939	1940	1941	1942	1943-45	1946	1947	1948	1949	1950	1951	1952	1953
Jan.	8,395	10,255	10,287	23,559	23,951	30,704	NO DETAILED RECORD	31,659	66,041	39,046	40,794	37,351	50,685	29,719	37,544
Feb.	10,295	9,035	12,103	25,474	27,003	27,246		35,843	79,718	35,833	44,208	40,597	56,848	34,702	47,880
Mar.	10,928	8,259	12,183	23,481	25,516	28,005		42,200	63,339	40,551	55,283	54,533	60,000	31,482	57,824
Apr.	10,996	7,456	12,853	21,900	30,207	18,443		42,841	47,724	31,157	50,432	56,190	57,476	38,774	60,099
May	11,119	6,374	14,300	25,942	21,664	16,544		44,954	61,586	32,256	50,102	50,930	38,792	44,480	50,540
June	16,049	10,385	17,749	33,304	27,804	17,939		29,493	60,683	20,550	63,350	53,871	32,930	39,289	47.754
July	20,222	13,588	23,816	29,996	30,039	13,625		60,022	50,143	19,303	42,750	47,503	28,804	38,030	30,050
Aug.	26,080	25,927	29,930	35,266	38,104	10,216		45,007	51,006	45,752	49,568	58,917	30,311	41,277	
Sept.	34,827	30,473	62,031	51,289	50,812	14,714		43,503	63,095	78,228	63,413	91,209	42,390	57,740	
Oct.	34,373	35,518	43,991	54,792	49,340	10,888		40,105	87,008	75,209	71,093	81,000	39,207	62,807	
Nov.	25,903	28,908	34,782	57,517	40,599	11,025		64,177	114,933	79,427	83,942	91,043	59,104	73,223	
Dec.	23,156	18,722	38,255	58,148	35,244	9,802		81,850	80,940	80,447	100,573	84,483	59,342	78,873	

CGE-3-69

Schedule No. 12

CANADIAN SALES OF RADIO RECEIVERS BY TYPES
(Indicated as Percentage of Total Yearly Sales)

	1935	1936	1937	1938	1939	1940	1941	1942	*	1946	1947	1948	1949	1950	1951	1952
AC (and AC/DC) Receivers																
Table	29.1%	30.1%	28.6%	33.2%	43.7%	47.4%	51.1%	54.8%		66.8%	58.9%	54.4%	54.1%	56.5%	55.1%	60.3%
Console	41.7%	37.3	35.2	31.2	21.0	18.3	14.7	10.1		1.1	1.7	2.6	1.2	.9	.4	.17
** Combinations (Table & Console)	.2	.4	.4	.4	1.2	2.0	4.1	6.5								
Table										5.9	7.1	7.3	2.2	2.0	1.0	1.31
Console										2.4	6.8	12.3	10.8	14.1	14.6	13.1
Total AC (& AC/DC) Receivers	71.0	67.8	64.2	64.8	65.9	67.7	69.9	77.4		76.2	74.5	76.6	68.3	73.5	71.	74.8
Battery Receivers																
Table	11.3	15.8	19.8	20.7	24.8	20.4	17.5	16.2		19.1	13.2	6.8	4.1	2.8	2.9	2.7
Colsole	9.0	8.8	7.4	5.9	3.4	1.6	1.0	1.3			.6	.5	.5	.2	.6	.06
Total Battery	20.3	24.6	27.2	26.6	28.2	22.0	18.5	17.5		19.1	13.8	7.3	4.6	3.0	2.9	2.7
Auto Receivers	8.6	7.5	8.6	8.6	5.9	6.5	7.6	3.3		3.9	9.1	9.7	18.9	16.9	21.7	18.3
Portable Receivers	.1	.1				3.8	4.0	1.8		.8	2.0	6.4	8.2	6.6	4.4	4.2
Total Table (not includ. Comb)	40.4	45.9	48.4	53.9	68.5	67.8	68.6	71.0		85.9	72.1	61.2	58.2	59.3	58.	62.9
Total Console (not includ. Comb)	50.7	46.1	42.6	37.1	24.4	19.9	15.7	17.4		1.1	2.3	3.1	1.7	1.1	.4	.2
Total Comb. (Table & Console)	.2	.4	.4	.4	1.2	2.0	4.1	6.5		8.3	13.9	19.6	13.0	16.1	15.5	14.4
Total Auto and Portable	8.7	7.6	8.6	8.6	5.9	10.3	11.6	5.1		4.7	11.7	16.1	27.1	23.5	26.1	22.5

* Production curtailed (wartime restrictions).

** No breakdown between table and console combinations 1935-1942.

CG53-73

Defendant's Exhibit No. 139.

Sept. 1, 1953

RADIO RECEIVER UNIT SALES BY TYPES (RTMA)

1946 - 1952 BY MONTHS

	TOTAL	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.
Home Sets Standard													
1946	298,332	23,696	19,511	22,502	25,770	24,535	12,147	30,355	23,789	18,706	20,462	37,861	38,798
1947	392,494	31,440	35,067	28,835	23,228	35,774	29,806	22,352	23,828	31,011	42,991	50,355	37,807
1948	270,992	19,609	17,146	16,778	11,543	11,344	11,182	12,574	16,742	36,567	34,964	40,325	42,218
1949	369,431	20,140	20,649	30,204	17,159	20,791	29,535	19,858	19,668	32,121	38,501	49,716	71,089
1950	400,984	22,706	24,675	29,197	24,794	23,441	23,584	19,528	29,601	53,194	46,395	53,816	50,053
1951	288,480	24,330	28,682	34,448	27,996	13,908	9,265	11,348	13,123	20,839	27,049	37,555	39,937
1952	311,937	15,612	17,231	13,555	16,597	22,531	18,483	16,415	19,047	31,932	39,178	48,912	50,444
Total	2,332,650	157,733	162,961	175,519	149,087	152,324	134,002	132,430	145,798	224,370	249,540	318,540	330,346
Home Sets Multiband													
1946	85,899	3,551	8,200	8,572	7,036	6,062	4,925	12,506	6,384	3,723	4,256	5,918	14,766
1947	95,633	13,136	12,299	9,240	7,265	4,358	6,031	4,145	4,521	6,327	9,849	7,850	10,612
1948	46,141	3,221	2,405	2,664	2,856	3,545	3,785	1,769	3,210	5,262	7,426	5,719	4,279
1949	40,338	3,022	2,813	1,943	3,820	2,736	2,095	1,811	2,904	4,439	5,486	5,827	3,442
1950	25,609	1,649	1,363	3,246	1,864	1,213	992	1,480	1,805	3,390	2,700	3,297	2,610
1951	20,638	1,319	1,376	1,472	1,902	1,267	991	679	1,267	1,904	2,961	3,284	2,215
1952	20,399	1,684	1,241	1,208	915	1,594	1,077	680	1,655	1,659	4,086	2,617	1,947
	334,657	27,582	29,697	28,346	25,694	20,775	19,896	23,070	21,746	26,704	36,764	34,512	39,871
Home Sets Battery													
1946	108,679	2,823	4,417	8,337	8,161	7,351	6,137	11,828	9,194	12,977	11,235	11,078	15,141
1947	111,924	7,676	12,235	7,907	11,697	9,064	11,986	8,214	3,183	6,867	9,912	12,999	5,184
1948	43,366	2,121	2,144	2,029	1,767	1,664	2,038	1,360	5,945	8,195	7,639	5,730	2,734
1949	36,498	1,478	1,886	2,252	2,015	1,599	4,950	3,121	4,467	6,287	5,010	2,545	888
1950	23,385	567	942	644	1,139	886	3,799	1,817	1,821	2,574	3,895	3,474	1,827
1951	16,281	982	1,660	1,285	1,031	962	510	736	3,216	1,354	1,111	1,474	1,960
1952	15,030	905	683	718	1,762	558	1,947	613	1,864	2,083	1,784	1,347	766
	355,163	16,552	23,967	23,172	27,972	22,084	31,367	27,689	34,690	40,337	40,586	38,647	28,500

Schedule No. 13

CGE-3-7

Page 2

RADIO RECEIVER UNIT SALES BY TYPES (RTMA)

1946 - 1952 BY MONTHS

	TOTAL	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.	OCT	NOV.	DEC.
Portables													
1946	4,434	1,369	595	129	45	214	24	230	467	267	131	188	775
1947	21,176	565	791	1,772	3,340	3,029	1,780	2,351	2,419	1,622	1,652	821	1,034
1948	34,287	1,040	1,220	983	1,577	5,786	3,829	2,318	1,858	5,558	2,332	4,371	3,415
1949	53,722	2,032	2,856	2,516	4,709	8,609	6,961	6,481	5,082	3,334	4,767	2,873	3,502
1950	50,231	1,120	1,626	3,834	5,604	9,675	8,911	6,941	3,845	2,871	1,802	2,072	1,930
1951	24,374	890	1,576	2,105	4,019	3,790	4,176	2,318	1,233	1,128	837	842	1,460
1952	22,940	631	539	1,073	2,355	4,627	3,755	2,918	1,153	1,159	1,439	2,150	1,141
	211,164	7,647	9,203	12,412	21,649	35,730	29,436	23,557	16,057	15,939	12,960	13,317	13,257
Combinations Standard													
1946	26,579	7	914	1,866	1,341	2,676	2,697	1,602	2,195	2,987	3,036	3,178	4,080
1947	62,481	4,998	4,259	3,939	4,060	3,312	2,386	2,193	3,121	5,882	7,813	9,938	10,580
1948	70,203	2,829	3,302	5,921	4,865	2,682	1,748	929	5,868	10,550	11,743	10,052	9,714
1949	59,657	5,752	3,779	3,922	3,367	1,295	2,544	2,695	3,454	6,825	7,760	9,735	8,529
1950	69,277	2,620	4,166	5,009	5,470	2,739	3,381	3,998	7,414	10,986	7,086	6,906	9,502
1951	55,284	4,274	5,506	7,140	3,934	2,830	1,343	2,007	5,062	4,269	5,912	6,595	6,412
1952	50,319	4,412	4,204	3,366	3,550	2,342	2,595	1,764	3,382	6,024	6,864	7,028	4,788
	393,800	24,892	26,130	31,163	26,587	17,876	16,694	15,188	30,496	47,523	50,214	53,432	53,605
Combinations Multiband													
1946	20,751	-	545	505	1,049	201	311	2,181	1,908	2,679	2,963	3,575	4,834
1947	50,292	4,025	2,728	3,503	3,238	2,903	2,632	2,332	3,135	3,265	6,896	6,656	8,979
1948	45,335	4,532	2,262	2,150	2,575	2,314	1,319	942	2,982	6,052	7,138	7,195	5,874
1949	38,566	2,432	2,926	2,050	1,851	3,089	788	1,190	2,809	4,446	5,145	5,373	6,467
1950	36,897	1,897	1,788	2,200	1,491	1,065	767	1,093	1,910	5,165	7,143	6,226	6,152
1951	31,304	2,938	2,290	2,268	3,117	761	986	1,137	1,726	3,100	3,890	4,051	5,040
1952	28,854	2,234	2,560	2,037	1,274	967	1,059	863	2,102	3,773	4,333	3,685	3,967
	251,999	18,058	15,099	14,713	14,595	11,300	7,862	9,738	16,572	28,480	37,508	36,761	41,313

Schedule No. 13 (con'd)

CGB-3-72

- 27 -

Schedule 13 (con'd)

Page 3

RADIO RECEIVER UNIT SALES BY TYPES (RTMA)

1946 - 1952 BY MONTHS

	TOTAL	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.
Auto Sets													
1946	21,932	-	442	108	178	2,937	1,658	1,742	2,322	2,214	3,926	3,674	2,751
1947	73,943	1,940	2,143	1,871	1,685	3,536	5,985	8,494	7,303	7,050	7,878	13,681	12,377
1948	51,497	6,256	4,581	8,491	3,849	4,848	5,062	2,864	3,330	4,439	2,971	1,975	3,431
1949	131,758	5,771	8,520	11,835	14,963	12,868	16,480	8,911	12,492	7,616	12,011	10,374	9,917
1950	124,962	7,378	13,384	12,639	16,932	12,992	9,883	[illegible]	9,209	6,932	6,855	9,058	9,759
1951	120,736	11,765	13,012	15,395	13,792	14,263	14,552	7,637	10,396	6,846	4,306	4,619	1,953
1952	100,366	2,998	7,229	9,081	10,396	9,814	8,124	10,674	8,186	8,840	6,095	5,953	12,780
Total	625,194	36,104	49,311	59,420	61,795	60,638	61,764	52,663	53,238	43,937	44,042	49,334	52,968
Total													
1946	566,606	31,646	34,624	42,019	43,580	43,956	27,899	60,444	46,259	43,553	46,009	65,472	81,145
1947	807,943	63,780	69,522	57,067	54,513	61,976	60,606	90,081	52,510	62,024	86,991	102,300	86,573
1948	561,821	39,608	33,060	39,016	29,032	31,583	28,963	22,756	39,935	76,623	74,213	75,367	71,665
1949	729,970	40,627	43,429	54,722	47,884	50,987	63,353	44,067	50,876	65,068	78,680	86,443	103,834
1950	731,345	37,937	47,944	56,769	57,294	52,011	51,317	44,798	55,605	85,112	75,876	84,849	81,893
1951	557,097	46,498	54,102	64,114	55,791	37,781	31,823	28,062	36,023	39,440	46,066	58,420	58,977
1952	549,845	28,472	33,687	31,038	38,885	42,433	37,040	34,127	37,389	55,470	63,779	71,692	75,833
	4,504,627	288,568	316,368	344,745	326,979	320,727	303,001	284,335	318,597	427,290	471,614	544,543	559,860

CGE-3-73

Schedule No. 14

RADIO RECEIVER UNIT SALES BY AREAS AND MONTHS 1946-1952 (R.MA)

	TOTAL	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.
Maritimes													
1946	44,425	3,130	2,263	3,506	3,322	3,648	1,796	4,944	3,481	3,463	2,967	5,024	6,881
1947	63,127	5,937	5,740	3,446	6,483	5,408	5,769	4,319	3,114	4,794	5,168	6,841	6,108
1948	39,608	2,727	2,492	3,242	1,628	1,961	2,037	1,726	2,405	5,568	5,290	5,711	4,821
1949	53,660	2,203	3,875	4,091	3,409	3,377	3,921	2,953	4,037	5,316	6,050	6,204	8,224
1950	55,937	2,765	3,985	4,172	3,949	3,815	3,178	2,918	4,012	9,403	5,500	5,999	6,241
1951	40,931	2,892	4,752	5,170	3,132	1,892	1,663	1,849	2,349	3,205	3,259	4,599	6,169
1952	45,858	1,549	2,078	1,740	2,912	3,409	3,048	3,493	3,703	4,928	6,221	6,995	5,782
Total	343,546	21,203	25,185	25,367	24,835	23,510	21,412	22,202	23,101	36,677	34,455	41,373	44,226
Quebec													
1946	122,036	5,926	8,172	9,391	9,675	10,272	6,228	11,791	10,522	8,746	9,587	13,015	18,711
1947	180,719	13,842	16,602	13,967	12,069	15,867	13,311	10,854	10,743	13,517	18,970	20,724	20,253
1948	129,487	8,127	7,414	8,422	7,619	8,989	5,191	5,374	7,898	16,595	18,992	18,619	16,247
1949	129,579	8,306	8,816	8,419	8,174	8,787	11,049	9,155	8,034	12,124	12,271	15,640	18,804
1950	145,816	7,412	8,362	10,322	10,253	13,629	9,570	8,115	13,038	17,799	13,812	16,812	16,692
1951	110,335	10,808	8,597	11,130	11,255	5,153	5,573	5,617	6,895	7,646	12,872	13,124	11,665
1952	101,269	4,535	7,014	5,363	7,103	9,251	6,692	5,899	6,390	9,259	12,576	13,620	13,367
Total	919,241	58,956	64,977	67,014	66,148	71,948	57,614	56,805	63,520	85,686	99,080	111,554	115,739
Ontario													
1946	236,575	13,224	13,564	16,347	16,813	17,130	12,073	25,270	17,680	17,095	19,403	29,426	38,550
1947	340,967	24,241	28,241	23,491	21,734	23,818	24,670	22,197	21,196	27,180	35,599	47,083	41,517
1948	232,579	19,199	13,747	18,427	11,770	11,615	13,352	9,939	17,114	30,711	26,467	28,659	31,579
1949	388,516	20,731	22,667	32,460	27,203	29,236	37,515	20,960	26,226	28,522	42,162	45,308	55,526
1950	365,003	18,917	26,156	29,304	33,454	26,432	27,305	22,415	24,777	33,273	36,751	43,405	42,814
1951	275,269	22,604	28,365	32,265	28,283	22,471	19,091	15,866	18,100	18,483	18,124	26,561	25,056
1952	258,890	12,599	15,778	16,799	18,571	20,561	17,646	18,355	18,650	24,855	26,294	29,291	39,491
Total	2,097,799	131,515	148,518	169,093	157,828	151,263	151,652	135,002	143,743	180,119	204,800	249,733	274,533
Manitoba													
1946	50,100	2,478	3,017	3,695	5,202	4,096	2,425	5,797	5,373	3,640	4,518	5,357	4,904
1947	64,481	4,878	5,420	4,623	4,295	4,681	3,999	3,956	7,126	4,841	8,653	7,845	4,164
1948	40,287	2,701	2,427	1,899	1,887	1,739	1,516	1,424	3,022	7,719	5,006	5,536	5,411
1949	41,796	2,572	2,000	2,184	2,147	2,230	3,096	3,098	4,548	5,169	[illegible]	4,628	5,526
1950	42,448	2,606	2,480	3,212	2,467	1,256	3,078	3,116	4,253	5,505	[illegible]	4,855	4,511
1951	39,406	2,927	4,178	5,010	3,521	2,460	1,324	1,399	3,901	3,209	[illegible]	3,726	5,425
1952	35,400	2,404	2,078	1,605	2,242	1,951	1,994	1,495	2,518	4,018	4,600	5,465	5,030
Total	313,918	20,566	21,600	22,228	21,761	18,413	17,432	20,285	30,741	34,101	35,210	37,412	34,971

CGE-3-74

Defendant's Exhibit No. 139.

Schedule No. 14 (con'd)

Page 2

RADIO RECEIVER UNIT SALES BY YEARS AND MONTHS 1946-1952 (RTMA)

	TOTAL	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.
Sask.													
1946	31,303	1,553	2,029	2,734	2,434	2,571	1,594	3,543	2,669	2,823	2,840	3,030	3,483
1947	37,560	3,271	3,809	3,074	2,744	3,201	3,134	1,942	2,413	3,089	4,725	3,331	2,827
1948	28,032	1,514	1,580	1,145	1,097	1,761	1,655	1,007	2,891	3,985	4,720	3,811	2,866
1949	28,177	1,695	1,767	1,761	1,689	1,593	1,917	1,745	2,070	4,083	3,620	2,695	3,542
1950	26,304	1,243	1,680	1,867	1,531	1,373	1,801	2,180	1,612	4,433	3,842	2,966	1,776
1951	19,035	1,393	1,546	1,908	2,261	1,166	1,151	653	1,147	1,498	2,001	2,104	2,207
1952	22,502	1,699	1,323	1,115	1,573	1,687	1,660	1,187	1,257	2,683	2,600	3,407	2,311
Total	192,913	12,368	13,734	13,604	13,329	13,352	12,912	12,257	14,059	22,594	24,348	21,344	19,012
Alberta													
1946	35,493	2,018	2,119	2,970	3,099	2,695	1,820	4,137	2,838	3,907	2,330	4,289	3,271
1947	48,387	4,791	4,137	3,738	2,927	3,388	3,878	2,553	2,686	3,729	5,729	6,145	4,686
1948	39,096	1,770	1,774	2,563	1,907	1,545	1,967	1,369	3,242	6,238	6,113	5,950	4,658
1949	42,099	1,961	2,525	3,086	2,691	2,738	2,715	2,714	2,787	4,422	4,941	5,297	6,222
1950	43,314	2,030	2,787	3,793	2,706	2,576	2,983	2,434	3,649	6,653	4,592	5,116	3,995
1951	34,293	2,561	3,320	4,208	3,697	2,765	1,498	1,188	2,198	2,703	2,851	3,881	3,423
1952	43,276	3,168	2,391	2,347	3,403	2,774	3,293	1,817	2,220	5,434	5,656	5,988	4,785
Total	285,958	18,299	19,053	22,705	20,430	18,481	18,154	16,212	19,620	33,086	32,212	36,666	31,040
B.C.													
1946	46,674	3,317	3,460	3,376	3,035	3,546	1,963	4,962	3,696	3,879	4,364	5,331	5,745
1947	72,702	6,820	5,573	4,728	4,261	5,613	5,845	4,260	5,232	4,874	8,147	10,331	7,018
1948	52,732	3,570	3,626	3,318	3,124	3,973	3,245	1,917	3,363	5,807	7,625	7,081	6,083
1949	46,143	3,159	1,779	2,721	2,571	3,026	3,140	3,442	3,174	5,432	5,038	6,671	5,990
1950	52,523	2,964	2,494	4,099	2,934	2,930	3,402	3,620	4,264	8,046	6,270	5,696	5,804
1951	37,828	3,313	3,344	4,423	3,642	1,874	1,523	1,490	1,833	2,696	4,233	4,425	5,032
1952	42,650	2,518	3,025	2,069	3,081	2,800	2,507	1,881	2,651	4,293	5,832	6,926	5,067
Total	351,252	25,661	23,301	24,734	22,648	23,762	21,625	21,572	24,213	35,027	41,509	46,461	40,739
Total													
1946	566,606	31,646	34,624	42,019	43,580	43,956	27,899	60,444	46,259	43,553	46,009	65,472	81,145
1947	807,943	63,780	69,522	57,067	54,513	61,976	60,606	50,081	52,510	62,024	86,991	102,300	86,573
1948	561,821	39,608	33,060	39,016	29,032	31,583	28,963	22,756	39,935	76,623	74,213	75,367	71,665
1949	729,970	40,627	43,429	54,722	47,884	50,987	63,353	44,067	50,876	65,068	78,680	86,443	103,834
1950	731,345	37,937	47,944	56,769	57,294	52,011	51,317	44,798	55,605	85,112	75,876	84,849	81,833
1951	557,097	46,498	54,102	64,114	55,791	37,781	31,823	28,062	36,023	39,440	46,066	58,420	58,977
1952	549,845	28,472	33,687	31,038	38,885	42,433	37,040	34,127	37,389	55,470	63,779	71,692	75,833
Total	4504,627	288,568	316,368	344,745	326,979	320,727	301,001	284,335	318,597	427,290	471,614	544,543	559,860

CGB-D-15

Schedule No. 15

RADIO RECEIVER DOLLAR VALUE SALES AND AVERAGE UNIT SELLING PRICE (RTMA)

1946 - 1952 BY MONTHS

Dollar Value Sales	TOTAL	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE
1946	$ 28,855,142	$ 1,111,010	$ 1,410,257	$ 1,682,479	$ 1,721,053	$ 1,850,537	$ 1,348,408
1947	58,204,218	4,088,077	4,106,797	3,972,602	3,647,132	4,013,393	3,757,593
1948	47,058,470	3,748,676	3,058,964	3,710,865	2,880,270	2,691,608	2,239,077
1949	54,470,021	3,098,828	3,332,285	4,238,168	3,645,388	3,509,985	3,792,335
1950	57,320,400	2,831,088	3,759,177	4,296,342	4,404,288	3,479,347	3,123,037
1951	59,353,692	4,156,590	4,626,614	5,187,492	4,909,821	3,350,727	2,731,790
1952	47,838,393	3,003,925	3,672,974	3,305,435	3,393,364	3,186,073	2,851,624
	$344,100,336	$22,038,194	$23,947,068	$26,393,383	$24,601,316	$22,081,670	$19,843,864

	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
1946	$ 3,155,177	$ 2,470,376	$ 2,509,476	$ 2,958,156	$ 3,693,842	$ 4,944,371
1947	3,481,864	3,683,282	4,479,552	6,591,001	7,703,854	8,679,071
1948	1,330,572	3,124,455	5,983,635	6,179,656	6,261,578	5,849,114
1949	2,896,310	3,466,196	5,167,974	6,307,699	7,452,592	7,562,261
1950	3,144,374	4,293,133	6,939,640	6,793,682	7,239,868	7,036,424
1951	2,535,949	3,646,883	3,813,433	4,619,223	5,352,352	5,422,818
1952	2,744,098	3,301,993	5,083,419	5,709,451	5,789,687	5,796,350
	$ 19,288,344	$23,986,318	$33,977,129	$39,158,868	$43,493,773	$45,290,409

Average Unit Selling Price	TOTAL	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1946	51	35	41	40	39	42	48	52	53	58	64	56	61
1947	72	64	59	90	67	65	62	70	70	72	76	75	100
1948	84	95	93	95	99	85	77	58	78	78	83	83	82
1949	75	76	77	77	76	69	60	66	68	79	80	86	73
1950	78	75	78	76	77	67	61	70	77	82	90	85	86
1951	90	89	86	81	88	89	86	90	101	97	100	92	92
1952	87	106	109	106	87	75	77	80	88	92	90	81	104

CQ5-3-76

Sept. , 1953

* Television receiver unit sales by types not available prior to January 1, 1951

TELEVISION RECEIVER UNIT SALES BY TYPES AND MONTHS 1951-1952 (RTMA)

	TOTAL	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.
Table Models Under $400													
1951	4,143	174	324	338	153	305	139	10	75	388	550	709	978
1952	51,172	839	746	899	800	2,413	1,838	1,703	4,618	6,955	9,229	7,474	11,658
Total	55,315	1,013	1,070	1,237	953	2,718	1,977	1,713	4,693	7,343	9,779	10,183	12,636
Table Models Over $400													
1951	11,460	1,352	1,522	1,735	1,373	418	236	139	267	922	1,205	1,442	849
1952	22,024	1,142	1,048	923	1,429	1,090	930	1,564	2,052	1,383	3,213	3,352	3,898
Total	33,484	2,494	2,570	2,658	2,802	1,508	1,166	1,703	2,319	2,305	4,418	4,794	4,747
Console Models Under $500													
1951	5,173	280	363	432	97	34	8	27	46	377	1,539	1,155	815
1952	39,831	996	726	1,220	1,042	1,686	2,068	2,516	3,458	6,307	6,216	7,253	6,343
Total	45,004	1,276	1,089	1,652	1,139	1,720	2,076	2,543	3,504	6,684	7,755	8,408	7,158
Console Models Over $500													
1951	17,178	1,701	1,637	2,985	2,722	332	100	138	567	1,409	1,468	2,233	1,866
1952	23,909	1,503	1,109	1,221	569	1,042	629	1,183	1,396	3,178	4,386	3,516	4,167
Total	41,087	3,204	2,746	4,206	3,291	1,374	729	1,321	1,963	4,587	5,854	5,749	6,033
Combinations													
1951	2,661	302	442	465	64	27	10	9	9	190	400	355	388
1952	9,437	379	645	455	742	352	205	526	1,267	1,418	577	1,836	1,036
Total	12,098	681	1,087	920	806	379	215	535	1,276	1,608	977	2,191	1,424
Total													
1949	* 8,212												
1950	29,611												
1951	40,615	3,809	4,288	5,955	4,409	1,116	493	323	964	3,286	5,182	5,894	4,896
1952	146,373	4,859	4,274	4,718	4,582	6,583	5,670	7,492	12,790	19,241	23,631	25,431	27,102
Total	224,811	8,668	8,562	10,673	8,991	7,699	6,163	7,815	13,754	22,527	28,813	31,325	31,998

Schedule No. 1C

CGE-3-77

Defendant's Exhibit No. 139.

Sept 4, 1953

Schedule No. 17

* Figure indicates total unit
sales to October 31, 1949

TELEVISION RECEIVER UNIT SALES BY AREAS AND MONTHS 1949-1952 (RTMA)

	TOTAL	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.
Tor.-Hamilton													
1949	3,191										* 2,094	551	546
1950	10,290	315	479	519	517	318	224	503	325	1,134	1,527	2,210	2,219
1951	16,247	1,435	1,224	2,348	1,481	387	189	167	580	1,701	2,067	2,543	2,125
1952	59,756	1,862	1,905	2,386	2,252	3,392	2,398	2,048	4,569	7,933	9,432	9,834	11,745
Total	89,484	3,612	3,608	5,253	4,250	4,097	2,811	2,718	5,474	10,768	15,120	15,138	16,635
Niagara Pen.													
1949	1,360										* 846	253	261
1950	4,541	135	206	221	195	240	207	206	400	443	651	718	919
1951	8,238	628	620	1,040	1,039	216	135	65	191	746	1,188	1,257	1,113
1952	17,454	874	773	704	441	1,003	842	636	1,286	2,433	2,813	2,710	2,939
Total	31,593	1,637	1,599	1,965	1,675	1,459	1,184	907	1,877	3,622	5,498	4,938	5,232
Windsor													
1949	3,169										* 1,817	707	645
1950	13,396	353	711	774	715	637	363	934	1,194	2,188	1,922	1,839	1,766
1951	13,498	1,532	2,251	2,263	1,584	410	105	58	115	564	1,526	1,733	1,357
1952	21,215	1,791	1,372	1,306	1,200	1,223	785	574	1,258	2,520	3,157	3,007	3,022
Total	51,278	3,676	4,334	4,343	3,499	2,270	1,253	1,566	2,567	5,272	8,422	7,286	6,790
Other Areas													
1949	492										* 337	110	45
1950	1,384	42	56	24	44	117	140	91	80	151	167	213	259
1951	2,632	214	193	304	305	103	64	33	78	275	401	361	301
1952	9,685	224	192	273	331	195	237	337	519	1,136	1,822	2,404	2,015
Total	14,193	480	441	601	680	415	441	461	677	1,562	2,727	3,088	2,620
Montreal													
1952	38,263	108	32	49	358	770	1,408	3,897	5,158	5,219	6,407	7,476	7,381
Total Units													
1949	8,212										* 5,094	1,621	1,497
1950	29,611	845	1,452	1,538	1,471	1,312	934	1,734	1,999	3,916	4,267	4,980	5,163
1951	40,615	3,809	4,288	5,955	4,409	1,116	493	323	964	3,286	5,182	5,894	4,896
1952	146,373	4,859	4,274	4,718	4,582	6,583	5,670	7,492	12,790	19,241	23,631	25,431	27,102
Total	224,811	9,513	10,014	12,211	10,462	9,011	7,097	9,549	15,753	26,443	38,174	37,926	38,658

CGE-376

Schedule No. 18

CANADIAN TELEVISION DOLLAR VALUE SALES (FROM RTMA)
YEARS 1949-1953 (NOV.) BY MONTHS

	1949	1950	1951	1952	1953
January	$	$ 340,258	$ 1,979,075	$ 2,464,302	$ 8,880,961
February		593,825	2,215,985	2,182,204	10,788,012
March		628,221	3,131,874	2,298,734	11,237,985
April		603,721	2,500,887	2,172,624	9,250,698
May		546,708	555,297	2,764,212	8,185,485
June		327,136	254,239	2,442,781	4,234,035
July		672,830	187,746	3,398,944	3,579,477
August		819,724	503,098	5,683,208	8,793;275
September		1,631,416	1,726,977	8,629,781	17,001,798
October	*$2,181,777	1,798,621	2,538,780	10,204,684	24,293,928
November	623,458	2,384,894	2,999,309	10,932,198	22,261,633
December	613,267	2,510,731	2,664,235	11,524,010	
	$3,418,508	$12,858,083	$21,237,442	$64,677,682	

* Covers all sales prior to October 31, 1949

CGE-3-79

Schedule NO. 18

CANADIAN TELEVISION RECEIVER DOLLAR VALUE SALES (FROM RTMA)

YEARS 1949 - 1952 BY MONTHS

Dollar Value Sales	January	February	March	April	May	June
1949	$	$	$	$	$	$
1950	340,258	593,825	628,221	603,721	546,706	327,136
1951	1,979,075	2,215,985	3,131,674	2,500,807	555,257	254,239
1952	2,464,302	2,162,204	2,298,734	2,172,684	2,764,212	2,442,781
Total	$4,783,635	$4,972,014	$6,058,629	$5,277,212	$3,866,175	$3,024,156

Dollar Value Sales	July	August	September	October	November	December
1949	$	$	$	$2,181,777	$ 623,436	$ 613,287
1950	672,830	819,724	1,631,416	1,798,621	2,384,894	2,510,731
1951	167,746	503,098	1,726,977	2,538,780	2,999,309	2,664,235
1952	3,398,944	5,683,208	8,629,781	10,204,684	10,932,198	11,524,010
Total	$4,239,520	$7,006,030	$11,988,174	$16,723,862	$16,939,837	$17,312,263

Dollar Value Sales	
1949	3,418,500
1950	12,858,083
1951	21,237,442
1952	64,677,682
Total	$102,191,707

CGE-7-8D

Schedule No. 19

RADIO RECEIVER SET SALES BY AREAS
JANUARY 1. TO OCTOBER 31, 1953

	January	February	March	April	May	June	July	August	September	October	Total
aritimes	2,956	3,066	3,864	4,430	3,048	2,764	2,207	2,940	4,222	4,130	33,627
uebec	6,057	7,887	11,278	9,443	6,264	7,082	6,091	7,947	9,759	10,898	82,706
ntario	19,861	24,158	30,784	32,126	27,193	26,288	19,424	19,082	18,696	23,629	241,241
anitoba	2,065	2,201	2,422	3,516	2,688	1,749	2,114	2,011	3,342	3,970	26,078
ask.	1,210	1,956	1,731	2,109	2,571	1,672	1,046	1,375	1,808	2,270	17,748
lberta	3,181	3,156	3,583	4,363	3,697	3,130	1,963	2,674	4,346	5,433	35,526
. C.	2,195	2,729	2,869	2,825	2,735	3,269	2,226	3,304	3,582	5,112	30,846
otal	37,525	45,153	56,531	58,812	48,196	45,954	35,071	39,333	45,755	55,442	467,772

RADIO RECEIVER SET SALES BY TYPES
JANUARY 1. TO OCTOBER 31, 1953

	January	February	March	April	May	June	July	August	September	October	Total
me Sets											
tandard	14,701	15,607	23,037	17,655	10,758	13,140	14,310	16,644	24,289	30,798	180,939
ulti Band	1,755	2,835	2,344	2,656	1,542	824	881	1,818	2,149	3,140	19,944
attery	529	774	1,190	425	875	882	517	652	1,060	1,127	8,031
lock	3,253	2,972	3,472	4,172	4,479	2,564	1,284	2,800	3,632	4,675	33,303
ortables	537	1,583	2,945	3,188	3,632	5,741	3,723	2,048	1,944	1,470	26,811
uto	13,463	15,808	18,920	25,738	23,287	18,861	11,558	11,795	5,510	6,943	151,883
mbination											
andard	1,510	3,015	2,049	3,571	2,225	2,618	1,793	2,933	5,626	4,541	29,881
ulti Band	1,777	2,559	2,574	1,407	1,398	1,324	1,005	643	1,545	2,748	16,980
	37,525	45,153	56,331	58,812	48,196	45,954	35,071	39,333	45,755	55,442	467,772

Defendant's Exhibit No. 139.

Schedule No. 20

TELEVISION RECEIVER SET SALES BY AREAS
JANUARY 1. TO OCTOBER 31. 1953

	January	February	March	April	May	June	July	August	Sept.	Oct.	Total
Maritimes	2	22	2	23	14	28	67	53	74	138	423
Quebec	5,440	7,700	8,023	6,018	5,369	3,283	2,394	7,846	13,829	24,170	84,072
Toronto	8,864	8,259	8,269	5,289	5,500	2,935	2,783	6,745	14,083	13,037	76,304
Ham.-Niag.	4,195	4,347	4,000	2,116	1,943	993	1,120	2,606	5,309	6,249	32,878
Windsor	1,799	1,663	1,591	1,350	1,281	608	673	1,572	2,805	3,029	16,491
Ottawa & Eastern Ont.	997	909	1,236	2,120	3,079	1,393	883	2,271	3,494	6,015	22,057
Other Ontario	799	828	1,184	1,087	608	473	313	706	1,024	3,592	11,274
Prairies	-	51	29	144	191	118	75	83	55	282	1,027
B.C.	852	1,182	1,926	1,560	2,139	989	1,024	322	1,307	1,958	13,259
All Canada	22,548	25,021	26,260	20,307	20,124	10,880	9,332	22,264	42,040	59,069	258,445

TELEVISION RECEIVER SET SALES BY TYPES
JANUARY 1. TO OCTOBER 31. 1953

	January	February	March	April	May	June	July	August	Sept.	Oct.	Total
TABLE MODELS											
17" and under	7,601	7,049	9,909	6,038	8,726	4,418	3,397	8,785	14,395	15,396	86,374
18" - 22"	5,449	5,706	4,063	3,841	3,260	1,877	1,720	4,888	10,098	19,416	61,532
Over 22"	-	-	-	-	-	-	-	-	-	-	-
CONSOLES											
17" and under	2,725	4,466	2,774	2,716	2,698	1,611	944	2,108	4,571	3,017	28,284
18" - 22"	6,100	5,925	8,189	6,016	4,901	2,749	2,570	5,730	11,155	18,392	72,327
Over 22"	-	-	- 71	- 20	20	30	- 20	12	11	201	351
3 WAY COMBINATIONS											
17" and under	440	608	26	62	60	61	496	313	53	135	2,254
18" and over	233	673	548	1,014	459	128	225	308	1,757	1,918	7,323
	22,548	25,021	26,260	20,307	20,124	10,880	9,332	22,264	42,040	59,069	258,445

CGE-3-82

Schedule No. 21

IMPORTATION OF RADIO RECEIVERS

(Practically 100% from U.S.)

Year	DUTY-PAID IMPORTATIONS		DUTY-FREE IMPORTATIONS (Returning Tourists)	
	Number	Value	Number	Value
1938	8,282	$ 183,828	36,227	685,531
1939	10,437	208,109	48,652	809,564
1940	6,641	165,188	16,763	285,293
1941	2,070	109,960	1,952	31,368
1942	1,111	89,014	1,541	29,849
* 1943	3,509	2,279,087	575	12,310
* 1944	1,802	1,323,907	447	8,077
* 1945	1,012	507,426	711	15,094
1946	23,023	803,421	18,854	660,651
1947	67,979	2,214,488	44,050	1,568,097
1948	1,886	271,425	993	36,096
1949	1,882	203,380	51,994	1,493,581
1950	2,826	254,004	44,124	1,341,204
1951	9,322	583,084	46,497	1,574,383
1952	19,476	1,345,106	62,982	2,312,079
1953 (to July 31)	14,177	678,933	* 17,036	* 674,710

* Dominion Bureau of Statistics report on Duty-Free Importations of radio sets into Canada has been discontinued from June 1, 1953. Figure indicates imports to May 31, 1953.

CGE-3-83

Schedule No. 22

MONTHLY EXPORTS OF CANADIAN-MADE RADIO RECEIVERS
1947 - 1948 - 1949 - 1950

(Prewar exports were practically nil and were not recorded by the Bureau of Statistics. In 1946 13,923 receivers were exported.)

	1947		1948		1949		1950	
	Units	Value	Units	Value	Units	Value	Units	Value
January	8,338	$ 235,489	1,394	$ 55,904	2,124	$ 74,920	2,048	$ 91,653
February	4,517	132,157	3,433	141,017	2,898	106,143	5,336	84,123
March	866	31,822	1,277	43,817	3,925	158,280	2,628	90,801
April	1,910	105,781	1,008	32,171	3,207	130,591	1,714	60,576
May	1,261	78,643	2,144	82,921	5,195	224,635	1,780	81,821
June	4,705	197,780	441	15,146	2,464	93,731	1,604	63,100
July	14,310	355,669	1,142	33,942	2,519	88,244	3,546	78,404
August	2,488	75,763	2,418	66,129	1,546	73,424	2,905	104,577
September	3,917	88,278	2,157	57,108	1,332	57,457	5,802	186,677
October	4,567	85,823	3,410	91,842	2,482	128,041	2,259	105,835
November	4,590	153,762	2,722	81,739	2,463	136,570	2,141	110,434
December	1,174	64,111	6,267	191,652	3,179	154,300	4,564	184,065
	52,043	$1,605,078	27,813	$893,388	33,334	$1,426,936	36,387	$1,248,126

CGE-3-84

Schedule No. 22
Continued.

MONTHLY EXPORTS OF CANADIAN-MADE RADIO RECEIVERS
1951 - 1952 - 1953 (to July 31)

	1951		1952		1953	
	Units	Value	Units	Value	Units	Value
January	2,447	$ 105,112	2,480	77,307	2,551	99,359
February	1,514	86,882	1,512	55,911	2,405	112,754
March	2,804	113,458	2,801	94,398	2,050	124,529
April	2,519	116,664	2,453	112,634	2,892	105,241
May	1,392	64,253	3,404	157,855	1,430	54,296
June	2,489	109,548	5,550	192,248	956	42,818
July	1,572	72,742	1,832	112,407	1,732	67,509
August	2,396	55,707	432	30,919		
September	8,773	102,440	2,450	111,400		
October	4,324	120,853	5,055	237,100		
November	3,877	157,715	3,678	149,025		
December	1,518	34,995	2,484	123,067		
	35,625	$1,200,435	34,131	$1,454,271	14,016	$606,506

CGE-3-85

Schedule No. 23

EXPORTS OF CANADIAN MADE RADIO RECEIVERS
BY COUNTRIES
1950 - 1951 - 1952 - 1953-(to July 31)

Country	1950		1951		1952		1953	
	Units	Value $	Units	Value $	Units	Value $	Units	Value $
Aden	-	-	-	-	-	-	-	-
Afghanistan	1	85	1	82	-	-	-	-
Arabia	193	8,329	1,011	23,323	3,277	78,248	865	22,295
Argentina	167	8,056	8	1,216	4	559	1	115
Australia	1	110	5	619	3	182	4	345
Austria	1	84	-	-	-	-	-	-
Azores	10	265	5	295	-	-	-	-
Bahamas	-	-	50	557	1	40	-	-
Barbados	-	-	-	-	1	90	1	93
Belgian Congo	143	6,806	354	14,457	208	6,501	86	3,296
Belgium	266	7,840	109	1,405	16	5,362	-	-
Bermuda	1	96	-	-	-	-	-	-
Brazil	32	3,903	12	1,808	48	19,692	9	1,366
Br. East Africa	2	224	1	174	1	193	-	-
Br. Guiana	-	-	-	-	-	-	-	-
Br. Honduras	-	-	-	-	-	-	-	-
Br. India	-	-	-	-	-	-	-	-
Br. Malaya	1	95	-	-	39	1,343	-	-
Br. Oceania	13	507	-	-	-	-	-	-
Bolivia	199	9,271	205	10,073	202	2,723	4	386
Bulgaria	-	-	-	-	-	-	-	-
Canary Islands	17	683	43	2,098	2	229	-	-
Ceylon	-	-	26	2,048	8	4,290	-	-
Chile	509	18,383	21	1,559	16	2,363	2	388
China	-	-	-	-	6	6,000	-	-
Colombia	675	36,925	159	14,121	4,490	162,789	694	31,911
Costa Rica	6	258	390	7,133	406	10,870	135	4,375
Cuba	1,367	52,727	383	8,850	1,331	34,059	1,163	35,236
Czechoslovakia	-	-	-	-	-	-	-	-
Dominion Republic	329	10,207	204	5,012	124	3,763	206	12,714
Ecuador	390	16,888	730	18,029	1,105	31,303	512	16,587
Egypt	415	17,604	-	-	132	5,096	-	-
El Salvador	658	25,215	905	31,131	287	14,320	208	9,426
Ethiopia	1	95	1	191	2	308	1	193
France	40	1,365	52	1,274	70	5,518	4	593
French Africa	360	15,543	-	-	44	6,222	30	7,726
Fr. East Indies	167	10,715	5	441	90	49,461	-	-
Fr. West Indies	8	300	6	287	17	621	4	175
Fr. Oceania	102	3,881	41	1,497	132	4,502	43	1,137
Finland	3	114	-	-	1	193	1	47
Germany	35	4,043	-	-				
Greece	171	4,771	5	346	51	1,258	6	945
Guam	2	-	-	-	-	-	-	-
Guatemala	1,029	33,657	484	25,319	31	696	399	32,745
Hawaii	188	9,719	5	405	1	53	-	-
Hayti	108	7,628	110	6,830	60	2,582	58	3,236
Honduras	349	12,210	336	10,833	579	17,389	157	7,264
Hong Kong	-	-	-	-	2	382	28	1,033
Hungary	1	87	-	-	-	-	-	-
Iceland	15	2,524	31	5,396	60	7,473	2	387
India	6	331	49	2,678	206	6,231	-	-
Indonesia	20	4,861	60	2,461	812	116,6[illegible]	357	12,895

CGB-3-86

Defendant's Exhibit No. 139.

Country	1950		1951		1952		1953	
	Units	Value	Units	Value	Units	Value	Units	$ Value
Iran	727	$ [illegible]						
Iraq	50	1,180	50	$ 2,095	-	$ -	1	36
Ireland	-	-	668	16,630	205	7,008	-	-
Israel	37	1,668	1	204	-	-	-	-
Italy	76	2,240	20	1,139	15	831	3	281
Jamaica	3	108	109	3,423	6	3,040	1	93
Japan	634	14,471			2	53	2	67
Jordan	-	-	263	15,323	2,052	72,713	1,077	45,406
Korea	-	-	2	154	1	115	-	-
Leeward & Windward Islands	1	45	- 4	- 82	6 2	3,217 43	- 1	- 93
Liberia	9	689						
Lebanon	-	-			4	4,000	-	-
Madagascar	75	3,448			2	385	-	-
Malaya	-	-	56	2,800	73	2,334	88	4,298
Malta	-	-	205	8,727	-	-	6	505
Mexico	2,312	59,315	-	-	-	-	-	-
Morocco	318	8,681	477	12,874	97	5,414	124	9,013
Netherlands	5	749	436	13,835	244	6,560	120	2,200
Neth. Antilles	181	17,924	17	1,396	17	2,610	2	187
North E. Indies	-	-	118	10,095	164	8,955	71	5,334
North W. Indies	-	-	-	-	-	-	-	-
Neth. Guiana	-	-	-	-	-	-	-	-
Newfoundland	-	-	-	-	-	-	-	-
New Zealand	-	-	-	-	-	-	-	-
Nicaragua	103	4,662	1	44	1	120	-	-
Norway	2	269	69	5,924	187	4,768	74	3,475
Palestine	-	-	-	-	5	2,708	1	545
Panama	831	43,454	-	-	-	-	-	-
Pakistan	492	18,845	708	35,389	1,040	40,370	312	10,339
Paraguay	244	9,007	165	5,829	350	62,103	45	24,129
Persia	-	-	222	10,236	1	115	43	2,574
Peru	2	338	-	-	-	-	-	-
Philippine Is.	524	1,573	4,935	134,593	1,921	58,160	443	25,318
Poland	2	229	61	2,881	959	32,044	333	12,954
Portugal	49	2,519	-	-	-	-	-	-
Port. Africa	149	6,409	115	4,939	232	5,773	7	741
Port. Asia	-	-	43	1,793	11	423	11	234
Puerto Rico	888	38,358	-	-	-	-	—	-
S. Domingo	-	-	294	10,814	34	785	92	5,502
Siam	629	[illegible],340	-	-	-	-	-	-
Spain	16	[illegible]685	2,822	55,011	2,066	47,384	-	-
Spanish Africa	-	-	50	2,323	1	115	5	9,145
St. Pierre	2	118	-	-	-	-	2	186
Switzerland	12	946	1	19	1	14	-	-
Sweden	-	-	6	713	41	1,398	10	479
Syria	11	1,595	-	-	1	193	-	-
Thailand	-	-	61	1,684	-	-	-	-
Trinidad	-	-					777	27,926
Taiwan	-	-			1	111	-	-
Tripoli	-	-					1	37
Turkey	57	1,913	-	-	-	-	-	-
Union of S.Af.	1	32	7	997	9	1,080	-	-
U.S.S.R.	2	191	115	12,065	2,800	32,384	-	-
Un. Kingdom	11	781	-	-	-	-	-	-
			2	224	4	526	2	81
United States	10,581	264,691	5,718	250,826	5,161	202,306	3,774	130,283
U.S. Virgin Is.	-	-	-	-	27	1,110	32	1,127
Uruguay	521	17,372	1,014	26,480	35	8,651	1	194
U.S. Oceania	60	2,210	204	14,355	120	[illegible]	185[illegible]	5,387

CG[illegible]-3-[illegible]

Schedule No. 23
Cont'd.

Country	1950 Units	1950 Value	1951 Units	1951 Value	1952 Units	1952 Value	1953 Units	1953 Value
Venezuela	8,743	340,484	10,382	318,883	2,872	153,005	1,324	69,976
Virgin Islands	36	1,755	10	253	-	-	6	587
Yugo Slavia	1	96	-	-	6	3,217	-	-
Burma	-	-	173	7,437	4	1,272	2	163
Denmark	-	-	1	48	-	-	-	-
Fr.W. Africa	-	-	112	5,234	-	-	-	-
W. Germany	-	-	1	116	-	-	-	-
Greenland	-	-	-	-	1	115	7	878
					1	193	-	-
Total -	36,387	$ 1,248,126	35,625	$ 1,200,435	34,131	$ 1,454,271	14,018	$ 606,506

CGE-3-88

Schedule No. 24

CGE3-89

RADIOS SOLD BY FACTORIES IN THE UNITED STATES
FACTORY SALES AND SALES VALUE OF RADIO SETS
1922 - 1953 to October 31

	HOME	CLOCK*	PORTABLE*	SUB TOTAL	AUTO*	TOTAL	VALUE*
1922	100,000			100,000		100,000	
1923	500,000			500,000		500,000	
1924	1,500,000			1,500,000		1,500,000	
1925	2,000,000			2,000,000		2,000,000	
1926	1,750,000			1,750,000		1,750,000	
1927	1,350,000			1,350,000		1,350,000	
1928	3,250,000			3,250,000		3,250,000	
1929	4,430,000			4,430,000		4,430,000	
1930	3,800,000			3,800,000		3,800,000	
1931	3,485,000			3,485,000	110,000	3,595,000	$104,700,000
1932	2,300,000			2,300,000	145,000	2,445,000	54,400,000
1933	3,435,000			3,435,000	725,000	4,160,000	70,300,000
1934	3,700,000			3,700,000	780,000	4,480,000	94,900,000
1935	4,900,000			4,900,000	1,130,000	6,030,000	128,400,000
1936	6,900,000			6,900,000	1,400,000	8,300,000	169,400,000
1937	6,335,000			6,335,000	1,750,000	8,085,000	165,400,000
1938	6,340,000			6,340,000	800,000	7,140,000	112,300,000
1939	9,560,000			9,560,000	1,200,000	10,760,000	153,400,000
1940	9,720,000			9,720,000	2,130,000	11,850,000	177,100,000
1941	11,060,000			11,060,000	2,600,000	13,660,000	233,600,000
1942**	3,970,000			3,970,000	360,000	4,330,000	102,700,000
1943							
1944							
1945	500,000			500,000		500,000	
1946	13,411,000			13,411,000	1,610,000	15,021,000	410,900,000
1947	17,610,000			17,610,000	3,410,000	21,020,000	703,600,000
1948	13,160,000			13,160,000	3,720,000	16,880,000	531,400,000
1949	7,176,000			7,176,000	3,850,000	11,026,000	292,800,000
1950	8,213,000		1,689,700	9,902,700	4,739,500	14,642,200	359,670,000
1951	5,833,377	756,266	1,304,342	7,913,985	4,544,020	12,458,005	311,699,285
1952	4,181,131	1,892,344	1,704,728	7,778,203	3,242,849	11,021,052	249,847,249
1953 (to Oct.31)	3,431,359	1,752,092	1,510,317	6,693,768	4,507,888	11,201,656	240,546,047
	163,920,867	4,400,702	6,209,087	174,530,656	42,754,257	217,284,913	$4,667,062,581

* All available data shown. Home Sets includes all Radios (except Auto) prior to 1950.

** Civilian production ended April 1942.

Defendant's Exhibit No. 139.

Schedule No. 25

TELEVISION SETS SOLD BY FACTORIES IN UNITED STATES

(1946 to 1953 to October 31)

YEAR	UNITS	VALUE
1946	6,476	$ 1,295,200
1947	178,571	51,428,448
1948	969,800	225,963,400
1949	2,970,100	574,209,433
1950	7,355,100	1,397,469,000
1951	5,311,888	944,028,735
1952	6,193,644	1,063,634,484
1953 (to Oct. 31)	6,204,803	1,149,401,994
Total	29,190,382	5,407,430,694

CGE 3-90

Defendant's Exhibit No. 139.

Alphabetical List of Postwar Licensees.

Licensee	Location
Addison Industries Limited	Toronto
Canadian Admiral Corporation Limited	Port Credit
Canadian Aviation Electronics Limited	Montreal
Chisholm Industries Limited	Vancouver
Coronet Television Corporation (Assignee of Williams Norman & Co.)	Walkerville
Cossor (Canada) Ltd.	Halifax
Crosley Radio and Television Limited	Toronto
Crystal Radio Co. of Canada (Assignee of Jewel Radio Co. of Canada)	Toronto
Deseronto Electronics Limited	Deseronto
Dominion Electrohome Industries Limited	Kitcherner
Electronic Leaders Inc.	Montreal
Electrical Products Manufacturing Company Ltd.	Montreal
Emerald Television Corporation	Montreal
Hackbush Electronics Limited	Toronto
Hallicrafters Canada Limited	Toronto
Industrial Radioelectric Enterprise Limited	Vancouver
Manning Radio Limited	Toronto
Mastervision Corporation Limited	Toronto.
Measurement Engineering Limited	Arnprior
Monarch Radio Limited	Montreal
Motorola Canada Limited	Toronto
Pye (Canada) Limited	Ajax
Research Industries Limited	Vancouver
Sparton of Canada Limited	London
Stark Electronic Instruments Limited	Toronto
Stewart-Warner Corp. of Canada Limited	Belleville
Superb Electric Industries Limited	Toronto
Thorcraft Limited (Assignee of Thorkelson Radio Products)	Winnipeg
Transvision Television (Canada) Limited (Assignee of General Radienics Limited)	Hamilton
Triton Electronics Limited	Toronto
United Television Company Limited	Toronto

Cancelled Licenses.

Book, Samuel A. and Company	Winnipeg
Breadner Company Limited	Ottawa
Brand and Millen Limited	Long Branch
Cam Radio Products Limited	Montreal
Dubeau and Frere	Quebec City
Faust Limited	Montreal
Hermac Radio Limited	Montreal
Meteor Television Corp. Limited	Toronto
Moffats Limited	Weston
Northern Tool and Gauge Limited	Eastview
Northland Radio Industries Limited	Calgary

Radiolectric Manufacturing Company	Windsor
Schroter Electronics Limited	Vernon
Tele-King Television Co. of Canada	Montreal
Venus Television Limited	Toronto
Wamac Distributors Limited	Toronto

Applications Pending

Benco Television Associates	Toronto
Davis Electronics Manufacturing Corp. Ltd.	Montreal
Lynox Electronics Reg'd.	Sherbrooke
Provincial Distributing Co. Reg'd.	Montreal

Special Arrangements.

General Motors of Canada Limited	Oshawa
Hudson Motors of Canada Limited	Toronto
Nash Motors of Canada Limited	Tilbury
S. Smith and Sons (Radiomobile)	London, Eng.

Note—The "Special Arrangements" list could also be considered as including RCA Victor, Philco Corporation, and the five shareholder companies.

Defendant's Exhibit No. 139.

Trade Names of Radio and Television Receivers Currently in Use.

Manufacturer	Trade Name
Addison Industries Limited	Addison
Canadian Admiral Corporation Limited	Admiral
Canadian Aviation Electronics Limited	Dumont
Canadian General Electric Company Limited	General Electric
Canadian Marconi Company Limited	Marconi
Canadian Radio Manufacturing Corp. Limited	Philips Rogers-Majestic
Canadian Westinghouse Company Limited	Westinghouse
Chisholm Industries Limited	Chisholm
Coronet Television Corporation Limited	Coronet
Crosley Radio and Television Limited	Crosley
Deseronto Electronics Limited	Arvin Sni-Dor
Crystal Radio Company of Canada	Crystal Jewel Automatic
Dominion Electrohome Industries Limited	Electrohome
Electronic Leaders Inc.	TravLer
Electrical Products Mfg. Company Limited	Fleetwood
Emerald Television Corporation	Fada
Hackbusch Electronics Limited	Stromberg-Carlson
Hallicrafters Canada Limited	Hallicrafters
Manning Radio Limited	Manning
Monarch Radio Limited	Monarch
Motorola Canada Limited	Motorola
Northern Electric Company Limited	Northern Electric
Philco Corporation of Canada Limited	Philco
Provincial Distributing Reg'd	Wilcox-Gay
RCA Victor Company Limited	RCA Victor
Research Industries Limited	Claredon
Sparton of Canada Limited	Sparton
Stewart-Warner Corporation Limited	Stewart-Warner
Superb Electric Industries Limited	CBS-Columbia

Thorcraft Limited	Thor-Craft
Transvision Television (Canada) Limited (Assignee of General Radionics Ltd.)	Auto-Rola Transvision
Triton Electronics Limtied	Murphy
United Television Limited	Visionaire

—47—

Manufacturers of Stencil Receivers.

Canadian General Electric Co. Limited
Coronet Television Corporation
Dominion Electrohome Industries Limited
Electrical Products Manufacturing Co. Limited
RCA Victor Company Limited
Stewart-Warner Corporation Limited
Transvision Television (Canada) Limited

Principal Purchasers of Stencil Receivers	Trade Names
Eatons of Canada Limited	Aurora Minerva Roamer Viking
Simpson-Sears Limited	Sereneier Silvertone
Hudson Bay Company	Baycrest
Canadian Tire Corp. Ltd.	Supertone
McLeods Limited	Arcadia Coronada
Lindsay Company	Lindsay
Champion Television Limited	Champion
Canadian Fairbanks Morse	Emerson

Radio and Television Receiver Licensees.

1. Addison Industries Limited, Toronto.

Prior to 1939, this licensee was known as Mohawk Radio Limited. Mr. W. J. Addison purchased the controlling interest and, in 1941, changed the name of the company to Addison Industries Limited. Addison added its own cabinet plant in 1947 and manufactures a complete line of radio and TV receivers. Royalty reports and payments are made promptly.

2. Canadian Admiral Corporation Limited, Port Credit.

This licensee is a wholly owned subsidiary of Admiral Corporation in the United States, now one of the major U. S. radio and television manufacturing companies. The Canadian company was established in 1946 with key personnel coming from the U. S. firm, including V. Barreca, the President, and W. M. Hummel, the Secretary-Treasure. The first Admiral receivers appeared on the Canadian market in January 1947 and were produced for Admiral by RCA Victor of Montreal although royalties on the receivers were paid by Admiral. Manufacturing facilities were acquired at the Long Branch Small Arms Plant and production commenced in July 1947. On March 1, 1948 Admiral moved from Long Branch to larger quarters at Malton and, in April 1951 moved into a new $350,000 plant on a 10-acre site at Port Credit. A large addition was made to the Port Credit plant in 1952. This licensee has been very active in television and since 1951 has ranked first in royalty payments to the Company. Details of royalty collection difficulties recently experienced with Admiral appear in another portion of this Survey.

3. Canadian Aviation Electronics, Montreal.

Canadian Aviation Electronics was established in 1951 by K. R. Patrick, formerly of RCA Victor, and a number of prominent Montreal men. The company was originally engaged only in repair, construction and servicing and therefore did not require a patent license. In 1952 Canadian Aviation arranged to manufacture and distribute the DuMont television receivers. The $1,000 advance security deposit was made and royalties have been paid on all receivers sold to date. However Canadian Aviation has not as yet signed a formal license agreement on the grounds that the agreement submitted (the broad scope grey-back license) covers a number of fields in which Canadian Aviation may be interested but does not feel that it should be obligated to pay royalties if others operating in the same fields are not paying. Several follow-ups have recently been made to Canadian Aviation in this matter but the license still remains unsigned.

4. Chisholm Industries Limited, Vancouver.

The license held by Chisholm Industries was originally taken out by Mr. Chisholm in the name of Vancouver Radio Laboratories but the name of the Company was changed in June 1947 and the license transferred. Chisholm Industries specializes in the manufacture of console radio-phonograph combinations and practically all are sold on the West Coast. Recently a 21" TV console has been added to the Chisholm line but to date television production has been very low.

5. Coronet Television Corporation, Windsor.

The license now held by Coronet was originally issued to Williams, Norman and Company of Canada Limited but in 1952 the name of the company was changed to Coronet Television Corporation. Production started in February 1951 following the Muntz design and selling direct to the consumer through Coronet owned stores established first in Windsor and Chatham, then in Toronto, Montreal, Ottawa and other outlets. The owner and president is Mr. W. Hurwitz. This licensee has made rapid progress considering that it was a complete newcomer in the television field and unit sales have been quite high. However there are indications that the financial structure is not sound and for the past six months Coronet has apparently experienced considerable difficulty in getting the leading

—50—

finance companies to handle its paper due to the fact that credit sales were being made to consumers with too little down payment. In this same period we have experienced difficulty collecting royalties from Coronet and have had a number of cheques returned from the bank. However by threat of cancellation of the license and continental follow-ups the amount outstanding has recently been reduced considerably and we now have a group of cheques to be deposited over the next months to bring the account up to date by the year end.

6. Cossor (Canada) Limited, Halifax.

This licensee is affiliated with Cossor of England and to date has been primarily interested in marine radar and test equipment. Plant facilities were transferred from Montreal to Halifax in 1948 and although sample Cossor radio and television receivers were displayed at the Canadian National Exhibition in 1950 and 1951, no sales have been reported to date. Cossor has only executed the original "Blue-backed" receiver license bu the new "Grey backed" license has been submitted and followed up by mail on several occasions. We understand that most of Cossor's activities involve work for the Department of Defense Production but we have also had reports of sales of their products to other Government departments that do not have patent clearance. To date Cossor have ignored all efforts to have them execute the broader scope license.

7. Crosley Radio and Television Limited, Toronto.

After the Brand and Millen bankruptcy in September 1951 (see report on license No. 34) the Crosley Company of the United States took over the assets and formed a new Canadian company Crosley Radio and Television Limited. Crosley moved to new quarters at 121 McCormack Street, Toronto and appointed Mr. Ivor Leslie as Manager. Crosley has been comparatively successful under the new arrangement and since the summer of 1952 has also been manufacturing the receivers being sold in Canada by Hallicrafters.

—51—

8. Crystal Radio Company of Canada, Toronto.

In 1949 Mr. J. R. Duggan, former manager of Brand and Millen, set up the Jewel Radio Company of Canada to manufacture this line of receivers in Canada. Later Jewel also arranged to manufacture the Automatic motor car receivers and in May 1953 the name of the company was changed to Crystal Radio Company of Canada. Crystal still manufactures Jewel radios and Automatic motor car sets in addition to the line of Crystal radio receivers. To date there has been no indication that the company is interested in the television field.

9. Deseronto Electronics Limited, Deseronto, Ontario.

Deseronto was established in 1949 and has specialized in the manufacture of stencil line receivers—the Arvin for S. G. Waters Distributors (formerly Wahas Distributors) and the radio portion of a small radio-phono combination for Sni-Dor of Montreal. 8his licensee is operating on a very small scale and has not indicated any desire to get into television production. It is reported to be controlled by the Eddy Match Company which own the building in which it operates in Deseronto.

10. Dominion Electrohome Industries Limited, Kitchener.

Dominion Electrohome has been a licensee for many years and, in addition to manufacturing stencil receivers for Eatons and Simpsons, has a nationally distributed Electrohome line. It manufacturers cabinets for its own receivers and for sale to other radio and TV manufacturers. It is also engaged in the manufacture of household furniture, air conditioners and electric fans. This company is now owned outright by Mr. C. A. Pollock and has no direct tie in with any U. S. organization. The industry sales slump in 1951 apparently affected Dominion Electrohome very seriously but the situation has recently improved. Royalty payments are slow but the financial position appears to be much better now than it was a year ago.

11. Electronic Leaders Incorporated, Montreal.

Early in 1953 we received a report that Electronic Leaders Incorporated of Montreal had imported some TravLer television receivers from the United States. When we notified Electronic Leaders of our position in this matter they applied for an application to manufacture the receivers in Montreal and sent in the $1,000 security deposit. We advised the company that a license would be issued on the same terms and conditions as the other licensees but we withheld actual execution of the document pending assurance that manufacture would be carried out according to the requirements of the Patent Act. We examined the premises of Electronic Leaders in April and observed a small quantity of receivers being assembled but were still not completely satisfied that this assembly was not being used to cover up importation. Later we learned that Electronic Leaders did handle some imported receivers during the summer and early fall and although royalty reports and payments had been received the formal license is being withheld pending further information.

12. Electrical Products Manufacturing Co. Ltd., Montreal.

Electrical Products is owned by Mr. M. F. Pollock and became a licensee in June 1947. The first receivers produced by Electrical Products was a line of radio-phonograph combinations sold under the trade name Fleetwood. More recently, this licensee has also been manufacturing a number of stencil radio and television receivers for Simpson-Sears and a console-combination model for Firestone. A new plant was built in 1950 and Electrical Products has become one of the more important of the new licensees, particularly in the manufacture of stencil receivers. TV receivers have been produced since early 1952 but volume has been relatively low compared with radio.

13. Emerald Television Corporation Limited, Montreal.

In December 1952 an application for a license to manufacture television receivers was received from Emerald

Television Corporation. The application came through the Allan Swabey Company who indicated that their client had arranged for the Canadian manufacture of Fada TV receivers. Examination of the premises indicated that this Company was in about the same status as Electronic Leaders with practically no test equipment and very limited production facilities. However they claim that they have manufactured a limited number of Fada television receivers that have appeared on the Montreal market. For the purpose of this Survey we are classifying the company as a licensee because the security deposit has been made and royalty reports and payments have been received. However a formal license agreement has not been executed pending more details on the operation.

14. Hackbusch Electronics Limited, Toronto.

After many years as a licensee Stromberg-Carlson dropped out of the receiver manufacturing business in 1952 and the president of the company, Mr. R. A. Hackbusch, set up Hackbusch Electronics to manufacture Hackbush sound equipment and with exclusive rights for distribution of Stromberg's products in Canada. The formal transfer of all rights including the license agreement from Stromberg-Carlson to Hackbusch Electronics has recently been completed and Hackbusch has recently reported manufacture and sale of a small number of radio and television chassis for use in custom built receivers.

15. Hallicrafters (The) Canada Limited, Toronto.

Hallicrafters took out a license in the summer of 1952 and since that time the radio and television receivers that they have sold in Canada have been manufactured for them in the Crosley plant in Toronto. Hallicrafters own factory is now nearing completion in the Toronto area and it is expected that they will be producing their own receivers within one or two months.

16. Industrial Radioelectric Enterprises Ltd., Vancouver.

This company signed the "Grey-backed" license in November 1951 and has been paying royalties on radiotelephone units manufactured for the West coast fishing fleet. Early this year the company indicated that it was planning to manufacture television receivers and in the last few months it has reported sales of about 100 sets.

17. Manning Radio Limited, Toronto.

This company made application and was granted a license in 1946 but did not get into production of radio receivers until December 1948. The Manning radio is a deluxe combination AM-FM radio-phonograph selling at over $1,500 and sales average only about one per month.

18. Mastervision Corporation Limited, Scarboro.

A license was granted to Mastervision in 1949 and the president of the company, Mr. Al Leary, formerly of Toronto Radio Station CHUM, indicated that production would commence immediately on television receivers in Building #25 of the General Engineering property in Scarboro. Apparently the company ran into financial difficulties and had to give up its manufacturing facilities after producing a few sample units using parts purchased from jobbers. Mr. Leary requested that we let the license and the $1,000 deposit stand pending refinancing of the company.

19. Measurement Engineering Limited, Arnprior.

Measurement Engineering, originally located in Toronto, moved to Arnprior in 1948. Commencing in July 1947 this licensee produced small quantities of a high-priced combination AM-FM radio first identified as the Wardbamford and later identified as the Palomar. The company also produced a small quantity of 32-volt radio receivers in 1948. Since that time Measurement has been interested only in defence work and in the commercial radio fields. It has produced radio-telephone equipment for the Toronto

Police and Toronto Harbour Commission. Measurement has signed the Grey-backed license agreement and is paying royalties on products in a number of the broader scope fields.

20. Monarch Radio Limited, Montreal.

This licensee produced small radio receivers in 1948 and 1949 but since August 1949 has concentrated on electric phonographs production. Reports and payments are made promptly but volume is low.

21. Motorola Canada Limited, Toronto.

Motorola Canada Limited was formed in 1952 and took over the plant formerly occupied by Stromberg-Carlson on Geary Avenue in Toronto. Mr. M. M. Elliott, formerly of Canadian Marconi, was made general manager and production of radio and television receivers got under way in the fall of 1952. The parent company in the United States is one of the three or four top producers of radio and TV and is the recognized U.S. leader in production of motor car receivers. The Canadian Motorola company has made rapid progress in its first year of operation and is running Canadian Admiral a close second in volume of royalty payments. For the present at least Motorola has engaged only in the domestic receiver field and Canadian Radio Manufacturing Corporation still has the Canadian rights for Motorola communications equipment. Motorola claims to have important Canadian patents and apparently the U.S. company is devoting a great deal to research and development.

22. Pye Canada Limited, Ajax.

Pye is a wholly owned subsidiary of the English company of the same name and is now producing both radio and television receivers. The parent company produces television studio apparatus and AM land-mobile equipment and has indicated that these products will also be produced at the Ajax plant. Representatives of Pye have made numerous claims with respect to its patent strength but a check has indicated that it has very few Canadian patents in the receiver field and none of apparent value. It has recently filed a number of patent applications in other electronic fields and it is possible that these may be of some value.

Pye has not signed the broader scope licence and pays royalties only on receivers.

23. Research Industries Limited, Vancouver.

This licensee has been operating on a limited scale since November 1947 producing small quantities of radio receivers for sale in the Vancouver area. Its receivers are identified by the trade name Clarendon and have included some coin-operated hotel room receivers identified as Clarendon model WH-60. Research Industries has also indicated an interest in getting into other electronic fields and has signed the Grey-backed license.

24. Sparton of Canada Limited, London.

Sparton is one of the old established licensees and, although its radio and TV manufacturing is on a comparatively small scale, it is apparently in a sound financial position. Sparton also has the sole Canadian rights for the manufacture and sale of Columbia records.

25. Stark Electronic Instruments Limited, Ajax.

In November 1947 the Company made a special arrangement with Stark and collected flat rate royalties on several hundred Modernaire one-tube battery receivers imported from the United States. Later Stark applied for and was granted a license to manufacture radio and television receivers in Canada but no receivers have been produced to date. Stark's principal business is meters and test equipment but royalties are not being paid on these products. A Grey-backed license was submitted to Stark but has not been signed. Stark opened a new factory at Ajax in 1951 and has received several substantial orders from the Department of Defence Production for electronic equipment in the defence program.

26. Stewart-Warner Corporation of Canada Ltd., Belleville.

Stewart-Warner has refused to sign a formal license but monthly royalty reports and payments have been received regularly. It was felt that the Grey-backed license would meet the request of Stewart-Warner for a longer term license in broader fields but Stewart-Warner representatives indicate they will not sign any formal license until assured that all patent owners are paying royalties.

27. Superb Electric Manufacturing Company, Toronto.

Superb applied for a license to manufacture television receivers in 1951 but no activity was reported until this year when it was announced that Superb would manufacture the CBS Columbia receivers. Superb paying royalties on the CBS Columbia receivers and claims that they are being manufactured at its Bathurst Street plant. We have examined the manufacturing facilities recently and they did not appear adequate to support this statement. However some sets were being produced and all of those on the premises had apparently been assembled in Canada. We feel that the present operations of this licensee are in the same status as Electronic Leaders and Emerald but in each case are faced with definite statements by the applicant that they are manufactured in Canada and not importing from United States.

28. Thorcraft Limited, Winnipeg.

A license was granted to Thorkelson Radio Products of Winnipeg in January 1948 and limited production of radio receivers was commenced in July of that year. The radios manufactured by Thorkelson have been sold under the trade name Thor-craft and in 1952 the company's name was changed to Thorcraft Limited. Most of the receivers produced have been 32 volt types for sale on farms equipped with Deleo systems. Peak production was less than 100 receivers per month and in the last year only about 20 sets have been sold.

29. Transvision Television (Canada) Limited, Hamilton.

Early in 1949 Cub Aircraft Company of Hamilton changed its name to Transvision Television (Canada) Limited and announced that it was going into the manufacture of TV

receivers. Transvision then purchased General Radionics Limited of Toronto (a licensee of the Company engaged in the manufacture of motor car receivers) and requested permission to assign the latter's license to Transvision. The assignment of the license was permitted and all royalty reports have since been made by Transvision with the General Radionics motor car receivers being treated as a stencil line. Most of these receivers are Supertone made for Canadian Tire Corporation. General Radionics production facilities were moved from Toronto to the Transvision plant at the Hamilton Municipal airport in 1950. Transvision made about 300 TV receivers in 1951 but then discontinued TV production. It has recently been reported that Transvision may get substantial orders to produce a stencil line of TV.

30. Triton Electronics Limited, Toronto.

This company was established in 1952 by Frank Murphy who at one time owned the large Murphy Radio Company in England. The advance security deposit was received in October of 1952 but there has been very little activity and to date the only receiver announced by the company is a radio-phonograph console selling at $295, cash in advance and delivery in six weeks. Approximately 50 of the units have been sold to date and the company is apparently in very poor financial condition.

31. United Television Company Limted, Toronto.

United Television applied for a license early in 1953 and commenced manufacture of a 21″ table model unit sold under the name Visionaire. The company is operating on a small scale and we have experienced considerable difficulty collecting royalties. However the receivers are definitely completely manufactured in Canada and collections have improved in the past month. When the Visionaire was first placed on the market it was the lowest priced 21″ table model in Canada but many other companies now have receivers below this price ($350 list) and United is apparently

unable to further reduce its price.

Cancelled Licenses.

32. Book, Samuel A., & Company, Winnipeg.

This former licensee was setting up to manufacture the Clarion radio reecivers in Canada in 1947 but did not get into production and the license was cancelled at the licensee's request. The $1,000 advance deposit was returned after payment of royalties covering sale of some twenty-five sample receivers imported from the Clarion Radio Manufacturing Company in the United States.

33. Breadner Company Limited, Ottawa.

The Breadner Company took out a license in 1947 to manufacture battery portables under the trade name Bradna. Peak production (in 1948) was only about forty receivers per month and this gradually dropped off to less than five per month in the summer of 1949. Breadner requested cancellation in 1950 and, after auditing the returns, the security deposit was repaid and the license terminated.

34. Brand and Millen Limited, Long Branch.

Brand and Millen was one of the first new postwar companies to make formal application for a license and production of its Astra radio receivers commenced at Long Branch in October 1946. In addition to the Astra reecivers, this licensee manufactured some of the Crosley receivers for Moffats in 1947-1948 and the Aurora receivers sold by the T. Eaton Company. In 1949, Brand and Millen also manufactured Jewel radio receivers and a combination AM-FM radio television table model receiver sold under the name of Garod. Mr. J. R. Ruggan, the general manager of the company, resigned in 1949 and established the Jewel Radio Corporation of Canada (see report #8—Crystal). In early 1950 Brand and Millen acquired the Crosley franchise for Canada and commenced production of Crosley radio and TV receivers. During the summer of 1951, Brand and Millen's royalty reports were sent in regularly but were not accompanied by payments. All efforts made to collect the amounts owing to the Company were unsuccessful (it was learned later that Brand & Millen had not paid its sales and excise taxes to the government after April 1951) and Brand and Millen went into bankruptcy September 18, 1951. Royalty reports indicated the total amount owing to the Company was $6,982 (less the $1,000 advance security deposit). The trustees ran the bankrupt company on a limited scale from September 18 to October 26, 1951 and during this period regular royalties were paid in full to the Company by arrangement with the trustees. On October 26 the assets were taken over by the U. S. Crosley Company and the new Canadian company, Crosley Radio and Television Ltd. was established. Settlement with Brand and Millen creditors has now been finalized and the Company received payments of $1,531.85 in January 1952 and $1,225.48 in October 1952 and a final payment of $432.72 in April 1953.

35. Cam Radio Products Limited, Montreal.

This company applied for a license to manufacture radio receivers in 1947 but no sales were made and request for cancellation of the agreement was received in 1952. After making the usual check to assure that any payments dues to the Company had been made the security deposit was returned and the license cancelled.

36. Debeau & Frere, Quebec City.

Dubeau was the first of the post war licensees to get into production ~~(February 1946)~~ but the company failed about twelve months later and the license was cancelled. The advance security deposit was returned after we had received adequate assurance that all royalties due to the Company had been paid.

37. Faust Limited, Montreal.

Faust Limited took out a license in 1947 to manufacture Emor radios in Canada. The Emor was a novelty receiver housed in a chrome plated revolving sphere supported on a cylindrical pedestal. The license was granted on the basis of manufacture in Canada but apparently about 500 units was imported from the U. S. Sales were not satisfactory and in 1949 Faust applied for cancellation of the license. No royalty payments had been made but the royalty reports received indicated that the security deposit would cover the amount owing to the Company. We endeavoured to obtain certified reports of sales but were unable to trace the company and on the advice of Price Waterhouse the $1,000 security deposit was transferred into income in 1951.

38. Hermac Radio Limited, Montreal.

Hermac was granted a license and got into radio receiver production in February 1947. This licensee went into bankruptcy a year later and, after final adjustment of some outstanding royalties, the remaining balance of the advance security deposit was returned and the license cancelled.

39. Meteor Television Corporation Limited, Toronto.

An application for a license to manufacture television receivers was made in July 1951 by Mr. W. M. Webb on behalf of Meteor Television and the $1,000 security deposit made. The company went into bankruptcy after selling less than 25 receivers and after paying up the royalty owing (approximately $100) Webb applied for transfer of its deposit and the license to Venus TV Limited in Windsor. We approved this transfer in April 1952 but experienced great difficulty in collecting royalties or obtaining reports from Venus. Webb left the company in December of 1952 and operations were discontinued shortly after. On the advice of Price Waterhouse the unpaid

balance of the Venus 1952 royalties amounting to $3848 less a $500 payment received in January 1953 and less the $1,000 advance security deposit (balance of $2,348) was written off as a bad debt. A check with components parts manufacturers and others indicated that the assets of the company were nil and there was no point inforcing a bankruptcy declaration.

40. Moffats Limited, Weston.

Moffats took over the Crosley line, formerly handled by Addison, and applied for a license in 1946. First production of radios at Moffats' Weston plant was in February 1946 and a rate of approximately 1,500 receivers per month was maintained until May of 1947. For the next year, about half of the Crosley receivers were made for Moffats in the Brand and Millen plant and in July 1948 Moffats decided to completely discontinue activities in the radio field. In 1949 and early 1950, monthly royalty reports and payments covering disposal of the stock of receivers on hand were received and the license was then cancelled.

41. Northern Tool and Gauge Limited, Eastview.

Northern Tool and Gauge was granted a license in the fall of 1948 and in February 1949 commenced production of a coin-operated hotel room radio receiver identified as the Atcora. The radio chassis portion of these receivers was previously supplied to Northern Tool by another licensee, Hermac of Montreal, and royalties were paid by Hermac. When Hermac went into bankruptcy in 1948, Northern Tool and Gauge applied for a license to manufacture the complete unit. This license ran into financial difficulties in 1949 and the final sixty units in stock were sold in November of that year. We were first requested to hold the license open pending reorganization and refinancing of the company but finally were requested to cancel in January 1951 and, after certification of the reports and payments, the deposit was returned and the license cancelled.

42. Northland Radio Industries Limited, Calgary.

In 1946 Northland was granted a license to manufacture Emerson radio receivers in Canada but persisted in importing sets until the import ban went into eeffct in November 1947. In spite of every effort to collect full royalties on all receivers sold, this licensee's reports fell behind in the last quarter of 1947 and the law firm of Hannah, Nolan, Chambers, Might and Saucier of Calgary was retained by the Company and instructed to take legal action against Northland for approximately $8,000 in unpaid royalties. After due consideration, this action was discontinued in 1948 and the unpaid royalties (less the $1,000 advance security deposit) were written off as a bad debt. Emerson receivers are now manufactured in Canada by one of the shareholder companies and distributed by Fairbanks-Morse. The Company receives royalties on the sale of these receivers.

43. Radiolectric Manufacturing Co., Windsor.

A Windsor solicitor representing this company made inquiries in August of 1952 with respect to a license to manufacture television receivers and sent in an application accompanied by the $1,000 security deposit in December 1952. Limited production got under way early in 1953 but the company was dissolved in June of this year after a total of only approximately 80 receivers had been produced. After receiving the usual affidavit and checking to make sure all royalties had been paid in full the balance of the security deposit was returned and the license arrangement terminated. The receivers manufactured and sold by Radiolectric were identified as Croydon.

44. Schroter Brothers Limited, Vernon.

In 1946 a license was granted to Schroter Brothers Licited, the owners of radio station CJIB in Vernon, for the manufacture of radio receivers to incorporate wire recorders. In 1947 the license was transferred to Schroter Electronics Limited but production plans were abandoned and the license cancelled in 1948.

—64—

45. Tele-King Television Company, Montreal.

In May 1950 we received an application for license to manufacture television receivers from Mr. M. Valeriote in the name of the Tele-King Television Company of Canada. Mr. Valeriote who also operates Astra Industries Limited in Montreal, claimed that he had Canadian rights from Tele-King but it later developed that there was some misunderstanding in the matter and Tele-King of United States denied the Canadian company use of its name. The company never got into production although nil royalty reports were received regularly and finally in April 1952 the license was cancelled and the $1,000 deposit returned.

46. Venus TV Limited, Windsor.

As indicated in report no. 39 on Meteor, Venus TV was set up by Mr. Webb at 401 Park Street West in Windsor in March of 1952. Some receivers were produced in 1952 but we experienced great difficulty with royalty reports and payments. Webb left the company in December 1952 and talked of setting up another company but we pointed out that no license could be granted to him until the outstanding Venus royalties were paid in full.

47. Wamac Distributors Limited, Toronto.

Wamac originally applied for and received a license in 1946 to manufacture the Arvin radio receivers in Canada. Manufacturing plans did not materialize and Wamac became a distributor for Canadian Admiral in January

1947. The owner, Mr. Stan Waters, then requested cancellation of the license and return of the advance security deposit. Several months after cancellation of the Wamac license, we learned that Wamac was selling some U. S. made Arvin radio receivers in the Montreal area. When we notified Wamac with respect to the sale of these infringing receivers, Mr. Waters applied for reinstatement of the license to manufacture receivers in Canada, and, in settlement, paid 3½% of the laid down price of the imported sets. The Wamac application for reinstatement was approved but the licensee again did not proceed with

manufacturing plans and we finally cancelled the license in June 1949. Wamac then arranged to have the Arvin receivers produced by Deseronto Electronics Limited. Reecntly, Waters changed the name of his company to S. G. Waters Distributors Limited. In September of this year we received a report that Waters had imported some Arvin TV receivers from the U. S. and when warning letters were disregarded one of these sets was purchased from a Montreal dealer (Century Electric) for use as evidence in case of litigation. It now appears that the case will be settled without action and Waters has agreed, to discontinue his importation activites.

Appplications Pending.

48. Benco Television Associates, Toronto.

In the fall of 1951 representatives of Benco Television Associates, manufacturers of television boosters, inquired about a license and with approval of the Board we indicated that a license would be granted upon receipt of an advance security deposit of $100. This amount was deposited in February 1952 but any of the circuits of devices being made by this company that we have examined apparently do not infringe patents owned or administered by the Company and no royalties have been paid under the licensing arrangement.

49. Davis Electronics Manufacturing Corporation Limited, Montreal.

In February 1953 we received a $1,000 security deposit on an application for a license from Davis Electronics Manufacturing Corporation Limited to manufacture television receivers. Mr. J. Davis, president of the company, indicated that the plans were to manufacture stencil receivers for various departmental stores but the company got into financial difficulty and apparantly has produced only a very small number of receivers sold under the name Champion. We have experienced difficulty obtaining royalty reports and payments from this company but believe that the security deposit is sufficient to cover any amounts outstanding.

We have not classified this company as a licensee and no formal license agreement has been executed.

50. Lynox Electronics Reg'd., Sherbrooke, Quebec.

We received an application from Lynox Electronics Reg'd. in September 1953. The $1,000 security deposit was forwarded and the applicant indicated that he was planning to manufacture television receivers in Sherbrooke. We have not as yet had an opportunity to check into the manufacturing facilities of this company.

51. Provincial Distributing Reg'd., Montreal.

In October 1952 we received an application for a license through Tremblay Machine Shops of Montreal to manufacture Wilcox-Gay television receivers in Canada. This company has not to date indicated any signs of getting into production and we have left the application in the pending applications for the time being.

Motor Car Manufacturers.

In addition to the licensing arrangements referred to above, the Company has made special arrangements with General Motors, Hudson and Nash covering royalty payments on radios imported as an integral part of U. S. made motor cars in quantities that cannot be economically produced in Canada. Royalty rates on such receivers has been set at a flat $1.50 per unit. A similar arrangement has been made with S. Smith & Co. (Radiomobile) covering a small number of radio receivers imported as an integral part of English made motor cars.

S. D. Brownlee,
General Manager and Secretary-Treasurer.

Volume V

INDEX.

PAGE

No. 140—Minutes meeting of Quebec Radio—TV Distributors—March 5, 1953 1959

No. 141—Minutes meeting of Quebec Radio—TV Distributors—May 7, 1953 1962

No. 142—Memo—Nov. 5, 1953, Thompson re CRPL . . 1964

No. 143—Minutes meeting of Quebec Radio—TV Distributors—March 3, 1954 1968

No. 144—Brownlee Report to Directors—Jan. 13, 1954, re: Actions Taken on Reported Infringements in 1953 1973

No. 145—Letter Sept. 9, 1954, McConnell to Schmitt . . 1978

No. 146—Letter June 24, 1927, Macfarlane to Zenith . . 1982

No. 147—Letter Jan. 30, 1930, McVeigh to CRPL 1989

No. 148—Letter Nov. 30, 1936, CRPL to Tracey 2005

No. 149—Letter Sept. 12, 1951, Brownlee to Birchard . 2009

No. 150—Letter July 21, 1953, Miguel to Brownlee 2012

No. 151—Kiley report on Conference with CRPL—July 30, 1958 2014

No. 152—Capell report on Meeting with McConnell—July 30, 1958 2017

No. 153—Letter Apr. 16, 1959, McConnell to Curtis . . 2019

No. 154—Letter June 5, 1959, McConnell to Crotty . . 2021

No. 155—Letters CRPL—Consolidated Motors—1951 2022

No. 156—Letter Feb. 21, 1951, Consolidated Industries to Zenith 2025

Telegram—Feb. 20, 1951, Zenith to Consolidated . . 2025

No. 157—Letter May 7, 1951, Miguel to Consolidated Industries 2026

Letter Apr. 27, 1951, Consolidated to Zenith 2027

No. 158—Letter June 12, 1951—Consolidated to Zenith 2028

No. 159—Letter May 1, 1952, Miguel to Consolidated 2029

Letter Apr. 24, 1952, Consolidated to Zenith 2030

No. 160—Letter Apr. 11, 1953, Winnipeg Supply to Gonzales 2031

No. 161—Letters, Ideal Electric, Aug. 20, 1954, Zenith, Aug. 16, 1954, July 21, 1954, July 16, 1954, July 6, 1954 2033

No. 162—Letters—Ideal Electric to CRPL, July 6, 1954, July 14, 1954, Aug. 24, 1954, July 29, 1954, Aug. 30, 1954 2040

No. 162A—Letter May 22, 1928, Electric Radios to Zenith 2047

No. 162B—Dec. 18, 1929, McVeigh to Munroe 2050

No. 162C—Memo—Feb. 18, 1936, Vasques to Robertson 2052

No. 162D—Letter July 23, 1962, Ideal to Zenith, Letter May 17, 1962, McConnell to Electrical Distributors, Letter Dec. 11, 1929, Munroe to Zenith, Letter Mar. 10, 1930, Zenith to Munroe, Letter Mar. 4, 1930, Munroe to McVeigh, Letter Mar. 1, 1930, Williams to Smart & Biggar, Letter Feb. 21, 1930, Smart & Biggar to Williams, Telegram Mar. 23, 1930, Munroe to McVeigh, Letter Apr. 3, 1930, Munroe to McVeigh, Letter Apr. 17, 1930, Munroe to McVeigh, Letter June 27, 1930, Haugh to Klugh, et al. 2053

No. 163—Letter Jan. 21, 1924, Adams to Davis 2066

Letter Jan. 23, 1924, Adams to Davis 2068

No. 164—Letter Nov. 27, 1935, Macfarlane to Grimley 2070

No. 165—Letter June 11, 1936, Brooks to Gardner .. 2072

No. 166—Letter Jan. 13, 1944, MacKenty to Schairer .. 2073

No. 167—Letter Dec. 11, 1944, MacKenty to Schairer .. 2081

No. 168—Letter Nov. 6, 1946, Marpole to Shackelford 2089

No. 169—Memo—Nov. 17, 1949, Mayer to Shackelford 2095

No. 170—Memo—Aug. 10, 1951, Johnson to Marpole .. 2101

No. 171—"Output" License 2121

No. 172—Letter May 2, 1940, Trav-Ler Radio to Hazeltine 2133

Letter May 10, 1940, Hazeltine to Trav-Ler 2134

No. 173—Report of Meeting—Apr. 27, 1945—representative of CRPL and Canadian Licenses 2135

No. 174—Minutes of meeting of CRPL shareholder Company—Oct. 17, 1950 2137

No. 175—Letter Sept. 10, 1945, Binns to Macfarlane .. 2146

No. 176—Letter Jan. 9, 1947, to Binns 2147

No. 177—Letter July 20, 1953, Dodds to Brownlee 2148

No. 178—Letter Aug. 11, 1950, Dodds to Brownlee 2149

No. 179—Bulk Exhibit—Canadian market inquiries re Zenith equipment 2152

No. 180—Hazeltine—Neutrodyne Agreement—Oct. 19, 1928 2305

No. 181—Agreement—Aug. 11, 1933—Amalgamated Wireless and Standard Telephones and Cables 2310

No. 182—ARTS—Neutrodyne Agreement—Apr. 12, 1934 2318

No. 183A—ARTS—Neutrodyne Agreement—Nov. 28, 1938 re Australia 2336

No. 183B—ARTS—Neutrodyne Agreement—Nov. 28

1938 re New Zealand 2346
No. 184—ARTS—Neutrodyne Agreement—Jan. 31, 1946 2357
No. 185—Letter—July 6, 1950, Hooke to Warner, re extensions of ARTS—Neutrodyne Agreements—Exhs. 183-A and 183-B to Dec. 31, 1955 2375
No. 186—Letter Oct. 2, 1953, Hooke to Warner, re extension of Pool Agreements to June 30, 1958 2378
No. 187—Letter Apr. 9, 1958, Wilson to Warner, re extension of Pool Agreements to June 30, 1960 2379
No. 188—ARTS License No. 1 2381
No. 189—ARTS License No. 3 2395
No. 190—Extension of ARTS License No. 3 2410
No. 191—ARTS License No. 3-B 2412

DEFENDANT'S EXHIBIT NO. 140.

Minutes of the regular monthly Meeting of the Quebec Radio-Television Distributors Association, Inc., held on Thursday, March 5th, 1953, at 12:30 P.M. at the Queen's Hotel, Montreal, Que.

Present	Representing
Messrs. A. Asselin	Canadian Marconi Co. Ltd.
W. J. Collins	Electrical Products Mfg. Co. Ltd.
J. V. Molloy	Electrical Products Mfg. Co. Ltd.
T. J. Burke	National Carbon Limited
L. G. Dunn	Union Electric Supply Co. Ltd.
M. Bourbonniere	Philips Industries Ltd.
S. Wellum	Philips Industries Ltd.
E. C. MacLeod	John Millen & Son Ltd.
L. McClenaghan	Sparton of Canada Ltd.
J. Ferland	Canadian General Electric Co., Ltd.
P. Gareau	The Canadian Fairbanks-Morse Co. Ltd.
J. Camirand	Motorola Canada Limited
G. Fortier	Hermann Fortier Inc.
L. Bissette	Hermann Fortier Inc.
J. McGivern	Sparton of Canada Ltd.
L. W. Gauthier	Canadian Westinghouse Co. Ltd.
A. Shields	Canadian Westinghouse Co. Ltd.
R. G. Scroggie	Secretary

In the absence of the President, the Vice-President, Mr. A. Asselin, occupied the Chair and Mr. R. G. Scroggie acted as Secretary of the Meeting.

Minutes

Upon motion by Mr. J. Molloy, seconded by Mr. L. G. Dunn, it was resolved that the Minutes of the last monthly meeting be approved without reading.

Television Show

The Chairman called upon Mr. Molloy to report upon his interview with Mr. Dansereau of the Show Mart in respect to possible accommodation for a Television exhibition. Mr. Molloy advised that Mr. Dansereau was very anxious to have such a show and that he would accept almost any proposition which the Association might be willing to make as to price, space and time. He was also willing to attend to its promotion.

Mr. Collins reported that Mr. McGovern had contacted the Windsor Hotel to see if they would be able to accommodate a show but that there were no available dates or space and that in any event they would not be willing to have such a show within the Hotel.

Mr. Collins also advised that Mr. Berlinguette was willing to arrange and promote a Television Show for the Association.

After considerable discussion as to the merits of holding an exclusive show in either the Mount Royal Hotel or the Show Mart or participating in the All Electrical Show, the Chairman called for a vote. By a substantial majority, it was decided that participation in the All Electrical Show would be the most advantageous means of promoting television in the Montreal area.

Mr. L. G. Dunn suggested that if the Association approached Mr. Berlinguette, it might be possible to obtain a special rental price for members and in this regard suggested that $1.25 a square foot could be offered. He was of the opinion that a Committee should be formed to discuss the whole matter with Mr. Berlinguette, having in mind cost of space, location, promotion, admission, etc. Upon motion by Mr. W. J. Collins, seconded by Mr. M. Bourbonniere, Mr. L. G. Dunn and Mr. A. Asselin were appointed as a Committee and were requested to communicate with Mr. Berlinguette and report their findings to the members.

Syracuse Television Station

Mr. Collins reported that the Syracuse television station was substantially increasing its telecasting range and that Montreal television set owners might expect to be able to pick up their telecasts. He suggested that the Association should endeavor to obtain information as to what channel these telecasts might be picked up on. Mr. Wellum agreed to look up the F.C.C. records and report his findings to the Secretary. Mr. Collins said he would also make further inquiries.

Importation of U. S. Television Receivers

It was reported that the R.T.M.A. had this matter in hand and was working hard to curb the importation. Members were requested to report any violations to the R.T.M.A. without delay.

There being no further business on the agenda, the Meeting was, on motion, adjourned.

....

Chairman *Secretary.*

DEFENDANT'S EXHIBIT NO. 141.

Manutes of the regular monthly Meeting of the Quebec Radio-Television Distributors Association Inc., held on Thursday, May 7th, 1953, at 12:30 P.M. in the Queen's Hotel, Montreal, Que.

	Present	Representing
Messrs.	T. F. McGovern	Northern Electric Co. Ltd.
	I. Pappin	Northern Electric Co. Ltd.
	J. Ferland	Canadian General Electric Co. Ltd.
	K. C. Hartwell	Canadian General Electric Co. Ltd.
	F. W. Wansborough	Canadian General Electric Co. Ltd.
	W. J. Collins	Electrical Products Mfg. Co. Ltd.
	T. J. Burke	National Carbon Ltd.
	M. Moussette	Sparton of Canada Ltd.
	L. McClenaghan	Sparton of Canada Ltd.
	J. McGivern	Sparton of Canada Ltd.
	A. Bayard	RCA Victor Co. Ltd.
	E. MacLeod	John Millen & Son Ltd.
	L. Beauregard	Lewis Bros. Ltd.
	A. Asselin	Canadian Marconi Co. Ltd.
	L. G. Dunn	Union Electric Supply Co. Ltd.
	R. G. Scroggie	Secretary

The President, Mr. T. F. McGovern, occupied the Chair and Mr. R. G. Scroggie acted as Secretary of the Meeting.

Mr. McGovern extended, on behalf of all of the members of the Association, a most sincere expression of sympathy to Mr. L. G. Dunn in his bereavement.

Minutes

On motion by Mr. T. J. Burke, seconded by Mr. A. Asselin, the Minutes of the last regular monthly Meeting and those of the Special Meeting held on April 16th were unanimously approved without reading.

All Electrical Show

Mr. McGovern reported that in accordance with advice received from the Secretary, all member companies had been informed that Eastern Canada Exhibitions Inc. had accepted without reservation the Association's requirements in respect to participation in the All Electrical Show. Mr. McGovern further reported that Mr. Seguin of the C.B.C. had changed positions and that he had taken up the matter of C.B.C. assistance in promoting the Show with Mr. Ouimet and that Mr. Ouimet had assured him that they realized that the promotion of Television was important to the C.B.C. and that they would co-operate. He did not, however, undertake to telecast any special programmes.

Mr. Bayard also reported that he had had lengthy discussions with the C.B.C. apropos to the official opening of the Montreal, Toronto hookup, the quality of programmes and the increasing of the hours of telecasting in the Montreal area.

Importation

The Chairman reported on action taken by Canadian Radio Patents Ltd. to helt the importation of non-licensed radio and television sets and complimented Mr. Brownlee for the excellent work which he was doing. It was decided that members should clear all infractions through the Secretary who would report immediately to Mr. Brownlee. The Secretary was requested to write C.R.P.L. requesting information governing importation regulations as well as details as to what was necessary to qualify for a manufacturing license.

Nomination Committee

A Nominating Committee of three under the chairmanship of Mr. W. J. Collins assisted by Mr. A. Bayard and Mr. J. Forland was appointed. They were requested to consider their recommendations for a new slate of Officers for the fiscal year 1953-54 to be voted upon at the Annual meeting.

Annual Meeting

Members were reminded that the Annual Meeting and Spring Golf Tournament will be held on Monday, May 25th, at the Islemore Golf and Country Club. As in the past, all members were requested to supply prizes.

There being no further business on the agenda, the Meeting was, on motion, adjourned.

Chairman. Secretary.

DEFENDANT'S EXHIBIT NO. 142.

November 5th, 1953.

Memo:

re: C. R. P. L.

The following is a summary of information I received from Brownlee by telephone to-day.

The shareholders are:

Northern Electric Company Limited;
Canadian General Electric Company, Limited;
Canadian Radio Manufacturing Corporation (Rogers);
Canadian Westinghouse Company Limited; and
Canadian Marconi Company.

Each of these shareholders owns 20% of the issued capital stock.

C. R. P. L. has been issuing what it calls output licenses to Canadian manufacturers of radio and television based on

(a) input license agreements from its shareholders;
(b) as licensing agent for R. C. A.;
(c) as exclusive Canadian licensee of the Hazeltine Corporation;
(d) under its own patents, the only one of which is any particular value at the present time is the reecntly purchased Parker patent—their other patents consist of tag ends of patents they had in the past purchased from their shareholders.

Output licenses are formal documents. Actually to-day there are no formal input licenses but a form of such a license has been drafted and is in the hands of Vice President Coles for his scrutiny before being submitted to representatives of their shareholders. The licenses from R. C. A. and the shareholders are all non-exclusive.

The Hazeltine agreement provides for royalties on a percentage of selling prices of sets with a maximum of $45,000 a year. Actually for the sake of convenience royalties are paid by C. G. E. et al. at the rate of 10¢ per domestic set and 5¢ per exported set. The maximum is being paid to Hazeltine. The R. C. A. arrangement boils down to R. C. A. getting 25% of the gross receipts from royalties before income taxes, so that the distribution of revenue is roughly:

(a) 25% of gross before taxes, to R. C. A.;
(b) $45,000 to Hazeltine;
(c) about one-half of the balance for operating costs and taxes;
(d) the balance divided equally among the shareholders as dividends.

The estimated revenue for 1953 is One Million Dollars which would result in dividends of about $75,000 per shareholder free of income tax.

C. G. E.'s representatives as directors are Mr. Turner and Mr. Macfarlane. Mr. Macfarlane is the President and Mr. Coles of Westinghouse is Vice President. Each shareholder appoints two directors. The next dividend meeting will probably be in December.

The bulk of the revenue collected is from television but there is some from radio.

There are oral license agreements from the shareholders to C. R. P. L. on which it is currently basing its output licenses.

The shareholders have no rights under each others patents or under R. C. A. patents. Brownlee is of the opinion that all of the shareholders should sign output agreements, thereby effectively obtaining cross licenses under all the R. C. A. and other shareholders' patents. He thinks that R. C. A. has agreed to sign such a license and his recollection is that in 1950 the shareholder companies tentatively agreed to take such licenses, but nothing was done to formalize such an agreement and the matter has lapsed because nobody has followed it up actively. Mr. Macfarlane at that time was the prime mover in these things but since that time Brownlee has been unable to get him to push matters.

Northern Electric has not many patents of its own and has not been able to undertake to include Western Electric's patents with its contribution. When this was discovered there was some discussion as to trimming down Northern's shareholder interest, but this action was not taken when Western agreed to take no action on its patents against the other shareholders or licensees of C. R. P. L.

The government deal in which C. R. P. L. has acted for R. C. A. and the C. R. P. L. shareholders, is contained in an agreement between C. R. P. L. and D. D. P., the parties having considered this to be a suitable manner in which the Government would obtain the kind of rights it wanted.

C. R. P. L. was of the opinion that it was authorized to make such a deal when it obtained Letters of Authority from R. C. A. and the shareholder companies. The revenue from this government deal is divided as follows:

(a) 25% to R. C. A.;
(b) the balance in equal shares between all the shareholders except Northern Electric.

Northern was cut out because it was not in a position to bind Western. Brownlee rather agrees with me that even if C. G. E. had no patents coming to if under its agreement with G. E. it would still be entitled to get in on these payments by the Government in view of its interest in the so-called pooled patents of C. R. P. L.

C. G. E. pays 5 cents per export unit and 10¢ per domestic unit as its contribution to the Hazeltine royalty, and it also pays a royalty to C. R. P. L. at the regular rate on stencil sets it makes for non-shareholders. It pays no royalty on the stencils it makes for Northern.

C. R. P. L. currently has in its surplus, Government and Hydro bonds to a face value of $275,000 which the directors have not seen fit to distribute in the form of dividends in view of the fact that their market price is less than their cost.

Brownlee is of the opinion that if the shareholder companies sign output licenses and paid royalties they would make a nice recovery in the way of dividends over and above their contributions. There would be some unbalance of course due to the unbalanced production. It might be possible for a large producer to be in a position of not getting more than he put in, but despite this Brownlee thinks that the operations of C. R. P. L. are of very substantial benefit to the industry as a whole and to all the shareholders, if for no other reason than the threat against dumping.

Recently a writ was issued against Foucher Electric of Montreal for selling imported Dumont sets. The Plaintiffs were C. G. E., C. R. P. L. and Hazeltine. An offer of settlement has been made and it is not expected that this case will go to court.

/PE H. K. Thompson

c. c. H. M. Turner
R. H. Littlejohn

DEFENDANT'S EXHIBIT NO. 143.

(Letterhead of Quebec Radio-Television Distributors Association, Inc., Montreal, Que.)

March 1st, 1954.

Notice to Members:

A Special Meeting has been called and will be held at 12:30 P.M. on Wednesday, March 3rd, at the Queen's Hotel.

All members are urgently requested to be in attendance as the guest at this meeting will be Mr. S. D. Brownlee, Secretary-Treasurer of Canadian Radio Patents Limited. Matters of great importance to the industry will be discussed.

If possible, I would appreciate your phoning this office (HA. 3113) in advance of the Meeting advising as to how many will attend from your firm in order that adequate accommodations may be made.

R. G. Scroggie
Secretary.

Defendant's Exhibit No. 143.

Minutes of the regular monthly Meeting of the Quebec Radio-Television Distributors' Association, Inc., held on Wednesday, March 3rd, 1954, at 12:30 P. M. in the Queen's Hotel, Montreal.

	Present	Representing
Messrs.	M. Bourbonniere	Philips Industries Limited
	A. Laliberte	Lewis Bros. Ltd.
	L. A. Beauregard	Lewis Bros. Ltd.
	J. Lalonde	Industrial Distributors Co.
	E. M. Mander	Industrial Distributors Co.
	E. C. MacLeod	John Millen & Son Ltd.
	Y. Lebeuf	Canadian Fairbanks-Morse Co. Ltd.
	P. Gareau	Canadian Fairbanks-Morse Co. Ltd.
	T. J. Wilde	Canadian Marconi Co.
	L. Desmarais	Canadian Marconi Co.
	J. B. Norton	Crosley Radio & Television Ltd.
	H. E. Clements	Crosley Radio & Television Ltd.
	J. Molloy	Electrical Products Mfg. Co. Ltd.
	W. J. Collins	Electrical Products Mfg. Co. Ltd.
	L. McClenaghan	Sparton of Canada Ltd.
	M. Moussette	Sparton of Canada Ltd.
	J. McGivern	Sparton of Canada Ltd.
	K. M. Bissell	Northern Electric Co.
	I. P. Pappin	Northern Electric Co.
	B. Manis	Radio Accessories Ltd.
	T. J. Burke	National Carbon Limited
	L. G. Dunn	Union Electric Supply Co. Ltd.

Present	Representing
G. M. Demers	Canadian Westinghouse Supply Co.
J. A. Bayard	RCA Victor Co. Ltd.
S. D. Brownlee	Canadian Radio Patents Ltd.
H. Hudon	Acting Secretary

The Vice-President, Mr. H. M. Bourbonniere, occupied the Chair and Mr. H. Hudson acted as Secretary, replacing Mr. R. G. Scroggie was was unable to attend.

Minutes.

The Minutes of the last monthly Meeting held on December 3rd, 1953, were read and upon motion by Mr. E. Clements, seconded by Mr. L. A. Beauregard, were duly approved as read.

Guest Speaker.

The Chairman then introduced Mr. S. D. Brownlee, Secretary-Treasurer of Canadian Radio Patents Limited. Mr. Brownlee outlined the history, progress and functions of his organization. He also spoke at length of the efforts which have and are being made to curb the importation and sale of unlicensed television receivers in Canada. He informed the members that Canadian Radio Patents Limited had to date taken legal action in respect to thirty-five infringements of patent rights, the greater number of which had been satisfactorily settled. He admitted that in certain cases, the results had not been entirely to their liking.

The following is a brief summary of the specific cases referred to by Mr. Brownlee:

Faucher.

A settlement has been concluded out of court as between the respective lawyers. Under the terms of the settlment, Faucher is permitted to dispose of his inventory of unlicensed television receiving sets. He supplied a list of the serial numbers to Canadian Radio Patents Limited. Any members who may be dubious of Faucher's compliance with the terms of the settlement may have access to the list of serial numbers supplied to C. R. P. L.

Appliances Unlimited.

Mr. Brownlee apologized for the delay in concluding this case. Proceedings had been commenced during the month of February and originally the case was to have been decided by the first of March. However, an extension of ten days was granted the defendants and as a result a decision is not expected until approximately the middle of March.

Traveler.

The parties marketing these sets claimed to have assembled them here from imported component parts. They applied to C. R. P. L. for a license and were refused. However, they continued their operations and it was later disclosed that they were also marketing U. S. made sets. They were confronted with the evidence of importation and although they did not admit to the charge, they promised to cease operations.

Despite the foregoing, approximately a week ago, it was discovered that Simpsons of Montreal had in their stock a number of imported sets. They again refused to admit to importation and explained that they had been disposing of their original inventories. Again promises were made that they would stop selling. Simpsons have expressed their dissatisfaction in their dealings with this group and have promised to co-operate with C. R. P. L.

Mr. Brownlee asked for the continued co-operation of the members of the Association in order that C. R. P. L.

may stop the activities of unlicensed operators at the outset. Reports of infractions should be made immediately and C. R. P. L. will do everything possible to take action without delay.

Mr. Collins asked that more publicity be given in respect to the legal proceedings instituted by C. R. P. L. He was of the opinion that such publicity would deter many who were not aware of the legal implications of importing and selling unlicensed sets. At the same time, many dealers who otherwise might handle these sets, would in view of the publicity and resultant understanding of the legal implications, refuse to have any dealings with the importers.

A vote of thanks and appreciation was extended to Mr. Brownlee who so kindly took time to so adequately explain the situation and the position of C. R. P. L. in its efforts to curb unlicensed importations and protect legitimate distributors and manufacturers.

The Meeting was then adjourned with all unfinished business to be concluded at the next regular monthly Meeting.

Chairman.

Secretary.

DEFENDANT'S EXHIBIT NO. 144.

Canadian Radio Patents Limited
159 Bay Street
Toronto

January 13, 1954.

Re: Actions Taken On Reported Infringements in 1953.
Memo To Directors

Attached is a summary of the actions that were taken by CRPL in the thirty five cases of infringement that were reported during 1953.

Most of the infringement reports received in 1953 involved individual dealers that had imported U.S. television receivers and, following the approved procedure in such cases, we usually settled for a written guarantee to immediately discontinue the infringement and did not press for damages if only a few sets were involved.

In cases such as Electromaid where 72 TV receivers were involved and in the case of the 160 Arvin sets imported by S. G. Waters after previous warnings we settled for $10 per receiver damages.

After initial warning letters were ignored, we purchased, and examined for infringement a total of six TV receivers (from Faucher, North Star, Legare, Century, Amhearst and Appliances Unlimited).

The threat of possible infringement action resulted in satisfactory settlements in the cases of North Star, Legare and Century (see notes on attached summary) but it was necessary to commence an action in the Exchequer Court of Canada before a settlement was made with Faucher. Mr. Gowling is now proceeding against Amhearst Television and the receiver recently purchased from Appliances

Unlimited is being examined as a preliminary to commencing an action against this company.

Although we have not received any new reports of infringement for the past two months and believe the situation is under control, we are continuing to periodically run the warning Notice in the trade publications.

S. D. Brownlee,
Secretary-Treasurer.

SDB/ml

Defendant's Exhibit No. 144.

Summary of Infringement Warnings and Actions Taken in 19

January 13,1954.

Name of Reported Infringer	Address	Infringing Product	Date of First Warning Letter	Remarks
Air Equipment Service Ltd.	1401 Hornby St.,Vanc.	Imported TV receivers	Feb.23/53	Assurance of discontinuing Feb
Amherst Television	1106 Ontario E.,Mont.	" Olympic TV	May22/53	See note below
Appliances Unlimited	1356 St. Catherine,Mtl.	" TV sets	Feb.23/53	See note below
Avio	1214 Homer St., Vanc.	" TV sets	Mar. 2/53	Assurance of discontinuing Mar.
Eastway TV	1494 Kingston Rd.,Toronto	(used) " " "	Oct.19/53	" " " Oct.21
Baschofberger	836 Wake St. Arvida, Que.	Swiss radios	May 14/53	" " " June 2
Century Electric Co.	420 McGill St, Montreal	Imported Arvin TV	Nov. 5/53	Settled with S.O. Waters Distbrs
Continental Sales Co.	5743 St. Hubert, Mtl.	" TV receiver	Apr.13/53	Assurance of discontinuing Apr.1
Devenport and Goldstaw	6640 Fraser, Vanc.	" " "	Nov. 9/53	" " " Dec.
Dalfen's Dept. Stores	5322 Queen Mary Rd. Mtl.	" " "	Feb.26/53	" " " Mar.
Eastern Television Import	Farnham, Quebec	" " "	Oct. 6/53	" " " Oct.
Electromaid	Montreal	" " "	Aug.17/52	See note below
Fanshaw Electric	251 Beaubien St.E., Mtl.	" " "	Oct.27/52	See note below
Fred Walsh & Son	Beatty St. Vancouver	" " "	Feb.23/53	Assurance of discontinuing Feb.2
Farley Television	5206 Queen Mary Rd. Mtl.	(used) " " "		" " "
Furniture Show Room	2456 Des Carrieres, Mtl.	" " "	May 1/53	" " " May
German Book Store	3425 St. Lawrence, Mtl.	German radios	Dec.31/53	No reply to date
Great Eastern Oil & Import Co.	St. Johns, Newfoundland	German radios	July16/53	Exchanged correspondence gave patent rep. on vir. diag. consid ing license to assemble.
Laurent Bourgon	315 Craig St. W. Mtl.	Imported TV sets	Feb.24/53	Assurance of discontinuing Mar. 1

cw 691

Page 2

Name of Reported Infringer	Address	Infringing Product	Date of First Warning Letter	Remarks
Legare Company	1278 Mount Royal E,Mtl.	TraVler TV sets	Nov. 5/53	Settled with Electronic Leaders See note below
Lion TV Distributors	Box 173, Vancouver	Imported TV receivers	Mar.19/53	Ad in Vanc. paper- no reply - no further reports
Lukino Firestone Store	2825 Howard Ave. Wind.	(used) " " "	Nov. 2/53	Assurance of discontinuing Nov. 4
Mar't - Y - Bo	207 Bernard West, Mtl.	Imported " "	Feb.16/53	" " " Feb.26
Modern Refrigeration	1 Notre Dame St. E. Mtl.	TraVler TV sets	Nov. 5/53	(see North Star)
Morris Television & Appl.	1231 Manning Ave., Verd.	Imported TV receivers	Nov. 3/53	Reg. letter not accepted-no reply to follow ups to date.
Man-Isle Trucking Co. Ltd.	817 Granville St. Vanc.	" " "	Jan. 5/53	Assurance of discontinuing Jan.20
North Star	1 Notre Dame St. E.	" " "	Nov. 5/53	See note below
Premier Appliances Ltd.	326 Pelissier St., Wind.	" " "	Oct.26/53	Assurance of discontinuing Nov. 6
Red Arrow Distributors	2208 Danforth Ave.,Toronto	" car radios	Oct.30/53	" " " Nov. 9
Trans Canada Upholstering	5176 St. Laurence, Mtl.	" TV receivers	Nov.11/53	" " "
Television Specialties Co.	4810 St. Dennis, Mtl.	" " "	Mar.17/53	" " " Mar.20
Valley Radio & Appliances	Mission City, B. C.	" " "	Feb.23/53	" " " Mar.27
Van Baggen Electric Co.	3398 Kingsway, Vanc.	" " "	Mar. 2/53	" " " Mar. 2
Victory Sales Reg'd.	7233 Durocher, Montreal	" " "	Sept 5/53	" " " Sept.8
Westmount Moving & Storage	3425 St. Laurence, Mtl.	" " "	Nov. 12/53	Referred to Farley TV.

Ex. 692

Notes

1. Amhearst Television—Has disregarded warning letters and continues to sell imported Olympic TV receivers—purchased receiver as evidence—examined for patents—turned over information to Gowling—proceeding with action in Exchequer Court of Canada.

2. Appliances Unlimited—When first warned of infringement agreed to discontinue but has recently commenced importation again—purchased receiver as evidence—now being examined for infringement—will proceed with action.

3. Faucher Electric—Disregarded warnings—purchased receiver as evidence—examined for infringement—Gowling started action in Exchequer Court of Canada on October 15, 1953—Faucher consented to judgment prohibited from future importing and paid $10 per receiver damages.

4. Century Electric—Arvin receiver purchased as evidence and examined—S. G. Waters Distributors accepted responsibility for all Arvins on Canadian market and settled for $10 per set damages plus agreement to discontinue importation.

5. Legare—TraVler set purchased from Legare traced to North Star and then to Electronic Leaders—(applicant for license)—claimed mfg. in Canada—royalties paid—accepted.

6. North Star—TraVler set purchased from North Star claimed partial mfg'd. by Electornic Leaders and royalties paid—accepted (Electronic Leaders has limited production facilities but has made some sets and threatened action against Legare and North Star has cleared the situation—still holding Electronic Leaders' license pending assurance full mfg. in Canada.

7. Electromaid—This company had disposed of 71 imported TV receivers before we obtained a written agreement to discontinue. Settlement was made at $10 per receiver.

cc: Directors
SDB/ml

S. D. Brownlee,
Secretary-Treasurer.

DEFENDANT'S EXHIBIT NO. 145.

September 9, 1954.

Mr. P. G. Schmitt, Manager,
Associated Companies Division,
Westinghouse Electric International Co.,
40 Wall Street,
New York 5, N. Y.

Subject: License Agreement between Canadian Westinghouse Company Limited and Canadian Radio Patents Limited dated August 31, 1954, and effective January 2, 1951.

Dear Mr. Schmitt:

This letter is being written in order to comply with the requirements of the penultimate paragraph of Article II of the License and Technical Assistance Agreement effective January 1, 1947, between our companies and the Westinghouse Electric Corporation.

Canadian Radio Patents Limited is a patent holding company owned by five shareholders, namely, Canadian Westinghouse Company Limited, Canadian General Electric Company Limited, Northern Electric Company Limited, Canadian Marconi Company Limited and Rogers Majestic Company Limited (Phillips). Each shareholder makes its patents in the radio purposes field available to C.R.P.L. and the pool also contains Canadian patents of Hazeltine and R.C.A. together with certain patents owned outright by C.R.P.L. such as the Parker television patent which was purchased recently for a substantial sum.

Any former agreements between the shareholders and C.R.P.L. were confined to narrow fields and were so old that the patents involved had expired. Since C.R.P.L. has been active against importers of television sets recently it was felt by the directors of that company that formal documents should exist between the shareholders and C.R.P.L. granting rights to C.R.P.L. under current patents. The subject agreement grants such rights to C.R.P.L. from Canadian Westinghouse. The remaining four shareholders are signing identical agreements.

The present agreement was executed on August 31, 1954, but is effective from January 2, 1951. It was made retroactive since C.R.P.L. has been granting licenses in the fields covered since 1951.

Canadian Westinghouse grants to C.R.P.L. under its patents in the radio purpose field a non-exclusive license with the right to sub-license. The patents included at the date of the agreement are attached to the agreement as Schedule "A". Other patent rights acquired by Canadian Westinghouse in the radio purposes field from time to time during the term of the agreement will be included in Schedule "A".

The term radio purposes includes the following:

(a) Broadcast Reception Apparatus—amplitude modulated, frequency modulated, television and facsimile receivers:

(b) Amplification, Warning, Recording and Reproduction Apparatus—amplifiers, electric phonographs, phonograph pick-ups and other apparatus for non-synchronous recording and reproduction of sound, television and facsimile; synthetic production of sound, speech input, intercommunication, public address, hearing aids and alarm devices;

(c) Amateur Radio Receiving Apparatus;

(d) Radio Telegraph and Telephone Apparatus—equipment for land mobile, marine, aeronautical and point to point services, all for private commercial use;

(e) Apparatus for Inductive Telegraph and Inductive Telephone Systems;

(f) Apparatus specified in sub-sections (a), (b) and (c) of this Section 2 other than radio receivers for use in automobiles, complete except for cabinets and parts used for assembly of such apparatus in cabinets or other permanent housing;

(g) Broadcast Transmitting Apparatus—amplitude modulated, frequency modulated, television and facsimile transmitters, including pick-up transmitters, studio apparatus, television cameras microphones and facsimile terminal apparatus;

(h) Amateur Radio Transmitting Apparatus;

(i) UHF and Micro Wave Relay Apparatus for private commercial use;

(j) Aids to Navigation and Radio Indication Apparatus;

(k) Medical Electronic Apparatus, other than X-Ray;

(l) Theatre Television Apparatus;

(m) Accessories supplemental to the operation of apparatus specified in sub-sections (a) to (l) inclusive of this Section 2—such as antenna; power supply, radio frequency converters and boosters, battery chargers;

(n) Measuring and Testing Apparatus, other than electron microscopes, for use in conjunction with apparatus specified in sub-sections (a) to (m) inclusive of this Section 2.

C.R.P.L. is given the right to take necessary legal steps to restrain and secure compensation for all infringements of the licensed patents providing that it has received the prior consent of Canadian Westinghouse which consent shall not be unreasonably withheld.

Canadian Westinghouse agrees to sign all papers and documents to enable C.R.P.L. to take legal action against infringement of the licensed patents.

The agreement will continue until December 31, 1955, and from year to year thereafter until December 31, 1960, subject to termination at any time after December 31, 1955, by three months' notice in writing by either party to the other.

Schedule "A" at the date of this agreement contains 194 patents. Of these 135 stand in the name of Canadian Westinghouse Company Limited and 59 in the name of the Westinghouse Electric Corporation.

Would you kindly acknowledge receipt of this summary. If you would care to have a copy of the complete agreement I will be pleased to send one to you.

Yours very truly,

B. McConnell,
Assistant Secretary.

BMcC:mm

DEFENDANT'S EXHIBIT NO. 146.

212 King Street West
Toronto

Toronto 2, June 24th, 1927.

The Zenith Radio Corporation,
3620 Iron Street,
Chicago, Ill.,
U. S. A.

Attention Mr. E. F. McDonald, Jr., President.

Dear Sir:

Answering your inquiry of June 22nd, a limited number of licenses are being issued by our Company for the manufacture and sale of Radio Receiving Sets to be used only for the non-commercial reception of public radio telephone broadcasting within the Dominion of Canada.

The licenses are standard in form upon the following basis, namely, 10% royalty from the invoice price of the Radio Receiving Sets as sold by the Licensee, the said royalty being payable quarterly on the last days of January, April, July and October of each year, the minimum royalty for each year being $10,000.00.

At the time of granting any license an advance payment of $10,000.00 is required to be applied upon accruing royalties and settlement must be made of any claims for past infringements.

In the case of licensees who desire to manufacture in the United States, imports into Canada are restricted to an aggregate of $100,000.00 per year beyond which the licensee must manufacture in this country. Upon imported sets the net selling price includes the customs duty and freight to the point of entry into Canada.

The patents under which the licenses are being granted are as follows:—

Rice	241,138
Alexanderson	208,583
Langmuir	244,847
Mathes	183,275
Mathes	209,777
Arnold	213,999
Hartley	174,690
Nichols	183,276
Armstrong	216,321
Round	179,703
Franklin	187,793
DeForest	159,794
DeForest	174,361
DeForest	218,235
DeForest	218,468
DeForest	218,238
DeForest	218,242
DeForest	218,473

Yours very truly,

Canadian Radio Patents, Limited,
Per (Illegible),
Secretary-Treasurer.

JCM/C.

June 22, 1927.

Canadian Radio Patents Limited,
212 King Street West,
Toronto, Ontario,
Canada.

Gentlemen:

Would you be good enough to advise us the terms under which you are issuing licences? Also the radio patents controlled by you in the Canadian dominion.

As you probably know, the Zenith Radio Corporation was the first to be licensed by the Radio Corporation of America, The General Electric Company, The Westinghouse Electric & Mfg. Co. and the American Telephone & Telegraph Company.

Thanking you for your advice on the subject, we are

Cordially and sincerely yours,
Zenith Radio Corporation,
E. F. McDonald, Jr.,
President.

HMC
D

Memorandum of Agreement made in duplicate this .... day of .... A. D. 1927; by and between: Canadian Radio Patents Limited, a Corporation organized under the laws of the Dominion of Canada, and having its head office and principal place of business at the City of Toronto, in the Province of Ontario, hereinafter called the "Licensor" of the First Part: and ....
.... of the Second Part:

Whereas the Licensor is presently a Licensee for the purpose hereinafter set forth, with power to grant sub-licenses under the Canadian patents set forth in the Schedule attached hereto, and has agreed to grant to the Licensee a non-exclusive license to manufacture and sell thereunder, radio receiving sets to be used only for the non-commercial reception of public radio telephone broadcasting:

1. Now Therefore This Agreement Witnesseth that for and in consideration of the sum of Ten Thousand Dollars ($10,000.00) of lawful money of Canada paid upon execution hereof by the Licensee to the Licensor, receipt whereof is hereby acknowledged, and of the covenants and agreements contained herein the Licensor hereby grants to the Licensee, subject to the terms and conditions and to the performance of the obligations hereinafter set forth, a non-exclusive license under the Canadian patents set out in the Schedule attached hereto, during the full term of the said patents, and all re-issue of extensions thereof, to manufacture and sell radio receiving sets to be used only for the non-commercial reception of public radio telephone broadcasting:

2. The Licensee covenants with the Licensor to pay to the Licensor a royalty of ten per cent (10%) on the invoice price of all radio receiving sets as sold by it which embody any of the inventions described in any of the said patents; such royalty to be payable quarterly on the fifteenth days of January, April, July and October in each year, commencing with the 15th day of April, 1927, covering in each case the three months period ending on the first day of the month referred to:

3. The Licensee shall keep faithful and true account of all radio receiving sets sold by it and of the invoice price thereof, and for the purpose of determining the amount of royalty payable from time to time, the Licensor shall have the right to employ a chartered accountant to examine the books of the Licensee, and the Licensee shall give to any such chartered accountant full access to all books and papers which the said accountant shall require to inspect for the said purpose:

4. The license hereby granted is assignable by the Licensee only to its successors or assigns, of substantially the entire good will and business of the said Licensee, but is in all other respects personal and non-transferable:

5. The Licensee shall mark all radio receiving sets sold or offered for sale by it in the manner required by the provisions of the Patent Act, and by affixing thereto a notice reading—"Licensed by Canadian Radio Patents Limited".

6. In the event the Licensee shall fail to pay to the Licensor the royalties referred to in the preceding paragraphs, or shall otherwise fail to observe the covenants herein contained, or in the event that the Licensee shall become bankrupt or insolvent, or if a receiver or liquidator shall be appointed to administer its affairs, the Licensor may, at its option and without prejudice to any of its other legal and equitable rights and remedies under this Agreement, by thirty days notice in writing particularly specifying the breach, terminate the license herein given or granted, or of the rights of the Licensee hereunder, unless the Licensee within such period of thirty days shall have rectified such breach; in which case this license contract shall continue as though no such notice had been given. The deposit in the registered mails of a postpaid envelope addressed to the last known Post Office address of the Licensee, and containing any such notice, shall constitute due and sufficient service of such notice as to the date of such deposit.

7. Unless this Licensee Contract shall terminate as provided in the foregoing section, the license hereby granted shall extend and continue throughout the term of the herein referred to Canadian Letters Patent latest in date, and any re-issue or extension thereof, under which the Licensee is herein licensed. The termination of this License Contract for any reason whatsoever shall not relieve the Li-

censee of any obligations due to the Licensor at the date of such termination.

8. Should the license fees payable hereunder in any calendar year amount to less than Ten Thousand Dollars ($10,000.00) and should the Licensee continue to refuse or fail to pay to the Licensor the difference between the license fees so payable and the sum of Ten Thousand Dollars ($10,000.00) the Licensor may after ten days notice in writing to the Licensee demanding payment of such difference, cancel this license but without discharging the Licensee from its obligations to pay the license fees then payable.

9. The Licensee shall not import or cause to be imported directly or indirectly, into the Dominion of Canada, radio receiving sets manufactured or sold under this license during any one calendar year having an invoice price (including freight and duty) in the aggregate or more than One Hundred Thousand Dollars ($100,000.00).

10. The term invoice price used herein when applied to radio receiving sets imported into Canada shall include customs duty and freight to the point of entry into Canada.

In Witness Whereof the Parties Have Signed.

Signed, Sealed & Delivered

In the presence of:

....

....

Canadian Radio Patents Limited,

....

President.

....

Secretary.

Schedule.

Canadian Patents of

Canadian General Electric Company, Limited.

1.	Rice	241138
2.	Alexanderson	208583
3.	Langmuir	244847

Western Electric Company, Incorporated.

1.	Mathes	183275
2.	Mathes	209777
3.	Arnold	213999
4.	Hartley	174690
5.	Nichols	183276

Canadian Westinghouse Company, Limited.

1.	Armstrong	216321

Canadian Marconi Company.

1.	Round	179703
2.	Franklin	187793

Standard Radio Mfg. Corporation Limited.

1.	De Forest	159794
2.	do.	169332
3.	do.	174361
4.	do.	218235
5.	do.	218468
6.	do.	218238
7.	do.	218242
8.	do.	218473

DEFENDANT'S EXHIBIT NO. 147.

January 30, 1930.

Canadian Patents, Ltd.
212 King Street, West,
Toronto, Canada.

Gentlemen:—

We have recently been approached by several firms who wish to distribute Zenith Receivers in Canada, and we understand that arrangements have to be made with you for a license before any sets can be sold.

It was our understanding that in order to obtain this license, the distributor had to guarantee a minimum royalty of $10,000 which permitted the import of $100,000 worth of merchandise, and any merchandise imported in excess of this would be licensed at a flat 10% per set.

However, we are now advised that a distributor's license only entitles him to $100,000 per year, and a license for the sale of an unlimited amount must be a manufacturer's license. You will appreciate, of course, that it would not be worth our while to enter the Canadian market on a basis of $100,000 per year, and in order that we may give this matter intelligent consideration, we would appreciate full advice as to just what the license covers.

Very truly yours,

Zenith Radio Corporation
K. R. McVeigh,
Manager Export Div.

KRMcV:G

Canadian Radio Patents Limited
212 King Street West
Toronto

Office of Secretary-Treasurer

Toronto, 2, February 6th, 1930.

Zenith Radio Corporation,
3620 Iron Street,
Chicago, Ill., U. S. A.

Attention:—Mr. K. R. McVeigh—Mngr. Exp. Division

Gentlemen:

Your letter of January 30th, with reference to a license under the Patents owned or controlled by this Company in Canada, has been received and I am enclosing herewith a copy of the Standard Agreement form executed by our various Licensees in Canada. This Agreement form covers the situation pretty thoroughly and I believe that you will find the various points discussed in your letter dealt with clearly therein.

In addition, I may say that it has been our practice in the past to obtain from applicants for a license a $10,000.00 payment in advance of royalties and it is very probable that if and when any further licenses are granted, payment of an additional sum not to be considered an advance payment of royalty, may be required by our Board of Directors.

While I am not in a position to state definitely what the attitude of our Board would be, at the same time, the general feeling is, that no new licenses should be granted at this time. However, if one of the existing Licensees in Canada should desire to discontinue or amalgamate their radio business, it is possible, that our people would give careful consideration to the transfer of the license agreement, to a reputable concern of good financial standing.

From a perusal of the license Agreement form, you will observe that no limitation is placed upon sales in Canada by the Licensee but that the latter is required to comply with the requirements of the Canadian Patent Act and importation of receivers into Canada, must be limited. In this connection I may say that the extent of the organization contemplated in Canada and the amount of investment actually to be made in Canada would be of prime importance in considering the advisability of the possible granting of a new license or transferring of an existing one. While this whole matter is of course entirely one for our Board of Directors to decide, I may say that there is very little likelihood of an application receiving their favourable decision unless substantial investment in Plant, Organization, etc., is to be made in Canada.

If there is any further information which you may desire on this subject, I shall be very glad to hear from you further, and if you wish to make a definite proposal or application and will write to us setting the whole matter out fully it will be placed before our Board of Directors at the earliest possible opportunity for their decision in the matter.

Very sincerely yours,

Geo. F. Brookes

GFB/HCQ. *Auditor.*

Canadian Radio Patents Limited

and

License Agreement

Radio Receiving Sets, Canada

Memorandum of License Agreement made in duplicate this .... day of ...., A. D. 1929, between:

Canadian Radio Patents Limited,

a corporation organized under the laws of the Dominion of Canada, and having its Head Office at the City of Toronto, in the Province of Ontario, hereinafter called the "Licensor," of the First Part:

—and—

....

a corporation organized under the laws of ....
and having its Head Office at the City of ....
in the Province of ...., hereinafter called the "Licensee," of the Second Part:

Whereas the Licensor represents that it owns or has the right to grant licenses under various Letters Patent of the Dominion of Canada, set forth in Schedule "A" hereto annexed, relating to or useful in the manufacture of radio receiving sets, as hereinafter defined.

And Whereas the Licensee desires to make lawful use of some or all of the inventions covered by said Canadian Letters Patent, and to that end desires to acquire the licenses herein expressed.

Now Therefore, in consideration of the premises and of the license granted herein by the Licensor to the Licensee and of the mutual covenants herein contained it is agreed as follows:

1. The Licensor hereby grants to the Licensee, for the term of this agreement, under all of the Letters Patent of the Dominion of Canada set forth in Schedule "A" attached hereto, but only upon the terms and conditions and for the uses hereinafter specified, a personal indivisible, non-transferable and non-exclusive license to manufacture complete radio receiving sets, (including power supply units and power amplifier units when used as integral parts of said sets, all as herein defined), at its factory located at ...., in the .... of ...., and not elsewhere without the written permission of the Licensor; and to sell only in the Dominion of Canada complete radio receiving sets so manufactured, but only for the non-commercial reception of public radio telephone broadcasting. The License hereby granted does not include any license to sell any part or parts of a radio receiving set as distinguished from the complete set or any machine, appliance or material or any part thereof.

The Licensor has no license under the Canadian Letters Patent set forth in Schedule "A" in the field of electrical phonograph reproduction or in the field of production, projection or reception, either directly or by electric current waves or impulses, of still or motion pictures or of motion pictures synchronized with sound recorded on films or grooved records, its license and the license herein granted being only for the manufacture, use and sale of radio receiving sets to be used only for the non-commercial reception of public radio telephone broadcasting.

The Licensor does not own or control or possess rights under any patents for the manufacture and/or sale of vacuum tubes, and nothing herein contained shall be construed as conferring upon the Licensee, either expressly or by implication, estoppel or otherwise, any license to manufacture or sell any apparatus or article except in accordance with the express provisions of this agreement.

The Licensor has no patents or patent rights or licenses under patents whatsoever in foreign countries, and nothing herein contained shall be construed as conferring upon the Licensee, either expressly or by implication, estoppel or otherwise, any license under any patents of countries other than the Dominion of Canada.

2. For the purpose of this agreement the following terms are defined, namely:—

(a) "Radio Receiving Set"—means a radio receiver embodying one or more input circuits tuned or which can be tuned to substantial resonance with the radio frequency of the signal to be received, or coupled to a circuit or circuits so tuned or which can be so tuned; one or more devices for relaying or for amplifying such signals at the said radio frequency; one or more output circuits tuned or which can be tuned to substantial resonance with the radio frequency of the signal to be received or coupled to a circuit or circuits so tuned or which can be so tuned; a single detecting device for directly converting the signals so received and so relayed or amplified from said radio frequency signal currents, and if employed, one or more devices with their associated circuits for amplifying such audio frequency current. In any event the term "Radio Receiving Set" shall not for the purpose of this agreement include the so-called superhetrodyne or superregenerative receivers or parts therefor.

The said term "Radio Receiving Set" shall be understood to cover the whole of the component parts of the complete radio receiving apparatus as sold to the using public in Canada, that is to say, as included a case or cabinet containing the wiring and electrical devices and including power supply units and power amplifier units as herein defined if and when used as an integral part of said radio receiving set; and any other device which is normally built in or forms part of said radio receiving set as sold to the using public in Canada, but not as including the renewable batteries or tubes.

(b) "Power Supply Unit"—means apparatus adapted to take not exceeding 300 watts of electric current from an ordinary electrical power distributing system (such as an electric lighting circuit) and to transform, rectify, electrically filter and/or otherwise convert or modify the current so received and to deliver one or more electric currents having such characteristics as to be suitable for operating a radio receiving set, power amplifier unit and/or loud speaker.

(c) "Power Amplifier Unit"—means apparatus adapted to receive signal energy from the output of a radio receiving set and to deliver electric currents varying in accordance with the received signals, but of greater energy, suitable for the operation of a loud speaker.

(d) "Public Radio Telephone Broadcasting"—means the broadcasting by radio telephony of sounds of music, news, speeches, sermons, advertising and entertainment, educational and similar matter for reception by the general public.

(e) "Non-commercial Reception"—means and is limited to the reception for private entertainment and instruction in homes and also in other places where no charge is made directly or indirectly for admission or for the privilege of listening.

(f) "Superhetrodyne"—means utilizing the conversion of incoming signal modulated high-frequency electrical oscillations, by combination with other high-frequency electrical oscillations, into signal modulated oscillations of a different frequency lower than said incoming oscillations but in the ultra audible range, amplifying said last mentioned oscillations and detecting the signal modulations thereof.

(g) "Super-regenerative"—means the method of amplifying oscillatory electrical energy in which the output of a repeater is regeneratively associated with the input thereof to the extent of the regenerative effect being periodically varied independently of the variations in the energy to be amplified, in such manner as to increase amplification due to said repeater.

(h) The term "Chassis" or "Chassis Portion" shall be understood tocover the whole of the radio receiving set, including all electrical and wiring devices, power amplifier and power supply equipment, if such equipment forms an integral part of the said receiving set, but not including the cabinet, renewable batteries or tubes.

3. The Licensee hereby agrees to pay to the Licensor a royalty of ten per cent (10%) of the Licensee's invoice price, as hereinafter defined (before cash discount, freight, royalty or advertising allowances or similar deductions are made), of the chassis portion of all radio receiving sets licensed and sold under this agreement, plus ten per cent (10%) of a fixed nominal invoice valuation of Ten Dollars ($10.00) for the cabinet portion of the said radio receiving set as sold to the using public in Canada.

For the purpose of assessing royalties, the invoice price of the chassis portion of a complete radio receiving set shall be ascertained by taking that proportion of the invoice price of the complete radio receiving set as sold to the using public in Canada, which the manufacturing cost of the chassis, including the usual overhead burden and other standard charges, bears to the total manufacturing cost of the complete radio receiving set including overhead burden and other standard charges as herein defined. The invoice price of the complete radio receiving set, for purposes of royalty, as herein referred to, shall not be less than the "list" or generally advertised Canadian retail selling price of the complete radio receiving set, less the standard Canadian domestic wholesalers' discount allowed by the Licensee, which discount for purposes of said royalty shall not be greater than 50-10-5%.

In computing royalty payments in respect of licensed apparatus hereunder there shall be deducted from such invoice price of said radio receiving set (if originally included in said invoice price), the Licensee's invoice price of the vacuum tubes which have been purchased by the Licensee for sale with suc hsaid radio receiving set. In no case, however, shall the invoice price of vacuum tubes so deducted be greater than the standard list price of such vacuum tubes less the Licensee's standard or recognized discount to domestic wholesale distributors on complete radio receiving sets, if the Licensee shall sell such apparatus to distributors, or Licensee's discount on complete radio receiving sets to dealers, if the Licensee shall sell such apparatus to dealers.

In order to insure to the Licensor the full royalty payments contemplated hereunder, the Licensee covenants that in the event that any radio receiving set licensed hereunder shall be sold either—(1) to a corporation, firm or association which, or individual who, shall own a controlling interest in the Licensee by stock ownership or otherwise, or (2) to a corporation, firm or association in which the Licensee or its stock-holders shall own a controlling interest by stock ownership or otherwise, the royalty to be paid hereunder in respect of such radio receiving set shall be based upon the invoice price at which such purchaser re-sells said radio receiving set, rather than upon the invoice price of the Licensee.

4. The Licensee within twenty days (20) after and as of the first day of each month during the term of this agreement shall furnish the Licensor with a written statement, in form satisfactory to the Licensor, specifying the total

number and invoice price thereof of radio receiving sets sold under this agreement by the Licensee during the preceding month, or that part of the preceding month during which this agreement shall have been in force, also specifying the Licensee's invoice prices with respect to all types of said radio receiving sets, the type or model number and the trade or brand name, and also specifying the vacuum tubes and other apparatus sold in such licensed set, and the deduction to be made from the Licensee's invoice price in respect thereof in accordance with the provisions of Article 3 hereof. A similar statement shall be rendered within twenty days (20) after and as of the date of the termination of this agreement covering the period from the end of the preceding month to the date of the termination of this agreement. The royalty prescribed herein shall be due and payable on the said twentieth day of each month during the term of this agreement, and on the twentieth day following the termination of this license upon all such radio receiving sets sold by the Licensee during the respective period covered by the statement above mentioned.

The amount required to bring the aggregate royalty payment for any calendar year, or part thereof that this agreement shall be in force up to the amount of the minimum royalty payable for such year or part of year as in Clause Eight hereof provided, shall be due and payable on the tenth day of January next following such calendar year or part of year, or as the case may be, on the tenth day following the date of the termination of this agreement.

Radio Receiving Sets shall be deemed to be sold within the meaning of this agreement when the radio receiving set has been billed to any vendee, consignee or user, or if not billed when it has been shipped, delivered or consigned to any vendee, consignee, or user.

5. The Licensee shall keep full, true and accurate books of account and records of all business done under the li-

cense granted by this agreement, in sufficient detail to enable the Licensor to ascertain what license fees or royalties are due hereunder. The said books and records shall particularly show the number by types of sets made and sold by the Licensee, and the Licensee's invoice price thereon for each type or model (before cash discounts, freight, royalty, advertising allowances or similar deductions have been made). The Licensee's said books of account and records, including information or records concerning cost of materials and manufacturing data shall be open to the inspection of the Licensor or its duly authorized representative at all times, in order to substantiate cost percentages or invoice prices used by the Licensee in computing royalty payments hereunder, and generally the Licensee shall allow such investigations of the Licensee's business and operation in connection with this agreement as may be neecssary to determine the accuracy of the Licensee's accounts, records, reports and payments hereunder.

6. The Licensee shall affix in a conspicuous place on all radio receiving sets manufactured and sold by the Licensee under the terms of this agreement, a license notice bearing the corporate name of the Licensee and the inscription, namely:—"Licensed by Canadian Radio Patents Limited only for the non-commercial reception of public radio telephone broadcasting; Patented 1914, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1924, 1925, 1926," etc., or as otherwise may be required under the provisions of the Patent Act of the Dominion of Canada.

The Licensee shall, unless otherwise permitted by the Licensor, mark all radio receiving sets manufactured and sold by the Licensee under the terms of this agreement with its own trade-name or trade-mark, and will also observe any reasonable requirements which the Licensor, by notice in writing to the Licensee, may propose for the purpose of preventing the use of said sets otherwise than in accordance with the licenses hereby granted.

All said markings and inscriptions required herein shall be of a prominent, fixed and permanent character displayed in such manner that dealers and wholesale and retail purchasers and users may see the same at the time of purchase and sale, and the Licensee's circulars, price lists and catalogues referring to said radio receiving sets shall also contain the same marking inscriptions or notices.

7. In the event of failure by the Licensee at any time during the continuance in force of this agreement, to render any of the statements called for herein upon any of the prescribed dates or to pay all of the royalties required hereunder when due or to comply with any of the other obligations of this Agreement, or in the event that the Licensee shall make an assignment for the benefit of its creditors, or voluntarily or involuntarily be declared a bankrupt, or if a receiver or liquidator shall be appointed to administer its affairs, the Licensor may at its option, and without prejudice to any of its other legal and equitable rights and remedies under this Agreement, by ten days' notice in writing particularly specifying the breach, terminate the license herein given or granted, and the rights of the Licensee hereunder, unless the Licensee within the said period of ten days shall rectify such breach, in which case this License Agreement shall continue as though no such notice had been given. The deposit in the post-office of a registered post-paid envelope addressed to the last known place of business of the Licensee and containing any such notice, shall constitute due and sufficient service or delivery of such notice as of the date of such deposit. No such cancellation shall release the Licensee from any of the liability accruing to the Licensor hereunder prior to the time such cancellation becomes effective. No failure on the part of the Licensor to exercise its rights of cancellation hereunder for any one or more defaults shall be construed to prejudice its rights of cancellation for any subsequent default.

8. The Licensee further agrees to pay to the Licensor, for each and every calendar year during the time that this agreement shall remain in force, a minimum royalty of Ten Thousand Dollars ($10,000.00) per annum. In case this agreement shall be in force for only a part of any calendar year, the minimum royalty for each year and the amount of sales to which the minimum royalty applies shall be prorated to cover such part of such year as this Agreement shall be in force. Should the license fee payable hereunder for any calendar year amount to less than the said Ten Thousand Dollars ($10,000.00) the Licensor, notwithstanding anything in this agreement to the contrary, may upon failure of the Licensee to pay the difference between the said license fee as payable and the said minimum royalty required, cancel this license by ten days' notice in writing to the Licensee, but such cancellation shall not release the Licensee from its obligations to pay the royalty on the sales of radio receiving sets manufactured by it prior to the time of cancellation.

9. The Licensee covenants that it will, within the scope of this agreement, fully comply with the provisions of the Patent Act of the Dominion of Canada requiring the manufacture of said radio receiving sets mainly within the Dominion of Canada for the satisfaction of the reasonable requirements of the public; but in no event whatsoever shall the Licensee during any calendar year import or cause to be imported directly or indirectly into the Dominion of Canada, radio receiving sets, as herein defined, having an aggregate invoice price of more than $200,000.

The term "Invoice Price" herein when applied to radio receiving sets which may be imported into Canada shall include customs duties, and freight to the point of clearance within Canada. In any event the price of said imported radio receiving sets upon which royalties shall be calculated, shall be not less than the Licensee's standard price to Canadian domestic wholesalers laid down in Canada, and not less than 50-10-5% off the list or advertised retail selling price to the consumer in Canada of the complete radio receiving set as defined in Article 2, Clause A, Paragraph 2 hereof.

10. Until written notice of change of address is served by either party upon the other, any notice or request with reference to the subject matter of this agreement shall be deemed to have been sufficiently given when, if given to the Licensor, it shall be addressed to Canadian Radio Patents Limited, at its office 212 King Street West, in the City of Toronto, and when, if given to the Licensee it shall be addressed to the Licensee at its office,
and in either case sent by registered mail.

11. Neither this Agreement or any of its benefits shall be directly or indirectly assigned, transferred, divided or shared by the Licensee with any person, firm or corporation whatsoever, without the written consent of the Licensor. This Agreement and the License hereby granted shall terminate unless otherwise agreed in writing by the Licensor, upon any attempt by the Licensee to assign the same or upon the acquisition directly or indirectly of a controlling interest by stock ownership or otherwise in the Licensee by any other corporation, firm or person not holding a like license for radio receiving sets from the licensor. The Licensee agrees to permit the authorized representatives of the Licensor to examine the stock register books of the Licensee at any time upon reasonable notice. This Agreement shall enure to the benefit of the successors and assigns of the licensor, but shall not enure to the benefits of the successors and assigns or legal representatives of the Licensee, without the written consent of the Licensor.

12. Unless sooner terminated as hereinbefore provided, this Agreement shall continue in force to the end of the term of the latest patent now or hereinafter included in

this license, insofar as concerns the patent or patents then in force. The termination of this license for any reason whatsoever shall not relieve the Licensee from any of its liabilities acruing prior to such termination. The expression "term of this agreement" or similar expression, wherever used herein shall be deemed to be the period during which this Agreement shall remain in force as herein provided.

13. The License Agreement between the parties hereto, or their predecessors in title, dated .... A. D. 192........, is hereby cancelled and terminated.

14. This License Agreement, except as otherwise provided, shall be deemed to have been in full force and effect as of and from the First day of April A. D. 1929.

In Witness Whereof the parties hereto have caused these presents to be executed by their proper officers thereunder duly authorized, and their corporate seal to be hereunto affixed as of the day and year first above written.

Canadian Radio Patents Limited.

Witness:
....
President.

....
Secretary.

....

Witness:
....
President.

....
Secretary.

SCHEDULE "A".

RADIO RECEIVING SET LICENSE, CANADA.

A. Patents owned by Canadian General Electric Company, Limited.

1.	241,138	June 24, 1924	Rice	Amplification of Small Currents
2.	208,583	Feb. 15, 1921	Alexanderson	Selective Tuning Systems.
3.	244,847	Nov. 25, 1924	Langmuir	System of Amplifying Variable Currents.

Power Supply and Amplifier Units.

1.	220,741	July 11, 1922	Hull	Method of and means for obtaining Constant Direct Current Potentials.
2.	214,464	Nov. 29, 1921	White	Circuit connections of Electron Discharge Apparatus.
3.	198,076	Mar. 9, 1920	Langmuir	Method of and means for controlling Electric Current.
4.	263,962	Aug. 31, 1926	Rice & Kellogg	System for Amplifying.
5.	196,145	Jan. 13, 1920	Langmuir	Amplification of Variable Currents.

B. Patents owned by Western Electric Company, Incorporated and Northern Electric Company Limited.

1.	209,777	Mar. 22, 1921	Mathes	Vacuum Tube Filament and Plate Compensation.
2.	213,999	Oct. 25, 1921	Arnold	Gaseous Repeaters.
3.	174,690	Jan. 23, 1917	Hartley	Electric Circuits.
4.	183,276	Mar. 26, 1918	Nichols	Vacuum Tubes Circuits.
5.	183,275	Mar. 26, 1918	Mathes	Circuits for Electric Discharge Devices.

Power Supply and Amplifier Units.

1.	218,067	April 25, 1922	Arnold	Thermionic Amplifier.
2.	208,862	Feb. 22, 1921	Scriven	Vacuum Tube Apparatus.
3.	183,275	Mar. 26, 1918	Mathes	Circuits for Electric Discharge Devices.
4.	188,399	Jan. 21, 1919	Heising	Circuit Connections of Electron Discharge Apparatus.

C. Patents owned by Canadian Westinghouse Company Limited.

216.321	Mar. 7, 1922	Armstrong	Wireless Receiving System.

D. Patents owned by Canadian Marconi Company.

1.	179,703	Oct. 9, 1917	Round	Continuous Electrical Oscillations.
2.	187,793	Dec. 3, 1918	Franklin	Receivers for Wireless Telephony.

E. Patents owned by Rogers Majestic Corporation Limited (formerly Standard Radio Manufacturing Corporation Limited).

1. 159,794	Dec. 29, 1914	DeForest	Amplifying and Reproducing Sounds.
2. 169,332	May 9, 1916	DeForest	Wireless Receiving Systems.
3. 218,235	May 2, 1922	DeForest	Radio Signalling Systems.
4. 174,361	Jan. 9, 1917	DeForest	Wireless Telegraph and Telephone Systems.
5. 218,468	May 9, 1922	DeForest	Selective Audion Amplifier.
6. 218,238	May 2, 1922	Logwood	Oscillation Generator Systems.
7. 218,242	May 2, 1922	DeForest	Amplifying Pulsating Electric Currents.
8. 218,473	May 9, 1922	DeForest	Audion Circuit.

Power Supply and Amplifier Units.

1. 181,500	Jan. 8, 1918	DeForest	Telephone and Telegraph Systems.

Patent owned by Canadian Radio Patents Limited.

251,845	July 21, 1925	Cardwell	Variable Air Condensers.

DEFENDANT'S EXHIBIT NO. 148.

Canadian Radio Patents Limited
159 Bay Street
Toronto

November 30, 1936

Mr. E. A. Tracey,
Vice President,
Zenith Radio Corporation,
Chicago, U. S. A.

Dear Sir:

Mr. M. M. Elliott of the Canadian Marconi Company has referred to me your letter of November 18th with reference to the radio patent situation in Canada.

Enclosed I am sending you a notice which contains a list of the concerns in Canada to whom licenses have been reserved or granted by us and also a partial schedule of the patents and patent rights which we own or control. I may say that in addition to this we have the continuing rights in the radio receiving set field under all RCA developments and patents inas far as Canada is concerned.

By reason of the requirements of the Canadian Patent Act, it is not the policy of this Company to grant licenses for the importation of radio receiving sets into Canada. It has been our practice to require that our licensed companies manufacture in Canada to a sufficient extent to meet the reasonable requirements of the public.

Our present standard royalty arrangement is 10% of the invoice value of the chassis portion of the set, plus certain other additions, and the standard agreement provides for a minimum annual royalty of $10,000.00.

Whether or not a license will be granted to your Company to manufacture and sell receivers in Canada will, of course, be a matter which our Board of Directors must decide, and if you are desirous of obtaining such a license, it is suggested that you make formal applications so that the matter may be placed before our Board for consideration.

Yours truly,

Illegible,

GFB/h *Manager.*

Announcement.

We again desire to announce that under the patents controlled by Canadian Radio Patents Limited, for the manufacture and sale in Canada of Radio Receiving Sets to be used only for the non-commercial reception of public radio telephone broadcasting, Licenses have been reserved or granted to the following:—

1. Canadian General Electric Company, Ltd. (General Electric).
2. Canadian Westinghouse Company, Ltd. (Westinghouse).
3. Northern Electric Company, Ltd. (Northern Electric).
4. Canadian Marconi Company (Marconi).
5. Rogers-Majestic Corporation, Ltd. (Rogers, Majestic, Deforest).
6. Dominion Electrohome Industries, Ltd. (Phonola).
7. Mohawk Radio Ltd. (Lyric Andrea).
8. Philco Products of Canada, Ltd. (Philco).
9. Sparton of Canada, Ltd. (Sparton).
10. Stewart-Warner-Alemite Corporation, Ltd. (Stewart-Warner).
11. Stromberg-Carlson Telephone Manufacturing Co., Ltd. (Stromberg-Carlson).
12. R. C. A. Victor Company, Ltd. (R. C. A. Victor).

Radio Receiving Sets manufactured by others, or imported into or sold in aCnada, embodying the following features:—

(a) Regeneration feed back, or oscillation.
(b) Tuned radio frequency.
(c) Grid leak detection.
(d) Neutralization of inter-electrode capacity.
(e) Power amplification and power supply.
(f) Superheterodyne circuits.

are infringements of the patents controlled by Canadian Radio Patents Limited.

Among these patents ar the following:—

241,138	Rice
208,583	Alexanderson
244,847	Langmuir
220,741	Hull
214,464	White
198,076	Langmuir
263,962	Rice & Kellog
196,145	Langmuir
209,777	Mathes
213,999	Arnold
183,276	Nichols
183,275	Mathes
218,067	Arnold
208,862	Soriven
183,275	Mathes
188,399	Heising
216,321	Armstrong
187,793	Franklin
218,235	DeForest
218,468	DeForest
218,238	Logwood
218,242	DeForest
218,473	DeForest
181,500	DeForest
251,845	Cardwell

This announcement is made to direct the attention of manufacturers, importers, purchasers or users of radio receiving sets to the patent situation affecting such apparatus and that unlicensed use of these inventions will involve liability to Canadian Radio Patents Limited.

Canadian Radio Patents Limited,
159 Bay Street,
Toronto.

DEFENDANT'S EXHIBIT NO. 149.

Canadian Radio Patents Limited
159 Bay Street
Toronto

September 12, 1951.

Mr. Bruce L. Birchard,
Patent Department,
Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, Ill.,
U. S. A.

Dear Mr. Birchard:

I have your letter of September 10th with reference to the revised list of patents that we are now working on for inclusion in the standard CRPL output license agreement for radio and television receivers but, in looking over the status of this work, it appears that it will still be several weeks before the list will be finalized and printed. We are still waiting on lists from two of the companies involved, and there is also under consideration broadening the scope of the CRPL output license agreement to include other electronic fields and thus bring in additional patents.

We are completely out of copies of the Schedule "A" that is in our existing agreement but I have extracted a copy of said Schedule "A" from a cancelled license and I am enclosing it in the hope that it will be of some value to you until the other list is completed.

Although our licensees are covered under the RCA Canadian Patents and also those of Philco, neither of these groups were included in the Schedule "A" as originally printed. However, as previously indicated, the coverage offered to our licensees is all of the present and future patents in these fields covering inventions originating with such companies as RCA, General Electric, Westinghouse, Northern Electric (Western), Marconi, Rogers (including Philips), Philco, Hazeltine and certain patents that have been purchased of various inventors and companies by Canadian Radio Patents Limited.

Yours very truly,

Illegible,
Secretary-Treasurer.

SDB/NC

encl.

September 10, 1951.

Mr. S. D. Brownlee
Canadian Radio Patents Limited
159 Bay Street
Toronto, Canada

Dear Mr. Brownlee:

I am in receipt of the license agreement you sent me on September 6, 1951. I would appreciate your sending me another copy of the license agreement with the revised schedule A attached as soon as it is available so that we will have the complete picture before us. I would like an indication from you as to when you think this revised schedule will be available.

Very truly yours,

Bruce L. Birchard
Patent Department

BLM:MLM

Canadian Radio Patents Limited
159 Bay Street
Toronto

September 6, 1951.

Mr. Bruce L. Birchard, Attorney,
Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, Ill.,
U. S. A.

Dear Mr. Birchard:

As requested in your letter of August 31st, we are enclosing a copy of the standard CRPL output license agreement for radio and television receivers and electric phonographs.

The list of patents is not attached to this copy in view of the fact that we are currently revising the list to bring it up to date but, as previously noted, our license includes the present and future patents in these fields covering inventions originating with such companies as RCA, General Electric, Westinghouse, Marconi, Northern Electric (Western), Rogers (including Philips), Philco, Hazeltine Corporation and others.

Yours very truly,

Illegible,
Secretary-Treasurer.

SDB/NC

encl.

DEFENDANT'S EXHIBIT NO. 150.

(Letterhead of Zenith Radio Corporation, Chicago 39.)

July 21, 1953.

Mr. Stewart Brownlee, Secretary-Treasurer
Canadian Radio Patents, Ltd.
159 Bay Street
Toronto, Canada

Dear Mr. Brownlee:

Your records will show that we have had considerable previous correspondence regarding the possibility of Zenith Radio Corporation securing a license under the Canadian radio patent pool.

In the past we have been consistently advised that the only license available to us would be one restricted either to an arrangement whereby the goods would be manufactured in the Dominion of Canada by a member of the pool or for the manufacture by Zenith in Canada, but that in no event would such license permit the importation into Canada of radio and televsion receivers manufatcured in the United States.

You will further recall that when Zenith Radio Corporation receivers were imported into Canada during 1951 by a distributor in Winnipeg, representatives of the Canadian Radio Patents, Ltd. threatened the distributor with legal proceedings if such importation of Zenith merchandise continued.

We are still interested in entering the Canadian market and I will appreciate your advice as to whether it is now possible to secure a license from Canadian Radio Patents, Ltd. which will permit importation into Canada of Zenith radio and television receivers manufactured in the United States.

Very truly yours,
Illegible.

J. A. Miguel, Jr./b

Air-Mail

Canadian Radio Patents Limited
159 Bay Street
Toronto

July 23, 1953.

Mr. John A. Miguel, Jr.,
Manager International Division,
c/o Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, U. S. A.

Dear Mr. Miguel:

We have your letter of July 21st with reference to the requirements of the Canadian Patent Act and the licensing policy of Canadian Radio Patents Limited.

There has been no change in the "working in Canada" requirements of the Canadian Patent Act or in the specific rulings with respect to Canadian Radio Patents Limited given by the Canadian Commissioner of Patents to the effect that CRPL cannot grant licenses for importation.

All of the companies selling radio or television receivers in Canada are licensed under the patents owned or administered by Canadian Radio Patents Limited and all of these companies are manufacturing their receivers in Canada in accordance with the requirements of the Canadian Patent Act.

We will be pleased to grant Zenith a license under the same terms and conditions as the other royalty paying licensees, but one of the provisions is to manufacture in accordance with the requirements of the Canadian Patent Act.

If you require any further details, please do not hesitate to call upon us.

Yours very truly,
S. D. Brownlee,
Secretary-Treasurer.

SDB/dh

DEFENDANT'S EXHIBIT NO. 151.

Conference

Canadian Radio Patents Limited
Mr. B. McConnell, President

Zenith Radio Corporation of Canada, Ltd.
Mr. L. B. Kiely, Mr. S. L. Capell

Date: July 30, 1958

Place: Toronto Board of Trade

Time: July 30, 1958, 11:00 a.m.

Mr. Brian McConnell, President, Canadian Radio Patents Limited, 200 St. Clair Avenue West, Toronto, phoned me on July 25, for the purpose of setting up an appointment to discuss matters of mutual concern. I advised Mr. McConnell that July 30 would be the earliest date possible and that I would confirm this date on the morning of July 30, to be sure both parties were available.

Mr. S. L. Capell and I had other business down-town on July 30. Therefore, Mr. Capell accompanied me to the Board of Trade to meet Mr. McConnell at 11:00 a.m.

Mr. McConnell opened the discussion with the suggestion that he would like to know more specifically what Zenith plans and objectives are in Canada, as he and his group had no further knowledge than had been published in various news releases.

Mr. McConnell wished to determine:

Were Zenith importing sets now? He understood such was the case.

Was Zenith planning to set up Canadian manufacturing at some future date?

To the first question, I answered "Yes, Zenith are importing sets into Canada now."

To the second question, I answered that there had been no decision a syet by senior officials of the Company regarding the matter of Canadian production in the future, or if any decision had been made, it had not been expressed as an opinion by the Company at this time.

Mr. McConnell told us that he had read of the litigation in the United States, involving Zenith with R.C.A. Victor and other prime tube patent holders, and he assumed that the agreements that concluded this litigation would be extended to Canada by the parties involved.

He was of the opinion, however, that Zenith television receivers and high-fidelity instruments might infringe patents controlled by Canadian Radio Patents Limited, such as:

Parker—held by C.R.P.L.
Armstrong, F.M.—Represented by C.R.P.L.
some Marconi patents—Represented by C.R.P.L.
some Philips patents—Represented by C.R.P.L.

Mr. McConnell told us that under Sections 67 and 68 of the Canadian Patent Act, any of the patents or groups of patents controlled by C.R.P.L. that might be infringed by Zenith equipment in Canada could result in such patents being categorized as "Abused" by the Commissioner of

Patents, in the event that action for infringement by patent-holders was not initiated within the prescribed period after importation, as spelled out in Sections 67 and 68 of the Canadian Patent Act.

Mr. McConnell then requested that we supply him with a couple of schematic diagrams of Zenith television equipment (two typical chasses), and I offered to do so, inasmuch as these schematic diagrams are readily available through any Zenith dealer. Mr. McConnell explained that the diagrams would be examined by C.R.P.L. principals and that in all probability the Philips engineering division in Canada would accept this assignment for the Canadian Radio Patents Limited. He told us that in the event infringement of patents held by Marconi, Philips, or C.R.P.L. patents administered in Canada under the name of Parker or Armstrong F.M. was indicated by the examination, he would like a meeting to discuss the problem with Zenith representatives, to forestall a serious situation for C.R.P.L. under the Canadian Patent Act.

The conference closed with the understanding that we would supply the Zenith schematics to Mr. McConnell. These would be examined by the engineering division of one of the C.R.P.L. members, and subsequently, Zenith would be notified of the findings of this examination.

Yours very truly,

Lloyd B. Kiely,
General Manager.

LBK:hh

DEFENDANT'S EXHIBIT NO. 152.

Meeting with Mr. Brian McConnell

July 30, 1958

Place: Toronto Board of Trade

Time: 11 a.m., July 30, 1958

Present: Mr. Brian McConnell, C.R.P.L.; Messrs. L. B. Kiely, S. L. Capell, Zenith Radio Corporation of Canada, Ltd.

This meeting resulted from a telephone call to Mr. Kiely from Mr. McConnell, stating that he wished to call on Zenith Radio Corporation of Canada, Ltd. to discuss C.R.P.L. matters.

Mr. Kiely reported this telephone call to Mr. Wright, who advised Mr. Kiely to meet with Mr. McConnell and hear what he had to say, but to give no information regarding Z.R.C. of C., Ltd.

Mr. McConnell opened the discussion by stating that he would like to know something about Zenith activities in Canada, as all he knew was what he had read in the papers. Was Zenith importing sets, T.V. and radio? He assumed so. Did Zenith have in mind continuing to import, or would Canadian manufacturing follow? Mr. Kiely did what little talking there was on behalf of Z.R.C. of C., Ltd., Mr. Capell being present solely as a witness. Mr. Kiely was completely non-committal, stating that these were matters that would be decided in due course and nothing could be said at this time.

Mr. McConnell then stated that he had read that Zenith in the U.S.A. had made arrangements with R.C.A. and G.E. for use of their patents and he assumed these arrangements would also extend to Canada.

He was concerned, however, that Zenith television receivers and high-fidelity instruments might infringe patents represented by C.R.P.L. such as:

Parker—held by C.R.P.L.

Armstrong }
Marconi }—represented by C.R.P.L.
Philips }

Mr. McConnell stated that if these patent holders licensed the importation of goods using their patents, the Commissioner of Patents, under the Canadian Patent Act, Sections 67 and 68, might rule that these patents (exclusive rights thereto) abused.

Mr. McConnell then suggested that Zenith supply C.R.P.L. with schematic diagrams of two average Zenith television receiver chassis, so that C.R.P.L. could determine if any of the patents they were representing, other than R.C.A. or G.E., were being employed. If their examination showed infringement, he would like a meeting to discuss the problem with Zenith because it would create a serious situation for C.R.P.L. under the Canadian Patent Act.

Mr. Kiely said such schematics of current receivers could be obtained from servicing dealers, but that as a courtesy we might be able to supply them.

Mr. Kiely then suggested that there was nothing more to talk about until C.R.P.L. had determined whether or not Zenith was, in C.R.P.L.'s opinion, infringing any of the patents they were representing. Mr. McConnell agreed, and the meeting then adjourned to the dining room, where Mr. Kiely provided lunch.

S. L. Capell.

:hh

DEFENDANT'S EXHIBIT NO. 153.

Canadian Radio Patents Limited
200 St. Clair Ave. West
Toronto

April 16, 1959.

Mr. P. Curtis,
Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, Illinois.

Dear Mr. Curtis:

Mr. Kiely informed me this morning that you would like to have details of the patent coverage which we hold relating to Zenith receivers being offered for sale in Canada.

I am pleased to supply this information and I hope that it will be of assistance during the forthcoming meeting between us which Mr. Kiely is kindly arranging.

The following remarks pertain to your Devon 21 television receiver identified as No. B-2225. A physical investigation of this unit has disclosed that it incorporates the inventions of the following Canadian patents:

1. No. 441,777—Armstrong—This patent corresponds ot United States patent No. Re. 21660. We have heard on several occasions from United States sources that the United States patent is considered to be invalid. We have had a thorough investigation in respect to the Canadian patent and the evidence indicates the patent to be valid in this country. It is quite possible, of course, that the United States patent could be invalid and the Canadian patent valid in view of differences in the Patent Acts of the two countries and the judicial interpretation placed thereon.

2. No. 474,968—This patent is owned by Hazeltine Corporation and corresponds to United States patent No. 2,525,919.
3. No. 562,773—This patent is owned by Philips and corresponds to United States patent No. 2,805,384. I am advised by Philips that due to the fact that the Canadian and United States applications were independently prosecuted by different attorneys, the claims in the two applications differ considerably. Consequently I will obtain a copy of the Canadian patent and will forward it to you as soon as it is received.

In order that we might have as much information as possible before us in anticipation of the meeting in Chicago I wonder if you would be so good as to send me a list of any Canadian Zenith patents which you consider may be used either by (a) yourselves, or (b) by others in Canada.

I understand from Mr. Kiely that your shareholders meeting has caused a slight deferment of the meeting between us but I trust that this will not be too long delayed and that we may discuss the Canadian patent situation relative to your operations in Canada in the near future.

Yours very truly,

B. McConnell,
President.

BMc:jm

DEFENDANT'S EXHIBIT NO. 154.

Canadian Radio Patents Limited
200 St. Clair Ave. West
Toronto

June 5, 1959.

Mr. F. W. Crotty,
Zenith Radio Corporation,
6001 West Dickens Avenue,
Chicago, Illinois,

Dear Mr. Crotty:

During the discussions with yourself and Mr. Curtis in your office on May 12th you requested a copy of one of our present standard license agreements together with further information relative to Canadian patent No. 562,773.

A blank copy of an agreement is enclosed herewith.

With regard to the patent and its use in Zenith television receiver No. B-2225, I have had this matter reinvestigated and there is no doubt in our minds that the invention covered by the patent is used in this receiver. The tests show this quite conclusively. To explain this by correspondence would, however, be a most difficult task as I surmised, and I would suggest therefore that, if possible, you visit Toronto at which time a test demonstration can be arranged for you.

As indicated during our discussions I was under the impression Zenith of Canada had decided to manufacture receivers in this country. You indicated that no such decision had been made and that the matter was still under consideration.

Yours very truly,

BMcC:jm
Encl.

B. McConnell,
President.

DEFENDANT'S EXHIBIT NO. 155.

February 13, 1951.

Consolidated Motors Limited,
Parts and Accessories Division,
229 Main Street,
Winnipeg, Man.

Gentlemen:

For your information, we are enclosing copy of a warning ad that we have recently been running in Canadian radio trade publications.

We believe that this ad is self-explanatory and we wish to emphasize that it is our intention to protect our patent rights by legal action if necessary in case of sale of radio receivers not manufactured under license from Canadian Radio Patents Limited.

Yours very truly,

SDB/NC
encl.

Secretary-Treasurer.

(Letterhead of Consolidated Motors Parts, Winnipeg, Canada.)

February 14, 1951.

Canadian Radio Patents Ltd.
159 Bay Street,
Toronto, Ontario.

Gentlemen:

I acknowledge your letter of February 13th, and attached to it a notice to importers regarding radio and television receivers.

We are at a loss to understand why this has been brought to our particular attention as the majority of the radios which we purchase are purchased from Canadian manufacturers.

I would appreciate if you would give us an explanation as to why this has been brought to our attention.

Yours truly,

"Consolidated"
A. G. Lush
Manager.

A. G. Lush/is

Canadian Radio Patents, Limited
Copy for Enclosure to

February 16, 1951.

Mr. A. G. Lush, Manager,
Consolidated Motor Parts,
229 Main Street,
Winnipeg, Man.

Dear Mr. Lush:

We have your letter of February 14th requesting further information as to why we forwarded a copy of the warning notice that CRPL has been running in the Canadian trade papers.

Quite frankly, we had received at least three reports from different sources to the effect that you were considering the distribution of Zenith imported radio receivers in the Province of Manitoba and that some Zenith receivers are already in dealer stores to be offered for sale when CSA approval is received. We have not had an opportunity of confirming these reports but, in case you were unaware of our position in this matter, we thought it only fair to send you copies of our warning notice.

If the reports we have received are incorrect, no harm is done but, if they are correct, we are fully prepared to proceed with legal action against anyone offering for sale receivers that infringe patents administered by Canadian Radio Patents Limited and not manufactured by our licensees.

Yours very truly,

Secretary-Treasurer.

SDB/NC

DEFENDANT'S EXHIBIT NO. 156.

(Letterhead of Consolidated Industries Ltd., Winnipeg, Canada.)

February 21, 1951.

Zenith Radio Corporation,
International Division,
6001 Dickens Ave.,
Chicago 39, Illinois.

Attention: Mr. J. A. Miguel, Jr.

Dear Sir:

Thank you for your telegram received today with reference to our request for information as to license by Canadian Radio Patents Ltd. As our Mr. Lush is out of town at present we are suspending sales of your radio until his return, when we hope to have our position clarified. We will also advise you as soon as we can whether or not to ship the 61 radios you are holding for us.

Your very truly,
Consolidated Industries Ltd.

B. Coleman/is Per B. Coleman

(Form of Western Union Telegram.)

No. Wds.-Cl. of Svc.—Nite Ltr. Pd. or Coll.—Paid
Charge to the Account of—X-862 Time Filed—2-20-51

A. G. Lush
Consolidated Industries Ltd.
229 Main Street
Winnipeg, Manitoba

Retel 19th we are not licensed yet by Canadian Radio Patents Limited. We understand they do not license unless established to manufacture in Canada. Withholding further shipment till we hear from you.

J. A. Miguel

JAM/b Zenith Radio Corporation

DEFENDANT'S EXHIBIT NO. 157.

May 7, 1951

Consolidated Industries, Ltd.
229 Main Street
Winnipeg, Canada

Att: Mr. B. Coleman

Gentlemen:

As requested in your letter dated April 27, we enclose, herewith, our Check No. 289629 in the amount of $1,766.18 in liquidation of the credit balance on our books in your favor in accordance with the attached statement.

We sincerely regret that conditions did not make it possible for you to import and sell the sets for which your remittance was originally intended. However, as soon as conditions make it possible for us to enter into the Canadian market without any problems or difficulties, we shall be glad to get in touch with you again.

Very truly yours,

J. A. Miguel, Jr.,
Manager International Division.

JAM/b
Air-Mail
Encl. Ck. 289629

Consolidated Industries, Ltd.
229 Main Street
Winnipeg, Manitoba, Canada

2/19	cash		1,768.96
2/23	R20032	1.60	parts—EP06598—Tel. 2/16
3/15	R20638	.39	parts—EP06792—Tel. 2/22
4/16	R21500	.79	parts—EP07082—Tel. 4/15 (Door—L.H.)
			1,766.18

Defendant's Exhibit No. 157.

② return

Zenith-Bonfig Exh.

CONSOLIDATED
APPLIANCE AND EQUIPMENT DISTRIBUTORS
Industries Ltd.

ELECTRIC APPLIANCES - LAWN MOWERS - EQUIPMENT - SPORTING GOODS

TELEPHONE 924 [illegible]

229 Main Street
WINNIPEG, CANADA

April 27, 1951

Lewis
let's do this –
have cheque sent to [illegible]
me [illegible]

4/30

Check attached
statement explains
difference in amount.
5/2/51

Zenith Radio Corporation,
International Division,
6001 Dickens Ave.,
Chicago 39, Illinois.

Attention: Mr. J. A. Miguel

Dear Sir:

In view of the fact that we have been prevented from offering Zenith radios for sale in Canada at the present time by the Canadian Radio Patents Ltd, we have no alternative but to cancel the order we have with you for a quantity of radios and combinations. We would, therefore, appreciate if you would issue your cheque to cover the amount of credit balance on your books which, according to the last statement from your Company, is $1,766.97.

We regret having to make this request, but as you will understand, there is no alternative for us.

We do hope that as soon as conditions warrant, and you are prepared to enter the Canadian market on a coast to coast basis, you will certainly keep us in mind for Western Canadian territory.

Yours very truly,

CONSOLIDATED INDUSTRIES LTD

Per B Coleman

B.Coleman/is

RECEIVED
APR. 30 1951
J. A. MIGUEL, JR.

2357

DEFENDANT'S EXHIBIT NO. 158.

CONSOLIDATED
APPLIANCE AND EQUIPMENT DISTRIBUTORS
Industries Ltd.
ELECTRIC APPLIANCES – LAWN MOWERS – EQUIPMENT – SPORTING GOODS

TELEPHONE 924 255

229 Main Street
WINNIPEG, CANADA

June 12, 1951.

David
I thought these were already cancelled

Hazeltine Research, Inc. vs. Zenith Radio Corporation } C.A. No. 50-C-184.
Defendant's Exh. No. 158

Zenith Radio Corporation,
International Division,
6001 Dickens Ave.,
Chicago 39, Illinois.

Gentlemen:

Please cancel our orders 10915 and 10916 until further notice.

The reason for this being as yet no final C.P.R.A. Approval has been received. We hope shortly that this Approval will be forthcoming, so that we may have the opportunity of going all-out for Zenith in Canada.

Trusting that this is satisfactory, we are

Yours very truly,

CONSOLIDATED INDUSTRIES LTD

W H Gray

W. H. Gray,
Appliance Manager.

WHG/is

RECEIVED
JUN 14 1951
J. A. MIGUEL, JR.

1851

DEFENDANT'S EXHIBIT NO. 159.

May 1, 1952

Consolidated Industries, Ltd.
229 Main Street
Winnipeg, Canada

Att: Mr. A. G. Lush, Manager

Gentlemen:

Thank you for your letter of April 24.

We, too, would like very much to have our radios sold in the Canadian market, but, unfortunately, our products are not yet licensed by the Canadian Radio Patents Pool. Until such time as this patent matter is cleared, we regret that we cannot offer our radios for export to and resale in Canada.

Best regards.

Very truly yours,

(Illegible)

J. A. Miguel, Jr./b

Air-Mail

(Letterhead of Consolidated Industries Ltd., Winnipeg, Canada.)

April 24, 1952.

Zenith Radio Corporation,
International Division,
6001 Dickens Ave.,
Chicago 39, Illinois.

Attention: Mr. J. A. Miguel, Manager.

Dear Sir:

Since the Canadian dollar is at a premium over the American dollar and our excise tax has been cut, it now puts us in a position to import from United States the Zenith Radios at a price in comparison with Canadian made.

I would appreciate if you would be kind enough to forward to us 24 only Standard Clock Model Radios (not Deluxe Model); 24 only J-402 Portables and 6 only Trans-Oceanic. We would also appreciate if you would forward, under a separate mail, catalogues on your latest Console Models as well as distributor's cost price.

We look to a great volume of business in the very near future as we have been advised by our Government to make as many purchases as possible in United States in view of the Canadian dollar position.

Kindest regards.

Yours truly,

Consolidated Industries Ltd.
A. G. Lush,
Manager.

A.G.Lush/is

DEFENDANT'S EXHIBIT NO. 160.

The Winnipeg Supply & Fuel Co. Ltd.
8th Floor—Boyd Building
Winnipeg, Man.

April 11th, 1953.

Mr. Raul Gonzales
International Division
Zenith Radio Corporation
6001 Dickens Avenue
Chicago 39, Illinois

Dear Mr. Gonzalez:

We have your letter of March 27th in reply to our earlier inquiry of March 23rd regarding distribution of your television and radio equipment in Canada.

You have stated in the second paragraph of your letter that you are not exporting to Canada at the present time because our Canadian Radio Patent Pool does not make it possible for you to secure patent coverage for imported instruments.

Because we already represent some large American concerns in Western Canada who do not manufacture in this country, we felt that it was strange if there was some special law that had reference to the type of equipment manufactured by your organization.

Now this may be but according to our Legal Advisors, there does not appear to be anything in our Canadian Patent Laws which would prohibit your exporting and having your product distributed in Canada.

There is however, an aspect of our existing patent law which may be guiding your thinking and that is that if a patentee has not commenced to manufacture to an adequate extent and supply on reasonable terms, the patented article, within 3 years from the date of the patent, and if the manufacturer refuses to grant a license or distributorship on reasonable terms, any interested party may make an application to the Commissioner of Patents for an Order that the manufacturer be forced to grant a license of his manufacturing rights under the patent upon such terms as to royalties, etc., as the Commissioner may deem equitable.

However, of course, this provision is overcome providing you have active distribution of your products in this country irrespective of whether they are manufactured here or not.

We thought you would like to have this information if it is of any value to you and are writing you again reiterating our interest in the possible future distribution of your products in this country.

Cordially yours,

The Winnipeg Supply & Fuel Co. Limited,
(Signed) R. A. W. Vidler,
Research Department.

R.A.W.Vidler/vmci

DEFENDANT'S EXHIBIT NO. 161.

(Letterhead of Ideal Electric Supply Co., Truro, N. S.)

August 20th, 1954.

Zenith Radio Corporation,
6001 Dickens Ave.,
Chicago 39, U. S. A.

Attention: Mr. Joseph S. Wright,
General Counsel

Dear Sir:

We are enclosing a copy of a letter received this morning from Canadian Radio Patents Limited, as per your request on July 21st.

Yours sincerely,

Ideal Electric Supply Co.,
N. A. MacCuspie,
President.

J/

Enc. 1.

Copy

Defendant's Exhibit No. 161.

Canadian Radio Patents Limited,
200 St. Clair Ave. West, Toronto.

August 16, 1954.

Mr. N. A. MacCuspie, President,
Ideal Electric Supply Company,
Truro, N. S.

Dear Mr. MacCuspie:

Your letter of July 29th was delayed in reaching us due to the fact that it was mailed to 159 Bay St., our former address.

We have rechecked with the patent attorneys and engineers responsible for examining the circuit diagrams of all unlicensed receivers brought to our attention and they have indicated that the Canadian patents owned or administered by CRPL covering inventions utilized in the Zenith television receivers include, amongst others, Canadian patents 356,764—Simonds, 378,393—Gunther, 383,276—Vance, 398,523—Wheeler, 400,539—Ballard, 405,905—Delvaux, 409,049—Poch, 409,244—Bedford, 457,328—Parker, 466,035—Porsch and 476,757—Seeley.

The solicitors that will act for us in this case are Gowling, MacTavish, Osborne and Henderson of 88 Metcalfe Street, Ottawa and if we do not hear from you within the next ten days, in accordance with the original request for advise that you have discontinued the sale of unlicensed receivers, we will turn the matter over to our solicitors with instructions to commerce an action in the Exchequer Court of Canada.

Yours very truly,

S. D. Brownlee,
President.

SDB/ml

Mr. N. A. MacCuspie, President,
Ideal Electric Supply Co.,
Truro, Nova Scotia,
Dominion of Canada.

July 21, 1954

Dear Mr. MacCuspie:

Mr. Miguel handed me your letter of July 16, 1954 and we have noted with considerable interest the letter from Mr. S. D. Brownlee of July 6, 1954 and particularly his statement in the first paragraph that it has been reported by his patent attorneys and engineers that the Zenith television receivers "infringe various Canadian patents of invention either owned by this Company or under which this Company has licensing rights."

It would be very interesting to us to know just what patents are considered to be infringed by just what Zenith television receivers. We will appreciate your inquiring of Mr. Brownlee and asking him for this information. Upon receipt of it we will be very happy to examine the patents in question and adivse you further with regard thereto.

In the meantime, we are unable to indemnify you against any litigation which might result from your sale of Zenith television receivers in the Dominion of Canada, but we will of course be very happy to cooperate fully with you in the defense of any litigation which should be instituted.

For your information, Zenith has been in litigation in the United States for a number of years on the question of the legality of the American patent pool and we have also filed an action in the courts here in Chicago in which we are seeking damages because of the alleged wrongful activities of the radio pool in seeking to prevent us from marketing our merchandise in the Dominion of Canada.

We will appreciate very much hearing further from you and obtaining any additional information that you may secure.

Very truly yours,

Joseph S. Wright.

JSW:moh

cc: Messrs. Miguel
Curtis

(Letterhead of Ideal Electric Supply Co., Truro, N. S.)

July 16, 1954.

Zenith Radio Corporation,
6001 Dickens Ave.,
Chicago 39, U. S. A.

Attention: Mr. Walter R. Peirels,
Asst. Sales Mgr., International Division.

Dear Sir:

We recently received a letter dated July 6th from Canadian Radio Patents Ltd., 159 Bay Street, Toronto (a copy of which is enclosed) with regard to us selling Zenith Television receivers of U. S. manufacture in Canada and according to their letter these receivers evidently are infringing on various Canadian patents of invention either owned by Canadian Radio Patents Ltd. or under their licensed rights.

We must say we are a bit concerned about this at the moment as we were quite hopeful that we would be doing quite a volume in this part of Canada on Zenith television sets for the balance of the year. At the moment we only have one station operating in the Maritime Provinces, within the next three months we will have four stations operating which would certainly boost our sales and get Zenith television on the market in these parts.

If in fact the Zenith sets do infringe any Canadian patent owned by Canadian Radio Patents Ltd. or on which that Company has licensed rights then the owners of the rights have the right to sue the person who sells one of these sets for infringing the patent or licensing rights. Whether the sets do infringe said patents or rights is a matter which could not be determined without the assistance of Patent Attorneys in Ottawa and Patent Engineers also probably in Ottawa, and even after the most careful examination by such Attorneys and Engineers the matter may still remain uncertain.

Therefore we wish to advise that we cannot accept the risk of continuing to sell or distribute these sets while the question of the patent remains in doubt; and that unless you provide us with some satisfactory guarantee of indemnity against loss, we will have to discontinue at once the sale of such television sets until the question is settled.

In the meantime if you will kindly hold up all shipments of television receivers to us until we have a reply from you, as possibly you may be able to give us some light on this problem.

Thanking you in anticipation of an early reply, we remain,

Yours very truly,

Ideal Electric Supply Co.,
N. A. MacCuspie/B,
N. A. MacCuspie.
President.

NMC:JB

Canadian Radio Patents Limited
159 Bay Street
Toronto

July 6, 1954.

Registered Mail
Ideal Electric Supply Co.,
Truro, Nova Scotia.

Gentlemen:

We wish to bring to your attention that the Zenith television receivers of U. S. manufacture which we understand you are selling, are reported by our patent attorneys and engineers to infringe various Canadian patents of invention either owned by this Company or under which this Company has licensing rights.

While, under the provisions of Section 45 of the Patent Act, the owner of a patent has the "exclusive right, privilege and liberty of making, constructiong, using and vending to others to be used" the patented invention, we, however, in accordance with the requirements of Section 65 and 66 of the said Patent Act have arranged for the manufacture and sale in Canada of television receivers embodying said inventions by the following Canadian companies, namely:

Addison Industries Limited, Toronto, Ontario.
Arcan Corporation Ltd., Hamilton, Ont.
Canadian Admiral Corp. Ltd., Port Credit, Ont.
Canadian Aviation Electronics Ltd., Montreal, Quebec.
Canadian General Electric Co. Ltd., Toronto, Ontario.
Canadian Marconi Company, Montreal, Quebec.
Canadian Radio Mfg. Corp. Ltd., Toronto, Ontario.
Canadian Westinghouse Co. Ltd., Hamilton, Ontario.
Chisholm Industries Ltd., Vancouver, B. C.
Cossor (Canada) Ltd., Halifax, N. S.

Crosley Radio & Televsion Ltd., Toronto, Ont.
Crystal Radio of Canada Ltd., Toronto, Ont.
Dominion Electrohome Industries Ltd., Kitchener, Ont.
Electrical Products Mfg. Co. Ltd., Montreal, Quebec.
Hackbusch Electronics Ltd., Toronto, Ont.
Hallicrafters Canada Ltd., Toronto, Ont.
Manning Radio Ltd., Toronto, Ont.
Measurement Engineering Ltd., Arnprior, Ont.
Monarch Radio Mfg. Co., Montreal, Que.
Motorola Canada Ltd., Toronto, Ont.
Northern Electric Co. Ltd., Montreal, Que.
Philco Corp. of Canada Ltd., Toronto, Ont.
Pye Canada Ltd., Ajax, Ontario.
R. C. A. Victor Co. Ltd., Montreal, Que.
Research Industries Ltd., Vancouver, B. C.
Sparton of Canada Ltd., London, Ont.
Stewart-Warner Corp. of Canada Ltd., Belleville, Ont.
Superb Electric Industries Ltd., Toronto, Ontario.
Sylvania Electric (Canada) Ltd., Dunnville, Ontario.

who are at present working the patented inventions on a commercial scale and who are willing and prepared to meet the public demand for the patented articles in Canada on reasonable terms.

If you are unacquainted with our rights in this matter, we would suggest that you consult your own solicitors, who will no doubt inform you as to your exact position under the circumstances mentioned but if any further information on the subject is required, we shall be very glad to communicate further with them or with you.

Should you continue to handle television receivers which infringe these patents, we may be obliged in protection of ourselves and our licensees to institute necessary legal proceedings to prevent further infringement by you and to recover such damage as may have been sustained through your merchandising of infringing television receivers.

We shall appreciate you writing us by not later than July 13th, 1954 advising that you have discontinued the sale of television receivers other than those which are manufactured by any of the licensed companies mentioned in the foregoing list.

Yours very truly,

Canadian Radio Patents Limited,
Per signed S. D. Brownlee/L.

SDB:ml

DEFENDANT'S EXHIBIT NO. 162.

Canadian Radio Patents Limited,
159 Bay Street,
Toronto

July 6, 1954.

Registered Mail
Ideal Electric Supply Co.,
Truro, Nova Scotia.

Gentlemen:

We wish to bring to your attention that the Zenith television receivers of U. S. manufacture which we understand you are selling, are reported by our patent attorneys and engineers to infringe various Canadian patents of invention either owned by this Company or under which this Company has licensing rights.

While, under the provisions of Section 45 of the Patent Act, the owner of a patent has the "exclusive right, privilege and liberty of making, constructing, using and vending to others to be used" the patented invention, we, however, in accordance with the requirements of Section 65 and 66 of the said Patent Act have arranged for the manufacture and sale in Canada of television receivers embodying said inventions by the following Canadian companies, namely:

Addison Industries Limited, Toronto, Ontario.
Arcan Corporation Ltd., Hamilton, Ont.
Canadian Admiral Corp. Ltd., Port Credit, Ont.
Canadian Aviation Electronics Ltd., Montreal, Quebec.
Canadian General Electric Co. Ltd., Toronto, Ontario.
Canadian Marconi Company, Montreal, Quebec.
Canadian Radio Mfg. Corp. Ltd., Toronto, Ontario.
Canadian Westinghouse Co. Ltd., Hamilton, Ont.
Chisholm Industries Ltd., Vancouver, B. C.
Cossor (Canada) Ltd., Halifax, N. S.
Crosley Radio and Television Ltd., Toronto, Ontario.
Crystal Radio of Canada Ltd., Toronto, Ontario.
Dominion Electrohome Industries Ltd., Kitchener, Ont.
Electrical Products Mfg. Co. Ltd., Montreal, Quebec.
Hackbusch Electronics Limited, Toronto, Ontario.
Hallicrafters Canada Limited, Toronto, Ontario.
Manning Radio Limited, Toronto, Ontario.
Measurement Engineering Ltd., Arnprior, Ont.
Monarch Radio Mfg. Co., Montreal, Quebec.
Motorola Canada Limited, Toronto, Ontario.
Northern Electric Co. Ltd., Montreal, Quebec.
Philco Corp. of Canada Ltd., Toronto, Ontario.
Pye Canada Limited, Ajax, Ontario.
RCA Victor Company Ltd., Montreal, Quebec.
Research Industries Limited, Vancouver, B. C.
Sparton of Canada Limited, London, Ontario.
Stewart-Warner Corp. of Canada Ltd., Belleville, Ont.
Superb Electric Industries Ltd., Toronto, Ontario.
Sylvania Electric (Canada) Ltd., Dunnville, Ont.

who are at present working the patented inventions on a commercial scale and who are willing and prepared to meet the public demand for the patented articles in Canada on reasonable terms.

If you are unacquainted with our rights in this matter, we would suggest that you consult your own solicitors, who will no doubt inform you as to your exact position under the circumstances mentioned but if any further information on the subject is required, we shall be very glad to communicate further with them or with you.

Should you continue to handle television receivers which infringe these patents, we may be obliged in protection of ourselves and our licensees to institute necessary legal proceedings to prevent further infringement by you and to recover such damage as may have been sustained through your merchandising of infringing television receivers.

We shall appreciate your writing us by not later than July 13th 1954 advising that you have discontinued the sale of television receivers other than those which are manufactured by any of the licensed companies mentioned in the foregoing list.

Yours very truly,
Canadian Radio Patents Limited,
Per S. D. Brownlee /L

SDB/ml

July 14, 1954.

Canadian Radio Patents Ltd.,
159 Bay Street,
Toronto, Ontario.

Attention: Mr. Brownlee.

Dear Sir:

Yours of recent date with regard to us selling television receivers made by Zenith Radio Corporation has been referred to our Solicitor who will no doubt be writing you in the very near future.

We remain,

Yours very truly,
Ideal Electric Supply Co.
N. A. MacCuspie, *President.*

NMC:JB

July 29, 1954.

Canadian Radio Patents Limited,
159 Bay Street,
Toronto, Ontario.

Attention: Mr. S. D. Brownlee.

Dear Sir:

Referring to your letter of July 6th with regard to us selling Zenith television receivers of U. S. manufacture.

We have taken this matter up with our Solicitors and they have asked us to refer you to the first paragraph your letter of July 6th, 1954, that it has been reported by your patent attorneys and engineers that the Zenith television receivers infringe various Canadian patents of invention either owned by your Company or under which your Company has licensed rights.

We are interested to learn just what patents are considered to be infringed by just what Zenith television receivers. We would appreciate your early reply.

Thanking you, we remain,

Yours very truly,

Ideal Electric Supply Co.,
N. A. MacCuspie, *President.*

NMC:JB

August 24, 1954.

Canadian Radio Patents Limited,
200 St. Clair Avenue West,
Toronto, Ontario.

Attention: Mr. S. D. Brownlee.

Dear Sir:

Replying to yours of August 16th which came to hand a few days ago with regard to Zenith television receivers of which we imported a few early in the year.

We wish to advise that we have not imported any Zenith television receivers since the date of your letter July 6th, at which time you advised us as to the difficulties we might run into, and further we do not intend at the present to import any further Zenith television receivers unless Zenith television receivers become licensed in Canada.

Now that we are not allowed to sell Zenith television receivers it might be possible that you would know of some reputable manufacturer of television who is looking for representation in this part of Canada. We would be very grateful if you would advise us as to their name.

Thanking you in anticipation of an early reply, we remain,

Yours very truly,

Ideal Electric Supply Co.,
N. A. MacCuspie, *President.*

NMC:JB

Defendant's Exhibit No. 162.

Canadian Radio Patents Limited
200 St. Clair Avenue West
Toronto

August 16, 1954.

Mr. N. A. MacCuspie, President,
Ideal Electric Supply Company,
Truro, Nova Scotia.

Dear Mr. MacCuspie:

Your letter of July 29th was delayed in reaching us due to the fact that it was mailed to 159 Bay Street, our former address.

We have rechecked with the patent attorneys and engineers responsible for examining the circuit diagrams of all unlicensed receivers brought to our attention and they have indicated that the Canadian patents owned or administered by CRPL covering inventions utilized in the Zenith television receivers include, amongst others, Canadian patents 356,764 — Simonds, 378,393 — Gunther, 383,276 — Vance, 398,523—Wheeler, 400,539—Ballard, 405,905—Delvaux, 409,049—Poch, 409,244—Bedford, 457,328—Parker, 466,035—Porsch and 476,757—Seeley.

The solicitors that will act for us in this case are Gowling, MacTavish, Osborne and Henderson of 88 Metcalfe Street, Ottawa and if we do not hear from you within the next ten days, in accordance with the original request for advice that you have discontinued the sale of unlicensed receivers, we will turn the matter over to our solicitors with instructions to commence an action in the Exchequer Court of Canada.

Yours very truly,

S. D. Brownlee,
President.

SDB/ml

Canadian Radio Patents Limited
200 St. Clair Ave. West
Toronto

August 30, 1954.

Mr. N. A. MacCuspie, President,
Ideal Electric Supply Company,
Truro, Nova Scotia.

Dear Mr. MacCuspie:

We have your letter of August 24th, in which you indicate that you have discontinued the sale of unlicensed television reecivers.

In this regard, we would appreciate receiving from you a record of the serial numbers of any unlicensed receivers that you have already sold, so that if these are brought to our attention in the field they can be properly identified.

According to our records, the unlicensed receivers that you were handling included model M2260 (serial No. 1,793,414), model 2260 (serial No. 1,785,187) and model 225R (serial No. 1,792,799).

With reference to your request for the names of manufacturers who would be looking for representatives in the Truro area, we are sure that with some twenty-four Canadian companies now manufacturing television receivers and with production running at the rate of over 500,000 units per year, you should have no difficulty in obtaining supplies from any number of manufacturers.

To assist you in contacting these manufacturers, we are enclosing a copy of the RTMA of Canada Trade Directory listing the receiver manufacturers that are members of that Association and giving the names of the executive officers that you may wish to contact.

Yours very truly,

S. D. Brownlee,
President.

SBD/ml
encl.

DEFENDANT'S EXHIBIT NO. 162-A.

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1258.

Electric Radios Limited
298 Main Street
Winnipeg, Manitoba

May 22nd, 1928.

Zenith Radio Corporation,
3620 Iron Street,
Chicago, Ill.

Attention: Mr. Thomas H. Endicott.

Gentlemen:

Mr. Fonseca has requested the writer to reply to your letter of May 15th, which has been delayed in Customs.

In the first instance, we wish to compliment you on your new Zenith line, as covered by photographs, and descriptions just received. We are highly pleased, and can assure you of large volume Zenith distribution in Manitoba and Saskatchewan, if you will clear up the patent situation for us.

Smart and Bigger, 8 O'Connor St., Ottawa, Ontario, solicitors for Canadian Radio Patents Limited, have advised us that both Zenith and Sparton sets infringe the patents of their clients, and that they are not prepared to consider any arrangement for the importation of unlicensed sets. They further state that they have instructions to institute proceedings to restrain the sale of such sets.

Canadian Radio Patents Limited, have announced that under the patents controlled by them, for the manufacture and sale in Canada of Radio Receiving Sets to be used only for the non-commercial reception of public radio telephone broadcasting, licenses have been reserved or granted to the following:

Canadian General Electric Co. Ltd., Toronto, Ontario.
Canadian Westinghouse Co. Ltd., Hamilton, Ontario.
Northern Electric Co. Ltd., Montreal, Quebec.
Canadian Marconi Co., Montreal, Quebec.
Standard Radio Mfg. Corp. Ltd., Toronto, Ontario.
DeForest Radio Corp., Ltd., Toronto, Ontario.
King Quality Products Ltd., Bridgeburg, Ontario.
Stromberg Carlson Telephone Mfg. Co., Toronto, Ontario.
Splitdorf Electrical Co. Ltd., Toronto, Ontario.
Grimes Radio Corp. Ltd., Kitchener, Ontario.
Work-Rite Radio Ltd., Brantford, Ontario.
Federal Radio Corp., Buffalo, N. Y.
Canadian Brandes Ltd., Toronto, Ontario.
American Bosch Magneto Corp., Springfield, Mass.
Mohawk Radio Ltd., Toronto, Ontario.
McLagan-Erle Ltd., Stratford, Ontario.
Freed Eisemann Radio Corp., Brooklyn, N. Y.
Stewart Warner Speedometer Corp., Chicago, Ill.

Any other manufacturers of Radio Receiving Sets sold in Canada embody the following features:

A. Regenerative or feed back circuits.

B. Tuned radio frequency sets having a plurality of stages of tuned radio frequency amplification coupled with vacuum tubes.

C. A grid-leak arrangement comprising a condenser shunted by a high resistance.

D. The neutralization of inter-electrode capacity in an amplifying stage, are infringers of the patents controlled by Canadian Radio Patents Limited.

Among those patents are the following:

Rice	241,138	Mathes	183,275
Alexanderson	208,583	Mathes	209,777
Langmuir	244,847	Arnold	213,999
Hartley	174,690	DeForest	174,361
Armstrong	216,321	DeForest	218,468
Round	179,703	DeForest	218,235
Franklin	187,793	DeForest	218,238
DeForest	159,794	DeForest	218,242
DeForest	169,332	DeForest	218,473

In the face of the above, Capt. Sparks on May 15th, at the Head Office, in Montreal, of the Canadian Fairbanks-Morse, contracted with them for Canadian distribution in the provinces of Ontario, Manitoba and Alberta, of the Sparton line, guaranteeing them protection from Canadian Radio Patents.

The Fada people who are in the Canadian field have only recently beaten Canadian Radio Patents on the Alexanderson patent, which we understood they felt to be their strongest claim.

The above gives you a birds-eye view of the Canadian situation. If you require any further facts or figures to complete the picture we will endeavour to supply them. In the meantime, we wish to impress upon you the value of the Canadian market, and the advantage of getting in early. The Canadians are going to buy Radio Sets in greatly increasing numbers, and we are now organizing to secure the major portion of this trade in Manitoba and Saskatchewan. We are able and willing to put your line over big in this territory if you will give us the necessary protection, but you will understand we cannot afford to prejudice our position, when other producers are willing to satisfactorily take care of us.

We will await your reply with much interest, and wish to assure you of our hearty co-operation in assisting you to take care of this situation.

Yours very truly,

Electric Radios,
Per. F. E. H. Luke.

FEHL/WID.

DEFENDANT'S EXHIBIT NO. 162B.

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1251.

December 18, 1929.

Mr. Leslie Munroe,
c/o Williams Motor Company,
Calgary, Alta.

Dear Mr. Munroe:

We are glad to note that the seven (7) sets which we shipped you have proven so satisfactory.

It is rather difficult to determine just how the question of shipments to Canada should be handled. If too many shipments are made to one firm or individual, the Canadian Patents Limited, of course, are likely to take action which might prove embarrassing to the importer, and for this reason we have been making sales and shipments direct, in spite of the fact that we have a few people in the same position as yourself.

If you think you would be protected by having us make direct shipments to the customer and pay you a commission on inquiries you send us, this would be quite satisfactory to us; or, you may get in touch with the firm in Windsor who have a special arrangement with Canadian Patents

Limited and see if you can also make a similar arrangement. This firm is

The Maxwell Radio Company
Windsor, Ont., Canada.

Almost daily we receive inquiries from firms or individuals in Canada who wish to buy sets and where these inquiries are from territories covered by some Canadian firm, such as yourself, to whom we have already sold sets, we generally refer the person making inquiry to the firm in question; or, when it is from some part of the country where we have no connection, we answer it ourselves and in some cases make the sale direct.

In a number of cases where we have referred inquiries to Canadian firms we have been informed that it was impossible for them to take care of the order, as they were afraid of getting into trouble with Canadian Patents Limited, but if you can make any arrangement which you consider will give you full protection in this connection, we will be glad indeed to refer any inquiries we receive from Alberta to you, and you can handle them in any manner you might consider satisfactory.

Yours very truly,

Zenith Radio Corporation,
K. R. McVeigh,
Manager, Export Division;
Sales Dep't.

DEFENDANT'S EXHIBIT NO. 162C.

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1262.

February 18, 1936.

To: Mr. Robertson.

We are receiving quite a number of inquiries from Canada which we do not know how to handle. Nobody will import our sets there unless we have taken out a license and, according to the last conversation we had on this matter, it is my understanding that you do not contemplate taking such action.

Is there any chance of completing the arrangements that you started with the Canadian Marconi Company? If so, I do not think there is any use for us to continue corresponding with firms in Canada since every one has the same come-back, namely, "Are you licensed?"

Vasquez.

CVM:AL

DEFENDANT'S EXHIBIT NO. 162-D.

(Letterhead of Ideal Electric Supply Limited, Truro, Nova Scotia.)

23rd July, 1962.

Zenith Radio Corporation
6001 Dickens Ave.
Chicago 39, Illinois, U. S. A.

Att: Mr. Joseph S. Wright, President

Dear Mr. Wright:

When in Montreal and Toronto in June at the Open House Showing I was given to understand that either you or Mr. Caplin would be interested in receiving a copy of the letter our competitors namely Electrical Distributors Ltd., of this town received from our friends Canadian Radio Patents Ltd., of Toronto relative to them importing sets mnaufactured in U.S.A. by Motorola.

If you were not the interested party in this information would you kindly hand same on to Mr. Caplin, as I was able to receive a photostatic copy from Electrical Distributors Ltd. of this town, it is quite evident that our friends Canadian Radio Patents Ltd., are trying to use the same tactics as they did on us a number of years back.

If you are interested in any further information as to the proceedings now taking place I would be glad to obtain for you the photostatic copies of such correspondence.

Thanking you for past favours, I remain,

Yours very truly,

Ideal Electric Supply Ltd.,
N. A. MacCuspie, *President*

NAM/pw

(Letterhead of Canadian Radio Patents Limited, Toronto.)

May 17, 1962.

Registered.
Electrical Distributors Limited,
779 Prince Street,
Truro, Nova Scotia.

Dear Sirs:

We notice from an item appearing in the press that you have been appointed a regional distributor to market, in Canada, home entertainment products manufactured in the United States and bearing the trade name "Motorola."

Canadian Radio Patents Limited is an agency empowered to license the Canadian electronic patents of such firms as Philips Electronics Industries Limited, Canadian Marconi Company, Northern Electric Company Limited, Canadian Westinghouse Company Limited, Canadian General Electric Company Limited and Hazeltine Corporation. In addition, we own Parker patent No. 457,328 entitled "Television Receivers."

Addison Industries Limited and Seabreeze Manufacturing Limited which made Motorola products in Canada were each licensed by Canadian Radio Patents Limited. Although we have not, of course, had an opportunity to examine the circuits of any home entertainment products which you intend to market in Canada under your arrangement with Motorola we would strongly suspect that television receivers would incorporate the inventions of at least the above mentioned Parker patent and also Armstrong patent No. 441,777. F.M. radio receivers would almost certainly use the latter patent also. A close analysis of the circuits would probably disclose other inventions covered by patents which we are empowered to license.

Section 67 (2) (b) of the Canadian Patent Act stipulates that:

> "The exclusive rights under a patent shall be deemed ot have been abused . . . if the working of the invention within Canada on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by the patentee or persons claiming under him, or by persons directly or indirectly purchasing from him, or by other persons against whom the patentee is not taking or has not taken any proceedings for infringement."

Subsection (3) of the same section states:

> "It is declared with relation to every paragraph of subsection (2) that, for the purpose of determining whether there has been any abuse of the exclusive rights under a patent, it shall be taken that patents for new inventions are granted not only to encourage invention but to secure that new inventions shall so far as possible be worked on a commercial scale in Canada without undue delay."

From the foregoing you will see that licensing of imported products which hinder working of patented inventions in Canada on a commercial scale constitutes abuse of the exclusive rights granted under the patent or patents involved. Furthermore, such abuse can exist should the patentee or persons claiming under him fail to take action for infringement against an importer into Canada of a patented invention.

At this point it seems fairly evident that importation of Motorola products incorporating our inventions would hinder the Canadian manufacture on a commercial scale of similar products. Accordingly, in order to comply with the intent of the Canadian Patent Act, we would not be prepared to license such imported products with the exception of patents of Canadian General Electric Company Limited and Canadian Westinghouse Company Limited.

These, we have been instructed to license irrespective of the country of origin of the patented products.

Accordingly, should importation of Motorola products take place and should these be found to incorporate inventions covered by patents which we are empowered to license other than those of Canadian Westinghouse or CGE, we would be forced to place the matter in the hands of our solicitors with instructions to take whatever action they may deem necessary in order to protect our patents. I might point out that we initiated two cases in the Exchequer Court last year, one against a Canadian manufacturer which was settled before coming to trial, the second against an importer of German radio receivers. Judgment on the latter case was handed down on May 2nd of this year in favour of Canadian Radio Patents Limited.

In closing, I wish to inform you that we would be most happy to issue a license to you to make or have made in Canada any equipment coming within the ambit of our patents.

Yours very truly,

B. McConnell,
President.

BMcC:gj

Calgary, December 11, 1929

Mr. K. R. McVeigh,
Zenith Radio Corporation,
3620 Iron Street, Chicago.

Dear Mr. McVeigh:

We have received the total of seven sets and have them all working in different localities, with excellent results. As I told you before, they have the edge on anything that is marketed in this part of the country, and we would like very much to distribute them in Alberta next year in the event of your company deciding to take out a Canadian license.

We have turned down a number of people who have asked to buy sets for the reason that we do not wish to run afoul of Canadian Patents Limited. One applicant, Mr. J. T. Saul, I understand has written you direct, after having been turned down by us, and I am told you are shipping him direct, at 40% off list. This is O.K. with us, but we were rather surprized to find that you would consider shipping to individuals direct, especially in view of the fact that we were previously in touch with him.

The question arises now as to just how such cases should be handled in future. We could refer any applicants to you direct if you so desire, and have you ship direct to them, but naturally we would like to be protected on the difference between the discounts you have offered them and those quoted us. A case pending at the present time is Mr. Robert Livingstone, of Lethbridge, Alberta, to whom we have shown the set, but have felt it advisable to discourage him from getting one (which perhaps accounts for his determination to have one). There are several more persons whom we have had to turn down, but I wish you would write me in this connection as to what policy you think it would be best to pursue between now and the time your firm decides to enter the Canadian Market under license.

I should be glad if you would advise me of the name and address of the party in Windsor, Ontario, you spoke to me about as having a special arrangement with Canadian Patents Limited under which he imports a few machines and pays his regular 10% per machine. Would like to have a general idea of the nature of his contract with them. We are thinking of taking the question up with Canadian Patents Limited and endeavoring to make a similar temporary arrangement to enable us to import machines until such time as your company takes out a license up here.

Yours very truly,

Leslie Munroe.

P.S. Please send me half a dozen of your standard fuses and I will remit whatever the charges are.

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1253.

March 10, 1930.

Mr. Leslie Monroe,
c/o Williams Motors Ltd.,
Calgary, Alberta, Canada.

Dear Mr. Monroe:

The letters which were sent out by Messrs. Smart & Biggar to purchasers of radio receivers not licensed by Canadian Patents Ltd. is more or less a matter of form. A short time ago I received a similar letter from a firm in Nova Scotia and they have since informed me that nothing further came of it.

We have already advised Canadian Patents Ltd. that it is our intention to enter the Canadian market and I presume this is the reason they are checking up our imports of Zenith receivers.

The firm in Windsor who have special arrangements with Canadian Patents Ltd. is the Maxwell Radio Ltd. and, on his last visit, Mr. Maxwell informed me that he was paying Canadian Patents Ltd. 12½% on each Zenith he imported. Maxwell is also, however, a large G. E. distributor and I imagine that this may enable him to bring a little pressure to bear on Canadian Patents Ltd. on his imports of Zeniths.

I would suggest that you write Mr. Maxwell and get full particulars from him.

Yours very truly,

Zenith Radio Corporation,
K. R. McVeigh,
Sales Department.

HC

Calgary, March 4, 1930.

Dear Mr. McVeigh:

This is to advise you that the solicitors for Canadian Radio Patents Limited (Messrs. Smart & Biggar, of Ottawa) have written to Mr. Williams regarding the set which he is using in his home. I enclose copy of their letter, and copy of Mr. Williams' reply, and shall keep you advised of further developments.

The three machines which we recently ordered duly arrived, but we do not feel at liberty to clear them through the Customs until this matter is straightened out. This will explain any delay which you may experience in getting the return from the C.O.D.

My own impression is that someone here informed Canadian Radio Patents that Mr. Williams had a machine in his home, but I would be glad to have advice from you as to whether or not your firm has heard anything from them in this connection.

I should be very much obliged if you would give me all the particulars which you have in your possession regarding the arrangement which the Windsor Radio Shop (I think that was the name of the firm) have with Canadian Patents Ltd. whereby they import machines under a royalty basis. We would like to know on what basis the royalty is calculated, how returns are made, etc.—in fact all particulars which you may have knowledge of, concerning the arrangement.

Also please say if your firm contemplate taking out a license in the near future as in that event it is possible that we could get them to refrain from taking any action.

Yours very truly,
Leslie Munroe.

Address:
c/o Wililams Motors, Ltd.,
Calgary, Alberta, Canada.

Defendant's Exhibit No. 162D.

330—7th Avenue West,
Calgary, Alberta,

March 1, 1930.

Messrs. Smart & Biggar,
Victoria Building,
Ottawa, Ont.

Dears Sirs:

Thank you for yours of February 21st.

It is quite true that I purchased a Zenith Radio receiving set in Chicago. At the time I purchased it I had thoughts of endeavoring to get the distributing rights for Zenith Radios in Alberta.

I have been using the set in my home, and find it very satisfactory.

I have not yet given up all notion of trying to get the Alberta rights, and if your clients have any proposition to make me I shall be glad to entertain it.

Yours truly

(Sgd.) G. P. Williams.

Smart & Biggar.
Victoria Building.

Ottawa, Canada,

February 21, 1930.

Geoffrey Williams, Esq.,
330 Seventh Avenue West,
Calgary, Alta.

Dear Sirs:

We are acting for Canadian Radio Patents Limited who own certain patent rights relating to receiving sets, particulars of which are set forth in the enclosed warning notice. We have been advised that you have purchased a Zenith Radio receiving set which infringes a number of the patents referred to in the enclosed notice.

It is possible that you may have purchased this set in ignorance of our clients' rights, and we should be obliged if you would advise us of your position in the matter.

Very truly yours,

(Sgd.) Smart & Biggar.

(Form of Postal Telegraph.)

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1252.

C2 44 NL Calgary Alta Mar 23 1930

K R McVeigh, Zenith Radio Corp.
Chicago Ill.

Canadian Patents say they cannot allow further unlicensed machines enter Canada and are returning our remittance covering ten percent royalty on three now in custom presume therefore we will have to return them unless you can suggest some way out of difficulty wire reply.

Leslie Munroe.
Mar 24 844A

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1254.

333—7th Ave. W.

Calgary, April 3, 1930

Mr. K. R. McVeigh,
Zenith Radio Corporation
3620 Iron St.,
Chicago, Ill.

Dear Mr. McVeigh:

Your telegram duly received, and I note what you say with regard to the clearing of the three sets which we have on hand in Customs. In view of the somewhat positive assertion made by Canadian Patents Limited that they could not agree to the importation of further unlicensed sets, I still do not feel at liberty to clear them. I am writing them again, asking them to re-consider the matter in view of the fact that the sets are actually here and no useful purpose would be served by their forcing them to be returned to you.

If you feel at liberty to do so, I should be glad if you would give me some idea as to when you expect to take out a Canadian license, as this information might serve to guide me in my negotiations with Canadian Patents.

I sincerely hope it will not be necessary to return the sets, and we do not feel at liberty to clear them as I would be quite sure that they have an eye on them here and would welcome the opportunity of starting something if we were to clear them especially after their refusal to allow them to enter in the first place.

I will keep you advised of any further developments, and would appreciate a note from you if anything happens that would be of interest to us here.

Yours very truly,

Leslie Monroe.

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1255.

Calgary, April 17, 1930

Mr. K. R. McVeigh,
Zenith Radio Corporation,
3620 Iron Street,
Chicago.

Dear Mr. McVeigh:

Up to the present we have still been trying to obtain the consent of Canadian Radio Patents to the clearing of the three sets now in Customs, but without success. We wrote them a further rather lengthy letter a couple of weeks ago, pointing out that they would lose nothing by allowing these sets to enter the country, but so far they have ignored our letter. The express company became insistent that we do something about getting the sets cleared and out of their way, so Mr. Williams and I again had an interview with our lawyers and their advice was to the effect that the sets should not be cleared, as the clearing of them (after letting C. R. P. know that they were here and their refusing to allow them to enter) might result in serious complications later on. The lawyers advised returning the sets to you.

There would appear to be several things we can do in the circumstances. One is to return the sets immediately. Another is to allow them to remain in bond until your firm takes out its Canadian license—provided this is done within the next couple of months—and then clear them. Another idea—and I don't know whether this could be successfully worked or not—is for you to reconsign the sets to Bill Smith or Tom Jones, and they could then be cleared. This latter suggestion, however, appears to be somewhat shady, and perhaps should not be resorted to.

To return the sets immediately involves considerable red tape, getting consular invoices, etc., as well as an item of approximately $100 express charges both ways. Therefore if there is any other way out of the difficulty we would rather not return them. If the sets are allowed to remain in bond until next fall and you then take out your Canadian license, there is no doubt but what we can dispose of them without loss, even though they will be year-old models.

I am very sorry that events have taken this turn, and we of course want to do the right thing in this matter. I would therefore appreciate hearing from you with your suggestions as to what would be the best course to pursue.

Yours very truly,

Leslie Munroe.

Leslie Munroe,
c/o Williams Motors Ltd.,
330-7th Ave. W.,
Calgary, Alta, Canada.

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1256.

June 27th, 1930

Messrs. Klugh,
Robertson,
Petrtyl,
Terwilliger.

We have just had the unhappy experience of having our shipment of complete radio sets consigned to

Leslie Monroe,
Calgary, Alta., Canada

returned for credit because entry was refused by the Canadian Customs on the objection of the Canadian Patents Limited that we were violatnig certain patent rights of Canadian manufacturers, with the result that the objection was sustained and we were unable to complete the delivery.

Under the circumstances, no further efforts should be made to solicit business in Canada and all inquiries from Canadian dealers and jobbers should be declined, for the reason that we are not licensed to operate in the Dominion.

Will Mr. Petrtyl issue a bulletin notice to our Salesmen on this subject.

A. T. Haugh.

GV

DEFENDANT'S EXHIBIT NO. 163.

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 3.

(Letterhead of Radio Corporation of America
Interdepartment Correspondence.)

To: Mr. I. J. Adams, Patent Attorney.

From: Mr. Manton Davis.

Date January 21, 1924
File No.

Subject: Canadian Situation

Location:

Referring To:

With some hesitation I advised Mr. Philip that in my opinion the mobilization of Canadian radio patents resulted in our being able to sell our products in Canada through any one of the corporations party to the mobilization contract. I told Mr. Philip that in my opinion, while we had no Canadian rights, this situation worked out for us a sort of left-handed right in that no one would be in position to object since the mobilization contract resulted in a sort of estoppel against all the parties signing it.

In a recent conference with Mr. Mallory of the Westinghouse Company he challenged this position on a number of grounds and chiefly on the ground that under the Canadian patent law, if the holders of Canadian patents permitted the importation into Canada of radio products manufactured in America, first, their own patents would be invalidated and, second, the importer would subject himself to pains and penalties under the Canadian patent laws which appear to have some criminal aspects. Mr. Mallory informed us that within the last ten days he had an opinion from the Canadian counsel of the Canadian Westinghouse Company on which he based his conclusions.

From the attached correspondence, it would appear that the patent attorneys of the General Electric Company are of opinion that as a result of recent modifications of Canadian patent law, the situation has been changed and that, though Mr. Mallory's statement was correct under the old law, it is incorrect under the law as recently modified.

I would appreciate your opinion on the following: 1. Do you concur in the advice originally given to Mr. Philip? I understood from several of your recent communications that you do, but before going into this matter further, I would appreciate a restatement of your opinion.

2. According to your information what is the present state of the Canadian patent law? Is the statement outlined by Mr. Mallory on the authority of the Canadian Westinghouse counsel correct or is the opinion of the General Electric counsel correct?

3. In your opinion, can we safely contract with the Canadian Marconi to be the exclusive agent of the Radio Corporation for the Canadian territory?

Davis

Assistant General Attorney.

(Stamp) Zenith-Rauland Cross-

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 4.

Col. Manton Davis. 1/23/24

I. J. Adams.

Colonel Davis:

Replying to your letter of January 21st, the authorization that you gave to Mr. Philip in regard to sales in Canada seems to follow the plan that I outlined in my letter to you of November 17th and therefore it is my opinion that your authorization is correct.

Now, in respect to importation, it formerly was the law that importations into Canada later than one year after the date of the patent grant would invalidate the Canadian patent if the importation was carried on by the party owning the Canadian patent or someone having an interest in that patent. This has long been a thorn in the side of the United States manufacturers who own Canadian patents and it was a great relief to these manufacturers when the Canadian laws were changed last year in this respect. When I wrote you about this situation I was fully advised in regard to the Canadian law and knew that the law against importation had been repealed. Mr. Scudder of the General Electric Company, therefore, is correct in his statements and Mr. Mallory has been misinformed.

Now, in respect to possible violations of our agreement with the Westinghouse Company, I will say that the Westinghouse Company has never told us that they had contracts with the Canadian Company whereby they made certain covenants that we are bound to respect. If they have such contracts they should furnish them to us and if you succeed in getting them I would be glad to go through the contracts and see whether they have any patent restrictions or covenants that would prevent our making sales in

Canada of products made by the Westinghouse Company. As a matter of fact, I do not believe that any contract they have would affect the situation in respect to the importation of devices in Canada, but of course I cannot make a definite statement to this effect without knowing what their contracts are.

Since Mr. Mallory, on behalf of the Westinghouse Company, has objected to our selling our products to anyone of the licensed companies in Canada I believe that we should clear the whole situation up with the manufacturing companies and I suggest that you either send copies of my letters of October 17th and November 17th to Mr. A. G. Davis and Mr. Terry to see if they take the contrary position in any respect, or since considerable discussion might pass back and forth in regard to patent matters before a definite opinion would be reached by these gentlemen, it probably would be advisable for me to refer copies to them. However, I will not take any steps in this respect until you have considered the matter and suggest what you think would be the best plan for reaching an understanding with the manufacturing companies on this point.

I am returning the correspondence that you attached to your letter of January 21st.

ija-g

encl.

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 16.

DEFENDANT'S EXHIBIT NO. 164.

Canadian General Electric Company Limited
Head Office—Toronto, Canada.

Toronto 2, Ont., November 27, 1935.

E. C. Grimley, Esq.,
President,
RCA Victor Company Limited,
925 Lenoir Street,
Montreal, Quebec.

Dear Mr. Grimley:—

Recently we have had applications from parties in Canada requesting the terms upon which we would grant them a license under our patents to import into Canada and sell power amplifier and power supply equipment, mainly I presume for installation in small rinks, fairgrounds, etc.

In the past two or three years we issued two or three licenses with a time cancellation clause under Canadian G. E. patents, but advised the parties that they took their own risk under Northern Electric patents, and some of these Companies such as Baldwin International, Screen and Sound Service and Wholesale Radio have possibly been selling some of this equipment.

However, in view of our recent arrangements with your Company we would prefer to see business of this nature go through your Company for distribution either by ourselves or your distributing organization in so far as such is permitted under our agreements with the other Companies, and if the same does not constitute a public address system in which field Northern have exclusive rights.

Under these circumstances I would appreciate if you can tell me whether under your new set-up with Northern covering sound equipment field you are enabled to sell public address systems and thus desire that no further amplifier licenses be granted.

Confidentially the recent inquiries have come from Radio Receptor and the Webster people in the United States who some time ago were also anxious to come into the Canadian field but were dissuaded by us from doing so.

On the other hand, if our respective Companies are unable to benefit from a manufacturing standpoint there may be no reason why these people should not be licensed.

For your information it might be advisable to add that in respect to power supply and power amplifier equipment when used as part of or in conjunction with a radio receiving set the exclusive license rights are in Canadian Radio Patents Limited, but where these patents are used for sound amplification purposes without microphone, Canadian G. E., if it so desires, can issue a license under its own patents but not under those of any other party.

Yours very truly,

J. C. Macfarlane,
General Solicitor.

JCMacfarlane:P.

DEFENDANT'S EXHIBIT NO. 165.

Canadian Radio Patents Limited
159 Bay Street
Toronto

June 11th, 1936.

Mr. E. L. Gardner,
Comptroller,
RCA Victor Company, Limited,
Montreal, Que.

Dear Mr. Gardner:

Your letter of June 10th has been received.

As you intimated, there is no provision in the Patent Act which prohibits the importation of a patented device by unlicensed parties, also, paradoxically enough, the Act does provide that if the patentee or its licensee does not supply the reasonable demands of the public either by reason of importation or by failure to manufacture, severe penalties are suffered, including the possible revocation of the patent.

I may say that many attempts have been made to have the Department of National Revenue co-operate in the protection of patents by means of eliminating or prohibiting importation. These demands have been made both through the Commissioner of Patents and through several other channels and in every case have been quite unsuccessful. The Department of National Revenue, and particularly the Customs section has consistently taken the position that if duty is paid in accordance with the regulations they cannot take any further steps. There is of course some justification for this stand as manifestly it would be quite impossible for customs appraisers to be familiar with the patent situation on all merchandise which might cross the border.

Yours very truly,

Geo. F. Brooks,
Manager.

GFB/m

DEFENDANT'S EXHIBIT NO. 166.

(Letterhead of Radiomarine Corporation of America,
a Radio Corporation of America Service,
75 Varick Street, New York 13.)

January 13, 1944.

Mr. C. S. Schairer
Radio Corporation of America
30 Rockefeller Plaza
New York 20, N. Y.

Dear Mr. Schairer:

Attached is a preliminary draft of "A Proposal for RCA's License and Patent Relationships in Canada after 1944". I have shown this to Messrs. Gardner, Cook and Madden, and they are in accord with the suggestions made therein.

I would appreciate very much your giving me your views concerning it.

Mr. Macfarlane was in to see me yesterday and told me that the owners of CRPL were planning to extend CRPL's sublicensing rights under their respective patents for another year, i.e. until December 31, 1945, and that when this was done CRPL would ask all its licensees to extend their license agreements with it until that date. Mr. Macfarlane asked if we would be willing to extend CRPL's right to grant sublicenses under our patents, which right expires the end of this year, until December 31, 1945. I told him that we would have to receive consideration for such rights and that I did not believe that any of us had time to conduct a Six Party negotiation at this moment, with which he agreed.

I think that within the next few weeks we should let Mr. Macfarlane know definitely that we do not propose to continue CRPL's sublicensing rights under our patents and at the same time word should be transmitted to the licensees of CRPL, by one means or another, to the effect that their licenses with CRPL will not include RCA's patents after the end of this year.

Faithfully yours,
(Illegible)

JGM/MB
Enc.
1/11/44

A Proposal for RCA's License and Patent Relationships In Canada After 1944.

All the agreements under which RCA granted and received licenses in Canada will expire on January 1, 1945, and all the licenses granted thereunder by and to RCA will also terminate. The only continuing covenant, if it may be termed such, is contained in Clause XII of the Agreement of August 1, 1924 between RCA, Canadian General Electric Company, Limited (CGE) and Canadian Westinghouse Company Limited (CW), the first two sentences of which read as follows:

> "This Agreement shall enter into effect on the date first herein written, and shall continue until January 1st, 1945, at which date it shall expire. On the expiration of this Agreement reasonable adjustment shall be made with respect to the continued use of such patents or applications for patents as at the time are still in force and are being used by the Canadian Companies or either of them."

It is, therefore, necessary at this time to give careful consideration to a formula upon which the future licenses and patent relationships of RCA and its 100% subsidiary in Canada, RCA Victor Company Limited, on one hand, and the other Canadian patent owning interests, on the other, may be established.

Present Situation

Under the 1924 agreement CGE and CW acquired from RCA exclusive licenses in certain portions of the radio field, not including radio tubes. After RCA acquired the Victor Talking Machine Company, including its subsidiary Victor Talking Machine Company of Canada Limited (now called RCA Victor Company Limited), it became necessary for RCA to obtain licenses under its own patents and under the patents of others in order to place its Canadian subsidiary in a competitive position in Canada. Protracted negotiations ensued, which resulted in the 1935 agreements, under which RCA and Victor acquired non-exclusive licenses in the radio field, CGE and CW acquired broader licenses, including radio tubes, in the radio field under patents of RCA, and also acquired licenses under such patents outside the radio field as well in, for example, the power purpose field. Arrangements were then made for the exchange of licenses with other companies in Canada, namely:

Canadian Marconi Company (Limited Liability).
Northern Electric Company, Limited.
The Bell Telephone Company of Canada.
Rogers-Majestic Corporation, Limited.

At the same time, Canadian Radio Patents, Limited (CRPL), which is owned by CGE and CW, Marconi, Northern and Rogers, acquired the right to grant sublicenses under RCA's patents to its present and future licensees for radio broadcast receivers. In exchange for these rights, RCA received free licenses from CRPL for the broadcast receiver field.

Thermionics, Limited, which is owned by CGE and CW, Northern and Marconi, acquired certain limited sublicensing rights for tubes.

There is another radio agreement in effect in Canada to which RCA is not a party, dated March 12, 1923, between CGE, CW, Marconi, Northern, Bell and International

Western Electric Company, which provided for the exchange, among the parties, of licenses in various fields, including the radio field. This agreement may be terminated by any party upon one year's notice, but it is interesting to note that all obligations between CGE and the other parties shall in any event terminate at the end of 1944.

Proposed Patent and License Relationship
Subsequent to 1944.

Patents.

[A study of the respective patent situations of the parties involved has been made by taking as a basis the charts of important United States patents, which Mr. Schairer has had recently compiled. Determination has been made as to which of these important United States patents owned by RCA, GE, Westinghouse and ATT have been filed in Canada.] The attached Schdule A shows the number of these patents now existing in Canada, clarified into the principal radio fields. There are also attached supporting schedules showing the corresponding United States patents, and in the case of RCA patents, a complete list of those patents contained on the above mentioned charts.

Considered quantitatively, the comparative patent situations are as follows:

Important Patents and Applications for Patents issued or filed in Canada.

RCA (including EMI and Purchased Patents)	187	79.2%
CGE	23	9.8%
CW	14	5.9%
Northern Electric	10	4.2%
Canadian Marconi	2	.9%
	236	

(Written in margin.) Who owns these, RCA or Canadian Victor? Does RCA own Canadian patents of EMI origin? O. S. S. 1/17/44.

Neither the foregoing tabulation, nor the attached Schedule A and its supporting schedules, include patents filed under any secrecy legislation, but it is doubtful that the inclusion of such patents would change the relative positions of the various companies to any appreciable degree.

It is apparent that RCA possesses the strongest patent situation in Canada, and in view of this position, it is recommended that discussions be started with the Canadian companies not later than the coming summer, with the aim of negotiating new agreements.

In view of the current discussions between RCA, GE and W in this country concerning certain interpretations of Agreement A-1, it would probably be difficult to get GE and W in Canada to agree to utilize any definitions for the fields of the new agreement other than those now contained in Agreement A-1 and in Agreement Supplemental to Agreement A-1, because a draft of the new agreement will undoubtedly be submitted by CGE and CW to representatives of their parent companies in the United States, who will be fearful of creating prejudice to themselves if the definitions of A-1 and Supplemental A-1, particularly as applied to the radar field, are modified.

(Written in margin.) Does the definition of radio purposes in the present Canadian agreements include radar, etc.? (Other note on page illegible.)

This situation, of course, may change at any time and therefore the fields outlined in the following proposal are subject to modification. In any event, it would probably be desirable, if the present definitions of A-1 and Supplemental A-1 are to be used in the proposed Canadian agreement, between RCA, on one hand, and CGE and CW, on the other, that the parties agree that any modifications in the definitions of A-1 arrived at in the United States either by mutual agreement, by arbitration or by litigation shall apply as among the three parties to the new Canadian agreement.

It is recommended that the new Canadian agreements embrace the following substantive principles:

> It would probably be preferable to have three separate agreements as follows:
>
> > Agreement A, between RCA and RCA Victor, on one hand, and CGE and CW, on the other;
> >
> > Agreement B, between RCA and RCA Victor, on one hand, and Northern and Bell, on the other;
> >
> > Agreement C, between RCA and RCA Victor, on one hand, and Marconi, on the other.

The reasons for these separate agreements are first: The fundamental difficulty in negotiating one agreement with a large number of parties having conflicting interests; and second: that the fields of the grants by RCA to the other Canadian parties are quite diverse and it is believed that separate agreements with the power field group, the wire telephone group and the wireless telegraph communication company will not only be simpler to negotiate but easier to administer.

In Agreement A, RCA and Victor, on one hand, and CGE and CW, on the other, would exchange non-exclusive licenses in the field of Radio Purposes and for the other fields for which RCA received licenses pursuant to Agreement A-1 and the Agreement Supplemental to Agreement A-1, except for the field of Public Service Communication for Toll. It is proposed (handwritten: preferable) that such licenses be royalty bearing and that royalties be paid by the respective grantees to the respective grantors. In view of the fact that RCA's patent situation is more valuable than that of CGE and CW taken together, the royalty rates payable by CGE and CW to RCA should be much higher than the rates of royalty to be paid by RCA and Victor to CGE and CW.

(Written in margin.) Our licenses should include broader rights in the field of electronics, than we now have in USA —such as pool tubes, rectifiers, etc. O. S. S. 1/17/44. Or, CGE and CW might pay RCA an annual differential based on differences in gross volumes of radio business done to avoid complicated accounting. O. S. S. 1/17/44.

CGE and CW will desire licenses in the power, therapeutic, medical, railway signalling and X-ray fields. RCA's patent situation does not particularly pertain to these fields, although applications of high frequency currents, to the power and other fields, is becoming increasingly important and RCA has made valuable contributions in many of these applications. It is suggested that CGE and CW receive free licenses from RCA for the power, therapeutic, medical, railway signalling and X-ray fields, and that RCA and Victor receive free licenses from CGE and CW for the therapeutic, medical and railway signalling fields.

It is suggested that the duration of this agreement be December 31, 1954, and that the territory be Canada and Newfoundland, with the exception of Westinghouse, with respect to which Newfoundland will not be included.

The licenses must clearly permit importation as well as local manufacture.

Agreement B, between RCA and Victor, on one hand, and Northern and Bell, on the other, would be the same as Agreement A insofar as the licenses for the fields of Radio Purposes and the fields for which RCA received licenses under Agreement A-1 and Agreement Supplemental to Agreement A-1 are concerned, Northern will desire manufacturing and selling rights for wire telephone equipment and Bell will desire using rights for such equipment. RCA might grant free licenses to them for these fields in exchange for free licenses in the power, therapeutic, medical and railway signalling fields. Licenses for the Radio Purposes and allied fields would, as in the case of Agreement A, be royalty bearing, with royalties payable by all grantees.

Agreement C would be between RCA and Victor, on one hand, and Marconi on the other. Here again in the Radio Purposes field and allied fields licenses would be the same as Agreement A, except there appears to be no reason for RCA to pay any royalties to Marconi. Marconi, however, will probably desire a license for Radio Communication for Tolls, and since Marconi has, as far as is known, substantially no patent situation with which to trade such a license with RCA, it will probably be advisable to place the toll license on a royalty basis. It is doubtful that the domestic formula of 4½% of the total receipts would be agreeable to Marconi, but since RCA's inventions are probably involved in Marconi's communication systems, some compensation should be paid by Marconi in this field.

It is recommended at this time that RCA not join any of the licensing organizations in Canada, such as CRPL, Thermionics, Limited, or the proposed Sea, Land, Air, Limited, the last of which is in process of formation for the purpose of granting licenses in the commercial apparatus field. CRPL, Thermionics and their owners have been targets for attacks by the Tariff Board and by other government agencies in Canada, and it is not unlikely that unless there are radical changes in the licensing policies of these organizations that there may be similar attacks in the future with which RCA should not become involved. It is, therefore, recommended that RCA adopt the same liberal licensing policy which it has followed in the United States. RCA should offer licenses to all reputable radio manufacturers in Canada at reasonable royalty rates. RCA can by this method conduct its own licensing program in Canada without becoming concerned in the conflicting interests of others.

(Written in margin) RCA, rather than Canadian Victor, should get the most, if not all, of the royalties because it does the research and makes most of the inventions. OSS 1/17/44.

DEFENDANT'S EXHIBIT NO. 167.

Brownlee Exh. 15.

December 11, 1944.

Mr. O. S. Schairer

Mr. J. C. Macfarlane, Vice President of Canadian General Electric Company, called upon us on December 8th in connection with the pending Canadian negotiations.

I started to tell him about our meeting with the Canadian Westinghouse people and gave him our reasons for not desiring to enter into a multi-party Agreement, but he told us he already had a report on that meeting. He further stated that although he was not opposed to separate agreements in so far as RCA was concerned, he thought that a joint agreement would be preferable inasmuch as the Canadian parties, with the exception of RCA Victor Company Limited, would probably all be parties to one cross license agreement, in addition to their joint agreement with reference to Canadian Radio Patents Limited. He did say, however, that the CGE had no way of determining what patents GE in the United States had filed under secrecy laws and therefore he did not know what the value of CGE's post-war patent position will be. In view of this he stated definitely that CGE would under no circumstances enter into a long term agreement at the present time. In the light of this condition, he said that he desired to discuss only the question of CGE's acquiring the right to grant licenses under RCA's patents.

I told him that we regarded the licenses with all of the Canadian parties, including CRPL, as constituting a subject that must be discussed as a whole. He replied that he would propose that we settle the licenses for Canadian Patents Limited now, and then when time is available next year that the licenses with the other Canadian parties be negotiated. He emphasized, with some degree of logic, that it would be regrettable to let the licenses with the five Canadian licensees of CRPL expire in entirety because it would be more difficult to negotiate non licenses than it would be to extend the present licenses for another year.

I asked him what CRPL would offer in the way of consideration for our patent rights under an agreement to run for one year, and he said he was not authorized to make any offer and that he thought that a statement of the consideration should come from us. I told him that I would discuss his proposal with our people and suggested that in view of his statement that we try to hold a meeting in Montreal between now and the first of the year with all of the interested parties, inasmuch as, according to his statement, at least the CRPL aspects of the problem would be settled before the end of the year. Mr. Macfarlane then contradicted his previous statement and said that the CRPL situation did not have to be cleared up before the end of the year, and that if we attacked the problem soon after the year end that would probably be satisfactory to him and to the other owners of CRPL.

As to our joining CRPL, I told Mr. Macfarlane I did not know whether we would want to join CRPL as a stockholder or whether we would prefer to give CRPL the right by contract to grant licenses under our patents in the broadcast receiving set field, both telephone and television, and receive as consideration a portion of the gross receipts of Canadian Patents Limited. He refused to commit himself as to which of these two methods he preferred and said that he thought that we ought to grant the license now and talk about the compensation later in the event that CRPL should have any income in 1945. I told Mr. Macfarlane that as far as we are concerned, this would be impossible. Mr. Macfarlane then said that he thought we should let him know what consideration we wanted for sub-licensing rights for CRPL.

I also told Mr. Macfarlane that we might find it difficult to give sublicensing rights to CRPL if that organization continued its policy of refusing to grant licenses for importation into Canada. He replied that he thought the patent law of Canada required that patented goods be made in Canada, but I told him that I thought only a reasonable proportion of the goods had to be made in Canada under a patent in order to preserve such patent.

I also talked to Mr. Macfarlane about the tube situation in Canada. I told him that in any agreement with GE and the two other tube manufacturers, we would want to have the right to demand that brand tubes be manufactured for us. He told me that the other manufacturers might object to this, but intimated that he did not think that he would object to such a clause.

I asked him if he could give us the reason behind the rather radical drop in the tube prices of from 25 to 33⅓%, which had been put into effect by CGE and GE a few days ago, and he replied that this had been done to forestall criticism of the fact that the Canadian prices are considerably higher than the imported prices of United States made tubes. He then intimated that some action had been taken to meet the competition of imported tubes.

I next asked him what the owners of Thermionics were going to do with Thermionics after the war and whether they were going to continue to impress quota and other restrictions upon Rogers. He said that he thought Thermionics could continue, but that it would no longer impress any quota or other restrictions, including those of price, upon its three licensees Rogers, CRV and CW.

I asked him how he was coming along in his discussion situation. He could not recollect what Photophone Limited was charging our licensees at the present time for the rights to import films into Canada. I explained to Mr. Macfarlane the background of this business and told him what was happening in Hollywood at the present time. I told him that in so far as the possibility of continuing to collect royalty in Canada was concerned, there was little likelihood that this could be continued at anything like the present rate. I also told him that in our license with GE and W we would want the non-exclusive right to grant licenses under their patents to our licensees to import films into Canada.

I asked him how he was coming along in his discussion with Philco. He said that he thought that CGE and Philco would reach a solution of their difficulties in a few weeks. I reminded him that he had given the same estimate some six months ago, and then he stated that he did not know when the discussions would resolve the problem between them and that the case might even proceed to the Privy Council.

When Mr. Macfarlane left, he said that he would get in touch with me within a week or so.

Faithfully yours,

....

cc: Messrs. Cook
Deakins
Gardner
Shackelford
Redier

December 11, 1944

Mr. O. S. Schairer,
RCA Laboratories
Princeton, N. J.

Dear Mr. Schairer:

Mr. J. C. Macfarlane, Vice President of Canadian General Electric Company, called upon me on December 8th in connection with the pending Canadian negotiations.

I started to tell him about our meeting with the Canadian Westinghouse people and gave him our reasons for not desiring to enter into a multi-party agreement, but he told me he already had a report on that meeting. He further stated that although he was not opposed to separate agreements in so far as RCA was concerned, he thought that a joint agreement would be preferable inasmuch as the Canadian parties, with the exception of RCA Victor Company Limited, would probably all be parties to one cross license agreement, in addition to the joint agreement with reference to Canadian Radio Patents Limited. He did say, however, that the CGE had no way of determining what patents GE in the United States had filed under secrecy laws and therefore he did not know what the value of CGE's post-war patent position will be. In view of this he stated definitely that CGE would under no circumstances enter into a long term agreement at the present time. In the light of this condition, he said that he desired to discuss only the question of CRPL's acquiring the right to grant licenses under RCA's patents.

I told him that we regarded the licenses with all of the Canadian parties, including CRPL, as constituting a subject that must be discussed as a whole. He replied that he would propose that we settle the licenses for Canadian Patents Limited now, and then when time is available next year that the licenses with the other Canadian parties be negotiated. He emphasized, with some degree of logic, that it would be regrettable to let the licenses with the five Canadian licensees of CRPL expire in entirety because it would be more difficult to negotiate new licenses than it would be to extend the present licenses for another year.

I asked him what CRPL would offer in the way of consideration for our patent rights under an agreement to run for one year, and he said he was not authorized to make any offer and that he thought that a statement of the consideration should come from us. I told him that I would discuss his proposal with our people and suggested that in view of his statement that we try to hold a meeting in Montreal between now and the first of the year with all of the interested parties, inasmuch as, according to his statement, at least the CRPL aspects of the problem should be settled before the end of the year. Mr. Macfarlane then contracted his previous statement and said that the CRPL situation did not have to be cleared up before the end of the year, and that if we attacked the problem soon after the year and that would probably be satisfactory to him and to the other owners of CRPL.

As to our joining CRPL, I told Mr. Macfarlane I did not know whether we would want to join CRPL as a stockholder or whether we would prefer to give CRPL the right by contract to grant licenses under our patents in the broadcast receiving set field, both telephone and television, and receive as consideration a portion of the gross receipts of Canadian Patents Limited. He refused to commit himself as to which of these two methods he preferred and said that he thought that we ought to grant the License now and talk about the compensation later in the event that CRPL should have any income in 1945. I told Mr. Macfarlane that as far as we are concerned, this would be impossible. Mr. Macfarlane then said that he thought we should let him know what consideration we wanted for sub-licensing rights for CRPL.

I also told Mr. Macfarlane that we might find it difficult to give sublicensing rights to CRPL if that organization continued its policy of refusing to grant licenses for importation into Canada. He replied that he thought the patent law of Canada required that patented goods be made in Canada, but I told him that I thought only a reasonable proportion of the goods had to be made in Canada under a patent in order to preserve such patent.

I also talked to Mr. Macfarlane about the tube situation in Canada. I told him that in any agreement with GE and the two other tube manufacturers, we would want to have the right to demand that brand tubes be manufactured for us. He told me that the other manufacturers might object to this, but intimated that he did not think that GE would object to such a clause.

I asked him if he could give me the reason behind the rather radical drop in tube prices of from 25 to 33⅓%, which had been put into effect by CGE and CW a few days ago, and he replied that this had been done to forestall criticism of the fact that the Canadian prices are considerably higher than the imported prices of United States made tubes. He also intimated that such action had been taken to meet the competition of imported tubes.

I next asked him what the owners of Thermionics were going to do with Thermionics after the war and whether they were going to continue to impress quota and other restrictions upon Rogers. He said that he thought Thermionics could continue, but that it would no longer impress any quota or other restrictions, including those of price, upon its three licensees: Rogers, CRV and CW.

I also talked to Mr. Macfarlane about the Photophone situation. He could not recollect what Photophone Limited was charging our Licensees at the present time for the rights to import films into Canada. I explained to Mr. Macfarlane the background of this business and told him what was happening in Hollywood at the present time. I told him that in so far as the possibility of continuing to collect royalty in Canada was concerned, there was little likelihood that this could be continued at anything like the present rate. I also told him that in our license with GE and W we would want the non-exclusive right to grant licenses under their patents ~~to our~~ licensees to import films into Canada.

I asked him how he was coming along in his discussion with Philco. He said that he thought that CGE and Philco would reach a solution of their difficulties in a few weeks. I reminded him that he had given the same estimate some six months ago, and then he stated that he did not know when the discussions would resolve the problems between them and that the case might even proceed to the Privy Council.

When Mr. Macfarlane left, he said that he would get in touch with me within a week or so.

Faithfully yours,

JGM/NS

cc: Messrs. Cook
Deakins
Gardner
Shackelford
Rodier

DEFENDANT'S EXHIBIT NO. 168.

November 6, 1946

Dr. B. E. Shackelford,
Radio Corporation of America,
RCA International Division,
745 Fifth Avenue,
New York 22, N. Y.

Dear Doc:

Enclosed is a copy of a name we have just received from Mr. Brownlee of Canadian Radio Patents Limited together with a questionnaire. You will note that they ask that we return one copy to them not later than Monday, November 18th. We would appreciate, therefore, receiving your suggestions regarding the form some time prior to that date.

Incidentally on September 9th I sent to Mr. Myers (with copy to you and Mr. Johnson) a draft of Mr. Brownlee's proposed form of C. R. P. L. licensed agreement, together with my comments thereon. I do not believe we have had any reply to this memo, consequently we have not forwarded to C. R. P. L. the comments on it.

Possibly in filling out this questionnaire you could also comment on the form of license agreement as covered by my memo of September 9th.

Very truly yours,

H. G. Marpole.

MGM/jtr

Copy to:
Mr. R. P. Myers,
Mr. H. W. Johnson.

PROPOSED CRPL PRIMARY "OUTPUT" LICENSE

1. SCOPE

1. Do you favour including in the scope of the primary CRPL output license the following:— ....
   - (a) A.M. receivers for home, educational and non-commercial use? ....
   - (b) F.M. receivers for home, educational and non-commercial use? ....
   - (c) Television receivers for home, educational and non-commercial use? ....
   - (d) Electric phonographs, either alone or combined with one or more of (a), (b) and (c)? ....
   - (e) Separate remote, time or preselective control devices for (a), (b), (c) and (d)? ....
   - (f) A.M. to F.M. converters? ....
   - (g) Sets (other than automobiles) less cabinets? ....
   - (h) Other? ....

2. DEFINITIONS

Have you any suggested revisions for the definitions in the August 29th draft? (These were extracted from the 1946 RCA U. S. License covering the same fields as the proposed draft and are doubtlessly the result of a great deal of consideration by attorneys and engineers in the U. S. radio industry.)

....

....

3. ROYALTY

- (i) What basis of royalty do you favour:—
  - (a) Percentage of net selling price as in draft? ....
  - (b) Flat rate basis? ....
  - (c) Buff-backed license basis? ....
  - (d) Other? ....
- (ii) What rate of royalty do you favour? ....
- (iii) Do you favour half-royalty for export? ....
- (iv) Increased royalty for sets (other than automobile) sold less cabinets? ....

4. ADVANCE PAYMENT OR MINIMUM

(a) Do you favour a "termination type minimum" as suggested in draft? ______
How much? ______

(b) Do you favour an advance security deposit from new licensees? ______
How much? ______

(c) Do you favour a definite annual minimum? ______
How much? ______

(d) Other, or combination of (a), (b), (c)?

5. MANUFACTURE IN CANADA

(a) Do you favour definite requirements for manufacture in Canada along lines of buff-backed agreement? ______

(b) Tied in with compliance with Canadian Patent Act as in draft? ______

(c) Importation on written approval of CRPL? ______

(d) Other? ______

6. REPORTS

(a) Do you favour "RCA" form of report? (Exhibit "A" of draft.) ______

(b) Other? ______

7. LIFE

(a) Do you favour ten years from January 1, 1945, as in draft? ______

(b) Other? ______

8. PRODUCT IDENTIFICATION

(a) Do you favour requiring licensee to use own name or trademark as in buff-backed agreement and in draft? ______

(b) Code identification for manufacturers of stencil sets? ______

(c) Other? ______

9. PATENTS

(a) Do you favour inclusion of specific lists of patents? ....

(b) Reference to patents only by general fields included in the "grant of license" clauses? ....

(c) Inclusion in license of names of companies whose patents are in? ....

(d) Combination of (a), (b), (c)? ....

(e) Other? ....

10. RECIPROCAL

Should any reciprocal rights be required from licensees? ....

GENERAL REMARKS

....

....

....

Company ....

Per ....

PROPOSED CRPL PRIMARY "OUTPUT" LICENSE

1. SCOPE

Do you favour including in the scope of the primary CRPL output license the following:—

(a) A.M. receivers for home, educational and non-commercial use? Yes

(b) F. M. receivers for home, educational and non-commercial use? Yes

(c) Television receivers for home, education and non-commercial use— Yes

(d) Electric phonographs, either alone or combined with one or more of (a), (b) and (c)? Yes

(e) Separate remote, time or preselective control devices for (a), (b), (c) and (d)? Yes

(f) A.M. to F. M. converters? Yes

(g) Sets (other than automobile) less cabinets? Yes

(h) Other? Tele Converters. ?

2. DEFINITIONS

Have you any suggested revisions for the definitions in the August 29th draft? (These were extracted from the 1946 RCA U.S. Licnse covering the same fields as the proposed draft and are doubtlessly the result of a great deal of consideration by attorneys and engineers in the U.S. radio industry.)

See my letter to RPM Sept. 9th

---

3. ROYALTY

(i) What basis of royalty do you favour:—
  (a) Percentage of net selling price as in draft? (deduct sales tax 7.41) Yes subject to my comment
  (b) Flat rate basis? …………
  (c) Buff-backed license basis? …………
  (d) Other? …………
(ii) What rate of royalty do you favour? …………
(iii) Do you favour half-royalty for export? Yes
(iv) Increased royalty for sets (other than automobile) sold less cabinets? Yes

4. ADVANCE PAYMENT OR MINIMUM

(a) Do you favour a "termination type minimum" as suggested in draft? Yes
  How much? …………
(b) Do you favour an advance security deposit from new licensees? …………
  How much? …………
(d) Other, or combination of (a), (b), (c)? …………

5. MANUFACTURE IN CANADA

(a) Do you favour definite requirements for manufacture in Canada along lines of buff-backed agreement? …………
(b) Tied in with compliance with Canadian Patent Act as in draft? Yes less 2—Para
(c) Imp[illegible]tion on written approval of CRPL? subj[illegible]onsideration of wording. ?
(d) Othe[illegible] …………

6. REPORTS

(a) Do you favour "RCA" form of report? (Exhibit "A" of draft.) Yes subject to comment my letter

(b) Other? ________

7. LIFE

(a) Do you favour ten (8) years from January 1, 1947, as in draft? Yes

(b) Other? ________

8. PRODUCT IDENTIFICATION

(a) Do you favour requiring licensee to use own name or trademark as in buff-backed agreement and in draft? ________

(b) Code identification for manufacturers of stencil sets? ________

(c) Other? ________

9. PATENTS

(a) Do your favour inclusion of specific lists of patents? ________

(b) Reference to patents only by general fields included in the "grant of license" clauses? ________

(c) Inclusion in license of names of companies whose patents are in? ________

(d) Combination of (a), (b), (c)? ________

(e) Other? ________

10. RECIPROCAL

Should any reciprocal rights be required from licensees? No

GENERAL REMARKS

____

____

____

____

Company ____________________

Per ____________________

DEFENDANT'S EXHIBIT NO. 169.

Mayer Ex. 25 LM517

17 November 1949

To: Dr. B. E. Shackelford, New York,

Subject: E. M. I. Licensing.

Ref: (a) My LM-503 dated 10 Nov. 1949
(b) My LM-506 " 11 Nov. "
(c) My LM-505 " 11 Nov. "

1. Further to ref. (a) and our exchange of radiograms, I visited Shoenberg at his place in the country near Eastbourne where he is spending this week. Dale Harris was also there, and we proceeded to discuss a number of points connected with the proposed agreements.

2. Regarding the sub-licensing agreement, Shoenberg objects to paying any minimum and sees no reason for its inclusion. He says we are sharing in the benefits of a licensing arrangement and if, for example, the pool should cease to exist, why should EMI be obliged to pay a minimum for a non-exclusive license when there might not be enough receipts to justify it. He feels that RCA should also share with EMI the risks involved in licensing. If we insist he might be agreeable to a very small minimum, and when pressed mentioned perhaps £2,000/£3,000. He was agreeable to a percentage but not to a figure as high as 40 per cent. He spoke of the 25 per cent, which he had offered, but after further discussion said he could not agree to recommend to his Board more than one-third.

It would therefore appear that I could negotiate for this figure for the percentage (which is within the latitude provided) if we are willing to eliminate the minimum or make it so low as to have little significance.

What are your views?

3. Shoenberg confirmed and expanded on what I have already said in ref. (b) concerning his views on the exchange of the results of research. We discussed this matter at some length and he said that McGee and White reported that RCA had shown them nothing which we would not have shown to anyone else, and he mentioned Dr. Jolliffe's refusal to give information on the new small camera tube. Of course Shoenberg said that had any RCA people visited EMI after the talk in April, he would have been willing to show them everything EMI had. I explained the situation and said that I thought the only satisfactory way in which an exchange of this kind could work is by goodwill on both sides and by the value of the contributions which the research personnel concerned are able to exchange with each other. Shoenberg agreed that there is nothing one can write which would force an exchange of what one side might be unwilling to give. However, he explained that in this matter it was a question of what was available to his competition, and his interest primarily was to ensure that EMI was in no worse position than Marconi in regard to the exchange of the results of research. I told him I thought this would be the case, particularly if his men continued to hold the high regard which our people had for EMI research. Shoenberg would like Dr. Jolliffe's draft letter reworded in some way, which we did not go into, to assure this equivalent treatment of EMI. The actual words in our agreement with HWT on this subject are as follows:

Article II.

"Section 5. RCA shall make available in the United States to MWT and its subsidiaries, upon a non-exclusive basis, and MWT shall make available in the United Kingdom to RCA Photophone Limited or other subsidiary designated by RCA, upon the same basis, the results of research relating to Contract Apparatus carried on by RCA and its subsidiaries or by MWT and its subsidiaries, respectively. Research personnel of RCA and its subsidiaries shall be made available in the United States to MWT and its subsidiaries and research personnel of MWT and its subsidiaries shall be made available in the United Kingdom to RCA Photophone Limited or other subsidiary designated by RCA, for visits and general discussion of research, in each case upon a non-exclusive basis."

What are your views?

4. By virtue of his claim for exclusivity under the pre-1945 RCA British patents and in order to safeguard the operation of the pool, Shoenberg previously had asked for the conditions mentioned in paragraph 16 of ref. (a). On the basis of your radiogram of 11 November, I told him that I thought our lawyers might be agreeable to a clause not to offer more favorable terms, but I felt sure that to require us to pay into the pool any receipts that might be obtained outside would not be acceptable for legal reasons. After much discussion on this matter it was suggested that as an alternative RCA might agree to:

(a) accept from EMI the difference between the sub-licensing receipts payable by EMI to RCA and the amount received by RCA for licenses granted outside the pool;

(b) not to make available or offer license terms at a lower rate* than that obtainable from the pool.

On this point* Shoenberg agreed that it need not be exactly the same rate and perhaps three-quarters of the rate would be satisfactory, i.e., about 1 per cent. (pool rate is 1½ per cent.). It is important in his view that it should be more attractive for a manufacturer to take a license with the pool, and he points out that this would also be to RCA's interest and advantage.

In this connection he also raised the question of our license arrangement with Pye, and I explained as per the General's radiogram to Fisk. Shoenberg is concerned lest Pye should be in a position, through having a license from RCA, of not joining in any future pool. However, he takes comfort from his conviction that EMI after all possesses exclusive rights under all RCA's British patents on pre-1945 inventions, and he trusts that Pye has not gained the impression from RCA that by their agreement Pye obtain a license under those patents.

5. Another aspect of this matter is the question of imports raised by Article II, Section 2(e) of the draft sublicensing agreement which states:

> "That EMI shall not restrict any licensee (by written agreement or otherwise) in regard to exports or imports to or from any country."

Shoenberg said that they could not agree to license foreign manufacturers to import into Great Britain, and he says this on the basis of his claim for exclusivity. In their view it would mean the immediate collapse of the whole licensing pool and of the revenue derived from it. They have always had to refuse to license imports from anywhere. British manufacturers are extremely jealous of importers, and although the Patent Act does not specifically support this attitude, there is no doubt that the old idea of patents giving a monopoly continues today and confirms a basis of a general licensing policy in Britain of using patents to build up trade and keep out cutthroat competition from foreign countries where prices may be cheaper.

If one looks at the Patent Acts, the current Act which expires this year only provides for compulsory licensing if the domestic manufacturer can show that the demands of the home market are not being met. The new Act, which is designed to encourage exporters, provides that a compulsory license can be obtained if the domestic manufacturer is not meeting the demands of the export market. Nothing is said about importers, and by implication it may be argued that the New Act supports the policy of discouraging importers. This is a big subject which I will not discuss further here except to say that it would certainly be a tricky business in the radio field to import into the U.K. in the face of an adverse patents situation.

It is certainly unlikely, therefore, that a satisfactory license from the pool would be obtainable for foreign-manufactured sets imported into the U.K.

Would it be possible to delete Section 2(e)?

6. With regard to the conditions of Article II, it is doubtful whether they are met by the licenses granted by the pool, and EMI would be unwilling to commit themselves to the conditions for anything more than the licenses under RCA's British patents which would be made available by the proposed sub-licensing agreement. In carrying out the conditions, therefore, it would probably be necessary to have a separate licensing form for the RCA patents (which according to EMI, would not include those for which they claim they already have licensing rights).

7. Another major point which Shoenberg brought up was their need to find some means of earning dollars which Fisk raised and which I mentioned in ref. (c), and for convenience repeat here:

> "On this point he (Fisk) said, for example, that whereas RCA would be receiving something for sub-licensing in the U.K., EMI was getting nothing for similar rights in the United States and Canada, and he was very much afraid that the Government people were going to be asking him why it was EMI could not earn some dollars for their patents. I explained, and he knew, that we considered the sub-licensing rights under his patents in the United States were part of the deal and a contribution towards the greater value of our patent situation in relation to that of EMI. Moreover, that we

> obtained no added income because of those rights, although, of course, as he said, it naturally strengthens our overall position. Nevertheless, Sir Ernest asked that we should give some thought to this matter. I said I did not see how we could help him, but that I thought there were still opportunities for them to earn dollars by the sale of inexpensive television receivers in the United States, and we discussed this matter briefly."

Shoenberg spoke of these difficulties in convincing his people that RCA's proposals were intended as a genuine desire to come to an agreement with EMI, and said that it would help him enormously both with his people and with the Government if he could show that EMI got something for sub-licensing rights under their U.S. patents.

What are your views?

8. With regard to MOV, we discussed the draft very briefly and Shoenberg said he thought the percentage was too high. I countered by saying that we had already reduced it from 3 per cent., and took the opportunity of saying that after consideration we proposed not to include transmitting tubes, and for that reason I would be able to meet him on the matter of the minimum since he had also thought that on the high side. Shoenberg raised no objection to this, but pointed out that the turnover figures which he had given would be appreciably less by exclusion of the transmitting field, but was unable to say by how much. It was left that we should later discuss the matter further with him and some of the MOV people.

9. We did not discuss further Australasia, nor did I raise the matter of the Photophone field. Having made his major points Shoenberg became rather tired, and we adjourned with the idea that I should call him sometime next week when he expects to be back in London.

The key of the situation is the question of exclusivity, which is discussed separately. If it appears likely that there is going to be some appreciable delay in advising me of your views on the several points herein raised, I should like to be informed immediately.

C. G. Mayer.

cc: Dr. B. F. Shackelford.
Dr. C. B. Jolliffe.

DEFENDANT'S EXHIBIT NO. 170.

(Stamp) Zenith-Rauland Cross-Claimant's Exhibit 43.

Radio Corporation of America,
RCA International Division,

Inter-Company Correspondence.

Date: August 10, 1951

To: Mr. H. G. Marpole—Montreal

Subject: Proposed Canadian Standard Form of License Agreement for Home Instruments.

Dear Harry:

I believe we have resolved the rate problem with respect to the record player and cabinet deductions in the proposed Canadian standard form for home instruments.

From the date which you gave, it is logical to expect an over-all deduction of about 1% for the excess cabinet deduction, and a similar 1% for the record changer deduction. Those deductions meet with Andy's approval which would result in a rate on TV receivers of 1,225%. Consequently, I feel we can proceed on this basis provided the anticipated deductions do not exceed these limits.

Attached are two copies of the July 13th draft for home instruments together with a letter of interpretation similarly dated. You may want to review these before your projected trip.

E. W. Johnson,
License Department.

EWJ:MW
Enclosures

cc: Mr. J. G. MacKenty—Edgartown, Mass.

P.S. I assume there are no additional deductions in the CRPL set up. If so, please advise.

[Draft of 7/13/51 C. E. Y.]

(Letter of Interpretation)

Dated as of ...., 19....

(Name and address of Licensee)

Gentlemen:

Reference is made to the License Agreement between us for Home Instruments, dated as of ...., 19....., and in particular to the license grant in Section 1 of Article II thereof.

It is not our intent to restrict the license grant to exclude the right to sell in Canada any apparatus which may have been imported. We, therefore, assure you that the granting clause of the abovementioned License Agreement will be interpreted to give you the right to sell Licensed Apparatus under RCA's Canadian Letters Patent even though such apparatus was not manufactured under such Canadian Letters Patent. Such sales shall, of course, be subject to the payment of royalties thereon as provided in the abovementioned License Agreement. The apparatus shall be deemed to be licensed under the abovementioned License Agreement at the time of such sale.

Nothing herein contained shall be construed as granting any license to you, either expressly or by implication, other than the license expressly granted in the abovementioned License Agreement.

If you accept the foregoing interpretation, kindly sign and return to us the attached carbon copy of this letter.

Very truly yours,

RCA Victor Company, Ltd.

This draft has been prepared solely for use as a basis of discussion. No part of it has been finally approved or agreed to by either party and neither party is in any way bound thereby.

By..,
President.

Agreed to and accepted by:
(Name of Licensee)..

This draft has been prepared solely for use as a basis of discussion. No part of it has been finally approved or agreed to by either party and neither party is in any way bound thereby.

By..
President.

(Draft of 13/July/51)

This draft has been prepared solely for use as a basis of discussion. No part of it has been finally approved or agreed to by either party and neither party is in any way bound thereby.

License Agreement
Between
RCA Victor Company, Ltd.
and
____

For
Home Instruments
1951

(Note for Inside Cover)

It is the policy of RCA Victor Company, Ltd. to grant to anyone, upon request, non-exclusive licenses on reasonable terms and conditions under any or all of the patents under which it has the right to grant licenses. If there is any apparatus not licensed by this License Agreement which Licensee desires to manufacture and sell, RCA Victor Company, Ltd. will grant a separate license therefor at Licensee's request. Any inquiries with respect thereto should be addressed to RCA Victor Company, Ltd., 1001 Lenoir Street, Montreal 30, Quebec.

License Agreement

License Agreement, dated as of ______________, 19____, by and between RCA Victor Company, Ltd., hereinafter called RCA Victor, and ______________________________
______________, hereinafter called Licensee.

Witnesseth:

Whereas, RCA Victor owns, or has rights to grant licenses, under, various Canadian Letters Patent (including the Canadian Letters Patent of Radio Corporation of America, a Delaware, U. S. A., corporation) for inventions useful in the Licensed Apparatus hereinafter specified and defined and in its manufacture, and

Whereas, Licensee desires to make lawful use of some or all of such inventions covered by said Canadian Letters Patent, and to that end desires to acquire the license herein granted.

Now, Therefore, in consideration of the premises, the license granted herein by RCA Victor to Licensee, and the agreements, covenants and conditions herein contained, the parties covenant and agree each with the other as follows:

Article I.

Definitions.

For the purposes of this License Agreement, the following definitions shall apply:

Section 1. "Broadcast reception" means the reception from radio broadcast stations of pictures, news, music, speeches, sermons, advertising, entertainment, educational and similar matter, or any of them, or combinations of any of them, for the purpose of entertainment or instruction.

Section 2. "Pictures" means light images, shadows, reflections, photographs and other visible reproductions, of the aspect or shape of animate or inanimate objects or of drawings, writings, forms and other graphic printed or written matter of all kinds.

Section 3. "Radio tube" means a device comprising two or more electrodes and an envelope which is to any extent evacuated or contains gas vapor or liquid under any degree of pressure and operates by electronic discharge or ionization to change the form of, control or modify energy supplied thereto.

Section 4. "Cabinet" means only that portion of Licensed Apparatus which is external to, permanently houses and protects and is designed to improve the appearance or saleability of the remaining portions thereof in the form and condition in which such apparatus is advertised (if at all) by Licensee and is normally intended to be sold at retail to the ultimate user.

Section 5. "Electrical phonograph" means apparatus for the reproduction of sound either directly or in conjunction with a radio receiving set from sound records used in or in connection with such apparatus to be heard in the immediate vicinity of the apparatus in which such record gives rise to or controls an electric current or electro-motive force in such a way that the variations of the electric current or electro-motive force correspond in some way to the recorded sounds and the electric current or electro-motive force directly or indirectly brings about the production of sound either from said apparatus or from said radio receiving set.

Section 6. "Automobile receiving set" means a complete radio broadcast receiving set designed, adapted and sold especially for installation and use in automobiles.

Section 7. "Repair parts" means parts (other than radio tubes) used to replace defective or worn out parts of a similar type for the purpose of repairing Licensed Apparatus.

Article II.

License.

Section 1. RCA Victor hereby grants to Licensee upon the terms and conditions hereinafter set forth a personal indivisible non-transferable and non-exclusive license for the Licensed Apparatus hereinafter specified:

(a) To manufacture and sell Licensed Apparatus and.

(b) To have Licensed Apparatus manufactured for Licensee by any other party licensed by RCA Victor to manufacture such apparatus and to sell such apparatus so manufactured for Licensee subject to the payment of royalties thereon by Licensee as provided in Article III hereof. Such apparatus shall be deemed to be licensed under this License Agreement at the time of sale by Licensee.

This license is granted under all the Canadian Letters Patent covering inventions relating to or useful in Licensed Apparatus or in the manufacture thereof owned by RCA Victor or others during the term of this License Agreement with respect to which and to the extent to which and subject to the conditions under which RCA Victor shall have the right to grant licenses to Licensee during the term of this License Agreement.

Section 2. Subject to the reservations and exceptions specified in Section 3 of this Article II said license is granted for the following apparatus:

(a) Complete radio telephone broadcast receiving sets for broadcast reception;

(b) Complete radio broadcast receiving sets for the reception of pictures including television and facsimile pictures but not including theatre television receivers;

(c) Complete electrical phonographs for use other than in theatres and otherwise than in combination or in connection with apparatus in the field of wire telephony;

(d) Complete combinations of apparatus for two or more of the uses specified in sub-paragraphs (a), (b) and (c) of this Section 2, and complete attachable apparatus for converting Licensed Apparatus specified in such sub-paragraphs (a), (b) or (c) into such combinations for the respective uses therein specified;

(e) Separate remote, time or preselective control devices, for controlling the operation of any of the apparatus specified in sub-paragraphs (a), (b), (c) or (d) of this Section 2;

(f) Apparatus specified in sub-paragraphs (a) (b), (c), (d), (e), (h) or (i) of this Section 2, other than automobile receiving sets, for the respective uses therein specified, complete except for cabinets and parts used for the assembly of such apparatus in cabinets or other permanent housings;

(g) Automobile receiving sets, complete except for one or more of the following: (1) cabinets, (2) parts used for the assembly of such sets in cabinets or other permanent housings, or (3) external remote control heads and external flexible shafts connected to said remote control heads, provided such sets are in the form and condition in which they are normally intended for assembly by vendees or users in cabinets or other permanent housings not furnished by or obtained through Licensee. Any of the foregoing excepted items may be omitted, but if included in or sold with such automobile receiving sets then such items shall be deemed parts thereof;

(h) Converters for converting complete sets of the kind and for the use specified in sub-paragraph (a) of this Section 2 (or any combinations which include such sets) into complete sets (or combinations) of the same kind and for the same use adapted to receive signals of a different frequency from those which such sets (or combinations) were originally designed to receive;

(i) Complete electrical sound recording apparatus, either separately or in combination with apparatus specified in subparagraphs (a) and (c) of this Section 2, for use in homes for making sound records of entertainment and educational matter for the private use of the maker; and

(j) Repair parts for any Licensed Apparatus of the kinds specified above in this Section 2.

Each apparatus specified in sub-paragraphs (a), (b), (c), (d), (e), (h) and (i) of this Section 2, in order to constitute Licensed Apparatus, shall be completely manufactured apparatus, complete with cabinet or cabinets, and in the form and condition in which it is advertised (if at all) by Licensee and is normally intended to be sold at retail to the ultimate user.

Wherever the term "Licensed Apparatus" is used in this License Agreement it means only apparatus of the kinds, and only in the form and condition, specified and described in this Section 2, and only such apparatus as is covered by, or made under, any unexpired Canadian Letters Patent now or hereafter issued under which a license is granted hereunder to Licensee.

Section 3. Anything in this License Agreement to the contrary notwithstanding, no license is herein granted, and no act or acts of manufacture or sale hereunder shall be construed as or result in conveying any license to Licensee or others, expressly or by implication, estoppel, or otherwise, under or with respect to:

(a) Letters Patent with respect to which RCA Victor can grant licenses only upon the payment of royalties or other consideration by Licensee other than the royalties provided for herein; or

(b) Letters Patent claims relating to the structure or manufacture of radio tubes, or to sound or picture records or record blanks; or

(c) Letters Patent of any country other than Canada; or

(d) Unassembled apparatus or parts thereof, other than repair parts; or

(e) Any apparatus, parts or components (other than repair parts, or any method or process, upon which Licensee is not required to pay royalties hereunder.

Section 4. RCA Victor shall not assert any patent or patents, owned by RCA Victor or under which RCA Victor has the right to grant licenses to others, against any vendee or user of Licensed Apparatus specified in sub-paragraphs (f) and (g) of Section 2 of this Article II, on account of the assembly by such vendee or user of such apparatus in cabinets or other permanent housings not furnished by or obtained from Licensee.

Article III.

Royalties.

Section 1. Licensee shall pay to RCA Victor royalties at the following rates upon all Licensed Apparatus sold by it during the term of this License Agreement covered by, or made under, any unexpired United States Letters Patent now or hereafter issued under which a license is granted hereunder to Licensee:

(a) Upon all Licensed Apparatus (including combinations), other than the Licensed Apparatus specified in sub-paragraphs (e), (f), (h) and (j) of Section 2 of Article II hereof, royalties at the rate of .... per cent (.....%) of net amounts determined as provided in Section 2 of this Article III when such apparatus comprises or includes apparatus for the reception of pictures, including television and facsimile pictures; and

(b) Upon all Licensed Apparatus (including combinations) specified in sub-paragraph (f) of Section 2 of Article II hereof, royalties at the rate of ....

per cent (.....%) of net amounts determined as provided in Section 2 of this Article III when such apparatus comprises or includes apparatus for the reception of pictures, including television and facsimile pictures; and

(c) Upon all Licensed Apparatus, other than the Licensed Apparatus specified in sub-paragraphs (e), (f), (h) and (j) of Section 2 of Article II hereof, royalties at the rate of .... per cent. (.....%) of net amounts determined as provided in Section 2 of this Article III when such apparatus comprises only apparatus for the reception, recording and/or reproduction of sound; and

(d) Upon all Licensed Apparatus specified in subparagraph (f) of Section 2 of Article II hereof, royalties at the rate of .... per cent. (.....%) of net amounts determined as provided in Section 2 of this Article III when such apparatus comprises only apparatus for the reception, recording and/or reproduction of sound; ~~and~~

(e) Upon all Licensed Apparatus specified in subparagraphs (e) and (h) of Section 2 of Article II hereof, royalties at the same rate as that which applies to Licensed Apparatus of the type to be controlled or converted.

No royalties shall be payable upon repair parts.

Section 2. The base for the computation of the royalties specified in Section 1 of this Article III shall be Licensee's genuine selling price at which customers are billed in the usual course of business for the apparatus therein specified, as packed for shipment to customers and including all packing material and boxes, cartons, crates and all contents thereof, without any deductions except as hereinafter in this Section 2 specified. Such royalties shall be computed and paid on net amounts determined by making only the following deductions, and no others, from such selling price:

(a) Any excise or sales tax which is actually paid, directly or indirectly, by Licensee on the apparatus, or component parts thereof, so sold by Licensee, but only if and to the extent the amount of such tax is included in such selling price;

(b) Licensee's net purchase prices (including inward freight only) of radio tubes, batteries, cabinets (in excess of $30 each) and/or automatic record changers purchased by Licensee for use in Licensed Apparatus, if Licensee has included in such selling price an amount at least equal to such net purchase prices for such items. Where Licensed Apparatus is manufactured for Licensee as provided in sub-paragraph (b) of Section 1 of Article II hereof, the deduction for such items shall not exceed the lowest amount which Licensee is then currently paying for similar items for use in Licensed Apparatus manufactured by Licensee or the fair market value thereof, whichever shall be lower. In the event Licensee manufactures tubes, batteries, cabinets and/or automatic record changers for use in Licensed Apparatus, the deduction for such items shall not exceed the lowest prices (less $30 each in the case of cabinets) at which Licensee currently sells similar items to third persons or the fair market value thereof, whichever shall be lower.

Section 3. The rates of royalty provided for in Section 1 of this Article III, and the bases to which such rates shall be applicable, are accepted and recognized by the parties hereto as a reasonable and convenient measure of the fair value of the license granted herein.

Section 4. Licensed Apparatus shall be considered as sold when billed out or, if not billed out, when delivered, shipped or mailed.

Section 5. If as a result of a price reduction established by Licensee or a return to Licensee of Licensed Apparatus previously sold by it, Licensee shall refund to a customer part or all of the selling price of such Licensed Apparatus, Licensee shall be entitled to a credit against royalties payable hereunder equal to the royalties on that part of the selling price so refunded.

Section 6. Licensee's genuine selling price, for the purpose of computing royalties payable hereunder on Licensed Apparatus consigned, shall be the consignee's selling price before any allowance or deduction whatsoever, except Licensee's selling commissions to the consignee.

Section 7. Sales of Licensed Apparatus by Licensee to any other party who is licensed under RCA Victor's patents of Canada to manufacture and sell such apparatus, and who is obligated to pay royalties in respect thereof, shall be reported by Licensee to RCA Victor, but shall not be subject to the payment of royalties hereunder by Licensee.

Licensee shall report all its sales of Licensed Apparatus referred to in sub-paragraph (b) of Section 1 of Article II hereof, and shall pay royalties thereon, in all respects as though such apparatus had been manufactured by Licensee itself under this Licensee Agreement.

Section 8. It is the intent of this License Agreement, and the parties agree, that the selling price in each case which shall constitute the base for the computation of royalties as provided in Section 2 of this Article III shall be a genuine selling price established in a normal bona fide arm's length transaction between parties who are not in affiliation. Without limiting the generality of the foregoing, if the parties are in affiliation, or if a relationship or arrangement of any kind exists or should exist or if any method or device is or should be used wherein a selling price of Licensed

Apparatus is not one realized in a normal bona fide arm's length transaction, or if any contribution or consideration other than the selling price is or should be received by Licensee in respect of the manufacture or sale of any Licensed Apparatus, then and in each such event the price established or realized by Licensee shall not be deemed to be such a genuine selling price. For the purpose of royalty computations, each transaction wherein Licensee does not realize such genuine selling price shall be disregarded, and royalties shall be computed and paid upon the equivalent of such genuine selling price. RCA Victor recognizes that sales to an affiliate may be made at the equivalent of genuine selling prices, and when and to the extent that RCA Victor is satisfied and agrees in writing that any such sale is made at a price equivalent to a genuine selling price, such price shall constitute the base for the computation of royalties.

"Affiliation" as herein used means any relationship, contract, arrangement, method or device wherein, with respect to any matter or thing which affects the amount of royalties payable hereunder, one or more of the parties to a transaction has or exercises, or has the power to exercise, directly or indirectly, in any manner, control, direction or restraint of the other or others, or wherein, two or more of such parties in any manner, directly or indirectly, are subject to common control, direction or restraint.

Article IV.

Statements and Payments.

Section 1. Within thirty (30) days after March 31, June 30, September 30 and December 31 of each year during the term of this License Agreement, Licensee shall furnish RCA Victor with a statement certified by an officer of Licensee specifying the total amounts of royalties payable to RCA Victor hereunder for each type of Licensed Apparatus sold hereunder by Licensee during the preceding calendar quarter, and shall at the same time make the payments prescribed therefor in Section 1 of Article III hereof. A similar statement shall be rendered and payment made within thirty (30) days after, and as of, the date of any termination of this License Agreement covering the period from the end of that covered by the last preceding statement to the date of such termination, which statement shall include Licensed Apparatus manufactured during the term of this License Agreement, or actually in manufacture upon the date of termination of this License Agreement, and not sold prior to such termination which, for the purpose of computing the payments to be made under Article III hereof, shall be considered as having been sold by Licensee prior to termination of this License Agreement.

Section 2. Licensee shall pay interest to RCA Victor upon any and all amounts of royalties that are at any time overdue and payable to RCA Victor at the rate of six per cent. (6%) per annum from the date when such royalties are due and payable as provided herein to the date of payment.

Section 3. Licensee shall keep true and accurate records, files and books of account containing all the data reasonably required for the full computation and verification of the royalties to be paid and the information to be given in the statements herein provided for, and shall at all reasonable times permit independent chartered accountants engaged by RCA Victor adequately to inspect the same for the sole purpose of determining the amounts payable by Licensee pursuant to Section 1 of Article III hereof.

Article V.

Patent and License Markings.

Licensee shall observe all reasonable requirements which RCA Victor by written notice to Licensee may from time to time impose with respect to marking Licensed Apparatus or parts thereof made and sold hereunder by Licensee with patent and license notices.

Article VI.

Term and Termination.

Section 1. This License Agreement shall be effective as of the date hereof and, unless sooner terminated as provided in Section 2 of this Article VI, shall continue in effect until December 31, 1955 and, subject to the right of either party to terminate the same on December 31, 1955 or at any time subsequent thereto by giving to the other at least six (6) months' prior written notice, shall continue thereafter until December 31, 1960.

Section 2.

(a) If Licensee shall at any time default in rendering any of the statements required hereunder, or in the payment of any monies due hereunder, or in fulfilling any of the other obligations or conditions hereof, and such default shall not be cured within thirty (30) days after written notice from RCA Victor to Licensee specifying the nature of the default, RCA Victor shall have the right to terminate this License Agreement by giving written notice of termination to Licensee, and upon the giving of such notice of termination this License Agreement shall terminate on the thirtieth (30th) day after such notice is given. Licensee shall have the right to cure any such default up to but not after the giving of such notice of termination.

(b) RCA Victor shall also have the right to terminate this License Agreement by giving written notice of termination to Licensee at any time upon or after the filing by Licensee of a petition in bankruptcy or insolvency, or upon or after any adjudication that Licensee is bankrupt or insolvent, or upon or after the filing by Licensee of any petition or answer seeking reorganization, readjustment or arrangement of the business of Licensee under any law relating to bankruptcy or insolvency, or upon or after the appointment of a receiver for all or substantially all of the property of Licensee, or upon or after the making by Licensee of any assignment or attempted assignment for the benefit of creditors, or upon or after the institution of any proceedings for the liquidation or winding up of Licensee's business or for the termination of its corporate charter; and this License Agreement shall terminate on the thirtieth (30th) day after such notice of termination is given.

(c) In the event of the direct or indirect taking over, or assumption of control, of Licensee's business by any superior authority, RCA Victor shall have the right to terminate this License Agreement at any time thereafter upon giving written notice thereof to Licensee, and upon the giving of such notice of termination this License Agreement shall terminate forthwith.

(d) If at any time during the term of this License Agreement an application shall be made to the Commissioner of Patents of Canada alleging that there has been an abuse (within the meaning of Section 65 (2) (b) of the Patent Act, 1935, as amended) of any of the patents under which Licensee is licensed pursuant to Section 1 of Article II of this License Agreement, by any act or acts of Licensee hereunder, RCA Victor shall have the right to terminate this License Agreement by giving written notice of termination to Licensee, and upon the giving of such notice of termination this License Agreement shall terminate on the thirtieth (30th) day after such notice is given.

(e) If at any time during the term of this License Agreement Licensee shall acquire from any third party a license of a scope similar to or broader than the scope specified in Section 2 of Article II hereof, and under patents which include not only the patent under which a license is herein granted but other patents under which such third party has the right to grant licenses, Licensee shall have the right to terminate this License Agreement by giving written notice of termination to RCA Victor, and upon the giving of such notice of termination this License Agreement shall terminate on the last day of the calendar quarter during which such notice is given.

Section 3. Upon termination of this License Agreement, by expiration or otherwise, the license, rights and obligations hereunder shall cease and determine except that the license shall continue as to all specific pieces of Licensed Apparatus manufactured during the term of this License Agreement, or actually in manufacture upon the date of termination of this License Agreement, by Licensee, for the full terms of the patents under which such Licensed Apparatus is licensed hereunder to be made and/or sold, and except that no termination of this License Agreement by expiration or otherwise shall release Licensee from any of its obligations hereunder (including its obligation to furnish statements and to pay royalties with respect to Licensed Apparatus manufactured during the term of this License Agreement, or actually in manufacture upon such date of termination, by Licensee), or rescind or give rise to any right to rescind anything done or any payment made or other consideration given to either party hereunder, prior to the time such termination becomes effective.

Section 4. No failure or delay on the part of RCA Victor in exercising its right of termination hereunder for any one or more defaults shall be construed to prejudice its right of termination for such or for any other or subsequent default.

Article VII.

Miscellaneous Provisions.

Section 1. Licensee intends to manufacture Licensed Apparatus at its factory located at .... If Licensed Apparatus is to be manufactured at any other location, Licensee shall notify RCA Victor in writing of such other location prior to the commencement thereat of such manufacture.

Section 2. This License Agreement shall not be assignable by Licensee, in whole or in part, to any person, firm or corporation whatsoever, nor shall the rights herein of Licensee be or become in any way, directly or indirectly, transferable or available to, or divisible or capable of being shared with, any other party, without the prior written consent of RCA Victor.

Section 3. Any notice or request required or permitted to be given under or in connection with this License Agreement or the subject-matter hereof shall be deemed to have been sufficiently addressed when, if given to RCA Victor, it shall be addressed to RCA Victor Company, Ltd., 1001 Lenoir Street, Montreal 30, Quebec, and when, if given to Licensee, it shall be addressed to .... and in each case either delivered at such address to an officer of the party to which given, or sent by registered mail. If mailed, the date of mailing shall be deemed to be the date on which such notice or request has been given. Either party may give written notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such party as above provided at such changed address.

Section 4. This License Agreement is executed and delivered within the Province of Quebec, Canada, and it is the intention of the parties that it shall be construed, interpreted and applied in accordance with the laws of the Province of Quebec.

Section 5. This License Agreement sets forth the entire agreement and understanding between the parties as to the subject-matter of this License Agreement and merges all prior discussions between them, and neither of the parties shall be bound by any conditions, definitions, warranties or representations with respect to the subject-matter of this License Agreement, other than as expressly provided in this License Agreement or as duly set forth on or subsequent to the date hereof in writing and signed by the party or by a proper and duly authorized representative of the party to be bound thereby.

In Witness Whereof the parties hereto have caused this Agreement to be executed as of the day and year first above written.

RCA Victor Company, Ltd.

This draft has been prepared solely for use as a basis of discussion. No part of it has been finally approved or agreed to by either party and neither party is in any way bound thereby.

By ....

Attest:

....

Witness:

....

This draft has been prepared solely for use as a basis of discussion. No part of it has been finally approved or agreed to by either party and neither party is in any way bound thereby.

....

(Licensee's Name)

DEFENDANT'S EXHIBIT NO. 171.

License Agreement.

This License Agreement dated as of the .... day of ...., 1963, between Hazeltine Corporation, a corporation of the State of Delaware, U. S. A., (hereinafter called Licensor) and Canadian Radio-Patents Limited, a private company organized under the laws of the Dominion of Canada (hereinafter called Licensee),

Witnesseth That

Whereas the Licensor represents that ~~it~~ owns or has the right to grant exclusive licenses under various patents and applications for patents of the Dominion of Canada for inventions useful in licensed apparatus as hereinafter specified and defined, and maintains laboratories with a staff of engineers, research men and inventors, and expects to file further patent applications and to obtain further patents of the Dominion of Canada important in the fields of this agreement; and

Whereas the Licensee desires an exclusive license in the field hereinafter mentioned with the right to grant sublicenses under such patents issued and to be issued and under said applications;

Now, Therefore, in view of the premises and in consideration of the licenses herein contained and agreed to be granted, the mutual covenants and agreements herein contained, the parties hereto agree as follows:—

Article I.

Definitions.

For the purposes of this agreement, the following definitions shall apply:—

Section 1.

As hereinafter used, the word "patent" will be deemed to include either a Canadian patent which is already issued, or an application for Canadian patent, or a Canadian patent which may issue on an application for a Canadian patent.

Section 2.

The "field of this agreement" is television, meaning specifically broadcast transmitters and receivers for the transmission and reception of either monochrome or color television signals by radio waves or wire.

Section 3.

The term "receiver" means the complete, operable apparatus, including at least the sound and picture reproducers and all tubes and/or equivalent semiconductor devices and components, for receiving signals from broadcast stations and converting them into television pictures and accompanying sound.

Article II.

Licenses.

Section 1.

Licensor hereby grants and agrees to grant to Licensee upon the terms and conditions hereinafter set forth and solely and only to the extent hereinafter specified and defined, an exclusive license with the right to grant sublicenses to practice in the manufacture, use, and sale of television receivers and transmitters the inventions of all Canadian patents now or hereafter owned by Licensor within the field of this Agreement, or under which Licensor during the term of this Agreement acquires the right to grant licenses to others but, in the case of patents of others under which Licensor shall have only a limited right to grant licenses, the licenses herein granted are subject to any limitations to which that right may be subject.

Section 2.

No license is granted under any Letters Patent of others which or rights under which are held by Licensor under an agreement such that Licensor can grant licenses only upon the payment of royalties or other consideration by Licensor to others; provided however, that Licensor will from time to time keep Licensee informed of all such agreements and that Licensee may at any time obtain rights under such agreements corresponding to the licenses herein granted, so far as such agreements permit, upon payment to Licensor of any amounts which Licensor is required to pay under such agreements because of Licensee's exercise of such rights.

Section 3.

No license is granted under any patents foreign to Canada.

Section 4.

The licenses herein referred to shall include the right to import licensed apparatus within the field of this Agreement into Canada unless it shall reasonably appear that such importation shall constitute grounds for requiring the grant of compulsory licenses to others in accordance with Canadian law under the patents licensed herein, or grounds for forfeiture in accordance with Canadian law of said patents. Licensee agrees and will require its sublicensees to agree to manufacture in Canada such proportion of their total licensed apparatus licensed hereunder as may from time to time be necessary to satisfy the requirements of Canadian law in order to prevent the granting of compulsory licenses to others under the patents licensed hereunder or the forfeiture thereof.

Article III.

Enforcement of Patents.

Section 1.

Licensee agrees to use its best efforts to enforce all patents licensed by this Agreement by sublicensing Canadian manufacturers or users or vendors operating within the field of this Agreement, or by resorting to infringement litigation where necessary.

Article IV.

Royalties and Expenses.

Section 1.

Licensee shall maintain a schedule of royalties chargeable on a non-discriminatory basis to sublicensees including manufacturers, users or vendors associated with Licensee in any capacity, as by stock ownership. Such schedule will set a percentage royalty based on the sales price of receivers and transmitters for each or all of the patents licensed herein useful in receivers or transmitters and will be worked out in consultation with Licensor and will be subject to the approval of Licensor if the royalty rates do not at least equal royalty rates obtained by Licensor for the corresponding patents in the United States.

Section 2.

Royalties received by Licensee will be shared by Licensee and Licensor in the following manner.

Licensee's net costs of administration of its licensing program, including litigation, salaries and accounting costs will be determined and will be subject to the approval of Licensor if in excess of normal reasonable costs of administration of comparable licensing programs in the United States.

From Licensee's gross royalty income, there will be deducted the net costs of administration, and the remainder will be shared in the proportion of 80% to Licensor and 20% to Licensee.

Article V.

Reports and Payments.

Section 1.

During the term of this Agreement, Licensee will maintain records of —

1. The manufacture, use or sale of all apparatus subject to royalty hereunder.
2. All costs of administration of its licensing program attributable to the licensing of the patents licensed hereunder, including litigation costs, accounting costs and salary costs fairly allocatable to the licensing of the patents licensed hereunder.

Such records will be in sufficient detail to enable the royalties payable hereunder to Licensor to be determined and Licensee agrees to allow such investigation of all its operations hereunder as may be necessary to determine Licensee's compliance with this Agreement and the accuracy of said records and the statements to be furnished hereunder. Licensee further agrees to permit Licensor's duly authorized representative or, at the option of Licensee, a reputable certified public accountant to inspect such records at all reasonable times.

Section 2.

Within thirty (30) days next following the calendar quarters ending March 31, June 30, September 30 and December 31 of any year during the term of this Agreement Licensee will furnish Licensor with written statements over the signature of some officer of Licensee setting forth the number of units of apparatus upon which royalties are payable hereunder, Licensee's administration costs, the royalties paid or payable, and the amounts due Licensor hereunder for the preceding calendar quarter.

The royalty prescribed herein shall be due and payable with such statements.

Section 3.

Licensee agrees to pay interest to Licensor upon any and all of royalties that are overdue to Licensor at the rate of 6% per annum from the date when such royalties are due and payable.

Section 4.

All money values herein shall be in Canadian funds.

Article VI.

Patent Marking.

Section 1.

Licensee agrees to have marked on all licensed apparatus manufactured and sold by Licensee and/or its sub-licensees hereunder the word "Patented" followed by the years of the grants of the patents which are, in the opinion of the Licensee, involved in such apparatus, or such other patent marking as otherwise may be required under the provisions of the Patent Act of the Dominion of Canada.

Article VII.

Litigation.

Section 1.

The Licensee is authorized, subject to the limitations contained in this Agreement, to take the necessary legal steps to restrain and to secure compensation for all infringements of the Licensor's patents coming within the scope of this Agreement and to oppose the revocation of any of said patents or the grant thereunder of compulsory licenses in conflict with the license herein granted, and to that end to bring or defend legal action in its own name, or, with the consent in writing of the Licensor, which consent will not unreasonably be withheld, jointly with the Licensor, whose name may be added as co-plaintiff or co-defendant for such purposes. The Licensee will meet and defray any and all expenses in any such action prosecuted or defended by the Licensee and will fully indemnify the Licensor for any damages, costs and expenses which it may sustain or be called upon to pay by reason of its name being added as a party to such proceedings. All damages, profits or other recoveries obtained from infringers of the said patents within the fields of this license, whether such recoveries concern infringement either before or after the date of this Agreement shall be reported and shared in the same manner as royalties are under the provisions of this Agreement.

Provided, however, that the Licensor shall be given by the Licensee prompt and full notice of any such proposed action and the Licensor shall have the right if it so desires to participate in any such legal proceedings or the prosecution or defense thereof by its own counsel and to approve of the strategy and procedure adopted, which approval will not be unreasonably withheld, such participation to be at its own expense; in the event that only the rights or interests of the Licensor outside of the license herein granted may be affected, the Licensor shall conduct the said litigation at its own expense. Also, the Licensor shall have the right at its own expense to bring and conduct litigation which it deems necessary to protect its patent situation, subject to the right of the Licensee to approve of the strategy and procedure adopted, which approval will not be unreasonably withheld.

Section 2.

The Licensor agrees that it will cooperate with the Licensee in said enforcement of patents and prevention of unlicensed competition in patented apparatus, including the furnishing of statistical and technical information and other facts relating to such enforcement and prevention; provided that such cooperation shall be at the cost of the Licensee and shall not unreasonably interfere with any of the Licensor's operations.

Article VIII.

Prosecution of Patent Applications.

The Licensor agrees that as soon as it is reasonably possible after the execution of this Agreement it will transmit to the Licensee a statement of all patents and applications for patents of the Dominion of Canada now owned or controlled by Licensor or under which Licensor has the right to grant licensee, under which licenses will pass to the Licensee under this Agreement, and that in every case hereafter as soon as it is reasonably possible after the filing by it or on its behalf of a U. S. patent application (if licenses under a corresponding Canadian application would pass to the Licensee under this Agreement), it will transmit promptly a copy of such application to the Licensee with or without claims as Licensor may elect. In the event an application is filed by the Licensor in the U. S. Patent Office and, if for good and sufficient reasons a corresponding Canadian application is not filed within nine months after the filing of the United States application, the Licensee shall have the right of filing said Canadian application at its own expense, in which event the Licensor will authorize the issuance of the patent in the name of the Licensee and will supply Licensee with all necessary documents to enable Licensee to obtain and maintain patent protection thereon.

The Licensor, during the life of this Agreement, will prosecute in the Canadian Patent Office at its own expense the patent applications filed by it and coming within the scope of this Agreement to the same extent and with the same care as is exercised with regard to other applications owned by the Licensor.

Article IX.

Notices.

Any notice hereunder must be in writing and may be given by registered letter and shall be deemed to have been given when such registered letter, properly addressed, is mailed; if given otherwise than by registered letter, it shall be deemed to have been given when delivered. If such notice is to be given to Licensor, it shall be addressed to Licensor at its office, 59-25 Little Neck Parkway, Little Neck 62, N. Y.; if given to Licensee, it shall be addressed to Licensee at 200 St. Clair Ave. West, Toronto, Ontario. Either party hereto may at any time by thirty (30) days' notice to the other designate any other address in place of those above given.

Article X.

Term and Termination.

Section 1.

Unless sooner terminated as herein provided, this Agreement shall continue in force for a period of five (5) years from the effective date hereof and, if Licensee shall have fully and faithfully performed all of its obligations hereunder, thereafter for an additional period of five (5) years, unless Licensee shall have given six months' notice to the Licensor prior to the end of the first five-year period of its election to terminate this Agreement.

Provided, however, with respect to patents owned or controlled by the Licensor during the period or periods of the continuance of this Agreement, the license herein granted to Licensee and, at Licensee's option, the sub-licenses granted hereunder by Licensee, shall continue in force in accordance with the terms of this Agreement until the ends of the terms of said patents with respect to apparatus which at the termination of said period or periods have been manufactured or are in process of manufacture or for which firm orders have been received prior to said termination.

Section 2.

Licensor, at its option, may terminate this Agreement (a) in case at the end of any twelve (12) months' period ending December 31st of any year, the royalty payments hereunder accruing to Licensor for that period are less than Fifty Thousand (\$50,000) Dollars and unless within thirty (30) days after the end of such twelve months period the Licensee of its own motion pays to Licensor an additional sum of money equal to the difference between the accrued royalties and Fifty Thousand (\$50,000) Dollars; (b) on the failure of Licensee to render statements, to pay royalties or to make any other payments due under this Agreement;

(c) on Licensee's failure to comply with any other provision of this Agreement; (d) at any time upon or during the bankruptcy, receivership or insolvency of Licensee or the appointment of a receiver or trustee for its property, or upon or after an assignment for the benefit of creditors. Any such termination by Licensor shall be by notice in writing to Licensee, stating the reason for the termination and, unless such default or failure has been rectified in the meantime, said termination shall take effect thirty (30) days after such notice is given.

Section 3.

No termination of this Agreement for any cause shall release Licensee from any of the liabilities hereunder accruing to Licensor or rescind anything done or any payment or other consideration made or given to either party hereunder prior to the time such termination becomes effective. No failure on the part of Licensor to exercise any right of termination hereunder shall be construed to prejudice any subsequent right of termination.

Article XI.

Successors and Assigns.

Neither this Agreement nor the licenses, rights or privileges herein granted shall be directly or indirectly by operation of law or otherwise, assigned, transferred, divided or shared by Licensee (except with its sublicensees) with any person, firm or corporation whatsoever, without the written consent of the Licensor but such consent shall not be unreasonably withheld. This Agreement shall inure to the benefit of the successors or assigns of the Licensor, but neither the Agreement nor the licenses, rights or privileges herein granted shall inure to the benefit of the successors, assigns or any legal representatives of the Licensee without the written consent of the Licensor having first been obtained, but such consent shall not unreasonably be withheld.

Article XII.

This Agreement is to be governed by and interpreted in accordance with the laws of the Dominion of Canada.

Article XIII.

The parties hereto hereby agree to execute and deliver with reasonable promptness such other instruments and perform all such acts as may be reasonably necessary for carrying out the provisions and purposes of this Agreement.

In Witness Whereof, the parties hereto have caused this instrument to be executed in duplicate by their proper officers thereunto duly authorized and their corporate seals to be hereto affixed as of the day and year first above written.

Hazeltine Corporation,

Witness:

....

President.

....

....

Secretary.

Canadian Radio Patents Limited,

Witness:

....

President.

....

....

Secretary.

DEFENDANT'S EXHIBIT NO. 172.

(Letterhead of Trav-ler Radio & Television Corporation, Chicago, Illinois.)

Hazeltine Corp.
15 Exchange Place,
Jersey City, N. J.

Gentlemen:

We have had a few inquiries from prospective customers in Canada.

Please send us any information you have regarding Canadian Patent Rights. We would like to know if we can sell our merchandise and if there is any Canadian law which does or does not permit the sale of same.

Any information you can supply us with in this regard will sincerely be appreciated. Awaiting your early reply, we are

Yours very truly,

Trav-ler Radio & Television Corp.,
E. Lemsky.

EL:IK

Defendant's Exhibit No. 172.

May 10, 1940

Mr. E. Lemsky
Trav-ler Radio & Television Corp.
1028 W. Van Buren Street
Chicago, Illinois

Dear Mr. Lemsky:

This is in answer to your letter of May 2 with respect to Canada. A group of patents generally corresponding to those owned or controlled by Radio Corporation of America is vested in Canada in the Canadian Radio Patents Ltd. This company has a number of licensees in Canada, and it is my understanding that they will not license sets for importation into their country. They are located at 159 Bay Street, Toronto. Perhaps you can write to them direct.

The Hazeltine Corporation patents in Canada are not entirely under our control, and consequently licenses can only be obtained by a manufacturer in Canada.

With every good wish.

Yours very sincerely,

Hazeltine Corporation
Illegible
Vice President-Treasurer.

JB:AO

DEFENDANT'S EXHIBIT NO. 173.

April 27th, 1945.

Report of Meeting held at the Ritz-Carlton Hotel, Friday, April 27th, 1945, at which the following were present:

Mr. B. M. Coles	representing Canadian Westinghouse
Mr. H. A. Ceech	
Mr. Cran	representing Rogers-Majestic
Mr. R. M. Brophy	
Mrs. S. M. Finlayson	representing Canadian-Marconi
Mr. J. C. Macfarlane	representing Canadian General Electric
Mr. S. D. Brownlee	
Mr. W. W. Richardson	representing Canadian Radio Patents Ltd.
Mr. J. C. MacKenty	representing Radio Corporation of America
Mr. Meyers	
Mr. Deakin	representing RCA-Victor
Mr. Marpole	
Mr. Elder	
Mr. R. D. Harkness	representing Northern Electric
Mr. M. K. Pike	
Mr. A. J. R. Lamone	

Mr. Brophy opened the meeting and asked Mr. MacKenty what points he desired to place before the meeting in connection with the Canadian Patent situation.

Mr. MacKenty reiterated the stand R. C. A. had taken at the last meeting, that is, they could not transfer patents to RCA-Victor or Canadian Radio Patents Limited, but that they would like to canvass the situation and see if we had any ideas as to what could be done to resolve the matter.

Mr. Ceech proposed that R. C. A. give their patent rights to RCA-Victor, their Canadian subsidiary, who could then deal as a Canadian Company with Canadian Radio Patents Limited. Mr. MacKenty stated that this was being given consideration.

Mr. MacKenty then put forward the proposition which they were considering that is, to grant non-exclusive rights to RCA-Victor with the right to grant sub-licenses; RCA-Victor would then be in a position to enter into a contract with Canadian Radio Patents Limited, by which they would grant a non-exclusive right to Canadian Radio Patents Limited with the right to grant non-exclusive licenses, with the following provisions:

1. No fixing of licensees' prices.
2. No setting of quotas.
3. No control of production.
4. No control of character of product.
5. No control of quantities of product.
6. No control of markets, either by limitation of territory or limitation of customers.
7. No discrimination between licensees.
8. License all responsible applicants.
9. License imports from the United States.
10. Permit exports to the United States.

Discussion then took place as to what remuneration R. C. A. had in mind, and they intimated that their patent position was as strong as that of Canadian Radio Patents Limited, in the radio receiving set field. It was asked —would they be satisfied with one-sixth of the remuneration received by Canadian Radio Patents Limited, to which they said they would give consideration, but were not in a position at the moment to state whether this would meet their views.

They also advised that they had drafted a new license agreement for the Canadian field on the basis of 2¼% of the selling price of the Canadian radio receiving set, less tubes and Excise Tax, which we understand is equivalent to 2% of the selling price.

Mr. MacKenty is to send us a copy of his notes with regard to the points 1 to 10 mentioned above.

A. J. R. Lanoue.

AJRL:PM

DEFENDANT'S EXHIBIT NO. 174.

Canadian Radio Patents Limited
159 Bay Street
Toronto

Minutes of a meeting of CRPL shareholder company patent department representatives held in Toronto, Tuesday, October 17, 1950.

Present: Messrs B. McConnell, R. S. Harrison, F. H. Hamer, L. C. Prittie, R. A. Eckersley, J. Young, J. F. Patterson, J. P. Fotheringham, J. C. Macfarlane and S. D. Brownlee.

1. Minutes of Previous Meeting (March 1, 1950).

Mr. S. D. Brownlee reviewed the minutes of the last previous meeting of the group held in Toronto, March 1, 1950, and the minutes were approved in the form distributed by mail.

2. Patent Evaluation Report.

It was noted that the original patent evaluation report prepared in 1948 had contained a breakdown of the principal patents by companies and divided into three categories, AM receivers, FM receivers and television receivers with a further breakdown to show patents classified as:—

"A" generally used and useful for litigation and

"B" used in some instances and as a possible use in litigation against specific infringing receivers.

In view of the proposed broadening scope of CRPL, it was suggested that the patent evaluation report be enlarged to include other fields in which CRPL might be expected to receive requests for licenses or in which infringement action might be contemplated.

After general discussion, it was recommended that rather than specifically listing only those patents classified as either "A" or "B" all patents of each company should be listed for each field and that those patents in the list considered as "B" be marked by a single asterisk and those classified as "A" be marked by a double asterisk. It was also recommended that the lists of patents for each field be made independent of the lists for other fields so that if a single patent is applicable in several fields it will appear in each list.

Mr. Hamer noted that his company might not approve submission of such classified lists of the Philips Canadian patents in view of the fact that CRPL has not as yet completed the formal input arrangements to cover licensing in some of the fields discussed under the suggested broadened scope.

After general discussion, the following fields were suggested for the new Patent Reports:

1. AM Receivers;
2. FM Receivers;
3. TV Receivers;
4. Audio Frequency Amplifiers;
5. Receiver Tubes for 1, 2 and 3;
6. Transmitter Tubes;

7. Tubes for UHF;
8. Special Tubes (including photo cells);
9. Transistors and other semi conducting devices.
10. Transmitters;
11. Television studio equipment;
12. Apparatus and systems for relay links;
13. Radar;
14. Aids to Navigation;
15. Sound recording and reproduction (including moving pictures);
16. Facsimile;
17. Antennae;
18. Other systems of communication not covered in the above.

It was recommended that each CRPL shareholder company that is in a position to do so prepare complete and separate lists of all of its patents applicable to each of the 18 headings noted above, indicating by asterisks (in the manner previously noted) the patent considered as either "A" classification or "B" classification and submitting the lists to the CRPL office for collation in complete reports under each of the 18 headings.

3. "Radio Purposes" Definitions

The definition of "Radio Purposes" contained in the draft CRPL input agreement dated March 31, 1950, distributed to the CRPL shareholder companion for consideration in April was reviewed with a view to determining whether or not it appeared to adequately cover for example the eighteen fields listed above. It was the general consensus of opinion that each of these eighteen fields appeared to be included within the scope of the "Radio Purposes" definition but it was also noted that the term "Communications" might be interpreted as being considerably broader than normally considered unless tied down more specifically.

Mr. Macfarlane noted that similar definitions of "Radio Purposes" had been used in recent patent agreements in the United States but in one recent example "radio distance indication or control" or "remote indication and control by radio" had been added after the words "position finding". Mr. Macfarlane also noted that in recent U. S. agreement using this form of definition the "Grant of Licenses" clauses had been worded to emphasize that the license included coverage on the processes, parts, tools and machines used in the manufacture of the licensed apparatus.

4. Farnsworth.

Mr. McConnell noted that the Farnsworth Patent referred to in the minutes of the March 1st, 1950 meeting as No. 386,493 should be No. 384,693.

Messrs. Macfarlane and Brownlee reported that they had discussed the Farnsworth situation with Hazeltine representatives during a visit to the Hazeltine Labs. in August, 1950, and that Mr. Dodds of Hazeltine had noted that the most important Farnsworth U. S. patent appears to be No. 2,051,372 on the High Voltage Power Supply and that Farnsworth also has a U. S. Patent No. 2,059,863 on the Blocking Oscillator although the latter patent claims do not appear to correspond to the disclosure and the patent might not stand up in litigation. Hazeltine also referred to a Farnsworth U. S. patent referred to as the "Retrace Blackout" but noted that infringement would require a complete system including a receiver and a transmitter and any possible application of the Retrace Blackout patent to receiver manufacturers would involve the question of contributory infringement.

Mr. Hamor recommended that all previous reports on Farnsworth and other groups of adversely held patents be compiled into single reports for convenient reference and S. D. Brownlee agreed to prepare such reports.

5. Zenith.

It was noted that no corresponding Canadian patent has issued to date at the "Adler Tube" covered in Zenith U. S. patent No. 2,511,143 (Gated Beam).

As a matter of general interest, it was noted that the Zenith Phonovision experiment in Chicago has been delayed until November and that there is no knowledge of any specific patent situation covering this system.

6. DuMont.

It was noted that the RCA-DuMont suit in the United States has been settled and that DuMont have now apparently taken a standard RCA receiver license.

Mr. Macfarlane noted that three U. S. DuMont patents 2,483,607; 2,508,267 and 2,451,590 have been reported of interest but apparently no corresponding Canadian patents have issued to date. However, it has been observed that DuMont has recently been filing corresponding Canadian applications on most of its developments.

7. Pye.

It was noted that there is no new report on the Pye patent situation in Canada which was covered in detail in the minutes of the March 1st, 1950 meeting.

8. EMI.

Mr. Young of Canadian Marconi volunteered to prepare a report on the EMI patents and it was recommended that S. D. Brownlee also check with RCA to determine the present status, particularly of applications filed after 1944 when the original EMI-RCA arrangement apparently terminated.

9. Parker Patents.

It was noted that there is still no report on the outcome of the ownerwship of the Lewis Parker Patent on Intercarrier Sound. This patent is still considered of importance in the television field and it was recommended that all representatives continue to make enquiries and advise CRPL of any new information with respect to the matter.

10. Philco.

Messrs. Macfarlane and Brownlee reported that they had not had an opportunity since the last meeting to follow up with Philco to obtain an up-to-date list of Philco patents considered of importance for possible litigation, but such a report will be obtained from Philco as soon as possible.

11. Columbia Colour TV.

In the course of general discussion of the FCC's announcement on colour TV, is was noted that President Stanton of Columbia had stated that Columbia would issue licenses under its colour patents at royalty rates varying from 25¢ to $1.00 for complete receivers, 50¢ for converters and that no royalty would be involved in adapting present black and white receivers to receive Columbia type colour programs in black and white.

It was noted that in general the Columbia system involved principles so old that nothing basic in the way of patents would likely exist but that some specific patents to Dr. Goldmark might be worth considering if the present Columbia Colour television system actually goes into general use. It was recommended that all representatives investigate this matter.

12. Sylvania.

It was noted that copies of a notice to cathode ray tube manufacturers in the United States have come to the attention of Canadian tube manufacturers. The notice refers to Sylvania's U. S. patents 2,211,613 and 2,211,614 relating to guns used in TV picture tubes of the ion trap type. Apparently corresponding patent applications have been pending in Canada for at least ten years but the exact date of filing in Canada is not as yet known and, if the date is not too early, there appears to be some possibility that prior publications may be effective against any possible valid Canadian patents issuing on this developement. Since the development included not only the picture tubes but also the auxiliary material assembled with the tube in television chassis production, the patents are of interest in the TV receiver as well as in the tube manufacturing fields.

13. I. T. & T.

Mr. Young noted that I. T. & T. have a considerable number of patents on relays, as for example a Reeve patent on pulse count (or code) modulation and these may be of importance in some of the broader fields to be considered by CRPL.

14. Hazeltine.

Mr. Brownlee reported that Mr. L. B. Dodds of Hazeltine Corp. had submitted a detailed review of the Hazeltine Canadian Patents which he considered of sufficient importance for use in litigation and after dicussion it was recommended that a copy of Mr. Dodds' letter be attached as Appendix "A" to the minutes of this meeting.

Mr. McConnell submitted a revised classification of the Hazeltine Canadian Patents in radio and television for incorporation in the patent evaluation report.

15. Armstrong.

Mr. Young reported that there was no new word on the Armstrong-RCA patent litigation in the United States.

16. Rediffusion Inc.

It was noted that there had been no recent reports on activities of Rediffusion but it appears that most of the patents applicable to standard radio or television receivers would also be applicable to the equipment to be used by Rediffusion Inc. if it proceeds with its announced plans for closed wired radio and TV systems in Montreal.

16. Litigation.

It was noted that Mr. Gowling has been requested to review the principal Hazeltine Canadian Patents preparatory to possible use in litigation but no progress reports have as yet been received from Mr. Gowling.

It was noted that the Harries patent action in the United States (referred to in minutes of last meeting) was lost on appeal and there has been no further word with respect to possible action in Canada.

17. Importation.

Mr. Macfarlane reported discussions with RCA attorneys with reference to interpretation of the Canadian Patent Act in the manner of importation and all representatives were requested to review this situation and report any cases of interest in the interpretation of Section 65 of the Canadian Patent Act insofar as it refers to importation as an abuse under the Act.

18. (Illegible).

It was noted that RCA recently announced reductions in its U. S. radio and television receiver royalty rates and has stated that there would be no added royalty for use of its colour patents if its system is approved by the FCC.

19. (Illegible) Patent Conditions.

It was pointed out that consideration was being given to possible extension of the royalty free license granted by Sealandair to the government during the last war and that such consideration ties in with the general problem brought up by the wording of the patent condition clauses with respect to royalty payments and patent ownership resulting from government development contracts on products for the armed services.

It was noted that several of the patent department representatives have been individually working on possible alternatives to the clauses relating to patents in the "General Conditions" applying to government development contracts and it was recommended that to avoid duplication of effort suggested alternative clauses and general information on this matter be channelled through Canadian Radio Patents Limited.

20. General.

Mr. Patterson referred to the Canadian Polydorff Patent No. 405,883 relating to powdered iron cores in rotating antennae as of possible general interest. It was noted that on this same subject there are U. S. patents 2,442,310, 2,399,382 but to date there appears to be no corresponding Canadian patents.

Adjournment.

There being no further business before it, the meeting adjourned at 4:30 p.m.

DEFENDANT'S EXHIBIT NO. 175.

September 10, 1945

Mr. J. C. Macfarlane, Secy.-Treas.
Canadian Radio Patents Ltd.
159 Bay Street
Toronto, Canada

Dear Mr. Macfarlane:

In accordance with the promise I made during our conversation on Friday, September 7th, I am enclosing herewith a list of the Hazeltine Corporation licensees in the United States as of the present date. We will keep you advised of any additions or changes from time to time.

We also discussed the effect of the minimum guarantee during the present year now that the Canadian Government has removed its restrictions on the manufacture and sale of radio equipment for use in the home. In looking over the agreement between our two companies, we find that Article XIV, Section 4 bears on this subject. In order to clear the point we discussed and to aid in reconversion, Hazeltine will waive any minimum royalty payment for the year ending December 31, 1945. This waiver will not affect the payment of royalties due on sales during this period in accordance with the provisions of Articles IV and V.

After January 1, 1946, the agreement will continue in force according to its terms. We trust this is satisfactory to you.

Yours very sincerely,

Hazeltine Corporation,
(Illegible),
President.

JB:OJO
Enc.

DEFENDANT'S EXHIBIT NO. 176.

Canadian Radio Patents Limited
159 Bay Street
Toronto

January 9, 1947

Mr. Jack Binns,
Hazeltine Corporation,
821 National Press Building,
Washington 4, D. C.

Dear Mr. Binns:

We have been working on a new form of license for the CRPL royalty-paying licensees and, since many of these licensees are affiliated with companies in the United States that pay royalties to RCA and to Hazeltine, we feel that it would be advantageous to compare our proposed license with those now being issued in the United States, particularly with respect to lining up definitions, basis of royalty application and the like.

We have a copy of the 1946 RCA license for radio broadcast receiving sets and electrical phonographs but we do not appear to have on record a copy of the standard license currently in use by your Company and we would very much appreciate it if you would let us have a copy.

With best regards and every good wish for the New Year,

Yours very truly,

(Illegible),
Manager.

SDB/m

DEFENDANT'S EXHIBIT NO. 177.

July 20, 1953.

Mr. S. D. Brownlee, Secretary-Treasurer
Canadian Radio Patents Limited
159 Bay Street
Toronto, Canada.

Re: Hazeltine—CRPL Agreement
of July 2, 1943.

Dear Mr. Brownlee:

You will recall that under Article IX of the subject Agreement Hazeltine agrees to supply you, for use in Canada, its general technical reports, etc. It is my understanding that you, in turn, have been distributing this information among your licensees in Canada.

To the best of my knowledge there is only one of your licensees in Canada which has a counterpart in the United States which is not licensed under the Hazeltine patents and that is, Crosley Radio & Television Limited. The matter recently came to my attention through an announcement that Avco Manufacturing Corp., of this country, of which Crosley is a division here, was organizing a new Canadian subsidiary, Avco of Canada Limited, which would acquire, among others, Crosley Radio & Television Limited.

At the present time we are in serious litigation with Avco (Crosley) in this country and, if we can reasonably do so, we should like to avoid the possibility of the Hazeltine technical reports and information reaching the United States Company via the Canadian subsidiary. I do not know just what your undertakings are with your licensees for the supplying of such technical information or whether it would embarrass you to withhold the Hazeltine reports from the

Crosley company there. In any event, I thought it would do no harm to ask you whether or not the reports could be withheld from Crosley without embarrassment to you.

Incidentally, since our conversation in Toronto some months ago, I have been curious to learn as to whether you resolved your difficulties with Admiral.

With kind regards.

Sincerely,

(Illegible),
Vice President.

DEFENDANT'S EXHIBIT NO. 178.

Copy

Appendix "A".

Hazeltine Corporation
5825 Little Neck Parkway
Little Neck, N. Y.

August 11, 1950.

Mr. S. D. Brownlee, Manager
Canadian Radio Patents Limited
159 Bay Street
Toronto, Ontario, Canada

Dear Mr. Brownlee:

In further reply to your letter of June 27, 1950, and supplementing my letter of July 6, 1950, I have now reviewed the Hazeltine Canadian patents and call your attention to the following which may be of sufficient importance for use in litigation against unlicensed Canadian radio and TV manufacturers:

398,523 (Reissue of 374,220; U. S. Re. 21,176)

Claims 25-28 of this patent added by the reissue cover a TV scanning yoke with a small condenser connected across half of the yoke to neutralize the unbalanced yoke capacitance and eliminate spurious ripples in the scanning pattern. The arrangement is in general use in this country.

404,449 (U. S. 1,958,027)

375,284 (U. S. 2,015,327)

These two patents cover the circuit and tube, respectively, of the electron-coupled mixer stage. U. S. ~~1,558,027~~ originally included very broad claims to this device but the broader claims were lost in Interference to RCA and issued in their patent 2,323,250. The claims remaining in these two patents, while quite restricted in scope, do cover nearly all AM receivers made in this country.

370,215 (U. S. 1,879,863, Re. 19,744, and 2,080,646)

This patent broadly covers the present form of automatic volume control in universal use in radio receivers and in some use in television receivers. It also includes claims (Claims 6-11) broadly to a visual resonance indicator such as the magic-eye tuning indicator. While U. S. Re. 19,744, directed to automatic volume control, was held invalid by our Supreme Court, it had previously been held valid and infringed in very strong opinions by the United States District Court and the Court of Appeals. We have always felt that the lower courts were right and the Supreme Court wrong and that view is shared generally in industry here even by those who have consistently fought Hazeltine. We would not be at all hesitant in relitigating the patent in Canada.

393,945 (U. S. 2,196,881)

This patent covers a double tuned preselector of constant bandwidth. It has been used to some extent in TV receivers, particularly in the continuously tunable type.

404,881 (U. S. 2,211,718)

A VHF and UHF amplifier in which the imput conductance is neutralized by a properly proportioned cathode inductance. The circuit is used to a considerable extent in the new TV receivers.

408,698 (U. S. 2,240,490)

408,699 (U. S. 2,240,507)

These two patents cover the so-called "proportional clipper" for clipping sync pulses from the video signals at root of the synchronizing pulses irrespective of variations in amplitude of the video signal. They have been used to a limited extent in television receivers.

409,659 (U. S. 2,269,540)

This is directed to a combined grid circuit d-c rosterer and manual contrast control stage in which adjustment of the latter does not affect the black level stabilization. It has been used to a moderate extent in TV receivers.

463,327 (U. S. 2,463,229)

Claims 11-14 of this patent broadly cover a grounded grid amplifier tube of the construction exemplified in the type 6J4 tube. The claims in question were taken from RCA in Interference proceedings involving their application involving the 6J4 developments. The invention is used to a considerable extent in UHF and VHF apparatus including TV.

If there is any further information you want, will you please let me know. We shall be looking forward to seeing you in New York in the near future and can at that time discuss the question more fully.

You probably know that we have closed our New York office and concentrated all our activities at the laboratory at Little Neck. If you can let us know when you will be in New York and when you would like to come out to Little Neck, we can simplify your transportation out here, I believe.

With kind regards.

Sincerely,
(Sgd.) L. B. Dodds,
Vice President.

LBD:rbj

DEFENDANT'S BULK EXHIBIT NO. 179.

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1314.

November 4, 1936

Grosser & Glass Ltd.
31 Twelfth Street, West
Prince Albert, Sask., Canada

Gentlemen:

In reply to your kind letter of October 31st, we are very happy to send you a copy of our current catalog and price list covering the new 1937 line. In this catalog you will find the various models which we have available for export, and you will easily be able to see why it is that Zenith has gained supremacy in the radio field. You will agree that our prices are very fair, considering the exceptionally high quality of these radio receivers.

Zenith radio has enjoyed far more acceptance than any other radio manufacturer during the past year, and this is due only to our advanced engineering, the durability and performance of our radio sets, and the many outstanding new features which have not as yet even been thought of by other manufacturers.

Because of various restrictions and because manufacturers must have a license to sell radio receivers in Canada, we can only make shipment on a basis of F.O.B. factory, Chicago. On this basis we will be happy to allow you a discount of 50% on the prices shown on the above-mentioned price list.

With your order will you be so kind as to send cash to cover the value of the receiver, plus transportation charges? This will expedite matters a great deal, and we can assure you of prompt attention to your orders.

We sincerely hope that the foregoing is quite clear and that you will not fail to ask any questions you may have.

We are looking forward to the opportunity of serving you, and hope that soon we will be able to number you among the many enthusiastically satisfied Zenith accounts.

Yours very truly,

Zenith Radio Corporation
Edward A. Twerdahl
Assistant Manager, Export Division.

EAT:IF

Grosser & Glass Ltd.
Prince Albert, Sask.

October 31, 1936.

Zenith Radio Corp.,
3620 Iron St.,
Chicago, Ill.

Dear Sir,

We are very desirous of securing a line of radio and we will appreciate hearing from you as to whether you have a Canadian office or not. If, so, kindly let us know the address.

Thanking you, we remain

Yours very truly,

Grosser & Glass Ltd.,
per N. O. Grosser

G/G.

February 3, 1937.

Mr. Byrant:—

Where are you on the Canadian situation? Why can't we get a Canadian outlet for our stuff?

McDonald

EFM*GP

June 28, 1937

Beasley's
2383 Yonge at Broadway
Toronto, Ontario, Canada

Attention: Mr. G. E. Precious

Gentlemen:

In reply to your kind letter of June 18th, it is a pleasure to send you a copy of our domestic folder covering the new 1938 line of Zenith Radio Receivers. From this folder you will be able to get some idea as to why Zenith has gained supremacy in the radio industry. You will also agree that our prices are very fair, especially considering the very high quality of these radio receivers.

Zenith Radio Receivers have enjoyed by far more acceptance than those of any other radio manufacturer during the past two years or more, and this has been due solely to advanced engineering, durability and performance of the receiver, and the many outstanding new features which have not as yet even been thought of by other manufacturers and which help to keep Zenith "The World's Most Copied Radio"—"Always A Year Ahead".

Because of various restrictions and because manufacturers must have a license to sell radio receivers in Canada, we can only make shipment on a basis of F.O.B. factory Chicago. On this basis we will be happy to allow you a discount of 40% on the prices shown on the above-mentioned price list.

With your order will you be so kind as to send cash to cover the value of the receiver, plus transportation charges? This will expedite matters a great deal and we can assure you of prompt attention to your order. Please do not hesitate to ask any questions that you might have. We are looking forward to the opportunity of serving you and hope that soon we will be able to number you among the many enthusiastically satisfied Zenith accounts.

Yours very truly,

Zenith Radio Corporation
A. V. Duke
Export Traffic Manager

AVD:IF

(Letterhead of Beasley's, Toronto, Ontario.)

June 18, 1937.

Zenith Radio Corporation,
Chicago, Ill.

Gentlemen:

We would appreciate if you would send us descriptive folders of your 1938 series Radios, together with list and net prices f.o.b. Chicago.

If you are contemplating arranging for Ontario Hydro approval for your receivers, we would be glad to discuss with you the matter of distribution in this city.

Yours very truly,

Geo. E. Precious
Sales Manager

GEPrecious

PG

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1319.

September 1, 1937.

Mr. A. E. Easingwood
Langley Prairie, British Columbia
Canada

Dear Sir:

We have for acknowledgment your letter of August 16th, and are pleased indeed to enclose herewith a service manual covering our 1958 line of receivers.

We are glad to note that you have made arrangements to import Zenith Receivers from the Northwest Hardware Company of Bellingham, Washington, and we wish you much success.

Sincerely yours,

Zenith Radio Corporation
A. V. Duke
Export Traffic Manager.

AVD:IF

Defendant's Bulk Exhibit No. 179.

(Letterhead of Albert E. Easingwood,
Langley Prairie, B.C.)

August 16th 1937.

Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago, Ill.

Dear Sirs:— Attention of Mr. Edward A. Twerdahl.

Will you be good enough to forward me "Service Notes" on Model Zenith Radio 9-S-262, and any other Service notes on other Models.

I am pleased to inform you I have made satisfactory arrangements with the Northwest Hardware Co. of Bellingham, Washington, for the importing of your radios here, which is only 20 miles away.

I also wish to state that the Model abovementioned is certainly a wonderful job, and I hope in the near future to be able to sell quite a few. There is nothing in this country that can even compare with Zenith.

It is 15 years since I got my first Zenith which is still operating as efficiently as it was then.

Thanking you, and assuring you I shall do all I can to feature your goods, difficult as it is under present restrictions.

It is too bad you cannot get going in Canada, because I know only too well, you are losing a fabulous amount of money, and so far as I can judge, you have a field all your own. Everybody knows Zenith, because most everybody takes the Saturday Evening Post.

Sincerely

A. E. Easingwood

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1324.

October 15, 1937
Zenith's 23rd Year

Mr. H. Wall
Brunkild, Manitoba
Canada

Dear Mr. Wall:

We have just received your letter of September 6th. In this letter we note that you are considerably perturbed due to the fact that you have not received the set which you ordered. Upon checking our correspondence file, we note that Mr. Duke wrote you on October 12th, informing you that our files do not indicate that your earlier letter was received. Please send us a duplicate of the letter so that we might be guided accordingly.

In the first portion of your letter, you point out that you were given the agency for Zenith Radios. We are anxious to clear up this particular point as this is not exactly the case. When you were in Chicago we pointed out that as long as the present patent conditions exist in your country, it is not possible for us to give you, or anyone else, the agency to market Zenith Radio Receivers. We pointed out the troubles that might occur, and with your knowing full well these conditions, you agreed to purchase Zenith sets and assume full responsibility if the sets were confiscated by the Canadian Patent Pool.

The price on the 7J232, with antenna, will be the same as was charged to you on your invoice of August 19th, namely, $59.47. This price is F.O.B. Chicago. All shipping charges will be for your account.

In the future, we ask that you address your correspondence to the attention of the export department.

Yours very truly,
Zenith Radio Corporation
James F. Weldon
Manager, Export Division

jfw/em

Brunkild, Man., Canada,

Oct. 6, 1937.

Zenith Radio Corporation,
Export Division,
6001 Dickens Ave.,
Chicago, Ill.

To Whom It May Concern.

Dear Sir:

Last summer I purchased a radio as the enclosed invoice indicates. At that time I got in touch with the head manager, Mr. Wellwood (?), and I was given the agency for Zenith radio. At the same time I was advised to write to Mr. A. V. Duke, concerning radios.

I have written twice to Mr. Duke ordering a radio, the last time Sept. 29,—but I did not receive a reply. I do not understand this. My customer is getting quite impatient. Please let me know at once if my customer can expect to get a Zenith radio through me or not. I repeat the order: hold the same type of radio (7J232T with antenna kit) ready to ship to the address I'll give you as soon as I know how much I have to pay for same. Hoping to get a immediate reply, I remain

Yours truly,
H. Wall.

P.S. Please send me a few folders on radios.

H. W.

(Stamp) Zenith-~~Raul~~and Cross-
Claimants' Exhibit 1241.

December 10, 1937.

Mr. Nathan T. Nemetz
626 West Pender Street
Vancouver, Canada

Dear Mr. Nemetz:

We have your letter of December 6 and regret that it will not be possible for us to negotiate with you for the sale of our radio receivers in Canada.

We are not licensed under the Canadian patent pool and at the moment we are not doing any business in Canada.

Should this situation change you can be sure that we will get in touch with you.

Sincerely,
Paul M. Bryant,
Assistant to the President.

PMB:AS

Nathan T. Nemetz
Barrister and Solicitor
Notary Public
626 West Pender Street
Vancouver, Canada

Dec. 6/37.

The Sales Manager,
Zenith Corporation,
Chicago, Ill.

Dear Sirs:

I am instructed to write you concerning the possibility of obtaining distribution of your radio in the Province of British Columbia.

My clients are prepared to pay cash for a carload of your machines and arrange for future business relations with you by furnishing to you their names, business references and financial standing. Because the radio season is already well advanced and my clients are anxious to start business, I would appreciate an immediate answer.

Of course, your radio would have to be saleable in British Columbia, that is, patented, licensed and conforming in the usual business fashion to and with the Canadian laws and regulations.

If you are interested, you might give your prices, discounts and requirements for a speedy financial arrangement whereby the first carload of radios could be shipped. I might say that my clients intend to establish a distributing corporation here in Vancouver with full coverage throughout the province. They have an organization ready to commence business, they have contacts for the widest distribution, and they are further prepared to enter into any advertising campaign to establish the good name of your radio in this centre.

Would you, therefore, kindly write the air mail as to your observations.

Yours truly,

Nathan T. Nemetz.

NTN/MM

(Written in margin:) Mr. Bryant: What is the latest re Canada.

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1328.

March 14, 1938.

Columbia Sales Service, Inc.,
1063 Bleury Street
Montreal, Canada

Attention: Mr. David Rosenbaum

Gentlemen:

We have for acknowledgement your letter of March 11, and in reply, we wish to advise you that at the present time, we do not know how the patent situation in your country will affect the Radio Nurse.

We are now checking on this and should know more definitely regarding this matter within a period of three weeks.

Very sincerely yours,

Zenith Radio Corporation,
A. V. Duke,
Export Traffic Manager.

AVD:LH

(Letterhead of Columbia Sales Service, Inc.,
Montreal, Canada.)

Mar. 11, 1938.

Zenith Radio Corp.,
6001 Dickens Ave.,
Chicago, Ill.

Gentlemen:

We would like to represent your firm in introducing the Radio Nurse into the Canadian market.

How do you stand in regard to the patent situation in this country?

We know that the Radio Trust here keeps Zenith Radio out of Canada.

Would that affect the "Radio Nurse" as well?

Yours truly,

Columbia Sales Service Inc.
Per: David Rosenbaum.

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1392.

March 25, 1938.

Mr. W. C. Bailey
460 Giles Blvd. East,
Windsor, Ontario, Canada

Dear Mr. Bailey:

We have for acknowledgement your letter of February 11, and in accordance with your request, we are pleased to enclose herewith a circular covering our latest 1938 line of receivers. From the prices shown, we are pleased to quote you a discount of 25%, and our prices are f.o.b. Chicago, remittance together with the order.

We trust that after you have had an opportunity of looking over this circular, we may have the pleasure of receiving further advices from you. We have been unable to set up any agencies in Canada because of the Patent Pool, but as stated above, we shall be pleased to ship to you direct.

We wish to thank you for your interest in our line, and now await with a great deal of interest your comments.

Very truly yours,

Zenith Radio Corporation,
A. V. Duke,
Export Traffic Manager.

AVD:LH

encl.

460 Giles Blvd. East,
Windsor, Ontario.

February 11, 1938.

Zenith Radio Corporation,
3620 Iron Street,
Chicago, Illinois.

Sirs:

Have you any representative for your Radios in Canada? If not, I would be interested to have your price list and act as your agent here.

Will you quote me prices without the cabinet, so as to lessen the duty and the cabinets could be made up here.

I have bought several of your Radios in Detroit and brought them over here.

Our electric here is twenty-five, (25), cycle.

Yours very truly,

W. C. Bailey.

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1329.

March 25, 1938.

Jarvis Electric &
Refrigeration Company
318 Homer Street
Vancouver, B. C., Canada

Gentlemen:

We have for acknowledgement your letter of March 10, and in accordance with your request, we are pleased to enclose herewith a circular covering our latest 1938 line of receivers. From the prices shown, we are pleased to quote you a discount of 25%, and our prices are f.o.b., Chicago remittance together with the order.

We trust that after you have had an opportunity of looking over this circular, we may have the pleasure of receiving further advices from you. We have not been able to set up any agencies in Canada because of the Patent Pool, but as stated above, we would be pleased to ship to you direct.

We wish to thank you for your interest in our line and now await with a great deal of interest your comments.

Sincerely yours,

Zenith Radio Corporation,
A. V. Duke,
Export Traffic Manager.

AVD:LH

encl.

(Letterhead of Jarvis Electric & Refrigeration Co.,
Vancouver, D. C.)

Mar. 10/38.

Zenith Radio Corporation, Dept. W.
6001 Dickens Ave.,
Chicago, Ill.

Gentlemen:

Following up your display advertisement in the Women's Home Companion of April 1938 issue on the Zenith "Radio Nurse".

After perusing the above ad carefully we immediately felt a favorable reaction. We cannot help but feel that there is a definite place in every home, (especially where there are children) for an alarm of this type.

We should now like to know if you are interested in British Columbia distribution? The Jarvis Electric has been established in business for 28 years. We have a separate direct sales set-up under the name of Jarvis Sales; in addition we have handled national lines under the name of Cale B. Jarvis.

We have made up and are enclosing certain statistical information about this city for you to study and digest.

Our connections are of the best, and we will be pleased to submit both business and banking references if your set-up is of mutual interest. In fact, we offer the names of Mr. A. A. Silberman, National Park-O-Graf Corp'n, 3232 West Chicago Ave., Chicago, and Mr. A. E. Wilson, Gen. Sales Manager, Mills Novelty Co., 3100 Fullerton Ave., Chicago, to substantiate the foregoing statements.

Let us know what your reaction is to this letter and when replying we would appreciate it if you will be as equally frank, thereby keeping all correspondence to a minimum.

Assuring you of our prompt and careful attention to all future correspondence, we are

Yours very truly,
Jarvis Electric & Refrigeration Co.
J. B. Jarvis.

CBJ:G

Greater Vancouver

"The Third City of Canada"

Statistical Summary

Form of Government—Mayor & Council.
Population—360,000.
Area—190.53 Square Miles.
Auto. Registrations—110,000.
Telephones in Service—70,000.
Railroads—5 Systems (3 Terminals).
Steamships—Port of Call for 53 Lines.
Percentage of Homes Owned—64.0.
Per Capita purchasing power—$814.00 (Largest in Canada).
Newspapers—3 Dailies (1 morning, 2 Nights).
Light & Power—1 to 4¢ per K.W.H.

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1391.

March 28, 1938.

Mr. W. A. Parkinson
18 Hambly Avenue
Toronto, Ontario,
Canada

Dear Mr. Parkinson:

We have for acknowledgement your letter of March 26, and in reply, we wish to advise you that we would be in a position to quote you a discount of 40% from the list price of $29.95. This quotation on the Radio Nurse is f.o.b., Chicago, remittance together with the order.

No doubt, you know that all radio and radio appliance sales in Canada are controlled by a Patent Pool, and we wish to advise you that we do not have a license on this Pool. We would, therefore, be unable to grant you a franchise, but we would be glad to ship you material you should order from us from time to time.

You would, no doubt, submit the first of these samples you received to the Ontario Hydro Electric Commission for their approval.

We trust that we may now have the pleasure of receiving further remarks from you by return mail, and remain

Sincerely yours,

Zenith Radio Corporation,
A. V. Duke,
Export Traffic Manager.

AVD:LH

18 Hambly Ave.
Toronto, Ont., Canada

March 26/38.

Zenith Radio Corporation
Chicago, Ill., U. S. A.

Attention: A. V. Duke.

Gentlemen:

Thanks for your letter of the 25th March in answer to my inquiry. My purpose in writing was in relation to distribution here. I have had many years experience in merchandising various products and lately resigned as sales manager of a company for the purpose of founding an agency business and can offer you a valuable connection and a thorough understanding of our markets. Will have office and display room ready for occupancy on the 4th prox. if you would consider granting me a sales franchise for the Province of Ontario or wider territory. Am sure that we can produce an amount of business that would be mutually profitable. Please bear in mind the fact that your magazine and radio advertising has wide circulation here and that advantage should be taken of this while the iron is hot. For instance during the period of radio announcements as to the "coming product" I personally heard numerous people discussing the matter and wondering about it all. We have a population in greater Toronto in excess of 800,000 and 65% of Canada's purchasing public are concentrated in Ontario and Quebec, with ⅔ of these in Ontario. If you are interested I will gladly furnish you with further information as to self or give you full details covering sale possibilities, etc.

Our method of operating would be to appoint sales outlets among the retailers in all centers, these to consist of electrical, radio, and department stores, and sell direct-import orders where possible, carrying only sufficient stock to supply the smaller dealers. This however is only a suggestion as we realize that you with your experience may find it more successful to operate along other lines. We would however appreciate some further word in the matter at your earliest convenience.

Yours truly,

(Illegible)

P. S. All electrical products sold in Ontario, have to be submitted to the Ontario Hydro Electric Commission for approval. There is a graduated fee for this and for the placques to be fastened to each article. A detailed description of your product would be sufficient for submission as to any changes that might have to be made. From my radio experience however I do not believe that any changes would be asked for.

P.

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1401.

August 8, 1938

Mr. M. L. Grosser
Grosser & Glass Ltd.,
Prince Albert, Sask.,
Canada

Dear Mr. Grosser:

We have for acknowledgement your letter of July 18, and in accordance with your request, we are pleased to enclose herewith a circular covering our latest automobile radios. From the prices shown, we are pleased to quote you a discount of 25%—these prices are f.o.b. factory remittance together with the order.

We trust that after you have had an opportunity of looking over this circular, we may have the pleasure of receiving further advices from you, inasmuch as we do not have, at the present time, a distributor in Canada—this is due to the fact that we do not have a license in the Canadian Patent Pool.

We wish to thank you for your interest in our line, and now await with a great deal of interest your comments.

Very truly yours,

Zenith Radio Corporation
A. V. Duke
Export Division

AVD:LH

(Letterhead of Grosser & Glass Ltd., Prince Albert, Sask.)

July 18, 1938.

Zenith Radio Corp.,
3620 Iron Street,
Chicago, Ill.

Dear Sir,

We would appreciate very much receiving distributor's prices on your car radios.

Thanking you, we remain

Yours very truly,

Grosser & Glass Ltd.,
per N. L. Grosser

G/G.

(Stamp), Zenith-Rauland Cross-
Claimants' Exhibit 1412.

September 15, 1938

Mr. Jack Becker
Dominion-Hardware Store,
Oakville, Ontario, Canada

Dear Mr. Becker:

We have for acknowledgement your letter of September 9, and in accordance with your request, we are pleased to enclose herewith a circular covering our latest 1939 line of receivers. From the prices shown, we are pleased to quote you a discount of 25%, and our prices are F.O.B. factory remittance together with the order.

We trust that after you have had an opportunity of looking over this circular, we may have the pleasure of receiving further advices from you, inasmuch as we do not have, at the present time, a distributor in Canada due to the fact that we do not have a license to sell radios in Canada.

We wish to thank you for your interest in our line, and now await with a great deal of interest your comments.

Very truly yours,

Zenith Radio Corporation
A. V. Duke
Export Division

AVD:LH

encl.

domestic circular with prices.

(Letterhead of Dominion Hardware Store,
Oakville, Ontario.)

Sept. 9, 1938.

Zenith Radio Corp.,
6001 W. Dickens Ave.,
Chicago, Ill.

Dear Sirs:

On a recent visit to Chicago I noticed your radios on display. We have sold radio for a number of years and your line interests me.

If you would kindly mail catalogue and prices I would appreciate it very much.

Dominion Hardware Store
Oakville—Ontario
Phone 334
Jack Becker

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1333.

September 20, 1938.

Manufacturers' Sales Company
862 Cambie Street
Vancouver, B. C.

Attention Mr. J. E. Munro

Gentlemen:

We thank you for your letter of September 14, wherein you made inquiry regarding the possibility of representing the Zenith Radio Corporation in Western Canada.

For the reasons enumerated in the second paragraph of your letter, we have found it impossible to secure permanent representation in your country. There are many details regarding patent pool modification, and similar matters with which you are undoubtedly familiar, that will have to be taken care of before we can make a concrete plan for distribution in Canada.

Should you have any concrete ideas as to how importations into Canada could be made under the presently existing obstacles, we would be very glad to have your further reply.

In the meanwhile, should you be unable to give any suggestions to overcome these obstacles, we shall keep your letter on file until such time as it is possible for us to engage in an intelligent Canadian sales plan.

We deeply appreciate your having written us, and hope that some time during the early Fall a modification of the existing conditions will be brought about.

Thanking you for your interest, we are

Very truly yours,

Zenith Radio Corporation

STT:S S. T. Thompson

(Letterhead of Manufacturers' Sales Company,
Vancouver, B. C.)

Zenith Radio Corporation, September 14, 1938
6001 Dickens Avenue,
Chicago, Illinois.

Attention Sales Manager.

Dear Sirs:

We should like to discuss with you the possibility of representing you for the sale of Zenith Radios in Western Canada.

We are of course, quite aware that there are obstacles to the sale of American made receiving sets in Canada at the present time but we look forward to some radical changes being made by the Canadian Government in the matter of lifting certain restrictions which are now in force.

As our organization is equipped to give complete coverage to the trade in Western Canada, we know we can give you first class representation.

Please let us hear from you in this connection.

Yours faithfully,

Manufacturers' Sales. Co.

J. E. Munro/Y. H. J. E. Munro

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1334.

December 31, 1938

Mr. E. M. Bassingthwaighte
153 George Street
Belleville, Ont., Canada.

Dear Mr. Bassingthwaighte:

We acknowledge receipt of your letter of December 21 addressed to Commander McDonald.

At the present time we have no definite plans for entering Canada. As you know, the patent pool has a very definite control over the manufacture of radio products in the Dominion.

Should the situation change, we will be very glad to communicate with you and have a discussion on the subject. As of the moment the only thing we can do is keep your letter on file for future reference.

We appreciate your having written to us.

Yours very truly,

Zenith Radio Corporation

STT/S S. T. Thompson

Rasmussen

153 George St.
Belleville, Ont.

12-12-38.

Commdr. MacDonald,
President,
Zenith Corpn.
Chicago.

Dear Sir.—

I was advised recently that Zenith will shortly be operating in Canada and am interested in the possibilities of putting my services at your disposal.

Present Position—Sales Manager, Radio Division Stewart-Warner Alemite Corpn. of Can. Ltd.

Length of Service—5 years.

Results—Stewart-Warner has progressed from being a "tail-ender" to about fifth or sixth position in the industry in Canada.

Total sales this year—17000 units. Total sales 1937—20000 units.

Previous Positions—from 1925 to 1933 went from field man to General Sales Eng. with De Forest Crosley. Instituted many policies which made them outstandingly successful. Left as result of re-organization occasioned by losses of subsidiaries over which writer had no control.

Previous History—Graduate by Osgoode Hall Law School 1922. Four years overseas as Lieutenant in British navy 1915-9. Two years practicing law.

Present Condition—Physically fit, age 42. Married, two children.

Reasons for Change—Knowing Stewart-Warner as you do, you will appreciate that the good progress we have made in Canada has not been without difficulty. They are suffering from lack of vision and aggressiveness in their attack on the radio market, and a narrow, petty method of handling the details of radio business. When I joined them in 1934, I had to set-up a complete new division and a distributor organization as well. The then General Manager, after many battles, became fairly conversant with plans and was really becoming enthusiastic about the radio business. After his death ten months ago, the factory superintendent was put in charge and we have found ourselves completely incompatible. I am still in charge of sales and could go on indefinitely but do not believe I can make substantial progress under the present management.

As sales manager first of .... De Forest Crosley and since then of Stewart-Warner I know the Canadian market thoroughly and am acquainted with every important radio Dealer from coast-to-coast.

The progress your Company has made in the States the last few years assures me that you have the right attitude to the radio market and that I could do a real job for you in this country. I am sure that a strong distributing organization could be set-up very rapidly.

If interested, I would be glad to interview you in Chicago after the holiday season.

Yours very truly,

E. M. Bassingthwaighte

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1406.

February 21, 1939

Park Avenue Furniture Store,
4587 Joanne Manco Street,
Montreal, Canada

Gentlemen:

We have for acknowledgment your letter of February 15, and in accordance with your request, we are pleased to enclose herewith circular covering our line of receivers, also price list and wish to advise you that we will allow a discount of 5%, F.O.B. Chicago, remittance together with the order.

We do not have a distributor in Canada at the present time, due to the fact that we are not a member of the Canadian Patent Pool. Therefore, we are in a position to make shipment direct to you if you wish us to do so.

Yours very truly,

Zenith Radio Corporation
A. V. Duke
Export Division

AVD:LH

domestic export price list and export folder

Defendant's Bulk Exhibit No. 179.

(Letterhead of Park Avenue Furniture Store, Montreal.)

Feb. 15, 1939

Zenith Radio Corp.,
Chicago, Ill.

Dear Sirs:

Will you kindly forward us one of your catalogues and price lists as we are interested in importing some Radios into Canada.

Awaiting your favorable reply. We remain,

Yours truly,

Park Ave. Furniture Store
Hyman Solloway

HS:GS

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1397.

February 22, 1939.

Cherniak & Company, Ltd.,
129 Sandwich Street, E.,
Windsor, Ontario, Canada

Gentlemen:

We have for acknowledgment your recent inquiry, and in accordance with your request, we are pleased to enclose herewith circular covering our line of receivers, also price list.

From this price list, we allow you a discount of 5%, F.O.B. Chicago, remittance together with the order.

Inasmuch as we are not a member of the Canadian Patent Pool, we do not have a distributor there and will be glad to make shipment direct to you if you desire to purchase a receiver.

Yours very truly,

Zenith Radio Corporation
A. V. Duke
Export Division

AVD:LH

From
Cherniak & Co.,
129 Sandwich St. E.,
Windsor, Ont.

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1416.

March 1, 1939.

Mr. D. E. Allen,
2074 Queen Street,
East Toronto, Canada

Dear Mr. Allen:

We have for acknowledgment your letter of February 18, and in accordance with your request, we are pleased to enclose herewith circular covering our line of receivers and also a half-tone print of the model 6D315. From the prices shown on the enclosed price list, we will be pleased to offer you a discount of 5%. These prices are subject to remittance together with the order, F.O.B. Chicago.

We do not have any exclusive representation in Canada at the present time due to the fact we do not have membership in the Canadian Patent Pool. If you should wish, however, to order some receivers, we will be glad to make shipment to you.

Yours very truly,

Zenith Radio Corporation
A. V. Duke
Export Division

AVD:LH

export folder
half-tone print of 6D315
export domestic price list.

(Letterhead of Fisher's Hotels.)

Feb. 18/39.

Weldon
Zenith Radio Corp.
6001 Dickens Ave.
Chicago.

Dear Sirs—

Are you interested in securing a sales representative for Canada?

The Jan. issue of "Hotel Bulletin" announces your Hotel Zenith Universal radio, which should have a profitable demand here.

I shall be pleased to receive full details as to prices so that I can go into the matter of duty and laid in prices as compared to domestic lines.

Full information together with best sales plan would be appreciated.

Yours truly.

D. E. Allen.
2074 Queen St. East Toronto, Can.

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1398.

July 6, 1939.

Norton Motors
Acton, Ontario,
Canada

Attention Mr. Howard Norton

Gentlemen:

We have for acknowledgment your inquiry of July 3, and we are pleased to enclose herewith our circular and price list covering our line of radio receivers.

We are sorry to advise you that we are not a member of the Canadian Patent Pool, therefore, we are not in a position to offer you any specific territory. We are willing, however, to ship you such receivers that you might order. From the attached price list, we will allow you a discount of 5%, remittance together with the order, F.O.B. Chicago. We trust that after you have had an opportunity of looking over this material, we may have the pleasure of receiving further remarks from you.

The unit will operate satisfactorily in your car without plug suppressors. It will operate only on 110 volt, 60 cycles and will not operate on 25 cycles.

Yours very truly,

Zenith Radio Corporation
A. V. Duke
Export Division

AVD:LH

Price List 1940—D-1—4/7/39
1940—D-2—6/12/39

(Letterhead of Norton Motors, Acton, Ontario, Canada.)

July 3, 1939.

Zenith Radio Co.,
Chicago U.S.A.

Gentlemen,

We are interested in securing the franchise for your radios in our town.

Please let us know if this territory is open and if so send us your confidential dealer price-lists. We are particularly interested in the portable model advertised in the Sat. Ev'g Post of July 1. Will this operate satisfactorily in a car without plug suppressors? Will it operate on 110 volt 25 cycle current? What is dealer cost and retail price of battery pack for this set?

Send American prices as we anticipate taking delivery of all radios while in the U.S.

Yours truly

Howard Norton

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1417.

August 8, 1939.

National Marketing Service,
279 Victoria Street,
Toronto, Ont., Canada

Attention Mr. J. J. Marshall

Gentlemen:

This will acknowledge receipt of your letter of July 22, and in accordance with your request, we are pleased to enclose herewith price list and circular covering our line of receivers. From this price list, we are pleased to quote you a discount of 5%, deliveries made F.O.B. Chicago, against remittance together with the order.

We sincerely hope that after you have had an opportunity of looking over this material, we may have the pleasure of receiving an order from you.

We do not have exclusive representation in Canada due to the Patent Pool which you no doubt know all about. We are glad, however, to make shipments to any one who desires to order direct from us.

Sincerely yours,
Zenith Radio Corporation
A. V. Duke
Export Division

AVD:LH

domestic price list #1940-/D-3
½-tone circular

(Letterhead of National Marketing Service,
Toronto, Canada.)

July 22, 1939.

Zenith Radio Corporation,
Premium Division,
Chicago, Ill.,
U. S. A.

Gentlemen:

The writer, while in charge of the Radio Department of the Hudson Bay Company some years ago, was instrumental in handling a considerable number of Zenith Radios and experience with this line created a lasting impression and one of which you can be rightfully proud.

We are now, as you will see from our stationery, in the Sales Promotion Advertising Business with an established clientelle and with a considerable turn over on all lines we carry.

We are at this time on the look out for an outstanding portable radio and your advertisements in Premium Practice are very encouraging. We would appreciate it if you would send us your complete catalogue with prices on your complete 1940 line in both portable and mantel sets.

Yours sincerely,
National Marketing Service
J. J. Marshall

JJM/ER

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1250.

August 8, 1939.

Coast Distributors Limited
1142 Homer Street,
Vancouver, B. C. Canada

Attention Mr. C. B. McAllister

Gentlemen:

We have for acknowledgement you letter of July 31, and we are indeed sorry to note that you were unable to take the model 5G401 portable receiver on your holiday trip.

We note your remarks regarding many persons who would like to purchase Zenith radios and we would be pleased to cooperate with you on each individual order. Inasmuch as the Patent Pool prevents us from establishing an exclusive distributor in Canda, we will be glad to make individual shipments for you.

In accordance with your request we are sending you under separate covering our line of receivers.

Zenith Radio Corporation,
A. V. Duke
Export Division

AVD:LH

(Leterhead of Coast Distributors Limited, Vancouver, B. C.)

Zenith Radio Corp., July 31st 1939.
6001 Dickens Ave.,
Chicago, Ill.

Attention Mr. G. E. Mills.

Gentlemen:

Yours of the 28th instant to hand.

Please be advised that the writer picked up Model 5G401 Portable Radio on return trip from holiday on Oregon Coast.

Unfortunately shipment was delayed and we were unable to have this splendid job with us on our holiday, since same was shipped C. O. D., and as there was no Agency for Express Co. at Depoe Bay, Oregon, it had to await our return to Seattle.

It is a very fine job and we only wish we could import same for sale here. We still hope that the Patent Pool in Canada will be broken up. Same is still under investigation by Federal Authorities. We will assuredly be interested in your line as soon as it is possible to again import.

Please convey the writers regards to Mr. MacDonald.

We have a great many persons who ask us what set to buy while visiting in U. S. A. We could sell your sets to them for delivery at Seattle Hotels. Please advise if you would co-operate with us. We could sell them at Retail and absorb the Express to Seattle. We would like about 200 all line folders. We are

Yours very truly,
Coast Distributors Ltd.
CBM/BF Per C. B. McAllister.

P.S. Please send us engineering data sheet on above receiver.

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1340.

November 30, 1939.

Mr. George M. Droneck
R. R. #2,
Vernon, B. C. Canada

Dear Sir:

We have for acknowledgement your letter of November 25, and in reply, we are sorry to advise you that we do not have any representation in Canada due to the fact that we do not belong to the Canadian Patent Pool.

However, we will be pleased to make shipment to you direct and so that you may become familiar with our line, we are enclosing herewith circulars and price list covering same. From the attached price list, we are pleased to quote you a discount of 5%—delivery F. O. B. factory, Chicago—remittance together with the order.

We trust that after you have had an opportunity of looking over this material, we may have the pleasure of receiving an order from you.

Very truly yours,

Zenith Radio Corporation,
A. V. Duke,
Export Division

AVD:LH

domestic circular
export circular
1940-D-5 price list

R. R. #2,
Vernon B. C. Canada,

Nov. 25, 1939.

Zenith Radio Corp.,
Chicago, Ill.,

Dear Sirs:

Please forward by return mail, any literature dealing with your line of radios. Especially the portable model. Canadian Dealer.

Thanking you in advance, I remain,

Very truly yours,

Geo. M. Droneck.

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1419.

November 30, 1939.

Air Electric Distributors,
219 Phoenix Blk.
Notre Dame & Donald St.,
Winnipeg, Canada

Gentlemen:

We have for acknowledgment your letter of November 27, and in reply, wish to advise you that we do not have an exclusive distributor in Canada due to the fact that we are not members of the Canadian Patent Pool.

We are enclosing herewith circulars showing the line of receivers.

We cannot give you exclusive representation but we will be glad to make shipment direct to you.

You will note that we do not have, at the present time, any 32-volt receivers. However, we do have 6-volt sets.

We trust that after you have had an opportunity of looking over this material, we may have the pleasure of serving you.

Yours very truly,
Zenith Radio Corporation,
A. V. Duke,
Export Division.

AVD:LH

domestic circular
export circular

(Letterhead of Air Electric Distributors, Winnipeg.)

November 27th, -39.

Zenith Radio Corp.
6001 West Dickens St.,
Chicago, Ill.,

Dear Sirs:

Would you kindly give the writer the address of your agent in Manitoba and Saskatchewan. If however you are not represented in this territory and are willing to grant a franchise on distributors basis we would appreciate your consideration.

We feel that a great field is opening up in this district for 32 volt radios and believe they could be carried with excellent results in conjunction with the lines we are already selling.

Trusting we will hear from you in the very near future, and thanking you in advance for your attention in this matter, we are,

Very truly yours,
Air Electric Distributors,
Per M. G. Wilton.

MGW

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1267.

September 30, 1940.

Mr. Thompson:

As you know, we have just gone in for a real national advertising campaign.

Note the circulation of these magazines in foreign countries where we have had no circulation heretofore on national advertising.

While it is true that 613,000 of these are wasted in Canada, yet the circulation is large in other sections and we should do something to corral that Canadian business.

McDonald.

EFM:clh

CIRCULATION IN FOREIGN COUNTRIES.

Magazine	U. S. Possessions	Canada and New Foundland	Cuba & West Indies	Africa	Oceana	Mexico & Central America	South America	Europe	Asia	Misc. Foreign	Foreign Totals	Entire Total Circulation
New Yorker	1005	2493	387	212	150	159	423	3407	410		8646	151764
American Home	7327	54081	1385	52	1859	381	2048	1035	373		68595	1831779
Colliers	—	268	1353	118	60	824	2672	1832	288		7915	2882506
Sunset	1025	357	—	—	—	—	—	72	—		1454	238974
Cosmopolitan	7438	43420	1660	159	1066	1174	2044	3379	3282		63622	1871971
Better Homes and Gardens	3380	29424	206	29	61	155	246	596	211		34308	2026184
The American	8415	62498	1026	315	492	1227	1969	1742	668		78362	2279860
Time	331[illegible]	13354	2619	666	299	3541	3363	4299	2514		34573	773268
Red Book	8445	64394	796	100	1953	1201	1814	885	487		80075	1256304
Esquire	683	15644	1213	582	4173	1326	2174	10835	1238		37868	471007
Life	16631	85625	3140	889	2653	3131	5533	5906	1450		124958	2851878
Liberty	12483	195831	—	—	—	—	—	—	—	2112	210426	2322260
Sat. Even. Post	16894	920	1580	1503	15466	2023	4283	8712	1061		52442	3129168
National Geographic	7564	44985	3624	8660	26725	3342	9321	81935	6495		192651	1100222
Totals	94668	613294	18989	13285	55551	18494	35890	124635	18477	2112	995395	23193145

(Matter handwritten in margin is illegible.)

Memorandum.

Re: Sale of Zenith Radios in Canada.:

> At a conference attended by Commander McDonald, Hugh Robertson, G. E. Gustafson, John Howland and myself on Friday, November 23d, it was agreed after a thorough discussion of all phases of the problem that Zenith Radio Corporation would not at this time engage or attempt to engage in either the manufacture or sale of radio apparatus in Canada. This conclusion was based upon the many difficulties and objections from a legalistic and patent point of view which seem to make it impossible for the corporation or its Canadian subsidiary to enter upon any Canadian operations.

The only basis on which sales could be made in Canada seems to be to have the Canadian subsidiary employ Canadian Marconi or some other organization to manufacture sets in Canada which, in turn, would be sold by Zenith Radio Corporation of Canada, Ltd. Commander McDonald said he would not approve of that action, and of course there would not be any sufficient margin of profit in it to enable the Canadian subsidiary to function.

Consideration was given to the direct sale by mail from the United States, but as it developed during the conference that purchasers in Canada would be subject to attack for infringement of Canadian patents even though the parent company might have a license, it was decided to abandon that idea. Any license from the Canadian Patent Pool would be limited to the manufacture and sale of radios in Canada.

As a result of the conference, the entire matter has now been tabled, at least for the time being, except, of course, that Canadian Marconi will build a few sets under its own name on Zenith's design to be sold to Ford of Canada and to Hudson. This matter is covered by letter agreements between Zenith and Marconi.

11-24-45

I. H.

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1275.

(Form of Western Union Telegram.)

8-8-51

Montebello Electric
Montebello Quebec
Canada

Re Your Tel We Are Not Yet Licensed By Canadian Patents Pool Therefore Are Not Represented In Canada.

ZenithRad.

bmpc/h

(Form of Western Union Telegram.)

Tnx Wu Q070 9-Cpr Montebello Que Aug 8 1951 1240 P-
Zenith Radio Corp-

Please Wire Name And Address Of Your Canadian Distributor—Montebello Electric-1223P.

(Handwritten) Miss P. Reply by telegram we have none in Canada—Not licensed by Patents Pool.

(Stamp) Zenith-Rauland Cross-

Claimants' Exhibit 1432.

August 21, 1951.

North Shore Electrical Distributors Lmtd.
181 A Charlotte Street
Peterborough, Ontario Canada

Attention: Mr. V. A. Nolan

Gentlemen:

We thank you for your letter of August 13, in which you express interest in becoming distributor for Zenith products for the Province of Ontario.

We are not established or licensed yet to sell our radio products in Canada. We hope eventually to enter the Canadian market, and when our plans to this end begin to materialize, we shall be glad to give further consideration to the appointment of distributors.

In the meantime, we thank you for your interest in Zenith.

Your very truly,

L. S. Fischer,
International Division.

LSF:mp
Air Mail
612.2

(Letterhead of North Shore Electrical Distributors Limited, Peterborough, Ontario, Canada.)

(Written in margin.) Fischer: We are not established as licensed yet to sell our radio products in Canada.

August 13, 1951.

Zenith Radio Corporation,
6001 West Dickens Ave.,
Chicago 39, Ill.,
U. S. A.

Dear Sirs:

Our company is engaged in the wholesale distribution of Home Appliances in the Province of Ontario Canada. We have an adequate sales force covering this extensive area which has a population of approximately five million people, and we are searching for the better type of merchandise with which to supply our dealers.

If you are not currently represented by a distributing organization in Ontario, would you please give consideration to our appointment as your representatives in ths area. If our suggestion meets with your approval, would you please send us details of the products you have available, dealers price and discounts, and advise of any Federal regulations influencing the export of your merchandise to this country. A representative of this company can be made available for discussion if you are interested.

Please contact the Royal Bank of Canada Peterborough Ontario for financial references.

Yours truly,
North Shore Electrical Distributors Ltd.
V. A. Nolan.

VAN/MS

(Form of Western Union Telegram.)

8-31-51.

B Tomas
Box 76
Batawa Ontario
Canada

Retel 31st No Record Receiving Yourlet July 23rd. Regret We Have No Sales Or Distribution Arrangements in Canada. Our Radios Unlicensed By Canadian Patents Pool. If You Can Import And Send Covering Us Dollars Offer Our Super Transoceanic With Battery $130 FOB Border Point.

International Division
Zenith Radio Corp.

JAM/b

(Form of Western Union Telegram.)

Aug 31 1951

Wu V04533/29 Dl 5 Extra-Clt Batawa One Aug 31 1951 938A- The President Zenith Radio Corp-

Belet July 23 Would Appreciate Detailed Information Where in Canada Available New Zenith Super Transoceanic Portable Set With Fourway Reception Stop Thanks For Immediate Attention-

B Tomas Box 76 Batawa Ontario- 1048A
Tomas 76. .RV045 Pcf Tks.

January 25, 1952.

The George Taylor Hardware Ltd.
Timmins, Ontario, Canada

Attention: Mr. J. L. Fulton, Mgr.

Gentlemen:

Thank you for your letter of January 18, dealing with the interest which exists in the Canadian North in our Super Trans-Oceanic portable.

The fact is that we are not as yet established or licensed in Canada, and for this reason we are not in a position to offer our products for resale in your country. We hope to become established in Canada in the foreseeable future; however, in the meantime we can only suggest the possibility of individual purchases at retail which may be made by persons who pay a visit to the United States from Canada.

Enclosed please find some illustrated literature on the Super Trans-Oceanic. The instrument is offered at retail in the United States at $124.25. The price of dry battery type Z-985, model H500 battery complement is $6.25.

Thank you very much for the interest which you have taken.

Yours very truly,

L. S. Fischer,
International Division.

LSF/ms

Encl.

Air-Mail

(Letterhead of George Taylor Hardware Limited, Timmins, Ont.)

Jan. 18, 1952.

Zenith Radio Corporation,
Chicago, Illinois,
U. S. A.

Gentlemen:

We are being continually asked about your world wide Portable All Wave Radio which sells for somewhere about $125.00 in U. S. A.

Is there not someway we could purchase these machines from you, even on a dealer basis which would be some relief as the demand is from lumber companies, pulp and paper companies and trappers in the far north. They require them and do not know where to secure them.

We are writing—not from a profit angle—but more for a service we wish to perform.

Yours very truly,

The Geo. Taylor Hardware Limited
J. L. Fulton

JLF:al

Manager

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1358

March 9, 1952.

Mr. Trevor F. Peck, President,
Trevor Peck Co. Limited,
1498 Sherbrooke St. W,
Montreal 25, Que., Canada.

Dear Sir:

We acknowledge receipt of your letter of February 24th, in reference to instruments of our manufacture for distribution in Canada.

Please be advised that it is not that we do not want a distributor in Canada, but that we are not presently licensed by the Canadian Radio Patent Pool to have distributors in Canada due to the fact that we do not, at present, have a manufacturing concern in your country. We are, however, working on such an arrangement, which we trust will be ready within the next few months, and as soon as we are able to sell to your good selves, you may rest assured that you will be promptly notified accordingly, and at the same time catalogues and price lists will be sent to your good selves.

Trusting that this fully answers your letter and thanking you very much for the evident interest you have shown in the products of our manufacture, we are

Yours very truly,

Raul Gonzalez
International Division

RG:cb

(Letterhead of Trevor Peck Co. Limited, Montreal 25.)

February 24, 1953

Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, Ill. U. S. A.

Attention: Mr. Raul Gonzalez,

Dear Mr. Gonzalez,

We have your letter of December 18th to Mr. Walter Cottingham of this company.

We respect your policy of not desiring a Canadian Distributor at the present time. However, we are a retail store that sells to the people who want the best. We handle "DuMont" which is now made in Canada. We import some Capehart products and we put out our own line of photographs. Many requests came our way for the Zenith Trans-Oceanic, and although we could not promise any terrific volume, we could sell quite a few of them. This certainly would not hurt your dealers in the U. S., and it could not help but enhance your name in Montreal. Our service department has made a name for themselves servicing your products and on more than one occasion we have imported parts and batteries for your sets.

We believe you put out the best portable radio in the country and we would like to order them in quantities of six, cash before delivery.

We would appreciate hearing from you if any satisfactory arrangements could be made.

Cordially yours,

Trevor Peck Company Limited,
Trevor F. Peck, President.

TFP/ms

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1347.

March 11, 1952
(Dictated 3-7-52)

W. H. Cardozo Furniture Company,
Fifth Street at First Avenue North
Minneapolis 3, Minnesota
Att: Mr. R. Golden:

Gentlemen:

Mr. Bonfig has referred to me your letter of February 26 in which you enquire about the possibilities of a Zenith distributorship in Winnipeg.

Our situation in Canada may be summed up by saying that distribution and manufacturing wise we are not set up in that country. For several months now we have been exploring the best possible way which Zenith can enter into the Canadian market. Any radio or television manufacturer cannot simply go into Canada on the basis of the manufacturer exporting the complete products. This is more or less restricted or virtually prohibited by the Canadian Radio Patents Pool, which is very strong in Canada. This Pool will not license any American radio and television manufacturer to go into Canada unless they are either already established locally manufacturing wise, or there is intent to set up local manufacturing facilities within a reasonable time—say 90 to 100-days. For this reason we do not have any license from the Canadian Radio Patents Pool, and we cannot apply for same until our management has decided that we will go into Canada to manufacture Zenith radio and television products on the same basis that a few of our competitors have already done.

Our entry into the Canadian market on a broad long-term commercial basis depends on decision by our management and Board of Directors, as such a step will mean capital investment. Thus, we are not in a position as yet to discuss or negotiate, either with your goodselves or with anybody else, insofar as eventual regional distributorship in Canada is concerned. However, as soon as these preliminary steps have been definitely resolved, in addition to the setting-up of actual manufacturing facilities, we shall start tackling then the next vital problem which will be distribution for all, or regions of, Canada.

We appreciate very much your writing to us, and the good things you have said about our Zenith products. As soon as a definite resolution is reached by our management we shall be glad to communicate with you again.

Very truly yours,

J. A. Miguel, Jr/b

(Letterhead of W. N. Cardozo Furniture Company,
Minneapolis 3, Minnesota.)

February 26, 1952.

Zenith Corporation
6001 Dickens Ave.
Chicago 39, Illinois

Attention H. D. Bonfig.

Gentlemen:

Please excuse my clumsiness in presenting this situation but for many years I have been the buyer of appliances with the Cardozo Furniture Company of Minneapolis and have enjoyed selling the Zenith televisions and radios and fully appreciate their quality, styling, performance, and factory policies.

Now to get to the meat of this letter. I have just been advised that in the very near future, within a year, television will be introduced, through government facilities, in Winnipeg and western Canada. The jest of my entire hope is what the availability would be for a distributorship in this particular locality for the Zenith product. I am fully knowledged on the necessaries of a distributorship and have at my disposal enough capital to take on a project such as this.

I would like very much to have your comments, either encouraging or discouraging, with reference to the above. It would be greatly appreciated.

Yours very truly,

W. N. Cardozo Furniture Co.,
R. Golden.

RG:sj

(Stamp.) Zenith-Rauland Cross-
Claimants' Exhibit 1348.

(Letterhead of Hobbs Hardware Co. Limited,
London, Canada.)

July 4, 1952.

Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, Ill., U. S. A.

Attention: Mr. J. A. Miguel, Jr.

Gentlemen:

We thank you for your letter of July 1st, and if you will keep us in mind we are still very much interested in discussing with you the distribution of your products when you have made a decision relative to the Canadian market.

Thanking you for your kind consideration.

Very truly yours,

Hobbs Hardware Co. Limited,
K. S. Murray,
Managing Director.

KSM*ba

July 1, 1952.

Hobbs Hardware Co., Ltd.
London, Canada

Att: Mr. K. S. Murray, Managing Director.

Gentlemen:

Receipt is acknowledged with thanks of your letter of June 20.

The matter is still under consideration by our management and Board of Directors. We are not in a position at this time to make any commitments with respect to the distribution of our products throughout Canada on a national or regional basis until it is definitely decided that we will actively enter into that market.

Our products are not yet licensed by the Canadian Radio Patents Pool as licenses are given out only where the licensee is locally established in Canada manufacturing wise. In view of this problem we are not in a position to export our products for resale in Canada, so that a sales or distribution arrangement based on imports of our American sets is not even possible at this time. It is hoped that we shall be able to tell you something more definite within the next 2 or 3-months.

Very truly yours,

J. A. Miguel, Jr./b

Air-Mail

(Letterhead of Hobbs Hardware Co. Limited,
London, Canada.)

June 20, 1952.

Zenith Radio Company,
International Division,
6001 Dickens Avenue,
Chicago 39, Illinois, U. S. A.

Gentlemen:

In January, 1951 you wrote us about the possibility of our Company being considered as a distributor of your product, should you enter the Canadian market.

It is fully realized the manufacturing difficulties under which you are now operating, and we are inquiring to see if a decision has been made on the Western Ontario market.

Several of our dealers have been inquiring about the possibility of getting your radio and television receivers, hence the purpose of this letter.

Thanking you for your kind consideration.

Yours very truly,

Hobbs Hardware Co., Limited,
K. S. Murray,
Managing Director.

KSM•bs

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1352.

September 26, 1952.

Manning Equipment Limited
Halifax, Canada

Att: Mr. W. G. Morris, Sales Manager.

Gentlemen:

We acknowledge with thanks receipt of your letter dated September 16, expressing interest in handling the distribution of our products for the Maritime Provinces.

It is true that we have been exploring the possibilities of producing our radio and television sets in Canada, but, so far, this matter is still up for decision by our Board of Directors. Until this local manufacturing matter is settled, which is the only way of entering the Canadian market, we are, of course, not establishing any distributorship arrangements, nor making any commitments in this regard, for any or all of Canada. You understand, naturally, that without local production facilities we cannot get into that market as the Canadian Radio Patents Pool will not grant licenses to anyone unless the licensee has local manufacturing facilities in Canada. Therefore, any arrangement in Canada based on importation of the American radio or television set is very definitely out of the question.

In the circumstances, we, therefore, regret that we are not in a position to entertain your kind offer. However, we will keep your solicitation in our file for reference later on when it is finally decided that we will enter into the Canadian market manufacturing and distribution wise.

Again thanking you for writing to us, and for your interest in our Zenith products, we are

Very truly yours,

J. A. Miguel, Jr./b

Air-Mail

35

(Letterhead of Manning Equipment Limited,
Halifax, Canada.)

September 16th, 1952.

Zenith Radio Corporation,
6001 Dickson Ave.,
Chicago, Illinois.

Gentlemen:—

We have heard persistent rumors of your intention of opening a factory in Canada for the production of radios and television receivers.

If this is correct, we would be very interested in acting as your distributors for the Maritime Provinces.

Our business is entirely wholesale and a member of the Canadian Electrical Distributors Association. The territory we cover are the provinces of Nova Scotia, New Brunswick and Prince Edward Island regularly by our own field salesmen, twelve months of the year. We also sell to a limited extent, to Newfoundland. We do not, at present, regularly cover that province but expect to be in a position to do so shortly.

For credit refernces, we refer you to the Bank of Nova Scotia, Halifax, Nova Scotia, Dunn & Bradstreets and the Canadian Electrical Distributors Association.

We have been distributing Stromberg-Carlson radios in the Maritime Provinces for the past few years and as you have probably heard, this Company has decided to drop out of the radio and TV field in Canada.

If our proposal is of interest to you, we would appreciate it if you would be good enough to send a general outline regarding price lists, our cost, etc., by letter.

Yours very truly,
Manning Equipment Limited,
W. G. Morris,
Sales Manager.

WGM/p

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1344.

January 13, 1953.

Atlas International Agency,
C. P. 5, Haute-Ville
Levis, P. Q., Canada.

Gentlemen:

We acknowledge receipt of your letter, wherein you express your interest in distributing the merchandise of our manufacture.

Please be advised that inasmuch as you need no import license and there are no exchange restrictions in Canada, there is still a patent pool to contend with, which is our problem and for that very reason we are not yet prepared to enter into a distributorship in Canada. However, your letter will be held in abeyance and immediately upon any changes that may occur, you will be promptly notified, and catalogues and price lists will be sent to you at that time.

Thank you, nevertheless, for the intrest you have shown in the goods of our manufacture.

Yours sincerely,

Raul Gonzales,
International Division.

RG:cb

(Letterhead of Atlas International Agency, C. P. 5, Haute-Ville, Levis, P. Q., Canada.)

December 30, 1952.

Zenith Radio Corp.,
Chicago 30, Illinois, U. S. A.

Gentlemen,

We have just received today, a letter from your head office in Canada, in which it is writed that, they handle only the hearing aids apparatus made by your company and they cannot supply us with any type of receiver.

It is know to us that a manufacturer cannot market in Canada, a receiver unless it is made in Canada, but, he can export to dealers in Canada, any receiver for resale purposes.

We have checked the customs office here and they have answered that we can import for resale any television or other type of receiver as long we pay the 20%, 10% and 15% sales taxes and customs and excise tax.

All taxes and customs are charges one after the other, for this reason, end product is quite higher in cost than in Canada, thus if a merchandise cost $100, and is subject to 20% customs duty, the new price is 120, to that the 10% sales tax is added to bring the price to 132, and to add a final touch the 15% excise tax is added and the price is placed on the $152. bracket.

Many prospectors, farmers and isolated persons need a powerful portable receiver such as your transoceanic and similar receivers, thus with our mail order serivce it would be possible for us to reach many prospects.

Here we have installed many american and canadian made television receivers but performance is relatively poor much of the time. Two days ago we have ad a fine skip for two days, but now all is returned to normal and reception is poor. As we are not yet ready to buy your television receivers we remain interested in your portables and other am/fm receivers pick-up, ect., and we expect to receive your catalogue and price list soon.

In waiting to hear from you soon we are,

Truly yours,

Atlas International Agency,
C. Vaillancourt, Jr.,
Manager.

CV/3

(Handwritten in margin) Gonzales: True there are no Canadian Govt restrictions to bring in radios and TV sets. However, the problem is that our sets are not licensed for sale in Canada by the Canadian Radio Patents Pool—(Initials illegible).

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1356.

February 11, 1953.

Belltower Distributors Limited
35-37 Gerrard St. West
Toronto 2, Ontario

Atten. Mr. J. A. Pardie, President

Gentlemen:

This acknowledges your letter of February 4th, with reference to your interest in securing a franchise for distributoin in Canada of the merchandise of our manufacture.

Please be advised that at the present we are unable to open any distributorships in Canada because we are not licensed for shipments to Canada by the Canadian Radio Patents Pool.

We are trying to work something out, however, and immediately upon completion of the matter you will be promptly notified and catalogs and parts lists will be sent to you, together with a letter explaining our sales terms and any other information that may be of interest to you.

Thanking you very much for your interest in our product, and trusting that in the not too distant future we shall be doing business with you, we are

Yours very truly,

R. Gonzalez,
International Division.

RG/ep

(Letterhead of Belltower Distributors Limited, Toronto 2, Ont.)

February
fourth
1953.

Zenith Radio Corp.,
6001 W. Dickens Ave.,
Chicago 39, Illinois,
U. S. A.

Dear Sirs:—

We are National Distributors in Canada of household electrical appliances, and our organization is set up in such a manner so as to be able to conduct business with either wholesalers or direct with dealers, in addition to servicing the appliances sold, as to parts and warranty repairs.

The writer has extensive experience in this field of merchandising, and is taking the liberty of writing you for the purpose of inquiring whether you would be interested in having representation in Canada under an exclusive Franchise.

We would appreciate hearing from you in this respect—giving full particulars and literature for the various products manufactured by your concern.

Yours very truly,

Belltower Distributors Limited,
J. A. Pardie,
President.

JAP/GS

(Handwritten in margin:) Ray: ACR and tell them we are not established in Canada—our products not licensed by the Canadian Radio Patents Pool.

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1357.

LEGISLATIVE ASSEMBLY.
British Columbia

Parliament Buidings,
Victoria, B. C. ,

February 18, 1953.

Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, U. S. A.

Dear Sirs:

I wish to thank you for your reply to my request for information concerning the possibility of sale of your radios and television sets in Canada.

In view of the demand in this country it is to be hoped that some time your company will be in a position to conform to the necessary requirements so that those who would like to purchase your sets will be able to do so. The few people whom I know who are at present owners of Zenith products have nothing but praise for their performance.

Yours sincerely,

Arthur J. Turner, MLA.

AJT/RM

Defendant's Bulk Exhibit No. 179.

February 11, 1953.

Mr. Arthur J. Turner
Legislative Assembly
Parliament Buildings
Victoria, B. C. Canada

Dear Sir:

This will acknowledge your letter of February 2, wherein you request information as to our reason for not being represented in Canada.

Please be advised that the Canadian Radio Patents Pool has not licensed us for importations into Canada due to the fact that we have no manufacturing in Canada, and while we do receive thousands of requests from all parts of your respected country, we have been unable to comply with them because of the fact that we are not licensed, as above stated.

Trusting that the above fully answers your letter and thanking you very much for the innterest you have shown in our company and our product, we are

Yours very truly,

R. Gonzalez,
International Division.

RG/ep

LEGISLATIVE ASSEMBLY
British Columbia

Parliament Buildings,
Victoria, B. C.,

February 2, 1953.

Zenith Radio Corporation,
6011 Dickens Avenue,
Chicago 39, Ill., U. S. A.

Dear Sirs:

It has come to my attention that the Zenith radios and television sets are not available in British Columbia or anywhere else in Canada. We are at a loss to understand why this should be. A friend of mine is interested in the possibility of securing an agency, particularly in British Columbia, for your products. I will be glad to receive information concerning these two matters at your earliest convenience.

Yours truly,

Arthur J. Turner, MLA.

AJT/M

(Handwritten in margin) Gonzales: Tell him that we are not licensed by the Canadian Radio Patents Pool because of the fact that have no manufacture in Canada. (Initials illegible.)

29 Palmerston Gardens,
Toronto, Ontario,
Canada.

March 8, 1956.

Zenith Radio Corp.,
Chicago, Ill.,

Gentlemen:

I have tried unsuccessfully for some time to get a Zenith Television Set here in Toronto. The Robert Simpsons Co. Ltd. sells Zenith hearing-aids, but, not any other of your products. I purchased a Zenith portable radio while I was in New York City, and it is the best radio I have ever had, and, since it was so good, I was most interested in getting a television set made by you.

Do you have a dealer or distributor of your products here in Canada, and, if not, would you be interested in offering a dealership to someone here in Toronto? I know that Zenith products would go over very big over here, as they are a very good product.

I am most anxious to hear from you regarding the above, and thanking you in advance, I remain

Yours very truly,
Mrs. T. Galinsky.

P.S. Could you send some literature on your products?
TG/cw

(Stamp) Zenith-Rauland
Cross-Claimants'
Exhibit 1359.

March 14, 1953.

Mr. F. W. Robinson, President
Robinson Electric, Limited
Kentville, Nova Scotia
Canada

Dear Mr. Robinson:

I certainly want to thank you for your kind letter of March 6, but I'm afraid I am not the person you visited with at the recent Radio Show at the Park Sheraton Hotel in New York City. My recollection is that that was the show and meeting conducted by our New York Distributing Company to present new TV models, and I did not attend that dealer meeting. Perhaps you spoke to someone from the Zenith Radio Corporation of New York, our distributing subsidiary for that area.

Unfortunately, Zenith radio and television sets cannot be offered for resale in Canada, in view of the fact that our products are not licensed by the Canadian Radio Patents Pool. The Pool does not license anyone unless it has established local manufacturing facilities in Canada and, as you know, Zenith does not manufacture, nor do we have arrangements with somebody else to manufacture our radios and television sets in Canada. In view of this situation, we have not directly exported Zenith radio and television sets to Canada for resale in that country, nor have we made any commitments or arrangements for the distribution of our sets in that market.

On the other hand, it is not unlikely that several hundreds, and perhaps thousands, of our radios and television sets have found their way into Canada, but these got in there on individual shipments or purchases, without involving resale. Of course, a large segment of this individual purchase has flourished quite a bit in the cities and other commercial centers along the Canadian border.

For several months now we have been studying the possibility of our entering into the Canadian market on a full-fledged local manufacturing and distribution basis. The matter is now up for approval by our management and Board of Directors and as soon as a favorable resolution in this connection has been reached you will either hear from us or read about it in the local papers or trade publications. We expect that this matter will come up for a definite decision within the next three months.

Again, many thanks for writing to us and for the interest that you have expressed on Zenith products.

Very truly yours,

J. A. Miguel, Jr./b
A

(Letterhead of Robinson Electric, Limited, Kentville, Nova Scotia.)

March 6, 1953.

Mr. John Miguel,
Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago, Ill., U. S. A.

Dear Mr. Miguel:

I would like to thank you very much for taking time to speak with me at the recent Radio Show and at the Park Sheridan Hotel in New York. I realize that you were pressed for time and there were many things I wished to talk over with you that had to be left unsaid.

I am keenly interested in the complete Zenith line, and am prepared to do anything in reason to work out some kind of a business deal with you. I hope to see Zenith on the market in Canada soon and would like to feel that at that time your Company and mine would be doing business together.

As you are no doubt aware the Canadian Government has promised we shall have television in Nova Scotia by the end of the year, and we fully expect to sell television sets at that time in considerable quantity.

I would consider bringing some Zenith radios in now and paying full duty on them. Whilst they would possibly sell for at least 10% more than a Canadian manufactured product, I feel that the quality of your radios will assure a market at these prices. I am, therefore, asking if you would consider selling us radios to be shipped by you from your nearest warehouse. I have contacted the Customs and Excise Department and they assure us that there is no obstacle preventing us from importing radios.

I am prepared to do all this providing you could sell us radios at your best Distributor Discount. If you are interested in this proposition, please send us some catalogues and price sheets showing our net cost. I shall be pleased to give you an order for radios if you will consider selling to us.

Once again, may I thank you for the kindness shown me by yourself and your associates, which helped to make my stay in New York an enjoyable one.

Yours very sincerely,

F. W. Robinson,
Robinson Electric Limited.

FR/G

(Stamp) Zenith-Rauland
Cross-Claimants'
Exhibit 1219.

March 27, 1953.

The Winnipeg Supply & Fuel Co. Ltd.
8th Floor Boyd Building
Winnipeg, Manitoba, Canada

Gentlemen:

We acknowledge receipt of your letter dated March 23rd wherein you express your interest in becoming our distributor in Western Canada.

Please be advised that presently we are not prepared to go into any business negotiations in Canada due to the Canadian radio patent pool restrictions for companies that do not have manufacturing concern in Canada.

You may rest assured that everything possible is being done to open distributorships in Canada and as soon as we overcome the present difficulties, you may be sure that you will be promptly notified and all necessary information given to you at that time.

Thanking you very much for the interest you have shown in our products, we are

Yours very truly,

Raul Gonzales,
International Division.

RG/jm

(Letterhead of The Winnipeg Supply and Fuel Co. Limited,
Winnipeg, Man.)

March 23rd 1953.

Air Mail
Zenith Radio Corp.,
6001 Dickens Avenue,
Chicago, Illinois.

Gentlemen:

Our firm is anxious to negotiate for a distributorship in Western Canada on television equipment.

Our firm at present, widely distribute lines of various appliances representing such firms in Western Canada as the Iron Fireman Manufacturing Company and Rheem Gas Appliances. Our present dealers in a vast majority of cases, particularly in country points are general appliance dealers handling radio and other types of equipment. As one of the largest firms of its kind in Western Canada, we could readily expand and extend our sales force to give adequate coverage on television equipment wherever this action was necessary or the market and equipment handled justified our doing so.

There is not any television in Western Canada as yet and it appears that this city will have the first television broadcasting station commencing operations early this fall. From this start we see a rapid development of television broadcasting throughout the other larger cities in the west, probably including at least half a dozen who will get started within the next year or 18 months.

If, therefore, you have not made or initiated any plans for distributing your product in Western Canada to date, we would like to know if you might consider entering this expanding market and if so would appreciate receiving detailed information, prices, literature, etc. on your television equipment.

If you are interested, we would appreciate hearing from you prior to March 26th. At that time, we have one of our representatives making a trip to eastern Canada and he could go via Chicago which would give him an opportunity of learning something of your product and securing any other information.

Cordially yours,
The Winnipeg Supply & Fuel Co.
Limited,
R. A. W. Vidler,
Research Department.

R. A. W. Vidler/vmci

(Handwritten in margin) Gonzales: You know the answer. (Initials illegible.)

(Stamp) Zenith-Raulard
Cross-Claimants'
Exhibit 1361.

April 16, 1953.

Firestone Tire & Rubber Company of Canada, Ltd.
Beach Road,
Hamilton, Ontario, Canada.

Attention: Mr. W. Derry,
Merchandise Buying

Gentlemen:

We acknowledge, with thanks, receipt of your letter of April 2nd, inquiring about the possibility of a distributorship deal with us for Canada. We also received your two very interesting wholesale and consumer catalogues.

First of all, our radios and television sets are not available for export to and resale in Canada, as Zenith is not licensed by the Canadian Radio and Patents Pool, on the ground that we have no local manufacturing facilities in Canada. We have, therefore, abstained from making any commitments or even negotiating for the distribution of our sets in Canada.

We, at this time, are giving serious consideration to the possibility of setting up local manufacturing facilities in Canada, in which event we shall apply for a license from the pool, but no resolution has, as yet, been reached by our managements and board of directors. We expect that, at its best, this project may take several months to develop. Once the question of local manufacturing is decided upon, then we shall look into the problem of national and/or regional distribution.

In any even, if and when we are definitely established in Canada, it is not likely that we will make arrangements for distribution confined to certain segments of our line only, such as table models, in which you express particular interest. Rather, the arrangements for Canada will follow the same pattern as distribution of our products in the United States and markets abroad, where the entire line of radio and television sets from table models to combinations will have to be covered in the franchise.

We are thankful to you for writing to us and for the interest you have shown in Zenith products, and we hope that the question of marketing our products in Canada will be resolved satisfactorily by our management and directors.

Yours very truly,

JAMiguel, Jr./cb

(Letterhead of Firestone Tire & Rubber Company of Canada Limited, Hamilton, Ont.)

April 2, 1953.

Zenith Radio Corporation,
Chicago 39, Ill.
U.S.A.

Attention: Export Manager

Gentlemen:

While at the Furniture and Appliance Show, held in Chicago last January, the writer was greatly interested in your display of television and radio. I could not help but admire the modern and clever styling of your products.

We would be interested in discussing with you the possibility of the distribution of the Zenith line of mantel radios for Canada or the feasibility of securing cabinets and parts for the manufacture and assembly of these radios under the Firestone name in Canada.

As you probably know, we can offer you a nation wide distribution and we feel the best coverage of any national account in Canada. We operate on a similar basis to that of our Akron Office, in that we are considered national distributors and sell only to Firestone Dealer Franchised Stores and accounts who are located in every locality in this country.

To give you a clear conception of our type of merchandise, we are enclosing our latest Spring and Summer Wholesale Catalogue as well as our latest consumer catalogue.

We would appreciate hearing from you at your earliest convenience on the above subject.

Yours very truly,
W. Derry.
Merchandise Buying.

WD/lvs

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1211

(Letterhead of Robinson Electric, Limited, Kentville, Nova Scotia.)

May 4, 1953.

Mr. J. A. Miguel, Jr.,
Manager, Internation Division,
Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, Ill. U. S. A.

Dear Sir:

Thank you very much for your letter of April 28 in reply to my recent query.

Until such time as you are able to distribut your products in Canada, and I trust that it will not be too long before that is possible, we shall not be taking on any other new lines of radio, and hope that we may eventually be able to sell Zenith.

Once again, thank you very much,

Yours sincerely,

Robinson Electric Limited
F. W. Robinson,
President.

FR/g

April 28, 1953.

Mr. F. W. Robinson, President
Robinson Electric, Limited
Kentville, Nova Scotia
Canada

Dear Mr. Robinson:

Thank you for your letter of April 20 expressing interest in distributing our radio and television lines in the Maritime Provinces.

We, too, are very much interested in securing satisfactory representation in the Maritime Provinces and, for that matter, other territories of Canada, but, unfortunately, it is not possible for us to sell our radio and television sets for export to and resale in Canada in view of the fact that we are not licensed by the Canadian Radio Patents Pool. This Pool, which is more or less a protective association, will not license unless we set up local manufacturing facilities—a matter now under consideration by our management which, however, may take several months to be decided upon. In other words, they would not license anyone whose business in Canada on radio and television sets would be based exclusively or largely on the distribution in Canada of American manufactured sets. A distributorship, therefore, of Zenith sets under these conditions would be meaningless and anyone buying our sets for distribution and resale in Canada would face possible legal entanglements and a lawsuit from the Pool, despite the fact that the Canadian Government itself does not prohibit the importation of complete radio and television sets into Canada.

We will surely communicate with you if, and when, the company decides to enter into the Canadian market by establishing manufacturing facilities there, or, should there be any possible change in the policy of the Pool which would permit the distribution and resale of our American made sets without being harassed, molested or being threatened with civil law suits.

Again, thanking you for writing to us, and for your interest in Zenith products, we are

Very truly yours,

J.A.Miguel,Jr./b

Air-Mail

(Letterhead of Robinson Electric, Limited,
Kentville, Nova Scotia.)

April 20, 1953.

Mr. J. A. Miguel,
Manager of Export Sales,
Zenith Radio Corporation,
6001 West Dickens Ave.,
Chicago, Illinois, U. S. A.

Dear Sir:

I am very much interested in the complete line of radios and television receivers as shown by you at New York this year, and would like to handle them on a distributor basis for the Maritimes, that is: Nova Scotia, New Brunswick and Prince Edward Island.

Robinson Electric Limited have salesmen covering these provinces and selling to the Electrical Dealers. I realize that at the moment you are only considering entering the Canadian market, but you have the quality line of radios that I have been looking for for a long time, and I feel that there could be a large market for your products. I am, therefore, asking that when you do set up distributors for your products in Canada that you please consider us.

Trusting that I may hear favorably from you, I remain,

Yours sincerely,

Robinson Electric Limited
F. W. Robinson,
President.

FR/g

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1217.

May 5, 1953.

The Winnipeg Supply & Fuel Co.
Boyd Building, 8th Floor
Winnipeg, Man., Canada

Gentlemen:

Please accept our apology for our delay in acknowledging your letter, however, we felt that it would be best to investigate the matter a little bit further prior to replying to your third, fourth, fifth and sixth paragraph of your letter, and now we would like to send you an extract from another letter from the Canadian Radio Patent Pool Ltd., which we trust you will read carefully.

We are still, of course, investigating all possibilities of getting our merchandise to Canada, and we feel quite certain that it won't be too long before we find a way, and at that time you will be promptly notified.

Thank you very much, nevertheless, for the evident interest you have shown in our products, we are

Yours very truly,

Raul Gonzalez
International Division

RG/ms

Air-Mail

(Letterhead of the Winnipeg Supply and Fuel Co. Limited,
Winnipeg, Man.)

April 11th, 1953.

Mr. Raul Gonzalez,
International Division,
Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, Illinois.

Dear Mr. Gonzales:

We have your letter of March 27th in reply to our earlier inquiry of March 23rd regarding distribution of your television and radio equipment in Canada.

You have stated in the second paragraph of your letter that you are not exporting to Canada at the present time because of our Canadian Radio Patent Pool does not make it possible for you to secure patent coverage for imported instruments.

Because we already represent some large American concerns in Western Canada who do not manufacture in this country, we felt that it was strange if there was some special law that had reference to the type of equipment manufactured by your organization.

Now this may be but according to our Legal Advisors, there does not appear to be anything in our Canadian Patent Laws which would prohibit your exporting and having your product distributed in Canada.

There is however, an aspect of our existing patent law which may be guiding your thinking and that is that if a patentee has not commenced to manufacture to an adequate extent and supply on reasonable terms, the patented article, within 3 years from the date of the patent, and if the manufacturer refuses to grant a license or distributorship on reasonable terms, any interested party may make an application to the Commissioner of Patents for an Order that the manufacturer be forced to grant a licence of his manufacturing rights under the patent upon such terms as to royalties, etc., as the Commissioner may deem equitable.

However, of course, this provision is overcome providing you have active distribution of your products in this country irrespective of whether they are manufactured here or not.

We thought you would like to have this information if t is of any value to you and are writing you again reiterating our interest in the possible future distribution of your products in this country.

Cordially yours,
The Winnipeg Supply & Fuel Co. Limited
R. A. W. Vidler
Research Department.

R.A.W.Vidler/vmci

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1216.

May 7, 1953.

Mr. Mark Rycharski
Camp 8
Kemano, B. C., Canada

Dear Mr. Rycharski:

Your letter of April 26 addressed to the President of our Company has been referred to me for attention and reply.

We are very thankful to you for your very keen interest in obtaining one of our Super Trans-Oceanic short wave portables, the type of a set which we have every reason to believe, as you have indicated, to be one that is ideally suited for usage in that part of Canada. Our only regret is that, apparently, the two letters you mention having written to us before have not been attended to, a situation that has upset us quite a bit inasmuch as we make it a point to answer, as promptly as we can, all letters we receive from our friends and customers abroad, including those that may come from all parts of Canada, which have been averaging better than 25 daily. A check of our files and records does not show that we ever got your first two letters, but it is just possible that they have been lost in the mails or mislaid in the routing of your letters for proper attention from one department to another. At any rate, we want to assure you that we are very much interested in receiving letters from our friends and customers like your goodself and we also value very highly your patronage of Zenith products.

I believe you should know that Zenith radios and television sets are not in the Canadian market either from local manufacturing or based on importing our American manufactured Zenith sets. The reason for this situation is the fact that we are not licensed by the Canadian Radio Patents Pool until such time as we have set up local manufacturing. As we understand it, this Pool, or Protective Association, in Canada, does not license anyone based primarily on the imports of American radios and television sets, rather they have to invest in the establishment of a local plant in Canada to take care of that market. For this reason, any of our friends and customers in Canada who wish to buy Zenith sets, like the Trans-Oceanic, for instance, will have to obtain them either directly from us or from our dealer outlets in the United States.

We shall be glad to sell you our Trans-Oceanic Model H500. The list price, f.o.b. factory is $124.25, plus $6.25 for the Z-985 battery pack. The set is available in stock for immediate shipment, and, if interested, will you please send in your order at your earliest opportunity with covering U. S. dollar remittance.

Incidentally, in order that you might know the actual cost of this set to you at destination, we are outlining hereunder how the Canadian Customs charges are computed based on values for duty of $124 (Canadian funds) for the radio (Trans-Oceanic) and $6.00 (Canadian funds) for the battery:

Radio	
$124 @ 20% (Duty)	$24.80
Duty paid value $124 plus $24.80—148.80 (value plus duty) @ 10% sales tax	14.88
Excise Tax 15% of $148.80	22.32
Total	$62.00

Battery	
$6.00 @ 22½%	$ 1.35
Duty paid value $6 plus $1.35 equals $7.35 (value plus duty) at 10% sales tax	.74
Total	$ 2.09

Again, please accept our apologies for not attending to your request sooner, and if we can be of further service to you, please do not hesitate to call on us.

Yours very truly,

J. A. Miguel, Jr./b
Air-Mail
Encl.

From the desk of E. F. McDonald, Jr.

May 2, 1953.

Mr. Miguel—

Note this letter from Canada. I wish you would answer this fellow in detail and give him our booklet on theTrans-oceanic.

It's a shame that people like this write to us three times before they can get an answer. All letters like this should be answered. I assume the two previous ones never reached you.

He should be told what it would cost him in Canada; if it has to go through customs duty; etc. But he should also be told that many Canadians bring them back with them on their exemption when they come to this country, etc. etc.

McDonald.

K

Mark Rycharski, Camp 8, Kemano, B. C., Canada.

April 26th, 1953.

To the President of the Zenith Radio Corporation
Chicago, Illinois
U. S. A.

Dear Mr. President,

Please would you kindly advice me to whom I have to write my letter, or better if you would like to be so helpful and transfer this letter to the proper Dept. in your corporation, or to the good and respectable dealer.

I would like very much to purchase this beautiful "Zenith Super Trans-Oceanic Radio", portable, Model 1953—and I saved the money for it.

I am one of the New Canadians, you know, they all in the world call us not very nice DP (Delayed Pilgrims? or what?),—and I am working with the big construction hydro electric project in Kemano, B. C. (Morrison & Knudsen Co. of Canada Ltd.).

Leaving here far away from the outside world, in rocky mountains—radio set is the only pleasure and entertainment I can afford and wish very much to own.

I could buy the radio from Vancouver (Eatons mailing catalogue) by COD, but I can see only some poor looking sets and I have no confidence that this will be any good radio over here as the reception is rather hard.

Unfortunately I don't know the address of any dealer here in Canada or in the States, who is selling "Zeniths".

Seeing very often the advertisement of your corporation advertising Zenith Radio in the Saturday Evening Post —I wrote twice already (address: Zenith Radio Corp., Chicago, Ill., U. S. A.) asking kindly for information concerning purchase of Zenith set, that mean what is the price and how much money in USA currency I have to sent (in Bank Money Order) including customs duty (price duty paid).

I want to have this Radio and no other, and now I am mad, because I don't know what to do else, beside I did.

There was no answer for my 2 letters, which I tried to write very kindly and politely. I know my English is not very good, but I am trying to do my best in learning, and I hope that you Mr. President will agree with me that if someone was ignoring my request just for this reason—is certainly not a gentleman.

I ned the good Radio also for learning and improving my English—as there are special lessons broadcast from Victoria and Seattle, I think.

I am very sorry, Mr. President, to bother you with such thing, because I know you have some more important things to deal with, but as you can see this is the only my hope, that maybe with your kind help, someone will answer me to my question.

I wish you a very good health and good luck with everything—family and business.

Yours very sincerely,
Mark Rycharski.

May 14, 1953.

Mr. Sid Crysler
Major Appliance Division
Seattle Hardware Company
501 First Avenue South
Seattle 14, Washington

Dear Mr. Crysler:

Len Truesdell has referred to me your letter of April 28 regarding the sale of Zenith sets in Canada. First, please excuse the delay in answering your letter as I have been out of town for several days.

So you may have a full understanding of Zenith's position in the Canadian market, I would like to acquaint you with certain facts and developments which have a definite bearing on the present situation in Canada whereby both Zenith radios and television sets have not been marketed on an official basis for many years in that country.

Zenith has not been an active participant in the Canadian market for almost twenty years now, due to the fact that our sets have not been licensed by the Canadian Radio Patents Pool, a more or less protective association that has been established in Canada way back in 1925 to look after the patent interests of a few of our principal make competitors, and to make it extremely difficult, if not impossible, for others who are not in this circle to enter the Canadian market and compete effectively with them. This is not a Canadian Government agency, but under Canadian Patent Laws its position appears to be strong, and their threats of Civil law suits for damages, infringements, etc. against local Canadian companies and American companies established in Canada have invariably scared away many from distributing or reselling radio and television sets that are not licensed by the Pool. One feature of the licensing policy of the Pool is the fact that they do not license anyone unless the licensee has already, or will have, local manufacturing facilities in Canada. In other words, they do not want to license people like Zenith for instance, who at present do not have local facilities to manufacture Zenith sets in Canada and whose business in Canada will depend almost entirely on the importation of the American maufactured Zenith radios and television sets. Actually this matter of official entry of Zenith in the Canadian market is now under consideration by management and we are expecting a resolution on it sometime in the next 60 to 90-days.

In the circumstances, we have not shipped or sold directly our sets for export to and resale in Canada as we do not wish to be involved in unnecssary legal entanglements and law suits, particulerly in view of the fact that we have assets in Canada as represented by our Canadian Hearing Aid Subsidiary in Windsor, Ontario. We know that very many of our Zenith sets have found their way into Canada some way or other through returning Canadian residents who have brought back with them Zenith sets and through the traffic enjoyed by our distributors and dealers along the border from coast to coast.

To the best of our knowledge this matter of power standards in Canada does not have the effect of a government restriction as the Canadian Government at present does not have any import control, or restrictions, or prohibition on the importation of radio and television sets into Canada, provided that the payment of duties, as well as sales and excise taxes are taken care of and that the establishment of a fair market value is established to the satisfaction of the customers and excise authorities.

While Canada, or any part thereof, is outside your territory, we cannot advise you not to sell our sets for export to and reslae in Canada, particularly since we have, as yet, no distributorship or sales arrangements for the overall Canadian market. On the other hand, there is the likelihood that the people you are selling to in Canada, as well as your good selves, would be involved in a civil damage law suit initiated by the Pool, with the possibility that Zenith Radio Corporation may be, too, dragged into this matter.

We fully appreciate and understand that every day which goes by we are losing out on a lot of business because of the fact that we are not appopriately set up to participate in the exploitation of the rapidly increasing Canadian radio and television market. However, this is a problem which, as already indicated, is now being tackled at management level. In the meantime, we trust you will have this background in mind in the event you are faced with problems relating either to the actual sale or possibility of sale of our sets in the Canadian market.

With all good wishes,

Very truly yours,

J. A. Miguel, Jr./b

Air-Mail

(Letterhead of Seattle Hardware Company, Seattle 14, Washington.)

April 28, 1963.

Mr. L. C. Truesdell
Zenith Radio Corporation
6001 W. Dickens Avenue
Chicago 39, Illinois

Dear Len:

We have been shipping a few Zenith Trans-Oceanics to dealers in British Columbia. There is quite a market developing for this set in Canada. One of the dealers who is an importer, was in to see me today and wanted to have us get this Zenith Radio approved by The Canadian Standards Association, so that he could advertise and sell it openly in Canada. At present it is more or less an under the counter deal.

I explained to him that through some agreement Zenith had always stayed out of Canada and would not make any particular atempt to sell sets there. He then offered to get this approval for himself as an importer. Of course, if he gets it for himself it will be available to anybody else in British Columbia, but in order to get this he needs a copy of the Underwriters Laboratory Approval of the Trais-Oceanic. He states that if he could get this laboratory report then he would have no difficulty in getting the approval of the Canadian Standards Association and believes he could move two or three hundred sets in British Columbia in the next few months.

Since neither we, as the distributor, nor the factory would be involved in any way in making this application, I am passing it on to you and if it looks all right would appreciate it if you would send me a copy of the Underwriters Laboratory Approval which I could forward to him.

We have had a lot of dealers down here trying to figure out some way to get television sets into Canada, but they are stopped at the border because of this same lack of approval and whether your agreement with Marconi for Canada covers television as well as radio, I am not in a position to say. It might be worth looking into because we sure could do a slug of business up there if we could ship to Canada.

With kindest personal regards, I am

Yours very truly,

Seattle Hardware Company,
By Sid Crysler,
Major Appliance Division.

S. A. Crysler/eec

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1362.

June 9, 1953

Pacific Electric
P. O. Box 1399
Prince Rupert, B. C., Canada.

Gentlemen:

Please be advised that we are unable to sell our merchandise for distribution in Canada due to the Canadian Patent Pool restrictions of our products in your respective country and even if they were purchased locally they would have to be taken out of the country one at a time by individuals and each one bearing with them a retail price sales slip at the price which is recorded with Canadian customs.

We are looking forward to establishing a distributorship in Canada some time in the not to distant future and at that time we will be happy to notify you so that you may contact our distributor for further information.

Thanking you very much, we are

Yours very truly,

Raul Gonzalez,
International Division.

RG:cb

(Letterhead of Pacific Electric, Prince Rupert, B. C.)

May 6-53

Zenith Radio Corp.
Chicago 39

Gentlemen:

We would like very much to import your Trans-Oceanic radios for the retail market.

Would you please advise who your distributors are in Washington State and in Alaska.

Yours very truly,

John H. Roach.

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1238.

June 19, 1953

Mr. Eli Brown, President
National Television
5347 Park Avenue
Montreal, Quebec
Canada

Dear Mr. Brown:

We acknowledge with thanks receipt of your letters of May 26 and June 6, enquiring about the possibility of an arrangement for the distribution of our products.

Unfortunately, there has been no change in our own situation with respect to the manufacturing and/or distribution of our radio and television sets in the Canadian market. This matter is high in the agenda for consideration my our Management and Board of Directors. At this writing, we do not know how we are going to enter into a Canadian market and lacking a decision on the matter from our Management and Directors we are, of course, not in a position to make any commitments or even to negotiate for the eventual distribution of our sets for Canada or any part thereof.

Furthermore, because we are not licensed by the Canadian Radio Patents Pool, exports of our Zenith radios and television sets to Canada has been precluded. The Pool will not license anyone based on the sales development of the American made sets; rather they would do so only if the licensee will have manufacturing facilities in Canada, a matter which, as we already indicated, is now under serious consideration by our management. You will hear from us as soon as our management and directors have resolved favorably in this situation.

In the meantime, please accept our sincere thanks for the interest which you have evinced, and for taking the trouble of writing to us. With all good wishes,

Sincerely,

J. A. Miguel, Jr./b
Air-Mail

(Letterhead of National Television Nationale,
Montreal, Que.)

June 6, 1953

Zenith Radio Corporation
6001 Dickens Avenue
Chicago 39, Ill.
U. S. A.

Attention: Mr. John McGill.

Gentlemen:

Further to our letter of May 23, 1953, we would like to point out that if there is any possibility of getting together on a proposition such as the one set forth, we would appreciate hearing from you at a very early date. If an equitable working arrangement can be arrived at, it would be advisable to get started immediately so that full advantage can be taken of the Fall season coming up.

Coincidentally, Mr. Louis Naimer of Union Electric Supply Co. Ltd., with whom your firm has had some preliminary discussion and shown an interest in working out a Canadian distributor deal, is associated with the writer. The reason that the Union Electric were not able to complete such a set up is that, as you no doubt know, radio and/or television receivers must be assembled in Canada by a Canadian Radio Patent Ltd. licensee, which we are.

Yours very truly,
National Television,
Eli Brown,
President.

EB/TL

(Letterhead of National Television Nationale,
Montreal, Que.)

Air Mail May 23, 1953.

Mr. John McGill
Zenith Radio Corporation
6001 Dickens Avenue
Chicago 39, Ill.
U. S. A.

Dear Sir:

This letter will serve to introduce us to you as Canadian manufacturers and distributors of television sets.

We have, hitherto, been importing chassis, components, etc. and assembling television sets of unknown names. We are licensed manufacturers and enjoy a large and pleasant relationship with television outlets.

We have not seen very many of your products on the Canadian market. We are anxious to make arrangements with a name brand manufacturer with a set whose quality is good and price competitive. If you are not already committed to a Canadian deal involving the assembly and distribution of your products, we would very much appreciate an opportunity of presenting to you, what we consider to be, advantages in working with us.

While we are mainly interested in television, we would of course be prepared to assemble and/or import and distribute your other lines as well.

Looking forward to a reply at your earliest convenience.

Yours very truly,

National Television
Eli Brown,
President.

EB/TL

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1364.

July 1, 1953.

Arkley, Payne & Watson Ltd.
1652 W. 5th Avenue
Vancouver 9, B. C.
Canada

Attention: Mr. George T. Watson

Dear Mr. Watson:

It is indeed a pleasure to hear from you again and you may rest assured that your letters are no bother whatsoever. They are considered very informative and of great value to us.

We have not as yet heard anything in reference to your comments about information released by the Canadian Radio Patents Pool in reference to TV in Canada. However, we will look into the matter and, if you on the other hand, can find out any further information, we would appreciate very much your relaying the same to us at your convenience.

We have not as yet encountered too much difficulty in obtaining materials for cabinets but we will keep in mind that they are available in Canada should we at any time decide to manufacture in Canada.

We thank you very much for your most valuable information and continued interest in our products. With kindest personal regards, we are

Yours very truly,

Raul Gonzalez
International Division

RG:GM

(Letterhead of Arkley, Payne & Watson Ltd.,
Vancouver 9, B.C.)

June 26, 1953.

Zenith Radio Corporation,
International Division,
6001 Dickens Ave.,
Chicago 39, U.S.A.

Attention Mr. Raul Gonzalez

Dear Raul:—

Who bothers you more than I do? I have heard that the radio pool have just about made a decision re TV in Canada, at least this is a rumor I received from the East today, and as it is just over a month since I last heard from you, I am wondering if there are any new developments with respect to Zenith for British Columbia.

Incidentally, if cabinets are any problem, arrangements could be made to have cabinets made right here in B.C., as industry is now set up here for that purpose. While there is not a tremendous amount of activity at the moment on TV, within the next 6 weeks the demand here should be terrific and we are certainly hoping that Zenith and ourselves will be in a position, early this Fall, to enjoy some of the volume which takes place.

If you have a moment I would appreciate very much indeed a short note from you.

With best personal regards,

Yours very truly,

Arkley, Payne & Watson Ltd.,
George
Geo. T. Watson

GTW/ob

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1368.

July 2, 1953.

Harris Music Shop
278 Main Street
Penticton, B. C.
Canada

Gentlemen:

We are not at all surprised that you do not know any Zenith distributors in any part of Canada since we do not have any distributorships at all in Canada due to the Canadian Radio Patent Pool restricting radio and television manufacturers from selling in Canada unless they have a manufacturing concern locally.

There are no distributors in the United States from whom you could purchase our merchandise for export unless you would cross the border, buy it, and carry it back yourself. Other than that, any purchases desired would have to be made direct from this office and, unfortunately, we are in no position to accept orders for merchandise for distribution.

Regretting our inability to serve you at this time but trusting that we can be of service to you at an early future date, we thank you very much.

Yours very truly,

Raul Gonzales
International Division

RG/jc

(Letterhead of Harris Music Shop, Penticton, British Columbia, Canada.)

June 20th, 1953.

Zenith Radio Corp.
Chicago 39, Ill.
U. S. A.

Dear Sirs,

For some time we have been interested in your radios and record players.

We do not know of a Zenith distributor here in Western Canada, but as we are near to Spokane and Seattle, we would like to know if any arrangements could be made.

In any case we would appreciate some literature and trade prices. There is no Television in this area.

Respectfully yours,

Harris Music Shop
Wm. J. Harris.

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1214.

August 31, 1953

Mr. C. E. Crepeau
28 Jogues Street
Sorel, P. Q., Canada

Dear Sir:

Our New Jersey office has sent us a copy of their letter to you and also your letter in regard to importing our products into Canada.

At the present time it is impossible to give any quotations on our products for export to Canada because we are restricted by the Canadian Radio Patent Pool, but we hope in the very near future to be in a position to give you better news.

Thanking you for the interest you have shown in our products, we are

Yours very truly,

Raul Gonzalez
International Division.

RG/jc

Air-Mail

75 Austin Street
August 26th, 1953.

Mr. C. E. Crepeau,
28 Jogues St.,
Sorel, P. Q.,
Canada.

Dear Sir:

Thank you for your letter of August 19th inquiring about the possibility of purchasing Zenith products from us. Unfortunately, we are not the distributors for your particular area, since we cover a portion of New Jersey and Staten Island only.

Under the circumstances, we are forwarding your request to our Chicago office for action.

Very truly yours,

Zenith Radio Corp. of New York
V. M. Aitken,
Office Manager,
New Jersey Division.

VMA:am

cc: Export Department—Chicago—For your attention

Sorel, August 19th, 1953.

Zenith Corporation Of New-York
Newark, N. J.
U. S. A.

Dear Sirs:

Upon inquiry in Chicago, about the possibility of buying your sets in Canada.

I have been told that for the present the Zenith company is not considering manufacturing sets in Canada, and since the Hydro-Quebec has certain specifications, that are not generally met in the states, the importation of sets in great quantities is not feasible.

However, by having each set imported in each customer's name, even though it represents more work, the difficulty can be pushed aside.

With this in view, and considering that your sets could easily be sold here given half a chance in the pricing.

Could you consider favoring me with the same prices that you sell your American dealers, a cash with order arrangement would be considered satisfactory to me.

Hoping that you will consider this offer very seriously, I remain,

Yours truly,

Chas. E. Crépeau.

My address is: C. E. Crépeau
28 Jogues St.
Sorel, P. Q. Canada

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1210.

October 22, 1953.

Mr. F. W. Robinson, President
Robinson Electric, Limited
Kentville, Nova Scotia
Canada

Dear Mr. Robinson:

Thanks for your letter of October 8th.

There has been no change in our situation for Canada since our last letter to you. Our hands are tied in the matter of exporting our radios to Canada as the Patent Pool will not give us a license, based primarily on the importation of the American manufactured Zenith sets. We would like to export our sets to Canada, particularly since there is no restriction on the part of the Canadian Government to ban our American made sets for resale in Canada. The only problem is that with the Pool and we have found, so far, that Canadian firms are reluctant to handle the distribution and resale of our American made radios for fear of repercussions from the Canadian Patent Pool. Actually, if you want to buy sets from us and are willing to undertake the risk of possible difficulties with the Pool because we are not licensed, we see no reason why we cannot sell you our radios, since, to the best of our knowledge, there is nothing under present Canadian Customs Regulations banning the entry of American Zenith radios into Canada.

The matter of establishing manufacturing facilities for Zenith sets in Canada continues under advisement. We cannot foretell at this time whether or not our management will decide favorably on our going into the Canadian market by establishing local manufacturing facilities or making an arrangement with someone already established there to make the sets for us.

That is the way the situation is at present insofar as Canada is concerned. We trust you understand our position.

Very truly yours,

J. A. Miguel, Jr./b

(Letterhead of Robinson Electric, Limited,
Kentville, Nova Scotia.)

October 8, 1953.

Mr. John A. Miguel, Jr.,
Manager, International Division,
Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, U. S. A.

Dear Mr. Miguel:

In reference to your letter of April 28th in which you explained why you were not at present exporting Zenith Radio to Canada and which also stated that your management was considering such a step.

I am wondering whether any progress has been made to date along these lines and would appreciate hearing from you what the situation is at present.

Again, may I thank you for any and all past courtesies shown to me, both by yourself and other representatives of your Company.

Yours very sincerely,
Robinson Electric Limited,
F. W. Robinson,
President.

FR/g

December 22, 1953.

P. B. Hart Agency
723 Dominion Square Building
Montreal 2, Canada

Gentlemen:

We acknowledge with thanks receipt of your letter dated December 8, enquiring about the possibility of a representation or some other arrangement with respect to Zenith radio and television sets in Canada.

As you have surmised, we do not have any representation on Zenith radio and TV products in Canada for the reason that without a license from the Canadian Radio Patents Pool no one in Canada has been interested in distributing or handling our sets for resale. The Pool, as you know, from its policy of long standing, does not license anyone unless they have set up local manufacturing facilities. In other words, they are not interested in a license agreement based principally on the importation into Canada of the American made radio and TV sets.

We are desirous to sell our sets, particularly the Trans-Oceanic portable, for export to and resale in Canada, provided we can find someone in Canada who is in a position to merchandise our sets, knowing beforehand that in doing so he runs the risk of possible legal entanglement with the Pool. There is no problem in supporting a plan of about [illegible]50-Trans-Oceanics monthly, but the problem here, as pointed out above, is the problem with the Pool.

We do not know at this writing when Zenith will be established in Canada manufacturing wise, as this matter is still under advisement by our management. In the meantime, the best we can do is to sell our American sets to anyone in Canada who would be interested in importing them and undertaking the risk of a civil law suit with the Pool. You, of course, realize that in the interim we can sell our sets for export to Canada free of any responsibility or obligation with respect to possible legal entanglement with the Radio Patents Pool.

Very truly yours,

J. A. Miguel, Jr./b

Air-Mail

(Letterhead of P. B. Hart, Manufacturers' Agent,
723 Dominion Square Building, Montreal 2, Canada.)

December 8th 1953.

Zenith Radio Corporation,
Chicago 39, Ill.

Dear Sirs:— Attention Sales Manager.

We have been wondering if you would be interested in being represented in Canada on commission basis or such other basis as may be made, for the sale of your radio and television apparatus.

We do not think that you have any representation in this country for these products, hence this letter. We have been as you can see by this letterhead in the textile raw material business for the past 35 years but we are thinking of getting out of it, in the not too distant future.

A couple of years ago the writer purchased one of your Trans-Oceanic portables in New York which has given every satisfaction and which I consider the best portable made.

In case you would be interested in this matter and to save time, we would like to know if it would be possible for you in 1954, to handle for example, say 250 portables monthly for Canada, as per your apparatus outlined on page 101 of the December issue of Holiday.

If you give us this information we would like to know the approximate FOB wholesale price, your shipping point, which we presume is Chicago so we could calculate at what this apparatus would have to sell retail in Canada. In Canada, price fixing, is not allowed by law, but the Manufacturer or Distributor, can suggest a retail price, such as you have done in the advertisement in question, in Holiday, for the United States market.

In conclusion might state that our record is clear, we have built our business to one of the largest of its kind in Canada but the textiles trades the last couple of years has not been satisfactory, hence we are considering getting into another business.

We would ask you to please treat this letter as confidential and will be pleased to answer any questions you may care to put to us.

Yours very truly,

P. B. Hart

PBH/I

(Letterhead of Industrial Distributors Co.,
Montreal 3, Canada.)

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1207.

February 1st, 1954

Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, Ill.

Attention: Mr. J. A. Miguel, Jr.
Manager, International Division

Dear Mr. Miguel,

We have never acknowledged your letter of December 18th, regarding the conditions on which you were willing to ship Zenith television sets into Canada.

We agree with you that the method proposed was not an ideal one, but it was the only suggestion we could come up with at the time.

However, the whole matter has now been solved by the fact that we have taken on the distributorship for the Province of Quebec for Emerson Radio and Television sets. These are manufactured in Canada by the Canadian Marconi Company Limited, and the former distributor, Canadian Fairbanks Morse Co., ceased to distribute Emerson on December 31st 1953.

We appreciate your efforts to co-operate in the matter of bringing television sets into Canada, and regret that there was no way in which we could get together on it.

Yours very truly,

Industrial Distributors Co.
Trevor Holland
Vice-President

TH/CV

December 18, 1953

Industrial Distributors Co.
1505 St. James St. W.
Montreal 3, Canada

Att: Mr. Trevor Holland, Vice President

Dear Mr. Holland:

We have discussed with our management executives and our lawyers the subject brought up in your letter of December 1st.

Frankly, we are not attracted to the idea as it involves a more or less underhand way of getting our products into Canada through a third party. However, we would be willing to sell and ship to you our complete sets for you to do whatever would be necessary to meet the Hydro standards prior to resale in Montreal and with the full understanding that in importing and reselling these sets you may run into some legal difficulties with the Canadian Radio Patents Pool. We, of course, can sell you our sets free of all obligations and/or responsibilities in connection with any legal entanglement or difficulty that you may be faced with.

If you are interested in buying Zenith sets under the condition outlined above, we shall be glad to send you complete literature on our current line and quote you accordingly.

Very truly yours,

J. A. Miguel, Jr./b

Air-Mail

(From the desk of—H. C. Bonfig)

December 15, 1953

Mr. Miguel:

copy—Messrs. Robertson
Kaplan
Wright

I have read over the attached from Industrial Distributors Co., Montreal.

Frankly I, personally, would not favor any such idea as outlined in Mr. Holland's letter of December 1st. If I remember correctly, when we were up in Canada the Davis Electronics Corp. was mentioned as the one gyp outfit in Canada.

Furthermore, it would seem to me that for the privilege of picking up a few hundred sets in Canada, we could well jeopardize our whole position in this market. Even though Admiral have injected some "schlock" ideas into the Canadian market, Canada still remains an essentially conservative market where most people have their feet pretty well planted on the ground and conduct their business in a pretty sensible manner.

I am afraid of any of these trick alliances which might present themselves as a means of entering this market. It is my judgment we should enter the market Right or not at all. By Right, I do not mean with our own plant, or any great expense, but I do mean on a basis which will attract the kind of highgrade dealer in Canada that will put us in the same kind of competitive position that we enjoy in the U. S.

H. C. B.

HCB:bk

Enc.

(Letterhead of Industrial Distributors Co.,
Montreal 3, Canada.)

December 1st, 1953.

Zenith Radio Corporation,
Chicago, Ill.

Attention: Mr. McGill, Sales Mgr. Export.

Dear Mr. McGill,

After speaking to you on the telephone on Tuesday November 24th, we did some further investigating with regard to the possibility of bringing Zenith Television sets inot Canada, legally.

On Friday November 27th, I spoke to Mr. Peirels, in your absence, and told him what further progress we had made. He informed me that you would be back in Chicago around the 6th or 7th of December, and suggested that I write you giving you the whole story, so that you could consider the matter and let us have a reply as soon as possible.

We have had preliminary discussions with Mr. G. O. Davis, President of Davis Electronic Manufacturing Corporation Limited. This company is a member in good standing of Canadian Radio Patents Limited, and at present they are supposedly manufacturing Brunswick television chassis in Canada, and selling them under stencil brand names, such as Coronet. Davis Electronic Manufacturing Corporation is actually only doing a partial assembly job in Canada, but they are apparently able to keep in the clear with Canadian Radio Patents Limited, as long as they pay the 3½% royalty which is required on each set. They have the regulation $1000.00 deposit with Canadian Radio Patents Limited.

Mr. Davis' proposition is that you should ship to him, for our account, television cabinets and chassis in separate packing, shipping the picture tube, but omitting the receiving tubes. He would then install the chassis in the cabinets in his little plant at Lachute, Quebec, install Canadian receiving tubes made by the Canadian Marconi Company Limited, put on the official sticker of the Quebec Hydro Electric Commission, and turn the completed sets over to us. He would pay the 3½% royalty on each set to Canadian Radio Patents Limited, and would be recorded with them as the manufacturer of Zenith television sets in the Province of Quebec.

As far as Canadian Radio Patents Limited is concerned, he would be manufacturing, and using us as a distributor. Actually, of course, we would be buying from you, for shipment to us via Davis Electronics Manufacturing Corporation Limited.

We are attaching a recent announcement we sent out to our dealers in the Province of Quebec, which will give you a summary of the products we handle. As you can see, they are all prestige products, and we are interested in trying out this market with a television set having a name which will rank with the names of the products we already distribute.

Our listing in the current issue of Dun & Bradstreet is D + 2, and for references we would refer you to the Lewyt Corporation of Brooklyn, N. Y., Apex Rotarex Corporation of Cleveland, Ohio, The Perfection Stove Company of Cleevland, Ohio and Servell International, Pine Street, New York.

If the proopsition set forth above is of any interest to you, we were thinking in terms of bringing in 150 or 200 sets in order to try out the market as far as our present dealers in the larger Quebec centers are concerned. A separate English language television station is going into operation in Montreal shortly, which will give us two outlets here, and Burlington, Vermont and Plattsburg, N. Y. both expect to build stations in the near future, which will be beamed primarily at Montreal. Quebec City, where we have several very good accounts, is also expecting to have a television station within the next two months. You can see, therefore, that even in spite of the terrific number of brands of television which are already on the Quebec market, that the television picture is only beginning to open up here.

If you intend going into this matter further, we will of course have to have an idea of what it would cost us to have you ship television sets under the conditions referred to above. The 21 inch screen is the most popular here at the moment, although there is still quite a bit of selling being done with the 17 inch screen.

We would appreciate hearing from you.

Yours very truly,
Industrial Distributors Co.,
Trevor Holland,
Vice-President.

TH/CV
Encl.

(Letterhead of Industrial Distributors Co., Montreal 3, Canada.)

October 19, 1963.

Announcement.

To All Our Dealers:

On October 16th we discontinued the distribution of Bendix Appliances, which will henceforth be handled by Moffats Limited, Montreal.

On the same day, we are proud to announce that we were appointed as exclusive distributors throughout the Province of Quebec of the famous "Apex" line of Automatic

Washers and Dryers, Wringer-type Washers, and Automatic Dishwashers and Garbage Disposal Units. This outstanding line of laundry equipment will be well remembered by both dealers and members of the public to whom it gave such satisfaction in the past, and we are looking forward to showing you the exciting new Apex "Wash-A-Matic" models that we are now introducing into the Quebec market.

We are also proud to announce at this time that we were recently appointed as exclusive Quebec Distributors for the well-known line of "Perfection" Gas and Electric Ranges, Gas and Oil Space Heaters, and Portable Room Heaters. Perfection's exclusive features and superior construction and finish have made their products leaders in the field for many years, and their name is accepted everywhere as representing a line of quality merchandise, manufactured for that section of the public which insists on buying the best, at competitive prices.

In addition to the two above lines of appliances, we are still of course exclusive Quebec Distributors for the world-famous "Servel" Refrigerators, Home Freezers and Air Conditioners; and for "Lewyt" Cleaners, the only vacuum cleaner in America that has been officially endorsed by the National Institute of Rug Cleaners.

In closing, may we say that we are extremely grateful for the business which you have been good enough to place with us in the past, and we hope that with these four leading lines of household appliances, we can continue to be of service to you in the future.

Yours very truly,

Industrial Distributors Co.

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1243.

February 2, 1954

Amana of B. C.
3158 West Broadway
Vancouver 8, B. C.

Gentlemen:

In reply to your letter of January 25, we are sorry to advise that we have not reached any definite conclusion regarding the establishment of a Canadian set up to manufacture and distribute our radios and television sets in Canada. The various possibilities are still being studied and checked by our management, but, at this writing, it is impossible for us to indicate what the outcome is going to be.

In the meantime, we would like very much to sell our American made radios and TV sets for export to and resale in Canada, but furtherance of this possibility has been hampered by the Canadian Radio Patents Pool, who has threatened law suits against Canadian firms who would handle and resale our sets, as Zenith is not licensed by the Pool. This combine does not license on the basis of direct importations, rather they would do so only when the licensee has a local manufacturing set up in Canada. This is a situation which we find it very difficult to understand, and we often wonder why the trade tolerates it, when the Canadian Government itself imposes no prohibition or restrictions on the importation of American radios and television sets. If the Canadian radio and television industry needs protection for its survival, its recourse is to the Government, not to a so-called patent combine from which only five or six in the industry derive direct financial benefits.

Very truly yours,

J. A. Miguel, Jr./b
Air Mail

(Letterhead of Amana of B. C., Vancouver 8, B. C.)

January 25th, 1954.

Zenith Radio Corp.
Chicago 39, Illinois.

Attention Export Manager.

Dear Sir:

On November 13th last I contacted you by telephone during my brief visit to Chicago. At that time you advised me to contact you by letter after the first of the year.

As I mentioned previously, we are distributors for Amana Refrigeration Inc. and are very desirous of taking on another line. Your line appealed to us very much, and we feel our firm could do a job for you in this province.

I would like very much to hear from you and to know if anything further has been done regarding your line being merchandised in Canada.

Yours truly,

E. S. Freedman,
Amana of B. C.

HF/b.

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1247.

Legislative Assembly
Province of Quebec.
Quebec City, February 24th, 1954.

The Sales Manager,
Zenith Radio Corporation,
6001 Dickens Ave.,
Chicago, Ill., U. S. A.

Dear Sir:

I wish to obtain, as soon as possible from a Canadian Manufacturer of radio and television receivers licensed by Canadian Radio Patents Limited, a direct agency as wholesale distributor for Quebec City and district, with the intention of placing agents in towns and places where this manufacturer is not yet represented. In addition I could secure repairs and service as warranted on the receivers in question.

My son, who is to be a partner in the undertaking, speaks both languages as I do, and is now employed by the Bell Telephone Company of Canada. We had followed electronics and radio-television courses at the Quebec Technical School and at present are following an improvement course called: "Radio and Television Servicing," from the National Radio Institute of Washington, D. C., U. S. A.

You will find enclosed copies of letter and list of manufacturers licensed by Canadian Radio Patents Limited containing all information in respect of their requirements. If you are interested to obtain a license under the Canadian Radio Patent Act soon, I would be grateful to be informed if you are interested in being represented in our district, because Quebec City is to have a television broadcasting

Station before the 1st of May and excellent opportunities are to be provided by the organization of Television in our region, where demand will be considerable for the sale of receiving sets.

I own myself one of your Zenith TV receivers, model No. 192230E, serial No. R-283101 since few months and though the nearest broadcasting Station is in Montreal at a distince of 180 miles, I am glad to let you know I have a very good reception.

If you are interested in the proposal, I could furnish the best references before requesting the privilege of being your representative. I hope that my request will receive full consideration and remain,

Yours truly,
Roch Potvin.

Roch Potvin,
7 St-Cyrille Street,
Quebec City,
Que, Canada.

True Copy
Canadian Radio Patents Limited
159 Bay Street
Toronto

January 21, 1954.

Mr. Roch Potvin,
7 St-Cyrille Street,
Quebec City, Quebec.

Dear Mr. Potvin:

We have your letter of January 19th with reference to importation of radio and television receivers from the United States.

For your general information I am enclosing a copy of a Notice with respect to the licensing policy of Canadian Radio Patents Limited that we run at regular intervals in the various Canadian radio and television trade publications.

Canadian Radio Patents Limited is a central patent licensing agency administering the Canadian patents covering inventions in the field of radio and television receivers originating with such companies as RCA, Hazeltine, General Electric, Westinghouse, Norther Electric, Marconi, Rogers and Philips. Our Company was established in 1927 and since that time has never refused a license to anyone wishing to operate under these Canadian patents in accordance with the requirements of Canadian Patent Act. However, the Canadian Patent Act has certain requirements with respect to manufacture of patented articles in this country and one of the requirements of a license is therefore to manufacture the receivers in Canada rather than import them from abroad.

From time to time over the past fifteen years we have received various inquiries with respect to the requirements of Canadian Patent Act and the licensing policy of Canadian Radio Patents Limited from Zenith Radio Corporation and we believe that they are fully aware of the above requirements.

If either you or Zenith Corporation is interested in a license under the patents owned or administered by Canadian Radio Patents Limited to manufacture radio and television receivers in Canada in accordance with the requirements of the Canadian Patent Act under which all other companies are operating (we have granted sixty licenses since 1945) such license can be obtained on the same terms and conditions as our other royalty paying licensees but a license cannot be granted for importation and if unlicensed receivers are offered for sale in this country we will have no alternative but to protect our rights and those of our licensees by action for patent infringement.

Yours very truly,

S. D. Brownlee,

SDB/ml *Secretary-Treasurer.*

Notice

To Importers, Vendors or Users of Radio and Television Receivers.

We wish to bring to your attention that Canadian Radio Patents Limited is a central patent licensing agency administering various important Canadian patents of invention relating to radio and television receivers.

While under the provisions of Section 45 of the Canadian Patent Act, the owner of a patent and his legal representatives have the "exclusive right, privilege and liberty of making, constructing, using and vending to others to be used" the patented invention, Canadian Radio Patents Limited, however, in accordance with the requirements of Section 65 and 66 of the Patent Act, has licensed the following Canadian companies for the manufacture and sale in Canada of radio and television receivers embodying said inventions:—

Addison Industries Limited
Canadian Admiral Corporation Limited
Canadian Aviation Electronics Limited
Canadian General Electric Company Limited
Canadian Marconi Company
Canadian Radio Manufacturing Corporation Limited
Canadian Westinghouse Company Limited
Chisholm Industries Limited
Coronet Television Corporation
Cossor (Canada) Limited
Crosley Radio and Television Limited
Davis Electronics Manufacturing Corporation Limited
Deseronto Electronics Limited
Dominion Electrohome Industries Limited
Electrical Products Manufacturing Company Limited
Emerald Television Corporation
Hallicrafters (Canada) Limited, The
Industrial Radioelectric Enterprise Limited
Jewel Radio Company of Canada, The

Manning Radio Limited
Measurement Engineering Limited
Monarch Radio Manufacturing Company
Motorola Canada Ltd.
Northern Electric Company Limited
Philco Corporation of Canada Limited
Provincial Distributing Reg'd
Pye Canada Limited
Radioletric Manufacturing Company
RCA Victor Company Limited
Research Industries Limited
Sparton of Canada Limited
Stark Electronic Instruments Limited
Stewart-Warner Corporation of Canada Limited
Stromberg-Carlson Company Limited
Superb Electric Industries Limited
Thorcraft Limited
Transvision-Television (Canada) Limited
Triton Electronics Limited
United Television Company Limited

The above companies are working the patented inventions in Canada on a commercial scale and are prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms.

Canadian Radio Patents desires to inform importers, vendors, purchasers or users of radio or television receivers which infringe patent rights owned or administered by Canadian Radio Patents Limited and are not manufactured by any of the Canadian companies listed above, that they will be held liable to Canadian Radio Patents Limited on account of said infringement.

Canadian Radio Patents Limited will be glad to furnish upon application full particulars and information in respect to the patents that it owns or administers relating to radio and television receivers.

Canadian Radio Patents Limited,
159 Bay Street,
Toronto, Canada.

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1372.

April 8, 1954

Weco Sales
103-1980 Nelson Street
Vancouver, B. C., Canada

Attn: L. Harold Michalson

Gentlemen:

This is in reply to your letter of April 4th, regarding the representation of Zenith Radio in the British Colombia area in Canada.

We are very sorry, that this is not possible at the present time, due to the Canadian Radio Patents Pool restrictions. Since we have no manufacturing facilities in Canada, we are not licensed by the Canadian Radio Patents Pool for distribution of our products in Canada, and under the circumstances, we are unable to make any offers to you at this time.

You may rest assured, that if and when any changes are made, you will be notified accordingly.

We thank you very much, nevertheless, for the evident interest you have shown in our company.

Yours very truly,

Raul Gonzales,
International Division.

RG/hb

Air-Mail

(Letterhead of Weco Sales, Vancouver, B. C.)

April 4, 1954.

The President,
Zenith Radio Corporation,
Chicago, Ill.

Dear Sir:

I have often wondered why your line is not distributed here in Western Canada, having owned and enjoyed a number of your sets. I would be interested to learn as to whether you would like representation in this area, and if so, would like further particulars.

The potential sale of Radios and Television in Western Canada is tremendous, and at present is shared by only a few of the larger manufacturers.

I will be very pleased to hear from you regarding this matter.

Thanking you, I am,

Yours very truly,

Weco Sales,
LHM/c L. Harold Michalson.

(Written in margin.) (Illegible.)

(Written in margin) Gonzales: Pls. ack. & tell him we **have not been able** to export for resale in Canada owing to **Canadian** Radio Patents Pool. We have no manufacturing **facility** in Canada. That's why we have no distribution in all Canada.

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1373.

July 23, 1954

Lumsden and Company
P. O. Box 403
Ancaster, Ontario
Canada

Gentlemen:

We certainly appreciate the evident interest you have shown in our products, but unfortunately at this time we cannot make any offers to you.

The Canadian Radio Patents Pool has not licensed us for the distribution of our products in Canada because we have no manufacturing facilities locally.

If, and when, we will be in a position to do business you can be certain that we will notify you immediately.

Thank you very much.

Yours very truly,

Raul Gonzalez,
International Division.

RG/sd

Air-Mail

Defendant's Bulk Exhibit No. 179.

(Letterhead of Lumsden and Company, Ancaster, Ontario.)

July 20th, 1954

Zenith,
6001 Dickens Ave.,
Chicago, Ill.
Attention: Sales Manager

Dear Sir:

Our firm wishes to obtain a quality Hi-Fi line for Canadian distribution. Your ad in the July 17th issue of Billboard on your sets is of great interest to us.

We have investigated the Canadian market thoroughly and believe your "Zenith" models should fit in exceptionally well.

If you fee lthat an association with our company could be of benefit to you, we would be pleased to go into further details with you.

The set would have to meet C.S.A. electrical standards and in order to do this and to ascertain freight rates, we would have to import one model as an experiment.

After this has been done and after showing the models to some of our largest accounts, we would purchase stock for distribution across Canada.

The writer will be in Chicago soon, and would therefore appreciate a reply at your earliest convenience.

Sincerely,

Lumsden and Company,
Wm. G. Lumsden,
President.

WGL:ac

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1206.

August 11, 1954

Shelbern Industries (Canada)
1449 St. Alexander Street
Montreal, Quebec
Canada

Att: Mr. Bernard B. Lax, Sales Manager

Gentlemen:

Receipt is acknowledged with thanks of your letter dated August 6 with regard to the possibilities of Zenith products in Canada.

For several months now we have had under serious consideration by our management Zenith's entry into the Canadian market on a more or less permanent basis. As you can well imagine, there are several ways of accomplishing this. All these angles, possibilities and ramifications are being fully explored. So far, no resolution or decision has been reached by our management in this regard, but it is expected something will be decided upon in the very near future to enable Zenith to participate freely in the Canadian market.

We, too, have been very pleasantly surprised with the high regard that Canadians have for Zenith products, despite the fact that we have been out of that market on a direct basis, that is, either through direct exports from the factory or through local assembly or manufacturing. The high regard for Zenith products in Canada perhaps is an indication of the large quantity of Zenith sets, both radio and television that have been brought into Canada by individuals acquiring the sets from our American jobbers and dealers.

As you have surmised, Zenith is not licensed by the Canadian Radio Patents Pool, on account of which the importation of Zenith sets for resale in Canada has been, for all practical purposes, nil. We understand that those who have imported Zenith sets for resale in Canada have been threatened by the Pool and this action has scared many from indulging into such activity. Frankly, to the best of our knowledge, we know of no Canadian Government regulation or restriction that forbids the entry of Zenith or any other American radio into Canada, as long as the legal duties and taxes are paid.

With regard to selling you our plastic cabinets, whether they be of new or old models, we are sorry to state that this is not possible. Our plastic cabinet designs are individual to Zenith and they are almost as exclusive to us as our trade-mark proper. In keeping with the company's policy of long standing we do not wish to release or sell these plastic cabinets for usage with other than Zenith chassis and for sale under a different brand. However, there are a number of American competitors and there are many of them who might be interested in selling you cabinets of their molds. We would suggest that you obtain the full list of American radio manufacturers from the Radio-Electronics-Television Manufacturers Association (RETMA) at Suite 800—Wyatt Building, Washington, D. C., or, better, request RETMA to put you in touch with those manufacturers who might be interested in a deal of that kind.

Concerning your further proposal, we regret that we cannot take advantage of it since this whole situation, as mentioned above, is under consideration by our management and we cannot act or negotiate until we know that it would be within the limits of the directive or policy to be established.

Thanking you for writing to us and for your interest in Zenith, we are

Very truly yours,

J. A. Miguel, Jr./b
Air-Mail

(Letterhead of Shelbern Industries (Canada),
Montreal, Que.)

August 6, 1954.

General Manger
Zenith Radio Corporation
Chicago 39, Illinois
U. S. A.

Dear Sir:

For some time now, I have wondered why your company has not introduced their radios into the Canadian market. It seems a pity that you cannot take advantage of the fact that the Zenith name is firmly established here, and that the potential is vast.

Our company is now manufacturing radios under the brand—Shelbern. The line is unadvertised, have buying appeal in the virtue of its low price. In preparing for the coming season, we find that we have run into difficulty in securing cabinets. As our operation is relatively new, we feel that the initial cost of molds does not warrant us making specially designed cabinets. Consequently, the thought came to mind, that since your products are not available here, perhaps you would sell some cabinets to us, either your new, or your discontinued models. We would be interested in the following: #J615; #J733; #L622. Kindly quote us your best price in 1000 & 2000 lots. We would of course replace your name with ours.

I wish to make a further proposal. We have a plant of highly qualified technicians. Our overhead is extremely small, so that we can assemble radios at a very low cost. We have a wide sales organization of the best radio salesmen in the industry who completely cover all of Canada from coast to coast. We would be very interested in coming to an agreement with your company whereby we could buy complete kits of parts of Zenith radios, assemble them, and then market the completed sets under your brand name. Alternatively, we would be prepared to offer you company stock in return for extended credit on kits purchased.

I am sure you are aware that Canadian Radios Patents Ltd. prohibits the entry of completed radios into Canada for resale. We are licenced by them to assemble radios, and have the facilities to produce upwards of five hundred units per week. Our sets are also approved by Canadian Standards Association, and it would be little trouble to have your designs approved.

We would be most anxious to discuss the aforementioned with you further. Should you not see your way clearly to pursue the above proposals at the present time, we would be greatly indebted to you if you would provide us with the names of several companies in your acquaintance in the United States where we can obtain radios cabinets.

In the hope of hearing from you at your earliest convenience, I remain,

Yours very truly,

Bernard B. Lax,
Sales Manager,
Shelbern Industries (Canada).

BBL:lp

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1205.

October 26, 1954.

J. D. Valliere Limitee
862 St. Catherine Street East
Montreal, Quebec
Canada

Gentlemen:

We acknowledge with thanks receipt of your letter dated October 29, expressing interest in selling our Zenith radios through your credit jewelry store chain and door-to-door systems.

As you know, Zenith radios are not manufactured locally in Canada and such Zenith radios that are available or in use in Canada are of American manufacture and were imported. We have not been able to establish distribution arrangements for all or any portion of Canada because Zenith radios, not being manufactured locally, have not been licensed by the Canadian Radio Patents Pool. Because of that situation, we have found it impossible to find any firm in Canada who would undertake the distribution of Zenith sets for fear of reprisal from the Pool.

We are, of course, willing to sell our radios for export to and resale in Canada, but without any obligation or responsibility on the part of our company with regard to such action as may be undertaken by the Pool, aimed particularly at those who resell our sets in Canada. As there are no Canadian Government regulations prohibiting or restricting the importation of Zenith sets into Canada, there will be, we believe, no problem bringing them in. The only problem is in connection with the Pool, who will, no doubt, threaten you with court action for damages, etc.

In such event, we will, of course, do everything possible in battling their case in court as we, too, are very anxious to know just what alleged patents of theirs are being infringed upon by our circuits and sets. To the best of our knowledge, no action of this kind has been actually taken to court, although many threats of such action have been made to certain firms who imported our sets for resale.

Such is the situation we are faced with in Canada, which, we believe, you should know about. We have been exploring the possiblity of manufacturing our sets in Canada, but, at this writing, it is hard to say how far we are away in the realization of this project.

We are pleased to send you herewith a complete set of descriptive and illustrated specification sheets covering every one of our AC/DC radios, portables, clock radios, combinations and high-fidelity instruments.

If, despite the present difficulty with the Pool, discussed above, you see the possibility of marketing our radios and you are still interested, we shall be glad to furnish you with our confidential export distributor price schedule, upon request.

Thanking you for writing to us, and for your interest in Zenith, we are

Very truly yours,

J. A. Miguel, Jr./b

Air-Mail

(Letterhead of J. D. Valliere Limitee, Montreal,
Que., Canada.)

October 20th, 1954.

Zenith Radio Corporation,
Chicago 39, Illinois.

Attention: Sales Manager

Dear Sir,—

We are interested in your lovely radios as advertised in The Jeweler's Circular. We are the largest distributors of Jewellery and allied lines in French Canada.

We believe that we could use your merchandise in large quantity in both our Credit Jewellery Stores and our door-to-door business.

As you know, it is impossible to sell on credit and door-to-door and buy from jobbers. We have a Jobber Organization by which we buy Remington shavers and typewriters, Ronson lighters, and a whole lot of nationally advertized merchandise.

It has worked out very well without upsetting their selling set-up in our territory, or causing them any trouble. Whatever merchandise you would ship to this Jobbing Company, J. D. Valliere Limited will hold itself responsible creditwise.

If you are interested in a set-up like that in French Canada, we would appreciate receiving your Catalogue, and, we will communicate again with you very shortly.

Very very truly,

J. D. Valliere Limited,
J. L. Mayrand,
Accountant.

Defendant's Bulk Exhibit No. 179.

(Letterhead of J. D. Valliere Limitee, Montreal,
Que., Canada.)

October 28th, 1954.

Mr. J. A. Miguel, Jr.,
c/o Zenith Radio Corporation,
Chicago 39, Illinois,
U. S. A.

Dear Sir,—

We acknowledge receipt of your letter of the 26th instant, which we read with interest. Since we have not sold radios as yet, we have learned a lot about the Canadian Radio Patents Pool.

We have obtained information to the effect that there is nothing to do for the present with that Pool, and we sincerely regret to say that we do not wish to start a fight right now.

If, on the other hand, you see your way through with the Pool, we would very much appreciate being informed of your intentions concerning distribution arrangements in this Country.

We thank you for the illustrated specification sheets received, and until we hear from you again, we remain,

Yours sincerely,

J. D. Valliere Limitee,
J. L. Mayrand,
Accountant.

(Letterhead of W. R. Watkins, Company Limited,
41 Kipling Avenue South, Toronto 18,
Ontario, Canada.)

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1278.

November 29th, 1954.

Zenith Radio Corp.,
6001 West Dickens Ave.,
Chicago, Ill.
Atten. Mr. H. C. Bonfig,
Vice-President & Director of Sales

Dear Mr. Bonfig:

As indicated by me during my telephone conversation with you, I am enclosing a copy of a letter just received from Mr. Gordon Gowling.

If Monday December 6th is satisfactory for you to see me, I will be only too pleased to go to Chicago and it is possible that at that time a number of questions which your Counsel wishes to raise with Mr. Gowling can be answered via long distance phone. I would request Mr. Gowling to be in his office on that date.

Should unforseen circumstances make it impossible for you to keep Monday December 6th, then I will await your call and a suggested date from you for a later meeting.

Other information which I have been able to assemble will be of interest to your Company, I am sure.

Yours very truly,

W. R. Watkins Company Limited.
W. R. Watkins
President.

WRW/W

(Letterhead of Gowling, MacTavish, Osborne & Henderson,
Barristers & Solicitors, Ottawa, Canada.)

November 26, 1954.

W. R. Watkins, Esq.,
W. R. Watkins Company Limited,
41 Kipling Avenue South,
Toronto 18, Ontario.

Dear Reg:

With reference to our recent correspondence and telephone conversations, I feel that before I write direct to Mr. Bonfig of Zenith or arrange to meet with him in Chicago, you should consider whether such a conference will serve any useful purpose. My own position would also have to be clarified because of commitments which I have to other companies concerned with patents in the electronic field. As I explained, I charge Counsel fees at the rate of $500.00 per day in connection with all work referred to me in connection with such matters and I do not wish to accept work on this basis unless I feel that I can accomplish something for you. Both Mr. Brownlee, and I, have already given you considerable general information about Canadian Radio Patents Limited and our patent laws. I, therefore, feel that it would be much more satisfactory if you and Mr. Bonfig would indicate to me what questions you wish to raise in Canada for my consideration.

In dealing with your problems, you should keep in mind that I am under retainer to Canadian Radio Patents Limied and also to Philco. Although I am not definitely committed on all matters to other leading manufacturers, I have acted as Counsel for some of them in matters pertaining to the radio and television art.

The policy of Canadian Radio Patents Limited is to grant licences under its patents to anyone wishing to manufacture television and radio receivers in Canada and, I believe, you have been given a copy of the form of license agreement which is issued. The Company does not permit the importation of sets from other countries. As I pointed out in our earlier discussions of this subject, the working conditions of the Canadian Patent Act require patentees to manufacture in Canada to a sufficient extent to satisfy the demands for patented products in this country. Since the licensees are able to fully supply the Canadian market, it would be an abuse of the patent rights if Canadian Radio Patents Limited permitted the importation of sets from other countries. The conditions of our Act to which I refer are contained in sections 66 to 73 of the 1952 edition of our Patent Act. I think you will find that the patent attorneys for Zenith are probably familiar with our laws.

If you and Mr. Bonfig wish me to supplement the information already given to you by Mr. Brownlee and myself, I think it would be desirable from the standpoint of everyone concerned if you will indicate to me the questions which you would like to have answered. If it appears necessary to have a conference to deal with your problems, I shall be very pleased to meet with you and Mr. Bonfig in Chicago, Toronto or Ottawa. I regret that I cannot, at the moment, set a date at which I may leave the city because of certain commitments which I have made to deal with Court matters and problems arising before the Royal Commission which is considering patent, trade mark and copyright matters. I hope that within the next two weeks I shall know where I stand in these matters and I could then arrange a date to suit you and Mr. Bonfig. In the meantime, I assume that you will give consideration to the suggestions that I have made above.

I enclose an extra copy of this letter so that you may send it to Mr. Bonfig for his consideration.

Yours very truly,

G:C "E. G. Gowling"

November 1, 1954.

Messrs. Bonfig
Miguel
Wright

I have just had a call from Mr. Watkins of the W. R. Watkins Company, Ltd., Toronto, Canada. He said that he had explored with his solicitor the possibility of importing radio receivers without a patent pool license.

"Coincidentally" his solicitor happens to be the solicitor for the patent pool and for Philco and he was advised that he would be served with an interim injunction within a few days after importing the sets. This solicitor is Mr. Dowling of McTavish & Dowling, Ottawa.

He added that he had additional information with respect to at least two other companies who had the facilities and would be interested in manufacturing sets for us in Canada and he was anxious to come down and talk to us at our convenience on this subject.

I told him that he would hear further from Mr. Miguel or Mr. Bonfig.

Sam Kaplan

SK:vb

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1374.

February 15, 1955.

McMullen Supplies, Limited
433 Laurier Ave., West

Att: Mr. H. J. McNulty, President

Gentlemen:

We acknowledge with thanks receipt of your letter dated January 29, enquiring about the possibility of distributing Zenith products in Eastern Ontario and Western Quebec.

It is a fact that Zenith has not been established anywhere in Canada for many years, despite the fact that we have been hungrily watching the successful development of television in the Canadian market. The main reason why we have been out of the Canadian market is the fact that we have not been licensed by the Patent Pool—a situation that is covered in our suit for triple damages against RCA in the Chicago Federal District Court under the U. S. Anti-Monopoly laws. Also, anyone in Canada who may have imported Zenith sets and resold them there would be vulnerable to all kinds of threats and possible damage suits by the Pool.

Under the circumstances, we regret that we will have to defer action in launching our products in the Canadian market until this situation is more clearly defined.

Thanking you for writing to us, and for your interest in Zenith.

Very truly yours,

J. A. Miguel, Jr./b

Air-Mail

(Letterhead of McMullen Supplies, Limited,
Ottawa 4, Ont.)

January 29, 1955.

Zenith Radio Corporation,
6001 Dickens Ave.,
Chicago 39, Illinois,
U. S. A.

Dear Sirs:

We decided within the past few days to discontinue the exclusive distribution of Admiral Products in our territory. We are, therefore, open for consideration of Distributor Franchises covering the lines previously handled by Admiral and additional lines.

We might tell you that our television sales alone approximated one-third of the entire industry sales in our area. Our company have been distributors of major appliances for the past twenty-five years, serving a well established and completely representative clientele throughout our district. The territory covered embraces Eastern Ontario and Western Quebec.

For information concerning our financial standing, references may be made to Dun & Bradstreet, Motor & Equipment Manufacturers' Association, New York, N. Y., or our Bankers, Royal Bank of Canada, Bank & Sparks Street, Ottawa, Ontario.

Should you be interested in a distributor franchise with a well established and well financed organization, we would appreciate having the opportunity of discussing with you, at an appropriate date, the type of franchise agreement you may have to offer for our consideration.

Yours very truly,
McMullen Supplies Limited.
H. J. McNulty,
President.

HJMcN:lk

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1202.

November 17, 1955

Marshall-Wells Canadian Companies
Winnipeg 2, Canada

Att: Mr. H. N. Addison, Merchandise Supervisor
Major Appliance Division

Gentlemen:

We acknowledge with thanks receipt of your letter dated November 4 inquiring about our plans to merchandise Zenith Radio Corporation products in Canada.

First let me say that, at present, we do not have a manufacturing plant or an arrangement with anyone to manufacture Zenith radios and television sets in Canada. Although there have been talks about our entering into the Canadian market via local manufacturing, this matter continues in abeyance.

On the other hand, we have always been interested in exporting our products for resale in Canada, and to this end we have had negotiations with several Canadian firms for distribution of these imported Zenith products on a, more or less, regional basis. However, we have not been successful in properly developing these distribution arrangements because of the threats and harassment received by the Canadian firms, who offered our products for resale and wanted to become distributors of Zenith radios and television sets, from the Canadian Radio Patents Limited. This pool has not yet seen fit to give Zenith a license to import goods into Canada, although there is nothing in the Canadian law which prohibits such imports. In the case of the Winnipeg area, for instance, we have had contact dating several years back with Consolidated Industries Limited who brought in for resale in the territory a quantity of Zenith radios. We are hopeful that they will indicate interest soon on resumption of handling our line of Zenith radios and television sets based on importation of these products from us.

Such is the situation as it exists today with respect to the merchandising of Zenith radios and television sets in Canada. If you have any further thoughts which you feel may be of mutual interest in light of the present situation, we shall be glad, indeed, to receive your comments.

Thanking you for writing to us, and with all good wishes.

Very truly yours,

J. A. Miguel, Jr./m
Air Mail

Marshall-Wells Canadian Companies
Executive Offices
Winnipeg
2

November 4, 1955

Zenith Radio Corporation,
Export Department,
Chicago, Illinois,
U. S. A.

Dear Sirs:

A rumour is circulating in certain parts of our country that Zenith Radio Corporation is coming into Canada to merchandise their products. If you have any such plans and intend to merchandise your products through distributors we would like to have the opportunity of discussing the subject with you.

Yours truly,
H. N. Addison,
Merchandise Supervisor, Major Appliance Division.

HNAddison/L

(Letterhead of Pacific Goldsmiths, Vancouver 2, B. C.)

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1201.

Nov. 24th, 1955

Mr. J. A. Miguel,
Zenith Radio Corporation,
Chicago, Ill.

Dear Mr. Miguel:

This will acknowledge receipt of your letter dated Nov. 17th.

Now further to our telephone conversation, I wish to say that I am honored, and positively ready to participate as a Zenith distributor. I will make all my arrangements, both personal and financial before I come to Chicago. I will be ready to go ahead even to the extent of handling the major cities of Canada. I intend to devote my full time and best effort to this project.

Mr. Miguel, when I phoned you to ask you if there was any immediate urgency for me to come to Chicago, I am certain that you knew how anxious I was to complete this deal. We received your letter on Saturday, Nov. 19th. Needless to tell you, my wife Bette and I were very happy talking about it. I began to make arrangements to leave for Chicago the following Tuesday. On Sunday, the day after receiving your letter, my wife slipped on the walk in front of our house, had a nasty fall, and fractured her pelvis. She will need to be in the hospital for at least three weeks. Thank God, she does not need to be in a cast or have any traction treatment, however she will have to stay in bed. This was the real reason for my phone call to you. As you can easily understand this was quite a shock to me, we have two boys who need looking after, etc.

If the matter had required immediate action, after discussing it with my wife, we decided that we would hire special nurses and that I would leave for Chicago at once. I phoned you Tuesday, the third day after the accident, and I was ready to leave that night. When you assured me that there was no immediate urgency, I was happy. The doctors promise me that Bette will be fine, so I am very thankful.

When I am in Chicago to keep our appointment on Jan. 6th, I will have all my affairs in order. I wish to thank you for this opportunity.

Sincerely,

Sid Young.

pv

Confidential . . . . Personal

November 17, 1955

Mr. Sid Young
Pacific Goldsmiths
600 Robson Street
Vancouver 2, B. C.

Dear Mr. Young:

As promised you, I am writing to tell you that there has been a significant change in our policy about Canada, in view of which I see excellent possibility of our radio and television products being merchandised throughout Canada, and particularly in your area, based on the importation of these products directly from us.

We are hopeful that the patent situation as regards Canada may be improved, and that Zenith products can be handled without harrassment of Canadian Radio Patents Limited. While the pool has not yet seen fit to give Zenith a license to import goods into Canada, there is nothing in the Canadian law which prohibits such imports, and our attorneys are hopeful that this situation can be broken.

While we will not be in a position to guarantee anybody handling our products against patent liability in Canada, we will, certainly, undertake to cooperate with anyone harrassed by the pool and render legal and other assistance to the end that the local distributor does not suffer loss as a result of his handling our merchandise.

I recall that you have been particularly interested in reaching a direct deal with the factory for the distribution in the Vancouver area. I have some recollection, also, of a remark you made to me about the formation of a new company with adequate operating capital to handle the distribution on a mutually satisfactory basis. If there is still interest in exploring the possibilities of a distributorship franchise in light of the present situation that still exists in Canada today—as explained in the foregoing—I would like very much to hear from you before we establish contact with other people.

If you are planning to come east soon, it may not be a bad idea to include a visit with us in Chicago to explore and discuss this matter further.

Looking forward to hearing from you promptly, and with kindest regards.

Sincerely,

J. A. Miguel, Jr./m
Air Mail

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 1245.

December 8, 1955

Mr. L. G. Groom, Industrial Manager
Southern Canada Power Company, Limited
355 St. James St. West
Montreal 1, Canada

Dear Mr. Groom:

I was out of the country last week and that is why I was not able to acknowledge, until now, your letter of November 28.

There are no new developments to report to you as regards a policy on the part of our company to establish manufacturing facilities in Canada. The matter continues in abeyance, and at this time I hesitate to guess when our management will decide on that project, particularly in the face of the problem we have had with the Canadian Radio Patents Pool, who has harassed and threatened a number of Canadian firms who imported Zenith radios and television sets for resale in Canada.

If and when our company decides to enter into the Canadian market manufacturing-wise and a policy is established, you can be sure of hearing from us at that time.

Many thanks for your interest and for writing to us. Best regards.

Sincerely,

J. A. Miguel, Jr./m

Air Mail

(Letterhead of Southern Canada Power Company, Limited,
Montreal 1, Canada.)

November 28, 1955.

Zenith Radio Corporation,
6001 West Dickens Avenue,
Chicago, Illinois,
U. S. A.

Attention: Mr. J. A. Miguel, Jr.,
Manager, International Division.

Dear Mr. Miguel,

It is now two years since we last discussed the Zenith plans for a Canadian Manufacturing Branch. When Mr. Bonfig was last here, your Principal's policy was to arrange manufacturing facilities with an existing Canadian company. However, I understand that this did not work out, and since Mr. Bonfig has now resigned from your Organization, I was wondering if you could enlighten me on any recent developments in this regard.

Through the joint efforts of the Town and Commercial Leaseholds Limited, we have just completed the erection of a modern 40,000 square foot factory in Granby, Quebec. There is a great abundance of very reasonably priced labour with many trades which you would require for any Canadian manufacturing set-up. This factory building may be secured on a direct rental or long-term purchase lease basis, as you may desire, and I am positive that you would benefit considerably from establishing a manufacturing branch in Canada at this time.

We are prepared to extend you every possible assistance, and should this be under active consideration, I would be pleased to journey to Chicago for further detailed discussions. If you are interested in securing further details regarding this building, and information pertaining to Granby, I shall forward same to you upon request.

In the meantime, I should like to hear from you again, and look forward to the day when the Zenith Radio Corporation will be manufacturing in the industrial area of the Southern Canada Power Company.

Kindest regards.

Sincerely,

L. G. Groom,
Industrial Manager.

LGG:s

(Stamp) Zenith-Rauland Cross-
Claimants' Exhibit 1376.

(Letterhead of R. W. Alford & Co. Ltd.,
Kingston, Ontario, Canada.)

April 12th, 1956.

Zenith Radio Corporation,
6001 Dixon Ave.,
Chicago 39, Ill.

Dear Sirs:

We acknowledge, with thanks, your letter dated April 6th concerning our inquiry regarding the possible import of Zenith products.

From your letter, we would gather that there is a certain element of risk in our so doing, and we would suggest that until this situation has been cleared up the matter should be dropped at least by us.

As soon the difficulties have been solved satisfactorily, we would certainly be interested in discussing this matter further.

In the meantime, please accept our thanks for your cooperation, and we remain,

Cordially yours,

R. W. Alford & Co. Ltd.,
R. W. Alford.

RWA/eb

April 6, 1956.

R. W. Alford & Co., Ltd.,
121 Princess Street,
Kingston, Ontario, Canada.

Gentlemen:

We acknowledge with thanks receipt of your letter dated April 2 and complying with your request, we are pleased to send you descriptive and illustrated specification sheets on our current lines of radios, phonographs, high-fidelity sets, and television receivers.

For your information, we have been carrying on negotiations with a number of firms in Toronto in the hope that we could reach an understanding to do some business with Zenith products for distribution in Ontario. To date, however, no arrangement or understanding has, as yet, been consummated.

In connection with the possible handling of our products —that is, importing them for resale in your area—we want you to know about the patent problem. We are hopeful that the patent situation as regards Canada may be improved and that Zenith products can be handled without harrassment of Canadian Radio Patents Limited. While the Pool has not yet seen fit to give Zenith a license to import goods into Canada, there is nothing in the Canadian law which prohibits such imports, and our attorneys are hopeful that the situation can be broken.

While we will not be in a position to guarantee you or anybody else handling our products against patent liability in Canada, we will certainly undertake to cooperate with our customer and render legal and other assistance to the end that our customer does not suffer loss as a result of handling our merchandise.

We realize that this is not an altogether satisfactory arrangement, but we are determined to become an important factor in the Canadian market, and we assure you that we will be glad to work very closely with whomever we have chosen as a distributor who may be in a position in developing some business for us under the conditions that exist today in Canada.

Answering your specific query, our socket powered sets are not Hydro approved. Our all-transistor pocket radio—Model Royal "500"—as it operates exclusively from batteries, does not require, of course a CSA approval.

The latest information we have on the importation of radios and TV sets into Canada is as follows:

> The customs' duty is 20%, sales tax 10%, and excise tax 15%; the latter applied on the cost of the goods plus the 20% duty. Excluding transportation and insurance, which will range anywhere from 3 to 6% of the cost, you can figure on the duty, excise and sales taxes to be 50% of your f. o. b. factory cost.

Enclosed herewith are copies of our latest confidential export distributor's price lists. In the case of shipments to Canada, domestic packing will suffice and, of course, there will be no additional charge for this. You will note that our prices are subject to a 5% cash discount on payment cash-in-advance or through an irrevocable letter of credit in U. S. funds. We can handle also shipments on a sight draft bill of lading attached basis, but then, the 5% cash discount will not apply.

We await with interest your further advice.

Very truly yours,

J. A. Miguel, Jr./m
Enclosures

Air Mail

(Letterhead of R. W. Alford & Co. Ltd.,
Kingston, Ontario, Canada.)

April 2nd, 1956.

Zenith Company,
Chicago 39, Ill.
U. S. A.

Dear Sirs:

We would be interested in receiving all information concerning your portable radio line particularly your Royal model 500.

In your reply, please be kind enough to state fob prices, and on any a. c. models please state whether or not these are approved by the Ontario Hydro Electric Power Commission for use in Ontario.

You no doubt have the information regarding custom duties, and, if so, please include this information also.

Any purchases made by us will be made on a fob basis, a sight draft, bill of lading, attached if you wish.

Yours very truly,

R. W. Alford & Co. Ltd.,
(Signature illegible),
for R. W. Alford.

RWA/eb

DEFENDANT'S EXHIBIT NO. 180.

This Agreement made between the Hazeltine Corporation, a corporation of the State of Delaware, one of the United States of America, having its Registered Office at 15 Exchange Place, Jersey City, United States of America, hereinafter referred to as the Hazeltine Corporation which expression shall be deemed to include it's successors and assigns of the one part and Neutrodyne Proprietary Limited, a Company registered under the laws of the State of Victoria, Commonwealth of Australia, and having it's Registered Office at 440 Little Collins Street, Melbourne in the State of Victoria, aforesaid, hereinafter referred to as the Neutrodyne Company which expression shall be deemed to include it's successories and assigns of the other part:

It Is Hereby Agreed As Follows:

(1) The Hazeltine Corporation agrees to enter into an Agreement with the Neutrodyne Company, in accordance with the draft of such Agreement, a copy of which is set out in the Schedule appearing hereunder.

(2) The consideration for the Hazeltine Corporation agreeing to enter into the Agreement hereinbefore referred to, shall be the transfer to the Hazeltine Corporation of Sixteen Thousand fully paid up shares of One Pound each in the Neutrodyne Company.

Schedule Above Referred to.

Agreement.

"This Agreement made between the Hazeltine Corporation, a corporation of the State of Delaware, one of the United States of America, having its registered office at 15 Exchange Place, Jersey City, United

States of America hereinafter referred to as the Hazeltine Corporation which expression shall be deemed to include its successors and assigns of the One Part and Neutrodyne Proprietary Limited, a Company registered under the laws of the State of Victoria, Commonwealth of Australia, and having its registered office at 440 Little Collins Street, Melbourne, C. I., in the State of Victoria, aforesaid, hereinafter referred to as the Neutrodyne Company which expression shall be deemed to include its successories and assigns of the Other Part.

Whereas the Hazeltine Corporation are the owners of certain inventions relating to Radio Receiving Circuits and Apparatus and are registered as the proprietors of the following letters Patents in the Commonwealth of Australia

No. 19,999 dated February 20, 1924, granted to Hazeltine Corporation, in respect of an invention entitled: "Means for Neutralising Capacity Coupling".

No. 20,000 dated April 7, 1924, granted to Hazeltine Corporation in respect of an invention entitled: "Means for Eliminating Magnetic Coupling Between Coils".

No. 23,308 dated February 27, 1925, granted to Hazeltine Corporation, in respect of an invention entitled: "Wave Signalling System".

No. 23,802 dated April 3, 1926, granted to Hazeltine Corporation, in respect of an invention entitled: "Uni-Control Signalling System".

No. 24,489 dated September 22, 1924, granted to Hazeltine Corporation, in respect of an invention entitled: "Method and Means for Eliminating Capacitive Coupling".

No. 1,947 dated May 26, 1925, granted to Hazeltine Corporation, in respect of an invention entitled: "Radio Receiving System".

And Whereas the Hazeltine Corporation has agreed to give and to grant unto the Neutrodyne Company the sole and exclusive right and authority to grant non-exclusive, non-divisible, non-transferable, limited licenses under the above recited letters Patents to individuals, firms, partnerships and companies now engaged in, or to be engaged in trading or dealing in and/or in the manufacture of radio receivers in the Commonwealth of Australia.

Now Therefore Know All Men by these presents that in pursuance of the said agreement the Hazeltine Corporation doth hereby give and grant unto the Neutrodyne Company the sole and exclusive right and authority to grant to individuals, firms, partnerships and companies now engaged in, or to be engaged in trading or dealing in and/or in the manufacture of radio receivers in the Commonwealth of Australia non-exclusive, non-divisible, non-transferable, limited licenses under the above recited Letters Patents subject to the following terms and conditions, that is to say—

1. The Neutrodyne Company hereby covenants to grant licenses only to such individuals, firms, partnerships and companies as are deemed by the Neutrodyne Company to be solvent and financially responsible and
2. The Neutrodyne Company shall grant any and all licenses subject to all and every of the requirements, restrictions and provisions that are included in the standard printed license adopted by the Hazeltine Corporation in the granting of licenses for the United States of America, a copy of which standard printed licenses is attached hereto and marked "Schedule One", except that no license shall be granted for a royalty less than five per centum (5%) and that the minimum annual guarantee provisions may at the option of the Neutrodyne Company, be omitted.

3. That all rights and authority hereby granted by the Hazeltine Corporation to the Neutrodyne Company or any or all of them are subject to withdrawal or cancellation by the Hazeltine Corporation Upon sixty (60) days notice in writing to be served by the Hazeltine Corporation upon the Neutrodyne Company by hand or in the ordinary course of post, but such notice of withdrawal or cancellation shall not affect, vitiate or determine any license or licenses which may have been granted by the Neutrodyne Company during the continuance of this agreement provided that such licenses are in accordance with the terms of this agreement.

4. It is hereby covenanted and agreed by and between the parties hereto that this agreement is to be construed as and may, if desired, by the Neutrodyne Company be registered at the Patents Office of the Commonwealth of Australia as a matter affecting the proprietor-ship of the Letters Patents above recited.

5. And it is hereby further covenanted and agreed by and between the parties hereto that this agreement shall apply and extend to and shall include all or any Letters Patents which may be hereafter granted in the Commonwealth of Australia to the Hazeltine Corporation or its representative or representatives or which may be hereafter acquired by or on behalf of the Hazeltine Corporation in respect of radio receiving circuits or apparatus so far as the Commonwealth of Australia is concerned.

In Witness Whereof Etc."

In Witness Whereof this instrument has been executed on behalf of and under the Seal of the Hazeltine Corporation by it's duly authorized officer with the approval of it's Board of Directors, this 11th day of September, 1928.

Hazeltine Corporation.
By (illegible),
President.

(Seal)
Attest—
(illegible),
Secretary.

The Common Seal of Neutrodyne Proprietary Limited has been hereunto affixed at Melbourne in the State of Victoria, by order of the Board of Directors, this 19th day of October 1928.

Neutrodyne Proprietary Limited.
Louis Abrahams,
Director.
S. Wright,
(Seal) *Secretary.*

DEFENDANT'S EXHIBIT NO. 181.

Dated 11th August, 1933.

Amalgamated Wireless (Australasia) Limited
—with—
Standard Telephones and Cables
(Australasia) Limited.

—Agreement—

Norton Smith & Co.
Solicitors
Sydney.

An Agreement made the eleventh day of August One thousand nine hundred and thirty-three Between Amalgamated Wireless (Australasia) Limited a Company duly incorporated under the Companies Acts of New South Wales and having its registered office at Number 47 York Street City of Sydney (hereinafter referred to as "A.W.A.") of the one part and Standard Telephones and Cables (Australasia) Limited a Company duly incorporated under the provisions of the Companies Acts of New South Wales and having its registered office at Number 71 York Street aforesaid (hereinafter referred to as "Standard") of the other part Whereas A. W. A. owns or controls and will continue for the term of this Agreement to own or control for Australasia numerous Patents relating to the field of radio purposes such rights including the right to grant sub-licenses in Australasia in the field of radio purposes under the Patents of Marconi's Wireless Telegraph Company Limited of London General Electric Company of America Radio Corporation of America and Telefunken Gesellschaft fur Drahtlose Telegraphie, M.B.H.

of Germany And Whereas Standard owns or controls and will continue for the term of this Agreement to own or control for Australasia certain Patents in the field of radio purposes including the right to grant sub-licenses in Australasia under patents in the field of radio purposes owned by Standard Telephones and Cables London and its associated companies the International Telephone and Telegraph Corporation (a Delaware Corporation) the Western Electric Company (a New York Corporation) and the Electrical Research Products Incorporated (a Delaware Corporation) And Whereas Standard has already entered into certain Agreements granting certain parties licenses to use the patent rights controlled by Standard And Whereas the parties hereto have agreed that as the inventions covered by the patents owned or controlled by them respectively are used in Australasia it would be in their interests to enter into an arrangement whereby a License could be granted to parties in Australasia giving such parties the right to use the inventions covered by the patents owned or controlled by the parties hereto for the manufacture use and sale of Broadcast Receivers Now It Is Hereby Agreed between the parties hereto as follows:

1. A Company shall be registered under the provisions of the Companies Acts of New South Wales to be known as "Australian Radio Technical Services and Patents Company Limited" (hereinafter referred to as "A. R. T. S. P.") with a capital of Ten thousand pounds (£10,000) divided into Ten thousand (10,000) shares of One Pound each.

2. The objects of A. R. T. S. P. shall be expressed in its Memorandum of Association to include (inter alia):

   (a) To arrange with the parties hereto for the grant to the Company of the exclusive right to grant or to arrange for the grant of sub-licenses in Australasia entitling the holders thereof to manufacture use and sell Broadcast Receivers embodying the inventions covered by the patents owned and/or controlled by such parties respectively.

(b) The granting in Australasia of sob-licenses to persons firms and corporations entitling them to manufacture use and/or sell Broadcast Receivers embodying the inventions or any of the inventions covered by any patents and on such terms and subject to such conditions as A. R. T. S. P. shall think proper.

(c) The furnishing of technical advice to manufacturers for the development and production of broadcast receivers.

(d) The indemnifying of licensees holding sub-licenses from A. R. T. S. P. against claims made upon them by third persons for using the inventions covered by the patents aforesaid or other patents in connection with broadcast receivers manufactured used or sold by such licensees.

(e) The granting of assistance pecuniary or otherwise in the defense of actions brought by third parties against persons holding sub-licenses from A. R. T. S. P.

(f) Such other objects as may be agreed upon by the parties.

3. The first issue of shares by A. R. T. S. P. shall be Ten thousand (10,000) shares of One pound each of which Five thousand nine hundred and ninety-six (5,996) shall be taken up and paid for by A. W. A. and shall be called "A" Shares and Three thousand nine hundred and ninety-seven (3,997) shall be taken up and paid for by Standard and shall be called "B" Shares. The parties hereto shall continue to hold shares in the Company in the same propor-

tions notwithstanding whatever other shares may be issued at any time and provision shall be made in the Memorandum and Articles of Association of A. R. T. S. P. accordingly.

4. The Memorandum and Articles of Association of A. R. T. S. P. shall be subscribed to by seven persons of whom four shall be nominees of A. W. A. and shall hold "A" Shares and three nomniees of Standard and shall hold "B" Shares. Apart from the shares issued [illegible] such subscribers and the shares to be issued to the parties hereto as provided in the last preceding clause no shares shall be issued by A. R. T. S. P. to any person firm or company unless and until the approval of any proposed issue shall have been given by shareholders who hold in the aggregate at least three-fourths of its issued share capital.

5. A. R. T. S. P. shall have five Directors and the Articles of Association of that Company shall provide that three of such Directors shall from time to time be nominated by A. W. A. and two shall be nominated by Standard.

6. The Memorandum and Articles of Association of A. R. T. S. P. shall be approved by A. W. A. and Standard respectively prior to its incorporation.

7. As soon as practicable after the incorporation of A. R. T. S. P. the parties shall grant to A. R. T. S. P. under the several patents owned or controlled by them such licenses and/or sub-licenses as may be necessary to enable A. R. T. S. P. exclusively to issue or to arrange for the issue of sub-licenses for the manufacture sale and use of broadcast receivers.

8. Unless and until otherwise agreed to by the parties hereto licenses or sub-licenses that shall be granted to A. R. T. S. P. by A. W. A. and Standard pursuant to the provisions of this Agreement shall include only licenses or sub-licenses that confer the right to use for the purpose

aforesaid only the inventions covered by the said Patents that relate to the field of radio broadcast receivers and shall not include the right to manufacture use and/or vend such receivers combined with gramophones.

9. Each of the parties hereto shall nominate one of their technical staff to join the technical staff of A. R. T. S. P. which Company shall pay to the parties hereto for the services of such officer an amount to be agreed upon.

10. A. R. T. S. P. shall as soon as reasonably possible after incorporation issue non-exclusive sub-licenses for the territory field and period covered by this Agreement to all applicants approved of by its Board of Directors and the forms of such sub-licenses and any modifications thereof shall be approved of by the parties hereto.

11. All net revenue from sub-licenses issued by A. R. T. S. P. to persons firms or corporations in Australia received by it after incorporation and prior to the first day of March One thousand nine hundred and thirty-four and all net revenue from sub-licenses issued to persons firms and corporations in New Zealand received by it prior to the First day of June One thousand nine hundred and thirty-four shall be held by A. R. T. S. P. as trustee for Standard and for such other person firm or corporation (if any) that may confer on A. R. T. S. P. rights similar to the rights herein contracted to be conferred upon it by the parties hereto. On and after the dates aforesaid all monies received by A. R. T. S. P. from its sub-licensees in Australasia and all monies that may be paid to either of the parties hereto by Licensees or sub-Licensees from either of them in respect of licenses or sub-licenses issued covering broadcast receivers shall during the currency of this Agreement belong to A. R. T. S. P.

12. Save as herein provided nothing herein contained shall affect the rights of either of the parties hereto under the Patents owned or controlled by such parties respectively.

13. Each of the parties hereto shall sign seal execute and deliver such licenses or other documents as may reasonably be required for carrying out the terms and conditions of this Agreement.

14. In the event of the infringement of any of the Patents owned or controlled by the parties hereto that fall within the scope of this Agreement no action shall be taken at the expense or for the benefit of A. R. T. S. P. against the parties infringing such patents except with the consent of both the parties hereto and in the event of the parties hereto agreeing to take action in connection with any such infringement then each of such parties shall render every assistance and execute all necessary documents in order to assist in the successful maintenance and prosecution of any such action provided that all costs damages and expenses of carrying on such action shall be borne by A. R. T. S. P. and any costs damages or compensation or other monies recovered in any such action shall accrue to the benefit of A. R. T. S. P.

15. The party owning or controlling the patent alleged to have been infringed may take action at its own expense and for its own benefit in the event of the other party failing to agree or declining or omitting to consent to any such action as aforesaid after having been requested in writing so to do.

16. Each of the parties hereto shall bear all expenses of applying for taking out maintaining and/or renewing patents owned or controlled by such party Provided However that whenever any patent shall appear to the party owning or controlling the same to be of no further commercial value such party may after having given written notice to the other of its intention so to do abandon such patent unless the other party shall within a reasonable time after receipt of such notice object to such proposed abandonment for some good and sufficient reason.

17. A. R. T. S. P. shall not without the consent of both

the parties hereto acquire any Patents by purchase or otherwise from third parties.

18. The operations of A. R. T. S. P. shall be restricted to the Commonwealth of Australia and the Dominion of New Zealand and to such territories as may from time to time be administered under mandate by either of these countries. Such Conmmonwealth and Dominion and the territories administered by either of them as aforesaid are in this Agreement referred to as "Australasia".

19. Until the first day of March One thousand nine hundred and thirty-four each of the parties hereto shall be entitled to retain any revenue received by it from any person firm or corporation in respect of its particular patents as far as operations in Australia are concerned and until the thirty-first day of .... May One thousand nine hundred and thirty-four as far as operations in New Zealand are concerned.

20. The term of this Agreement shall be five years from the fifteenth day of August One thousand nine hundred and thirty-three and thereafter from year to year subject to termination by twelve months' notice in writing from one of the parties hereto to the other and any license or sublicense to be granted by either of the parties hereto to A. R. T. S. P. shall be drawn in accordance with this term of this Agreement.

21. In the event of either of the parties hereto determining this Agreement by notice pursuant to Clause 20 hereof such party shall offer all the shares held by it in A. R. T. S. P. to the other party at a price to be mutually agreed upon or failing agreement at a price to be determined by arbitration in accordance with the Arbitration Act 1902.

22. If any question shall arise between the parties hereto as to the meaning or construction of this Agreement the same shall be construed according to the laws in force in the State of New South Wales.

23. Whenever the word "Patents" shall occur in this Agreement the same shall include Letters Patent Applica-

tions for Letters Patent and rights to or under Letters Patent Applications for Letters Patent and patented inventions taken out or applied for during the period of the Agreement. And the words "own or control" whenever used herein with reference to patents shall be deemed to include in all cases the right to issue licenses or sub-licenses and to enforce all rights conferred by the patents under which such licenses or sub-licenses are granted in the manner and to the extent contemplated by this Agreement. And the words "Broadcast Receivers" wherever used herein shall mean broadcast receiving apparatus for the reception of sound broadcast for the public by wireless but only for private or domestic use or for the purpose of lectures or demonstration in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public and not being held for payment) and not otherwise.

24. A. W. A. shall subject to the control of the Directors of A. R. T. S. P. carry on the affairs of A. R. T. S. P. at such remuneration and subject to such conditions as such Directors may from time to time determine.

In Witness whereof the parties hereto have duly executed these presents the day and year first hereinbefore written.

Signed for and on behalf of Amalgamated Wirless (Australasia) Limited by:
(Sgd.) L. A. Hooke
duly authorised in that behalf
in the presence of:
(Sgd.) R. A. Hack.

(Sgd.) L. A. Hooke

Signed for and on behalf of Standard Telephones and Cables (Australasia) Limited by:
(Sgd.) H. C. Trenam
duly authorized in that behalf
in the presence of:
(Sgd.) J. F. Wilson

(Sgd.) H.C.Trenam

DEFENDANT'S EXHIBIT NO. 182.

Dated 12th April 1934.

Between

Australian Radio Technical Services & Patents Co Limited

And

Neutrodyne Proprietary Ltd.

This Deed made this Twelfth day of April One thousand nine hundred and thirty four Between Australian Radio Technical Services and Patents Company Limited (hereinafter called "A. R. T. S.") of the first part And Neutrodyne Proprietary Limited (hereinafter referred to as "Neutrodyne") of the second part, Whereby it is hereby agreed as follows:

1. A. R. T. S. undertakes that it has the exclusive right to grant licenses or sub-licenses for the purposes of manufacture sale and use of broadcast receivers as herein defined under all of the Australian and New Zealand present and future patented inventions which any of the Companies specified in the First Schedule hereto owns or controls and will continue to have such right during the currency of this agreement.

2. Neutrodyne undertakes that it has the exclusive right to grant licenses or sub-licenses for the purposes of manufacture sale and use of broadcast receivers as herein defined under all the Australian and New Zealand present and future patented inventions which either of the Companies specified in the Second Schedule hereto owns or controls Subject However to the rights of the parties whose names and addresses are set forth in the Third Schedule hereto

under agreements already entered into with them by Neutrodyne and Neutrodyne will subject as aforesaid continue to have such exclusive right during the currency of this Agreement and no person or company (including the registered proprietor) except those firms or companies mentioned in the Third Schedule hereto shall have the right to manufacture sell or use such broadcast receivers as herein defined employing such inventions without first obtaining a license from A. R. T. S.

3. A. R. T. S. agrees that it will pay to Neutrodyne royalties at the rate provided in Clause 9 hereof in respect of every broadcast reeciver as herein defined manufactured and/or sold in the Commonwealth of Australia or Dominion of New Zealand by any of the Companies mentioned in the First Schedule hereto or by any representative or subsidiary of any of such companies or under any license granted or to be granted under the Australian or New Zealand patents owned or controlled by any of such companies irrespective of whether such license is granted by the registered proprietor or its licensees.

4. Neutrodyne agrees that it will pay to A. R. T. S. the sum of Six shillings (6/-) in respect of every broadcast receiver as herein defined manufactured and/or sold in the Commonwealth of Australia or Dominion of New Zealand by either of the companies mentioned in the Second Schedule hereto or by any representative or subsidiary of either of such Companies or under any license granted or to be granted under the Australian or New Zealand patents owned or controlled by either of such Companies irrespective of whether such license is granted by the registered proprietor or its licensees, save and except in respect of broadcast receivers as herein defined manufactured under those licenses already granted to the persons firms or companies mentioned in the Third Schedule hereto and save and except in respect of broadcast receivers as herein defined manu-

factured under license which may be granted by A. R. T. S. under the power conferred upon it granted under this Agreement.

5. In consideration of the premises and of the payment to Neutrodyne of the royalties hereinafter mentioned in manner hereinafter provided Neutrodyne except in so far as it may be unable to do so by reason of the terms conditions agreements and covenants expressed and contained in existing agreements made between Neutrodyne and the other parties whose names and addresses are set forth in the Third Schedule hereto hereby grants to A. R. T. S. for the term herein mentioned but subject as hereinafter provided the otherwise exclusive right and authority to grant sub-licenses to third parties (hereinafter called "Licensees") to use manufacture and sell in the Commonwealth of Australia and/or Dominion of New Zealand broadcast receivers as herein defined the subject of the present and future Letters Patent owned or controlled by it conditionally on such sub-licenses being non-assignable by A. R. T. S. or by its Licensees.

6. For the purposes of and during the continuance of this Agreement Neutrodyne hereby irrevocably appoints A. R. T. S. its Attorney in its name to effectually execute sign seal and deliver all such documents deeds and instruments and to do and execute all such matters acts and things as may be necessary to effectually grant the said licenses or sub-licenses to Licensees as aforesaid subject as herein provided.

7. A. R. T. S. shall not grant licenses or sub-licenses to use any patents relating to broacast receivers as herein defined unless such licenses or sub-licenses shall include the right to use all the Letters Patent owned or controlled by all the parties hereto.

8. The term of this agreement shall be four years and nine months commencing on the Second day of April, One thousand nine hundred and thirty-four.

9. A. R. T. S. shall pay to Neutrodyne in manner hereinafter provided royalties in respect of all licenses issued by A. R. T. S. calculated as follows: viz: The sum of three shilling (3/-) in respect of each and every radio broadcast receiver as herein defined upon which a royalty shall be received by or on account of A. R. T. S. in each and every year commencing on the Second day of April, One thousand nine hundred and thirtyfour during the said term up to and including 100,000 in each year and on each broadcast receiver as herein defined in excess of one hundred thousand (100,000) in each year up to and including one hundred and twentyfive thousand (125,000) in each year a royalty of Two shillings and ninepence (2/9d) and on each broadcast receiver as herein defined in excess of One hundred and twentyfive thousand (125,000) in each year a royalty of Two shillings and sixpence (2/6d). Such royalties shall be paid not later than the last day of the month next succeeding the month during which the said royalties shall be received by or on account of A. R. T. S. and A. R. T. S. shall with each payment of royalties as aforesaid furnish to Neutrodyne or as it may direct a complete and detailed statement showing the manner in which such royalties have been made up and calculated and also setting forth in particular the quantity of broadcast receivers as herein defined on which royalties have been received by or on account of A. R. T. S. the name and address of each person company or corporation paying such royalties and the quantity of broadcast receivers as herein defined on which each such person company or corporation has paid royalties. A. R. T. S. shall at all times during the continuance of said term keep and maintain full and complete records of all royalties paid and payable to or on account of or by A. R. T. S. as aforesaid. Neutrodyne by a member or members of the Institute of Chartered Accountants of

Australia appointed for the purpose shall have the right from time to time during the said term and for a period of six months thereafter to inspect examine and take extracts and copies of all records and books of account kept and maintained by A. R. T. S. as hereinbefore provided.

10. During the said term and subject to as hereinafter expressly provided A. R. T. S. shall have the right to take and institute all such actions suits or other legal proceedings as may be necessary to prevent the continuance of or to prevent the infringement within Australia and New Zealand of any patent right or interest owned or controlled by Neutrodyne and being the subject of this agreement Provided Always that Neutrodyne shall contribtue a proportion of all reasonable and proper legal costs charges and expenses occasioned by or arising out of such actions suits and legal proceedings as aforesaid, such proportion shall be equal to the proportion of Neutrodyne's royalty income from licensing of broadcast receivers under this agreement compared with A. R. T. S. royalty income from licensing of broadcast receivers under this agreement at the date of commencement of such legal proceedings and for the purpose of this clause Neutrodyne hereby irrevocably during the period of this agreement appoints A. R. T. S. its Attorney in its name to take and institute all such action suits and proceedings Provided Further that in respect of any such actions suits or proceedings Neutrodyne shall have the right to veto the appointment of any Counsel or Solicitor to be briefed or retained in connection therewith and all processes and pleadings to be used in connection therewith shall if so required by Neutrodyne be in such form and shall contain such statement of fact and otherwise as one or more Counsel nominated or appointed by Neutrodyne at its own expense for that purpose shall require. Provided Further that Neutrodyne shall have the right to veto institution of infringement actions in respect

of Neutrodyne's patents if the number of such actions would but for such veto exceed the proportion of one Neutrodyne infringement action to two other infringement actions on the other patents owned or controlled by A. R. T. S.

11. Neutrodyne shall give to A. R. T. S. free of all costs and expenses all reasonable proper and necessary information and assistance relating to its patent rights and interests including all service information emanating from the Hazeltine Corporation of the State of New York U. S. A. which may be available from time to time for use of its licensees and such reasonable information and assistance as A. R. T. S. may require in connection with any suit action or proceeding relating thereto. Any service bulletins or circulars based on information emanating from Neutrodyne or the said Hazeltine Corporation which may be issued by A. R. T. C. shall clearly indicate their source or origin.

12. If in any yearly period during the term of this agreement the amount of royalties payable by A. R. T. S. to Neutrodyne in respect of the territory of Australia (but not including New Zealand) shall (not readable on original exhibit) sum of Ten thousand pounds (£10,000) but shall not amount to the sum of Fifteen thousand pounds (£15,000) then A. R. T. S. shall (subject to the limitation hereinafter mentioned) pay to Neutrodyne in respect of each such yearly period a further payment of an amount sufficient to bring the amount payable to Neutrodyne up to the sum of Fifteen thousand pounds (£15,000) for each such yearly period Provided However that such further payments shall not exceed the sum of Two thousand five hundred pounds (£2,500) in respect of any such yearly period Provided Further that in the event of A. R. T. S. obtaining and producing for the inspection of Neutrodyne a Power of Attorney or other document duly executed by the International General Electric Company Incorporated which will enable A. R. T. S. to effectively ~~commence~~ and prosecute actions

for infringement of any three of the following Patents, namely, Patents Nos. 10999/27, 11616/28 and 14555/28, and 26192/30 Then as from the date of the production of such Power of Attorney or other document to Neutrodyne and during such period as it shall remain in operation no such payments as above-mentioned shall be payable to Neutrodyne.

The yearly period above-mentioned shall be calculated from the Second day of April in each year during the term of this Agreement until the First day of April in the following year and the first yearly period shall commence on the Second Day of April, One thousand nine hundred and thirtyfour. In respect of the nine months period commencing on the Second day of April, One thousand nine hundred and thirtyeight and ending on the Thirtyfirst day of December, One thousand nine hundred and thirtyeight the respective sums of money above-mentioned shall be reduced proportionately (that is, by twentyfive percent).

13. Every license or sub-license granted by A. R. T. S. hereunder shall contain an obligation binding the licensee to set forth in a monthly royalty return the quantity of broadcast receivers as herein defined which the licensee has manufactured or sold under such license or sub-license.

14. A. R. T. S. agrees in so as it is within its power that legal action shall be instituted and prosecuted with due diligence against any person or company infringing any of the Letters Patent owned or controlled by the companies specified in the First and Second Schedules hereto. If, however, Neutrodyne considers that legal proceedings should be brought against alleged infringers of any of its patents and A. R. T. S. does not take such legal proceedings then Neutrodyne may take such proceedings at its own expense and shall be entitled to collect costs damages and royalties both past and future from such alleged infringer for its sole use and benefit.

15. A. R. T. S. agrees to take prompt steps and shall do everything necessary to enforce payment by any licensee of royalties due under any license issued by it in pursuance of this Agreement.

16. Notwithstanding anything contained herein all licenses to manufacture and sell under patents granted or greed to be granted herein shall cease immediately on the termination of this Agreement.

17. Neutrodyne undertakes and agrees that it will use its best endeavours to ensure that the persons and companies whose names are set out in the Third Schedule hereto to whom licenses and sublicenses have been granted by it in respect of the manufacture use or sale of the inventions the subject of patent rights or interests owned or controlled by it shall accept from A. R. T. S. a license or sub-license as the case may be in respect of the said inventions and upon and subject to the terms and conditions expressed and set forth in the A. R. T. S. License Agreement No. 1 with such modifications or variations as are embodied in the Fourth Schedule hereto Provided Always that in the event of any such person or company whose name appears in the Third Schedule hereto refusing to accept the said A. R. T. S. License Agreement then Neutrodyne shall during the period of such refusal pay to A. R. T. S. Sixty percent of the License fees or royalties received by Neutrodyne from such person or company Provided However that in the event of it becoming necessary for A. R. T. S. to institute an action for infringement in respect of any patents owned or controlled by A. R. T. S. against any person or company whose name appears in the Fifth Schedule hereto then Neutrodyne shall pay to A. R. T. S. Fifty per cent of all proper and reasonable legal expenses of such infringement action.

18. A. R. T. S. shall simultaneously with the execution of this Agreement hand to Neutrodyne written notices ac-

cepting the offers to execute A. R. T. S. license agreements with the modifications or variations set out in the Fourth Schedule hereto which have been made or are warranted by Neutrodyne to have been made to A. R. T. S. by any of the persons firms or companies whose names appear in the Fifth Schedule hereto and A. R. T. S. shall enter into such modified or varied license agreements with all such persons firms and companies as soon as possible thereafter.

19. It is agreed that immediately upon the execution of this agreement:

(a) The actions for infringements of patents instituted by Neutrodyne against New System Telephones Pty. Ltd., Airzone (1931) Ltd., C. Plowman and A. G. Healing Ltd. shall be discontinued upon the terms that each party to such respective actions shall pay its own costs.

(b) Neutrodyne shall withdraw its support both technical and financial to the defence of Stromberg-Carlson (A/asia) Ltd. in the action instituted against such Company by Standard Telephones and Cables (A/asia) Ltd. in the Supreme Court of New South Wales.

(c) The petition for revocation of patents instituted in the Supreme Court of Victoria by Electricity Meter Manufacturing Co. Ltd., New System Telephones Pty. Ltd., A. G. Healing Ltd., and Airzone (1931) Ltd. in respect of certain patents of Neutrodyne shall be discontinued upon the terms that each party to such Petition shall bear its own costs.

(d) The opposition to the amendments of Patent No. 8545/32 applied for by Neutrodyne shall be withdrawn each party to pay its own costs and A. R. T. S. hereby undertakes to use its best endeavours to procure the withdrawal of such opposition.

(e) A. R. T. S. shall arrange to the satisfaction of Neutrodyne that the respective parties to the actions mentioned in sub-clause (a) hereof and the parties to the Petition mentioned in sub-clause (c) hereof shall consent to the discontinuance of the said actions and petition upon the terms that each party to such respective actions and petition shall pay its own costs.

20. Whereas the present Licenses of A. R. T. S. have prior to the Second day of April One thousand nine hundred and thirty-four infringed certain patents owned and controlled by Neutrodyne and A. R. T. S. has agreed to pay to Neutrodyne damages for such infringements and the present Licensees of Neutrodyne have prior to the said date infringed certain patents owned or controlled by A. R. T. S. and Neutrodyne has agreed to pay to A. R. T. S. damages for such infringements Now It Is Agreed that the difference in the amounts of such damages respectively shall be settled by the payment to Neutrodyne by A. R. T. S. of the sum of Two thousand five hundred pounds (£2500) such payment to be made in five equal yearly instalments of Five hundred pounds (£500) the first payment to be made on the Thirtieth day of June One thousand nine hundred and thirty-four.

21. Notwithstanding anything herein contained A. R. T. S. and Neutrodyne reserve the right under their existing license agreemnts to collect all moneys and/or royalties payable to them for the use of their patents prior to the Thirty-first day of March One thousand nine hundred and thirty-four whether such moneys are payable before or after such date.

22. Neutrodyne will at its own cost render such service

to A. R. T. S. in the States of Victoria and South Australia as shall be agreed upon as being for the mutual benefit of the parties hereto and A. R. T. S. shall at its own cost render similar service in the other States of the Commonwealth and New Zealand. Neutrodyne shall also refund to A. R. T. S. a proportion of the cost to be incurred by A. R. T. S. in carrying out its obligations to issue licenses and collect royalties from licensees in New Zealand. Such proportion shall be equal to the proportion of gross royalty income which shall be received by Neutrodyne for the territory of New Zealand compared with the gross royalty income which shall be received by A. R. T. S. in respect of the same territory.

23. A. R. T. S. shall at all times during the currency of this Agreement use its best endeavours to exploit for the profit and benefit of the parties hereto the patent rights and interests owned or controlled by such parties and will do everything necessary to grant as many licenses to use such patent rights and interests as possible and to obtain from every licensee reasonable and proper payments of royalties and will promptly collect all royalties payable by licensees and where necessary will without delay institute legal proceedings for the recovery thereof. Every license to be issued by A. R. T. S. shall contain an obligation by the licensee to make monetary payments of royalties.

24. Neutrodyne shall at all times during the currency of this Agreement use its best endeavours to assist in the exploitation for the profit and benefit of the parties hereto of the patent rights and interests owned or controlled by such parties.

25. Notwithstanding anything herein contained all royalties which shall be received by A. R. T. S. from Radio Corporation Pty. Ltd. in respect of broadcast receivers as herein defined manufactured only by it or its successors up

to a limit of Twelve thousand (12,000) shall be paid to Neutrodyne by A. R. T. S. For the purpose of calculating the amounts Mentioned in Clause 12 the payments herein mentioned shall be included.

26. Notwithstanding anything herein contained A. R. T. S. shall not be bound to pay to Neutrodyne by reason of this agreement any royalty whatsoever on broadcast receivers as herein defined, manufactured only by Amalgamated Wireless (Australasia) Limited of 47 York Street Sydney, and Standard Telephone & Cables (Australasia) Ltd. of 71 York Street Sydney or their respective Successors under any license issued by A. R. T. S. by virtue of this Agreement up to a limit of Thirty-six thousand (36,000) broadcast receivers as herein defined.

27. The expression "Broadcast Receivers" when herein used shall mean broadcast receiving apparatus (other than valves and loud speakers) for the reception of speech or music transmitted and intended for simultaneous reception by all listeners as distinct from point to point communication but only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public and not being held for payment) but not otherwise but shall include sets of component parts.

28. The expression "Broadcast Receiver" excludes valves and loudspeakers.

29. Notwithstanding anything hereinbefore contained all rights and obligations relating to the Dominion of New Zealand shall not commence until the First day of June One thousand nine hundred and thirty-four.

First Schedule.

Bell Telephone Laboratories
Marconi's Wireless Telegraph Co. Ltd.
Gesellschaft fur drahtlose Telegraphie (M.B.H.)
Radio Corporation of America
General Electric Co. Inc. (including International General Electric Company Inc.)
Standard Telephones & Cables (A/asia) Ltd.
Compagnie Generale de Telegraphie Sans Fil)
Societe Francaise Radio Electrique) Until 1937
Standard Telephones & Cables (London)
International Telephone and Telegraph Corporation
Western Electric Company Incorporated.
Electrical Research Products Inc.
International Standard Electric Corporation Inc.
Amalgamated Wireless (A/asia) Ltd.

Second Schedule.

Neutrodyne Proprietary Limited.
Hazeltine Corporation (U. S. A.)

Third Schedule.

Aristone Radio Co. (Aust.) Pty. Ltd.
230 Chapel Street, Prahran.
Colonial Radio Pty. Ltd.,
136 a'Beckett Street, Melbourne.
Custom Built Radio,
229 Castlereagh Street, Sydney.
D. W. Super Short Wave Converters,
Lennox Street, Gordon, Sydney.
Duffy Radio Co. Ltd.,
53 George Street, Redfern, Sydney.
Eclipse Radio Pty. Ltd.,
212 City Road, South Melbourne.

Raycophone Ltd.,
    368 George Street, Sydney.
Orpheus Radio Co. Pty. Ltd.,
    294 Little Lonsdale Street, Melbourne.
Premier Radio,
    11 Constitution Road, Ryde, N. S. W.
Radio Maintenance Pty. Ltd.,
    407 Swanston Street, Richmond.
Radio & Television Ltd.,
    York House, York Street, Sydney.
Radiette Radio Ltd.,
    187 William Street, Sydney.
Slade's Radio,
    Lang Street, Croydon, Sydney.
Stromberg-Carlson (A/asia) Ltd.,
    72 William Street, Sydney.
Superheterodynes Pty. Ltd.,
    90 Chapel Street, St. Kilda, Vic.
Targan Electric Co. Pty. Ltd.,
    131 Brunswick Road, East Brunswick, Vic.
University Radio Co.,
    22 City Road, Sydney.
Radio Corporation Pty. Ltd.,
    Sturt Street, Melbourne.
Essanay Manufacturing Pty. Ltd.,
    Buckhurst Street, Sth. Melbourne, Vic.
Howard Radio Pty. Ltd.,
    Brunswick, Vic.
Firth Bros. Pty. Ltd.,
    Little Lonsdale St., Melbourne.
Majestic Radio Manufacturing Co.,
    101 William Street, Sydney.
Philadelphia Storage Battery Company (U. S. A.) (so far as concerns the territory of New Zealand only).

Fourth Schedule.

1. The License shall commence as from the First day of January One Thousand nine hundred and thirtyfour.
2. The first initial royalty payment of One Hundred and fifty pounds (£150) payable under Clause 4 (i) of the said License agreement shall be deemed to have been paid by each signatory Company.
3. The royalties or damages due to A. R. T. S. for infringement prior to the 1st April 1934 of patents owned and/or controlled by A. R. T. S. shall be deemed to have been paid by each signatory Company.
4. As from the First day of April One thousand nine hundred and thirtyfour the rights to manufacture under the patents of the Neutrodyne Pty. Ltd. shall be included in the License agreements without increase in the royalty charges as shown in Schedule of the said License agreement and A. R. T. S. shall undertake to hold the signatory companies protected against Neutrodyne Pty. Ltd. for the use of its inventions after the First day of April One thousand nine hundred and thirtyfour by reason of finalising an agreement with Neutrodyne Pty. Ltd. by which A. R. T. S. will acquire the rights to grant licenses to manufacture broadcast receivers under that Company's patents in that regard.
5. That A. R. T. S. will cause a written notice to be sent to each of the signatory companies under its seal, to the effect that A. R. T. S. has the necessary authority and right to grant for the currency of this agreement to persons firms or companies a license to manufacture broadcast receivers but not including valves and speakers under the present and future patents rights of:

Bell Telephone Laboratories Inc.
Electrical Research Products Inc.
International Standard Electric Corporation, New York

International Telephone and Telegraph Laboratories Inc.
N. V. Philips, Gloeilampenfabrieken
Philips' Lamps (A/asia) Ltd.
Standard Telephones & Cables (A/asia) Ltd.
Standard Telephones & Cables (London)
Western Electric Company Inc.
Amalgamated Wireless (A/asia) Ltd.
International General Electric Co. Inc.
Marconi's Wireless Telegraph Co. Ltd.
Radio Corporation of America.
Telefunken Gesellschaft fur Drahtlose Telegraphie (M. B. H.)
Compagnie Generale de Telegraphie Sans Fil
Societe Francaise Radio Electrique
Radio Corporation Pty. Ltd.
Neutrodyne Pty. Ltd.
Haxeltine Corporation of the State of New York, U. S. A.

6. The License Agreement shall give the signatory companies the right to use the inventions referred to in Clause 5 of the said agreement without payment of extra royalties except only that, if A. R. T. S. shall be called upon to pay for any invention emanating from any laboratory or source other than the aforesaid the signatory companies shall have the option to use same upon payment of a royalty based on A. R. T. S.' cost but without profit to A. R. T. S.

7. The License agreement shall indemnify each signatory company against all costs and damages for any action for infringement of patent rights which may be taken against any signatory company by any third party in connection with any broadcast receiver which has been approved by A. R. T. S. as non-infringing the patent right of third parties; but each signatory company shall be bound to first submit all receivers and circuits required by A. R. T. S. for approval purposes. The deci-

sion of A. R. T. S. as to approval, disapproval or request for alteration shall be conveyed to the submitting signatory company within fourteen days of the receipt of such company's sample by A. R. T. S.

8. A. R. T. S. shall upon Stromberg Carlson (A/asia) Ltd. executing under seal the formal documents embodying the terms and conditions of License No. 1 and the terms and conditions of this offer arrange with the Standard Telephones & Cables (A/asia) Ltd. to withdraw their present infringement action on the Anderson patent against Stromberg-Carlson (A/asia) Ltd. each side to pay its own costs in such action.

9. Each signatory company undertakes that it will, if this offer is accepted and if called upon so to do, execute a formal agreement under its seal (if any), embodying the terms and conditions of this offer provided always that such terms and conditions shall be expressed in such Agreement in a form and manner approved by the solicitors of the Litigation Protection Trust.

Fifth Schedule.

Aristone Radio Co. (Aust) Pty. Ltd.
230 Chapel St., Prahran.
Colonial Radio Pty. Ltd.,
136 a'Beckett St., Melbourne.
Custom Built Radio,
229 Castlereagh St., Sydney.
D. W. Super Short Wave Converters,
Lennox St., Gordon, Sydney.
Duffy Radio Co. Ltd.,
73 George St., Redfern, Sydney.
Eclipse Radio Pty. Ltd.,
212 City Rd., South Melbourne, Vic.
Raycophone Ltd.,
386 George St., Sydney.
Orpheus Radio Co. Pty. Ltd.,
294 Lonsdale St., Melbourne.

Radio Maintenance Pty. Ltd.,
407 Swanston St., Richmond.
Radio & Television Ltd.,
York House, York St., Sydney.
Radiette Radio Ltd.,
187 William St., Sydney.
Slade's Radio,
Lang Street, Croydon, N. S. W.
Stromberg-Carlson (A/asia) Ltd.,
72 William St., Sydney.
Superheterodynes Pty. Ltd.,
96 Chapel St., St. Kilda, Vic.
Targan Electric Co. Pty. Ltd.,
131 Brunswick Road, East Brunswick.
University Radio Co.,
22 City Road Sydney.
Majestic Radio Manufacturing Co.,
161 William St., Sydney.
Radio Corporation Pty. Ltd.,
Sturt St., Sth. Melbourne, Vic.

The Common Seal of Australian Radio Technical Services and Patents Company Limited was hereunto affixed by L. A. Hooke and H. C. Trenam two Directors of the Company by order of the Board in the presence of
J. W. Wilson,
Secretary.

L. S.
L. A. Hooke
Director
H. C. Trenam
Director

The Common Seal of Neutrodyne Proprietary Limited was hereunto affixed by order of the Directors in the presence of:
A. E. Burbury.

L. S.
A. G. Warner
Director
Louis Abrahams
Director

DEFENDANT'S EXHIBIT NO. 183-A.

April 5th, 1939
LBD:jp

Australian Pool Agreement.

This agreement is the same as the New Zealand Pool Agreement except as follows:

Paragraph 9—Neutrodyne's share is 25% less £1,800 instead of 22%.

Paragraph 12(b)—Neutrodyne's contribution to litigation expenses is 25% instead of 22%.

Paragraph 18—(This paragraph is entirely different.) Neutrodyne is to render services to A. R. T. S. in Victoria, South Australia and Tasmania; A. R. T. S. is to render similar services throughout the rest of Australia.

L. B. Dodds.

This Deed made this Twenty eighth day of November One thousand nine hundred and thirtyeight Between Australian Radio Technical Services and Patents Company Proprietary Limited (hereinafter called "A. R. T. S.") of the first part And Neutrodyne Proprietary Limited (hereinafter referred to as "Neutrodyne") of the second part Whereas it is hereby agreed as follows:—

1. A. R. T. S. undertakes that it has the exclusive right to grant licenses or sub-licenses for the purposes of manufacture sale and use of broadcast receivers as herein defined under all of the New Zeland present and future patented inventions which any of the Companies specified in the First Schedule hereto owns or controls and will continue to have such right

(a) As to any such inventions owned or controlled by the Companies specified in the First Part of the

First Schedule during the currency of this Agreement.

(b) As to any such inventions owned or controlled by the Companies specified in the Second part of the First Schedule for such periods respectively during the currency of this Agreement as A. R. T. S. shall be entitled to exercise such right.

and no person or company (including the registered proprietor) shall have the right to manufacture sell or use such broadcast receivers as herein defined employing such inventions without first obtaining a license from A. R. T. S. during the periods respectively above set forth.

fined under all of the New Zealand present and future

2. Neutrodyne undertakes that it has the exclusive right to grant licenses or sub-licenses for the purposes of manufacture sale and use of broadcast receivers as herein defined under all the New Zealand present and future patented inventions which any of the Companies specified in the Second Schedule hereto owns or controls and Neutrodyne will continue to have such exclusive right during the currency of this Agreement and no person or company (including the registered proprietor) shall have the right to manufacture sell or use such broadcast receivers as herein defined employing such inventions without first obtaining a license from A. R. T. S. inventions without first obtaining a license from A. R. T. S.

3. A. R. T. S. agrees in respect of any broadcast receivers manufactured and/or sold in Australia by any of the Companies mentioned in the First Schedule or by any representative or subsidiaries of such Companies or under any license or sub-license granted or to be granted under the Australian Letters Patent owned or controlled by any such Companies irrespective of whether such license or sub-license is granted by the registered proprietor or its licensees to pay to Neutrodyne royalties at the same rate

as would be payable to Neutrodyne if such broadcast receivers had been manufactured and/or sold by a licensee of A. R. T. S. This Clause shall not operate in respect of any broadcast receivers as herein defined manufactured and/or sold under any license granted after September 1940 under the Australian Letters Patent owned or controlled by the Bell Telephone Laboratories Incorporated, Western Electric Company Incorporated and Electrical Research Products Incorporated.

4. Neutrodyne agrees in respect of every broadcast receiver manufactured and/or sold in Australia by any of the Companies mentioned in the Second Schedule hereto or by any representative or subsidiaries of such Companies or under any license or sub-license granted or to be granted under the Australian Letters Patent owned or controlled by any such Companies irrespective of whether such license or sub-license is granted by the registered proprietor or its licensees to pay to A. R. T. S. royalties at the same rate as would be payable to A. R. T. S. if such broadcast receivers had been manufactured and/or sold by a licensee of A. R. T. S. under and by virtue of this Agreement.

5. In consideration of the premises and of the payment to Neutrodyne of the royalties hereinafter mentioned in manner hereinafter provided Neutrodyne hereby grants to A. R. T. S. for the term herein mentioned but subject as hereinafter provided the exclusive right and authority to grant sub-licenses to third parties (hereinafter called "Licensees") to use manufacture and sell in the Commonwealth of Australia broadcast receivers as herein defined the subject of the present and future Letters Patent owned or controlled by it conditionally on such sub-licenses being non-assignable by A. R. T. S. or by its Licensees.

6. For the purposes of and during the continuance of this Agreement Neutrodyne hereby irrevocably appoints A. R. T. S. its attorney in its name to effectually execute

sign seal and deliver all such documents deeds and instruments and to do and execute all such matters acts and things as may be necessary to effectually grant the said licenses or sub-licenses to Licensees as aforesaid subject as herein provided.

7. A. R. T. S. shall not grant licenses or sub-licenses to use any Letters Patent relating to broadcast receivers as herein defined unless such licenses or sub-licenses shall include the right to use all the Letters Patent owned or controlled by all the parties hereto.

8. The term of this Agreement shall be five years commencing on the First day of January One thousand nine hundred and thirty nine.

9. In consideration of the premises A. R. T. S. will in respect of the period covered by this Agreement pay to Neutrodyne 25% (twenty-five per centum) of the gross sum received by it from Licensees or sub-licensees for royalties paid for the use sale or manufacture of broadcast receivers in the Commonwealth of Australia. Such royalties shall include royalties which have been paid in respect of Letters Patent owned or controlled by the Companies mentioned in the First Schedule as well as royalties which have been paid for Letters Patent owned or controlled by the Companies mentioned in the Second Schedule hereto Provided That from the said payment by A. R. T. S. to Neutrodyne under this Clause A. R. T. S. shall retain the sum of £1,800 (Eighteen hundred pounds) per annum.

10. The amount payable under Clause 9 hereof shall be paid by A. R. T. S. to Neutrodyne monthly and not later than the last day of the month next succeeding the month during which the said royalties have been received by or on account of A. R. T. S. A. R. T. S. will keep and maintain full and complete records of all royalties received by or payable to it under Clause 9 hereof and of all licenses or sub-licenses granted by it and will on or before the

last day of each and every month during the continuance of this Agreement furnish Neutrodyne with a complete and accurate statement showing the manner in which said royalties have been calculated and setting forth the name and address of every person firm or company from whom such royalties have been received and the number of broadcast receivers on which royalties have been paid.

11. Neutrodyne by a member or members of the Institute of Chartered Accounts of Australia appointed for the purpose shall have the right from time to time during the said term and for a period of six months thereafter to inspect examine and take extracts and copies of all records and books of account kept and maintained by A. R. T. S. as hereinbefore provided.

12. (a) During the said term and subject as hereinafter expressly provided A. R. T. S. shall have the right to take and institute all such actions suits or other legal proceedings as may be necessary to prevent the continuance of or to prevent the infringement within the Commonwealth of Australia of any patent right or interest owned or controlled by Neutrodyne and being the subject of this Agreement and for the purpose of this Clause Neutrodyne hereby irrevocably during the period of this Agreement appoints A. R. T. S. its Attorney in its name to take and institute all such actions suits and proceedings Provided Further that in respect of any such actions suits or proceedings Neutrodyne shall have the right to veto the appointment of any Counsel or Solicitor to be briefed or retained in connection therewith and all processes and pleadings to be used in connection therewith shall if so required by Neutrodyne be in such form and shall contain such statement of fact and otherwise as one or more Counsel nominated or appointed by Neutrodyne at its own expense for that purpose shall require Provided Further that Neutrodyne shall have the right to veto institution of

infringement actions in respect of Neutrodyne's Letter Patent if the number of such actions would but for such veto exceed the proportion of one Neutrodyne infringement action to two other infringement actions on the other Letters Patent owned or controlled by A. R. T. S.

(b) In respect of any action suit or other legal proceedings to prevent the continuance of or to prevent the infringement within the Commonwealth of Australia of any patent right or interest owned or controlled by the Companies specified in the First and Second Schedules hereto A. R. T. S. shall be responsible for and pay all legal costs charges and expenses occasioned by or arising out of any such action suit or legal proceedings (including any costs ordered to be paid by the Plaintiff or Plaintiffs Petitioner or Petitioners in any such action suit or legal proceedings or agreed to be paid on the settlement or withdrawal of any such action suit or legal proceedings) whether any such action suit or legal proceedigns are commenced in the name of A. R. T. S. as Plaintiff or in the name or names of any of the Companies set out in the First and Second Schedules hereto Provided Always that Neutrodyne shall contribute 25% (twenty-five per centum) of such legal costs charges and expenses as aforesaid.

13. Neutrodyne shall give to A. R. T. S. free of all costs and expenses all reasonable proper and necessary information and assistance relating to its patent rights and interests including all service information emanating from the Hazeltine Corporation of the State of New York United States of America which may be available from time to time for use of its Licensees and such reasonable information and assistance as A. R. T. S. may require in connection with any suit action or proceeding relating thereto. Any service bulletins or circulars based on information emanating from Neutrodyne or the said Hazeltine

Corporation which may be issued by A. R. T. S. shall clearly indicate their source or origin.

14. Every license or sub-license granted by A. R. T. S. hereunder shall contain an obligation binding the Licensee to set forth in a monthly royalty return the quantity of broadcast receivers as herein defined which the Licensee has manufactured or sold under such license or sub-license.

15. A. R. T. S. agrees insofar as it is within its power that legal action shall be instituted and prosecuted with due diligence against any person or company infringing any of the Letters Patent owned or controlled by the Companies specified in the First and Second Schedules hereto. If however Neutrodyne considers that legal proceedings should be brought against alleged infringers of any of its Letters Patent and A. R. T. S. does not take such legal proceedings then Neutrodyne may take such proceedings at its own expense and shall be entitled to collect costs damages and royalties both past and future from such alleged infringers for its sole use and benefit.

16. A. R. T. S. agrees to take prompt steps and shall do everything necessary to enforce payment by any Licensee of royalties due under any license issued by it in pursuance of this Agreement.

17. Notwithstanding anything contained herein all licenses to manufacture and sell under Letters Patent granted or agreed to be granted herein shall cease immediately on the termination of this Agreement.

18. Neutrodyne will at its own cost render such service to A. R. T. S. in the States of Victoria and South Australia and Tasmania as shall be agreed upon as being for the mutual benefit of the parties hereto and A. R. T. S. shall at its own cost render similar service in the other States of the Commonwealth of Australia.

19. A. R. T. S. shall at all times during the currency of

this Agreement use its best endeavors to exploit for the profit and benefit of the parties hereto the patent rights and interests owned or controlled by such parties and will do everything necessary to grant as many licenses to use such patent rights and interests as possible and to obtain from every Licensee reasonable and proper payments of royalties and will promptly collect all royalties payable by Licensees and where necessary will without any delay institute legal proceedings for the recovery thereof. Every license to be issued by A. R. T. S. shall contain an obligation by the Licensee to make monetary payments of royalties.

20. Neutrodyne shall at all times during the currency of this Agreement use its best endeavours to assist in the exploitation for the profit and benefit of the parties hereto of the patent righst and interests owned or controlled by such parties.

21. The expression "Broadcast Receivers" where herein used shall mean broadcast receiving apparatus (other than valves and loud speakers) for the reception of speech or music transmitted and intended for simultaneoos reception by all listeners as distinct from point to point communication but only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public and not being held for payment) but not otherwise but shall include sets of component parts.

22. The expression "Broadcast Receivers" excludes valves and loud speakers.

23. This Agreement shall be deemed to have been made in and subject to the laws of Victoria.

First Schedule.

First Page.

Marconi's Wireless Telegraph Company Limited,
Telefunken Gesellschaft Fur Drahtlose Telegraphie m.b.H.,
Radio Corporation of America,
General Electric Company Incorporated (including International General Electric Company Incorporated),
Standard Telephones & Cables Pty. Limited,
Standard Telephones & Cables Limited (London),
International Telephone and Telegraph Corporation,
International Standard Electric Corporation Incorporated,
Amalgamated Wireless (Australasia) Limited.

First Schedule.

Second Part.

Bell Telephone Laboratories Incorporated,
Campagnie Generale De Telegraphie Sans Fil,
Societe Francaise Radio Electrique,
Western Electric Company Incorporated,
Electrical Research Products Incorporated.

Second Schedule.

Neutrodyne Proprietary Limited,
Hazeltine Corporation (U. S. A.)
Radio Corporation Proprietary Limited.
The Common Seal of Australian

Radio Technical Services and
Patents Company Proprietary
Limited was hereto affixed by
L. A. Hooke and
Sir Ernest Fisk, two

Directors of the Company by order of the Board in the presence of

(Signed) J. F. Wilson,
Secretary.

L. S. L. A. Hooke,
E. Fisk.

The Common Seal of Neutrodyne Proprietary Limited was hereto affixed by order of the directors in the presence of

(Signed) A. G. Warner.

DEFENDANT'S EXHIBIT NO. 183-B.

April 5th, 1939.

LBD:jp

New Zealand Pool Agreement.

1. A. R. T. S. warrants that it has exclusive rights under the patents of the companies of the First Schedule, even excluding patent owner.
2. Neutrodyne represents that it has exclusive rights under the patents of the companies of the Second Schedule, even excluding the patent owner.
3. A. R. T. S. agrees to pay to Neutrodyne royalties on all receivers sold by the companies of the First Schedule and their licensees to some extent as pool licensees.
4. Neutrodyne agrees to pay to A. R. T. S. royalties on all receivers sold by the companies of the Second Schedule and their licensees, to same extent as if sold by Pool licensee.
5. Neutrodyne grants exclusive right to sublicense to A. R. T. S.
6. Neutrodyne appoints A. R. T. S. its attorney in fact to issue licenses in its name.
7. A. R. T. S. can grant licenses only under all patents.
8. Term—five years from January 1st, 1939.
9. A. R. T. S. to pay to Neutrodyne 22% of gross royalties received. (How about those payable at termination of pool?)
10. A. R. T. S. will keep records, make reports, and royalty payments by last day of each month for preceding month.
11. Neutrodyne has right to inspect A. R. T. S.' books.

12. (a) A. R. T. S.' right to bring legal actions and Neutrodyne appoints its attorney in fact; Provided Neutrodyne can veto any counsel, and all pleadings are subject to approval of counsel of Neutrodyne; Provided further, Neutrodyne may veto if more than one in three actions are on Neutrodyne patents.

    (b) All actions under (a) at expense of A. R. T. S. subject to a 22% contribution by Neutrodyne.

13. Neutrodyne to give A. R. T. S. all possible technical information including that from Hazeltine.
14. All licenses issued by A. R. T. S. shall require licensee to issue monthly report of receivers manufactured or sold.
15. A. R. T. S. agrees to diligently proceed against infringers; in case of disagreement, Neutrodyne may proceed at own expense and for own benefit.
16. A. R. T. S. to enforce payment of royalties under pool license.
17. All licenses to terminate with termination of pool.
18. Neutrodyne to refund to A. R. T. S. a proportionate share (22%) of expenses of A. R. T. S. in issuing licenses and collecting royalties.
19. A. R. T. S. to use best efforts to exploit the pool patents.
20. Neutrodyne to use best efforts to exploit the pool patents.
21. *Definition of "Broadcast Receivers"—limits to home receivers.—Excludes television.
22. "Broadcast Receivers" excludes tubes and speakers.
23. Agreement under laws of Victoria.

---

* No agreement as to form of pool license or minimum rate of royalty.

L. B. Dodds.

This deed made this Twenty Eighth day of November One thousand nine hundred and thirty-eight Between Australian Radio Technical Services and Patents Company Proprietary Limited (hereinafter called "A. R. T. S.") of the first part and Neutrodyne Proprietary Limited (hereinafter referred to as "Neutrodyne") of the second part Whereas it is hereby agreed as follows:—

1. A. R. T. S. undertakes that it has the exclusive right to grant licenses or sub-licenses for the purposes of manufacture sale and use of broadcast receivers as herein defined under all of the Australian present and future patented inventions which any of the companies specified in the First Schedule hereto owns or controls and will continue to have such right

   (a) As to any such inventions owned or controlled by the Companies specified in the First Part of the First Schedule during the currency of this Agreement

   (b) As to any such inventions owned or controlled by the Companies specified in the Second part of the First Schedule for such periods respectively during the currency of this Agrement as A. R. T. S. shall be entitled to exercise such right

and no person or company (including the registered proprietor) shall have the right to manufacture sell or use such broadcast receivers as herein defined employing such inventions without first obtaining a license from A. R. T. S. during the periods respectively above set forth.

2. Neutrodyne undertakes that it has the exclusive right to grant licenses or sub-licenses for the purposes of manufacture sale and use of broadcast receivers as herein defined under all the Australian present and future patented inventions which any of the companies specified in the Second Schedule hereto owns or controls and Neutrodyne

will continue to have such exclusive right during the currency of this Agreement and no person or company (including the registered proprietor) shall have the right to manufacture sell or use such broadcast receivers as herein defined employing such inventions without first obtaining a license from A. R. T. S.

3. A. R. T. S. agrees in respect of any broadcast receivers manufactured and/or sold in New Zealand by any of the Companies mentioned in the First Schedule or by any representative or subsidiaries of such Companies or under any license or sub-license granted or to be granted under the New Zealand Letters Patent owned or controlled by any such Companies irrespective of whether such license or sub-license is granted by the registered proprietor or its Licensees to pay to Neutrodyne royalties at the same rate as would be payable to Neutrodyne if such broadcast receivers had been manufactured and/or sold by a Licensee of A. R. T. S. This Clause shall not operate in respect of any broadcast receivers as herein defined manufactured and/or sold under any license granted after September 1940 under the New Zealand Letters Patent owned or controlled by the Bell Telephone Laboratories Incorporated, Western Electric Company Incorporated and Electrical Research Products Incorporated.

4. Neutrodyne agrees in respect of every broadcast receiver manufactured and/or sold in New Zealand by any of the Companies mentioned in the Second Schedule hereto or by any representative or subsidiaries of such Companies or under any license or sub-license granted or to be granted under the New Zealand Letters Patent owned or controlled by any such Companies irrespective of whether such license or sub-license is granted by the registered proprietor or its licensees to pay to A. R. T. S. royalties at the same rate as would be payable to A. R. T. S. if such broadcast receivers had been manufactured and/or sold by a Licensee of A. R. T. S. under and by virtue of this Agreement.

5. In consideration of the premises and of the payment to Neutrodyne of the royalties hereinafter mentioned in manner hereinafter provided Neutrodyne hereby grants to A. R. T. S. for the term herein mentioned but subject as hereinafter provided the exclusive right and authority to grant sub-licenses to third parties, (hereinafter called "Licensees") to use manufacture and sell in the Dominion of New Zealand broadcast receivers as herein defined the subject of the present and future Letters Patent owned or controlled by it conditionally on such sub-licenses being non-assignable by A. R. T. S. or by its Licensees.

6. For the purposes of and during the continuance of this Agreement Neutrodyne hereby irrevocably appoints A. R. T. S. its Attorney in its name to effectually execute sign seal and deliver all such documents deeds and instruments and to do nad execute all such matters acts and things as may be necessary to effectually grant the said Licenses or sub-Licenses to Licensees as aforesaid subject as herein provided.

7. A. R. T. S. shall not grant licenses or sub-licenses to use any Letters Patent relating to broadcast receivers as herein defined unless such licenses or sub-licenses shall include the right to use all the Letters Patent owned or controlled by all the parties hereto.

8. The term of this Agreement shall be five years commencing on the First day of January One thousand nine hundred and thirty nine.

9. In consideration of the premises A. R. T. S. will in respect of the period covered by this Agreement pay to Neutrodyne 22% (twenty two per centum) of the gross sum received by it from Licensees or sub-licensees for royalties paid for the use sale or manufacture of broadcast receivers in the Dominion of New Zealand. Such royalties shall include royalties which have been paid in respect of Letters Patent owned or controlled by the Companies men-

tioned in the First Schedule as well as royalties which have been paid for Letters Patent owned or controlled by the Companies mentioned in the Second Schedule hereto.

10. The amount payable under Clause 9 hereof shall be paid by A. R. T. S. to Neutrodyne monthly and not later than the last day of the month next succeeding the month during which the said royalties have been received by or on account of A. R. T. S. A. R. T. S. will keep and maintain full and complete records of all royalties received by or payable to it under Clause 9 hereof and of all Licenses or sub-licenses granted by it and will on or before the last day of each and every month during the continuance of this Agreement furnish Neutrodyne with a complete and accurate statement showing the manner in which the said royalties have been calculated and setting forth the name and address of every person firm or company from whom such royalties have been received and the number of broadcast receivers on which royalties have been paid.

11. Neutrodyne by a member or members of the Institute of Chartered Accountants of Australia appointed for the purpose shall have the right from time to time during the said term and for a period of six months thereafter to inspect examine and take extracts and copies of all records and books of account kept and maintained by A. R. T. S. as hereinbefore provided.

12. (a) During the said term and subject as hereinafter expressly provided A. R. T. S. shall have the right to take and institute all such actions suits or other legal proceedings as may be necessary to prevent the continuance of or to prevent the infringement within the Dominion of New Zealand of any patent right or interest owned or controlled by Neutrodyne and being the subject of this Agreement and for the purpose of this Clause Neutrodyne hereby irrevocably during the period of this Agreement appoints A. R. T. S. its Attorney in its name to take and institute all

such actions suits and proceedings Provided Further that in respect of any such actions suits or proceedings Neutrodyne shall have the right to veto the appointment of any Counsel or Solicitor to be briefed or retained in connection therewith and all processes and pleadings to be used in connection therewith shall if so required by Neutrodyne be in such form and shall contain such statement of fact and otherwise as one or more Counsel nominated or appointed by Neutrodyne at its own expense for that purpose shall require Provided Further that Neutrodyne shall have the right to veto institution of infringement actions in respect of Neutrodyne's Letters Patent if the number of such actions would but for such veto exceed the proportion of one Neutrodyne infringement action to two other infringement actions on the other Letters Patent owned or controlled by A. R. T. S.

(b) In respect of any action suit or other legal proceedings to prevent the continuance of or to prevent the infringement within the Dominion of New Zealand of any patent right or interest owned or controlled by the Companies specified in the First and Second Schedules hereto A. R. T. S. shall be responsible for and pay all legal costs charges and expenses occasioned by or arising out of any such action suit or legal proceeding (including any costs ordered to be paid by the Plaintiff or Plaintiffs Petitioner or Petitioners in any such action suit or legal proceedings or agreed to be paid on the settlement or withdrawal of any such action suit or legal proceedings) whether any such action suit or legal proceedings are commenced in the name of A. R. T. S. as Plaintiff or in the name or names of any of the Companies set out in the First and Second Schedules hereto Provided Always that Neutrodyne shall contribute 22% (twentytwo per centum) of such legal costs charges and expenses as aforesaid.

13. Neutrodyne shall give to A. R. T. S. free of all

costs and expenses all reasonable proper and necessary information and assistance relating to its patent rights and interests including all service information emanating from the Hazeltine Corporation of the State of New York United States of America which may be available from time to time for use of its licensees and such reasonable information and assistance as A. R. T. S. may require in connection with any suit action or proceeding relating thereto. Any service bulletins or circulars based on information emanating from Neutrodyne or the said Hazeltine Corporation which may be issued by A. R. T. S. shall clearly indicate their source or origin.

14. Every license or sub-license granted by A. R. T. S. hereunder shall contain an obligation binding the Licensee to set forth in a monthly royalty return the quantity of broadcast receivers as herein defined which the Licensee has manufactured or sold under such License or sub-license.

15. A. R. T. S. agrees insofar as it is within its power that legal action shall be instituted and prosecuted with due diligence against any person or company infringing any of the Letters Patent owned or controlled by the Companies specified in the First and Second Schedules hereto. If however Neutrodyne considers that legal proceedings should be brought against alleged infringers of any of its Letters Patent and A. R. T. S. does not take such legal proceedings then Neutrodyne may take such proceedings at its own expense and shall be entitled to collect costs damages and royalties both past and future from such alleged infringer for its sole use and benefit.

16. A. R. T. S. agrees to take prompt steps and shall do everything necessary to enforce payment by any Licensee of royalties due under any license issued by it in pursuance of this Agreement.

17. Notwithstanding anything contained herein all licenses to manufacture and sell under Letters Patent granted

or agreed to be granted herein shall cease immediately on the termination of this Agreement.

18. Neutrodyne shall refund to A. R. T. S. a proportion of the cost to be incurred by A. R. T. S. in carrying out its obligations to issue licenses and collect royalties from Licensees in the Dominion of New Zealand. Such proportion shall be equal to the proportion of gross royalty income which shall be received by Neutrodyne for the territory of the Dominion of New Zealand compared with the gross royalty income which shall be received by A. R. T. S. in respect of the same territory.

19. A. R. T. S. shall at all times during the currency of this Agreement use its best endeavours to exploit for the profit and benefit of the parties hereto the patent rights and interests owned or controlled by such parties and will do everything necessary to grant as many licenses to use such patent rights and interests as possible and obtain from every Licensee reasonable and proper payment of royalties and will promptly collect all royalties payable by Licensees and where necessary will without any delay institute legal proceedings for the recovery thereof. Every license to be issued by A. R. T. S. shall contain an obligation by the Licensee to make monetary payments of royalties.

20. Neutrodyne shall at all times during the currency of this Agreement use its best endeavours to assist in the exploitation for the profit and benefit of the parties hereto of the patent rights and interests owned or controlled by such parties.

21. The expression "Broadcast Receivers" where herein used shall mean broadcast receiving apparatus (other than valves and loud speakers) for the reception of speech or music transmitted and intended for simultaneous reception by all listeners as distinct from point to point communica-

tion but only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public and not being held for payment) but not otherwise but shall include sets of component parts.

22. The expression "Broadcast Receiver" excludes valves and loud speakers.

23. This Agreement shall be deemed to have been made in and subject to the laws of the State of Victoria.

First Schedule.

First Part.

Marconi's Wireless Telegraph Company Limited
Telefunken Gesellschaft Fur Drahtlose Telegraphie m.b.H.
Radio Corporation of America
General Electric Company Incorporated (including International General Electric Company Incorporated)
Standard Telephones & Cables Pty. Limited
Standard Telephones & Cables Limited (London)
International Telephone And Telegraph Corporation
International Standard Electric Corporation Incorporated
Amalgamated Wireless (Australasia) Limited

First Schedule.

Second Part.

Bell Telephone Laboratories Incorporated
Compagnie Generale De Telegraphie Sans Fil
Societe Francaise Radio Electrique
Western Electric Company Incorporated
Electrical Research Products Incorporated.

Second Schedule.

Neutrodyne Proprietary Limited
Hazeltine Corporation (U. S. A.)
Radio Corporation Proprietary Limited.

The Common Seal of Australian Radio Technical Services And Patents Company Proprietary Limited was hereto affixed by L. A. Hooke and Sir Ernest Fisk two Directors of the Company by order of the Board in the presence of:
(Signed) J. F. Wilson
Secretary.

L. S. L. A. Hooke
E. Fisk

The Common Seal of Neutrodyne Proprietary Limited was hereunto affixed by order of the Directors in the presence of
(Signed) A. G. Warner.

DEFENDANT'S EXHIBIT NO. 184.

Dated 1946

Agreement

between

Australian Radio Technical Services
And Patents Company Pty. Limited.

—and—

Neutrodyne Proprietary Limited

This Deed made this 31st day of January One thousand nine hundred and forty-six Between Australian Radio Technical Services and Patents Company Pty. Limited (hereinafter called "A. R. T. S.") of the first part and Neutrodyne Proprietary Limited (hereinafter referred to as "Neutrodyne") of the second part Whereas it is hereby agreed as follows:—

1. A. R. T. S. warrants that it has the exclusive right to grant licenses or sub-licences for the purposes of manufacture sale and use of broadcast receivers as herein defined during the currency of this Agreement under all Australian Letters Patent set out in the Third Schedule hereto.

2. Neutrodyne warrants that it has the exclusive right to grant licences or sub-licences for the purposes of manufacture sale and use of broadcast receivers as herein defined during the currency of this Agreement under all then existing Australian Letters Patent protecting inventions originating in any of the Companies specified in the Second Schedule hereto or the subsidiaries of any such Companies and it further warrants that it has the exclusive right to grant licences or sub-licences for the purposes of manufacture sale and use of broadcast receivers as herein defined

during the currency of this Agreement under all Australian Letters Patent of which any of the Companies specified in the Second Schedule hereto shall be the registered proprietor or shall own or control and no person (including the registered proprietor) shall during the currency of this Agreement have the right to manufacture sell or use such broadcast receivers as herein defined employing the inventions protected by such Letters Patent without first obtaining a license from A. R. T. S.

3. In consideration of the premises of and the payment to Neutrodyne of the royalties hereinafter mentioned in manner hereinafter provided Neutrodyne hereby grants to A. R. T. S. but subject as hereinafter provided the exclusive right and authority to grant sub-licences to third parties (hereinafter called "licensees") to use manufacture and sell for the term herein mentioned in the Commonwealth of Australia broadcast receivers as herein defined the subject of the present and future Letters Patent owned or controlled by it conditionally on such sub-licences being non-assignable by A. R. T. S. or by its licensees.

4. For the purposes of and during the continuance of this Agreement Neutrodyne hereby irrevocably appoints A. R. T. S. its attorney in its name to effectually execute sign seal and deliver all such documents deeds and instruments and to do and execute all such matters acts and things as may be necessary to effectually grant the said licences or sub-licences to licensees as aforesaid subject as herein provided.

5. A. R. T. S. shall not grant licences or sub-licences to use any Letters Patent relating to broadcast receivers as herein defined unless such licences or sub-licences shall include the right to use all the inventions protected by Letters Patent under which A. R. T. S. has the exclusive right to grant licences including the licences or sub-licences referred to in Clauses 1, 3 and 4 hereof.

6. The term of this Agreement shall be five years commencing on the first day of January, One thousand nine hundred and forty-six.

7. In consideration of the premises A. R. T. S. will in respect of the period covered by this Agreement pay to Neutrodyne 25% (twenty-five per centum) of the gross sum received by it from licensees or, sub-licensees for royalties paid for the use sale or manufacture of broadcast receivers in the Commonwealth of Australia. Such royalties shall include royalties which have been paid to A. R. T. S. in respect of Letters Patent owned or controlled by the Companies mentioned in the First and Second Schedules as well as additional royalties which have been paid by licensees under the Letters Patent owned or controlled by the Companies referred to in Clause 15 (a) hereof Provided That from the amounts agreed to be paid by A. R. T. S. to Neutrodyne under this Clause A. R. T. S. shall be entitled to deduct and retain each year during the currency of this Agreement a sum equal to 1.41% (one point four one per centum) of the gross amount on which the percentage payable to Neutrodyne is calculated.

8. The amount payable under Clause 7 hereof shall be paid by A. R. T. S. to Neutrodyne monthly and no later than the last day of the month next succeeding the month during which the said royalties have been received by or on account of A. R. T. S. A. R. T. S. will keep and maintain full and complete records of all royalties received by or payable to it under Clause 7 hereof and of all licences or sub-licences granted by it and will on or before the last day of each and every month during the continuance of this Agreement furnish Neutrodyne with a complete and accurate statement showing the manner in which said royalties have been calculated and setting forth the name and address of every person firm or company from whom such royalties have been received and the number of broadcast receivers on which royalties have been paid.

9. Neutrodyne by a member or members of the Institute of Chartered Accountants of Australia appointed for the purpose shall have the right from time to time during the said term and for a period of six months thereafter to inspect examine and take extracts and copies of all records and books of account kept and maintained by A. R. T. S. as hereinbefore provided.

10(a). During the said term and subject as hereinafter expressly provided A. R. T. S. shall have the right to take and institute all such actions suits or other legal proceedings as may be necessary to prevent the continuance of or to prevent the infringement within the Commonwealth of Australia of any patent right or interest owned or controlled by Neutrodyne and being the subject of this Agreement and for the purpose of this Clause Neutrodyne hereby irrevocable during the period of this Agreement appoints A. R. T. S. its Attorney in its name to take and institute all such actions suits and proceedings Provided That in respect of any such actions suits or proceedings Neutrodyne shall have the right to veto the appointment of any Counsel or Solicitor to be briefed or retained in connection therewith and all processes and pleadings to be used in connection therewith shall if so required by Neutrodyne be in such form and shall contain such statement of fact and otherwise as one or more Counsel nominated or appointed by Neutrodyne at its own expense for that purpose shall require Provided Further That Neutrodyne shall have the right to veto institution of infringement actions in respect to Neutrodyne's Letters Patent if the number of such actions would but for such veto exceed the proportion of one Neutrodyne infringement action to two other infringement actions on the other Letters Patent owned or controlled by A. R. T. S. Provided Further That if Neutrodyne considers that legal proceedings should be brought against alleged infringers of any of its Letters Patent Neutrodyne may on giving notice to A. R. T. S. take and institute all such actions suits or other legal proceedings as may be necessary to prevent infringement.

(b) In respect to any action suit or other legal proceeding to prevent the continuancy of or to prevent the infringement within the Commonwealth of Australia of any patent right or interest owned or controlled by the Companies specified in the First and Second Schedules hereto A. R. T. S. shall be responsible for and pay all legal costs charged and expenses occasioned by or arising out of any such action suit or legal proceedings (including any costs ordered to be paid by the plaintiff or plaintiffs petitioner or petitioners in any such action suit or legal proceedings or agreed to be paid on the settlement or withdrawal of any such action suit or legal proceedings) whether any such action or legal proceedings are conmmenced in the name of A. R. T. S. as plaintiff or in the name or names of any of the Companies set out in the First and Second Schedules hereto Provided Always that Neutrodyne shall contribute 25% (twenty-five per centum) of such legal costs charges and expenses as aforesaid.

11. Neutrodyne shall give to A. R. T. S. free of all costs and expenses all reasonable proper and necessary information and assistance relating to its patent rights and interests including all service information emanating from the Hazeltine Corporation of the State of New York United States of America which may be available from time to time for use of its licensees and such reasonable information and assistance as A. R. T. S. may require in connection with any suit action or proceedings relating thereto. Any service bulletins or circulars based on information emanating from Neutrodyne or the said Hazeltine Corporation which may

be issued by A. R. T. S. shall clearly indicate their source of origin.

12. Every license or sub-licence granted by A. R. T. S. hereunder shall contain an obligation binding the licensee to set forth in a monthly royalty return the quantity of broadcast receivers as herein defined which the licensee has manufactured or sold under such license or sub-license.

13. A. R. T. S. agrees that legal action shall be instituted and prosecuted with due diligence against any person or company infringing any of the Letters Patent owned or controlled by the Companies specified in the First and Second Schedules hereto by the making using exercising or vending of broadcast receivers.

14. A. R. T. S. agrees to take prompt steps and shall do everything necessary to enforce payment by any licensee of royalties due under any licence issued by it in pursuance of this Agreement.

15. In the event of

(a) A. R. T. S. being granted the right to grant licences for the purposes of manufacture sale and use of broadcast receivers as herein defined in respect of any inventions covered by Letters Patent other than those specified in Clauses 1 and 2 hereof and other than those owned or controlled by N. V. Phillips' Gloeilampenfabrieken and its subsidiaries under an Agreement requiring A. R. T. S. to make an annual payment to the grantor out of the royalties collected by A. R. T. S. (hereafter referred to as "said additional agreement") and

(b) Companies entitled to receive in the aggregate at least 80% (eighty per centum) of the gross sum received by A. R. T. S. from its licensees and sublicensees agreeing to contribute to such annual payment to satisfy the terms of the said additional agreement

A. R. T. S. shall make a deduction from the annual sum payable to Neutrodyne hereunder which bears the same ratio to the annual sum payable by A. R. T. S. to satisfy the terms of such additional agreement as the annual sum paid by A. R. T. S. to Neutrodyne under Clause 7 hereof bears to the gross sum received by A. R. T. S. from its licensees and sub-licensees.

16. Notwithstanding anything contained herein all licences to manufacture and sell under Letters Patent granted or agreed to be granted herein shall cease immediately on the termination of this Agreement.

17. Neutrodyne will at its own cost render such service to A. R. T. S. in the States of Victroia and South Australia and Tasmania as shall be agreed upon as being for the mutual benefit of the parties hereto and A. R. T. S. shall at its own cost render similar service in the other States of the Commonwealth of Australia.

18. A. R. T. S. shall at all times during the currency of this Agreement use its best endeavours to exploit for the profit and benefit of the parties hereto the patent rights and interests owned or controlled by such parties and will do everything necessary to grant as many licences to use such patent rights and interests as possible and to obtain from every licensee reasonable and proper payments of royalties and will promptly collect all royalties payable by licensees and where necessary will without any delay institute legal proceedings for the recovery thereof. Every Licence to be issued by A. R. T. S. shall contain an obligation by the licensee to make monetary payments of royalties.

19. Neutrodyne shall at all time during the currency of this Agreement use its best endeavours to assist in the exploitation for the profit and benefit of the parties hereto of the patent rights and interests owned or controlled by such parties.

20. In the event of either party receiving any revenue directly or indirectly from Letters Patent relating to broadcast receivers such revenue shall be paid to A. R. T. S. and treated as gross revenue of A. R. T. S. from its licensees.

21. The expression "broadcast receivers" when herein used shall mean broadcast receiving apparatus which is designed to incorporate valves (whether or not equipped with the valves themselves) and which is designed to receive and translate modulated electrical oscillations broadcast to the public for sound and/or television and/or facsimile reception whether or not in the case of television or facsimile reception such apparatus is in the same cabinet with or is adapted to be used with a radio-gramophone provided that such broadcast receiving apparatus is only for private or domestic use or for the purposes of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public and not being held for payments) and not otherwise. Such expression does not include valves or cathode ray tubes whether or not incorporated in the apparatus nor separate components but shall include sets of component parts and/or any electronic device designed to be operated by such broadcast receiving apparatus.

22. This Agreement shall be deemed to have been made in and subject to the Laws of Victoria.

First Schedule.

Marconi's Wireless Telegraph Company Limited
Telefunken Gesellschaft fur Drahtlose Telegraphie m.b.H.
Radio Corporation of America
General Electric Company Incorporated (including International General Electric Company Incorporated)

Standard Telephones & Cables Pty. Limited
Standard Telephones & Cables Limited (London)
International Telephone and Telegraph Corporation
International Standard Electric Corporation
Amalgamated Wireless (Australasia) Limited.

Second Schedule.

Neutrodyne Proprietary Limited
Hazletine Corporation (U. S. A.)
Radio Corporation Proprietary Limited.

Third Schedule.

21959/29
21960/29
24349/29
24472/30
24484/30
24485/30
24680/30
24825/30
25072/30
25201/30
25414/30
25448/30
25450/30
25564/30
25566/30
25567/30
26192/30
26193/30
26211/30
26667/30
26670/30
26672/30
26736/30
26763/30
26818/30
27215/30

28512/30
28898/30
29294/30
29298/30
29538/30
29938/30
30356/30
30829/30
41/31
43/31
372/31
391/31
926/31
1012/31
1104/31
1137/31
1316/31
1428/31
1429/31
1596/31
1842/31
2145/31
2232/31
2233/31
2388/31
2510/31

2829/31
2949/31
3046/31
3047/31
3311/31
3348/31
3797/31
3823/31
3824/31
4174/31
4175/31
4250/31
4272/31
4273/31
4366/31
3271/31
4400/31
4558/31
4651/31
4769/31
5160/31
5194/31
5379/31
5439/31
5477/31

5478/31
5548/31
5625/32
5670/32
5761/32
5762/32
5844/32
5847/32
5871/32
5930/32
5933/32
5953/32
6092/32
6361/32
6437/32
6444/32
6611/32
6696/32
6726/32
6783/32
6784/32
6903/32
7107/32
7124/32
7189/32

7449/32 11377/33 14049/33 16775/34

7580/32
7632/32
7696/32
7729/32
7786/32
7808/32
7810/32
8442/32
8933/32
9045/32
9163/32
9170/32
9171/32
9336/32
9509/32
9511/32
9606/32
9879/32
9920/32
10396/32
10493/32
10658/32
10711/32
10757/33
10761/33
10765/33
10836/33
10837/33
11037/33
11119/33
11190/33
11175/33
11212/33
11287/33
11344/33
11520/33
11578/33
11689/33
11694/33
11701/33
11788/33
11819/33
11923/33
11952/33
12055/33
12056/33
12103/33
12159/33
12239/33
12240/33
12273/33
12457/33
12649/33
12652/33
12864/33
12956/33
13022/33
13111/33
13230/33
13236/33
13350/33
13457/33
13570/33
13650/33
13750/33
13754/33
13942/33
13943/33
13944/33
14048/33
14051/33
14237/33
14417/33
14509/33
14511/33
14512/33
14602/33
14646/33
14814/33
14815/33
14816/33
14935/33
14936/33
15080/33
15082/33
15134/33
15178/33
15354/33
15449/33
15555/33
15556/33
15609/33
15650/33
15889/34
15907/34
15908/34
16063/34
16064/34
16187/34
16188/34
16276/34
16278/34
16357/34
16369/34
16670/34
16829/34
17107/34
17203/34
17204/34
17205/34
17266/34
17422/34
17607/34
17981/34
18129/34
18149/34
18506/34
18507/34
18544/34
18572/34
18709/34
18973/34
19103/34
19248/34
19250/34
19374/34
19494/34
19515/34
19668/34
19669/34
19886/34
20190/34
20332/34
20462/34
20556/34
20557/34
20558/34
20840/35
20868/35
20889/35
21220/35
21537/35
21649/35
21764/35
21846/35
21956/35
24818/35
25227/35
25228/35
25244/35
25446/35
25548/35
101,182
101,183
101,186
101,233
101,234
101,239
102,339
102,442
102,443
102,486
102,502
102,525

21958/35
21996/35
22392/35
22393/35
22394/35
22453/35
22497/35
22628/35
22770/35
22794/35
23096/35
23435/35
23805/35
23880/35
23965/35
24063/35
24065/35
24130/35
24160/35
24166/35
24210/35
24270/35
24271/35
24333/35
24400/35
24401/35
24435/35
24617/35
24647/35
24796/35
25550/35
25551/35
719/36
100,034
100,035
100,039
100,040
100,041
100,051
100,073
100,171
100,253
100,287
100,313
100,483
100,488
100,533
100,598
100,651
100,718
100,723
100,759
100,886
100,909
100,935
101,020
101,033
101,034
101,042
101,140
101,272
101,310
101,337
101,387
101,394
101,396
101,616
101,675
101,729
101,750
101,761
101,774
101,834
101,847
101,920
101,935
101,945
101,951
101,962
101,989
102,066
102,067
102,090
102,111
102,163
102,226
102,227
102,233
102,263
102,338
102,553
102,556
102,619
102,701
102,757
102,759
102,765
102,895
102,896
102,917
102,922
103,157
103,160
103,207
103,208
103,226
103,232
103,348
103,523
103,635
103,640
103,642
103,663
103,667
103,669
103,683
103,779
103,792
103,797
103,801

103,811
103,824
103,831
103,840
103,845
103,855
103,893
103,925
103,932
103,976
103,982
105,463
105,510
105,571
105,572
105,621
105,625
105,680
105,695
105,839
106,061
106,071
106,893
106,929
106,953
107,075
107,086
107,115
107,117
107,118
107,158
107,163
107,237
107,855
107,856
107,904
107,909
107,951
107,952
107,953
107,970
107,972
108,047
108,085

104,072
104,197
104,218
104,253
104,298
104,341

104,342
104,496
104,596
104,624
104,640
104,646
104,663
104,700
104,762
104,785
104,786
104,824
104,896
104,955
105,130
105,132
105,225
105,260
105,311

106,240
106,241
106,242
106,254
106,324
106,366
106,416
106,473
106,522
106,536
106,579
106,597
106,634
106,635
106,636
106,646
106,681
106,700
106,772
106,775
106,776
106,806
106,820
106,872
106,873

107,255
107,263
107,267
107,273
107,274
107,296
107,355
107,376
107,421
107,425
107,514
107,563
107,565
107,575
107,639
107,654
107,689
107,737
107,762
107,763
107,817
107,818
107,819
107,823
107,844

108,208
108,271
108,276
108,411
108,422
108,430
108,449
108,450
108,525
108,569
108,571
108,575
108,613
108,637
108,639
108,652
108,653
108,671
108,673
108,707
108,794
108,874
108,876
108,944
108,948

109,021
109,045
109,098
109,211
109,222
109,297
109,312
109,338
109,354
109,355
109,357
109,368
109,391
109,409
109,463

110,042
110,044
110,152
110,153
110,156
110,157
110,184
110,216
110,238
110,345
110,377
110,441
110,442
110,444
110,462

111,020
111,104
111,105
111,131
111,141
111,158
111,175
111,255
111,370
111,386
111,429
111,452
111,518
111,519
111,576

112,309
112,311
112,347
112,403
112,429
112,431
112,432
112,498
112,501
112,519
112,591
113,001
113,080
113,086
113,177

109,477
109,530
109,592
109,592
109,658
109,707
109,710
109,716
109,763
109,780
109,790
109,791
109,837
109,852
109,863
109,868
109,919
109,935
109,945
109,951
109,952
109,953
110,467
110,506
110,557
110,557
110,623
110,653
110,686
110,687
110,722
110,723
110,781
110,797
110,817
110,843
110,877
110,916
110,948
110,951
110,953
110,954
110,957
110,000
111,636
111,666
111,685
111,685
111,699
111,797
111,805
111,813
111,843
111,845
111,877
111,882
111,927
111,929
111,979
111,994
112,007
112,094
112,140
112,210
112,239
112,246
113,178
113,253
113,256
113,256
113,321
113,326
113,330
113,368
113,485
113,486
113,490
113,491
113,499
113,564
113,582
113,613
113,660
113,669
113,670
113,703
113,731
113,749
113,789
113,907
114,010
114,039
114,121
114,183
114,205
114,280
114,296
114,351
114,467
114,468
114,469
114,605
114,617
114,760
114,785
114,936
114,968
115,056
115,720
115,723
115,757
115,786
115,797
115,804
115,935
115,952
116,131
116,209
116,220
116,237
116,361
116,385
116,386
116,401
116,416
116,425
116,459
116,476
116,819
116,826
116,842
116,873
116,905
116,932
116,933
116,934
116,973
116,974
117,053
117,085
117,090
117,123
117,124
117,126
117,167
117,195
117,196
117,235
117,963
117,985
118,081
118,020
118,056
118,264
118,314
118,392
118,452
118,466
118,499
118,628
118,646
118,659
118,717
118,740
118,748
118,805
118,859
118,896

115,076
115,093
115,102
115,175
115,208
115,379
115,390
115,411
115,412
115,413
115,414
115,439
115,565
115,634
115,644
115,648
119,640
119,783
119,820
119,821
119,953
27911/30
28436/30
30576/30
2423/31
3262/31
4610/31
5373/31
5404/31
5426/31
5550/31
7456/32
10805/33
21266/35
21267/35
100,050
100,116
100,255
100,515
100,517
100,588

116,498
116,503
116,544
116,554
116,610
116,619
116,655
116,693
116,768
116,780
116,785
116,786
116,803
116,804
116,806
116,809
102,712
103,252
103,322
103,564
103,615
103,616
103,680
103,665
103,666
103,765
103,825
103,826
103,862
103,904
104,043
104,048
104,144
104,508
104,581
104,626
104,666
104,800
104,912
104,978
104,979

117,245
117,297
117,298
117,312
117,313
117,375
117,404
117,533
117,561
117,784
117,823
117,912
117,919
117,926
117,941
117,950
105,614
105,644
105,688
105,718
105,732
105,883
105,995
106,105
106,106
106,182
106,183
106,298
106,316
106,454
106,509
106,564
106,633
106,637
106,706
107,027
107,150
107,321
107,401
107,450
107,451

118,964
118,970
118,007
119,023
119,033
119,045
119,138
119,145
119,202
119,206
119,286
119,287
119,446
119,460
119,512
119,570
107,845
107,873
108,892
108,044
108,270
108,302
108,305
108,350
108,351
108,550
108,556
108,576
108,582
108,583
108,584
108,586
108,712
108,730
108,821
108,827
108,844
108,950
109,081
109,105
109,165

100,839
101,537
101,582
101,752
102,047
102,186
102,284
102,286
102,430
102,572
102,573
109,714
109,966
109,968
110,072
110,085
110,204
110,206
110,240
110,241
110,291
110,292
110,388
110,494
110,495
110,496
110,662
110,717
110,718
110,719
110,720
110,721
110,803
110,819
110,847
110,883
110,923
110,924
110,962
111,015
111,017
104,980
105,072
105,073
105,089
105,149
105,198
105,215
105,285
105,544
105,545
105,546
111,538
111,539
111,542
111,543
111,544
111,545
111,546
111,548
111,596
111,632
111,855
112,000
112,068
112,128
112,183
112,185
112,187
112,188
112,211
112,230
112,251
112,257
112,352
112,437
112,460
112,574
112,615
112,758
112,781
112,828
107,452
107,517
107,691
107,699
107,700
107,707
107,708
107,782
[illegible]7,783
107,794
107,795
113,235
113,257
113,261
113,272
113,282
113,346
113,407
113,425
113,427
113,473
113,474
113,475
113,501
113,502
113,504
113,512
113,544
113,556
113,557
113,558
113,581
113,650
113,785
113,786
113,787
113,821
113,839
113,840
113,841
113,843
109,188
109,221
109,234
109,260
109,279
109,397
109,434
109,436
109,479
109,584
109,464
114,046
114,048
114,049
114,101
114,102
114,169
114,170
114,244
114,367
114,401
114,402
114,403
114,434
114,435
114,436
114,455
114,603
114,672
114,801
114,978
115,133
115,247
115,388
115,415
115,488
115,493
115,494
115,519
115,520
115,523

111,040
111,054
111,286
111,535
111,536
111,537
116,124
116,389
116,514
116,906
116,924
117,063
117,197
117,224
117,279
117,361
117,366
117,379
117,457
117,594
117,738
117,744
117,873
117,916
117,999
118,069
118,102
118,168
118,430
118,552
118,660
118,870
118,874
118,897
118,928
119,039
119,127
119,230
119,251
119,409
119,546

113,072
113,154
113,170
113,172
113,176
113,182
119,555
119,614
119,622
119,694
119,709
119,727
119,728
119,742
119,785
24053/29
24940/30
28261/30
28262/30
2099/31
15545/33
16095/34
19148/34
19189/34
19195/34
19562/34
19998/34
20614/34
21242/35
22275/35
22858/35
25823/35
261/36
734/36
735/36
1059/36
100,583
100,827
100,279
100,929
100,930

113,877
113,996
113,998
113,999
114,043
114,044
100,376
102,698
100,330
101,347
100,623
101,839
100,782
101,586
102,269
101,231
102,446
102,682
102,683
102,749
101,929
102,790
102,716
102,383
103,284
102,878
104,719
103,242
105,129
103,228
105,208
104,359
103,879
105,221
105,746
104,652
105,645
106,369
106,069
105,567
104,561

115,667
115,756
115,805
115,808
116,106
116,108
104,568
106,130
104,772
106,225
106,354
105,319
104,929
105,903
105,190
105,453
105,632
106,628
105,634
105,840
105,808
105,191
105,778
106,172
106,904
106,359
105,952
105,396
105,324
105,992
105,556
106,175
107,406
106,468
107,448
107,465
107,359
106,010
105,954
107,329
106,408

119,554
107,012
106,013
106,620
106,982
108,088
106,714
108,523
107,069
108,593
107,091
108,489
107,307
107,664
107,434
109,261
109,285
107,839
107,537
109,449
107,775
109,450
107,840
109,451
107,732
110,782
109,730
108,125
109,304
108,680
110,437
108,797
109,056
110,755
111,001
112,136
109,136
115,339
114,869
115,340
115,086
100,103
109,088
108,724
111,275
109,320
109,321
109,178
109,977
110,802
112,464
110,967
109,877
111,090
112,599
112,465
110,121
112,425
111,194
111,195
111,196
110,320
111,211
111,197
111,198
111,212
111,213
112,493
112,566
112,600
112,494
112,466
112,515
111,214
111,215
111,216
111,217
112,016
114,950
117,713
115,019
114,961
106,353
112,259
111,219
111,504
112,451
113,730
113,312
111,766
111,865
111,956
111,786
112,088
117,436
117,471
118,361
115,255
114,678
114,974
115,089
115,090
115,091
115,237
114,774
114,723
114,724
114,725
115,060
114,732
114,733
114,734
114,735
114,736
114,737
114,958
116,499
114,727
115,338
116,970
116,465
117,506
115,694
106,369

115,773
116,306
114,902
115,746
114,744
117,667
116,568
114,905
116,129
115,625
117,488
116,411
117,392
117,372
115,316
115,364
115,727
116,624
117,613
117,503
117,217
117,979
118,075
110,136

The Common Seal of Australian Radio Technical Services and Patents Company Proprietary Limited was hereto affixed by

and
two

Directors of the Company by order of the Board and in the presence of,

Secretary.

The Common Seal of Neutrodyne Proprietary Limited was hereto affixed by order of the Directors in the presence of

Secretary.

DEFENDANT'S EXHIBIT NO. 185.

(22/6/51)

MD.460/50

6th July 1950

The Hon. A. G. Warner,
Managing Director,
Neutrodyne Pty. Ltd.,
Grant Street,
South Melbourne.

Dear Mr. Warner,

With reference to the conversations between Mr. Bore, yourself and the writer yesterday, I confirm the understanding reached, as follows:—

1. The Agreements for both Australia and New Zealand between ARTSP and Neutrodyne will be extended for five years from 1st January 1951 except that as ARTSP payments to Philips will be raised to 16% in respect of both Australia and New Zealand, Neutrodyne's Australian percentage will be decreased from 25% to 23%, but ARTSP agrees to pay to Neutrodyne the sum of £1250. per annum for carrying out the duties described in Clause 17 of the present Australian Agreement between ARTSP and Neutrodyne.
2. Clause 15 of both the ARTSP/Neutrodyne Australian and New Zealand Agreements shall be modified to read:—

"If at any time additional members are admitted to the pool, then each of the present parties, that is, Amalgamated Wireless (Australasia) Ltd., Standard Telephones & Cables Pty. Ltd. Philips Electrical Industries of Australia Pty. Ltd. and Neutrodyne Pty. Ltd., shall contribute proportionately to all costs arising therefrom. Before the admission of any additional member or members the matter will be discussed by present parties and provided that at least three of the present parties are in agreement on the admission and conditions, then all parties shall be bound by the decision."

3. Clause 10 of the ARTSP/Neutrodyne Australian Agreement shall be modified to read (last proviso):—

   "Provided always that Neutrodyne shall contribute 23% (Twenty-three per centum) of such legal costs charges and expenses as aforesaid and of any other legal expenses, indemnities and other such charges and expenses incurred by ARTSP in protecting the rights and property of itself and/or its licensees and/or licensors".

4. The last proviso of Clause 10 of the ARTSP/Neutrodyne New Zealand Agreement shall be modified to read as (3) above except that the contribution shall be 22%.

Yours faithfully,

(L. A. Hooke)
Managing Director.

LAH.EH

(22/6/51)

Neutrodyne Proprietary Limited
126-130 Grant Street,
South Melbourne, S.C.4

July 18, 1950

Mr. L. A. Hooke,
Managing Director
Amalgamated Wireless (Australasia) Pty. Ltd.,
47 York Street,
Sydney. N.S.W.

Dear Mr. Hooke,

I thank you very much for your letter of the 6th July setting out the conversations which took place, and the understandings which were reached between us.

I confirm the understandings as set out in your letter.

Yours truly,

(Signed). A. G. Warner
A. G. Warner,
Managing Director.

DEFENDANT'S EXHIBIT NO. 186.

Australian Radio Technical Services and Patents Pty. Ltd.
47 York Street, Sydney

2nd October 1953

The Hon. A. G. Warner,
Managing Director,
Electronic Industries Limited,
Box 845J G.P.O.,
Melbourne.

Dear Mr. Warner,

With reference to the meeting held on 28th September, I set out hereunder the agreement reached between the licensors:—

It was agreed by Mr. Warner (Electronic Industries Ltd.), Mr. Leddy (Philips Electrical Industries of Australia Ltd.), Mr. Bore (Standard Telephones & Cables Pty. Ltd.) and Mr. Hooke (Amalgamated Wireless (Australasia) Ltd.), on behalf of their respective companies—

(a) That the existing pool arrangements be continued for five years as from 1st July 1953.

(b) For the second two and a half years of the five year period (i.e., from 1st January 1956), division of pool revenue between Licensors to be subject to adjustment.

(c) Arrangements for further continuation of pooling Licensors' rights after the five year period to be a matter for future negotiation, such negotiation to commence at least twelve months prior to the end of the five year period.

(d) Any new basis for division of revenue agreed to under (c) to be retrospective for the two and a half year period ending 30th June 1958, but should any party stay out of the pool after the five year period, no retrospective adjustment of revenue be made for that party.

(e) Any adjustment under (d) to be made out of, and as a first charge against, revenue received in respect of the period subsequent to 30th June 1958, so that Accounts for the previous period can be closed.

Yours sincerely,

(Sgd.)
(L. A. Hooke)

DEFENDANT'S EXHIBIT NO. 187.

Australian Radio Technical Services and
Patents Co. Pty. Ltd.
47 York Street, Sydney.

9th April, 1958

Sir Arthur Warner,
Managing Director,
Neutrodyne Proprietary Ltd.,
Box 845 J, G.P.O.
Belbourne. Vic.

Dear Sir Arthur,

With reference to the meeting held on 3rd April 1958, I set out hereunder the agreement reached between the Licensors:—

It was agreed by Mr. Bore and Mr. Cameron (Standard Telephones & Cables Pty. Ltd.), Sir Arthur Warner (Neutrodyne Pty. Ltd.), Mr. Leddy (Philips Electrical Industries Pty. Ltd.), Mr. Burnett (Electric & Musical Industries

Ltd.) and Sir Lionel Hooke (Amalgamated Wireless (Australasia) Ltd.) on behalf of their respective Companies:—

1. That the existing Agreements between the Licensors and A. R. T. S. in respect of Australian and New Zealand Patent Rights be and are hereby extended to 30th June 1960 subject to the following amendments as from 1st July 1957:—

    (a) The payment by A. R. T. S. to Philips shall be 22.5% of the net revenue of A. R. T. S.

    (b) The payment by A. R. T. S. to Neutrodyne shall be 21% of the net revenue of A. R. T. S.

    (c) The payment by A. R. T. S. to E. M. I. shall be 12% of the net revenue of A. R. T. S.

2. The Agreement dated 11th June 1957 between Philips and A. R. T. S. in respect of the Parker Patent No. 140509 be and is hereby extended to 30th of June 1960.

3. As from 1st July 1956 payments to Philips under the above Agreement of 11th June 1957 in respect of the Parker patent be borne by A. R. T. S., Philips, Neutrodyne and E. M. I. in the same ratio as those Companies receive revenue from A. R. T. S.

4. A[illegible] retrospective adjustments to be made out of future revenue.

I shall be glad if you will kindly indicate your agreement with the above by signing and returning the duplicate of this letter.

Yours truly,
(Sgd.)
J. F. Wilson,
Secretary,
Australian Radio Technical Services
and Patents Co. Pty. Ltd.

Agreed:
(Sgd.) A. G. Warner.
Date: 15.4.58

DEFENDANT'S EXHIBIT NO. 188.

License No. 1.

An Agreement made this .... day of .... 193..... Between Australian Radio Technical Serivces & Patents Company Pty. Limited having its registered office at 47 York Street Sydney in the State of New South Wales (hereinafter called "the Grantor") of the first part, and .... of .... (herinafter called "the Licensee") of the second part

Whereas the Australian Radio Technical Services & Patents Company Pty. Limited has the right to grant licences to the extent purpose and for the period of this agreement for all patents owned or controlled by Amalgamated Wireless (Australasia) Limited, Standard Telephonse & Cables (A/SIA) Pty. Limited, N. V. Philips Gloeilampenfabrieken and Neutrodyne Proprietary Limited but only from the first day of March 1934 with respect to patents owned or controlled by Amalgamated Wireliess (Australasia) Limited and only from the second day of April 1934 with repsect to patents owned or controlled by Neutrodyne Proprietary Limited.

And Whereas the Licensee claims to be a bona fide manufacturer of wireless broadcast receiving apparatus and/or radio gramophones and as such manufacturer has applied to the Grantor to grant and the Gantor has agreed to grant to the Licensee a licence under the Letters Patent and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed upon the basis agreed between the parties as being convenient. Now It Is Hereby Agreed As Follows:—

1. (a) The expression "Broadcast Receivers" when herein used shall mean broadcast receiving apparatus

(other than valves and loud speakers) for the reception of speech or music transmitted and intended for simultaneous reception by all listeners as distinct from point to point communication but only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public and not being held for payment) but not otherwise and shall not include such receivers combined with gramophones but shall include sets of component parts.

(b) The expression "Set of component parts" for broadcast receiving apparatus when herein used shall mean a number of component parts which are capable of being assembled so as substantially to constitute a broadcast receiver.

(c) The expression "Radiogramophone" when herein used shall mean a unitary instrument which is designed to incorporate valves (whether or not equipped with the valves themselves) and which is designed for the reproduction of sound through an electrically-operated loudspeaker alternatively from (a) apparatus designed for the reception and translation into sound of modulated electrical oscillations broadcast to the public and (b) apparatus (such as a turn-table and pick-up) designed for the translation into sound of vibrations recorded on a sound record. Such expression does not include valves and does not include any radiogramophones combined with other apparatus dependent thereon either wholly or in part for its operation but does include battery eliminator as hereinafter defined when incorporated in a radiophone and any set of component parts which are capable of being assembled to substantially constitute a radiogramophone.

(d) The expression "Battery Eliminator" when herein used shall mean an apparatus which renders unnecessary the use of one or more batteries in the operation of broadcast receiving apparatus or a radiogramophone by facilitating the substitution therefor of electricity mains.

(e) The word "Valve" (or "Valves") when herein used shall be deemed where the context so admits to include interalia a multiple valve a valve for rectifying electric current and other apparatus used in direct substitution for a valve.

(f) The expression "Multiple Valve" when herein used shall mean a valve designed to operate with more than one cathode-anode stream.

(g) The expression "Place of Public Entertainment" when herein used shall mean a place of public entertainment now existing or which during the subsistence of this Licence may exist and at which entertainment tax is or shall be payable or would be payable but for any statutory exemption granted subsequent to the first day of January, 1934. If during the subsistence of this Licence entertainment tax should be abolished then thereafter the expression shall mean a place of public entertainment now existing or which during the subsistence of this Licence may exist of the character of those places of public entertainment at which at the present time entertainment tax is in fact payable or would be payable but for any statutory exemption granted subsequent to the first day of January, 1934.

(h) The expression "Private or Domestic Use" as used herein shall be deemed to include also the manufacture and sale of broadcast receiving apparatus and radiogramophones to proprietors of for use in Public Houses Hotels Boarding Houses Restaurants Cafes Tea Houses and/or small Dance Halls (only) Provided that such are not attached to or do not form part of a theatre or cinema.

(i) The expression "Selling" when herein used shall be deemed to include selling on the so-called hire-purchase system.

2. (a) The Grantor grants and agrees to grant to the

Licensee subject to the terms and conditions herein appearing a personal non-exclusive non-assignable license to use and exercise all or any of the inventions the subject of the Letters Patent applicable to broadcast receiving apparatus and radiogramophones respectively in respect of which and insofar as the Grantor now has or may hereafter during the subsistence of this Licence have power to grant Licenses or Sub-Licences for the purposes and on the terms hereof (which Letters Patent are herein collectively called "the said Letters Patent") for the purpose of manufacturing using selling or letting on hire within the Commonwealth of Australia and such territories as may from time to time be administered under mandate by the said Commonwealth (a) broadcast receiving apparatus and (b) radiogramophones but in both cases only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public generally and not being held for payment) and not otherwise. Such Licence shall be deemed to have commenced on the first day of January 1934 insofar as relates to the patents owned or controlled by Standard Telephones & Cables (A/SIA) Pty. Limited, N. V. Philips Gloeilampenfabrieken respectively and on and from the first day of March 1934 insofar as relates to the patents owned or controlled by Amalgamated Wireless (A/sia) Limited and on and from the second day of April 1934 insofar as relates to the patents owned or controlled by Neutrodyne Proprietary Limited and shall continue until the thirty-first day of December 1938 unless previously revoked as hereinafter provided.

(b). The Licensee undertakes that all companies or firms now or hereafter during the subsistence of this Licence directly or indirectly owned or controlled by the Licensee and all Companies or Firms formed by the Licensee during the subsistence of this Licence and directly or indirectly owning or controlling the Licensee shall if engaged in any field of business to which this Licence is applicable forthwith accept Licences from the Grantor upon the same terms as this Licence and the Grantor agrees to grant such Licences accordingly. If the Licensee shall become directly or indirectly owned or controlled by a company or firm which does not hold or forthwith obtain a Licence from the Grantor upon the same terms as this Licence the Grantor shall be at liberty to revoke this Licence.

3. (a) Nothing contained herein shall be deemed to license the Licensee to manufacture sell or let on hire

(a) valves or any kind, or
(b) loudspeakers of any kind, or
(c) television receiving apparatus.

(b) Nothing herein contained shall be deemed to license the Licensee to manufacture sell or let on hire any individual component part of broadcast receiving apparatus or a radiogramophone other than in and forming part of broadcast receiving apparatus or a radiogramophone other than in and forming part of broadcast receiving apparatus or radiogramophone.

(c) The Licence hereby granted shall not authorise the use or exercise of broadcast receiving apparatus or any radiogramophone for any purpose whatsoever other than the purposes herein set forth and in particular shall not authorise the use or exercise of any of the said apparatus by operating the same for revenue-earning purposes. Nor shall this Licence authorise the use or exercise of any of the said apparatus for purposes of receiving broadcasting or operating any radiogramophone in relation in any manner to the service of any place of public entertainment or of any place in which any business requiring any Licence from public authority is conducted (except insofar as such use is authorised under the definition of "private and domestic use") or for use with a microphone.

4. The Licensee agrees with the Grantor as follows:—

(a) Not without the previous written consent of the Grantor to export or sell for export or knowingly permit to be exported any broadcast receiving apparatus or radiogramophone.

(b) Not without the previous written consent of the Grantor to sell let on hire or put into use in the territory for which this Licence is granted any broadcast receiving apparatus or radiogramophones which have not been manufactured in the territory for which this Licence is granted.

(c) From time to time on the request of the Grantor to furnish to the Grantor diagrams and/or samples of all broadcast receiving apparatus and radiogramophones for the time being manufactured sold or let on hire by the Licensee.

(d) To attach or cause to be attached in a prominent position to all broadcast receiving apparatus and radiogramophones sold or put into use by the Licensee (or in the case of sets of component parts of such apparatus to supply for attachment by the constructor to the assembled apparatus) a plate indicating the number of valves (as hereinbefore defined but subject to the provisos contained in Sub Clauses (f) (i) and (ii) of this Clause) on which the royalty for such apparatus is payable and being the following words:

With respect to broadcasting receiving apparatus

"No. .... This instrument was manufactured under a license granted by Australian Radio Technical Services and Patents Company Pty. Limited in respect of patents controlled by it for the reception in the Commonwealth of Australia and such territories as may from time to time be administered under mandate by the said Commonwealth of sound broadcast by wireless

> but only for private use and not for operation for any public or commercial or revenue-earning purpose. N.B.—A Post Office Licence is necessary."

With respect to radiogramophones:—

> "No. .... This instrument is manufactured under a licence granted by the Australian Radio Technical Services and Patents Company Pty. Limited in respect of patents controlled by it for the reception in the Commonwealth of Australia and such territories as may from time to time be administered under mandate by the said Commonwealth of sound broadcast by wireless and for the reproduction within the said territory of sound from records but only for private use and not for operation for any public or commercial or revenue-earning purpose. N.B.—A Post Office Licence is necessary."

Such plates shall be obtained only from and shall be supplied by the Grantor and no such plate shall be removed from any apparatus to any other without the previous consent in writing of the Grantor and no apparatus shall be considered as duly franked hereunder unless such plate be attached thereto. In addition if required the Licensee shall mark in accordance with the requirements of the Patent Acts of the Commonwealth of Australia or any amendments thereof made during the subsistence of this License all apparatus manufactured sold let on hire or put into use by the Licensee hereunder.

(e) So far as is reasonably practicable to make the conditions of this License a condition of every sale or hire binding upon and observable by every purchaser or hirer or any broadcast receiving apparatus or any radiogramophone sold or put into use by the Licensee.

(f) To pay to the Grantor by way of royalty:

(i) In respect of each and every broadcast receiving apparatus sold let on hire or put into use by the

Licensee employing or designed to employ a valve or valves

(a) in respect of patents owned or controlled by Standard Telephones & Cables (A/sia) Pty. Limited and N. V. Philips Gloeilampenfabrieken from the first day of January 1934 up to and including the twenty-eighth day of February 1934 the sum of one shilling and sixpence (1/6d.) and

(b) on and from the first day of March 1934 the sum of three shillings and sixpence (3/6d.)

in respect of each and every valve included or intended to be employed therein whether or not such apparatus embodies or utilises or is designated or intended to embody or utilise any invention the subject of any of the said Letters Patent Provided that in the case of multiple valves employed or intended to be employed in such broadcast receiving apparatus each and every cathode-anode stream contained therein shall be deemed to be one valve and the royalty shall be calculated accordingly:

(ii) in respect of each and every radiogramophone sold or let on hire or put into use by the Licensee employing or designed to employ a valve or valves (a) the sum of three shillings and sixpence (3/6d.) in respect of each and every vavle employed or intended to be employed therein and in addition (b) the sum of three shillings and sixpence (3/6d.) whether or not such radiogramophone embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent Provided that in the case of multiple valves employed or intended to be employed in such radiogramophone each and every cathode-anode stream contained therein shall be deemed to be one valve and the royalty shall be calculated accordingly.

Provided that at the end of each year of the term of the Licence granted to any Licensee an account shall be prepared by the Grantor showing the amount of royalties paid by such Licensee during such year under paragraph (i) of this sub-clause and such Licensee shall according to the Licensee's actual output of Broadcast Receivers during such year be entitled to a reduction on the royalties so paid by him calculated on the basis of the difference between the royalties so paid by the Licensee and the rates of royalty set out in the schedule hereto and the amount of such difference which may be payable to such Licensee shall be credited to such Licensee by the Grantor.

Provided Always that no royalty shall be payable under paragraphs (i) and (ii) of this Sub-Clause (f) in respect of a battery eliminator incorporated in and forming part of a complete broadcast receiver or radiogramophone and Provided Always that in respect of broacast receiving apparatus or radiogramophones manufactured or sold by the Licensee which employ any patent under which the Grantor may become liable to pay a royalty to a third party or share a royalty with a third party the Grantor shall offer to the Licensee and the Licensee may accept the right to the inclusion in this licence of that patent on payment to the Grantor of an additional royalty of such amount as may be required to enable the Grantor out of the total royalties paid by the Licensee both to retain the royalties payable under paragraphs (i) and (ii) of this Sub-Clause (f) and to satisfy the terms of the Licence or Agreement under which royalty is or shall be payable by the Grantor. The Grantor shall if so required in writing by the Licensee furnish the Licensee with proof of the third party's claim to royalty. The Grantor shall upon request of the Licensee and the Licensee shall upon request of the Grantor permit the Grantor to examine free of charge diagrams and/or samples of broadcast receiving apparatus and radiogramophones manufactured or proposed to be manufactured by the Licensee and advise whether such apparatus embodies or utilises any invention the subject of any of the said Letters Patent under which the Grantor may be liable for royalty to a third party as herein mentioned. The Grantor shall inform the Licensee of the amount of any such additional royalty and any such additional royalty shall be shown separately in the returns hereinafter mentioned.

(g) Keep proper and accurate and separate accounts of everything necessary to ensure an accurate return to be made each calendar month in conformity with any of the provisions of this Licence showing separately the royalties payable under each of the paragraphs (i) and (ii) of the last preceding Sub-Clause (f) and to render such accounts within fifteen (15) days of the last day of each calendar month in each year to such person as the Grantor may designate to the Licensee from time to time and to accompany each such account with a remittance in respect of the royalties thereby shown to be due. In the event that the Licensee fails to keep the books of account above mentioned in addition to any other rights and remedies the Grantor may have the Licensee agree to pay to the Grantor the amount of royalty which the Grantor made by notice in writing to the Licensee stipulate as the amount estimated to be due unless the Licensee proves that the royalty due should be some other amount.

(h) The Licensee shall furnish monthly returns verified by the Auditor of the Licensee or by a Statutory Declaration of the proper officer and in the event of any dispute shall permit the Grantors to appoint a Public Accountant to inspect the books and accounts of the Licensees relative to this License.

(i) To pay to the Grantor on the execution hereof for the first yearly period of this Licence and thereafter so long as the Licensee shall continue to manufacture, sell, let on hire or put into use broadcast receivers and/or radiogramophones in advance each year during the period of this Licence the sum of one hundred and fifty pounds (£150) as minimum royalty for the yearly period, which sum shall in no event be returnable but from the initial minimum royalty payment under tthis Clause shall be deducted and regarded as full settlement of all claims for past infringement of patents owned or controlled by Standard Telephones and Cables (A/sia) Pty. Limited, as distinct from any claims under any patents owned or controlled by Amalgamated Wireless (Australasia) Limited or others the sum of ten pounds (£10) for every one thousand (1000) broadcast receivers manufactured during one year by the Licensee. For the purpose of computing such number the production of the Licensee for the quarter ending 31st March 1934 will be taken as the basis.

(j) Not at any time during the subsistence hereof to dispute or impeach or to assist others to dispute or impeach the validity of the said Letters Patent.

(k) Not without the previous written consent of the Grantor to sell or let on hire or put into use or permit to be sold let on hire or put into use any broadcast receiving apparatus or any radiogramophone except under the Licensee's own trade mark or trade name or any other trade mark or trade name which may be approved by the Grantors from time to time.

(l) Not to assign transfer mortgage grant sub-licences under or in any manner part with the possession or control of this Licence or any part of it without the previous written consent of the Grantor.

5. During the subsistence of this Licence the Grantor will keep the Licensee fully indemnified against costs and damages arising in connection with all actions proceedings claims and demands which may be made against the Li-

censee by any third party who seeks to establish or establishes to the satisfaction of a court of competent jurisdiction within the Commonwealth of Australia and such territories as may from time to time be administered under mandate by the said Commonwealth his right to restrain the user and exercise by the Licensee under the Grant contained under this Licence for any of the said Letters Patent on the ground that such user and exercise is an infringement of any legal rights or legal interests of such third party in such Letters Patent Provided Always that the Grantor is immediately informed of the institution of such proceedings and is given full and complete rights to take over at its own cost and through its own solicitors the defence of such proceedings if it so requests and in that event the Licensee shall assist the Grantor in every reasonable manner but the Grantor shall be at liberty to compromise submit to judgment in abandon discontinue or otherwise dispose of the same as to it may seem expedient.

6. The Grantor may revoke this Licence upon the happenings of any of the following events:

(a) If any royalty return or any royalty shown to be due is not rendered or is unpaid for thirty days (30) after the last day of any preceding month and remains unrendered or unpaid for seven days after notice in that behalf from the Grantor, or

(b) If there be any breach on the part of the Licensee of any other of the Agreements herein contained and the same be not remedied made good or desisted from within seven (7) days of notice on that behalf from the Grantor; or

(c) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall go into liquidation whether voluntary or compulsory;

any revocation of this Licence shall be without prejudice to all claims of the Grantor against the Licensee for out-

standing royalties or prior breaches of this Licence or otherwise and also without prejudice to the provision of Clause 7 hereof.

7. (a) The Licensee agrees to grant to the Grantor upon request a non-exclusive non-transferable licence (but with the right to sub-licence subsidiary or associated companies) to make use exercise and vend all or any of the inventions the subject of Letters Patent applicable to broadcast receiving apparatus and/or radiogramophone in respect of which and insofar as the Licensee has or shall hereafter have power to grant a licence for the purposes of manufacturing using selling or hire within the Commonwealth of Australia and such territories as may from time to time be administered under mandate by said Commonwealth broadcast receiving apparatus and/or radiogramophones but only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public generally and not being held for payment) and not otherwise.

(b) If any invention in respect of which any such licence is herein agreed to be granted by the Licensee comes within the scope of the claims of any Letters Patent in respect of which the Licence is granted or agreed to be granted hereunder by the Grantor then the Grantor shall pay no royalty. If any such invention does not come within the scope as aforesaid then the Grantor shall be entitled to such licence on payment of a royalty at a rate not exceeding the lowest rate paid by any Licensee in respect of the same invention or if there is no other Licensee then at a rate not exceeding five per cent. (5%) of the net selling price of the article manufactured in accordance therewith or (whether or not there is another licensee) not exceeding the rate paid by the Licensee to the Grantor hereunder whichever is the smaller.

(c) Any such licence granted by the Licensees shall continue until the thirty-first day of December 1938 or for such other period as may be agreed upon.

In Witness Whereof the parties hereto have duly executed these presents the day and year first hereinbefore written.

The Schedule Herein Referred to.

Annual Output of Broadcast Receivers employing or designed to employ the following aggregate number of valves as herein defined.	Rate per valve as defined excluding Rectifier, from 1st Jan. 1934	from 1st Mar. 1934
4 to 1999	1/6	3/6
2000 " 3999	1/5½	3/5
4000 " 5599	1/5	3/4
5600 " 7199	1/4½	3/3
7200 " 9999	1/4	3/2
10000 " 12879	1/3½	3/1
12880 " 17999	1/3	3/-
18000 " 23199	1/2½	2/11
23200 " 35999	1/2	2/10
36000 " 43999	1/1½	2/9
44000 " 59999	1/1	2/8
60000 " 75999	1/0½	2/7
76000 " 105999	1/-	2/6
106000 " 135999	11½	2/5
136000 " 191999	11	2/4
192000 " 245999	10½	2/3
246000 " 243999	10	2/2
344000 " 442799	9½	2/1
442800 and over	9	2/-

The above rebates do not apply to Radiogramophones.

The Common Seal of Australian Radio Technical Services & Patents Company Pty. Limited was hereunder affixed by

.... and

....

Secretary.

.... in the

presence of ....

Seal.

License No. 1.

Dated the day of

193

Australian Radio Technical
Services and Patents
Company Pty. Limited

to

License

To use and exercise certain Australian Letters Patent for certain specific purposes as within in connection with Wireless Broadcast Receiving Apparatus and/or Radiogramophones.

DEFENDANT'S EXHIBIT NO. 189.

License No. 3.

An Agreement made this ______________ day of ______________, 19____ Between Australian Radio Technical Services & Patents Company Pty. Limited having its registered office at 47 York Street Sydney in the State of New South Wales (hereinafter called "the Grantors") of the first part, and ______________ of ______________ (hereinafter called "the Licensee") of the second part.

Whereas the Australian Radio Technical Services & Patents Company Pty, Limited has the right to grant licences to the extent purpose and for the period of this agreement for all patents owned or controlled by Amalgamated Wireless (Australasia) Limited, Standard Telephones & Cables (A/SIA) Pty. Limited, N. V. Philips

Gloeilampenfabrieken and Neutrodyne Proprietary Limited.

And Whereas the Licensee claims to be a bona fide manufacturer of wireless broadcast receiving apparatus and/or radio gramophones and as such manufacturer has applied to the Grantor to grant and the Grantor has agreed to grant to the Licensee a licence under the Letters Patent and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed upon the basis agreed between the parties as being convenient. Now It Is Hereby Agreed As Follows:—

1. (a) The expressions "Broadcast Receivers" and "Broadcast receiving apparatus" when herein used shall each mean broadcast receiving apparatus (other than valves and loud speakers) for the reception of speech or music transmitted and intended for simultaneous reception by all listeners as distinct from point to point communication but only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable education philanthropic or religious character (such lectures or demonstrations not being open to the public and not being held for payment) and not otherwise and shall not include such receivers combined with gramophones but shall include sets of component parts.

(b) The expression "Set of component parts" for broadcast receiving apparatus when herein used shall mean a number of component parts which are capable of being assembled so as substantially to constitute a broadcast receiver.

(c) The expression "Radiogramophone" when herein used shall mean a unitary instrument which is designed to incorporate valves (whether or not equipped with the valves themselves) and which is designed for the reproduction of sound through an electrically-operated loudspeaker alternatively from (a) apparatus designed for the reception and translation into sound of modulated electrical oscillations broadcast to the public or from (b) apparatus (such as a turntable and pick-up) designed for the translation into sound of vibrations recorded on a sound record but which is only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable, educational philantropic or religions character (such lectures or demonstrations not being open to the public and not being held for payment) and not otherwise. Such expression does not include valves and does not include any radiogramophones combined with other apparatus dependent thereon either wholly or in part for its operation but does include battery eliminators as hereinafter defined when incorporated in a radiogramophone and any set of component parts which are capable of being assembled to substantially constitute a radiogramophone.

(d) The expression "Battery Eliminator" when herein used shall mean an apparatus which renders unnecessary the use of one or more batteries in the operation of broadcast receiving apparatus or a radiogramophone by facilitating the substitution therefor of electricity mains.

(e) The word "Valve" (or "Valves") when herein used shall be deemed where the context so admits to include *inter alia* a multiple valve a valve for rectifying electric current and other apparatus used in direct substitution for a valve.

(f) The expression "Multiple Valve" when herein used shall mean a valve designed to operate with more than one cathode-anode stream.

(g) The expression "Place of Public Entertainment" when herein used shall mean a place of public entertainment now existing or during the subsistence of this Licence may exist and at which entertainment tax is or shall be payable or would be payable but for any statutory exemption granted subsequent to the first day of January 1939. If during the subsistence of this Licence entertainment tax should be abolished then thereafter the expression shall mean a place of public entertainment now existing or which during the subsistence of this Licence may exist of the character of those places of public entertainment at which at the present time entertainment tax is in fact payable or would be payable but for any statutory exemption granted subsequent to the first day of January 1939.

(h) The expression "Private or Domestic Use" as used herein shall be deemed to include also the use in Public Houses, Hotels, Boarding Houses, Restaurants, Cafes, Tea Houses and/or small Dance Halls (only) Provided that such are not attached to or do not form part of a theatre or cinema.

(i) The expression "Selling" when herein used shall be deemed to include selling on the so-called hire-purchase system.

(j) The word "Plate" when herein used shall be deemed to include transfer.

2. (a) The Grantor grants and agrees to grant to the Licensee subject to the terms and conditions herein appearing a personal non-exclusive non-assignable license to use and exercise all or any of the inventions the subject of the Letters Patent applicable to broadcast receiving apparatus and radiogramophones respectively in respect of which and insofar as the Grantor now has or may hereafter during the subsistence of this Licence have power to grant Licences or Sub-Licences for the purposes and on the terms hereof (which Letters Patent are herein collectively called "the said Letters Patent") for the purpose of manufacturing using selling or letting on hire within the Commonwealth of Australia and such territories as may from time to time be administered under mandate by the said Com-

monwealth (a) broadcast receiving apparatus and (b) radiogramophones but in both cases only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public generally and not being held for payment) and not otherwise. Such Licence shall be deemed to have commenced on the first day of January 1939, and shall continue until 31st day of December 1943, unless previously revoked as hereinafter provided.

(b) The Licensee undertakes that all companies or firms now or hereafter during the subsitence of this Licence directly owned or controlled by the Licensee and all Companies or Firms formed by the Licensee during the subsistence of this Licence and directly or indirectly owning or controlling the Licensee shall if engaged in any field of business to which this Licence is applicable forthwith accept Licences from the Grantor upon thhe same terms as this Licence and the Grantor agrees to grant such Licences accordingly. If the Licensee shall become directly or indirectly owned or controlled by a company or firm which does not hold or forthwith obtain a Licence from the Grantor upon the same terms as this Licence the Grantor shall be at liberty to revoke this Licence.

3. (a) Nothing contained herein shall be deemed to license the Licensee to manufacture sell or let on hire

(a) vales of any kind, or
(b) loudspeakers of any kind, or
(c) television receiving apparatus.

(b) Nothing herein contained shall be deemed to license the Licensee to manufacture sell or let on hire any individual component part of broadcast receiving apparatus or a radiogramophone other than in the forming part of broadcast receiving apparatus or a radiogramophone.

(c) The Licence hereby granted shall not authorise the use or exercise of broadcast receiving apparatus or any radiogramophone for any purpose whatsoever other than the purposes herein set forth and in particular shall not authorise the use or exercise of any of the said apparatus by operating the same for revenue-earning purposes. Nor shall this Licence authorise the use or exercise of any of the said apparatus for purposes of receiving broadcasting or operating any radiogramophone in relation in any manner to the service of any place of public entertainment or of any place in which any business requiring any Licence from public authority is conducted (except insofar as such use is authorised under the definition of "private and domestic use") or for use with a microphone.

4. The Licensee agrees with the Grantor as follows:—

(a) Not without the previous written consent of the Grantor to export or sell for export or knowingly permit to be exported any broadcast receiving apparatus or radiogramophone.

(b) Not without the previous writen consent of the Grantor to sell or hire or offer or expose for sale or hire in the territory for which this licence is granted any broadcast receiving apparatus or radiogramophones which have not been manufactured in the territory for which this Licence is granted.

(c) From time to time on the request of the Grantor to furnish to the Grantor diagrams and/or samples of all broadcast receiving apparatus and radiogramophones for the time being manufactured sold or let on hire by the Licensee.

(d) To attach or cause to be attached in a prominent position to all broadcast receiving apparatus and radiogramophones sold or hired or offered or exposed for sale or hire by the Licensee (or in the case of a set of component part for such apparatus to supply for attachment to the assembled apparatus by the constructor thereof) a plate marked by the Grantor with a Serial Number determined by the Grantor and indicating the number of valves (as hereinbefore defined but subject to the provisoes contained in Sub-Clauses (f) (i) and (ii) of this Clause) on which the royalty payable hereunder is calculated and bearing the following words:

With respect to Broadcast receiving apparatus:—

> "No. .... This instrument was manufactured under a licence granted by Autralian Radio Technical Services and Patents Company Pty. Limited in respect of patents controlled by it for the reception in the Commonwealth of Australia and such territories as may from time to time be administered under mandate by the said Commonwealth of sound broadcast by wireless but only for private or domestic use and not for operation for any public or commercial or revenue-earning purpose. N.B.—A Post Office Licence is necessary."

With respect to radiogramophones:—

> "No. .... This instrument is manufactured under a licence granted by the Australian Radio Technical Services and Patents Company Pty. Limited in respect of patents controlled by it for the reception in the Commonwealth of Australia and such territories as may from time to time be administered under mandate by the said Commonwealth of sound broadcast by wireless and for the reproduction within the said territory of sound from record but only for private or domestic use and not for operation for any public or commercial or revenue-earning purpose. N.B.—A Post Office Licence is necessary."

Plates complying with the above may be obtained from the Grantor and no such plate shall be removed from any Broadcast Receiver or radiogramophone to any other apparatus without the previous consent in writing of the Grantor and no Broadcast Receiver or radiogramophone shall be or be deemed to be licensed hereunder unless such a plate be attached thereto and the absence of such a plate from any Broadcast Receiver or radiogramophone shall be conclusive evidence that the same is not licensed hereunder. In addition if required by law the Licensee shall further mark in accordance with the requirements of the Patent Act of the Commonwealth of Australia or any amendments thereof made during the subsistence of this License all Broadcast Receivers of radiogramophones covered by this License which are manufactured sold let on hire or put into use by the Licensee.

(e) So far as is reasonably practicable to make the conditions of this Licence a condition of every sale or hire binding upon and observable by every purchaser or hirer of any broadcast receiving apparatus or any radio-gramophone sold or hired or offered or exposed for sale or hire by the Licensee.

(f) To pay to the Grantor by way of royalty:—

(i) In respect of each and every broadcast receiving apparatus sold or hired or offered or exposed for sale or hire by the Licensee employing or designed to employ a valve or valves the sum of three shillings and sixpense (3/6d.) in respect of each and every valve included or intended to be employed therein whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent Provided that in the case of multiple valves employed or intended to be employed in such broadcast receiving apparatus each and every cathode-anode stream contained therein shall be deemed to be one valve and the royalty shall be calculated accordingly;

(ii) In respect of each and every radiogramophone sold or hired or offered or exposed for sale or hire by the Licensee employing or designed to employ a valve or valves (a) the sum of three shillings and six-pense (3/6d.) in respect of each and every valve employed or intended to be employed therein and in addition (b) the sum of three shillings and sixpense (3/6d.) whether or not such radiogramophone embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent Provided that in the case of multiple valves employed or intended to be employed in such radiogramophone each and every cathode-anode stream contained therein shall be deemed to be one valve and the royalty shall be calculated accordingly.

Provided that at the end of each year of the term of the Licensee [not legible] paid by the Licensee and the rates of royalty set out in the schedule hereto and the amount of such difference which may be payable to such Licensee shall be credited to such Licensee by the Grantor. Provided always that no progressive or annual rebate whatsoever will be credited or allowed in the event of any default by the licensee in making any royalty return or payment on due date pursuant to Clause 4 Sub-Clause (g).

Provided Always that no royalty shall be payable under paragraphs (i) and (ii) of this Sub-Clause (f) in respect of a battery climinator incorporated in and forming part of a complete broadcast receiver or radiogramophone and Provided Always that in respect of broadcast receiving apparatus or radiogramophones manufactured or sold by the Licensee which employ any patent under which the Grantor may become liable to pay a royalty to a third party or share a royalty with a third party the Grantor shall offer to the Licensee and the Licensee may accept the right to the inclusion in this licence of that patent on payment to the Grantor of an additional royalty of such amount as may be required to enable the Grantor out of the total royalties under paragraphs (i) and (ii) of this Sub-Clause (f) and paid by the Licensee both to retain the royalties payable to satisfy the terms of the Licence or Agreement under which royalty is or shall be payable by the Grantor. The Grantor shall if so required in writing by the Licensee furnish the Licensee with proof of the third party's claim to royalty. The Grantor shall upon request of the Licensee and the Licensee shall upon the request of the Grantor permit the Grantor to examine free of charge diagrams and/or samples of broadcast receiving apparatus and radio-gramophones manufactured or proposed to be manufactured by the Licensee and advise whether such apparatus embodies or utilises any invention the subject of any of the said Letters Patent under which the Grantor may be liable for royalty to a third party as herein mentioned. The Grantor shall inform the Licensee of the amount of any such additional royalty and any such additional royalty shall be shown separately in the returns hereinafter mentioned.

(g) Keep proper and accurate and separate accounts of everything necessary to ensure an accurate return to be made each calendar month in conformity with any of the provisions of this Licence showing separately the royalties payable under each of the paragraphs (i) and (ii) of the last preceding Sub-Clause (f) and to render such accounts within thirty (30) days of the last day of each calendar month in each year to such person as the Grantor may designate to the Licensee from time to time and to accompany each such account with a remittance in respect of the royalties thereby shown to be due. In the event that the Licensee fails to keep the books of account above mentioned in addition to any other rights and remedies the Grantor may have the Licensee agrees to pay to the Grantor the amount of royalty which the Grantor may by notice in writing to the Licensee stipulate as the amount estimated to be due unless the Licensee proves that the royalty due should be some other amount.

(h) The Licensee shall furnish monthly returns verified by the Auditor of the Licensee or by a Statutory Declaration of the proper officer and in the event of any dispute shall permit the Grantors to appoint a Public Accountant to inspect the books and accounts of the Licensees relative to this Licence.

(i) To pay to the Grantor on the execution hereof for the first yearly period of this Licence and thereafter so long as the Licensee shall continue to manufacture sell or hire or offer or expose for sale or hire broadcast receivers and/or radiogramophones in advance each year during the period of this Licence the sum of one hundred and fifty pounds (£150) as minimum royalty for the yearly period, which sum shall in no event be returnable.

(j) Not at any time during the subsistence hereof to dispute or impeach or to assist others to dispute or impeach the validity of the said Letters Patent.

(k) Not to assign transfer mortgage grant sub-licences under or in any manner part with the possession or control of this Licence or any part of it without the previous written consent of the Grantor.

5. During the subsistence of this Licence the Grantor will keep the Licensee fully indemnified against costs and damages arising in connection with all actions proceedings claims and demands which may be made against the Licensee by any third party who seeks to establish or establishes to the satisfaction of a court of competent jurisdiction within the Commonwealth of Australia and such territories as may from time to time be administered under mandate by the said Commonwealth his right to restrain the user and exercise by the Licensee under the Grant contained under this Licence of any of the said Letters Patent on the ground that such user and exercise

is an infringement of any legal rights or legal interests of such third party in such Letters Patent Provided Always that the Grantor is immediately informed of the institution of such proceedings and is given full and complete rights to take over at its own cost and through its own solicitors the defence of such proceedings if it so requests and in that event the Licensee shall assist the Grantor in every reasonable manner but the Grantor shall be at liberty to compromise submit to judgment in abandon discontinue or otherwise dispose of the same as to it may seem expedient.

6. The Grantor may revoke this Licence upon the happenings of any of the following events:—

(a) If any royalty return or any royalty shown to be due is not rendered or is unpaid for thirty days (30) after the last day of any preceding month and remains unrendered or unpaid for seven days after notice in that behalf from the Grantor, or

(b) If there be any breach on the part of the Licensee of any other of the Agreements herein contained and the same be not remedied made good or desisted from within seven (7) days of notice on that behalf from the Grantor; or

(c) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall go into liquidation whether voluntary or compulsory;

any revocation of this Licence shall be without prejudice to all claims of the Grantor against the Licensee for outstanding royalties or prior breaches of this Licence or otherwise and also without prejudice to the provision of Clause 7 hereof.

7. (a) The Licensee agrees to grant to the Grantor upon request a non-exclusive non-transferable licence (but with the right to sub-licence subsidiary or associated companies) to make use exercise and vend all or any of the

inventions the subject of Letters Patent applicable to broadcast receiving apparatus and/or a radiogramophone in respect of which and insofar as the Licensee has or shall hereafter have power to grant a licence for the purposes of manufacturing using selling or letting on hire within the Commonweath of Australia and such territories as may from time to time be administered under mandate by the said Commonwealth broadcast receiving apparatus and/or radiogramophones but only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public generally and not being held for payment) and not otherwise.

(b) If any invention in respect of which any such licence is herein agreed to be granted by the Licensee comes within the [not legible] in accordance therewith or (whether or not there is another licensee) not exceeding the rate paid by the Licensee to the Grantor hereunder whichever is the smaller.

(c) Any such licence granted by the Licensee shall continue until the thirty-first day of December 1943 or for such other period as may be agreed upon.

In Witness Whereof the parties hereto have duly executed these presents the day and year first hereinbefore written.

The Schedule Herein Referred To.

Annual Output of Broadcast Receivers employing or designed to emply the following aggregate number of valves as herein defined.	Rates per valve as defined excluding Rectifier,
1 to 2,500	3/6
2,501 “ 5,000	3/5
5,001 “ 7,500	3/4
7,501 “ 10,000	3/3
10,001 “ 12,500	3/2

12,501 " 15,000	3/1
15,001 " 17,500	3/-
17,501 " 20,000	2/11
20,001 " 30,000	2/10
30,001 " 40,000	2/9
40,001 " 50,000	2/8
50,001 " 60,000	2/7
60,001 " 70,000	2/6
70,001 " 125,000	2/5
125,001 " 200,000	2/4
200,001 " 300,000	2/3
300,001 " 400,000	2/2
400,001 " 500,000	2/1
500,001 and over	2/-

The above rebates do not apply to Radiogramophones.

8. The Licensee in lieu of paying the minimum royalty mentioned in Clause 4 (i) hereof shall furnish a guarantee in a form to be settled by the Grantor by some person or persons to be approved by the Grantor for the payment of royalties in terms of the Licence Provided also that the Licensee shall not be [not legible].

The Common Seal Of Australian Radio Technical Services & Patents Company Pty. Limited was hereunto affixed by ....
and ....
two Directors of the Company by order of the Board in the presence of

....

Secretary.

Seal.

Signed Sealed and Delivered by

....

in the presence of ....

....

Seal.

License No. 3.

Dated the day of

19

Australian Radio Technical
Services and Patents
Company Pty. Limited

to

License

To use and exercise certain Australian
Letters Patent for certain specific
purposes as within in connection with
Wireless Broadcast Receiving
Apparatus and/or Radiogramophones.

—

Guarantee.

In Consideration of Australian Radio Technical Services and Patents Co. Ltd. granting the within License to the Licensee at my request I Hereby Guarantee that the Licensee will pay all sums now or hereafter to become payable by the Licensee under or in pursuance of the License and will duly perform and observe all the conditions and provisions of the License Provided however that my total liability hereunder shall not exceed in the aggregate the sum of fifty pounds And I Hereby Agree that the neglect or forbearance of the Grantor to require and enforce payment of any moneys due under the License from the Licensee or the giving of time or granting of any indulgence to the Licensee shall not prejudice the Grantor's rights or affect my liability hereunder any rule of law or Equity to the contrary notwithstanding.

Signed ....

Address ....

Witness ....

....

DEFENDANT'S EXHIBIT NO. 190.

Extension of License No. 3.

Dated the .... day of

.... 19 ....

Australian Radio Technical Services
and Patents Company Pty. Limited

to

....

Extension of License No. 3.

An Agreement made the .... day of .... 1943 Between Australian Radio Technical Services and Patents Company Pty. Limited of the one part and .... of the other part Whereas this Agreement is supplemental to a License (hereinafter called "the License") dated the .... day of .... 19.......... made between the same parties as are parties hereto with respect to the use and exercise of all or any of the Inventions the subject of the Letters Patent applicable to Broadcast Receiving apparatus and radio gramophones respectively upon the terms set out in the said License And Whereas the parties hereto desire to vary the terms of the said License in the manner hereinafter appearing Now It Is Hereby Agreed as follows:—

1. The term of the said License as provided in Clause 2(a) thereof and of any License granted by the Licensee during the period provided in Clause 7(c) of the said License shall be extended to and continue in force until the 31st day of December 1944 and the said Clauses 2(a) and 7(c) shall be read and construed accordingly.

2. Subject to the variations herein contained and such alterations (if any) as may be necessary to make the said License consistent with this Agreement the said License shall remain in full force and effect.

In Witness whereof the parties hereto have duly executed these presents the day and year first hereinbefore written.

The Common Seal Of Australian Radio Technical Services And Patents Company Pty. Limited was hereunto affixed by

....

in the presence of

....

Secretary.

(Seal)

The Common Seal of ....
was hereunto affixed in the presence of

(Seal)

DEFENDANT'S EXHIBIT NO. 191.

License No. 3B.

An agreement made this .... day of ...., 19......, between Australian Radio Technical Services & Patents Company Pty. Limited having its registered office at 47 York Street Sydney in the State of New South Wales (hereinafter called "the Grantor") of the first part, and ....
of .... (hereinafter called "the Licensee" of the second part.

Whereas the Australian Radio Technical Services & Patents Company Pty. Limited has the right to grant licenses to the extent purpose and for the period of this agreement for all patents owned or controlled by Amalgamated Wireless (Australasia) Limited, Standard Telephones & Cables (A/SIA) Pty. Limited, N. V. Philips Gloeilampenfabrieken and Neutrodyne Proprietary Limited.

And Whereas the Licensee claims to be a bona fide manufacturer of wireless broadcast receiving apparatus and/or radio gramophones and as such manufacturer has applied to the Grantor to grant and the Grantor has agreed to grant to the Licensee a licence under the Letters Patent and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed upon the basis agreed between the parties as being convenient. Now it is hereby agreed as follows:—

1. (a) The expressions "Broadcast Receivers" and "Broadcast receiving apparatus" when herein used shall each mean broadcast receiving apparatus (other than valves and loud speakers) for the reception of speech or music transmitted and intended for simultaneous reception by all listeners as distinct from point to point communication but only for private or domestic use or for the purpose

of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public and not being held for payment) and not otherwise and shall not include such receivers combined with gramophones but shall include sets of component parts.

(b) The expression "Set of component parts" for broadcast receiving apparatus when herein used shall mean a number of component parts which are capable of being assembled so as substantially to constitute a broadcast receiver.

(c) The expression "Radiogramophone" when herein used shall mean a unitary instrument which is designed to incorporate valves (whether or not equipped with the valves themselves) and which is designed for the reproduction of sound through an electrically-operated loudspeaker alternatively from (a) apparatus designed for the reception and translation into sound of modulated electrical oscilations broadcast to the public or from (b) apparatus (such as a turntable and pick-up) designed for the translation into sound of vibrations recorded on a sound record but which is only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable, educational philanthropic or religious character (such lectures or demonstrations not being open to the public and not being held for payment) and not otherwise. Such expression does not include valves and does not include any radiogramophones combined with other apparatus dependent thereon either wholly or in part for its operation but does include battery eliminators as hereinafter defined when incorporated in a radiogramophone and any set of component parts which are capable of being assembled to substantially constitute a radiogramophone.

(d) The expression "Battery Eliminator" when herein used shall mean an apparatus which renders unnecessary the use of one or more batteries in the operation of broadcast receiving apparatus or a radiogramophone by facilitating the substitution therefor of electricity mains.

(e) The word "Valve" (or "Valves") when herein used shall be deemed where the context so admits to include inter alia a multiple valve a valve for rectifying electric current and other apparatus used in direct substitution for a valve.

(f) The expression "Multiple Valve" when herein used shall mean a valve designed to operate with more than one cathode-anode stream.

(g) The expression "Place of Public Entertainment" when herein used shall mean a place of public entertainment now existing or which during the subsistence of this Licence may exist and at which entertainment tax is or shall be payable or would be payable but for any statutory exemption granted subsequent to the first day of January, 1939. If during the subsistence of this Licence entertainment tax should be abolished then thereafter the expression shall mean a place of public entertainment now existing or which during the subsistence of this Licence may exist of the character of those places of public entertainment at which at the present time entertainment tax is in fact payable or would be payable but for any statutory exemption granted subsequent to the first day of January, 1939.

(h) The expression "Private or Domestic Use" as used herein shall be deemed to include also the use in Public Houses Hotels Boarding Houses Restaurants Cafes Tea Houses and/or small Dance Halls (only) Provided that such are not attached to or do not form part of a theatre or cinema.

(i) The expression "Selling" when herein used shall be deemed to include selling on the so-called hire-purchase system.

(j) The word "Plate" when herein used shall be deemed to include transfer.

2. (a) The Grantor grants and agrees to grant to the Licensee subject to the terms and conditions herein appearing a personal non-exclusive non-assignable license to use and exercise all (not legible) time to time be administered under mandate by the said Commonwealth (a) broadcast receiving apparatus and (b) radiogramophones but in both cases only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public generally and not being held for payment) and not otherwise. Such Licence shall be deemed to have commenced on the first day of January, 1939, and shall continue until 31st day of December, 1943, unless previously revoked as hereinafter provided.

(b) The Licensee undertakes that all companies or firms now or hereafter during the subsistence of this Licence directly or indirectly owned or controlled by the Licensee and all Companies or Firms formed by the Licensee during the subsistence of this Licence and directly or indirectly owning or controlling the Licensee shall if engaged in any field of business to which this Licence is applicable forthwith accept Licences from the Grantor upon the same terms as this Licence and the Grantor agrees to grant such Licences accordingly. If the Licensee shall become directly or indirectly owned or controlled by a company or firm which does not hold or forthwith obtain a Licence from the Grantor upon the same terms as this Licence the Grantor shall be at liberty to revoke this Licence.

3. (a) Nothing contained herein shall be deemed to license the Licensee to manufacture sell or let on hire

(a) valves of any kind, or
(b) loudspeakers of any kind, or
(c) television receiving apparatus.

(b) Nothing herein contained shall be deemed to license the Licensee to manufacture sell or let on hire any individual component part of broadcast receiving apparatus or a radiogramophone other than in and forming part of broadcast receiving apparatus or a radiogramophone.

(c) The Licence hereby granted shall not authorise the use or exercise of broadcast receiving apparatus or any radiogramophone for any purpose whatsoever other than the purposes herein set forth and in particular shall not authorise the use or exercise of any of the said apparatus by operating the same for revenue-earning purposes. Nor shall this Licence authorise the use or exercise of any of the said apparatus for purposes of receiving broadcasting or operating any radiogramophone in relation in any manner to the service of any place of public entertainment or of any place in which any business requiring any Licence from public authority is conducted (except insofar as such use is authorised under the definition of "private and domestic use") or for use with a microphone.

4. The Licensee agrees with the Grantor as follows:—

(a) Not without the previous written consent of the Grantor to export or sell for export or knowingly permit to be exported any broadcast receiving apparatus or radiogramophone.

(b) Not without the previous written consent of the Grantor to sell or hire or offer or expose for sale or hire in the territory for which this license is granted any broadcast receiving apparatus or radiogramophones which have not been manufactured in the territory for which this Licence is granted.

(c) From time to time on the request of the Grantor to furnish to the Grantor diagrams and/or samples of all broadcast receiving apparatus and radiogramophones for the time being manufactured sold or let on hire by the Licensee.

(d) To attach or cause to be attached in a prominent position to all broadcast receiving apparatus and radiogramophones sold or hired or offered or exposed for sale or hire by the Licensee (or in the case of a set of component parts for such apparatus to supply for attachment to the assembled apparatus by the constructor thereof) a plate marked by the Grantor with a Serial Number determined by the Grantor and indicating the number of valves (as hereinbefore defined but subject to the provisoes contained in Sub-Clauses (f) (i) and (ii) of this Clause) on which the royalty payable hereunder is calculated and bearing the following words:

With respect to Broadcast receiving apparatus:

> "No. .... This instrument was manufactured under a license granted by Australian Radio Technical Services and Patents Company Pty Limited in respect of patents controlled by it for the reception in the Commonwealth of Australia and such territories as may from time to time be administered under mandate by the said Commonwealth of sound broadcast by wireless but only for private or domestic use and not for operation for any public or commercial or revenue-earning purpose. N.B.—A Post Office Licence is necessary."

With respect to radiogramophones:

> "No. .... This instrument was manufactured under a license granted by Australian Radio Technical Services and Patents Company Pty Limited in respect of patents controlled by it for the reception in the Commonwealth of Australia and such territories as may from time to time be administered under mandate by the said Commonwealth of sound broadcast by wireless and for the reproduction within the said territory of sound from record but only for private or domestic use and not for operation for any public or commercial or revenue-earning purposes. N.B.—A Post Office Licence is necessary."

Plates complying with the above may be obtained from the Grantor and no such plate shall be removed from any Broadcast receiver or radiogramophone to any other apparatus without the previous consent in writing of the Grantor and no Broadcast Receiver or radiogramophone shall be or be deemed to be licensed hereunder unless such a plate be attached thereto and the absence of such a plate from any Broadcast Receiver or radiogramophone shall be conclusive evidence that the same is not licensed hereunder. In addition if required by law the Licensee shall further mark in accordance with the requirements of the Patent Act of the Commonwealth of Australia or any amendments thereof made during the subsistence of this License all Broadcast Receivers or radiogramophones covered by this License which are manufactured sold let on hire or put into use by the Licensee.

(e) So far as is reasonably practicable to make the conditions of this Licence a condition of every sale or hire binding upon and observable by every purchaser or hirer of any broadcast receiving apparatus or any radiogramophone sold or hired or offered or exposed for sale or hire by the Licensee.

(f) To pay the Grantor by way of royalty:

(i) In respect of each and every broadcast receiving apparatus sold or hired or offered or exposed for sale or hire by the Licensee employing or designed to employ a valve or valves the sum of three shillings and sixpence (3/6d.) payable in cash prior to issue of license plate in respect of each and every valve included or intended to be employed therein whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent Provided that in the case of multiple valves employed or intended to be employed in such broadcast receiving apparatus each and every cathode-anode stream contained therein shall be deemed to be one valve and the royalty shall be calculated accordingly;

(ii) In respect of each and every radiogramophone sold or hired or offered or exposed for sale or hire by the Licensee employing or designed to employ a valve or valves (a) the sum of three shilings and sixpence (3/6d.) payable in cash prior to issue of license plate in respect of each and every valve employed or intended to be employed therein and in addition (b) the sum of three shillings and sixpence (3/6d.) whether or not such radiogramophone embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent Provided that in the case of multiple valves employed or intended to be employed in such radiogramophone each and every cathode-anode stream contained therein shall be deemed to be one valve and the royalty shall be calculated accordingly.

Provided Always that no royalty shall be payable under paragraphs (i) and (ii) of this Sub-Clause (f) in respect of a battery eliminator incorporated in and forming part of a complete broadcast receiver or radiogramophone and Provided Always that in respect of broadcast receiving apparatus or radiogramophones manufactured or sold by the Licensee which employ any patent under which the Grantor may become liable to pay a royalty to a third party or share a royalty with a third party the Grantor shall offer to the Licensee and the Licensee may accept the right to the inclusion in this licence of that patent on payment to the Grantor of an additional royalty of such amount as may be required to enable the Grantor out of the total royalties paid by the Licensee both to retain the royalties payable under paragraphs (i) and (ii) of this Sub-Clause (f) and to satisfy the terms of the Licence or Agreement under which royalty is or shall be payable by the Grantor. The Grantor shall if so required in writing by the Licensee furnish the Licensee with proof of the third party's claim to royalty. The Grantor shall upon request of the Licensee and the Licensee shall upon request of the Grantor permit the Grantor to examine free of charge diagrams and/or samples of broadcast receiving apparatus and radiogramophones manufactured or proposed to be manufactured by the Licensee and advise whether such apparatus embodies or utilises any invention the subject of any of the said Letters Patent under which the Grantor may be liable for royalty to a third party as herein mentioned. The Grantor shall inform the Licensee of the amount of any such additional royalty and any such additional royalty shall be shown separately in the returns hereinafter mentioned.

(g) Keep proper and accurate and separate accounts of everything necessary to enable a Public Accountant appointed by the Grantor to ascertain whether the royalties payable under each of the paragraphs (i) and (ii) of the last preceding sub-clause (f) have been paid. In the even that the Licensee fails to keep the books of account above mentioned in addition to any other rights and remedies the Grantor may have the Licensee agrees to pay to the Grantor the amount of royalty which the Grantor may by notice in writing to the Licensee stipulate as the amount estimated to be due unless the Licensee proves that the royalty due should be some other amount.

(h) The Licensee shall permit a Public Accountant appointed by the Grantors to inspect the books and accounts of the Licensee relative to this License. In the event of such inspection revealing any short payment of royalty the Licensee agrees to pay to the Grantor the costs of such inspection in addition to any such royalty short paid.

(i) Not at any time during the subsistence hereof to dispute or impeach or to assist others to dispute or impeach the validity of the said Letters Patent.

(j) Not to assign transfer mortgage grant sub-licences under or in any manner part with the possession or control of this Licence or any part of it without the previous written consent of the Grantor.

5. During the subsistence of this Licence the Grantor will keep the Licensee fully indemnified against costs and damages arising in connection with all actions proceedings claims and demands which may be made against the Licensee by any third party who seeks to establish or establishes to the satisfaction of a court of competent jurisdiction within the Commonwealth of Australia and such territories as may from time to time be administered under mandate by the said Commonwealth his right to restrain the user and exercise by the Licensee under the Grant contained under this Licence of any of the said Letters Patent on the ground that such user and exercise is an infringement of any legal rights or legal interests of such third party in such Letters Patent Provided Always that the Grantor is immediately informed of the institution of such proceedings and is given full and complete rights to take over at its own cost and through its own solicitors the defense of such proceedings if it so requests and in that event the Licensee shall assist the Grantor in every reasonable manner but the Grantor shall be at liberty to compromise submit to judgment in abandon discontinue or otherwise dispose of the same as to it may seem expedient.

6. The Grantor may revoke this Licence upon the happenings of any of the following events:

(a) If there be any breach on the part of the Licensee of any of the terms and conditions herein contained and the same be not remedied made good or desisted from within seven (7) days of notice on that behalf from the Grantor; or

(b) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall go into liquidation whether voluntary or compulsory;

any revocation of this Licence shall be without prejudice to all claims of the Grantor against the Licensee for outstanding royalties or prior breaches of this Licence or otherwise and also without prejudice to the provision of Clause 7 hereof.

7. (a) The Licensee agrees to grant to the Grantor upon request a non-exclusive non-transferable licence (but with the right to sub-licence subsidiary or associated companies) to make use exercise and vend all or any of the inventions the subject of Letters Patent applicable to broadcast receiving apparatus and/or a radiogramophone in respect of which and insofar as the Licensee has or shall hereafter have power to grant a licence for the purposes of manufacturing using selling or letting on hire within the Commonwealth of Australia and such territories as may from time to time be administered under mandate by the said Commonwealth broadcast receiving apparatus and/or radiogramphones but only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character ((such lectures or demonstrations not being open to the public generally and not being held for payment) and not otherwise.

(b) If any invention in respect of which any such licence is herein agreed to be granted by the Licensee comes within the scope of the claims of any Letters Patent in respect of which the Licence is granted or agreed to be granted hereunder by the Grantor then the Grantor shall pay no royalty. If any such invention does not come within the scope as aforesaid then the Grantor shall be entitled to such licence on payment of a royalty at a rate not exceeding the lowest rate paid by any Licensee in respect of the same invention or if there is no other Licensee then at a rate not exceeding five per cent. (5%) of the net selling price of the article manufactured in accordance therewith or (whether or not there is another licensee) not exceeding the rate paid by the Licensee to the Grantor hereunder whichever is the smaller.

(c) Any such licence granted by the Licensee shall continue until the thirty-first day of December 1943 or for such other period as may be agreed upon.

8. The Licensee also agrees to furnish a guarantee in a form to be settled by the Grantor by some person or persons approved by the Grantor for the payment of royalties in terms of the License.

In Witness Whereof the parties hereto have duly executed these presents the day and year first hereinbefore written.

The Common Seal of Australian Radio Technical Services & Patents Company Pty. Limited was hereunto affixed by

.... and

.... two

Directors of the Company by order of the Board and in the presence of

....

Secretary.

Seal.

Signed Sealed and Delivered by..........

....

in the presence of ....

....

Seal.

License No. 3B.

Dated the .... day of

.... 19..............

Australian Radio Technical
Services and Patents
Company Pty. Limited

to

....

License

To use and exercise certain Australian Letters Patent for certain specific purposes as within in connection with Wireless Broadcast Receiving Apparatus and/or Radiogramophones.

Guarantee.

In Consideration of Australian Radio Technical Services and Patents granting the within License to the Licensee at my request I Hereby Guarantee Licensee will pay all sums now or hereafter to become payable by the Licensee under or in part of the License and will duly perform and observe all the conditions and provisions cited Provided however that my total liability hereunder shall not exceed in the aggregate of fifty pounds And I Hereby Agree that the neglect or forbearance of the Grantor to and enforce payment of any moneys due under the License from the License or the giving or the granting of any indulgence to the Licensee shall not prejudice the Grantor's rights of my liability hereunder any rule of law or Equity to the contrary notwithstanding.

Signed ....

Address ....

....

Witness ....

INDEX.

No. 192—ARTS License No. 5..........2425
No. 193—ARTS License No. 6..........2438
No. 194—ARTS License No. 6-B..........2452
No. 195—ARTS License No. 7-B..........2464
No. 196—Memo—Jan. 24, 1951, Shackelford to Bruner —re Historical Outline Amalgamated Wireless, et al...........2476
No. 197—Abstracts—Dodds—Australian and New Zealand Pool Agreements..........2482
No. 198—Letter Sept. 12, 1946, Hazeltine to Warner..2485
No. 199—Letter Dec. 22, 1949, Warner to Binns......2486
No. 200—Letter July 7, 1950, Warner to Binns.......2489
No. 201—Letter July 20, 1950, Hazeltine to Warner..2492
No. 202—Letter Sept. 24, 1951, Warner to Binns.....2493
No. 203—Letter Apr. 10, 1958, Warner to Dodds.....2495
No. 204—Letter Oct. 22, 1958, Dodds to Warner.....2499
No. 205—Letter Jan. 15, 1959, Warner to Dodds......2500
No. 206—Letter Jan. 26, 1959, Dodds to Warner.....2502
No. 207—Letter Feb. 2, 1959, Warner to Dodds......2503
No. 208—Letter Feb. 2, 1948, Warner to Grayson....2504
No. 209—Letter Oct. 2, 1958, Warner to Hooke......2507
No. 210—Letter Jan. 21, 1959, Warner to Dodds......2508
No. 211—Letter Nov. 17, 1960, Warner to Dodds.....2510
No. 212—Memo—Jan. 2, 1963—Tiffany to McFarland —re Neutrodyne..........2512
No. 213—Letter Apr. 23, 1935, Clapp to Brown, re Radio Merchandising Position..........2513
No. 214—Letter Apr. 28, 1947, Clapp to Eveleth.....2519
No. 215—Bulk Exhibit—Australian market inquiries re Zenith equipment..........2523

No. 216—Bulk Exhibit—Excerpts from Statistical Publications—Australian, Canadian and British....2591
No. 218—Summary Sheet—Zenith's Share of Domestic Market 2621
No. 220—Computation of Lost Sales and Lost Profits.2661
Defendant's Patent Trial Exhibit No. F-10..........2665

PLAINTIFF'S EXHIBITS.

No. 36—Plaintiff's Reply to Counterclaim, etc. in Delaware Case No. 982 2667
No. 37—Stipulation and order of dismissal in Delaware Case No. 1247 2695
No. 38—Amended Complaint in Illinois Case No. 48-C-1818 2697
No. 39—Answer and Counterclaim in Illinois Case No. 48-C-1818 2701
No. 40—Amendment to Counterclaim in Illinois Case No. 48-C-1818 2726
No. 41—Amended Counterclaim in Illinois Case No. 48-C-1818 2734
No. 42—Amendment and Suppplement to Counterclaim in Illinois Case No. 48-C-1818 2743
No. 43—Stipulation and order of dismissal in Illinois Case No. 48-C-1818 2751
No. 44—Complaint in United States v. General Electric Company, et al., Civil No. 140-157 2753
No. 45—Final Judgment Against Defendant General Electric in United States v. General Electric Company, et al., Civil No. 140-157 2767
No. 46—Final Judgment Against Defendant Westinghouse Electric Corp. in United States v. General Electric Company, et al., Civil No. 140-157 2772

No. 47—Final Judgment Against Defendant Philips' Gloeilampenfabrieken in United States v. General Electric Company, et al., Civil No. 140-157 2778
No. 48—Agreement for settlement of litigation 2783
No. 49—Canadian Patent Act 2787
No. 50—Canada Royal Commission on Patents, Copyright and Industrial Designs, Report on Patents of Invention 2793
No. 50-A—Excerpts from Report on Patents of Invention 2811
No. 51—Plaintiff's Interrogatory No. 8 to Defendant and Defendant's Answer 2834
No. 52—Letter Dec. 9, 1959, Hazeltine to Magnavox .. 2835
No. 53—Letter Dec. 16, 1959, Magnavox to Dodds 2837
No. 54—Letter June 27, 1960, Hazeltine to Magnavox .. 2839
No. 55—Letter Dec. 6, 1960, Magnavox to Dodds 2841
No. 58—Memo dated Dec. 5, 1950, from Bruce L. Birchard to Mr. Miguel 2843
No. 60—Note (undated) from W. W. Richardson, on letterhead of Canadian Radio Patents Ltd. 2845
No. 62—Zenith Annual Report—1962 2847
No. 63—Zenith Operating Profit Percentages (Canadian Sales) 1960-1963 2855
Adoption of Defendant's Findings of Fact and Conclusions of Law on Patent and Antitrust Issues ... 2857
Findings of Fact and Conclusions of Law on the Patent and Antitrust Issues 2859
Findings of Fact and Conclusions of Law with Respect to the Antitrust Issues Raised in the Answer and Counterclaim 2892
Plaintiff's Proposed Findings of Fact and Conclusions of Law with Respect to the Defense of Misuse and Defendant's Counterclaim Under the Antitrust Laws 2913

DEFENDANT'S EXHIBIT NO. 192.

Licence No. 5

Dated the .... day of

.... 19..............

Australian Radio Technical
Services and Patents
Company Pty. Limited

to

....

Licence

To use and exercise certain Australian Letters Patent for certain specific purposes as within in connection with Wireless Broadcast Receiving Apparatus and/or Radiogramophones.

Licence No. 5.

An Agreemen made this .... day of .... 19.............. Between Australian Radio Technical Services & Patents Company Pty. Limited having its registered office at 47 York Street Sydney in the State of New South Wales (hereinafter called "the Grantor") of the first part, And ....
of .... (hereinafter called "the Licensee") of the second part.

Whereas the Grantor has the right to grant licenses to the extent purpose and for the period of this agreement for all Australian Letters Patent owned or controlled by Amalgamated Wireless (Australasia) Limited, Standard Telephones & Cables Pty. Limited, N. V. Philips Gloeilampenfabrieken and Neutrodyne Proprietary Limited.

And Whereas the Licensee claims to be a bona fide manufacturer of wireless broadcast receiving apparatus and/or radio gramophones and as such manufacturer has applied to the Grantor to grant and the Grantor has agreed to grant to the Licensee a licence under the Letters Patent and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved. and assessed upon the basis agreed between the parties as being convenient. Now It Is Hereby Agreed As Follows:

1. (a) The expression "Broadcast Receiver" and "Broadcast Receiving Apparatus" when herein used shall each mean broadcast receiving apparatus which is designed to incorporate valves (whether or not equipped with the valves themselves) and which is designed to receive and translate amplitude modulated electrical oscillations broadcast to the public for sound reception. Such expression does not include valves or cathode ray tubes whether or not incorporated in the apparatus nor separate components but shall include sets of component parts and/or any electronic device designed to be used in association with such broadcast receiving apparatus.

(b) The expression "Radiogramophone" when herein used shall mean an instrument which is designed to incorporate valves (whether or not equipped with the valves themselves) and which may be used for the reproduction of sound through an electrically operated loudspeaker alternatively from (i) apparatus designed for the reception and translation into sound of amplitude modulated electrical oscillations broadcast to the public and (ii) apparatus (such as turntable and pick-up) designed for the translation into sound of vibrations recorded on a disc sound record. Such expression does not include valves or cathode ray tubes whether or not incorporated in the instrument nor separate components but does include playing disks designed for use in combination with broadcast receivers and shall include sets of component parts.

(c) The expression "Set of Component Parts" for broadcast receiving apparatus or radiogramophones when herein used shall mean a number of component parts which are capable of being assembled so as substantially to constitute a broadcast receiver and/or radiogramophone.

(d) The word "Valve" (or "Valves") when herein used shall be deemed where the context so admits to include inter alia a multiple valve a valve for rectifying electric current and other apparatus used in direct substitution for a valve.

(e) The expression "Place of Public Entertainment" when herein used shall mean a place of public entertainment now existing or which during the subsistence of this Licence may eixst and at which entertainment tax is or shall be payable or would be payable but for any statutory exemption granted subsequent to the first day of January, 1951. If during the subsistence of this Licence entertainment tax should be abolished then thereafter the expression shall mean a place of public entertainment now existing or which during the subsistence of this Licence may exist of the character of those places of public entertainment at which at the present time entertainment tax is in fact payable or would be payable but for any statutory exemption granted subsequent to the first day of January, 1951.

(f) The expression "Private or Domestic Use" as used herein shall be deemed to include also the use in Public Houses Hotels Boarding Houses Restaurants Cafes Tea Houses Factories Warehouses Shops and/or small Dance Halls (only) Provided that such are not attached to or do not form part of a theatre or cinema.

(g) The expression "Selling" when herein used shall be deemed to include selling on the so-called hire-purchase system.

(h) The word "Plate" when herein used shall be deemed to include transfer.

2. (a) The Grantor grants and agrees to grant to the Licensee subject to the terms and conditions herein appearing a personal non-exclusive non-assignable licence to use and exercise all or any of the inventions the subject of the Letters Patent applicable to broadcast receiving apparatus and radiogramophones respectively in respect of which and insofar as the Grantor now has or may hereafter during the subsistence of this Licence have power to grant licences or sub-licences for the purposes and on the terms hereof (which Letters Patent are herein collectively called "the said Letters Patent") for the purposes of manufacturing using selling or letting on hire within the Commonwealth of Australia and such territories as may from time to time be administered under mandate by the said Commonwealth (a) broadcast receiving apparatus and (b) radiogramophones but in both cases only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open the the public generally and not being held for payment) and not otherwise. Such Licence shall be deemed to have commenced on the first day of January, 1951, and shall continue until the 30th day of June, 1953, unless previously revoked as hereinafter provided.

(b) The Licencee undertakes that all companies or firms now or hereafter during the subsistence of this Licence directly or indirectly owned of controlled by the Licensee and all Companies or Firms formed by the Licensee during the subsistence of this Licence and directly or indirectly owning or controlling the Licensee shall if engaged in any field or business to which this Licence is applicable forthwith accept licences from the Grantor upon the same terms as this Licence and the Grantor agrees to grant such licences accordingly. If the Licensee shall become directly or indirectly owned or controlled by a company or firm which does not hold or forthwith obtain a licence from the Grantor upon the same terms as this Licence the Grantor shall be at liberty to revoke this Licence.

(c) The Grantor covenants and agrees that if during the subsistence of this Licence it grants to any Licensee either in the Comonwealth ofAustralia or such territories as may from time to time be administered under mandate by the said Comonwealth any other licence at lesser rates or royalty or on any terms or conditions more beneficial or favourable in any manner whatsoever than is or are provided and made available to or enjoyed by the Licensee hereunder then forthwith the Licensee shall be entitled to and shall be offered by the Grantor such other licence in lieu of this licence so that he shall enjoy the same rates of royalty the same terms and conditions of manufacture and generally the same benefits as such Licensee who shall have been granted better terms as aforesaid by the Grantor and the Grantor hereby undertakes forthwith to advise the Licensee upon such better terms being made available to any other Licensee as aforesaid.

(d) The Grantor covenants and agrees to provide to the Licensee an accurate list of the said Letters Patent current at the first day of January 1951 and to advise the Licensee at least quarterly thereafter of changes additions and revisions to this list occasioned by expiration of any of the said Letters Patent or by the granting of new Letters Patent or by any other cause.

3. (a) Nothing contained herein shall be deemed to license the Licensee to manufacture import sell or let on hire valves or any kind but the Licence shall be deemed to license the Licensee to manufacture sell or let on hire any other individual component part of broadcast receiving apparatus or radiogramophone without payment of any royalty.

(b) The Licence hereby granted shall not authorise the use or exercise of broadcast receiving apparatus or any radiogrammophone for any purpose whatsoever other than the purposes herein set forth and in particular shall not authorise the use or exercise of any of the said apparatus by operating the same for revenue-earning purposes. Nor shall this Licence authorise the use or exercise of any of the said apparatus for purposes of receiving sound broadcasting or operating any radiogramophone in relation in any manner to the service of any place of public entertainment or of any place in which any business requiring any licence from public authority is conducted (except insofar as such use is authorised under the definition of "private and domestic use") or for use with a microphone.

(c) The Grantor agrees to take all necessary action either at law or in equity to prevent any person or persons firm or firms corporation or corporations and company or companies whomsoever and whatsoever manufacturing or selling or letting on hire broadcast receivers and/or radiogramophones which embody or utilise or are designed to embody or utilise any invention the subject of the said Letters Patent during the terms of this License without payment of the royalties specified hereunder or under any licence granted in accordance with Clause 2(c) hereof.

4. The Licensee agrees with the Grantor as follows:

(a) From time to time on the request of the Grantor to furnish to the Grantor diagrams and/or samples of all broadcast receiving apparatus and/or radiogramophones for the time being manufactured sold or let on hire by the Licensee.

(b) To attach or cause to be attached in a prominent position to all broadcast receiving apparatus and radiogramophones sold or hired or offered or exposed for sale or hire by the Licensee (or in the case of a set of component parts for such apparatus to supply for attachment to the assembled apparatus by the constructor thereof) a plate marked by the Grantor with a Serial Number determined by the Grantor and indicating the number of valves (as hereinbefore defined) and bearing the following words: With respect to Broadcast Receiving Apparatus and/or Radiogramophones:

> "No .... This instrument was manufactured under a Licence granted by Australian Radio Technical Services and Patents Company Pty. Limited in respect of Letters Patent controlled by it for the reception in the Commonwealth of Australia and such territories as may from time to time be administered under mandate by the said Commonwealth of Sound broadcast by wireless but only for private or domestic use and not for operation for any public or commercial or revenue-earning purpose. N. B.—A Post Office License is necessary."

Plates complying with the above may be obtained from the Grantor and no such plate shall be removed from any broadcast receiver or radiogramophone to any other apparatus without the previous consent in writing of the Grantor and no broadcast receiver or radiogramophone shall be or be deemed to be licensed hereunder unless such a plate be attached thereto and the absence of such a plate so marked from any broadcast receiver or radiogramophone shall be conclusive evidence that the same is not licensed hereunder. In addition if required by law the Licensee shall further mark in accordance with the requirements of the Patent Act of the Commonwealth of Australia or any amendments thereof made during the subsistence of this Licence all broadcast receivers and/or radiogramophones covered by this Licence which are manufactured sold let on hire or put into use by the Licensee.

(c) So far as is reasonably practicable to make the conditions of this Licence a condition of every sale or hire binding upon and observable by every purchaser or hirer of any broadcast receiving apparatus and/or any radiogramophones sold or hired or offered or exposed for sale or hire by the Licensee.

(d) To pay to the Grantor by way of royalty:—

(i) In respect of all complete broadcast receivers and complete radiogramophones sold let on hire or put into use by the Licensee during the subsistence of this Licence whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent royalties upon the following scale based on the Licensee's net turnover as hereinafter defined—

3¼% of the Licensee's net turnover if such turnover is less than £15,000 per annum.

2¾% of the Licensee's net turnover if such turnover is or exceeds £15,000 and is less than £40,000 per annum.

2¼% of the Licensee's net turnover if such turnover is or exceeds £40,000 and is less than £70,000 per annum.

1¾% of the Licensee's net turnover if such turnover is or exceeds £70,000 and is less than £100,000 per annum, or,

¼% of the Licensee's net turnover if such turnover is or exceeds £100,000 per annum.

For the purpose of this sub-Clause the expression "net turnover" shall be ascertained by multiplying the number of each type of complete broadcast receivers including valves and/or complete radiogramophones including valves sold let on hire or put into use by the Licensee by [not legible] price of batteries of any kind at which each such type is sold in each month at genuine arms-length trading to the Licensee's largest distributor or customer in which the Licensee has no interest by share-holding or otherwise.

"Largest distributors or customers" shall mean that distributor or customer or alternatively those distributors or customers enjoying the longest discount or best price and who alone absorbs or together absorb not less than twenty per cent of the net turnover of the Licensee.

(ii) In respect of all broadcast receivers not complete with valves cabinet and loudspeaker or any of them and in respect of all radiogramophones not complete with valves cabinet loudspeaker pickup and motor or any of them sold or let on hire or offered for sale or hire by the Licensee during the subsistence of this Licence whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent the same percentages of the Licensee's net turnover as in the preceding sub-Clause hereinbefore set forth provided that the price of each incomplete receiver or radiogramophone shall be determined by adding to the sale price thereof an amount being the total of the sale price of valves loudspeaker cabinet and other components (excluding batteries) necessary to constitute a complete broadcast receiver or radiogramophone such price to be certified by a Public Accountant to be appointed by the Grantor and when so determined shall be included as part of the Licensee's net turnover for the particular year in which the same shall be sold let on hire or offered for sale.

Provided Always that in respect of broadcast receiving apparatus or radiogramophones manufactured or sold by the Licensee which employ any Letters Patent under which the Grantor may become liable to pay a royalty to a third party or to share a royalty with a third party the Grantor shall offer to the Licensee and the Licensee may accept the right to the inclusion in this Licence of that Letters Patent on payment to the Grantor of an additional royalty of such amount as may be required to enable the Grantor out of the total royalties paid by the Licensee both to retain the royalties payable under this sub-Clause and to satisfy the terms of the licence or agreement under which royalty is or shall be payable by the Grantor. The Grantor shall if so required in writing by the Licensee furnish the Licensee with proof of the third party's claim to royalty. The Grantor shall upon request of the Licensee and the Licensee shall upon request of the Grantor permit the Grantor to examine free of charge diagrams and/or samples of broadcast receiving apparatus and radiogramophones manufactured or proposed to be manufactured by the Licensee and advise whether such apparatus embodies or utilises any invention the subject of any of the said Letters Patent under which the Grantor may be liable for royalty to a third party as herein mentioned. The Grantor shall inform the Licensee of the amount of any such additional royalty and any such additional royalty shall be shown separately in the returns hereinafter mentioned.

(e) Keep proper and accurate and separate accounts of everything necessary to ensure an accurate return to be made each calendar month in conformity with any of the provisions of this Licence showing the royalties payable under the last preceding sub-Clause (d) and to render such accounts within thirty (30) days of the last day of each calendar month in each year to such person as the Grantor may designate to the Licensee from time to time and to accompany each such account with a remittance based on the estimated annual turnover of the Licensee in respect of the royalties thereby shown to be due. In the event that the Licensee fails to keep the books of account above-mentioned in addition to any other rights and remedies the Grantor may have the Licensee agree to pay to the Grantor the amount of royalty which the Grantor may by notice in writing to the Licensee stipulate as the amount estimated to be due unless the Licensee proves that the royalty due should be some other amount.

(f) The Licensee shall furnish monthly returns verified by the Auditor of the Licensee or by a Statutory Declaration of the proper officer and in the event of any dispute shall permit the Grantor to appoint a Public Accountant to inspect the books and accounts of the Licensee relative to this Licence.

(g) To pay to the Grantor on the execution hereof for the first yearly period of this Licence and thereafter so long as the Licensee shall continue to manufacture sell or hire or offer or expose for sale or hire broadcast receivers and/or radiogramophones in advance each year during the period of this Licence the sum of one hundred and fifty pounds (£150) as minimum royalty for the yearly period, which sum shall in no event be returnable.

(h) Not at any time during the subsistence hereof to dispute or impeach or to assist others to dispute or impeach the validity of the said Letters Patent.

(i) Not to assign transfer mortgage grant sub-licences under or in any manner part with the possession or control of this Licence or any part of it without the previous written consent of the Grantor.

5. During the subsistence of this Licence the Grantor will keep the Licensee fully indemnified against costs and damages arising in connection with all actions proceedings claims and demands which may be made against the Licensee by any third party who seeks to establish or establishes to the satisfaction of a court of competent jurisdiction within the Commonwealth of Australia and such territories as may from time to time be administered under

mandate by the said Commonwealth his right to restrain the use and exercise by the Licensee under the Grant contained under this Licence of any of the said Letters Patent on the ground that such use and exercise is an infringement of any legal rights or legal interests of such third party in such Letters Patent Provided Always that the Grantor is immediately informed of the institution of such proceedings and is given full and complete rights to take over at its own cost and through its own solicitors the defence of such proceedings if it so requests and in that event the Licensee shall assist the Grantor in every reasonable manner but the Grantor shall be at liberty to compromise submit to judgment in abandon discontinue or otherwise dispose of the same as to it may seem expedient.

6. The Grantor may revoke this Licence upon the happening of any of the following events:—

(a) If any royalty return or any royalty shown to be due is not rendered or is unpaid for thirty (30) days after the last day of any preceding month and remains unrendered or unpaid for seven days (7) after notice in that behalf from the Grantor; or

(b) If there be any breach on the part of the Licensee of any other of the agreements herein contained and the same be not remedied made good or desisted from within seven (7) days of notice in that behalf from the Grantor; or

(c) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall go into liquidation whether voluntary or compulsory;

any revocation of this Licence shall be without prejudice to all claims of the Grantor against the Licensee for outstanding royalties or prior breaches of this Licence or otherwise.

7. Notwithstanding anything herein contained this Agreement and Grant shall not apply to and the Grantor

hereby covenants that he will not charge or demand any royalty in respect of broadcast receiving apparatus and/or radiogramophones manufactured and exported by the Licensee beyond the Commonwealth of Australia and such territories as may from time to time be administered under mandate by the said Commonwealth.

In Witness Whereof the parties hereto have duly executed these presents the day and year first hereinbefore written.

The Common Seal of Australian Radio Technical Services & Patents Company Pty. Limited was hereunto affixed by

.... and

.... two

Director of the Company by order of the Board in the presence of

____

Secretary.

Seal

Signed Sealed and Delivered by

....

in the present of ....

....

Seal

DEFENDANT'S EXHIBIT NO. 193.

Exhibit R.

Licence No. 6.

An Agreement made this .... day of .... 19...... Between Australian Radio Technical Services & Patents Company Pty. Limited having its registered office at 47 York Street Sydney in the State of New South Wales (hereinafter called "the Grantor") of the first part, And ....

....

of ....

(hereinafter called "the Licensee") of the second part.

Whereas the Grantor has the right to grant licences to the extent purpose and for the period of this agreement for all Australian Letters Patent owned or controlled by Amalgamated Wireless (Australasia) Limited, Standard Telephones & Cables Pty. Limited, N. V. Philips Gloeilampenfabrieken, Neutrodyne Proprietary Limited and Electric and Musical Industries Ltd.

And Whereas the Licensee claims to be a bona fide manufacturer of broadcast sound receivers and/or television receivers and/or radiogramophones and as such manufacturer has applied to the Grantor to grant and the Grantor has agreed to grant to the Licensee a licence under the Letters Patent and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed upon the basis agreed between the parties as being convenient. Now It Is Hereby Agreed as Follows:—

1. (a) The expression "Broadcast Sound Receiver" when herein used shall mean broadcast receiving apparatus which is designed to incorporate valves (whether or not equipped with the valves themselves) and which is designed

to receive and translate modulated electrical oscillations broadcast to the public for sound reception. Such expression does not include valves or cathode ray tubes whether or not incorporated in the apparatus nor separate components but shall include sets of component parts and/or any electronic device designed to be used in association with such broadcast sound receiving apparatus.

(b) The expression "Radiogramophone" when herein used shall mean an instrument which is designed to incorporate valves (whether or not equipped with the valves themselves) and which may be used for the reproduction of sound through an electrically operated loudspeaker alternatively from (i) apparatus designed for the reception and translation into sound of modulated electrical oscillations broadcast to the public and (ii) gramophone apparatus (such as turntable and pick-up) designed for the translation into sound of vibrations recorded on a disc sound record. Such expression does not include valves or cathode ray tubes whether or not incorporated in the instrument nor separate components but does include playing desks designed for use in combination with broadcast sound receivers and shall include sets of component parts.

(c) The expression "Television Receivers" when herein used shall mean apparatus (whether or not equipped with electron discharge devices or equivalent devices) which is intended to receive and translate electrical oscillations modulated by vision and associated sound signals which are broadcast to the public and which is intended for use for entertainment or education purposes or is of a type normally supplied to the public for domestic use Provided However that such expression shall include:—

(i) the following apparatus combined therewith or sold for combination therewith namely apparatus intended for the reception and translation of electrical oscillations modulated by sound signals which are broadcast to the public but are not accompanied by vision signals (hereinafter referred to as "sound-only receiving apparatus") apparatus intended for the reproduction of sound from records (hereinafter referred to as "gramophone apparatus") and signal boosting apparatus;

(ii) television receiving apparatus of the kind supplied by a broadcast television relay service as the subscribers' terminal units;

(iii) sets of component parts as hereinafter defined.

Provided Further that the expression "Television Receivers" shall Not include:—

any broadcast relay apparatus other than the terminal units referred to as included under item (ii) above, or Television Receivers adapted for producing a picture larger than 30 square feet.

(d) The expression "Set of Component Parts" for broadcast sound receivers and/or television receivers and/or radiogramophones when herein used shall mean a number of component parts which are capable of being assembled so as substantially to constitute a broadcast sound receiver and/or television receiver and/or radiogramophone.

(e) The word "Valve" (or "Valves") when herein used shall be deemed where the context so admits to include inter alia an electron discharge device a multiple valve a valve for rectifying electric current and other apparatus used in direct substitution for a valve.

(f) The expression "Place of Public Entertainment" when herein used shall mean a place of public entertainment existing at any time during the subsistence of this Licence.

(g) The expression "Private or Domestic Use" as used herein shall be deemed to include also the use in Public Houses Hotels Boarding Houses Restaurants Cafes Tea

Houses Factories Warehouses Shops and/or small Dance Halls (only) Provided That such are not attached to or do not form part of a theatre or cinema.

(h) The expression "Selling" when herein used shall be deemed to include selling on the so-called time payment or hire-purchase system.

(i) The word "Plate" when herein used shall be deemed to include transfer.

2. (a) The Grantor grants and agrees to grant to the Licensee subject to the terms and conditions herein appearing a personal non-exclusive non-assignable licence to use and exercise all or any of the inventions the subject of Letters Patent applicable to broadcast sound receivers television receivers and radiogramophones respectively in respect of which and insofar as the Grantor now has or may hereafter during the subsistence of this Licence have power to grant licences or sub-licences for the purposes and on the terms hereof (which Letters Patent are herein collectively called "the said Letters Patent"(for the purposes of manufacturing using selling or letting on hire within the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth under mandate or otherwise (i) broadcast sound receivers (ii) television receivers and (iii) radiogramophones but in each case only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public generally and not being held for payment) and not otherwise. Such Licence shall be deemed to have commenced on the first day of July 1953 and shall continue until the 30th day of June 1958 unless previously revoked as hereinafter provided.

(b) The Licensee undertakes that all companies or firms now or hereafter during the subsistence of this Licence directly or indirectly owned or controlled by the Licensee and all Companies or Firms formed by the Licensee during the subsistence of this Licence and directly or indirectly owning or controlling the Licensee shall if engaged in any field of business to which this Licence is applicable forthwith accept licences from the Grantor upon the same terms as this Licence and the Grantor agrees to grant such licences accordingly. If the Licensee shall become directly or indirectly owned or controlled by a company or firm which does not hold or forthwith obtain a licence from the Grantor upon the same terms as this Licence the Grantor shall be at liberty to revoke this Licence.

(c) The Grantor covenants and agrees to provide to the Licensee an accurate list of the said Letters Patent current at the first day of July 1953 and to advise the Licensee at least quarterly thereafter of changes additions and revisions to this list occasioned by expiration of any of the said Letters Patent or by the granting of new Letters Patent or by any other cause.

3. (a) Nothing contained herein shall be deemed to license the Licensee to manufacture import sell or let on hire—

Valves or cathode ray tubes of any kind; or

Any other individual component part of broadcast sound receivers radiogramophones or television receivers other than in and forming part of a broadcast sound receiver radiogramophone or television receiver Provided Always that the Licence shall not licence the Licensee to manufacture sell or let on hire the material of or any material used in any component part.

The expression "Component Part" when herein used shall mean any individual constituent part of broadcast sound receivers, radiogramophones and/or television receivers.

(b) The Licence hereby granted shall not authorise the use or exercise of broadcast sound receivers or any television receivers or any radiogramophones for any purpose whatsoever other than the purposes herein set forth and in particular shall not authorise the use or exercise of any of the said apparatus by operating the same for revenue-earning purposes. Nor shall this Licence authorise the use or exercising of any of the said apparatus for purposes of receiving sound or television broadcasting or operating any radiogramophones in relation in any manner to the service of any place of public entertainment or of any place in which any business requiring any licence from public authority is conducted (except insofar as such use is authorized under the definition of "Private and Domestic Use") or for use with a microphone.

(c) The Grantor agrees to take all necessary action either at law or in equity to prevent any person or persons firm or firms corporation or corporations and company or companies whomsoever and whatsoever manufacturing or selling or letting on hire broadcast receivers television receivers and/or radiogramophones which embody or utilise or are designed to embody or utilise any invention the subject of the said Letters Patent during the term of this Licence without payment of the royalties specified hereunder.

4. The Licensee agrees with the Grantor as follows:—

(a) From time to time on the request of the Grantor to furnish to the Grantor diagrams and/or samples of all broadcast sound recivers and/or television receivers and/or radiogramophones for the time being manufactured sold or let on hire by the Licensee.

(b) To attach or cause to be attached in a prominent position to all broadcast sound receivers television receivers and radiogramophones sold or hired or offered or exposed for sale or hire by the Licensee (or in the case of a set of component parts for such apparatus to supply for attachment to the assembled apparatus by the constructor therof) a plate marked by the Grantor with a Serial Number determined by the Grantor and indicating the number of valves (as hereinbefore defined) and bearing the following words:

With respect to Broadcast Sound Receivers and/or Television Receivers and/or Radiogramophones:

> "No. .... This instrument was manufactured under a Licence granted by Australian Radio Technical Services and Patents Company Pty. Limited in respect of Letters Patent controlled by it for the reception in the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth of Sound and/or Television broadcast by wireless but only for private or domestic use and not for operation for any public or commercial or revenue-earning purpose. N. B.—A Post Office Licence is necessary."

Plates complying with the above may be obtained from the Grantor and no such plate shall be removed from any broadcast sound receiver or television receiver or radiogramophone to any other apparatus without the previous consent in writing of the Grantor and no broadcast sound receiver or television receiver or radiogramophone shall be or be deemed to be licensed hereunder unless such a plate be attached thereto and the absence of such a plate so marked from any broadcast sound receiver or television receiver or radiogramophone shall be conclusive evidence that the same is not licensed hereunder. In addition if required by law the Licensee shall further mark in accordance with the requirements of the Patent Act of the Commonwealth of Australia or any amendments thereof made during the subsistence of this Licence all broadcast sound receivers and/or television receivers and/or radiogramophones covered by this Licence which are manufactured sold let on hire or put into use by the Licensee

(c) So far as is reasonably practicable to make the conditions of this License a condition of every sale on hire binding upon and observable by every purchaser or hirer of any broadcast sound receiver and/or television receiver and/or radiogramophones sold or hired or offered or exposed for sale or hire by the Licensee.

(d) To pay to the Grantor by way of royalty:

(i) In respect of all complete broadcast sound receivers and complete radiogramophones sold let on hire or put into use by the Licensee during the subsistence of this Licence whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent royalties upon the following scale based on the Licensee's net turnover as hereinafter defined in this sub-Clause (d)(i)—

¾ of 1% (three-quarters of one per centum) of the Licensee's net turnover of broadcast sound receivers and/or radiogramophones.

For the purpose of this sub-clause (d)(i) the expression "net turnover" shall be ascertained by multiplying the number of each type of complete broadcast sound receivers including valves and/or complete radiogramophones including valves sold let on hire or put into use by the Licensee by the highest price excluding Sales Tax and excluding the price of batteries of any kind at which each such type is sold in each month at genuine arms-length trading to the Licensee's largest distributor or customer in which the Licensee has no interest by share-holding or otherwise. "Largest distributors or customers" shall mean that distributor or customer or alternatively those distributors or customers enjoying the longest discount or best price and who alone absorbs or together absorb not less than twenty per centum of the net turnover of the Licensee.

(ii) In respect of all complete television receivers sold let on hire or put into use by the Licensee during the subsistence of this Licence whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent royalties upon the following scale based on the Licensee's net turnover as hereinafter defined in this sub-Clause (d)(ii)—

Television Receivers which incorporate both sound only receiving apparatus gramophone apparatus	Television Receivers which incorporate sound only receiving apparatus or gramophone apparatus but not both	All other Television Receivers	
4 %	4½%	5 %	of the Licensee's net turnover if such turnover is less than £40,000 per annum.
3¼%	3¾%	4¼%	of the Licensee's net turnover if such turnover is or exceeds £40,000 and is less than £70,000 per annum.
2¾%	3¼%	3¾%	of the Licensee's net turnover if such turnover is or exceeds £70,000 and is less than £100,000 per annum.
2¼%	2¾%	3¼%	of the Licensee's net turnover if such turnover is or exceeds £100,000 per annum.

For the purposes of this sub-Clause (d)(ii) the expression "net turnover" of television receivers shall be ascertained by multiplying the number of each type of complete television receiver including valves sold let on hire or put into use by the Licensee by the highest price excluding Sales Tax and excluding the price of batteries of any kind at which each such type is sold in each month at genuine arms-length trading to the Licensee's largest distributor or customer in which the Licensee has no interest by shareholding or otherwise.

"Largest distributors or customers" shall mean that distributor or customer or alternatively those distributors or customers enjoying the longest discount or best price and who alone absorbs or together absorb not less than twenty per cent of the net turnover of the Licensee.

(iii) In respect of all broadcast sound receivers and/or television receivers not complete with valves cathode ray tubes cabinet and loudspeaker or any of them and in respect of all radiogramophones not complete with valves cabinet loudspeaker pickup and motor or any of them sold or let on hire or offered for sale or hire by the Licensee during the subsistence of this Licence whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent the same percentages of the Licensee's net turnover as in the preceding sub-Clauses (d)(i) and (d)(ii) respectively hereinbefore set forth provided that the price of each incomplete broadcast sound receiver or television receiver or radiogramophone shall be determined by adding to the sale price thereof an amount being the total of the sale price of valves cathode ray tubes loudspeaker cabinet and other components (excluding batteries) necessary to constitute a complete broadcast sound receiver or television receiver or radiogramophone such price to be certified by a Public Accountant to be appointed by the Grantor and when so determined shall be included as part of the Licensee's net turnover for the particular year in which the same shall be sold let on hire or offered for sale.

Provided Always that in respect of broadcast sound receivers or television receivers or radiogramophones manufactured or sold by the Licensee which employ any Letters

Patent under which the Grantor may become liable to pay a royalty to a third party or to share a royalty with a third party the Grantor shall offer to the Licensee and the Licensee may accept the right to the inclusion in this Licence of that Letters Patent on payment to the Grantor of an additional royalty of such amount as may be required to enable the Grantor out of the total royalties paid by the Licensee both to retain the royalties payable under this sub-Clause and to satisfy the terms of the licence or agreement under which royalty is or shall be payable by the Grantor. The Grantor shall if so required in writing by the Licensee furnish the Licensee with proof of the third party's claim to royalty. The Grantor shall upon request of the Licensee and the Licensee shall upon request of the Grantor permit the Grantor to examine free of charge diagrams and/or samples of broadcast sound receivers and television receivers and radiogramophones manufactured or proposed to be manufactured by the Licensee and advise whether such apparatus embodies or utilises any invention the subject of any of the said Letters Patent under which the Grantor may be liable for royalty to a third party as herein mentioned. The Grantor shall inform the Licensee of the amount of any such additional royalty and any such additional royalty shall be shown separately in the returns hereinafter mentioned.

(c) Keep proper and accurate and separate accounts of everything necessary to ensure an accurate return to be made each calendar month in conformity with any of the provisions of this License showing the royalties payable under the last preceding sub-Clause (d) and to render such accounts within thirty (30) days of the last day of each calendar month in each year to such person as the Grantor may designate to the Licensee from time to time and to accompany each such account with a remittance based on the estimated annual turnover of the Licensee in respect of the royalties thereby shown to be due. In the event that the Licensee fails to keep the books of account above-mentioned in addition to any other rights and remedies the Grantor may have the Licensee agrees to pay to the Grantor the amount of royalty which the Grantor may by notice in writing to the Licensee stipulate as the amount estimated to be due unless the Licensee proves that the royalty due should be some other amount.

(f) The Licensee shall furnish monthly returns verified by the Auditor of the Licensee or by a Statutory Declaration of the proper officer and in the event of any dispute shall permit the Grantor to appoint a Public Accountant to inspect the books and accounts of the Licensee relative to this Licence.

(g) To pay to the Grantor on the execution hereof for the first yearly period of this Licence and thereafter so long as the Licensee shall continue to manufacture sell or hire or offer or expose for sale or hire broadcast sound receivers and/or television receivers and/or radiogramophones in advance each year during the period of this Licence the sum of one hundred and fifty pounds (£150) as minimum royalty for the yearly period, which sum shall in no event be returnable.

(h) Not at any time during the subsistence hereof to dispute or impeach or to assist others to dispute or impeach the validity of the said Letters Patent.

(i) Not to assign transfer mortgage grant sublicences under or in any manner part with the possession or control of this License or any part of it without the previous written consent of the Grantor.

5. During the subsistence of this Licence the Grantor will keep the Licensee fully indemnified against costs and damages arising in connection with all actions proceedings claims and demands which may be made against the Licensee by any third party who seeks to establish or estab-

lishes to the satisfaction of a court of competent jurisdiction within the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth under mandate or otherwise his right to restrain the use and exercise by the Licensee under the Grant contained under this Licence of any of the said Letters Patent on the ground that such use and exercise is an infringement of any legal rights or legal interests of such third party in such Letters Patent Provided Always that the Grantor is immediately informed of the institution of such proceedings and is given full and complete rights to take over at its own cost and through its own solicitors the defence of such proceedings if it so requests and in that event the Licensee shall assist the Grantor in every reasonable manner but the Grantor shall be a liberty to compromise submit to judgment in abandon discontinue or otherwise dispose of the same as to it may seem expedient.

6. The Grantor may revoke this Licence upon the happening of any of the following events:—

(a) If any royalty return or any royalty shown to be due is not rendered or is unpaid for thirty (30) days after the last day of any preceding month and remains unrendered or unpaid for seven (7) days after notice in that behalf from the Grantor; or

(b) If there be any breach on the part of the Licensee of any other of the agreements herein contained and the same be not remedied made good or desisted from within seven (7) days of notice in that behalf from the Grantor; or

(c) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall go into liquidation whether voluntary or compulsory;

any revocation of this Licence shall be without prejudice to all claims of the Grantor against the Licensee for out-

standing royalties or prior breaches of this Licence or otherwise.

7. Notwithstanding anything herein contained this Agreement and Grant shall not apply to and the Grantor hereby covenants that he will not charge or demand any royalty in respect of broadcast sound receivers and/or television receivers and/or radiogramophones manufactured and exported by the Licensee beyond the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth under mandate or otherwise.

In Witness Whereof the parties hereto have duly executed these presents the day and year first hereinbefore written.

The Common Seal of Australian Radio
Technical Services & Patents Company
Pty. Limited was hereunto affixed by
.... and
.... two
Directors of the Company by order of
the Board and in the presence of
....
....
....
Secretary.

(Seal)

Signed Sealed and Delivered by..........
....
in the presence of..........................

(Seal)

which is designed to incorporate valves (whether or not equipped with the valves themselves) and which is designed to receive and translate modulated electrical oscillations broadcast to the public for sound reception. Such expression does not include valves or cathode ray tubes whether or not incorporated in the apparatus nor separate components but shall include sets of component parts and/or any electronic device designed to be used in association with such broadcast sound receiving apparatus.

(b) The expression "Radiogramophone" when herein used shall mean an instrument which is designed to incorporate valves (whether or not equipped with the valves themselves) and which may be used for the reproduction of sound through an electrically operated loudspeaker alternatively from (i) apparatus designed for the reception and translation into sound of modulated electrical oscillations broadcast to the public and (ii) gramophone apparatus (such as turntable and pick-up) designed for the translation into sound of vibrations recorded on a disc sound record. Such expression does not include valves or cathode ray tubes whether or not incorporated in the instrument nor separate components but does include playing desks designed for use in combination with broadcast sound receivers and shall include sets of component parts.

(c) The expression "Television Receivers" when herein used shall mean apparatus (whether or not equipped with valves or equivalent devices) which is intended to receive and translate electrical oscillations modulated by vision and associated sound signals which are broadcast to the public and which is intended for use for entertainment or education purposes or is of a type normally supplied to the public for domestic use Provided However that such expression shall include:—

(i) the following apparatus combined therewith or sold for combination therewith namely apparatus in-

DEFENDANT'S EXHIBIT NO. 194.

Exhibit S.

Licence No. 6B

An Agreement made this .... day of .... 19........ Between Australian Radio Technical Services & Patents Company Pty. Limited having its registered office at 47 York Street Sydney in the State of New South Wales (hereinafter called "the Grantor") of the first part, And ....

....

of .... (hereinafter called "the Licencee") of the second part.

Whereas the Grantor has the right to grant licences to the extent purpose and for the period of this agreement for all Australian Letters Patent owned or controlled by Amalgamated Wireless (Australasia) Limited, Standard Telephones & Cables Pty. Limited, N. V. Philips Gloeilampenfabrieken, Neutrodyne Proprietary Limited and Electric And Musical Industries Limited.

And Whereas the Licensee claims to be a bona fide manufacturer of broadcast sound receivers and/or television receivers and/or radiogramophones and as such manufacturer has applied to the Grantor to grant and the Grantor has agreed to grant to the Licensee a licence under the Letters Patent and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed upon the basis agreed between the parties as being convenient. Now It Is Hereby Agreed As Follows:—

1. (a) The expression "Broadcast Sound Receiver" when herein used shall mean broadcast receiving apparatus

tended for the reception and translation of electrical oscillations modulated by sound signals which are broadcast to the public but are not accompanied by vision signals (hereinafter referred to as "sound only receiving apparatus") apparatus intended for the reproduction of sound from records (hereinafter referred to as "gramophone apparatus") and signal boosting apparatus,

(ii) television receiving apparatus of the kind supplied by a broadcast television relay service as the subscriber's terminal units,

(iii) sets of component parts as hereinafter defined.

Provided Further that the expression "Television Receivers" shall Not include:—

any broadcast relay apparatus other than the terminal units referred to as included under item (ii) above, or Television Receivers adapted for producing a picture larger than 30 square feet.

(d) The expression "Set of Component Parts" for broadcast sound receivers or television receivers or radiogramophones when herein used shall mean a number of component parts which are capable of being assembled so as substantially to constitute a broadcast sound receiver and/or television receiver and/or radiogramophone.

(e) The expression "Battery Eliminator" when herein used shall mean an apparatus which renders unnecessary the use of one or more batteries in the operation of broadcast sound receiving apparatus or television receiving apparatus or a radiogramophone by facilitating the substitution therefor of electricity mains.

(f) The word "Valve" (or "Valves") when herein used shall be deemed where the context so admits to include inter alia an electron discharge device a multiple valve a valve for rectifying electric current and other apparatus used in direct substitution for a valve.

(g) The expression "Multiple Valve" when herein used shall mean a valve designed to operate with more than one cathode-anode stream.

(h) The expression "Place of Public Entertainment" when herein used shall mean a place of public entertainment existing at any time during the subsistence of this Licence.

(i) The expression "Private or Domestic Use" as used herein shall be deemed to include also the use in Public Houses, Hotels, Boarding Houses, Restaurants, Cafes, Tea Houses, Factories, Warehouses, Shops and/or small Dance Halls (only) Provided that such are not attached to or do not form part of a theatre or cinema.

(j) The expression "Selling" when herein used shall be deemed to include selling on the so-called time payment or hire-purchase system.

(k) The word "Plate" when herein used shall be deemed to include "transfer".

2. (a) The Grantor grants and agrees to grant to the Licensee subject to the terms and conditions herein appearing a personal non-exclusive non-assignable licence to use and exercise all or any of the inventions the subject of Letters Patents applicable to broadcast sound receivers television receivers and radiogramophones respectively in respect of which and insofar as the Grantor now has or may hereafter during the subsistence of this Licence have power to grant licences or sub-licences for the purposes and on the terms hereof (which Letters Patent are herein collectively called "the said Letters Patent") for the purposes of manufacturing using selling or letting on hire within the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth under mandate or otherwise (i) broadcast sound

receivers (ii) television receivers and (iii) radiogramophones but in each case only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public generally and not being held for payment) and not otherwise. Such License shall be deemed to have commenced on the first day of July 1953 and shall continue until the 30th day of June 1958 unless previously revoked as hereinafter provided.

(b) The Licensee undertakes that all companies or firms now or hereafter during the subsistence of this License, directly or indirectly owned or controlled by the Licensee and all Companies or Firms formed by the Licensee during the subsistence of this Licence and directly or indirectly owning or controlling the Licensee shall if engaged in any field of business to which this Licence is applicable forthwith accept licences from the Grantor upon the same terms as this Licence and the Grantor agrees to grant such licences accordingly. If the Licensee shall become directly or indirectly owned or controlled by a Company or firm which does not hold or forthwith obtain a licence from the Grantor upon the same terms as this Licence the Grantor shall be at liberty to revoke this Licence.

3. (a) Nothing contained herein shall be deemed to license the Licensee to manufacture import sell or let on hire (a) valves or cathode ray tubes of any kind (b) loudspeakers of any kind (c) any other individual component part of broadcast sound receiving apparatus or television receiving apparatus or radiogramophones other than in and forming part of broadcast sound receiving apparatus or television receiving apparatus or a radiogramophone.

(b) The Licence hereby granted shall not authorise the use or exercise of broadcast sound receivers or any television receivers or any radiogramophones for any purpose whatsoever other than the purposes herein set forth and in particular shall not authorise the use or exercise of any of the said apparatus by operating the same for revenue-earning purposes. Nor shall this Licence authorise the use or exercise of any of the said apparatus for purposes of receiving sound or television broadcasting or operating any radiogramophones in relation in any manner to the service of any place of public entertainment or of any place in which any business requiring any licence from public authority is conducted (except insofar as such use is authorised under the definition of "private and domestic use") or for use with a microphone.

4. The Licensee agrees with the Grantor as follows:—

(a) Not without the previous written consent of the Grantor to export or sell for export or knowingly permit to be exported any broadcast sound receiving apparatus or television receiving apparatus or radiogramophone,

(b) Not without the previous written consent of the Grantor to sell or hire or offer or expose for sale or hire in the territory for which this Licence is granted any broadcast sound receiving apparatus or television receiving apparatus or radiogramophones which have not been manufactured in the territory for which this License is granted.

(c) From time to time on the request of the Grantor to furnish to the Grantor diagrams and/or samples of all broadcast sound receivers and/or television receivers and/or radiogramophones for the time being manufactured sold or let on hire by the Licensee.

(d) To attach or cause to be attached in a prominent position to all broadcast sound receivers television receivers and radiogramophones sold or hired or offered or exposed for sale or hire by the Licensee (or in the case of a set of component parts for such apparatus to supply for attachment to the assembled apparatus by the constructor thereof) a plate marked by the Grantor with a Serial Number determined by the Grantor and indicating the number of valves (as hereinbefore defined) and bearing the following words:—With respect to Broadcast Sound Receivers and/or Television Receivers and/or Radiogramophones—

> "No. ....This instrument was manufactured under a License granted by Australian Radio Technical Services and Patents Company Pty. Limited in respect of Letters Patent controlled by it for the reception in the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth of Sound and/or Television broadcast by wireless but only for private or domestic use and not for operation for any public or commercial or revenue-earning purpose. N.B.—A Post Office Licence is necessary."

Plates complying with the above may be obtained from the Grantor and no such plate shall be removed from any broadcast sound receiver or television receiver or radiogramophone to any other apparatus without the previous consent in writing of the Grantor and no broadcast sound receiver or television receiver or radiogramophone shall be or be deemed to be licensed hereunder unless such a plate be attached thereto and the absence of such plate so marked from any broadcast sound receiver or television receiver or radiogramophone shall be conclusive evidence that the same is not licensed hereunder. In addition if required by law the Licensee shall further mark in accordance with the requirements of the Patent Act of the Commonwealth of Australia or any amendments thereof made during the subsistence of this Licence all broadcast sound receivers and/or television receivers and/or radiogramophones covered by this Licence which are manufactured sold let on hire or put into use by the Licensee.

(e) So far as is reasonably practicable to make the conditions of this Licence a condition of every sale or hire binding upon and observable by every purchaser or hirer of any broadcast sound receiver and/or television receiver and/or any radiogramophone sold or hired or offered or exposed for sale or hire by the Licensee.

(f) To pay to the Grantor by way of royalty:—

(i) In respect of each and every broadcast sound receiver and/or radiogramophone sold let on hire or offered or exposed for sale or hire or put into use by the Licensee during the subsistence of this Licence employing or designed to employ a valve or valves the sum of nine pence (9d.) payable in cash prior to issue of licence plate in respect of each and every valve iscluded or intended to be employed therein whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent Provided that in the case of multiple valves employed or intended to be employed in such receiver or radiogramophone each and every cathode-anode stream contained therein shall be deemed to be one valve and the royalty shall be calculated accordingly.

(ii) In respect of all television receivers sold let on hire or put into use by the Licensee during the subsistence of this Licence whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent royalties upon the following scale—

(a) In respect of each and every valve employed or intended to be employed in a television receiver which incorporates both sound only receiving apparatus and gramophone apparatus the sum of two shillings (2/-) payable in cash prior to issue of licence plate.

(b) In respect of each and every valve employed or intended to be employed in a television receiver which incorporates a sound only receiving apparatus or gramophone apparatus but not both the sum of two shillings and six pence (2/6) payable in cash prior to the issue of licence plate.

(c) In respect of each and every valve employed or intended to be employed in all other television receivers the sum of three shillings (3/-) payable in cash prior to the issue of licence plate.

Provided That in the case of multiple valves employed or intended to be employed in such television receivers each and every cathode-anode stream contained therein shall be deemed to be one valve and royalty shall be calculated accordingly.

Provided Always that no royalty shall be payable under paragraphs (i) and (ii) of this sub-Clause (f) in respect of a battery eliminator incorporated in and forming part of a complete broadcast sound receiver or television receiver or radiogramophone And Provided Always that in respect of broadcast sound receivers or television receivers or radiogramophones manufactured or sold by the Licensee which employ any Letters Patent under which the Grantor may become liable to pay a royalty to a third party or to share a royalty with a third party the Grantor shall offer to the Licensee and the Licensee may accept the right to the inclusion in this Licence of that Letters Patent on payment to the Grantor of an additional royalty of such amount as may be required to enable the Grantor out of the total royalties paid by the Licensee both to retain the royalties payable under this sub-clause (f) and to satisfy the terms of the licence or agreement under which royalty is or shall be payable by the Grantor. The Grantor shall if so required in writing by the Licensee furnish the Licensee with proof of the third party's claim to royalty. The Grantor shall upon request of the Licensee and the Licensee shall upon request of the Grantor permit the Grantor to examine free of charge diagrams and/or samples of broadcast sound receivers and television receivers and radiogramophones manufactured or proposed to be manufactured by the Licensee and advise whether such apparatus embodies or utilises any invention the subject of any of the said Letters Patent under which the Grantor may be liable for royalty to a third party as herein mentioned. The Grantor shall inform the Licensee of the amount of any such additional royalty and any such additional royalty shall be shown separately in the accounts hereinafter mentioned.

(g) Keep proper and accurate and separate accounts of everything necessary to enable a Public Accountant appointed by the Grantor to ascertain whether the royalties payable under each of the paragraphs (i) and (ii) of the last preceding sub-Clause (f) have been paid. In the event that the Licensee fails to kep the books of account abovementioned in addition to any other rights and remedies the Grantor may have the Licensee agrees to pay to the Grantor the amount of royalty which the Grantor may by notice in writing to the Licensee stipulate as the amount estimated to be due unless the Licensee proves that the royalty due should be some other amount.

(h) The Licensee shall permit a Public Accountant appointed by the Grantor to inspect the books and accounts of the Licensee relative to this Licence. In the event of such inspection revealing any short payment of royalty the Licensee agrees to pay to the Grantor the costs of such inspection in addition to any such royalty short paid.

(i) Not at any time during the subsistence hereof to dispute or impeach or to assist others to dispute or impeach the validity of the said Letters Patent.

(j) Not to assign transfer mortgage grant sub-licences under nor in any manner part with the possession or control of this Licence or any part of it without the previous written consent of the Grantor.

5. During the subsistence of this Licence the Grantor will keep the Licensee fully indemnified against costs and damages arising in connection with all actions proceedings claims and demands which may be made against the Licensee by any third party who seeks to establish or establishes to the satisfaction of a court of competent jurisdiction within the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth under mandate or otherwise his right to restrain the use and exercise by the Licensee under the Grant contained under this Licence of any of the said Letters Patent on the ground that such use and exercise is an infringement of any legal rights or legal interests of such third party in such Letters Patent Provided Always that the Grantor is immediately informed of the institution of such proceedings and is given full and complete rights to take over at its own cost and through its own solicitors the defence of such proceedings if it so requests and in that event the Licensee shall assist the Grantor in every reasonable manner but the Grantor shall be at liberty to compromise submit to judgment in abandon discontinue or otherwise dispose of the same as to it may seem expedient.

6. The Grantor may revoke this Licence upon the happening of any of the following events:—

(a) If there be any breach on the part of the Licensee of any of the terms and conditions herein contained and the same be not remedied made good or desisted from within seven (7) days of notice in that behalf from the Grantor; or

(b) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall go into liquidation whether voluntary or compulsory;

any revocation of this Licence shall be without prejudice to all claims of the Grantor against the Licensee for out-

standing royalties or prior breaches of this Licence or otherwise.

In Witness Whereof the parties hereto have duly executed these presents the day and year first hereinbefore written.

The Common Seal of Australian Radio
Technical Services & Patents Company
Pty. Limited was hereunto affixed by
....and
....two
Directors of the Company by order of the
Board and in the presence of

....

Secretary.

(Seal)

Signed Sealed and Delivered by

....

in the presence of...

....

(Seal)

DEFENDANT'S EXHIBIT NO. 195.

Licence No. 7B.

An Agreement made this .... day of .... 1961 Between Australian Radio Technical Services & Patents Company Pty. Limited having its registered office at 47 York Street Sydney in the State of New South Wales (hereinafter called "the Grantor") of the first part, And .... of .... (hereinafter called "the Licensee") of the second part.

Whereas the Grantor has the right to grant licences to the extent purpose and for the period of this agrement for all Australian Letters Patent owned or controlled by Amalgamated Wireless (Australasia) Limited, Standard Telephones & Cables Pty. Limited, N. V. Philips' Gloeilampanfabrieken, Neutrodyne Proprietary Limited, Electric and Musical Industries Limited and Pye Limited.

And Whereas the Licensee claims to be a bona fide manufacturer of broadcast sound receivers and/or television receivers and/or radiogramophones and as such manufacturer has applied to the Grantor to grant and the Grantor has agreed to grant to the Licensee a licence under the Letters Patent and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed upon the basis agreed between the parties as being convenient. Now It Is Hereby Agreed As Follows:—

1(a). The expression "Broadcast Sound Receiver" when herein used shall mean broadcast receiving apparatus which is designed to incorporate valves (whether or not equipped with the valves themselves) and which is designed to receive and translate modulated electrical oscillations brodacast to the public for sound reception. Such expression does not include valves or cathode ray tubes whether or not incorporated in the apparatus nor separate components but shall include sets of component parts and/or any electronic device designed to be used in association with such broadcast sound receiving apparatus.

(b) The expression "Radiogramophone" when herein used shall mean an instrument which is designed to incorporate valves (whether or not equipped with the valves themselves) and which may be used for the reproduction of sound through an electrically operated loudspeaker alternatively from (i) apparatus designed for the reception and translation into sound of modulated electrical oscillations broadcast to the public and (ii) gramophone apparatus (such as turntable and pick-up) designed for the translation into sound of vibrations recorded on a disc sound record. Such expression does not include valves or cathode-ray tubes whether or not incorporated in the instrument nor separate components but does include playing desks designed for use in combination with broadcast sound receivers and shall include sets of component parts.

(c) The expression "Television Receivers" when herein used shall mean apparatus (whetehr or not equipped with valves or equivalent devices) which is intended to receive and translate electrical oscillations modulated by vision and associated sound signals which are broadcast to the public and which is intended for use for entertainment or education purposes or is of a type normally supplied to the public for domestic use Provided However that such expression shall include:—

(i) the following apparatus combined therewith or sold for combination therewith namely apparatus intended for the reception and translation of electrical oscillations modulated by sound signals which are broadcast to the public but are not accompanied by vision signals (hereinafter referred to as "sound only receiving apparatus'') apparatus intended for the reproduction of sound from records (hereinafter referred to as "gramophone apparatus'') and signal boosting apparatus,

(ii) television receiving apparatus of the kind supplied by a broadcast television relay service as the subscriber's terminal units,

(iii) sets of component parts as hereinafter defined

Provided Further that the expression "Television Receivers'' shall Not include:—

any broadcast relay apparatus other than the terminal units referred to as included under item (ii) above, or Television Receivers adapted for producing a picture larger than 30 square feet.

(d) The expression "Set of Component Parts'' for broadcast sound receivers or television receivers or radiogramophones when herein used shall mean a number of component parts which are capable of being assembled so as substantially to constitute a broadcast sound receiver and/or television receiver and/or radiogramophone.

(e) The expression "Battery Eliminator'' when herein used shall mean an apparatus which renders unnecessary the use of one or more batteries in the operation of broadcast sound receiving apparatus or television receiving apparatus or a radiogramophone by facilitating the substitution therefor of electricity mains.

(f) The word "Valve'' (or "Valves'') when herein used shall be deemed where the context so admits to include inter alia an electron discharge device a multiple valve a valve for rectifying electric current and other apparatus used in direct substitution for a valve.

(g) The expression "Multiple Valve'' when herein used shall mean a valve designed to operate with more than one cathode-anode stream.

(h) The expression "Place of Public Entertainment" when herein used shall mean a place of public entertainment existing at any time during the subsistence of this Licence.

(i). The expression "Private or Domestic Use" as used herein shall be deemed to include also the use in Public Houses Hotels Boarding Houses Restaurants Cafes Tea Houses Factories Warehouses Shops and/or small Dance Halls (only) Provided that such are not attached to or do not form part of a theatre or cinema.

(j) The expression "Selling" when herein used shall be deemed to include selling on the so-called time payment or hire-purchase system.

(k) The word "Plate" when herein used shall be deemed to include "transfer" or "sticker".

2(a). The Grantor grants and agrees to grant to the Licensee subject to the terms and conditions herein appearing a personal non-exclusive non-assignable licence to ~~use~~ and exercise all or any of the inventions the subject of Letters Patent applicable to broadcast sound receivers television receivers and radiogramophones respectively in respect of which and insofar as the Grantor now has or may hereafter during the subsistence of this Licence have power to grant licences or sub-licences for the purposes and on the terms hereof (which Letters Patent are herein collectively called "the said Letters Patent") for the purposes of manufacturing using selling or letting on hire within the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth under mandate or otherwise (i) broadcast sound receivers (ii) television receivers and (iii) radiogramophones but in each case only for private or domestic use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public generally and not being held for payment) and not otherwise. Such Licence shall be deemed to have commenced on the first day of January 1961 and shall continue until the 31st day of December 1965 unless previously revoked as hereinafter provided.

(b) The Licensee undertakes that all companies or firms now or hereafter during the subsistence of this Licence directly or indirectly owned or controlled by the Licensee and all Companies or Firms formed by the Licensee during the subsistence of this Licence and directly or indirectly owning or controlling the Licensee shall if engaged in any field of business to which this Licence is applicable forthwith accept licences from the Grantor upon the same terms as this Licence and the Grantor agrees to grant such licences accordingly. If the Licensee shall become directly or indirectly owned or controlled by a Company or Firm which does not hold or forthwith obtain a licence from the Grantor upon the same terms as this Licence the Grantor shall be at liberty to revoke this Licence.

3(a). Nothing contained herein shall be deemed to license the Licensee to manufacture import sell or let on hire (a) valves or cathode ray tubes of any kind (b) loudspeakers of any kind (c) any other individual component part of broadcast sound receiving apparatus or television receiving apparatus or radiogramophones other than in and forming part of broadcast sound receiving apparatus or a radiogramophone.

(b) The Licence hereby granted shall not authorise the use or exercise of broadcast sound receivers or any television receivers or any radiogramophones for any purpose whatsoever other than the purposes herein set forth and in particular shall not authorise the use or exercise of any of the said apparatus by operating the same for revenue-earning purposes. Nor shall this Licence authorise the use or exercise of any of the said apparatus for purposes of receiving sound or television broadcasting or operating any radiogramophones in relation in any manner to the service of any place of public entertainment or of any place in which any business requiring any licence from public authority is conducted (except insofar as such use is authorised under the definition of "private and domestic use") or for use with a microphone.

4. The Licensee agrees with the Grantor as follows:—

(a) Not without the previous written consent of the Grantor to export or sell for export or knowingly permit to be exported any broadcast sound receiving apparatus or television receiving apparatus or radiogramophone.

(b) Not without the previous written consent of the Grantor to sell or hire or offer or expose for sale or hire in the territory for which this Licence is granted any broadcast sound receiving apparatus or television receiving apparatus or radiogramophones which have not been manufactured in the territory for which this Licence is granted.

(c) From time to time on the request of the Grantor to furnish to the Grantor, diagrams and/or samples of all broadcast sound receivers and/or television receivers and/or radiogramophones for the time being manufactured sold or let on hire by the Licensee.

(d) To attach or cause to be attached in a prominent position to all broadcast sound receivers television receivers and radiogramophones sold or hired or offered or exposed for sale or hire by the Licensee (or in the case of a set of component parts for such apparatus to supply for attachment to the assembled apparatus by the constructor thereof) a plate marked by the Grantor with a Serial Number determined by the Grantor and indicating the number of valves (as hereinbefore defined) and bearing the following words:—With respect to Broadcast Sound Receivers and/or Television Receivers and/or Radiogramophones—

> "No. .... This instrument was manufactured under a Licence granted by Australian Radio Technical

> Services and Patents Company Pty. Limited in respect of Letters Patent controlled by it for the reception in the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth of Sound and/or Television broadcast by wireless but only for private or domestic use and not for operation for any public or commercial or revenue-earning purpose. N.B.—A Post Office Licence is necessary."

Plates complying with the above may be obtained from the Grantor and no such plate shall be removed from any broadcast sound receiver or television receiver or radiogramophone to any other apparatus without the previous consent in writing of the Grantor and no broadcast sound receiver or television receiver or radiogramophone shall be or be deemed to be licensed hereunder unless such a plate be attached thereto and the absence of such plate so marked from any broadcast sound receiver or television receiver or radiogramophone shall be conclusive evidence that the same is not licensed hereunder. In addition if required by law the Licensee shall further mark in accordance with the requirements of the Patent Act of the Commonwealth of Australia or any amendments thereof made during the subsistence of this Licence all broadcast sound receivers and/or television receivers and/or radiogramophones covered by this Licence which are manufactured sold let on hire or put into use by the Licensee.

(e) So far as is reasonably practicable to make the conditions of this Licence a condition of every sale or hire binding upon the observable by every purchaser or hirer of any broadcast sound receiver and/or television receiver and/or any radiogramophone sold or hired or offered or exposed for sale or hire by the Licensee.

(f) To pay to the Grantor by way of royalty:—

(i) In respect of each and every broadcast sound receiver and/or radiogramophone sold let on hire or offered or exposed for sale or hire or put into use by the Licensee during the subsistence of this Licence employing or designed to employ a valve or valves the sum of four pence (4d.) payable in cash prior to issue of licence plate in respect of each and every valve included or intended to be employed therein whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent Provided that in the case of multiple valves employed or intended to be employed in such receiver or radiogramophone each and every cathode-anode stream contained therein shall be deemed to be one valve and the royalty shall be calculated accordingly.

(ii) In respect of all television receivers sold let on hire or put into use by the Licensee during the subsistence of this Licence whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent royalties upon the following scale—

(a) In respect of each and every valve employed or intended to be employed in a television receiver which incorporates both sound only receiving apparatus and gramophone apparatus the sum of one shilling and three pence (1/3) payable in cash prior to issue of licence plate.

(b) In respect of each and every valve employed or intended to be employed in a television receiver which incorporates a sound only receiving apparatus or gramophone apparatus but not both the sum of one shilling and six pence (1/6) payable in cash prior to the issue of licence plate.

(c) In respect of each and every valve employed or intended to be employed in all other television receivers the sum of one shilling and nine pence (1/9) payable in cash prior to the issue of licence plate.

Provided That in the case of multiple valves employed or intended to be employed in such television receivers each and every cathode-anode stream contained therein shall be deemed to be one valve and royalty shall be calculated accordingly.

Provided Always that no royalty shall be payable under paragraphs (i) and (ii) of this sub-Clause (f) in respect of a battery eliminator incorporated in and forming part of a complete broadcast sound receiver or television receiver or radiogramophone And Provided Always that in respect of broadcast sound receivers or television receivers or radiogramophones manufactured or sold by the Licensee which employ any Letters Patent under which the Grantor may become liable to pay a royalty to a third party or to share a royalty with a third party the Grantor shall offer to the Licensee and the Licensee may accept the right to the inclusion in this Licence of that Letters Patent on payment to the Grantor of an additional royalty of such amount as may be required to enable the Grantor out of the total royalties paid by the Licensee both to retain the royalties payable under this sub-Clause (f) and to satisfy the terms of the licence or agreement under which royalty is or shall be payable by the Grantor. The Grantor shall if so required in writing by the Licensee furnish the Licensee with proof of the third party's claim to royalty. The Grantor shall upon request of the Licensee and the Licensee shall upon request of the Grantor permit the Grantor to examine free of charge diagrams and/or samples of broadcast sound receivers and television receivers and radiogramophones manufactured or proposed to be manufactured by the Licensee and advise whether such apparatus embodies or utilises any invention the subject of any of the said Letters Patent under which the Grantor may be liable for royalty to a third party as herein mentioned. The Grantor shall inform the Licensee of the amount of any such additional royalty and any such additional royalty shall be shown separately in the accounts hereinafter mentioned.

(g) Keep proper and accurate and separate accounts of everything necessary to enable a Public Accountant appointed by the Grantor to ascertain whether the royalties payable under each of the paragraphs (i) and (ii) of the last preceding sub-Clause (f) have been paid. In the event that the Licensee fails to keep the books of account abovementioned in addition to any other rights and remedies the Grantor may have the Licensee agrees to pay to the Grantor the amount of royalty which the Grantor may by notice in writing to the Licensee stipulate as the amount estimated to be due unless the licensee proves that the royalty due should be some other amount.

(h) The Licensee shall permit a Public Accountant appointed by the Grantor to inspect the books and accounts of the Licensee relative to this Licence. In the event of such inspection revealing any short payment of royalty the Licensee agrees to pay to the Grantor the costs of such inspection in addition to any such royalty short paid.

(i) Not at any time during the subsistence hereof to dispute or impeach or to assist others to dispute or impeach the validity of the said Letters Patent.

(j) Not to assign transfer mortgage grant sub-licences under nor in any manner part with the possession or control of this Licence or any part of it without the previous written consent of the Grantor.

5. During the subsistence of this Licence the Grantor will keep the Licensee fully indemnified against costs and damages arising in connection with all actions proceedings

claims and demands which may be made against the Licensee by any third party who seeks to establish or establishes to the satisfaction of a court of competent jurisdiction within the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth under mandate or otherwise his right to restrain the use and exercise by the Licensee under the Grant contained under this Licence of any of the said Letters Patent on the ground that such use and exercise is an infringement of any legal rights or legal interests of such third party in such Letters Patent Provided Always that the Grantor is immediately informed of the institution of such proceedings and is given full and complete rights to take over at its own cost and through its own solicitors the defence of such proceedings if it so requests and in that event the Licensee shall assist the Grantor in every reasonable manner but the Grantor shall be at liberty to compromise submit to judgment in abandon discontinue or otherwise dispose of the same as to it may seem expedient.

6. The Grantor may revoke this Licence upon the happening of any of the following events:—

(a) If there be any breach on the part of the Licensee of any of the terms and conditions herein contained and the same be not remedied made good or desisted from within seven (7) days of notice in that behalf from the Grantor; or

(b) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall go into liquidation whether voluntary or compulsory;

any revocation of this Licence shall be without prejudice to all claims of the Grantor against the Licensee for outstanding royalties or prior breaches of this Licence or otherwise.

In Witness Whereof the parties hereto have duly executed these presents the day and year first hereinbefore written.

The Common Seal Of Australian Radio Technical Services & Patents Company Pty. Limited was hereunto affixed by E. A. Burbury and E. R. Reddell two Directors of the Company by order of the Board and in the presence of (Illegible), *Secretary.*	E. A. Burbury (Seal) E. R. Reddell

Licence No. 7B

Australia

Dated the .... day of
.... 19..........

Australian Radio Technical
Services and Patents
Company Pty. Limited

to

Licence

To use and exercise certain Australian Letters Patent for certain specific purposes as within in connection with Wireless Broadcast Sound Receiving Apparatus and/or Television Receiving Apparatus and/or Radiogramophones.

DEFENDANT'S EXHIBIT NO. 196.

Shackelford Exhibit 132.

January 24, 1951

Mr. Meade Brunet
Historical Outline—

Amalgamated Wireless (Australasia) Ltd. (AWA)
Amalgamated Wireless Valve Company Pty. Ltd. (AWV)

Dear Mr. Brunet:

AWA was formed as a combination of the Australian radio communication interests of British Marconi, Telefunken, and CGTSF. The Government permitted these

Companies to retain only a minority interest as the decision was that communications should be governmentally controlled.

The original equipment of AWA was furnished by the various existing foreign interests, but it was decided that the new communication company (AWA) should begin the manufacture of its own equipment. Marconi, and presumably the other operating companies, sold their stock in AWA to the public but in the case of Marconi at least there still remains a "perpetual" patent license and technical aid agreement flowing in AWA's favor. AWA is also distributor for Marconi.

Marconi's obligations patentwise and informationally to AWA preceded the formation of the RCA, and therefore preceded the Agreement of 1919 between RCA and Marconi. According to the provisions of the RCA-Marconi 1919 Agreement, RCA's rights flowed to Marconi, broadly speaking, for the Eastern Hemisphere including Australasia (Australia, New Zealand and the Fiji Islands). These rights were formally sold to AWA by Marconi in an Agreement between them dated January 22, 1929. Because of the two Agreements (the 1919 RCA-MWT and the 1930-32 Radio Group-AWV Agreements) and the 1929 Marconi-AWA Agreement, RCA's rights in Australasia flowed exclusively to AWA. There was however no agreement between RCA and AWA for exchange of information.

Prior to 1930, AWA manufactured apparatus but not tubes. Their representatives came to the United States in that year and made an arrangement with RCA, GE and Westinghouse (known as the Radio Group) whereby a subsidiary valve company would be established to be owned 55% by AWA, 22½% by RCA, 13½% by IGE, and 9% by Westinghouse. Such ownership was on the basis that dividends were to be in lieu of royalty and service charges. In other words, there is no provision in the 1930-32 AWV-

Radio Group Agreements for the payment of either royalties or service charges by the participating companies.

In 1930 when arrangements for the organization of the Valve Company were made as indicated above, the AWA-Radio Group Agreements contained a provision for AWV to be the exclusive licensee of RCA, GE and Westinghouse until 1955. The Agreements also provided that these three companies would furnish manufacturing information on tubes to AWV. At the time of these Agreements, RCA had begun manufacture of tubes but GE and Westinghouse had terminated their manufacture. This was a factor in setting up of the proportional control.

In 1945, RCA granted to AWA the right to sublicense under its Australian patents in the home radio field through its subsidiary, Australian Radio Technical Services and Patents Pty. Ltd. (ARTS). In addition, patents of most of the large radio concerns are grouped in Australia under ARTS, which is managed by AWA. RCA was to receive 6% of the royalties received by AWA through its participation in ARTS. At about the same time, AWA asked the Radio Group for permission to grant a license to Philips to import or make valves in Australia. This request was rejected.

The RCA-Marconi Agreement of 1919 expired December 31, 1944 so that AWA was not in a position to obtain rights through the RCA-Marconi 1919 Agreement under patents of RCA on inventions made after that date. AWA visited RCA in the summer of 1948, stating that it desired rights under later patents and that it wished to purchase information in the apparatus field which it never had had before. AWA was told that there would be no new deal between our companies without some provision to remove the exclusivity existing under the old arrangements.

New non-exclusive agreements were made by RCA effective January 1, 1949, with both AWA and AWV. These provided for the furnishing of licence and information to both companies divided as to apparatus for AWA and tubes for AWV, that is, in the broad radio field, until 1961. Provision is made for payment of royalty and service charges by both companies and the percentage of sub-licensing receipts was raised to 20% and made to apply to sub-licensing in both apparatus and tube fields.

The important change from the standpoint of RCA was a provision by separate letters from the two companies to the effect that AWA or AWV as the case might be would grant a license to any U. S. manufacturer upon standard non-discriminatory terms. This was the final breaking down of all exclusivities under RCA patents (with the exception of the communication license in Argentina which has since been changed). This termination of exclusivity was and is regarded by RCA as very important.

At the time of the signing of the Agreements just above, RCA also appointed AWA and AWV as its distributors in Australia and New Zealand, thus making these companies distributors for both Marconi and RCA.

B. E. Shackelford,
License Department.

Attachments—
Agreement RCA-AWA Jan. 1, 1949.
Agreement RCA-AWV Jan. 1, 1949.
Termination Agreement RCA-AWV Dec. 31, 1948.
Letter AWA to RCA Jan. 1, 1949.
Letter AWV to RCA Jan. 1, 1949.

Index,

1. AWA Agreement Outline.
2. AWV Agreement Outline.
3. AWA Agreement dated as of 1/1/49.
4. AWV Agreement dated as of 1/1/49.
5. AWV Termination Agreement dated as of 12/31/48.
6. AWV Letter Agreement dated 1/1/49.
7. AWA Letter Agreement dated 1/1/49.

RCA-AWA Australasia

License And Information Agreement.

January 1, 1949.

Scope—Apparatus for Radio Purposes, excluding Radio Tubes.

Licenses

(a) To AWA—Non-exclusive licenses to make and sell under RCA patents of Australasia. Option for manufacture and sale in the U. S.

(b) To RCA—Non-exclusive license to make and sell under AWA's patents of the U. S. Agreement by AWA to license any U. S. company for manufacture and/or sale in Australasia.

Sub-Licenses

(a) To AWA—Non-exclusive right to grant non-exclusive sub-licenses to others under RCA's patents of Australasia.

(b) To RCA—Non-exclusive right to grant non-exclusive sub-licenses to others under AWA's patents of the U. S.

Note: Certain of the license and sub-license rights are subject to the old Marconi Agreements.

Information—Information to AWA on standard plan.
Filing of Patents—Each to file for the other and to be reimbursed for 70% of the costs.

Compensation

(a) AWA to pay RCA 1.1% of factory costs.
(b) AWA to pay RCA 20% of its sub-licensing receipts.

Term

December 1, 1954 and continuing year by year until December 31, 1960. May be terminated after 1954 on one year's notice.

January 25, 1951.

RCA-AWV Australasia.

License And Information Agreement.

January 1, 1949.

Scope—Radio Tubes.

Licenses

(a) To AWV—Non-exclusive licenses to make and sell under RCA patents of Australasia. Option for manufacture and sale in the U. S.
(b) To RCA—Non-exclusive license to make and sell under AWV's patents of the U. S. Agreement by AWV to license under any U. S. company for manufacture and/or sale in Australasia.

Sub-Licenses

(a) To AWV—Non-exclusive right to grant non-exclusive sub-licenses to others under RCA's patents of Australasia.

(b) To RCA—Non-exclusive right to grant non-exclusive sub-licenses to others under AWV's patents of the U. S.

Note: Certain of the license and sub-license rights are subject to the old Marconi Agreements.

Information—Information reciprocal on standard plan.

Filing of Patents—Each to file for the other and to be reimbursed for 50% of the costs.

Compensation

(a) AWV to pay RCA 1½% of net sales.

(b) AWV to pay RCA 20% of its sub-licensing receipts.

Term—Until December 31, 1960.

January 25, 1951.

DEFENDANT'S EXHIBIT NO. 197.

April 5th, 1939.

LBD:jp

License No. 3—New Zealand Pool License.

1 (a) Definition of "Broadcast Receivers".

*(b) Definition of "Set of Component Parts"—Kits.

(c) Definition of "Radiogramophone".

(d) Definition of "Battery Eliminator".

(e) Definition of "Valve".

(f) Definition of "Multiple Valve".

(g) Definition of "Place of Public Entertainment".

*(h) Definition of "Private or Domestic Use"—includes hotels, cafes and dance halls.

(i) Definition of "Selling".

(j) Definition of "Plate".

2 (a) Grantor grants usual non-exelusive non-transferable license under all patents as to which it has right during term of agreement to Licensee on broadcast receivers and radiogramophones; for five years to December 31st, 1944.

(b) Licensee agrees that all controlled companies accept similar license, which Grantor agrees to grant; license revocable if Licensee becomes controlled by a non-licensee.

3 (a) No license granted to sell (1) valves; (2) loudspeakers; (3) television receivers.

(b) No license to sell parts.

(c) License limited to specified apparatus and uses.

4 Licensee agrees:

(a) Not to export without consent of Grantor.

(b) Not to import without consent of Grantor.

(c) To supply Grantor with diagrams and/or samples.

(d) To attach a marking plate marked and supplied by Grantor with Serial Number and number of valves and specified legend. Apparatus not so marked conclusively not licensed.

(e) To make conditions of license a condition of every sale.

(f) To pay royalty

(1) With respect to radio receivers, 3/6d on each valve stream whether or not it utilizes any invention.

(2) With respect to radiogramophones, 3/6d on each valve stream plus 3/6d.

Provided that, if Licensee is not in defulat, at end of each year Licensee is entitled to a reduction on volume of output in accordance with the Schedule.

Provided further no royalty on battery eliminator included in sets; and Provided further Grantor will offer license under patents on which it has to pay royalties for use by Licensee on payment by Licensee of royalties for such use. Licensee to submit to Grantor diagrams or models to see if they infringe such patents of third parties.

(g) To keep proper records and render accounts and remittance in thirty days after and of, and for, each month; upon failure to keep records, Licensee agrees to pay royalties stipulated by Grantor or prove some other amount.

(h) Licensee to furnish verified returns and permit inspection of records.

(i) To pay minimum annual royalty of £150.

(k) Not to assign without consent of Grantor.

5 Grantor guarantees patent immunity under all patents under which license is granted provided Licensee gives prompt notice to Licensor of any suits, gives Grantor full control, and assists Grantor.

6 Grantor may terminate license:

(a) If royalties are unpaid after due for seven days after notice.

(b) Any other breach not rectified within seven days of notice.

(c) If Licensee becomes bankrupt, etc.

7 (a) Licensee agrees to grant to Grantor a non-exclusive license with right to a sub-license for apparatus and uses within the field of license under all Licensee's patents.

(b) If any invention licensed by Licensee under (a) comes within any of pool patents, the license to Grantor is royalty free; otherwise royalty shall be not more than 5% of selling price and no higher than to any other Licensee, or than paid by Licensee hereunder.

(c) Any license under (a), to continue to December 31st, 1943.

(Schedule of sliding scale royalties).

L. B. Dodds.

DEFENDANT'S EXHIBIT NO. 198.

September 12, 1946

Mr. A. G. Warner, Managing Drector
Neutrodyne Proprietary Limited
440 Lt. Collins Street
Melbourne, C.1
Australia

Dear Mr. Warner:

This will acknowledge receipt of your letter of August 15th enclosing a draft of the proposed License Agreement between A. R. T. S. and the Trade.

With respect to the sugguestion that you make in the third paragraph of your letter relating to payments from Radio Corporation and its associated companies to Neutrodyne being subject to a deduction of ¼% of the royalty on their turn-over as calculated under the License Agreement, this is quite satisfactory to us.

We congratulate you upon the results and we are in full accord with your actions. I would appreciate it very much indeed if you would be good enough to let me know when the formal signing takes place.

Yours very sincerely,

Hazeltine Corporation
President.

JB:OJO

DEFENDANT'S EXHIBIT NO. 199.

(Letterhead of Neutrodyne Proprietary Limited, Melbourne.)

22nd December, 1949.

Mr. J. Binns,
President,
Hazeltine Electronics Corporation,
58-25 Little Neck Parkway,
Little Neck, L. I., N. Y., U. S. A.

Dear Mr. Binns,

I have arranged my affairs in such a way as to enable me to make a trip to America. For two years, I have been expecting to be kicked out of my Cabinet position as Minister of Housing, but so far I have only been abused.

In the meantime, I am exercising my mind on the problem of the radio receiver pool which I hope will recommence on the 1st January 1951—that is to say, in 13 months' time. In order that you may visualise the position in Australia, you must realize that we do not have any television at all, and that we will not have any television on the 1st January 1951; consequently, there will be no actual manufacture of television receivers and therefore no call for any manufacturer to pay royalties upon television receivers.

There will, of course, be the prospective possibilities regarding the manufacture of television receivers but we still may not know the exact details of the television plans or the particular patents which may be used in the future on the part of most manufacturers to signing any license agreement for the payment of royalties upon television reecivers as at the 1st January 1951.

Therefore, we are driven back, to regarding the radio broadcast receiver patent situation as the mainstay of the patent pool. We are making an examination of all the patents in Australia of the various members of the pool which relate to radio receivers (and also for television). The investigation, so far as the radio receivers are concerned, shows that a number of the basic radio inventions have become public property and we are now more concerned with improvement patents some of which will have a short life after 1st January 1951. Accordingly, the residue of receiver patents held by the Pool including ourselves at the 1st January 1951 may be weak in essentiality.

I have been wondering whether we should not seek to strengthen our position here in Australia by inviting Pye of England to join Neutrodyne in the Australian Pool; I have not mentioned or discussed this with Pye. I am bringing with me to America a loose leaf volume of abridgments of patents and applications for patents in the name of Pye which will allow you to make an estimate of the strength of the Pye patent position in Australia.

As to Pye joining Neutrodyne in the Pool, I am not necessarily recommending this course—I am not aware whether Pye would agree to it but at least it might be worthy of consideration and I submit it for your comments.

Yours sincerely,

A. G. Warner,
Managing Director.

(Handwritten in margin.) Expect arrive N. Y. about 31 Dec.

22nd December, 1949

Memo Re Neutrodyne Position.

This document is prepared for the purpose of ascertaining our position in the next Pool, commencing January, 1951.

Most of the subsequent patents are not yet printed. As they are printed they will be sent to New York.

The Red Book contains the Australian specifications which will be in force on 1st January, 1951.

At the back of the Red Book is a list of the patents for which application has been made (some issued), all of which it is anticipated will be in force on the 1st January, 1951.

All the above refers to radio receiver patents and does not include television.

The Black Book contains particulars of patents relating to television exclusively. At the back of the book, and in five subsequent Volumes, are contained printed specifications. The five Volumes will be sent by sea mail. Substantially, all the specifications apply to patents which will be in force on 1st January, 1951. Therefore, with the Black Book and the subsequent five Volumes which will be sent by sea mail, Hazeltine will have a complete dossier of our television position as at the 1st January, 1951.

The loose-leaf folder contains the complete Pye story so that Hazeltine may ascertain whether Pye's assistance in the Patent Pool is worth considering.

Mr. Fox is preparing lists of the television patents in force as at January 1st, 1951, which are owned or controlled by the prospective members of the new Pool. They will be sub-divided and bound according to the Companies in Australia who we think control the patents in each subdivision. It is anticipated that it will take Mr. Fox four or five months to complete this. When completed, we will send you a complete set so that you may, if possible, advise us, who are the strong members of the prospective Pool in Australia, so that I may negotiate to the best advantage.

Note: "Television Transmission Standards Proposed for Australia" are shown on the sheets inside the front cover of the Black Book. The drawings referred to in these standards have not yet been released by the Australian Government Authorities. Fox will send you copies of these drawings and any amendments to the standards as soon as he receives them from the Australian Government.

DEFENDANT'S EXHIBIT NO. 200.

(Letterhead of Electronic Industries Limited,
Melbourne, Australia.)

July 7, 1950.

Mr. J. Binns,
President,
Hazeltine Corporation,
58-25 Little Neck Parkway,
Little Neck, N. Y., U. S. A.

Dear Jack,

I have had a number of tentative conversations with Hooke regarding the new pool, and we decided some time ago that we would not move in regard to the Licensees until we had a tentative understanding among the Licensors in regard to the split up of the license receipts (if any), and some arrangement in regard to admitting new-comers to the pool, in view that the pool strength in regard to radio receivers was not as great as previously.

The following arrangements have now been made at a meeting of the pool members held yesterday. These arrangements are not yet set out in writing, but they were agreed to by members of the pool and notes taken in respect to the matters agreed upon.

The agreement between the pool members is to be for a period of Five years commencing from the 1st January 1951.

Neutrodyne is to receive precisely the same percentage of income in regard to New Zealand upon precisely the same conditions and terms.

In Australia, Neutrodyne is to suffer a reduction from 25% of the proceeds to 23% of the gross proceeds, but is to receive from the pool, £1250 per annum towards the maintenance of the Neutrodyne office in Victoria, which office administers the licensing arrangements with the Licensees in that State.

Philips is to receive an increase from 15% to 16% in Australia, and an increase of from 12% to 16% in New Zealand. Philips little effort may be regarded as blackmail upon a team of partners who were not individually powerful, particularly in regard to radio receivers. Philips argued that in addition to having some patent rights, that they had contributed to the pool 17% of the total contriuted by the Four Licensors.

The actual percentage of pay-ins in respect to set production during the past year being approximately as follows:—

Electronic Industries	42%
A. W. A.	27%
Philips	17%
S. T. C.	14%

You will appreciate that television will not start in Australia as a royalty income producer for at least 2½ years after the commencement of this new pool.

I felt that Hazeltines' combinde radio, and television patent position was not over strong in these circumstances, and whilst I feel that the other members of the pool also had certain elements of weakness, I thought it would be a mistake to be obstinate about keeping our previous percentage, in spite of the fact that Electronics were the major contributor to the pool's income, and of course I played this card hard.

I did feel that it was very important that the pool should stand together so that at least some income could be achieved.

In giving away 2% of the Australian income, I did obtain a recovery of £1,250, which of course, may in certain circumstances, be equal to the 2% I have given away. Nevertheless, I do regard it as a minor sacrifice.

The members further agreed that if a new-cower had to be admitted, such as E. M. I., that each of the Licensors would contribute proportionately to his receipts from the pool to the pay-out to the new-incoming full member, and that if three of the pool members agreed to the admission, and terms of admission, then the Fourth member would be bound by the majority decision.

In these circumstances, we have at least achieved unity of the pool members, and we now start our preliminary negotiations with the trade—I will advise you in respect to these matters in due course.

Our general proposals are that we shall issue only one form of license which will be a joint television and radio receiver license, and must be taken in toto, and taken so as to operate from the 1st January 1951. The effect of this will be that every person desiring a television license within the five year period will have to pay upon his radio receivers as from the 1st January 1951.

We also propose to have a different rate of royalty for radio receivers as compared to television receivers. Tentatively, this rate is 2% on radio and 3½% on television. This will mean a substantial drop in the pool's income during the next three years, but this will probably be satisfactory in all the circumstances.

Otherwise, everything continues happily, and the pool income is at the present moment substantial, and at least equal to that of last year.

With best wishes,

I remain,

Yours truly,

A. G. Warner.

DEFENDANT'S EXHIBIT NO. 201.

Air Mail July 20, 1950

Mr. A. G. Warner,
Neutrodyne Proprietary, Ltd.,
Box S45J,
Melbourne, Australia.

Dear Arthur:

Many thanks for your letter of July 7th giving me an outline of your discussions with Hooke. In view of all of the circumstances, I thoroughly concur in the solution that you have reached. I think a reduction of 2 per cent is well worth while in order to get the five-year pool operation, particularly with the television phase included. As you say, the recovery of £1,250 for expenses will probably equal the sacfifice.

I am also in agreement with the terms agreed upon for the admission of additional licensors such as E. M. I. whenever necessary.

I will be very glad to hear from you as to progress when you start the preliminary negotiations with the trade, and I wish you every success in connection therewith.

With very good wish

Yours very sincerely,

Hazeltine Corporation

JB:ojo *President.*

DEFENDANT'S EXHIBIT NO. 202.

(Letterhead of Electronic Industries Limited, Melbourne Australia.)

September 24, 1951.

Mr. J. Binns, President
Hazeltine Corporation,
58-25 Little Neck Parkway,
Little Neck, N. Y. U. S. A.

Dear Jack,

The signing of the Licence Agreement still drags somewhat wearily along.

However, we have now reached the stage where we have a printed Licence, and I send you herewith a copy by air-mail and a further copy by sea-mail.

From this Licence Agreement you will see that upon a sliding basis we receive 1¼% and upwards. Hazeltine's share is in accordance with my previous advice.

I had a ring the other day from the boss of A. W. A.'s Patent Department, a Mr. Burbury, who asked me whether I would agree to E. M. E., London, receiving a share out of the patent pool. In view of the position I replied that I would be prepared to concede some small percentage.

I gathered, although I was not officially informed, that Lionel Hooke has been having some discussions with Sir Ernest in London, and that in the interests of peace, Lionel wanted some authority from one of the licencees in the pool to make some arrangement with Sir Ernest.

Until such time as we have television, I feel we should do our utmost to maintain some income, and to keep the pool together, hence my concurrence in the suggestion.

I have no further details to give you, but immediately Lionel Hooke returns I will have a discussion with him and advise you the result.

You will be interested to know that the Commonwealth Government sold out its 51% shareholding in A. W. A. to the public. The shares were 8/6d paid, and had nett asset backing of about 35/—. The price to the public was 45/—, at which price they were underwritten by Stock Brokers. A few days after they had been sold, there was a general recession in the market for shares in Australia . . . they have fallen to 39/—. . . .

The main result of the sale of A. W. A. shares by the Government is to leave them in an open competition with ourselves. This will, in the long run I believe, re-act to the benefit of Electronic Industries and Hazeltine.

Yours truly,

A. G. Warner,
Managing Director.

Copy to L. B. Dodds, also copy of Licence #5.

DEFENDANT'S EXHIBIT NO. 203.

(Letterhead of Electronic Industries Limited, Melbourne, Australia.)

April 10, 1958.

Mr. L. B. Dodds,
Hazeltine Corporation,
58-25 Little Neck Parkway,
Little Neck, L. I., New York, U. S. A.

Dear Mr. Dodds,

I have just returned from a meeting of the Pool members at which certain verbal agreements were made, which I have no doubt will be put into operation, supported either by agreement between the parties or that the parties will accept the Minutes of the meeting as being the general authorisation subject to any litigation being necessary, in which case more formal documents may be required.

You will appreciate that I am the only remaining person in the Pool who has been there since the Pool was first started, which gives me a standing in the Pool and an experience which exceeds that of others around the table.

Generally, the division of the Pool was based upon the following factors:—

(a) the patent strength of the member;
(b) the power to support that strength with money and experience;
(c) the power to break up the other fellows patent strength or to support it;
(d) the volume of payment to the Pool by the licensor based upon his production of television and radio receivers (we are the strongest on this count);
(e) the prospects of future patents.

The division determined upon was as follows:—

Hazeltine	21½% of the gross receipts.	
E. M. I.	12%	—do—
Philips	22½%	—do—

and the balance of 44% to A. W. A. and S. T. C., out of which they pay the expenses of operating the Pool—approximately 1%.

The gross receipts for the purpose of the above division are taken after payment to Philips for and on behalf of Parker of approximately .8 of 1% as a royalty payment. Assuming therefore that the average royalty rate is 2.3% the balance of the licensors will distribute 1½% between them in the above proportions.

In order to complete the record I attach hereto a scale of the licence fees agreed upon.

Now as to the past—

It was agreed that for the year ended June 30th, 1956, the cost of Parker should be borne by all members of the Pool proportionately to their old share of the Pool and that A. W. A. and S. T. C. should not be excluded as contributors to the cost of Parker as previously agreed.

It was also agreed that the adjustment on the above new basis should be back-dated to 1st July 1957, with A. W. A. and S. T. C. contributing proportionately to cost of Parker, and should continue until 30th June 1958 at which date the Pool will terminate unless it is renegotiated, which I expect it will be.

A. W. A. agreed to a smaller share and to contribute to share of Parker because of their weakness via RCA anti-trust embarrassment.

All of the above arrangements should make a substantial adjustment in our favour for the reason that our average receipts of last year were less than 21½%, and we also paid approximately twice the contribution towards Parker than that which we shall now be paying.

Payment to us of the necessary adjustments back to 1956 in the one case and back to 1957 in the other are to be paid out of the future gross income of ARTS and it may be that we will not get the full adjustment during this financial year.

Owing to the complications of the 1956 Parker adjustments at the old rate and the adjustment on the new rate from 1957 up to date, it is rather difficult for me to make an assessment of this in cash because it is a percentage of percentages, but at a rough estimate I think our rebate will be £15,000 and we will continue to be more favourably treated.

As soon as possible I will make an estimate of our income for the year ended June 30th and send it forward to you, but I do not think I can do this much before June since I am dependent very largely upon the accountants of ARTS to work out the adjustment and to make a financial contribution.

Yours truly,

Arthur Warner,
Managing Director.

Television Receivers which incorporate both sound only receiving apparatus and gramophone apparatus:	Television Receivers which incorporate sound only receiving apparatus or gramophone apparatus but not both:	All other Television Receivers:	
4 %	4½%	5 %	of the Licensee's net turnover if such turnover is less than £40,000 per annum.
3¼%	3¾%	4¼%	of the Licensee's net turnover if such turnover is or exceeds £40,000 and is less than £70,000 per annum.
2¾%	3¼%	3¾%	of the Licensee's net turnover if such turnover is or exceeds £70,000 and is less than £100,000 per annum.
2¼%	2¾%	3¼%	of the Licensee's net turnover if such turnover is or exceeds £100,000 and is less than £500,000 per annum.
2 %	2½%	3 %	of the Licensee's net turnover if such turnover is or exceeds £500,000 and is less than £1,000,000 per annum.
1½%	2 %	2½%	of the Licensee's net turnover if such turnover is or exceeds £1,000,000 and is less than £2,000,000 per annum.
1¼%	1¾%	2¼%	of the Licensee's net turnover if such turnover is or exceeds £2,000,000 per annum.

The foregoing scale shall be operative as from 1st July, 1957.

DEFENDANT'S EXHIBIT NO. 204.

October 22, 1958.

Air Mail

Sir Arthur G. Warner
Managing Director
Electronic Industries Ltd.
Box 845 J
Melbourne, Australia

Re: Hazeltine-Neutrodyne Agreement

Dear Sir Arthur:

Upon reviewing some of the documents turned over to me by Mr. Binns it seemed to me that the only document establishing the relationships between Hazeltine and Neutrodyne was the original agreement signed back in 1928. That agreement includes a number of conditions which, if fulfilled, would considerably hamper Neutrodyne in negotiating licenses with ARTS or others and which, of course, have not been followed in practice.

For example, that agreement limits the right of Neutrodyne to issue licenses to those conforming to the Hazeltine printed license in the United States. It also restricts it to granting licenses at royalties not less than 5% and further gives Hazeltine an option to cancel the agreement on 60 days' notice. In addition, the license is restricted in its terms to radio receiving circuits or apparatus which might or might not be broad enough to include television apparatus, valves, and other related devices and circuits.

It may be that you would just as soon continue our very satisfactory relationship on the informal basis existing for many years in spite of this obsolete formal agreement. On the other hand, it occurred to me that perhaps you would like to replace the original agreement with one which more nearly represents current practices. If you would, I would be glad to draft such an agreement and submit it for your consideration.

With kind regards,

Sincerely,

Vice President.

LBD:CBS

DEFENDANT'S EXHIBIT NO. 205.

(Letterhead of Electronic Industries Limited,
Melbourne Australia.)

January 15, 1959.

Dear Mr. Dodds,

I know that I should have answered your letter of the 22nd October but in fact I handed it over to Mr. Fox for suggestions. I am sure you will enjoy, in confidence, the memo which he sent back. It read:—

> "... Mr. Dodd's tidy mind resents living in the casual conditions of the Binns era, but my instinctive reaction to this letter is to leave well alone and not have a modern formal agreement ..."

Upon receiving the above note from him, I filed the lot.

Generally, I think we would be better without a formal agreement, but if you want it we are prepared to make it. The advantages of not having a formal agreement in our circumstances are as follows—

We have a long friendly basis of doing business with you going back to 1928 (30 years). The major shareholders of Electronic Industries, myself, my family, and the Abrahams and their families, who control Electronic Industries, also have personal relationships with you and some of them are young.

It follows therefore that our friendly relationships will most likely continue for a considerable number of years.

No formal agreement between ourselves can be enforced in any Court of Law, so that after we have 'dotted the i's and crossed the t's' and argued about the clauses, they will still be unenforceable. In fact, we can only hang together with goodwill and good intentions, a point incidentally which is often missed by American companies dealing with Australian organisations.

In addition, a formal agreement is subject to examination by Government Departments, taxation and otherwise, and it is difficult to avoid the commitments of the written agreement whereas if there is no formal agreement one is able to argue the arrangements as circumstances arise from time to time to suit our mutual interest as opposed to that of Government interests.

We are against a formal agreement but if you want one—OK. . . .

Regards,

Yours truly,

Arthur Warner.

DEFENDANT'S EXHIBIT NO. 206.

Air Mail

January 26, 1959.

Sir Arthur G. Warner
Managing Director
Electronic Industries Ltd.
Box 845 J, GPO
Melbourne, Australia

Dear Sir Arthur:

This will acknowledge and thank you for your letter of January 15, 1959, relative to the proposed formal agreement between our companies. Obviously, I got quite a chuckle out of Mr. Fox's comments.

I think you may have misapprehended my motive for suggesting a formal agreement. It was not at all directed towards tightening our present pleasant and informal working arrangements but only to be able to satisfy our Government tax people or Department of Justice if they began to question why we are doing some of the things that we are doing.

However, we are entirely agreeable to continuing under the present informal arrangement, at least until some Government agency questions it which, of course, may be never.

With kind regards.

Sincerely,

....

Vice President.

LBD:CBS

DEFENDANT'S EXHIBIT NO. 207.

(Letterhead of Electronic Industries Limited,
Melbourne, Australia.)

February 2, 1959.

Mr. L. B. Dodds,
Hazeltine Corporation,
58-25 Little Neck Parkway,
Little Neck, L. I.,
New York, U. S. A.

Dear Mr. Dodds,

I thank you for your letter of the 26th January re a formal agreement.

I understand the position, and if, as and when we want a formal agreement, in the light of some Government matter then I think we can frame an agreement to suit our mutual interests as opposed to those of the Government.

Regards,

Yours truly,

Arthur Warner.

DEFENDANT'S EXHIBIT NO. 208.

(Letterhead of Neutrodyne Pty. Ltd., South Melbourne, S.C.4.)

AGW/JE. 2nd February, 1948

Hazeltine Corporation,
1775 Broadway,
New York 19, N. Y.

Attention Mr. J. D. Grayson.

Dear Sirs,

Further to my letter dated 20th January, 1948, in reply to yours of January, I have to advise you that we have now endeavoured to supply the answers to the questions on the form you enclosed, and which is returned herewith. I set out hereunder the method by which we would answer the questions on the form:

1. Date of incorporation: 9th June, 1928.
2. Incorporated under the "Victorian Companies Act, 1915."
3. Officers of the Company:
   Managing Director—A. G. Warner
   Secretary—M. G. Roberts
   Manager—C. E. Tapp (until date of death, 7/1/48).
4. Directors:
   A. G. Warner
   H. P. Abrahams
   C. W. LePlastrier
   G. Sly.

5. Stock Holders:—

	Shares
Estate of late L. H. Abrahams	2,500
øAbrahams, H. P.	5
Electronic Industries Ltd.	24,980
Hazeltine Corporation	70,000
øLe Plastrier, C. W.	5
øSly, G.	5
øWarner, A. G.	5
Warner, Mrs. E.	2,500
øNominee shares held for Directors qualification. Electronic Industries Ltd. beneficial owners.	100,000

6. Depository: If this means the name of the Bank, it is the National Bank of Australasia Limited, 271 Collins Street, Melbourne. If it means the name of the person with whom money is deposited, as set out on the balance sheet, then the name of that person is Electronic Industries Limited.

7. Bank Signatories:—

A. G. Warner, solely

L. R. Machin or C. A. Fox, countersigned by M. G. Roberts.

8. Corporate Agent:—

We are not clear as to what is meant by this, but it would appear to be Neutrodyne Pty. Ltd.

It is not clear whether you want us to sign this form, and if so, how you want it signed; or, alternatively, whether you are merely seeking information for some internal records.

You will note that your letter of October 24th, 1947, has not arrived, and we only have the form to guide us.

You will appreciate that words have different meanings in different countries. In Australia the word "depository" would be a slightly polite way of referring to a lavatory—hence the confusion!

Yours truly,

Neutrodyne Pty. Limited.
A. G. Warner,
Managing Director.

Neutrodyne Proprietary, Ltd.

Incorporated—Date:
Under laws of:

Officers—

Directors—

Capitalization—100,000 shares at £1 each authorized and issued.

Stockholders—

Name	# Shares Held
Hazeltine Corporation	70,000

Depositories—

Bank Signatories—

Corporate Agent—

Present Date:

DEFENDANT'S EXHIBIT NO. 209.

October 2, 1958.

Sir Lionel Hooke,
Amalgamated Wireless (A/asia) Limited,
47 York Street,
Sydney. N. S. W.

Dear Lionel,

There appears to be an error in the method by which the accountants are computing Neutrodyne's share of the pool.

Prior to our meeting in April, and prior to the new arrangements, Parker and EMI received their share before distribution was made to the other licensors. At the April meeting, according to my written notes which I confirmed with Hazeltine, it was agreed that first Parker should receive approximately .8 of 1% as a royalty payment and that the balance would be distributed as follows:

Hazeltine	21½%
E. M. I.	12 %
Philips	22½%

and 44% to A. W. A. and S. T. C., out of which you were to pay the expense of operating the Pool, estimated at 1%.

Under the method adopted by the accountants it appears to me that they have gone back to the old agreement and assumed that before the division is made to Hazeltine, E. M. I. payments should be deducted. For example, if you will examine the statement sent to me under cover of the letter of the 25th September, Schedule 1 Part (b) you will see that the gross revenue from April to June is £256,907, and from this amount the Parker distribution has been properly deducted, but they follow by deducting the payment to EMI and distributing the balance of £125,116 less expenses as to 21% to Neutrodyne, whereas according to the arrangements we should have received 21% of £163,344. This is the only method of calculating our proportion after deducting the Parker proportion.

I distinctly remember a long argument with EMI on this subject and we only agreed to maintain them on 12% subject to them giving up their priority as set out in the previous agreement.

The accountants have ignored this arrangement and have calculated it on the old rulings.

Will you please investigate and correct? . . .

Regards,

Yours truly,

Arthur Warner.

DEFENDANT'S EXHIBIT NO. 210.

(Letterhead of Electronic Industries Limited, Melbourne Australia.)

January 21, 1959.

Mr. L. B. Dodds,
Hazeltine Corporation,
58-25 Little Neck Parkway,
Little Neck, L. I.
New York, U. S. A.

Dear Mr. Dodds,

On the 10th April last year I wrote you a letter giving you the new break-up of income following a meeting of the Pool Members in that month.

As a result of this and other matters, we started to receive income from ARTS on a satisfactory level, but subsequently discovered that ARTS' interpretation of the arrangement made at the meeting, and confirmed by them in writing on the 9th April, copy attached, was not being followed in the compilation of the returns, and on October 2nd I wrote a letter, copy also attached.

As a result of this and other correspondence a meeting was held in Sydney on December 22nd to settle the argument, which boiled down to the question as to whether EMI's payment should be deducted from the income before its percentage distribution (as it was in the old agreement, which nobody appeared to remember at the previous meeting).

The argument lasted long and fierce, as a result of which Philips and I agreed to reduce our percentage income from 22½% in the case of Philips and 21½% in the case of Neutrodyne to 21% and 20% respectively. EMI was not to be deducted in the assessment of the net income.

This means in fact that our income was increased by about 1/15th from what it was previously. If you are interested in the mathematics of this division I can send you some copies of correspondence and calculations, but I think the simplest way is to tell you that the arrangement now stands as per ARTS' letter to me of the 6th January, the substance of which is that out of the gross income received by ARTS Parker receives .8 of 1% as a priority payment—the .8 of 1% is of the turnover of the manufacturers.

DEFENDANT'S EXHIBIT NO. 211.

(Letterhead of Electronic Industries Limited, Melbourne, Australia.)

November 17, 1960

Mr. L. B. Dodds,
Hazeltine Corporation,
Little Neck 62,
New York, U. S. A.

Dear Mr. Dodds,

I am sending forward separately two copies of the Balance Sheet.

The nett profit for the year was quite good being £68,415 after income tax. We paid out during the year two dividends amounting to £80,000 and I see no reason why a further dividend of £40,000 should not now be paid since we have sufficient funds for this purpose.

Would you kindly advise whether you think this £40,000 should be paid before Christmas of this year, or after Christmas.

Referring back to the profit, you will notice that it is higher than the previous years and was due to the greater production of T.V. receivers in Australia. I do not anticipate that the income for this year will be very much for the following reasons—

(a) The Pool is being embarrassed by the current RCA situation.

(b) There is a demand from the manufacturers for reduction in ARTS royalty on account of RCA who are asking for a separate royalty, and also on the grounds that there are now no radio patents upon which they should pay at all.

(e) The total production of TV in Australia since the 1st July, has fallen considerably. Accordingly, we must anticipate a falling off of income.

You will notice under the Liabilities that we owed you £23,000 at June 30th and this was sent forward to you on the 9th August as a draft—$53,214.42.

Currently I am engaged in some further negotiations within the Pool and although these were settled in a manner which I have previously reported to you; the whole subject matter has been reopened because of RCA's entry into Australia with a separate licence for which they are asking a royalty of 8/- Australian currency per set.

I do not think it would be very helpful for me to write a long letter dealing with all the points. When I have the matter sorted out and agreement arrived at, I will write giving you details of the settlement.

With king regards,

Yours sincerely,

Arthur Warner.

DEFENDANT'S EXHIBIT NO. 212.

W. M. McFarland January 2, 1963.

Serial XXX-63-T2

B. J. Tiffany
Neutrodyne Proprietary, Ltd.

Sir Arthur Warner called this morning and wanted to set up a meeting with Mr. Dodds and myself. After a brief discussion, Mr. Warner was advised that the meeting should include Mr. McFarland and Mr. Westermann. I discussed the telephone conversation with Mr. McFarland.

Mr. McFarland and I agreed on alternate appointments. The appointment has been arranged for Thursday, January 3, 10:00 A.M. Messrs. Dodds and Westermann have been informed. The other recipients of this memo are hereby advised.

I have arranged for Hazeltine Transportation to meet Sir Arthur Warner at the Hotel Pierre at 9:00 A.M. so that he will arrive at Little Neck at 10:00 A.M. I suggest that the meeting be in Mr. McFarland's office commencing at 10:00 A.M. As the meeting will undoubtedly continue until lunchtime, I would suggest that Messrs. Beam and McFarland, if possible, have lunch with Sir Arthur. Mr. Dodds advised that he will not be free for lunch.

Mr. Warner advised that he would only be in New York for two or three days and then would be off to England.

B. J. Tiffany.

BJT:eew

cc: RLBeam
LBDodds
EARuestow/Patent Dept. Files.
DWestermann
Accounting Dept./Neutrodyne File.

DEFENDANT'S EXHIBIT NO. 213.

(Stamp) Zenith-Rauland Cross
Claimants' Exhibit 674.

FBC/23865

23rd April, 1935.

Mr. A. T. Brown,
International General Electric Co. Inc.,
570 Lexington Avenue,
New York, U. S. A.

Radio Merchandising Position.

Dear Mr. Brown,

I must apologize for the unavoidable delay in replying fully to your letter of the 20th November, 1934, but in order to deal with the situation in an intelligent manner it is necessary to give a complete summary outlining the Australian Radio situation, as there are so many aspects which have a bearing on the question.

(1) Sales Agreement With Amalgamated Wireless (A'sia) Ltd.

In your letter you make reference to an Agreement dated the 20th March, 1928, between Amalgamated Wireless (A'sia) Ltd., and the Australian General Electric Co. Ltd., and under which the latter was permitted on payment of certain royalties to A. W. A., to enter the radio merchandising field. This Agreement was allowed to expire in due course, on January 1st, 1933, although since that time, by mutual consent, the general arrangements have been followed without prejudice, by both parties, as a convenient basis on which to operate; but during the last five years it has been impossible to import receivers (except in very special cases) due to the Customs Tariff position which has rendered importation prohibitive. (For further details refer to Para. (4).)

(2) International Agreement.

Ever since the inception of Radio Broadcasting in Australia, about 1924, (at which time we became interested in the possibilities of marketing Receivers) our hands have been more or less tied, owing to certain International Agreements under which RCA rights for Australasia were passed to the Marconi Group, and through them were vested in A. W. A., the details of which you are fully conversant with.

In 1931 we received a draft copy (in green cover) of a proposed agreement between the RCA, I. G. E., Westinghouse, Gramophone Co., Columbia, EMI, and A. W. A., and this in turn was followed by a draft copy (in grey cover) of a somewhat similar agreement between the same parties, both dated as of January 7, 1932. As you are familiar with the terms of both these Agreements, suffice it here to say that apparently A. W. A. were to receive entire control of the Radio Receiver situation in Australasia, except that certain minor rights were reserved to the A. G. E. I. These rights apparently amount to very little and we are of the opinion that at least equal terms could probably be obtained by other Companies or individuals who were in a favourable position similar to our own, so far as trading is concerned.

(3) Sources of Supply of Receivers.

Since the expiry of our sales agreement with A. W. A. as referred to in Para. (1), we have been free to purchase Receivers from any source whatsoever, provided we paid A. W. A. a royalty of 10% on the landed cost of all imported Receivers, in accordance with the old Agreement we had with them. However, bearing in mind the draft

Agreements referred to in Para. (2) and the implied resources of research available to A. W. A., and as they have been manufacturing Radio Receivers in Australia for several years, we considered it advisable to continue purchasing our main supplies from them, anticipating that in the long run they could supply us a higher grade of Receiver that we could obtain from other local sources. In 1933 our hopes and patience were severely tried, as A. W. A. produced a range of Receivers requiring an unusual amount of servicing, and the prestige of A. W. A. (Radiola) and the A. G. E. I. Ltd., suffered considerably. The 1934 range was much better as regards servicing, although in our opinion A. W. A. displayed little leadership in comparison with the rest of the trade, while the 1935 range just going into production is largely a repetition of last years models with minor modifications. Looking backwards at this stage, it appears as though our interests may possibly have been served better by purchasing from other manufacturers who were prepared to give us sole selling rights in Australia, whereas our efforts with the A. W. A. receivers which we marketed under our own name were overshadowed by them with the goodwill of the trade name "Radiola" which by the way was built up in no small measure by the old A. G. E. Co. Ltd.

(4) Customs Tariff.

The economic wisdom of manufacturing Receivers in Australia may be open to question, but it is very certain that having once engaged in such manufacture and established a secondary industry employing thousands of Australians, no Government would dare to remove altogether the duty at present applied to imported Receivers. The "Scullin" (Labour) Government in the early days of the depression in 1930 voted a total prohibition of the importation of Radio Receivers, and although this embargo was removed by the next Government, the rate of duty was then set at such a figure as to amount almost to prohibition. As an example, we would instance a friend of the Company who purchased a receiver in the United States for £9, and had to pay £37. duty on entering Australia. Consequently, importation has been restricted to some special lines such as auto receivers, and somewhat novel and consequently expensive Receivers advertised in American magazines and specifically ordered by customers, or required by us as samples to illustrate the trend of American development. At the present time, it is out of the question to consider the regular importation of Receivers owing to the excessive landed costs, particularly on the lower priced Receivers (which represent the bulk of our sales) as the rate of duty is based upon the number of anode streams in the valves.

(5) Patents and Royalties.

(A) Australian Radio Technical Service & Patents Co. Ltd. ("ARTS").

Although the patent situation in Australia has been complicated, any difficulties in this connection have been simplified so far as we are concerned, by the purchase of Receivers from A. W. A. The situation today is not clear, as no attempt has been made through legal processes to determine the merits of relative claims of the different parties, many of whose claims are conflicting. The holders, as listed in the attached advertisement ('C') of the major patent rights, appear to think that it will be more profitable for them to combine together and present a united front, which they have accomplished under the title of "Australian Radio Technical Services & Patents Co. Ltd." On the other hand, the remaining manufacturers have been somewhat indifferent, preferring to pay whatever royalties are demanded and pass on the extra expense to the customer, rather than fight the matter in the courts.

(B) Australian Radio Manufacturers Patents Association Ltd. ("ARMPAL").

These latter manufacturers, however, have recently formed an Association under the title of "ARMPAL" (Australian Radio Manufacturers Patents Association Ltd.) for the purpose of protecting their manufacturing interest, and further information on this score can be obtained from the inaugural speech of "ARMPAL" given verbatim on page 9 of the "Radio & Electrical Merchant" of November 23, 1934, attached herewith. For further reference, a copy of the "ARTS" License No. 1 is also attached. A perusal of these two publications will provide a fair picture of the "ARTS" claims on the one hand, and the reaction of "ARMPAL" to them.

(C) Effect on Imported Receivers.

"ARTS" have been endeavouring to prevent all importations, and have met with some degree of success. We were recently informed verbally by A. W. A. on behalf of "ARTS" that it would be impossible for us to import any further Receiving Sets from U. S. A. as it would constitute an infringement of the "ARTS" patent agreement. We questioned the correctness of this statement, and asked A. W. A. to put it in writing, but this they failed to do, and later telephoned us to the effect that if we only wanted to import one or two special Receivers for particular customers, we could order the Receivers, but should not find it necessary to advise either "ARTS" or themselves of our action, excepting to pay to A. W. A. the royalty of 10% as provided under the old Agreement.

(D) Effect on G. E. Products.

From an I. G. E. viewpoint, this raises a most important issue, as we feel that it is contrary to the spirit of the Agreement which you have with A. W. A. to place any embargo on the importation of your products into this territory, providing that we are prepared to concede to A. W. A. the royalty of 10% on landed cost, as we have been in the habit of doing for some years past. If this matter is taken up with A. W. A. they will doubtless say that they only represent one party to the "ARTS" Agreement, and that the objection comes from the other parties. We personally believe that the A. W. A. are sufficiently strong to enforce the granting of the permission, should they so desire. However, if they wish to keep your product out of this market, and deprive you of a sales outlet, you are certainly entitled to some compensation, or at least you should have been consulted and your consent obtained before they entered into any agreement which prohibited the sale of your product in this country. Admittedly, owing to the tariff situation, this would not have much immediate effect, but there is always the possibility that the Customs tariff may be lowered, although at the moment there is no indication of any move in this direction.

(6) General.

From our viewpoint, the position, as will be seen from the above, is far from satisfactory, but unfortunately our hands appear to be very securely tied, primarily by the International Agreements which provide for R. C. A. and I. G. E. Australian rights passing to A. W. A., and secondly by the Customs Tariff, and Patents position.

The question asked in the last paragraph of your letter as to whether we are contractually free to purchase Radio Receivers direct from you is one which we are unable to answer. In fact, we feel that you are possibly in a much better position to answer the question than we are.

The writer is leaving for U. S. A. next month and anticipates being in New York about the end of June and will then take an opportunity of discussing this and the radiotron valve position with you at greater length.

Yours very truly,
(Signed) F. B. Clapp.

FBC/AB
SMC
SBC

P/S. Purely as a matter of interest, I am attaching hereto, copy of an advertisement regarding the Valve situation, which recently appeared in the Australian Press.

DEFENDANT'S EXHIBIT NO. 214.

(Stamp) Zenith-Rauland Cross-Claimants' Exhibit 689.

(Letterhead of Australian General Electric Proprietary Limited, Sydney.)

Airmail.

28th April, 1947.

G. S. Eveleth, Esq.,
Vice President,
International General Electric
Company Inc.,
570 Lexington Avenue,
New York, U.S.A.

Dear Mr. Eveleth,

We recently received a letter from Mr. Sadona asking for details, so far as we have them, of the patent pool existing in Australia in regard to radio patents. As this is a subject which I have already broached with you, I am sending this letter as it will contain some information additional to that which you have already.

It is, I think, worthwhile to recapitulate the history of radio patents in Australia which leads up to the present position which briefly is as follows.

The Australian Wireless Telegraphy Act, which was passed in 1905 and amended from time to time, vests the control of wireless communication in Australia in the Minister named under the Act and prohibits persons from transmitting or receiving unless in possession of a licence issued by the Minister. This covers radio broadcasting as well as radio telegraphy and telephony.

In 1927, the Government entered into an agreement with Amalgamated Wireless (Australasia) Ltd. whereby the latter would make available free of charge to broadcasting stations, listeners, radio manufacturers and dealers, all Australian patent rights or inventions relating to broadcasting which were owned or controlled by A.W.A. or in respect of which A.W.A. had the power to grant licences. It is understood that the A.W.A. advised the Commonwealth that it possessed a licence in perpetuity from Marconi and a licence until 1945 from R.C.A. In return for this, the Government paid A.W.A. 3/d. a year for each listener's licence that was issued.

In 1933 this Agreement was terminated and manufacturers of radio equipment in Australia were obliged to make their own arrangements in respect of the patent situation as a result. Certain holders of Australian patents combined to form a company known as the Australian Radio Technical Services and Patents Co. Ltd. (ARTS) to act as a pool into which were thrown all their patents. The companies founding ARTS were—

(1) Amalgamated Wireless (Australasia) Ltd.
(2) Standard Telephones & Cables (Australasia) Ltd.
(3) Neutrodyne Proprietary Ltd.
(4) N. V. Philips Gloeilafpenfabrieken.

A notice was issued by ARTS in the press on the 20th January, 1934, which stated that ARTS had exclusive right to grant licences in Australia for the sale or use of Broadcast Receivers under patents owned or controlled by (then followed a long list of names including the International General Electric Company Inc.).

Manufacturers of receivers in Australia signed Agreements with ARTS known as Licence No. 1, entitling them under specified terms and conditions, to use all the patents in the pool for a five year period from 1933 to 1938. In 1939 an Agreement of generally similar text, known as Licence No. 3, was made to cover a further five year period from 1939 to 1943. Owing to the prohibition of manufacture of receivers during the war (except for the use of the Armed Services) the subject of licences was not renewed until the end of 1945. Pending the production of a new Agreement, Licence No. 3 was extended as a temporary expedient.

As so many patents had expired, the terms of Licence No. 3 were not acceptable to the licensees, either in regard to the scope of the patents nor the fees payable by the licensees to ARTS. Consequently, after protracted discussions the new Agreement, known as Licence No. 4, was drawn up and signed about a month ago. In this case the licence was extended to cover television and facsimile, radio gramophones and loud speakers. The licence also includes patents covering frequency modulation. This Agreement continues to the end of 1950.

In considering your patents in Australia covering radio, these have been thrown into the pool by A.W.A., but we have no information as to whether there was any written or implied agreement on your part to such a course.

Full information on this matter was sent to Mr. A. T. Brown in a communication dated January 25th, 1934. The matter has been referred to on several occasions subsequently, but as far as I know no replies were received and we therefore concluded that the A.W.A. were within their rights in pooling the patents. For your ready reference I am enclosing herewith copy of our letter to Mr. Brown of January 25th, 1934.

As far as we know there has been no case of patents which were conceived after the 1st January, 1945, being pooled by A.W.A., and they are therefore not being exploited in Australia. It is, of course, possible that one or more of them may be infringed, but it is extremely difficult, if not virtually impossible, for the A.G.E. Company to police them effectively.

We are attaching a copy of printed forms of Licence Nos. 1 and 3. On the latter alterations have been made in red which would bring it into conformity with Licence No. 4. You will notice we have made no reference to Licence No. 2, which we have not been able to trace, but suspect that it covers transmitters only.

During last year we engaged a well-known consulting engineer, Dr. Geoffrey Builder, to give us a preliminary estimate of the value of your patents in relation to others on cognate subjects in Australia. I am sending a copy of Dr. Builder's report, addressed to you, under separate cover.

The ARTS pool was formed to protect the patents held by the persons associated in the Company. So far as we are able to gather, the remuneration to the persons is in proportion to the number of patents which they contribute to the pool without any relation to the quality or value of such patents. It is for this reason that we have urged your patent department recently to consider the wisdom of filing applications in Australia to cover inventions which have any value at all, even though the scope is narrow. We believe that it would be entirely in your interest to be joined with ARTS in your own name and not through A.W.A. In any case it is our understanding that A.W.A. has no licence from you for patents on inventions conceived after the 1st January, 1945.

While dealing with this subject I draw your attention to the question of patents in the industrial electronic field. We are directly interested in these through our manufacturing activity, but we are hampered in the use of your designs by reason of your patent arrangements with the Westinghouse Company which so far does not extend to Australia. You will recall that I wrote to you on the subject on August 8, 1945. I have had several letters from Mr. Bush on the subject, the last being that dated April 23, 1946. Indirectly, I am aware that you have discussed the matter with Westinghouse Company as Mr. Henderson, Australian representative of that company, has referred to correspondence from his principals on the subject. So far we have not heard that any finality has been reached.

Yours very truly,

FBC:PJ

F. B. Clapp.

c.c. Mr. P. G. Sadona

following mail copy

DEFENDANT'S BULK EXHIBIT NO. 215.

December 20, 1956.

Mr. A. Hannah
"Erambie"
45 Hillone Road
South Tamworth
N.S.D., Australia

Dear Sir:

We received today, your inquiry of October 15, in which you expressed interest in our Transoceanic portable radio receiver, Model Y600.

In accordance with your request, we take pleasure in sending you enclosed, illustrated literature which will give you complete and detailed information about the basic performance characteristics and operating features.

Although we have been always interested in marketing our Zenith sets, including the Transoceanic, in Australia, we have not been successful in our efforts due to the actions of the Australian Patents Pool. Anyone in Australia importing, distributing, or re-selling Zenith's products has been harrassed and threatened with law suits by this Pool, in consequence of which importers, distributors and dealers have been discouraged from handling our products. It is known to us that there is a considerable number of Transoceanic radio receivers in use in Australia, but most if not all of these instruments were imported directly by individuals or perhaps purchased and brought back by members of the Australian Armed Forces from their overseas tour of duties.

Again thanking you for your interest in our products, we remain,

Yours very truly,

Walter R. Peirels,
Asst. Sales Manager
International Division.

WRP/sd

Air-Mail

Encl.
1386.5

"Erambie"

45 Milburne Road,
South Farnworth,
N. S. D.
Australia,

Oct. 15, '56.

Pls mail Y600 spec. sheet and folder!

Dear Sir:

Following your advertisement in the "National Geographic", my interest has been answered as to the new model Zenith "Super Trans-Oceanic" portable radio and the possibility of securing one in Australia.

Would you kindly forward to the above address information and price of the mentioned radio.

Yours faithfully,

Les A. Hannah.

Mr. Miroslav Blahout
Box 63 G. P. O.
Ballarat Victoria
Australia

March 20, 1957

Dear Sir:

We received your letter of March 13 and we thank you for your kind opinion about the performance or our Super Transoceanic portable radio receiver.

For your convenience we are handing you enclosed illustrated literature which will describe in detail the latest version of our Super Transoceanic portable Model A600.

Although we have always been interested in marketing our Zenith sets in Australia, we have not been successful in this effort because of the Australian Patent Pool. Anyone in Australia importing, distributing or reselling Zenith products has been harassed and threatened with lawsuits by this Pool, in consequence of which importers, distributors and dealers have been discouraged to handle our products. It is hoped that in the not too distant future this situation can be broken to permit us to offer freely our products from distribution and resale in Australia without restrictions or difficulties, except those normally encountered from government import license and exchange regulations.

This does not mean, however, that Zenith products cannot be imported into Australia, as to our knowledge there are no restrictions or prohibitions by the Australian Government on imports of radios from the United States. In the event that you wish to order a Super Transoceanic portable radio receiver Model A600 directly from the factory we shall be pleased to grant you our confidential courtesy prices as follows:

Super Transoceanic Model A600	$83.97
Ballast adapter S-15715 for operation on 220 volt AC/DC	2.94
Battery pack Z-985X	4.65

In addition to the price of the radio receiver and accessories you will have to cover forwarding charges which, according to our estimate, will not exceed the amount of $20.00.

If you intend to purchase one of our radio receivers and accessories for direct shipment from the factory to your address in Australia it will be necessary that you apply to the Australian Government for an import license and an exchange permit to obtain the necessary dollar amount to cover our invoice. We suggest, that you contact your local authorities for full information about import license and exchange permit.

Please feel free to request additional information about our product if such should be needed and thanking you for your interest in our Super Transoceanic portable radio receiver, we remain,

Yours very truly,

Walter R. Peirels,
Assistant Sales Manager
International Division

WRP/jg
1400.3
Encl.

Ballarat 13th March 1957
M. Blahout
Ballarat-Victoria
Australia

Zenith Radio Corporation
Chicago 39, Illinois

Pls. mail folder & spec. sheet A600.

Dear Sir!

After long search, I finally did find your address in "The Saturday Evening Post" from 15th Nov. 1952. Four years ago when I was in the Army (Australian) in Japan and Korea, I saw many Zenith Radios (Super Trans-Oceanic) from your soldiers. I think it was the best I ever saw and since then I am very much interested in same. I am New Australian as I did come here seven years ago from Czechoslovakia and like to listen to news & etc. from home and Europe. Here in Australia is very hard to get good radio with long range reception and if you'll get one is to big and expensive.

I wanted to ask you if would be possible to buy Zenith radio (Super Trans-Oceanic) from your firm. In case they are out of production, even good second-hand would be very welcome. Could you please let me know if and how could I obtain one, price and how to pay for it? I will be leaving soon for "Rum Jungle" so if you would be so kind and let me know soon as possible.

Yours faithfully,

Miroslav Blahout.

Pls. mail A600 folder & spec sheet.

J. F. Brooks & Company
142 Phillip Street
Sydney, Australia

April 15, 1957

Attention: S. Platt

Gentlemen:

We thank you for your letter of April 5th in which you expressed interest in our Model Royal "500" seven-Transistor portable radio receiver for sale in the Canton Island Air Base and for your convenience we are handing you enclosed illustrated and descriptive literature which will give you detailed information about this truly outstanding instrument.

The export distributor price for Model Royal "500" is $45.00 FOB factory Chicago and is subject to a discount of 5% for payment cash-in-advance or by suitable letter of credit.

We can also supply you with genuine cowhide carrying cases at $1.95 net and as a further accessory we can offer you our earphone No. 39-23 at $2.78 net.

The battery complement of the Royal "500" consists of four Mercury batteries type Z-9 which will provide 400 hours of operating time. The price for these batteries is $.39 net each. The Royal "500" can also be operated on four regular Pen-Lite batteries which are available wherever flashlights are sold. Pen-Lite batteries, which we can offer you under our type No. 8 at the price of 6¢ net each, will provide 100 hours operating time.

Please feel free to request additional information if such should be required and looking forward to your further welcome news we remain,

Yours very truly,

Walter R. Peirels,
Assistant Sales Manager
International Division.

WRP:rm
Air-Mail
1409.4

(Letterhead of J. F. Brooks & Co., Sydney, Australia.)

5th April, 1957

The President,
Zenith Radio Corporation,
Chicago 39, Ill.,
U. S. A.

Dear Sir,

We are interested in the purchase of Model Royal "500" 7-Transistor Pocket radios, in various.

These are required for sale over counters at Aircraft bases, such as Canton Island, (U. S. A./British Territory undefined).

Payment would be by L/C through National City Bank of N. Y. U. S. A.

Please quote your lowest prices, as we have heavy aircraft freight and trans-shipment expenses.

Looking forward to your early reply,

We are, Yours truly,

J. F. Brooks & Co.,
S. Platt.
Per D. S. Spiller.

P. S. Should you have an Export Agent handling these matters, it would be appreciated if you would forward our request on to them, do not refer back to us.

Pls. mail 2 spec. sheets Royal 500.

August 7, 1957

Mr. Andrew Hegh
P. O. Box 339
Mt. Isa
Queensland, Australia.

Dear Mr. Hegh:

In response to your recent inquiry, we are pleased to send you the attached specification sheet which provides technical and operating features of our super Transoceanic. You will note that its circuit uses 6 tubes, including a selenium rectifier, and that its circuit has a tuned radio frequency stage with a 3-gang condenser, so necessary for long distance reception. Details as to band coverage are contained in the attached specification sheet.

The suggested list price in the United States of the Transoceanic, less batteries, is $139.95. If you are in a position to import this set, we shall be glad to extend to you a courtesy price of $83.97 net plus $3.00 for the S15715 220 volt voltage adaptor and $4.95 for the battery pack Z985X, f.o.b. factory Chicago, including export packing. Our standard export terms are: payment cash-in-advance or through an irrevocable letter of credit in U. S. funds. We estimate that inland transportation, ocean freight, insurance, etc. from the factory to destination will cost approximately $38.50.

We are sorry we have no recent information available as to the customs' duties in Australia on American radios, but, no doubt, you will be able to get this information more accurately from your local customs' authorities.

Thanking you for writing to us and for your interest in our product, we are,

Very truly yours,
R. M. Carstens,
International Division.

RMC/ro
Attach.
Air Mail

Bruno:

Please give me the figure in the third paragraph. Thanks.

Mary Anne.

$38.50.

P. O. Box 339
Mt. Isa
Queensland
Australia

Dear Sir,

Would you mind sending me full particulars about your "Zenith" Trans-Oceanic portable short wave radio, on how much it would cost, if it could be imported into Australia, if so, about how much would the customs duty be. Also how many valves it has, what short wave bands it is on, and what broadcast bands it is on. Would it be from 550 to 1600 kilocycles? Also how long would it take to get here? I would be very pleased if you would send me these details.

Yours faithfully,

Andrew Hegh.

December 10, 1957

Master G. Irvine
MacNiel House
Knox Grammar School
Wahroonga, N. S. W., Australia

Dear Sir:

Thank you for your recent letter expressing interest in our all-transistor pocket radio.

Enclosed is an illustrated specification sheet of our model Royal "500", which we can presently offer for export to Australia at our confidential courtesy price of $49.19, plus $2.00 for 4 Mercury batteries. Also available is our leather carrying case for this model at $1.95.

Our terms include payment in advance. All methods of payment must be made or drawn in U. S. dollars.

If we can be of further service, please let us know.

Very truly yours,

L. DeRobertis,
International Division.

LDR/ak

Air-Mail

Encl.

Master G. Irvine:
MacNiel House
Knox Grammar School
Wahroonga, N. S. W.
Australia.

Dear Sir:

I read recently, an add in a National Geographic about Radio's. And there is a ? ? ? ? Boy at school that has a Zenith small pocket size. Runs on batteries and transistors: Would you be able to send me the price in $ and if I wanted it how much would I have to pay for that and could you post it to me in Australia? For my father plans to go to America and has some $ saved up. The boy here offered to sell it to me for $65 it is 3 or 4 yrs. old and is not going so good now. I would be very obliged if you would forward me a Pamphlet of some description with the information in it.

Yours Sincerely,

Geoff Irvine.

April 28, 1958

Magnecord Australasia Pty. Ltd.
Kylò House
31 Macgnario Place
Sydney, Australia

Attn: Kay B. Teehey

Gentlemen:

Thank you very much for your letter of April 21.

In line with your request, we are enclosing a detailed descriptive folder for the Zenith Royal "1000" all-transistor standard and shortwave portable radio. An individual specification bulletin is also provided.

In lieu of local distribution in Australia, we will be happy to handle your order on a direct factory basis. Your net f. o. b. factory export cost is noted per attached pro-forma invoice. We have included in the pro-forma the optional accessories, such as the private listening earphone and carrying case.

Transportation costs, depending on the method you select, are extra. Estimated costs via parcel post and air freight are noted on the attached invoice.

We sincerely appreciate your interest and will look forward to receiving your confirmation covering Zenith's all-transistor Transoceanic portable radio.

Very truly yours,

N. D. Olsen, Jr.,
International Division.

NDO/ak

Air Mail

Attach.

INVOICE

ZENITH RADIO CORPORATION

~~XX~~ pro-forma

6001 DICKENS AVENUE • BERKSHIRE 7-7500
CHICAGO 39, ILLINOIS

SOLD TO

MACHECORD AUSTRALASIA PTY. LTD.
KYLE HOUSE
31 MACQUARIE PLACE
SYDNEY, AUSTRALIA

SHIPPED TO

SAME

L/C TERMS: AS FIXED BY CONTRACT OR PURCHASE ORDER—ALL SHIPMENTS F.O.B. FACTORY

SHIPPED VIA	DATE SHIPPED	YOUR ORDER NO.	OUR ORDER NO.	INVOICE DATE
PER ADVICES	PER SCHEDULE	LTR. 4/21/58		4/28/58

QUANTITY	PART NO. OR MODEL	DESCRIPTION	PRICE	AMOUNT
1	ROYAL 1000	PORTABLE	$134.58	
1	713	BATTERY KIT	.86	
1	339-24	EARPHONE	2.15	
1		CARRYING CASE	4.50	
				$142.09
		*ESTIMATED PARCEL POST $7.50		
		*ESTIMATED AIR FREIGHT $53.30		
		EXCISE TAX EXEMPT N CARTON OVERPACK FOR EXPORT TO: AUSTRALIA		
		MARKS: SAME AS SHIP TO SAMPLE #1 MADE IN USA		

ITEMS ORDERED BUT NOT SHIPPED HAVE BEEN BACK-ORDERED AND WILL BE SHIPPED AS SOON AS POSSIBLE.
CONSIGNEE: NOTE CAREFULLY CONDITION OF PACKAGES BEFORE RECEIPTING IN GOOD ORDER.

The merchandise herein was delivered to the carrier in good condition. If any shortage or damage is discovered, either at time of delivery or later, it is incumbent upon [illegible] of the Fair Labor Standards Act as amended and all regulations and orders of the United States Department of Labor issued under section 14 thereof.

[illegible]

Defendant's Bulk Exhibit No. 215.

ORDER HISTORY

SHIP TO: Magnecord Australasia Pty. Ltd.
Kyle House
31 Macquarie Place
Sydney, Australia

CHARGE TO: Same

ORDER NO: EO Proforma
DATE: 4/25/58
CUST. ORDER NO: Ltr. 4/21
SHIPPING DATE: Per schedule
ROUTE: Per advice *

TERMS: L/C (X). C.I.A. ( ) N.C.R.O.I. ( ) ARMY/NAVY ( ) S.D./D.P. C.O.D. { }

QUAN.	DESCRIPTION	UNIT PRICE	PROFORMA UNIT PRICE	INVOICE TOTAL
1	Royal 1000 Portable	134.58		
1	#13 Battery Kit	.86		
1	B34-24 Earphone	2.15		
1	Carrying Case	4.50		
				142.09
	* Estimated Parcel Post $7.50			
	* " Air Frt $53.50			

EXCISE TAX exempt N
MARKS:
same as ship to
Sample
3240-#1
Made in USA.

FOR EXPORT TO: Australia
CASE PACKING
DOMESTIC PACKING
CARTON OVERPACK X
COMBINE WITH:
INSURANCE:

December 10, 1958

Mr. Leslie P. R. Bean
Stromberg-Carlson
(Australasia) Proprietary, Ltd.
Box 3971, G. P. O., Sydney,
Australia

Dear Mr. Bean:

Mr. Clifford Hunt has referred to me your letter of December 3rd regarding your need for a couple of our TV sets. We shall be very glad to accommodate you, but at this moment we are in the process of changing to a new line of television sets which will be announced to distributors next week. I would prefer to send you information on the new models, so that the samples you will receive from us will be the reflection of our latest designs. I expect to have price information and literature by the end of next week and based on that, we will send you a proforma invoice covering our new 21" set and one of our deluxe TV consoles, with the aid of which you can then apply for a corresponding import license. Rather than making special arrangements to ship these from one of our distributors on the Coast, I think it would be just as well to have the two sets supplied directly from Chicago.

I will communicate with you again as soon as I have information and literature on the new TV line.

With all good wishes.

Very truly yours,

E. Blonde.

J. A. Miguel, Jr./ff

Airmail

C 2359 W Frosted Walnut $218.27
C 2221 R. Maroon—133.97

(Letterhead of Stromberg-Carlson (Autralasia)
Proprietary . Limited, Sydney, Australia.)

3rd December, 1958

Mr. Clifford J. Hunt,
Vice President,
Zenith Radio Corporation,
6001 Dickens Avenue,
Chicago 39, Illinois, U. S. A.

My dear Cliff,

I should esteem it a favour if you would be so kind as to let us have (and bill us) two of your T. V. reecivers, one being a low priced one (not a portable) and the other—one of your high-class ones. We would like to have complete receivers, cabineted etc., in order to get ideas as to the trim and finish for our future guidance.

I am wanting to let my engineers see class American receivers in these two categories.

Before you make any shipment would you be so kind as to advise me as to the cost of these, because I have to get from our Federal Government an import licence and I must do this before I place an order. Allan Freedman suggests that you might care to ship these from the West Coast by steamer from San Francisco or Los Angeles.

I trust that I am not intruding too much upon your generosity.

With kind regards,

Yours very sincerely,

Leslie P. R. Bean.

Defendant's Bulk Exhibit No. 215.

INVOICE & Proforma

ZENITH RADIO CORPORATION
6001 DICKENS AVENUE • BERKSHIRE 7-7500
CHICAGO 39, ILLINOIS

SOLD TO
Mr. Leslie P. R. Bean
Stromberg-Carlson
(Australasia) Proprietary, Ltd.
Box 5971, G.P.O.
Sydney, Australia

SHIPPED TO
SAME

TERMS: AS FIXED BY CONTRACT OR PURCHASE ORDER—ALL SHIPMENTS F.O.B. FACTORY

SHIPPED VIA	DATE SHIPPED	YOUR ORDER NO.	OUR ORDER NO.	INVOICE DATE
				12/24/58

QUANTITY	PART NO. OR MODEL	DESCRIPTION	PRICE	AMOUNT
1	C2359W	Frosted Walnut 21-inch Console-Hi-fi TV set	$218.27	$218.27
1	C2221R	Maroon 21-inch Table Model TV set	133.97	133.97
		TOTAL		$352.24
		FOB FACTORY, CHICAGO		

ZENITH RADIO CORPORATION
INTERNATIONAL DIVISION
6001 DICKENS AVENUE
CHICAGO 39, ILLINOIS

ITEMS ORDERED BUT NOT SHIPPED HAVE BEEN BACK-ORDERED AND WILL BE SHIPPED AS SOON AS POSSIBLE.

CONSIGNEE: NOTE CAREFULLY CONDITION OF PACKAGES BEFORE RECEIPTING IN GOOD ORDER.

The merchandise hereon was delivered to the carrier in good condition. If any shortage or damage is discovered, either at time of delivery or later, it is incumbent upon the consignee to file claim for redress against the carrier. No returns accepted unless specifically authorized. "We hereby certify that these goods were produced in compliance with all applicable requirements of sections 6, 7 and 12 of the Fair Labor Standards Act as amended and all regulations and orders of the United States Department of Labor issued under section 14 thereof."

10041-34

17

December 24, 1958

Mr. Leslie P. R. Bean
Stromberg-Carlson
(Australasia) Proprietary, Ltd.
Box 3971, G. P. O.
Sydney, Australia

Dear Mr. Bean:

Supplementing Mr. Miguel's letter of December, 10, enclosed are specification sheets on our new TV models C 2359W and C2221R together with our proforma invoice giving the price information.

If these sets meet with your approval, please advise us and we will handle the shipment from our plant.

Best wishes for the Holidays.

Sincerely,

Mary Ann Sundt (Mrs.),
Secy. to Mr. Miguel.

MAS/m

Attach.

Airmail

March 2, 1959

Mr. Rodney Bailey
84 Fawcett Street
Mayfield
Newcastle, New South Wales
Australia

Dear Sir:

We acknowledge and thank you very kindly for your inquiry of February 22, and in response thereto, are pleased to enclose specification sheet on Zenith's Royal "1000/1000D."

Regrettably, the units are not available for distribution in Australia; however, we will be more than pleased to extend a direct factory quotation.

The Royal "1000" has a suggested retail selling price of $250.00, the Royal "1000D." $275.00. On a courtesy basis, the Royal "1000" is offered at $150,00, the Royal "1000D" at $165.00. These prices are quoted on an F. O. B. factory —Chicago basis, battery complement included.

You will please note from the attached specification sheet, that the Royal "1000D" differs only in that it contains a ninth waveband covering 150—400 KC, utilized in the United States as a CAA weather navigation band, in Europe as a long-waveband.

Regarding reception range—a Mr. R. N. Sneddon, 35 Reading Rd., Brighton, Sydney, Australia, purchased a Royal "1000" from us in November of 1958. He has expressed his pleasure with the receiver and, perhaps, he would not mind dropping you a line as to the receiver's performance.

Either unit can be released quite economically via parcel-post with total parcel-post, insurance, and packing estimated at $7.60. Air freight is quite prohibitive as we estimate, on a 17 pound basis, $71.00 for air freight charges to Sydney.

Terms of payment are on a cash in advance basis in U. S. currency to cover the estimated forwarding charges.

We sincerely trust that the enclosed, as well as the foregoing, serves to answer your questions, in full, and we will look forward to being of further service.

Yours very truly,

H. L. Grimm,
International Division.

HLG:ca

Air Mail
enc.

---

84 Fawcett Street,
Mayfield, Newcastle,
N. S. W., Australia,

February 22nd, 1959.

Dear Sirs:

I am greatly interested in the all transistor Trans-Oceanic portable radio.

Could you send me any details as to the metre bands covered, antenna required and reception range.

Also, could you tell me if these receivers are available here in Australia.

Kindest regards.

Yours sincerely,

Rodney Bailey

March 4, 1959.

Mr. S. A. Hossain
Office of the High Commissioner for
Pakistan in Australia and New Zealand
115 Pitt Street, G. P. O. Box 5256
Sydney, Australia

Dear Sir:

We acknowledge and thank you very kindly for your correspondence of February 24, your reference SW/Z/I.

We are pleased to enclose our latest radio line brochure, accompanied by a sepcification sheet on Zenith's Royal "1000/1000D." The latter model differs only in that it contains a ninth waveband covering 150-400 KC, utilized in Europe as a long-waveband, in the United States as a CAA weather navigation band.

The foregoing are accompanied by our confidential courtesy export price list SPRA-110, applicable to members of the diplomatic corps.

If you will kindly advise, after reviewing the enclosed, the exact models in which you are interested, we will be more than pleased to extend the total estimated CIF quotation for your remittance in line with our terms of payment of cash in advance.

May we take this opportunity to thank you very kindly for the interest which you have shown in Zenith's products.

Yours very truly,

H. L. Grimm,
International Division

HLG:ca

Airmail

enc.

Office of the High Commissioner for Pakistan
in Australia and New Zealand, 115 Pitt Street,
G. P. O. Box 5256, Sydney, Australia.

24.2.59

Zenith
Radio Corporation of America,
Export Manager,
Diplomatic Sales Division,
Chicago,
Illinois,
U. S. A.
Ref: SW/Z/I

re: Importation of shortwave receiver

Dear Sir,

We are interested in your shortwave wireless receivers capable of receiving worlds existing shortwave station with maximum band spread. We are also interested in your portable contemporary model shortwave receiver.

As you know we are offered courtesy diplomatic discount over the gross export prices by the manufacturers and also exempted from import duty and sales tax.

It will be much appreciated if you kindly send catalogue and diplomatic export prices of your short wave receivers, including the portable models, by airmail.

Thanking you,

Very truly yours,

S. A. Hossain.

April 1, 1959

Mr. J. A. Evans Jr.
Myrrhee
Via Wangaratta
Victoria, Australia

Dear Mr. Evans:

We acknowledge and thank you very kindly for your secondary correspondence relative to your eventual desire to purchase the Zenith Royal "1000D."

We shall look forward to receiving your remittance as indicated in the amount of $165.00 plus $7.75 to cover the required insurance, parcel post, packing and handling.

We regret to advise that we do not manufacture the companion record player for utilization with the Trans-oceanic. All of our record playing units utilize their own amplification system.

We will look forward to being of further service.

Yours very truly,

H. L. Grimm,
International Division

HLG:ca

Air-Mail

J. A. Evans (Jur.)
Myrrhee,
Via Wangaratta,
Victoria,
Australia.

Dear Sir,

I very much appreciated the offer of the Zenith Radios (Oct. 30, 1958).

I am interested in the Royal "'1000D" & would you have a very small record player to plug into the wireless.

I have not made up what cost the customs will be yet (import duty) & shillings in the £.

As soon as I receive the next letter I will send the money as quoted $165.00 on the Royal "1000D" & plug in record if suitable.

Yours truly,
J. A. Evans (Jur.)

October 30, 1958.

Mr. J. A. Evans Jr.
Myrrhee
Via Wangaratta
Victoria, Australia

Dear Mr. Evans:

We acknowledge and thank you very kindly for your recent inquiry, and in response thereto are pleased to enclose specification sheet on Zenith's Royal "1000"/"1000D".

Further we are enclosing our line brochure as you have not specifically indicated which model you are interested in.

The Royal "1000D" differs from the regular Royal "1000" in that it contains a ninth waveband of 150 to 400 KC—utilized in The United States as a CAA weather navigation band, in Europe as a long wave band. The normal suggested retail selling price is $250.00 on the Royal "1000," and $275.00 on the Royal "1000D." In lieu of firm representation in your immediate locale, we will be more than pleased to extend a confidential courtesy price of $150.00 on the Royal "1000"—$165.00 on the Royal "1000D." These prices are quoted on a FOB factory—Chicago basis, battery complement included.

Either set can be released via insured parcel post with total forwarding and handling charges running $7.00. Export case packing, for parcel post release is an additional $.75.

Our terms of payment are on a cash-in-advance basis in US currency or, where applicable pounds sterling at the banks discounted rate of approximately $2.30 per pound.

We sincerely trust that the enclosed as well as the foregoing answers your questions in full, and if we may be of any further service at a later date, please do not hesitate to write.

Yours very truly,

H. L. Grimm,
International Division.

HLG:cl
(Encl.)

J. A. Evans (Jnr)
Myrrhee

Via Wangaratta
Victoria
Australia

Dear Sir,

I am very interested in your Zenith Radio which I saw advertised. I have been looking for a decent radio & this is the only one that suited most.

Would you kindly send at your earliest convenience information on the Zenith Radio.

Yours sincerely,
John Evans (Jur.)

May 6, 1959.

Mr. J. M. Bennett
Xavier College
Barkers Road
Kew E.4, Melbourne, Australia

Dear Sir:

Thank you for your letter, received by us today, requesting information on our Royal "500" transistor radio.

We do not as yet have representation in Australia, for our products, but we trust that sometime in the future, we may be able to do so.

The price of the Royal "500" is $49.16, four Z-9 batteries $1.52, parcel post, insurance and handling approximately $2.50—total $53.18.

Upon receipt of your order and covering remittance, this receiver can be shipped to you immediately.

Yours very truly,
J. Wilson Cook,
International Division.

JWC/ak
Air Mail

Xavier College
Barkers Road,
Kew E. W.
Melbourne,
Australia.

Dear Sir,

I read an advertisement regarding your "Royal 500" model pocket radio.

I can not find any agent for your radios in Melbourne or Australia so I was wondering if you would please forward me some information as to how I could obtain one of their radios from you and it's approximate cost please.

I realize that Custom Duty is very severe, but I am seriously considering sending to you for one of these radios.

My address is:
Xavier College, Barkers Road, Kew E. W., Melbourne, Australia.

Thanking you,

Yours sincerely,
J. M. Brennett.

June 22, 1959.

Mr. R. J. Oldfield,
"Gurrawarra"
Bourke,
New South Wales, Australia.

Dear Sir:

Thank you for your letter of May 31, 1959, inquiring about our radios.

We have great pleasure in enclosing specification sheets of our Royal "760" and Royal "1000" models, and you will note that it contains full details of their operation.

Regarding your inquiry on modification to the Royal

"1000" to operate as does the Navigator, i. e., directional, this would be a very costly business and is certainly not recommended.

Mr. F. J. Brandt, Box 4486, P. P. O., Sydney, New South Wales, Australia, has manager to get some of our sets into Australia and, therefore, we suggest that you contact him for the purchase of one of these sets.

We thank you for your interest.

Yours very truly,
J. Wilson Cook,
International Division.

JWC/ag
Airmail
Enclosures
BCC: Mr. F. J. Brandt,
Sydney, New South Wales,
Australia.

"Gurrawarra,"
Bourke,
New South Wales,
Australia.

2nd June, 1959.

The Sales Executive,
Zenith Radio Corporation,
Chicago 39,
Illinois, U. S. A.

Dear Sir:

I have been reading lately your advertisement in "Flying", Saturday Evening Post, and the National Geographic, concerning your radios. As I am an operator of light aircraft, the flight test of your "Navigator" model in "Flying" was very impressive.

Of particular interest to me was your Royal 1000 long range short wave set, as I live in an area plagued by poor daytime reception in the 500 to 1500 kilocycle band, because of the distance from stations. Often during the summer months, this frequency band is unuseable owing to thunderstorm activity.

I would like full details of these two sets, ("Navigator" and Royal 1000), including frequency range, battery life and type, and price.

Could the Royal 1000 be modified to give the same directional sensitivity as the "Navigator"? If so, what would be the extra cost involved?

Any information relating to your other radios would be received with interest.

Yours faithfully,
R. J. Oldfield.

(note)

letter mentioning Brandt

P.S. A replica of this letter was inadvertently sent to you last week by surface mail.

"Gurrawarra",
Bourke,
21st May, 1959.
Australia.

The Sales Executive,
Zenith Radio Corporation,
Chicago 39,
Illinois, U. S. A.

Dear Sir

I have been reading lately your advertisement in "Flying" "Saturday Evening Post" and "The National Geographic" concerning your radios. As I am an operator of a light aircraft the flight test of your "Navigator" model in "Flying" was very impressive.

Of particular interest to me was your Royal 1000 long range Short Wave set, as I live in an area plagued by poor daytime reception in the 500 to 1500 KC band because of the distance from stations. Often during the summer months this frequency band is unuseable owing to thundrer-storm activity.

I would like full details of these two sets, (Navigator and Royal 1000), including frequency range, battery life and type and price.

Could the Royal 1000 be modified to give the same directional sensitivity as the Navigator? If so, what would be the extra cost involved?

Any information relating to your other radios would be received with interest.

Yours faithfully,
R. J. Oldfield.

(note)

Air Mail letter answered.

December 24, 1959.

Mr. W. C. Hawkins,
Purchasing Director,
Stromberg-Carlson (Australasia),
Proprietary Limited,
Box 3971, G. P. O.
Sydney, Australia.

Dear Mr. Hawkins:

We thank you for your letter of December 16, in which you expressed interest in our 17-inch television receivers with conventional and also with remote control tuning.

We believe, that our model E1812L with conventional tuning and our model E2010C with remote control tuning will meet with your approval and for your convenience we are handing you enclosed illustrated and descriptive specification sheets for these 2 models.

Please note that the export price for model E1812L, net F. O. B. factory in Chicago, is $127.97—while the price for model E2010C is $155.97, net F. O. B. factory in Chicago. These prices include domestic packing, which we have found fully adequate for air freight shipments. However, if you wish to have these sets shipped via ocean freight, we would strongly recommend export case packing for which we will apply an additional charge of $2.50 per set.

The weight of model E1812L in domestic packing is 57 pounds and in export packing, approximately, 95 pounds—while the weight of model E2010C in domestic packing is 65 pounds and in export packing approximately, 105 pounds.

Please feel free to request additional information if such should be needed and looking forward to your further news, we remain, with our very best wishes for a pleasant holiday season,

Yours very truly,

Walter R. Peirels,
Assistant Sales Manager,
International Division.

WRP/ag

Airmail

2153.6
Enclosure

(Letterhead of Stromberg-Carlson (Australasia) Proprietary . Limited, Sydney, Australia.)

16th December, 1959

Walter R. Peirels,
Assistant Sales Manager,
International Division,
Zenith Radio Corporation,
6001 Dickens Avenue, Chicago 39, U. S. A.

Dear Sir:

We are anxious to obtain samples of your 17″ portable television receivers. We would issue an order for one of the Standard type and one with the Remote Control feature.

We suggest that you supply one "Jamaica Model D1812 L" and one "Bahama Model D1814P" providing that one of these can be supplied with a Remote Control unit.

When replying please let us know the unit price and the packed weight so that we can arrange for an Import Licence.

Thanking you for an early Airmail reply,

Yours faithfully,

Stromberg-Carlson (Australasia)
Pty. Ltd.,
W. C. Hawkins,
Purchasing Director.

Pls. Mail spec. sheet E1812 and E2010.

February 29, 1960

Lt. Col. Albert Jacoby
MGO Branch
Army Headquarters
Albert Parks Barracks
Melbourne, Australia

Dear Sir:

We received your letter of February 10, 1960 with your request for a 1960 television service manual.

Please find enclosed the requested material, which we hope will be of service to you.

Yours very truly,
L. T. Vigil (Mrs.),
International Division.

LTV/cl
Air-Mail

MGO Branch,
Army Headquarters,
Albert Park Barracks,
Melbourne, Australia.

COMMONWEALTH OF AUSTRALIA
Department of the Army
Melbourne, SCI.

Zenith Radio Corporation,
6001 Dickens Ave.,
Chicago 39, Ill.

Dear Sirs:

A number of friends returning to Australia from USA are bringing Zenith TV sets. These require conversion to Australian TV standards and of course the service manual is essential. In particular the following model has arrived, and I would be very grateful if you would forward a copy of the service manual at your earliest convenience.

17″ Portable, Model E 1811C—16D25 Chassis.

Over the last three years, I have converted some 30 to 40 Zenith TV sets to Australian standards, and you have been kind enough to forward manuals on request. Would it therefore be possible for you to include me on your mailing list for future models in order to obviate the necessity for special requests for service information.

I will be pleased to forward a check to cover any costs involved.

Thanking you for your co-operation,

I remain,

Yours Truly,

Albert Jacoby.

Lt.-Col. Albert Jacoby,
MGO Branch,
Army Headquarters,
Albert Park Barracks,
Melbourne, Australia.

March 8, 1960

ROT/LB Henk Cassa
(Official No.-R/35910)
Moran Division; Class L 2 R
Flinders Naval Base (R. A. N.)
Via Melbourne
Victoria, Australia

Dear Sir:

We thank you for your letter dated February 29, 1960, inquiring about our Royal "1000" Zenith Transoceanic receiver.

It gives us great pleasure to enclose the specification sheet of our Royal "1000/1000D" models, the prices of which are as follows:

Royal "1000" is priced including case packing and batteries at	$150.75
That of the Royal "1000D"	$165.75

Parcel Post charges and insurance on either model amounts to $7.95.

Regarding your customs requirements, etc., we would not know these details in this country and you will have to ask the Customs Officials of Australia yourself.

Upon receipt of your remittance in U. S. funds, either of these models can be despatched to you without delay.

In the meantime, we remain,

Yours very truly,
J. Wilson Cook,
International Division.

JWC:sn

Airmail

Enclosure

Flinders Naval Base
Victoria, Australia
29-2-1960

Dear Sir(s):

I am a recruit in the Royal Australian Navy and I am doing a Radio Course. I chose this course because I am very interested in Radio Work. I have a radio of my own it is a "Sharp 2-band 10 transistors radio." What I am most interested in is getting shortwave stations which you can get on the "Sharp" but not the whole world.

So therefore when I read the advertisement about the Zenith in the World Radio Handbook I decided to write to you.

Would you be so kind as to give me some information on the Zenith.

What would be the dimensions of the Zenith and what would be the price of it for sending it here if I wanted to buy it.

If I wanted to buy it would it be possible to send it down here or do I have to have an import license, and how would I have to go about sending the money down. If it would not be possible to send the Zenith down could you tell me whether you have any branches here in Melbourne where you could get a Zenith.

There dear sir(s) are some of the questions I would like to know the answers to, and I would be very glad if you could give me some information on the Zenith.

I am looking forward to your answer, and Thanking you very much for your information.

I am yours

truly,

H. Cassa.

March 8, 1960

Mr. Leslie Varga
67 Pentral Street
North Sydney, Australia

Dear Sir:

Thank you for your letter dated March 2, 1960, regarding our Royal "1000" all-transistor Transoceanic receiver. The price of this receiver is as follows:

1. Royal "1000" including batteries and Case Packing	$150.75
Estimated Parcel Post and Insurance Charges	7.95
Total	$158.70

Upon receipt of your remittance in the above amount this receiver can be dispatched to you without delay.

Customs duties and other charges, you will of course have to find out from your own Customs Department on this question.

In the meantime, we remain,

Yours very truly,

J. Wilson Cook,
International Division.

JWC:an

Airmail

Enclosure

Zenith Radio Corporation
Chicago 39, Illinois,
U. S. A.

North Sydney, 2, March '60

Dear Sir!

I read your advertisement in The American Geographic Magazine "on Zenith" all-transistor, Trans-Oceanic standard short wave radio operating in 8 wave band.

Since that set is not available here in Australia, please be you so kind and forward me if possible, technical details, ie (circuit) of that radio, and its price, and whether would you be able to provide me one if I'll send you its price in advance, if not please let me know the address of a firm, being able to send me one.

Sincerely yours,
Leslie Varga,
67 Pentral Street,
North Sydney, Australia.

Mr. G. Barrett
17 Curry Street
Merewether, Newcastle
New South Wales, Australia

March 22, 1960

Dear Sir:

We wish to acknowledge and thank you very kindly for your recent inquiry.

As the Royal "250" has been superseded with our Royal "100" we are pleased to provide you with our latest radio line brochure.

In view of your interest in the smaller type units, we will be pleased to extend a confidential courtesy export price of $30.28 on the Royal "100." $36.51 on the Royal "275." These prices are quoted on a F.O.B. factory—Chicago basis, battery complement included.

Either unit can be released quite economically via insured parcel post with total estimated parcel postage, insurance packing and handling running in the neighborhood of $1.50.

Our terms of payment are on a cash-in-advance basis in U. S. currency to include the necessary forwarding charges.

We wish to take this opportunity to thank you very kindly for your various comments relative to Zenith's products and to further extend our appreciation for your continued interest in same.

We trust that the enclosed as well as the foregoing serves to answer your questions in full and we will look forward to being of further service at a later date.

Yours very truly,
H. L. Grimm,
International Division.

HLG:sn
Airmail
Enclosure

---

17 Curry St.
Merewether
Newcastle
New South Wales
Australia

Dear Sir,

I suppose you would find it most unusual to receive a request from so far away, but I am interested in a small transistor radio. The models I am interested in are your Americana Royal 250 priced at $39.95 or the Statesman Royal 275 priced at $49.95. I saw the advertisement for these models in a Saturday Evening Post dated August 4th 1959 and I liked them at first sight.

The Americana Royal at $39.95 would be the equivalent of about £18 out here, whereas an equivalent model of Australian or Japanese manufacture would cost about £30, a big difference in price. Because of more advancement in Electronics I know which I would rather have, yours, regardless of price.

I first came across your make of Radio when an uncle of mine, a seaman, brought one back with him from one of his journeys. It was a Mantel Model black in colour with gold lettering and he purchased it in Houston, Texas about 10 years ago. I will always remember this Radio as it had a beautiful tone, and, to this day, it has not given one bit of trouble, not even value.

Unfortunately my uncle, who lives in Melbourne, decided to modermise, and invested in a Television Set and to do so decided, very reluctantly, to sell the radio as part payment. I was down there on holiday early February and he still regrets selling it, as a matter of fact I saw the agent who traded the radio in and he said to his knowledge, it had not given any trouble at all to the people whom he had resold it to.

This testimony alone, I think, is a grand advertisement for your product and I am hoping to hear from you very soon with particulars of, in particular your Americana Royal 250 in which I am very interested, so I will close now.

I Remain

Yours Faithfully,
Mr. G. Barrett.

April 22, 1960

Mr. I. R. Chan
63 Metung Street
Balwyn, E. 8, Melbourne, Victoria
Australia

Dear Mr. Chan:

We acknowledge and thank you very kindly for your inquiry of April 19, and in response thereto, we are pleased to provide you with individual specification sheet on Zenith's Royal "1000"/"1000D."

The Royal "1000D" contains a ninth wave band, covering 150-400 KC, utilised in the United States as a weather navigation band, in Europe as a long wave band,—this represents the prime difference between the two units.

In lieu of active representation in Australia, we will be more then pleased to extend a confidential courtesy export price of $150.00 on the Royal "1000", $165.00 on the Royal "1000D." These prices are quoted on a FOB factory Chicago basis, battery complement included.

Either set can be released quite economically via parcel post with total parcel post, insurance, packing and handling estimated at $7.80. Via air freight, we estimate charges $48.00.

Our terms of payment are on a cash-in-advance basis in U. S. currency to include the estimated forwarding charges.

We take this opportunity to thank you very kindly for the interest which you have shown in Zenith's products, and trust that we will have the pleasure of being of further service.

Yours very truly,
H. L. Grimm
International Division

HLG/cl
Air-Mail
(Encl.)

63 Metung Street,
Balwyn, E. 8.,
Melbourne, Victoria.
Australia.

Tuesday, 19 April. 1960.

Dear Sir,

I have noted with great interest your advertisement for the "Zenith all-transistor Trans-Oceanic" radio receiver in the 1960 edition of the World Radio Handbook. As no receiver of this type and quality cannot be obtained here in Australia, I would be most grateful if you could furnish me with details of its performance; range of frequencies; price; etc., and how, if possible, I may obtain one of these receivers.

As I am most interested in Shortwave Reception and have taken up Shortwave Listening as a hobby, I require a high performance, low running cost receiver. The "Zenith Trans-Oceanic" seems the most suitable and convenient receiver to purchase, as it fulfills all these requirements.

It would be most appreciated if you could supply me with the above information.

Yours Sincerely,

Ian R. Chan

April 22 1960

Mr. G. A. Rawson
15 First Avenue
Willoughby, N.S.W., Australia

Dear Mr. Rawson:

We acknowledge and thank you very kindly for yours of April 15, and in response thereto, we are pleased to provide you with our latest radio line brochure accompanied by individual specification sheet on Zenith's Royal "1000"/ "1000D."

Kindly note that the prime difference between the Royal "1000" and Royal "1000D" is that the latter model contains a ninth wave band, covering 150-400 KC, utilized in the United States as a weather navigation band, in Europe as a long wave band.

All of our units are designed for reception on the standard broadcast band, covering 540 to 1600 KC which is commonly used throughout the world. This is many times referred to as the medium wave service.

In addition to reception on the standard or medium wave band, our model Royal "780" is designed for reception on the medium wave band as well as the afore mentioned band incorporated in the Royal "1000D."

Models Royal "1000" and "1000D" in the transistor, battery operated type units are also designed for shortwave reception. In addition to these units the B600 and B600L are designed for shortwave and standard broadcast reception on the bands as indicated.

For comparative reasons specification sheets are enclosed on the B600 and B600L. Please note that these units are designed for operation on AC, DC or the Zenith Z985X unit. They operate on any 25 to 60 cycle, 85-130 volt AC, DC power outlet or with utilization of a ballast adapter, operation is possible on 170-250 volt AC, DC power supply.

These two units are tube type radios and differ only in the cabinet finish.

We are pleased to provide you with our confidential courtesy export price list SPRA-112 and upon receiving indication from yourself as to the exact model or models in which you are definitely interested, we will be pleased to extend the total estimated CIF quotation.

Kindly note that our terms of payment are on a cash-in-advance basis in U. S. Currency or through suitable letter of credit in U. S. funds.

We take this opportunity to thank you kindly for the interest shown in Zenith's products, and trust that we will have the pleasure of being of further service at a later date.

Yours very truly,

H. L. Grimm
International Division

HLG/cl
Air-Mail
(Encl.)

15 First Avenue,
Willoughby,
N. S. W.,
Australia.

15th April, 1960.

Zenith Radio Corporation,
International Division,
6001 West Dickens,
Chicago 39,
Illinois,
U. S. A.

Dear Sirs,

Having seen your advertisement regarding Trans-Oceanic portable transistor receivers in the latest edition of the "WRH", would you be good enough to send me some more particulars regarding these models—in regard to prices, whether they would be suitable for Australian conditions, and if so are they available here?

Yours faithfully,
Gary Rawson

June 10, 1960.

Mr. L. H. Vidler
Flat 2, Block 2
Allawah Flats
Bradder, A. C. T.
Australia

Dear Mr. Vidler:

We acknowledge and thank you very kindly for your inquiry of June 3, and in response thereto, we are pleased to provide you with our latest radio line brochure.

We believe that the set which you are referring to is the

Zenith Royal "500E" which has dimensions almost identical to those which you have set forth.

In lieu of representation in Australia, we are pleased to provide you with the following quotations:

	FOB Factory W/Batteries	Estimated Parcel Post, Packing & Insurance
R100	$30.28	$1.50
R275	36.51	1.50
R500	51.20	1.50
R675	35.09	1.90
R710	40.90	2.80
R755	53.34	2.80
R780	65.30	2.80
R1000	150.00	7.50
R1000D	165.00	7.50

Kindly note that our terms of payment are on a cash-in-advance basis in U. S. currency to include the estimated forwarding charges.

We wish to take this opportunity to thank you very kindly for the interest which you have shown in Zenith's products, and we trust that we will have the pleasure of being of further service.

Yours very truly,

H. L. Grimm,
International Division.

HLG/cl
Air-Mail
(Encl.)

(Letterhead of Commonwealth Scientific and Industrial Research Organization, Canberra, A. C. T., Australia.)

Private address:
L. H. Vidler,
Flat 2, Block 2,
Allawah Flats,
Braddon, A. C. T.
Australia.

3rd June, 1960.

The Manager,
International Department,
Zenith Radio Corp.
Chicago, Illinois.
U. S. A.

Dear Sir,

I wish to purchase a "Zenith Transistor Radio". I believe you manufacture a set that measures approximately 6″ × 3½″ × 1½″.

Accordingly I would be pleased if you would forward me a catalogue and price list of your products and the postages applicable to posting to Australia, in particular, the radio mentioned above.

Yours faithfully,

(L. H. Vidler).

Defendant's Bulk Exhibit No. 215.

October 4, 1960.

Mr. R. J. Tremayne
c/o Marine Board of Hobart
Franklin Wharf
Hobart, Tasmania, Australia

Dear Mr. Tremayne:

Many thanks for your letter of September 29, wherein you are requesting full particulars covering our Trans-oceanic shortwave portable radios. In this respect we are pleased to attach our specification sheets on the Zenith Transoceanic model Royal "1000" (and 1000D); model B600 Transoceanic (tube type), and also our multiple band radios the Navigator Royal "780" (AM/FM), the new FM/AM portable radio, the Royal "2000." The suggested retail prices on these instruments here in the United States, F. O. B. factory, are as follows:

Royal "1000" (AM/SW	$250.00 ea.
Royal "1000D" (AM/LW/SW)	275.00 "
B600	139.95 "
Royal "780Y" (AM/LW)	99.95 "
Royal "2000" (FM/AM)	189.95 "

The above prices are suggested list prices and do not include such items as batteries, earphones, carrying cases, taxes, etc. We trust this answers your inquiry. If we can be of further service, please do not hesitate to write. Thank you.

Sincerely yours,

W. P. Semonoff,
International Division.

WPS/cl
Air-Mail
(Encl.)

R. J. Tremayne,
c/o Marine Board of Hobart,
Franklin Wharf,
Hobart, Tasmania.

29th September 1960.

The Zenith Radio Corporation,
Chicago 39,
Illinois, U. S. A.

Dear Sirs,

It would be appreciated if you could forward me particulars of the Zenith Trans-Oceanic all band transistor Portable Radio, indicating if possible the price at which the set sells in the U. S. A.

Thanking you,

Yours faithfully,

R. J. Tremayne.

October 17, 1960.

Mr. E. J. Smith
32 Hastings Rd.
Hawthorn East, E. 3,
Victoria, Australia

Dear Mr. Smith:

Many thanks for your letter of October 10, requesting full particulars on our fine Transoceanic model Royal "1000D" shortwave portable radio. In this respect, we are pleased to attach our specification sheet and folder which offers the complete information that you desire. You will notice that model Royal "1000D" is the nine band radio, the extra band operating on longwave of 150 to 400 KC. The model Royal "1000" does not incorporate this extra longwave band.

We have recently appointed a new distributor for your country. We suggest that you contact them for prices and further information. They are located at:

Montrose (Australia) Pty. Ltd.
22 York Street
Sydney, Australia

Once again, thank you kindly for your inquiry. If we can be of further service, please do not hesitate to write.

Sincerely yours,

W. P. Semonoff,
International Division.

WPS/ch

Air-Mail

cc: Montrose, (Australia) Pty. Ltd.

32 Hastings Rd.,
Hawthorne East. E.3
Victoria,
Australia.

10th Oct. 1960.

The Manager,
Zenith Radio Corp.
6001 W. Dickens Ave.,
Chicago 39,
Illinois, U. S. A.

Dear Sir,

Would you kindly forward to me at the above address all the information you have on your Zenith Trans Ocean 9 Band All Transistor Portable.

Thanking you in anticipation.

Yours faithfully,

E. J. Smith.

November 29, 1960.

Mr. P. J. Lawrence
The Rectory
2 Rowland Street
Maylands
Western Australia

Dear Mr. Lawrence:

Many thanks for your lettergram wherein you are requesting information on Zenith Transoceanic portable radios. In this respect, we are pleased to enclose our specification sheet covering the new Royal "1000" Transoceanic all-transistor portable radio; and also the tube type model B600 Transoceanic portable radio.

If you will kindly let us know exactly which model you desire to purchase, we shall be glad to quote you our confidential courtesy export prices. Our terms of payment are cash-in-advance through an authorized bank check, or irrevocable letter of credit in our name.

We shall look forward to receiving your further comments. Thank you.

Sincerely yours,

W. P. Semonoff,
International Division.

WPS/cl

Air-Mail

The Rectory
2 Rowland St
Maylands
Western Australia

Zenith Radio:

Dear Sir,

I saw your advertisement for a short wave wireless in the National Geographic Magazine (1953) could you please send me illustrated literature on your Zenith, seven band Super Trans-Oceanic, and other sets were short wave is the main feature with a hand spreader or a vernier logging device

Yours Sincerely

P. J. Lawrence.

December 20, 1960

Mr. Emmanuel Cominos
245 Margaret Street
Toowoomba
Queensland, Australia

Dear Mr. Cominos

Many thanks for your recent letter requesting information on Zenith Royal "1000D" Transoceanic portable radios. In this respect, we are pleased to enclose our specification sheet which gives the full details of this magnificent radio receiver.

We are pleased to quote you our courtesy export price of $164.00 each, FOB Chicago. Our terms of payment are cash-in-advance in suitable U. S. funds. If you will kindly let us know if you are still interested in purchasing this radio, we shall be glad to quote you the estimated CIF landed cost. At the time of answering, kindly indicate whether you desire air or ocean shipping. Thank you.

Sincerely yours,

W. P. Semonoff
International Division

WPS/cl

Air-Mail

Emmanuel Cominos
245 Margaret street,
Toowoomba.
Queensland
Australia.

14th December 1960

Zenith Radio Corporation
Chicago 39
Illinois
U. S. A.

Dear Sir,

In the December edition of the National Geographic magazine, I was attracted by your advertisement for the Trans Oceanic all transistor portable radio.

Since November, import restrictions in Australia have been raised and if it is at all possible, I would be much obliged if you could send me a prospectus on this model and also the total cost of purchase in Australian currency.

Hoping that this request will come to some avail,

Yours sincerely

E. Cominos

May 8, 1962

Rayford's Home Electrics Pty. Ltd.
281 Hunter Street
Newcastle, N.S.W., Australia
Attention: Mr. R. F. Mason, Manager

Gentlemen:

It was our pleasure to receive your letter of May 2 inquiring about the purchase of a Zenith Royal 1000 transistor radio.

Since we do not have any representation in Australia, we usually refer all inquiries to our distributor in Hong Kong for handling and if you will contact them I am sure they will quote you an attractive price. Their address is:

Scientific Service Company, Ltd.
447-8 Alexandra House
P. O. Box 923
Hong Kong

We enclose some line brochures covering our radio, television and phonograph line which might prove of interest to you.

Once again, we wish to thank you very kindly for your interest in our products.

Yours very truly,

H. R. Hart
International Division

HRH/dc
Airmail
Encl.

(Letterhead of Rayford's Home Electrics Pty. Ltd.,
Newcastle, N.S.W., Australia.)

2nd May, 1962.

The Manager,
Zenith Radio Corporation,
Chicago 39,
Illinois. U. S. A.

Dear Sir,

We have had an enquiry regarding a Zenith Royal 1000 transistor radio, and would appreciate your reply as to our method of purchase and actual price etc. If this model is no longer available, please advise as to current design. You might if at all possible, send me details, pamphlets etc. on your range of tape recorders, as we are the largest distributor (retail wise) in this particular district.

Thanking you in anticipation of your prompt reply.

Yours faithfully,

Rayford's Home Electrics Pty. Ltd.
R. F. Mason.
Manager.

November 20, 1962

Mr. P. G. O'Neil
309 Mill Point Road
South Perth
Western Australia

Dear Mr. O'Neil:

In answer to your letter of November 15th, Zenith does not have any representation in Australia, and we refer you to our Hong Kong distributor for price and delivery information of our Zenith radios.

The address of our Hong Kong distributor is:

Scientific Service Company, Ltd.
447-8 Alexandra House
P. O. Box 923
Hong Kong

Since Scientific Service maintains an In Bond warehouse, they can offer you prices comparable to what you might expect if we were importing sets into Australia.

Please let us know if we can be of further assistance to you.

Yours very truly,

H. R. Hart
International Division

HRH/jm

airmail

P.G.O'Neil
309 Mill Point Road
South Perth
Western Australia

15th November 1962

Zenith Radio Corp.
Chicago 39
Illinois . . . . U. S. A.

Dear Sirs

Please forward Full Particulars of Transistor Portable Radios including the 9 Wave Band Model as advertised in "Post International", also advise if these models are available in Australia.

And Oblige

Yours Faithfully

(Mr. P.G.O'Neil)

January 3, 1963

Greg Gersekoski
7 Radnor Street
Indooropilly, Brisbane,
Queensland, Australia

Dear Mr. Gersekoski:

In answer to your letter of December 18 it is our pleasure to enclose descriptive material on all of our stereophonic record players.

After you have looked over the features of each and everyone of our sets please make your selection and let us know. We will be most pleased to quote you the total C. I. F. Brisbane charges for the model of your choice.

Thank you very kindly.

Yours very truly,

H. R. Hart
International Division.

HRH/dc

Airmail

Encl.

Tel. 78-2778 December 18, 1962

7 Radnor Street,
Indooroopilly, Brisbane,
Queensland, Australia.

Zenith Sales Corporation,
6001 Dickens Avenue,
Chicago 39. Illinois.
U. S. A.

Dear Sir,

On December 24, 1960, I wrote to you, Zenith International, in connection with the purchase of your Royal "50" Pocket Transistor Radio. A friend of ours who was, at the time in the United States, carried the set with him to Australia, and I am most satisfied at its unfailing performance, as well as its smart appearance and wonderful durability.

I am writing you now, however, in connection with the purchase of a 4-speed Stereophonic Record Player. I am not sure whether Zenith manufacture Phonographs or not, but would appreciate it greatly if you'd be as good as to forward Via Air, at your earliest convenience, a small detailed catalog, listing your complete 1963 range of portable Phonographs, together with the respective prices of each set illustrated.

Do you have any recognised Export Firms in the Chicago area who would be able to send the set of our choice to Brisbane? Unfortunately, we have no "friend" this time who would be able to bring the set back with him, and therefore would like the set sent by "surface mail" either through one of your Export Firms—or directly from the Factory itself.

We have checked with the Australian Customs and they assured us an import licence would not be required in this case, but that a small amount of duty would be applicable upon arrival.

Also, could a 50 cycle adaptor be shipped with the designated set, in order to compensate for the difference in cycles? If so, how much would such an adaptor cost—or would it be free of charge if purchased with the Phonograph?

And one other thing, do any of your "portable" sets include a radio or are they all manufactured without radios? As I am most anxious to procure a set just as soon as possible, an early reply in this matter would certainly be appreciated. Thanking you, and hoping to be favoured with an early reply,

I remain,
Very truly yours,
Greg Gersekoski

Airmail

Foreign
Information
Service

March 28, 1960

Bulletin No. 2,105

Confidential for Customers
Australia: E-M

There has been a further relaxation of import regulations by the Australian Government. Some 90 per cent of all imports entering Australia are now free from import licensing. For these goods, banks in Australia can make exchange available simply on evidence of shipment.

Imports which remain subject to licensing cover principally consumer goods. Licensing control falls under the following categories.

Administrative—requiring special application.

Quotas—licenses are granted either on a quota established for the importer in a base year or on a replacement basis whereby a fresh license is issued when the previous license has been utilized. Current quotas generally have been increased by 20 per cent.

There has also been a relaxation of controls effecting remittances. Residents may make remittances of personal gifts, subscriptions, payments for services rendered, repayment of debts, fees, rates, taxes and other like commitments, upon £A. 150 per annum and sustenance up to £Stg. 80 per month (remittable 3 months in advance if desired).

[Handwritten note]

Peirels

Will you pls find out just where our products—complete or in components—fit in.

Jim.
4/19

April 21, 1960

Mr. Edmund E. Jarvis,
Trade Commissioner,
Australian Trade Commission,
6 W. Michigan Avenue,
Chicago 2, Illinois.

Dear Mr. Jarvis:

The foreign information service has advised us with their bulletin of March 28 that a further relaxation of import regulations has been announced by the Australian Government. It was stated, that about 90% of all imports entering Australia are now free from import licensing and banks in Australia are free to make exchange available for such imports simply on evidence of shipment.

We are manufacturers of electronic products, radios, television receivers, and record playing instruments which we offer in the form of completely assembled units and also in the form ~~of~~ kits of parts for local assembly.

We will appreciate your information as to how our above indicated products are affected by this new relaxation of import restrictions and if our products can now be imported freely into Australia, subject only to normal clearance through customs channels.

For your convenience, we are enclosing a stamped self-addressed envelope for your reply and thanking you in advance for your kind attention, we remain,

Yours very truly,
Walter R. Peirels,
Assistant Sales Manager
International Division.

WRP/ag
Enclosure
bcc: Mr. J. A. Miguel, Jr.

Australian Government Trade Commissioner.

6 North Michigan Avenue
Chicago, Illinois, U. S. A.

Cable Address Austrade
Telephone RAndolph 6-5170

(Stamp) Received Jul 19 1960, Jul 20 1960 (Illegible).

Your Ref.

July 18, 1960

Our Ref. 7/R/E

Mr. Walter R. Peirels,
Assistant Sales Manager,
International Division,
Zenith Sales Corporation,
6001 Dickens Avenue,
Chicago 39, Illinois

Dear Mr. Peirels:

I regret the delay in answering your letter of April 21, but the nature of your enquiry required a clarification on the subject with the Department of Trade in Canberra which has advised as follows:

> "In order to indicate whether the firm's products (classed broadly as electronic) are subject to licensing or not, it is necessary to have details as to what particular items are involved—as licensing treatment accorded is determined by the tariff classification of the goods concerned.
>
> "A wide range of electronic goods are exempt from control and it could well be that all the firm's products are no longer subject to import licensing. To indicate the precise licensing position, however, further details should be submitted.
>
> "In respect of items specifically mentioned viz—radios, television receivers and record playing instruments the position is that these items are no longer subject to import licensing."

I trust that you will find the foregoing information interesting and illuminating, and if other questions should arise please do not hesitate to write us.

Sincerely yours,

AEG/pe

E. E. Jarvis, *Trade Commissioner.*

DEFENDANT'S BULK EXHIBIT NO. 216.

MONTHLY BULLETIN

of

PRODUCTION STATISTICS

No. [illegible] October, 1960

COMMONWEALTH BUREAU
of
CENSUS AND STATISTICS
CANBERRA AUSTRALIA

PREPARED UNDER INSTRUCTIONS F [illegible] ONORABLE THE TREASURER

COMMON [illegible] TISTICIAN

Defendant's Bulk Exhibit No. 216.

MONTHLY BULLETIN OF AUSTRALIAN PRODUCTION STATISTICS

No. 145 OCTOBER, 1960

For the purpose of the accompanying statistics, a "factory" is taken to be a manufacturing establishment in which four or more persons are employed, or in which power other than manual is used, and the production of small establishments not classified for statistical purposes as factories is not included in the figures shown herein. Annual totals for 1948-49 and the last three complete financial years are shown in conjunction with (a) totals for the most recent six month and three month periods, together with comparative figures for the same periods, twelve months earlier, and (c) monthly totals for each of the latest thirteen months (in most cases).

Figures from July, 1959 onwards are preliminary and subject to revision, but the annual totals shown for 1958-59 are final.

An index of the contents is given on page 2.

Many of the items included are shown in greater detail in the Secondary Industries Bulletin and the series of Manufacturing Industries Bulletins.

The production of each of the commodities listed is given up to the latest available month. For each commodity other than those collected by, or in conjunction with Government Statisticians, the authority responsible for providing the figures is indicated by a footnote to the item title. Figures up to 1958-59 inclusive represent totals derived, wherever possible, from the annual factory returns collected by Deputy Commonwealth Statisticians in each State. It should be noted that in some cases annual returns are accepted from factories for a year other than the normal financial year ended June, 30th.

PERSONS USING THIS BULLETIN ARE ASKED TO NOTE PARTICULARLY THE FOLLOWING: -

1. The Monthly Bulletin of Production Statistics contains data of monthly output of over 1[illegible] individual factory products. As monthly particulars of additional items are collected and become available for publication, they will be included in the Bulletin. The items for which quantity of output is published herein are not, however, selected as representative of all factory output. In practice, it is not possible to make such a selection at present.

2. The tables should be read only as showing monthly trends in output of the individual items or groups of items listed. They have not been summarised into a monthly index of Volume of Factory Output, nor a monthly index of Industrial Production because they cannot be assumed to be representative of total trends in volume of factory output nor volume of industrial production. It is, in fact improbable that they are continually representative in this sense.

3. Although the list of items in these monthly tables includes only a small proportion of all the items produced in factories, it nevertheless relates directly to items accounting for possibly up to 35 per cent. of total value of factory output.

4. Comparable annual data of quantity of output are collected at present for a longer list of items covering about one-half of factory production, measured in gross value of output, or slightly less (about 45 per cent.) measured in terms of net value of output or "value added" by process of manufacture. Among the factors limiting useful extension in the annual collection of factory output (in quantitative terms) into the field as yet unrecorded in that way are: (i) the fact that a large part of factory production cannot be expressed in quantity terms but only as a gross or net value of output; (ii) the great and growing diversity of factory products; and (iii) the absence of homogeneity in many types of factory products.

S.R. CARVER
COMMONWEALTH STATISTICIAN

10.

AUSTRALIAN PRODUCTION STATISTICS

Item / Period	WIRELESS AND TELEVISION						
	Radio Sets					Television Sets	
	Car	Portable	Other (a)	Radio-grams	Total	Television only	With Radio and/or Record Player
	– thousand –						
Year : 1948-49	n.a.	n.a.	n.a.	n.a.	294.1	..	..
1957-58	85.4	77.4	116.1	101.9	380.8	273.8	8.7
1958-59	92.4	113.4	100.7	71.8	378.3	305.1	11.3
1959-60	105.9	167.6	75.7	56.7	405.9	435.3	6.6
Latest 6 Months, 1960	53.7	124.3	33.9	23.9	235.8	261.6	2.47
Same 6 months, 1959	36.8	46.5	34.5	30.2	148.0	240.5	4.27
Latest 3 months, 1960	31.6	95.1	15.7	11.0	153.4	119.1	1.02
Same 3 months, 1959	23.4	28.4	21.7	14.2	87.7	123.6	1.97
Month, 1959: October	8.92	14.55	9.85	5.08	38.4	39.9	0.60
November	9.56	22.92	10.65	4.51	47.6	33.5	0.70
December	11.17	27.44	9.18	5.66	53.4	28.4	0.62
1960: January	6.03	14.98	3.88	2.79	27.7	18.2	0.34
February	12.13	16.70	5.02	3.85	37.7	25.8	0.38
March	14.06	14.82	5.03	6.21	40.1	33.8	0.39
April	9.73	14.70	5.10	4.51	34.1	31.9	0.43
May	8.04	13.35	3.98	5.73	31.1	45.4	0.55
June	6.49	8.46	6.56	4.52	26.0	49.2	0.53
July	7.50	7.44	7.63	2.71	25.3	r47.9	0.37
August	9.04	25.30	4.51	3.33	42.2	r50.1	0.32
September	11.22	29.24	4.56	3.66	48.7	r42.2	0.32
October	11.38	40.50	6.66	3.97	62.5	*26.8	*0.38

Item / Period	Record Changers	Record Players	Phonographs	Phonograph Records			Tape and Wire Recorders
				Single Play (b)	Extended Play (c)	33⅓ r.p.m.	
	– thousand –						Number
Year : 1948-49	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
1957-58	123.4	57.6	n.a.	4,861	1,325	2,253	3,120
1958-59	57.3	58.0	29.1	3,736	1,282	2,113	3,198
1959-60	49.5	47.9	24.9	3,505	1,240	2,531	4,865
Latest 6 months, 1960	17.1	23.9	14.2	1,648	494	1,210	1,970
Same 6 months, 1959	29.5	22.3	10.5	1,695	612	1,058	2,135
Latest 3 months, 1960	9.1	11.2	7.7	825	300	662	1,019
Same 3 months, 1959	15.5	9.[illegible]	4.4	900	373	610	1,550
Month, 1959: October	4.73	2.8[illegible]	1.64	316	153	218	543
November	4.82	2.9[illegible]	2.99	250	136	258	439
December	3.55	4.78	2.64	272	89	200	483
1960: January	2.18	3.15	1.68	254	74	164	212
February	4.21	4.22	2.56	353	128	261	251
March	5.15	5.73	2.99	344	131	272	687
April	3.34	4.58	1.68	268	73	209	314
May	3.59	3.77	2.29	308	70	214	270
June	2.45	5.17	1.79	228	59	165	396
July	1.96	3.79	2.39	287	65	169	285
August	2.64	3.57	2.31	279	95	218	147
September	3.12	4.89	2.62	277	106	219	492
October	3.31	2.72	2.60	269	99	225	380

(a) Mantel, Table and Console. (b) 78 r.p.m. and 45 r.p.m. Single Play. (c) 45 r.p.m. Extended Play, 33⅓ r.p.m. 7" and 16 2/3 r.p.m. 7", 10" and 12".

* November, 1960; Television only 20.0 ; with Radio and/or Record Player 0.32.

CERP Pub. from: Canberra
To: Foreign Communications Division
Office of Foreign Commercial Services
Department of Commerce
Washington 25, D.C.

BDSA ~~[illegible]~~ 318-315

MONTHLY BULLETIN
OF
PRODUCTION STATISTICS

No. 174
MARCH, 1963

RECEIVED
JUL 24 1963
LEATHER, SHOES & ALLIED
PRODUCTS DIVISION

COMMONWEALTH BUREAU OF CENSUS AND STATISTICS, CANBERRA, AUSTRALIA

COMMONWEALTH BUREAU OF CENSUS AND STATISTICS

CANBERRA, AUSTRALIA

MONTHLY BULLETIN OF PRODUCTION STATISTICS

NO. 174 - MARCH, 1963.

EXPLANATORY NOTES

1. The Bulletin contains statistics of production in Australia of mine and factory products for which monthly figures are available. An alphabetical index of these products is given on page 2.

2. For each product annual totals for the last three complete financial years are shown in conjunction with (a) totals for the most recent six-monthly and three-monthly periods together with similar figures for the same periods, twelve months earlier and (b) monthly totals for each of the latest fourteen months (where available).

3. The annual totals for the years 1959-60 and 1960-61 are mostly derived from the annual factory returns collected by the Deputy Commonwealth Statistician in each State and are final. It should be noted that in some cases, returns are accepted from factories for a year other than the normal financial year ending on 30th June.

4. The monthly figures are also based for the most part on returns collected by the Deputy Commonwealth Statisticians. Where another authority is the source, this is shown in a footnote. Monthly figures from July, 1961 onwards may be revised when the results of the Annual Factory Returns for 1961-62 become available.

5. For the purpose of factory statistics collections, a factory is taken to be a manufacturing establishment in which four or more persons are employed or in which power other than manual is used; any production in small establishments not classified as factories is not included in the figures shown herein.

6. Further detail in respect of many of the items will be found on an annual basis in the Secondary Industries Bulletin and the series of Manufacturing Industries Bulletins published by this Bureau and on a monthly basis, in the Monthly Production Summaries, also issued by this Bureau.

PERSONS USING THIS BULLETIN ARE ASKED TO NOTE PARTICULARLY THE FOLLOWING:-

1. The Monthly Bulletin of Production Statistics contains data of monthly output of over 300 individual factory products. As monthly particulars of additional items are collected and become available for publication, they will be included in the Bulletin. The items for which quantity of output is published herein are not, however, selected as representative of all factory output. In practice, it is not possible to make such a selection at present.

2. The tables should be read only as showing monthly trends in output of the individual items or groups of items listed. They have not been summarised into a monthly index of Volume of Factory Output, nor a monthly index of Industrial Production, because they cannot be assumed to be representative of total trends in volume of factory output or volume of industrial production. It is, in fact, improbable that they are continually representative in this sense.

3. Although the list of items in these monthly tables includes only a small proportion of all the items produced in factories, it nevertheless relates directly to items accounting for possibly up to 40 per cent. of total value of factory output.

4. Comparable annual data of quantity of output are collected at present for a longer list of items covering about one-half of factory production, measured in gross value of output, or slightly less (about 45 per cent.) measured in terms of net value of output or "value added" by process of manufacture. Among the factors limiting useful extension in the annual collection of factory output (in quantitative terms) into the field as yet unrecorded in that way are: (i) the fact that a large part of factory production cannot be expressed in quantity terms but only as a gross or net value of output; (ii) the great and growing diversity of factory products; and (iii) the absence of homogeneity in many types of factory products.

AUSTRALIAN PRODUCTION STATISTICS

Period	RADIO SETS: Car	RADIO SETS: Portable	RADIO SETS: Other (a)	RADIO SETS: Radio-grams	RADIO SETS: Total	Transistors (excl. Power)	Magnetic Sound Recorders (b)
	- thousand -						number
Year : 1959-60	104.8	164.4	76.3	57.1	402.6	880	4,342
1960-61	87.2	244.4	74.4	48.8	454.8	2,111	4,363
1961-62	58.1	177.6	80.5	52.3	368.5	1,758	4,988
Latest 6 months, 1962-63	64.2	131.8	67.0	33.6	296.6	1,373	2,592
Same 6 months, 1961-62	29.8	108.3	32.5	27.3	197.9	917	n.a.
Latest 3 months, 1962-63	30.4	50.9	24.9	15.7	121.9	589	1,499
Same 3 months, 1961-62	13.4	38.5	44.0	13.9	79.8	356	n.a.
Month, 1962 : February	5.17	13.55	5.21	5.19	29.1	118	n.a.
March	5.23	13.74	5.76	5.91	30.6	145	n.a.
April	4.55	10.61	5.86	3.67	24.7	147	n.a.
May	6.36	9.53	9.05	4.58	29.5	117	n.a.
June	7.01	10.78	9.32	3.29	30.4	100	n.a.
July	8.91	9.88	7.63	4.59	31.0	119	545
August	9.19	13.19	9.43	6.08	37.9	160	613
September	9.93	14.35	12.12	5.48	41.9	186	340
October	10.75	21.26	12.38	6.02	50.4	274	458
November	13.10	31.74	19.49	6.38	70.7	305	382
December	9.96	27.85	10.26	5.49	53.6	205	253
1963 : January	7.44	15.94	9.33	3.88	36.6	177	232
February	10.89	17.90	7.90	5.48	42.2	206	594
March	12.04	17.04	7.64	6.37	43.1	206	673

Period	TELEVISION SETS: Television only	TELEVISION SETS: With Radio and/or Record Player	Television Picture Tubes	Phonographs (c)	PHONOGRAPH RECORDS: Single Play (d)	PHONOGRAPH RECORDS: Extended Play (e)	PHONOGRAPH RECORDS: 33 1/3 R.P.M. (f)
	- thousand -						
Year : 1959-60	428.8	6.7	n.a.	25.5	3,500	1,239	2,530
1960-61	311.8	4.2	372.3	24.2	3,210	845	2,926
1961-62	287.7	7.2	327.6	24.4	3,018	755	3,421
Latest 6 months, 1962-63	123.4	4.71	183.8	20.4	1,814	504	1,830
Same 6 months, 1961-62	111.6	2.94	130.3	13.1	1,635	398	1,828
Latest 3 months, 1962-63	59.4	2.01	80.1	7.9	958	222	817
Same 3 months, 1961-62	59.7	1.91	75.2	6.1	865	195	867
Month 1962 : February	20.4	0.67	25.0	2.43	241	58	269
March	26.7	0.87	31.8	2.40	305	77	337
April	26.4	0.72	29.4	2.22	191	64	209
May	40.9	0.96	51.4	1.86	259	77	291
June	37.8	1.07	40.7	2.55	225	44	268
July	36.0	1.34	40.2	4.16	289	52	267
August	39.0	1.28	43.4	3.51	326	53	314
September	20.1	1.17	26.5	2.91	268	77	354
October	22.6	0.93	29.1	3.81	297	87	431
November	24.4	1.15	33.3	4.21	293	120	334
December	17.0	0.62	21.3	4.48	266	75	248
1963 : January	15.5	0.64	20.9	1.87	326	66	233
February	20.0	0.61	26.9	3.31	359	88	282
March	23.9	0.76	32.3	2.70	273	68	302

(a) Mantel, Table and Console. (b) Prior to July, 1962, described on Collection Form as "Tape and Wire Recorders". (c) Includes Record Players in Case or Cabinet. (d) 78 r.p.m. and 45 r.p.m. Single Play. (e) 45 r.p.m. Extended Play, 33 1/3 r.p.m. 7" and 16 2/3 r.p.m. 7", 10" and 12". (f) 10" and 12".

MONTHLY BULLETIN
OF
PRODUCTION STATISTICS

No. 180
SEPTEMBER, 1963

COMMONWEALTH BUREAU OF CENSUS AND STATISTICS, CANBERRA, AUSTRALIA

Defendant's Bulk Exhibit No. 216.

COMMONWEALTH BUREAU OF CENSUS AND STATISTICS
CANBERRA, AUSTRALIA
MONTHLY BULLETIN OF PRODUCTION STATISTICS
NO. 180 : SEPTEMBER, 1963

EXPLANATORY NOTES

1. The Bulletin contains statistics of production in Australia of mine and factory products for which monthly figures are available. An alphabetical index of these products is given on page 2.

2. For each product annual totals for the last three complete financial years are shown in conjunction with (a) totals for the most recent six-monthly and three-monthly periods together with similar figures for the same periods, twelve months earlier and (b) monthly totals for each of the latest fourteen months (where available).

3. The annual totals for the years 1959-60 and 1960-61 are mostly derived from the annual factory returns collected by the Deputy Commonwealth Statistician in each State and are final. It should be noted that in some cases, returns are accepted from factories for a year other than the normal financial year ending on 30th June.

4. The monthly figures are also based for the most part on returns collected by the Deputy Commonwealth Statisticians. Where another authority is the source, this is shown in a footnote. Monthly figures from July, 1962 onwards may be revised when the results of the Annual Factory Returns for 1962-63 become available.

5. For the purpose of factory statistics collections, a factory is taken to be a manufacturing establishment in which four or more persons are employed or in which power other than manual is used; any production in small establishments not classified as factories is not included in the figures shown herein.

6. Further detail in respect of many of the items will be found on an annual basis in the Secondary Industries Bulletin and the series of Manufacturing Industries Bulletins published by this Bureau and on a monthly basis, in the Monthly Production Summaries, also issued by this Bureau.

PERSONS USING THIS BULLETIN ARE ASKED TO NOTE PARTICULARLY THE FOLLOWING:-

1. The Monthly Bulletin of Production Statistics contains data of monthly output of over 300 individual factory products. As monthly particulars of additional items are collected and become available for publication, they will be included in the Bulletin. The items for which quantity of output is published herein are not, however, selected as representative of all factory output. In practice, it is not possible to make such a selection at present.

2. The tables should be read only as showing monthly trends in output of the individual items or groups of items listed. They have not been summarised into a monthly index of Volume of Factory Output, nor a monthly index of Industrial Production, because they cannot be assumed to be representative of total trends in volume of factory output or volume of industrial production. It is, in fact, improbable that they are continually representative in this sense.

3. Although the list of items in these monthly tables includes only a small proportion of all the items produced in factories, it nevertheless relates directly to items accounting for possibly up to 40 per cent. of total value of factory output.

4. Comparable annual data of quantity of output are collected at present for a longer list of items covering about one-half of factory production, measured in gross value of output, or slightly less (about 45 per cent.) measured in terms of net value of output or "value added" by process of manufacture. Among the factors limiting useful extension in the annual collection of factory output (in quantitative terms) into the field as yet unrecorded in th[illegible] are (i) the fact that a large part of factory production cannot be expressed in quantity terms but only as a gross or net value of output; (ii) the great and growing diversity of factory products; and (iii) the absence of homogeneity in many types of factory products.

AUSTRALIAN PRODUCTION STATISTICS

Period	RADIO SETS					Transistors (excl. Power)	Magnetic Sound Recorders (b)
	Car	Portable	Other (a)	Radiograms	Total		
	- thousand -						number
Year : 1960-61	87.2	244.4	74.4	48.8	454.8	2,111	4,363
1961-62	57.7	178.1	78.6	52.6	367.0	1,758	5,032
1962-63	123.0	206.5	106.3	64.2	500.0	2,393	6,070
Latest 6 months, 1963	66.8	78.0	27.4	29.4	201.6	1,454	2,191
Same 6 months, 1962	46.0	68.3	53.4	27.7	195.4	829	n.a.
Latest 3 months, 1963-64	36.0	40.7	17.3	15.0	109.0	899	1,211
Same 3 months, 1962-63	28.1	37.4	29.2	16.2	110.8	465	1,498
Month, 1962 : August	9.19	13.19	9.43	6.08	37.9	160	613
September	9.95	14.35	12.12	5.48	41.9	186	340
October	10.75	21.26	12.38	6.02	50.4	274	458
November	13.10	31.74	19.49	6.38	70.7	305	382
December	9.96	27.89	10.26	5.49	53.6	205	253
1963 : January	7.44	15.94	9.33	3.88	36.6	177	232
February	10.89	17.90	7.90	5.47	42.2	206	594
March	12.04	17.04	7.64	6.37	43.1	206	673
April	10.34	13.23	2.99	5.68	32.2	179	627
May	12.57	13.35	3.06	4.80	33.8	229	249
June	7.88	10.70	4.09	3.92	26.6	147	104
July	12.36	9.86	7.38	4.71	34.3	292	133
August	12.12	13.85	4.78	4.83	35.6	304	460
September	11.49	17.01	5.11	5.46	39.1	303	618

Period	TELEVISION SETS		Television Picture Tubes (g)	Phonographs (c)	PHONOGRAPH RECORDS		
	Television only	With Radio and/or Record Player			Single Play (d)	Extended Play (e)	33 1/3 R.P.M. (f)
	- thousand -						
Year : 1960-61	311.8	4.2	372.3	24.2	3,210	845	2,926
1961-62	287.7	7.2	328.7	24.5	3,018	755	3,421
1962-63	r 281.4	11.1	r 370.7	r 36.5	3,629	897	3,669
Latest 6 months, 1963	143.5	5.65	190.3	13.6	1,924	567	1,997
Same 6 months, 1962	191.3	6.54	231.5	17.2	1,558	347	1,703
Latest 3 months, 1963-64	71.7	3.02	93.3	8.1	992	256	1,093
Same 3 months, 1962-63	86.2	3.79	110.0	10.6	883	182	935
Month, 1962 : August	30.0	1.28	43.4	3.51	326	53	314
September	20.1	1.17	26.5	2.91	268	77	354
October	22.6	0.93	29.1	3.81	297	87	431
November	24.4	1.15	33.3	4.21	293	120	334
December	17.5	0.62	21.3	4.48	266	75	248
1963 : January	15.1	0.64	20.9	1.87	326	66	233
February	20.0	0.61	26.9	3.31	359	88	282
March	23.9	0.76	32.3	2.70	273	68	302
April	21.5	0.87	30.2	1.26	291	44	297
May	28.2	0.94	40.4	r 2.47	325	56	360
June	22.1	0.82	26.4	1.78	316	111	247
July	24.5	1.10	34.9	1.86	361	78	377
August	24.2	0.88	30.2	2.66	316	115	363
September	23.0	1.04	28.2	3.55	315	63	353

(a) Mantel, Table and Console. (b) Prior to July, 1962, described on Collection Form as "Tape and Wire Recorders". (c) Includes Record Players in Case or Cabinet. (d) 78 r.p.m. and 45 r.p.m. Single Play. (e) 45 r.p.m. Extended Play, 33 1/3 r.p.m. 7" and 16 2/3 r.p.m. 7", 10" and 12". (f) 10" and 12". (g) Includes those incorporating used screens from July, 1963.

Defendant's Bulk Exhibit No. 216.

CENTRAL STATISTICAL OFFICE

MONTHLY DIGEST OF STATISTICS

No. 214

OCTOBER 1963

RECEIVED
NOV 21 1963
J. A. MIGUEL, JR.

LONDON: HER MAJESTY'S STATIONERY OFFICE
SEVEN SHILLINGS

MONTHLY DIGEST OF STATISTICS

No. 214

OCTOBER 1963

This *Digest* has been prepared by the Central Statistical Office in collaboration with the Statistics Divisions of Government Departments.

2. The name of the Department or organisation providing the statistics is shown under each table. Some of the statistics provided by Departments are actually collected by other organisations such as nationalised boards and trade associations. The assistance provided by these organisations, too numerous to mention individually, is gratefully acknowledged.

3. The figures in the *Digest* are mainly totals for calendar months or monthly averages.

4. Some of the figures included in this *Digest* are provisional only and may be revised in later issues.

Definitions

5. *A Supplement of Definitions and Explanatory Notes*, published with the January issue, gives detailed definitions of all the terms and units used in the *Digest*.

6. The following general definitions should be noted in using the *Digest*:

Area covered. Except where otherwise stated, all statistics relate to the United Kingdom of Great Britain and Northern Ireland.

Units of measurement.
Ton = long ton of 2,240 lb.
Gallon = imperial gallon.

Consumption and stocks. The terms "consumption", "disposals" and "stocks" are normally defined in detail in the *Supplement* to the *Digest*.

Figures of consumption and stocks are seasonal and should be used with caution. The stocks figures given may often relate to only part of the total stocks in the country.

External trade. Owing to differences in coverage and timing, figures of imports and exports are not always comparable with those for production, consumption and stocks.

Symbols and conventions used

7. *Symbols.* The following symbols are used throughout:

.. not available.

— nil or less than half the final digit shown.

* average (or total) of five weeks.

8. *Change of basis.* A line drawn across a column between two consecutive figures indicates that the figures above and below the line have been compiled on different bases and are not strictly comparable. In each case a footnote explains the difference.

9. *Rounding of figures.* In tables where figures have been rounded to the nearest final digit, there may be an apparent slight discrepancy between the sum of the constituent items and the total as shown.

Central Statistical Office,
Great George Street, S.W.1.

25th October, 1963.

1 HD

ELECTRONIC APPARATUS

Radio and other electronic apparatus

Deliveries

TABLE 78 £ thousand

	Electronic control equipment(1)		Electronic computers		Electronic measuring and testing equipment		Transmitters (2)		Radar and navigational aids		Radio communication equipment		All other electronic apparatus(3)	
	Total	For export	Total	For export	Total	For export	Total	For export	Total	For export	Total	For export	Total	For export
1959	3,256	432	7,662	2,090	6,702	1,890	3,846	2,364	14,410	8,943	10,648	6,287	5,951	2,707
1960	3,169	340	8,196	2,301	8,472	3,245	4,360	2,828	14,619	9,875	11,585	7,531	7,129	3,139
1961	11,918	3,142	10,903	1,262	9,033	3,193	5,478	3,097	14,059	9,056	13,406	8,645	9,871	4,568
1962	15,384	3,904	13,440	2,544	11,599	3,663	6,374	3,780	18,121	11,998	15,677	10,028	9,164	3,839
1960 1st qtr.	672	75	2,036	494	2,126	629	936	544	3,925	2,860	2,890	1,785	1,513	581
2nd qtr.	698	107	1,255	541	2,192	923	1,089	605	3,277	2,209	2,922	1,822	1,767	829
3rd qtr.	817	74	2,094	726	1,959	768	867	617	3,076	1,930	2,803	1,686	1,706	746
4th qtr.	981	85	2,811	540	2,194	926	1,468	1,063	4,341	2,877	3,370	2,268	2,143	982
1961 1st qtr.	2,362	507	2,911	253	2,134	727	1,152	662	3,548	2,268	3,287	2,137	2,949	1,305
2nd qtr.	2,709	740	2,888	305	2,142	772	1,334	827	3,735	2,549	3,290	2,113	2,164	868
3rd qtr.	3,186	978	2,266	340	2,154	793	1,336	695	3,197	1,807	2,939	1,822	2,035	833
4th qtr.	3,662	917	2,838	364	2,603	901	1,655	913	3,579	2,433	3,890	2,573	2,722	1,562
1962 1st qtr.	4,156	868	3,009	184	2,731	877	1,800	1,050	5,369	3,640	3,994	2,718	2,573	957
2nd qtr.	3,911	924	2,834	593	2,754	797	1,600	1,008	4,852	2,406	4,291	2,483	2,013	688
3rd qtr.	3,493	923	3,830	724	2,973	1,055	1,092	567	3,513	2,354	3,607	2,170	2,118	1,034
4th qtr.	3,823	1,188	3,768	1,043	3,142	935	1,882	1,155	5,388	3,598	3,785	2,441	2,460	1,160
1963 1st qtr.(4)	4,425	1,355	6,037	613	3,290	795	1,110	596	3,877	1,956	2,763	1,522	2,873	652
2nd qtr.(4)	4,012	1,346	4,831	943	2,656	841	1,102	588	2,801	2,261	2,587	1,267	2,869	973

Monthly averages or calendar months

	Radios and radiograms(5)							Television sets(5)				
	Production	Home sales				Export sales(6)		Production	Home sales		Export sales(6)	
		Radio sets		Radiograms								
	Thousands	Thousands	£ thousand	Thousands	£ thousand	Thousands	£ thousand	Thousands	Thousands	£ thousand	Thousands	£ thousand
1959	153	130	1,116	16	453	22	213	230·6	231·3	7,806	2·0	66
1960	209	154	1,365	17	446	23	231	178·4	151·4	5,018	3·2	110
1961	256	219	1,714	16	412	18	192	104·7	125·7	4,072	3·7	126
1962	248	213	1,594	17	472	13	130	121·9	114·8	3,946	9·3	292
1962 July	272	247	1,856	10	263	16	152	110·6	69·2	2,395	11·3	339
August ...	213	219	1,642	17	505	11	114	81·1	115·5	4,020	18·7	548
September ...	257	203	1,530	28	790	11	128	121·1	161·3	5,530	13·8	440
October ...	291	239	1,021	32	879	14	133	160·1	192·0	6,651	5·7	208
November ...	267	219	1,670	34	940	15	124	185·1	204·0	7,066	4·3	161
December ...	182	174	1,221	21	587	13	123	119·9	125·7	4,313	3·3	122
1963 January ...	206	189	1,568	13	375	16	149	121·6	115·4	4,066	2·6	99
February ...	191	185	1,354	16	467	17	134	117·8	130·0	4,557	4·1	165
March ...	220	224	1,626	17	485	26	285	130·5	118·0	4,193	5·4	236
April ...	204	195	1,503	13	366	19	169	113·5	84·8	2,939	4·2	153
May	268	261	2,007	18	525	17	161	154·0	110·1	3,903	3·5	122
June... ...	220	240	1,866	11	298	13	114	127·5	92·4	3,364	3·4	122
July ...	241	262	1,991	14	404	9	95	131·8	111·7	4,159	4·6	153
August ...												
September ...												

(1) From January 1961 the field of enquiry has been extended.
(2) Transmitters (sound and vision) for public broadcasting and ancillary equipment.
(3) Electronic instruments for nuclear application, electronic heating equipment, industrial television equipment, electronic simulators and trainers and other electronic apparatus.
(4) Provisional.
(5) Including chassis.
(6) Value figures are calculated at f.o.b. prices.

Source: Ministry of Aviation

CENTRAL STATISTICAL OFFICE

Annual Abstract of Statistics

No. 100

1963

LONDON: HER MAJESTY'S STATIONERY OFFICE
1963

INTRODUCTION

THIS ANNUAL ABSTRACT OF STATISTICS for the United Kingdom has been prepared by the Central Statistical Office in collaboration with the Statistics Divisions of Government Departments.

2. The name of the Department or organisation providing the statistics is shown under each table. Some of the statistics provided by Departments are actually collected by other organisations such as nationalised boards and trade associations. The assistance provided by these organisations, too numerous to mention individually, is gratefully acknowledged.

3. In addition, an Index of Sources is given on pages 316 to 322, which sets out the official publications or other sources from which the statistics are taken or to which further reference can be made. The tables in this issue contain the latest statistics available, even though they may not yet have appeared in departmental publications.

4. Most of the tables in this *Abstract of Statistics* give annual figures, so far as they are available, for each of the years 1952 to 1962. Some of the tables include figures for the early months of 1963. Current data for many of the series appearing in the *Abstract* are contained in *Economic Trends*, the *Monthly Digest of Statistics* and in *Financial Statistics*, prepared by the Central Statistical Office and published by H.M. Stationery Office.

Definitions

5. *Area covered*. Except where otherwise stated all statistics relate to the United Kingdom of Great Britain and Northern Ireland.

6. *Time series*. So far as possible annual totals are given throughout, but quarterly or monthly figures are given where these are more suitable to the type of series. Except where it is stated to the contrary all statistics are for calendar years ended 31st December.

For some series, weekly data are collected and not figures for calendar years. In such cases the figures appearing in the columns for particular years are cumulative totals for 52 or 53 weeks and, where this is so, attention is drawn to the footnotes to the tables. Since the series have not been adjusted to make them equivalent to a calendar year, care must be taken in making comparisons between figures for periods of different numbers of weeks.

7. *Explanatory notes*. Several sections of the *Abstract* are preceded by pages of explanatory notes which should be read in conjunction with the tables. In addition, definitions of many of the terms occurring in both the *Abstract* and the *Monthly Digest of Statistics* are given in detail in the *Supplement of Definitions and Explanatory Notes to the Monthly Digest of Statistics* published annually by H.M. Stationery Office. Detailed notes on items which appear in both the *Abstract* and *Financial Statistics* are given in a section called 'Notes and definitions' at the end of each month's issue of *Financial Statistics*. The original sources listed in the Index of Sources may also be consulted.

8. *Consumption and stocks*. Statistics of consumption and stocks should be used with care. The terms "consumption," "disposals" and "stocks" are normally defined in detail in the *Supplement* to the *Monthly Digest of Statistics*. The stocks figures given may often relate to only part of the total stocks in the country.

Revisions and changes in content

9. *Revisions*. The scope of the *Abstract* is revised from time to time to include new statistical information as it becomes available. Some of the figures included in this *Abstract* are regarded by Departments as provisional only and may be revised subsequently.

10. *New tables*. The following new tables have been introduced into the present issue of the *Abstract*:

	Table
Production of synthetic resins	190
(This table replaces Table 192, Plastic materials, in the *Annual Abstract of Statistics, 1962*.	
Index numbers of turnover in the catering trade	226
Northern Ireland banks	332
Hire purchase and other instalment credit	341
Agricultural producer returns	366
Standard regions and conurbations for statistical purposes	Appendix I
Standard Industrial Classification	Appendix II

11. *Extended series and revisions*. Other changes in the contents of this issue as compared with the previous issue involve the addition of new series to existing tables and some substantial revisions. The following are the tables principally affected by these alterations:

INTRODUCTION

Table	
94	Pupils in schools (England and Wales).
	This table now shows full-time equivalent teachers and pupils per full-time equivalent teacher.
268-274	Balance of payment of the United Kingdom.
	These tables have been amended to correspond with *United Kingdom Balance of Payments*, 1963.
275	Official holdings of gold and currencies and acceptances outstanding.
	This table now shows separately gold and convertible currencies.
280-95	National income and expenditure.
	These tables are from *National Income and Expenditure*, 1963.

Symbols and conventions used

13. *Change of basis.* Where consecutive figures have been compiled on different bases and are not strictly comparable, a footnote is added indicating the nature of the difference.

14. *Units of measurement.* A table showing the various units of measurement used in this *Abstract* and, where appropriate, their metric equivalents, is given on page xi.

15. *Rounding of figures.* In tables where figures have been rounded to the nearest final digit, there may be an apparent slight discrepancy between the sum of the constituent items and the total as shown.

16. *Symbols.* The following symbols have been used throughout the *Abstract:*

.. = not available.

— = nil or negligible (less than half the final digit shown).

Central Statistical Office,
Great George Street,
London, S.W.1.
October, 1963

Output of machinery, instruments and other engineering products (1)

TABLE 195 (continued)

	Unit	1955	1956	1957	1958	1959	1960	1961	1962
Miscellaneous electrical equipment									
Radio sets: Transistorised(3)	Thousands	1,623	1,325	1,466	1,351	1,381	1,250	2,417	2,517
Other(3)	„						714	278	84
Car radios(3)	„	102	121	134	193	277	296	199	172
Radiograms(3)	„	417	236	243	264	176	244	180	203
Television sets(3)	„	1,771	1,457	1,847	1,998	2,863	2,141	1,256	1,463
Cine-projectors: 35mm.	Value £ thousand	1,113	754	673	616	447	411	377	309
Other	„ „	1,591	1,591	1,354	1,395	1,663	1,562	1,508	1,600
Blankets and pads(15)	Thousands(16)	333	539	563	686	1,031	1,400	1,212	1,382
Dry shavers(16)	„ (16)	656	898	1,011	859	997	986	850	852
Floor polishers	„ (16)	146	116	105	88	91	81	88	122
Irons	„ (16)	2,963	2,452	2,428	2,448	2,483	2,433	2,251	2,051
Toasters	„ (16)	328	269	298	285	247	252	347	310
Vacuum cleaners	„ (16)	1,238	1,026	1,245	1,340	1,651	1,317	1,443	1,356
Domestic washing machines	Thousands(16)	918	614	667	876	1,230	1,019	995	1,102
	Value £ thous. (9)(16)	26,741	19,174	23,499	33,014	50,905	42,123	42,825	46,998
Electric lamps, complete (including flash-lamp bulbs)	Millions(3)	348	330	297	312	326	378	399	382
	Value £ thousand(10)	18,393	17,964	19,343	19,680	20,968	23,778	25,113	25,364
Other machinery and equipment									
Cameras (excluding cine-cameras)	Thousands	1,476	1,302	1,115	872	957	1,036	1,079	869
	Value £ thousand(10)	2,240	1,996	1,769	1,665	1,540	1,971	1,905	1,632
Industrial valves	Value £ million	29·1	33·6	37·5	35·1	35·0	38·2	43·4	43·7
Mining machinery	„ „	39·9	41·7	45·2	53·0	46·5	46·1	53·6	49·7
Pumps(18)	„ „	40·8	43·8	44·7	48·4	52·2	54·9	54·9	54·8
Refrigerating machinery: Domestic	Value £ thousand	16,644	14,815	17,532	24,638	36,218	38,053	29,517	25,781
Commercial	„ „	9,831	10,860	12,152	13,885	16,714	17,988	15,693	14,765
Industrial	„ „	3,603	4,407	4,680	5,532	6,092	6,561	7,122	7,363

[1] Figures of quantity relate to complete units; figures of value include replacement parts and accessories except where otherwise stated. The figures relate to deliveries except where it is stated otherwise. [2] Including tractors for industrial and agricultural uses, but excluding those for road haulage. Market-garden type tractors, that is, tractors of under 10 horse-power appear in Table 196. Tractors for road haulage are included under "Goods vehicles" in Table 197. [3] Figures relate to production. [4] Figures relate to production up to second quarter 1956. [5] Deliveries of specialist producers from 1958. Earlier figures relate to production. [6] Excluding lifts, escalators and hoists, all of which are included under "Other mechanical handling equipment." The figures also exclude underground conveyors which are included under "Mining machinery." [7] Figures from October 1961 have been collected on a different basis and are not strictly comparable with those for earlier periods. [8] From 1959 grabs are included with complete excavators; before 1959 they are included with parts and accessories. [9] Excluding parts from April 1962. [10] Excluding replacement parts and accessories. [11] Including engines for use in industry, rail traction and track-laying tractors, marine auxiliary engines and some engines for marine propulsion. Engines for aircraft, road motor vehicles, fighting vehicles and wheeled and half-track tractors other than heavy earth-moving types, and heavy slow-speed engines for ship propulsion are excluded. [12] Excluding fuel oil burners. [13] Including electric motors and generators, other than turbo-generator sets, rotary converters, etc. [14] Excluding stationers' goods. [15] Blankets only from July 1959. [16] Figures from the third quarter of 1959 have been collected on a different basis and are not strictly comparable with those for earlier periods. [17] Home deliveries. [18] Including from 1958 hydraulic accumulators and rams.

Source: Board of Trade and Ministry of Aviation

Agricultural machinery: Production(1)

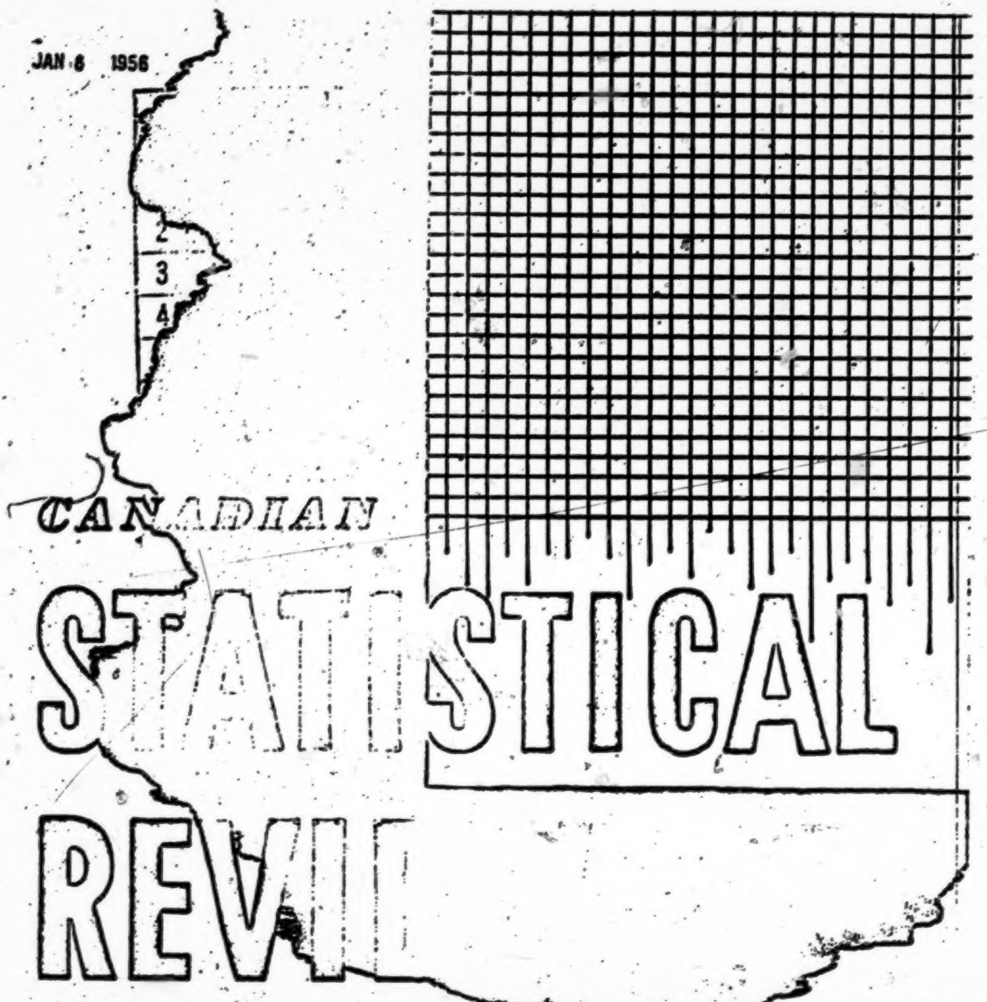
TABLE 196

	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962
Value (£ million)											
Total(2)	106·1	93·8	107·8	113·5	102·5	130·6	142·5	163·2	166·3	176·3	182·0
of which for export	58·5	48·6	57·6	58·0	55·0	72·3	71·3	88·8	101·7	104·0	114·4
Number											
Tractors: Total	154,103	136,808	166,791	174,609	139,133	185,336	186,503	215,581	227,509	231,846	238,561
Agricultural types	124,270	109,756	135,186	135,238	111,363	147,396	144,078	164,784	183,311	176,892	201,952
Tracklayers(3)	3,540	2,704	3,834	3,702	2,818	3,279	2,950	3,402	1,330	1,168	1,050
Wheeled(4)	120,730	107,052	131,352	131,536	108,545	144,117	141,128	161,382	180,981	175,724	200,902
Market garden types(5)	29,833	27,052	31,605	39,371	27,770	37,940	42,425	50,797	45,198	54,954	36,609
Tractor mouldboard ploughs	44,715	28,472	29,702	26,571	19,534	22,443	27,835	23,802	16,388	18,530	17,081
Disc harrows	14,563	8,203	11,230	10,076	6,282	8,754	8,831	8,938	6,169	8,667	7,499
Cultivators (including rotary)	28,934	17,731	17,177	15,666	13,311	15,327	16,080	19,831	19,862	20,272	16,741
Corn drills(6)	6,719	4,274	4,010	3,796	2,993	4,164	3,695	4,581	3,541	3,801	3,292
Farmyard manure spreaders	11,065	7,687	9,403	10,697	6,203	8,390	7,814	7,623	7,781	8,027	7,259
Mowers	23,618	15,860	19,554	19,009	19,967	18,875	18,745	20,690	16,539	15,269	12,226
Pick-up balers	6,660	7,007	9,904	10,805	8,025	8,019	13,559	13,937	14,684	14,160	15,707
Combine harvesters	5,306	4,757	6,120	6,209	5,088	6,883	6,553	4,401	3,213	2,781	2,845
Grain and grass driers	796	614	1,151	1,142	1,612	1,751	1,581	1,768	1,647	1,595	1,945
Milking machines	9,895	10,882	10,238	7,617	10,005	8,241	6,513	8,138	8,435	9,349	7,194

[1] From 1959 figures relate to deliveries, except for agricultural tractors where the numbers produced are shown. [2] Including value of items not shown separately below, and also parts and accessories. [3] Including half-tracks up to 1955. [4] Including industrial wheeled and half-track tractors from 1956. [5] Tracklayers and wheeled types, including self-propelled cultivators and motor scythes. [6] Including combined seed and fertilizer drills.

Source: Board of Trade

JAN 6 1956



CANADIAN STATISTICAL REVIEW

1955 SUPPLEMENT

5

SUPPLEMENT No. 2

DOMINION BUREAU OF STATISTICS, OTTAWA, CANADA

FOREWORD

This is the second volume in the series of biennial supplements to the *Canadian Statistical Review.* The present report supersedes the first issue which was published in December, 1953.

These supplements were initiated in response to demands from businessmen, economists and statisticians for a readily available and continuous record of current economic indicators. They contain three important features: first, they present in the form of monthly averages, from 1926 or the earliest year for which data are available, to the last complete year, the annual record of the 1,600 statistical series carried in the regular monthly issues of the "Canadian Statistical Review". This permits users of the statistics to locate historical figures without endless thumbing through back issues or maintaining extensive records. Secondly, except in certain specified cases, the annual and monthly data are comparable throughout the period covered, and incorporate all revisions which have been made since the publication of the 1953 supplement. Thirdly, these reference volumes provide monthly data for a longer period than can be shown in the monthly bulletins, thereby permitting more extensive analysis of seasonal trends.

The 1955 supplement presents, for most series, monthly or quarterly data from January 1952 through December 1954 or for a longer period where more space was available as a result of the lack of historical figures. Since the publication of the first supplement, both monthly and annual data have been revised in several cases, so that, in the case of monthly and quarterly data, the figures for 1950 and 1951 as shown in the 1953 volume are not always strictly comparable with those for later years contained in the present report. An examination of the statistics for 1952, shown in both publications, will reveal the extent of changes for those series which have been altered during the past two years. The annual data are comparable throughout except where specifically noted.

Designed to be used in conjunction with the latest monthly issue of the "Canadian Statistical Review", this volume presents the record of the more important economic indicators from 1926 to date. Through the means of weekly Supplements, subscribers are assured of receiving most of the current figures as soon as they are forthcoming. These supplements are supplied without charge to regular subscribers to the "Canadian Statistical Review".

The present volume was prepared by the Business Statistics Section of the Research and Development Division of the Bureau.

HERBERT MARSHALL
Dominion Statistician

TABLE 25B. Radio and Television Receiving Sets

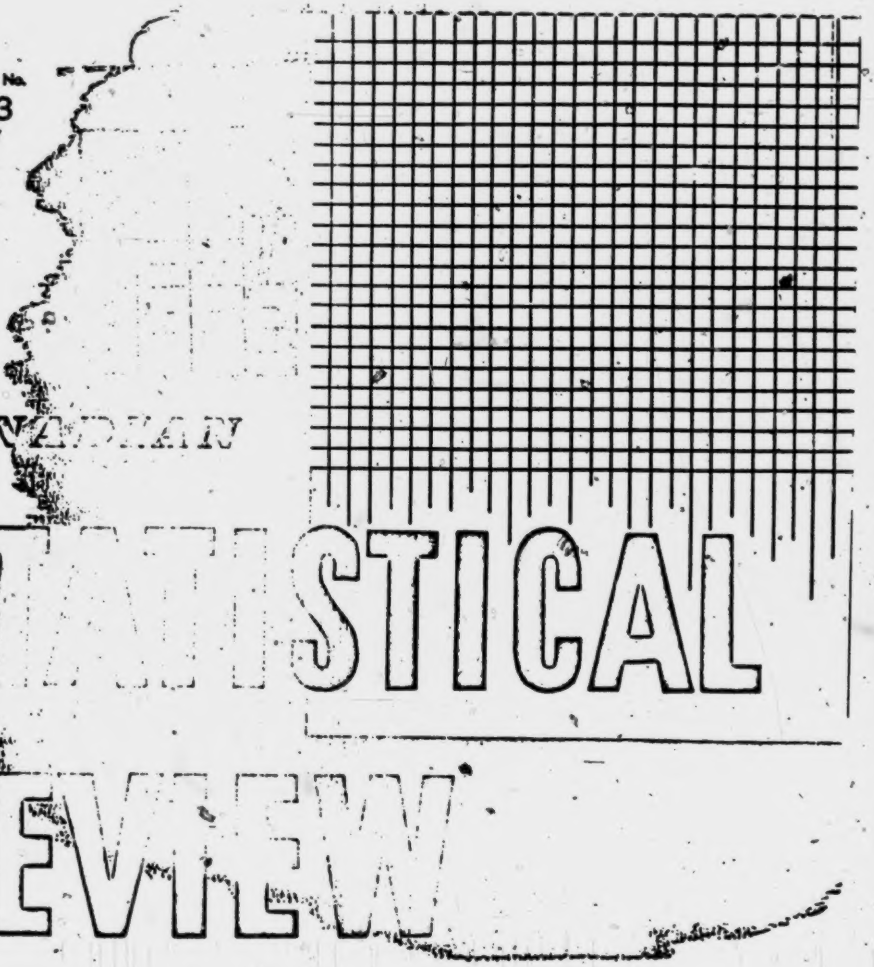
Monthly averages or calendar months

	Production[1]		Domestic Shipments				Factory Stocks End of Period		Imports[2]	Exports	Value of Factory Shipments	
			Radios									
	Radios	Television Sets	Total	Home Sets	Combinations	Television Sets	Radios	Television Sets			Radios	Television Sets
	(Thousands)										(Thousand dollars)	
1926	2.5	–	..	..	–	–	..	–	2.7[3]	..	..	–
1927	4.0	–	..	..	–	–	..	–	2.6[3]	..	..	–
1928	6.8	–	..	..	–	–	..	–	..	..	..	–
1929	15.5	–	..	..	–	–	..	–	0.9[3]	..	..	–
1930	14.2	–	16.6	14.3	2.2	–	26.9	–	..	..	1,600	–
1931	24.3	–	23.8	22.6	1.1	–	34.5	–	0.9[3]	..	1,512	–
1932	10.1	–	11.1	10.7	0.4	–	22.2	–	0.7[3]	..	563	–
1933	9.4	–	10.0	9.2	0.8	–	13.1	–	..	..	660	–
1934	15.7	–	12.9	12.8	0.1	–	24.4	–	..	..	812	–
1935	15.9	–	15.9	16.4	–	–	26.9	–	..	..	1,375	–
1936	21.2	–	20.7	19.6	0.1	–	40.3	–	..	..	1,048	–
1937	24.1	–	22.3	20.3	0.1	–	47.2	–	..	..	1,886	–
1938	20.2	–	20.9	19.6	0.1	–	57.0	–	2.3	..	1,856	–
1939	20.0	–	20.9	20.7	0.4	–	60.5	–	4.0	0.1	1,867	–
1940	60.4	–	26.6	22.1	0.7	–	..	–	2.0	0.1	1,963	–
1941	22.3	–	22.3	20.1	1.4	–	..	–	0.3	0.6	1,940	–
1942	16.8	–	19.4	15.6	1.2	–	..	–	0.3	0.2	1,280	–
1943	0.1	–	1.9	..	..	–	0.7	–	0.3	–	..	–
1944	–	–	0.1	..	..	–	0.1	–	0.2	–	..	–
1945	4.2	–	2.7	..	..	–	6.3	–	0.1	–	..	–
1946	30.2	–	47.4	41.3	4.0	–	10.0	–	2.5	1.2	2,404	–
1947	82.0	–	60.7	51.8	9.8	–	100.2	–	0.3	4.4	5,023	–
1948	53.3	–	40.5	31.7	9.8	–	104.5	–	0.2	2.3	4,713	–
1949	60.0	0.8	60.4	26.1	7.5	7	109.6	1.0	4.5	2.8	4,470	..
1950	60.4	2.7	63.2	30.2	10.2	2.5	145.3	2.7	2.9	2.1	4,930	1,079
1951	52.4	4.1	47.9	27.8	7.9	2.3	103.0	14.7	4.7	2.0	4,280	1,720
1952	40.5	10.5	47.4	20.6	7.1	11.4	52.0	2.0	6.9	2.8	4,171	5,036
1953	62.8	25.5	51.7	26.6	3.4	20.5	102.5	75.5	4.9	1.9	4,262	12,200
1954	28.1	40.7	40.6	25.7	4.0	32.0	109.4	46.0	2.9	1.3	2,005	10,830
1952 J	22.3	2.7	20.7	15.5	6.7	4.0	166.7	12.8	2.5	2.5	2,126	2,356
F	25.2	2.5	24.7	18.4	7.5	3.9	176.0	12.4	2.2	1.5	2,083	2,021
M	26.1[4]	5.1	31.5	15.7	5.7	4.1	161.1	13.4	2.4	2.8	2,303	2,045
A	20.7	4.6	30.0	21.4	4.6	4.0	148.0	14.0	0.5	2.5	2,317	1,900
M	22.2	0.2	26.5	22.6	4.2	5.9	126.1	16.4	7.2	2.4	2,446	2,051
J	20.7	5.2	26.3	22.7	4.6	4.8	131.7	16.0	2.4	2.6	2,100	2,125
J	20.3	3.4	20.0	20.1	4.0	6.3	130.6	12.8	0.5	1.8	2,282	2,947
A	42.0[4]	8.5	41.3	34.0	7.0	11.5	122.8	12.6	10.5	0.4	2,894	5,094
S	44.8	11.5	37.7	27.1	10.3	17.5	105.7	6.8	10.0	2.5	5,304	7,077
O	63.1	22.4	61.3	43.0	10.5	22.0	94.8	6.0	8.6	2.1	5,465	8,790
N	65.2[4]	22.9	72.2	53.1	11.2	24.6	70.0	4.3	8.5	2.7	6,012	10,120
D	50.5	20.7	70.9	54.1	9.6	27.0	32.0	2.0	7.8	2.5	6,130	11,383
1953 J	30.4	25.8	37.5	19.6	2.1	22.5	66.7	8.6	6.6	2.6	3,201	8,062
F	46.8	27.8	47.5	22.9	3.4	26.6	80.2	8.9	5.8	2.4	4,379	10,904
M	61.7	22.3	57.8	29.6	4.5	26.6	71.5	15.8	6.1	2.1	5,025	14,370
A	65.2	31.4	60.1	24.9	5.0	19.9	79.6	27.3	8.5	2.0	5,456	9,110
M	62.4	30.4	50.5	17.7	1.6	19.2	92.0	26.7	6.6	1.4	4,227	7,730
J	60.5	20.8	47.8	17.4	2.9	10.8	110.6	50.6	2.7	1.0	4,060	4,294
J	43.1	16.7	26.7	17.0	2.8	8.3	117.1	61.0	3.8	1.7	2,010	2,522
A	30.1	28.0	30.0	21.9	2.7	22.4	137.3	96.7	2.8	0.6	2,312	8,834
S	71.6	43.0	46.4	31.2	7.2	42.7	152.5	97.0	2.5	4.6	2,719	17,014
O	73.1	40.3	56.0	20.6	7.4	50.3	172.6	86.0	2.9	1.4	4,400	24,319
N	58.0	40.9	50.7	21.2	6.4	55.5	190.0	90.5	2.6	1.2	5,250	22,334
D	72.1	61.2	70.5	46.5	2.5	51.2	182.5	70.5	6.4	1.9	5,705	20,217
1954 J	37.0	42.6	28.9	18.7	2.7	34.4	104.8	79.6	1.8	0.7	2,040	12,083
F	26.6	41.4	22.8	18.6	1.4	28.0	216.6	62.6	2.4	1.1	2,160	14,253
M	52.7	37.4	42.7	27.6	1.2	27.9	225.7	82.6	3.0	0.3	2,227	14,200
A	40.2	30.5	30.3	22.7	1.4	26.2	234.6	85.2	2.3	0.8	2,003	9,221
M	32.1	26.5	32.3	17.2	2.1	21.4	223.4	80.7	1.1	1.3	2,222	6,996
J	45.2	31.4	60.0	18.8	1.9	22.4	236.7	90.7	1.2	2.4	2,001	7,459
J	16.0	14.1[4]	25.0	11.6	1.1	26.4	220.3	86.2	1.5	2.3	1,041	3,004
A	33.0	36.4	30.6	18.0	1.2	55.0	222.3	67.7	2.3	2.5	2,414	19,000
S	31.0	54.5	30.4	31.5	1.9	64.3	200.3	40.4	2.6	1.6	2,604	26,400
O	32.6	51.2	47.2	30.6	1.4	51.7	194.5	20.2	4.7	1.7	3,007	31,203
N	42.2	56.0	50.2	41.8	1.1	54.5	182.0	60.0	6.4	1.2	4,062	[illegible]
D	28.1	55.9	60.6	41.4	[illegible]	60.4	160.4	40.0	3.0	0.5	4,370	30,460

Note: For explanatory notes and sources, see page 152.

Defendant's Bulk Exhibit No. 216.

CATALOGUE No.
11-003
MONTHLY



CANADIAN
STATISTICAL
REVIEW

Feature Articles:
The 1961
Input-Output
Table

OCTOBER 1963

VOLUME XXXIX NUMBER 10

DOMINION BUREAU OF STATISTICS, OTTAWA, CANADA

Table 49: refrigerators and washing machines

monthly averages or months		mechanical refrigerators					domestic washing machines[3]				
		domestic types[4]			all types						
		production	shipments[5]	factory stocks[1]	imports	exports	production[2]	shipments[5]	factory stocks[1,2]	imports	exports
		thousands									
1961		19.25	20.04	33.57	4.11	0.99	23.94	24.25	36.97	2.93	1.28
1962		22.59	21.48	51.33	4.04	0.71	24.86	24.85	38.21	2.06	1.01
1961	M	24.92	21.33	46.04	6.99	0.43	21.53	21.93	39.01	2.63	0.48
	A	25.83	22.73	49.13	8.06	1.17	23.62	21.37	41.25	2.04	1.09
	M	23.51	26.47	45.66	10.12	1.02	24.62	22.49	42.38	2.81	1.69
	J	25.01	26.73	43.95	8.36	1.08	26.92	24.09	45.21	1.77	1.48
	J	16.17	24.88	35.34	7.31	1.26	19.82	23.48	41.26	2.14	2.33
	A	16.70	26.30	25.74	4.18	0.39	28.37	34.38	27.28	2.99	0.76
	S	18.93	20.07	24.59	8.81	1.12	27.04	29.44	24.88	2.45	0.95
	O	16.08	14.33	26.35	4.81	1.09	27.84	27.31	26.57	4.64	1.88
	N	20.58	17.02	29.91	2.89	1.32	29.36	23.44	32.49	4.34	0.71
	D	15.33	11.67	33.57	2.42	1.13	22.03	17.58	36.97	1.93	0.76
1962	J	19.30	16.65	38.13	4.73	1.02	22.47	21.23	37.81	2.39	0.53
	F	24.42	18.95	43.66	7.77	0.89	22.74	21.88	38.37	2.73	0.34
	M	27.70	22.27	49.09	4.89	0.10	23.01	23.04	40.34	2.01	0.68
	A	25.76	24.56	50.30	5.61	0.68	21.18	21.83	39.69	2.21	0.79
	M	25.49	28.79	47.01	7.18	1.05	23.27	22.84	40.13	2.51	2.08
	J	28.21	28.73	46.48	5.73	1.12	24.16	25.14	39.14	2.17	1.35
	J	19.06	25.02	40.51	6.26	0.79	21.53	25.32	35.84	1.94	0.79
	A	18.35	22.62	37.47	1.17	0.71	23.21	30.31	27.94	1.80	0.98
	S	21.90	22.54	34.16	2.48	0.37	28.36	30.74	25.36	1.49	1.01
	O	21.85	17.34	40.68	0.65	0.42	33.54	29.81	30.00	1.98	0.65
	N	20.46	14.84	46.30	1.20	0.85	26.33	25.21	31.30	1.22	1.55
	D	18.53	15.53	51.33	0.80	0.50	26.49	20.38	38.21	1.55	1.39
1963	J	24.12	21.87	53.73	1.16	0.34	24.83	24.09	41.63	0.94	0.64
	F	25.92	20.87	55.85	0.57	0.25	24.38	22.98	43.28	1.21	1.09
	M	25.33	24.85	58.44	1.07	0.89	23.15	25.21	41.68	1.19	3.14
	A	27.67	26.96	61.27	1.91	1.53	24.57	22.42	43.71	1.01	1.69
	M	27.88	27.65	59.96	2.29	2.78	28.04	27.73	48.40	1.74	2.32
	J	27.86	26.44	62.22	2.84	3.53	26.86	27.84	48.80	1.34	3.05
	J	22.51	29.81	54.86		3.83	24.48	29.33	44.28		2.27
	A	16.73	23.77	47.48		2.22	22.71	30.01	36.37		2.08

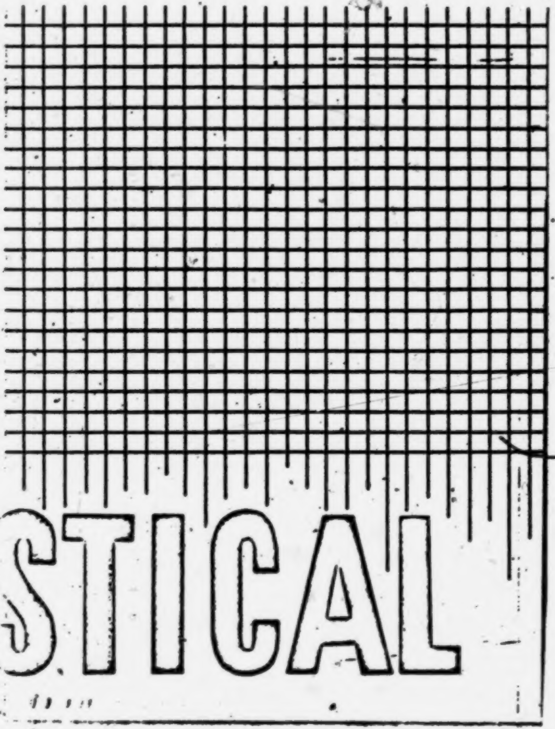
Table 50: radio and television receiving sets

monthly averages or months		producer's sales										imports	
		radio receivers						television receivers					
		total	home sets	portables	auto	combinations	record players	total	atlantic provinces	Quebec and Ontario	western provinces	radio sets	television sets
		thousands											
1961		51.1	20.2	4.5	19.4	7.0	14.7	29.6	2.4	18.9	8.3	90.0	1.8
1962		57.4	21.0	1.8	25.4	9.2	17.1	35.0	2.5	22.1	10.3	68.3	1.4
1961	A	40.6	15.7	2.9	18.6	3.5	7.9	20.9	2.1	13.8	4.9	84.9	1.3
	M	39.7	14.5	2.1	19.3	2.8	6.4	19.1	1.4	12.9	4.9	134.2	1.2
	J	41.3	14.5	5.8	18.0	2.0	6.6	19.8	1.3	14.0	4.4	137.1	1.2
	J	34.1	11.7	4.6	13.7	4.1	6.7	22.9	1.4	16.1	5.3	92.7	1.1
	A	44.2	18.1	2.4	16.2	6.6	14.2	31.0	1.9	21.2	7.9	91.8	2.8
	S	66.5	27.9	4.5	22.2	11.9	17.9	47.9	2.3	29.6	15.0	62.5	2.2
	O	61.6	27.5	2.8	22.3	9.0	19.7	45.6	2.7	27.1	14.8	87.3	2.0
	N	75.9	33.3	5.4	26.1	11.3	32.6	40.5	2.1	24.9	12.5	87.2	2.0
	D	72.6	32.0	5.6	22.9	12.0	33.4	30.3	2.6	17.8	9.9	99.5	1.9
1962	J	52.4	16.4	1.7	25.2	9.1	10.8	32.3	2.5	19.9	9.9	41.9	2.1
	F	47.2	16.0	0.8	23.7	6.8	12.5	30.8	2.6	19.4	8.8	45.1	2.3
	M	55.7	17.5	1.2	30.3	6.6	10.1	30.2	2.7	19.5	8.0	66.4	1.9
	A	36.7	14.3	1.5	15.7	5.3	7.3	25.9	2.4	16.8	6.7	66.7	0.5
	M	47.7	14.9	1.7	26.5	4.6	9.5	21.3	1.9	12.8	6.5	101.8	0.6
	J	50.0	16.7	2.1	27.0	4.2	8.6	32.4	2.4	21.7	8.3	72.1	0.4
	J	41.5	13.8	1.6	19.5	6.6	11.2	30.0	1.9	19.9	8.2	93.1	1.3
	A	41.6	19.6	1.3	10.8	9.9	15.7	34.1	2.0	22.1	10.0	72.7	1.3
	S	62.8	26.7	1.4	19.5	15.2	19.3	52.0	2.3	31.8	16.9	67.0	0.6
	O	78.3	27.9	1.8	35.5	13.0	24.4	51.8	2.4	32.3	14.2	66.4	1.0
	N	94.9	36.7	2.0	40.4	14.7	83.9	38.0	2.4	28.5	16.1	78.5	1.7
	D	80.5	31.0	2.7	31.1	14.7	41.0	29.4	2.0	18.0	9.4	36.2	1.5
1963	J	56.4	13.6	0.8	32.3	9.7	9.5	32.0	2.8	19.8	10.5	21.6	1.4
	F	59.9	17.7	0.9	31.4	9.9	10.6	32.5	2.4	20.3	9.7	30.6	2.0
	M	55.0	17.5	0.7	28.7	8.1	8.8	27.5	2.3	18.5	6.7	51.9	1.8
	A	48.0	18.4	0.7	22.8	6.0	5.8	25.5	2.1	17.3	6.2	68.0	1.0
	M	60.5	17.8	1.2	34.7	6.8	9.6	30.5	2.5	18.9	7.2	85.4	1.0
	J	49.2	14.5	1.6	25.1	6.0	9.2	25.9	1.8	18.5	5.9	89.4	1.9
	J	41.5	15.9	1.7	17.6	6.5	8.6	30.5	2.2	20.8	7.8		
	A	48.2	20.4	1.5	16.7	9.6	12.9	30.8	2.8	24.9	11.6		

---

[1] End of period. [2] Does not include apartment-type machines. [3] Electric and other. [4] Gas types are included. [5] In some cases these shipments are not at the factory level, and stocks at beginning of month plus production less shipments do not equal stocks at end of month. Source: Domestic Electric Refrigerators (43-001), Domestic Washing Machines (43-002), Radio and Television Receiving Sets (43-004), Trade of Canada, Imports (65-007); Exports (65-004), D.B.S.

CATALOGUE No.
11-003
MONTHLY



CANADIAN
STATISTICAL
REVIEW

Feature Article:

National Accounts,
Income and Expenditure,
Third Quarter, 1963.

DECEMBER 1963

VOLUME XXXVIII NUMBER 12

DOMINION BUREAU OF STATISTICS, OTTAWA, CANADA

Table 49: refrigerators and washing machines

monthly averages or months	mechanical refrigerators					domestic washing machines[2]				
	domestic types[4]			all types						
	production	shipments[5]	factory stocks[1]	imports	exports	production[3]	shipments[3]	factory stocks[1,3]	imports	exports
	thousands									
1961	19.25	20.04	33.57	6.11	0.99	23.94	24.25	36.97	2.93	1.20
1962	22.59	21.48	51.33	4.04	0.71	24.86	24.85	38.21	2.06	1.01
1961 M	23.51	26.47	45.66	10.12	1.02	24.62	23.49	42.38	2.81	1.69
J	25.01	26.73	43.95	8.36	1.08	26.92	24.09	45.21	1.77	1.48
J	16.17	24.88	35.24	7.31	1.26	19.82	23.48	41.26	2.14	3.33
A	16.70	26.20	25.74	4.15	0.39	20.37	34.35	27.28	2.39	0.76
S	18.93	20.07	24.59	5.81	1.12	27.04	29.44	24.88	3.45	0.95
O	16.08	14.33	26.35	4.81	1.89	27.84	27.31	26.57	4.64	1.38
N	20.58	17.02	29.91	2.89	1.32	29.36	23.44	32.49	4.24	0.71
D	15.33	11.67	33.57	2.42	1.13	22.03	17.55	36.97	1.93	0.76
1962 J	19.30	16.65	38.13	4.73	1.02	22.47	21.23	37.51	2.39	0.53
F	24.42	18.90	43.86	7.77	0.89	22.74	21.88	38.37	3.73	0.34
M	27.70	22.27	49.09	4.89	0.10	25.01	23.04	40.34	2.01	0.68
A	25.76	24.56	50.30	5.61	0.68	21.18	21.83	39.69	2.21	0.79
M	25.49	28.79	47.01	7.18	1.05	23.27	22.84	40.12	2.51	2.08
J	28.21	28.73	46.48	5.73	1.12	24.16	25.14	39.14	2.17	1.35
J	19.06	25.02	40.51	6.26	0.79	21.53	25.52	35.04	1.94	0.79
A	18.35	22.62	37.47	1.17	0.71	23.21	30.31	27.94	1.60	0.98
S	21.90	22.54	36.16	2.48	0.37	28.36	30.74	25.56	1.49	1.01
O	21.85	17.34	40.68	0.65	0.42	33.54	29.81	30.00	1.98	0.65
N	20.46	14.84	46.30	1.20	0.85	26.33	25.21	31.30	1.22	1.55
D	18.53	15.53	51.33	0.80	0.50	26.49	20.58	38.21	1.55	1.39
1963 J	24.12	21.87	53.73	1.16	0.34	24.83	24.89	41.63	0.94	0.64
F	25.92	20.07	55.85	0.57	0.25	24.30	22.90	43.28	1.21	1.09
M	25.03	24.85	58.44	1.07	0.89	23.15	25.21	41.68	1.19	2.14
A	27.67	26.96	61.27	1.91	1.53	24.57	22.42	43.71	1.01	1.69
M	22.88	27.65	59.96	2.29	2.78	28.04	27.73	48.40	1.74	2.32
J	27.86	26.44	62.22	2.54	3.53	26.86	27.84	48.80	1.24	2.05
J	22.51	29.81	54.86	2.97	3.63	24.45	29.53	44.20	0.83	3.27
A	16.73	23.77	47.48	1.70	2.22	22.71	30.01	36.37	0.69	2.08
S	21.88	27.54	39.84		2.24	34.16	38.70	32.54		3.05
O	19.83	19.65	40.63		2.36	35.22	35.72	30.43		2.62

Table 50: radio and television receiving sets

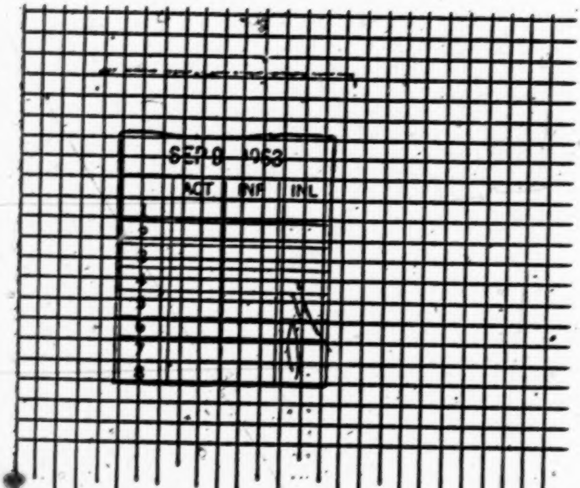
monthly averages or months	producer's sales										imports	
	radio receivers						television receivers					
	total	home sets	portables	auto	combinations	record players	total	atlantic provinces	Quebec and Ontario	western provinces	radio sets	television sets
	thousands											
1961	51.1	20.2	4.5	19.4	7.0	14.7	29.6	2.4	18.9	8.3	90.0	1.8
1962	57.4	21.0	1.8	25.4	9.2	17.1	35.0	2.5	22.1	10.3	68.3	1.4
1961 J	41.3	14.5	5.8	18.0	3.0	6.6	19.8	1.3	14.0	4.4	137.1	1.2
J	34.1	11.7	4.6	13.7	4.1	6.7	22.9	1.4	16.1	5.3	92.7	1.1
A	44.2	18.1	3.4	16.2	6.6	14.2	31.0	1.9	21.2	7.9	91.8	2.8
S	66.5	27.9	4.5	22.2	11.9	17.9	47.9	3.3	29.6	15.0	62.5	2.2
O	61.6	27.5	2.8	22.3	9.0	19.7	45.6	2.7	27.1	14.8	87.5	2.0
N	75.9	33.3	5.4	26.1	11.2	32.6	40.5	2.1	24.9	12.5	87.2	2.0
D	78.6	32.0	5.6	22.9	12.0	33.4	30.3	2.6	17.8	9.9	99.5	1.9
1962 J	52.4	16.4	1.7	25.2	9.1	10.8	32.3	2.5	19.9	9.9	41.9	2.1
F	47.2	16.0	0.8	23.7	6.8	13.5	30.8	2.6	19.4	8.8	45.1	3.3
M	55.7	17.5	1.2	30.3	6.6	10.1	30.2	2.7	19.5	8.0	66.4	1.9
A	36.7	14.3	1.5	15.7	5.3	7.5	25.9	2.4	16.8	6.7	66.7	0.5
M	47.7	14.9	1.7	26.5	4.6	9.5	21.3	1.9	13.8	5.5	101.0	0.6
J	50.0	16.7	2.1	27.0	4.2	8.6	32.4	2.4	21.7	8.3	73.1	0.4
J	41.5	13.8	1.6	19.5	6.6	11.2	30.8	1.9	19.9	8.2	93.1	1.3
A	41.6	19.6	1.3	10.8	9.9	15.7	34.1	2.0	22.1	10.0	72.7	1.3
S	62.8	26.7	1.4	19.5	15.2	19.3	52.0	3.3	31.8	16.9	67.0	0.6
O	78.3	27.9	1.8	35.5	13.0	24.4	51.8	3.4	32.3	16.2	66.4	1.0
N	94.9	36.7	2.0	40.4	14.7	33.9	50.0	3.4	30.5	16.1	70.5	1.7
D	80.5	31.0	2.7	31.1	14.7	41.0	29.4	2.0	18.0	9.4	56.2	1.5
1963 J	56.4	13.5	0.8	32.2	9.7	9.5	33.8	2.6	19.8	10.5	21.6	1.6
F	59.9	17.7	0.9	31.4	9.9	10.6	32.5	2.4	20.3	9.7	30.6	2.0
M	55.8	17.5 454	0.7 4.3	28.7	8.1	8.8	27.5	2.3	18.5	6.7	51.9	1.8 7.4
A	48.0	18.4	0.7	22.8	6.0	5.8	25.5 400	2.1	17.3	6.2	66.0 575	1.0
M	60.5	17.8	1.2	34.7	6.8	9.6	28.5	2.5	18.9	7.2	85.[illegible]	1.0
J	49.2	16.5	1.6	25.1	6.0	9.2	25.9	1.5	18.5	5.9	89.4	1.9
J	41.5	15.9	1.7	17.6	6.3	8.6	30.9	2.2	20.8	7.5	121.7	1.2
A	40.2	20.4	1.5	16.7	9.6	12.9	38.8	2.3	24.9	11.6	92.4	2.4
S	86.7	30.8	2.0	37.7	16.2	25.5	56.3	5.1	33.3	17.8		
O	105.2	34.9	1.5	53.6	15.2	24.5	56.5	4.1	33.8	18.5		

---

[1] End of period. [2] Does not include apartment-type machines. [3] Electric and other. [4] Gas types are included. [5] In some cases these shipments are not at the factory level, and stocks at beginning of month plus production less shipments do not equal stocks at end of month. Sources: Domestic Electric Refrigerators (43-001), Domestic Washing Machines (43-002), Radio and Television Receiving Sets (43-004), Trade of Canada, Imports (65-007), Exports (65-004), D.B.S.

Defendant's Bulk Exhibit No. 216.

CATALOGUE No.
11-502
OCCASIONAL



SEP 9 1963
ACT INF INL

CAN[illegible]
ST[illegible]STICAL
REV[illegible]

HISTORICAL SUMMARY

1963 EDITION

**This publication replaces the 1959 Supplement (No. 4) of the Canadian Statistical Review.
It contains annual figures only.**

DOMINION BUREAU OF STATISTICS, OTTAWA, CANADA

FOREWORD

This is the fifth volume in a series of supplements to the Canadian Statistical Review. The first four volumes were issued biennially starting with 1953, the last being for 1959. The present volume differs from the first four in that it is an Occasional Paper, i.e., it is to be issued from time to time as the need arises rather than biennially. It also differs in that it contains only annual data whereas the earlier volumes contained both annual and monthly data. A selection of the important monthly figures is now carried in another publication called the "Annual Supplement" to the Canadian Statistical Review. (DBS Catalogue No. 11-206).

The present volume is similar to the others in that its contents, table headings and table numbers (with a few exceptions) are the same as those in the tabular section of the Review. As formerly this publication is to be used in conjunction with the latest monthly issue of the Review; to facilitate comparison with monthly figures, most of the annual data are on a monthly basis, i.e., expressed as an average per month for the year, and this is so indicated in the table headings. However, in some series where it is customary to use the total for the year rather than the monthly average the totals are presented; to make their levels comparable with monthly figures, the totals should be divided by twelve, or by four in case of quarterly data. Where they occur, these departures are shown in the table headings as "yearly totals" or "years" or are indicated in the footnotes.

For easier reference, the footnotes are given at the bottom of each table. Most of the footnotes have been expanded from previous issues and give a brief description of the nature of the data, its method of collection and changes which have occurred over time.

All the tables include 1962 as the last year and extend to 1926 or as far back as data are available. The figures for the current years were the latest available early in 1963 and some of them are still subject to revision.

The present volume was prepared in the Current Business Indicators Section, National Accounts and Balance of Payments Division of the Dominion Bureau of Statistics.

WALTER E. DUFFETT,
Dominion Statistician.

TABLE 38. Radio and Television Receiving Sets

Monthly averages	Producer's sales										Imports	
	Radio receivers					Record players	Television receivers				Radio sets	Television sets
	Total	Home sets	Portables	Auto	Combinations		Total	Atlantic Provinces	Quebec and Ontario	Western Provinces¹		
	thousands											
1930	18.6	16.3	—		2.2	..	—	—	—	—	..	—
1931	23.8	22.6	0.1		1.1	..	—	—	—	—	6.9	—
1932	11.1	10.7	—		0.4	..	—	—	—	—	0.7	—
1933	9.4	7.8	0.8		0.7	..	—	—	—	—	..	—
1934	12.9	12.8	1.1		0.1	..	—	—	—	—	..	—
1935	16.0	14.4	1.4		—	..	—	—	—	—	..	—
1936	20.7	19.0	1.6		0.1	..	—	—	—	—	..	—
1937	22.3	20.3	1.9		0.1	..	—	—	—	—	..	—
1938	20.9	18.0	1.8		0.1	..	—	—	—	—	2.3	—
1939	30.9	28.7	1.8		0.4	..	—	—	—	—	4.9	—
1940	36.6	33.1	1.4	2.4	0.7	..	—	—	—	—	2.6	—
1941	33.3	28.1	1.3	2.8	1.6	..	—	—	—	—	0.3	—
1942	17.4	15.4	0.3	0.6	1.2	..	—	—	—	—	0.2	—
1943	1.0	..	..	..	..	..	—	—	—	—	0.3	—
1944	—	..	..	..	..	..	—	—	—	—	0.2	—
1945	2.7	..	..	..	..	..	—	—	—	—	0.1	—
1946	47.4	41.2	0.4	1.8	4.0	..	—	—	—	—	2.5	—
1947	69.7	51.8	1.8	6.3	9.8	..	—	—	—	—	9.3	—
1948	49.7	31.9	2.2	4.8	9.8	..	—	—	—	—	6.2	—
1949	60.4	36.1	5.0	11.4	7.8	..	0.3	—	0.3	—	4.5	—
1950	63.3	38.2	4.1	10.7	10.2	..	2.5	—	2.5	—	3.9	—
1951	47.9	27.6	2.1	10.3	7.9	..	2.3	—	2.3	—	4.7	—
1952	47.4	29.6	2.0	8.7	7.1	..	11.4	—	11.4	—	6.9	—
1953	51.7	28.6	2.6	15.2	5.4	..	30.5	0.1	28.6	1.7	2.0	1.4
1954	40.6	25.7	1.8	9.1	4.0	..	52.0	2.3	38.5	11.2	1.3	1.6
1955	50.8	30.1	2.9	16.9	2.9	..	63.7	6.3	40.5	17.0	2.3	0.5
1956	59.1	32.3	4.6	18.5	3.6	17.1	49.8	4.1	32.8	12.9	6.5	0.7
1957	60.1	30.7	5.4	19.6	4.4	20.3	39.1	2.8	26.4	10.0	12.2	0.3
1958	57.9	28.6	7.0	17.9	4.3	18.4	35.0	2.9	21.6	10.5	24.0	1.2
1959	64.2	30.0	8.6	19.9	5.6	16.8	33.7	3.3	20.5	10.0	46.0	1.1
1960	58.0	25.2	7.6	19.8	5.3	16.5	28.2	2.7	17.6	7.9	60.9	1.2
1961	51.1	20.2	4.5	19.4	7.0	14.7	29.6	2.4	18.9	8.3	50.0	1.8
1962	57.4	21.0	1.8	25.4	9.2	17.1	35.0	2.5	22.1	10.3	60.3	1.4

---

[1] Includes Lakehead area, (Port Arthur and Fort William) to the end of 1958.

Sources: Monthly reports "Radio and Television Receiving Sets, Including Record Players", Catalogue No. 43-004, and "Trade of Canada, Imports", Catalogue No. 65-007, DBS.

CATALOGUE No.
43-004
MONTHLY

DOMINION BUREAU OF STATISTICS

OTTAWA - CANADA

Published by Authority of the Minister of Trade and Commerce

Vol. 18, No. 11 Price: $1.00 per year

RADIO AND TELEVISION RECEIVING SETS
(Including Record Players)

NOVEMBER 1963

TABLE 1. Sales of "Made-in-Canada" Radio Receiving Sets

	Auto	Portables	Home sets	Radio phonograph combinations	Total
			number of units		
November 1963					
Domestic sales in:					
Atlantic provinces ...	190	120	2,540	691	3,541
Quebec	964	159	8,523	4,612	14,258
Ontario	43,126	1,146	12,004	4,724	61,000
Manitoba	246	30	2,259	729	3,264
Saskatchewan	77	18	850	515	1,460
Alberta	104	52	2,204	915	3,275
British Columbia	170	28	2,593	1,180	3,971
Total domestic sales	44,877	1,553	30,973	13,366	90,769
Export sales	-	-	12	3,088	3,100
Total sales	44,877	1,553	30,985	16,454	93,869
Eleven months ended November 1963					
Domestic sales in:					
Atlantic provinces ...	2,384	1,008	18,887	4,432	26,711
Quebec	12,834	3,062	72,393	30,558	118,847
Ontario	318,868	7,706	84,885	34,192	445,651
Manitoba	4,123	553	14,833	5,558	25,067
Saskatchewan	1,743	283	7,755	4,352	14,133
Alberta	2,561	739	15,721	7,2[illegible]	26,225
British Columbia	2,691	782	17,003	8,765	29,241
Total domestic sales	345,204	14,133	231,477	95,061	685,875
Export sales	194	12	3,050	15,318	18,574
Total sales	345,398	14.145	234,527	110,379	704,449

Industry and Merchandising Division

January 1964
6523-542

ROGER DUHAMEL, F.R.S.C., Queen's Printer and Controller of Stationery, Ottawa

TABLE 4. Production of Radio and Television Receiving Sets and Record Players

	November 1963	Eleven months ended November 1963
	number of units	
Radio receiving sets:		
Auto	49,281	291,217
Portables	6,277	26,146
Home sets	31,027	254,205
Radio phonograph combinations ..	16,693	125,119
Totals	103,278	696,687
Television receiving sets	47,132	422,710
Record players:		
With amplifier	23,796	172,091
Without amplifier	-	-
Totals	23,796	172,091

TABLE 5. Producers sales of Imported(1) Radio and Television Receiving Sets

	November 1963	Eleven months ended November 1963
	number of units	
Radio receiving sets:		
Auto	1,417	14,276
Portables	6,578	64,322
Home Sets	1,722	12,007
Radio phonograph combinations ..	71	1,259
Totals	9,788	91,864
Television receiving sets	61	882

(1) As reported by respondents only - see January, 1963 report; figures reported in this table are not included in sales figures elsewhere in this report.

TABLE 6. Domestic sales of "Made-in-Canada" Radio Receiving Sets, by Months, 1962 and 1963

	Auto		Portables		Home sets		Radio phonograph combinations	
	1962	1963	1962	1963	1962	1963	1962	1963
				number of units				
January	24,987	32,210	1,729	821	16,360	13,646	8,515	8,272
February ...	23,696	31,358	754	892	15,943	17,663	6,362	8,202
March	30,311	28,686	1,249	707	17,545	17,508	6,430	7,109
April	15,726	22,848	1,467	691	14,262	18,400	5,182	4,581
May	26,363	34,557	1,729	1,230	14,915	17,744	4,123	5,819
June	26,968	25,134	2,141	1.552	16,670	14,729	4,060	5,537
July	19,511	17,567	1,642	1,653	13,754	14,742	6,454	5,716
August	10,663	16,695	1,321	1.499	19,618	20,408	9,321	8,978
September ..	19,499	37,664	1,378	2.029	26,739	30,801	13,486	14,094
October	35,548	53,608	1,841	1.506	27,889	34,863	11,764	13,387
November ...	40,433	44,877	3,026	1.553	36,732	30,973	12,808	13,366
December ...	31,053		3,702		30,986		13,951	
Totals ...	304,758		21,979		251,413		102,456	
Year to date	273,705	345,204	18,277	14,133	220,427	231,477	88,505	95,061

TABLE 7. Domestic sales of "Made-in-Canada" Television Receiving Sets and Record Players, by Months, 1962 and 1963

	Record players		Television receiving sets	
	1962	1963	1962	1963
		number of units		
January	10,781	9,532	32,342	32,965
February	13,542	10,584	30,833	32,473
March	10,102	8,844	30,204	27,527
April	7,437	5,728	25,874	25,509
May	9,491	9,626	21,256	28,496
June	8,588	9,200	32,370	25,865
July	11,153	8,617	29,955	30,532
August	15,682	12,946	34,091	38,789
September	19,324	25,495	52,027	56,329
October	24,387	24,462	51,849	56,462
November	33,890	27,844	50,011	48,661
December	40,929		29,356	
Totals	205,306		420,168	
Year to date	164,377	152,878	390,812	403,608

TABLE 10. Production and Shipments of Television Picture Tubes(1), by Months, 1962 and 1963

	Production		Shipments			
	Units		Units		Value	
	1962	1963	1962	1963	1962	1963
	number				dollars	
January	53,666	58,580	49,151	54.166	1,012,700	995,490
February	55,883	54,498	53,102	60.417	1,109,674	1,165,968
March	64,770	68,420	56,789	54.671	1,180,971	1,046,132
April	52,462	60,588	53,705	51.571	1,104,603	1,012,689
May	51,964	54,068	49,706	57.658	1,053,8[illegible]	1,103,649
June	57,472	57,932	52,511	54,421	1,145,012	1,136,768
July	38,413	31,156	41,572	37.148	867,700	753,667
August	46,925	44,652	45,407	45.475	937,855	942,315
September	59,640	60,717	64,257	65.365	1,291,785	1,289,200
October	65,952	83,525	66,317	69.611	1,296,446	1,317,268
November	66,125	76,853	67,741	66.663	1,329,697	1,169,340
December	66,903		62,923		1,210,344	
Totals	680,175		663,181		13,520,623	
Year to date	613,272	642,987	600,258	617.166	12,310,279	11,932,486

(1) Includes rebuilt tubes.

TABLE 11. Imports(1) of Specified Electronic Equipment

	August 1963		Eight months ended August 1963	
	No.	$	No.	$
Radio phonograph sets	1,036	100,076	7,211	653,153
Radio receiving sets, transistor type, n.e.s.	67,908	660,864	454,718	4,490,849
Radio receiving sets, n.e.s.	23,454	212,897	99,027	1,331,394
Electronic tubes, n.o.p.	614,547	808,513	7,231,775	9,321,749
Electronic tube parts n.o.p.	-	268,294	-	2,804,005
Television picture tubes	(2)	(2)	(2)	(2)
Semi-conductors except transistors and parts of semi-conductors ...	-	170,138	-	2,366,785
Transistors	162,666	154,411	1,816,598	1,757,572
Glass bulbs for electronic tubes	-	136,901	-	1,816,117
Television receiving sets	2,422	346,747	12,808	1,745,183

(1) Customs clearance, latest available.
(2) Included with electronic tubes, n.o.p.

TABLE 12. Exports(1) of Specified Electronic Equipment

	October 1963		Ten months ended October 1963	
	No.	$	No.	$
Radio receiving sets	2,460	611,781	20,495	3,599,235
Television receiving sets	1,212	303,273	4,382	827,009
Electronic tubes, semi-conductors and parts	-	121,030	-	1,784,944

(1) Customs clearance, latest available.

DEFENDANT'S EXHIBIT NO. 218.

ZENITH SHARE OF DOMESTIC MARKET.

		Factory Shipments		
Television		Zenith	Industry	Zenith % of Industry
1949	Year	1002985	6089757	
	1/1 to 5/31	363117	1992652	
	6/1 to 12/31	639868	4097105	15.616
1950		997007	5541467	17.992
1951		1041289	5903338	17.638
1952		1104967	6322806	17.476
1953	1/1 to 5/31	535948	2468436	21.712
Radio				
1949	Year	1201635	9733270	
	1/1 to 5/31	332227	2961635	
	6/1 to 12/31	869408	6771635	12.839
1950		1268962	10308523	12.316
1951		1291069	11392518	11.332
1952		1244626	11671842	10.664
1953	1/1–5/31	476684	3684610	12.937

Excerpts from Market Research and Sales Statistics Dept. reports.

Defendant's Exhibit No. 218.

FINAL MONTHLY REPORT (4-5 WEEK MONTHS, DOMESTIC AND EXPORT MARKETS)

STATUS OF ZENITH AND INDUSTRY PRODUCTION, SALES AND INVENTORY UNITS, ZENITH PERCENTAGE OF INDUSTRY, AND PERCENT CHANGES

PRODUCT: Total Television Cumulative

REPORT NO.: MT-100-1A

MONTH	ZENITH					INDUSTRY					ZENITH PERCENTAGE OF INDUSTRY		PERCENTAGE CHANGE FROM PREVIOUS YEAR			
	FACTORY			DISTRIBUTOR		FACTORY			DISTRIBUTOR				PRODUCTION		SALES TO DEALERS	
	Production	Inventory	Shipments	Sales To Dealers	Inventory	Production	Inventory	Shipments	Sales To Dealers	Inventory	Prod.	Sales To Dealers	Zenith	Industry	Zenith	Est. Industry
[illegible] JANUARY FEBRUARY	84,127 172,203	7,904 4,464	77,887 167,354	78,885 182,188	38,213 39,304	437,086 886,518	362,510 386,713	409,813 881,833	370,680 [illegible]	713,877 [illegible]	19.2 19.2	21.3 19.8	+31.0 +32.9	+ 0.7 +11.5	+31.8 +43.9	-32.8 -12.7
MARCH APRIL	250,340 320,312	5,063 8,216	250,600 318,344	238,880 294,158	81,307 65,037	1,380,880 1,779,801	383,851 405,148	1,340,836 1,688,985	1,258,096 1,588,980	787,883 788,419	18.6 18.0	19.0 19.0	+33.8 +38.7	+13.9 +16.8	+36.8 +41.7	- 7.3 - 1.3
MAY JUNE	373,968 478,084	8,080 7,885	363,117 [illegible]	[illegible]	[illegible]	2,221,718 2,768,728	[illegible]	1,982,682 2,380,981	[illegible]	[illegible] 881,880	16.9 17.0	18.1 17.4	[illegible]	[illegible] +28.4	+38.3 +44.1	+ 3.6 +16.1
JULY AUGUST	527,087 642,880	4,227 6,427	[illegible]	485,098 872,180	[illegible]	[illegible]	[illegible] 646,318	[illegible]	[illegible]	[illegible]	16.8 17.8	17.8 17.9	[illegible]	[illegible]	+45.6 +47.3	+15.9 +18.5
SEPTEMBER OCTOBER	761,473 859,776	5,796 7,303	[illegible] 814,170	[illegible] 801,321	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	17.0 16.5	16.8 16.8	+42.1 +39.7	[illegible] +37.7	+46.8 +44.6	+18.6 +20.6
NOVEMBER DECEMBER	986,808 1086740	7,737 4,134	[illegible]	896,847 987,006	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	16.8 16.5	16.4 16.4	[illegible] +40.6	[illegible] +39.0	+41.2 +40.4	+21.0 +18.8
[illegible] JANUARY FEBRUARY	110,388 211,908	6,322 6,707	107,173 [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	21.0 20.8	20.6 19.0	[illegible]	[illegible] +24.0	+20.8 +11.2	+13.5 +14.7
[illegible]	321,941 [illegible]	6,330 [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	19.8 20.1	[illegible]	[illegible]	+14.6 [illegible]	+14.1 +15.0	+17.9 +19.8
[illegible]	445,388 551,780	17,707 6,880	[illegible] 518,847	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	+21.1 [illegible]	[illegible]	+20.2 +12.0	+17.0 +11.7
JULY [illegible]	581,289 669,371	3,671 6,694	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	+11.8 + 7.7	+10.0 + 2.7
[illegible]	789,328 886,788	7,880 7,821	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	+ 4.8 + 3.7	[illegible]
[illegible]	982,070 [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

FINAL MONTHLY REPORT (4-5 WEEK MONTHS, DOMESTIC AND EXPORT MARKETS)

STATUS OF ZENITH AND INDUSTRY PRODUCTION, SALES AND INVENTORY UNITS, ZENITH PERCENTAGE OF INDUSTRY, AND PERCENT CHANGES

PRODUCT: Total Television Cumulative

REPORT NO. HT-100-1A

MONTH	ZENITH					INDUSTRY					ZENITH PERCENTAGE OF INDUSTRY		% from Previous Year			
	FACTORY			DISTRIBUTOR		FACTORY			DISTRIBUTOR				PRODUCTION		SALES TO DEALERS	
	* Production	* Inventory	Shipments	Sales To Dealers	Inventory	* Production	* Inventory	Shipments	Sales To Dealers	Inventory	* Prod.	Sales To Dealers	* Zenith	* Industry	Zenith	Industry
1961 JANUARY FEBRUARY	86,200 179,766	6,748 7,695	76,424 162,278	80,543 159,146	55,699 68,540	367,935 812,353	403,699 411,103	364,316 780,[illegible]	403,570 838,375	602,23[illegible] 589,5[illegible]	23.4 22.1	20.0 19.1	-41.9 -15.2	-30.1 -21.3	-45.4 -11.8	- 4.1 -12.5
MARCH APRIL	294,590 372,130	5,761 11,948	272,530 340,058	254,957 321,565	82,000 94,305	1,309,811 1,715,619	373,198 440,442	1,293,[illegible] 1,[illegible]	1,138,672 1,440,672	602,[illegible] 588,[illegible]	22.5 21.7	19.1 19.1	- 6.2 - 2.8	-17.1 -14.3	- 6.7 - 5.0	-10.1 - 9.5
MAY JUNE	449,927 542,044	15,109 [illegible]	408,[illegible] 505,[illegible]	377,980 450,457	88,971 117,[illegible]	2,186,018 2,[illegible],136	529,499 524,344	1,986,[illegible] 2,581,[illegible]	2,089,770 2,459,744	597,[illegible] 733,[illegible]	20.6 19.4	18.7 18.1	+ 1.0 + 1.9	-10.6 - 5.5	- 2.1 - 1.8	- 5.9 - 4.1
JULY AUGUST	597,180 708,873	9,307 9,[illegible]	593,[illegible] 695,[illegible]	[illegible] 665,0[illegible]	[illegible] [illegible]	3,148,524 3,609,188	466,[illegible] 454,313	[illegible] 3,519,[illegible]	[illegible] 3,[illegible]	718,[illegible] 707,[illegible]	18.8 19.5	18.1 18.0	+ 3.1 + 7.5	- 1.5 + .1	- 2.0 + 1.8	- 2.6 - .9
SEPTEMBER OCTOBER	836,201 939,936	5,887 9,205	779,115 871,776	741,081 840,592	103,[illegible] 99,0[illegible]	4,393,768 5,011,583	417,446 [illegible]	4,[illegible] [illegible]	4,089,107 4,434,084	810,5[illegible] 815,[illegible]	19.0 18.7	18.1 18.1	+ 6.4 + 5.8	+ .5 + 2.9	+ 1.2 + 1.2	+ .1 + .8
NOVEMBER DECEMBER	1033,172 1116,953	9,889 5,820	958,[illegible] 1041239	936,341 1033831	96,[illegible] 90,452	5,597,535 6,177,197	429,383 436,991	5,357,235 5,903,338	5,175,857 5,776,941	823,[illegible] 770,44[illegible]	18.5 18.1	18.1 18.0	+ 7.4 + 8.3	+ 5.6 + 8.2	+ 2.0 + 2.6	+ 1.7 + 2.2
1962 JANUARY FEBRUARY	109,636 218,429	11,088 9,344	100,875 204,[illegible]	104,117 19[illegible],907	70,198 63,576	488,069 1,080,383	439,585 484,[illegible]	408,[illegible] 1,0[illegible]	465,[illegible] [illegible],111	761,99[illegible] 748,410	22.4 21.2	22.4 20.[illegible]	+27.2 +21.9	+32.9 [illegible]	[illegible] +25.0	+15.4 +10.6
MARCH APRIL	350,985 448,085	6,323 8,650	337,940 416,180	311,674 370,[illegible]	101,840 126,7[illegible]	1,640,614 2,200,201	448,[illegible] 448,[illegible]	1,447,[illegible] 2,050,477	1,367,967 [illegible]	608,[illegible] 625,318	20.[illegible] 20.1	19.8 19.5	+19.1 +18.[illegible]	[illegible] [illegible]	[illegible] [illegible]	+17.6 +15.0
MAY JUNE	507,977 612,270	9,633 8,[illegible]	478,[illegible] 578,[illegible]	430,[illegible] [illegible]	131,145 131,084	2,674,846 3,296,501	654,[illegible] 597,[illegible]	[illegible] [illegible]	[illegible] [illegible]	[illegible] 1,084,146	19.0 18.6	19.[illegible] 19.3	[illegible] [illegible]	[illegible] +17.[illegible]	+13.4 +18.0	+10.[illegible] + 9.3
JULY AUGUST	567,950 772,948	8,[illegible] 10,387	[illegible] 738,[illegible]	[illegible] [illegible]	164,490 134,216	3,621,910 4,138,808	487,185 487,481	3,498,730 3,967,130	[illegible] [illegible]	1,017,743 988,678	18.4 18.7	19.0 18.7	+11.8 + 9.0	+14.0 +11.7	[illegible] [illegible]	+ 9.4 + 9.7
SEPTEMBER OCTOBER	[illegible] [illegible]	8,479 8,843	850,997 [illegible]	[illegible] [illegible]	108,540 100,[illegible]	4,884,[illegible] 5,[illegible]	489,785 441,[illegible]	4,728,[illegible] [illegible]	[illegible] [illegible]	1,017,785 [illegible]	18.4 18.1	[illegible] [illegible]	+ 7.1 [illegible]	[illegible] [illegible]	[illegible] [illegible]	+ 8.3 + 8.7
NOVEMBER DECEMBER	1087082 1184841	6,[illegible] 3,[illegible]	[illegible] [illegible]	[illegible] [illegible]	[illegible] [illegible]	[illegible] 6,472,[illegible]	[illegible] [illegible]	[illegible] [illegible]	[illegible] 6,[illegible]	[illegible] [illegible]	17.[illegible] 17.[illegible]	[illegible] [illegible]	[illegible] [illegible]	[illegible] +4.7	[illegible] [illegible]	+ 9.[illegible] + 9.1

ZENITH * Includes Export

[illegible]

FINAL MONTHLY REPORT (4-5 WEEK MONTHS, DOMESTIC AND EXPORT MARKETS)

STATUS OF ZENITH AND INDUSTRY PRODUCTION, SALES AND INVENTORY UNITS, ZENITH PERCENTAGE OF INDUSTRY, AND PERCENT CHANGES

PRODUCT: Total Television Cumulative

REPORT NO.: MR-100-1A

MONTH	ZENITH					INDUSTRY					ZENITH PERCENTAGE OF INDUSTRY		± % from Previous Year			
	FACTORY			DISTRIBUTOR		FACTORY			DISTRIBUTOR				PRODUCTION		SALES TO DEALERS	
	* Production	* Inventory	Shipments	Sales To Dealers	Inventory	* Production	* Inventory	Shipments	Sales To Dealers	* Inventory	* Prod.	Sales To Dealers	* Zenith	* Industry	Zenith	Industry
1962 JANUARY	109,636	11,088	100,875	104,117	70,138	468,889	439,838	398,863	465,836	781,566	22.4	22.4	+27.8	+28.9	+29.3	+15.4
FEBRUARY	218,429	9,344	208,634	190,907	85,876	1,030,363	484,888	1,008,882	987,111	768,410	21.2	20.7	+21.5	+28.8	+25.0	+18.6
MARCH	350,986	4,323	337,949	311,876	101,248	1,669,814	446,883	1,647,886	1,867,987	808,208	20.8	19.9	+19.1	+29.0	+22.3	+17.6
APRIL	442,086	6,650	418,159	376,587	88,705	2,200,201	546,878	2,059,677	1,932,729	655,318	20.1	19.5	+18.8	+20.8	+17.1	+15.0
MAY	507,977	9,633	478,882	430,784	131,145	2,674,848	634,607	2,601,488	2,243,528	886,525	19.0	19.2	+12.9	+22.4	+13.4	+10.5
JUNE	612,276	8,299	575,536	531,785	131,054	3,295,501	587,603	3,089,814	2,734,058	1,034,146	18.6	19.5	+13.0	+17.6	+18.0	+ 9.3
JULY	667,950	8,231	630,573	601,875	114,458	3,631,910	487,128	3,488,730	3,173,886	1,017,745	18.4	19.0	+11.8	+14.0	+14.3	+ 9.4
AUGUST	772,945	10,327	728,906	689,673	124,218	4,132,603	487,481	3,947,118	3,698,017	983,672	18.7	18.7	+ 9.0	+11.7	+13.8	+ 9.7
SEPTEMBER	895,481	6,479	850,257	884,756	108,580	4,684,120	429,788	4,712,286	4,423,117	1,017,708	18.6	18.6	+ 7.1	+10.7	+11.3	+ 9.2
OCTOBER	986,191	8,843	936,661	928,009	100,625	5,484,088	441,988	5,353,910	5,054,880	947,600	18.1	18.4	+ 4.9	+ 8.4	+10.8	+ 8.7
NOVEMBER	1057521	8,889	1014184	1031181	82,084	5,951,361	399,486	5,794,388	5,685,887	857,561	17.8	18.5	+ 3.3	+ 5.3	+10.1	+ 9.8
DECEMBER	1154841	3,522	1104967	1150480	77,936	6,471,180	372,551	6,322,808	6,301,340	750,058	17.8	17.9	+ 3.4	+ 4.7	+ 9.0	+ 9.1
1963 JANUARY	112283	10,919	102,405	110,427	55,086	484,415	382,185	486,876	503,821	656,388	23.2	21.9	+ 2.4	- 0.9	+ 6.1	+ 8.6
FEBRUARY	234,547	8,681	221,956	217,375	72,442	1,042,348	408,778	980,371	1,039,820	634,084	22.5	20.9	+ 7.4	+ 1.2	+ 9.3	+ 5.3
MARCH	398,003	6,526	380,442	335,886	109,009	1,738,781	370,084	1,681,463	1,641,617	785,379	22.9	20.5	+13.4	+ 2.9	+ 7.7	+ 4.7
APRIL	484,749	12,790	458,423	408,853	133,013	2,287,418	471,881	2,104,947	2,086,785	781,697	21.2	19.8	+ 9.7	+ 6.0	+ 7.0	+ 5.4
MAY	573,505	22,666	536,948	480,702	113,252	2,794,917	588,482	2,488,436	2,414,886	746,971	20.5	19.9	+12.9	+ 4.5	+ 11.8	+ 7.6
JUNE	695,999	8,373	663,052	598,306	136,350	3,459,921	543,711	3,161,293	2,956,808	898,018	20.1	20.2	+13.7	+5.0	+12.5	+8.5
JULY	763,162	12,345	725,963	669,894	128,366	3,844,212	474,488	3,600,749	3,405,249	889,033	19.9	19.7	+14.3	+5.8	+11.3	+7.3
AUGUST	887,933	22,297	832,519	762,225	149,049	4,409,410	500,356	4,118,601	3,954,670	857,484	20.1	19.3	+14.9	+ 6.7	+10.5	+ 7.1
SEPTEMBER	1021499	11,269	968,837	916,012	131,883	5,188,815	451,084	4,910,357	4,758,191	888,690	19.7	19.3	+14.1	+ 8.7	+11.1	+ 7.8
OCTOBER	1121639	14,450	1060600	1025310	122,116	5,818,908	453,294	5,517,065	5,428,031	782,567	19.3	18.9	+15.7	+13.7	+10.5	+ 7.8
NOVEMBER	1228716	[illegible],884	1165590	1130431	114,630	6,440,308	442,256	6,125,517	6,068,862	750,108	19.1	18.6	+15.1	+ 8.2	+ 9.6	+ 7.1
DECEMBER	1332576	[illegible],707	128,5155	1263993	108,615	7,130,351	484,058	6,753,248	6,828,383	618,398	18.7	18.5	[illegible].4	+10.2	+11.8	+ 8.4

26170 *Includes Export

Market Research And Sales Statistics

45

FINAL MONTHLY REPORT (4-5 WEEK MONTHS, DOMESTIC AND EXPORT MARKETS)

STATUS OF ZENITH AND INDUSTRY PRODUCTION, SALES AND INVENTORY UNITS, ZENITH PERCENTAGE OF INDUSTRY, AND PERCENT CHANGES

PRODUCT: Total Radio (Less Radio-Phonograph Combs) Cumulative

REPORT NO.: MR-100-1.1A

MONTH	ZENITH FACTORY * Production	ZENITH FACTORY * Inventory	ZENITH FACTORY Shipments	ZENITH DISTRIBUTOR Sales To Dealers	ZENITH DISTRIBUTOR Inventory	INDUSTRY FACTORY * Production	INDUSTRY FACTORY * Inventory	INDUSTRY FACTORY Shipments	INDUSTRY DISTRIBUTOR Sales To Dealers	INDUSTRY DISTRIBUTOR Inventory	ZENITH PERCENTAGE OF INDUSTRY * Prod.	ZENITH PERCENTAGE OF INDUSTRY Sales To Dealers	PERCENTAGE CHANGE FROM PREVIOUS YEAR PRODUCTION * Zenith	PERCENTAGE CHANGE FROM PREVIOUS YEAR PRODUCTION * Industry	PERCENTAGE CHANGE FROM PREVIOUS YEAR SALES TO DEALERS Zenith	PERCENTAGE CHANGE FROM PREVIOUS YEAR SALES TO DEALERS Industry
[illegible] JANUARY FEBRUARY	88,715 159,896	21,598 9,651	71,842 154,818	62,715 123,738	108,638 128,863	704,085 1,397,519	623,896 614,635	576,801 1,267,740	614,181 1,154,328	1,009,078 1,159,773	12.5 11.4	10.2 10.7	+48.5 +38.7	+18.4 +24.7	+15.1 +26.4	+36.0 +32.2
MARCH APRIL	246,371 314,691	14,278 17,480	239,070 291,651	201,084 263,858	128,879 128,428	2,238,884 2,861,881	716,405 621,854	1,985,037 2,504,718	1,798,014 2,183,848	1,256,375 1,387,282	11.0 11.0	11.2 12.2	+27.1 +29.8	+27.6 +28.9	+29.9 +28.6	+34.5 +40.0
MAY JUNE	357,389 452,512	17,285 13,676	338,227 438,142	340,885 439,923	107,014 87,710	3,418,851 4,307,390	880,849 814,121	2,981,636 3,818,576	2,892,485 3,358,888	1,415,534 1,506,176	10.8 10.8	13.1 13.1	+25.6 +32.8	+29.0 +33.4	+28.7 +34.4	+31.7 +26.9
JULY AUGUST	512,946 606,743	14,183 20,515	488,885 588,708	518,988 596,842	78,023 74,840	4,782,780 5,511,[illegible]	724,871 [illegible]	4,484,308 5,[illegible]	4,005,402 4,813,808	1,585,305 1,515,586	10.7 11.0	13.0 12.4	+29.5 +21.7	+34.3 +28.2	+35.1 +31.0	+26.8 +23.0
SEPTEMBER OCTOBER	788,891 969,617	18,380 15,983	738,130 918,883	725,880 854,882	100,888 129,813	6,776,405 8,080,028	800,[illegible] [illegible],705	6,[illegible],346 7,768,[illegible]	5,879,465 6,511,169	1,619,018 1,905,139	11.8 12.0	12.1 12.4	+27.1 +31.6	+27.8 +29.8	+30.9 +32.5	+24.3 +21.7
NOVEMBER DECEMBER	1152[illegible] 1251725	21,204 9,651	1082,161 [illegible]	[illegible] 1101[illegible]	128,310 127,789	9,[illegible],372 10,[illegible]	610,[illegible] [illegible],245	8,[illegible],008 9,782,[illegible]	7,800,153 9,[illegible],166	1,[illegible],281 1,244,[illegible]	12.4 12.4	12.5 12.5	+31.8 +32.2	+26.6 +25.3	+31.9 +34.4	+20.5 +18.4
[illegible] JANUARY FEBRUARY	78,469 173,[illegible]	12,921 21,[illegible]	71,878 146,[illegible]	74,313 [illegible],878	111,[illegible] 128,[illegible]	[illegible]	709,[illegible] [illegible]	[illegible] 1,[illegible]	[illegible] 1,[illegible]	1,170,[illegible] 1,[illegible],810	10.0 11.2	10.6 10.6	- 9.4 + 8.6	+ 2.8 +12.3	+18.5 +15.6	+14.7 +11.9
MARCH APRIL	[illegible],700 372,[illegible]	17,250 15,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	2,[illegible] [illegible]	2,[illegible],700 2,[illegible]	1,[illegible],795 1,460,714	11.1 10.8	11.7 11.7	+17.8 +18.1	+18.5 +20.4	+18.5 +16.3	+13.6 +21.2
MAY JUNE	[illegible]	11,[illegible] 13,130	[illegible],784	[illegible],469	[illegible]	[illegible]	[illegible] 1,[illegible],570	[illegible] 4,[illegible]	[illegible] 3,[illegible]	1,[illegible] 1,[illegible]	[illegible]	12.3 12.6	+27.8 [illegible]	+24.4 +25.6	+16.7 +11.9	+22.6 +17.6
JULY AUGUST	[illegible]	9,[illegible] [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	4,[illegible] [illegible]	4,[illegible] [illegible]	1,[illegible],130 1,[illegible]	[illegible]	12.6 12.6	+37.4 +34.0	+20.5 +17.4	+25.5 +12.2	+14.6 + 9.4
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	+12.6 + 8.4	+ 8.8 + 7.1	+ 8.3 [illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Defendant's Exhibit No. 218.

FINAL MONTHLY REPORT (4-5 WEEK MONTHS, DOMESTIC AND EXPORT MARKETS)

SUMMARY OF ZENITH AND INDUSTRY PRODUCTION, SALES AND INVENTORY UNITS, ZENITH PERCENTAGE OF INDUSTRY, AND PERCENT CHANGES

PRODUCT: TOTAL RADIOS (Less Radio-Phonograph Combinations)- Cumulative

REPORT NO. MR-100-1A

MONTH	ZENITH					INDUSTRY					ZENITH PERCENTAGE OF INDUSTRY		% from Previous Year			
	FACTORY			DISTRIBUTOR		FACTORY			DISTRIBUTOR				PRODUCTION		SALES TO DEALERS	
	* Production	* Inventory	Shipments	Sales To Dealers	Inventory	* Production	* Inventory	Shipments	Sales To Dealers	Inventory	* Prod.	Sales To Dealers	* Zenith	* Industry	Zenith	Industry
1961 JANUARY	91,688	21,982	77,774	72,791	137,190	702,957	910,699	995,981	471,818	1,219,753	13.0	15.4	+18.9	- 2.8	- 2.1	- 33.1
FEBRUARY	189,847	37,898	156,254	135,665	189,[illegible]	1,608,993	994,190	1,311,080	1,111,887	1,193,945	11.8	11.2	+ 8.3	- 6.8	- 3.0	-13.9
MARCH	290,225	17,077	271,848	229,043	178,700	2,809,818	981,841	2,309,081	1,965,094	1,436,807	11.6	11.7	+ 0.8	- 3.6	- 3.9	- 3.7
APRIL	347,924	28,381	318,763	308,798	185,041	3,250,172	1,030,882	2,986,743	2,637,850	1,465,179	10.7	11.8	- 0.4	- 5.1	- 1.6	+ 0.8
MAY	400,736	36,808	387,672	385,882	157,072	4,067,846	1,178,739	3,631,046	3,373,842	1,381,[illegible]	9.9	11.4	-13.2	+ 6.7	- 1.3	+ 6.0
JUNE	517,308	17,453	486,301	489,018	128,845	5,185,499	1,189,786	4,703,856	4,370,853	1,457,[illegible]	10.0	11.[illegible]	- 7.0	+ 0.8	- 0.7	+10.7
JULY	570,882	26,006	539,402	572,690	100,308	5,885,770	1,138,084	5,457,082	5,129,613	1,485,840	9.7	11.2	- 8.3	+ 1.0	- 2.6	+11.7
AUGUST	706,848	31,159	654,888	666,801	117,764	6,799,487	1,097,100	6,418,863	6,083,824	1,469,919	10.4	11.1	+ 1.6	+ 5.1	- .8	+14.4
SEPTEMBER	914,308	23,177	867,380	853,848	153,043	8,238,702	1,089,873	7,884,811	7,633,380	1,648,711	11.1	11.1	+ 6.7	+ 8.2	+ [illegible]	+14.8
OCTOBER	1081034	38,488	1014886	938,686	201,485	9,476,864	1,088,120	9,183,078	8,836,889	1,690,[illegible]	11.4	11.0	+ 6.0	+ 8.7	+ 2.6	+11.8
NOVEMBER	1234657	31,190	1171724	1080882	248,178	10,618,982	988,084	10,282,201	9,607,142	1,789,380	11.6	10.9	+ 3.8	+ 9.8	± 0.0	+ 9.1
DECEMBER	1357107	7,848	1291039	1253120	164,872	11,805,501	1,094,012	11,392,518	11,225,010	1,861,780	11.5	11.2	+ 1.8	+10.6	- .3	+ 7.4
1962 JANUARY	77,181	20,883	60,884	78,518	185,835	820,041	1,198,388	730,551	582,889	1,840,[illegible]	9.4	13.[illegible]	-15.8	+16.7	+ 7.8	+19.4
FEBRUARY	167,147	36,758	138,849	149,642	176,060	1,804,606	1,308,093	1,515,139	1,260,762	1,427,796	9.3	11.[illegible]	-12.0	+ 19.5	+10.3	+13.6
MARCH	275,250	10,898	280,696	253,768	184,131	3,007,513	1,405,880	2,685,980	2,177,988	1,861,[illegible]	8.8	11.1	- 8.8	+19.0	+10.8	+10.8
APRIL	389,810	43,834	318,870	333,894	176,388	3,980,871	1,568,780	3,430,832	2,987,487	1,585,[illegible]	9.3	11.[illegible]	+ 0.8	+21.5	+10.1	+13.3
MAY	449,161	31,708	408,088	412,898	189,188	4,900,089	1,700,460	4,837,697	3,780,976	1,631,078	9.2	11.0	+12.1	+21.1	+ 6.8	+11.5
JUNE	556,878	19,889	585,387	630,949	185,318	[illegible]	1,580,580	5,496,821	4,800,576	1,871,084	9.3	10.6	+ 7.7	+16.2	+ 6.5	+ 9.8
JULY	607,635	22,654	568,233	585,910	157,880	6,785,272	1,414,629	6,321,504	5,721,683	1,773,190	9.0	10.4	+ 6.4	+14.6	+ 4.1	+11.6
AUGUST	725,128	30,461	675,007	681,111	162,198	7,549,270	1,383,081	7,180,928	6,570,344	1,781,761	9.6	10.5	+ 2.9	+11.0	+ 3.6	+ 9.1
SEPTEMBER	907,829	17,428	867,285	842,617	170,098	8,680,548	1,237,816	8,621,543	7,685,[illegible]	1,680,880	10.5	10.6	-0.7	+ 7.3	+ 2.3	+ 5.3
OCTOBER	1088918	34,880	[illegible]	971,682	208,188	10,018,779	1,281,773	9,864,888	8,899,808	1,969,119	10.7	10.9	-1.1	+ 5.7	+3.5	+ 4.1
NOVEMBER	1160851	26,038	1152848	1161588	180,780	11,036,880	1,807,677	10,788,347	10,189,808	1,787,181	10.8	11.1	- 5.8	+ 2.8	+ 7.7	+ 5.9
DECEMBER	1269683	7,640	[illegible]	1229403	112,188	11,812,889	1,188,894	11,671,348	11,787,888	1,687,888	10.8	11.3	- 3.9	+ 0.9	+ 6.1	+ 6.7

*Includes Export

Market Research And Sales Statistics

FINAL MONTHLY REPORT (4-5 WEEK MONTHS, DOMESTIC AND EXPORT MARKETS)

STATUS OF ZENITH AND INDUSTRY PRODUCTION, SALES AND INVENTORY UNITS, ZENITH PERCENTAGE OF INDUSTRY, AND PERCENT CHANGES

PRODUCT: Total Radio (Less Radio-Phonograph Combination) - Cumulative

REPORT NO. MR-100-1A

MONTH	ZENITH					INDUSTRY					ZENITH PERCENTAGE OF INDUSTRY		± % from Previous Year			
	FACTORY			DISTRIBUTOR		FACTORY			DISTRIBUTOR				* PRODUCTION		SALES TO DEALERS	
	* Production	* Inventory	Shipments	Sales To Dealers	Inventory	* Production	* Inventory	/ Shipments	Sales To Dealers	Inventory	* Prod.	Sales To Dealers	Zenith	Industry	Zenith	Industry
1952 JANUARY FEBRUARY	77,181 167,147	30,893 26,758	60,694 139,848	78,518 149,642	165,235 176,060	880,041 1,804,605	1,196,359 1,358,065	738,351 1,515,139	562,688 1,380,762	1,348,836 1,427,734	9.4 9.3	13.9 11.9	-15.8 -11.0	+26.7 +19.3	+ 7.9 +10.3	+19.4 +13.4
MARCH APRIL	275,230 369,810	10,290 48,554	358,634 518,870	353,760 535,294	194,131 178,385	3,007,315 3,980,871	1,406,999 1,566,756	2,655,980 3,630,235	2,177,808 2,887,497	1,651,276 1,625,098	9.1 9.3	11.7 11.2	+ [illegible] + 6.5	+[illegible] +21.5	+20.8 +10.1	+10.8 +13.3
MAY JUNE	449,167 556,979	11,702 19,229	608,085 585,527	412,789 590,949	169,183 165,119	4,900,089 5,998,968	1,700,400 1,380,330	4,257,687 5,486,221	3,729,976 4,609,574	1,681,076 1,671,006	9.2 9.3	11.0 10.9	+22.1 [illegible]7.7	+21.1 +26.3	+ 6.8 +8.8	+11.6 + 9.8
JULY AUGUST	607,638 725,120	28,454 30,461	590,255 676,007	595,918 681,111	157,648 162,196	6,725,272 7,549,278	1,414,818 1,363,021	6,321,504 7,186,888	5,721,663 6,570,544	1,773,196 1,791,742	9.0 9.6	10.4 10.5	+ [illegible] + [illegible]	+16.6 +11.0	+ 4.1 + 5.8	+11.6 + 9.1
SEPTEMBER OCTOBER	807,829 1068818	17,494 34,658	657,285 1007888	842,817 971,605	170,089 201,196	8,880,545 10,018,779	1,337,825 1,351,773	8,611,545 9,654,882	7,885,880 8,889,906	1,959,010 1,949,115	10.2 10.7	10.8 10.8	- 0.7 - 1.1	+ 7.3 + 5.7	+ 2.3 + 3.5	+ 3.3 + 4.1
NOVEMBER DECEMBER	1169421 1285653	25,632 7,640	1133948 1244638	1131888 1329406	160,726 112,196	11,084,886 11,912,049	1,297,077 1,195,294	10,789,247 11,671,348	10,196,609 11,787,083	1,757,103 1,087,608	10.8 10.8	11.1 11.3	- 3.6 - [illegible]	+ 3.8 + 0.9	+ 7.7 + 8.1	+ 8.9 + 6.7
1953 JANUARY FEBRUARY	98,902 218,612	22,862 [illegible]	76,059 161,818	64,036 147,592	110,080 148,925	686,080 1,386,909	1,139,390 1,116,626	587,088 1,379,876	[illegible] [illegible]	1,362,316 1,417,162	14.4 15.6	14.1 [illegible]	[illegible] [illegible]	-22.6 -24.2	-18.6 - 1.4	- 19.5 -15.2
MARCH APRIL	306,187 436,[illegible]	11,680 18,605	298,116 414,917	242,654 311,714	205,242 221,211	2,387,701 3,080,601	981,025 1,012,473	2,325,896 3,058,046	1,887,[illegible] 2,365,387	1,602,376 1,670,502	12.8 14.3	[illegible] 22.8	[illegible] [illegible]	-23.9 -24.7	- 4.4 - 6.5	-15.3 -15.8
MAY JUNE	515,785 615,136	30,247 17,060	470,[illegible] 575,166	385,054 476,795	212,107 222,921	3,848,[illegible] 4,[illegible],615	[illegible] 2,390,[illegible]	[illegible] [illegible]	[illegible] 3,[illegible],670	1,666,157 1,587,687	13.2 12.7	[illegible] 13.1	[illegible] [illegible]	-21.5 -19.4	- 6.9 -8.5	-16.9 -18.0
JULY AUGUST	658,605 738,100	33,811 10,574	688,[illegible] 705,[illegible]	648,385 626,640	187,604 165,166	5,490,400 6,384,963	1,360,869 1,075,895	5,[illegible] 6,[illegible],179	4,[illegible],715 5,[illegible]	1,636,086 1,430,640	12.0 11.6	11.[illegible] 11.6	[illegible] [illegible]	-18.3 -17.2	- 8.0 - 7.9	-19.0 -16.6
SEPTEMBER OCTOBER	849,092 972,206	15,621 27,426	813,473 987,[illegible]	782,615 886,285	159,072 180,786	7,406,871 8,673,781	1,068,[illegible] 1,089,695	[illegible] [illegible]	[illegible] [illegible]	1,348,[illegible] 1,[illegible]	11.3 11.[illegible]	[illegible] [illegible]	[illegible] [illegible]	-26.4 -25.4	- 9.5 - 9.0	-15.5 -15.4
NOVEMBER DECEMBER	1094422 1107940	20,874 11,665	1046[illegible] 11[illegible]09	997,380 1120[illegible]	167,[illegible] 163,553	9,460,877 10,334,[illegible]	1,086,137 1,071,[illegible]	9,[illegible] 10,250,976	8,[illegible] 9,977,[illegible]	1,919,[illegible] 1,958,941	11.4 11.6	[illegible] 11.3	[illegible] [illegible]	-14.2 -13.3	-14.8 -15.0	-15.5 -15.2

CUMULATIVE REPORT

Zenith Research And Sales Statistics

Defendant's Exhibit No. 218.

ZENITH SALES IN SPECIFIC MARKETS.

		Television	Radio
Canada (per Market Research and Sales Statistics Dept. reports)			
1959	Year	10916	14466
	1/1 to 5/31	3573	4228
	6/1 to 12/31	7343	10238
1960		18396	16985
1961		17295	18906
1962		14195	15062
1963	1/1–5/31	4766	4059
United Kingdom (furnished by Export Dept.)			
1959	6/1–12/31	0	1488
1960		1	1604
1961		21	1274
1962		28	1319
1963	1/1–5/31	15	388
Australia (furnished by Export Dept.)			
1959	6/1–12/31	2	1
1960		9	9
1961		2	8
1962		1	12
1963	1/1–5/31	0	23

Defendant's Exhibit No. 218.

CANADIAN TELEVISION SHARE OF MARKET REPORT
BY PROVINCE - MONTHLY & CUMULATIVE

MONTH OF: Second Half - 1959

REPORT NO.: MTVC-130

		JULY		AUGUST		SEPTEMBER		OCTOBER		NOVEMBER		DECEMBER	
		MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE
TOTAL CANADA	ZENITH UNITS	621	4,529	646	5,175	1,430	6,605	1,568	8,173	1,434	9,607	1,309	10,916
	INDUSTRY UNITS	27,066	191,447	31,105	222,552	48,670	271,222	56,410	327,632	46,125	373,757	32,208	405,965
	ZENITH SHARE	2.3	2.4	2.1	2.3	2.9	2.4	2.8	2.5	3.1	2.6	4.1	2.7
NEWFOUNDLAND	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	303	4,951	335	5,286	529	5,815	1,664	7,479	785	8,264	594	8,858
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	
NOVA SCOTIA	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	
	INDUSTRY UNITS	922	8,519	1,173	9,692	1,964	11,656	2,119	13,775	2,690	16,465	1,783	[illegible]
	ZENITH SHARE	-	-	-	-	-	-	-			-		
NEW BRUNSWICK AND PRINCE EDWARD ISLAND	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	
	INDUSTRY UNITS	[illegible]	4,383	767	5,150	2,309	7,459	1,990	9,449	1,901	11,350	1,185	12,535
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-
QUEBEC	ZENITH UNITS	127	754	115	869	189	1,058	256	1,314	[illegible]	[illegible]	[illegible]	[illegible]
	INDUSTRY UNITS	6,677	41,747	7,561	49,308	12,911	62,219	13,782	76,000	9,860	85,806	6,7[illegible]	[illegible]
	ZENITH SHARE	1.9	1.8	1.5	1.8	1.5	1.7	1.9	1.7	2.5	1.8	[illegible]	[illegible]
ONTARIO	ZENITH UNITS	281	1,898	220	2,118	536	2,654	485	3,139	[illegible]	[illegible]	[illegible]	[illegible]
	INDUSTRY UNITS	11,214	77,386	12,034	89,420	16,356	105,776	18,639	124,415	17,595	142,010	13,293	[illegible]
	ZENITH SHARE	2.5	2.5	1.8	2.4	3.3	2.5	2.6	2.5	2.7	2.5	3.[illegible]	[illegible]
MANITOBA	ZENITH UNITS	17	308	63	371	189	560	219	779	203	982	[illegible]	[illegible]
	INDUSTRY UNITS	1,808	12,730	2,094	14,824	3,515	18,339	[illegible]	22,713	3,131	25,84[illegible]	[illegible]	28,[illegible]
	ZENITH SHARE	0.9	2.4	3.0	2.5	5.4	3.1	5.0	3.4	6.5	3.8	7.5	[illegible]
SASKATCHEWAN	ZENITH UNITS	21	390	34	424	203	627	[illegible]	876	176	1,052	176	1,228
	INDUSTRY UNITS	1,326	9,751	1,533	11,284	3,252	14,536	[illegible]	18,769	3,318	22,097	2,007	24,104
	ZENITH SHARE	1.6	4.0	2.2	3.8	6.2	4.3	5.9	4.7	5.3	4.8	8.8	5.1
ALBERTA	ZENITH UNITS	45	573	80	653	156	809	199	1,008	158	1,166	170	1,336
	INDUSTRY UNITS	1,829	16,595	2,493	19,088	3,696	22,784	4,066	26,850	3,599	30,449	2,452	32,901
	ZENITH SHARE	2.5	3.5	3.2	3.4	4.2	3.6	4.9	3.8	4.4	3.8	6.9	4.1
BRITISH COLUMBIA	ZENITH UNITS	130	606	134	740	157	897	160	1,057	164	1,221	125	1,346
	INDUSTRY UNITS	2,377	14,405	3,095	17,500	5,098	22,598	5,584	28,182	3,240	31,422	1,807	33,229
	ZENITH SHARE	5.5	4.2	4.3	4.2	3.1	4.0	2.9	3.8	5.1	3.9	6.9	4.1
[illegible]ON AND [illegible]HWEST [illegible]ORY	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	[illegible]ITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-

3044

Market Research And Sales Statistics

CANADIAN TELEVISION SHARE OF MARKET REPORT
BY PROVINCE · MONTHLY & CUMULATIVE

MONTH: First Half - 1959

REPORT NO.: – [illegible]YC-130

		JANUARY		FEBRUARY		MARCH		APRIL		MAY		JUNE	
		MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE
TOTAL CANADA	ZENITH UNITS	817		970	1,787	681	2,468	716	3,184	389	3,573	335	3,908
	INDUSTRY UNITS	31,741		31,701	63,442	25,732	89,174	27,612	116,786	22,958	139,744	[illegible]	164,381
	ZENITH SHARE	2.6		3.1	2.8	2.6	2.8	2.6	2.7	1.7	2.6	1.4	2.4
NEWFOUNDLAND	ZENITH UNITS	-		-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	402		363	745	587	1,332	1,153	2,485	1,220	3,705	943	4,648
	ZENITH SHARE	-		-	-	-	-	-	-	-	-	-	-
NOVA SCOTIA	ZENITH UNITS	-		-	-	-	-	-	-	-	-	-	
	INDUSTRY UNITS	[illegible]		1,143	2,697	1,308	4,005	4,431	5,439	1,118	[illegible]		
	ZENITH SHARE	-		-	-	-	-	-	-	-	-	-	-
NEW BRUNSWICK AND PRINCE [illegible]	ZENITH UNITS	-		-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	ZENITH SHARE	-		-	-	-	-	-	-	-	-	-	-
QUEBEC	ZENITH UNITS	[illegible]		146	307	112	419	134	553	40	593	38	627
	INDUSTRY UNITS	5,970		5,749	11,719	4,764	16,483	6,187	22,670	5,907	28,577	6,495	35,070
	ZENITH SHARE	2.7		2.5	2.6	2.4	2.5	2.2	2.4	0.8	2.1	0.4	1.8
ONTARIO	ZENITH UNITS	208		365	573	292	865	373	1,238	194	1,432	185	1,617
	INDUSTRY UNITS	11,913		13,332	25,245	11,029	36,274	11,122	47,396	8,668	56,064	10,108	66,172
	ZENITH SHARE	1.7		2.7	2.3	2.6	2.4	3.4	2.6	2.2	2.6	1.8	2.4
MANITOBA	ZENITH UNITS	69		94	163	64	227	29	256	13	269	22	291
	INDUSTRY UNITS	2,492		2,145	4,637	1,675	6,312	1,690	8,002	1,539	9,541	1,381	10,922
	ZENITH SHARE	2.8		4.4	3.5	3.8	3.6	1.7	3.2	0.8	2.8	1.6	2.7
SASKATCHEWAN	ZENITH UNITS	109		124	233	62	295	27	322	20	342	27	369
	INDUSTRY UNITS	2,294		1,925	4,219	1,475	5,694	976	6,670	832	7,502	923	8,425
	ZENITH SHARE	4.8		6.4	5.5	4.2	5.2	2.8	4.8	2.4	4.6	2.9	4.4
ALBERTA	ZENITH UNITS	113		144	257	83	340	97	437	50	487	41	528
	INDUSTRY UNITS	3,419		3,267	6,686	2,373	9,059	2,467	11,526	1,521	13,047	1,719	14,766
	ZENITH SHARE	3.3		4.4	3.8	3.5	3.8	3.9	3.8	3.3	3.7	2.4	3.6
BRITISH COLUMBIA	ZENITH UNITS	157		97	254	68	322	56	378	66	444	32	476
	INDUSTRY UNITS	2,638		2,981	5,619	1,685	7,304	1,967	9,271	1,466	10,737	1,291	12,028
	ZENITH SHARE	6.0		3.3	4.5	4.0	4.4	2.8	4.1	4.5	4.1	2.5	4.0
[illegible]ON AND [illegible]	ZENITH UNITS	-		-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	-		-	-	-	-	-	-	-	-	-	-
	ZENITH SHARE	-		-	-	-	-	-	-	-	-	-	-

3844

Market Research And Sales Statistics

CANADIAN TELEVISION SHARE OF MARKET REPORT
BY PROVINCE - MONTHLY & CUMULATIVE

MONTH: Second Half 1960

REPORT NO.: MTV-130

		JULY		AUGUST		SEPTEMBER		OCTOBER		NOVEMBER		DECEMBER	
		MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE
TOTAL CANADA	ZENITH UNITS	716	5,700	991	6,691	1,898	8,589	1,641	10,230	1,381	11,611	1,785	[illegible]
	INDUSTRY UNITS	19,664	156,064	28,091	184,155	46,944	231,099	44,812	275,911	35,469	311,380	29,375	340
	ZENITH SHARE	3.6	3.7	3.5	3.6	4.0	3.7	3.7	3.7	3.9	3.7	6.1	
NEWFOUNDLAND	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	77	3,524	244	3,768	569	4,337	699	5,036	543	5,579	497	6,076
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-
NOVA SCOTIA	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	721	7,219	1,287	8,506	[illegible]	[illegible]	2,034	12,338	1,364	13,702	1,192	14,894
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-
[illegible] AND PRINCE EDWARD ISLAND	ZENITH UNITS	-		-	-	-	-	-	-	-		-	
	INDUSTRY UNITS	720	5,597	753	6,350	[illegible]	7,788	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-
	ZENITH UNITS	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	INDUSTRY UNITS	5,344	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	ZENITH SHARE	2.7	3.6	3.1	3.5	3.0	3.4	2.9	3.3	2.5	3.2	6.6	3.5
ONTARIO	ZENITH UNITS	334	2,288	479	2,767	761	3,528	494	4,022	513	4,535	576	5,111
	INDUSTRY UNITS	8,260	59,543	10,749	70,292	16,647	86,939	15,441	102,380	12,119	114,499	11,046	125,545
	ZENITH SHARE	4.0	3.8	4.5	3.9	4.6	4.1	3.2	3.9	4.2	4.0	5.2	4.1
MANITOBA	ZENITH UNITS	84	520	91	611	215	826	238	1,064	179	1,243	257	1,500
	INDUSTRY UNITS	1,068	9,882	1,827	11,709	3,614	15,323	3,758	19,081	2,857	21,938	2,325	24,263
	ZENITH SHARE	7.9	5.3	5.0	5.2	5.9	5.4	6.3	5.6	6.3	5.7	11.1	6.2
SASKATCHEWAN	ZENITH UNITS	42	408	52	460	155	615	216	831	151	982	114	1,096
	INDUSTRY UNITS	909	6,937	1,514	8,451	2,677	11,128	3,616	14,744	2,494	17,238	2,012	19,250
	ZENITH SHARE	4.6	5.9	3.4	5.4	5.8	5.5	6.0	5.6	6.1	5.7	5.7	5.7
ALBERTA	ZENITH UNITS	45	534	68	602	248	850	229	1,079	152	1,231	233	1,464
	INDUSTRY UNITS	1,184	11,644	2,103	13,747	3,532	17,279	4,219	21,498	2,930	24,428	2,910	27,338
	ZENITH SHARE	3.8	4.6	3.3	4.4	7.0	4.9	5.4	5.0	5.2	5.0	8.0	5.4
BRITISH COLUMBIA	ZENITH UNITS	65	521	65	586	116	702	162	864	163	1,027	176	1,203
	INDUSTRY UNITS	1,381	11,287	1,903	13,190	3,430	16,620	3,180	19,800	2,897	22,697	1,878	24,575
	ZENITH SHARE	4.7	4.6	3.4	4.4	3.4	4.2	5.1	4.4	5.6	4.5	9.4	4.9
YUKON AND NORTHWEST TERRITORY	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-

2644

Market [illegible]search And Sales Statistics

Defendant's Exhibit No. 218.

CANADIAN TELEVISION SHARE OF MARKET REPORT
BY PROVINCE - MONTHLY & CUMULATIVE

III

MONTH(S) OF	REPORT NO.
Second Half 1961	MTVC-130

		JULY		AUGUST		SEPTEMBER		OCTOBER		NOVEMBER		DECEMBER	
		MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE
TOTAL CANADA	ZENITH UNITS	1,135	7,282	1,479	8,761	2,932	11,693	1,938	13,628	1,812	15,437	1,638	17,075
	INDUSTRY UNITS	*22,560	154,824	*29,794	181,618	*46,332	230,950	*43,505	274,455	*39,184	313,630	*31,389	345,019
	ZENITH SHARE	5.1	4.7	5.0	4.7	6.3	5.1	4.4	5.0	4.6	4.9	[illegible]	[illegible]
NEWFOUNDLAND	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	* 192	2,241	* 291	2,532	* 498	3,030	* 669	3,699	* 591	4,290	* [illegible]	4,775
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-
NOVA SCOTIA	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	* 615	7,298	*1,009	8,307	* 1,874	9,901	* 1,622	11,623	* 1,532	13,155	* 1,686	14,841
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-
NEW BRUNSWICK AND PRINCE EDWARD ISLAND	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	* 675	4,715	* 686	5,401	* 1,148	[illegible]	* [illegible]	[illegible]	* 1,115	[illegible]	[illegible]	[illegible]
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-
QUEBEC	ZENITH UNITS	449	[illegible]	588	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		
	INDUSTRY UNITS	* 6,147	44,672	*8,773	53,445	*13,592	67,037	*11,906	78,943	*10,968	89,911	* 7,976	97,887
	ZENITH SHARE	7.3	5.0	6.7	5.3	7.5	5.7	5.9	5.8	5.6	5.8	[illegible]	[illegible]
ONTARIO	ZENITH UNITS	482	2,920	588	3,508	1,193	4,701	599	5,300	680	5,980	[illegible]	[illegible]
	INDUSTRY UNITS	* 8,841	56,972	*11,213	68,135	*14,356	82,491	*12,877	95,368	*12,058	107,426	*10,116	117,542
	ZENITH SHARE	5.5	5.1	5.2	5.1	8.3	5.7	4.7	5.6	5.6	5.6	6.4	5.6
MANITOBA	ZENITH UNITS	26	485	76	561	164	725	141	866	126	992	157	1,149
	INDUSTRY UNITS	* 1,098	9,006	* 1,812	10,818	* 3,535	14,353	* 3,655	18,008	* 2,902	20,910	* 1,769	22,679
	ZENITH SHARE	2.4	5.4	4.2	5.2	4.6	5.1	3.9	4.8	4.3	4.7	8.9	5.1
SASKATCHEWAN	ZENITH UNITS	15	261	56	317	68	385	120	505	79	584	77	661
	INDUSTRY UNITS	* 1,155	6,876	* 1,481	8,357	* 2,922	11,279	* 2,881	14,160	* 2,764	16,924	* 1,927	18,851
	ZENITH SHARE	1.3	3.8	3.8	3.8	2.3	3.4	4.2	3.6	2.9	3.5	4.0	3.5
ALBERTA	ZENITH UNITS	72	793	83	876	280	1,156	234	1,390	151	1,541	294	1,835
	INDUSTRY UNITS	* 1,351	10,749	* 1,733	12,482	* 4,148	16,630	* 4,594	21,224	* 3,688	24,912	* 3,288	28,200
	ZENITH SHARE	5.3	7.4	4.8	7.0	6.8	7.0	5.1	6.5	4.1	6.2	8.9	6.5
BRITISH COLUMBIA	ZENITH UNITS	61	579	88	667	207	874	137	1,011	157	1,168	165	1,333
	INDUSTRY UNITS	* 1,586	12,345	* 2,796	15,141	* 4,465	19,606	* 3,929	23,535	* 3,562	27,097	* [illegible]	[illegible]
	ZENITH SHARE	3.8	4.7	3.1	4.4	4.6	4.5	3.5	4.3	4.4	4.3	[illegible]	4.4
YUKON AND NORTHWEST TERRITORIES	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-

* Estimated - based on the assumption that Admiral, not included in EIA reports, accounts for 15% of industry.

Market Research And Sales Statistics

#8

CANADIAN TELEVISION SHARE OF MARKET REPORT
BY PROVINCE - MONTHLY & CUMULATIVE

MONTH: Second Half 1962

REPORT NO.: MTVC-130

		JULY		AUGUST		SEPTEMBER		OCTOBER		NOVEMBER		DECEMBER	
		MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO-DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE
TOTAL CANADA	ZENITH UNITS	1,120	8,468	739	9,207	1,471	10,678	1,116	11,794	1,233	13,027	1,168	14,195
	INDUSTRY UNITS	30,092	203,927	33,584	237,511	52,578	290,089	51,720	341,809	49,710	391,519	*29,457	420,976
	ZENITH SHARE	3.7	4.2	2.2	3.9	2.8	3.7	2.2	3.5	2.5	3.3	4.0	3.4
NEWFOUNDLAND	ZENITH UNITS	-	28	4	32	8	40	-	40	-	40	-	40
	INDUSTRY UNITS	201	2,564	394	2,958	522	3,480	619	3,999	623	4,622	389	5,011
	ZENITH SHARE	-	1.1	1.0	1.1	1.5	1.1	-	1.0	-	0.9	-	0.8
NOVA SCOTIA	ZENITH UNITS	-	31	-	31	-	31	1	32	-	32	-	32
	INDUSTRY UNITS	1,014	7,966	860	8,826	1,836	10,662	1,722	12,384	1,572	13,956	845	14,801
	ZENITH SHARE	-	.4	-	.4	-	.3	[illegible]	.3	-	0.2	-	0.2
NEW BRUNSWICK AND PRINCE	ZENITH UNITS	1	57	1	58	-	58	-	58	-	58	-	58
	INDUSTRY UNITS	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	1,199	[illegible]	[illegible]	10,117	741	10,858
	ZENITH SHARE	.1	1.0	.1	.9	-	.9	-	.7	-	0.6	[illegible]	0.5
QUEBEC	ZENITH UNITS	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	INDUSTRY UNITS	8,225	58,984	10,215	69,199	14,868	84,067	14,072	98,139	11,989	110,128	7,838	117,966
	ZENITH SHARE	4.8	4.9	3.1	4.6	3.6	4.5	2.3	4.2	3.9	4.1	5.6	4.2
ONTARIO	ZENITH UNITS	486	3,237	270	3,507	549	4,056	432	4,488	448	4,936	436	5,372
	INDUSTRY UNITS	11,684	72,692	11,338	84,030	17,403	101,433	18,126	119,559	18,085	137,644	10,273	147,917
	ZENITH SHARE	4.2	4.5	2.4	4.2	3.2	4.0	2.4	3.8	2.5	3.6	4.2	3.6
MANITOBA	ZENITH UNITS	42	440	41	481	106	587	121	708	76	784	68	852
	INDUSTRY UNITS	1,937	13,396	2,174	15,570	3,733	19,303	3,336	22,639	2,930	25,569	2,093	27,662
	ZENITH SHARE	2.2	3.3	1.9	3.1	2.8	3.0	3.6	3.1	2.6	3.1	3.2	3.1
SASKATCHEWAN	ZENITH UNITS	32	285	18	303	44	347	58	405	30	435	49	482
	INDUSTRY UNITS	1,036	8,323	1,458	9,781	2,825	12,606	2,870	15,476	2,450	17,926	1,533	19,459
	ZENITH SHARE	3.1	3.4	1.2	3.1	1.6	2.8	2.0	2.6	1.2	2.4	3.2	2.5
ALBERTA	ZENITH UNITS	41	740	60	800	95	895	121	1,016	139	1,155	83	1,238
	INDUSTRY UNITS	2,442	16,298	2,999	19,297	4,441	23,738	4,786	28,524	4,740	33,264	2,585	35,849
	ZENITH SHARE	1.7	4.5	2.0	4.1	2.1	3.8	2.5	3.6	2.9	3.5	3.2	3.5
BRITISH COLUMBIA	ZENITH UNITS	126	751	27	778	133	911	57	968	76	1,044	93	1,137
	INDUSTRY UNITS	2,859	17,727	3,454	21,181	5,936	27,117	5,090	32,207	6,086	38,293	3,160	41,453
	ZENITH SHARE	4.4	4.3	.8	3.7	2.2	3.4	1.1	3.0	1.2	2.7	2.9	2.7
YUKON AND NORTHWEST TERRITORY	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-

*December Includes Color Television

Market Research And Sales Statistics

Defendant's Exhibit No. 218.

CANADIAN TELEVISION SHARE OF MARKET REPORT
BY PROVINCE - MONTHLY & CUMULATIVE

MONTH: First Half 1963

REPORT NO.: MTVO-130

		JANUARY		FEBRUARY		MARCH		APRIL		MAY		JUNE	
		MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE
TOTAL CANADA	ZENITH UNITS	835		1,157	1,991	1,090	3,081	771	3,852	914	4,766	878	5,644
	INDUSTRY UNITS	32,012		32,553	64,565	29,405	93,795	23,018	119,810	28,468	148,278	28,250	176,528
	ZENITH SHARE	2.7		3.5	3.1	3.7	3.3	3.0	3.2	3.2	3.2	3.3	3.2
NEWFOUNDLAND	ZENITH UNITS	-		1	1	6	7	10	17	1	18	2	20
	INDUSTRY UNITS	457		525	982	417	1,399	287	1,686	427	2,113	253	2,366
	ZENITH SHARE	-		0.2	0.1	1.4	0.5	3.5	1.0	0.2	0.9	0.8	0.8
NOVA SCOTIA	ZENITH UNITS	-		-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	1,146		924	2,070	1,015	3,085	1,090	4,175	1,190	5,365	733	6,098
	ZENITH SHARE	-		-	-	-	-	-	-	-	-	-	-
NEW BRUNSWICK AND PRINCE EDWARD ISLAND	ZENITH UNITS	-		-	-	-	-	4	4	14	18	-	18
	INDUSTRY UNITS	1,030		933	1,963	931	2,894	693	3,587	827	4,414	497	4,911
	ZENITH SHARE	-		-	-	-	-	0.6	0.1	1.7	0.4	-	0.4
QUEBEC	ZENITH UNITS	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	INDUSTRY UNITS	7,657		8,996	16,653	8,182	24,835	8,103	32,938	9,306	42,244	7,763	50,007
	ZENITH SHARE	3.6		4.7	4.2	3.3	4.0	2.6	4.4	3.5	4.2	4.5	4.2
ONTARIO	ZENITH UNITS	410		468	878	420	1,298	297	1,595	351	1,946	332	2,278
	INDUSTRY UNITS	11,019		11,350	22,369	11,731	34,100	9,511	43,611	9,525	53,136	11,115	64,251
	ZENITH SHARE	3.7		4.1	3.9	3.6	3.8	3.1	3.7	3.7	3.7	3.0	3.5
MANITOBA	ZENITH UNITS	39		58	97	56	153	60	213	78	291	58	349
	INDUSTRY UNITS	2,161		2,119	4,280	1,428	5,708	1,318	7,026	1,372	8,398	1,278	9,676
	ZENITH SHARE	1.8		2.7	2.3	3.9	2.7	4.6	3.0	5.7	3.5	4.5	3.6
SASKATCHEWAN	ZENITH UNITS	28		19	47	34	81	24	105	24	129	26	155
	INDUSTRY UNITS	1,358		2,113	3,471	1,082	4,553	848	5,401	1,019	6,420	686	7,106
	ZENITH SHARE	2.1		0.9	1.4	3.1	1.8	2.8	1.9	2.4	2.0	3.8	2.1
ALBERTA	ZENITH UNITS	72		91	163	80	243	61	304	100	404	97	501
	INDUSTRY UNITS	3,017		2,663	5,680	2,255	7,935	2,041	9,976	2,281	12,257	1,600	13,857
	ZENITH SHARE	2.4		3.4	2.9	3.5	3.1	3.0	3.0	4.4	3.3	6.0	3.6
BRITISH COLUMBIA	ZENITH UNITS	29		72	101	47	148	23	171	16	187	16	203
	INDUSTRY UNITS	4,037		2,910	6,947	2,342	9,289	2,138	11,427	2,537	13,964	2,165	16,129
	ZENITH SHARE	0.7		2.5	1.5	2.0	1.6	1.1	1.5	0.6	1.3	0.7	1.3
YUKON AND NORTHWEST TERRITORY	ZENITH UNITS	-		-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	-		-	-	-	-	-	-	-	-	-	-
	ZENITH SHARE	-		-	-	-	-	-	-	-	-	-	-

Market Research And Sales Statistics

Defendant's Exhibit No. 218.

CANADIAN RADIO SHARE OF MARKET REPORT BY PROVINCE - MONTHLY & CUMULATIVE

MONTH:	REPORT NO.:
Second Half - 1959	MRC-130

		JULY		AUGUST		SEPTEMBER		OCTOBER		NOVEMBER		DECEMBER	
		MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE
TOTAL CANADA	ZENITH UNITS	[illegible]	7,357	1,012	8,369	1,368	9,737	1,210	10,947	1,665	12,612	1,854	14,4[illegible]
	INDUSTRY UNITS	33,345	227,407	39,563	265,990	60,448	326,438	55,055	381,493	58,565	440,058	64,114	504,[illegible]
	ZENITH SHARE	5.6	3.2	2.6	3.1	2.3	3.0	2.2	2.9	2.8	2.9	2.9	2.9
NEWFOUNDLAND	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	420	4,366	649	5,015	1,148	6,163	704	6,867	912	7,779	[illegible]	9,930
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-
NOVA SCOTIA	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	1,666	8,700	2,067	10,767	2,063	12,830	1,579	14,409	1,987	16,395	2,818	19,213
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-
NEW BRUNSWICK & PRINCE EDWARD ISLAND	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	[illegible]	[illegible]	[illegible]	[illegible]	1,018	7,597	1,362	[illegible]	1,284	[illegible]	[illegible]	[illegible]
				-	-	-	-	-	-	-	-	-	-
QUEBEC	ZENITH UNITS	[illegible]	1,540	239	1,779	209	1,988	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	INDUSTRY UNITS	[illegible]	64,018	11,915	75,933	16,543	92,476	14,743	107,219	14,820	122,039	15,663	137,702
	ZENITH SHARE	3.7	2.4	2.0	2.3	1.3	2.1	1.0	2.0	2.7	2.1	2.4	2.1
ONTARIO	ZENITH UNITS	972	2,893	206	3,099	591	3,690	415	4,105	580	4,685	665	5,350
	INDUSTRY UNITS	12,643	81,043	13,944	94,987	23,611	118,598	21,109	139,707	22,960	162,667	28,653	191,320
	ZENITH SHARE	7.7	3.6	1.5	3.3	2.5	3.1	2.0	2.9	2.5	2.9	2.3	2.8
MANITOBA	ZENITH UNITS	91	750	209	959	163	1,122	117	1,239	129	1,368	232	1,600
	INDUSTRY UNITS	1,794	16,291	2,582	18,873	4,022	22,895	3,941	26,836	4,469	31,305	3,194	34,499
	ZENITH SHARE	5.1	4.6	8.1	5.1	4.1	4.9	3.0	4.6	2.9	4.4	7.3	4.6
SASKATCHEWAN	ZENITH UNITS	60	504	79	583	122	705	114	819	133	952	111	1,063
	INDUSTRY UNITS	1,347	10,869	1,481	12,350	2,498	14,848	2,760	17,608	2,315	19,923	2,486	22,409
	ZENITH SHARE	4.5	4.6	5.3	4.7	4.9	4.7	4.1	4.7	5.7	4.8	4.5	4.7
ALBERTA	ZENITH UNITS	162	896	118	1,014	112	1,126	242	1,368	222	1,590	236	1,826
	INDUSTRY UNITS	2,129	17,778	2,347	20,125	4,690	24,815	3,852	28,667	4,143	32,810	3,772	36,582
	ZENITH SHARE	7.6	5.0	5.0	5.0	2.4	4.5	6.3	4.8	5.4	4.8	6.3	5.0
BRITISH COLUMBIA	ZENITH UNITS	233	774	161	935	171	1,106	179	1,285	194	1,479	238	1,717
	INDUSTRY UNITS	2,918	18,451	2,910	21,361	4,855	26,216	4,786	31,002	5,675	36,677	4,726	41,403
	ZENITH SHARE	8.0	4.2	5.5	4.4	3.5	4.2	3.7	4.1	3.4	4.0	5.0	4.2
YUKON AND NORTHWEST TERRITORY	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-

3664.1

Market Research And Sales Statistics

CANADIAN RADIO SHARE OF MARKET REPORT
BY PROVINCE - MONTHLY & CUMULATIVE

MONTH: First Half - 1959

REPORT NO.: MRC-150

		JANUARY		FEBRUARY		MARCH		APRIL		MAY		JUNE	
		MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE
TOTAL CANADA	ZENITH UNITS	780		760	1,540	824	2,364	1,115	3,479	749	4,228	1,266	5,494
	INDUSTRY UNITS	29,716		33,403	63,119	32,889	96,008	34,866	130,874	33,097	163,971	30,088	194,059
	ZENITH SHARE	2.6		2.3	2.4	2.5	2.5	3.2	2.7	2.3	2.6	4.2	[illegible]
NEWFOUNDLAND	ZENITH UNITS	-		-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	332		582	914	1,015	1,929	861	2,790	620	3,410	536	[illegible]
	ZENITH SHARE	-		-	-	-	-	-	-	-	-	-	-
NOVA SCOTIA	ZENITH UNITS	-		-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	1,039		1,026	2,065	1,296	3,361	1,166	4,527	1,177	5,704	1,330	7,034
	ZENITH SHARE	-		-	-	-	-	-	-	-	-	-	-
NEW BRUNSWICK AND PRINCE EDWARD ISLAND	ZENITH UNITS	-		-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	584		871	1,455	877	2,332	840	3,172	827	3,999	[illegible]	[illegible]
	ZENITH SHARE	-		-	-	-	-	-	-	-	-	-	-
[illegible]	ZENITH UNITS	155		133	318	147	465	273	738	161	899	296	1,195
	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	9,335	37,478	9,581	47,059	7,365	[illegible]
	ZENITH SHARE	1.8		1.5	1.7	[illegible]	1.7	2.9	2.0	[illegible]	[illegible]	[illegible]	[illegible]
ONTARIO	ZENITH UNITS	280		197	477	189	666	452	1,118	265	1,383	538	1,921
	INDUSTRY UNITS	10,480		10,413	20,893	11,514	32,407	13,266	45,673	11,132	56,805	11,595	68,400
	ZENITH SHARE	2.7		1.9	2.3	1.6	2.1	3.4	2.4	2.4	2.4	4.6	2.8
MANITOBA	ZENITH UNITS	120		121	241	141	382	84	466	75	541	119	659
	INDUSTRY UNITS	2,341		2,487	4,828	2,274	7,102	2,292	9,394	2,541	11,935	2,562	14,497
	ZENITH SHARE	5.1		4.9	5.0	6.2	5.4	3.7	5.0	3.0	4.5	4.6	4.5
SASKATCHEWAN	ZENITH UNITS	60		75	135	132	267	71	338	55	393	51	444
	INDUSTRY UNITS	1,476		1,820	3,296	1,502	4,798	1,695	6,493	1,509	8,002	1,520	9,522
	ZENITH SHARE	4.1		4.1	4.1	8.8	5.6	4.2	5.2	3.6	4.9	3.4	4.7
ALBERTA	ZENITH UNITS	88		137	225	121	346	169	515	96	611	123	734
	INDUSTRY UNITS	2,556		3,174	5,730	2,853	8,583	2,640	11,223	2,613	13,836	1,813	15,649
	ZENITH SHARE	3.4		4.3	3.9	4.2	4.0	6.4	4.6	3.7	4.4	6.8	4.7
BRITISH COLUMBIA	ZENITH UNITS	77		67	144	94	238	66	304	97	401	140	541
	INDUSTRY UNITS	2,295		2,427	4,722	2,631	7,353	2,771	10,124	3,097	13,221	2,312	15,533
	ZENITH SHARE	3.4		2.8	3.0	3.6	3.2	2.4	3.0	3.1	3.0	6.1	3.5
YUKON AND NORTHWEST TERRITORY	ZENITH UNITS	-		-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	-		-	-	-	-	-	-	-	-	-	-
	ZENITH SHARE	-		-	-	-	-	-	-	-	-	-	-

3864

Market Research And Sales Statistics

CANADIAN RADIO SHARE OF MARKET REPORT
BY PROVINCE - MONTHLY & CUMULATIVE

MONTH: Second Half 1960

REPORT NO.: MRC-130

		JULY		AUGUST		SEPTEMBER		OCTOBER		NOVEMBER		DECEMBER	
		MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE
TOTAL CANADA	ZENITH UNITS	1,142	6,348	1,726	8,074	2,253	10,327	2,093	12,420	2,035	14,455	2,480	16,935
	INDUSTRY UNITS	30,517	205,309	37,130	242,439	42,530	284,969	41,277	326,246	54,710	380,956	53,911	434,867
	ZENITH SHARE	3.7	3.1	4.6	3.3	5.3	3.6	5.1	3.8	3.7	3.8	4.6	3.9
NEWFOUNDLAND	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	415	4,346	684	5,010	568	5,576	954	6,530	959	7,489	794	8,283
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-
NOVA SCOTIA	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	1,293	9,222	2,004	11,226	1,718	12,944	1,644	14,588	2,766	17,354	2,324	19,678
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-
NEW BRUNSWICK AND PRINCE EDWARD ISLAND	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	1,018	6,165	946	7,111	1,054	8,165	1,074	9,239	1,216	10,455	1,494	11,949
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-
QUEBEC	ZENITH UNITS	289	1,732	505	2,237	381	2,618	378	2,996	494	3,490	455	3,945
	INDUSTRY UNITS	7,582	59,920	9,850	69,760	12,338	82,102	10,338	92,640	16,227	108,867	15,451	124,318
	ZENITH SHARE	3.8	2.9	5.1	3.2	3.1	3.2	3.7	3.2	3.0	3.2	2.9	3.2
ONTARIO	ZENITH UNITS	579	2,189	656	2,845	1,291	4,136	1,060	5,196	866	6,062	1,292	7,354
	INDUSTRY UNITS	13,330	77,024	13,632	90,656	15,058	105,712	15,286	120,998	19,335	140,333	21,174	161,507
	ZENITH SHARE	4.3	2.8	4.8	3.1	8.6	3.9	6.9	4.3	4.5	4.3	6.1	4.6
MANITOBA	ZENITH UNITS	72	660	153	813	118	931	183	1,114	143	1,257	186	1,443
	INDUSTRY UNITS	1,559	12,177	2,473	14,650	2,790	17,440	2,713	20,153	3,216	23,369	2,292	25,661
	ZENITH SHARE	4.6	5.4	6.2	5.5	4.2	5.3	6.7	5.5	4.4	5.4	8.1	5.6
SASKATCHEWAN	ZENITH UNITS	50	440	59	499	101	600	140	740	97	857	135	972
	INDUSTRY UNITS	1,129	7,724	1,493	9,217	1,722	10,939	1,885	12,824	1,920	14,744	1,947	16,691
	ZENITH SHARE	4.4	5.7	4.0	5.4	5.9	5.5	7.4	5.8	5.1	5.7	6.9	5.8
ALBERTA	ZENITH UNITS	58	716	183	899	210	1,109	194	1,303	204	1,507	275	1,782
	INDUSTRY UNITS	1,748	14,415	3,224	17,639	3,552	21,191	3,935	25,126	4,306	29,432	3,726	33,158
	ZENITH SHARE	3.3	5.0	5.7	5.1	5.9	5.2	4.9	5.2	4.7	5.1	7.4	5.4
BRITISH COLUMBIA	ZENITH UNITS	94	611	170	781	152	933	138	1,071	231	1,302	137	1,439
	INDUSTRY UNITS	2,443	14,346	2,824	17,170	3,730	20,900	3,448	24,348	4,765	29,113	4,709	33,822
	ZENITH SHARE	3.8	4.3	6.0	4.5	4.1	4.5	4.0	4.4	4.8	4.5	2.9	4.3
YUKON AND NORTHWEST TERRITORY	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-

2844.1

Market Research And Sales Statistics.

CANADIAN RADIO SHARE OF MARKET REPORT
BY PROVINCE - MONTHLY & CUMULATIVE

MONTH: Second Half 1961

REPORT NO.: MRC-130

		JULY		AUGUST		SEPTEMBER		OCTOBER		NOVEMBER		DECEMBER	
		MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE
TOTAL CANADA	ZENITH UNITS	1,496	9,108	1,460	10,568	2,224	12,792	1,657	14,449	1,816	16,265	2,641	18,906
	INDUSTRY UNITS	*24,233	181,216	*30,866	212,082	*46,107	258,189	*44,251	302,440	*52,336	354,776	*56,038	[illegible]
	ZENITH SHARE	6.2	5.0	4.7	5.0	4.8	5.0	3.7	4.8	3.7	4.6	4.7	4.6
NEWFOUNDLAND	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	* 263	2,806	* 363	3,169	* 641	3,810	* 629	4,439	NA	NA	* 590	NA
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-
NOVA SCOTIA	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	* 1,168	9,022	* 1,160	10,182	* 1,932	12,114	* 1,646	13,760	NA	NA	* 2,600	NA
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-
NEW BRUNSWICK AND PRINCE EDWARD ISLAND	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	* 620	4,188	* 704	4,892	* 1,166	6,058	* 985	7,043	NA	NA	* 1,575	NA
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-
QUEBEC	ZENITH UNITS	490	2,959	624	3,583	636	4,219	464	4,683	614	5,297	870	[illegible]
	INDUSTRY UNITS	* 7,433	54,435	* 8,721	63,156	*12,534	75,690	*11,980	*87,670	NA	NA	*16,444	NA
	ZENITH SHARE	6.6	5.4	7.2	5.7	5.1	5.6	3.9	5.3	-	-	5.3	[illegible]
ONTARIO	ZENITH UNITS	652	3,366	453	3,819	962	4,781	749	5,530	693	6,223	960	7,183
	INDUSTRY UNITS	* 9,513	87,554	*12,596	80,150	*18,661	98,811	*17,076	115,887	NA	NA	*23,057	NA
	ZENITH SHARE	6.9	5.0	3.6	4.8	5.2	4.8	4.4	4.8	-	-	4.2	-
MANITOBA	ZENITH UNITS	100	762	185	897	190	1,087	161	1,248	163	1,411	302	1,713
	INDUSTRY UNITS	* 1,011	9,192	* 1,748	10,940	* 2,757	13,697	* 2,763	16,460	NA	NA	* 2,623	NA
	ZENITH SHARE	9.9	8.3	7.7	8.2	6.9	7.9	5.8	7.6	-	-	11.5	-
SASKATCHEWAN	ZENITH UNITS	49	377	36	413	53	466	75	541	76	617	81	698
	INDUSTRY UNITS	* 695	6,562	* 881	7,443	* 1,414	8,857	* 1,699	10,556	NA	NA	* 1,896	NA
	ZENITH SHARE	7.1	5.7	4.1	5.5	3.7	5.3	4.4	5.1	-	-	4.3	-
ALBERTA	ZENITH UNITS	102	941	96	1,037	223	1,260	102	1,362	84	1,446	246	1,692
	INDUSTRY UNITS	* 1,386	11,272	* 2,047	13,319	* 2,993	16,312	* 3,288	19,600	NA	NA	* 3,224	NA
	ZENITH SHARE	7.4	8.3	4.7	7.8	7.5	7.7	3.1	6.9	-	-	7.6	-
BRITISH COLUMBIA	ZENITH UNITS	104	703	116	819	160	979	107	1,086	156	1,242	182	1,423
	INDUSTRY UNITS	* 2,136	16,185	* 2,646	18,831	* 4,009	22,840	* 4,185	27,025	NA	NA	* 4,03[illegible]	NA
	ZENITH SHARE	4.9	4.3	4.4	4.3	4.0	4.3	2.5	4.0	-	-	4.5	-
[illegible] AND [illegible]HWEST TERRITORY	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-

3664.1

* Estim[illegible] - based on the assumption that Admiral, not included in EIA reports, accounts for 6% industry.

Market R[illegible]earch And Sales Statistics

Defendant's Exhibit No. 218.

CANADIAN RADIO SHARE OF MARKET REPORT BY PROVINCE - MONTHLY & CUMULATIVE

MONTH: Second Half 1962

REPORT NO.: NRC-130

		JULY		AUGUST		SEPTEMBER		OCTOBER		NOVEMBER		DECEMBER	
		MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE
TOTAL CANADA	ZENITH UNITS	1,154	8,709	926	9,635	1,429	11,064	999	12,063	1,449	13,512	1,550	15,062
	INDUSTRY UNITS	20,573	162,904	25,721	188,625	33,798	202,423	33,360	235,783	45,069	280,852	41,533	322,385
	ZENITH SHARE	5.6	6.1	3.6	5.7	4.2	5.5	3.0	5.1	3.2	4.8	3.7	4.7
NEWFOUNDLAND	ZENITH UNITS	5	136	24	160	4	164	21	185	-	185	[illegible]	185
	INDUSTRY UNITS	464	3,650	897	4,547	844	5,391	933	6,324	834	7,158	694	7,852
	ZENITH SHARE	1.1	3.7	2.7	3.5	.5	3.0	2.3	2.9	-	2.6	-	2.4
NOVA SCOTIA	ZENITH UNITS	-	23	1	[illegible]	-	24	4	28	1	29	1	30
	INDUSTRY UNITS	824	6,968	1,312	8,280	1,644	9,924	1,250	11,174	2,032	13,206	1,778	14,984
	ZENITH SHARE	-	.3	.1	.3	-	.2	.3	.3	-	.2	0.1	0.2
NEW BRUNSWICK AND PRINCE	ZENITH UNITS	-	99	1	100	-	100	-	100	-	100	-	100
	INDUSTRY UNITS	569	4,154	753	4,907	1,050	5,957	1,016	6,973	1,169	8,142	1,090	9,232
	ZENITH SHARE	-	2.4	.1	2.0	-	1.7	-	1.4	-	1.2	-	1.1
QUEBEC	ZENITH UNITS	442	2,832	372	3,204	631	3,835	259	4,094	561	4,655	505	5,160
	INDUSTRY UNITS	6,392	44,765	7,022	51,787	8,609	60,396	7,178	67,574	11,110	78,684	9,215	87,899
	ZENITH SHARE	6.9	6.3	5.3	6.2	7.3	6.3	3.6	6.1	5.0	5.9	5.5	5.9
ONTARIO	ZENITH UNITS	508	3,294	295	3,589	431	4,020	437	4,457	584	5,041	533	5,574
	INDUSTRY UNITS	7,101	49,085	8,575	57,660	12,483	70,143	13,334	83,477	18,738	102,215	19,128	121,343
	ZENITH SHARE	7.2	6.7	3.4	6.2	3.5	5.7	3.3	5.3	3.1	4.9	2.8	4.6
MANITOBA	ZENITH UNITS	47	739	83	822	73	895	64	959	88	1,047	123	1,170
	INDUSTRY UNITS	1,036	8,637	1,963	10,600	2,257	12,857	2,562	15,419	2,575	17,994	1,951	19,945
	ZENITH SHARE	4.5	8.6	4.2	7.8	3.2	7.0	2.5	6.2	3.4	5.8	6.3	5.9
SASKATCHEWAN	ZENITH UNITS	21	317	20	337	77	414	50	464	30	494	64	558
	INDUSTRY UNITS	649	5,077	1,059	6,136	1,486	7,622	1,408	9,030	1,404	10,434	1,360	11,794
	ZENITH SHARE	3.2	6.2	1.9	5.5	5.2	5.4	3.6	5.1	2.1	4.7	4.7	4.7
ALBERTA	ZENITH UNITS	54	702	79	781	98	879	87	966	77	1,043	204	1,247
	INDUSTRY UNITS	1,295	9,551	1,867	11,418	2,896	14,314	2,533	16,847	2,958	19,805	2,717	22,522
	ZENITH SHARE	4.2	7.4	4.2	6.8	3.4	6.1	3.4	5.7	2.6	5.3	7.5	5.5
BRITISH COLUMBIA	ZENITH UNITS	77	567	51	618	115	733	77	810	108	918	120	1,038
	INDUSTRY UNITS	2,243	11,017	2,273	13,290	2,529	15,819	3,146	18,965	4,249	23,214	3,600	26,814
	ZENITH SHARE	3.4	5.1	2.2	4.7	4.5	4.6	2.4	4.3	2.5	4.0	3.3	3.9
YUKON AND NORTHWEST TERRITORY	ZENITH UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	INDUSTRY UNITS	-	-	-	-	-	-	-	-	-	-	-	-
	ZENITH SHARE	-	-	-	-	-	-	-	-	-	-	-	-

[illegible]

M[illegible] Research And Sales Statistics

Defendant's Exhibit No. 218.

CANADIAN RADIO SHARE OF MARKET REPORT
BY PROVINCE - MONTHLY & CUMULATIVE

MONTH: First Half 1965

REPORT NO.: [illegible]-150

		JANUARY		FEBRUARY		MARCH		APRIL		MAY		JUNE	
		MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE
TOTAL CANADA	ZENITH UNITS	451		795	1,244	1,041	2,285	865	3,150	879	4,[illegible]	[illegible]	[illegible]
	INDUSTRY UNITS	15,341		19,921	35,162	20,403	55,565	23,427	78,[illegible]	21,150	[illegible]	21,[illegible]	1[illegible]
	ZENITH SHARE	3.0		4.0	3.5	5.1	4.1	3.8	4.0	3.6	[illegible]	3.6	3.[illegible]
NEWFOUNDLAND	ZENITH UNITS	-		1	1	-	1	24	25	8	[illegible]	47	[illegible]
	INDUSTRY UNITS	329		429	758	692	1,450	633	2,083	739	2,8[illegible]	973	3,[illegible]
	ZENITH SHARE	-		0.2	0.1	-	0.1	3.8	1.2	0.7	1.[illegible]	4.8	2.[illegible]
NOVA SCOTIA	ZENITH UNITS	-		-	-	-	-	-	-	-	[illegible]	-	-
	INDUSTRY UNITS	664		668	1,332	906	2,238	645	3,[illegible]	1,213	4,[illegible]	[illegible]	5,20[illegible]
	ZENITH SHARE	-		-	-	-	-	-	-	-	[illegible]	-	-
NEW BRUNSWICK AND PRINCE EDWARD ISLAND	ZENITH UNITS	25		-	25	36	61	-	61	-	[illegible]	[illegible]	[illegible]
	INDUSTRY UNITS	506		431	937	724	1,651	8[illegible]	2,46[illegible]	77[illegible]	[illegible]	[illegible]	[illegible]
	ZENITH SHARE	[illegible]		-	2.7	5.0	3.7	[illegible]	2.5	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	ZENITH UNITS	[illegible]		265	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	INDUSTRY UNITS	[illegible]		6,536	10,145	5,076	15,221	7,959	23,180	8,10[illegible]	31,[illegible]	6,[illegible]	[illegible]
	ZENITH SHARE	3.3		4.1	3.7	0.2	[illegible]	[illegible]	5.4	3.[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	ZENITH UNITS	[illegible]		[illegible]	495	[illegible]	[illegible]	[illegible]	1,173	[illegible]	[illegible]	[illegible]	[illegible]
	INDUSTRY UNITS	5,[illegible]		6,625	11,850	8,152	20,002	7,311	27,313	8,2[illegible]	[illegible]	[illegible]	[illegible]
	ZENITH SHARE	3.3		4.8	4.2	4.7	4.4	4.0	4.3	[illegible]	[illegible]	[illegible]	[illegible]
MANITOBA	ZENITH UNITS	39		86	125	47	172	[illegible]	194	[illegible]	[illegible]	[illegible]	[illegible]
	INDUSTRY UNITS	1,357		1,285	2,642	1,251	3,893	1,551	5,4[illegible]	1,715	6,[illegible]	[illegible]	[illegible]
	ZENITH SHARE	2.9		6.7	4.7	3.8	4.4	1.6	3.7	4.[illegible]	[illegible]	[illegible]	[illegible]
SASKATCHEWAN	ZENITH UNITS	36		25	61	29	90	86	112	56	[illegible]	[illegible]	[illegible]
	INDUSTRY UNITS	746		790	1,536	739	2,275	91[illegible]	3,188	857	[illegible]	[illegible]	[illegible]
	ZENITH SHARE	4.8		3.2	4.0	3.9	4.0	[illegible]	3.6	3.6	3.6	[illegible]	[illegible]
ALBERTA	ZENITH UNITS	42		48	90	94	184	[illegible]	246	36	282	[illegible]	[illegible]
	INDUSTRY UNITS	1,175		1,416	2,591	1,584	4,175	[illegible]	6,082	1,501	7,5[illegible]	1,[illegible]	[illegible]
	ZENITH SHARE	3.6		3.4	3.5	5.9	4.4	[illegible]	4.0	2.4	3.7	[illegible]	[illegible]
BRITISH COLUMBIA	ZENITH UNITS	17		52	69	33	102	[illegible]	115	4	119	[illegible]	[illegible]
	INDUSTRY UNITS	1,650		1,741	3,371	1,279	4,650	1,5[illegible]	6,181	1,727	7,908	1,596	9,[illegible]
	ZENITH SHARE	1.0		3.0	2.0	2.6	2.2	0.8	1.9	0.2	1.5	1.4	[illegible]
[illegible]	ZENITH UNITS	[illegible]		[illegible]	-	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	-	-	[illegible]
	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	-	[illegible]	[illegible]	-	[illegible]
	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	-	[illegible]	[illegible]	[illegible]	[illegible]

ZENITH RADIO CORP.—ZENITH SALES CORP.

Unit and Dollar Sales.

	1963			1962			1961			1960			1959		
	Units	Amount	Per Unit	Units	Amount	Per Unit	Units	Amount	Per Unit	Units	Amount	Per Unit	Units	Amount	Per Unit
Television															
Black & white															
Domestic	1266572	180354637	142.40	1104020	169926000	153.92	1060315	177248103	167.17	996966	163017721	163.51	1005815	164677500	163.73
Export	41708	4345794	104.20	38949	3910325	100.40	57421	5043693	87.84	24931	2451893	98.35	32576	3026387	92.90
Canada	17614	2261251	128.38	12919	1767316	136.80	17876	2577107	144.16	12276	1788406	145.68	9042	1344810	148.73
Total	1325894	186961682		1155888	175603641		1135612	184868813		1034173	167258020		1047433	169048757	
Color															
Domestic	158752	63670289	401.07	92091	38369603	416.65									
Export	23	10108	439.48	—	—	—									
Canada	679	242137	356.61	497	187985	378.24									
Total	159454	63922534		92588	38557588										
Radio-Phono-Stereo*															
Domestic	1378666	59834488	43.40	1445112	61650078	42.66	1466962	56573991	38.57	1442058	56557949	39.22	1441654	62728783	43.51
Export	33414	2724784	81.55	30616	2027476	66.22	39185	2316978	59.13	37265	2046859	54.92	45558	2379565	52.23
Canada	13005	473718	36.43	14686	512889	34.92	18949	567660	29.96	17124	576866	33.69	10612	437828	41.26
Total	1425085	63032987		1490414	64190443		1525096	59458629		1496447	59181474		1497824	65546176	
Total	2910433	313917203		2738890	278351672		2660708	244327442		2530620	226439494		2545257	234594933	

	1963			1962			1961			1960			1959		
***Radio**															
Domestic	1151098	29535474	25.66	1237995	33809080	27.31	1288054	37384383	29.02	1268825	38832057	30.60	1200328	38283363	31.89
Export	27508	2183147	79.36	27467	1749249	63.69	32827	1538046	46.85	33553	1748731	52.12	39548	1878559	47.50
Canada	12513	345235	27.59	14060	381334	27.12	18480	491387	26.59	16265	467902	28.77	9919	349594	35.24
Total	1191119	32063856		1279522	35939663		1339361	39413816		1318643	41048690		1249795	40511516	
Phono-Stereo															
Domestic	227568	30299011	133.14	207117	27840998	134.42	178908	19189608	107.26	173233	17725892	102.32	241326	24445420	101.30
Export	5906	541637	91.71	3149	278227	88.35	6358	778932	122.51	3712	297928	80.26	6010	501006	83.36
Canada	492	128483	261.14	626	131555	210.15	469	76278	162.63	859	108964	126.85	693	88234	127.32
Total	233966	30969131		210892	28250780		185735	20044818		177804	18132784		248029	25034660	
Total Radio-Ph.-St.	1425085	63032987		1490414	64190443		1525096	59458629		1496447	59181474		1497824	65546176	

Defendant's Exhibit No. 218.

1960

ZENITH RADIO CORP.—PARENT ONLY 1960 FINALS.

	Canadian Portion							Percentages							
								Television				Radio			
	Television		Radio		Stereo Hi Fi	Total	Parent Total	Fixed		Variable		Fixed		Variable	
Sales before Price Adj. Provision	1762203		464702												
Price Adjustment Provision	11737		312												
Net Sales	1750466	100%	464390	100%							100.00%				100%
Deductions	—		—												
Excise Tax	489	.03	131	03							.03				.03
Royalties, Contingencies, etc.	200816	11.47	60076	12.94				(11.7%)	1.34	(88.3%)	10.13	(11.7%)	1.51	(88.3%)	11.43
Advertising	(463)	(.03)	(123)	(.03)							(.03)				(.03)
Bad Debts	3918	.22	1039	.22							.22				.22
Trade Discount Allowance	16766	.96	678	.15							.96				.15
Warranty Provision															
Total Deductions	221526	12.65	61801	13.31							11.31				11.80
Net Sales After Deductions	1528940	87.35	402589	86.69							88.69				88.20
Prime Cost															
Material Standard	1019675	58.25	274508	59.11							58.25				59.11
Material Adjustment from Standard	(20372)	(1.16)	(5484)	(1.18)							(1.16)				(1.18)
Material Inventory Allowance	30590	1.75	4504	.97							1.75				.97
Material Price Variance	(8159)	(.47)	(154)	(.03)							(.47)				(.03)
Misc. Material Costs	11019	.63	2444	.53							.63				.53
Labor Standard	102597	5.86	27255	5.87							5.86				5.87
Labor Adjustment from Standard	499	.03	132	.03							.03				.03
Labor Variance	3622	.21	2336	.50							.21				.50
Other Direct Labor-Rework, etc.	18967	1.08	5038	1.08							1.08				1.08
Other Dir. Labor–Fringe on Dir. Labor	35189	2.01	9348	2.01				(55.5%)	1.12	(44.5%)	.89	(55.5%)	1.12	(44.5%)	.89
Tools and Dies	15613	.89	2299	.50					.89				.50		
Total Prime Cost	1209240	69.08	322226	69.39							67.07				67.77
Contribution to Overhead	319700	18.27	80363	17.30							21.62				20.43
Overhead															
Factory Overhead—Standard	139100	7.95	(29845	6.43				(45.8%)	3.34	(54.2%)	3.97	(45.8%)	2.71	(54.2%)	3.20
Factory Overhead in Excess of Std.	(11199)	(.64)	5.91 (2402)	(.52)											
Eng. (Other than Civ. Development)	14530	.83	3857	.83					.83				.83		
Civilian Development (Direct)	23669	1.35	6279	1.35					1.35				1.35		
Indirect Contract Expense	—		—						—				—		
Indirect Administrative	24263	1.39	6437	1.39					1.39				1.39		
Legal Expense	4953	.28	1314	.28					.28				.28		
Sales Expense and Cabinet Design	55996	3.20	13158	2.83				(25%)	.80	(75%)	2.40	(25%)	.71	(75%)	2.12
Parts	—														
Total Overhead	251381	14.36	58488	12.59							6.37				5.82
Operating Profit or Loss	68319	3.91	21875	4.71							15.25				15.11
Other Income or Expense															
Miscellaneous Income—Purchase Dis.	15543	.89	4207	.91			Purchase discount 1688870 .88				.89				.91
Exess Amortization Adj. (Income)		4.80		5.62					11.34		16.14		10.41		16.02
Phonevision Research Eng. (Direct)															
California Research (ZRRC)															
Phonevision Promotion															
Inter Div. Inv. Profit Variation															
Total Misc. Income or Expense															
Profit & Loss Adjustment–Prior Years															
Net Profit Before Taxes															
Tax Estimate															
Net Profit After Tax Estimate															

Defendant's Exhibit No. 218.

ZENITH RADIO CORP.—PARENT ONLY.

Summary of Profit Percentages Applying to Additional Sales Volumes in Canada, United Kingdom, Australia.

Television and Radio—By Years.

	Television					Radio				
	1959[1]	1960	1961	1962	1963	1959[1]	1960	1961	1962	1963
Net Sales		100.00	100.00	100.00	100.00		100.00	100.00	100.00	100.00
Deductions										
Royalties, contingencies, etc.		.03	.10	.10	.08		.03	.03	.03	—
Advertising		10.13	7.53	6.70	4.86		11.43	7.45	6.68	4.87
Bad debts		(.03)	—	(.14)	.25		(.03)	—	(.14)	.25
Trade discount allowance		.22	.25	.18	—		.22	.25	.18	—
Warranty provision		.96	.81	.67	.60		.15	.13	.11	.15
Total deductions		11.31	8.69	7.51	5.79		11.80	7.86	6.86	5.27
Net Sales After Deductions		88.69	91.31	92.49	94.21		88.20	92.14	93.14	94.73
Prime Costs										
Material standard		58.25	57.24	56.23	57.81		59.11	63.16	59.32	59.73
Material adjustment from standard		(1.16)	(1.30)	(1.26)	—		(1.18)	(1.44)	(1.33)	—
Material inventory allowance		1.75	1.72	1.56	1.73		.97	.95	1.02	.88
Material price variance		(.47)	(.96)	(.73)	(.95)		(.03)	(1.06)	(1.[illegible])	(1.29)
Misc. material costs		.63	.86	1.15	.96		.53	.95	1.24	.80
Labor standard		5.86	5.93	6.05	6.14		5.87	5.79	6.70	5.91
Labor adjustment from standard		.03	.04	(.07)	—		.03	.04	(.08)	—
Labor variance		.21	.61	.68	.26		.50	.59	.75	.53
Other direct labor–Rework, etc.		1.08	1.20	1.20	.93		1.08	1.17	1.33	1.95
Other direct labor–Fringe on SL.		.89	1.01	1.07	.94		.89	.99	1.18	1.06
Tools and dies		—	—	—	—		—	—	—	—
Total prime cost		67.07	66.35	65.88	67.82		67.77	71.14	68.75	69.57
Contributions to Overhead		21.62	24.96	26.61	26.39		20.43	21.00	24.39	25.16
Factory overhead–standard Factory overhead in excess of std.		} 3.37	3.40	3.07	2.60		3.20	2.70	2.76	2.03
Engineering (other than civ. development)		—	—	—	—		—	—	—	—
Engineering–Civ. develop–Direct		—	—	—	—		—	—	—	—
Indirect administrative		—	—	—	—		—	—	—	—
Legal expense		—	—	—	—		—	—	—	—
Sales expense		2.40	1.75	2.27	2.54		2.12	1.78	2.66	3.08
Total overhead		6.37	5.15	5.34	5.14		5.32	4.48	5.42	5.11
Operating Profit or Loss		15.25	19.81	21.27	21.25		15.11	16.57	18.97	20.05
Purchase discounts		.89	.82	.79	.83		.91	.91	.83	.85
Profit or Loss Before Other Income and Expense		16.14	20.63	22.06	22.08		16.02	17.48	19.80	20.90

1. The 1959 profit and loss was not suitable for this purpose and we have substituted 1960.
   (a) 1959 Profit and Loss was for combined television, radio and hi fi.
   (b) Advertising and sales promotional expense was allocated between domestic and Canada on the sales dollar basis—direct expenses were not segregated.

   The substitution of 1960 for 1959 results in the use of a lower profit percentage.

Note: It has been assumed that, to the extent that sets built to the standards used in England and Australia would cost more or less than sets built to Canadian standards, the factory selling price would be adjusted correspondingly and the profit percentage would not change.

1961

ZENITH RADIO CORP.—PARENT ONLY 1961 FINALS.

		Canadian Portion							Parent Total	Percentages							
										Television				Radio			
		Black & White		Color	Radio		Stereo Hi Fi	Total		Fixed		Variable		Fixed		Variable	
Sales before Price Adjustment Provision		2531460			490386												
Price Adjustment Provision		19971			12034												
Net Sales		2511489	100%		478352	100%							100.00%				100.00%
Deductions																	
Excise Tax		—			—												
Royalties, Contingencies, etc.		2584	.10		150	.03							.10				.03
Advertising		218374	8.69		41112	8.59				(13.3%)	1.16	(86.7%)	7.53	(13.3%)	1.14	(86.7%)	7.45
Bad Debts		(36)	—		(7)	—											
Trade Discount Allowance		6176	.25		1176	.25							.25				.25
Warranty Provision		20224	.81		640	.13							.81				.13
Total Deductions		247322	9.85		43071	9,00							8.69				7.86
Net Sales After Deductions		2264167	90.15		435281	91.00							91.31				92.14
Prime Cost																	
Material Standard		1437593	57.24		302132	63.16							57.24				63.16
Material Adjustment from Standard		(32769)	(1.30)		(6887)	(1.44)							(1.30)				(1.44)
Material Inventory Allowance		43128	1.72		4525	.95							1.72				.95
Material Price Variance		(24166)	(.96)		(5091)	(1.06)							(.96)				(1.06)
Misc. Material Costs		21686	.86		4557	.95							.86				.95
Labor Standard		148954	5.93		27702	5.79							5.93				5.79
Labor Adjustment from Standard		1096	.04		204	.04							.04				.04
Labor Variance		15205	.61		2829	.59							.61				59
Other Dir. Labor-Rework, etc.		30115	1.20		5601	1.17							1.20				1.17
Other Dir. Labor-Fringe on Dir. Labor		58371	2.32		10856	2.27				(56.6%)	1.31	(43.4%)	1.01	(56.6%)	1.28	(43.4%)	.99
Tools and Dies		20190	.80		2147	.45					.80				.45		
Total Prime Cost		1719408	68.46		348575	72.87							66.35				71.14
Contribution to Overhead		544764	21.69		86706	18.13							24.96				21.00
Overhead																	
Factory Overhead—Standard	6.28	199512	7.94		30231	6.32				(45.9%)	2.88	(54.1%)	3.40	(45.9%)	2.30	(54.1%)	2.70
Factory Overhead in Excess of Std.		(41636)	(1.66)		(6309)	(1.32)											
Eng. (Direct and Indirect)		47912	1.91		9126	1.91					1.91				1.91		
Indirect Administrative		45070	1.80		8584	1.80					1.80				1.80		
Legal Expense		5333	.21		1016	.21					.21				[illegible]		
Sales Expense		58489	2.33		11057	2.31				(25%)	.58	(75%)	1.75	(25%)	[illegible]	(75%)	1.73
Parts		—			—								5.15				4.43
Total Overhead		814680	12.53		53705	11.23							19.81				16.57
Operating Profit or Loss		230084	9.16		83001	6.90			Purchase								
Other Income or Expense									Discount								
Miscellaneous Income (Purchase disc.)		20666	.82		4343	.91			1726, 398	.83			.82				.91
Excess Amortization Adj. (Income)			9.98			7.81					10.65		20.63		9.67		17.48
Phonevision Research Eng. Direct																	
California Research (ZRRC)																	
Phonevision Promotion																	
Special Contingency Prov.																	
Total Misc. Income or Expense																	
Interdivision Inv. Profit Variation																	
Retirement Provision Adj.																	
Net Profit Before Taxes																	
Tax Estimate (52,643974)																	
Net Profit After Tax Estimate																	
(1) Parametric Engineering																	

1962

ZENITH RADIO CORP.—PARENT ONLY 1962 FINALS.

		Canadian Portion							Parent Total
		Black & White		Color	Radio		Stereo Hi Fi	Total	
Sales before Price Adj. Provision		1767084			382094				
Price Adjustment Provision		6432			5504				
Net Sales		1760652	100.00%		376590	100.00%			
Deductions									
Excise Tax		—			—				
Royalties, Contingencies, etc.		1841	.10		129	.03			
Advertising		168111	9.55		35846	9.52			
Bad Debts		(2513)	(.14)		(538)	(.14)			
Trade Discount Allowance		3090	.18		661	.18			
Warranty Provision		11827	.67		442	.11			
Total Deductions		182356	10.36		36540	9.70			
Net Sales After Deductions		1578296	89.64		340050	90.30			
Prime Cost									
Material Standard		990014	56.23		223386	59.32			
Material Adjustment from Standard		(22190)	(1.26)		(5007)	(1.33)			
Material Inventory Allowance		27461	1.56		3824	1.02			
Material Price Variance		(12798)	(.73)		(5201)	(1.38)			
Misc. Material Costs		20212	1.15		4660	1.24			
Labor Standard		106551	6.05		25247	6.70			
Labor Adjustment from Standard		(1220)	(.07)		(289)	(.08)			
Labor Variance		11908	.68		2822	.75			
Other Dir. Labor-Rework etc.		21175	1.20		5017	1.33			
Other Dir. Labor-Fringe on Dir. Labor		38140	2.17		9037	2.40			
Tools and Dies		13245	.75		1705	.45			
Total Prime Cost		1192498	67.73		265201	70.42			
Contribution to Overhead		385798	21.91		74849	19.88			
Overhead									
Factory Overhead—Standard	6.55	140455	7.98		26961	7.17			
Factory Overhead in Excess of Std.		(25103)	(1.43)		(4819)	(1.28)			
Eng. (Direct and Indirect)		29477	1.67		6305	1.67			
Indirect Contract Expense		—			—				
Indirect Administrative		29060	1.65		6216	1.65			
Legal Expense		7600	.43		1626	.43			
Sales Expense		53330	3.03		13375	3.55			
Parts		—			—				
Total Overhead		234819	13.33		49664	13.19			Purchase Discount
Operating Profit or Loss		150979	8.58		25185	6.69			1957, 615 .78
Other Income or Expense									
Miscellaneous Income		13964	.79		3120	.83			
Excess Amortization Adj. (Income)			9.87			7.52			
Phonevision Research Eng. Direct									
California Research (ZBRC)									
Phonevision Promotion									
SPL. Contingency No. 2									
Total Misc. Income or Expense									
Interdivision Inv. Profit Variation									
Retirement Provision Adj.									
Net Profit Before Taxes									
Tax Estimate									
Net Profit After Tax Estimate									

Percentages							
Television				Radio			
Fixed		Variable		Fixed		Variable	
			100.00%				100.00%
			.10				.03
(29.8%)	2.85	(70.1%)	6.70	(29.8%)	2.84	(70.1%)	6.68
			(.14)				(.14)
			.18				.18
			.67				.11
			7.51				6.86
			92.49				93.14
			56.23				59.32
			(1.26)				(1.33)
			1.56				1.02
			(.73)				(1.38)
			1.15				1.24
			6.05				6.70
			(.07)				(.08)
			.68				.75
			1.20				1.33
(50.7%)	1.10	(49.3%)	1.07	(50.7%)	1.22	(49.3%)	1.18
	.75				.45		
			65.88				68.75
			26.61				24.39
(53.2%)	3.48		3.07	(53.2%)	3.13		2.76
	1.67				1.67		
	1.65				1.65		
	.43				.43		
(25%)	.76	(75%)	2.27	(25%)	.89	(75%)	2.66
			5.34				5.42
			21.27				18.97
			.79				.83
	12.69		22.06		12.28		19.80

Defendant's Exhibit No. 218.

1963

ZENITH RADIO CORP.—PARENT ONLY 1963 PRELIMINARY.

	Canada Portion								Percentages							
	Black & White		Color	Radio		Stereo Hi Fi	Total	Parent Total	Television				Radio			
									Fixed		Variable		Fixed		Variable	
Sales before Price Adjustment Provision	2261504			345075												
Price Adjustment Provision	17784			3034												
Net Sales after Price Adjustment Provision	2243720			342041												
Trade Discount Allowance	2312			198												
Net Sales	2241408	100.00%		341843	100.00%							100.00%				100.00%
Deductions																
Excise Tax	—			—												
Royalties, Contingencies, etc.	1837	.08		—								.08				
Advertising	181556	8.10		27767	8.12				(40.0%)	3.24	(60.0%)	4.86	(40%)	3.25	(60%)	4.87
Bad Debts	5609	.25		855	.25							.25				.25
Trade Discount Allowance	—			—												
Warranty Provision	13329	.60		501	.15							.60				.15
Total Deductions	202331	9.03		29123	8.52							5.79				5.27
Net Sales After Deductions	2039077	90.97		312720	91.48							94.21				94.73
Prime Cost																
Material Standard	1295683	57.81		204171	59.73							57.81				59.73
Material Inventory Allowance	38870	1.73		3021	.88							1.73				.88
Material Price Variance	(21821)	(.95)		(4414)	(1.29)							(.95)				(1.29)
Misc. Material Costs	21596	.96		2729	.80							.96				.80
Labor Standard	137598	6.14		20162	5.91							6.14				5.91
Labor Variance	5774	.26		1821	.53							.26				.53
Other Dir. Labor-Rework etc.	20841	.93		6675	1.95							.93				1.95
Other Dir. Labor-Fringe on Dir. Labor	41083	1.83		7045	2.06				(48.7%)	.89	(51.3%)	.94	(48.7%)	1.00	(51.3%)	1.06
Tools and Dies	18284	.82		1484	.43					.82				.43		
Total Prime Cost	1558408	69.53		242694	71.00							67.82				69.57
Contribution to Overhead	480669	21.44		70026	20.48							26.39				25.16
Overhead																
Factory Overhead—Standard	182395	8.13		21467	6.28				}(55.8%)	3.28		2.60	(55.8%)	2.57		2.03
Factory Overhead in Excess of Std.	(50365)	(2.25)		(5744)	(1.68)											
Eng. (Direct and Indirect)	36454	1.63		5811	1.70					1.63				1.70		
Indirect Contract Expense	—			—						—				—		
Indirect Administrative	30682	1.37		4843	1.42					1.37				1.42		
Legal Expense	3970	.18		622	.18					.18				.18		
Sales Expense	76032	3.39		14038	4.10				(25%)	.85	(75%)	2.54	(25%)	1.02	(75%)	3.08
Parts	—			—												
Total Overhead	279168	12.45		41037	12.00							5.14				5.11
Operating Profit or Loss	201501	8.99		28989	8.46							21.25				20.05
Other Income or Expense								Purch. Disc.								
Zenith Research (UK)	18662	.83		2916	.85			2283, 214 .82				.83				.85
Miscellaneous Income		9.82			9.33					12.26		22.08		11.57		20.90
Excess Amortization Adj. (Income)																
Phonevision Research, Eng. Direct																
California Research (ZRRC)																
Phonevision Promotion																
Special Cont.																
Total Misc. Income or Expense																
Prov. for Inter. Div. Pft in H A Inv.																
Retirement Provision Adj.																
Net Profit Before Taxes																
Tax Estimated																
Net Profit After Tax Estimate																
(1) Parametric Engineering																

CANADIAN ADVERTISING AND SALES PROMOTION—1960.

Sub Account	Title	Amount	Fixed	Variable
7020	Magazine advertising space	$4040050	2020025	2020025
7029	Premises (floor space)	——		
7030	Magazine advertising prod.	675212	337606	337606
7040	Trade paper advertising space	681270		681270
7050	Trade paper advertising prod.	1198862		1198862
7060	Newspaper advertising space	9408405		9408405
7070	Newspaper adv. prod. incurred dir. by ZRC	1899699		1899699
7080	Dealer & dist. mats & electros etc.	(39154)		(39154)
7090	Broadcasting–TV stations (time)	——		
7100	Broadcasting–TV stations (talents & prod.)	(2600)		(2600)
7103	Sales Commander's Club expense	——		
7110	Billboard (space)	2852753		2852753
7120	Billboard (prod.)	3019471		3019471
7130	Broadcasting–radio stations (time)	(129200)		(129200)
7140	Broadcasting–radio stations (tal. & prod.)	(19300)		(19300)
7150	Spec. services–surveys, clipping serv. etc.	70143		70143
7170	Telephone directory advertising	94374	94374	
7250	Store displays	(1600569)		(1600569)
7260	Dealer signs	(487284)		(487284)
7270	Souvenirs	——		
7350	Specification sheets	(772643)		(772643)
7351	Banners and streamers	(32708)		(32708)
7352	Folders, pamphlets and broadsides	752651		752651
7360	Mailings–advertising	265972		265972
7361	Mailings–publicity	23169		23169
7370	Publicity–All Forms	9781		9781
7380	House Organ (For Can. Dist. & Dlrs.)			
7390	Sales Training	(122378)		(122378)
7391	Dist. & Dealer Merchandise Plans	——		
7392	Sales Incentive Merchandise	(268001)		(268001)
7393	Promotion & Dem. of PV, other than Chi.	——		
7500	National Exhibits	750000	750000	
7510	Distributor–Dealer Exhibits (Fact. Part)	(16263)		(16263)
7511	Convention Trip Expenses–Sales Com.	549284		549284
7520	Adv. Postage, Express & Freight	(7690)		(7690)
7522	Advertising Travel	——		
7523	Advertising Donations	52793		52793
7524	Advertising Fringe Cost	——		
7526	Advertising Prov. for Co Op-Canadian	4412419		4412419
7527	Advertising Equalization Expense	——		
	Total	$27303753	3202005	24101748
			11.7%	88.3%

CANADIAN ADVERTISING AND SALES PROMOTION.

		Total	Fixed	Variable
1961	Total expense	279841		
	Magazine space	46773	23386	23387
	Magazine prod.	8126	4063	4063
	Exhibits	7879	7879	
	Telephone directory	1854	1854	
	Other	215209		215209
	Total	279841	37182	242659
			13.3%	86.7%
1962	Total expense	244383		
	Magazine space	71299	35650	35649
	Magazine prod.	6948	3474	3474
	Exhibits	29498	29498	
	Telephone directory	4313	4313	
	Other	132325		132325
	Total	244383	72935	171448
			29.8%	70.1%
1963	Total expense	249818		
	Magazine space	121673	60837	60837
	Magazine prod.	6090	3045	3045
	Exhibits	11787	11787	
	Telephone directory	5727	5727	
	World Series of Golf	18225	18225	
	Other	86316		86316
	Total	249818	99621	150298
			40.0%	60.0%

CANADIAN FRINGE.

	1959	1960	1961	1962	1963
Direct labor fringe					
Total fringe	4933858	4128537	5136707	5431131	5373110
Retirement plan prov. included	2871500	2290981	2910118	2755824	2617559
% PSRP prov. to total	58.2%	55.5%	56.6%	50.7%	48.7%
Factory overhead fringe					
Total fringe	2233062	1991708	2036894	2532216	2641664
Retirement plan prov. included	1443999	1178148	1162974	1406187	1425630
% PSRP prov. to total	64.6%	59.1%	57.1%	55.5%	54.0%

Page 1 of 2

ZENITH RADIO CORPORATION.

Summary of Factory Overhead by Expenses Year Ended December 31, 1960.

	Expense Account	Amount	Fixed		Variable	
02	Non-measurable inspection	148783			148783	
04	Salvage & scrapping material	171070			171070	
05	Setup	124561			124561	
07	Maintenance	271420			271420	
09	Supervision & administrative	2463715	1519974		2187799	
10	Clerical	1244058				
13	Idle time	119083			119083	
14	Overtime premium	156605			156605	
15	Night premium	93366			93366	
16	Union activities	5328	5328			
17	Wage rate variance	210030			210030	
19	Training	222598			222598	
20	Year end inventory	57860	57860			
26	Material handling	1579942			1579942	
27	Tool crib stores	64460	32230		32230	
28	Advance dev. & design of test equip.	16101	16101			
32	Salaries—other	579566	579566			
33	Salaries—time reports	776407	776407			
35	Stationery engineers & electricians	111720	111720			
36	Other indirect labor	110021			110021	
37	Guards	244189	244189			
38	Janitors	296599			296599	
39	Adding missing pts.	20674			20674	
		9088156	3343375	(36.8%)	5744781	(63.2%)
40	Travel	21178			21178	
46	Maintenance	574720	287360	50/50	287360	
47	Telephone & telegraph	106086			106086	
48	Equipment rental	98924			98924	
49	Outside warehousing	47507			47507	
50	Heating	89185	89185			
51	Power & light	245381	245381			
53	Drum reels & spools	6480			6480	
54	Supplies	691802			691802	
55	Outside services	45992			45992	
56	Depreciation	1072053	1072053			
62	Dev. prod. processes—new mfg. pts.	7471	7471			
65	Property taxes	392122	392122			
66	General insurance	72817	72817			
67	Compensation insurance	81401			81401	
68	Employment advertising	30689	30689			
73	Scrap sales	(62423)			(62423)	
74	Rent (net)	(303582)	(303582)			
78	Moving	3370	3370			
79	Rearranging facilities	177758	177758			
80	Demurrage & special switching	53859			53859	
81	Outside trucking	106128			106128	
82	Cafeteria—net	15933	15933			
	Total forward	12663007				

Defendant's Exhibit No. 218.

Page 2 of 2

ZENITH RADIO CORPORATION.

Summary of Factory Overhead by Expenses Year Ended December 31, 1960.

Expense Account	Amount	Fixed	Variable
Brought forward	12663007	7621731	5041276
83 Excess outside trucking cost	2374		2374
84 Excess freight chgs, due on misdirected shpmts.	392		392
89 Medical fees & supplies	19289		19289
90 Other expense—net	55377		55377
91 Jury duty	359	359	
95 Space	(218998)	(218998)	
98 Billing CR. labor & matl charged to ZSC	(85201)		(85201)
99 Year end inventory	6088	6088	
Transfers other than space	(174415)		(174415)
80 Fringe cost	1991708	1178143 299392 (36.8%)	514173 (63.2%)
Difference due to rounding	3		3
Transfers to engineering dept.	(1920)	(1920)	
Total	14258063		
175 Factory overhead direct costs	16508	16508	
17908 Credit from sources other than shipments	(263574)		(263574)
Miscellaneous charges	615304		615304
Inventory variation	18783		18783
Total	14645084		
		6713504 45.8%	7931580 54.2%

Defendant's Exhibit No. 218.

Page 1 of 2

ZENITH RADIO CORPORATION.

Summary of Factory Overhead by Expenses Year Ended December 31, 1961.

	Expense Account	Amount	Fixed		Variable	
	Controllable					
101	Supervision hourly	2489693				
102	Clerical hourly	588,265	3193152		1377606	
103	Salaries—other	1492800				
107	Salaried overtime		—		—	
120	Small tools labor	11591	5796	50/50	5795	
121	Non-scheduled maintenance labor	315728			315728	
122	General maintenance labor	399050	199525	50/50	199525	
123	Stationary engineering	61000	61000			
124	Salvage and scrap	154369			154369	
125	Set-up	116348			116348	
126	Material handling	1556352			1556352	
129	Development	43281	43281			
130	Engineering projects	37769	37769			
131	Rearranging labor	14763	14763			
132	Janitors	298282			298282	
137	Exhibits—meetings		—		—	
138	Miscellaneous projects	12255	12255			
139	Other indirect labor	463180			463180	
140	Overtime premium	410119			410119	
141	Night premium	65970			65970	
143	Idle time	139478			139478	
144	Training	269625			269625	
145	Union activities	4570	4570			
146	Obtain first aid	10156	10156			
197	Wage rate variance	(45509)			(45509)	
		8909135	3582267	40.2%	5326868	59.8%
199	Fringe cost (Balance 873920)	2036894	351316	40.2%	522604	59.8%
	PSRP Portion of fringe		1162974			
201	Office supplies	67184			67184	
202	Postage	10655	10655			
203	Telephone & telegraph	119418			119418	
204	Subscriptions—memberships	4373	4373			
205	Travel & entertainment	26288			26288	
206	Contributions	15	15			
207	General maintenance material	243452	121726	50/50	121726	
208	Rearranging material	37123	37123			
209	Outside services	166460			166460	
210	Equipment rental	19288			19288	
211	Supplies—other	481425			481425	
212	Small tools materials	137113	68557	50/50	68556	
220	Outside warehouse	49009			49009	
221	Returnable containers	19346			19346	
222	Outside trucking	81901			81901	
223	Demurrage & switching	52866			52866	
233	Test sets	(4254)	(4254)			
236	Employment advertising	35827			35827	
237	Compensation insurance	80866			80866	
250	Corporate expenses	24234	24234			
299	Miscellaneous	53933			53963	
	Total forward	12652551				

Defendant's Exhibit No. 218.

Page 2 of 2

ZENITH RADIO CORPORATION.

Summary of Factory Overhead by Expenses Year Ended December 31, 1961.

	Expense Account	Amount		Fixed		Variable	
	Brought forward	12652551		6420879		6231672	
807	Billboard space	10		10			
809	TV broadcast time	176		176			
816	Folders rec.	47		47			
821	Spec. sheets			—		—	
823	Sales incentive merchandise			—		—	
832	Mailings			—		—	
834	Publicity			—		—	
838	House organ	18499		18499			
282	Service manuals	212		212			
	Non-controllable						
865	Tool development			—		—	
870	Maintenance—non-scheduled	2362				2362	
869	Corrections	70681				70681	
871	Depreciation	1100020		1100020			
872	Property taxes	418335		418335			
873	Insurance	62788		62788			
874	Heating	66606		66606			
875	Utilities	264349		264349			
876	Rent	2974		2974			
889	Fringe cost see a/c 199			—		—	
898	Accrual—indirect labor	518707				518707	
899	Reversal—indirect labor	(494595)				(494595)	
868	Annual inventory	83555		83555			
	Assessment						
901	Space	2361014	(1)	2361014			
902	Personnel	617578	(1)	617578			
904	Data processing	230115		115057	50/50	115058	
905	Maintenance charges	713055		356527	50/50	356528	
906	Rearranging charges	60963		60963			
907	Expense chargees	2221667	(1)	2221667			
909	Bid proposals			—		—	
978	Moving			—		—	
987	Expense credit—development			—		—	
990	Scrap sales	(81662)				(81662)	
991	Allocation credit			—		—	
992	Billings to subsidiaries			—		—	
993	Expense credit—engineering projects			—		—	
994	Expense-credit—maintenance			—		—	
995	Expense credit—rearranging			—		—	
999	Expense credit—other	(6833128)		(6833128)			
	Miscellaneous adjustment	8525				8525	
	Total	14060404					
175	Factory overhead direct costs	12859		12859			
	Billing credit	(226902)				(226902)	
17908	Credit from sources other than ship.	(494408)				(494408)	
	Miscellaneous charges	482986				482986	
	Inventory variation	(85209)				(85209)	
	Total	13699735		6289094	45.9%	7410641	54.1%

Page 1 of 2

ZENITH RADIO CORPORATION.

Summary of Factory Overhead by Expenses Year Ended December 31, 1962.

	Expense Account	Amount	Fixed		Variable	
	Controllable					
101	Supervision hourly	214220	214220			
102	Clerical hourly	15239	15239			
106	Salaries	4777110	3375249		1401861	
107	Salaried overtime	125195			125195	
120	Small tools labor	4602	2301	50/50	2301	
121	Non-scheduled maintenance labor	417193			417193	
122	General maintenance labor	388093	194046		194047	
123	Stationary engineering	57855	57855			
124	Salvage and scrap	181774			181774	
125	Set up	159016			159016	
126	Material handling	1809094			1809094	
129	Development	38657	38657			
130	Engineering projects	40159	40159			
131	Rearrange labor	32585	32585			
132	Janitors	339806			339806	
133	Misc. projects	51856	51856			
139	Other indirect labor	504804			504804	
140	Overtime premium	426239			426239	
141	Night premium	71986			71986	
143	Idle time	183558			183558	
144	Training	308505			308505	
145	Union activities	4240	4240			
146	Obtain first aid	11902	11902			
197	Wage rate variance	45051			45051	
		10208739	4038309	39.6%	6170430	(60.4%)
201	Office supplies	68804			68804	
202	Postage	9431	9431			
203	Telephone and telegraph	137349			137349	
204	Subscriptions and memberships	6707	6707			
205	Travel and entertainment	33285			33285	
207	General maintenance material	373006	186503		186503	
208	Rearrange material	53038	53038			
209	Outside services	77129			77129	
210	Equipment rental	55124			55124	
211	Supplies—other	629577			629577	
212	Small tools material	116236	58118	50/50	58118	
220	Outside warehouse	59137			59137	
221	Returnable containers	40116			40116	
222	Outside trucking	96991			96991	
223	Demurrage and switching	79936			79936	
233	Test sets	(3841)	(3841)			
236	Employment advertising	37694			37694	
237	Compensation insurance	82865			82865	
250	Corporate expenses	33148	33148			
299	Miscellaneous	63489			63489	
303	Billboard prod.	(204)			(204)	
	Total forwarded	12257756				

Defendant's Exhibit No. 218.

ZENITH RADIO CORPORATION.

Summary of Factory Overhead by Expenses Year Ended December 31, 1962.

	Expense Account	Amount	Fixed		Variable	
	Brought forward	12257756	5626922		6630834	
821	Special sheets	100	100			
823	Sales incentive merchandise	675	675			
833	House or[illegible]	21628	21628			
834	Publicity	40	40			
	Non-Controllable					
868	Annual inventory	92092	92092			
869	Corrections	124093			124093	
871	Depreciation	1298893	1298893			
872	Property taxes	497263	497263			
873	Insurance	59998	59998			
874	Heating	86272	86272			
875	Utilities	292088	292088			
876	Rent	5358	5358			
	PSRP Portion		1406197			
889	Fringe cost (Balance 1126019)	2532216	445904	39.6%	680115	60.4%
898	Accrual—indirect labor	1068450			1068450	
899	Reversal—indirect labor	(1068450)			(1068450)	
	Assessment					
901	Space	(A) 2640879	(A) 885677		—	
902	Personnel	722375	722375			
904	Data processing	301416	150708	50/50	150708	
905	Maintenance charges	965389	482694	50/50	482695	
906	Rearrangement charges	617843	617843			
907	Expense charges	(A) 2558421	—		—	
990	Scrap sales	(80043)			(80043)	
991	Allocation credit	(A) (4313123)	—		—	
992	Billings to subsidiaries	(389347)			(389347)	
993	Expense credit—engineering projects	(46235)	(46235)			
994	Expense credit—maintenance	(514811)			(514811)	
995	Expense credit—rearrangement	(38653)	(38653)			
999	Expense credit—other	(2616510)	(2616510)			
	Difference due to rounding	693			693	
	Total	17076266	—		—	
175	Factory overhead direct costs	55408	55408			
17908	Credit from sources other than shipments	(1036302)			(1036302)	
	Inventory variation	(36337)			(36337)	
	Miscellaneous charges—Scrap, etc.	472547			472547	
	Transfers to engineering dept.	(8801)	(8801)			
	Total	16522781	8792427		7730854	
			53.2%		46.8%	

Page 1 of 2

ZENITH RADIO CORPORATION.

Summary of Factory Overhead by Expenses Year Ended December 31, 1963.

	Expense Account	Amount	Fixed		Variable	
	Controllable					
101	Supervision hourly	259223	259223			
102	Clerical hourly	17952	17952			
106	Salaries	5202470	3523862		1678608	
107	Salaried overtime	125577			125577	
120	Small tools labor	5306	2653	50%	2653	
121	Non-scheduled maintenance labor	423813			423813	
122	General maintenance labor	412271	206135		206136	
123	Stationary engineering	76110	76110			
124	Salvage and scrap	183602			183602	
125	Set-up	168195			168195	
126	Material handling	1996417			1996417	
129	Development	50220	50220			
130	Engineering projects	42043	42043			
131	Rearranging labor	34785	34785			
132	Janitors	393433			393433	
137	Exhibits—meetings	8			8	
138	Miscellaneous projects	38103	38103			
139	Other indirect labor	549495			549495	
140	Overtime premium	405340			405340	
141	Night premium	72785			72785	
143	Idle time	202695			202695	
144	Training	374849			374849	
145	Union activities	7933	7933			
146	Obtain first aid	11376	11376			
197	Wage rate variance	48763			48763	
		11102764	4270395	(38.5%)	6832369	(61.5%)
201	Office supplies	76253			76253	
202	Postage	11212	11212			
203	Telephone & telegraph	140823			140823	
204	Subscriptions—memberships	8047	8047			
205	Travel & entertainment	36141			36141	
207	General maintenance material	419687	209844	50%	209843	
208	Rearranging material	87462	87462			
209	Outside services	56646			56646	
210	Equipment rental	24947			24947	
211	Supplies—other	654676			654676	
212	Small tools material	227279	113640	50%	113639	
220	Outside warehouse	28398			28398	
221	Returnable containers	65159			65159	
222	Outside trucking	93883			93883	
223	Demurrage & switching	92841			92841	
233	Test sets	(7202)	(7202)			
236	Employment advertising	28153			28153	
237	Compensation insurance	116157			116157	
250	Corporate expenses	12288	12288			
299	Miscellaneous	67632			67632	
	Total forward	13343246				

Page 2 of 2

ZENITH RADIO CORPORATION.

Summary of Factory Overhead by Expenses Year Ended December 31, 1963.

	Expense Account	Amount	Fixed		Variable	
	Brought forward	13343246	6206312		7136934	
807	Billboard space	4	4			
808	Billboard prod.					
811	Radio time	150	150			
821	Spec. sheets					
328	Sales incentive merchandise					
332	Mailings	320	320			
334	Publicity	876	876			
333	House organ	21938	21938			
	Non-Controllable					
365	Tool development	4499	2250	50	2249	
368	Annual inventory	100129	100129			
369	Corrections	129933			129933	
371	Depreciation	1626030	1626030			
372	Property taxes	740743	740748			
373	Insurance	83585	83585			
374	Heating	125024	125024			
375	Utilities	365583	365583			
376	Rent	5010	5010			
	PSRP portion		1415630			
389	Fringe cost (Balance 1226034)	2641664	472023	(38.5%)	754011	(61.5%)
398	Accrual—indirect labor	2049836			2049836	
399	Reversal—indirect labor	(2049836)			(2049836)	
	Assessment					
901	Space	(A) 3529485	(A) 154777			
902	Personnel	800923	800923			
904	Data processing	336728	168364	50/50	168364	
905	Maintenance charges	980847	490423	50/50	490424	
906	Rearranging charges	341288	341288			
907	Expense charges	(A) 1989388	—		—	
909	Bid proposals	7	7			
978	Moving	121211	121211			
987	Expense credit—development	(32971)	(32971)			
990	Scrap sales	(75862)			(75862)	
991	Allocation credit	(A) (5364096)	—		—	
992	Billings to subsidiaries	(468102)			(468102)	
993	Expense credit—engineering projects	(53109)	(53109)			
994	Expense credit—maintenance	(495872)			(495872)	
995	Expense credit—rearranging	(39514)	(39514)			
999	Expense credit—other	(2155976)	(2155976)			
	Difference due to rounding	(76)			(76)	
	Total	18603033	—		—	
175	Factory overhead direct costs	43781	43781			
17908	Credit from sources other than ship.	(1432087)			(1432087)	
	Miscellaneous charges		—		—	
	Inventory variation	(196873)			(196873)	
	Total	17017854	9504185	55.8%	7513669	44.2%

ZENITH RADIO CORPORATION.

Summary of a/c 09, Supervision and Administrative Expense, and a/c 10, Clerical for the Years 1959 and 1960.

2/18/64

Responsibility No.	Name	1959 09 Sup.	1959 10 Clerical	1960 09 Sup.	1960 10 Clerical		1959 Fixed	1959 Var.	1960 Fixed	1960 Var.
3011	TV chassis assembly	7593548	386368	8562167	489552			7979916		9051719
3012	TV final assembly	12506390	573516	15488745	700513			13079906		16189258
3013	Radio assembly & balance	2132420	228732	4161054	77550			2361152		4238604
3014	Space command assembly & test	1202083	3700	2054777	79895			1205783		2134672
3015	Hi Fi final assembly & test	13037256	548195	3822097	81793			13585451		3903890
3016	Hi Fi chassis assembly	—	—	448655	—			—		448655
3017	TV final assembly	262991	2300	6057497	458656			265291		6516153
In 1960 3040 In 1959 3041	Components & wire	2659548	844176	2791677	1053088			3503724		3844765
3052	Hi Fi final assembly	—	—	—	—		—	—	—	—
3070	Quality control	13981125	4264360	10821083	4045052	F	18245485		14866135	
3213	KF contract assembly	—	—	—	—		—	—	—	—
3310	Sub-assembly	12659158	608231	12581425	1043751			13267389		13625176
3320	Record players & changers	500183	—	454875	23239			500183		478114
3321	Hearing aid	3629324	454697	3931738	491339	F	4084021		4423077	
3331	AM-FM radio assembly	5043582	317103	4766333	130040			5360685		4896373
3340	Components	24381599	1631718	27136986	1886128			26013317		29023114
3350	Press room	4563092	1514883	4433680	1250050			6077975		5683730
3355	Machine shop, riveting & welding	3262231	89614	3189722	77840			3351845		3267562
3370	Quality control	7082626	1020479	8984765	1074600	F	8103105		10059365	
3460	Assembly, repair & test	3306042	—	5882081	1000			3306042		5883081
3470	Quality control	368355	77981	1121842	358178	F	446336		1480020	
3510	Tooling	4930359	977073	5001910	822810	F	5907432		5824720	
3530	Test equipment	4108511	342901	3946962	334884	F	4451412		4281846	
In 1960 3550 In 1959 3551	Wood shop	998750	403142	1165348	373151	F	1401892		1538499	
3570	Space	7988100	963249	8324498	1121558	F	8951349		9446056	
3590	Personnel	12563616	12531459	12937409	14046069	F	25095075		26983478	
3610	Material handling	45075724	55850117	53215419	56379572			100925841		109594991
3640	Factory general	26827817	34899495	25368886	35512600	F	61727312		60881486	
3671	Purchasing & expediting	1000000	443611	3000000	1383072	F	1443611		4383072	
3680	Process engineering	4891045	1128317	5585951	1103950	F	6019362		6689901	
3661	Machine development	—	—	995768	—	F	—	—	995768	—
	Totals	226555475	120105417	246233350	124399930		145876392	200784500	151853423	218779857
	Unreconciled difference	1998100	623800	138100	5900	F	2621900	—	144000	
	Totals	228553575	120729217	246371450	124405830		148498292	200784500	151997423	218779857
							349282792		370777280	

ZENITH RADIO CORPORATION.

Page 1 of 2

A/C 106 Salaries—Analysis by Cost Center 1963-62.
A/C 103-2-1 Salaries—Analysis by Cost Center 1961.

2/14/64

Center		Department		1963				1962				1961				
												Amount				
				Amount	Fixed		Variable	Amount		Fixed	Variable	A/C 103	A/C 102	A/C 101	Fixed	Variable
3001		Production Admin.	F	112233	112233			111649		111649		14742	7719	70540	93001	
3010		Machine Development	F	51058	51058			46172	#3400	46172		7625		28350	35975	
3020		Test Equipment	50/50	107021	53510	50/50	53511	103460	#3300	51730	51730		3608	29649	16628	16629
3100	Plt 1	Administration	F	25710	25710			24934		24934		[illegible]	4954	18440	26701	
V	V	Production		17987			17987	8100			8100		1500	8132		9632
3110	V	Bldg 5 Production		97498			97498	100505			100505		4423	90796		95219
3120	V	Woodshop		21933			21933	20526			20526		3372	16880		20252
3130	V	Bldg. 8 Prod.		161726			161726	164343			164343		13810	165580		179390
3140	V	Bldg. 6 Prod.		146794			146794	161139			161139		4955	182744		187699
3170	V	Maintenance & Plant Protection	50/50	67097	33548		33549	65049		82524	82525		3630	61883	82756	82757
3180	V	Process Engr'g	F	104621	104621			106849		106849		77043	5219	18978	101240	
3200	Plt 2	Administration	F	54158	54158			53926		53926			4966	30655	35621	
3210	V	2nd Fl. Prod. Components		154137			154137	156926			156926	4800	13022	152608		170460
3220	V	Ceramic Condenser		33138			33138	31888			31888		4200	23154		27354
3230	V	2nd Fl. Prod. Units & microphone assembly		119097			119097	119950			119950		4186	102973		107159
3240	V	3rd Fl. Production		216521			216521	222035			222035		15054	187331		202385
3250	V	1st Fl. Fabricating		90551			90551	87539			87539		11720	71818		83538
3260	V	Prod. Control Admin.	F	11594	11594			10592		10592				10152	10152	
3270	V	Contracts	F	27823	27823			22271		22271						
3280	V	Tooling & facilities	F	321872	321872			309229		309229		142147	23862	109170	275179	
3290	V	Quality Control	F	97801	97801			92699		92690		8042	6960	91298	106300	
3300	Plt 5	Administration	F	9898	9898							50518			50518	
3310	V	H. Aid Assn. & Test	F	8725	8725											
3360	V	Prod. Control Admin.	F	6861	6861											
3370	V	Process Engr'g	F	6101	6101											
3380	V	Industrial Engr'g	F	2680	2680											
3390	V	H. Aid Quality Cont.	F	3079	3079											
3400	Plt 6	Administration	F	16017	16017											
V	V	Production		11731			11731									
3410	V	Chas Assn Admin		18702			18702									
V	V	Production		58072			58072									
3420	V	Stereo Prog Pkg. & BA		11734			11734									
3430	V	Final Assem Adm		12807			12807									
V	V	Production		53588			53588									
3450	V	Quality Control	F	33453	33453											
3460	V	Prod. Control Adm.	F	19174	19174											
V	V	Production		89258			89258									
3470	V	Process Engr'g	F	17764	17764											
3480	V	Industrial Engr'g	F	15342	15342											
3500	Plt 5	Administration	F	5516	5516			18137		18137		5590	5193	26451	37234	
3510	V	Bal & Fin test H.		5261			5261	17679			17679		84	6310		6344
3540	V	Chas Assm Hi Fi		10905			10905	89209			89209			36864		36864
3550	V	Final Assm Hi Fi		8757			8757	81547			81547			35252		35252
3560	V	Prod. Control	F	12830	12830			44079		44079		16379	6253	19465	42117	
3570	V	Repair Hi Fi		2191			2191	6443			6443			5933		5933
3590	V	Quality Control	F	5105	5105			18922		18922			2878	12232	15110	
		Carry Forward		2485921	1056473		1429448	2190797		938718	1252084	330188	151518	1618653	878527	1216832

Page 2 of 2

ZENITH RADIO CORPORATION.

A/C 106 Salaries—Analysis by Cost Center 1963-62.
A/C 103-2-1 Salaries—Analysis by Cost Center 1961.

2/14/64

Center		Department		1963 Amount	1963 Fixed		1963 Variable	1962 Amount	1962 Fixed	1962 Variable	1961 Amount A/C 103	1961 A/C 102	1961 A/C 101	1961 Fixed	1961 Variable
		Brought Forward		2485921	1056473		1429448	2190797	938713	1252084	330188	151518	1613653	878527	1216832
3610	√	Salvage		26782			26782	80452		80452		10495	23673		34168
3620	√	Requirement Control	F	72914	72914			71977	71977		29626	17235	21874	68735	
3630	√	Material Control	F	391395	391395			396173	396173		160418	39629	224963	425010	
3640	√	Scheduling	F	58954	58954			56343	56343		15169	11729	31803	58701	
	Misc.														
3700		Industrial Engr.	F	57160	57160			404256	404256		268831	30593	69367	368791	
3710		Factory Budgets	F	82581	82581										
3720		Time Study	80/20	89425	71540	(80 F)	17885								
3730		Time Study Plt 2	80/20	168494	134795	(80 F)	33699								
3740		Inspection Process		27763			27763								
3750		Methods & Sugg Sys.	F	50468	50468										
3800		Traffic	50/50	63377	31688		31689	61125	30562	30563	21167	21528	18060	30377	30378
3900		Quality Control	F	179437	179437			179452	179452		38036	37549	96003	171588	
2110		Personnel	F	304837	304837	(F)		280696	280696		39455	99178	121746	260379	
2120		Medical	F	63415	63415			52357	52357		19069	4786	29738	53593	
2200		Quality Assur.	F	81515	81515			81159	81159		38664	13832	27410	79906	
2300		Purchasing	F	749639	749639			692265	692265		433850	113954	83766	631570	
3251	Plt 2	Stores, Expediting & Matl Handling		88458			88458	66252		66252		4255	64704		68959
3262	√	Inventory Control & Scheduling	F	183716	183716			191296	191296		98327	18218	42814	159359	
3263	√	Ship, Receiving		22884			22884	22510		22510		12350	14919		27269
3600	Plt 1	Prod. Control Adm.	F	3335	3335							1416	5200	6616	
Totals per Overhead Schedule				5202470	3523862		1678608	4777110	3375249	1401861	1492800	588265	2489693	3193152	1377606
												4570758			

Purchase Discount.

		Parent Total		Cana TV	Cana Radio
1959	Material at std	125569718		977758	
	Material price var.	331258		2254	
	Misc. mat. cost	1746554		15445	
		127647530		995457	
	Purchase Discount	1872370			
	%	1.47%		1.47%	
	Purchase Discount			14633	
1960	Material at std.	110534620		1019675	274508
	Material price var.	(712156)		(8159)	(154)
	Misc. mat. cost	1148566		11019	2444
		110971030		1022535	276798
	Purchase Discount	1688870	@1.52%	15548	4207
	%	1.52%			
1961	Material at std.	119591505		1437593	302132
	Material price var.	(1848631)		(24166)	(5091)
	Misc. mat. cost	1793120		21686	4557
		119535994		1435113	301598
	Purchase Discount	1726398	@1.44%	20666	4343
	%	1.44%			
1962	Material at std.	138504185		990014	223386
	Material price var.	(1405655)		(12798)	(5201)
	Misc. mat. cost	2738661		20212	4660
		139837191		997428	222845
	Purchase Discount	1957615	@1.40%	13964	3120
	%	1.40%			
1963	Material at std.	158567037		1295683	204171
	Material price var.	(2371156)		(21821)	(4414)
	Misc. mat. cost	2587516		21596	2729
		158783397		1295958	202486
	Purchase Discount	2283214	@1.44%	18662	2916
	%	1.44%			

DEFENDANT'S EXHIBIT NO. 220.

LOST SALES AND LOST PROFITS IN TELEVISION AND RADIO IN CANADA, UNITED KINGDOM AND AUSTRALIA, JUNE 1, 1959 TO MAY 31, 1963.

	Market (Units)	Zenith Share of Market (%)	Zenith Share of Market (Units)	Zenith Sales in Market (Units)	Lost Sales in Market (Units)	Zenith Ave. Fact Sell. Pr. to Canada (US $)	Lost Sales in Market (US $)	Profit Applying to Add'l Volume (%)	Lost Profit on Lost Sales (US $)
Canada									
Television									
1959 6/1–12/31	235900	15.616	36838	7343	29495	148.73	4386791	16.14	708028
60	338400	17.992	60885	13396	47489	145.68	6918198	16.14	1116597
61	355200	17.638	62650	17295	45355	144.16	6538377	20.63	1348867
62	420200	17.475	73430	14195	59235	136.80	8539318	22.06	1883774
63 1/1–5/31	147000	21.712	31917	4766	27151	128.38	3485645	22.08	769630
	1496700		265720	56995	208725		29868329		5826896
Radio									
1959 6/1–12/31	270200	12.839	34691	10238	24453	35.24	861724	16.02	138048
60	393600	12.316	48476	16935	31541	28.77	907435	16.02	145371
61	296400	11.332	33588	18906	14682	26.59	390394	17.48	68241
62	273300	10.664	29145	15062	14083	27.12	381931	19.80	75622
63 1/1–5/31	89300	12.937	11553	4059	7494	27.59	206759	20.90	43213
	1322800		157453	65200	92253		2748243		470495
United Kingdom									
Television									
1959 6/1–12/31	1619100	3.904	63210	0	63210		9401223		1517357
60	1816800	4.498	81720	1	81719		11904824		1921439
61	1508400	4.410	66520	21	66499		9586496		1977694
62	1370400	4.369	59873	28	59845		8186796		1806007
63 1/1–5/31	557500	5.428	30261	15	30246		3882981		857362
	6872200		301584	65	301519		42962320		8079859
Radio									
1959 6/1–12/31	748300	3.210	24020	1488	22532		794028		127203
60	1552000	3.079	47786	1604	46182		1328656		212851
61	2429000	2.833	68814	1274	67540		1795889		313921
62	2384000	2.666	63557	1319	62238		1687895		334203
63 1/1–5/31	982000	3.234	31758	388	31370		865498		180889
	8095300		235935	6073	229862		6471966		1169067
Australia									
Television									
1959 6/1–12/31	239800	1.562	3746	2	3744		556845		89875
60	370300	1.799	6662	9	6653		969209		156430
61	299700	1.764	5287	2	5285		761886		157177
62	284600	1.748	4975	1	4974		680443		150106
63 1/1–5/31	117300	2.171	2547	0	2547		326984		72198
	1311700		23217	14	23203		3295367		625786
Radio									
1959 6/1–12/31	138100	1.284	1773	1	1772		62445		10004
60	279800	1.232	3447	9	3438		98911		15846
61	287700	1.133	3260	3	3257		86604		15188
62	284800	1.066	3036	12	3024		82011		16238
63 1/1–5/31	129700	1.294	1678	23	1655		45661		9543
	1120100		13194	48	13146		375632		66769
							85721857		16238872

Sources of Industry Statistics.

Canada

Canadian Statistical Review, Historical Summary 1963 Edition Table 50, by Dominion Bureau of Statistics.

Canadian Statistical Review, October, 1963 Table 50 by Dominion Bureau of Statistics.

Radio—Producers sales of home sets and portables.

Television—Producers sales of television.

United Kingdom

Annual Abstract of Statistics, 1963, Table 195 by Central Statistical Office.

Monthly Digest of Statistics, October, 1963, Table 78 by Central Statistical Office.

Radio—Home sales of radio less estimated car radios.

Television—Home sales of television.

Australia

Monthly Bulletin of Production Statistics, October, 1960, March, 1963, September, 1963, by Commonwealth Bureau of Census and Statistics.

Radio—Production of portable and other radio sets.

Television—Production of television only sets.

Defendant's Exhibit No. 220.

Canadian Statistics.

			Monthly Average	Total
Television				
1959	6/1–12/31	(1)	33.700	235900
1960		(1)	28.200	338400
1961		(1)	29,600	355200
1962		(2)		420200
1963	1/1–5/31	(2)		147000
Radio (Home sets and portables)				
1959	6/1–12/31	(1)	33.600	270200
1960		(1)	32.800	393600
1961		(1)	24.700	296400
1962		(2)		273300
1963	1/1–5/31	(2)		89300

(1) Canadian Statistical Review, Historical Summary, 1963.

(2) Canadian Statistical Review, October, 1963.

U. K. Statistics.

Annual Abstract of Statistics 1963—Table 195	Production				
	Radio Sets				
	Transistor	Other	Car Radios	Radiograms	Television Sets
1959	1,381,000	—	277,000	176,000	2,863,000
		1,834,000			
60	1,250,000	714,000	296,000	244,000	2,141,000
		2,504,000			
61	2,417,000	278,000	199,000	180,000	1,256,000
		3,074,000			
62	2,517,000	84,000	172,000	203,000	1,463,000
		2,976,000			

Monthly Digest of Statistics Oct. 1963—Table 78	Production		Home Sales, excluding radiograms & export	
	Radio & Radiograms	Television Sets	Radio Sets (1)	Television Sets
1959*	1,836,000	2,863,200	1,560,000	2,775,600
60*	2,508,000	2,140,800	1,848,000	1,816,800
61*	3,072,000	1,256,400	2,628,000	1,508,400
62*	2,976,000	1,462,800	2,556,000	1,370,400
63**	1,089,000	636,400	1,054,000	557,500

---

* Corrected from monthly averages.

** (5 months)

Use the following		Home Sales excluding car radios, radiograms and export Radio Sets	 Television Sets
1959	(6/1–12/31)	748,300	1,619,100
1960		1,552,000	1,816,800
1961		2,429,000	1,508,400
1962		2,384,000	1,370,400
1963	(1/1–5/31)	982,000	557,500

(1) Est. car radios included

1959—277,000
1960—296,000
1961—199,000
1962—172,000
1963— 72,000

Australian Production.

Periods Reported			Radio Sets (excl. car and radiograms)		Periods Required		
1958-59	7/1–6/30	(1)	214100	17800	1959	6/1–12/31	138100
				120300			
1959-60	7/1–6/30	(2)	240700	120400	1960		279800
				159400			
1960-61	7/1–6/30	(3)	318800	159400	1961		287700
				128300			
1961-62	7/1–6/30	(3)	256700	128400	1962		284800
				156400			
1962-63	7/1–6/30	(3)	312800	129700	1963	1/1– 5/31	129700

Television	Television Sets (excl. comb.)					
1958-59	(1)	305100	25400	1959	6/1–12/31	239800
			214400			
1959-60	(2)	428800	214400	1960		370300
			155900			
1960-61	(3)	311800	155900	1961		299700
			143800			
1961-62	(3)	287700	143900	1962		284600
			140700			
1962-63	(3)	281400	117300	1963	1/1– 5/31	117300

---

(1) Per Monthly Bulletin of Production Statistics, October, 1960.

(2) Per Monthly Bulletin of Production Statistics, March, 1963.

(3) Per Monthly Bulletin of Production Statistics, September, 1963.

DEFENDANT'S EXHIBIT F-10.

Hazeltine Re[illegible], Inc.
vs. Zenith Radio Corporation
Defendant's Exh. No. F-10
C.A. No.
59-C-18[illegible]

HAZELTINE RESEARCH CORPORATION
59-25 LITTLE NECK PARKWAY
LITTLE NECK 62, N. Y.
TELEPHONE FLUSHING 7-8700

RECEIVED
JUN 29 1959
Zenith Patent Department

DOCKETED

24-59

FILED
JUL 14 1965
AT.............. O'CLOCK..................
ELBERT A. WAGNER, JR.
CLERK

June 25, 1959.

F. W. Crotty, Esq.
Vice President, Patents
Zenith Radio Corporation
6001 Dickens Avenue
Chicago 39, Illinois

Dear Frank:

This is in reply to your letter of June 23, raising a number of questions relative to the proposed Hazeltine license agreement to Zenith which we discussed last week. I will take up the several points in order.

1. The 50-80-100% formula does apply to all of the terms of the standard license agreement except for color TV apparatus. Specifically, the same percentages would apply to the lump sum figure, if elected.

2. While I always hesitate to condense or simplify just what is covered by a patent claim, I think that your expression of the substance of the Loughren AGC patent does represent an essential and principal distinction from prior art AGC circuits. There are, of course, also other essential relationships defined by the claim, such as that the composite video applied to the AGC tube should include the D.C. component, but I believe that relationship existed in prior AGC circuits.

3. With respect to the RCA Licensee Bulletin, the information you asked for is included in my letter of June 22, which crossed yours in the mail.

When you have had an opportunity of completing your "homework" I would be glad to sit down with you and discuss the matter further.

With kind regards,

Sincerely,

PLAINTIFF'S EXHIBIT NO. 36.

UNITED STATES DISTRICT COURT,
For the District of Delaware.

Zenith Radio Corporation, *Plaintiff*, *vs.* Radio Corporation of America, et al., *Defendants.*	Civil Action No. 982.

PLAINTIFF'S REPLY TO COUNTERCLAIMS OF DEFENDANTS, RADIO CORPORATION OF AMERICA, GENERAL ELECTRIC COMPANY, AND WESTERN ELECTRIC COMPANY.

For convenience in this reply the term counterclaim is used to designate the latest filed counterclaim or amended counterclaim of each defendant respectively. Plaintiff replying to the counterclaims of defendants, Radio Corporation of America, hereinafter called RCA; General Electric Company, hereinafter called General Electric; and Western Electric Company, Incorporated, hereinafter called Western Electric, says:

With Respect to Counterclaim of RCA:

1. Plaintiff admits that RCA's counterclaim is made under the patent statutes of the United States but denies each and every other allegation of paragraph 6 thereof.

2. Plaintiff admits that RCA is the record owner of the title to the patents listed in Schedule A attached to its counterclaim but denies each and every other allegation of paragraph 7 thereof.

3. Plaintiff admits that defendant RCA threatened it with suit on patents owned or controlled by it or by the other defendants if plaintiff continued to manufacture and sell radio apparatus without license and admits that it is manufacturing and selling and intends to continue to manufacture and sell the radio apparatus referred to in paragraph 8 of RCA's counterclaim without license or consent of RCA but denies that said apparatus utilizes any inventions validly covered by any of the Letters Patent referred to in said paragraph 8.

4. Plaintiff denies each and every allegation of paragraph 9 of RCA's counterclaim.

With Respect to Counterclaim of General Electric:

5. Plaintiff admits that General Electric is the record owner of title to the patents listed in Schedule A attached to General Electric's counterclaim but denies the remaining allegations of paragraph 4 of said counterclaim.

6. Plaintiff admits that defendant RCA threatened it with suit on patents owned or controlled by it or by General Electric if plaintiff continued to manufacture and sell radio apparatus without license and admits that it is manufacturing and selling and intends to continue to manufacture and sell without the consent of General Electric or RCA the radio apparatus referred to in paragraph 5 of General Electric's counterclaim but denies that said apparatus utilizes any inventions validly covered by any of the Letters Patent referred to in said paragraph 5 and denies the remaining allegations of said paragraph.

7. Plaintiff denies the allegation of paragraph 6 of General Electric's counterclaim.

With Respect to Counterclaim of Western Electric:

8. Plaintiff admits that defendant Western Electric is the record owner of the title to the patents listed in Exhibit A attached to Western Electric's counterclaim but

denies each and every other allegation of paragraph 14 of said counterclaim.

9. Plaintiff admits that defendant RCA threatened it with suit on patents owned or controlled by it or by Western Electric if plaintiff continued to manufacture and sell radio apparatus without license and admits that it is manufacturing and selling and intends to continue to manufacture and sell radio apparatus without license or consent of Western Electric or RCA but denies that said apparatus utilizes any inventions validly covered by any of the Letters Patent referred to in paragraph 15 of Western Electric's counterclaim.

10. Plaintiff denies the allegations of paragraph 16 of Western Electric's counterclaim.

With Respect to the Counterclaims of RCA, General Electric and Western Electric.

11. Plaintiff, further answering said counterclaims, alleges on information and belief that the patents asserted by defendants RCA, General Electric and Western Electric in their counterclaims are part of a pool of patents and patent rights which were acquired by defendants and have been and are being asserted against plaintiff and others who manufacture and sell radio apparatus by RCA, both alone and with the aid and assistance of the other defendants and by the other defendants alone and in concert with RCA, as part of a plan and conspiracy to dominate and monopolize the entire electronics field including the radio, phonograph and allied fields to divide said fields among themselves and dominate and control the operation of others in said fields and to monopolize patents in said fields, to monopolize patent licensing in said fields and to restrain trade and competition therein in violation of the anti-trust laws and that said patents are, therefore, un-

enforceable. In support thereof, plaintiff, on information and belief, alleges:

(a) Said electronics field includes not only the radio field but also fields such as communication over wires, public address systems, talking moving pictures, facsimile reproductions, X-ray apparatus, medical devices, power control and conversion systems and also other fields in which vacuum-tubes and other radio instrumentalities are used. Said radio field includes, among other things, ship-to-ship radio, ship-to-shore radio, radio telegraph communication, transoceanic radio telegraph communication, radio broadcast transmission and reception including television commercial radio communication, and the manufacture, use and sale of transmitting and receiving apparatus therefor including parts such as radio vacuum tubes. Said phonograph field includes, among other things, mechanically operated phonographs, electrically operated phonographs, and radio phonograph combinations, including parts therefor such as records, vacuum-tubes and the like.

(b) Said plan and conspiracy embraces not only the United States but also countries foreign thereto and embrace world domination divided among the aforesaid companies and foreign companies who were and are actual or potential competitors. Among the foreign companies involved by direct agreements or mesne agreements were or are: Marconi's Wireless Telegraph Co. (Ltd.), known as the British Marconi Company; the Gesellschaft Fuer Drahtlose Telegraphic, m. b. H of Germany, known as the Telefunken Company; Compagnie Generale de Telegraphic sans Fils, a French company; N. V. Philips Gloeilamphenfabrieken, known as Philips Company of Holland; International General Electric Company, Austrailian General Electric Company, China General Edison Company, Inc., Compania General Electric do Brazil, South African General Electric Company, Ltd., Cia. General Electric Sudamericana, Inc., and Mexican General Electric Company; international companies affiliated with American Telephone & Telegraph Company and, international companies affiliated with Westinghouse Electric & Manufacturing Company.

It was, and, with unimportant modifications, still is, part of said plan and conspiracy to secure and perpetuate said domination, monopoly and division of fields among the several parties by exclusive agreements under the guise of patent licenses under masses of undisclosed and unknown present and future patents, by agreements to cooperate in the enforcement of patents in aid of the exclusive commercial fields, and by agreements to cooperate in procurement of additional patents, to systematically funnel them from all sources in this country and abroad into the control of the conspiring companies aforesaid and to concentrate in the hands of each of said companies the power to sue, to threaten or to restrictively license under the entire pool of massed patents in its particular agreed field. Said plan and conspiracy were initiated, implemented and effectuated by means of the agreements, among others, identified in the schedule hereto annexed entitled "Agreement Schedule."

(c) Said plan and conspiracy began in or about 1919 and has continued and is still continuing without change in purpose or effect. In 1919, the defendant RCA was caused to be organized by defendant General Electric, the largest company in the United States in the electrical field, and one of the largest in the world. RCA was caused to acquire, pursuant to arrangements made by General Electric, the entire assets and patent rights of Marconi Wireless Telegraph Company of America, Inc., the wholly-owned subsidiary of the British Marconi Company which was one of the then two dominant companies in world-wide radio communication. The United States properties and patents of the other of the two dominant companies, the Telefunken

Company of Germany, had been seized by the Alien Property Custodian and acquired by the Navy Department and thus removed from the competitive field. Thereafter and beginning in 1919, General Electric, Westinghouse Electric Company, one of the largest electrical manufacturing companies in the United States (then Westinghouse Electric and Manufacturing Company and hereinafter referred to as Westinghouse), and American Telephone and Telegraph Company (hereinafter referred to as A. T. & T.) a dominant company in telephone communications, acquired ownership and control of RCA, and RCA, both alone and with the aid and assistance of the other defendants, and the other defendants alone and in concert with one another and with RCA, entered upon the aforesaid plan and conspiracy to monopolize and dominate the entire radio, phonograph and allied fields, to divide said fields among themselves, to dominate and control the operations of others in said fields, to monopolize patents in said fields, to monopolize patent licensing in said fields and to restrain trade and eliminate competition therein. To that end, they entered into agreements and patent licenses dividing the several fields and parts thereof among themselves and eliminated from competition, by purchase and otherwise, companies which did, or might, compete; among others, the International Radio Telegraph Company, the Wireless Specialty Apparatus Company, the United Fruit Company and the Federal Telegraph Company of California. Further, they entered into agreements and patent cross licenses concentrating in RCA exclusive rights in the radio field under all patents and patent rights of General Electric, Westinghouse and A. T. & T. (except for limited rights reserved or conveyed to General Electric, Westinghouse and A. T. & T. and its subsidiaries Western Electric Company, Incorporated and Bell Telephone Laboratories, among others) or flowing to said companies from other sources. Further, to the same end, RCA, and the aforementioned companies, alone and in concert, adopted a policy of acquiring or controlling, and did acquire and control large numbers of patents and patent rights including patents on alternatives and substitutes even though not valid or not necessary to operations of RCA or of said other companies or not intended for use or used by RCA or said other companies, providing only that they purported to cover alternatives or substitutes or that the language of the claims of said patents was broad enough apparently to dominate some existing or future process or apparatus or part thereof in the radio, phonograph or allied fields. In furtherance thereof said companies agreed to interchange patent and other information on a confidential basis, to cooperate in patent office prosecutions, to share cost of patents and to aid each other in enforcing patents in their respective fields. Agreements among themselves and with other companies in this and foreign countries were established which systematically funneled into the control of RCA, masses of patents originating with said companies and other leading companies throughout the world for many years in the future. Patents and patent rights in such fields have been acquired from others in great numbers by obtaining the unrestricted assignment of patents by obtaining licenses which give extensive rights thereunder, including the rights to sublicense others and to sue for infringement thereof, and by various other means and devices which in fact and in practice place RCA in effective control and domination over such acquired patents and patent rights in the radio, phonograph and allied fields. In pursuit of said policy, RCA, alone and with the aid and assistance of the other defendants has in some cases taken advantage of its size and power resulting from the aforesaid plan and conspiracy and of the limited market for patents resulting therefrom to force sellers to take less than a fair value and, in other cases, in aid of its plan and conspiracy has resorted to excessive payments for patents and patent rights of doubtful validity and intrinsic worth. Said policy was adopted to build up, and in pursuance thereof RCA, alone and in combination with the other defendants, has built up and gathered unto itself, an overwhelming aggregate of patents and patent rights, which, in combination with the patents resulting from its own endeavors, has enabled it, and now enables it, to monopolize patents and patent licensing in the radio, phonograph and allied fields, and to threaten, intimidate, coerce, control or eliminate competitors and potential competitors therein with the mass of its patents and patent rights. In building up and extending said concentration of patents for the purpose of coercion and intimidation of competitors in said fields, it was and has continued to be and is now the policy and practice of RCA and said other companies to file patent applications on all developments in the radio, phonograph or allied fields, even though such developments did not and do not constitute advances in the art sufficient to constitute patentable invention, and to assert in said applications claims in the broadest possible language, even though such claims were beyond the scope of the actual invention if any, to secure the allowance of such claims by exhaustive and repeated argument in response to rejection by the United States Patent Office, and repeated interviews with the Examiners thereof, to the end that said RCA, alone and with the aid and assistance of said other companies, would continue to have under its control a large mass and group of patents on all possible embodiments, variations and alternatives of existing or prosepective radio devices, tubes and processes, in order to block the efforts of others to secure patents or develop non-infringing apparatus or methods, in order to fence in all possible operations in the radio, phonograph and allied fields and in order to enlarge and perpetuate the pool of patents and patent rights concentrated in and controlled by RCA, irrespective of whether they were to be put to use by defendants or any of them. By virtue of the aforesaid massing and pooling of patents and patent rights and the misuse thereof as set forth in this paragraph and in paragraph 12 hereof, among other things, RCA, individually and with the aid and assistance and concerted action of the other defendants, and said other defendants, alone and in concert with one another and with RCA, did dominate and monopolize the radio, phonograph and allied fields, did monopolize patents therein and patent licensing therein, did determine and control the conditions under which competition would be permitted and did restrain trade and competition therein and continue so to do.

(d) In or about 1932, certain of the contracts, agreements and licenses between RCA, General Electric, Westinghouse, A. T. & T. and others aforesaid were revised, whereby among other things, there was restored to General Electric, Westinghouse and A. T. & T. the right to grant licenses under and sue under their own patents in the radio, phonograph and allied fields; but said revised contracts, licenses and agreements left RCA in existence in an illegally dominant, monopolistic position in said fields with its ownership of radio properties and with exclusive contract rights and pooled patents and patent rights and with the powerful economic, competitive weapon of being the only entity in the United States with the authority to grant licenses under, and sue under or cause suit to be brought under, not only all of its own large number of patents and patent rights relating to said fields, including the manufacture, use and sale of apparatus for radio broadcast reception, but also the large number of then existing, as well as future, patents and patent rights of General Electric, A. T. & T., Western Electric, Bell Laboratories and Westinghouse relating to said field, which rights will continue for the full life of all patents acquired by any of said companies prior to January 1, 1955, notwithstanding that said agreements will expire December 31, 1954.

The effect of such unlawful conspiracy and combination has continued and still does continue notwithstanding the revision of said contracts, agreement and licenses. RCA alone, and with the aid and assistance of the others aforesaid, and said others acting in concert with RCA and with one another, have continued to carry out and are attempting to carry out the original intent and purpose of said unlawful conspiracy and combination. Said properties and pooled patent rights concentrated and perpetuated in RCA and particularly the combined licensing power in the radio, phonograph and allied fields have continued to be used and are now being used by RCA, alone and with the aid and assistance and concerted action of said other companies, to monopolize not only manufactures in said fields, but also to monopolize patents and patent licensing in said fields and to restrain competition therein. To that end, General Electric, Westinghouse, A. T. & T., Western Electric and Bell Laboratories, although having the right to grant licenses to manufacturers of radio and phonograph apparatus, have adopted and practiced a policy of not granting such licenses or of granting them on terms so onerous individually or collectively that the prospective licensee has been and is forced to deal with RCA and accept a license under the mass of pooled patents. Further to that end, RCA, and the other companies aforesaid, throughout said period have brought numerous and widespread suits for injunction and trebled damages on many of said patents and have given great publicity thereto all with the object and result of intimidating all competitors and possible competitors, none of whom was able to bear the financial burden and expend the time and energy necessary to investigate all of the patents asserted and who were forced thereby to go out of, or stay out of, the radio business or, in such cases and at such times as RCA was willing to grant licenses, to take licenses on arbitrary terms dictated by RCA including among others arbitrary royalty rates, restrictions as to place of manufacture, restrictions as to sale, restrictions as to use, restrictions as to duration of license, restrictions as to type of apparatus, as to completeness of apparatus and restrictions as to parts or components thereof.

(e) On or about November 21, 1932, the Government having brought an action against RCA, General Electric, Westinghouse, and A. T. & T., and certain subsidiaries of said companies, including Western Electric and others for violation of the anti-trust laws, a decree was entered in the United States District Court for the District of Delaware on consent, which, among other things, enjoined RCA from asserting exclusive rights in the radio field under patents owned or controlled by any of the other parties aforesaid, but, notwithstanding the provisions and intent of said decree, RCA alone and with the aid and assistance and concerted action of said other companies, has continued to assert and is effectively asserting exclusive patent rights in the radio, phonograph and allied fields derived from the other parties aforesaid under agreements and understandings with ~~said~~ parties and said other companies have acted, and are acting, in concert with RCA and one another to that end.

(f) It has been and is the policy and practice of RCA and said other companies to use the power of said mass of unidentified pooled patents and patent rights, now numbering in excess of 10,000, to blanket the entire industry and levy tribute at public expense on all of the enormous volume of broadcast radio receiving apparatus and vacuum tubes therefore purchased by the public, and to coerce manufacturers to take licenses and pay tribute irrespective of whether said patents were valid or invalid or whether they covered the apparatus on which tribute was levied.

At present, substantially all broadcast radio receiver manufacturers and vacuum tube manufacturers of the United States, approximately 150, have accepted licenses under said patents and now pay tribute on their entire production of radio apparatus and plaintiff believes that, at the present time, with the exception of itself, there are substantially no broadcast radio receiver manufacturers who have not been forced to acquiesce in and accept a license and pay tribute thereunder.

The burden thus imposed on the entire manufacture of radio receiving apparatus for broadcast reception by the use of said massed pool of patents as part of and in furtherance of said conspiracy to monopolize and to restrain trade has totalled in excess of Two Hundred Million Dollars ($200,000,000.00) and the price of radio apparatus to the public has been increased at least to this extent, and, moreover, the sale of radio apparatus has been restricted and restrained thereby. By means of this part of the conspiracy and combination to restrain and monopolize, RCA with the aid, assistance and concerted actions of the business of granting licenses in the radio field and dominated and monopolized the manufacture of broadcast radio receiving apparatus by compelling tribute from all manufacturers but has been enabled to further and carry out its plans to monopolize other parts of the radio industry and eliminate competition therein, for example in ship-to-shore communication, ship-to-ship transmission, commercial communication and other lines by reducing its prices and charges in such fields or operating in such fields without profit so that competitors or prospective competitors were discouraged or eliminated.

(g) In pursuance and effectuation of the aforesaid combination and conspiracy among said companies, it has been and is the policy and practice of RCA to package license the patents under its ownership of control, that is to say, to grant licenses only under the entire mass of unidentified pooled patents and patent rights at a uniform royalty rate applying to all, and to refuse to grant licenses under any number of patents less than those comprising the entire pool at a royalty rate less than the royalties levied by the terms of licenses under the entire pool of patents. As a result, the licensees were and are forced to pay royalties on invalid patents and on patents having claims broader than justified and to pay tribute on their entire production of radio apparatus without justification.

(h) As part of and in furtherance of said plan and conspiracy, RCA, alone and with the aid and assistance of the other companies aforesaid, has made use of said pooled patents and patent rights to induce or force agreements with others for the sale of radio apparatus for use, consumption or resale within the United States or its territories or the District of Columbia or insular possessions or other places under the jurisdiction of the United States on the condition, agreement or understanding that the lessee or purchaser thereof should not use or deal in radio apparatus, merchandise, supplies or other commodities of a competitor of RCA with the intention or effect of substantially lessening competition or tending to create a monopoly in the radio industry, and one instance thereof was held by the United States District Court for the District of Delaware (affirmed by the United States Circuit Court of Appeals for the Third Circuit) in the case of Lord et al. *v.* Radio Corporation of America, 24 F. 2d 565; (on appeal, 28 F. 2d 257) to be illegal and in violation of Section 3 of the Clayton Act (15 U. S. C. 14).

(i) RCA and the other companies aforesaid, by the foregoing and other acts, have deliberately, wilfully and wrongfully conspired to substantially lessen competition in, and establish a monopoly of, and to dominate the radio, phonograph and allied industries, of patents therein and of patent licensing therein. As part of and in furtherance of the pattern, purpose and plan to dominate, RCA and its co-conspirators, the companies aforesaid, have used and have permitted the use of, such pooled patents and patent rights, concentrated and perpetuated in RCA in the manner more specifically set forth in paragraph 12 hereof.

12. Further answering defendants' counterclaims, plaintiff alleges, on information and belief, that the patents asserted in said counterclaims, among others, are unenforceable because RCA, both alone and with the aid and assistance of the other defendants, and said other defendants, alone and in concert with RCA and with one another, have improperly acquired and improperly used and are now improperly using their patents and patent rights including the patents asserted in said counterclaims in that, among other things and in addition to the improper and illegal use of said patents alleged in paragraph 11 hereof RCA and said other defendants:

(a) have effected a pooling of more than 10,000 patents, of which the patents asserted in defendants' counterclaims are a part. Said patent pool comprises a substantial portion of all of the patents in the radio, phonograph and allied industries. It includes those patents originating in a substantial number of the principal and larger companies in said fields, and patents for alternative and normally competing processes, radio and phonograph systems and parts therefor. In furtherance of the purposes of said patent pool there is vested in RCA the power to grant licenses under and to sue for alleged infringement of all of the patents of the pool whether owned by RCA or others. RCA, alone and with the aid and assistance and concerted action of the other companies as aforesaid, has used and is using the said massed patents and patent rights and its said power to extend its monopoly beyond any proper separate monopolies of the several patents and to intimidate and coerce manufacturers and users of radio, phonograph and allied apparatus into accepting blanket licenses under said massed patents on excessive and unconscionable terms at public expense without investigation of the validity or proper scope thereof by the licensee. The aforesaid policies and practices have the purpose and result of forcing payment of royalties on all radio, phonograph and allied apparatus whether patented or unpatented and of restraining trade and competition in the radio, phonograph and allied industries.

(b) have unlawfully extended and attempted to extend any proper patent monopoly by procuring and enforcing plural patents for the same invention granted at different times so as to expire at different times, without disclaimer of any thereof; and have continued to exact tribute under the unexpired patents after the expiration of earlier issued patents for the same invention.

(c) have required and are requiring licensees to mark apparatus, made and sold under license, with the statement that it uses inventions covered by licensed patents whether this be true or false, and to mark such apparatus with the numbers of patents the inventions of which formed the subject matter of expired or invalid patents, some of which had previously been asserted by RCA or another of the aforesaid companies, and with the numbers of patents which did not apply to said apparatus. Defendants have themselves similarly marked apparatus sold by them. Defendants have indulged in these practices and prescribed these requirements in an attempt to extend, and with the effect of extending, their monopoly beyond the individual proper monopolies of the several patents; to mislead the public and RCA's licensees and competing manufacturers and the trade generally as to the scope of the patents and patent rights concentrated in RCA and as to the type of apparatus covered by said patents and patent rights; to thus cause otherwise unlicensed manufacturers to acquire licenses and to cause licensees to pay royalties on apparatus not in fact covered by defendants' patents. By resort to these practices and requirements, defendants have created the impression on the part of all manufacturers and the purchasing public that RCA had and has a complete patent monopoly of all radio apparatus. As a result, others were and are discouraged and prevented from competing with RCA, and RCA was and is enabled to collect royalties on apparatus not validly covered by any patents or patent rights owned by it,

(d) have unnecessarily and without justification, conducted or permitted to be conducted, and are now attempting to conduct, interference proceedings between applicants for patent and patents owned by others of the aforesaid companies but all of which are included in the pool of patents and patent rights under the control and management of RCA in the radio, phonograph and allied fields. RCA and said other defendants have engaged in these practices as part of a plan to extend, and with the effect of extending, the monopoly based on pooled patents by unduly postponing the time when by expiration of the patents the subject matter thereof might be available for free adoption and use by anyone,

(e) have exacted royalty payments on parts and equipment for which no patent rights were owned or controlled by RCA,

(f) by refusing to grant licenses for the manufacture and sale of radio apparatus under any one or more of the patents under their control to anyone who refused to take a license under all of said patents, and by refusing to charge a lower royalty for a license under one patent or a portion of said patents than for a license under all, have compelled and are continuing to compel manufacturers who desire a license under one or less than all said patents to take licenses under the entire block of pooled patents and pay royalties thereon. They have thereby precluded licensees from questioning the validity or scope of unexpired but invalid or limited patents and improperly forced the payment of royalties on said invalid and limited patents. Further, they have thereby discouraged and prevented the attack that otherwise would be made by the public against invalid and limited patents, have extended their monopoly and particularly RCA's monopoly in the radio, phonograph and allied fields beyond any proper separate monopolies of the several patents, and have levied and caused to be levied, tribute at public expense on the entire production of the licensees without justification,

(g) have placed, and are continuing to place, and have required, and are continuing to require, licensees to place, on tubes and other radio apparatus sold in the ordinary channels of trade, and on containers therefor restrictive notices as to uses thereof which are purported to be permitted or purported to be prohibited to the purchasers thereof although said notices in law are and were legally unenforceable and ineffective, all with the intention and result of restraining freedom of trade and extending the monopoly of the illegally pooled patents above referred to,

(h) have refused and are continuing to refuse to sell tubes except on the understanding and condition that they may be used and retained by the purchaser only subject to the condition that the sale thereof to the purchaser by RCA or the other defendants or their licensees does not entitle the purchaser to use them in any complete equipment, assembly, circuit, combination, method or process covered by any patent owned or controlled by RCA or the other defendants or under which RCA had the right to sue, whether valid or invalid. This has been and is the case even though there is no other use for said tubes and notwithstanding the fact that such tubes may have been designed for use in or may only be useful in such patented equipment, assembly, circuit, combination, method or process and notwithstanding that such tubes were purchased and sold for such use. Thereby they have forced, or attempted to force, the purchaser to take a license and pay tribute for the use of patents and patent rights pooled and concentrated in RCA, including invalid patents and patents not covering tubes, in order to make any use of said purchased tubes,

(i) have used, and permitted the use of, the power of said massed patents and patent rights to compel manufacturers to release all claims against RCA including all antitrust claims and all unfair competition claims in order to secure a license under any of said patents to manufacture radio or phonograph apparatus,

(j) have utilized and are utilizing said massed patents and patent rights for the purpose of creating and maintaining complete or partial monopolies in commodities such as tubes, parts and apparatus not validly covered or not purported to be covered by said patents and patent rights or any of them, and to compel the payment of unwarranted royalties thereon at the cost of the purchasing public,

(k) have, in addition to exacting royalty payments, at public expense, for apparatus, equipment, shipping materials, etc., which the patents did not cover, exacted, and permitted exaction of double royalties at public expense, namely, royalties from apparatus manufacturers for circuits designed for use only with particular types of radio tubes and incorporating such tubes as an essential part thereof and also royalties from the manufacturers of said radio tubes designed specifically for use with and as an essential part of said circuits,

(l) and, RCA alone and with the aid and assistance of the other defendants, after and while inducing and coercing those engaged or desiring to engage in the manufacture and sale of radio and phonograph apparatus to acquire a license from RCA under said massed patents and patent rights and to pay royalties thereunder on their entire production constituting a substantial portion of the price of such apparatus and to make available to RCA in the form of royalty reports and from examination of their books and records detailed information of the competitive operations of such licensees with respect to their entire production which information would not otherwise be available, has itself engaged in the manufacture and sale of radio and phonograph apparatus in competition with its said licensees with the intent and effect of placing RCA in the position where it could and did undersell its competitor licensees without loss to itself and of making the competitive operations of certain of said competitor licensees unprofitable or of such little profit as to discourage continued competition by said licensees,

(m) have misused the patent privilege by attempting to derive profit, not from legitimate use and exploitation of their inventions but by monopolizing and restraining trade in the manufacture, use and sale of apparatus used or useful in the radio and phonograph fields, and to that end RCA has, individually and in concert with the other defendants, combined the limited privileges granted by individual patents to form a massed pool of patents in which each derives a portion of its strength from its combination with others and whereby the massed pool of patents form an instrument for economic dominance and control greater than the sum of the separate monopolies intended by the policy of the patent statutes.

Whereby the defendants by virtue of their unlawful monopolies, acts, practices, policies and conduct aforesaid are abusing the privileges of the patent system and of the patents owned and controlled by them. They are seeking to assert rights in this Court in order to obtain judicial aid in, and condonement of, their unlawful domination and monopolistic control of the industry in the radio, phonograph and allied fields, and of the acts and practices aforesaid committed in the accomplishment and exercise thereof, all in violation of the true purpose and spirit of the patent laws and the public policy of the United States, whereby they are barred from the enforcement of said patents asserted in their counterclaims or any of their patents and patent rights and from any relief whatsoever.

13. Further answering defendants' counterclaims, plaintiff on information and belief alleges as to each of the Letters Patent on which said counterclaims are based that it is wholly void and invalid and of no force and effect for the following reasons, among others:

(a) because the alleged invention thereof was patented or described in patents and printed publications in this country or in foreign countries before the alleged invention or discovery thereof by the patentee or more than two years prior to the application for said patent in the case of applications filed on or prior to August 5, 1940, and more than one year prior to the application for said patent in the case of applications filed subsequent to August 5, 1940. The prior patents and publications pertinent to each of the counterclaim patents, as plaintiff is now advised, are listed in Schedule A annexed hereto. Plaintiff prays leave to add additional patents and publications when they become known to it.

(b) because said Letters Patent discloses no patentable invention over what was known to the art at the time the alleged invention or discovery thereof was purported to have been made. As illustrating the knowledge of the art pertinent to each counterclaim patent as plaintiff is now advised attention is directed to Schedule A annexed hereto and as it may be amended,

(c) because the patentee was not the first and original inventor of the subject matter purported to have been patented or any material or substantial part thereof, the alleged invention, if patentable at all, having been made, prior to the patentee by the authors and patentees listed in Schedule A hereof and by others who were using reasonable diligence in adapting and perfecting the same and whose name plaintiff asks leave to add thereto by amendment when they become known to it,

(d) that the purported invention thereof had been in public use or on sale in this country for more than two years prior to the application for said patent in the case of applications filed on or prior to August 5, 1940, and more than one year prior to the application for said patent in the case of applications filed subsequent to August 5, 1940 by persons whose names and addresses plaintiff prays leave to add to this reply as Schedule B when they become known to it,

(e) because for the purpose of deceiving the public the description and specification filed by the patentee in the Patent Office was made to contain less than the whole truth relative to the purported invention or discovery or more than is necessary to produce the desired effect,

(f) because the subject matter thereof was abandoned to the public because of unreasonable delay in making and asserting claims therefor,

(g) because the claims thereof were not presented until an unreasonable time after or more than the statutory period after, the subject thereof had been in public use in the United States or described in patents and printed publications. The particulars whereof plaintiff prays leave to add to this reply as Schedule C when they become known to it,

(h) because the patentee has unreasonably neglected or delayed to enter a disclaimer of material and substantial part or parts of the thing patented of which he was not the original and first inventor or discoverer,

(i) because the purported invention thereof is inoperative and is devoid of utility,

(j) because the application therefor and oath in support thereof was not made by the true inventor or inventors of the inventions purported to be disclosed therein. The particulars whereof plaintiff prays leave to add to this reply as Schedule D when they become known to it,

(k) because the purported invention thereof was patented in a foreign country on an application filed more than twelve months prior to the filing of the application for said Letters Patent in the United States. The particulars whereof plaintiff prays leave to add to this reply as Schedule E when they become known to it,

(l) because said Letters Patent is for the same alleged invention as another patent or patents owned by defendants or one of them and constitutes double patenting and an illegal extension of the monopoly thereof, the particulars whereof plaintiff prays leave to add to this reply as Schedule F when they become known to it,

(m) because said Letters Patent includes claims which are obviously invalid on the face of the patent because they are functional and such claims have not been disclaimed,

(n) because of vagueness and indefiniteness of disclosure and claims, and non-compliance with Section 4888 of the Revised Statute (35 U. S. C. 33),

(o) because the claims of the patent claim more than what is purported to have been invented,

(p) because the claims of the patent purport to monopolize an exhausted combination of elements, the only alleged novelty of which resides in the particular construction or characteristics of one of the elements,

(q) because the claims of the patent purport to monopolize a mere aggregation of unrelated elements,

(r) because the alleged invention described and claimed in said patent was not disclosed in the original application therefor but on the contrary was new matter illegally added subsequent to the filing of the original application,

(s) because the application and the claims of the patent as granted were not supported by the necessary statutory oath of the inventor.

14. Further answering the counterclaims, plaintiff on information and belief alleges with respect to each of the patents on which the counterclaims are based that because of the proceedings had or taken in the Patent Office during the prosecution of the application therefor or because the claims thereof were by amendment limited in scope in order to secure their allowance, defendants are estopped to assert an interpretation thereof which would enable such claims to include plaintiff's accused apparatus.

15. Further answering the counterclaims, plaintiff on information and belief alleges that reissue patents Nos. 20,114 and 20,338 are wholly void and invalid for each of the following reasons:

(a) because the oath supporting the application for reissue sets forth no facts from which the Commissioner of Patents could determine whether or not inadvertence, accident or mistake had occurred in the procurement of the original patent justifying the reissuance thereof,

(b) because the oath supporting the application for reissue on its face reveals that no inadvertence, accident or mistake occurred in the procurement of the original patent justifying the reissuance thereof, and the file history of the original patent shows that no inadvertence, accident or mistake occurred,

(c) because the reissue patent is for an invention different from that of the original patent of which it purports to be a reissue.

16. Further answering the counterclaims, plaintiff specifically denies infringement of each of the patents asserted in said counterclaims.

Wherefore, Plaintiff Prays:

(A) For a judgment that none of the defendants is entitled to the relief prayed for, or to any relief, and that said counterclaims be dismissed.

(B) For a judgment that the patents asserted by counterclaim, among others, are invalid and not infringed.

(C) For a judgment that defendants are seeking to enforce rights with respect to the patents and patent rights asserted which are contrary to the intent of the patent laws and the public policy of the United States and may not be awarded any relief thereon.

(D) For a judgment that defendants, and each of them, have misused the asserted patents and patent rights and that they may not be enforced for this reason.

(E) For a judgment that defendants, and each of them, have acquired and used the asserted patents and patent rights in violation of the anti-trust laws and that they may not be enforced for that reason.

(F) For the costs of the action.

(G) For reasonable attorneys' fees.

(H) For such other and further relief as to the Court may seem just and the circumstances warrant.

Zenith Radio Corporation,
By Arthur G. Connolly,
Its Attorney,
228 Delaware Trust Building,
Wilmington 28, Delaware.

Irving Herriott,
Burton K. Wheeler,
Pennie, Edmonds, Morton and Barrows,
Willis H. Taylor, Jr.,
R. Morton Adams,
Darby and Darby,
Floyd H. Crews,
Paul Kolisch,
Of Counsel.

November, 1949.

Agreement Schedule.

1. Agreement between General Electric and Marconi Wireless Telegraph Company of America dated October 22, 1919.

2. Agreement between RCA and Marconi Wireless Telegraph Company of America dated November 20, 1919.

3. Agreement between General Electric and RCA dated November 20, 1919.

4. Agreement between Marconi Wireless Telegraph Company of America and Compagnie Generale de Telegraphie sans Fils of France dated September 2, 1919.

5. Assignment of said contract of September 2, 1919 to RCA dated December 12, 1919.

6. Agreement between RCA and Marconi Wireless Company, Ltd. of England, General Electric assenting, dated November 21, 1919.

7. Amendment of the agreement of November 21, 1919 dated October 14, 1921.

8. Agreement between Marconi Wireless Telegraph Company of America and RCA dated March 27, 1920.

9. Agreement between General Electric and A. T. & T. dated July 1, 1920.

10. Agreement between General Electric, A. T. & T., RCA and Western Electric dated July 1, 1920.

11. Agreement between General Electric, A. T. & T., RCA and Western Electric dated July 1, 1920.

12. Letter agreement between A. T. & T. and General Electric dated July 1, 1920.

13. Agreement between RCA and A. T. & T. dated September 9, 1920.

14. Agreement between General Electric and United Fruit Company dated February 19, 1921.

15. Agreement between RCA and United Fruit Company dated March 7, 1921.

16. Agreement between RCA, General Electric and Wireless Specialty Apparatus Company dated March 7, 1921.

17. Letter agreement between A. T. & T. and General Electric dated March 9, 1921.

18. Agreement between Westinghouse and International Radio Telegraph Company dated May 22, 1920.

19. Agreement between Westinghouse and International Radio Telegraph Company dated June 21, 1920.

20. Agreement between Westinghouse and International Radio Telegraph Company dated June 29, 1921.

21. Agreement between RCA and International Radio Telegraph Company dated June 30, 1921.

22. Agreement between General Electric and Westinghouse dated June 30, 1921.

23. Agreement between RCA, General Electric and Westinghouse dated June 30, 1921.

24. Agreement between RCA, General Electric and Westinghouse dated June 30, 1921.

25. Agreement between Westinghouse, A. T. & T. and Western Electric dated June 30, 1921.

26. Letter agreement between A. T. & T., Western Electric, RCA and General Electric dated June 30, 1921.

27. Agreement between RCA, General Electric and Westinghouse dated June 30, 1921, known as "Armstrong and Pupin" agreement.

28. Agreement between RCA, Compagnie Generale de Telegraphie sans Fils, Telefunken and Marconi Wireless Telegraph Co., Ltd. dated October 14, 1921.

29. Agreement between RCA, Compagnie Generale de Telegraphie sans Fils and Radio France dated October 26, 1921.

30. Agreement between Westinghouse, General Electric and RCA dated June 29, 1923.

31. Agreement between RCA and Telefunken Company

(Gesellschaft Fur Drahtlose Telegraphie, G.m.b.H.) dated October 22, 1921.

32. Agreement between Westinghouse and International Radio Telegraph Company dated June 30, 1922.

33. Letter agreements between International General Electric Company, Westinghouse Electric International Corporation, N. V. Philips and N. V. Philips Radio dated July 22, 1925, August 27, 1925, October 1, 1925, April 19, 1926 and June 11, 1926.

34. Letter agreements between RCA, International General Electric, General Electric, Westinghouse Electric International Company and Westinghouse dated August 6, 1925, August 27, 1925 and September 3, 1925.

35. Agreement between General Electric and A. T. & T. dated July 1, 1926.

36. Agreements between RCA, General Electric, Westinghouse, A. T. & T., Western Electric and International Radio Telegraph Company dated July 1, 1926 modifying the agreements of said parties dated June 30, 1921.

37. Agreement between General Electric, RCA and Westinghouse dated June 11, 1929.

38. Agreement between General Electric, Westinghouse and RCA dated January 1, 1930.

39. Agreement between International General Electric, Westinghouse Electric International Company, N. V. Philips Gloeilampenfabrieken and N. V. Philips Radio dated March 19, 1931.

40. Nine substitute agreements between General Electric, A. T. & T., RCA, Westinghouse and Western Electric dated July 1, 1932.

41. Agreement between RCA, General Electric and Westinghouse dated November 21, 1932.

42. Agreement between RCA, General Electric and Westinghouse dated November 21, 1932.

43. Five agreements between RCA, General Electric,

Westinghouse and their subsidiaries dated November 21, 1932.

44. Memo agreement on foreign situation between RCA, General Electric and Westinghouse dated November 21, 1932.

45. Waiver letter of May 24, 1934 sent by RCA, International General Electric Company and Westinghouse Electric International Company to the Philips Company.

46. Agreement between RCA, International General Electric, Westinghouse Electric International Company and the Philips Company dated June 8, 1934.

47. Agreement between RCA, A. T. & T. and Western Electric dated December 26, 1935.

48. Agreement between RCA, International General Electric, Westinghouse Electric International Company and the Philips Company dated May 11, 1937.

49. Agreement between General Electric, RCA and Westinghouse dated July 1, 1939.

50. Agreement between International General Electric, RCA, Westinghouse and Westinghouse International dated July 1, 1939.

PLAINTIFF'S EXHIBIT NO. 37.

United States District Court

For the District of Delaware.

Zenith Radio Corporation, *Plaintiff*, vs. Radio Corporation of America, et al., *Defendants*.	Civil Action No. 1247 (Consolidated)

STIPULATION.

It Is Hereby Stipulated, Consented and Agreed by and between the plaintiff and the undersigned defendants, by their attorneys and counsel, that all claims asserted in this consolidated action by the plaintiff against each, any or all of the defendants be and they hereby are dismissed with prejudice, and that all claims asserted in this consolidated action by each or any of the defendants against the plaintiff be and they hereby are dismissed with prejudice, in each instance without costs, expenses or attorneys' fees.

Dated: September ...., 1957.

/s/ Thomas Cooch,
Attorney for Plaintiff Zenith Radio Corporation,

/s/ Caleb S. Layton (per RML),
Attorney for Defendant Radio Corporation of America,

/s/ J. J. Morris, Jr.,
Attorney for Defendant General Electric Company,

/s/ William Prickett,
Attorney for Defendant Western Electric Company, Incorporated.

/s/ Willis H. Taylor, Jr.,
Counsel for Plaintiff Zenith Radio Corporation,

/s/ John W. Clielch,
Counsel for Defendant Radio Corporation of America,

/s/ Albert C. Bickford,
Counsel for Defendant General Electric Company,

/s/ John E. F. Wood,
Counsel for Defendant Western Electric Company, Incorporated.

The above stipulation is approved this 27th day of September, 1957, and it is So Ordered.

/s/ Paul Leahy,
Chief Judge.

PLAINTIFF'S EXHIBIT NO. 38.

IN THE UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

Radio Corporation of America,
Plaintiff,
vs.
The Rauland Corporation and
Zenith Radio Corporation,
Defendants.

Civil Action
No. 48 C 1818.

AMENDED COMPLAINT.

Plaintiff, a Delaware corporation, complaining of defendants, alleges:

I.

This is an action for infringement by defendants of Letters Patent of the United States owned by the plaintiff, and arises under the patent laws of the United States.

II.

Plaintiff is engaged in the manufacture and sale of radio and television equipment and apparatus, including cathode ray tubes patented in Letters Patent of the United States identified in the schedule annexed to this amended complaint, which patents are owned by the plaintiff and were regularly and duly issued by the United States Patent Office.

III.

Defendants, The Rauland Corporation and Zenith Radio Corporation both Illinois corporations, within the past six years have been and are now infringing the aforesaid

Letters Patent by making, selling and using cathode ray tubes embodying the aforesaid patented inventions, within the Northern District of Illinois, Western Division and elsewhere in the United States, and intend to continue so to do.

IV.

Plaintiff has given notice to the defendants of their said infringement in accordance with Sec. 4900 R. S. (USC Title 35, Sec. 49).

Wherefore, plaintiff demands an injunction against defendants, and those controlled by them, enjoining them from further infringement of said Letters Patent, and compensation for said infringement, and an assessment of costs against defendants, including reasonable attorneys' fees.

Radio Corporation of America,
By Kirkland, Fleming, Green,
Martin & Ellis,
Carl S. Lloyd,

A True Copy Teste
Elbert A. Wagner, Jr.,
Clerk.

July 22, 1949.

July 9, 1963.

Schedule.

Jan. 22, 1935	Zworykin, et al.	1,988,469
Feb. 4, 1936	Schlesinger	2,029,639
Dec. 1, 1936	Batchelor	2,062,858
May 18, 1937	Schrader	2,080,837
July 13, 1937	George	2,086,546
Feb. 28, 1939	Snow	2,148,588
July 15, 1941	Zworykin	2,249,552
Aug. 26, 1941	Tower	2,254,090
Sept. 22, 1942	Tower	2,296,307
Aug. 31, 1943	Painter	2,328,292

IN THE UNITED STATES DISTRICT COURT.

* * (Caption—48-C-1818) * *

COMPLAINT.

Plaintiff, a Delaware corporation, complaining of defendants, alleges:

I.

This is an action for infringement by defendants of Letters Patent of the United States owned by the plaintiff, and arises under the patent laws of the United States.

II.

Plaintiff is engaged in the manufacture and sale of radio and television equipment and apparatus, including cathode ray tubes patented in Letters Patent of the United States identified in the schedule annexed to this Complaint, which patents are owned by the plaintiff and were regularly and duly issued by the United States Patent Office.

III.

Defendants, The Rauland Corporation and Zenith Radio Corporation both Illinois corporations, within the past six years have been and are now infringing the aforesaid Letters Patent by making, selling and using cathode ray tubes embodying the aforesaid patented inventions, within the Northern District of Illinois, Western Division and elsewhere in the United States, and intend to continue so to do.

IV.

Plaintiff has given notice to the defendants of their said infringement in accordance with Sec. 4900 R. S. (USC Title 35, Sec. 49).

Wherefore, plaintiff demands an injunction against defendants, and those controlled by them, enjoining them from further infringement of said Letters Patent, and compensation for said infringement, and an assessment of costs against defendants, including reasonable attorneys' fees.

Radio Corporation of America,
By Kirkland, Fleming, Green,
Martin & Ellis,
Carl S. Lloyd,
A True Copy Teste
Elbert A. Wagner, Jr.,
Clerk.

December 7, 1948.

July 9, 1963.

Schedule.

Jan. 22, 1935	Zworykin, et al.	1,988,469
Feb. 4, 1936	Schlesinger	2,029,639
Dec. 1, 1936	Batchelor	2,062,858
May 18, 1937	Schrader	2,080,837
July 13, 1937	George	2,086,546
Feb. 28, 1939	Snow	2,148,588
June 29, 1943	McLaughlin	2,323,148
Aug. 31, 1943	Painter	2,328,292

PLAINTIFF'S EXHIBIT NO. 39.

UNITED STATES DISTRICT COURT.

* * (Caption—48-C-1818) * *

ANSWER AND COUNTERCLAIM.

Defendants, The Rauland Corporation (hereinafter called "Rauland") and Zenith Radio Corporation (hereinafter called "Zenith"), answering the amended complaint of plaintiff, Radio Corporation of America (hereinafter called "RCA"):

1. Admit that the action was brought under the patent laws of the United States, but deny that they are guilty of the acts of infringement complained of, or of any infringement of plaintiff's patents.

2. Admit that the plaintiff is engaged in the manufacture and sale of radio and television equipment and apparatus, including cathode-ray tubes, and admit that RCA is the record owner of the title to the patents listed in the schedule annexed to the complaint, but deny each and every other allegation of paragraph II of the complaint.

3. Admit that they are both Illinois corporations, but deny each and every other allegation of paragraph III of the complaint.

4. Deny each and every allegation of paragraph IV.

5. Defendants, further answering, allege on information and belief that the patents asserted by plaintiff RCA, are part of a pool of patents and patent rights which were acquired by plaintiff and have been and are being asserted against defendants and others who manufacture and sell radio apparatus by RCA both alone and with the aid and assistance of the other companies hereinafter named and by said other companies alone and in concert with RCA, as part of a plan and conspiracy to dominate and monopo-

lize the entire electronics field including the radio, phonograph and allied fields, to divide said fields among themselves and dominate and control the operation of others in said fields and to monopolize patnets in said fields, to monopolize patent licensing in said fields and to restrain trade and competition therein in violation of the anti-trust laws and that said patents are, therefore, unenforceable. The other companies herein referred to are General Electric Company, a corporation organized and existing under the laws of the State of New York (hereinafter referred to as "General Electric"), American Telephone and Telegraph Company, a corporation organized under the laws of the State of New York (hereinafter referred to as "A. T. & T."), Western Electric Company, Incorporated, a corporation organized under the laws of the State of New York (hereinafter referred to as "Western Electric"), Bell Telephone Laboratories, Incorporated, a corporation organized under the laws of the State of New York (hereinafter referred to as "Bell Laboratories") and Westinghouse Electric Corporation, previously known as Westinghouse Electric & Manufacturing Corporation, a corporation organized and existing under the laws of the State of Pennsylvania (hereinafter referred to as "Westinghouse"). In support thereof, defendants, on information and belief, allege:

(a) Said electronics field includes not only the radio field but also fields such as communication over wires, public address systems, talking moving pictures, facsimile reproductions, X-ray apparatus, medical devices, power control and conversion systems and also other fields in which vacuum tubes and other radio instrumentalities are used. Said radio field includes, among other things, ship-to-ship radio, ship-to-short radio, radio telegraph communication, transoceanic radio telegraph communication, radio broadcast transmission and reception, including television, commercial radio communication, and the manufacture, use and sale of transmitting and receiving apparatus therefor, including parts such as radio vacuum tubes. Said phonograph field includes, among other things, mechanically operated phonographs, electrically operated phonographs and radio phonograph combinations, including parts therefor such as records, vacuum tubes and the like.

(b) Said plan and conspiracy embrace not only the United States but also countries foreign thereto and embrace world dominations divided among the aforesaid companies and foreign companies who were and are actual or potential competitors. Among the foreign companies involved by direct agreements or mesne agreements were or are: Marconi's Wireless Telegraph Co. (Ltd.), known as the British Marconi Company; the Gesellschaft Fuer Drahtlose Telegraphie, n. b. H. of Germany, known as the Telefunken Company; Compagnie Generale de Telegraphie sans Fils, a French company; N. V. Philips Gloeilamphenfabrieken, known as Philips Company of Holland; International General Electric Company, Australian General Electric Company, China General Edison Company, Inc., Compania General Electric do Brazil, South African General Electric Company, Ltd., Cia. General Electric Sudamericana, Inc., and Mexican General Electric Company; international companies affiliated with American Telephone & Telegraph Compay and, international companies affiliated with Westinghouse Electric & Manufacturing Company.

It was, and with unimportant modifications still is, part of said plan and conspiracy to secure and perpetuate said domination, monopoly and division of fields among the several parties by exclusive agreements under the guise of patent licenses under masses of undisclosed and unknown present and future patents, by agreements to cooperate in the enforcement of patents in aid of the exclusive commercial fields, and by agreements to cooperate in procurement of additional patents, to systematically funnel them from all sources in the country and abroad into the control of the conspiring companies aforesaid and to concentrate in the hands of each of said companies the power to sue, to threaten or to restrictively license under the entire pool of massed patents in its particular agreed field. Said plan and conspiracy were initiated, implemented and effectuated by means of the agreements, among others, identified in the schedule hereto annexed entitled "Agreement Schedule".

(c) Said plan and conspiracy began in or about 1919 and has continued and is still continuing without change in purpose or effect. In 1919, the defendant RCA was caused to be organized by defendant General Electric, the largest company in the United States in the electrical field, and one of the largest in the world. RCA was caused to acquire, pursuant to arrangements made by General Electric, the entire assets and patents rights of Marconi Wireless Telegraph Company of America, Inc., the wholly-owned subsidiary of the British Marconi Company which was one of the then two dominant companies in world-wide radio communication. The United States properties and patents of the other of the two dominant companies, the Telefunken Company of Germany, had been seized by the Alien Property Custodian and acquired by the Navy Department and thus removed from the competitive field. Thereafter and beginning in 1919, General Electric, Westinghouse Electric Company, one of the largest electrical manufacturing companies in the United States (then Westinghouse Electric and Manufacturing Company ,and hereinafter referred to as "Westinghouse") and American Telephone and Telegraph Company (hereinafter referred to as "A. T. & T.") a dominant company in telephone communications, acquired ownership and control of RCA, and RCA both alone and with the aid and assistance of the other defendants, and the other defendants alone and in concert with one another and with RCA, entered upon the aforesaid plan and conspiracy to monopolize and dominate the entire radio, phonograph and allied fields, to divide said fields among themselves, to dominate and control the operations of others in said fields, to monopolize patents in said fields, to monopolize patent licensing in said fields and to restrain trade and eliminate competition therein. To that end, they entered into agreements and patent licenses dividing the several fields and parts thereof among themselves and eliminated from competition, by purchase and otherwise, companies which did, or might, compete; among others, the International Radio Telegraph Company, the Wireless Specialty Apparatus Company, the United Fruit Company and the Federal Telegraph Company of California. Further, they entered into agreements and patent cross licenses concentrating in RCA exclusive rights in the radio field under all patents and patent rights of General Electric, Westinghouse and A. T. & T. (except for limited rights reserved or conveyed to General Electric, Westinghouse and A. T. & T. and its subsidiaries Western Electric Company, Incorporated and Bell Telephone Laboratories, among others) or flowing to said companies from other sources. Further, to the same end, RCA, and the aforementioned companies, alone and in concert, adopted a policy of acquiring or controlling, and did acquire and control large numbers of patents and patent rights including patents on alternatives and substitutes even though not valid or not necessary to operations of RCA or of said other companies, or not intended for use or used by RCA or said other companies, providing only that they purported to cover alternatives or substitutes or that the language of the claims of said patents was broad enough apparently to dominate some existing or future process or apparatus or part thereof in the radio, phonograph or allied fields. In furtherance thereof said companies agreed interchange patent and other information on a confidential basis, to cooperate in patent office prosecutions, to share cost of patents and to aid each other in enforcing patents in their respective fields. Agreements among themselves and with other companies in this and foreign countries were established which systematically funneled into the control of RCA, masses of patents originating with said companies and other leading companies throughout the world for many years in the future. Patents and patent rights in such fields have been acquired from others in great numbers by obtaining the unrestricted assignment of patents by obtaining licenses which give extensive rights thereunder, including the rights to sublicense others and to sue for infringement thereof, and by various other means and devices which in fact and in practice place RCA in effective control and domination over such acquired patents and patent rights in the radio, phonograph and allied fields. In pursuit of said policy RCA, alone and with the aid and assistance of said other companies, has in some cases taken advantage of its size and power resulting from the aforesaid plan and conspiracy and of the limited market for patents resulting therefrom to force sellers to take less than a fair value, and, in other cases, in aid of its plan and conspiracy has resorted to excessive payments for patents and patent rights of doubtful validity and intrinsic worth. Said policy was adopted to build up, and in pursuance therefore RCA, alone and in combination with said other companies, has built up and gathered unto itself, an overwhelming aggregate of patents and patent rights, which, in combination with the patents resulting from its own endeavors, has enabled it, and now enables it, to monopolize patents and patent licensing in the radio, phonograph and allied fields, and to threaten, intimidate, coerce, control or eliminate competitors and potential competitors therein with the mass of its patent and patent rights. In building up and extending said concentration of patents for the purpose of coercion and intimidation of competitors in said fields, it was and has continued to be and is now the policy and practice of RCA and said other companies to file patent applications on all developments, either in the radio, phonograph or allied fields, even though such developments did not and do not constitute advances in the art sufficient to constitute patenable invention, and to assert in said applications claims in the broadest possible language, even though such claims were beyond the scope of the actual invention if any, to secure the allowance of such claims by exhaustive and repeated argument in response to rejection by the United States Patent Office, and repeated interviews with the Examiners thereof, to the end that said RCA, alone and with the aid and assistance of said other companies, would continue to have under its control a large mass and group of patents on all possible embodiments, variations and alternatives of existing or prospective radio devices, tubes and processes, in order to block the efforts of others to secure patents or develop non-infringing apparatus or methods, in order to fence in all possible operations in the radio, phonograph and allied fields and in order to enlarge and perpetuate the pool of patents and patent rights concentrated in and controlled by RCA, irrespective of whether they were to be put to use by RCA or any of said other companies. By virtue of the aforesaid massing and pooling of patents and patent rights and the misuse thereof as set forth in this paragraph and in paragraph 6 hereof, among other things, RCA, individually and with the aid and assistance and concerted action of said other companies, and said other companies alone and in concert with one another and with RCA, did dominate and monopolize the radio, phonograph and allied fields, did monopolize patents therein, and patent licensing therein, did determine and control the conditions under which competition would be permitted and did restrain trade and competition therein and continue so to do.

(d) In or about 1932, certain of the contracts, agreements and licenses between RCA, General Electric, Westinghouse, A.T.&T. and others aforesaid were revised, whereby, among other things, there was restored to General Electric, Westinghouse and A.T.&T. the right to grant licenses under and sue under their own patents in the radio, phonograph and allied fields; but said revised contracts, licenses and agreements left RCA in existence in an illegally dominant, monopolistic position in said fields with its ownership of radio properties and with exclusive contract rights and pooled patents and patent rights and with the powerful economic, competitive weapon of being the only entity in the United States with the authority to grant licenses under, and sue under or cause suit to be brought under, not only all of its own large number of patents and patent rights relating to the said fields, including the manufacture, use and sale of apparatus for radio broadcast reception, but also the large number of then eixsting, as well as future, patents and patent rights of General Electric, A.T.&T., Western Electric, Bell Laboratories and Westinghouse relating to said fields, which rights will continue for the full life of all patents acquired by any of said companies prior to January 1, 1955, notwithstanding that said agreements will expire December 31, 1954.

The effect of such unlawful conspiracy and combination has continued and still does continue notwithstanding the revision of said contracts, agreements and licenses. RCA, alone and with the aid and assistance of the others aforesaid, and said others acting in concert with RCA and with one another, have continued to carry out and are attempting to carry out the original intent and purpose of said unlawful conspiracy and combination. Said properties and pooled patent rights concentrated and perpetuated in

RCA and particularly the combined licensing power in the radio and phonograph and allied fields have continued to be used and are now being used by RCA, alone and with the aid and assistance and concerted action of said other companies, to monopolize not only manufacture in said fields, but also to monopolize patents and patent licensing in said fields and to restrain competition therein. To that end, General Electric, Westinghouse, A. T. & T., Western Electric and Bell Laboratories although having the right to grant licenses to manufacturers of radio and phonograph apparatus, have adopted and practiced a policy of not granting such licenses or of granting them on terms so onerous individually or collectively that the prospective licensee has been and is forced to deal with RCA and accept a license under the mass of pooled patents. Further to that end, RCA, and the other companies aforesaid, throughout said period have brought numerous and widespread suits for injunction and trebled damages on many of said patents and have given great publicity thereto all with the object and result of intimidating all competitors and possible competitors, none of whom was able to bear the financial burden and expend the time and energy necessary to investigate all of the patents asserted and who were forced thereby to go out of, or stay out of, the radio business or, in such cases and at such times as RCA was willing to grant licenses, to take licenses on arbitrary terms dictated by RCA including, among others, arbitrary royalty rates, restrictions as to place of manufacture, restrictions as to sale, restrictions as to use, restrictions as to duration of license, restrictions as to type of apparatus, as to completeness of apparatus and restrictions as to parts or components thereof.

(e) On or about November 21, 1932, the Government having brought an action against RCA, General Electric, Westinghouse and A. T. & T., and certain subsidiaries of said companies, including Western Electric and others for violation of the anti-trust laws, a decree was entered in the United States District Court for the District of Delaware on consent, which, among other things, enjoined RCA from asserting exclusive rights in the radio field under patents owned or controlled by any of the other parties aforesaid, but, notwithstanding the provisions and intent of said decree, RCA, alone and with the aid and assistance and concerted action of said other companies, has continued to assert and is effectively asserting exclusive patent rights in the radio, phonograph and allied fields derived from the other parties aforesaid under agreements and understandings with said parties and said other companies have acted, and are acting, in concert with RCA and one another to that end.

(f) It has been and is the policy and practice of RCA and said other companies to use the power of said mass of unidentified pooled patents and patent rights, now numbering in excess of 10,000, to blanket the entire industry and levy tribute at public expense on all of the enormous volume of broadcast radio receiving apparatus and vacuum tubes therefore purchased by the public, and to coerce manufacturers to take licenses and pay tribute irrespective of whether said patents were valid or invalid or whether they covered the apparatus on which tribute was levied. At present, substantially all broadcast radio receiver manufacturers and tube manufacturers of the United States, approximately 150, have accepted licenses under said patents and now pay tribute on their entire production of radio apparatus and defendants believe that at the present time, with the exception of themsleves, there are substantially no manufacturers of radio broadcast receivers or tubes therefor who have not been forced to acquiesce in and accept a license and pay tribute thereunder.

The burden thus imposed on the entire manufacture of radio receiving apparatus for broadcast reception by the use of said massed pool of patents as part of and in furtherance of said conspiracy to monopolize and to restrain trade has totalled in excess of Two Hundred Million Dollars ($200,000,000.00) and the price of radio apparatus to the public has been incresed at least to this extent, and, moreover the sale of radio apparatus has been restricted and restrained thereby. By means of this part of the conspiracy and combination to restrain and monopolize, RCA with the aid, assistance and concerted actions of the other companies has not only monopolized patents and the business of granting licenses in the radio field and dominated and monopolized the manufacture of broadcast radio receiving apparatus by compelling tribute from all manufacturers, but has been enabled to further and carry out its plans to monopolize other parts of the raido industry and eliminate competition therein, for example in ship-to-shore communication, ship-to-ship transmission, commercial communication and other lines by reducing its prices and charges in such fields or operating in such fields without profit so that competitors or prospective competitors were discouraged or eliminated.

(g) In pursuance and effectuation of the aforesaid combination and conspiracy among said companies, it has been and is the policy and practice of RCA to package-license the patents under its ownership or control, that is to say, to grant licenses only under the entire mass of unidentified pooled patents and patent rights at a uniform royalty rate applying to all, and to refuse to grant licenses under any number of patents less than those comprising the entire pool at a royalty rate less than the royalties levied by the terms of licenses under the entire pool of patents. As a result, the licensees were and are forced to pay royalties on invalid patents and on patents having claims broader than justified and to pay tribute on their entire production of radio apparatus without justification.

(h) As part of and in furtherance of said plan and conspiracy, RCA, alone and with the aid and assistance of the other companies aforesaid, has made use of said pooled patents and patent rights to induce or force agreements with others for the sale of radio apparatus for use, consumption or resale within the United States or its territories or the District of Columbia or insular possessions or other places under the jurisdiction of the United States on the condition, agreement or understanding that the lessee or purchaser theerof should not use or deal in radio apparatus, merchandise, supplies or other commodities of a competitor of RCA with the intention or effect of substantially lessening competition or tending to create a monopoly in the radio industry, and one instance thereof was held by the United States District Court for the District of Delaware (affirmed by the United States Circuit Court of Appeals for the Third Circuit) in the case of Lord et al. v. Radio Corporation of America, 24 F. 2d 565; (on appeal, 28 F. 2d 257) to be illegal and in violation of Section 3 of the Clayton Act (15 U. S. C. 14).

(i) RCA and the other companies aforesaid, by the foregoing and other acts, have deliberately, wilfully and wrongfuly conspired to substantially lessen competition in, and establish a monopoly of, and to dominate the radio, phonograph and allied industries, of patents therein and of patent licensing therein. As part of and in furtherance of the pattern, purpose and plan to dominate, RCA and its co-conspirators, the companies aforesaid, have used and have permitted the use of, such pooled patents and patent rights concentrated and perpetuated in RCA in the manner more specifically set forth in paragraph 6 hereof.

6. Further answering, the defedants allege, on information and belief, that the patents asserted in the complaint and amended complaint, among others, are unenforceable because RCA, both alone and with the aid and assistance

of said other companies, and said other companies, alone and in concert with RCA and with one another, have improperly acquired and improperly used and are now improperly using their patents and patent rights, including the patents asserted in the complaint and amended complaint, in that, among other things, and in addition to the improper and illegal use of said patents alleged in paragraph 5 hereof RCA and said other companies:

(a) have effected a pooling of more than ten thousand (10,000) patents, of which the patents asserted in the complaint are a part. Said patent pool comprises a substantial portion of all of the patents in the radio, phonograph and allied industries. It includes those patents originating in a substantial number of the principal and larger companies in said fields, and patents for alternative and normally competing processes, radio and phonograph systems and parts therefor, including tubes. In furtherance of the purposes of said patent pool there is vested in RCA the power to grant licenses under and to sue for alleged infringement of all of the patents of the pool whether owned by RCA or others. RCA, alone and with the aid and assistance and concerted action of the other companies as aforesaid, has used and is using the said massed patents and patent rights and its said power to extend its monopoly beyond any proper separate monopolies of the several patents and to intimidate and coerce manufacturers and users of radio, phonograph and allied apparatus into accepting blanket licenses under said massed patents on excessive and unconscionable terms of public expense without investigation of the validity or proper scope thereof by the licensee. The aforesaid policies and practices have the purpose and result of forcing payment of royalties on all radio, phonograph and allied apparatus whether patented or unpatented and of restraining trade and competition in the radio, phonograph and allied industries,

(b) have unlawfully extended and attempted to extend any proper patent monopoly by procuring and enforcing plural patents for the same invention granted at different times so as to expire at different times, without disclaimer of any thereof; and have continued to exact tribute under the unexpired patents after the expiration of the earlier issued patents for the same invention,

(c) have required and are requiring licensees to mark apparatus, made and sold under license, with the statement that it uses inventions covered by licensed patents whether this be true or false, and to mark such apparatus with the numbers of patents the inventions of which formed the subject matter of expired or invalid patents, some of which had previously been asserted by RCA or another of the aforesaid companies, and with the numbers of patents which did not apply to said apparatus. RCA and said other companies have themselves similarly marked apparatus sold by them. RCA and said other companies indulged in these practices and prescribed these requirements in an attempt to extend, and with the effect of extending, their monopoly beyond the individual proper monopolies of the several patents; to mislead the public and RCA's licensees and competing manufacturers and the trade generally as to the scope of the patents and patent rights concentrated in RCA and as to the type of apparatus covered by said patents and patent rights; to thus cause otherwise unlicensed manufacturers to acquire licenses and to cause licensees to pay royalties on apparatus not in fact covered by plaintiff's patents. By resort to these practices and requirements, plaintiff and said other companies have created the impression on the part of all manfacturers and the purchasing public that RCA had and has a complete patent monopoly of all radio apparatus. As a result, others were and are discovered and prevented from competing with RCA, and RCA was and is enabled to collect royalties on apparatus not validly covered by any patents or patent rights owned by it,

(d) have, unnecessarily and without justification, conducted or permitted to be conducted, and are now attempting to conduct, interference proceedings between applicants for patent and patents owned by others of the aforesaid companies, but all of which are included in the pool of patents and patent rights under the control and management of RCA in the radio, phonograph and allied fields. RCA and said other companies have engaged in these practices as part of a plan to extend, and with the effect of extending, the monopoly based on pooled patents by unduly postponing the time when by expiration of the patents the subject matter thereof might be available for free adoption and use by anyone,

(e) have exacted royalty payments on parts and equipment for which no patent rights were owned or controlled by RCA,

(f) by refusing to grant licenses for the manufacture and sale of radio apparatus under any one or more of the patents under their control to anyone who refused to take a license under all of said patents, and by refusing to charge a lower royalty for a license under one patent or a portion of said patents than for a license under all, have compelled and are continuing to compel manufacturers who desire a license under one or less than all said patents to take licenses under the entire block of pooled patents and pay royalties thereon. They have thereby precluded licensees from questioning the validity or scope of unexpired but invalid or limited patents and improperly forced the payment of royalties on said invalid and limited patents. Further, they have thereby discouraged and prevented the attack that otherwise would be made by the public against invalid and limited patents, have extended their monopoly and particularly RCA's monopoly in the radio, phonograph and allied fields beyond any proper separate monopolies of the several patents, and have levied and caused to be levied, tribute at public expense on the entire production of the licensees without justification,

(g) have placed, and are continuing to place, and have required, and are continuing to require, licensees to place tubes and other radio apparatus sold in the ordinary channels of trade, and on containers therefor, restrictive notices as to uses thereof which are purported to be permitted or purported to be prohibited to the purchasers thereof although said notices in law are and were legally unenforceable and ineffective, all with the intention and result of restraining freedom of trade and extending the monopoly of the illegally pooled patents above referred to,

(h) have refused, and are continuing to refuse, to sell tubes except on the understanding and condition that they may be used and retained by the purchaser only subject to the condition that the sale thereof to the purchaser by RCA or the other companies or their licensees does not entitle the purchaser to use them in any complete equipment, assembly circuit, combination, method or process covered by any patent owned or controlled by RCA or the other companies or under which RCA had the right to sue, whether valid or invalid. This has been and is the case even though there is no other use for said tubes and notwithstanding the fact that such tubes may have been designed for use in or may only be useful in such patented equipment, assembly, circuit, combination, method or process and notwithstanding that such tubes were purchased and sold for such use. Thereby they have forced, or attempted to force, the purchaser to take a license and pay tribute for the use of patents and patent rights pooled and concentrated in RCA, including invalid patents and patents not covering tubes, in order to make any use of said purchased tubes,

(i) have used, and permitted the use of, the power of said massed patents and patent rights to compel manufacturers to release all claims against RCA, including all anti-trust claims and all unfair competition claims in order to secure a license under any of said patents to manufacture radio or phonograph apparatus,

(j) have utilized, and are utilizing, said massed patents and patent rights for the purpose of creating and maintaining complete or partial monopolies in commodities, such as tubes, parts and apparatus not validly covered or not purported to be covered by said patents and patent rights or any of them, and to compel the payment of unwarranted royalties thereon at the cost of the purchasing public,

(k) have, in addition to exacting royalty payments, at public expense, for apparatus, equipment, shipping materials, etc., which the patents did not cover, exacted and permitted exaction of double royalties at public expense, namely, royalties from apparatus manufacturers for circuits designed for use only with particular types of radio tubes and incorporating such tubes as an essential part thereof and also royalties from the manufacturers of said radio tubes designed specifically for use with and as an essential part of said circuit,

(l) and, RCA, alone and with the aid and assistance of said other companies, after and while inducing and coercing those engaged or desiring [illegible] engage in the manufacture and sale of radio and phonograph apparatus to acquire a license from RCA under said massed patents and patent rights and to pay royalties thereunder on their entire production constituting a substantial portion of the price of such apparatus and to make available to RCA in the form of royalty reports and from examination of their books and records detailed information of the competitive operations of such licensees with respect to their entire production which information would not otherwise be available, has itself engaged in the manufacture and sale of radio and phonograph apparatus in competition with its said licensees with the intent and effect of placing RCA in the position where it could and did undersell its competitor licensees without loss to itself and of making the competitive operations of certain of said competitor-licensees unprofitable or of such little profit as to discourage continued competition by said licensees,

(m) have misused the patent privilege by attempting to derive profit, not from legitimate use and exploitation of their inventions but by monopolizing and restraining trade in the manufacture, use and sale of apparatus used or useful in the radio and phonograph field, and to that end RCA has, individually and in concert with said other companies, combined the limited privileges granted by individual patents to form a massed pool of patents in which each derives a portion of its strength from its combination with others and whereby the massed pool of patents form an instrument for economic dominance and control greater than the sum of the separate monopolies intended by the policy of the patent statutes.

Whereby RCA and said other companies by virtue of their unlawful monopolies, acts, practices, policies and conduct aforesaid are abusing the privileges of the patent system and of the patents owned and controlled by them. RCA is seeking to assert rights in this Court in order to obtain judicial aid in, and condonement of, unlawful domination and monopolistic control of the industry in the radio, phonograph and allied fields, and of the acts and practices aforesaid committed in the accomplishment and exercise thereof, all in violation of the true purpose and spirit of the patent laws and the public policy of the United States, whereby plaintiff, RCA, and said other companies are barred from the enforcement of said patents asserted in the complaint and amended complaint or any of their patents and patent rights and from any relief whatsoever.

7. Further answering plaintiff's amended complaint, defendants, on information and belief, allege as to each of the Letters Patent listed in the schedule attached to the amended complaint that it is wholly void and invalid and of no force and effect for the following reasons, among others:

(a) because the alleged invention thereof was patented or described in patents and printed publications in this country or in foreign countries before the alleged invention or discovery thereof by the patentee or more than two years prior to the application for said patent in the case of applications filed on or prior to August 5, 1940 and more than one year prior to the application for said patent in the case of applications filed subsequent to August 5, 1940. The prior patents and publications pertinent to each of the patents, as defendants are now advised, are listed in Schedule A annexed hereto. Defendants pray leave to add additional patents and publications when they become known to them,

(b) because said Letters Patent discloses no patentable invention over what was known to the art at the time the alleged invention or discovery thereof was purported to have been made. As illustrating the knowledge of the art pertinent to each patent as defendants are now advised, attention is directed to Schedule A annexed hereto and as it may be amended,

(c) because the patentee was not the first and original inventor of the subject matter purported to have been patented or any material or substantial part thereof, the alleged invention, if patentable at all, having been made, prior to the patentee by the authors and patentees listed in Schedule A hereof and by others who were using reasonable diligence in adapting and perfecting the same and whose names defendants ask leave to add hereby by amendment when they become known to them,

(d) that the purported invention thereof had been in public use or on sale in this country for more than two years prior to the application for said patent in the case of applications filed on or prior to August 5, 1940 and more than one year prior to the application for said patent in the case of applications filed subsequent to August 5, 1940 by persons whose names and addresses defendants pray leave to add to this answer as Schedule B when they become known to them.

(e) because for the purpose of deceiving the public the description and specification filed by the patentee in the Patent Office was made to contain less than the whole truth relative to the purported invention or discovery or more than is necessary to produce the desired effect,

(f) because the subject matter thereof was abandoned to the public because of unreasonable delay in making and asserting claims therefor.

(g) because the claims thereof were not presented until an unreasonable time, or more than the statutory period after the subject thereof had been in public use in the United States or described in patents and printed publications, the particulars whereof defendants pray leave to add to this answer as Schedule C when they become known to them,

(h) because the patentee has unreasonably neglected or delayed to enter a disclaimer of material and substantial part or parts of the thing patented of which he was not the original and first inventor or discoverer,

(i) because the purported invention thereof is inoperative and is devoid of utility,

(j) because the application therefor and oath in support thereof was not made by the true inventor or inventors of the inventions purported to be disclosed therein the particulars whereof defendants pray leave to add to this answer as Schedule D when they become known to them,

(k) because the purported invention thereof was patented in a foreign country on an application filed more than twelve months prior to the filing of the application for said Letters Patent in the United States, the particulars whereof defendants pray leave to add to this answer as Schedule E when they become known to them.

(l) because said Letters Patent is for the same alleged invention as another patent or patents owned by plaintiff and constitutes an illegal extension of the monopoly thereof, the particulars whereof defendants pray leave to add to this answer as Schedule F when they become known to them,

(m) because said Letters Patent include claims which are obviously invalid on the face of the patent because they are functional and such claims have not been disclaimed,

(n) because of vagueness and indefiniteness of disclosure and claims, and non-compliance with Section 4888 of the Revised Statute (35 U. S. Code 33),

(o) because the claims of the patent claim more than what is purported to have been invented,

(p) because the claims of the patent purport to monopolize an exhausted combination of elements, the only alleged novelty of which resides in the particular construction or characteristics of one of the elements,

(q) because the claims of the patent purports to monopolize a mere aggregation of unrelated elements,

(r) because the alleged invention described and claimed in said patent was not disclosed in the original application therefor, but on the contrary was new matter illegally added subsequent to the filing of the original application, (s) because the application and the claims of the patent as granted were not supported by the necessary statutory oath of the inventor.

8. Further answering the amended complaint, defend-

ants, on information and belief, allege with respect to each of the patents listed in the schedule attached thereto that because of the proceedings had or taken in the Patent Office during the prosecution of the application therefor, or because the claims thereof were by amendment limited in scope in order to secure their allowance, the plaintiff is estopped to assert such a scope or interpretation for the claims of said patent as to include defendants' accused apparatus.

9. Further answering the amended complaint, defendants specifically deny infringement of each of the patents asserted in the schedule attached thereto.

Counterclaim.

Defendants, Rauland and Zenith, as a counterclaim against plaintiff, allege:

10. That this is a counterclaim under Title 28 United States Code Section 2201 for declaratory judgment of invalidity and non-infringement of patent rights.

11. Defendant, Rauland, is engaged in the manufacture and sale of cathode-ray tubes for television receivers, which cathode-ray tubes are being embodied and utilized in radio broadcast television receivers manufactured and sold by Zenith, Rauland being a wholly-owned subsidiary of Zenith.

12. Upon information and belief, plaintiff, RCA, is now the owner of the United States Letters Patent identified in the schedule of the amended complaint and of patent No. 2,323,148 listed in the schedule of the complaint, among others.

13. Plaintiff has asserted and charged that defendant aforesaid manufacture, use and sale of cathode-ray tubes constitutes infringement of United States Letters Patent, including those referred to in paragraph 12 hereof.

14. Defendants deny that their aforesaid, or any, manufacture, use and sale of cathode-ray tubes constitutes

infringement of any patents owned or controlled by RCA or under which RCA has the right to grant licenses or to sue alone or jointly with or in the name of the title holder.

15. Defendants allege that the patents referred to in paragraph 12 hereof are invalid, void and unenforceable for the reasons set forth in paragraphs 5, 6, 7 and 8 hereof.

16. By reason of the foregoing a controversy exists between plaintiff and defendants in that defendants claim the right to manufacture, use and sell cathode-ray tubes without interference from plaintiff by its' assertions and charges of infringement of the aforesaid or any other United States Letters Patent.

Wherefore, Defendants Pray:

A. For a judgment that the plaintiff is not entitled to the relief prayed for, or to any relief, and that the amended complaint be dismissed.

B. For a judgment that the patents listed in the schedule attached to the amended complaint are invalid and not infringed.

C. For a declaratory judgment of non-infringement of the patents identified in paragraph 12 hereof, and any and all other patents owned or controlled by RCA, or under which RCA has the right to grant licenses or to sue alone or jointly with or in the name of the title holder for alleged infringement thereof which RCA may assert to cover or be infringed by defendants' cathode-ray tubes.

D. For a declaratory judgment of invalidity and non-enforceability of each of RCA's patents as referred to in paragraph 12 hereof.

E. For a judgment that defendants are seeking to enforce rights with respect to the patents and patent rights asserted which are contrary to the intent of the patent laws and the public policy of the United States and may not be awarded any relief thereon.

F. For a judgment that defendants, and each of them have misused the asserted patents and patent rights and that they may not be enforced for this reason.

Q. For a judgment that defendants, and each of them have acquired and used the asserted patents and patent rights in violation of the anti-trust laws and that they may not be enforced for that reason.

H. For an injunction permanently restraining plaintiff, RCA, and its officers, agents, attorneys, workmen and employees, and all those in privity with it, from charging, orally or in writing, that said plaintiff owns or controls or is empowered to sue for alleged infringement of any issued patent allegedly covering or infringed by defendants' cathode-ray tubes, or any part or parts thereof, which defendants have made, used and/or sold or may hereafter make, use and/or sell; and from suing or threatening suit against any customer or user of defendants' said cathode-ray tubes, or any supplier or suppliers of parts therefor.

I. For the costs of this action.

J. For reasonable attorneys' fees.

K. For such other and further relief as to the Court may seem just and the circumstances warrant.

The Rauland Corporation and Zenith
Radio Corporation,
By (Illegible),
Attorneys for Defendants,

Irving Herriott and Charles O. Parker,
120 South La Salle Street,
Chicago 3, Illinois.

Burton K. Wheeler,
Pennie, Edmonds, Morton and Barrows,
Willis H. Taylor, Jr.,
R. Morton Adams,
Darby and Darby,
Floyd H. Crews,
Paul Kolisch,
Of Counsel.

November 21, 1949.

Acknowledgement of Service.

We hereby acknowledge service of the above and foregoing Answer and Counterclaim of the defendants, The Rauland Corporation and Zenith Radio Corporation, a copy of which Answer and Counterclaim was left with us this 21st day of November, 1949.

Kirkland, Fleming, Green, Martin &
Ellis,
By (Illegible),
Attorneys for Plaintiff.

A True Copy, Teste
Elbert A. Wagner, Jr.,
Clerk.

July 9, 1963.

PLAINTIFF'S EXHIBIT NO. 40.

In the District Court of the United States.

* * (Caption—48-C-1818) * *

AMENDMENT TO COUNTERCLAIM.

Now come The Rauland Corporation and Zenith Radio Corporation, defendants herein, and by leave of Court first had and obtained present herewith an additional Count to their amended counterclaim, to be designated as Count II of the amended counterclaim heretofore filed herein, and name as cross-defendants Radio Corporation of America, a corporation, the plaintiff in this suit (hereinafter designated as "RCA"), General Electric Company, a corporation organized and existing under the laws of the State of New York (hereinafter referred to as "General Electric") and Western Electric Company, Inc., a corporation organized and existing under the laws of the State of New York (hereinafter referred to as "Western Electric"), and for cause of Count II of their counterclaim show:

1. That the jurisdiction of this Court to hear this counterclaim is based upon the original jurisdiction of the Court to hear "any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies" and that, as hereinafter set forth, this controversy involves Sections 1, 2 and 7 of the Sherman Anti-Trust Act, 15 U. S. C. A., Sections 1, 2 and 15 (Act of July 2, 1890, Chap. 647, Sections 1, 2 and 7, 26 Stat. 209 and 210 as amended); Sections 1, 4, 5 and 12 of the Clayton Act, 15 U. S. C. A., Sections 12, 15, 16 and 22 (Act of October 15, 1914, Chap. 323, Sections 1, 4, 5 and 12, 38 Stat. 730, 731 and 736), and the Act of October 10, 1942, Chap. 589, 56 Stat. 781, as

amended by the Act of June 30, 1945, Chap. 213, 59 Stat. 306.

2. That cross-claimant Zenith Radio Corporation is a corporation organized and existing under the laws of the State of Illinois, and is now and has been continuously for more than twenty-five years last past engaged in the development for use and sale and in the manufacture, use and sale of radio and television apparatus and receiving sets throughout the United States, and during said period has built up a large volume of business in manufacturing and selling to dealers and to the public a complete line of different types of radio and television apparatus as the demand therefor has existed or may continue to exist from time to time, and in the shipment and sale of such apparatus in commerce between the various States of the United States, and said cross-claimant is now and has been engaged in interstate commerce during all of the period above stated and during all times material to this counterclaim.

3. That cross-claimant The Rauland Corporation is a corporation organized and existing under the laws of the State of Illinois and is now and has been continuously for more than ten years last past engaged in the development for use and sale of radio and television tubes and apparatus throughout the United States and foreign countries, and during said period has built up a large volume of business in manufacturing and selling to dealers and to the public such radio and television apparatus as the demand therefor has existed or may continue to exist from time to time, and in the shipment and sale of such apparatus in commerce between the various States of the United States and foreign countries, and said cross-claimant is now and has been engaged in interstate and foreign commerce during all of the period above stated and during all times material to this counterclaim.

4. That cross-defendants RCA, General Electric and

Western Electric are each corporations organized and existing under the laws of States other than the State of Illinois, and that the jurisdiction of this Court to hear this controversy is also based upon diversity of citizenship between cross-claimants and each of the cross-defendants, and that the amount in controversy herein exceeds $3,000.00 exclusive of interest and costs.

5. That cross-defendant RCA is party plaintiff in this suit and has already submitted itself to the jurisdiction of this Court, and cross-defendants General Electric and Western Electric are each found in and are doing business in the City of Chicago and State of Illinois and have each been qualified to do business in that State and have appointed resident agents in the City of Chicago upon whom service in their behalf may be made pursuant to the Statutes of the State of Illinois.

6. That each and all of the cross-defendants are now and at all times material to this counterclaim were engaged in interstate trade and commerce in the several States, and were engaged in commerce with foreign nations and were at the various times herein referred to and mentioned, and are now so engaged.

7. That cross-claimants herein reallege paragraphs 3 and 4 of their amended counterclaim and paragraphs 5 and 6 of their answer heretofore filed herein, and further say that cross-defendants and each of them, and their affiliated corporations together with sundry other persons and corporations, have been during the period complained of and pursuant to agreements, arrangements and understanding among themselves, engaged in a conspiracy (a) to monopolize and to attempt to monopolize the manufacture, sale and use of radio and television apparatus throughout the United States and foreign countries; (b) to restrain interstate trade and commerce in the manufacture, sale and use of radio and television apparatus

throughout the United States and foreign countries, and (c) to monopolize and to attempt to monopolize any and all patents in the electronics field and the licensing of the use of said patents in the manufacture, sale and use of radio and television apparatus throughout the United States and foreign countries, in the manner set forth in the succeeding paragraphs herein, all in violation of the provisions of the Federal Anti-Trust laws hereinabove referred to.

8. That cross-defendants themselves, or through predecessor corporations, together with sundry other persons and corporations, including amount others the British and American Marconi companies, the United Fruit Company and the Philips Company of Holland, sometime prior to the year 1920 entered into the conspiracy in violation of the Sherman and Clayton Acts hereinabove referred to, wherein and whereby the domestic and foreign patents of each and all of them in the electronics and allied fields were pooled and competition between each of them in certain designated fields was foreclosed and pursuant to which said conspiracy RCA and General Electric were granted exclusive fields of monopoly of the use and licensing of the pooled patents of (1) transoceanic wireless telegraphy, (2) transoceanic telephony, both wireless and wire, and (3) the manufacture, use and sale of wireless apparatus and devices, including such apparatus and devices for (a) wireless telegraphy, (b) wireless telephony for amateur purposes and (c) radio receiving sets for private use, and pursuant to which said conspiracy American Telephone & Telegraph Company, a corporation (hereinafter referred to as "AT&T"), Western Electric and their subsidiaries were granted exclusive fields of monopoly in (1) wire telegraphy other than transoceanic, (2) wire telephony on land, (3) wireless telephony on land and (4) the manufacture, use and sale of wire telephone and

telegraph apparatus and devices; that thereby cross-defendants and their co-conspirators, acting in concert, vested in RCA an illegal monopoly of patents and patent applications applicable to the radio manufacturing field, which said illegal pool of patents consisted of some ten thousand patents and applications applicable thereto.

9. That cross-defendants themselves, or through predecessor or subsidiary corporations, together with sundry other persons and corporations, including among others the British and American Marconi companies, the United Fruit Company and the Philips Company of Holland, sometime prior to the year 1926 entered into a conspiracy in violation of the Sherman and Clayton Acts hereinabove referred to, wherein and whereby the domestic and foreign patents of each and all of them in the electronics and allied fields were pooled and wherein and whereby the United States and foreign nations, for radio and television markets, were divided into mutually exclusive territories wherein and whereby the exclusive territories of cross-defendants were declared to be Canada (including Newfoundland) and the United States of America and its possessions, colonies, dependents and protectorates except Cuba and the Philippines; that the Philips Company of Holland is the holder of the largest patent pool applicable to electronics and the radio field on the continent of Europe, and operates a vast cartel system in which it monopolizes such business in many of the countries of Europe, and that the exclusive territory of the Philips Company, determined by the conspiracy herein alleged, included Holland, Czechoslovakia, Denmark, Esthonia, Finland, Latvia, Lithuania, Norway, Sweden and Switzerland, and that pursuant to said conspiracy it was agreed by and between said conspirators not to import or to permit to be imported into the exclusive territories of the others any radio valves, sets or other radio or television material manufactured or dealt in by

it or any of its subsidiaries or controlled companies, whether such valves, sets or other radio or television material be patented or not, without the mutual consent of said conspiring corporations; that by virtue of said conspiracy and resulting monopoly of patents in the electronics field, cross-claimants Zenith Radio Corporation and The Rauland Corporation were at all times material to this counter-claim excluded from any and all Canadian markets for radio and television sets or radio or television tubes or apparatus, and precluded from foreign competitive markets in which to obtain licenses under patents for the manufacture, sale or use of said radio and television apparatus.

10. That among the foreign companies participating in the aforesaid conspiracy are Marconi's Wireless Telegraph Co., Ltd. (known as the British Marconi Company); the Gesellschaft Fuer Drahtlose Telegraphie, m.b.h. of Germany (known as the Telefunken Company); Compagnie Generale de Telegraphie sans Fils, the French company; N. V. Philips Gloeilamphenfabrieken (also known as Philips Company of Holland); and International General Electric Company, a subsidiary of cross-defendant General Electric.

11. That the acts performed by cross-defendants and each of them pursuant to said unlawful monopoly and conspiracy were the direct and proximate cause of loss and damage to cross-claimant Zenith Radio Corporation in the operation of its business during the period complained of from June 22, 1940 down to the date of the filing of this Count of its amended counterclaim in an amount in excess of $4,452,183.00, said damages consisting of the following items: (a) loss of profits from the sale of radio and television sets in Canada during the period complained of in the amount of $1,976,898.00; (b) royalties paid to RCA by cross-claimants pursuant to illegal and unenforceable patent claims in the amount of $1,775,285.00, extorted under the threat of ruinous litigation under the massed aggregate of

thousands of alleged patent claims unlawfully pooled and asserted pursuant to the conspiracy herein alleged, and (c) attorneys' fees occasioned said cross-claimant by virtue of defending infringement suits brought on account of said illegal patent pool, which such fees amount to in excess of $700,000.00.

12. That cross-claimant Zenith Radio Corporation has thereby incurred total damages, being treble damages as provided by the Anti-Trust laws, in excess of $13,356,549.00.

13. That the acts performed by cross-defendants and each of them pursuant to said unlawful monopoly and conspiracy were the direct and proximate cause of loss and damage to cross-claimant The Rauland Corporation in the operation of its business during the period from July 1, 1943 down to the date of the filing of this Count of its amended counterclaim in an amount in excess of $900,000.00, said damages consisting of (a) loss of profits from the sale of radio and cathode ray tubes and radio and television apparatus in Canada during such period in an amount in excess of $700,000.00 and (b) attorneys' fee and costs and expenses occasioned said cross-claimant by virtue of defending infringement suits brought by RCA on account of said illegal patent pool, which said attorneys' fees and costs amount to in excess of $200,000.00.

14. That cross-claimant The Rauland Corporation has thereby incurred total damages, being treble damages as provided by the Anti-Trust laws, in excess of $2,700,000.00.

Wherefore, cross-claimants, Zenith Radio Corporation and The Rauland Corporation, ask that summons issue against all cross-defendants except RCA, requiring all and each of them to appear in answer to this amendment to cross-claimants' counterclaim within the time fixed by the rules of this Court, and that RCA be ordered and directed to answer this amended counterclaim within a short day to be fixed by further order of the Court, and that after hearing on issues joined, a joint and several judgment be entered in favor of Zenith Radio Corporation against cross-defendants in the amount of $13,356,549.00 and that in addition there be allowed by the Court to said cross-claimant the costs of this suit, including a reasonable attorney's fee as provided in the statute, and that a joint and several judgment be entered in favor of The Rauland Corporation against cross-defendants in the amount of $2,700,000.00 and that in addition there be allowed by the Court to said cross-claimant the costs of this suit, including a reasonable attorney's fee as provided in the statute.

Zenith Radio Corporation,
A corporation, defendant and cross-claimant,
By Joseph B. Wright,
Its attorney.

The Rauland Corporation,
A corporation, defendant and cross-claimant,
By Joseph B. Wright,
Its attorney.

Counsel for defendants-cross-claimants:
Thomas C. McConnell,
134 S. LaSalle St., Chicago,

Joseph B. Wright,
Philip J. Curtis,
6001 W. Dickens Ave., Chicago,

Willis H. Taylor, Jr.,
R. Morton Adams,
247 Park Ave., New York ,N. Y.

A True Copy Teste
Elbert A. Wagner, Jr.,
Clerk.

July 9, 1963.

PLAINTIFF'S EXHIBIT NO. 41.

UNITED STATES DISTRICT COURT.

* * (Caption—48-C-1818) * *

AMENDED COUNTERCLAIM AND AMENDED PRAYERS FOR RELIEF.

Amended Counterclaim.

Defendants, Rauland and Zenith, counterclaiming against the plaintiff RCA alleges:

1. This Counterclaim arises and is asserted under Section 16 of the Clayton Act (15 USC § 26) and prays for an injunction against threatened loss or damage to defendants by reason of violations of the antitrust laws by plaintiff, RCA. Said Section 16 of the Clayton Act provides in part as follows:

> Any * * * corporation shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws * * * when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity * * *.

Jurisdiction of this action is conferred on this court by Section 1337 of Title 28 of the United States Code.

2. Defendant Zenith is now, and continuously for more than twenty-five years last past has been, engaged, inter alia, in the business of manufacturing and selling radio apparatus, said radio apparatus including radio receiving sets, and in more recent years, television receiving sets. Defendant Rauland is a wholly owned subsidiary of Zenith, engaged in the manufacture of cathode ray tubes for use in television receiving sets made and sold by Zenith and others.

3. Plaintiff RCA, beginning in 1919, entered into a conspiracy in violation of the antitrust laws, with a number of companies, both domestic and foreign, who were, and continue today to be, holders of large pools or accumulations of patents and patent rights having application in the electronic industry and to the radio and television branch of that industry, said companies being identified in Paragraph 5 (pages 2, 3 and 4) of the Answer herein. Said conspiracy has existed continuously from its inception, and continues to exist today, in violation of the antitrust laws of the United States. The three primary objects and purposes of said conspiracy, all of which have directly and proximately caused, and are now causing, loss and damage to defendants, and have directly and proximately created the constant and continuing threat of loss and damage to defendants, were and are as follows:

First, to carve up the entire electronic industry into segments and subdivisions, or so-called "fields," as the parties to said conspiracy so designate them, said "fields" being divided up in accordance with the various types of products, services and/or activities embraced in the electronic industry. In order to create monopolies and to eliminate competition among themselves therein, said domestic conspirators who were and continue to be parties to said conspiracy allocated said "fields," respectively, to one another as their exclusive lines of business in which they have enjoyed, and presently continue to enjoy, monopolies in violation of the antitrust laws. Said divisions of "fields" were accomplished by a series of patent pooling agreements, whereunder said monopolies in lines of business were thus parcelled out within the electronic industry under the guise, and through the necessary operation, of purported patent cross-licensing agreements for the mutual exchange of patent rights under the various accumulations of patents within the ownership and control of the parties thereto. Said licenses were denominated “exclusive” prior to 1932 but have been changed nominally to “non-exclusive” licenses from that time to the present. Said nominal change from “exclusive” to “non-exclusive” did not cure or otherwise affect the illegality of said patent pooling agreements. A monopoly of the “field” of radio (including television) together with a monopoly of patents and patent rights in said “field,” and a monopoly of licensing the radio and television receiver manufacturing industry under all said patents and patent rights of all the companies parties to said conspiracy, was granted through such cross-licenses to RCA by its said co-conspirators. Said monopolization by RCA of said radio and television patents and patent rights, and of the licensing of said industry thereunder, continues today in violation of the antitrust laws under the currently effective patent pooling agreements. Further, said patent pooling agreements for divisions of “fields” have from the beginning of said conspiracy contained, and continue today to contain, illegal patent funneling provisions whereunder rights not only under existing patents of any of the parties thereto, but likewise under any future patents, issued to any of said conspiring companies while the agreements remain in effect, will continue automatically to funnel into the control of whichever party to the agreement has been granted an illegal monopoly of the particular line of business in which said funneled patent rights have application. By means of said funneling provisions, plaintiff RCA has, in the field of the manufacture and sale of radio and television receivers, heretofore acquired, and will continue hereafter to acquire, all rights, including rights to sublicense and sue the radio and television receiver manufacturing industry, under the patents of all the other parties to said presently effective patent pooling agreements during the full life of said agreements, and even beyond the expiration of said agreements for the full life of those patents under wihch said rights have thus been illegally funneled in violation of the antitrust laws.

Second, to carve up the market areas and commercial territories of the world for the manufacture and sale of radio apparatus and devices by a series of international cartel agreements to which plaintiff RCA is a party. The principal foreign parties to said international agreements are identified in Paragraph 5 (page 4) of the Answer herein. Said international cartel agreements are framed in the guise of international patent pooling and cross-licensing agreements. Said agreements grant RCA the right to sublicense and sue manufacturers of radio apparatus in the United States under all American patents and patent rights of the foreign patent owners with whom such international market territories are thus divide,d and thereby RCA has further augmented its monopolistic control of radio patents and patent rights for illegal domination of the radio and television receiver manufacturing industry of the United States. Said international agreements, by thus creating cartel arrangements for territorial divisions of world markets, and adding to RCA's unlawful pool of patents and patent rights and its resultant power unlawfully to dominate the radio industry thereunder, have existed from the beginning of said conspiracy, and continue today to exist in violation of the antitrust laws. Further, all of said international patent pooling agreements contain provisions in violation of the antitrust laws, whereunder rights under all future American patent acquisitions of the foreign parties thereto, applicable to radio, will continue to funnel into the control of RCA for the term of the agreements and in some instances, even beyond the term hereof. Further, by the provisions of said international agreements, RCA has given the foreign patent owners who are parties thereto the right, under all the patents which RCA has acquired in the foreign countries covered by those agreements, to sue any American manufacturers of radio apparatus, including the defendants herein, who should export radio apparatus into the territory of said foreigners, and in at least one instance, RCA has agreed to share with the foreigner the legal expenses of prosecuting such infringement suits. The operation of said provisions in said international agreements is such that these defendants would thus be barred by such infringement suits and threats thereof in foreign countries under RCA's said foreign patents, even if they accepted, as have all other manufacturers in the industry, an RCA so-called "Standard License" to manufacture and sell radio apparatus in the United States.

Third, to vest in RCA a monopoly of patents and patent rights and a monopoly of patent licensing in the radio "field," including the "field" of the manufacture and sale of radio and television receiving sets and parts and components thereof. As a result of said conspiracy, RCA has been and is invested with the power unlawfully to dominate the radio and television receiver manufacturing industry of the United States and to exclude from that industry any manufacturer, such as defendants Zenith and Rauland, who will not submit to RCA's domination by executing an RCA "Standard License," and pay RCA "royalties" for the immunity from litigation under the undifferentiated massed aggregate of unidentified patents and patent rights, now exceeding 10,000 in number, thus owned or controlled by RCA pursuant to the aforesaid conspiracy. Said royalties are imposed in the way of a tax levied as a percentage of the licensed manufacturer's income, for the privilege of remaining in business. RCA asserts this power to exclude by suits and threats of suits under the entire mass of undisclosed patents and patent rights, which it has acquired either by the aforesaid patent pooling agreements for divisions of "fields" and division of territories (alleged, respectively, in Subparagraphs "First" and "Second," immediately preceding), or by purchases from others, or through the operation of its own research laboratories which it finances entirely, or in large measure, from the continuing tribute which it thus exacts from said industry.

4. Defendants Zenith and Rauland, as a direct and approximate result of the antitrust violations asserted hereinabove in Paragraph 3, are now suffering loss and damage and are faced with a constant and continuing threat of extinction unless they recognize and submit to the power of RCA to exclude them from the radio and television industry by accepting a license and paying tribute in the form of "royalties" as aforesaid. The present suit by RCA is being prosecuted in attempted vindication and exercise of its unlawful power to exclude from the radio and television receiver manufacturing industry any manufacturer who refuses to submit to its exaction of tribute. RCA asserts this power of exclusion by virtue of its unlawful monopoly of patents and patent rights applicable to said industry, and its monopoly of the licensing of the industry thereunder, which monopolies it has acquired largely by virtue of the agreements in violation of the antitrust laws for divisions of "fields" and for divisions of territories, as alleged hereinabove in Paragraph 3. RCA, prior to the bringing of the present action, sought to induce these defendants to take licenses and pay tribute under the afore-

said mass of pooled patents and patent rights for the privilege of manufacturing and selling radio and television apparatus and parts and components thereof, and RCA took the position that unless they accepted said licenses from RCA and paid RCA said tribute thereunder, RCA would assert the combined power of the said patents and patent rights by suing them for infringement of one or more of said mass of 10,000 undisclosed patents and patent rights. Not only has RCA brought this suit against Zenith and Rauland on the patents asserted in the instant case, but it has also, together with two of its co-conspirators General Electric Company and Western Electric Company, Inc., sued Zenith on 62 other patents in the District of Delaware. Both in the instant action and in the Delaware actions, patents have been added by amendment and have been withdrawn by amendment in order to harass and oppress defendants, and put them to additional expense in defending such patent suits. In addition to the loss and damage by way of harassment and the great expense incurred in defending these pending patent litigations, which defendants Zenith and Rauland are presently suffering and will continue to suffer unless they are granted the relief prayed for herein, Zenith and Rauland, likewise as a direct and proximate result of the conspiracy alleged hereinabove in Paragraph 3, will be under a constant and continuing threat of oppressive and ruinous litigation which, in the absence of such relief, RCA will be free to institute, and intends to institute for the indefinite future. Under the illegal patent funneling provisions set forth in the presently effective patent pooling agreements between RCA and its co-conspirators, charged hereinabove in Paragraph 3, defendants Zenith and Rauland are faced with such patent infringement suits not only on whatever presently existing patents in this pool RCA may choose as assert now or hereafter, but likewise with infringement suits under whatever future patents may be acquired during the existence of the aforesaid agreements by any and all of RCA's domestic and foreign co-conspirators, which by the terms of such patent funneling provisions will automatically funnel into the patent pool of RCA; and said constant and continuing threat of patent infringement suits against Zenith and Rauland by RCA will continue, by virtue of the terms of said patent pooling agreements between RCA and its said co-conspirators, even beyond the existence of said agreements and for the full lives of all such patents. Under said funneling provisions, RCA automatically has acquired and will continue to acquire the rights to sublicense and sue the radio and television receiver manufacturing industry of the United States under most of the patents applicable to the radio and television field, issued in the United States on inventions originating not only in the United States, but in the principal foreign countries of the world. Defendants Zenith and Rauland, as a direct and proximate result of the aforesaid antitrust violations by plaintiff RCA, are suffering loss and damage and are threatened with further loss and damage in that their distributors, dealers, agents and customers are likewise under the constant and continuing threat of oppressive and ruinous litigation for patent infringement on the part of RCA.

Wherefore, Defendants Pray:

A. For a judgment that the plaintiff is not entitled to the relief prayed for, or to any relief, and that the second amended and supplemental complaint be dismissed.

B. For a judgment that the patents listed in the schedule attached to the second amended and supplemental complaint are not infringed and/or are invalid.

C. For an injunction enjoining and restraining Radio Corporation of America:

1. From suing the defendants or either of them under any patent, or threatening suit thereunder against defendants or either of them, by reason of their manufacture,

use or sale of radio and television apparatus, and components and parts thereof;

2. From so suing or threatening suit against any customer or user of any of defendants' radio and television apparatus or components or parts thereof, or any of defendants' suppliers of parts therefor;

3. from exercising in any way their unlawful monopolistic power, created and maintained by means of combination and conspiracy violative of the antitrust laws, to injure the business of Zenith and Rauland or their customers.

D. For the costs of this action.

E. For reasonable attorneys' fees.

F. For such other and further relief as to the Court may seem just and the circumstances warrant.

The Rauland Corporation and Zenith
Radio Corporation,
By Irving Herriott and
Charles O. Parker,
Attorneys for Defendants,

Irving Herriott and
Charles O. Parker,
120 South La Salle Street,
Chicago 3, Illinois.

Burton K. Wheeler,
Pennie, Edmonds, Morton, Barrows & Taylor
Willis H. Taylor, Jr.,
R. Morton Adams
Joseph S. Wright
Francis W. Crotty
Philip J. Curtis
6001 W. Dickens
Chicago, Illinois
Of Counsel.

A True Copy Teste
Elbert A. Wagner, Jr.,
Clerk.

July 9, 1963.

PLAINTIFF'S EXHIBIT NO. 42.

IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois,

Eastern Division.

Radio Corporation of America,
Plaintiff,
vs.
The Rauland Corporation and
Zenith Radio Corporation,
Defendants.

Zenith Radio Corporation and
The Rauland Corporation,
Counterclaimants,
vs.
Radio Corporation of America,
Counter-Defendants.
and
General Electric Company and
Western Electric Company, Inc.,
Cross-Defendants.

Civil Action
No. 48 C 1818.

AMENDMENT AND SUPPLEMENT TO COUNTERCLAIM.

Now come Zenith Radio Corporation and The Rauland Corporation, counterclaimants herein, and pursuant to leave of Court first had and obtained, present herewith an amendment and supplement to their counterclaim by striking from Count II of said counterclaim paragraphs 11 and 14, both inclusive, together with the prayer for relief, and substituting therefor the following:

11. That on January 14, 1949 the United States of America filed a complaint in the United States District

Court for the District of New Jersey against Western Electric Company, Inc., one of the cross-defendants herein, which said cause was docketed as Civil Action No. 17-49; that said suit was instituted under Sections 1, 2 and 3 of the Federal Anti-Trust Statute known as the Sherman Act and also under the Clayton Act, in and whereby it was charged that certain so-called "B-2" agreemnts dated July 1, 1932 made by the eWstern Electric Company with General Electric Company, Radio Corporation of America, and Westinghouse Electric Corporation, and all agreements supplementary thereto evidenced a conspiracy violative of the Federal Anti-Trust Laws in that they created a monopoly of patents in the electronics business and said suit suit sought a dedication to the public of all patents held pursuant to said agreements and a declaration by the Court that such agrements were illegal and that the patents licensed thereunder had been misused; that included in said pool of patents were the Western Electric patents alleged in the instant counterclaim to have been illegally polled, together with the patents of Radio Corporation of America, General Electric Company, and the other conspirators named in the counterclaim, to create a monopoly of patents in the electronics business and thereby to control the manufacture, sale and use of radio and television apparatus throughout the United States and foreign countries; that it was alleged in said complaint that Western Electric Company "had secured the exclusive right to furnish wire facilities ssential to radio program transmission service by agreeing with others not to engage in the manufacture and sale of radio equipment" and "by dividing fiels of manufacture, sale, and distribution of products covered by said patents with concerns engaged in other fields of telecommunication as well as in noncommunication fields"; that the Government complaint then alleged "by 1920, A. T. & T. and Western possessed patents and patent rights which were essential for the commercial use of radio. * * * Since the vacuum tube and other technology are to a large extent common to wire telephony and radio, A. T. & T. and Western were actual or potential competitors of General Electric Company, Radio Corporation of America, and Westinghouse Electric & Manufacturing Company, hereinafter collectively referred to as the 'Radio Group' which were engaged in the manufacture and sale of radio receiving and transmitting sets. A. T. & T. and Western entered into agreements with the Radio Group which had the effect of reserving to the Radio Group the manufacture and sale of radio receiving sets * * *."; that among the patents in the pool so created were and are certain Western Electric patents which have been asserted and are still being asserted against Zenith Radio Corporation in a cause pending in the United States District Court in Delaware, and that the issue of whether or not such pooling of patents was illegal under the Federal Anti-Trust Laws was and is directly involved in the above-mentioned and described case in the United States District Court in Delaware; that the Government suit referred to herein was terminated by a consent decree entered January 4, 1956, wherein and whereby the patents covered by the aforementioned cross-licensing agreement were ordered dedicated to the public; that under the provisions of the Clayton Act it is provided,

> "Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain, or punish violations of any of the anti-trust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter contained in said suit or proceeding shall be suspended during the pleading thereof."

That the effect of such telling of the statute of limitations is to permit the cross-claimants to maintain their counterclaim action against Western Electric for a period commencing January 14, 1947 down to the time of the filing of this counterclaim amendment.

13. That on January 27, 1941 the United States Department of Justice filed a complaint in behalf of the United States of America against General Electric Company et al., defendants, in the District Court of the United States for the District of New Jersey, docketed as Civil Action No. 1364; that in said complaint it was alleged that General Electric Company had violated the anti-trust laws of the United States in that they and others "have entered into and have maintained and are maintaining various patent pooling and licensing agreements" with companies engaged in the radio, telephoney, lighting and other related industries; that among such companies were Radio Corporation of America and Western Electric Company and among the isues to be tried in said cause was the alleged illegality under the Federal Anti-Trust Laws of the very same patent pooling agreements alleged and asserted as illegal in the instant counterclaim; that said litigation was finally determined by decretal order and judgment entered on October 8, 1953 from which the time for appealing expired November 8, 1953; that in said litigation it was determined that General Electric Company had violated the Anti-Trust Laws by maintaining a monopoly of patents and included in said monopoly are many of the same patents that have here been asserted against these counterclaimants and which are included in the pooling of patents complained of in the instant case; that by virtue of the tolling of the statute of limitations because of said Government suit these counterclaimants are entitled to maintain an action against General Electric Company as set forth in this counterclaim for damages under the Anti-Trust

Laws for a period extending at least as long as the claim asserted against Western Electric Company for the period beginning January 14, 1947 down to and including January 1, 1956.

13. That for the period commencing January 14, 1947 down to and including January 1, 1956 the acts performed by cross-defendants and each of them pursuant to said unlawful monopoly and conspiracy were the direct and proximate cause of loss and damage to cross-claimant Zenith Radio Corporation in the operation of its business in an amount in excess of $18,105,929.00, said damages consisting of the following items:

(a) Loss of profits from the sale of radio and television sets in Canada in the amount of $9,879,745.00;

(b) Loss of profits from the sale of radio sets in England, $1,466,029.00;

(c) Loss of profits from the sale of radio sets in Australia, $3,299,829.00;

(d) Loss of profits from the sale of radio sets in the Netherlands, $2,810,326;

(e) Attorneys' fees occasioned said cross-claimant by virtue of defending infringement suits brought on account of said illegal patent pool, which said fees are in excess of $750,000.00.

14. That cross-claimant Zenith Radio Corporation has thereby incurred total damages, being treble damages as provided by the anti-trust laws, in excess of $54,317,787.

15. That the acts performed by cross-defendants and each of them pursuant to said unlawful monopoly and conspiracy were the direct and proximate cause of loss and damage to cross-claimant The Rauland Corporation in the operation of its business during the period from January 14, 1947 down to the date of the filing of this amendment and supplement to the counter-claim in an amount in excess of $953,187.00 consisting of:

(a) Loss of profits from the sale of cathode ray tubes in Canada during such period in an amount in excess of $703,187.00; and

(b) Attorneys' fees and costs and expenses occasioned said cross-claimant by virtue of defending infringement suits brought by Radio Corporation of America for the account of said illegal patent pool which said attorneys fees and costs amount to in excess of $250,000.00

That cross-claimant The Rauland Corporation has thereby incurred total damages, being treble damages as provided by the Anti-Trust Laws, in excess of $2,859,561.00.

Wherefore, cross-claimants Zenith Radio Corporation and The Rauland Corporation ask that after hearing on issue joined a joint and several judgment be entered in favor of Zenith Radio Corporation against cross-defendants in the amount of $54,317,787.00 and that a joint and several judgment be entered in favor of The Rauland Corporation against cross-defendants in the amount of $2,859,561, and that in addition there be allowed by the Court to said cross-claimants the costs of this suit including a reasonable attorney's fee as provided in the Statute.

Zenith Radio Corporation, a corporation,
Defendant and Cross-Claimant,
Defendant and Cross-Claimant,
By Thomas C. McConnell,
Joseph S. Wright,
Its Attorneys.

The Rauland Corporation, a corporation,
Defendant and Cross-Claimant,
By Thomas C. McConnell,
Joseph S. Wright,
Its Attorneys.

III.

Now comes Zenith Radio Corporation, counterclaimant herein, and presents herewith an additional count to its counterclaim to be designated as Count III hereof wherein it complains of Radio Corporation of America and General Electric Company, counter-defendants, for the period beginning June 22, 1940 to January 1, 1947, and for cause of complaint says:

1. Realleges paragraphs 1, 2, 4, 5, 6, 7, 8, 9, and 10 of Count II of its amended counter claim and paragraphs 11 and 12 of the amendment to Count II of the counterclaim set forth above.

2. That the acts performed by cross-defendants and each of them pursuant to said unlawful monopoly and conspiracy were the direct and proximate cause of loss and damage to cross-complaint Zenith Radio Corporation from June 22, 1940 to January 1, 1947, such damages consisting of royalties paid to Radio Corporation of America by cross-claimant on acount of illegal and unenforceable patent claims in the amount of $1,524,319 extorted under the threat of ruinous litigation by the assertion of the massed aggregate of thousands of alleged patent claims unlawfully pooled and asserted pursuant to the conspiracy herein alleged.

3. That cross-claimant Zenith Radio Corporation has thereby incurred total damages, being treble damages as provided by the Anti-Trust Laws, in excess of $4,572,957.

Wherefore, cross-claimant Zenith Radio Corporation asks that a joint and several judgment be entered in favor of Zenith Radio Corporation against General Electric Company and Radio Corporation of America, cross-defendants, in the amount of $4,572,957.00, and that in addition there be allowed by the Court to said cross-claimant the costs of this suit including a reasonable attorney's fee as provided in the Statute.

Zenith Radio Corporation, a corpration,
Defendant and Cross-Claimant,

By Thomas C. McConnell,
Joseph S. Wright,
Its Attorneys.

A True Copy Teste.

Elbert A. Wagner, Jr.,
Clerk.

By ....,
Deputy Clerk.

July 9, 1963.

PLAINTIFF'S EXHIBIT NO. 43.

In the District Court of the United States.

* * (Caption—48-C-1818) * *

STIPULATION.

It Is Hereby Stipulated, Consented and Agreed by and between plaintiff, counter-defendant and cross-defendants, on the one hand, and by defendants, counter-claimants and cross-claimants, on the other hand, by their attorneys and counsel, that all claims asserted in this action by the plaintiff and counter-defendant against each or any of defendants, counter-claimants and cross-claimants be and they hereby are dismissed with prejudice, and that all claims asserted in this action by each or any of the defendants, counter-claimants and cross-claimants against each, any or all of plaintiff, counter-defendant and cross-defendants be and they hereby are dismissed with prejudice, in each instance without costs, expenses or attorneys' fes.

Dated this 27th day of September, 1957.

A. L. Hodson,
Attorney for Plaintiff and Counter-Defendant Radio Corporation of America.

Hamilton Beebe,
Attorney for Cross-Defendant General Electric Company.

Walter J. Cummings, Jr.,
Attorney for Cross-Defendant Western Electric Company, Inc.

Thomas C. McConnell,
Attorney for Defendant, Counter-Claimant and Cross-Claimant Zenith Radio Corporation.

Joseph S. Wright,
Attorney for Defendant, Counter-Claimant and Cross-Claimant The Rauland Corporation.

John T. Cahill,
Counsel for Plaintiff and Counter-Defendant Radio Corporation of America.

Richard R. Bickford,
Counsel for Cross-Defendant General Electric Company.

John E. F. Wood,
Counsel for Cross-Defendant Western Electric Company, Inc.

Thomas C. McConnell,
Counsel for Defendant, Counter-Claimant and Cross-Claimant Zenith Radio Corporation.

Joseph S. Wright,
Counsel for Defendant, Counter-Claimant and Cross-Claimant The Rauland Corporation.

So Ordered.

M. L. Igoe,
United States District Judge.

September 27, 1957.
A True Copy Teste.

Elbert A. Wagner, Jr.,
Clerk.
By Dorothy Aldridge,
Deputy Clerk.

Jan. 31, 1964.

PLAINTIFF'S EXHIBIT NO. 44.

United States of America, }
Southern District of New York. } ss:

I, James E. Valeche, Clerk of the United States District Court for the Southern District of New York, do hereby certify that the writings annexed to this certificate to wit: photostat copy of Complaint filed Nov. 24, 1958, in the matter of *U. S. A.* v. *General Electric Co., et al.,* Civ. 140-157 have been compared with their originals on file and remaining of record in this office; that they are correct transcripts therefrom and of the whole of the said originals.

In Testimony Whereof I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this 4th day of March in the year of our Lord one thousand nine hundred and sixty-three and of the Independence of the United States the one hundred and eighty-seventh.

James E. Valeche,
Clerk.

UNITED STATES DISTRICT COURT.

Southern District of New York.

United States of America,
Plaintiff,
vs.
General Electric Company, Westinghouse Electric Corporation, and N. V. Philips' Gloeilampenfabrieken,
Defendants.

Civil No. 140-157.

COMPLAINT.

Filed: November 24, 1958.

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants named herein and complains and alleges as follows:

I.

Jurisdiction and Venue.

1. This complaint is filed and these proceedings are instituted under section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U. S. C., Sec. 4), as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," said Act being commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of section 1 of the Sherman Act (15 U. S. C., Sec. 1).

2. Many of the acts done in pursuance of the offense charged herein have been performed and are being per-

formed by the defendants and their representatives within the Southern District of New York.

3. Each of the defendants maintains an office, transacts business and/or is found within the Southern District of New York.

II.

Description of Defendants.

4. General Electric Company (hereinafter referred to as "GE") is hereby made a defendant herein. The said defendant GE is a corporation organized and existing under the laws of the State of New York, with its principal place of business in New York, New York, and has transacted business and now transacts business within the Southern District of New York.

5. Westinghouse Electric Corporation (hereinafter referred to as "Westinghouse") is hereby made a defendant herein. The said defendant Westinghouse is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with principal places of business in East Pittsburgh, Pennsylvania, and New York, New York, and has transacted business and now transacts business within the Southern District of New York.

6. N. V. Philips' Gloeilampenfabrieken (hereinafter referred to as "Philips") is hereby made a defendant herein. The said defendant Philips is a limited company organized and existing under the laws of The Netherlands, with its principal place of business in Eindhoven, Holland. Philips is found in the Southern District of New York and has transacted business and now transacts business within the Southern District of New York.

III.

The Co-conspirators.

7. The corporations and companies listed below are not named as defendants, but as co-conspirators herein. Each is organized and existing under the laws of the country or state indicated below, and each has its principal place of business as set forth below.

Name	Place of Incorporation	Principal Place of Business	Abbreviated Name
Canadian Radio Patents Limited	Canada	Toronto, Ontario	CRPL
Canadian General Electric Company, Limited (subsidiary of GE)	Canada	Toronto, Ontario	Canadian GE
Canadian Westinghouse Electric Company Limited (subsidiary of Westinghouse)	Canada	Hamilton, Ontario	Canadian Westinghouse
Canadian Radio Manufacturing Corporation Limited	Canada	Leaside, Toronto, Ontario	CRMC
Rogers Majestic Electronics Limited (originally, Standard Radio Manufacturing Corporation Limited)	Canada	Leaside, Toronto, Ontario	Rogers Majestic
Canadian Marconi Company	Canada	Montreal, Quebec	Canadian Marconi
Northern Electric Company, Limited	Canada	Montreal, Quebec	Northern
Radio Corporation of America	Delaware	New York, N. Y.	RCA
RCA Victor Company, Limited (subsidiary of RCA)	Canada	Montreal, Quebec	Victor Ltd.
Western Electric Company Incorporated	New York	New York, N. Y.	Western
North American Philips Company, Inc.	Delaware	New York, N. Y.	NAP
Hazeltine Corporation	Delaware	Little Neck, N. Y.	Hazeltine

8. CRMC, Rogers Majestic, and any other subsidiary or affiliate of Philips owning or having owned any stock interest in CRPL are sometimes hereinafter referred to as "Canadian Philips".

9. Various individuals, not named defendants herein, participated as co-conspirators with the defendants and co-conspirator companies in the offense hereinafter charged. These individuals were and are officers, directors, employees or agents of the defendants and the co-conspirator companies, and others.

IV.

Definitions.

10. As used herein:

(a) "home entertainment apparatus" means radio and/or television receiving sets or parts thereof (other than tubes or transistors) of a type normally intended for home use;

(b) "patent" means a patent which has possible application in the manufacture, sale or distribution of home entertainment apparatus;

(c) "package license" means a standard form license issued for a particular use or type of home entertainment apparatus by a licensor under all of its applicable patents and sublicensing rights;

(d) "company" means a corporation, limited company, proprietary company, association (whether or not incorporated), partnership, or any other business entity, which is formed, organized or incorporated in the United States or elsewhere.

V.

Nature of Trade and Commerce.

11. The manufacture, sale and distribution of home entertainment apparatus is important to the economies of the United States and Canada. In 1956, factory sales of radio and television receiving sets in the United States amounted to approximately $1,400,000,000, with television receiving

set sales accounting for about $1,000,000,000. In 1956, factory sales of radio and television receiving sets in Canada amounted to approximately $225,000,000, with television receiving set sales accounting for about $180,000,000.

12. Canada is a growing market for the sale of home entertainment apparatus. In 1953, about 375,000 homes (approximately 10% of the total) were equipped with television receiving sets. This increased to about 2,500,000 homes (approximately 65% of the total) in 1957.

13. In 1956, there were approximately 30 companies manufacturing radio and/or television receiving sets in Canada. Such leading United States firms as GE, Westinghouse, RCA, The Philco Corporation, and Admiral Corporation own or control Canadian subsidiaries which manufacture and sell home entertainment apparatus in Canada. These subsidiaries are themselves among the leading firms in Canada in that field.

14. Since 1946, imports into Canada of home entertainment apparatus manufactured in the United States have been negligible in comparison to the total volume of such apparatus sold in Canada. In 1956, imports of radio and television receiving sets into Canada from the United States amounted to about $2,350,000, slightly more than 1% of the total sales of such apparatus in Canada. For the most part, the bulk of such imports went to Canadian subsidiaries of United States firms and were usually imported for special purposes.

15. Canadian radio and television broadcasting stations use the same frequencies and wave lengths as United States stations. Home entertainment apparatus manufactured in the United States is capable of being used in Canada either as it leaves the factory or with minor modifications. Broadcasts and telecasts originating on either side of the border are capable of being received and are being received by sets manufactured in either the United States or Canada.

16. Since 1927, all manufacturers of home entertainment apparatus in Canada have been licensed under package licenses issued by CRPL, which functions as a central patent licensing agency in Canada. CRPL is owned in five equal shares by Canadian subsidiaries or affiliates of GE, Westinghouse, Philips, Western, and The English Electric Company Limited of England, respectively. Package licenses issued by CRPL have included and include all the Canadian patents and patent rights owned or controlled by CRPL, GE, Westinghouse, Philips, RCA, Canadian Marconi and others.

VI.

Background of the Conspiracy.

17. On August 30, 1892, GE and various affiliated companies caused the incorporation of Canadian GE. On September 1, 1892, GE assigned to Canadian GE all Canadian patents which GE then owned or which it might thereafter acquire. Since 1924, GE has owned over 95% of the voting stock of Canadian GE and presently owns over 99% of the outstanding voting stock of Canadian GE.

18. In July, 1903, Westinghouse caused the incorporation of Canadian Westinghouse. On October 8, 1903, Westinghouse sold to Canadian Westinghouse all its Canadian patents and the right to patent in Canada such inventions as Westinghouse might make until December 31, 1913. This agreement continued in effect until December 31, 1946 and was succeeded by an agreement effective January 1, 1947. Westinghouse has owned over 75% of the voting stock of Canadian Westinghouse since August, 1955.

19. Northern was incorporated in 1914. At the time of such incorporation Western acquired a 43.6% stock interest in Northern. This stock interest has lessened and Western presently owns 10% of such stock. By an agreement dated April 23, 1914, Northern was licensed by a Western sub-

sidiary, Electrical Properties Limited, under Western's Canadian patents. This agreement was superseded in 1919 by an agreement between International Western Electric Company, Incorporated, another Western subsidiary, and Northern, and was reaffirmed and extended by a 1923 agreement. By a series of assignments in 1925, Western became the direct licensor of Northern under the said 1919 and 1923 agreements.

20. Sometime prior to November 15, 1926, Marconi's Wireless Telegraph Company, Ltd., of England (hereinafter referred to as "MWT"), the then parent of Canadian Marconi, assigned its then present and future Canadian patents and patent rights to Canadian Marconi.

21. Sometime prior to November 15, 1926, Standard Radio Manufacturing Corporation Limited (hereinafter referred to as "Standard") acquired ownership or control of the Canadian rights to the important deForest and Squire patents. On or about September 2, 1929, Standard was renamed Rogers Majestic.

22. In March 1923, Canadian GE, Canadian Westinghouse, Canadian Marconi, Northern, and two other Canadian subsidiaries of Western, entered into a cross-license agreement under which each party granted to the others royalty-free nonexclusive licenses under all Canadian patents owned or controlled by it. This agreement was terminable as to any party except Canadian GE on one year's notice after March 1933, and as to Canadian GE, on December 31, 1944.

23. On August 1, 1924, RCA granted exclusive licenses (with the exclusive rights to institute infringement suits but without the right to sublicense) until July 1, 1945, to Canadian GE and Canadian Westinghouse under RCA's then present and future Canadian patents and applications for patents.

24. On July 22, 1925, Philips gave the so-called "Radio

Group," consisting of International General Electric Company, Incorporated, RCA, and Westinghouse Electric International Company, an exclusive license under its then present and future patents for certain designated "exclusive territory," which included Canada and Newfoundland. Philips further agreed that it would not engage in the manufacture or sale of radio sets, transmitting equipment or tubes in Canada without the consent of the "Radio Group." This agreement was effective until July 1, 1945, and thereafter was to continue in effect unless terminated by not less than three years' notice in writing.

VII.

The Combination and Conspiracy.

25. Beginning on or about November 15, 1926, and continuing thereafter to the date of the filing of this complaint, the defendants, the co-conspirators, and other persons to the plaintiff unknown, have engaged in an unlawful combination and conspiracy in restraint of the aforesaid foreign commerce in home entertainment apparatus, in violation of section 1 of the Sherman Act. The defendants are continuing, and threaten to and will continue, the said offense unless the relief hereinafter prayed for in this complaint is granted.

26. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants and co-conspirators to prevent, hinder and preclude the importation into Canada from the United States of home entertainment apparatus which could compete in the Canadian Market with home entertainment apparatus manufactured in Canada by Canadian companies, including the Canadian subsidiaries or affiliates of each of the defendants.

27. During the period covered by this complaint, the

said combination and conspiracy has been effectuated from time to time by various means and methods, including, among others:

A. On or about November 15, 1926, Canadian GE, Canadian Westinghouse, Northern, Canadian Marconi, and Standard caused the incorporation of CRPL and caused all outstanding shares of CRPL to be issued to themselves, and on or about January 19, 1927, jointly authorized CRPL to sublicense Canadian patents owned or controlled by each of them, such licenses to be issued only upon the unanimous consent on the part of all the shareholders of CRPL.

B. Canadian GE, Canadian Westinghouse, Northern, Canadian Marconi, Standard, Rogers Majestic, and Canadian Philips thereafter continued to authorize CRPL to sublicense Canadian patents owned or controlled by each of them to at least December 6, 1957.

C. By agreements and understandings effective to the date of the filing of this complaint:

1. GE, since at least 1927, has authorized and continued to authorize Canadian GE to grant sublicensing rights to CRPL under GE's Canadian patents.

2. Westinghouse, since at least 1927, has authorized and continued to authorize Canadian Westinghouse to grant sublicensing rights to CRPL under Westinghouse's Canadian patents.

3. Philips, since at least 1945, has authorized and continued to authorize Canadian Philips to grant sublicensing rights to CRPL under Philips' Canadian patents, which, pursuant to an-

agreement between Philips and NAP, include those based on inventions originating with NAP!

D. Western authorized and, until at least 1952, continued to authorize Northern to grant sublicensing rights to CRPL under all Western's Canadian patents.

E. RCA from 1935 to the date of the filing of this complaint has authorized and continued to authorize Victor Ltd. to grant to CRPL the right to sublicense others under RCA's Canadian patents; and Victor Ltd. has granted sublicensing rights to CRPL under RCA's and Victor Ltd.'s Canadian patents during such period.

F. By an agreement effective to the date of the filing of this complaint, Hazeltine granted to CRPL an exclusive license with the right to sublicense others under Hazeltine's Canadian patents.

G. CRPL acquired the Canadian counterpart patents of the United States Parker patents.

H. Since 1927, CRPL has issued package licenses, from time to time, at a fixed and uniform royalty rate to Canadian companies engaged in the manufacture, distribution and sale of home entertainmen apparatus.

I. These said package licenses issued by CRPL have required the licensee to manufacture only in Canada and to refrain from importing home entertainment apparatus manufactured in the United States.

J. CRPL has refused to license the import into Canada of some entertainment apparatus manufactured in the United States.

K. CRPL has threatened to institute, and has instituted, patent infringement suits against dealers undertaking to sell in Canada home entertainment apparatus manufactured in the United States.

L. CRPL has persuaded and induced Canadian Standards Association to refuse to approve, as safe, home entertainment apparatus not manufactured under license from CRPL.

VIII.

Effects of the Combination and Conspiracy.

28. The combination and conspiracy hereinbefore alleged has had the following effects, among others:

A. Trade and commerce between the United States and Canada in home entertainment apparatus has been unreasonably restrained.

B. The Canadian market for home entertainment apparatus has been virtually closed to such apparatus manufactured in the United States.

C. Various United States companies which would otherwise have exported home entertainment apparatus to Canada from the United States have been compelled to manufacture such apparatus in Canada.

D. United States purchasers of home entertainment apparatus have been deprived of the benefits resulting from increased production of such apparatus in the United States.

IX.

Prayer.

Wherefore, plaintiff prays:

1. That the aforesaid combination and conspiracy in restraint of foreign commerce in home entertainment apparatus be adjudged and decreed to be unlawful, and that the agreements, understandings and practices alleged herein be adjudged and decreed to be in violation of section 1 of the Sherman Act.

2. That the Court adjudge and decree that the defendants have combined and conspired to restrain foreign trade and commerce in home entertainment apparatus in violation of section 1 of the Sherman Act.

3. That the defendants and each of them, their officers, directors, agents, representatives, successors, and all persons or corporations acting or authorized to act on behalf of them or any of them, be perpetually enjoined from combining and conspiring to restrain foreign trade and commerce in home entertainment apparatus, and that they be perpetually enjoined from engaging in or participating in practices, contracts, relationships or understandings, or claiming any rights thereunder, having the purpose or effect of continuing, reviving or renewing the aforesaid violation of the Sherman Act.

4. That the Court adjudge and decree that the defendants have used patent rights owned or controlled by them or any of them unlawfully in instituting, effectuating, and maintaining the aforesaid offense, and that the plaintiff have such relief with respect to the defendants' present and future patents and technical information as the Court may deem appropriate and necessary to dissipate the effects of the unlawful activities, and to prevent further unlawful use of patents by them.

5. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

6. That the plaintiff recover its taxable costs.

Dated: New York, N. Y.

November 24, 1958

William P. Rogers,
Attorney General.

Victor R. Hanson,
Assistant Attorney General.

Baddia J. Roshid,
Richard B. O'Donnel,
Attorneys, Department of Justice.

Harry G. Sklarsky,
John S. James,
Bernard M. Hollander,
Herman Gelfand,
Ralph S. Goodman,
Attorneys, Department of Justice.

PLAINTIFF'S EXHIBIT NO. 45.

United States of America, } ss.
Southern District of New York. }

I, James E. Valeche, Clerk of the United States District Court for the Southern District of New York, do hereby certify that the writings annexed to this certificate to wit: photostat copies of Judgments filed Sep. 4, 1962, and Nov. 1, 1962, in the matter of U. S. A. *vs.* General Electric Co., et al., Civ. 140-157 have been compared with their original on file and remaining of record in this office; that they are correct transcripts therefrom and of the whole of the said originals.

In Testimony Whereof I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this 4th day of March in the year of our Lord one thousand nine hundred and sixty-three and of the Independence of the United States the One Hundred and eighty-seventh.

James E. Valeche,
Clerk.

(Seal)

UNITED STATES DISTRICT COURT.

* * (Caption—140-157) * *

FINAL JUDGMENT.

Plaintiff, United States of America, having filed its complaint herein on November 24, 1968; defendant General Electric Company having appeared and filed its answer to the complaint on January 12, 1959, denying the substantive allegations thereof; and plaintiff and said defendant by their respective attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of or finding on any issues of fact or law herein and without this Final Judgment constituting evidence or an admission by either of them in respect to any such issue;

Now, Therefore, before any testimony has been taken and without trial or adjudication of or finding on any issue of fact or law herein, and upon consent of the parties as aforesaid, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim upon which relief may be granted against defendant General Electric Company (General Electric) under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act, as amended.

II.

As used in this Final Judgment, the term "home entertainment apparatus" shall mean radio and/or television receiving sets of a type normally intended for home use and parts made therefor, manufactured in the United States (other than tubes and solid state devices, including semiconductors); and, with reference to General Electric, the term "other person" shall mean any individual, partnership, association, firm, trustee or legal entity other than General Electric, its subsidiaries and its or their officers, directors, employees and agents when acting in such capacity.

III.

The provisions of this Final Judgment applicable to General Electric shall be binding upon its officers, directors, employees and agents, when acting on behalf of General Electric, and upon those persons in active concert or participation with General Electric who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

General Electric is enjoined and restrained from:

(A) Entering into, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any other person which directly or indirectly restricts or prevents any manufacturer of home entertainment apparatus in the United States from exporting any such apparatus from the United States into Canada; and

(B) Directing or causing or entering into any agreement with a foreign subsidiary of General Electric to take, or actively consenting to such subsidiary taking, any action to restrict or prevent any manufacturer in the United States from exporting any home entertainment apparatus from the United States into Canada.

The provisions of this Section IV shall not be construed to prohibit, without more, patent license agreements or assignments.

V.

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to General Electric made to its principal office, be permitted, subject to any legally recognized privilege, (i) reasonable access during the office hours of General Electric to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of General Electric and within the United States relating to any matters contained in this Final Judgment, and (ii) subject to the reasonable convenience of General Electric and without restraint or interference from it, to inerview within the United States officers or employees of General Electric, who may have counsel present, regarding any such matters. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice made to its principal office, General Electric shall submit such written reports with respect to any of such matters as from time to time may be necessary for the enforcement of this Final Judgment. No information obtained by the means provided in this Section V shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal procedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VI.

Jurisdiction of this cause is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

New York, New York

Dated: November 1, 1962.

(Illegible),
United States District Judge.

Judgment Entered November 1, 1962.

Herbert A. Charlson,
Clerk.

PLAINTIFF'S EXHIBIT NO. 46.

United States of America,
Southern District of New York. } ss:

I, James E. Valeche, Clerk of the United States District Court for the Southern District of New York, do hereby certify that the writings annexed to this certificate to wit: photostat copies of Judgments filed Sept. 4, 1962, and Nov. 1, 1962, in the matter of U. S. A. *vs.* General Electric Co., et al., Civ. 140-157 have been compared with their originals on file and remaining of record in this office; that they are correct transcripts therefrom and of the whole of the said originals.

In Testimony Whereof I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this 4th day of March in the year of our Lord one thousand nine hundred and sixty-three and of the Independence of the United States the One Hundred and eighty-seventh.

James E. Valleche,
(Seal) *Clerk.*

UNITED STATES DISTRICT COURT.

* * (Caption—140-157) * *

FINAL JUDGMENT.

Plaintiff, United States of America, having filed its complaint herein on November 24, 1968; defendant Westinghouse Electric Corporation, having appeared and filed its answer to the complaint on January 12, 1959, denying the substantive allegations thereof; and plaintiff and said defendant by their respective attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of or finding on any issues of fact or law herein and without this Final Judgment constituting evidence or an admission by either of them in respect to any such issue;

Now, Therefore, before any testimony has been taken and without trial or adjudication of or finding on any issue of fact or law herein, and upon consent of the parties as aforesaid, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim upon which relief may be granted against defendant Westinghouse Electric Corporation (Westinghouse) under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act, as amended.

II.

As used in this Final Judgment, the term "home entertainment apparatus" shall mean radio and/or television receiving sets of a type normally intended for home use and parts made therefor, manufactured in the United States (other than tubes and solid state devices, including semiconductors); and, with reference to Westinghouse, the term "other person" shall mean any individual, partnership, association, firm, trustee or legal ~~entity~~ other than Westinghouse, its subsidiaries and its or their officers, directors, employees and agents when acting in such capacity.

III.

The provisions of this Final Judgment applicable to Westinghouse shall be binding upon its officers, directors, employees and agents, when acting on behalf of Westinghouse, and upon those persons in active concert or participation with Westinghouse who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

Westinghouse is enjoined and restrained from:

(A) Entering into, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any other person which directly or indirectly restricts or prevents any manufacturer of home entertainment apparatus in the United States from exporting any such apparatus from the United States into Canada; and

(B) Directing or causing or entering into any agreement with a foreign subsidiary of Westinghouse to take, or actively consenting to such subsidiary taking, any action to restrict or prevent any manufacturer in the United States from exporting any home entertainment apparatus from the United States into Canada.

The provisions of this Section IV shall not be construed to prohibit, without more, patent license agreements or assignments.

V.

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Westinghouse made to its principal office, be permitted, subject to any legally recognized privilege, (i) reasonable access during the office hours of Westinghouse to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Westinghouse and within the United States relating to any matters contained in this Final Judgment, and (ii) subject to the reasonable convenience of Westinghouse and without restraint or interference from it, to interview within the United States officers or employees of Westinghouse, who may have counsel present, regarding any such matters. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice made to its principal office, Westinghouse shall submit such written reports with respect to any of such matters as from time to time may be necessary for the enforcement of this Final Judgment. No information obtained by the means provided in this Section V shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the

United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VI.

Jurisdiction of this cause is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

September 4, 1962.

(Illegible)
United States District Judge.

Consented to this 4th day of September 1962.

Herman Gelfand, for the plaintiff, United States of America.

(Illegible), for the defendant, Westinghouse Electric Corporation.

Judgment Entered Sept. 4, 1962.

Herbert A. Charlson,
Clerk.

United States of America,
Southern District of New York. } ss:

I, James E. Valeche, Clerk of the United States District Court for the Southern District of New York, do hereby certify that the writings annexed to this certificate to wit: photostat copy of Complaint filed Nov. 24, 1958, in the matter of—*U. S. A.* v. *General Electric Co., et al.,* Civ. 140-157 have been compared with their originals on file and remaining of record in this office; that they are correct transcripts therefrom and of the whole of the said originals.

In Testimony Whereof I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this 4th day of March in the year of our Lord one thousand nine hundred and sixty-three and of the Independence of the United States the One Hundred and eighty-seventh.

James E. Valeche,
(Seal) *Clerk.*

PLAINTIFF'S EXHIBIT NO. 47.

UNITED STATES DISTRICT COURT.

* * (Caption—140-157) * *

FINAL JUDGMENT.

The plaintiff, United States of America, having filed its complaint herein on November 24, 1958; defendant N. V. Philips' Gloeilampenfabrieken (hereinafter referred to as Philips) having appeared and filed its answer to the complaint on January 12, 1959, denying the substantive allegations thereof; and the plaintiff and said defendant by their respective attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of or finding on any issues of fact or law herein and without this Final Judgment constituting evidence or an admission by either of them in respect to any such issue;

Now, therefore before any testimony has been taken and without trial or adjudication of or finding on any issue of fact or law herein, and upon consent of the parties as aforesaid, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim upon which relief may be granted against defendant Philips under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act, as amended.

II.

As used in this Final Judgment, the term "home entertainment apparatus" shall mean radio and/or television receiving sets of a type normally intended for home use and parts made therefor, manufactured in the United States (other than tubes and solid state devices, including semiconductors); and, with reference to defendant Philips the term "other person" shall mean any individual, partnership, association, firm, trustee or legal entity other than said defendant, its subsidiaries and its or their officers, directors, employees and agents when acting in such capacity.

III.

The provisions of this Final Judgment applicable to defendant Philips shall be binding upon its officers, directors, employees and agents, when acting on behalf of Philips, and upon those persons in active concert or participation with Philips who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

Philips is enjoined and restrained from:

A. Entering into, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any other person which directly or indirectly restricts or prevents any manufacturer of home entertainment apparatus in the United States from exporting any such apparatus from the United States into Canada; and

B. Directing or causing or entering into any agreement with a foreign subsidiary of Philips to take,

> or actively consenting to such subsidiary taking, any action to restrict or prevent any manufacturer in the United States from exporting any home entertainment apparatus from the United States into Canada.

The provisions of this Section IV shall not be construed to prohibit, without more, patent license agreements or assignments.

V.

Service of process in any proceeding for the purpose of construing, carrying out, modifying, terminating or enforcing compliance with any provision of this Final Judgment may be effected on defendant Philips by personal service upon Nederlandsche Handel-Maatschappij N. V. New York Agency, and Philips hereby constitutes said Nederlandsche Handel-Maatschappij N. V. New York Agency its agent for such service. Service so made shall be deemed service on Philips. If the said Nederlandsche Handel-Maatschappij N. V. New York Agency shall refuse to continue to act as such agent at any time before the expiration of five years from the date of entry of this Final Judgment, then Philips shall immediately notify the Department of Justice of such refusal and shall within ten days appoint another person located within the Southern District of New York and otherwise acceptable to the Department of Justice to act as such agent. Service of process on such substituted agent shall be deemed service on Philips. Philips is enjoined and restrained from terminating, or attempting to terminate the authority of said Nederlandsche Handel-Maatschappij N. V. New York Agency or of any substitute agent appointed pursuant to this Section V unless it shall within ten days appoint another person located within the Southern District of New York and otherwise acceptable to the Department of Justice to act as such agent.

VI.

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Philips' agent appointed pursuant to Section V hereof, be permitted, subject to any legally recognized privilege, (i) reasonable access during the office hours of said agent to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said agent and within the United States relating to any matters contained in this Final Judgment, and (ii) subject to the reasonable convenience of said agent and without restraint or interference from it, to interview within the United States officers or employees of said agent, who may have counsel present, regarding any such matters. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice made to its principal office, said agent shall submit such written reports with respect to any of such matters as from time to time may be necessary for the enforcement of this Final Judgment. No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII.

Jurisdiction of this cause is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

(Illegible),
United States District Judge.

June 25, 1962.

Judgment entered June 25, 1962.

Herbert A. Charlson,
Clerk.

PLAINTIFF'S EXHIBIT NO. 48.

AGREEMENT FOR SETTLEMENT OF LITIGATIONS

Hazeltine Research, Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 48
C. A. No. 59-C 1847

1. All parties to the Delaware action (C. A. #1247, consolidated action) and to the Chicago action (#48c1818) to dismiss all their claims with prejudice; RCA, GE and Western Electric each to grant Zenith and Rauland, respectively, a general release and Zenith and Rauland each to grant RCA, GE and Western Electric, respectively, a general release, each such release, to the extent either party may request, to bind or benefit the parent and subsidiaries of the party giving or receiving such release ("subsidiaries" to include corporations in which the party has stock ownership of 50% or more).

2. RCA to grant Zenith and Rauland and Zenith and Rauland to grant RCA royalty-free licenses for radio and TV receiving sets, including tubes therefor, (excluding color TV, color tubes and Phonevision) for a term beginning on the date hereof and extending to January 1, 1963 under all United States and foreign patents issued prior to September 1, 1957 to the extent to which each of them has the right to grant such licenses (other than the patents to be licensed to Zenith and Rauland pursuant to paragraphs 4 and 5 hereof), ~~such licenses to include grants of immunity, to the extent each of them has the right to make such grants, under foreign patents of RCA, Zenith and Rauland with respect to any apparatus manufactured under such licenses.~~

John T. Cahill for RCA
G E Flood for Western Electric

for General Electric Co

28

- 2 -

3. The amount which Zenith and Rauland owe RCA for infringement of RCA's patents and the amount which RCA owes Zenith and Rauland for infringement of Zenith's and Rauland's patents to be determined by an arbitrator mutually acceptable to Zenith and Rauland on the one hand and RCA on the other (the parties having agreed that if he is available, Mr. Justice Minton shall be the arbitrator and if Mr. Justice Minton should not be available the arbitrator to be a man of comparable standing). In respect of Zenith's and Rauland's infringement claims against RCA, the amount to be determined shall be between a minimum of $1,700,000 and a maximum of $2,100,000; in respect of RCA's claim against Zenith and Rauland, the amount to be determined shall be between a minimum of $2,800,000 and a maximum of $3,700,000. In determining the amounts owed for infringement as aforesaid, the arbitrator shall consider only infringement and extent of use, and only patents relating to radio and TV receiving sets, including tubes therefor, (excluding color TV, color tubes and Phonevision) it being agreed that the RCA patents involved are those which RCA is now asserting against Zenith and Rauland in the aforesaid Delaware and Chicago actions.

4. GE on the one hand and Zenith and Rauland on the other to exchange royalty-free licenses for radio and TV receiving sets, including tubes therefor, (excluding color TV

for General Electric

- 3 -

and color tubes and transmission), under all United States and foreign patents, issued prior to September 1, 1957, to the extent to which each of them has the right to grant such licenses, both to be retroactive to January 1, 1947 and extending to January 1, 1963 in a form satisfactory to them, ~~such licenses to include grants of immunity to the extent each of them has the right to make such grants under foreign patents of GE, Zenith and Rauland with respect to any apparatus manufactured under such licenses.~~

5. Western Electric to grant Zenith and Rauland royalty-free licenses for radio and TV broadcast receiving sets, including tubes therefor, (including color TV, color tubes and transmission), and Zenith and Rauland to grant Western and companies of the Bell system royalty-free licenses for equipment useful in furnishing common carrier communications services, (including color TV, color tubes, and transmission), under all United States and foreign patents, issued prior to September 1, 1957, to the extent to which each of them has the right to grant such licenses, both to be retroactive to January 1, 1947 and extending to January 1, 1963 in a form satisfactory to them, ~~such licenses to include grants of immunity to the extent each of them has the right to make such grants under foreign patents with respect to any apparatus manufactured under such licenses.~~

6. The First National Bank of Chicago will undertake to pay Zenith and Rauland the aggregate sum of $10,000,000 in equal annual installments of $1,000,000 payable without interest on the first day of October in each year in accordance

for General Electric Co.

J. E. Flood
for Western Electric

Zenith Radio Corporation

Plaintiff's Exhibit No. 48.

with the attached undertaking of said Bank; Western Electric having arranged to make its payment to said Bank in connection with the above-mentioned undertaking on or before October 1, 1957 shall have no obligation to make any further contribution on account of said undertaking and the balance of such contributions shall be the sole obligation of RCA and GE.

For Zenith and Rauland

CAHILL GORDON REINDEL + OHL
By

For RCA

For GE

John E Flood
For Western Electric

September 9, 1957

PLAINTIFF'S EXHIBIT NO. 49.

Hazeltine Research, Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 49
C.A. No. 59-C-1847

CHAPTER 203.

An Act respecting Patents of Invention.

SHORT TITLE.

Short title.

1. This Act may be cited as the *Patent Act*. 1935, c. 32, s. 1.

INTERPRETATION.

Definitions.

2. In this Act, and in any rule, regulation or order made under it,

"Applicant."

(a) "applicant" includes an inventor and the legal representatives of an applicant or inventor;

"Commissioner."

(b) "Commissioner" means the Commissioner of Patents;

"Exchequer Court."

(c) "Exchequer Court" means the Exchequer Court of Canada;

"Invention."

(d) "invention" means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter;

"Legal representatives."

(e) "legal representatives" includes heirs, executors, administrators, guardians, curators, tutors, assigns and all other persons claiming through or under applicants for patents and patentees of inventions;

"Minister."

(f) "Minister" means the Secretary of State of Canada or such other Minister of the Crown as may be appointed by the Governor in Council to administer this Act;

"Patent."

(g) "patent" means letters patent for an invention;

"Patentee."

(h) "patentee" means the person for the time being entitled to the benefit of a patent for an invention;

"Regulation" and "rule."

(i) "regulation" and "rule" include rule, regulation and form;

"Work on a commercial scale."

(j) "work on a commercial scale" means the manufacture of the article or the carrying on of the process described and claimed in a specification for a patent, in or by means of a definite and substantial establishment or organization and on a scale that is adequate and reasonable under the circumstances. 1935, c. 32, s. 2.

Action to set aside prior patent.

sioner, commences an action to set aside the prior patent, so far as it covers the invention in question, but if such action is so commenced and diligently prosecuted, the application shall not be deemed to have been abandoned unless the applicant fails to proceed upon it within a reasonable time after the action has been finally disposed of.

When provisions of subsection (1) do not apply.

(3) Where the application was filed within one year from the date of the filing of the application for the prior patent, the provisions of subsection (1) do not apply to the determination of the respective rights of the parties to such action. 1935, c. 32, s. 61; 1947, c. 23, s. 17.

JUDGMENTS.

Judgment voiding patent to be filed.

64. A certificate of the judgment voiding in whole or in part any patent shall, at the request of any person filing it to make it of record in the Patent Office, be entered on the margin of the enrolment of the patent in the Patent Office, and the patent or such part thereof as is so voided shall thereupon be and be held to have been void and of no effect, unless the judgment is reversed on appeal as hereinafter provided. 1935, c. 32, s. 62.

Appeal.

65. Every judgment voiding in whole or in part or refusing to void in whole or in part any patent is subject to appeal to any court having appellate jurisdiction in other cases decided by the court by which such judgment was rendered. 1935, c. 32, s. 63.

CONDITIONS.

Information relating to patents.

66. (1) The Commissioner may, at any time, by notice in writing addressed to the patentee of any patent specified by him, or to his registered representative in Canada, and to every person who has a registered interest in such patent, require the patentee and such persons in respect of such specified patent to transmit and deliver to the Commissioner within sixty days from the date of such notice, or within such further time as the Commissioner may allow, a return stating

(a) whether the patented invention is being worked on a commercial scale in Canada, and the place where and the name and address of the person by whom the patented invention is being so worked, and

(b) the reasons, if any, why such patented invention is not being worked on a commercial scale in Canada.

Effect of failure to comply.

(2) The failure of the patentee or his registered representative in Canada, or that of any such person having a registered interest to comply with the terms of the notice mentioned in subsection (1), shall be deemed to be an admission on the part of the patentee or the person, as the

case

case may be, so failing, that the patented invention is not being worked on a commercial scale in Canada. 1935, c. 32, s. 64.

Abuse of rights under patents.

67. (1) The Attorney General of Canada or any person interested may at any time after the expiration of three years from the date of the grant of a patent apply to the Commissioner alleging in the case of that patent that there has been an abuse of the exclusive rights thereunder and asking for relief under this Act.

What amounts to such abuse.

(2) The exclusive rights under a patent shall be deemed to have been abused in any of the following circumstances:

Not working patented invention.

(a) if the patented invention (being one capable of being worked within Canada) is not being worked within Canada on a commercial scale, and no satisfactory reason can be given for such non-working, but if an application is presented to the Commissioner on this ground, and the Commissioner is of opinion that the time that has elapsed since the grant of the patent has by reason of the nature of the invention or for any other cause been insufficient to enable the invention to be worked within Canada on a commercial scale, the Commissioner may make an order adjourning the application for such period as will in his opinion be sufficient for that purpose;

Prevention of working by importation.

(b) if the working of the invention within Canada on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by the patentee or persons claiming under him, or by persons directly or indirectly purchasing from him, or by other persons against whom the patentee is not taking or has not taken any proceedings for infringement;

Not meeting demand.

(c) if the demand for the patented article in Canada is not being met to an adequate extent and on reasonable terms;

Prejudice to trade by refusal to licence.

(d) if, by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry of Canada or the trade of any person or class of persons trading in Canada, or the establishment of any new trade or industry in Canada, is prejudiced, and it is in the public interest that a licence or licences should be granted;

Prejudice by reason of conditions attached.

(e) if any trade or industry in Canada, or any person or class of persons engaged therein, is unfairly prejudiced by the conditions attached by the patentee, whether before or after the passing of this Act, to the purchase, hire, licence, or use of the patented article, or to the using or working of the patented process;

(*f*) if it is shown that the existence of the patent, being a patent for an invention relating to a process involving the use of materials not protected by the patent or for an invention relating to a substance produced by such a process, has been utilized by the patentee so as unfairly to prejudice in Canada the manufacture, use or sale of any such materials. **Prejudice in other respects.**

(3) It is declared with relation to every paragraph of subsection (2) that, for the purpose of determining whether there has been any abuse of the exclusive rights under a patent, it shall be taken that patents for new inventions are granted not only to encourage invention but to secure that new inventions shall so far as possible be worked on a commercial scale in Canada without undue delay. 1935, c. 32, s. 65. **Declaration of basis of grants of patents.**

68. On being satisfied that a case of abuse of the exclusive rights under a patent has been established, the Commissioner may exercise any of the following powers as he may deem expedient in the circumstances: **Powers of Commissioner in cases of abuse.**

(*a*) he may order the grant to the applicant of a licence on such terms as the Commissioner may think expedient, including a term precluding the licensee from importing into Canada any goods the importation of which, if made by persons other than the patentee or persons claiming under him would be an infringement of the patent, and in such case the patentee and all licensees for the time being shall be deemed to have mutually covenanted against such importation; a licensee under this paragraph is entitled to call upon the patentee to take proceedings to prevent infringement of the patent, and if the patentee refuses, or neglects to do so within two months after being so called upon, the licensee may institute proceedings for infringement in his own name as though he were the patentee, making the patentee a defendant; a patentee so added as defendant is not liable for any costs unless he enters an appearance and takes part in the proceedings; service on the patentee may be effected by leaving the writ at his address or at the address of his representative for service as appearing in the records of the Patent Office; in settling the terms of a licence under this paragraph the Commissioner shall be guided as far as may be by the following considerations: **Compulsory licences.**

(i) he shall, on the one hand, endeavour to secure the widest possible user of the invention in Canada consistent with the patentee deriving a reasonable advantage from his patent rights,

(ii) he shall, on the other hand, endeavour to secure to the patentee the maximum advantage consistent with the invention being worked by the licensee at a reasonable profit in Canada, and

([illegible]) he shall also endeavour to secure equality of advantage among the several licensees, and for this purpose may, on due cause being shown, reduce the royalties or other payments accruing to the patentee under any licence previously granted, and in considering the question of equality of advantage, the Commissioner shall take into account any work done or outlay incurred by any previous licensee with a view to testing the commercial value of the invention or to securing the working thereof on a commercial scale in Canada;

Exclusive compulsory licences.

(b) if the Commissioner is satisfied that the invention is not being worked on a commercial scale within Canada, and is such that it cannot be so worked without the expenditure of capital for the raising of which it will be necessary to rely on the exclusive rights under the patent, he may, unless the patentee or those claiming under him will undertake to find such capital, order the grant to the applicant, or any other person, or to the applicant and any other person or persons jointly, if able and willing to provide such capital, of an exclusive licence on such terms as the Commissioner may think just, but subject as hereafter in this Act provided;

Order for a licence.

(c) if the Commissioner is satisfied that the exclusive rights have been abused in the circumstances specified in paragraph *(f)* of subsection (2) of section 67, he may order the grant of licences to the applicant and to such of his customers, and containing such terms, as the Commissioner may think expedient;

Revocation of patent.

(d) if the Commissioner is satisfied that the objects of this section and section 67 cannot be attained by the exercise of any of the foregoing powers, he shall order the patent to be revoked, either forthwith or after such reasonable interval as may be specified in the order, unless in the meantime such conditions as may be prescribed in the order with a view to attaining the objects of this section and section 67 are fulfilled; and the Commissioner may, on reasonable cause shown in any case, by subsequent order extend the interval so specified; but the Commissioner shall

make no order for revocation which is at variance with any treaty, convention, arrangement, or engagement with any other country to which Canada is a party;

Refusal of order.

(*e*) if the Commissioner is of opinion that the objects of this section and section 67 will be best attained by making no order under the above provisions of this section, he may make an order refusing the application and dispose of any question as to costs thereon as he thinks just. 1935, c. 32, s. 66; 1947, c. 23, s. 18.

Terms of order for licence.

69. (1) In settling the terms of any such exclusive licence as is provided in paragraph *(b)* of section 68, due regard shall be had to the risks undertaken by the licensee in providing the capital and working the invention, but, subject thereto, the licence shall be so framed as

(a) to secure to the patentee the maximum royalty compatible with the licensee working the invention within Canada on a commercial scale and at a reasonable profit, and

(b) to guarantee to the patentee a minimum yearly sum by way of royalty, if and so far as it is reasonable so to do, having regard to the capital requisite for the proper working of the invention and all the circumstances of the case;

and, in addition to any other powers expressed in the licence or order, the licence and the order granting the licence shall be made revocable at the discretion of the Commissioner if the licensee fails to expend the amount specified in the licence as being the amount that he is able and willing to provide for the purpose of working the invention on a commercial scale within Canada, or if he fails so to work the invention within the time specified in the order.

Existing licensees preferred.

(2) In deciding to whom such an exclusive licence is to be granted the Commissioner shall, unless good reason is shown to the contrary, prefer an existing licensee to a person having no registered interest in the patent.

Effect of order for licence.

(3) The order granting an exclusive licence under section 68 operates to take away from the patentee any right that he may have as patentee to work or use the invention and to revoke all existing licences, unless otherwise provided in the order, but on granting an exclusive licence the Commissioner may, if he thinks it fair and equitable, make it a condition that the licensee shall

give

give proper compensation to be fixed by the Commissioner for any money or labour expended by the patentee or any existing licensee in developing or exploiting the invention. 1935, c. 32, s. 67.

Contents of applications.

70. (1) Every application presented to the Commissioner under section 67 or 68 shall set out fully the nature of the applicant's interest and the facts upon which the applicant bases his case and the relief which he seeks; the application shall be accompanied by statutory declarations verifying the applicant's interest and the facts set out in the application.

Service on patentee and others interested.

Advertising.

(2) The Commissioner shall consider the matters alleged in the application and declarations, and, if satisfied that the applicant has a *bona fide* interest and that a *prima facie* case for relief has been made out, he shall direct the applicant to serve copies of the application and declarations upon the patentee or his representative for service and upon any other persons appearing from the records of the Patent Office to be interested in the patent, and the applicant shall advertise the application in the *Canada Gazette* and the Canadian Patent Office Record. 1935, c. 32, s. 68.

Opposition and counter statement.

71. (1) If the patentee or any person is desirous of opposing the granting of any relief under sections 67 to 72, he shall, within such time as may be prescribed or within such extended time as the Commissioner may on application further allow, deliver to the Commissioner a counter statement verified by a statutory declaration fully setting out the grounds on which the application is to be opposed.

Attendance for cross-examination.

(2) The Commissioner shall consider the counter statement and declarations in support thereof and may thereupon dismiss the application if satisfied that the allegations in the application have been adequately answered, unless any of the parties demands a hearing or unless the Commissioner himself appoints a hearing; in any case the Commissioner may require the attendance before him of any of the declarants to be cross-examined or further examined upon matters relevant to the issues raised in the application and counter statement, and he may, subject to due precautions against disclosure of information to rivals in trade, require the production before him of books and documents relating to the matter in issue.

Reference to Exchequer Court.

(3) In any case where the Commissioner does not dismiss an application as hereinbefore provided, and

(a) if the parties interested consent, or

(b) if the proceedings require any prolonged examination of documents or any scientific or local investigation that cannot in the opinion of the Commissioner conveniently be made before him,

the Commissioner with the approval in writing of the Minister may order the whole proceedings or any issue of fact arising thereunder to be referred to the Exchequer Court, which has jurisdiction in the premises, and where the whole proceedings are so referred, the judgment, decision or order of said Court is final; and where a question or issue of fact is so referred, the said Court shall report its findings to the Commissioner. 1935, c. 32, s. 69.

Licence deemed to be by deed.

72. (1) Any order for the grant of a licence under this Act, without prejudice to any other method of enforcement, operates as if it were embodied in a deed granting a licence executed by the patentee and all other necessary parties.

Exception.

(2) The provisions of sections 67 to 72 do not apply to patents granted subject to the provisions of section 47.

"Patented article."

(3) For the purposes of sections 67 to 72, the expression "patented article" includes articles made by a patented process. 1935, c. 32, s. 70.

Appeal to Exchequer Court.

73. All orders and decisions of the Commissioner under sections 67 to 72 are subject to appeal to the Exchequer Court, and on any such appeal the Attorney General of Canada or such counsel as he may appoint is entitled to appear and be heard. 1935, c. 32, s. 71.

CAVEATS.

Intending applicant for patent may file a caveat.

74. (1) Any intending applicant for a patent who has not yet perfected his invention and is in fear of being despoiled of his idea, may file in the Patent Office a document setting forth a description of his invention so far as it has proceeded, with or without plans, at his own will; and the Commissioner, on payment of the prescribed fee shall cause that document, which shall be called a *caveat,* to be preserved in secrecy with the exception that he shall deliver copies thereof whenever required by the applicant or by any judicial tribunal; the secrecy of the document ceases when the applicant obtains a patent for his invention.

Notice of application by another to be sent to person filing caveat.

(2) Where application is made by any other person for a patent for any invention with which such *caveat* may in any respect interfere the Commissioner shall forthwith give notice

PLAINTIFF'S EXHIBIT NO. 50.

(Seal)

Canada

Royal Commission on Patents, Copyright
and Industrial Designs

Report on
Patents of Invention

• • • • •

Division II—The International Convention

Section 1. National Treatment

Canada is a party to what is called "The International Convention for the Protection of Industrial Property" (to be referred to as "The International Convention"), that is, the Union Convention of Paris, March 20, 1883, for the Protection of Industrial Property, revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, and at London on June 2, 1934. A Conference for Revision was held at Lisbon in October, 1958 and certain further revisions took place. Canada has not signed the Lisbon revised convention but has the right to accede to it. The Lisbon Convention contains one provision we do not like, the provision that industrial designs shall be protected in all the countries of the Union. In our report on Industrial Designs we said that there was nothing in any international convention, present or prospective, obliging Canada to protect industrial designs. If the Lisbon Revision is ratified by Canada this statement will no longer be true. We are mindful of the expression of our indisposition to favor such an international obligation, as expressed in our report on Copyright. Nevertheless there would be, we think, substantial advantages to Canada in accession and on the whole we think that Canada should accede.

In appendix D are set out extracts of the more important provisions of the Convention relating to patents. In these extracts we have arranged the text of the Convention as revised at Lisbon so that changes over the London 1934 Revision can be readily observed. Using the text of the London Revision as a basis, matter deleted from that text is enclosed in brackets and new matter added by the Lisbon Conference is italicized. For the complete text showing all the Lisbon revisions, see vol. 30 of the Canadian Patent Reporter, 1959, pp. 76-97.

Canada, in respect of the protection of patents, as a consequence of Articles 2 and 3, must grant to nationals of other Convention countries and those treated as such under Article 3, national treatment—that is, the same protection that Canada grants to Canadian nationals. As the list of Convention countries, that is, of countries which are parties to the Convention, includes a number of countries prolific in inventions, such as the United States, the United Kingdom, Germany, France, Italy, etc., our Patent Office, as noted above, serves a very much larger number of foreign inventors than of Canadian inventors. But, of course, Canadian inventors are assured of patent protection in the other Convention countries identical with that which those countries extend to their own nationals.

* * * * *

Canadian Radio Patents Limited.

Public representations were made to the Commission by S. G. Walters Limited, a company engaged in the distribution of various kinds of household electrical appliances, that the structure and operation of Canadian Radio Patents Limited should be examined to determine whether that Company offended the patent law insofar as it now prevails or ought to prevail in Canada, more particularly in reference to the utilization of a portfolio of patent to preclude the importation of certain articles into Canada. Similar representations were made by others.

Canadian Radio Patents Limited (hereinafter called CRPL) was incorporated in 1926 for the purpose of acting as a patent licensing agency. At the time of the presentation of its brief to this Commission it acted as the central patent licensing agency in the administration of patent rights in the radio, television and general electronic fields in respect of patents owned by its then five shareholders

Canadian General Electric Company
Canadian Westinghouse Company
Northern Electric Company
Canadian Marconi Company, and
Canadian Radio Manufacturing Company.

It also acted as licensing agent in Canada for RCA Victor Company and Hazeltine Electronic Corporation. CRPL acquired from such companies a non-exclusive licence with the right to grant sublicences.

In its operation CRPL grants to any individual, firm or corporation a licence in respect of its portfolio of patents to manufacure in Canada radio and television receivers and certain electronic apparatus. In conjunction with such licence it makes available to licensees general information relating to the manufacture of such equipment. CRPL sought to distinguish itself from a patent pool, which it defined as a company that acquired patents to be licensed only to the entities comprising the pool.

The evidence estabishes that no one intending to carry

on manufacturing operations in Canada was refused a licence in respect of all patents contained in the portfolio. The licence in respect to the manufacture of rado and television receivers requires the license to pay to CRPL a royalty on the basis of 3½% of the manufacturer's net selling price. Various deductions permitted by the licensor in respect to such items as the cost of tubes, batteries, record changers and cabinets reduces the royalty to 2½% or manufacturer's net selling price.

The portfolio in respect of which CRPL had the right to grant licenses consisted of 5,000 patents, and in the absence of a licence from CRPL it is doubtful if anyone could sell in Canada a radio or television receiver.

CRPL indicated that it does not grant a licence to any importer of radio or television receivers, except in the limited situation where the type or kind of radio or television receiver sought to be imported is not manufactured by any radio or television receiver manufacturer in Canada. It is particularly in respect of the policy of CRPL in precluding importers from bringing into Canada radio and television receivers that the compalint was made to this Commission.

It was stated to be the policy of CRPL to enforce its patent rights against any person who sells in Canada an imported radio or television receiver which infringes any one or more of the patents in its portfolio except in the limited area where permission has been granted to import the apparatus which CRPL agrees is not of a type or kind made in this country. CRPL will tell anyone who submits to it a diagram showing the circuit and layout what patents, if any, would be infringed by the manufacture, use or sale of apparatus constructed according to such diagram.

* * * * *

Appendix C.

Patent Act

(Seal)

Chapter 203.

An Act respecting Patents of Invention.

Short Title.

1. This Act may be cited as the Patent Act, 1935, c. 32, s. 1.

* * * * *

Conditions.

Information relating to patents.

66. (1) The Commissioner may, at any time, by notice in writing addressed to the patentee of any patent specified by him, or to his registered representative in Canada, and to every person who has a registered interest in such patent, require the patentee and such persons in respect of such specified patent to transmit and deliver to the Commissioner within sixty days from the date of such notice, or within such further time as the Commissioner may allow, a return stating

(a) whether the patented invention is being worked on a commercial scale in Canada, and the place where and the name and address of the person by whom the patented invention is being so worked, and

(b) the reasons, if any, why such patented invention is not being worked on a commercial scale in Canada.

Effect of failure to comply.

(2) The failure of the patentee or his registered representative in Canada or that of any such person having a registered interest to comply with the terms of the notice mentioned in subsection (1) shall be deemed to be an admission on the part of the patentee or the person, as the case may be, so failing, that the patented invention is not being worked on a commercial scale in Canada. 1935, c. 32, s. 64.

Abuse of rgihts under patents.

67. (1) The Attorney General of Canada or any person interested may at any time after the expiration of three years from the date of the grant of a patent apply to the Commissioner alleging in the case of that patent that there has been an abuse of the exclusive rights thereunder and asking for relief under this Act.

What amounts to such abuse.

(2) The exclusive rights under a patent shall be deemed to have been abused in any of the following circumstances:

Not working patented invention.

(a) if the patented invention (being one capable of being worked within Canada) is not being worked within Canada on a commercial scale, and no satisfactory reason can be given for such non-working, but if an application is presented to the Commissioner on this ground, and the Commissioner is of the opinion that the time that has elapsed since the grant of the patent has by reason of the nature of the invention or for any other cause been insufficient to enable the invention to be worked within Canada on a commecial scale, the Commissioner may make an order adjourning the application for such period as will in his opinion be sufficient for that purpose;

Prevention of working by importation.

(b) if the working of the invention within Canada on a commercial scale is being prevented or hindered by the importation from abroard of the patented article by the patentee or persons claiming under him, or by persons directly or indirectly purchasing from him, or by other persons against whom the patentee is not taking or has not taken any proceedings for infringement;

Not meeting demand.

(c) if the demand for the patented article in Canada is not being met to an adequate extent and on reasonable terms;

Prejudice to trade by refusal to licence.

(d) if, by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry of Canada or the trade of any person or class of persons trading in Canada, or the establishment of any new trade or industry in Canada, is prejudiced, and it is in the public interest that a licence or licences should be granted;

Prejudice by reason of conditions attached.

(e) if any trade or industry in Canada, or any person or class of persons engaged therein, is unfairly prejudiced by the conditions attached by the patentee, whether before or after the passing of this Act, to the purchase, hire, licence, or use of the patented article, or to the using or working of the patented process;

Prejudice in other respects.

(f) if it is shown that the existence of the patent, being a patent for an inventilon relating to a process involving the use of materials not protected by the patent or for an invention relating to a substance produced by such a process, has been utilized by the patentee so as unfairly to prejudice in Canada the manufacture, use or sale of any such materials.

Declaration of basis of grants of patents.

(3) It is declared with relation to every paragraph of subsection (2) that, for the purpose of determining whether there has been any abuse of the exclusive rights under a patent, it shall be taken the patents for new inventions are granted not only to encourage invention but to secure that new inventions shall so far as possible be worked on a commercial scale in Canada without undue delay. 1935, c. 32, s. 65.

Powers of Commissioner in cases of abuse.

68. On being satisfied that a case of abuse of the exclusive rights under a patent has been established, the Commissioner may exercise any of the following powers as he may deem expedient in the circumstances:

Compulsory licences.

(a) he may order the grant to the applicant of a licence on such terms as the Commissioner may think expedient, including a term precluding the licensee from importing into Canada any goods the importation of which, if made by persons other than the patentee or persons claiming under him would be an infringement of the patent, and in such case the patentee and all licensees for the time being shall be deemed to have mutually covenanted against such importation; a licensee under this paragraph is entitled to call upon the patentee to take proceedings to prevent infringement of the patent, and if the patentee refuses, or neglects to do so within two months after being so called upon, the licensee may institute proceedings for infringement in his own name as though he were the patentee, making the patentee a defendant; a patentee so added as defendant is not liable for any costs unless he enters an appearance and takes part in the proceedings; service on the patentee may be effected by leaving the writ at his address or at the address of his representative for service as appearing in the records of the Patent Office; in settling the terms of a licence under this paragraph the Commissioners shall be guided as far as may be by the following considerations:

(i) he shall, on the one hand, endeavor to secure the widest possible user of the invention in Canada consistent with the patentee deriving a reasonable advantage from his patent rights,

(ii) he shall, on the other hand, endeavor to secure to the patentee the maximum advantage consistent with the invention being worked by the licensee at a reasonable profit in Canada, and

(iii) he shall also endeavor to secure equality of advantage among the several licensees, and for this purpose may, on due cause being shown, reduce the royalties or other payments accruing to the patentee under any licence previously granted, and in considering the question of equality of advantage, the Commissioner shall take into account any work done or outlay incurred by any previous licensee with a view to testing the commercial value of the invention or to securing the working thereof on a commercial scale in Canada;

Exclusive compulsory licences.

(b) if the Commissioner is satisfied that the invention is not being work on a commercial scale within Canada, and is such that it cannot be so worked without the expenditure of capital for the raising of which it will be necessary to rely on the exclusive rights under the patent, he may, unless the patentee or those claiming under him will undertake to find such capital, order the grant to the applicant, or any other person, or to the applicant and any other person or persons jointly, if able and willing to provide such capital, of an exclusive licence [illegible] such terms as the Commissioner may think just, but subject as hereafter in this Act provided;

Order for a licence.

(c) if the Commissioner is satisfied that the exclusive rights have been abused in the circumstances specified in paragraph (f) of subsection (2) of section 67, he may order the grant of licences to the applicant and to such of his customers, and containing such terms, as the Commissioner may think expedient;

Revocation of patent.

(d) if the Commissioner is satisfied that the objects of this section and section 67 cannot be attained by the exercise of any of the foregoing powers, he shall order the patent to be revoked, either forthwith or after such reasonable interval as may be specified in the order, unless in the meantime such conditions as may be prescribed in the order with a view to attaining the objects of this section and section 67 are fulfilled, and the Commissioner may, on reasonable cause shown in any case, by subsequent order extend the interval so specified; but the Commissioner shall make no order for revocation which is at variance with any treaty, convention, arrangement, or engagement with any other country to which Canada is a party;

Refusal of order.

(e) if the Commissioner is of opinion that the objects of this section and section 67 will be best attained by making no order under the above provisions of this section, he may make an order refusing the application and dispose of any question as to costs thereon as he thinks just. 1935, c. 32, s. 66; 1947, c. 23, s. 18.

Terms of order for licence.

69. (1) In settling the terms of any such exclusive licence as is provided in paragraph (b) of section 68, due regard shall be had to the risks undertaken by the licensee in providing the capital and working the invention, but, subject thereto, the licence shall be so framed as

(a) to secure to the patentee the maximum royalty compatible with the licensee working the invention within Canada on a commercial scale and at a reasonable profit, and

(b) to guarantee to the patentee a minimum yearly sum by way of royalty, if and so far as it is reasonable so to do, having regard to the capital requisite for the proper working of the invention and all the circumstances of the case;

and, in addition to any other powers expressed in the licence or order, the licence and the order granting the licence shall be made revocable at the discretion of the Commissioner if the licensee fails to expend the amount specified in the licence as being the amount that he is able and willing to provide for the purpose of working the invention on a commercial scale within Canada, or if he fails to work the invention within the time specified in the order.

Existing licensees preferred.

(2) In deciding to whom such an exclusive licence is to be granted the Commissioner shall, unless good reason is shown to the contrary, prefer an existing licensee to a person having no registered interest in the patent.

Effect of order for licence.

(3). The order granting an exclusive licence under section 68 operates to take away from the patentee any right that he may have as patentee to work or use the invention and to revoke all existing licences, unless otherwise provided in the order, but on granting an exclusive licence the Commissioner may, if he thinks it fair and equitable, make it a condition that the licensee shall give proper compensation to be fixed by the Commissioner for any money or labour expended by the patentee or any existing licensee in developing or exploiting the invention. 1935, c. 32, s. 67.
Contents of applications.

70. (1) Every application presented to the Commissioner under section 67 or 68 shall set out fully the nature of the applicant's interest and the facts upon which the applicant bases his case and the relief which he seeks; the application shall be accompanied by statutory declarations verifying the applicants interest and the facts set out in the application.

Service on patentee and others interested.
Advertising.

(2) The Commissioner shall consider the matters alleged in the application and declarations, and, if satisfied that the applicant has a bona fide interest and that a prima facie case for relief has been made out, he shall direct the applicant to serve copies of the application and declarations upon the patentee or his representative for service and upon any other persons appearing from the records of the Patent Office to be interested in the patent, and the applicant shall advertise the application in the Canada Gazette and the Canadian Patent Office Record. 1935, c. 32, s. 68.

Opposition and counter statement.

71. (1) If the patentee or any person is desirous of opposing the granting of any relief under sections 67 to 72, he shall, within such time as may be prescribed or within such extended time as the Commissioner may on application further allow, deliver to the Commissioner a counter statement erified by a statutory declaration fully setting out the grounds on which the application is to be opposed.
Attendance for cross-examination.

(2) The Commissioner shall consider the counter statement and declarations in support thereof and may thereupon dismiss the application if satisfied that the allegations

in the application have been adequately answered, unless any of the parties demands a hearing or unless the Commissioner himself appoints a hearing; in any case the Commissioner may require the attendance before him of any of the declarants to be cross-examined or further examined upon matters relevant to the issues raised in the application and counter statement, and he may, subject to due precautions against disclosure of information to rivals in trade, require the production before him of books and documents relating to the matter in issue.

Reference to Exchequer Court.

(3) In any case where the Commissioner does not dismiss an application as hereinbefore provided, and

(a) if the parties interested consent, or

(b) if the proceedings require any prolonged examination of documents or any scientific or local investigation that cannot in the opinion of the Commissioner conveniently be made before him,

the Commissioner with the approval in writing of the Minister may order the whole proceedings or any issue of fact arising thereunder to be referred to the Exchequer Court, which has jurisdiction in the premises, and where the whole proceedings are so referred, the judgment, decision or order of said Court is final; and where a question or issue of fact is so referred, the said Court shall report its findings to the Commissioner. 1935, c. 32, s. 69.

* * * * *

Appendix D.

Extracts from the Convention of Paris as revised. (Matter deleted by Lisbon Conference enclosed in brackets; matter added by Lisbon Conference in italic.)

* * * * * *

Article 5.

A.—(1) The importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail revocation of the patent.

(2) [Nevertheless,] Each country of the Union shall have the right to take [the necessary] legislative measures *providing for the granting of compulsory licences* to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example failure to work.

(3) [These measures shall not provide for revocation of the patent unless the grant of compulsory licence is insufficient to prevent such abuses.]

Revocation of the patent shall not be provided for except in cases where the granting of compulsory licenses would not have been sufficient to prevent such abuses. No proceeding for the cancellation or revocation of a patent may be instituted before the expiration of two years from the granting of the first compulsory licence.

(4) [In any case, an application for the grant of a compulsory licence may not be made before the expiration of three years from the date of the grant of the patent, and this licence may be granted only if the patentee fails to justify himself by legitimate reasons. No proceedings for the cancellation or revocation of a patent may be instituted

before the expiration of two years from the granting of the first compulsory licence.]

An application for a compulsory licence may not be made on the ground of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period last expires; it shall be refused if the patentee justifies his inaction by legitimate reasons. Such a compulsory licence shall be non-exclusive and shall not be transferable, even in the form of the grant of a sub-licence, except with that part of the enterprise or good-will using such licence.

* * * * *

PLAINTIFF'S EXHIBIT NO. 50-A.

Royal Commission on Patents, Copyright and Industrial Designs.

Report on Patents of Invention.

The Queen's Printer and Controller of Stationery
Ottawa, 1960.

Price $2.00 Cat. No. Z1-1954/2

Division I—Introduction.

Section 1. Terms of Reference.

By commission, dated June 10, 1954, we were appointed Royal Commissioners to inquire as to whether Federal legislation relating in any way to patents of invention, industrial designs, copyright and trade marks affords reasonable incentive to invention and research, to the development of literary and artistic talents, to creativeness, and to making available to the Canadian public scientific, technical, literary and artistic creations and other applications, adaptations and uses, in a manner and on terms adequately safeguarding the paramount public interest, the whole in the light of present-day economic conditions, scientific, technical and industrial developments, trade practices and any other relevant factors or circumstances, including practices under or related to the said legislation and any relevant international convention to which Canada is a party.

We have submitted our report on copyright and our report on industrial designs, dated August 1, 1957 and

June 1, 1958 respectively and now beg to submit our report on patents. Pressure of other duties and the unexpected dimensions of the work have made it necessary for us to request to be relieved from the task of inquiring into and reporting on the law in relation to trade marks, a request to which your Excellency has been pleased to accede, and an Order in Council has been passed, dated October 16, 1959, amending our commission so as to delete the reference to trade marks. This, then, is the last of the reports which we are submitting pursuant to the commission mentioned above.

As stated in our report on copyright, on or about August 20, 1954, we sent a questionnaire pertaining to patents, copyright and industrial designs to a large number of corporations, firms associations and individuals. This number included or was intended to include all those in Canada who would be specially interested in any of the subjects of the inquiry. The part of the questionnaire relating to patents is attached as Appendix A. In the latter part of October, 1954, we inserted a notice in the Canada Gazette and in newspapers published in all the provinces of Canada, of public hearings stating the time and place when and where these hearings would be held and inviting those desiring to make representations at the hearings to communicate with the Secretary. The public hearings received considerable notice in the press and on the radio and we think that every reasonable opportunity has been given to those desiring to make representations to do so. An indication of those who have made representations to the Commission either in public or by written submissions will be found in Appendix B.

Apart from such representations we have had throughout the course of the inquiry the benefit of private discussions with many persons who have specialized in or have special knowledge of patent matters. We have also had continuously before us patent legislation of other countries and reports of committees on which patent legislation is based, and in addition two of our number (when there were three members of the Commission) visited London and The Hague and one visited Washington, Paris and Berne, where they discussed problems relating to patents with those who had had, either as government officials or otherwise, experience with those problems.

Of the committee reports examined, we shall be referring to the Report of the Swan Committee. This was a committee appointed by the President of the Board of Trade of the United Kingdom in April, 1944, to consider and report whether any, and if so, what changes were desirable in the Patents and Designs Acts and in the practice of the patent office and the courts in relation to matters arising therefrom. The chairman of the committee was Sir Kenneth R. Swan, Q. C. The committee made an interim report in March, 1945, a second interim report in February, 1946, and its final report in July, 1947. Following these reports the Patents Act, 1949 (United Kingdom) was passed enacting many of the recommendations of the Swan Committee.

We may add that the literature on the subject of patents and on the problems connected with them is most voluminous. A subcommittee of the Committee on the Judiciary, United States Senate, has since 1955 been reviewing the statutes of the United States relating to patents, trade marks, and copyright. This subcommittee was created by a Senate resolution in 1955 and has been continued by subsequent Senate resolutions year after year. As the chairman of the subcommittee is Senator O'Mahoney we shall refer to it as the O'Mahoney Subcommittee. The sub-
a Senate resolution in 1955 and has been continued by sub-
committee has been publishing a series of special studies on patents and reference to some of these will be made

in this report. Study No. 14, the foreword of which is dated June 27, 1958, is a bibliography compiled for the subcommittee by Julius W. Allen of the Legislative Reference service, Library of Congress. This is entitled "Economic Aspects of Patents and the American Patent System: A Bibliography". It consists of a list and short description of no fewer than 446 publications. Needless to say, we have not had time to examine all of these or more than a small part of the other literature on the subject. We nevertheless feel that our recommendations are capable of practical application and would, if adopted, improve our existing patent system.

Section 2. History and Character of our Present Legislation.

Canadian legislative provisions relating to patents are, with a few exceptions, to be found in the Patent Act which in its present form was enacted in 1935—S. C. 1935, c. 32. The 1935 statute, amended from time to time, was carried into the Revised Statutes of 1952 as Chapter 203, and has since been amended in minor particulars on two occasions by S. C. 1953-54, c. 19 and by S. C. 1953-54, c. 40, s. 15. The Act as amended to date is appended as Appendix C.

Probably the first patent law (in the sense of a general promise of exclusive rights to inventors) was enacted in 1474 by the Republic of Venice. (But see article by E. Wyndham Hulme in vol. XII of the Law Quarterly Review, 1896, pp. 141-154 which refers to earlier grants of franchises in England which may have been franchises of exclusive rights to inventors.) But for all practical purposes a person desiring to acquaint himself with the principles of Canadian Patent Law need go no further back than 1624 when the Parliament of James I passed the Statute of Monopolies 21 Jac. I, c. 3. This Statute forbids the granting by the Crown of exclusive rights to trade with the exception of patent monopolies to the "true and first inventor" of a new manufacture. As this Statute made it clear that the true and first inventors of any manner of new manufactures within the realm could be granted the exclusive privilege of working or making them, the statute has been called the "Magna Carta of the rights of inventors".

* * * * *

Division IV—Relationship of Our Proposals to the Present Canadian Act.

Section 1. Some Features of Present Act To Be Retained.

As will be seen, we are recommending the retention, with or without some modifications, in any new legislation, of many features of our present Act. Among these may be mentioned the provisions for the general organizational structure of the Patent Office and its staff, that is, a Commissioner, an Assistant Commissioner and Examiners, power in the Governor in Council on the recommendation of the Minister to make rules and regulations, the issue of patents by the Commissioner under seal and, generally speaking, the contents of patents, a register for patent attorneys or agents, registration in the Patent Office of assignment, etc., the right of the Government of Canada to use patented inventions, paying reasonable compensation, the free use of patented inventions on foreign ships, etc., annual reports by the Commissioner, requirements as to the contents of (complete) specifications, compulsory licensing when there is abuse of patent rights and in part, the definition of invention.

The definition of invention requires at this point some observations.

The definitions to be found in the Patents Act of the United Kingdom, Australia and New Zealand are the following:

United Kingdom.

"Invention" means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies and any new method or process of testing applicable to the improvement or control of manufacture, and includes an alleged invention.

Australia.

"Invention" means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies, and includes an alleged invention.

New Zealand.

"Invention" means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies and any new method or process of testing applicable to the improvement or control of manufacture, and includes an alleged invention.

The key words in each of these definitions are the words "any manner of new manufacture". It is apparent from the cases that "manner" means "kind" not "method" but what does "manufacture" mean? It has been authoritatively construed as applying not only to things made but to the practice of making: Fox on Patents, 3rd ed. p. 52. Accordingly it includes not only a product but a process. Fox in the work cited at p. 56 says, "It may, therefore, be accepted in principle that the requirements with regard to subject matter are co-extensive under the British and Canadian statutes, and that the jurisprudence established on this point by the Courts of England and Scotland is authoritative in this country". The learned author was referring to the jurisprudence under the definition before the words "and any new method or process of testing applicable to the improvement or control of manufacture" were inserted but we consider that a method or process of testing applicable to the improvement or control of manufacture would come within the word "process" used in the present Canadian definition. At the same time it is not precisely correct to say that the Canadian definition is identical in legal effect with the United Kingdom and New Zealand definitions quoted above. Many, but not all, of the judicial decisions in the United Kingdom based on the definition in the United Kingdom Act are applicable to the Canadian definition.

Our present definition is more nearly identical with that contained in the United States and South African statutes. It is provided in the United States Code, Title 35—Patents, section 101 that:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The definition in the South African Act of 1952 is as follows:

> "Invention" means, subject to the provisions of this Act, any new and useful art (whether producing a physical effect or not), process, machine, manufacture or composition of matter which is not obvious, or any new and useful improvement thereof which is not obvious, capable of being used or applied in trade or industry, and includes any distinct and new variety of plant, other than a tuber-propagated plant, which has been reproduced asexually, and any alleged invention.

It will be noted that the United States definition does not include the word "art", but otherwise is the same as the Canadian. Fox in the work cited at pp. 47-49 cites several cases in which some courts have detected subtle distinctions between arts and processes but which disclose no reason, in our view, which indicates the desirability of omitting the word "art" from the Canadian definition of invention.

The South African definition contains the words "which is not obvious". We think that similar words should be included in our definition of invention so that in part it should read as follows:

> "Invention" means any new and useful art, process, machine, manufacture or composition of matter (which is not obvious), or any new and useful improvement (which is not obvious) in any art, process, machine, manufacture or composition of matter.

The word "obvious" has a somewhat technical meaning in the law of patents as pointed out by Rinfret, J. as he then was in a judgment concurred in by Duff, C. J. in *Crosley Radio Corpn.* v. *Canadian General Electric Co. Ltd.* (1936), S. C. R. 551. Something which is new and useful is not an invention unless it was the result of an inventive step. If there was no inventive step it is said to be obvious.

The following may be quoted from the judgment of Rinfret, J. at p. 556:

> "We would suggest that, in England, the appearance, in later years, of the word 'obvious' in judgments dealing with patent matters, probably results from the fact that, under section 25 (subs. f) of the English Patents and Designs Act, a patent may be revoked upon the ground 'that the invention is *obvious* and does not involve any inventive step having regard to what was known or used prior to the date of the patent.' But although, perhaps, judgments under Canadian patent law may not have denied patentability to certain improvements upon the express ground that the advance over the prior art should be taken to have been obvious to the persons skilled in the art, the jurisprudence, both in the Canadian courts and in the Judicial Committee of the Privy Council, is not

wanting in pronouncements conveying the same idea. It has long been laid down in our courts that, in order validity to support a patent, it was, of course, necessary that the art, or the improvement thereon, should be new, that it must be useful and that it must not have been anticipated by prior knowledge or prior use by others within the meaning of sec. 7 of the Patent Act, in force at the time of the issuance of the patent in suit; but that something additional was also required. It was essential that there should be invention and that one did not hold a valid subject-matter of a patent unless he showed the exercise of the inventive faculties (See: Halsbury's Laws of England, vbis. Patents and Inventions, no. 288); and that is to say, in the words of Lord Watson (*Thomson* v. *American Braided Wire Company* (1889), 6 R. P. C. 518 (H. L.)), 'a degree of ingenuity . . . which must have been the result of thought and experiment'."

Many of the decisions dealing with obviousness were referred to in the judgment of Dumoulin, J. in *Visirecords of Canada Limited* v. *Malton et al.* (1958) Ex. C. R. 116. While the absence of the word "obvious" from our definition or its equivalent does not seem to have presented any difficulty to the courts in the past, which have always regarded the exercise of the inventive faculty as a prerequisite of an invention, we propose to introduce the word "obvious" into other provisions of legislation which we recommend, and we think it desirable to introduce it into the definition as part of the definition.

We are also recommending that "process" a word used in the definition of invention be defined as follows:

> "Process" means process or method and includes a new use of a known process, machine, manufacture or composition of matter.

This provision is now part of the definition section in the Patent Act of the United States (see section 100 (b)) and is desirable for the elimination of uncertainty. It has already been decided by the Supreme Court of Canada in *Commissioner of Patents* v. *Ciba Ltd.* (1959), S.C.R. 378 that a new use of an old process is patentable when the result is new. It would be illogical in the light of this decision to deny protection to the new use of an old product when the result is new as would appear to follow from *Rohm & Haas Company* v. *Commissioner of Patents* (1959), Ex. C. R. 153. Where there is a new use of an old process the applicant would normally be entitled to protection of the product flowing from the new use of the old process, while in the case of the new use of an old product, often a new product would not result ~~on~~ which protection could be obtained. Protection in the latter case can, therefore, be more important than in the former and is, we think, at least equally to be desired.

Section 2. Some Features of Present Act to Be Dropped.

As will be seen, we are recommending omission of certain features of the present Act from future legislation. Some of these are as follows: the requirement of section 28 that for an invention to be patentable it must not have been known or used by any person other than the inventor, before he invented it, a fundamental alteration in the Act which is fully discussed above in Division I, section 5; the provisions of section 45 regarding conflicting applications which are also discussed in Division I, section 5; and the provision for caveats which will have no purpose in the system we recommend.

* * * * * *

In the parts of this report which immediately follow we recommended the enactment of various sections which taken together should form a complete Act based upon the principles which we have outlined in the report up to this point. We would have much preferred to give the substance of every provision we desire to recommend with no drafting, even tentative, but we found this to be impracticable. There are so many cross-references between sections, so many situations where everything depends on wording, that we have drafted a proposed Act section by section, fully realizing that perhaps every single section should be redrafted in accordance with the standards of parliamentary draftsmanship and that rearrangements may be necessary both of and in the sections. Our proposed sections follow with comments where these are considered necessary. We have divided the proposed Act into "Parts" which should not be confused with the "Divisions" into which we have divided our report. Throughout this report we have used such words as "we" and "our" sometimes as applying to Canada and sometimes as applying to this Commission, but we think the sense is always clear.

* * * * *

Division XII—Compulsory Licences, Misuse of Patents, Restraint-of-Trade Abuses.

Part VIII. Compulsory Licenses, etc.

Conditions.

1. (1) The Commissioner shall, on the request of any person who pays the prescribed fee, by notice in writing addressed to the patentee of any patent specified in the request, or to his registered representative in Canada, and to every registered transferee of rights in respect of such patent (and to every person who has a registered interest in such patent if granted on an application filed before the coming into force of this Act), require the patentee and such persons, in respect of such patent, to transmit or deliver to the Commissioner within sixty days from the

date of such notice, or within such further time as the Commissioner may allow, a return stating:

(a) whether the patented invention is being commercially worked in Canada, and the place where and the name and address of the person by whom the patented invention is being so worked; and

(b) the reasons, if any, why such patented invention is not being commercially worked in Canada.

(2) The failure of the patentee or such representative in Canada or that of any such registered transferee to comply with the terms of the notice mentioned in the next preceding subsection, shall be deemed to be an admission on the part of the patentee or such person, as the case may be, so failing, that the patented invention is not being commercially worked in Canada.

2. (1) Subject to the provisions of section 5 of this Part, any person interested may, at any time after the grant of a patent, apply to the Patent Tribunal upon any one or more of the grounds specified in the next following subsection for an order for the grant of a licence under the patent.

(2) The grounds upon which application may be made for an order under this section are as follows, that is to say:

(a) that the patented invention, being capable of being commercially worked in Canada, is not being commercially worked therein or is not being so worked to the fullest extent that is reasonably practicable;

(b) that a demand for the patented article in Canada is being met to a substantial extent by importation;

(c) that a demand for the patented article in Canada is not being met on reasonable terms;

(d) that use has been made of the exclusive rights and privileges conferred by the patent, or the patent and one or more other patents, in such a way that the Exchequer Court could on an information exhibited by the Attorney General of Canada by virtue of section 30 of the Combines Investigation Act, make an order directing the grant of licences under any such patent;

(e) that the commercial working of the invention in Canada is being prevented or hindered by the importation of the patented article;

(f) that by reason of the refusal of the patentee to grant a license or licenses on reasonable terms

  (i) a market for the export of the patented article manufactured in Canada is not being supplied;

  (ii) the working or efficient working in Canada of any other patented invention which makes a substantial contribution to the art is prevented or hindered; or

  (iii) the establishment or development of commercial or industrial activities in Canada is unfairly prejudiced;

(g) that by reason of any condition imposed by the patentee—

  (i) upon the grant of a licence or licenses under the patent; or

  (ii) upon the purchase, hire or use of the patented article or process, the manufacture, use or sale by any person of any article not protected by the patent is unfairly prejudiced; or the establishment or development of commercial or industrial activities in Canada is unfairly prejudiced.

(3) Subject as hereinafter provided the Patent Tribunal may, if satisfied that any of the grounds aforesaid

are established, make an order for the grant of a licence under the patent, which order may require the licence to be granted upon such terms as the Patent Tribunal deems advisable, provided that

(a) where the application is made on the ground that the patented invention is not being commercially worked in Canada or is not being worked to the fullest extent that is reasonably practicable, and it appears to the Patent Tribunal that the time which has elapsed since the grant of the patent has for any reason been insufficient to enable it to be so worked, the Patent Tribunal may by order adjourn the application for such period as will in its opinion give sufficient time for the invention to be so worked;

(b) any licence granted under this section on the ground that a market for the export of the patented article is not being supplied shall contain such provisions as appear to the Patent Tribunal to be expedient for restricting the countries to which the patented article may be exported;

(c) no order shall be made under this section in respect of a patent on the ground that the working or efficient working in Canada of another patented invention is prevented or hindered unless the Patent Tribunal is satisfied that the patentee in respect of that other invention is able and willing to grant to the patentee and his licensee a licence in respect of that other invention on reasonable terms.

(4) No licence granted under the last foregoing subsection shall be an exclusive licence nor shall it be transferable even in the form of the grant of a sublicence.

(5) An application under this section may be made by

any person notwithstanding that he is already the holder of a licence under the patent; and no person shall be estopped from alleging any of the matters specified in subsection (2) of this section by reason of any admission made by him whether in such a licence or otherwise, or by reason of his having accepted such a licence.

(6) In this section the expression "patented article" includes any article made by a patented process.

3. (1) Where the Patent Tribunal is satisfied, on application made under the last foregoing section, that the manufacture, use or sale by any person of materials not protected by the patent is unfairly prejudiced by reason of conditions imposed by the patentee upon the grant of a licence or licences under the patent, or upon the purchase, hire or use of the patented article or process, it may, subject to the provisions of that section, order the grant of licences under the patent to such customers of the applicant as it deems advisable as well as to the applicant.

(2) Where an application under the last foregoing section is made by a person being the holder of a licence under the patent, the Patent Tribunal may, if it makes an order for the grant of a licence to the applicant, order the existing licence to be cancelled or may, if it deems advisable, instead of making an order for the grant of a licence to the applicant, order the existing licence to be amended.

(3) Where on an application under the last foregoing section the Patent Tribunal orders the grant of a licence, it may direct that the licence shall operate to cancel or amend any existing licence in respect of the patented invention.

The constitutionality of subsection (5) of section 2 and of subsections (2) and (3) of section 3 should probably be given some consideration. The basis for considering them within the powers of Parliament is that they relate to patents, in that subsection (12) of section 1 of Part V (the subsection providing for the terms of the grant) makes the grant of a patent conditional, and what the subsections under consideration do is to impose conditions. However, it is arguable that these subsections are really provisions relating to property and civil rights in a Province. We merely bring the matter to the attention of the law officers of the Crown.

4. (1) The powers of the Patent Tribunal upon an application under section 2 of this Part shall be exercised with a view to securing the following general purposes, that is to say—

(a) that patented inventions which can be commercially worked in Canada and which should in the public interest be so worked shall be worked therein without undue delay and to the fullest extent that is reasonably practicable;

(b) that the patentee shall receive reasonable remuneration;

(c) that the interests of any person for the time being working or developing an invention in Canada under the protection of a patent shall not be unfairly prejudiced;

(2) Subject to the foregoing subsection, the Patent Tribunal shall, in determining whether to make an order in pursuance of any such application, take account of the following matters, that is to say—

(a) the nature of the invention, the time which has elapsed since the grant of the patent and the measures already taken by the patentee or any licensee to make full use of the invention;

(b) the ability of any person to whom a licence would be granted under the order to work the invention to the public advantage; and

(c) the risks to be undertaken by that pesron in providing capital and working the invention if the application is granted;

but shall not be required to take account of matters subsequent to the making of the application.

5. No application for an order for the grant of a licence under section 2 of this Part shall be made on any of the grounds set out in subsection (2) (a), (2) (b), (2) (e) or (2) (f) (i) of section 2 before the expiration of a period of four years from the date of the filing of the complete specification of that application for the patent or three years from the date of the grant of the patent whichever of such periods is the last to expire.

Provisions for compulsory licensing for patent abuses so-called have been in Canadian legislation since 1923. Before that the remedy was revocation. Information obtained by us from the Commissioner of Patents on May 19, 1959 is that the records of the Patent Office do not show any application prior to August, 1935 and that whether there were applications before that is unknown in the Office as there are no indexes or files prior to 1935 showing applications for licences.

Between August, 1935 and May, 1959 there were 31 applications under section 67 of our present Act. Disposition of these applications was as follows:

Licences granted	5
Applications refused	6
Applications abandoned	12
Applications withdrawn	4
Agreements between parties	2
Applications pending	2
Total number of applications	31

Few matters connected with the law of patents have been more extensively discussed than compulsory working of patented inventions and compulsory licences under patents.

The provisions of sections 67 to 73 of our present Act deal with the powers of the Commissioner to order the grant of compulsory licences in cases where there has been what is referred to in section 67(1) as "abuse of the exclusive rights" under a patent. Section 67(2) sets out six classes of circumstances in which the exclusive rights under a patent shall be deemed to be abused. The first class of abuse, that in 67(2)(a), may be described as failure without satisfactory reason to work in Canada. It would appear that failure to work may be due to inertia or what is sometimes called "suppression" of the invention or by the supply of the Canadian market by importation. (No evidence of "suppression" was adduced.) The second class of abuse, that in section 67(2)(b), is the prevention or hindrance of working in Canada by importation. These two classes are the lineal descendants of a long line of ancestor provisions in Canadian, United Kingdom and other statutes applying or attempting to apply the principle of compulsory working. The usual sanction of such provisions is revocation of the patent—and indeed section 68(d) provides for revocation if the Commissioner is satisfied that the objects of sections 67 and 68 cannot be attained by the grant of compulsory licences. But the right of Canada, and indeed of all countries which are parties to The International Convention, to impose revocation as a sanction is now restricted by Article 5 of that Convention the relevant provisions of which are as follows:

> "A.—(1) The importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail revocation of the patent."

Canadian Radio Patents Limited.

Public representations were made to the Commission by S. G. Waters Limited, a company engaged in the distribution of various kinds of household electrical appliances, that the structure and operation of Canadian Radio Patents Limited should be examined to determine whether that Company offended the patent law insofar as it now prevails or ought to prevail in Canada, more particularly in reference to the utilization of a portfolio of patents to preclude the importation of certain articles into Canada. Similar representations were made by others.

Canadian Radio Patents Limited (hereinafter called CRPL) was incorporated in 1926 for the purpose of acting as a patent licensing agency. At the time of the presentation of its brief to this Commission it acted as the central patent licensing agency in the administration of patent rights in the radio, television and general electronic fields in respect of patents owned by its then five shareholders:

Canadian General Electric Company
Canadian Westinghouse Company
Northern Electric Company
Canadian Marconi Company, and
Canadian Radio Manufacturing Company.

It also acted as licensing agent in Canada for RCA Victor Company and Hazeltine Electronics Corporation. CRPL acquired from such companies a non-exclusive licence with the right to grant sublicences.

In its operation CRPL grants to any individual, firm or corporation a license in respect of its portfolio of patents to manufacture in Canada radio and television receivers and certain electronic apparatus. In conjunction with such licence it makes available to licensees general information relating to the manufacture of such equipment. CRPL sought to distinguish itself from a patent pool, which it defined as a company that acquired patents to be licensed only to the entities comprising the pool.

The evidence establishes that no one intending to carry on manufacturing operations in Canada was refused a licence in respect of all patents contained in the portfolio. The licence in respect to the manufacture of radio and television receivers require the licensee to pay to CRPL a royalty on the basis of 3½% of the manufacturer's net selling price. Various deductions permitted by the licensor in respect of such items as the cost of tubes, batteries, record changers and cabinets reduces the royalty to 2½% of manufacturer's net selling price.

The portfolio in respect of which CRPL had the right to grant licences consisted of 5,000 patents, and in the absence of a licence from CRPL it is doubtful if anyone could sell in Canada a radio or television receiver.

CRPL indicated that it does not grant a licence to any importer of radio or television receivers, except in the limited situation where the type or kind of radio or television receiver sought to be imported is not manufactured by any radio or television receiver manufacturer in Canada. It is particularly in respect of the policy of CRPL in precluding importers from bringing into Canada radio and television receivers that the complaint was made to this Commission.

It was stated to be the policy of CRPL to enforce its patent rights against any person who sells in Canada an imported radio or television receiver which infringes any one or more of the patents in its portfolio except in the limited area where permission has been granted to import the apparatus which CRPL agrees is not of a type or kind made in this country. CRPL will tell anyone who submits to it a diagram showing the circuit and layout what patents, if any, would be infringed by the manufacture, use or sale of apparatus constructed according to such diagram.

CRPL has granted to the Department of Defence Production a licence whereby an annual royalty is payable covering all electronic products under the defence program.

CRPL expressed concern about the compulsory licensing provisions of the Canadian Patent Act in the event that it should grant a licence to any person to import in circumstances where any manufacturing was carried out in Canada under a patent included in the portfolio which it administered. This concern did not relate to the grant of a non-exclusive compulsory licence by the Commissioner of Patents on the payment of a reasonable royalty. CRPL was itself prepared to grant a licence of such a nature.

The concern manifested itself in relation to the possibility that an exclusive licence would be granted on the operation of sections 67(2), (*b*) and 68, (*b*), of the Act. The grant of an exclusive licence to any Canadian manufacturer would operate contrary to the purpose of the licensing agency in making patents available to any manufacturer in Canada. It is the intention of the licensing agency in fulfilling its purpose to avoid the delays and expense incident to patent litigation in the radio receiver and television receiver manufacturing fields. CRPL stated that the royalties would be used by it through its shareholders for the purpose of research or by CRPL directly in the purchase of other inventions to be licensed amongst its Canadian licensees. An exclusive licence would, therefore, be contrary to a fundamental purpose of its existence.

To avoid the risk of such a licence CRPL sought to justify its refusal to grant a licence to import in circumstances other than where a type of apparatus covered by a patent in its portfolio was not made in Canada. The recommendations which we propose will eliminate this risk. CRPL and any holder of a portfolio of patents will have the right but not the obligation to grant a licence to import where the circumstances warrant, without fear of an exclusive licence. The proposal made by the delegates to the International Convention at Lisbon that article 5 of the Convention be amended to provide that a compulsory licence be granted only on a non-exclusive basis is a proposal that we elsewhere in this report recommend be made part of our law.

A second concern expressed by CRPL in its evidence before us related to the possibility of an order of revocation of one or more of the patents in its portfolio following a compulsory licence application. Such a possibility flows from section 68, subparagraph (*d*) of the Patent Act as it now exists. We do not believe that it is likely that the Commissioner of Patents would revoke a patent where the abuse was based on the fact that a licence had been granted to import. If the abuse is importation on the payment of a royalty, an abuse of this nature would not be remedied by revoking the patent and permitting importation by anyone and without royalty obligation. Such a course of action would not cure the mischief.

CRPL as it is now organized and as it now operates does not appear to us to be illegal. It is not illegal to acquire a portfolio of patents either by way of ownership of the patents or by way of acquiring a right to grant licences. The mere control of a sector of industry through the accumulation of patents is not in itself illegal.

The complaint against CRPL is that it refused to grant a licence to import. In refusing to grant such a licence CRPL was not going beyond its legal right when manufacture was taking place in Canada pursuant to licences granted by it in this country at reasonable royalty rates.

However, there is inherent in the accumulation of patents in respect of a sector of industry the possibility that the portfolio will be used to the public prejudice. When so used an abuse does exist in respect to which legislation must prescribe effective sanctions if the pool or licensing agency by monopolization through acquisition of patents seeks to assert the patents beyond the scope of the patent monopoly or for purposes in respect of which the patent is not adapted to be used or to assert the monopoly in such a way as to constitute a restraint-of-trade abuse of patents.

Sanctions which now exist will be found in the provisions of Sections 2 and 32 of the Combines Investigation Act and Section 411 of the Criminal Code. Section 30 of the Combines Investigation Act provides a civil remedy at the instance of the Attorney General. The nature of these remedies, which are dealt with elsewhere in this report, is not, in our opinion, sufficiently all-inclusive. We believe that where a pool or licensing agency in control of a portfolio, in practice, operates to the detriment of the public that a civil remedy ought to be available in the hands of an individual affected thereby. The remedy could take the form of a compulsory license with a reasonable royalty, a dedication of the patent, a royalty free compulsory license or, in lieu of the above relief in compulsory license proceedings, relief of a similar nature by way of defense in a patent infringement action.

The evidence before the Commission did not indicate that the likelihood of the abuse by misuse of a patent portfolio was of such a nature as to justify the recommendation at this time of a sanction in addition to those now available other than a compulsory licence at the instance of any person interested in the circumstances defined by section 30 of the Combines Investigation Act.

The result flowing from the recommendation of the Commission is that a company holding a patent portfolio will have the right to grant a licence to import in a proper case. The mere granting of a license to import will not in itself constitute an abuse that would give rise to the kind of compulsory license in respect of which CRPL expressed concern. Such a license could be granted. On the other hand, a company holding a patent portfolio is not obliged to grant a license to import where the patents are being commercially worked in Canada under conditions that do not constitute a misuse of patents.

PLAINTIFF'S EXHIBIT No. 51.

Plaintiff's Interrogatory No. 8 to Defendant and Defendant's Answer.

"8. With respect to the allegation the Plaintiff has participated in a combination and conspiracy in restraint of trade, set forth in Paragraph 13 of Defendant's Answer, specify and identify:

(a) Any documents and any correspondence on which Defendant will rely at the trial in support of such allegations and the location and custody thereof.

(b) Any acts or omissions of Plaintiff and each of its alleged co-conspirators, other than becoming a party to the agreements referred to in subparagraph (a) of this Paragraph 8, on which Defendant will rely at the trial in support of such allegations, and specify the time, place and persons present when each of such acts occurred and the substance of what was done and said.

(c) The time and place at which and the other circumstances under which the alleged combination conspiracy in restraint of trade took form.

(d) The time and place at which and the other circumstances under which Plaintiff was inducted into the alleged combination and conspiracy in restraint of trade.

"Answer: Answering Interrogatory No. (7[8]), defendant avers that it cannot identify the documents and other evidence on which it will rely at the trial in support of the allegations of Paragraphs 12 and 13 of its answer until it has conducted pre-trial discovery proceedings herein, pursuant to the Federal Rules of Civil Procedure, and has thereby obtained from plaintiff and others access to the relevant documents and other evidence bearing on the issues. In the course of such discovery proceedings the details of plaintiff's patent misuse and conspiracy will, defendant believes, be fully disclosed; meanwhile, defendant is without knowledge of the specific details of such misuse and conspiracy."

PLAINTIFF'S EXHIBIT No. 52.

Hazeltine Research, Inc.
5445 West Diversey Avenue
Chicago 39, Illinois
National 2-1582.

December 9, 1959.

The Magnavox Company of Tennessee
2131 Bueter Road
Fort Wayne 4, Indiana.

Gentlemen:

This letter is written in connection with the Hazeltine License Agreement in the home broadcast receiver field dated as of October 1, 1959, and executed concurrently herewith, and is to record certain further understandings between the parties as follows:

1. From the field of said License Agreement in which

licenses are granted there are deleted all sound radio receiving equipment (Article II, Sections 2a, 2c, and 2e) and the color television receiver apparatus (Article II, Sections 2b, 2d, and 2f).

2. The licenses granted under Article II of said License Agreement with respect to monochrome television receiver apparatus are restricted to United States Letters Patent Nos. 2,416,424-Wilson and 2,547,648-Loughren.

3. The several percentage rates of royalty recited in Article III, Section 1 are reduced by eighty per cent. (80%) and the annual lump sum payment specified in Article III, Section 6 is reduced from Fifty Thousand Dollars ($50,000) to Forty Thousand Dollars ($40,000).

This letter is written in duplicate and, upon acceptance by your company, shall be taken together with and considered as a part of aforesaid License Agreement.

Very truly yours,

Hazeltine Research, Inc.
By W. O. Swinyard,
Vice President.

(Corporate Seal)
Attest:
(Illegible).
Assistant Secretary.

Accepted:

The Magnavox Company of Tennessee,
By J. S. Sturgeon,
Vice President and Treasurer.
(Title)

(Corporate Seal)

Attest:
Gerard Ungaro,
Secretary.

PLAINTIFF'S EXHIBIT NO. 53.

The Magnavox Company
Fort Wayne 4, Indiana.

December 16, 1959

Mr. Laurence B. Dodds
Hazeltine Research, Inc.
5445 West Diversey Avenue
Chicago 39, Illinois

Dear Mr. Dodds:

This letter is to confirm our recent telephone discussion and to alter to the extent indicated below the royalty agreement that is currently in effect between our two companies.

I explained to you that at the present time we sell our entire output to the parent company which functioning as a distributor sells directly to retailers. The provisions of Article III, Section 2 are such that we would be required to pay royalties based upon the net selling price of the parent company to the retailer before deducting cash discounts, freight or advertising allowances or other similar deductions. Inasmuch as the industry generally sells almost exclusively to independent distributors who in turn sell to retailers, it is manifestly unfair for us to be required to pay a royalty based upon our company's selling price to retailers whereas other licensees are paying on their selling prices to distributors.

A study of competitors' prices to distributors made by us some time ago established that the application of a factor of 83.7% to our parent company's actual selling price to dealers would yield prices approximately equivalent to those at which our competitors sell to distributors.

In view of the above it is agreed that the royalties payable under our license agreement with you will be paid on the actual net selling prices realized by our parent company on sales to dealers before cash discount, freight or advertising allowances, or other similar deductions reduced, however, by a factor of 16.3%. The resulting net selling price will, of course, be reduced by any other deductions allowed under the terms of our license agreement.

It is further agreed that either party may request that the 83.7% be altered in order to agree with any changes which may occur in such percentage relationship in our industry.

If you are in agreement with the foregoing we will appreciate your confirming our understanding by executing the attached carbon copy of this letter and returning it to us.

Very truly yours,

The Magnavox Company of Tennessee,
J. S. Sturgeon,
Vice President and Treasurer.

JSS:lf
enc.

Confirmed by
Hazeltine Research, Inc.
By W. O. Swinyard,
Vice Pres.

cc: Mr. Gerard M. Ungaro
Mr. Robert J. Savage

PLAINTIFF'S EXHIBIT NO. 54.

Hazeltine Research, Inc.
5445 West Diversey Avenue
Chicago 39, Illinois
National 2-1582

June 27, 1960

The Magnavox Company of Tennessee
131 Bueter Road
Fort Wayne 4, Indiana

Gentlemen:

This letter is written in connection with the Hazeltine License Agreement in the home broadcast receiver field dated as of October 1, 1959, and is to record certain further understandings between the parties as follows:

1. The letter dated December 9, 1959 signed by the parties and modifying certain of the terms of said License Agreement is cancelled by mutual consent as of June 30, 1960.

2. From the field of said License Agreement in which licenses are granted there are deleted all sound radio receiving equipment (Article II, Sections 2a, 2c and 2e) and color television receiver apparatus (Article II, Sections 2b, 2d and 2f).

3. The licenses granted under Article II of said License Agreement with respect to monochrome television receiver apparatus are restricted to United States Letters Patent No. 2,547,648—Loughren.

4. The several percentage rates of royalty recited in Article III, Section 1, are reduced to fifty per cent (50%) of the rates specified and the annual lump sum payment specified in Article III, Section 6 is reduced from Fifty

Thousand Dollars ($50,000.) to Twenty-Five Thousand Dollars ($25,000.).

This letter is written in duplicate and upon acceptance by your company, shall be taken together with and considered as a part of aforesaid License Agreement effective as of July 1, 1960.

Very truly yours,

Hazeltine Research, Inc.
(Corporate Seal) by W. O. Swinyard,
Vice President.

Attest:
(Illegible),
Assistant Secretary.

Accepted:

The Magnavox Company of Tennessee,
(Corporate Seal) By J. S. Sturgeon,
Vice President and Treasurer.

Attest:
Gerard M. Ungaro,
Secretary.

PLAINTIFF'S EXHIBIT NO. 55.

The Magnavox Company
Fort Wayne 4, Indiana

December 6, 1960

Mr. Laurence B. Dodds
Hazeltine Research, Inc.
5445 West Diversey Avenue
Chicago 39, Illinois

Dear Mr. Dodds:

As referenced to my letter of December 1, 1960, a recent study has indicated that the 83.7% factor referred to in the second to the last paragraph of my letter dated December 16, 1959, should be changed to about 80.7%

There has been a further change in the industry situation. In the case of RCA, their manufacturing subsidiary sells to a national sales subsidiary corporation which in turn sells to local distributors (both wholly owned and independent). RCA has obtained a ruling from the Bureau of Internal Revenue that, for the purpose of establishing constructive sales prices upon which to base federal excise taxes, the constructive sales price on the sale by the RCA manufacturing subsidiary to the national sales subsidiary corporation shall be 90% of the lowest established prices for which the national sales subsidiary resells the article to independent distributors. I understand that several other major competitors have obtained similar rulings. In our case, we are still selling directly to retailers but have also established one distributor. The prices at which we sell to the distributor will average about the same as and are based on the industry study referred to above; i.e., 80.7% of the prices at which we sell to retailers. We are now in substantially the same position as RCA in that our manufacturing corporation, The Magnavox Company of Tennessee, sells to the parent company which functions as a national sales corporation which, in turn, sells to both retailers and to our distributor.

In view of the above it is requested that for the purpose of computing royalties under our license agreement we be permitted to compute royalties on the basis of 90% of our actual selling prices to our independent distributor. This will place us in the same competitive position as your other licensees.

If you are in agreement with the above I would appreciate your confirming our understanding by executing the attached carbon copy of this letter and returning it to us.

Very truly yours,

The Magnavox Company of Tennessee,
J. S. Sturgeon,
Vice President and Treasurer.

Confirmed by
Hazeltine Research, Inc.
By W. O. Swinyard,
Vice President.

PLAINTIFF'S EXHIBIT NO. 58.

December 5, 1950

Mr. Miguel:

This afternoon I spoke with Mr. Brownlee of Canadian Radio Patents which, as you know, is the Canadian Patent Pool. I was advised by Mr. Brownlee that it has been the experience of other radio manufacturers that a license from the Pool suffices to protect the manufacturers from any material patent problems. As you know, the patents of RCA, Hazeltine, General Electric, Westinghouse, Western Electric, Canadian Marconi, Phillips, and several others are included in the licensing schedule.

The royalty rate is 3½% of the manufacturers net selling price. Certain deductions are permitted as, for example, for sales and excise taxes, cost of tubes, cost of record changers and cabinet costs in excess of $30.00. There is no minimum royalty payment required by the license but an advance of $1,000 must be made by the licensee to cover any defaults in royalty payments. The royalty payments are due on the 20th of each month. There are presently 42 licensees in the pool.

Mr. Brownlee stated that under Section 65 of the Canadian Patent Act it is impossible for the Pool to license importation of radio and television apparatus. Any attempt on their part to license such importation may, upon complaint of some Canadian manufacturer, result in forfeiture of the patents in the Pool. Therefore, one taking a license under the patents of the pool must at least have the intent to manufacture in Canada. If it appears that the licensee has no such intent the pool will cancel his license and he will, of course, then be subject to an infringement action. I indicated that during a transitional period it might be necessary for us to bring sets into Canada from our plant in the United States. Mr. Brownlee indicated that they are quite reasonable in such cases and if it appeared that we would, in fact, have an intent to ultimately manufacture sets in Canada they would not cancel their license to us. He indicated that they had one experience involving Emerson in which they were forced to cancel the license because it became clear that Emerson had no intention of ever manufacturing in Canada.

I have asked Mr. Brownlee to send me a copy of their standard license agreement and it should be in my hands in the next few days. When I receive it I will pass it along to you with my comments

Bruce L. Birchard
Patent Department

BLB:MLM

PLAINTIFF'S EXHIBIT NO. 60.

Canadian Radio Patents Limited
159 Bay Street
Toronto

This will acknowledge receipt of your letter of November 13th regarding an inquiry from a Canadian manufacturer as to the conditions of obtaining a license under the patent rights of this Company.

Canadian Radio Patents Limited owns or controls in excess of 600 patents applicable to the radio receiving set field, which include the major Canadian patents in the radio set field originally owned by such companies as Canadian General Electric Company Limited, Canadian Marconi Company, Canadian Westinghouse Company Ltd., Northern Electric Co. Limited, Rogers-Majestic Corporation Ltd., and RCA Victor Co. Limited. A number of these patents are basic in the art and our patent attorneys and engineers report it is virtually impossible to make a modern radio receiving set without utilizing one or more of the patent rights owned or controlled by this Company.

The Canadian Patent Act requires reasonable manufacture of the patented article in Canada and, in order to comply therewith, the Patents Company has required each of its licensees, as shown on the attached announcement, to set up manufacturing facilities in Canada. If the manufacturer in question is interested in so doing, consideration will be given to an application for a license under our patent rights. Our standard license agreement provides for a royalty of 8% payable on the chassis plus speaker portion of the selling price of the complete radio set with a minimum annual royalty of $10,000 payable.

If the manufacturer in question is interested in obtaining a license, please have him make a formal application to this Company. In considering applications, the Board of Directors require information as to the investment to be made in radio, plant and equipment; full details as to the personnel of the Company, its board of directors, etc.; complete information with respect to financial responsibility; the volume of sales expected and all other data which may be necessary to give us a complete understanding of what the manufacturer proposes to do.

As you no doubt know, there have been numerous references by Government officials to the limitation or banning of the manufacture of new radio models so as to avoid further strain on the tooling industry. To set up manufacturing facilities in Canada would require extensive tooling and we would have to give serious consideration to this angle of the problem.

Wherever possible, we have always found it more satisfactory to discuss this subject personally with the parties interested so that we may get to know them and they us. Consequently, if the manufacturer is interested in proceeding on the general basis outlined, we would appreciate having him drop in to see us.

Yours very truly,

(signed) W. W. Richardson,
Manager.

PLAINTIFF'S EXHIBIT NO. 62.

FINANCIAL HIGHLIGHTS

	1962	1961	1960
Sales	$312,212,334	$274,167,987	$254,111,740
Net Income After Taxes	19,637,068	18,014,788	15,225,819
Per share	2.16	1.99	1.70
Dividends Paid	10,895,645	10,498,952	8,160,465
Per share	1.20	1.16⅔	.91⅔
Working Capital	73,212,710	69,241,438	68,285,118
Expenditures for Facilities	9,662,389	2,116,015	4,241,996

ZENITH RADIO CORPORATION

ANNUAL REPORT

FOR THE YEAR ENDED DECEMBER 31, 1962

CONTENTS

- Directors and Officers 1
- Subsidiaries 1
- To the Stockholders 2
- Your Company's Recent Progress 5
- Consolidated Balance Sheets 1962 and 1961 6
- Statements of Consolidated Income and Surplus 8
- Your Company's Products 9
  - Color Television 10
  - Monochrome Television 12
  - High Fidelity Stereophonic 14
  - Radios 16
  - Hearing Aids 18
- Showcases for Zenith Quality 20
- Research and Special Products 21
- Phonevision 26
- Plants and Facilities 28

Plaintiff's Exhibit No. 62.

ZENITH RADIO CORPORATION

Hazeltine Research, Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 62
C.A. No. 59-C-1847

DIRECTORS

Hugh Robertson

Frank A. Miller
W. S. Woodfill
E. N. Rauland
Karl E. Hassel
Joseph S. Wright
Eugene M. Kinney
Hays MacFarland
S. Kaplan
Leonard C. Truesdell

OFFICERS

Hugh Robertson, *Chairman of the Board*
Joseph S. Wright, *President*
S. Kaplan, *Executive Vice President and Treasurer*
Leonard C. Truesdell, *Executive Vice President—Marketing*
Donald MacGregor, *Vice President—Manufacturing*
J. E. Anderson, *Vice President—Purchasing*
J. E. Brown, *Vice President—Engineering*
Dr. Robert Adler, *Vice President—Director of Research*
Eugene M. Kinney, *Vice President—Hearing Aid*
Ralph M. Spang, *Vice President and Controller*
J. M. Ferren, *Vice President—Industrial Relations*
Francis W. Crotty, *Vice President—Patents*
Nathan W. Aram, *Vice President—Chief Engineer*
Frederick L. Hedblom, *Vice President—Works Manager*
Dr. Alexander Ellett, *Vice President—Special Scientific Projects*
Karl E. Hassel, *Secretary and Assistant Vice President*
J. Kuhajek, *Assistant Treasurer and Assistant Secretary*
Albert J. Franczak, *Assistant Treasurer and Assistant Controller*
H. M. Chesser, *Assistant Secretary*
Edwin M. Schroeder, *Assistant Secretary*

TRANSFER AGENTS

The First National Bank of Chicago, Chicago, Illinois
Chemical Bank New York Trust Company
New York, New York

REGISTRARS

Continental Illinois National Bank & Trust Co. of Chicago
Chicago, Illinois
The Chase Manhattan Bank, New York, New York

COUNSEL

Thos. C. McConnell
Philip J. Curtis
McConnell, Curtis & McConnell
Chicago, Illinois

GENERAL OFFICES

6001 Dickens Avenue, Chicago 39, Illinois

SUBSIDIARIES

ZENITH SALES CORPORATION
Chicago, Illinois

Leonard C. Truesdell, *President*
S. Kaplan, *Executive Vice President*
Clifford J. Hunt, *Vice President—Operations*
Walter C. Fisher, *Vice President—Distribution*
Erik Isgrig, *Vice President—Advertising*
Philip J. Wood, *Vice President—Field Sales*
John A. Miguel, Jr., *Vice President—Export*
Ted Leitzell, *Director of Public Relations*

WINCHARGER CORPORATION
Sioux City, Iowa

R. F. Weinig, *Vice President and General Manager*

THE RAULAND CORPORATION
Chicago and Niles, Illinois

E. N. Rauland, *President*
W. E. Phillips, *Vice President and General Manager*

ZENITH RADIO DISTRIBUTING CORPORATION
Chicago, Illinois

Robert C. Wallace, *Vice President and General Manager*

ZENITH RADIO CORPORATION OF NEW YORK
New York, New York

Harry Schecter, *Vice President and General Manager*

CENTRAL ELECTRONICS, INCORPORATED
Paris, Illinois

L. Scinto, *Vice President*

ZENITH RADIO RESEARCH CORPORATION
Menlo Park, California

Dr. L. C. Foster, *Vice President and Director of Research*

ZENITH RADIO CORPORATION OF CANADA LTD.
Toronto, Ontario, Canada

Sydney L. Capell, *Vice President—Radio and Television*
Roy W. Pratt, *Vice President—Hearing Aid*

ZENITH RADIO CORPORATION OF CALIFORNIA
Los Angeles, California

INTEROCEAN ADVERTISING CORPORATION
New York, New York

Plaintiff's Exhibit No. 62.

TO THE STOCKHOLDERS

OF ZENITH RADIO CORPORATION

The year 1962 was another period of sound growth for your Company.

Highlights of this year of significant progress for Zenith Radio Corporation and its subsidiaries are outlined below:

- New records in sales and earnings were established for the fifth time in six years.
- More than one million black and white television receivers were produced and sold for the fourth successive year. Production, factory shipments and distributor sales were at new record highs.
- Our first place position was maintained and strengthened in the increasingly competitive television industry.
- Color television engendered gratifying acceptance and strength during our first full year of production and sales.
- A new record in distributor sales to dealers of radio receivers was set with increases being attained in practically all categories.
- Production, factory shipments and distributor sales of high fidelity stereo instruments were at all-time highs.
- Our dominant position of leadership in the hearing aid industry was maintained.
- A three year test of Phonevision, the Company's over-the-air system of subscription television, was started.
- Expansion programs to add over one million square feet of required research, engineering and production space were vigorously advanced.
- Color television tube production was started on a pilot basis, with full production scheduled by mid-1963.

FINANCIAL

Net consolidated earnings for the year 1962 amounted to $19,637,068, or $2.16 per share, after provision for income taxes of $21,300,000. This represented a 9% increase over the previous record earnings reported for 1961 of $18,014,788, or $1.99 per share. Per share earnings are based on 9,104,029 shares outstanding as of December 31, 1962, and 9,031,542 shares outstanding at the end of 1961.

Net consolidated sales for the year of $312,212,334 were 14% above the previous record sales of $274,167,987 reported for 1961.

Your Company elected to adopt the new U. S. Treasury Department guideline lives for depreciating property. The increased depreciation allowance available to your Company under this ruling and reflected in 1962 operating expenses aggregated approximately $300,000.

Under the Revenue Act of 1962, Zenith and its subsidiaries are entitled to a special tax credit against Federal income taxes for investment in certain depreciable equipment. For statement purposes, the allowable tax credit will be included in earnings through reduced depreciation expense over the productive life of the equipment. On this basis, tax credit generated by equipment acquisitions during 1962 was relatively minor.

Results for the year reflect costs of the satisfactory settlement of the Marshall-Wells litigation. Under terms of the settlement Marshall-Wells was permanently enjoined from making or selling household appliances or related products under the "Zenith" name.

Working capital (current assets less current liabilities) at December 31, 1962, totaled $73,212,710. This represented an increase during the year of $3,971,272, after segregation of $9,500,000 in government securities to finance plant expansion programs scheduled for completion in 1963. Current assets of $108,300,334 at year end were 3.1 times current liabilities.

Expenditures for new and improved facilities aggregated $9,662,389 during 1962. Dismantlement and retirement of plant and equipment during the year totaled $1,576,059 on which accumulated depreciation amounted to $1,506,818.

DIVIDENDS

Dividend payments during 1962 amounted to $1.20 per share. Three quarterly dividends of $.20 each were paid in March, June and September; a $.25 quarterly dividend and a $.35 extra were paid in December. Dividend payments totaling $10,896,645 were the highest in your Company's history.

SUBSIDIARIES

Zenith Sales Corporation, responsible for marketing consumer products in the export and domestic markets,

continues to make a substantial contribution to the Company's continued progress. The growth of Zenith consumer sales can be attributed in a large measure to the timeliness and effectiveness of their marketing and advertising programs. Merchandising programs are continuously reviewed and updated to insure that Zenith products represent the best value to the consumer and the soundest merchandise for distributor and dealer.

The Rauland Corporation undertook two major expansion programs during the year. Color television tube production was started on a pilot basis late [illegible] 1962 at their main plant in space made available [illegible] relocation of other activities and the construction [illegible] a new 55,000 square foot addition. The new facilities, including specially designed and constructed fabrication equipment, are scheduled to be in full production by mid-1963. Special purpose electronic tube research, development and production activities were moved in September 1962 to a new 100,000 square foot building in Niles, Illinois.

Rauland's sales for the year were at an all-time high. Profits for the period, however, were unfavorably affected by (1) the unrealistic pricing situation in the cathode ray tube industry, (2) moving and rearrangement expenses and (3) high starting costs on initial color television tube production. Rauland's profit picture, however, should show improvement in 1963. Although operations during the first half of the year will continue to be affected by starting costs of color television tube production, other operating factors will be more favorable. The major portion of the moving expenses was absorbed in 1962 and a general price increase on tubes to a more realistic level was announced in early January.

Wincharger Corporation, a subsidiary which manufactures radio receivers under contract for the Zenith Sales Corporation, electric motors and power generators, had satisfactory earnings and sales for the year. Power generator sales established an all-time record in 1962 and the trend has continued with January 1963 being the best power generator month in Wincharger's history.

Central Electronics, Incorporated, in their first full year of operation in the new Paris, Illinois, facility proved to be a highly efficient supplier of component products.

Profits of Zenith Radio Corporation of Canada, Ltd. were again affected as a result of curbs instituted by the Canadian Government. Its action in establishing an exchange ratio which further discounted the Canadian dollar in relation to the U. S. dollar and the imposition of additional tariffs presented serious obstacles to the Canadian operation.

Other subsidiary companies, in most instances, reported satisfactory operating results in contributing to Zenith's record consolidated sales and earnings.

CONSUMER PRODUCTS

Zenith consumer product sales increased substantially during the past year.

Color television played an important part in Zenith's increased sales volume in 1962. Consumer recognition of the high quality and superior performance of Zenith television receivers has contributed to the Company's rapid growth in color television sales. Although 1962 was its first full year in the production and sale of color television receivers, your Company has long been a pioneer in color television development. In 1939, for example, Zenith demonstrated color television in its color laboratories, and in 1949 built the color television receivers that were used for closed-circuit telecasting of surgical operations. The industry's first 21-inch rectangular color television receiver, using a Rauland-produced tube, was demonstrated by Zenith in 1954. Programs in engineering, manufacturing and marketing are keyed to assuring Zenith's continued leadership and participation in the growing color television market.

Zenith television sets were again the No. 1 choice of the consumer. Production and shipments were the highest in Zenith's history, exceeding one million units for the fourth successive year. Distributor sales to dealers were also at a record high.

High fidelity stereophonic instrument sales posted significant gains with production, factory shipments and distributor sales of Zenith sets at all-time highs. The public interest in stereophonic sound reproduction has been heightened by the rapid expansion of Stereo FM broadcasting since its approval by the Federal Communications Commission in April 1961. Zenith, a long time exponent of FM and major contributor to the development of Stereo FM, has been in an excellent position to benefit from this expanding market.

Distributor sales to dealers of radio receivers were the highest of any year in Zenith's history. Gains were shown in practically all categories.

Zenith's hearing aid division completed a comprehensive operational study during 1962 which will result in a major reorganization of the engineering, manufacturing and distribution functions. The changes, when completed in mid-1963, will further strengthen our hearing aid operations and assure Zenith's continued position as the world's leading producer of quality hearing aids.

Zenith's constant objective of producing quality

products incorporating unexcelled performance standards has remained unchanged during the past forty-four years. Back of each Zenith product are months, even years, of planning. Research, engineering, production and marketing at Zenith coordinate their timing, efforts and resources to bring the consumer outstanding products attractively designed, intelligently priced and aggressively merchandised.

RESEARCH AND SPECIAL PRODUCTS

Research and engineering have been major contributing factors to Zenith's growth and acknowledged leadership in the electronics industry. It is from these areas that come improvements and exclusive features for existing products. Here, too, is the source of ideas for new products to further our diversification and growth.

Research and engineering activities, directed exclusively to electronics, were further expanded and accelerated during 1962. Your Company is contributing to the advancement of many areas of scientific endeavor through continuing research in microwave communications; semi-conductor devices, infrared devices, lasers, luminescent and other solid state materials; special vacuum tubes and other fields. Research in solid state materials is being stepped up by the establishment of a research laboratory in England which is expected to be in operation by May.

Out of this continuing research and engineering have come an increasing number of products for defense and industrial applications, as well as improvements in consumer products. The Special Products Division was enlarged during the year to bring these special products to the market place and acquaint potential customers with our research achievements.

Your management proposes to continue its emphasis on these highly important areas of research and engineering. A review of research and special product activities starts on page 21.

EXPORT

Export operations during the year continued to be affected by ever-tightening import restrictions and dollar-exchange controls in the major foreign markets. Consumer product exports to Latin America declined substantially from 1961 whereas sales to Europe, Africa and several other markets were improved. Competition from foreign producers, particularly in the Far East, is unprecedented.

Your Company is, nevertheless, continuing to pursue the development of export policies and plans to effectively cope with the restrictions and competition currently experienced.

LITIGATION

The Company is involved in certain legal actions arising out of matters incident to the conduct of its business and adequate provision has been made for any liability resulting therefrom. In the opinion of management and counsel, the outcome of these litigations should be favorable to the Company.

EMPLOYEE RELATIONS

One of the Company's great strengths has been the ability, conscientious performance and support displayed by Zenith and subsidiary company employees. Your management is pleased that a mutual relationship of respect and understanding continues to exist between the Company, the employees and the unions representing hourly paid employees.

The Zenith Profit-Sharing Retirement Plan is of great value in attracting and retaining desirable employees. The Plan continues to provide Company employees with a double incentive for reducing costs, improving performance and increasing profits. The normal incentive, provided by the employees' participation in current profits, is augmented and intensified by the Plan's ownership of 672,300 shares of Zenith stock.

OUTLOOK

The year 1963 gives tangible promise of being another year of continued progress and growth for Zenith. Factory shipments of both color and black and white television receivers in January were at all-time record highs for *any* month. It is expected that sales for the first three months of 1963 will be the highest of any quarter in Zenith history.

The Board of Directors is grateful for the loyalty and outstanding efforts of the thousands of people—employees, distributors, dealers and suppliers—who have contributed so much to our success, and upon whom we rely for our future progress.

Respectfully submitted,

Hugh Robertson

Hugh Robertson, *Chairman*

Joseph S. Wright

March 11, 1963

Joseph S. Wright, *President*

YOUR COMPANY'S RECENT PROGRESS

NET SALES

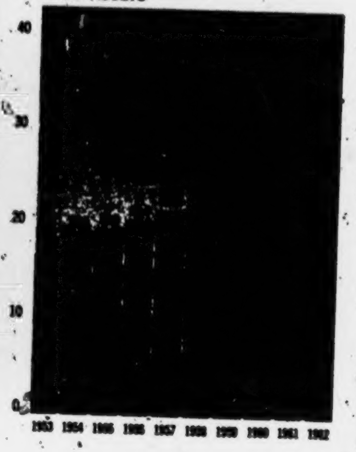
PROFITS

DIVIDENDS PAID*

NET WORTH

WORKING CAPITAL

FIXED ASSETS



*Adjusted to reflect two-for-one stock split on March [illegible], [illegible], three-for-one stock split on May 5, [illegible], and three-for-two stock split on November 2, 1962.

ZENITH RADIO CORPORATION AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS DECEMBER 31, 1962 AND 1961

ASSETS

	1962	1961
CURRENT ASSETS:		
Cash	$ 30,629,020	$ 29,457,069
U.S. Government securities, at cost	26,724,268	26,678,407
Receivables, less reserves of $2,516,600 in 1962 and $2,373,000 in 1961	25,843,266	24,298,124
Inventories, priced at lower of cost (first in, first out) or market, including finished goods of $6,206,318 in 1962, and $6,488,554 in 1961	25,103,780	23,507,568
Total current assets	108,300,334	103,941,168
OTHER ASSETS:		
Funds segregated for planned plant expansion represented by U.S. Government securities at cost	9,500,000	10,000,000
Receivable from settlement of litigation, due $1,000,000 annually, less $1,000,000 in current receivables	3,000,000	4,000,000
Prepaid expenses	749,039	771,256
Total other assets	13,249,039	14,771,256
PROPERTY, PLANTS AND EQUIPMENT, at cost	39,202,519	31,005,500
Less—Reserves for depreciation and amortization	17,140,532	16,377,422
Net property, plants and equipment	22,061,987	14,628,078
BROADCASTING STATIONS, PATENTS AND TRADEMARKS, at nominal value	1	1
	$143,611,361	$133,340,503

LIABILITIES

	1962	1961
CURRENT LIABILITIES:		
Accounts payable and accrued liabilities	$ 19,147,621	$ 18,544,182
Salaries, wages and taxes	9,034,279	9,568,450
Contribution to Zenith Profit-Sharing Retirement Plan	6,841,438	6,506,553
Provision for Federal income taxes, less U.S. Government securities of $17,000,000 in 1962 and $15,700,000 in 1961	64,296	80,545
Total current liabilities	35,087,634	34,699,730
CAPITAL STOCK AND SURPLUS:		
Capital stock, $1 par value per share; authorized, 12,000,000 shares; outstanding, 1962, 9,104,029 shares, 1961, 9,031,542 shares (note)	9,104,029	9,031,542
Capital surplus, per accompanying statement	1,227,360	158,326
Earned surplus, per accompanying statement	98,192,338	89,450,905
Total capital stock and surplus	108,523,727	98,640,773
	$143,611,361	$133,340,503

NOTE: Under the 1959 employees' stock option plan, ten-year options, exercisable one fifth eighteen months from date of grant and one fifth per year thereafter, are outstanding at December 31, 1962, for the purchase of [illegible] shares of authorized but unissued capital stock at prices ranging from $14.04 to $67.50 per share. During the year options for 72,487 shares were exercised, options for 1,500 shares were canceled and additional options totaling 7,250 shares were granted. 13,500 shares are available for the granting of additional options under the plan.

ZENITH RADIO CORPORATION AND SUBSIDIARIES

STATEMENTS OF CONSOLIDATED INCOME AND SURPLUS

FOR THE YEARS ENDED DECEMBER 31, 1962 AND 1961

INCOME

	1962	1961
NET SALES	$312,212,334	$274,167,987
COSTS AND EXPENSES:		
Cost of sales	234,366,925	202,810,349
Selling, advertising and administrative expenses	27,835,344	24,692,148
Contribution to Zenith Profit-Sharing Retirement Plan	6,841,428	6,506,583
Provision for depreciation	2,231,569	1,804,119
Total	271,275,266	235,813,199
Income before Federal income taxes	40,937,068	38,354,788
PROVISION FOR FEDERAL INCOME TAXES	21,300,000	20,340,000
Net income for the year	$ 19,637,068	$ 18,014,788

SURPLUS

	1962	
	Capital Surplus	Earned Surplus
BALANCE, DECEMBER 31, 1961	$ 158,325	$ 89,450,905
ADD:		
Net income for the year, as shown above	—	19,637,068
Excess of proceeds from sales of 72,487 shares of capital stock under employees' stock option plan over par value of stock issued	1,069,055	—
	1,227,380	109,087,973
DEDUCT:		
Cash dividends declared ($1.20 per share)	—	10,895,645
BALANCE, DECEMBER 31, 1962	$ 1,227,380	$ 98,192,328

AUDITORS' OPINION

To the Stockholders, Zenith Radio Corporation:

We have examined the consolidated balance sheet of Zenith Radio Corporation (a Delaware corporation) and Subsidiaries as of December 31, 1962, and the related statements of consolidated income and surplus for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying consolidated balance sheet and related statements of consolidated income and surplus present fairly the financial position of Zenith Radio Corporation and Subsidiaries as of December 31, 1962, and the results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Arthur Andersen & Co.

Chicago, Illinois,
February 11, 1963.

PLAINTIFF'S EXHIBIT NO. 63.

ZENITH RADIO CORPORATION.

Operating Profit Percentages (Canadian Sales).

	1960	1961	1962	1963
Television				
Used in tabulation of last profit	16.14%	20.63%	22.06%	22.08%
Reduction for expenses considered fixed:				
Advertising	1.34	1.16	2.85	3.24
Fringe on direct labor	1.12	1.31	1.10	.89
Tools & dies	.89	.80	.75	.82
Factory overhead	3.34	2.88	3.48	3.28
Engineering	2.18	1.91	1.67	1.63
Indirect administrative	1.39	1.80	1.65	1.37
Legal expense	.28	.21	.43	.18
Sales expense	.80	.58	.76	.85
	11.34	10.65	12.69	12.26
Purported actual operating profit	4.80%	9.98%	9.37%	9.82%
Radio				
Used in tabulation of last profit	16.02%	17.48%	19.80%	20.90%
Reductions for expenses considered fixed:				
Advertising	1.51	1.14	2.84	3.25
Fringe on direct labor	1.12	1.28	1.22	1.00
Tools & dies	.50	.45	.45	.43
Factory overhead	2.71	2.30	3.13	2.57
Engineering	2.18	1.91	1.67	1.70
Indirect administrative	1.39	1.80	1.65	1.42
Legal expense	.28	.21	.43	.18
Sales expense	.71	.58	.89	1.02
	10.40	9.67	12.28	11.57
Purported actual operating profit	5.62%	7.81%	7.52%	9.33%

1541

UNITED STATES DISTRICT COURT.
Chicago 4

Chambers of
Judge Richard B. Austin

January 25, 1965.

Mason, Kohlmainen, Rathburn & Wyss.
20 North Wacker Drive,
Chicago, Illinois 60606,

Dugald S. McDougall, Esquire,
135 South LaSalle Street,
Chicago, Illinois,

Messrs. Thomas C. McConnell and Philip J. Curtis,
134 South LaSalle Street,
Chicago, Illinois,

Francis W. Crotty, Esquire,
6001 W. Dickens Avenue,
Chicago, Illinois.

Re: Hazeltine Research, Inc. *vs.* Zenith Radio Corp.,
59 C 1847.

Gentlemen:

The court has reviewed the evidence, exhibits and briefs of the parties on both the patent and antitrust phases of the above cause and finds for the defendant on the issues raised by the complaint and answer and the counterclaim.

The Findings of Fact and Conclusions of Law proposed by defendant accord with those which the court would have entered and they are hereby adopted as the court's findings and conclusions. These have this day been signed and entered.

Counsel are directed to submit an appropriate judgment order within thirty (30) days from date hereof.

The court appreciates the able presentation of this case made by all counsel and their invaluable assistance in the submission of their proposed findings and conclusions.

Very truly yours,

R. B. Austin,
Judge.

1484 IN THE UNITED STATES DISTRICT COURT.

Northern District of Illinois,

Eastern Division.

Hazeltine Research, Inc.,
Plaintiff,
vs.
Zenith Radio Corporation,
Defendant.

No. 59 C 1847

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE PATENT AND ANTITRUST ISSUES.

Part I—Findings of Fact.

1485 Findings of Fact and Conclusions of Law.

I. The Parties, The Action, And The Issues.

1. Plaintiff Hazeltine Research, Inc., an Illinois corporation, is a patent holding and licensing company. Defendant Zenith Radio Corporation, a Delaware corporation, is a manufacturer of radio and television receivers. Both parties have regular and established places of business in Chicago, Illinois, in this District and Division.

2. The complaint alleges a cause of action for patent infringement, and the jurisdiction of this Court arises from the patent laws of the United States. The venue is properly laid in this District and Division.

3. The patent in suit is United States Letters Patent No. 2,547,648, entitled "Automatic Contrast Control System For Television Apparatus," issued to plaintiff on April 3, 1951, as the assignee of Arthur V. Loughren. Plaintiff has owned the Loughren patent at all times since its issuance. It was granted on an application, Serial No. 120,404, filed in the United States Patent Office on October 8, 1949. That application is asserted by plaintiff to be a "continua-

tion" of a prior application, Serial No. 643,287, filed on January 25, 1946. On the basis of that assertion, plaintiff contends that the 1949 application is legally entitled to the 1946 filing date of the earlier one. Defendant challenges this position, asserting that the 1949 application was not truly a "continuation" and hence not legally entitled to the 1946 date.

1486 4. Defendant is charged with having infringed claims 1, 2, and 4 of the patent in suit, the accused products being television receivers made and sold by defendant. All three of those claims were first submitted to the Patent Office in the aforementioned 1949 application, Serial No. 120,404. None of the claims carried forward from plaintiff's 1946 application is involved in the case.

5. Defendant denies having infringed plaintiff's patent, and it further avers that, in any event, plaintiff's claims in suit are invalid. The invalidity defense rests on these two independent grounds:

(a) Defendant asserts that the patent in suit, insofar as the claims alleged to be infringed are concerned, has an effective filing date of October 8, 1949, when the second application was filed, and that the claims in suit are accordingly invalid by reason of publication of their subject matter, and public use and sale thereof in this country, more than one year before the filing date of the patent.

(b) Defendant asserts that the claims in suit are void, regardless of their effective filing date, for failure to describe any invention patentable over the prior art.

Defendant also pleaded that the patent in suit is unenforceable by reason of its misuse by plaintiff. This defense, however, was reserved for separate trial, along with defendant's counterclaim seeking damages from plaintiff for anti-trust law violations.

1487 II. Facts Concerning Electrical Concepts and Circuit Elements Involved in the Case.

6. The term "current" in the electrical sense, refers to movement of electric charges. There are two types of electrical charge—positive and negative—but normally only negative charges (known as electrons) are mobile, and in consequence electric current nearly always consists of a flow of electrons. It is a characteristic of electric currents that they can flow only in a closed path or loop, and such a closed path is known in electrical parlance as a "circuit." A simple circuit may consist of only a single loop; more complex circuits may involve several interconnected loops.

7. There are two basic types of electric current, known respectively as "direct current" and "alternating current." A direct current is one that flows around a circuit in only one direction, whereas an alternating current is one which periodically reverses its direction of flow. In television circuits, the currents are often of complex character, involving both direct-current components and alternating-current components.

8. The force that makes current flow in a circuit is commonly called "voltake" or "potential"; it may be thought of as electrical "pressure", analogous in some respects to hydraulic pressure. Voltage results from the fact that unlike electric charges exert an attractive force on one another, which like charge exert on one another a corresponding repelling force. Anything that will cause a non-uniform distribution of electric charge in an object will create a voltage, and such voltage will produce an electric current if an electrical conductor is provided to complete a circuit between the oppositely charged portions of the object. The common chemical battery is one familiar type of voltage-generating device.

1488 9. Voltage is commonly measured from one point in a circuit with respect to some reference point in the same circuit. In television equipment, the reference point most commonly used is the metal chassis on which the parts are mounted, and this is usually called "ground," even though in practice there may be no actual conductor joining the metal chassis to the earth.

10. A "resistor" is an electric circuit element intentionally designed to offer resistance to the flow of electric current through it, the amount of such resistance being measured in terms of a unit called the "ohm." When current flows through a resistor, a voltage proportional in magnitude to that of the current appears across the resistor's terminals. Accordingly, in addition to being used for other purposes, resistors are often employed in television apparatus to derive from a varying signal current a proportionally varying signal voltage. When thus used, a resistor may be called an "impedance" or "load impedance."

11. A "capacitor" is an electric device having the property of storing electric charge, analogous in some ways to an elevated water tank. When connected in a circuit with a direct-voltage source, a capacitor will accumulate charge from the source until the stored charge produces a counter-voltage equal to the source voltage. If a charged capacitor is connected into a conductive circuit, it will act temporarily as a voltage source and drive current around the circuit. Because a capacitor, unlike a battery, has no internal means of rnewing its charge, however, the voltage of the capacitor will diminish as the current flows and ultimately drop to zero, unless its charge is replenished from some outside source.

12. Of outstanding prominence among the electrical components dealt with in this record are the devices 1489 known as "vacuum tubes." Two types are relevant here—the two-element vacuum tube, known as a

"diode," and the vacuum tube having three or more elements, generically known as a "grid-controlled tube."

13. A two-element vacuum tube or "diode" consists of an evacuated envelope, usually made of glass, containing one conductive element called a "cathode" and another called an "anode" or "plate." These electrodes are spaced a short distance apart, with a vacuum in between. The cathode is coated with a material having the property, when heated, of giving off electrons (i.e., negative electric charges) in great quantities. When the anode is at a negative voltage with respect to the cathode, these electrons do not go anywhere; they simply form a "cloud" around the cathode. If a voltage source be connected in a circuit with the cathode and anode so as to charge the anode to a positive voltage with respect to the cathode, however, the attractive force exerted by the positive anode will draw the electrons from the cathode across the intervening vacuum and thus create an electric current in the circuit. No electrons will flow through the diode in the other direction, however, even if the polarity of the voltage source be reversed. Devices, such as diode tubes, which have this property of conducting current in only one direction are known in the electrical art as "rectifiers."

14. A "grid-controlled tube" is a device which, like the diode, has a cathode and an anode enclosed in an evacuated envelope. It has in addition, however, a third electrode called a "grid," situated in the space between the cathode and the anode. This grid is formed of spaced wires which do not, in the mechanical sense, prevent the flow of electron current from the cathode to the anode, but which may, by electric forces, control—i.e., regulate—the rate at which such current flows. If the grid be at the same voltage
1490 as the cathode, electron current, will flow from the cathode to the anode whenever the anode voltage is positive with respect to the cathode, just as in a diode.

If the grid voltage be made negative relative to the cathode, however, the rate of electron flow from cathode to anode will be reduced, and if the grid voltage be made sufficiently negative with respect to the cathode, the electron current between cathode and anode will be cut off entirely. Thus the grid performs a function analogous to that of an adjustable valve in a water hose. Tubes having only one grid are called "tridoes," indicating that the tube contains three electrodes. Some tubes have more than one grid and are called "tetrodes," "pentodes," etc., depending on the number of electrodes they contain.

15. All the electrical concepts and circuit elements described in the findings just foregoing were old and well know prior to any of the work on which plaintiff's patent in suit is based.

III. How Television Pictures Are Transmitted And Received.

16. In a television system, an image of the scene to be televised is projected by a lens system onto the screen of a "camera tube", where the image is "scanned" by a rapidly moving electron beam sweeping across the image from side to side, each sweep being vertically shifted by a small amount from the path of its predecessor, so that the entire image area is progressively traversed. As this electron beam in the camera tube "scans" the image of the scene being televised, its intensity varies in proportion to the brightness of the various parts of the image; in this way, a varying electric current is generated which represents the degree of brightness of the parts of the image progressively scanned. This current (known as 1491 "video signal current") is employed at the television broadcasting station to generate radio waves having corresponding intensity variations, and these in turn may be picked up by television receivers within the range of

the broadcast station. The receiver circuits utilize the radio waves to develop a video signal voltage that has intensity variations corresponding in pattern to those of the video signal current generated by the camera tube at the broadcasting station. After being amplified by a circuit in the receiver known as a "video amplifier", this video signal voltage is applied to the receiver picture tube and there used to control the intensity of an electron beam which sweeps systematically across the picture-tube screen, producing thereon a reproduction of the original image televised by the broadcasting station.

17. For the image on the receiver picture tube to correspond to that transmitted by the broadcasting station, the electron beam in the picture tube must "scan" the receiver screen in exact time synchronism with the electron beam in the camera tube. This is accomplished by modulating the radio waves from the broadcasting station with control signals (known as "synchronizing pulses" or, more commonly, "sync pulses") which are used in the receiver to govern the timing of the picture-tube scanning. These sync pulses are of uniform magnitude and occur periodically in the video signal voltage, interspersed in time between the portions representing light and dark areas of the picture. Immediately following each sync pulse is another short-duration voltage pulse that represents the so-called "black level"—*i.e.,* the amount of signal voltage corresponding to a black area of the picture.

18. The television system used in the United States is of a type known as "negative modulation", in which 1492 increasing radio-wave intensity represents darkening, as opposed to brightening, of the transmitted picture. In England, at least until recently, a so-called "positive modulation" system was used, in which increasing wave intensity represented an increase in picture brightness—*i.e.,* the converse of the negative-modulation system. Both

these types if television systems were known, and their characteristics understood, long before the work underlying plaintiff's patent in suit was done. (R. 93, 95-96, 103)

IV.—Automatic Gain-Control Circuits—Their Purpose, History, and Basic Operating Principles.

19. To do its work well, the picture tube of a television receiver should be supplied with a video signal voltage of reasonably uniform intensity—that is, the range of video signal voltage defining the spread from white to black should be essentially the same whether the receiver is tuned to a powerful station or a weaker one, and notwithstanding changes in atmospheric conditions affecting the strength of the received radio waves. In television receivers, this is achieved by means of circuits known, interchangeably, as "automatic gain control" or "automatic contrast control" circuits. These names are frequently shortened to "AGC" and "ACC", respectively. AGC circuits for television receivers have been known since a date long prior to the work which led to the patent in suit. All such circuits—prior-art and contemporary alike—operate on the same basic principle, which involves generating an electrical control voltage proportional to the strength of the received radio waves, such control voltage being then applied to the television receiver circuits in such a way as automatically to reduce the amplification when the received signal grows in strength and increase it when the received signal weakens. Hence a video signal voltage
1493 of substantially uniform intensity is obtained for operation of the picture tube, despite wide variations in the strength of the radio waves that bring the television signal to the receiver. (R. 74, 153, 275)

20. Even before television, AGC circuits were known and used in connection with sound radio receivers. These

two branches of the radio art—sound radio and television—are so related historically and professionally that a skilled worker designing an AGC circuit for television could reasonably be expected to consult the literature on sound-receiver AGC circuits as a source of ideas. Plaintiff's expert witness conceded this. (R. 1446)

21. Numerous television AGC circuits—some of them simple and some of them rather complex—had been developed before the work underlying the patent in suit was done. While these circuits varied greatly in their details, they all had in common the development of the AGC control voltage in a so-called "integrating load circuit", consisting of a capacitor and a resistor connected in parallel. This old feature has been carried forward into modern AGC circuits and is utilized in all the circuits directly involved in this case. (R. 594-595)

22. In one AGC circuit acknowledged to be prior art, the integrating load circuit was supplied with current fed through a diode rectifier from the so-called "video detector" of the television receiver. This developed across the integrating load circuit a d-c voltage substantially equal to the peak magnitude of the video signal voltage, which, in the negative-modulation television system, was that of the sync pulses. While this AGC system was simple and would work, its control of receiver gain was not as sensitive as might be desired. This deficiency could be overcome by adding a d-c amplifier to raise the magnitude of the AGC voltage before using it to control the receiver gain,
1494 but this had the disadvantage of requiring an extra stage of amplification in the AGC system. (R. 689, 702-704)

23. The simple AGC circuit just described could not be used with "positive modulation" television signals, because in such signals the peak magnitude would vary with the picture brightness as well as with changes in signal

strength. The "black level" portions of positive-modulation television signals were a suitable index of actual signal strength, however, and early television designers accordingly developed AGC systems that were specifically engineered to develop an AGC control voltage proportional to the "black level". This was done by measuring the signal voltage only at those instants of time during which the black-level component was being received, and the circuits which accomplished that result were known, in the engineer's jargon, as "reacher-inners". These circuits, while designed primarily for positive-modulation television, would also work—and equally well—in receiving negative-modulation television pictures. Such circuits were known as early as the 1930's. (R. 221-222)

V. The AGC Circuit Of The Patent In Suit—How It was Developed And How It Works.

24. The work underlying the patent in suit was undertaken in the fall of 1945, when Arthur V. Loughren, named in the patent in suit as inventor, was in charge of an engineering group in plaintiff's laboratory. Loughren's task at hand was designing a television receiver, and one of the goals desired was an improved AGC system. An engineer named Bailey, in Loughren's group, suggested to Loughren that a more sentitive AGC could be secured if one were to start with the video signal voltage derived from the load impediance of the video amplifier, rather than from the video detector. (This was not a new idea, al-
1495 though Loughren at that time may have thought it was.) Starting with that lead, Loughren developed the AGC circuit of which several variants were illustrated and described in his original patent application. (R. 231-236, 815-816, 1451)

25 The main difficulty to be overcome in designing an AGC circuit that would utilize the signal voltage at the

video amplified load impedance is that the d-c voltage level at that point in a television receiver is positive with respect to ground, whereas the AGC control voltage itself must be negative with respect to ground. Loughren's idea for overcoming this difficulty consisted in offsetting the positive d-c voltage at the video amplifier load impedance by connecting the load impedance in a direct-current series circuit with the conventional components of a simple AGC circuit—*i. e.*, a diode rectifier and an integrating load circuit—and adding into the same circuit a source of voltage that would offset or "buck" the troublesome d-c voltage. This "bucking" voltage, Loughren realized, could be a mere battery, but this was deemed commercially impractical, even though it would work satisfactorily. It then occurred to Loughren that a similar result could be attained by inserting into the direct-current series circuit a source of alternating voltage, of such magnitude and frequency as to offset the d-c voltage during at least some of the periods in which sync pulses were being received. By this means, Loughren reasoned, the AGC diode would be able to conduct on sync pulses and thus develop in the integrating load circuit an AGC control voltage of the desired polarity. This approach was tried out in the laboratory, and it worked. (R. 158, 235-238)

26. Loughren's AGC circuit thus developed was more sensitive than its simple forerunner that operated on video signal voltage taken directly from the video detector, 1496 since Loughren's circuit utilized the gain of the video amplifier for AGC purposes. It had, however, certain definite requirements for successful operation, and they were clearly acknowledged in the original patent application filed on Loughren's circuit, in January of 1946. These essential requirements were:

(a) The direct-current series circuit that included the AGC rectifier and the integrating load circuit had to include also at least a portion of the video-amplifier load impedance. (R. 639, 720, 966)

(b) the video signal voltage obtained at the video-amplifier load impedance had to be of negative polarity. (R. 742, 978)

(c) The peak magnitude of the a-c "bucking" voltage introduced into the direct-current series circuit had to be approximately equal to the d-c voltage being "offset", *i. e.*, the d-c voltage at the video-amplifier load impedance. (R. 529-530, 533-534, 716-717)

27. While Loughren's AGC circuit was tested in plaintiff's laboratory with satisfactory results, and was made the subject of a patent application, it never won any commercial recognition. In fact, no television receiver sold in the United States by any commercial mnaufacturer, so far as plaintiff knows, has ever utilized any of the circuits disclosed in the Loughren patent. Moreover, none of those circuits was ever reported by plaintiff to its patent licensees, although it was plaintiff's practice so to report developments deemed important. (R. 258, 324-325, 370)

1497 VI The History of The Patent In Suit.

28. Plaintiff's original patent application on Loughren's AGC circuit was filed January 25, 1946. In that application several variants of Longhren's circuit were illustrated and described, with due recognition given to the required conditions for operation noted in Finding 26. All the claims originally filed in that application, and all those subsequently added by amendment, recited explicitly that the rectifier, the integrating load circuit, and at least a part of the video-amplifier load impedance must be connected together in a direct-current series circuit. In short, the original Loughren patent application of 1946 was ex-

pressly restricted in its concept, its description, its drawings, and its claims to an AGC system in which that basic requirement was met. No other form of AGC circuit was described, illustrated, suggested, or claimed in that application. (PL-2, pp. 8-9, 11, 19-32, 49, 50-62)

29. The Patent Office history of the 1946 Loughren application was routine, and the application was formally allowed, with fourteen claims, on August 26, 1949. It never matured into a United States patent, however; instead, it was abandoned by plaintiff after being replaced on October 8, 1949, by the revised application which plaintiff calls a "continuation". (PL-2, pp. 90-91; PL-4, third sheet)

30. The events leading up to plaintiff's abandonment of its 1946 application and its replacement by a revised application began with Radio Corporation of America's publication, on March 15, 1949, of its technical bulletin No. LB-769. In that bulletin RCA published a television AGC circuit that resembled Loughren's circuit in some basic respects wherein both Loughren and RCA had borrowed from the prior art, but was radically different from the Loughren circuit in other respects. The princi-
1498 pal differences between Loughren's AGC circuit and that of the RCA bulletin were these:

(a) All the circuits illustrated, described, or suggested in Loughren's 1946 application used a diode rectifier as an AGC tube. The RCA circuit employed no such diode rectifier; its AGC tube was of the grid-controlled type. (PL-1, PL-22. [illegible] 686)

(b) The circuit of Loughren's 1946 application, in all its variants, required that at least a portion of the video-amplifier load impedance be connected in a direct-current series circuit with the diode rectifier and the integrating load circuit. In the RCA circuit no such connections were made; instead, the load impedance of the video amplifier was connected to the grid of the AGC tube and was not connected in a direct-current series circuit with either the AGC tube or the integrating load circuit. (R. 639, 720, 726, 966, 1104)

(c) Loughren's circuit required, as a condition of successful operation, the use of a video signal voltage that was negatively polarized. The RCA circuit, on the other hand, utilized—and required —a video signal voltage of positive polarity. (R. 632, 742)

(d) The AGC system disclosed in Loughren's 1946 application used an a-c voltage supply which was part of his basic direct-current series circuit and acted as an "offset" to the d-c voltage on the video-amplifier load impedance. The peak magnitude of this a-c voltage in Loughren's system was critical; it had to be approximately equal to the d-c voltage that it was required to offset. In RCA's circuit, on the other hand, an a-c voltage was used, but its magnitude was not critical.
1499 Indeed, the only limiting factor on the size of that voltage was the insulation in the AGC tube. (R. 529-530, 533-534, 716-717, 743)

(e) Loughren's AGC circuit had an inherent characteristic of "loading" the video amplifier—*i. e.*, reducing the magnitude of the video signal voltage during periods in which the diode rectifier was conducting. (Stated in the conventional engineering parlance employed both by plaintiff's inventor-witness Loughren and defendant's expert witness Johnson, this loading action of the Loughren circuit on the video amplifier is equivalent to drawing energy from that amplifier to develop the AGC control voltage.) In RCA's circuit, no such inherent loading effect existed. (R. 319-321, 1402)

31. Within a few days after its publication, the RCA bulletin LB-769 came to Loughren's attention, and on March 24, 1949, Loughren sent a memorandum to one of plaintiff's principal officers, calling attention to the report and suggesting that the RCA circuit shown therein be examined in connection with the then-pending Loughren patent application, to determine whether the claims of the application would "dominate" the RCA circuit. Such an examination was made, the conclusion was reached that the Loughren patent application as it then stood did not "dominate" the RCA circuit, and steps directed to achieving such "domination" were initiated. A tentative claim was drafted on September 12, 1949, in language which plaintiff considered broad enough to describe or "read on" the RCA circuit as well as on its own circuit. This draft claim was identified by the same file number that plaintiff used for the original Loughren application, and was numbered "31", the next higher number in the sequence of claims submitted in such original application. Hence it
1500 appears that plaintiff for a time was considering submission of this broadened claim in the original Loughren application. Plaintiff soon decided, however, that a new patent application would be necessary to achieve its purpose; the next draft claim that plaintiff prepared, dated September 14, 1949, was numbered "1", and was assigned a new file number. Both draft claims were personally reviewed, and edited in his own handwriting, by the officer of plaintiff who had charge of its patent activities, and the second draft claim was, in addition, reviewed and approved by Loughren himself. One of the draft claims bears the handwritten notation "Broad"; the other has a marginal notation reading "Covers RCA keyed AGC system." (PL-21; PL-22; DX F-1; DX F-2; R. 271, 998-1018)

32. One of the handwritten changes in the second draft

claim, made personally by plaintiff's officer, consisted in striking from the text the word "amplifier" and substituting the broader term "repeater". This shows to be unfounded the contention, now made by plaintiff, that the word "repeater" in the claims in suit should be restrictively interpreted to mean only "amplifier". Plaintiff's choice of "repeater" in preference to "amplifier" was, it is plain, a conscious and deliberate broadening of the claim's scope. (DX F-2; R. 1018)

33. As already noted, every claim presented in the original Loughren application called explicitly for a direct-current series circuit including the rectifier, and the integrating load circurit, and "at least a portion" of the viedo-amplifier load impedance. In the revised claims which plaintiff drafted for the revised Loughren application, that plain and accurate description of Loughren's circuit 1501 arrangement was replaced with this recitation:

> ". . . a dircet-current series circuit including a rectifier *conductively connected* to said load impedance, an integrating load circuit for said rectifier and means for supplying a periodic potential to said series circuit . . ."

Thus, plaintiff edited out of its new claims the requirement, essential to successful operation of Loughren's circuit, that the direct-current series circuit must include "at least a portion of" the load impedance. (PL-2; DX F-2; PL-4, pp. 19-22)

34. The revised application was filed in the Patent Office on October 8, 1949. It contained, in addition to the fourteen claims previously allowed in the original application, five new claims drafted along the lines above indicated. The specification of the new application was revised, with respect to the original text, by editing out the passages referring to the necessity for including "at least a portion" of the video-amplifier load impedance in the

direct-current series circuit. Instead, that feature of Loughren's circuit was characterized, in the new application, as merely permissive or optional. The drawings of the original Loughren application were transferred, without alteration, to the revised application. (R. 1025, 1033; PL-4, pp. 19-22; and compare PL-2, p. 8, lines 10-13, and p. 9, lines 4-9, with PL-4, p. 8, lines 15-27, and p. 9, lines 12-21.)

35. The aforementioned differences between the specification of the revised Loughren application and that of the first Loughgren application constituted new matter for which no foundation existed in the original text. The feature that was characterized in the revised application as optional was not in fact optional or permissive in respect to the disclosure of the original application; it was, on the contrary, an essential requirement for
1502 successful operation of the circuits disclosed. (Plaintiff's expert witness so acknowledged.) The broader claims first submitted in the revised Loghren application were intentionally drafted by plaintiff to embrace concepts and circuit arrangements not disclosed or suggested in the original Loughren text. Their purpose, in fact, was to "dominate" the circuit independently developed by RCA and published by it in March of 1949. (R. 639, 966; PL-21; DX F-1)

36. In the course of the prosecution of the revised application, plaintiff succeeded in securing allowance by the Patent Office of four of the newly added broader claims, and the patent in suit hence issued on April 3, 1951, with eighteen claims—*i.e.*, the four new ones and the fourteen old claims brought forward from the old application. (None of those old claims is here alleged to be infringed.) During the prosecution of the revised application, plaintiff made representations as to the scope and meaning of the

new claims which defendant relies on as estoppels. These representations are dealt with hereinafter, in the findings which deal with the issue of infringement.

VII. Defendant's AGC Circuit Accused Of Infringement —Its Structure, Operation, And Origin.

37. Plaintiff has chosen defendant's television receiver model 16D21 as representative of the receivers accused of infringement. The full circuit diagram of that receiver is exhibit PL-7, and a simplified diagram of its AGC circuit is exhibit PL-23. The accused AGC system includes a video amplifier, which has a load impedance, identified on PL-23 as resistor R6. The AGC tube is of the grid-controlled type, identified on PL-23 as "1/2V9", and the video-amplifier load impedance is conductively connected to
1503 one of the grids of the AGC tube by a network of resistors, resulting in application to that grid of a positively polarized video signal voltage. An a-c voltage supply is connected to the plate of the AGC tube through a capacitor, thus applying thereto a train of positive voltage pulses that occur synchronously with sync pulses in the video signal voltage. The cathode-plate circuit of the AGC tube also contains an integrating load circuit across which the negatively polarized AGC control voltage is developed. The only direct-current series circuit in the accused AGC system is one which includes the cathode-plate path of the AGC tube and the integrating load circuit but does not include either the a-c voltage supply nor any part of the video-amplifier load impedance. (R. 398, 401, 565, 750-753)

38. While defendant's accused AGC circuit differs substantially from both plaintiff's Loughren circuit and that of the RCA bulletin, it has much more in common with the RCA circuit than with the Loughren circuit. Thus, it utilizes a grid-controlled tube rather than a diode, it oper-

ates on a positively polarized video signal voltage rather than a negative one, and it has no direct-current series circuit which includes the video amplifier load impedance. Further, the a-c voltage used in the accused circuit is about twice as great in peak magnitude as the d-c voltage on the video-amplifier load impedance and is not critical. All these characteristics represent respects in which the accused AGC system is like the RCA circuit and different from that of Loughren. Moreover, the accused circuit has the further difference from the Loughren circuit that its a-c voltage supply is not connected in a direct-current series circuit with the AGC tube and the integrating load circuit. To sum up, the accused circuit differs from that of plaintiff's Loughren circuit to an even greater
1504 degree than did the 1949 RCA circuit. (R. 437, 747-753, 1104-1105)

39. The record leaves no doubt that defendant's accused circuit was developed independently, without any assistance from, or indebtedness to, plaintiff. The first television receiver marketed by defendant, introduced to its distributors in September, 1948, and sold to the public shortly thereafter, contained an AGC circuit which, the expert witnesses for both parties agreed, was fully equivalent to the now-accused system in structure and operation, differing therefrom only in minor details of no significance for present purposes. That early circuit, moreover, was published by defendant in an instruction manual widely circulated in September, 1948. The earliest date on which plaintiff even claims to have supplied defendant with information on an AGC system was July, 1950, when its technical bulletin No. 7107 (Exhibit PL-19) was published. (R. 364, 818, 904, 1307)

VIII. Facts Bearing On The Defense That Plaintiff's Claims In Suit Are Invalid By Reason Of Prior Publication And Public Use.

40. The revised Loughren patent application of October 8, 1949, on which the patent in suit issued, was not a true "continuation" of the original Loughren application of January 25, 1946. On the contrary, it was drafted and filed by plaintiff for the conscious purpose of securing a broader patent monopoly than the disclosure of the original application afforded foundation for. This was done with the goal of "dominating" an AGC system, developed by RCA and first published in March of 1949, that was outside, and distinct from, the concepts and teachings disclosed and claimed in the original Loughren application of 1946. To provide a foundation for claims broad enough to "dominate" the RCA circuit, plaintiff wrote into
1505 the 1949 Loughren specification new matter not disclosed in the original 1946 application. All the claims here in suit were first presented in the 1949 revised application, and they all depend, as foundation for their asserted scope, upon the new matter added in 1949. Insofar as the claims here in suit are concerned, therefore, the patent in suit is entitled to no filing date earlier than that on which it was actually lodged in the Patent Office, namely, October 8, 1949. (See record references cited to findings Nos. 28-35, *supra.*)

41. The record establishes beyond doubt that the defendant developed, publicly used, and published, more than one year before October 8, 1949, a television AGC circuit that was fully equivalent, in structure and function, to its AGC circuit herein alleged to infringe. Specific facts concerning this prior knowledge, prior public use, and prior publication by defendant are as follows:

(a) Defendant's first commercial television receiver, designated Model 28F20, was engineered and ready for mass production by mid-September, 1948. (R. 907; DX C-9, DX D-1 to D-3)

(b) In that month, defendant conducted a school, at its place of business in Chicago, to familiarize the service managers of its various distributors with the circuit details and operation of its then-new Model 28F20 television sets, of which specimens had already been manufactured. The school was conducted in three sessions, the first of which ran from September 20 to September 24, 1948, and the second of which ran from September 27 to October 1, 1948. The service managers who attended these first two sessions, more than twenty in all, came from cities scattered throughout the United States and, with but a few exceptions, were employees of independent distributing companies
1506 rather than of defendant's subsidiaries. (R. 887, 898, 901; DX D-1 to D-3)

(c) Defendant by that time had already prepared and printed several hundred copies of a printed service manual for its television receiver Model 28F20, and that manual was used as the textbook for the aforementioned school. Copies therof were distributed to all of the persons who attended the school and were retained by them when, upon completing the course, they returned to their respective companies. That service manual contained a complete wiring diagram of defendant's television receiver Model 28F20, including the AGC circuit that formed a part thereof, and it also contained five paragraphs of descriptive text, captioned "Gated A.G.C.", which described the AGC circuit's operation. (R. 893, 904; DX C-9)

(d) During the school sessions which took place in September of 1948, specimens of defendant's television receivers, Model 28F20, were shown to the persons attending the school and demonstrated to them. Servicing adjustments on various parts of the receiver were demonstrated and explained to the students; specifically, the operation of the AGC circuit was described by the instructor and its adjustment for proper operation was demonstrated. (R. 901-903; DX C-9)

(e) All of these events took place on or prior to October 1, 1948, and more than one year before the filing date of the application on which the patent in suit issued. (R. 898; DX D-1 to D-3)

42. Italian patent No. 429,415, which was a substantial counterpart of the original Loughren United States application, issued on January 24, 1948. The drawings and
1507 specification of that Italian patent constituted a disclosure of subject matter within the scope of the claims in suit, published more than eighteen months prior to October 8, 1949, the filing date of the application on which the patent in suit issued. (DX E)

IX. Facts Bearing On The Defense That Plaintiff's Claims In Suit Are Invalid For Want Of Invention Over The Prior Art.

43. Defendant contends that the claims in suit, if interpreted broadly enough to embrace the AGC circuit herein alleged to infringe, are invalid for want of invention over the prior art, even if such claims were entitled as a matter of law to the January 25, 1946, filing date of the original Loughren application. This contention rests upon the following grounds:

(a) That the claims in suit, so construed, "read on", and are hence anticipated by, the disclosure of the Hardwick U. S. patent No. 2,307,218, issued in 1943;

(b) That the claims in suit, so construed, define subject matter that was obvious, and hence non-inventive, in view of the disclosure of Beers U. S. patent No. 2,120,999, issued in 1938; and

(c) That the claims in suit, so construed, define subject matter that was obvious, and hence non-inventive, in view of the teachings in Blumlein U. S. patents Nos. 2,307,375 and 2,224,134, respectively issued in 1943 and 1940, and Holmes U. S. patent No. 2,230,295, issued in 1941. (DX C-1, Tabs 1-3 and 5-6)

44. If given the broad interpretation plaintiff contends
for, the claims in suit do "read on" the AGC system
shown and described in the Hardwick patent. Defend-
1508 ant's expert witness applied the claims in suit to the
Hardwick disclosure and found each element thereof
present in Hardwick's circuit. This testimony, which the Court believes, was strongly corroborated by plaintiff's written admission, made before the present litigation started, that "We cannot question but that the Hardwick patent does accomplish generally the same result as Loughren." Plaintiff's expert witness attempted on direct examination to distinguish the claims in suit from the Hardwick disclosure, but his testimony to that effect was effectively negated on cross-examination. From his testimony as a whole, it is plain that such distinctions as do exist between Hardwick's disclosure and Loughren's AGC circuit relate to features not recited in the claims in suit and hence not available as grounds for saving the claims from anticipation. (R. 802-808, 1181-1197, 1210-1212, 1475-1503; DX F-6)

45. The Hardwick patent was of record in the Patent Office but was never applied against the Loughren claims by the examiner. Any presumption of validity to be gathered from that fact, however, has been sufficiently

overcome by the evidence in this record. Moreover, there is reason to believe from the Patent Office file that the examiner's failure to rely on Hardwick may have stemmed from plaintiff's representation that the term "rectifier" as used in the claims in suit did not embrace grid-controlled tubes. The AGC tube in the Hardwick cicruit was of the grid-controlled type. (R. 800, 939-940; PL-4, pages 53-54)

46. Given the broad interpretation which plaintiff insists the claims in suit should have (and must have if they are to cover defendant's accused AGC circuit), they are anticipated by the disclosure of the Hardwick patent and define no invention thereover.

1509 47. The Beers prior-art patent discloses an AGC circuit in the environment of a sound radio receiver. Some circuit changes would be necessary to adapt the Beers circuit for use in a television receiver, but such modifications were of a known and obvious character well within the skill of the art at the time Loughren's work was done. (DX C-1, Tab 1; R. 1456-1457)

48. The similarities between the Beers circuit and defendant's accused AGC circuit are striking. In both circuits a grid-controlled tube is used as the AGC tube; in both an a-c voltage is applied to the plate of the AGC tube, the signal voltage being applied to its grid; and similarly the AGC control voltage is developed in both instances across an integrating load circuit connected in the cathode-plate circuit of the AGC tube. The so-called "voltage offset" function accomplished by the a-c voltage supply in defendant's accused AGC circuit is identical to the corresponding function of the a-c voltage supply in the Beers circuit. (R. 811-816, 1400-1401)

49. The Beers patent discloses an AGC circuit having all of the structural elements of the claims in suit except

for the "direct-current electron tube repeater" which the claims call for. The claims in suit cannot be deemed patentable on the basis of that distinction, however, because the use of such a device was old in AGC circuits long before Loughren, and it performs in Loughren's circuit only its old and customary function. An example of a prior-art AGC circuit thus making use of a "direct-current electron tube repeater" is that shown in Fig. 6 of the Blumlein prior-art patent No. 2,307,375. (R. 816, 1451-1455, 1458)

50. Apart from the matter of the repeater just alluded
to, plaintiff's expert witness was unable to distinguish
1510 the accused AGC circuit from that of Beers except by
reliance on the fact that Beer's circuit was specifically
disclosed in the environment of a sound radio receiver
rather than in a television set. Plaintiff's expert witness
admitted, moreover, that the modifications necessary to
adapt the Beers circuit for use in a television set were of
conventional nature and known to skilled workers in the
prior art. (R. 1446-1447, 1457-1458)

51. The claims in suit, if construed broadly enough to embrace defendant's accused AGC circuit, define nothing inventive over the teachings of the Beers patent. It is significant in this connection that the Beers patent was not of record in the Patent Office history of the patent in suit. (PL-1.)

52. The Blumlein prior-art patent No. 2,307,375 discloses a television-receiver circuit together with several different AGC arrangements, any of which, the specification teaches, may be used with the basic receiver circuit. Among the alternative AGC circuits thus referred to by Blumlein in the '375 patent is the one shown in Fig. 5 of the earlier Blumlein patent No. 2,224,134. When the circuits of these Blumlein patents (both of which were Patent Office references) are thus connected together, an AGC system

results that is essentially like the defendant's accused AGC circuit, save for one difference: In the Blumlein circuit the a-c voltage supply is connected to a grid of the AGC tube, whereas in defendant's circuit the a-c voltage supply is connected to the AGC tube plate. Defendant points out that the Holmes prior-art patent No. 2,230,295 (not a Patent Office reference) taught that the a-c voltage supply in the AGC system could be applied either to the plate or to a grid of the AGC tube. If the Blumlein AGC circuit of the '375 and '134 patents is modified by shifting the a-c voltage supply from the grid to the plate 1511 of the AGC tube, the resulting circuit is almost identical to defendant's AGC system. Defendant's expert witness testified that in his opinion persons skilled in the art would be taught by the Holmes patent that the Blumlein circuit could be thus modified, and that defendant's accused AGC circuit could therefore be fairly deemed to be wholly derived from prior-art sources. Plaintiff's expert witness disagreed with that view. Considering the testimony of both men, their cross-examination, and the degrees of credibility they respectively inspired, the Court finds the opinion of defendant's expert witness to be the more worthy of belief, and it is accordingly adopted as the finding of the Court. (R. 777-792, 1216-1256, 1287-1293, 1335-1337, 1400-1402.)

53. Plaintiff, seeking to discount the force of the Blumlein, Hardwick, and Holmes circuits as prior art, makes the point that they were designed for use with positive-modulation television signals. This is true; however, as plaintiff's expert witness admitted, those self-same circuits would also work on negative-modulation signals. Moreover, the prior-art literature and the testimony of the expert witnesses establish that the characteristics of both types of television signal were well understood in the art, years before Loughren's work was done. It appears that prior

knowledge respecting either system was drawn upon routinely by skilled workers in designing apparatus for use with the other system. This is strongly confirmed by the fact that the Patent Office freely cited and relied on positive-modulation circuits as pertinent prior art against the Loughren claims, coupled with the significant fact that plaintiff never even suggested to the Patent Office that the prior art could be validly distinguished on the basis of the modulation type for which it was designed. Plaintiff's present contention in this regard is an afterthought lacking in merit. (R. 275, 333, 802, 1290-1291, 1488.)

1512 X. Facts Bearing On The Infringement Issue.

54. Resolution of the infringement issue involves determination of these two underlying factual questions:

(a) Do the claims in suit embrace, within their literal scope, the defendant's AGC circuits?

(b) Are the AGC circuits disclosed in the patent in suit and defendant's accused AGC circuit substantially identical with respect to means employed, mode of operation, and result obtained?

With those factual questions answered, the presence or absence of infringement can be determined by applying established legal principles to the facts.

55. With respect to the literal scope of the claims in suit, the parties are in controversy concerning the meaning of the word "rectifier" which appears as a major element in all of the claims in suit. Plaintiff contends that this term should be interpreted broadly enough to include grid-controlled tubes; defendant insists that it should be limited to tubes of the diode type.

56. The evidence is in sharp conflict as to what "rectifier" means as a technical term in the art. Plaintiff's

expert witness testified that the term "rectifier" is commonly used in a sense broad enough to include the grid-controlled AGC tube in defendant's circuit, in which a signal voltage is applied to the grid but no current flows through the grid circuit. Defendant's expert witness, on the other hand, attested that the term "rectifier" may properly be used only with respect to a device which conducts current more readily in one direction than in the other and hence does not include the grid-controlled tube used in defendant's AGC circuit, in which the grid
conducts no current in either direction. Each of the
1513 expert witnesses referred to technical publications
that supported his own opinion, and those publications
are of record as exhibits. (R. 737-738, 749, 982, 985; PL-25-31; DX B-1; DX G-1)

57. The patent in suit and its file history provide the following evidence that the term "rectifier," as used in the patent in suit, was meant in its narrow sense, limited to the diode type of tube:

(a) No kind of rectifier except a diode rectifier is shown in any of the drawings of the patent in suit nor described or even alluded to in the specification. (PL-1.)

(b) In both the specification of the original Loughren application filed in 1946 and all the claims that were ever presented therein, it was explicitly stated that the "rectifier" must be connected in a direct-current series circuit with the integrating load circuit and at least a part of the video-amplifier load impedance. This language plaintiff's expert witness acknowledged to be specifically directed to the diode-type rectifier. If "rectifier" had been meant in the broad sense plaintiff now contends for, the language used in the specification would have been inapt. Loughren himself incidentally, participated personally in the drafting of the original 1946 patent application. (R. 361, 639, 1351-1352; PL-2.)

(c) During the prosecution of the claims in suit, the patent examiner rejected them on the basis of the prior-art AGC circuit of the Blumlein patent No 2,307,375, in which the AGC tubes were of the grid-controlled type. With emphasis by underlining, plaintiff assured the Patent Office that the Blumlein prior-art circuit was not a proper basis for rejecting the claims, for the reason that Blumlein's AGC tubes 1514 "do not constitute a rectifier device." Following that representation, the examiner withdrew the Blumlein '375 reference and allowed the claims. (PL-4, pp. 53-54.)

58. After weighing the conflicting testimony of the witnesses and considering carefully all the other evidence on the subject, the Court is convinced, and accordingly finds, that the word "rectifier," in the claims in suit, means a diode device and does not embrace within its scope a grid-controlled AGC tube such as defendant employs in the accused AGC circuit. In finding thus, the Court is influenced by the fact that the testimony of defendant's expert witness is entirely harmonious with the position plaintiff itself took prior to the patent's issuance, whereas the testimony of plaintiff's expert is squarely inconsistent with plaintiff's *ante litem* position.

59. Another contested issue involving the language of the claims in suit is whether they call for a circuit in which "means for supplying a periodic potential" (*i.e.*, an a-c voltage supply) is part of a direct-current series circuit that includes also a "rectifier" and an integrating load circuit. Plaintiff admits that claim 4 in suit is thus restricted but contends that claims 1 and 2 in suit are not. (Pl. Br., pp. 28-30.)

60. Plaintiff's contention with this regard is inconsistent with the plain meaning of the words and punctuation used. Both claims 1 and 2 call for "a direct-current series circuit including a rectifier . . . , an integrating load circuit . . ., and means for supplying a periodic potential to said series circuit." In other words, each of claims 1 and 2 calls for a series circuit the components of which are recited in the customary serial form, to-wit: A, B, and C. Plaintiff would read the recitation of
1515 the third element—*i.e.,* the "means for supplying a periodic potential"—as an independent element not necessarily a part of the series circuit. But this reading is plainly not the correct one. To accept it would leave the recitation of the series-circuit components in the awkward form "including A, B," with no conjunction joining them. Had the meaning plaintiff now contends for been really intended by the claim draftsman, the language used would have been: ". . . a direct-current series circuit including a rectifier . . . *and* an integrating load circuit . . .; and means for supplying, etc." It is also noteworthy that the two elements of the respective claims that admittedly are independent—namely, the "repeater" and the "series circuit"—are separated by a semicolon, whereas the draftsman used a comma to separate the recital of the "integrating load circuit" from that of the "means for supplying a periodic potential." (PL-1, Cls. 1 and 2.)

61. Any remnant of doubt that the language and punctuation of claims 1 and 2 do require a circuit in which the a-c voltage supply is a part of the same direct-current series circuit that includes the rectifier and the integrating load circuit is swept away by the file history of the patent in suit. Plaintiff therein, again with emphasis by underlining, told the Patent Office in unmistakable terms that claim 1 in suit demands an arrangement in which the "periodic potential supply means" (*i.e.,* the a-c voltage

supply) "forms a series element of a direct-current series circuit." This commitment by plaintiff applies to claim 2 as well as to claim 1, since the words of the two claims are identical in the passages under consideration. (PL-4, p. 54.)

62. From these facts it follows that all three of the claims in suit require by their explicit language an
1516 arrangement in which an a-c voltage supply is connected as a series element of a direct-current series circuit which also includes a rectifier and an integrating load circuit.

63. The question whether there is substantial identity between the AGC circuit, of the patent and defendant's accused AGC circuit, as to means employed, mode of operation, and result obtained, must be answered "No" on this record. There are certain similarities between the two circuits, but every feature that they share they have also in common with the prior art. Hence the similarities constitute no evidence of infringement. To the extent that the circuit of the patent differs from the prior art, it differs also, in like or greater degree, from defendant's circuit. The means employed in the two circuits differ substantially and the respective modes of operation are radically different. The results achieved, so far as they are similar, are like the results obtained with prior-art circuits. (R. 686, 791, 1400-1401, 1434-1443)

64. Notwithstanding the fact that defendant's accused AGC circuit does not have a "rectifier" in the sense that term is used in plaintiff's claims, and does not have an a-c voltage supply connected in the manner which the claims demand, plaintiff asserts that the claims should nevertheless be held infringed, by virtue of the doctrine of equivalents. That contention must be rejected. For one thing the lack of substantial identity between the two circuits as to structure and mode of operation compels the conclusion

that they are not equivalent as a matter of ultimate fact. Moreover the file history of the patent in suit, *i.e.*, the circumstances under which the claims were secured from the Patent Office, would make it inequitable to apply the doctrine of equivalents in this case. In arguing for allow-
1517 ance of the claims in suit over the circuit shown in Fig. 6 of the Blumlein '375 patent, plaintiff unequivocally and emphatically restricted the scope of the claims to exclude grid-controlled AGC tubes and to include only circuits in which an a-c voltage supply is connected as a series element of a direct-current series circuit which includes also a rectifier and an integrating load circuit. Having thus secured allowance of the claims in suit, plaintiff may not reverse its field and now repudiate the very representations on the strength of which the claims were granted.

65. Defendant's AGC circuit does not utilize any invention, if any there be, that was contributed to the art by the patent in suit.

Part II—Conclusions of Law.

1. This action charges defendant with infringement of claims 1, 2 and 4 of plaintiff's United States Patent No. 2,547,648. The Court has jurisdiction of the subject matter and the parties, and the venue is properly laid in this District.

2. The patent in suit No. 2,547,648, so far as it relates to claims 1, 2, and 4 in suit, was first applied for when patent application No. 120,404 was lodged in the Patent Office on October 8, 1949. That application was not a legal continuation of plaintiff's earlier patent application No. 648,287, filed January 25, 1946, and is not legally entitled to a 1946 filing date insofar as the subject matter of claims Nos. 1, 2, and 4 in suit are concerned, because those claims are based on new matter not disclosed in the 1946 applica-

tion and first presented to the Patent Office on October 8, 1949.

3. Plaintiff's claims in suit Nos. 1, 2, and 4 of patent No. 2,547,648 are invalid and void by virtue of United States Code, Title 35, § 102, because their subject mat-
1518 ter was published, and publicly used in this country, more than one year prior to October 8, 1949.

4. Plaintiff's claims in suit Nos. 1, 2, and 4 of patent No. 2,547,648 are invalid and void by virtue of United States Code, Title 35, § 102, because their subject matter was anticipated by the disclosure of Hardwick U. S. patent No. 2,307,218.

5. Plaintiff's claims in suit Nos. 1, 2, and 4 of patent No. 2,547,648 are invalid and void by virtue of United States Code, Title 35, § 103, because they define no patentable invention in view of the prior art represented by Hardwick U. S. patent No. 2,307,218, Beers U. S. patent No. 2,120,999, Holmes U. S. patent No. 2,230,295, and Blumlein U. S. patents Nos. 2,307,375 and 2,224,134.

6. Even if valid, plaintiff's claims in suit Nos. 1, 2, and 4 of patent No. 2,547,648 have not been infringed by defendant.

7. Plaintiff having failed to establish any cause of action against defendant, the action must be dismissed for want of equity and judgment entered in defendant's favor against plaintiff for defendant's legal costs as provided by law.

R. B. Austin,
Judge, U. S. District Court.

Dated: January 25, 1965.

1519 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH RESPECT TO THE ANTITRUST ISSUES RAISED IN THE ANSWER AND COUNTERCLAIM.

Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, the court hereby makes the following findings of fact and conclusions of law:

I. The antitrust issues raised in the answer to this patent infringement suit and in the counterclaim for damages and injunctive relief were separately tried following the trial of the patent issues. Defendant in its answer asserted the affirmative defense that plaintiff was misusing its patents, including the patent in suit, in violation of public policy and the Sherman Act (15 U. S. C. §§ 1 and 2) and that it, therefore, came into this court with unclean hands and is therefore barred from receiving any relief in this action. Defendant also filed a counterclaim for damages and injunctive relief pursuant to Rules 13(a) of the Federal Rules of Civil Procedure, Section 1 and 2 of
1520 the Sherman Act (15 U. S. C. §§ 1, 2) and Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15, 26).

II. Defendant-Counterclaimant, Zenith Radio Corporation, is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 6001 W. Dickens Avenue, Chicago, Illinois, and is now and has been continuously for more than 43 years last past engaged in the development for sale and use and in the manufacture, sale and use of radio apparatus and receiving sets, and since the advent of television, television receiving sets throughout the United States and in foreign commerce, and during said period has built up a large volume of business in manufacturing and selling as the demand therefor has existed and will continue to exist, and in the shipment and sale of such apparatus in commerce between the various states of the United States and in foreign commerce, and said counterclaimant is now and has been engaged in said commerce during all of the period above stated and during all times material to this counterclaim.

III. Counterdefendant, Hazeltine Research, Inc., the party plaintiff in this suit, is an Illinois corporation owned and operated as a wholly owned subsidiary of Hazeltine Corporation, a New York corporation, engaged in the manufacture and sale of electronic equipment and devices. The parties stipulated that for the purposes of this litigation Hazeltine Research, Inc. and its parent, Hazeltine Corporation, would be considered as one entity operating as a patent holding and licensing company, engaged in the exploitation of patent rights in the electronics industry in the United States and in foreign countries. The gross income of the Hazeltine enterprises approximates $47,000,000 per year.

1521 IV. For many years plaintiff has accumulated a large number of patents, domestic and foreign, for use in its patent licensing business in the electronics industry. At the time of the filing of this suit Hazeltine had over five hundred patents and patent applications in its licensing portfolio.

V. Plaintiff's policy in licensing electronics manufacturers in the United States was to grant a so-called standard package license which conferred on the licensees for a five-year period freedom from any charge of infringement under all present as well as future Hazeltine patents issuing during the terms of the agreement. Royalties were required to be paid on the licensee's entire production whether its products employed any or none of the Hazeltine patents.

The license was in effect a covenant not to sue the licensee or its customers should Hazeltine decide within the license period that the manufacture and sale of any particular apparatus infringed upon any of its patent rights.

VI. Hazeltine filed numerous patent infringement suits against manufacturers who refused to sign its license agreement.

VII. Prior to the instant controversy, Zenith had the standard Hazeltine package license and in May of 1959, toward the close of the last five-year license period, Hazeltine requested that the license be renewed for another five-year period at the then package rate of $50,000 per year. Zenith refused contending that it did not require a license under any of the patents in the package and Hazeltine countered by asserting that Zenith was infringing at least four of the Hazeltine patents in the manufacture and sale of monochrome television receivers (at that time Zenith was not manufacturing color receivers). At the same 1522 time Hazeltine made an alternative proposal to Zenith, offering to grant a monochrome license in accordance with the following formula:

> Any one patent in the package would be licensed at 50% of the royalty rate for the entire package of over 500 patents and patent applications. Any two patents would be licensed at 80% of the package rate. Any three or more patents would be licensed at 100% of the package rate. Hazeltine reserved the right to sue for infringement of any patent not licensed. All licenses would otherwise be subject to all the terms and conditions of the standard package form of license and would require payment of royalties on all production during the five-year term of the license irrespective of whether any patent was employed or not. The license would not cover color television receivers.

Zenith refused to sign either of the proposed agreements and on November 20, 1959 the instant suit was filed.

VIII. With the suit on file and at issue, Hazeltine continued its attempt to persuade Zenith to sign the package license. During the course of discovery proceedings Hazeltine informed Zenith that in addition to the patent in suit, Zenith was infringing at least 9 designated Hazeltine patents and applications in the manufacture and sale of its color television receivers. The old form of standard package license under all the Hazeltine patents was again tendered to Zenith for signature and Zenith again refused to sign it.

IX. On April 11, 1962, Hazeltine submitted to Zenith a license proposal for color television which provided an annual royalty rate of $435,000 merely for the 9 patents asserted and an annual rate of $500,000 for a license under all of Hazeltine's patents and patent applications for color television. However, if the standard package license covering all of Hazeltine's patents, for monochrome as
1523 well as color, were signed, the maximum royalty rate would be $150,000, the same as the rate in the Hazeltine-RCA package license (later raised to $200,000). Zenith refused these proposals on the grounds that they were obviously designed to force Zenith to take the package license which it did not want or need; that Zenith could not place itself at a competitive disadvantage by taking a license under only 9 patents at $435,000 a year rather than signing the package license containing all Hazeltine patents at the package rate of $150,000 per year.

X. Hazeltine continued its efforts to persuade Zenith to sign the standard package license before this case could be brought to trial. In March 1963, as the case approached the final pre-trial conference, Hazeltine made the following proposal to Zenith:

> It grouped together the nine patents and one application which were claimed by Hazeltine to be employed in the manufacture of Zenith color receivers. It

placed a maximum royalty on this package of $275,000 per year but for color receivers only. For the entire package containing all of Hazeltine's then existing patents for color television, an annual maximum of $300,000 was set and for all present as well as future patents issued during the license period an annual maximum of $310,000 was demanded for color television alone.

In this same license proposal, Hazeltine offered its entire package of present and future patents, unspecified, for both monochrome as well as color receivers for an annual maximum of $200,000.

Under this proposal, a license could be taken, if desired, under only two of the ten patents asserted against Zenith's color receiver but it would bear an annual maximum royalty in excess of $200,000 and would license only color receiver production, whereas the entire package of over 500 patents and applications for both monochrome as
1524 well as color receivers would bear an annual maximum of $200,000. This proposal was obviously designed to persuade Zenith to sign the standard package license agreement which it was unwilling to do and presented to Zenith management the following alternatives:

1. Endure trials and possibly appeals on at least nine patents at a total estimated cost of over one million dollars, plus damages in the event any or all of the suits were lost..
2. Take a license under the package of ten patents and applications at a cost of $275,000 per year for color television, or a license under the entire package of existing Hazeltine patents for color television at a cost of $300,000 per year, or at a cost of $310,000 per year a license covering existing and future patents of Hazeltine for color tele-

vision for a five-year period. In each case Zenith would be obliged to make the royalty payment whether any of the patents licensed was used or not in Zenith's color receiver. This would still leave Zenith's entire monochrome production open to continuous attack by Hazeltine, and plaintiff's counsel had already claimed that Zenith's monochrome receiver infringed at least three patents in addition to the patent in suit.

3. Take a license for color television under two patents selected from the package of ten and pay over $200,000 per year, but this would expose Zenith's color production to the assertion of any or all of the color patents not licensed and would subject its entire monochrome production to the assertion of any of the hundreds of patents in the Hazeltine package.
4. Take the standard package license under all patents and patent applications of Hazeltine, present and future, for both monochrome and color television at an annual maximum of $200,000 per year.

1525 Over a five-year license period it would cost $500,000 to $550,000 more for a license under the small group of ten patents for color television alone than for the entire Hazeltine package covering over 500 patents and applications for monochrome as well as color television. In addition, the full package license would remove the risks of further protracted and expensive litigation or harassment whereas the more expensive license under less than the entire package would leave Zenith and its customers exposed to renewed charges of infringement based on any or all of the remaining hundreds of existing Hazeltine patents as well as all patents issuing during the term of the license. The only practical answer would be to accede to Hazeltine's demand and accept a full package license.

XI. Plaintiff's offer to license any one of its hundreds of patents for monochrome at 50% of the package rate, any two at 80% of that rate and any three or more at the full package rate was an attempt by economic coercion to force the taking of the package. This is clear from the fact that plaintiff had asserted that Zenith was infringing at least 4 patents in its monochrome receivers. Moreover, the reward demanded by plaintiff for a license under less than the full package of patents is in no way related to the quality of the patents since the price is determined solely by the number of patents chosen and most of the patents in the package are characterized by Hazeltine itself as "insignificant."

XII. In all of its proposals to Zenith, Hazeltine insisted as an alternative to litigation that Zenith for a period of five years pay royalties in large sums based on its entire production of receivers whether or not any Hazeltine patent was employed in any way in its products. Plaintiff thus insists that royalties be paid on admittedly unpatented apparatus.

1526 XIII. As of the date the trial began Defendant had been injured in its business and property as the proximate result of the acts and demands of Hazeltine, referred to above, in the amount of $50,065. Defendant has been forced to make expenditures of money and to use the time of its officers, employees, and counsel to defend against this patent infringement suit and by virtue of Hazeltine's threats of suits on other patents, defendant has been forced to expend substantial amounts of money to investigate the scope and validity of the patents asserted. The injury to Zenith's business was occasioned by the necessity that defendant make a choice among alternatives each of which had an adverse economic effect on its business. It was forced either to cease manufacturing and selling its television receivers, pay tribute with consequent increase in its costs or incur the expenses incident to the defense of protracted patent litigation. Although defendant's choice determined the nature and amount of the resulting damages, it was the necessity of having to choose that occasioned the injury.

XIV. In its counterclaim Zenith also seeks damages and injunctive relief based on plaintiff's conspiratorial activities with foreign cartels or patent pools in England, Canada and Australia which have curtailed Zenith's export business.

The British Patent Pool.

XV. The dominant radio and electronics companies in
Great Britain set up the British Patent Pool into which
flow thousands of patents owned or controlled by the
members and those affiliated with them in the plan. Among
these companies are Electric & Musical Industries Ltd.,
General Electric Company, Ltd., Marconi's Wireless
1527 Telegraph Co., Ltd., Philips Electrical Ltd., Pye Ltd,.
Murphy Radio Ltd., Rank Cintel Ltd., Standard Telephone & Cables Ltd., Gramophone Co. Ltd., E. K. Cole Ltd.
and Cossor Ltd. The Hazeltine inventions and patents have
been funneled into the Pool pursuant to an agreement with
General Electric Co. Ltd. and the share of the Pool's
income allocated to these patents in split between General
Electric Co. Ltd. and Hazeltine. Pursuant to this arrangement British inventions controlled by General Electric Co. Ltd. are licensed to Hazeltine for exclusive licensing use in its American territory and are included in its
United States package licensing activities. The Hazeltine-General Electric Co. Ltd. exclusive agreements were specifically devised to get the Hazeltine patents into the British
Patent Pool in a manner which would provide for G.E.C.
maximum bargaining power vis-a-vis the other Pool members on the division of the Pool income.

XVI. Pursuant to these arrangements, General Electric Co. Ltd. on its own behalf and on behalf of Hazeltine entered into successive pooling arrangements with the other members of the British Pool wherein and whereby it was agreed that the Hazeltine patents along with the patents of all of the Pool members be licensed in the territory of Great Britain solely by the Pool and on terms and conditions determined by the members of the Pool. Each of the participating parties in all of the interrelated agreements, including Hazeltine by virtue of the exclusivity of its joint arrangements with General Electric Co. Ltd., contractually pledged that during the period of the agreements no license would be issued that would permit the export of radio and television receivers from the United States into the British market and that the only license employed by the Pool would be a standard package
1528 license limited to local manufacture. Hazeltine has been participating in this plan and arrangement since 1938, is currently participating in it and intends to continue its participation.

XVII. Hazeltine has had full knowledge of the various interrelated agreements under which the Pool operates and has operated and for the purpose and effect of the plan which is to protect the British manufacturers in the Pool against competition from television receivers made in the United States and other countries. Hazeltine contends that it has entered into these arrangements because in that manner it can obtain more income from its English patent properties than it could through its own individual effort.

XVIII. The Pool has always issued one for of license which, like the Hazeltine package license in the United States, covers all of the patents in the pool and requires payment of royalties on all of the licensee's production whether or not any of the patents are employed. The effect of this plan is to amass all of the patents for assertion against anyone not licensed, to prevent importers or foreign manufacturers from entering the market and to preclude the possibility of any attack by the licensees on the validity of any one patent.

XIX. The policy of the Pool was early stated to be to cooperate in the division of territories provided by the plan and "not knowingly [to] assist any [American] company to sell in England under the protection" of the Pool patents apparatus manufactured in the United States and not licensed under the patents of the Pool's American participants. RCA and General Electric, like Hazeltine, for many years participated in the British Pool. However, as the result of antitrust litigation brought by Zenith and by the Government, RCA and General Electric were forced to cease their participation in the plan.
1529

XX. Initially the strength of the Pool was drawn from patents on radio receivers and with the advent of television, the power of the Pool became greater than ever. Color television is the most recent innovation in the home entertainment field and Hazeltine has now become an even more important factor in the British combination because of its color television patents which Hazeltine contends has given it a "dominating position" in the color television field.

XXI. For years Zenith made every effort to export home receivers to distributors and dealers in the English market. On each occasion, however, the Pool threatened its distributors until they ceased buying Zenith products and no substantial trade outlets could be found which would risk handling the line since the Pool would not license the sale of imported merchandise.

XXII. As a part of the settlement of antitrust litigation brought against RCA, General Electric and Western Electric, Zenith was in 1957 granted royalty-free world-

wide rights under the inventions and patents of these companies and began to ship radios to the British market. The Pool could not assert any of these rights to prevent importation and since all basic radio patents have expired, Zenith had been able for the first time to export to and sell its radio receivers in the English market. This is not true of television apparatus however. The Pool is armed with thousands of patents from the Pool members including the British counterparts of patents asserted by Hazeltine against Zenith in the United States. Zenith has been constrained from entering the British television market by the threat of the assertion against it of pooled patents, although Zenith has successfully engineered sets for
1530 the British market and has shipped some to its English distributor with the hope that the injunctive relief sought in this suit would be granted and business on a commercial scale could be conducted.

XXIII. The manufacture in the United States of receivers for sale to exporters here or directly to importers in England (or in Canada and Australia where corresponding patent pools are operating) would risk further charges by Hazeltine of infringement of the United States patents asserted against Zenith here and Hazeltine, by viritue of its exclusive arrangements with the English companies, is contractually unable to grant a license to manufacture in the United States for export to and sale in England under the British counterparts of its domestic patents. Hazeltine's United States package license expressly states, in compliance with the restrictions involved in the pooling arrangements, that no license is granted under any patent rights of countries foreign to the United States.

XXIV. Hazeltine has always told its licensees in the United States that as a matter of policy it would never collect a second royalty on sets exported to foreign countries "where Hazeltine had complete control over its patent situation" but that with respect to England, Canada, Australia and New Zealand, where Hazeltine patents are included in an industry-wide pool, the American licensees would have to make their own arrangements with such Pools.

The Patent Pool in Canada.

XXV. The patent pool existing in Canada is called Canadian Radio Patents Limited. This organization was formed in 1926 by the General Electric Company of the United States through its subsidiary, Canadian General Electric Co. and by Westinghouse, through its subsidiary, Canadian Westinghouse. The shareholders of Canadian Radio Patents Limited are Canadian General Electric, Canadian Westinghouse, Standard Radio Mfg. Corp. Ltd., the Canadian subsidiary of Philips of Holland, Canadian Marconi and Northern Electric (an affiliate of AT&T and Western Electric). The Pool has been largely made up of Canadian manufacturers (most of which are subsidiaries of American companies) who were and are competitors of Zenith with respect to sales sought to be made in Canada. The Pool for many years has had the exclusive right to sub-license not only the patents of the member companies but also the patents of Hazeltine, RCA and a number of other foreign companies. Since 1943 Hazeltine has been an active participant in the activities of the Pool and has been receiving a substantial share of its profits. The Hazeltine patents go into the pool pursuant to an exclusive license agreement between Hazeltine and Canadian Radio Patents Limited which grants to the Pool the right to include Hazeltine's Canadian patents, present and future, in its licensing and litigation activities. This arrangement has been extended to a date beyond the filing of the instant counterclaim.

1531

XXVI. The organization, purposes, and functions of the

Canadian Pool are, in principle, identical to those of the English Pool. Approximately 500 patents are amassed for licensing and the only form of license available is strictly limited to manufacture in Canada. It is also a package license under all patents in the Pool and all patents issued during the term of the license. The chief purpose of the Pool is to protect the manufacturing members and licensees from competition by American or other foreign companies seeking to export their product into Canada.

1532 XXVII. The Pool's campaign against importation of radio and television receivers from the United States is highly organized and effective. Patent agents, investigators and agents of the conspiring companies as well as the Canadian manufacturers and distributors trade associations at the behest of the Pool have systematically policed the marked in order to locate and stop the sale of imported receivers and have immediately attacked by infringement suit or threat thereof any dealer found to be selling imported receivers. Warning notices addressed to importers, vendors and users of radio and television receivers advise the trade and the public that only the products of certain named local manufacturers are licensed by the Pool under "basic patents" and that even "users" of unlicensed products are subject to suit on account of patent infringement. Many advertisements run by the Pool went much further. They contained disparaging statements about imported receivers to the effect that they were cheaply made, unsatisfactory in operation, caused fires and were dangerous to use because of "shock hazard."

XXVIII. Mass attacks in the form of infringement suits were made on dealers found to be selling imported American made radio and television receivers. Suits or the threat of suits effectively prevented dealers from handling American made sets.

XXIX. For many years Zenith attempted to set up distribution for its products in Canada but in very instance where a Canadian distributor began to sell Zenith products he was warned by the Pool to stop and return the merchandise or face expensive infringement litigation. To ward off these attacks Zenith attempted to get a license from the Pool, but in every instance it was advised by the Pool manager that importation would not be permitted and only local manufacture would be licensed.

1533 XXX. As a part of the settlement in the Zenith litigation against RCA, General Electric and Western Electric which involved the activities of the Canadian patent pool, Zenith obtained world-wide rights under the patents of the defendants and having obtained these and other patent licenses permitting importation into Canada, Zenith began late in 1958 to export to and sell in Canada its radio and television products through its Canadian subsidiary, Zenith Radio Corporation of Canada. The manager of the Pool, Brian McConnell, investigated the matter and informed Zenith that in order to continue this business in Canada, Zenith would be required to sign the Pool's standard package license which did not permit importation and that Zenith would have to manufacture in Canada any products it intended to sell there. The Pool manager further informed Zenith that it was infringing at least one of Hazeltine's Canadian patents and that Hazeltine's patents, as well as all of the other patents in the Pool, with the exception of those owned by Westinghouse and General Electric Company, could not be licensed for importation. With respect to the latter two companies, McConnell stated that they had instructed the Pool not to refuse to license their patents for importation. The notices to "importers, vendors or users of radio and television receivers" warning them not to purchase imported sets continued to be run by the Pool despite protests by

Zenith. Shortly after the aforesaid demand made on Zenith by the manager of the Canadian Pool, the instant suit was filed.

XXXI. Hazeltine before entering into its exclusive arrangement was fully aware of the purpose and the policy of the Pool to prevent the export of American-made receivers into Canada and has worked very closely with Canadian Radio Patents Limited in its licensing activities and
1534 its campaign against importation from the United
States.

XXXII. The proofs establish as a fact that in the circumstances of this case the Canadian Patent Act does not require the Pool to refuse to license importation, as contended by plaintiff. Nor does the Act penalize in any way a patentee who licenses for importation where, as in this case, there is being carried on extensive manufacturing in Canada under its patents.

The Australian Pool.

XXXIII. The dominant electronics company in Australia and its controlled territory is and for many years has been Amalgamated Wireless (A'sia) Limited (referred to as AWA). A number of the same companies involved in the English and Canadian cartel arrangements set up a patent pool in Australia identical in principle and purpose to the British and Canadian Pools. The patents of all of the conspiring companies funnel into the Pool which is known as Australian Radio Technical Services and Patents Company Pty. Limited (commonly called ARTS). The patents flow into ARTS through AWA, Standard Telephone and Cables Pty. Ltd., N. V. Philips Gloeilampenfabrieken, Electric and Musical Industries Ltd. (owning Marconi's and other rights for Australia), Pye Ltd. and Neutrodyne Proprietary Limited. Neutrodyne is a controlled subsidiary of Hazeltine; the latter company owns seventy percent of its stock.

XXXIV. Under an exclusive license agreement dated September 11, 1928, but still in full force and effect, Neutrodyne is authorized to place all inventions and patents of Hazeltine into the Australian Pool and is required to see to it that all of the requirements, restrictions and provisions of the standard package license of Hazeltine are contained in any pooling license issued thereunder. Sub-
1535 licensing rights, existing and future, under all of Hazeltine's inventions have been granted the Australian Pool under this arrangement for 35 years and have been the subject of the only form of license agreement issued by the Pool, a standard package license not referring to any particular patent or invention but to all of the rights of all the conspiring companies. A standard Pool license imposes the restrictions necessary to effectuate the division of territories involved in the over-all arrangements. It requires the licensee to agree not to export or import or sell or offer for sale in Australia any radio or television receiving apparatus not manufactured in Australia. Hazeltine has been fully aware of the Pool's plan and policy not to license for importation and has cooperated with and approved the operation of the Pool with respect to all the Hazeltine Australian patents.

XXXV. The standard package form of Hazeltine license covering all patents subject to licensing by the Pool and requiring royalty payment whether or not any such patent is used in the licensed apparatus, is employed by each Pool referred to in these findings and is also used by Hazeltine in the United States in order to prevent attacks by licensees on any of the patents of the participating companies in any of the markets covered by these findings.

1536 Damages Sustained by Zenith.

XXXVI. The foreign commerce of Zenith has been drastically curtailed by the patent Pools in England, Canada and Australia. The damages Zenith has sustained were estimated by experienced officials of Zenith, thoroughly familiar with the business problems and sales potentials in the markets involved. They determined the approximate damages sustained by a thorough study of each of the markets involved and all relevant factors including tariffs, shipping costs and manufacturing problems. Zenith's foreign commerce has been damaged by the Pools in the following amounts during the 4-year statutory damage period:

Canada	
Television	$5,826,896
Radio	470,496
England	
Television	8,079,859
Radio	1,169,067
Australia	
Television	625,786
Radio	66,769
Tital	$16,238,872

1537 Conclusions of Law.

1. The court has jurisdiction to determine the anti-trust issues under the provisions of the Act of Congress approved July 2, 1890, entitled "An Act To Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act.

2. Plaintiff's demands on defendant coupled with the bringing of this suit and the threat to bring other suits

on other patents constitute an illegal effort to coerce Defendant into signing the Hazeltine package license.

3. The policy of plaintiff, reflected in the demands made on defendant and action taken against it, was to grant no license unless under all of its hundreds of patents for a fixed royalty, is one of unlawful coercion contrary to public policy.

4. The reward sought by plaintiff from defendant for inventions to be licensed in no way related to the quality of the individual patents and under the package license each patent drew strength from the others, thus unlawfully extending the monopoly of each.

5. Plaintiff's offer to license its patents individually but at royalty rates far in excess of the package rate was never an alternative to its controlling policy to grant defendant a license only under all of its patents. Rather, it was proposed by Hazeltine in the later stages of its negotiations in the instant case to cloak the harshness of the original demand by seemingly meeting the request of defendant in that regard. Although it may be said that the Hazeltine proposals onthe surface were offers to treat of individual patents, the design was quite apparent—
1538 to force by unlawful coercion the acceptance of unwanted patents. This constituted an illegal extension of the patent monopolies. Whatever may be the asserted reason or attempted justification of Hazeltine, its efforts to compel defendant to accept a package of patents involved the use of one patent or group of patents as a lever to compel the acceptance of a license under others. Such a licensing scheme under applicable decision of The Supreme Court is illegal and constitutes a misuse of the patents involved.

VI. There is a further feature of Plaintiff's licensing practices that in and of itself constitutes an illegal attempt to extend the patent monopolies. The license agreement, whether it be under a single patent or under Hazeltine's entire patent package, requires the payment of royalties in large sums for a period of five years on the entire production of the licensee whether or not any licensed patent is employed in any way in the licensee's products. Plaintiff's demands that royalties be paid on admittedly unpatenter apparatus constitute misuse of its patent rights and plaintiff cannot justify such use of the monopolies of its patents, by arguing the necessities and convenience to it of such a policy. While parties in an arms-length transaction are free to select any royalty base that may suit their mutual convenience, a patentee has no right to demand or force the payment of royalties on unpatented products.

VII. The defense of misuse asserted by defendant is a valid one.

The Patent Pools.

VIII. Every act in furtherance of a general plan to restrain trade and commerce, foreign or domestic, in violation of the Sherman Act, is illegal regardless of whether such act or acts when standing alone and absent conspiracy could be found to be legal.

1539 IX. It is fundamental that an unlawful conspiracy may be and often is formed without simultaneous action or agreement on the part of conspirators. Acceptance of an invitation to participate in a plan, the necessary consequence of which, if carried out, is to restrain commerce, is sufficient to establish a conspiracy under the Sherman Act. Knowledge of a scheme that illegally restrains trade and participation in the plan with such knowledge is all that is required to establish a conspiracy under the antitrust laws and prior agreements need not be shown to have been made between each and all of the conspirators in order to establish a violation of the Sherman Act.

X. The combinations represented by the patent pools in

Canada, England and Australia had as their express purpose the prevention of importation into those markets of radio and television apparatus made in the United States and other countries. Hazeltine knowing of the restrictions against imports imposed by those Pools nevertheless chose to permit its patents to be used in furtherance of the scheme and thereby obtained a substantial share of the Pool's income. It thereby became a co-conspirator and legally liable for all the acts of the Pools and its members performed in furtherance of their patent licensing plan to divide markets and prevent competition from imported sets.

XI. Hazeltine's method of placing its patents in the foreign pools—the use of exclusive license agreements either directly with the Pool as in Canada or through a pool member, as in England, or through a subsidiary, as in Australia—is the traditional means employed in the formation of illegal cartels and it is no defense to say that the particular exclusive licenses to which Hazeltine was a party did not in and of themselves impose the illegal restriction. The character and effect of a conspiracy are not
1540 to be judged by dismembering it and viewing its
separate parts but only by looking at it as a whole.

XII. Hazeltine's defense that it had no intent to restrain trade and that it participated in the Pools for business reason has no legal validity. If good business reasons and expressions of good intent would serve as a defense for restraining trade, the Sherman Act would be rendered impotent and would afford no aid to the free flow of commerce.

XIII. Hazeltine's claimed defense that conspiracies by American companies with companies abroad are governed solely by foreign law and are not violative of the Sherman Act has no legal validity. It is well established that a conspiracy to restrain the domestic or foreign commerce of the United States to which any American company is a party violates the Sherman Act irrespective of the fact that the conduct complained of occurs in whole or in part in foreign countries.

XIV. By virtue of its arrangements in connection with the Pools in Canada, England and Australia, Hazeltine has violated Section 1 of the Sherman Act.

XV. Counterclaimant has established that it has been injured in its business by virtue of the unlawful conspiracy and acts performed in furtherance thereof. As a co-conspirator Hazeltine is liable for those damages.

XVI. Counterclaimant is entitled to the injunctive relief sought in the counterclaim.

R. B. Austin,
Judge, U. S. District Court.

Dated: January 25, 1965.

In the United States District Court.

* * (Caption—59-C-1847) * *

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH RESPECT TO THE DEFENSE OF MISUSE AND DEFENDANT'S COUNTERCLAIM UNDER THE ANTITRUST LAWS.

Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, the Court hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT.

Jurisdiction and Parties

1. Defendant, Zenith Radio Corporation (Zenith) has asserted as an affirmative defense to the claim of Plaintiff, Hazeltine Research Inc. (Hazeltine) for infringement of the patent in suit, Hazeltine's alleged misuse of its patents by mandatory package licensing, thus rendering Hazeltine's patents, including the patent in suit, unenforceable.

2. Zenith has also asserted as an affirmative defense to Hazeltine's claim for infringement of the patent in suit the alleged violation of the Antitrust Laws (Sherman Act, Title 15, U. S. Code, Sections 1 and 2) by Hazeltine and its parent Hazeltine Corporation (H. C.) in the licensing of the latter's foreign patents. That defense was stricken by the Court on motion of Hazeltine.

3. Zenith has counterclaimed for injunctive relief from, and for damages it claims to have suffered from, the alleged violation of the Antitrust Laws by Hazeltine and H. C., under the provisions of Title 15, U. S. Code, Sections 16 and 26 (The Clayton Act).

4. This Court has jurisdiction over Zenith's Counter-

claim as a permissive counterclaim under the provisions of Rule 13(b) of the Federal Rules of Civil Procedure.

5. Zenith, a corporation of Delaware, has its principal place of business in Chicago, Illinois and, during all the times material here, has been a large manufacturer, *inter alia,* of radio and television receivers which it has marketed in interstate and foreign commerce.

6. Hazeltine, a corporation of Illinois, also has its principal place of business in Chicago, Illinois and was organized in 1946 as a wholly-owned subsidiary of Hazeltine Corporation (H. C.), a corporation of Delaware, having its principal place of business in New York, New York. Hazeltine is engaged solely in research and development work in the field of radio and television receivers; in the granting and administering of nonexclusive, nondiscriminatory licenses to all domestic manufacturers of television receivers under its United States patents resulting from its research and development work and that of its parent H. C.; and in rendering engineering assistance to such licensees. Its gross income for 1962 (other than investment income) was approximately $500,000. Hazeltine is not a manufacturer of radio or television receivers.

7. H. C. is engaged solely in research, development, and manufacturing of military electronics equipment very different from radio and television receivers. It is not a manufacturer of radio or television receivers but owns the foreign patents which are counterparts of the United States patents owned and administered by Hazeltine and has granted licenses under such foreign patents to concerns in their respective countries.

8. It is stipulated that, for the purposes of this Action, Hazeltine and H. C. may be considered a single legal entity to avoid the issue of whether or not it is appropriate to "pierce the corporate veil", but it is proper to consider the separte and unrelated activities of the two companies separately.

Hazeltine's Domestic License Practices

9. Prior to about 1955, Hazeltine owned a number of patents useful in radio and television receivers and granted licenses to manufacturers under both groups of patents. About 1955, substantially all important patents applicable to radio receivers expired and Hazeltine no longer collected royalties on such receivers.

10. Until about 1958, Hazeltine owned a group of patents useful in television receivers, at least one of which was used in substantially all receivers and was held by this Court to be of a basic character. Because of this fact, up until that time Hazeltine had never had a request from a licensee or a prospective licensee for a license under less than its entire group of patents. Television receiver manufacturers preferred a license under the group of patents because it provided them complete freedom of design under Hazeltine's present and future patents for both monochrome and color receivers.

11. In 1958, the foregoing basic patent expired and Hazeltine no longer had any patent that could not be designed around. As a consequence, it voluntarily offered licenses under a small group of patents then in current use in television receivers, either individually or as a group. The Form 918 license was adopted at that time to comprise the "boiler plate" of license agreements with television receiver manufacturers, but it was the practice to tailor the license to the individual requirements of each licensee by the use of modifying letters.

12. This offer of licenses on individual patents was made not only to new licensees but was voluntarily made to then current licensees under the Hazeltine group of patents, thereby permitting them to reduce their contractual royalty obligations. As a result, at the time of the trial of the infringement action, the great majority of the television

receiver manufacturers, including Magnavox, Sylvania, Warwick (Sears Roebuck), Wells Gardner (Montgomery Ward), and Westinghouse, had taken licenses under one or two patents, including the patent in suit, while such companies as RCA and Admiral had elected to continue with licenses under the group of patents.

13. Hazeltine never refused to grant a license to any radio or television receiver manufacturer under any one or more of its patents nor did it ever demand that any such manufacturer accept a license under its entire group of patents or accept its printed form of license, such as Form 918, without modification.

14. While the Hazeltine Form 918 license provides as a royalty base the entire sales of the licensee of apparatus of the type licensed, Hazeltine has never demanded that any manufacturer not using any of its patents accept such a license and no such manufacturer has so accepted such a license.

15. The royalty rate specified in the Hazeltine Form 918 license is 0.95% of the manufacturer's selling price (less specified deductions) on monochrome television receivers and 1.35% on color television receivers. This license form was adopted in 1958 when the only color television receiver manufacturer was RCA, which was producing only a very small quantity of such receivers.

16. About 1958, when Hazeltine decided to take the initiative by offering licenses under individual patents selected by licensee, Hazeltine owned only a few patents of general application to monochrome television receivers and no manufacturer used the inventions of more than three or four patents in any given receiver. Careful consideration was given to an equitable rate of royalty with respect to the individual ones of these patents. In consultation with counsel in Chicago and New York, Hazeltine devised a formula under which it offered to grant a license under any

individual patent selected by the licensee at 50% of the rate applicable to its group of three or four patents then in use; under any two patents selected by the licensee at 80% of the group rate, and under any three or more patents at the group rate. In the opinion of Hazeltine, it was more equitable to allow each licensee to select the patent or patents most important to its own particular designs and to use that selection as a basis of determining the royalty rate rather than to pre-assign specific rates to the patents individually.

17. By 1961, when Zenith commenced the manufacture of color television receivers, the total production of such receivers had increased to significant quantities. Unlike the situation with respect to monochrome television receivers where the important patents had progressively decreased in number, Hazeltine had a large group of patents important in their application to color television receivers, as a result of its research and development investment of many millions of dollars. It was Hazeltine's opinion that the Form 918 license would not yield an equitable return on its investment and it discontinued offering further licenses under this form with respect to color television receivers toward the close of 1961.

18. Commencing in the Fall of 1961, Hazeltine undertook an intensive study and investigation to devise a new license formula applicable to color television receivers which would satisfy several conditions:

(1) It must assure a reasonable royalty return on the company's important color television patents in which it had invested so much money.

(2) It should preferably have a maximum of several maxima, which would meet the almost infinite resistance of certain members of the industry, to a license that had no ceiling on the royalties.

(3) It must permit a licensee to select any one or

more of the Hazeltine patents which it might choose and yet, at the same time, also permit those who preferred a package license to have a package license, and this must be done without any discrimination between the groups.

(4) It must avoid the pitfalls of the misuse doctrine, of which all were aware.

19. The task of meeting all of the foregoing conditions was a formidable one and involved the preparation of numerous drafts which were successively discarded. This work culminated in the letter-offer to the television industry dated March 20, 1963, as supplemented by the letter of May 20, 1963. The offer set out in these two letters was made to Zenith.

20. The offer made by the letters of March 20 and May 20, 1963 establish (1) a percentage royalty with respect to each of the nine enumerated Hazeltine patents and one application applicable to color television receivers; (2) a percentage royalty with respect to certain patents applicable to monochrome television receivers; (3) a percentage royalty with respect to any other Hazeltine patents selected by licensee; (4) percentage royalties for various selections from Hazeltine's entire group of present and future patents with respect to monochrome and color receivers; and (5) a schedule of maximum royalties corresponding to the total percentage royalties applicable to any given patent or group of patents selected by the licensee. The schedules of percentage royalties and maximum royalties were such that, in no event, would the royalty for any possible number of individually selected patents exceed that for the entire group.

21. At the time of the offer made to Zenith and to the television industry by the letters of March 20 and May 20, 1963, RCA held an outstanding license from Hazeltine pro-

viding a maximum payment of $200,000 per year which continued in effect until June 30, 1966. Consequently, in order to avoid discrimination between licensees, the March 20—May 20, 1963 offer included the proviso that in no event should the maximum royalty payable by the licensee exceed $200,000 per year prior to June 30, 1966, whether the licensee had or was negotiating for a license under a single patent, a few patents, or the entire group of Hazeltine patents.

22. The offer made by the letters of March 20 and May 20, 1963 was not a final take-it-or-leave-it offer but was the then current offer, which was negotiable. The latter of those two letters was mailed only two days before the Counterclaim was filed herein on May 22, 1963, so that, at that date, no license embodying the terms of that offer had actually been granted to any television receiver manufacturer.

23. Prior to the instant controversy, Zenith had operated under an earlier license form of Hazeltine covering its entire group of patents and carrying a maximum royalty payment of $50,000 per year. That license expired June 30, 1959. Shortly prior thereto, Hazeltine offered to Zenith a license under its entire group of patents or under any individual patent or patents which it might select. The royalty for the entire group of patents was the same as in the prior license, namely 0.95% of the manufacturer's selling price (less specified deductions) of its television receivers with a maximum of $50,000 per year; for any single one of the four Hazeltine patents which it believed Zenith was using, 50% of those rates; for any two of those patents, 80% of those rates, and for any three or more, 100% of those rates. Zenith refused all offers, taking the position that the Hazeltine patents were all invalid or did not cover Zenith's television receivers or both. Some four months later, Hazeltine filed this Action to protect its valuable patent rights from misappropriation by Zenith and to pro-

tect its many licensees from unlicensed competition by Zenith. These negotiations did not consider color television receivers since Zenith was not then manufacturing such receivers.

24. Commencing in the Fall of 1961, there were discussions between Hazeltine and Zenith with respect to a license under the Hazeltine patents directed to color television receivers. A rough draft agreement with respect to such receivers was sent by Hazeltine to Zenith in April of 1962, but it bore at the top of the first page the prominent legend "This is a Tentative Draft for Purposes of Negotiation and is Not to be Construed as an Offer to LICENCEE * * *". Negotiations were shortly thereafter broken off by Zenith and there was no further communication between the parties until the foregoing offering letters of March 20, and May 20, 1963.

25. There was no effort or action by Hazeltine to force or coerce Zenith into accepting a "package license" under Hazeltine's group of patents with respect to either monochrome or color television receivers. Hazeltine did not make any proposal to Zenith that it should accept a license under any Hazeltine patent that it was not using.

26. Hazeltine has not coerced any television receiver manufacturer to accept a license under its entire group of United States patents; it has not refused to grant a license to any such manufacturer under any one or more individual patents selected by the manufacturer; and it has not attached as a condition to the grant of such a license under individual patents, any unreasonable condition or any condition tantamount to a refusal of such a license. H. C.'s Foreign License Practices—Canada

27. Prior to 1943, H. C. unsuccessfully attempted to license Canadian radio manufacturers under its Canadian patents.

28. In 1943, H. C. approach Canadian Radio Patents Limited (CRPL) a company owned soley by a number of Canadian companies, most of which were manufacturers of radio (and later television) receivers. There resulted an agreement dated July 2, 1943, and still in effect at the time of the filing of the Counterclaim herein, under which H. C. granted an exclusive license under its Canadian patents to CRPL for a term of years. The royalties clauses of that agreement are as follows:

> "The Licensor (H. C.) hereby grants to the Licensee (CRPL), for the term of this agreement, the exclusive and divisible license, with the right to license others, to make within the Dominion of Canada the licensed apparatus specified in Section 2 hereinafter, and to sell said apparatus made by Licensee or its sub-licensees to others for the uses specified in Section 2 hereinafter, and for resale for such uses. Said license to manufacture includes the right to make all or any of the separate parts and the right to have all or any of the separate parts made by others, but no license is granted to sell parts separately except as a bona fide repair of used licensed apparatus or replacement of worn out or defective parts of used licensed apparatus. (Art. III, Section 1)
>
> "Licensee (CRPL) or any of its sub-licensees may import into Canada apparatus which it is commercially unsound or impracticable for Licensee or any of its sub-licensees to manufacture, unless it shall reasonably appear that such importation shall constitute grounds or part thereof for requiring the grant of compulsory licenses to others in accordance with the Canadian Patent Act under the patents of Licensor, or grounds or part thereof for forfeiture in accordance with the Canadian Patent Act of Licensor's patents; and Licensee agrees and will require its sub-licensees to agree to manufacture in Canada such proportion of their total licensed apparatus sold hereunder as may from time to time be necessary to satisfy the requirements of the Canadaian Patent Act in order to prevent the granting

of compulsory licenses to others and in order to prevent the forfeiture of Licensor's patents thereunder." (Art. VI)

29. The H. C.-CRPL agreement contains no restriction on the right of CRPL to license radio or television receivers imported into Canada by its licensees but, on the contrary, such importation is *explicitly authorized* except to such an extent as would give rise to grant of compulsory licenses or forfeiture of the licensed patents under the provisions of the Canadian Patent Act, as interpreted from time to time by the Canadian Courts.

30. Neither H. C. nor CRPL has the *power to prohibit* the importation of radio and television receivers into Canada—this can be effected only by the Canadian Government which as not exercised that power.

31. H. C. is not, and at no time was, a member of CRPL nor has it participated in the activities of that concern nor shared in its profits.

32. Zenith contends that the chief purpose of CRPL is to protect the manufacturing members of that concern from competition by American or other foreign companies seeking to export their receivers to Canada, but there is no evidence to support such contention.

33. Zenith contends that CRPL has conducted an organized campaign against importation of radio and television receivers from the United States, but the fragmentary evidence offered by Zenith fails to support such contention.

34. Zenith contends that CRPL has made mass attacks in the form of infringement suits against dealers found to be selling imported American radio and television receivers but there is no evidence to support such contention.

35. Zenith contends that it has been prevented from establishing in Canada a distribution of its radio and television receivers by the action of CRPL in warning each new distributor to stop the importation of Zenith receivers or

face expensive infringement litigation, but the only evidence on this point comprises complaints from 5 dealers throughout Canada over the last 35 years, which is not adequate proof to support this sweeping charge. Moreover, the evidence is that it is the policy of Zenith to indemnify its dealers and distributors against all patent infringement claims and there is no evidence that Zenith's distributors or dealers would not be fully protected by such indemnification. The evidence is further that Zenith has never had occasion to defend under an indemnity any of its dealers or distributors anywhere, including Canada, at least since 1948.

36: The evidence estblishes that if CRPL were to license the importation into Canada of radio and television receivers covered by patents which it owned or controlled, it would subject its patents to the risks of possible compulsory nonexclusive or exclusive licenses by order of the Canadian Commissioner of Patents or even to revocation of the patents.

37. The evidence is that in Zenith's opinion H. C. owns no valid Canadian patent which is infringed by any Zenith radio or television receiver.

38. The evidence is that CRPL has not "made a direct threat either orally or by correspondence, or had any communication with (a Zenith) dealer or prospective dealer with respect to importation of radio receivers into Canada" during the period for which Zenith is claiming damages hereunder (the "damage period") and there is no evidence that the situation is any different with respect to television receivers. The evidence is further to the effect that CRPL has not, since 1958, exerted "pressure in the trade among (Zenith's) dealers, among distributors and among customers".

39. Zenith Radio Corporation of Canada, Limited, a wholly-owned subsidiary and a major distributor of

Zenith's products in Canada, was *never* sued by CRPL for importation of radio or television receivers into Canada.

40. During the damage period, Zenith imported into Canada 57,000 television receivers and 157,000 radio receivers in spite of the fact that Zenith had made no attempt to market radios in Canada since 1958.

41. Zenith's claim for damages arising from the H. C.-CRPL agreement is based entitrely on a "feeling" of Mr. Wright, its President, that had the circumstances been other than what they have been, Zenith would have had a share of the Canadian market equal to its share of the domestic market.

42. There is no evidence that Zenith has in fact been damaged, directly or indirectly, by the H. C.-CRPL license agreement or by any actions of H. C. thereunder.

H. C.'s Foreign License Practices—England

43. In 1933, H. C. organized a company in England known as Hazelpat, Ltd., in an unsuccessful attempt to derive income from its British patents.

44. At an early date, prior to any time material here, there was formed in England a series of "Patent Pools", that is, a collection of substantially all patents of importance to radio receivers (and later television receivers) into a group or pool. The Pool was not a legal entity but a contractual association of all owners of patents of value in the field, the Pool being administered by a committee made up of representatives of the patent owners. The Pool granted simple nonexclusive licenses to all British manufacturers, who preferred this arrangement since it required them to negotiate only a single license rather than separate licenses with the various patent owners. These pools were identified by serial numbers, for example A.6, A.7, and A.8, and each ran for a period of years. There is no evidence that these pools or their activities in any way

violated the laws of Great Britain where all of their activities took place.

45. After the failure of the Hazelpat venture, H. C. entered into an agreement with The General Electric Company, Limited of Great Britain (GEC) in 1938, which, by several extensions and modifications, continued in force up to the time of the filing of the Counterclaim herein. Under these agreements, H. C. granted an exclusive license under its British patents to GEC, including the right to place those patents with its own in successive British pools.

46. So far as material here, the contract clauses under which H. C. granted to GEC the exclusive rights described in order to derive income from its British patents were essentially the same in the several agreements, extensions, and modifications. The most recent form of this clause, that relating to the A.7 Pool, reads as follows:

> "1. For the consideration hereinafter mentioned the Corporation (H. C.) hereby grants unto G. E. C. the sole right to utilize all present and future Patents belonging to the Corporation in Great Britain Northern Ireland the Isle of Man the Channel Islands and Eire in relation to Radio Apparatus (as hereinafter defined) to and for the purpose of enabling G. E. C. to secure entry into the A.7 Broadcast Licensing Pool (hereinafter referred to as 'the A.7 Pool') on such terms as G. E. C. may deem proper or otherwise to deal with the said Patents of the Corporation by way of granting sub-licenses thereunder for the purpose of the A.7 Pool * * *."

47. None of the H. C.-GEC agreements in any way, directly or indirectly, restricts trade between the United States and Great Britain, the only affected countries. There is no price-fixing; there is no restriction on importation by GEC from the United States nor any restriction on its right to license others for importation from the United States; and there is no division of markets or fields. In

fact, H. C. is not even in the "market" at all, since it has never made or sold either radio or television receivers and is not even a competitor of GEC. The agreements contain no restrictions whatever as to the terms on which GEC can deal with the British Pool. Each of the agreements is an open and aboveboard, arm's length transaction which H. C. developed as the only practical way in which it could derive income from its British patents.

48. After the 1938 H. C.-GEC agreement, that company did negotiate with successive British radio and television patent pools and did include Hazeltine British patents, along with its own, in such pools and collected from the pools a portion of the royalties collected by them from the British radio and television industry.

49. In the chain of title from H. C. to the British radio (and later television) manufacturers there have been three links:

(a) The link from H. C. to GEC. There have been no restrictions in any of the agreements comprising this link which have prevented the importation of radio or television receivers into Great Britain by anyone, including Zenith.

(b) The link from GEC to the British pools. GEC has been a member of the several British pools by subscribing to the Pool agreements. In the earlier British pools, the agreements *between the pool members themselves* specifically excluded from the rights granted by the members to the pool, the right to license imported apparatus, the members retaining such rights to themselves. However, the most recent British Pool Agreement, known as the A.7, was extended by agreements effective January 1, 1958 and July 1, 1960. By the last extension agreement, the A.7 Pool Agreement was modified so that the pool members, on and after July 1, 1960, no longer withheld from the Pool the right to license imported receivers.

(c) The link from the British Pool to the British radio and television manufacturers. The several British pools have issued nonexclusive licenses to all British radio and television manufacturers, including the pool members themselves. Again, in the earlier forms of these licenses, the right to sell imported radio and television receivers in Great Britain was explicitly withheld from the licensees, including the pool members. However, commencing with licenses effective as of July 1, 1960, this restriction upon the right of the licensees to sell imported radio and television receivers in Great Britain was eliminated.

50. As a consequence of the facts set forth in the preceding Finding No. 49, on and after July 1, 1960, only thirteen months after the commencement of the damage period, there has been no restriction whatever upon the licensees of the British Patent Pool with respect to the importation of radio and television receivers into Great Britain, including the pool members themselves.

51. Neither GEC nor any of the British patent pools has had the *power to prohibit* importation of radio and television receivers into Great Brtain, whether or not patented.

52. Neither GEC nor any of the British pools ever could or ever did place any restriction on the importation of unpatented radio or television receivers into Great Britain. The evidence is that H. C. has not owned any British patents relating to radio receivers since 1955 and, moreover, does not have any British patents applying to current television receivers because of the different standards there. Mr. Wright, President of Zenith, admitted that he had no knowledge of any Hazeltine patent that would prevent importation of Zenith television receivers into Great Britain and that he had had no investigation of the subject made.

53. Whether or not the Hazeltine British patents were included in the British Patent Pool could not have had the

slightest effect on the freedom of Zenith to export radio and television receivers into Great Britain.

54. Zenith's policy of indemnifying its dealers and distributors applies also to Great Britain, thus eliminating their concern of possible infringement of the H. C. British patents.

55. Zenith's claim for damages arising from the H. C.-GEC agreement is based entirely on the testimony of its Vice President, Mr. Kaplan, that Zenith should have had a share of the British radio and television receiver market one-quarter as great as its share of the United States market except for the restrictions on importation arising from the inclusion of the H. C. British patents in the British pool. Mr. Kaplan's testimony on the point reads:

> "A. Well, I would have to admit that the twenty-five per cent was to some extent arbitrary. I mean, what we are being asked to do here is to determine if a horse that died yesterday could win the Kentucky Derby. * * *"

56. There is no evidence that Zenith has in fact been damaged, directly or indirectly, by the H. C.-GEC agreement or by any actions of H. C. thereunder.

57. Zenith contends that the purpose of the British pools has been to protect British manufacturers in the pools from the competition from radio and television receivers made in the United States and other countries but there is no evidence to support this contention. The obvious and direct purpose of the pools was to derive income from the valuable patent properties of the pool members. That was H. C.'s sole object.

58. Zenith contends that the policy of the British Pool was to cooperate in the division of territories and to withhold any assistance to any American company to sell radio and television receivers in England under license from the

pool patents but there is no evidence to support this contention.

59. Zenith contends that, as a result of antitrust litigation brought by itself and by the Government, RCA and General Electric were forced to cease their participation in the British patent pools but there is no evidence to support this contention or its relevance.

60. Zenith contends that H. C. has become an even more important factor in the British Patent Pool because of its color television patents but there is no evidence to support this contention since there is as yet no commercial color television in Great Britain.

61. Zenith contends that it has made every effort to export radio and television receivers to distributors and dealers in the English market but has been thwarted by threats of the British Pool against such dealers and distributors, but there is no evidence to support that contention. There is no evidence that Zenith made any effort to market radio or television receivers in England and its President admitted that he knew of no Zenith dealer or distributor in England that had been "threatened or harassed" or sued by the British Pool.

62. Zenith contends that since its settlement of antitrust litigation with RCA, General Electric, and Western Electric in 1957, it has been able for the first time to export and sell its radio receivers in the English market. However, during the four years beginning June 1, 1959, *after* Zenith acquired rights under the British patents of those concerns, it sold only 6,073 radio receivers in England.

63. Zenith contends that the British Pool has asserted H. C. British patents against it and has constrained it from entering the British television market, but the evidence is that H. C. has no patents in England applicable to British television receivers because of the different television broadcasting standards there.

64. Zenith contends that H. C., by virtue of its agreement with GEC, has been contractually unable to grant it a license to manufacture in the United States for export to, and sale in, England under H. C.'s British patents, but there is no evidence that Zenith ever requested a license under such patents from GEC, which is able to grant such a license.

65. Zenith has failed to establish the fact of any damage arising out of the H. C.-GEC agreement.

H. C.'s Foreign Licensing Practices—Australia.

66. In Australia, in order to derive income from the Hazeltine patents there, H. C. joined with a local concern, Electronics Industries Limited, to form Neutrodyne Proprietary Limited (Neutrodyne) and entered into an agreement with that concern granting exclusive rights under Australian patents originating from Hazeltine inventions. That agreement was still in force at the time the Counterclaim was filed herein. There is in the H. C.-Neutrodyne agreement nothing whatever, directly or indirectly, restricting the right of Neutrodyne to grant licenses with respect to the importation of radio (and later television) receivers into Australia.

67. In 1933, there was formed an Australian radio patent pool, known as "Australian Radio Technical Service And Patents Company Limited" (ARTS) by Amalgamated Wireless (Australasia) Limited and Standard Telephones and Cables (Australasia) Limited. There is nothing in that agreement restricting the rights of ARTS to license radio and television receivers imported into Australia.

68. The first practical implementation of the H. C.-Neutrodyne Agreement (DX-180) for the exploitation of the Hazeltine patents in Australia was an Agreement dated April 12, 1934, between Neutrodyne and ARTS. The granting clause in that Agreement is paragraph 5, reading:

> "In consideration of the premises and of the payment to Neutrodyne of the royalties hereinafter mentioned in manner hereinafter provided Neutrodyne except in so far as it may be unable to do so by reason of the terms conditions agreements and covenants expressed and contained in existing agreements made between Neutrodyne and the other parties whose names and addresses are set forth in the Third Schedule hereto hereby grants to A.R.T.S. for the term herein mentioned but subject as hereinafter provided the otherwise exclusive right and authority to grant sub-licenses to third parties (hereinafter called 'Licensees') to use, manufacture and sell in the Commonwealth of Australia and/or Dominion of New Zealand broadcast receivers as herein defined the subject of the present and future Letters Patent owned or controlled by it conditionally on such sub-licenses being non-assignable by A.R.T.S. or by its Licensees."

There are no restrictions in this agreement on the licensing of imported receivers into Australia. That basic Neutrodyne-ARTS Agreement was followed by superseding agreements and extensions, including the same essential granting provisions, so far as material here.

69. The Neutrodyne-ARTS Agreement referred to in preceding Finding No. 68 was followed by superseding agreements and extensions including the same essential granting provisions, so far as material here.

70. The early license forms issued by ARTS to the Australian radio industry (there was no television at that time) followed rather closely the forms used by the British pools and contained a restriction against importation without the consent of ARTS. However, in the later license forms, starting with License No. 5, having an effective date of January 1, 1951, this restriction on importation was generally eliminated, although it was continued in the licenses to local assemblers.

71. Consequently, from the adoption of ARTS License

No. 5, effective January 1, 1951, there has been no restriction as to the licensing of imported radio and television receivers in the complete chain of title from H. C. to Neutrodyne-ARTS to the Australian manufacturer.

72. The real impediment to the importation of radio and television receivers into Australia by Zenith is clearly spelled out in one of Zenith's own exhibits, a letter from the Australian General Electric Company to the International General Electric Company in New York which included the statement:

> "* * * The 'Scullin' (Labour) Government in the early days of the depression in 1930 voted a total prohibition of the importation of Radio Receivers, and although this embargo was removed by the next Government, the rate of duty was then set at such a figure as to amount almost to prohibition. As an example, we would instance a friend of the Company who purchased a receiver in the United States for £9, and had to pay £37 duty on entering Australia. * * *"

73. As a consequence of the circumstances set forth in preceding Finding No. 72, Zenith exported to Australia during the four-year damage period only 14 television receivers and 48 radio receivers.

74. Apparently as a consequence of the prohibitive Australian tariffs on radio and television receivers, Zenith had never made any attempt to build up the radio business in Australia nor had it ever asked ARTS for a license to import either radio or television receivers into Australia.

75. There is no evidence that Zenith has in fact been damaged, directly or indirectly, by the H. C.-Neutrodyne-ARTS agreement, or by any actions of H. C. thereunder.

76. Zenith contends that the dominant electronics company in Australia is and has been Amalgamated Wireless (A'asia) Limited but there is no evidence to support such contention.

77. Zenith contends that the "cartel arrangements assigned Australia exclusively to Amalgamated Wireless and the patents and inventions of all of the conspirators were funneled into" ARTS, but there is no evidence to support these contentions.

78. Zenith contends that the standard ARTS Pool license imposes restrictions effecting a division of territories in the over-all arrangements, but there is no evidence to support this contention.

79. Zenith contends that the license issued by ARTS requires the licensee to agree not to export or import or sell or offer for sale in Australia any radio or television receiver not manufactured in Australia, but this has not been true at lease since January 1, 1951.

80. Zenith contends that the acceptance of a Hazeltine license under its United States patents precludes it from attacking counterpart foreign patents of H. C. in the respective foreign countries, but the evidence is that the acceptance of a license under the Hazeltine United States patents does not prevent the licensee from attacking H. C.'s foreign counterpart patents asserted against exported radio and television receivers.

81. Zenith contends that the purpose of ARTS has been to protect Australian manufacturers in the pool from competition from radio and television receivers made in the United States and other countries but there is no evidence to support this contention. The obvious and direct purpose of ARTS was to derive income from the valuable patent properties of the pool members. That was H. C.'s sole object.

82. Neither Hazeltine nor H. C. has participated in any general plan or conspiracy the purpose and effect of which have been to restrain the export of radio and television receivers from the United States.

Zenith's Claimed Damages

83. Zenith has failed to carry its burden of proof of the fact of damage arising from any act, agreement, or arrangement of Hazeltine or H. C.

84. Zenith's computations of the amount of its asserted damages is based upon speculations, assumptions, and errors of computation as follows:

(a) Uncertainty in the computation of its share of the United States market for radio and television receivers.

(b) The "feeling" of its President that Zenith should have the same share of the Canadian radio and television receiver market as its share of the United States market.

(c) The "to some extent arbitrary" guess of its Vice President that it should have a share of the British radio and television receiver market one-quarter as great as its share of the United States market.

(d) The guess of its Vice President that it should have 2% as great a share of the Australian radio and television receiver market as its share of the United States market.

(e) Errors in computations of Zenith's accounts including:

(1) The erroneous assumption that an increase in Zenith's sales of exported receivers would come off the same production lines as United States receivers.

(2) The erroneous inclusion in its profit computations of certain costs as "fixed", that is, not increasing with increased volume of production, which Zenith's accountant admitted on cross-examination were actually variable costs, that is, varying with volume of production.

(f) The assumption of Zenith's accountant that increased export sales would yield an increased percentage profit, in spite of the fact that an increase in Zenith's domestic sales of more than 50% from 1958 to 1962 did not realize any increase in percentage profit.

85. Zenith's computations of the amount of its asserted damages are so wildly speculative and so permeated with error that they cannot support a claim for damages.

86. There is no evidence of any "international conspiracy" having as its purpose or effect the restriction of interstate or foreign commerce in the field of radio and television receivers.

87. There is no evidence linking Hazeltine or H. C. with members of the alleged "international conspiracy".

88. There is no evidence linking CRPL, GEC, and ARTS, or any of them, in any contract, arrangement, plan, or conspiracy to restrict trade in the field of radio and television receivers among their respective countries or with the United States.

Conclusions of Law.

1. Hazeltine's practices in granting licenses under its United States patents in the radio and television receiver field have not constituted a misuse of its patents and has not rendered them unenforceable.

2. Hazeltine has attached no conditions to its various license offers under individual ones of its United States patents tantamount to a refusal to grant licenses under its patents individually.

3. Hazeltine has not followed the practice of mandatory package licensing.

4. The method set forth in the current Hazeltine form of license agreement for computing royalties as a percentage of the manufacturer's selling price on all appa-

ratus of the type licensed is an accepted method of royalty computation and is not illegal.

5. Under the Canadian Patent Act of 1935, the owner of a Canadian patent who licenses imported articles covered by the patent incurs the following risks:

(a) The grant of a *nonexclusive* license to any applicant by the Canadian Commissioner of Patents at royalty rates set by him.

(b) The grant of an *exclusive* license to any applicant by the Canadian Commissioner of Patents at royalty rates set by him.

(c) Revocation of the patent by the Canadian Commissioner of Patents.

6. The risks set forth in Conclusion No. 5 can arise whenever the Canadian Commissioner of Patents finds that certain "abuses" of the patent have occurred; the Canadian Courts have found such "abuses" to have occurred if the Canadian demand for the patented article is not supplied substantially entirely by Canadian manufacturers.

7. The International Convention for the Protection of Industrial Property, as revised at London 1934, to which Canada has adhered, does not restrict the right of the Canadian Commissioner of Patents to revoke Canadian patents for "abuses" such as licensing large-scale importation; Canada has not adhered to the Lisbon revision of that Convention in 1958 which modified the authority of the Canadian Commissioner of Patents to issue an order of revocation.

8. A simple, nonrestrictive license agreement between a United States nonmanufacturing concern, owning patents in a foreign country, with a noncompeting concern in such country, having as its principal purpose and result deriving royalty income from such foreign patents, does not constitute a contract, plan, arrangement, or conspiracy in restraint of trade even though the operations of the foreign

concern in such country, lawful there, would be illegal if performed in the United States.

9. The bilateral agreement between H.C. and CRPL currently in force is a lawful agreement, the primary purpose and effect of which is to enable H.C. to obtain a fair royalty return under its Canadian patents.

10. The bilateral agreement between H.C. and CRPL currently in force does not constitute a contract, arrangement, plan, or conspiracy in restraint of trade between the United States and Canada.

11. The bilateral agreement between H.C. and GEC currently in force is a lawful agreement the primary purpose and effect of which is to enable H.C. to obtain a fair royalty return under its British patents.

12. The bilateral agreement between H.C. and GEC currently in force does not constitute a contract, arrangement, plan, or conspiracy in restraint of trade between the United States and Great Britain.

13. The bilateral agreement between H.C. and Neutrodyne-ARTS currently in force is a lawful agreement, the primary purpose and effect of which is to enable H.C. to obtain a fair royalty return under its Australian patents.

14. The bilateral agreement between H.C. and Neutrodyne-ARTS currently in force does not constitute a contract, arrangement, plan, or conspiracy in restraint of trade between the United States and Australia.

15. Any restraint on the export trade between the United States on the one hand and Canada, Great Britain, and Australia on the other hand, indirectly resulting from the H.C. license agreements to CRPL, GEC, and Neutrodyne-ARTS, respectively, are reasonable and ancillary restraints and do not bring such license agreements within the purview of the United States Antitrust Laws.

16. The bilateral nonrestrictive license agreements between H.C. and CRPL, GEC, and Neutrodyne-ARTS have not resulted in any legal injury to Zenith.

17. Zenith's estimate of the amount of damages it alleges to have suffered by virtue of the bilateral nonrestrictive agreements between H.C. and CRPL, GEC, and Neutrodyne-ARTS is too speculative, uncertain, and unreliable to form a basis of an award of money damages to it.

18. Zenith's affirmative defense to Hazeltine's claim for infringement of the '648 Loughren patent in suit that Hazeltine has misused its United States patents, thereby rendering them unenforceable, is dismissed.

19. Zenith's Counterclaim is dismissed.

Respectfully submitted,

Mason, Kolehmainen, Rathburn & Wyss,
M. Hudson Rathburn,
20 North Wacker Drive,
Chicago 6, Illinois,
Attorneys for Plaintiff.

Of Counsel:
Laurence B. Dodds,
Bartholomew Diggins,
Edward A. Ruestow.

INDEX.

Plaintiff's Motion for Withdrawal of Antitrust Findings and Conclusions and for Other Relief 2939
Plaintiff's Motion for Withdrawal of Findings and Conclusions as to Misuse of Patents 2952
Post Trial Offers of Proof by Hazeltine Research, Inc. in Support of Motion for Withdrawal of Findings and Conclusions, etc. 2955
Affidavit of Laurence B. Dodds 2996
Notice of Motion 2998
Motion for Leave to File Counterclaim 2999
Affidavit of Francis W. Crotty 3000
Counterclaim 3001
Affidavit of David Westermann 3007
Special Appearance, Hazeltine Corp. 3008
Affidavit of L. B. Dodds 3009
Letter Apr. 26, 1963, MacDougall to Dodds 3012
Stipulation 3014
Pre-Trial Stipulation 3016
Memorandum in Support of Special Appearance in opposition to Entry of Judgment Against Hazeltine Corporation 3019
Transcript of Proceedings in the District Court 3031
Proceedings of March 30, 1965 3031
Proceedings of March 31, 1965 3035
Proceedings of April 1, 1965 3036
Order of District Court Dated April 1, 1965 3040
Transcript of Proceedings of April 2, 1965 3041

Motion of Hazeltine Research, Inc. for Dismissal of Counterclaim 3048
Defenses of Hazeltine Research, Inc. 3049
Memorandum of Hazeltine Research, Inc. Concerning Form of Proposed Final Judgment 3054
Order of District Court Denying Motion to Dismiss Zenith Counterclaim 3062
Motion of Hazeltine Research, Inc. to Quash Subpoena Duces Tecum 3062
Affidavit of L. B. Dodds With Respect to Motion .. 3064
Portion of Zenith's Pre-Trial Brief on the Antitrust Issues 3068
Portion of Hazeltine's Post-Trial Brief on the Antitrust Issues 3071
Excerpts From Patent Trial Testimony of Edward A. Ruestow 3073
Final Judgment and Decree Dated April 5, 1965 3078
Minute Order of Judgment 3081
Notice of Appeal of the Hazeltine Research, Inc. 3082
Notice of Appeal of Hazeltine Corporation 3084
Transcript of Proceedings of April 16, 1965 3086
Transcript of Proceedings of May 3, 1965 3088
Transcript of Proceedings of May 25, 1965 3089
Zenith's Motion for Letters Rogatory 3092
Affidavit of T. C. McConnell in Support of Motion 3094
Transcript of Proceedings of June 9, 1965 3095
Zenith's Motion for Letters Rogatory 3096
Transcript of Proceedings of June 14, 1965 3098
Transcript of Proceedings of August 11, 1965 3098
Motion to Postpone Taking of Market Share Evidence Until Determination of Embargo Issue 3101
Transcript of Proceedings of August 25, 1965 3108

Order re: Depositions 3113
Motion to Dismiss Counterclaim 3114
Affidavit of Victor P. Kayser....................3117

PROCEEDINGS RE EMBARGO IN ENGLAND AND AUSTRALIA

Testimony of John Q. Ewens 3119
Excerpts from Deposition of B. F. Meere 3165
Testimony of Clarence E. Gaudry....................3167
Excerpts from Deposition of Norman H. Nail 3175
Testimony of Anthony R. Jabez-Smith 3179
Opening Statement on Behalf of Zenith 3181
Excerpts from Deposition of William G. Mills 3182
Excerpts from Deposition of Joseph M. B. Ribalta ...3191
Transcript of Proceedings of October 21, 1965 3202

PLAINTIFF'S EXHIBITS.

No. 64—Amendments Incorporation Act No. 13 of 1905 3207
No. 64—Amendments Incorporation Act No. 32 of 1918 3208
No. 65—Acts Interpretation Act 1901-1964 3209
No. 66—The Customs Act 1901-1936 3229
No. 67—Customs Act 1901-1957 3237
No. 68—Statutory Rules. 1939. No. 163 3252
No. 69—Statutory Rules. 1956. No. 93 3255
No. 70—Customs Tariff 1933-1958 3259
No. 71—Customs Tariff (No. 3). No. 52 of 1960 3272
No. 72—Customs Tariff (Primage Duties) 1934-1958..3283
No. 73A—Sales Tax Assessment Acts 3293
No. 73B—Sales Tax Acts 1930-1950 3315
No. 73C—Sales Tax Acts 1930-1962 3324
No. 74A—Sales Tax (Exemptions and Classifications). No. 5 of 1956 3333
No. 74B—Sales Tax (No. 5). No. 76 of 1957 3335

No. 74C—Sales Tax (No. 5). No. 93 of 1960 3337

No. 74D—Sales Tax (No. 5). No. 6 of 1961 3339

No. 74E—Sales Tax (No. 5A). No. 81 of 1961 3341

No. 74F—Sales Tax (No. 5). No. 9 of 1962 3343

No. 74G—Sales Tax (No. 6). No. 77 of 1957 3345

No. 74H—Sales Tax (No. 6). No. 94 of 1960 3347

No. 74I—Sales Tax (No. 6). No. 7 of 1961 3349

No. 74J—Sales Tax (No. 6A). No. 82 of 1961 3351

No. 74K—Sales Tax (No. 6). No. 10 of 1962 3353

No. 75 —Sales Tax (Exemptions and Classifications) Act 1935-1963....................3355

No. 76 —History of Australia's Import Licensing Measures 3360

No. 87 —Import, Export and Customs Powers (Defense) Act, 1939.........................3364

No. 88 —The Import of Goods (Control) Order, 1954 3365

No. 92 —Summary of Import Licensing Regulations, Notice to Importers No. 401............3367

No. 104 —Department of Commerce, Operations Report 3368

No. 105 —Durable Consumer Goods, July 1959......3372

No. 106 —The Economist, May 30, 1959...............3374

No. 107 —Imports Cleared for Home Consumption, 1954-55 3375

No. 108 —Imports Cleared for Home Consumption, 1955-56 3377

No. 109 —Imports Cleared for Home Consumption, 1956-57 3379

No. 110 —Imports Cleared for Home Consumption, 1957-58 3383

No. 111 —Imports Cleared for Home Consumption, 1958-59 3385

DEFENDANT (CROSS-CLAIMANT)'S EXHIBITS.

No. 4—Imports into Australia, 1953-54 3390
No. 4—Imports into Australia, 1954-55 3391
No. 4—Imports into Australia, 1955-56 3392
No. 4—Imports into Australia, 1956-57 3393
No. 4—Imports into Australia, 1957-58 3394
No. 4—Imports into Australia, 1958-59 3395
No. 4—Imports into Australia, 1959-60 3396
No. 4—Imports into Australia, 1960-61 3399
No. 4—Imports into Australia, 1961-62 3401
No. 4—Imports into Australia, 1962-63 3403
No. 4—Imports into Australia, 1963-64 3405
No. 8—Oversea Trade, 1953-63 3407
No. 25—Imports into UK, Radio Receiving Sets 3434
No. 62—Imports into UK, Television Sets 3435

TRANSCRIPT OF PROCEEDINGS.

Testimony of Samuel Kaplan 3436
Testimony of Joseph S. Wright 3489
Colloquy and Remarks by Court 3523
Order of November 23, 1965 3528
Notice re Motion for Findings and Judgment 3529
Order of November 30, 1965 3530
Memorandum of Hazeltine Research, Inc. Concerning Form of Proposed Amended Finding and Proposed Final Judgment 3531
Memorandum of Hazeltine Corporation Appearing Specially 3536
Amended Finding of Fact 3537
Minute Order of Judgment 3538
Final Judgment 3539
Transcript of Proceedings of December 13, 1965 3540
Notice of Appeal Hazeltine Research, Inc. 3545
Notice of Appeal Hazeltine Corporation 3546

1566 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

MOTION FOR WITHDRAWAL OF ANTITRUST FINDINGS AND CONCLUSIONS AND FOR OTHER RELIEF.

Now comes Hazeltine Research, Inc., plaintiff and counterdefendant (hereinafter referred to as "Hazeltine"), by its attorneys, and respectfully moves the Court (a) to withdraw the Findings of Fact and Conclusions of Law with respect to the Antitrust Issues proposed by Zenith Radio Corporation, defendant and counterclaimant (hereinafter referred to as "Zenith"), and entered January 25, 1965, (b) to dismiss the counterclaim as not proven, or (c) in the alternative, to provide for further pleadings, discovery and proof as herein described.

As grounds for its motion, Hazeltine states:

(1) The cause of action which Zenith pleaded in its counterclaim filed May 22, 1963, is entirely different from the cause of action which Zenith attempted to prove and which was embodied in Zenith's findings and conclusions adopted by this Court;

1567 (2) The change in theory of action and of damages was without notice to Hazeltine and resulted in major prejudicial consequences to it;

(3) The general releases given by Zenith in the Zenith-RCA litigation bar all or substantially all of the damages claimed under Zenith's new theory of action;

(4) The Statute of Limitations (15 U. S. C. A. § 15(b)) is (a) a complete bar to recovery under Zenith's new claim, or (b) if not a complete defense, bars substantially all of the damages claimed;

(5) The record entirely fails to show the indispensable "fact of damage," that is, does not show that the "pools" caused Zenith any financial loss;

(6) The evidence as to extent of damage involves so many outright mistakes, false assumptions, incomplete data and unsound accounting procedures as to render it incredible, insufficient, and meaningless as a basis for a finding as to measure of damage;

(7) The face of the record, including Zenith's exhibits, shows that for a number of years, including the period in question, the Australian "pool" has not barred imports into Australia;

(8) Equitable considerations require a reopening.

These grounds are set forth more fully in the following paragraphs, and a detailed analysis of the facts and applicable law appears in the memorandum filed herewith.

1568 I. The Antitrust Claim Zenith Advanced During Trial and Embodied in Its Proposed Findings and Conclusions, Is Not the Claim which Zenith Pleaded.

The theory of action which Zenith attempted to prove at the trial and is embodied in the findings and conclusions, presents an entirely different lawsuit from the one which was pleaded in the counterclaim.

Counterclaim Pleaded.

(a) Proximate cause of injury. The acts claimed were the "pendency of [the patent infringement] suit," plus the alleged "charges of infringement" in connection with U. S. color patent licensing negotiations, said acts being allegedly done by Hazeltine as a "co-conspirator" in an international conspiracy to restrain importation into foreign countries (Paragraphs 9(C) and 7).

(b) Period of damage. The period for which damage was claimed was from October 18, 1961 to May 22, 1963. As we explain in our memorandum, the beginning date of damage was necessarily October 18, 1961, since that was the earliest date of licensing discussions as to the U. S. color patents referred to in Paragraph 7, and Zenith specifically admitted that the patent infringement suit, by itself, did not cause damage.

(c) Nature and extent of damage. The only damage
claimed was that Zenith had "been forced to delay
1569 expansion" of its foreign trade in Canada, England
and Australia and other countries as the result of
the aforesaid acts (Paragraph 9(C)). In other words,
Zenith claimed only such profits as it could have obtained
from an increase in its market share after October 18,
1961, and nothing more.

The Cause of Action Zenith Attempted to Prove and Embodied in Its Findings and Conclusions.

The cause of action embodied in the findings and conclusions is not only of vastly greater scope, but entirely different in nature.

(a) Proximate cause of injury. The claimed cause of injury was the alleged restrictive practices of the patent "pools" themselves in England, Canada and Australia, allegedly going back over a period of "many years" (e.g., Findings XXI, XXIX, XXXIII). The restrictive practices asserted were the refusal of the pools to license imports, and the threat to sue infringers (e.g., Findings XV, XXV, XXXIII).

(b) Period of damage. Zenith in its new theory of action and in its findings, claimed damages for the four-year period prior to the filing of its counterclaim, i.e., from May 22, 1959 to May 22, 1963 (Finding XXVI).

(c) Nature and extent of damage. Zenith under its new theory of action and in its findings took the position that, but for the restrictive practices of the "pools,"
1570 going back over the many years the various pools
had been in existence (e.g., Findings XV, XVI, XXI, XXV-XXIX, XXXIII-XXV), it could have in Canada, England and Australia developed a mature market by May 22, 1959, consisting of the same percentage of the market or a stated part of that percentage, which Zenith had built up in the United States where it had been selling radios since about 1923, and television sets since about 1948. It claimed as damage for the full four years (a) those profits in each of the countries, which it asserted it could have realized, if it had been able to develop mature markets, and then profited from them during the four-year-period, together with (b) the profits which it claims it could have gotten from additional growth, during the four-year period, all "but for" the alleged restrictive activities of the pools.

In other words, the lawsuit pleaded and the lawsuit tried were entirely different—as concerns the acts alleged to cause damage—and as concerns the period of alleged damages—and as concerns the nature and extent of the damage which Zenith claimed to have suffered. Further, the new, and unannounced lawsuit called for new defenses, new discovery and an entirely different trial preparation —all of which Hazeltine was deprived of by Zenith's conduct.

1571 II. Zenith's Change in Theory of Action Was Without Notice to Hazeltine and Resulted in Major Prejudicial Consequences to it.

Zenith at no time before or during the trial notified Hazeltine or the Court that it was changing its theory of action. It was not until Zenith produced Exhibit 218, which Hazeltine's counsel had no previous opportunity to analyze, nor had even seen, that there was even an indication that Zenith might be changing its theory of action, but the first time there was in fact an express statement of Zenith's new theory of action was in Zenith's proposed findings and conclusions, almost two months after the trial.

Thus, as Mr. Dodds points out in his affidavit filed herewith, there was (a) no definition of the new issues by a new pleading or otherwise, (b) no opportunity for Hazeltine to plead to the new cause of action and to interpose the affirmative defenses which became applicable, (c) no opportunity to conduct discovery or prepare defenses as to such new theory of recovery, and (d) no fair chance to present a defense thereto at the trial.

The actions of Zenith, which had the effect of misleading Hazeltine's counsel and leaving them surprised and unprepared to deal with or respond to Zenith's new theory and the evidence Zenith asserted, resulted in major and extremely serious consequences to Hazeltine, as hereinafter referred to. The effect of this change of position
1572 and entrapment was to subject Hazeltine to a potential judgment of over $48,000,000, and to destruction, as herein described.

As we shall show in our brief, exactly the same tactic of claiming one cause of action and trying to prove another was attempted in *Wisconsin Liquor Co.* v. *Park & Tilford Distillers Corp.*, 267 F. 2d 928, 930 (7th Cir. 1959), and both the District Court and the Seventh Circuit would not permit it, and held the cause of action, as pleaded, not proved.

In this case, the counterclaim as pleaded should be dismissed for failure of proof, but if this is not done, then the case should be reopened as outlined in the subsequent paragraphs to permit the filing of the affirmative defenses and the other steps outlined.

III. The General Releases Given By Zenith in the Zenith-RCA Litigation Bar All, or Substantially All, of the Damages Claimed Under Zenith's New Theory of Action.

By shifting its theory of action, Zenith is trying to recover, for a second time, the alleged damages for which it was allegedly paid $10,000,000 and for which it granted releases in the Zenith-RCA litigation.

All or substantially all of the damages allegedly suffered by Zenith are barred by the general releases which, 1573 Hazeltine alleges on information and belief, were given by Zenith to RCA, General Electric Company and Western Electric Company, or one or more of them, on or about September 27, 1957, as a part of the settlement of the Zenith-RCA litigation. These releases barred not only damages already suffered, but all damages which Zenith "hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents", thus covering all loss of profits which Zenith might suffer in the future (including the 1959-1963 period) by reason of the fact that its future share of markets was not as great as it would have been had Zenith been able to develop those markets free of the alleged restrictive effects of the pools.

Zenith has taken the position in this litigation that Hazeltine, and its parent, were co-conspirators with RCA, General Electric and Western Electric in the alleged pools and conspiracies. Thus, Zenith's claim against Hazeltine, as an alleged joint tort feasor, is barred by these releases to the same extent as the claims against the parties in the Zenith-RCA litigation.

Zenith's damage claim against Hazeltine for four years profits from fully matured markets, is necessarily based on the alleged effects of the pool activities covered by the
1574 releases. Hazeltine has made herewith, offer to prove said releases.

This Release defense was not applicable and could not have been pleaded to Zenith's original counterclaim, which pleaded only alleged acts occurring after the releases, as alleged causes of damages. It would be highly inequitable to now deprive Hazeltine of the right to interpose the defense.

IV. Statute of Limitations.

Zenith's new claims are subject to the additional affirmative defense which was not applicable, and hence, not pleaded to the counterclaim as pleaded, namely, the bar of the Statute of Limitations. In the counterclaim filed, the alleged "overt acts" causing damage were all within the four-year limitations period. Under Zenith's new theory, this is not the case, and Hazeltine should have the opportunity to plead this defense.

V. The Record Entirely Fails to Show the Indispensable "Fact of Damage" Either Under the Theory Pleaded or the Theory Embodied in the Findings and Conclusions.

The law imposes upon Zenith the burden of proving by clear, concrete and specific evidence that it has, in fact, been injured by some wrongful act of the alleged pool or

pools, but Zenith has been unable to show any specific injury which has resulted to it by reason of any acts jury which has resulted to it by reason of any acts
1575 of the pool within the complaint period. Indeed, it seeks here to recover over $48,000,000 of treble damages based on mere "guesstimates" of lost market shares.

That such evidence is not sufficient to prove the fact of damage was made clear in the Seventh Circuit's recent decision in *Wisconsin Liquor Co.* v. *Park & Tilford Distillers Corp.* (7th Cir. 1959), 267 F. 2d 928, 932, where a witness testified, without further supporting evidence, that "but for" interference arising from the breach of contract by defendant, plaintiff would have doubled its sales and profits. In holding such an estimate insufficient, the court said:

> "The only other evidence on the question of damages was testimony by one of appellant's officers that during the twelve month period from June 15, 1954 to June 30, 1955 (the first year under the distributorship contract) its books showed gross sales of Park & Tilford products amounting to $347,217.50 with profits (after taxes) of $45,289.25. This witness testified that, *absent interference* arising from the breach of contract, appellant would have doubled such sales and profits. This testimony has no support in the record since there is no competent evidence of loss of customers or sales and could certainly be no basis for the assessment of damages. Loss of profits is a proper measure of damages in Wisconsin, but the evidence must furnish some basis on which profit may be computed with reasonable certainty. [Citing cases.] *Recovery of an alleged loss of profits cannot be had on the basis of pure guesswork and speculative evidence as to the existence and extent of such losses.*" 267 F. 2d at 932 (Emphasis added).

1576 Similarly, Zenith has failed to prove the fact of damage in this case by any specific and concrete evidence, and there is strong reason to believe that it could not do so, as indicated by the following:

A. The alleged loss of radio sales could not have been the result of any activities by the pools, for the record shows that there were no patents which would prevent sales of Zenith's radios.

B. As to television, Zenith did not show that it was prepared or intended to enter into either the Australian or the English markets and ignored or improperly minimized the intervening factors preventing or impeding importation irrespective of any alleged pool restrictions. These included a tariff in Australia which would make the cost of an imported set almost double the price of a locally manufactured set, technical differences in England as to television which would require substantial changes to make a set usable in England, and a substantial price disparity in England which would place Zenith's sets at a price of up to 87% or more higher than locally manufactured sets. Hazeltine has made herewith offer to prove said tariffs and other factors.

C. In Canada, as its own annual statements show, Zenith achieved as large a share of that market as could be expected under the competitive conditions, and Zenith has failed to show that its inability to achieve a larger share of the market was the result of any activity of the pool.

D. Zenith's "estimates" as to the shares it should have had are legally and factually insufficient.

Finally, Zenith's failure to disclose its theory until trial prevented Hazeltine from discovering and offering evidence to show that, in the volumes claimed by Zenith, it 1577 would have been more profitable for Zenith to manufacture in the foreign countries as it was always free to do.

VI. The Evidence as to "Extent of Damage" Involves so Many Outright Mistakes, False Assumptions, Incomplete Data and Unsound Accounting Procedures as to Render it Incredible, Insufficient and Meaningless as a Basis For a Finding as to Measure of Damage.

The defects include the following:

A. Zenith's own Exhibits, upon analysis, suggest that the purported $9,248,296 "profit" which Zenith claims for exports to England, in fact would have been more than an $11,000,000 "loss".

B. About $10,000,000 of the $16,000,000-plus "profits" claimed for the three countries results from the improper exclusions of cost items in the cost compilations for Canada, which were also used for England and Australia.

C. Zenith apparently exaggerated its share of the United States market, which it used as the basis for its market share "estimates" in Canada, England and Australia.

D. In figuring its theoretical sales prices and profit margins, Zenith ignored the effects of tariffs, taxes, transportation and other costs which would have raised prices to noncompetitive levels or entirely destroyed any profit, and which Hazeltine has made offer to prove.

E. Zenith's contention that the problem of adaptation of sets for the English market need not be considered, and that the changes can be made in a distributor's "back-room with a screw driver" is so demonstrably absurd and false as to discredit the cost exhibit.

F. Other typical flaws in Exhibit 218 depriving the exhibit of weight include the following:

1578 (1) Failure to consider selling costs.

(2) The assumption that Zenith can ignore competitive prices.

(3) The deliberate selection of figures to inflate "profits."

(4) The careless assumptions as to product mix.

(5) Clerical errors and other evidences of carelessness in the preparation of DX 218.

VII. The Face of the Record, Including Zenith's Exhibits Shows that the Australian Pool Did Not Restrict Imports During the 1959-1963 Period.

Zenith's claim of illegality of the Australian pool is based on the charge that the "standard Pool license" offered to manufacturers "requires the licensee to agree not to export or import or sell or offer for sale in Australia any radio or television receiving apparatus not manufactured in Australia" (Finding XXXIV). The uncontradicted evidence is that since 1951, the "standard Pool license" available to manufacturers has included no restrictions on imports of equipment covered by the patents (license No. 6, DX 193), the restrictions referred to in said finding appearing only in the licenses (DX 194, 195, licenses 6B and 7B) granted to "local assemblers" (R. 1351-1354), which could not affect Zenith.

Further, if the Court feels it necessary, Hazeltine, by separate offer of proof, offers additional evidence 1579 that licenses for imports have been available since 1951, and that such licenses for imports have in fact been granted.

Zenith's contention as to "illegality" of the Australian pool and "restraint" on its imports, is based on license forms and alleged practices which have been inapplicable for over ten years.

VIII. The Equitable Considerations.

The reopening of proof in this case is vital to Hazeltine, and to the ends of justice. It is vital to give Hazeltine a chance to interpose its affirmative defenses, which are of major importance as a bar to Zenith's claims, and which could not be interposed to the counterclaim as filed. It is vital because otherwise Zenith by its tactic of pleading one lawsuit and trying another will have succeeded in depriving Hazeltine of its rights to make discovery, prepare for, and put in the defenses available to it. It is vital to give Hazeltine a reasonable opportunity to answer on the record the flimsy "proof" of damage offered by Zenith's executives and its Exhibit 218. If Hazeltine does not have this opportunity, it will in substance have been deprived of its day in court.

If judgment is allowed to enter, and if it were asserted against Hazeltine Corporation, the parent, as Zenith now improperly seeks to do, it would destroy both corpo-
1580 rations. As shown by the affidavit of David Westermann filed herewith Hazeltine is a small corporation, whose 1964 profit after taxes was $219,777, and whose net worth is $3,184,419 (and the net income after taxes of Hazeltine Corporation, the parent, which is not a party hereto, is only $1,132,092, and its net worth at the end of 1964, $21,068,763). If this proposed $48,000,000-plus judgment were to be entered, it should in any event be only after Hazeltine has had a fair opportunity to defend itself. It should not occur on the basis of a cause of action which was not pleaded; it should not occur on the basis of the flimsy evidence now in the record.

Hazeltine respectfully states to this Court that while this motion is limited to the matters above alleged, it does not thereby waive its right to raise any other matters in any subsequent proceedings.

Wherefore, Hazeltine Research, Inc. respectfully prays the Court that the following relief be granted:

(A) That the findings and conclusions herein as to the antitrust counterclaim be withdrawn, and that the counterclaim as pleaded be dismissed for lack of proof, or if not, that the further steps and actions hereinafter prayed be ordered.

(B) That Zenith be required to amend its counterclaim so that its pleadings shall comply with the theory of action embodied in its proposed findings and conclusions.

1581 (C) That Hazeltine be permitted to answer to such amended pleading, and to file its affirmative defenses thereto.

(D) That Hazeltine be permitted reasonable opportunity to engage in further discovery on the matters set forth in this motion, including discovery of the records and personnel of Zenith.

(E) That the Court hold further hearings on the matters set forth in the foregoing motion to permit the introduction of further evidence by Hazeltine, including evidence as to the matters stated in its offers of proof.

(F) That Hazeltine be granted such other and further relief as is proper under the circumstances.

Oral argument is requested.

Respectfully submitted,
Hazeltine Research, Inc.,
By: John T. Chadwell,
Victor P. Kayser,
M. Hudson Rathburn,
Attorneys for Plaintiff-Counterdefendant.

Of Counsel:
Laurence B. Dodds,
59-25 Little Neck Parkway,
Little Neck, New York,
Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603,
Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago, Illinois 60606.

1795 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

PLAINTIFF'S MOTION FOR WITHDRAWAL OF FINDINGS AND CONCLUSIONS AS TO MISUSE OF PATENTS.

Now comes Hazeltine Research, Inc., plaintiff and counter-defendant (hereinafter referred to as "Hazeltine"), by its attorneys, and respectfully moves the Court to withdraw the findings of fact and conclusions of law entered January 25, 1963, as they pertain to the defense of misuse, to permit the introduction of certain evidence on said points, and re-argument, as hereinafter described.

As grounds for this motion, Hazeltine states:

(1) Hazeltine recognizes that in the case of the misuse defenses, there is no problem of change of theory of recovery, nor of surprise and accompanying prejudice, but respectfully states to the Court its brief that the

1796 findings and conclusions on misuse are erroneous and that the enlargement of the evidence and further consideration of additional law can be expected to cause the Court to come to a different conclusion. Accordingly, Hazeltine respectfully requests the Court to exercise its discretion to consider the admission of further evidence and reargument as herein described.

(2) One ground for the Court's conclusion of misuse of patents was Zenith's contention that the formula of 50% maximum royalty for one patent, 80% royalty for two patents and 100% of the royalty for three patents was inherently coercive (Finding XI). Hazeltine desires to supplement the proof in the record, by the offer of the license agreements themselves, to show that 9 out of the 14 active licenses at the time of the filing of the counterclaim

were for less than all of the patents and the royalties were on the basis of the 50-80-100% formula; and that, in fact, the patent in suit was the one most commonly licensed at a royalty of 50% of the stated package rate. In other words, the 50-80-100% formula did not have the effect of economic coercion to force acceptance of the package.

(3) Another alleged ground of misuse involved Hazeltine's offer of a color license to Zenith and is based 1797 upon the charge that the benefit of a $200,000 maximum provision was available only if Zenith accepted a full package license for both black and white and color television use. Hazeltine desires to offer evidence of actual licenses in which the $200,000 maximum was afforded even though the entire package license for both uses was not taken by the licensor. Further, Hazeltine respectfully suggests that an analysis of the present record will show that there is no basis for Zenith's charge that the $200,000 maximum was applicable only to the full package license for both uses.

(4) The final ground for the alleged misuse was the conclusion that it is unlawful per se for a licensor to charge a royalty based upon the number of units manufactured by the licensee, whether or not such manufacturer embodies the claims of the licensed patents. We respectfully suggest that there are a number of cases, including cases decided by the Seventh Circuit after *Automatic Radio* v. *Hazeltine,* which approve licenses which require such a royalty base and the offer of such licenses to prospective licensees. These cases were not previously called to the Court's attention on this particular point.

1798 (5) We believe that if the foregoing requests are granted, the reopening of proof would not require a substantial amount of time and would no doubt be limited to the introduction into evidence of the actual license agreements, which Zenith may well be willing to stipulate to.

Wherefore, Hazeltine respectfully prays that the relief set forth above be granted.

Respectfully submitted,

Hazeltine Research, Inc.,
By John T. Chadwell,
Victor P. Kayser,
M. Hudson Rathburn,
Attorneys for Plaintiff-Counterdefendant.

Of Counsel:

Laurence B. Dodds,
59-25 Little Neck Parkway,
Little Neck, New York.

Chadwell, Keck, Kayser, Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603.

Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago, Illinois 60606.

1742 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

OFFERS OF PROOF BY HAZELTINE RESEARCH, INC. IN SUPPORT OF MOTION FOR WITHDRAWAL OF FINDINGS AND CONCLUSIONS, ETC.

John T. Chadwell,
Victor P. Kayser,
M. Hudson Rathburn,
Attorneys for Hazeltine Research, Inc., Plaintiff-Counterdefendant.

Of Counsel:
Laurence B. Dodds,
59-25 Little Neck Parkway,
Little Neck, New York,

Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603,

Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago, Illinois 60606.

1743 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

Offers of Proof by Hazeltine Research, Inc. in Support of Motion for Withdrawal of Findings and Conclusions, Etc.

Plaintiff and counter-defendant, Hazeltine Research, Inc. ("Hazeltine"), by its attorneys, hereby makes the offers of proof as set forth on the attached offers, for the purposes and on the grounds therein stated.

Said offers consist of the following:

1. Proof of the releases given by Zenith to RCA, General Electric Company and Western Electric Company, or one or more of them in the Zenith-RCA litigation.
2. Proof of report of Ernst & Ernst concerning Zenith's Exhibit 218.
3. Proof of Zenith's annual reports for the period 1947 to 1963, and proof of Zenith sales and net income for 1964.
4. Proof of tariffs, taxes and other matters affecting import of television and radio sets into Australia, Canada and England.

1744 5. Proof as to changes necessary to adapt American television sets for the English market.

6. Proof as to licenses and licensing practices of Australian "pool".

Respectfully submitted,

Chadwell, Keck, Kayser, Ruggles & McLaren,
By: Victor P. Kayser,
Attorneys for Hazeltine Research, Inc.

1745 Offer of Proof of Releases In Zenith-RCA Litigation.

Nature of evidence to be offered.

Hazeltine offers to prove, by competent evidence, unless Zenith will admit the facts, that on or about September 27, 1957, Zenith gave general releases to Radio Corporation of America, General Electric Company and Western Electric Company, or one or more of them; that said releases were in the form, or substantially in the form, of the release which is attached as an exhibit to this offer of proof; that said releases were given in connection with the settlement of the counterclaims of Zenith and Rauland against RCA, General Electric and Western Electric, in the case which was then pending in the United States District Court for this District, *Radio Corporation of America v. Zenith Radio Corporation and The Rauland Corporation*, Civil Action No. 48 C 1818.

Purposes and grounds of the offer of evidence.

Hazeltine offers to prove the aforesaid releases and surrounding circumstances for the purpose of showing that by the counterclaim embodied in Zenith's Proposed Findings and Conclusions, it is trying to collect for a second time for the claims of damage for which it 1746 has already collected once, and which claims were barred by the aforesaid release or releases.

As set forth in Hazeltine's Motion and Memorandum accompanying this offer of proof, Zenith has taken the position that Hazeltine was a co-conspirator in connection with the alleged conspiracy and pools which were the subject matter of its counterclaims in the Zenith-RCA litigation; the damage claims which Zenith now makes against Hazeltine are almost entirely, if not totally, based on or would result from the alleged restrictive practices of the alleged conspiracy and pools taking place within the period covered by the releases; and therefore said releases bar the claims against Hazeltine as an alleged co-conspirator.

1747 To All To Whom These Presents Shall Come Or May Concern, Greeting: Know ye, That Zenith Radio Corporation and The Rauland Corporation, each a corporation organized and existing under and by virtue of the laws of the State of Illinois, for and in consideration of the sum of One Dollar ($1.00) lawful money of the United States of America and other good and valuable consideration, to them in hand paid by *.., the receipt whereof is hereby acknowledged, have each remised, released and forever discharged, and by these presents does each for itself and its respective subsidiaries, successors and assigns remise, release and forever discharge the said *.. and its subsidiaries and their respective successors and assigns of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialities, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against said *.., its subsidiaries and their respective successors and assigns, said Zenith Radio Corporation and The Rauland Corporation and each of them ever had, now has or which each of them and their respective subsidiaries, successors and assigns, hereafter can, shall or may have for, upon or by

---

* Insert
"Radio Corporation of America," or
"General Electric Company," or
"Western Electric Company."
This release may not be changed orally.

reason of any matter, cause or thing whatsoever from
1748 the beginning of the world to the day of the date of
these presents, not including however, claims, if any,
for unpaid balances on any goods sold and delivered.

In Witness Whereof the said Zenith Radio Corporation and The Rauland Corporation have each caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the ______ day of September, nineteen hundred and fifty-seven.

In the Presence of:

____

In the Presence of:

____

Zenith Radio Corporation,
By ______________________________
The Rauland Corporation,
By ______________________________

State of Illinois, }
County of Cook. } ss.

On the ______ day of September, nineteen hundred and fifty-seven, before me came ______________________________ to me known, who, being by me duly sworn, did depose and say that he resides at ______________________________, that he is ____________________ of Zenith Radio Corporation, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

____________________,
Notary Public.

1749 State of Illinois, } ss.
County of Cook. }

On the .... day of September, nineteen hundred and fifty-seven, before me came ...., to me known, who, being by me duly sworn, did depose and say that he resides at ...., that he is .... of The Rauland Corporation, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

......................................,
Notary Public.

1750 Offer Of Proof As To Analysis Of Defendant's Exhibit 218 By Ernst & Ernst.

Nature of evidence to be offered.

We hereby offer to prove through personnel of Ernst & Ernst, Certified Public Accountants, having an office at 231 South La Salle Street, Chicago, Illinois, that they made a study of Defendant's Exhibit 218, together with DX 216, and underlying and related materials as disclosed in the Summary of Findings and Supporting Details in the matter of Hazeltine Research, Inc. v. Zenith Radio Corporation, filed herewith, and that they made the findings and came to the conclusions therein stated.

Purpose and grounds for offer of evidence.

The purpose of this offer of proof is to establish the defects in said Exhibit set forth in Hazeltine's motion and brief.

1752 Offer Of Proof As To Zenith's Annual Reports And Financial Information.

Nature of Evidence to be Offered.

Hazeltine offers to prove the publication of Zenith's Annual Reports for the years 1947 through 1963, unless Zenith will admit the authenticity of the same, and offers to prove Zenith's gross sales and net profits after taxes for the year 1964.

Purpose and Grounds for Offer of Evidence

The purpose of this offer of evidence is for a variety of reasons as follows:

(a) To prove by said annual reports, as admissions of Zenith, that such sales operations as Zenith carried on in Canada and England (there were no sales attempts in Australia) after the 1957 settlement and during the 1958-1963 period were highly satisfactory, or if not, that Zenith's problems resulted from other factors such as the Canadian tariff and Japanese low price competition.

(b) To prove that Zenith has been in the production and sale of radios in the United States since about
1753 1923, and of television since about 1948.

(c) To show Zenith's accounting practices, and other Zenith financial information, in connection with proof of the fact that Zenith's Exhibit 218 cannot constitute the basis for a finding as to the measure of damages.

1755 Offer Of Proof Of Certain Tariffs, Charges And Taxes In Effect In Australia, England And Canada During 1959-1963.

Nature of evidence to be offered.

Hazeltine offers to prove by competent evidence the existence of the tariffs, charges and taxes in Australia, England and Canada during the 1959-1963 period as set forth below.

Purpose and grounds of the offer of evidence.

The purpose of this evidence is to establish the existence of the high tariffs and taxes as intervening causes which made the import of television sets into Australia almost impossible as a financial matter, and as to the other two countries, made imports impractical and materially affected the profits, if any, which could have been realized from imports.

Specific Tariffs and Taxes

I. Australia

A. Tariff

The tariff on television sets in Australia during the applicable period was divided into two parts (Tariff Classification No. 181 (E) (2) (a)). The tariff for the picture
1756 tube was six pounds plus 12½% of the selling price f. o. b. the United States port of export. The tariff for the receiver less the picture tube was 25 pounds plus 45% of the selling price. The tariff for radios (Tariff Classification No. 181(E)(1)) was five pounds plus 45% of the selling price. During the applicable period, the average value of the Australian pound was the equivalent of $2.24 in United States dollars.

Thus, the tariff was 31 pounds ($69.44) plus 12½% of the price of the picture tube and 45% of the price of the receiver, and for radio it was five pounds ($11.20) plus 45% of the selling price. On a $136.80 television set (Zenith's 1962 average price), the duty would be $121.25, considering the picture tube to be priced at $30.00, which gives Zenith the benefit of any doubt as to its price.

B. Taxes

A sales tax of 25% was imposed on both radios and television. Where those products were imported, the base for computation of the tax was 120% of the products' value plus the custom duty. Thus, in the case of the $136.80 imported television set, the tax would be $71.35, or $37.15 more than the tax on a locally manufactured set.

II. Canada

A. Tariff and surcharge

In Canada during the period from 1959 through 1963, the tariff for radios and for television (Tariff Classification No. 445d) was the same. The basic tariff on these products was 20% of the United States plant price to United States dealers. From June 25, 1962 to February 19, 1963 an additional 10% surcharge was imposed. From February 20, 1963 to March 31, 1963, the surcharge was 5%. After April 1, 1963, there was no added surcharge. Thus, during the applicable period the tariff and surcharge was as high as 30% and was never lower than 20%.

B. Taxes

The Canadian sales tax of 11% and the Canadian excise tax of 15% was imposed on both radios and television sets. And the import duty was added into the price before calculation of the sales and excise taxes, which meant that an import was assessed an additional 5.2% (26% of 20%) on its United States price.

III. United Kingdom

A. Tariff

The tariff on both television sets and radios (Tariff 1758 Classification No. 85.15(A).) in the United Kingdom during the applicable period was 20% (except car radios which was 24%) of the f.o.b. port of entry price, i.e., the shipping costs were included in the price for purpose of calculating the duty.

B. Taxes

During the applicable period, a purchase tax of 60% was imposed on both radios and television sets, and the duty was added to the price on which the 60% tax was applied.

C. Embargo

We have just determined that there was a complete embargo on importation of radios, television sets and phonographs from the period 1951 through June 7, 1959. This was administered by the Board of Trade and effectively prevented any shipments of these products into England during this period. From July 7, 1959, a general license was available for importation of these items except that certain component parts of the radio and television receiver sets, such as tubes, transistors, valves and other items, could not be imported until after November 9, 1959.

1760 Offer of Proof as to Differences in Requirements and Standards for Television Sets in the United Kingdom, as Compared to the United States.

Nature of evidence to be offered.

Hazeltine offers to prove by the testimony of Bernard D. Loughlin, vice president for research of Hazeltine, the minimum changes which would have to be made in the construction of a United States television set during 1959-1963 to enable the same to be sold and used in the United Kingdom. Attached hereto as an Exhibit is a list of such minimum changes.

Purpose and grounds of the offer of evidence.

At the trial, Zenith's witness, Kaplan, and its counsel, took the position that the changes necessary to adapt a United States television set for use in the United Kingdom was so minute that "all the changes that were necessary to be made, the distributor could make in a back room with a screw driver" (R. 846, 1265).

The offered evidence has two purposes. First, it shows that contrary to Zenith's contention, the many changes which would be required as a minimum, are so extensive as to have a very specific bearing on the question of costs and alleged profit margin on export of sets to the United Kingdom. The changes are so great that the sets would either have to be produced or completed on a sep-
1761 arate assembly line, or if altered, a substantial undertaking would be involved, affecting both costs and desirability of the end result.

The second reason for this offer is that the "change with a screw driver" story is so obviously untrue as to substantially impair, if not destroy, any probative force of the testimony of the witness Kaplan. It shows that either he was testifying carelessly, or that in fact he had no knowledge of competitive problems and conditions in England.

1762 **Proffered Testimony of Bernard D. Loughlin as to Changes in Zenith Monochrome Television Receiver Required to Accommodate it to British Broadcast Standards.**

The circuit diagrams of Zenith monochrome television receivers, as published in Sams Photofact Folders for the period 1959-1963, were reviewed from the viewpoint of the minimum changes which would be required to enable them to provide commercially acceptable pictures from programs broadcast in accordance with British standards. From this particular viewpoint, it did not appear that there were any significant differences between the several receivers, and Zenith Chassis 16G20 (1961) was selected as typical.

Following is a statement of the minimum number of changes which would be required, in accordance with good engineering practice to enable the Zenith 16G20 receiver to operate from a British television signal, the necessary changes being stated in connection with each major difference in the broadcast standards of the British system and the U. S. system.

1. Broadcast channels. The U. S. system provides twelve broadcast channels, seven high VHF and five low VHF. The British system provides thirteen channels, eight high VHF and five low VHF, but two of the low VHF channels are entirely outside of the range of any U. S. channels.

1763 Changes required. Two new low VHF channel strips and one new high VHF channel strip, not available in the U. S., would be required for the Zenith turret turner. Each such strip contains several coils and eight switch contact points.

2. Channel spacing. The U. S. picture carrier is 4.5 Mc. below the sound carrier, while in the British system the picture carrier is 3.5 Mc. above the sound carrier. In the receiver for both systems, the high—low relationship is reversed in the intermediate-frequency channel. The standard U. S. intermediate-frequency corresponds to one of the low VHF channel frequencies of the British system.

Changes required. The intermediate-frequency of the receiver must be changed to avoid interference from the British station broadcasting on the U. S. intermediate frequency. Therefore, the intermediate-frequency circuits of the set must be redesigned for different center frequencies and must also be redesigned to pass a narrower band of frequencies, due to the different picture—sound carrier spacing. In addition, the intermediate-frequency rejection filters of the tuner require redesign because of the different intermediate frequencies. The output circuit of the tuner must also be changed to the different intermediate frequency. While each of the foregoing circuits is adjustable for alignment, the range of adjustment is not sufficient to accommodate the foregoing required changes. The preferred was of making the foregoing changes would be the replacement of the eleven intermediate-frequency coils. An alternative, at some sacrifice in performance, would be to add capacitors across the coils. In addition, the sound trap in the video amplifier output circuit must be redesigned for 3.5 Mc. instead of 4.5 Mc. This change would preferably be made by replacing the trap unit.

1764

3. Polarity of modulation. The U. S. standards specify negative modulation, that is, a signal in which the strength increases as the picture area is darker, while the British specifies the opposite, that is, positive modulation.

Changes required. The first change required is to reverse the connection of the video detector tube and change the bias on the video amplifier. The simplest additional change would be to replace the dual-pentode automatic-gain-control keyed sync separator and noise limiter with a dual triode, one half connected as a simple sync separator and the other half as a keyed automatic-gain-control tube, simultaneously changing the connection of the automatic-gain-control section from the output of the video amplifier to the output of the video detector. These changes
1765 will result in an automatic-gain-control of degraded but possibly acceptable performance. To retain the automatic-gain-control performance of the original set would require the addition of another tube and several circuit elements to permit operation on the British positive modulation signal.

4. Scanning. The U. S. standards provide for scanning the picture tube at 30 frames (60 fields) per second, each frame of 525 lines. The British standards specify 25 frames (50 fields) per second, each frame of 405 lines, so that the British line-scanning frequency is approximately 10 kc. versus the U. S. of approximately 16 kc.

Changes required. In the vertical scanning oscillator, one resistor would require replacement. In the horizontal scanning oscillator, the horizontal output transformer, one of the most critical and costly elements of the receiver, must be replaced. In addition, the horizontal hold control coil and at least three capacitors must be replaced.

5. Sound signal channel. The U. S. standards specify the transmission of the sound signal via frequency modulation (FM), while the British standards specify amplitude modulation (AM).

1766 Changes required. Changes in sound signal channel in converting from FM to AM are complicated by the fact that with the British system it is no longer possible to use the so-called "intercarrier sound" circuit, the circuit by which a portion of the amplification of the sound signal occurs in the video-signal channel. Among the changes that must be made in the sound channel are the following: The 4.5 Mc. sound intermediate-frequency amplifier and limiter must be replaced by a 38.15 Mc. amplifier and the connection must be changed from the video detector to the third video IF amplifier. This sound amplifier circuit includes new tuned circuits (two coils), a new tube, and several resistors and condensers. A separate automatic-gain-control (AGC) should be provided for the sound channel to accommodate slight detuning of the tuner. The present high gain (FM) detector must be replaced. The simplest adequate replacement is a dual-diode-triode tube connected as a combined AM detector, AGC detector, and audio amplifier.

6. Power supply. U. S. domestic power lines are generally 120 volt, 60 cycle, while the British is 240 volt, 50 cycle.

Changes required. The power transformer must be changed. This is one of the most expensive items of the receiver.

1767 7. Cabinets. While not a matter of standards, as a matter of practice for reasons of economy, the majority of the U. S. television receivers are housed in metal cabinets. The majority of the British receivers are housed in the more expensive wooden cabinets. This difference is related to the popular conception that the British 240 volt power supply (versus U. S. 120 volt) creates an unacceptable shock hazard when the set is housed in a metal cabinet.

The only praticable way of producing a Zenith receiver, even in moderate volume, for sale in England would be to set up a separate production assembly line, either in the U. S. or England. Conversion of completed

U. S. receivers, as described above, would result in a receiver wholly noncompetitive, both because of the cost of the replacement components and the cost of the labor in making the conversion. Production of receivers in the U. S. with omission of the parts to be replaced is a possibility, but this would increase the cost of the partially produced sets and would require assembly production lines in the U. S. or England in order to produce a receiver at a competitive cost. Conversion of the U. S. receivers to accommodate British standards by a mere technician or serviceman, set by set, would be utterly impracticable, either from a technical point of view, and it is believed, as a matter of economics.

Offer of Proof of Licensing Practices of the Australian "Pool".

Nature of evidence to be offered.

Hazeltine offers to prove by competent evidence the following:

(a) Form of patent License No. 7, offered by and made available by Australian Radio Technical Services & Patents Company Pty. Limited (A.R.T.S.), for the period from January 1, 1961 to December 31, 1965, containing no restriction on imports (copy of said Form No. 7 is attached as an Exhibit).

(b) Proof that extensions of License No. 6 (DX 193) which was for the period from January 1, 1955 to June 30, 1958, and which contained no restrictions on imports, were granted extending their term to December 30, 1960.

(c) Proof that licenses actually were issued or in effect during the 1959-1963 period permitting the import of radio and television sets, and that licenses permitting the import of Zenith radio and television sets could have been obtained.

Purpose and grounds of the offer of evidence.

The purpose of this offer of proof is to furnish evidence that since at least January 1, 1951, there have been no provisions in the licenses available to manufacturers 1770 and importers which would have prevented the import of television sets and radios covered by the claims of the licensed patents. We believe this is already clear on the record but are nevertheless making the additional evidence of proof.

The significance of this evidence is that it shows first, that the alleged restrictions on imports referred to in Zenith's Finding XXXIV did not exist during any relevant period and that the finding is totally without any basis, and secondly, that the claim of alleged damage caused by the "pool" is entirely without foundation since the alleged restrictions were non-existent.

1771 Licence No. 7.

An Agreement made this .... day of .... 19.... Between Australian Radio Technical Services & Patents Company Pty. Limited having its registered office at 47 York Street Sydney in the State of New South Wales (hereinafter called "the Grantor") of the first part, And .... of .... (hereinafter called "the Licensee") of the second part.

Whereas the Grantor has the right to grant licences to the extent purpose and for the period of this agreement for all Australian Letters Patent owned or controlled by Amalgamated Wireless (Australasia) Limited; Standard Telephones & Cables Pty. Limited, N. V. Philips' Gloeilampenfabrieken, Neutrodyne Proprietary Limited, Electric and Musical Industries Limited and Pye Limited.

And Whereas the Licensee claims to be a bona fide manufacturer of broadcast sound receivers and/or television receivers and/or radio-gramophones and as such manufacturer has applied to the Grantor to grant and the Grantor has agreed to grant to the Licensee a licence under the Letters Patent and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed upon the basis agreed between the parties as being convenient. Now It Is Hereby Agreed As Follows:—

1. (a) The expression "Broadcast Sound Receiver" when herein used shall mean broadcast receiving apparatus which is designed to incorporate valves (whether or not equipped with the valves themselves) and which is designed to receive and translate modulated electrical oscillations broadcast to the public for sound reception. Such expression does not include valves or cathode ray tubes whether or not incorporated in the apparatus nor separate components but shall include sets of component parts and/or any electronic device designed to be used in association with such broadcast sound receiving apparatus.

(b) The expression "Radiogramophone" when herein used shall mean an instrument which is designed to incorporate valves (whether or not equipped with the valves themselves) and which may be used for the reproduction of sound through an electrically operated loudspeaker alternatively from (i) apparatus designed for the reception and translation into sound of modulated electrical oscillations broadcast to the public and (ii) gramophone apparatus (such as turntable and pick-up) designed for the translation into sound of vibrations recorded on a disc sound record. Such expression does not include valves or cathode ray tubes whether or not incorporated in the instrument nor separate components but does include playing desks designed for use in combination with broadcast sound receivers and shall include sets of component parts.

(c) The expression "Television Receivers" when here-

in used shall mean apparatus (whether or not equipped with electron discharge devices or equivalent de-
1772 vices) which is intended to receive and translate electrical oscillations modulated by vision and associated sound signals which are broadcast to the public and which is intended for use for entertainment or education purposes or is of a type normally supplied to the public for domestic use Provided However that such expression shall include:—

(i) the following apparatus combined therewith or sold for combination therewith namely apparatus intended for the reception and translation of electrical oscillations modulated by sound signals which are broadcast to the public but are not accompanied by vision signals (hereinafter referred to as "sound only receiving apparatus") apparatus intended for the reproduction of sound from records (hereinafter referred to as "gramophone apparatus") and signal boosting apparatus;

(ii) television receiving apparatus of the kind supplied by a broadcast television relay service as the subscribers' terminal units;

(iii) sets of component parts as hereinafter defined. Provided Further that the expression "Television Receivers" shall Not include:—

any broadcast relay apparatus other than the terminal units referred to as included under item (ii) above, or Television Receivers adapted for producing a picture larger than 30 square feet.

(d) The expression "Set of Component Parts" for broadcast sound receivers and/or television receivers and/or radiogramophones when herein used shall mean a number of component parts which are capable of being assembled so as substantially to constitute a broadcast sound receiver and/or television receiver and/or radiogramophone.

(e) The word "Valve" (or "Valves") when herein used shall be deemed where the context so admits to include inter alia an electron discharge device a multiple valve a valve for rectifying electric current and other apparatus used in direct substitution for a valve.

(f) The expression "Place of Public Entertainment" when herein used shall mean a place of public entertainment existing at any time during the subsistence of this License.

(g) The expression "Private or Domestic Use" as used herein shall be deemed to include also the use in Public Houses Hotels Boarding Houses Restaurants Cafes Tea Houses Factories Warehouses Shops and/or small Dance Halls (only) Provided That such are not attached to or do not form part of a theatre or cinema.

(h) The expression "Selling" when herein used shall be deemed to include selling on the so-called time payment or hire-purchase system.

(i) The word "Plate" when herein used shall be deemed to include "transfer" or "[illegible]er".

2. (a) The Grantor grants and agrees to grant to the Licensee subject to the terms and conditions herein appearing a personal non-exclusive non-assignable licence to use and exercise all or any of the inventions the subject of Letters Patent applicable to broadcast sound receivers television receivers and radiogramophones respectively in respect of which and insofar as the Grantor now has or may hereafter during the subsistence of this Licence have power to grant licences or sub-licences for the purposes and on the terms hereof (which Letters Patent are herein collectively called "the said Letters Patent") for the purposes of manufacturing using selling or letting on hire within

the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth under mandate or otherwise (i) broadcast sound receivers (ii) television receivers and (iii) radiogramophones but in each case only for private or domestic 1773 use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public generally and not being held for payment) and not otherwise. Such Licence shall be deemed to have commenced on the first day of January, 1961 and shall continue until the 31st day of December, 1965 unless previously revoked as hereinafter provided.

(b) The Licensee undertakes that all companies or firms now or hereafter during the subsistence of this Licence directly or indirectly owned or controlled by the Licensee and all companies or firms formed by the Licensee during the subsistence of this Licence and directly or indirectly owning or controlling the Licensee shall if engaged in any field of business to which this Licence is applicable forthwith accept licences from the Grantor upon the same terms as this Licence and the Grantor agrees to grant such licenses accordingly. If the Licensee shall become directly or indirectly owned or controlled by a company or firm which does not hold or forthwith obtain a licence from the Grantor upon the same terms as this Licence the Grantor shall be at liberty to revoke this Licence.

(c) The Grantor covenants and agrees to provide to the Licensee an accurate list of the said Letters Patent current at the first day of January, 1961 and to advise the Licensee at least annually thereafter of changes additions and revisions to this list occasioned by expiration of any of the said Letters Patent or by the granting of new Letters Patent or by any other cause.

3. (a) Nothing contained herein shall be deemed to license the Licensee to manufacture import sell or let on hire—

Valves or cathode ray tubes of any kind; or

Any other individual component part of broadcast sound receivers radiogramophones or television receivers other than in and forming part of a broadcast sound receiver radiogramophone or television receiver Provided Always that the Licence shall not license the Licensee to manufacture sell or let on hire the material of or any material used in any component part.

The expression "Component Part" when herein used shall mean any individual constituent part of broadcast sound receivers, radiogramophones and/or television receivers.

(b) The Licence hereby granted shall not authorise the use or exercise of broadcast sound receivers or any television receivers or any radiogramophones for any purpose whatsoever other than the purposes herein set forth and in particular shall not authorise the use or exercise of any of the said apparatus by operating the same for revenue-earning purposes. Nor shall this Licence authorise the use or exercise of any of the said apparatus for purposes of receiving sound or television broadcasting or operating any radiogramophones in relation in any manner to the service of any place of public entertainment or of any place in which any business requiring any licence from public authority is conducted (except insofar as such use is authorised under the definition of "Private and Domestic use") or for use with a microphone.

(c) The Grantor agrees to take all necessary action either at law or in equity to prevent any person or persons firm or firms corporation or corporations and company or companies whomsoever and whatsoever manufacturing or selling or letting on hire broadcast receivers television receivers and/or radiogramophones which embody or utilise or are designed to embody or utilise any invention the subject of the said Letters Patent during the term of this Licence without payment of the royalties specified hereunder.

4. The Licensee agrees with the Grantors as follows:—

(a) From time to time on the request of the Grantor to furnish to the Grantor diagrams and/or samples of all broadcast sound receivers and/or television receivers and/or radiogramophones for the time being manufactured sold or let on hire by the Licensee pursuant to this Licence.

1774 (b) To attach or cause to be attached in a prominent position to all broadcast sound receivers television receivers and radiogramophones sold or hired or offered or exposed for sale or hire by the Licensee (or in the case of a set of component parts for such apparatus to supply for attachment to the assembled apparatus by the constructor thereof) a plate marked by the Grantor with a Serial Number determined by the Grantor and indicating the number of valves (as hereinbefore defined) and bearing the following words:—

With respect to broadcast Sound Receivers and/or Television Receivers and/or Radiogramophones:

> "No.................... This instrument was manufactured under a Licence granted by Australian Radio Technical Services and Patents Company Pty. Limited in respect of Letters Patent controlled by it for the reception in the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth of Sound and/or Television broadcast by wireless but only for private or domestic use and not for operation for any public or commercial or revenue-earning purpose. N.B.—A Post Office Licence is necessary."

Plates complying with the above may be obtained from the Grantor and no such plate shall be removed from any broadcast sound receiver or television receiver or radiogramophone to any other apparatus without the previous consent in writing of the Grantor and no broadcast sound receiver or television receiver or radiogramophone shall be or be deemed to be licensed hereunder unless such a plate be attached thereto and the absence of such a plate so marked from any broadcast sound receiver or television receiver or radiogramophone shall be conclusive evidence that the same is not licensed hereunder. In addition if required by law the Licensee shall further mark in accordance with the requirements of the Patent Act of the Commonwealth of Australia or any amendments thereof made during the subsistence of this Licence all broadcast sound receivers and/or television receivers and/or radiogramophones covered by this Licence which are manufactured sold let on hire or put into use by the Licensee.

(c) So far as is reasonably practicable to make the conditions of this Licence a condition of every sale or hire binding upon and observable by every purchaser or hirer of any broadcast sound receiver and/or television receiver and/or radiogramophone sold or hired or offered or exposed for sale or hire by the Licensee.

(d) To pay to the Grantor by way of rayalty:—

(i) In respect of all complete broadcast sound receivers and complete radiogramophones sold let on hire or put into use by the Licensee during the subsistence of this Licence whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent royalties upon the following scale based on the Licensee's net turnover as hereinafter defined in this sub-Clause (d) (i) —

½ of 1% (one-half of one per centum) of the Licensee's net turnover of broadcast sound receivers and/or radio-gramophones. Provided that such royalty shall not exceed two shillings (2/-) in respect of each such sound receiver or radio-gramophone.

For the purpose of this sub-Clause (d) (i) the expression "net turnover" shall be ascertained by multiplying the number of each type of complete broadcast sound receivers including valves and/or complete radiogramophones including valves sold let on hire or put into use by the Licensee by the highest price excluding Sales Tax and excluding the price of batteries of any kind at which each such type is sold in each month at genuine arms-length trading to the Licensee's largest distributor or customer in which the Licensee has no interest by share-holding or otherwise, "Largest distributors or customers" shall
1775 mean that distributor or customer or alternatively those distributors or customers enjoying the longest discount or best price and who alone absorbs or together absorb not less than twenty per centum of the net turnover of the Licensee.

(ii) In respect of all complete television receivers sold let on hire or put into use by the Licensee during the subsistence of this License whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent royalties upon the following scale based on the Licensee's net turnover as hereinafter defined in this sub-Clause (d) (ii)—

Television Receivers which incorporate both sound only receiving apparatus and gramophone apparatus.	Television Receivers which incorporate sound only receiving apparatus or gramophone apparatus but not both.	All other Television Receivers.
¾%	⅞%	1%

For the purposes of this sub-Clause (d) (ii) the expression "net turnover" of television receivers shall be ascertained by multiplying the number of each type of complete television receiver including valves sold let on hire or put into use by the Licensee by the highest price excluding Sales Tax and excluding the price of batteries of any kind at which each such type is sold in each month at genuine arms-length trading to the Licensee's largest distributor or customer in which the Licensee has no interest by shareholding or otherwise. "Largest distributors or customers" shall mean that distributor or customer or alternatively those distributors or customers enjoying the longest discount or best price and who alone absorbs or together absorb not less than twenty per cent of the net turnover of the Licensee.

(iii) In respect of all broadcast sound receivers and/or television receivers not complete with valves cathode ray tubes cabinet and loudspeaker or any of them and in respect of all radiogramophones not complete with valves cabinet loudspeaker pickup and motor or any of them sold or let on hire or offered for sale or hire by the Licensee during the subsistence of this Licence whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent the same percentages of the Licensee's net turnover as in the preceding sub-Clauses (d)(i) and (d)(ii) respectively hereinbefore set forth provided that the price of each incomplete broadcast sound receiver or television receiver or radiogramophone shall be determined by adding

> to the sale price thereof an amount being the total of the sale price of valves cathode ray tubes loudspeaker cabinet and other components (excluding batteries) necessary to constitute a complete broadcast sound receiver or television receiver or radiogramophone such price to be certified by a Public Accountant to be appointed by the Grantor and when so determined shall be included as part of the Licensee's net turnover for the particular year in which the same shall be sold let on hire or offered for sale.

Provided Always that in respect of broadcast sound receivers or television receivers or radiogramophones manufactured or sold by the Licensee which employ any 1776 Letters Patent under which the Grantor may become liable to pay a royalty to a third party or to share a royalty with a third party the Grantor shall offer to the Licensee and the Licensee may accept the right to the inclusion in this Licence of that Letter Patent on payment to the Grantor of an additional royalty of such amount as may be required to enable the Grantor out of the total royalties paid by the Licensee both to retain the royalties payable under this sub-Clause and to satisfy the terms of the license or agreement under which royalty is or shall be payable by the Grantor. The Grantor shall if so required in writing by the Licensee furnish the licensee with proof of the third party's claim to royalty. The Grantor shall upon request of the Licensee and the Licensee shall upon request of the Grantor permit the Grantor to examine free of charge diagrams and/or samples of broadcast sound receivers and television receivers and radiogramophones manufactured or proposed to be manufactured by the Licensee and advise whether such apparatus embodies or utilises any invention the subject of any of the said Letters

Patent under which the Grantor may be liable for royalty to a third party as herein mentioned. The Grantor shall inform the Licensee of the amount of any such additional royalty and any such additional royalty shall be shown separately in the returns hereinafter mentioned.

(e) Keep proper and accurate and separate accounts of everything necessary to ensure an accurate return to be made each calendar month in conformity with any of the provisions of this Licence showing the royalties payable under the last preceding sub-Clause (d) and to render such accounts within thirty (30) days of the last day of each calendar month in each year to such person as the Grantor may designate to the Licensee from time to time and to accompany each such account with a remittance based on the net turnover of the Licensee in respect of the royalties thereby shown to be due. In the event that the Licensee fails to keep the books of account above-mentioned in addition to any other rights and remedies the Grantor may have the Licensee agrees to pay to the Grantor the amount of royalty which the Grantor may by notice in writing to the Licensee stipulate as the amount estimated to be due unless the Licensee proves that the royalty due should be some other amount.

(f) The Licensee shall furnish monthly returns verified by the Auditor of the Licensee or by a Statutory Declaration of the proper officer and in the event of any dispute shall permit the Grantor to appoint a Public Accountant to inspect the books and accounts of the Licensee relative to this Licence.

(g) To pay to the Grantor on the execution hereof for the first yearly period of this Licence and thereafter so long as the Licensee shall continue to manufacture sell or hire or offer or expose for sale or hire broadcast sound receivers and/or television receivers and/or radiogramophones in advance each year during the period of this License the sum of one hundred and fifty pounds (£150) as minimum royalty for the yearly period, which sum shall in no event be returnable.

(h) Not at any time during the subsistence hereof to dispute or impeach or to assist others to dispute or impeach the validity of the said Letters Patent.

(i) Not to assign transfer mortgage grant sub-licences under or in any manner part with the possession or control of this Licence or any part of it without the previous written consent of the Grantor.

5. During the subsistence of this Licence the Grantor will keep the Licensee fully indemnified against costs and damages arising in connection with all actions proceedings claims and demands which may be made against the licensee by any third party who seeks to establish or establishes to the satisfaction of a court of competent jurisdiction within the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth under mandate or otherwise his right to restrain the use and exercise by the Licensee under the Grant contained under this Licence of any of the
1777 said Letters Patent on the ground that such use and exercise is an infringement of any legal rights or legal interests of such third party in such Letters Patent Provided Always that the Grantor is immediately informed of the institution of such proceedings and is given full and complete rights to take over at its own cost and through its own solicitors the defence of such proceedings if it so requests and in that event the Licensee shall assist the Grantor in every reasonable manner but the Grantor shall be at liberty to compromise submit to judgment in abandon discontinue or otherwise dispose of the same as to it may seem expedient.

6. The Grantor may revoke this Licence upon the happending of any of the following events:—

(a) If any royalty return or any royalty shown to be due is not rendered or is unpaid for thirty (30) days after the last day of any preceding month and remains unrendered or unpaid for seven (7) days after notice in that behalf from the Grantor; or

(b) If there be any breach on the part of the Licensee of any other of the agreements herein contained and the same be not remedied made good or desisted from within seven (7) days of notice in that behalf from the Grantor; or

(c) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall go into liquidation whether voluntary or compulsory;

any revocation of this Licence shall be without prejudice to all claims of the Grantor against the Licensee for outstanding royalties or prior breaches of this Licence or otherwise.

7. Notwithstanding anything herein contained this Agreement and Grant shall not apply to and the Grantor hereby covenants that he will not charge or demand any royalty in respect of broadcast sound receivers and/or television receivers and/or radiogramophones manufactured and exported by the Licensee beyond the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth under mandate or otherwise.

In Witness Whereof the parties hereto have duly executed these presents the day and year first hereinbefore written.

The Common Seal of Australian Radio Technical Services & Patents Company Pty. Limited was hereunto affixed by .... and .... two Directors of the Company by order of the Board and in the presence of .... Secretary.
(Seal.)

Signed Sealed and Delivered by ....
in the presence of ....
(Seal.)

1778 Licence No. 7

Australia

Dated the ...... day of ...., 19......

Australian Radio Technical
Services and Patents
Company Pty. Limited

to

....

Licence

To use and exercise certain Australian Letters Patent for certain specific purposes as within in connection with Wireless Broadcast Sound Receiving Apparatus and/or Radiogramophones and/or Television Receiving Apparatus.

2070 OFFER OF PROOF BY HAZELTINE RESEARCH, INC., MADE ON 3/31/65 (PAGES 192-94 OF TRANSCRIPT OF PROCEEDINGS OF 3/31/65).

United Kingdom Embargo.

The Import, Export and Customs Powers (Defense) Act, 1939 of the United Kingdom ("U. K.") in § 1(1) gave the Board of Trade complete powers to regulate all imports and exports and to make such orders to accomplish this, as they saw fit. The Board of Trade issued the following orders for implementation of this Act:

First Order—Import of Goods (Control) Order 1940 No. 873 (in force until 1954). No goods could be imported without a license issued by the Board of Trade.

Second Order—Import of Goods (Control) Order 1954 No. 23 (which is still in operation today). No goods could be imported without a license issued by the Board of Trade. (Second Order was same as First except for exceptions not relevant).

Both Orders established a license procedure for the issuance of two kinds of licenses:

1) general license—applied as to certain listed commodities covering some 200 pages (the list did not include radios, television sets or phonographs). Only items on this list could be imported under a general license from the U. S.

2) special licenses—these were issued only under very exceptional circumstances and not for commodities as such but for particular shipments. For example, if a U. K. child were dying in an English hospital, importation of an iron lung from the U. S. might be allowed. Mr. L. F. Standen, a senior officer at the

Board of Trade, No. 1 Victoria St., London S. W. 1 reviewed the files for this period and can state that no licenses were issued or could have been issued for radios, television sets, or phonographs.

2071 In the Notice to Importers No. 910, issued by the Board of Trade in May 1959 (no day set forth in the Notice), the General License theretofore existing was replaced by an Open General License which permitted the importation of all goods after June 7, 1959 except those listed. The list did not include radios, television sets or phonographs but did include valves, tubes, crystal diodes, crystal triodes and other crystal valves. Accordingly, radios and television sets could be imported after June 7, 1959.

In the Notice to Importers No. 920, issued by the Board of Trade effective November 9, 1959, only transistors and parts thereof were prohibited from being imported from the U. S.

In the Notice to Importers No. 932, issued by the Board of Trade effective February 1, 1960, the restrictions on importation of transistors and parts thereof were removed.

Mr. Standen stated that these orders and notices were effective in blocking all imports of these commodities during their effective periods and that no special licenses were or could have been issued for the importation of these commodities from the U. S.

Failure to obtain a license and any importation without the sanction of the Board of Trade could result in confiscation of the goods and a fine of £500 under § 3 of the Import, Export and Customs Powers (Defense) Act, 1939.

2075 Telefax Western Union.

LLGI54 (01)CDU180
WUH216 UXS 129 TX220/217 1/50 Pd Intl Fr Cd TX Londonlb Via RCA 29 1950

Charles E. Hussey McDermott Will and Emery Millam Chgo

From before 1951 specific import licenses would have been required for domestic radio and television receivers and gramophones and valves tubes crystal diodes crystal triodes and other crystal valves imported into the United Kingdom from the dollar area Stop

For some goods token import schemes allowing small imports on basis of pre-war trade were in force Stop

There was no such scheme for any of these goods Stop

The effect of specific licence requirements plus absence of token import scheme was that no commercial imports of the goods concerned would be license Stop

From 8th June 1959 specific import licenses for domestic radio television receivers and Gramophones were no longer required Stop

From 9th November 1959 specific import licences for valves and tubes including crystal diodes crystal triodes and other crystal valves were no longer required except that specific licenses continued to be required for transistors until 1st February 1960 Stop

Illegal circumvention of import licensing requirements would render person concerned liable to criminal penalties under the Import Export and Customs Powers (Defense) Act 1939 including forfeiture of goods Stop

United States Department of Commerce issued 2076 relevant press notice on 5th November 1959 references F. C. 59/261 and Comm-DC-47291

F Standen Tariff Division Board of Trade London

2077

McDermitt, Will & Emery
111 West Monroe Street
Chicago, Illinois 60603
312-Franklin 2-2000

In a telephone conference on March 31, 1965 with Mr. G. M. Niall of Blake & Riggall, attorneys in Melbourne, Australia, he stated that he has reviewed the matter of importation of radios and television sets and has discussed the question with officials of the Australian Department of Trade. He concluded that no importation of radios and television sets from the U. S., would have been possible from 1951 until February, 1960 unless the U. S. company was importing during the so-called base period of July 1, 1950 to June 30, 1951. . . .

The rules were basically as follows. If a U. S. company was importing so-called luxury goods listed in Category B of the Customs Import Licensing Regulations promulgated by the Department of Trade under the Australian Customs Act during the period of July 1, 1950 to June 30, 1951, then it could thereafter import a certain percentage of its base period imports. This percentage was regulated from time to time and varied between 25 and 40. Special licenses granting exceptions to this procedure were theoretically possible but practically unavailable, due to the Australian Government policy of restricting imports from dollar countries such as the U. S. to an absolute minimum. The officials of the Australian Department of Trade stated to Mr. Niall that it would not have been possible for a U. S. company to import radios and television sets in commercial quantities during the period from before 1951 until February, 1960.

The administration of this procedure was largely a currency restriction since its primary purpose was to reduce the dollar outflow from Australia. The Reserve Bank of Australia would grant permission to an Australian company to remit dollars to an American importer if and only if a license to import was available from the Australian Department of Trade.

CEH.

2078

EXCERPTS FROM ZENITH ANNUAL REPORTS.

1957

pp. 6-7

"Adverse trading factors such as scarce and expensive dollar convertibility, increasing tempo of import controls, nationalistic protection of local industries, political unrest and upheavals, tended to depress export business generally during the year. Foreign competition reached its highest level of penetration in export markets in 1957 and accounted for a large portion of the world's exports of radio receivers and radio-phonograph combinations.

"Your Company's outlook for export business in 1958 is good, based on the rising acceptance abroad of our excellent performing television receivers and the increasing activities of licensed local assemblers of Zenith products in Latin America.

"In addition, your Company is inaugurating an aggressive program to set up distribution of radio and television receivers in Canada, where it had previously been excluded from participation in the market through the operation of a cartel. Experienced and capable personnel have been employed and arrangements are being made for larger facilities in Toronto and Montreal. The operation in these areas will be conducted as a division of your Company's subsidiary, Zenith Radio Corporation of Canada, Ltd., which is presently distributing hearing aids throughout the Dominion. It is anticipated that independent distributors will be appointed to handle the distribution of Zenith products in the other areas of Canada."

1958

p. 4

"Zenith Radio Corporation of Canada, previously engaged exclusively in the distribution of hearing aids in Canada, during the year initiated the distribution of radio and television receivers in the provinces of Ontario and Quebec. As a result, sales volume increased substantially, but the expense of moving the operation from Windsor to Toronto (with a new branch operation in Montreal) and the heavy starting costs in connection with the new distribution activities unfavorably affected earnings."

2079 p. 6

"The substantial increase in sales noted above accomplished in a difficult export market does not include a significant volume of purchases of television and radio receivers and phonograph units by Canadian distributors during 1958. During the year, an aggressive sales and operating organization was added to the personnel of the Company's subsidiary, Zenith Radio Corporation of Canada, to initiate the distribution of radio and television receivers to dealers in the provinces of Ontario and Quebec. Four outstanding and experienced independent distributors were appointed to handle the distribution of Zenith products in western Canada. Although there has long been a strong consumer demand for Zenith products in Canada, much work had to be done to establish a dealer organization and the major benefits of Canadian distribution will begin to be felt in 1959."

1959

p. 4

"Zenith Radio Corporation of Canada made substantial progress during the year, but a continuation of the heavy costs in connection with the new radio and television receiver distribution activities unfavorably affected earnings.

"* * *

"A new subsidiary, Zenith Sales Corporation, which will perform the marketing function for Zenith Radio Corporation, commenced operation on January 1, 1960. It will be responsible for sales, distribution, product planning, advertising, sales promotion and market research for television, radio, phonograph and stereophonic home instruments in the United States and export markets."

p. 6

"Another serious deterrent to U. S. exports, particularly of radios, during the year was the severe foreign competition from Japan, which flooded practically all world markets with a wide range of cheap transistor products at very low prices. The impact of Japanese competition has been much stronger in export than in the domestic market.

"Our exports to Europe in 1959 improved slightly due particularly to the appointment in mid-year of an energetic independent distributor in the United Kingdom. For almost 30 years previously, the British market had

2080 been closed to our products because of cartelization and restrictions. Since July, 1959, our exports have been increasing, concentrated, however, in several models which have no direct counterparts in British production.

"* * *

"In the light of the unfavorable trading factors and adverse conditions which exist in many major world markets, 1960 can be another difficult year for U. S. exports.

"The Company's Canadian subsidiary, Zenith Radio Corporation of Canada Ltd., showed marked progress in the sales of all products. The long established Hearing Aid Division continued its steady growth in sales and profits. The Radio and Television Division, established in 1958, doubled its sales over the first year and in the closing months achieved a substantial gain in its percentage of industry sales despite a decline in over-all Canadian industry sales of television receivers. This gratifying performance emphasizes the wide acceptance of Zenith products by the Canadian trade and public.

"Zenith now has a strong distribution network at both the wholesale and retail level throughout Canada, supported by powerful national and local advertising.

"Our Canadian management is confident that Zenith sales and profits together with its percentage of industry sales will continue to rise throughout 1960."

1960

pp. 3-4

"Export sales of radios, television receivers, phonographs and stereophonic high fidelity instruments in 1960 showed a moderate decline from 1959. Major contributing factors to this expected decline were the loss of Cuban sales and the imposition of new or more rigid import restrictions in such important markets as Argentina, Chile, Brazil and Mexico.

"Comeptition from both U. S. and foreign manufacturers was extremely severe in all major overseas markets. Foreign manufacturers had the advantage of low labor rates, enabling them to offer lower priced products. 2081

"Even though a large number of restrictions will continue in major export markets, the outlook for 1961 is optimistic. The anticipated improvement of the balance-of-payments picture and a new climate of cordiality towards the U. S., especially in Latin America, should assist the U. S. in its promotion of exports and the drive for gradual reduction of foreign trade restrictions.

"Zenith Radio Corporation of Canada, Ltd., in 1960 successfully countered the downward industry sales trend (which began in Canada in 1955) and made important gains in the sale of Zenith television and radio receivers.

"The company's Canadian management is confident that 1961 will see further increases in sales and profits and a rise in its share of industry sales, despite the possibility that total Canadian industry sales may continue to decline. Plans are being readied for a manufacturing operation in Canada when the Canadian subsidiary's annual unit sales volume permits."

1961

p. 2

"Profits of Zenith Radio Corporation of Canada Ltd. were adversely affected during the year by the Canadian government's action which put the Canadian dollar at a discount, rather than the premium position it had previously held, in relation to the U. S. dollar."

pp. 3-4

"Even sales of television reecivers, radios, stereophonic high fidelity and other consumer products were at an all time high in 1961, up 65% from 1960. As in previous years, export operations were hampered by import restrictions and dollar exchange shortages. During the year the severity of foreign competition in many world markets was without precedent. This was particularly true of transistor radios where prices dropped sharply due to over production and heavy inventories in Japan.

"Zenith Radio Corporation of Canada Ltd. made grati-

fying progress during the year, selling more television receivers than in the two previous years combined. Consistent national advertising and the enthusiasm of
2082 distributors and dealers have created a growing demand for Zenith products in the Canadian market."

1962

p. 3

"Profits of Zenith Radio Corporation of Canada Ltd. were again affected as a result of curbs instituted by the Canadian Government. Its action in establishing an exchange ratio which further discounted the Canadian dollar in relation to the U. S. dollar and the imposition of additional tariffs presented serious obstacles to the Canadian operation.

"Other subsidiary companies, in most instances, reported satisfactory operating results in contributing to Zenith's record consolidated sales and earnings."

p. 4

"Export operations during the year continued to be affected by ever-tightening import restrictions and dollar-exchange controls in the major foreign markets. Consumer product exports to Latin America declined substantially from 1961 whereas sales to Europe, Africa and several other markets were improved. Competition from foreign producers, particularly in the Far East, is unprecedented.

"Your Company is, nevertheless, continuing to pursue the development of export policies and plans to effectively cope with the restrictions and competition currently experienced."

1779 IN THE UNITED STATES DISTICT COURT.

• • (Caption—59-C-1847) • •

AFFIDAVIT OF LAURENCE B. DODDS.

State of New York, }
County of Queens. } ss.

Laurence B. Dodds, being first duly sworn, on oath states as follows:

1. That he was chief trial counsel for Hazeltine Research, Inc. (Hazeltine) in the trial of the above case, and makes this affidavit in connection with the motion being filed on behalf of Hazeltine requesting that the Findings of Fact and Conclusions of Law heretofore entered be withdrawn and that further proceedings be had in the litigation.

2. That attached hereto is a true, correct, and complete copy of Zenith's Notice of Motion, and Motion for Leave to File Counterclaim, accompanying Affidavit of Francis W. Crotty, and draft of proposed Counterclaims I and 1780 II, all of which were served on counsel for Hazeltine on or about March 26, 1963, but were not filed, Counterclaim I being identical to the Counterclaim which was filed later and stamped May 22, 1963.

3. That he assumed, as he had a right to do, that said Counterclaim stated the issues which Zenith would present and attempt to prove at the trial of the antitrust issues which began February 17, 1964.

4. That the theory of action and of damages stated by Zenith in its proposed Findings and Conclusions came to him as a complete surprise, not having been stated in the Counterclaim.

5. That the so-called proof embodies in Exhibit 218

dealing with the alleged measure of damage was without prior notice to him; that he had not been previously furnished a copy of said Exhibit 218, and as he pointed out this failure to produce placed him at a great disadvantage; and that by reason of its detailed nature he did not have an adequate time to prepare cross-examination as to said Exhibit, nor to prepare to offer substantial answering evidence.

1781 7. That by reason of the failure of Zenith to give him notice of its change in theory from that which was pleaded, he was deprived of the opportunity to investigate the alleged facts and the law involved in such new theory, was deprived of the opportunity to answer and plead the affirmative defenses applicable to said new theory, was deprived of the opportunity to conduct discovery proceedings pertinent under such new theory, and had no adequate opportunity to prepare and introduce defenses to such new theory of action.

Laurence B. Dodds.

Subscribed and sworn to before me this 18th day of March, 1965.

(Seal) *Notary Public.*

Term Expires March 30, 1966.

1782 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

NOTICE.

To: Mr. M. Hudson Rathburn,
Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago 6, Illinois.

Please Take Notice that at 9:15 A. M. on April 3, 1963, at the pre-trial conference scheduled by the court for this case, we shall present to the court a Motion for Leave to File a Counterclaim herein, a copy of which Motion and Counterclaim are herewith served upon you.

Thomas C. McConnell,
Philip J. Curtis,
Attorneys for Defendant,
Zenith Radio Corporation.

Received a copy of the above and foregoing Notice, together with a copy of the Motion and Counterclaim mentioned therein, this 26th day of March, 1963.

Mason, Kolehmainen, Rathburn & Wyss,
By Warren D. McPhee.

1783 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

MOTION FOR LEAVE TO FILE COUNTERCLAIM.

Pursuant to Rules 13(a) (e) (f) and Rule 15(a) of the Federal Rules of Civil Procedure, defendant moves the court for leave to file a counterclaim, a copy of which is attached hereto, on the grounds that:

1. Said counterclaim arises out of the matters set forth in paragraphs 12 and 13 of defendant's answer herein and current related unlawful activities of plaintiff occurring since the filing of the answer which activities are the proximate cause of present and continuing damage to defendant sustained after the filing of the answer..

2. Said counterclaim is compulsory and justice requires that it be filed.

Attached hereto and marked Exhibit A is an Affidavit of counsel in support of the Motion.

Thomas C. McConnell,
Philip J. Curtis,
Attorneys for Defendant,
Zenith Radio Corporation.

March ...., 1963.

1784 Exhibit A.

IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

AFFIDAVIT OF FRANCIS W. CROTTY.

State of Illinois, }
County of Cook. } ss:

Francis W. Crotty, being duly sworn, deposes and says:

1. That he is Vice President in Charge of Patents at Zenith Radio Corporation, defendant herein, and one of defendant's counsel in this case.

2. That matters alleged in paragraphs 6-9, Counts I and II of defendant's counterclaim, to which this affidavit is attached, and which are the proximate cause of damages alleged and require the relief sought in said counterclaim, occurred after the filing of the answer herein.

3. That the unlawful conspiracy set forth in paragraphs the subject of the counterclaim and said paragraphs are 12 and 13 of the answer is the same conspiracy which is incorporated by reference in the counterclaim.

1785 4. That the discovery proceedings already conducted by defendant with reference to paragraphs 12 and 13 of the answer revealed evidence in support of both the answer and the counterclaim.

5. That the filing of this counterclaim should in no way delay or prolong the trial of this cause.

Francis W. Crotty.

Subscribed and Sworn to before me this 21st day of March, 1963.

Edith B. O'Connor,
Notary Public.

My Commission expires Jan. 31, 1967.

1786 In the United States District Court.

* * (Caption—59-C-1847) * *

COUNTERCLAIM.

Zenith Radio Corporation, defendant and counterclaimant, counterclaims against Hazeltine Research, Inc., plaintiff and counterdefendant, pursuant to Rule 13(a) of the Federal Rules of Civil Procedure and says:

Count I.

1. This is a counterclaim for damages and for injunctive relief under the following provisions of the Federal Anti-trust Laws: Sections 1 and 2 of the Act of Congress of July 2, 1890, 26 Stat. 209, as amended, commonly known as the Sherman Act (15 U. S. C. §§ 1 and 2) and Sections 4 and 16 of the Clayton Act, 38 Stat. 731, 735 (15 U. S. C. §§ 15 and 26).

The Parties.

2. Counterclaimant, Zenith Radio Corporation, is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 6001 W. Dickens Avenue, Chicago, Illinois, and is now and has been continuously for more than 43
1787 years last past engaged in the development for sale and use and in the manufacture, sale and use of radio apparatus and receiving sets, and since the advent of television, television receiving sets throughout the United States and in foreign commerce, and during said period has built up a large volume of business in manufacturing and selling as the demand therefor has existed and will continue to exist, and in the shipment and sale of such apparatus in commerce between the various states of the United States and in foreign commerce, and said counter-

claimant is now and has been engaged in said commerce during all of the period above stated and during all times material to this counterclaim.

3. Counterdefendant, Hazeltine Research, Inc., the party plaintiff in this suit, is an Illinois corporation owned and operated as a wholly owned subsidiary of Hazeltine Corporation, a New York corporation, engaged in the manufacture and sale of electronic equipment and devices. Counterdefendant's sole business is research in the radio and TV fields and the licensing of a patent pool in the United States pertaining to radio and television receivers and other electronic products, said pool being the United States counterpart of a number of inter-related territorial patent pools formed and operated in various market areas of the world, pursuant to a combination and conspiracy between counterclaimant, its parent, Hazeltine Corporation, and sundry other persons and corporations, domestic and foreign, as more particularly described and set forth hereinafter.

1788 4. Counterclaimant realleges Paragraphs 12 and 13 of its Answer herein and further asserts that counterdefendant and its parent, Hazeltine Corporation, in furtherance of the conspiracy alleged herein has entered into illegal agreements and arrangements with large foreign companies including General Electric Co. Ltd. of England, Canadian Radio Patents Limited of Canada, Svenska Aktiebolaget Gasacumulator of Sweden and Neutrodyne Proprietary Ltd. of Australia wherein and whereby the inventions and patents of the parties and their co-conspirators have been pooled into mutually exclusive market areas of the world which are thereby illegally blockaded from imports of electronic devices from the United States. Counterdefendant and its parent, Hazeltine Corporation, have thereby agreed with their foreign co-conspirators not to grant licenses under their patents and inventions that would permit exports from the United States into England, Canada, Australia and other markets and said foreign co-conspirators have in turn refused to issue any licenses for importation into their mutually exclusive territories without the consent of the respective pool members. The domestic patent rights of the foreign co-conspirators are, by agreement between Hazeltine Research, Inc., funneled into the Hazeltine Corporation and said co-conspirators, funneled into the Hazeltine domestic pool by assignments to counter-defendant, Hazeltine Research, Inc.

5. To implement and effectuate the conspiracy, each of said pools has adopted the standard package type of license described herein covering hundreds of unidentified patents and by threats of expensive protracted and ruinous
1789 infringement suits, has compelled acceptance of said licenses and effected the consequent restraint of trade and commerce between the United States and said foreign countries described above. This illegal employment of such package licenses has shielded the hundreds of pooled patents of the co-conspirators from attacks on their validity.

6. Following defendant's refusal to pay tribute to plaintiff under the illegal package license proposal and demands described in paragraph 12 of defendant's answer and after the complaint and answer in this suit had been filed, plaintiff presented to defendant for signature a form of agreement licensing defendant's manufacture and sales of television receivers of any type under a large number of patents, many undientified, at exorbitant and prohibitive and discriminatory "royalty rates" having no reference to the use, if any, of the patents covered by the proffered package license or of the value of all the individual patents in the pool. Said license, providing for total payment of "royalties" in excess of $2,500,000, was many times more onerous and discriminatory in its terms than the standard

package license first proffered before the filing of this suit, and the illegal demand was made that defendant either sign it or face protracted and expensive patent litigation on any number of hundreds of plaintiff's patents having any relation to television receivers.

7. The illegal package licenses which are the subject of counterdefendant's demands on counterclaimant include the following United States patents which counter-
1790 defendant specifically claims are infringed by television receivers manufactured and sold by counterclaimant:

Patent No.	Inventor	Issued
2,547,648	Loughren	4/3/51
2,728,813	Loughlin	12/27/55
2,773,929	Loughlin	12/11/56
2,774,072	Loughlin	12/11/56
2,848,537	Richman	8/19/58
2,905,749	Loughlin	9/22/59
2,922,839	Richman	1/26/60
2,933,558	Richman	4/19/60
2,954,425	Richman	9/27/60

Counterdefendant has further asserted that the aforesaid claims of infringement were not necessarily limited to the above-numbered patents but that hundreds of patents were at their disposal for possible assertion if the proffered package license agreement were not signed. Counterdefendant and its co-conspirators have thus employed all of the aforesaid patents and inventions in furtherance of the unlawful conspiracy described above.

8. The filing of this suit and the threats to file other infringement suits against counterclaimant on any number of patents in the Hazeltine pool were acts employed to effectuate the conspiracy alleged herein and to compel by economic coercion the signing of counterdefendant's package license. In turn either the signing of the license

or a finding of validity and infringement in this suit
1791 will signal and lend overwhelming support to attacks
on counterclaimant's export trade by the foreign pools under foreign patents covering the same inventions.

9. The acts performed by counterdefenadnt and its co-conspirators pursuant to the unlawful conspiracy alleged herein were the direct and proximate cause of loss and damage to counterclaimant which injury is continuing and includes:

(A) Counterclaimant has been, and will be forced to expend large sums of money and to use the time of its officers and employees to defend against the patent infringement claims asserted;

(B) Counterclaimant has been forced by the threat of suit to expend a substantial amount of money to investigate the scope and validity of counterdefendant's patents;

(C) Because of the pendency of this suit and counterdefendant's other charges of infringement described in paragraph 7 above, counterdefendant has been forced to delay expansion of its foreign trade in England, Canada, Australia and other countries where, in furtherance of the conspiracy alleged herein, counterdefendant's inventions and patents are employed to restrain and prevent importation and trade.

Wherefore, counterclaimant prays for:

1. A judgment against counterdefendant for treble the amount of damages sustained by defendant as the proximate result of said acts of counterdefendant and its co-
conspirators and for costs and attorneys' fees.

1792 2. An injunction enjoining counterdefendant and
anyone in privity with it from bringing or prosecuting this or any other action at law or suit in equity charging infringement of any patents against counterclaimant, its agents, vendees, distributors or others in privity with counterclaimant and enjoining counterdefendant from continuing its said unlawful combination and conspiracy.

3. Such other and further relief as the Court may deem just.

Count II.

1. This is a counterclaim under Title 28 United States Code, Section 2201, for a declaratory judgment of invalidity, non-infringement and unenforceability of patent rights.

Counterclaimant realleges paragraphs 2 through 9 of Count I of this counterclaim as paragraphs 2 through 9 of Count II.

10. The patents asserted against counterclaimant as described in paragraph 7 are invalid as to each of their claims and said claims are not infringed by any apparatus manufactured by counterclaimant. Said patents are also unenforceable because, as set forth in paragraphs 2 through 9, counterclaimants are misusing them in violation of the public policy of the United States relating to patents and inventions and have employed and are now employing the patents and the inventions covered by said patents in violation of the Federal Anti-trust Laws.

1793 Wherefore, counterclaimant prays:

1. For a declaratory judgment of invalidity, non-infringement and non-enforceability of each of the patents listed in paragraph 7.

2. For a declaratory judgment on non-enforceability of all of counterdefendant's patents.

3. For such other and further relief as the Court may deem just.

Thomas C. McConnell,
Philip J. Curtis,
Attorneys for
Defendant-Counterclaimant
Zenith Radio Corporation.

Dated: March 21, 1963.
Of Counsel:
Dugald S. McDougall,
Francis W. Crotty.

1794 In the United States District Court.

* * (Caption—59-C-1847) * *

AFFIDAVIT OF DAVID WESTERMANN.

State of Illinois,
County of Cook. } ss.

David Westermann, being first duly sworn, on oath states as follows:

1. That he is President of Hazeltine Research, Inc., plaintiff and counter-defendant in the above case.

2. That the net income, after taxes, for 1964 of Hazeltine Research, Inc. was $219,777; and that its net worth as shown on its December 31, 1964 audited balance sheet, was $3,184,419.

3. That, as shown in the financial statements in its 1964 Annual Report to its shareholders, the consolidated net income of Hazeltine Corporation and its subsidiaries for 1964, after provision for Federal taxes on income, was $1,132,092, and its consolidated net worth on December 31, 1964 was $21,068,763.

David Westermann.

Subscribed and Sworn to before me this 25th day March, 1965.

Dorothy Taus,
Notary Public.

1852 UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

SPECIAL APPEARANCE FOR PURPOSES OF OPPOSING ENTRY OF JUDGMENT AGAINST HAZELTINE CORPORATION.

Comes now Hazeltine Corporation, a Delaware Corporation, by its attorneys, and appears specially for the sole purpose of opposing the entry against it of any judgment in the action entitled Hazeltine Research, Inc. *vs.* Zenith Radio Corporation, Civ. No. 59 C 1847, on the ground that the entry of any such judgment against Hazeltine Corporation would deny it due process of law under the Fifth Amendment to the Constitution of the United
1853 States, all as more fully demonstrated in the accompanying brief and affidavits.

Hazeltine Corporation,
By: John T. Chadwell,
Victor P. Kayser,
135 South La Salle Street,
Chicago, Illinois 60603,
Its Attorneys.

Of Counsel:
Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-2545.

1870 AFFIDAVIT OF L. B. DODDS.

State of New York, }
County of Nassau. } ss.

L. B. Dodds, being first duly sworn, deposes and says that:

1. He is Vice President of Hazeltine Corporation.

2. He has been counsel for the plaintiff in the action entitled Hazeltine Research, Inc. *vs.* Zenith Radio Corporation, Civil Action No. 59 C 1847, before the United States District Court, Northern District of Illinois, Eastern Division. Hazeltine Research, Inc. is a wholly-owned subsidiary of Hazeltine Corporation, but its business has been and is conducted wholly separate and apart from that of Hazeltine Corporation. Affiant at no time appeared in said action as counsel for Hazeltine Corporation, was never authorized to do so, and at no time held out to counsel for defendant that he was acting in the case in any capacity other than as counsel for Hazeltine Research, Inc.

3. On January 2, 1962, defendant in said action caused to be served upon E. H. McDermott, Secretary of the plaintiff, a subpoena duces tecum calling for the production, among other things, of documents relating to foreign patents of the Hazeltine Corporation.

1871 4. On January 11, 1962, plaintiff filed a motion to quash the subpoena duces tecum served on E. H. McDermott. Following the filing of defendant's memorandum in opposition to the plaintiff's motion to quash said subpoena, and of plaintiff's reply memorandum, oral argument was heard by the Court on March 6, 1962.

5. On March 6, 1962, the Court entered its order overruling plaintiff's motion to quash the subpoena duces tecum but imposed certain limitations on said subpoena.

6. On April 3, 1963, a pre-trial conference was held in

the Court's chambers at which the matter of compliance with the subpoena duces tecum came up. Although objection could have been raised, on grounds of the separate corporate entities, to the production of documents of the Hazeltine Corporation in response to a subpoena addressed to an officer of Hazeltine Research, Inc., affiant stated that in order to simplify and expedite the trial plaintiff would not rely on the fact that it is a corporate entity separate and distinct from its parent, Hazeltine Corporation.

7. Following the pre-trial conference, counsel for defendant, Dugald S. McDougall, by letter dated April 26, 1963, tendered to affiant a pre-trial stipulation. Copies of that letter and stipulation are attached hereto as Exhibit A.

1872 8. The pre-trial stipulation, incorporating various changes suggested by affiant, was subsequently signed by the parties. Such stipulation, which is dated May 7, 1963, and was signed by Mr. McDougall on May 15, 1963, reads in pertinent part as follows:

> "The parties to this Action, by their attorneys, in fulfillment of certain understandings reached orally in the course of the pre-trial conference held herein on April 3, 1963, in order to simplify and expedite trial hereby stipulate and agree, for purposes of this Action only, as follows:
>
> * * * * *
>
> "4. Plaintiff agrees that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company."

9. Paragraph 4 of the pre-trial stipulation is in the identical language drafted by defendant's counsel Mr. McDougall. Affiant in executing said stipulation neither intended nor had any authority to bind Hazeltine Corporation. At no time during the trial below did counsel for the defendant express any understanding or contention that the pre-trial stipulation of May 7, 1963 was intended to be

the basis of holding Hazeltine Corporation liable on any of the issues in said action.

1873 10. That the pre-trial stipulation of May 7, 1963 was intended only for the limited purposes of simplifying and expediting trial of the action between Hazeltine Research, Inc. and Zenith, and was not intended to furnish a basis for imposing liability against Hazeltine Corporation, is confirmed by contemporaneous action of both parties.

11. On May 22, 1963, defendant filed a counterclaim in which Hazeltine Research, Inc. was the sole named counterdefendant, and the sole party from which monetary relief was requested. The prayer for monetary and injunctive relief in said counterclaim was as follows:

> "1. A judgment against counterdefendant for treble the amount of damages sustained by defendant as the proximate result of said acts of counterdefendant and its co-conspirators and for costs and attorneys' fees.
>
> "2. An injunction enjoining counterdefendant and anyone in privity with it from bringing or prosecuting this or any other action at law or suit in equity charging infringement of any patents against counterclaimant, its agents, vendees, distributors or others in privity with counterclaimant and enjoining counterdefendant from continuing its said unlawful combination and conspiracy.
>
> "3. Such other and further relief as the Court may deem just."

1874 12. Affiant first learned that an attempt would be made to impose liability on the Hazeltine Corporation on the day following the Court's entry of findings and conclusions in said action when affiant was informed of a report by the Dow-Jones Company that defendant's counsel had stated that the judgment to be entered would run against the Hazeltine Corporation as well as Hazeltine Research, Inc.

Affiant states that he has read the foregoing; that he knows the contents thereof; and that the same is true of his own knowledge.

L. B. Dodds.

Subscribed and sworn to before me this 29th day of March, 1965.

Caroline B. Dodds,
(Seal) *Notary Public in and for the County of Nassau, State of New York.*
No. 30-6052050.
Qualified in Nassau County.

Commission Expires March 30, 1966.

1875 Exhibit A.

(Letterhead of Ooms, McDougall & Hersh, Chicago 3, Illinois.)

April 26, 1963.

Via Air Mail
Laurence B. Dodds, Esq.
5925 Little Neck Parkway
Little Neck 62, New York

Re: Hazeltine *vs.* Zenith.

Dear Larry:

I am enclosing, somewhat belatedly, the original and three copies of the stipulation which I promised to prepare and send you, following the pre-trial conference on April 3.

Copies of the stipulation are also going forward to Messrs. Curtis and Crotty, with their copies of this letter.

I am sorry it took me so long to get this ready; I have simply been up to my ears in pressing work and have had no chance to do it sooner.

I believe you will find the stipulation in good order. If, however, you have any changes to suggest in it, please telephone me, if possible on Monday, April 29. I am requesting this prompt response only because I have to leave my office on Monday afternoon for a trial in Milwaukee and expect to be gone the rest of the week.

If you find the stipulation in good order, please execute it for Hazeltine and return the original and one copy to me. (As you will note, the stipulation has already been signed for Zenith.)

Sincerely yours,

Mac.

DSMcD:WF

Encl.

CC-Philip J. Curtis, Esq.
Francis W. Crotty, Esq.

1876 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

STIPULATION.

Whereas, defendant has moved for leave to file a counterclaim in the above-captioned action which includes a certain "Count II", seeking declaratory relief with respect to divers patents of plaintiff that have not heretofore been involved in this action, and

Whereas, the parties have agreed that it would be desirable to have the matters presently in issue resolved before the additional issues raised by said Count II are litigated, and

Whereas, the parties have further agreed that certain understandings reached orally in the course of the pretrial conference held herein on April 3, 1963, should be reduced to writing.

1877 Now, Therefore, the parties, by their respective counsel, do hereby stipulate and agree as follows:

1. Defendant agrees to withdraw said Count II from its proposed counterclaim, without prejudice.

2. Plaintiff agrees that it will not assert against defendant or its agents, distributors, or customers, by legal action or otherwise, any of its patents other than patent No. 2,547,648 already in suit, until after final disposition of the instant action.

3. Defendant agrees that, in any legal action that may hereafter be brought against it by plaintiff, charging infringement of any of the patents referred to in Paragraph 2 hereof, defendant will not rely, as a defense to such legal action, on any delay in the commencement of such action that is occasioned by plaintiff's compliance with Paragraph 2 hereof.

4. Plaintiff agrees that for purposes of this litigation plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company.

1878 5. The parties agree that all documents produced by Radio Corporation of America, General Electric Company, and Western Electric Company, in the action entitled *Radio Corporation of America* v. *Rauland Corporation and Zenith Radio Corporation,* No. 48-C-1818, are authentic; and that no objection on the ground of authenticity will be made by either party to the introduction into evidence of any such documents at the trial of this action.

6. The parties agree that photocopies of all documentary exhibits may be received in evidence at the trial of this action in lieu of the original documents, without formal certification or verification; provided, however, that as to any document of which the original is in the custody of one of the parties, such original will be produced for inspection by counsel for the other party on reasonable notice, either prior to or during the trial.

Hazeltine Research, Inc.,
By ....,
Its Attorney.

Zenith Radio Corporation,
By Dugald MacDougall,
Its Attorney.

April ...., 1963.

1879 IN THE UNITED STATES DISTRICT COURT.

• • • (Caption—59-C-1847) • •

PRE-TRIAL STIPULATION.

The parties to this Action, by their attorneys, in fulfillment of certain understandings reached orally in the course of the pre-trial conference held herein on April 3, 1963, in order to simplify and expedite trial hereby stipulate and agree, for purposes of this Action only, as follows:

1. Plaintiff agrees that it will not assert against Defendant or its agents, distributors, or customers, by legal action or otherwise, any of its patents other than patent No. 2,547,648 already in suit, until after final disposition of the instant Action.

2. Defendant agrees that it will not file any counterclaim herein or any separate action seeking a Declaratory Judgment of invalidity or non-infringement, or both, 1880 of any of Plaintiff's patents other than patent No. 2,547,648, until after final disposition of the instant Action.

3. Defendant agrees that, in any legal action that may hereafter be brought against it by Plaintiff, charging infringement of any of Plaintiff's patents, other than Patent No. 2,547,648, Defendant will not rely, as a defense to such legal action, on any delay in the commencement of such action that is occasioned by Plaintiff's compliance with Paragraph 1 hereof.

4. Plaintiff agrees that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company.

5. Any party desiring to introduce in evidence at trial a document or copy thereof previously produced by either party during discovery proceedings herein, or produced by

any party to either of certain actions entitled *Radio Corporation of America* v. *Rauland Corporation and Zenith Radio Corporation,* No. 48-C-1818, in this Court, and *Zenith Radio Corporation* v. *Radio Corporation of America,* et al., No. 1098, in the District Court of Delaware, may do so without further authentication or proof that: (a) such document is genuine, (b) such document was kept in the regular course of business, (c) such document
1881 was prepared by the author (or authors) indicated thereon on or about the date appearing on the face thereof, and (d) in the case of correspondence or memoranda, that such document was sent by the addressor(s) and received by the addressee(s) on or about the date it bears; providing that all objections under the rules of evidence are reserved, and subject to correction if error appears. Each party agrees to furnish the other party, at least thirty (30) days prior to trial, a list of such documents on which it intends to rely at the trial and the party having custody of such documents agrees to make them available to the other party for inspection.

6. The parties agree that photocopies or equivalent reproduced copies of all documentary exhibits may be received in evidence at the trial of this Action in lieu of the original documents, without formal certification or verification; provided, however, that as to any document of which the original or a master copy thereof from which the copy in question is reproduced is in the custody of one of the parties (except charts, diagrams and the like prepared for the purposes of the trial of this Action), such original or master copy will be produced for inspection by counsel for the other party on reasonable notice, either prior to or during the trial; providing that all objections under the rules of evidence are reserved.

1882 7. Uncertified printed copies or photostatic or equivalent reproduction copies of United States and foreign patents, printed publications, and official records and publications of the U. S. Patent Office may at trial be offered in evidence by either party with the same force and effect as originals or certified copies thereof, and the dates of filing, issuance, or publication indicated thereon shall be accepted as correct, subject to correction if error should appear and providing that all objections under the rules of evidence are reserved.

8. Plaintiff is and has been since its date of issue the owner of Letters Patent No. 2,547,648, granted to A. V. Loughren on April 3, 1951, involved in this Action.

9. Solely for the purpose of establishing venue in this Action, Defendant admits that it has a regular and established place of business within the Northern District of Illinois, and that it sold or offered for sale within the Northern District of Illinois, prior to filing of the Complaint herein, television receivers identified as Model 16D21, a correct circuit diagram of which is attached hereto as Exhibit A.

10. Charges of the Court Reporters for the Official Court copy of the transcript at trial shall be paid initially
one-half by Plaintiff and one-half by Defendant, and
1883 shall be taxed as costs against the losing party, or
as the Court may direct. Such transcript copies as may be ordered by a party for its own use shall be paid for by such party.

11. This Stipulation and attached Exhibit may be offered in evidence in whole or in part by either party.

L. B. Dodds,
Counsel for Plaintiff.

....,
Attorney for Defendant.

Dated: May 7, 1963.

1855 In the United States District Court.

* * (Caption—59-C-1847) * *

MEMORANDUM IN SUPPORT OF SPECIAL APPEARANCE IN OPPOSITION TO ENTRY OF JUDGMENT AGAINST HAZELTINE CORPORATION.

Hazeltine Corporation, by its attorneys, appears specially to oppose the entry of judgment against it in the above entitled proceeding. Because of representations by Zenith counsel that the judgment would bind Hazeltine Corporation, confirmed by the form of judgment tendered by Zenith, it has been deemed necessary that this unusual step be taken to insure that Hezeltine Corporation's constitutional rights be safeguarded and the company and its shareholders protected against serious and irreparable financial losses.

We call the Court's attention to the factual background here, in order that our position, and the reasons for it, be clear.

The original action was brought for infringement of a certain United States patent here owned by the plaintiff, Hazeltine Research, Inc., a wholly-owned subsidiary of Hazeltine Corporation, on November 19, 1959. The counterclaim, alleging a violation of the Sherman Act which purported to involve foreign patents owned by Hazeltine Corporation, was filed with leave of court on May 22, 1963, more than three years after the suit was filed. Hazeltine Research, Inc. and Zenith were the only parties named in the complaint or in the counterclaim, and the only parties for whom appearances have ever been entered, until the special appearance now made. There was no attempt to serve Hazeltine Corporation with process, nor any motion to make it a party. 1856

The counterclaim did not by its terms seek damages for any alleged act of Hazeltine Corporation. During the trial and without notice to Hazeltine Research, Inc. or Hazeltine Corporation, Zenith changed its theory and asked for damages as a direct result of alleged acts of the latter involving foreign patents not involved in the original infringement suit.*

1857 On January 25, 1965, this Court adopted as its own Zenith's proposed findings of fact and conclusions of law on the issues of the antitrust law violations and damages.

Hazeltine Corporation first learned that Zenith was asserting that it was liable on any judgment entered against Hazeltine Research, Inc. when on the day following the entry of the findings it was informed by a financial writer of the Dow Jones Company that Zenith's counsel had told Dow Jones that the judgment when entered would bind Hazeltine Corporation.

Zenith's attempt to impose judgment against Hazeltine Corporation is, we understand, based upon a pre-trial stipulation between Hazeltine Research, Inc. and Zenith.

In this memorandum we shall demonstrate that the stipulation affords no legal basis for holding Hazeltine Corporation personally liable.

---

* We call the Court's attention on this point to the Memorandum of Hazeltine Research, Inc. In Support of Its Motion for Withdrawal of Antitrust Findings and Conclusions and of Other Relief, which discusses this point in detail. While the Court has heard arguments on this question, we respectfully submit that there can be no dispute that, whichever position the Court accepts, no notice could be attributed to a non-party outside the Court's jurisdiction.

1858 I. There Is No Record Basis for Judgment Against Hazeltine Corporation.

As we have pointed out, it is our understanding that Zenith relies upon a pre-trial stipulation as its basis for judgment *in personam* against Hazeltine Corporation.

As we shall demonstrate, Hazeltine Corporation is not and was not intended to be bound by this stipulation. Thus, there is no record basis whatsoever for the action Zenith seeks.

A. The Stipulation Between Zenith and Hazeltine Research, Inc. Shows on Its Face That It Is Not Binding Upon Hazeltine Corporation.

The stipulation in question,* entered into by counsel for Zenith and Hazeltine Research, Inc., shows, on its face that Hazeltine Corporation is not bound by it.

The Stipulation, containing several paragraphs in addition to the one in dispute, all dealing with the simplification of issues, recites in its preamble (emphasis added):

> "*The parties to this Action, by their attorneys,* in fulfillment of certain understandings reached orally in the course of the pre-trial conference held herein on April 3, 1963, *in order to simplify and expedite trial* hereby stipulate and agree, *for purposes of this Action only,* as follows:"

1859 The disputed paragraph 4 states that:

> "4. *Plaintiff agrees* that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company."

The stipulation was executed by "L. B. Dodds, Counsel for plaintiff," and by counsel for Zenith.

Thus, the document on its face, does not bind Hazeltine Corporation, nor did anyone purport to execute it on its behalf. The stipulation bound only the parties in the pending case, and no one else.

---

*A copy of the disputed stipulation is attached hereto.

B. The Surrounding Circumstances Show That the Stipulation between Hazeltine Research, Inc. and Zenith Was Not Intended to Bind Hazeltine Corporation.

1. The Stipulation Was Drafted By Counsel for Zenith So All Doubts and Ambiguities Must Be Resolved in Favor of Hazeltine Corporation.

At the outset, the Court's attention is called to the fact that the critical paragraph of the stipulation, upon which Zenith relies for an unprecedented multi-million dollar judgment against a stranger to the litigation, was drafted by Zenith's own attorneys. So also was the caption of the stipulation itself, which identified only Hazeltine Research, Inc. Thus, under fundamental principles of contract law, any doubts and ambiguities must be resolved against
1860 Zenith, whose counsel drafted the stipulation. See *Alcoa S. S. Co.* v. *United States,* 338 U. S. 421, 424-425 (1949); *Caterpillar Tractor Co.* v. *Collins Machinery Co.,* 286 F. 2d 446, 450 (9th Cir. 1960); 17 Am. Jur. 2d, Contracts § 276. There can be not dispute, of course, as to the identity of the draftsman, since, as shown by the letter fom Mr. McDougall, Zenith's attorney in the litigation, to Mr. Dodds on April 26, 1963*, forwarding the original stipulation, there was no change made in the language of the pertinent paragraph at any time after Zenith's counsel had drafted it. (Dodds, para. 7-9.)

---

* This letter is attached as an exhibit to the Dodds affidavit filed herewith.

2. Zenith's Conduct Prior to and Following the Execution of the Stipulation is Inconsistent With Any Intent That Hazeltine Corporation Be Bound in Its Absence.

Zenith's conduct throughout the proceedings is utterly inconsistent with any intent that it looked to Hazeline Corporation for damages. Zenith manifested a contrary understanding in its pleadings, in its pre-trial and post-trial briefs, and in its complete failure to take any action that would suggest that it thought Hazeltine Corporation was subject to the jurisdiction of this Court.

1861 (a) Zenith's Pleadings Are Throughout Directed Only at Hazeltine Research, Inc. and Not at Hazeltine Corporation.

Zenith's deliberate and selective references to Hazeltine Research, Inc. in its antitrust counterclaim—a counterclaim prepared *prior* to any suggestion that a pre-trial stipulation be executed, and filed without alteration in this respect *after* the pre-trial stipulation was executed—overwhelmingly refute any idea that Zenith ever looked to Hazeltine Corporation for recovery of damages in this Court until long after the trial was over. The Zenith counterclaim made no attempt whatsoever to bring Hazeltine Corporation into the case as a party litigant.

The Zenith counterclaim, in pre-stipulation form* and as filed, was captioned:

---

* Because of the need to obtain leave to file the counterclaim under Rule 15(a), Zenith had served upon Hazeltine on or about March 26, 1963, a copy of the proposed counterclaim, a proposed motion signed by counsel for Zenith, and an affidavit dated March 21, 1963 signed and sworn to by Francis W. Crotty, a vice president of Zenith and counsel in this case. Copies are attached to the affidavit of Laurence B. Dodds, previously filed with the motion of Hazeltine Research, Inc. to reopen the proceedings.

"Hazeltine Research, Inc., *"Plaintiff-Counterdefendant,* *vs.* Zenith Radio Corporation, *Defendant-Counterclaimant.*	Civil Action No. 59 C 1847"

1862 The caption did not name Hazeltine Corporation either as a counter-defendant or as a third party defendant, and Zenith never made any attempt under the Federal Rules to bring Hazeltine Corporation into the case as a third party defendant. In that portion of the counterclaim entitled "The Parties," paragraph 3 alleged:

> "3. Counterdefendant, Hazeltine Research, Inc., the party plaintiff in this suit, as an Illinois corporation owned and operated as a wholly owned subsidiary of Hazeltine Corporation, a New York corporation, engaged in the manufacture and sale of electronic equipment and devices. Counterdefendant's sole business is research in the radio and TV fields and the licensing of a patent pool in the United States pertaining to radio and television receivers and other electronic products, said pool being the United States counterpart of a number of interrelated territorial patent pools formed and operated in various market areas of the world, pursuant to a combination and conspiracy between counter-claimant, its parent, Hazeltine Corporation, and sundry other persons and corporations, domestic and foreign, as more particularly described and set forth hereinafter."

Paragraph 4 of the Counterclaim alleged:

> "Counterclaimant realleges Paragraphs 12 and 13 of its Answer herein and further asserts that conuter-defendant and its parent, Hazeltine Corporation, in furtherance of the conspiracy alleged herein has entered into illegal agreements and arrangements with large foreign companies including General Electric Co. Ltd. of England, Canadian Radio Patents Limited of Canada, Svenska Aktiebolaget Gasaccumulator of

Sweden and Neutrodyne Proprietary Ltd. of Australia wherein and whereby the inventions and patents of the parties and their co-conspirators have been pooled
1863 into mutually exclusive market areas of the world which are thereby illegally blockaded from imports of electronic devices from the United States. Counterdefendant and its parent, Hazeltine Corporation, have thereby agreed with their foreign co-conspirators not to grant licenses under their patents and inventions that would permit exports from the United States into England, Canada, Australia and other markets and said foreign co-conspirators have in turn refused to issue any licenses for importation into their mutually exclusive territories without the consent of the respective pool members. The domestic patent rights of the foreign co-conspirators are, by agreement between Hazeltine Research, Inc., Hazeltine Corporation and said co-conspirators, funneled into the Hazeltine domestic pool by assignment to counterdefendant, Hazeltine Research, Inc."

Finally, in this counterclaim, the prayer for relief asked for money damages *only against Hazeltine Research, Inc.* The Zenith prayer for relief sought (emphasis added):

"1. A judgment *against counterdefendant* for treble the amount of damages sustained by defendant *as the* proximate *result of* said *acts of counterdefendant and its co-conspirators* and for costs and attorneys' fees.

"2. An injunction *enjoining counterdefendant and anyone in privity with it* from bringing or prosecuting this or any other actions at law or suit in equity charging infringement of any patents against counterclaimant, its agents, vendees, distributors or others in privity with counterclaimant and enjoining ocunterdefendant from continuing its said unlawful combination and conspiracy.

"3. Such other and further relief as the Court may deem just."

1864 Nowhere in this counterclaim is there the slightest suggestion that recovery is sought against Hazeltine Corporation.

(b) Zenith Never Attempted to Bring Hazeltine Corporation Into the Case.

Further, Zenith took no procedural action that suggested it thought Hazeltine Corporation was being brought into the suit. At no time did Zenith propose to serve Hazeltine Corporation with a summons and third party complaint, pursuant to Rule 14 of the Federal Rules of Criminal Procedure, as would be required to make it a party. At no time throughout the proceeding did Zenith ever refer to Hazeltine Corporation as a party, or denominate it a party in any paper it filed with this Court. To the contrary, its pre-trial and post-trial briefs on the anti-trust issues Zenith implicitly recognized the distinction between the plaintiff, a party, and Hazeltine Corporation, a non-party. Zenith's counsel there stated: "Plaintiff is a patent holding and licensing company wholly owned by a large New York electronics company called Hazeltine Corporation." Pre-trial and Post-trial Briefs on Misuse and Antitrust Issues, p. 2. If this were in itself not a clear enough indication that Zenith understood only Hazeltine Research, Inc. to be a party, its failure to object or reply in any way to the plaintiff's description of itself in its post-trial
1865 brief makes it clear that Zenith so understood. Plaintiff countered an implication as to its size, contained in the same paragraph as the above excerpt from Zenith's briefs by pointing out:

> "Plaintiff Hazeltine is an independent legal entity which must stand on its own feet and be responsible for operations. It is not subsidized by its parent H. C."
>
> Plaintiff's Post-Trial Brief on Misuse and Antitrust Issues, p. A-1.

Zenith took no issue with this statement, for its post-trial reply brief was silent on this point.

The complete absence, throughout the entire record, of any contention, suggestion, expression of opinion, assertion or other argument, on the part of any of Zenith's trial counsel prior to filing the proposed judgment that Zenith looked to Hazeltine Corporation for recovery, or that Hazeltine Corporation was to be bound in any way by the litigation, utterly destroys any semblance of good faith that could be attributed to Zenith's belated attempt to have this Court now enter judgment against Hazeltine Corporation. Zenith's silence on this point, we suggest, speaks far more eloquently than any words that might have been used.

1866 3. Hazeltine Research, Inc.'s Conduct Prior to and Following its Execution of the Stipulation Is Inconsistent With Any Intent to Bind Hazeltine Corporation.

The conduct of Hazeltine Research, Inc., both before and after the stipulation was executed, shows clearly that there was no intent to bind Hazeltine Corporation.

Counsel appeared in the case only for Hazeltine Research, Inc. No appearance was ever entered on Hazeltine Corporation's behalf, until this special appearance. Hazeltine Corporation was not designed as a party in any of the pleadings filed by Hazeltine Research, Inc.

As this Court knows, the stipulation contributed to the elimination of procedural complexities both in the preparation for trial and the trial itself. The Dodds affidavit clearly shows that such was its purpose. In light of all these facts and circumstances, it is clear that the action Zenith seeks would, in effect, materially alter the bargain between Hazeltine Research, Inc. and Zenith, in a manner the parties themselves could not have done.

Zenith's counsel is a veteran antitrust practitioner, highly skilled in the art of litigation. It stretches credulity to believe that he, intending to bind a non-party to a judgment if successful in the litigation, would hope or 1867 expect to do so with a stipulation in the form and manner adopted. Surely, he should not now be allowed to rewrite the pre-trial stipulation to bind one who was not a party to it at its inception, and who stood to benefit from it in no way whatsoever.

II. Any Judgment Against Hazeltine Corporation In This Action Would Deprive It of Due Process of Law.

Entry of an *in personam* judgment against Hazeltine Corporation in this proceeding would be contrary to basic principles of our legal system and a violation of due process of law under the Fifth Amendment to the Constitution of the United States.

The Fifth Amendment provides, of course, that no person shall be deprived of his property without due process of law. That due process means, most basically, the right and opportunity to appear and defend. The United States Supreme Court has declared:

> "It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process. . . . A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution and Statute of the United States . . . prescribe . . .; and judicial action enforcing it against the person or property of the 1868 absent party is not that due process which the Fifth and Fourteenth Amendments require." *Hansberry v. Lee,* 311 U. S. 32, 40-41 (1940).

Similarly, the Illinois Supreme Court stated, in *Alward v. Borah,* 381 Ill. 134, 137, 44 N. E. 2d 865, 868 (1942):

> "In the early case of *Botsford v. O'Conner,* 57 Ill. 72, we said: 'It is a principle that lies at the foundation of all jurisprudence in civilized countries, that a person

> must have an opportunity of being heard, before a court can deprive such person of his rights. To proceed upon any other rule, would shock the sense of justice entertained by mankind, would work great wrong and injustice, and render the administration of justice a mere form. Until a person is made a party to a suit, and is afforded a reasonable opportunity of being heard in defense of his rights, a court has no power to divest him of a vested right.' So far as we know, we have never departed from this rule, but have reaffirmed it many times."

There is no precedent for entry of judgment here. We know of no case where a court, having ruled against a subsidiary corporation in a judicial proceeding, thereupon entered judgment against the non-party parent corporation solely on the basis of a stipulation to which the parent was not even a party, which did not purport to bind the parent, but on its face bound only the party signing it.

The liability asserted by Zenith was allegedly that of
Hazeltine Corporation's subsidiary in its own right.
1869 Zenith made no attempt to bring Hazeltine Corporation into the litigation. Its attempt to do so would, of course, have been opposed, and, it is submitted, successfully. In any event, this issue was not raised.

For this Court to rule, upon a procedural stipulation designed solely to expedite discovery and trial, that Hazeltine Corporation, not even before the Court, should be liable for acts of a wholly-owned corporation, would be, we submit, a manifest miscarriage of justice. By so doing, this Court would exceed its jurisdiction and deprive Hazeltine Corporation of substantial constitutional rights to due process of law.

Conclusion.

We respectfully submit, that in the circumstances of this case, entry of judgment against Hazeltine Corporation would be a fundamental disregard of constitutional rights, would inflict needless and undeserved financial injury upon innocent victims that could not be remedied, and would grant to Zenith rights to which in justice it is not entitled.

Respectfully submitted,

John T. Chadwell,
Victor P. Kayser,
135 South LaSalle Street,
Chicago, Illinois 60603,
Attorneys for Hazeltine Corporation.

Of Counsel:
Chadwell, Keck, Kayser, Ruggles & McLaren,
135 South LaSalle St.,
Chicago, Ill. 60603,
Telephone: RA 6-2545.

IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Hon. Richard B. Austin, one of the judges of said court, in his courtroom in the United States Courthouse at Chicago, Illinois, on Tuesday, March 30, 1965, at the hour of 2:00 o'clock p.m.

Present:

Mr. Victor P. Kayser, Mr. Hudson Rathburn, and Mr. C. Lee Cook, Jr., on behalf of the plaintiff;

Mr. Thomas C. McConnell, Mr. Philip J. Curtis, and Mr. Francis W. Crotty, on behalf of the defendant.

Of Counsel for Defendant: Mr. Dugald S. McDougall.

2 The Clerk: 59 C 1847, Hazeltine v. Zenith, hearing.

* * * * *

Mr. Kayser: Now, I would like to inject one comment here, and that is his references always to the acts of counter-defendant and his co-conspirators; obviously what he is doing there is what he has done all the way through this case, is to say, "You have got a conspiracy and, therefore, your acts are his acts and his acts are their acts," and that is what he means when he talks about—

32 The Court: Well, certainly in regard to the American patents, there was no evidence or any charges in the pleadings in regard to a conspiracy in regard to the American patents, was there? I mean, this is strictly put on Hazeltine, on their package deal thing and Hazeltine had no co-conspirators in regard to American patents, did they?

Mr. Kayser: Well, your Honor, I agree, but Mr. McConnell said that they did.

But what is his theory here?

I mean, how could there possibly be a theory here?

Well, it is a far-out theory, but he elucidated it during the trial and pre-trial; his theory was that these acts were detrimental because if there were counter-part patents in England, or Canada, or Australia, or wherever, that if he took a license here or if the patent was found valid here that then this would somehow aid the foreign pools to enforce the counter-part patents, and that was his entire theory in this make-way antitrust counterclaim as he filed it. Maybe it doesn't make much sense, your Honor. I agree that it doesn't either. It was a make-way counterclaim.

The Court: I agree, too.

83 Mr. Kayser: It was a make way counter-claim.

But I would like to refer briefly, if I may, to these affidavits—

The Court: You may refer briefly or at length, whatever your pleasure is.

Mr. Kayser: Thank you.

The Court: I have indicated that there would be no limitation on this, because a substantial question and sum of money is involved and, therefore, there will be no limitation.

* * * * *

Now, we have a little bit more additional corroboration on this embargo, your Honor. We have—first, this
84 we would be prepared to prove—some more details on that. We also have a cable from the British Board of Trade, which is a branch of the English government which administered it. And for ease in reading, if your Honor desires, we have had the cable typed up because the printing is rather hard to follow. It's hard to read. As a matter of fact, I received, and haven't had a chance to digest it, a whole raft of the English statutes and regulations of the Board of Trade and so forth. But I say they

just came in, but here we have got a group of papers on this same subject. And I think it is indisputable that until June 8, 1959, the laws of the British Commonwealth or United Kingdom prevented the importing of radio and television from the United States, and yet here we have Zenith asking to hold Hazeltine for the damages on the basis of some theory that Hazeltine or these pools interfered with the development of a fully matured market. And it wasn't that at all; it was the English government.

The Court: Do you agree with the theory that sometime litigation must end?

85 Mr. Kayser: Yes, your Honor.

The Court: And these offers of proof are now being made more than one year after the proof closed on this case?

Mr. Kayser: Your Honor, this I think is one of the most unusual cases that will come into a Courtroom, in that we have here, as I think we can demonstrate—without basis we have here the danger of a judgment of almost forty-nine million dollars which will spell corporate death, which is subject to the affirmative defenses of limitations and of releases. This forty-eight million dollars is to be based on Exhibit 218 which is a group of papers, I submit, which was gotten together so hurriedly that it wasn't even typed. That, your Honor—that forty-eight million dollars, this group of papers, and I suggest that—

86 The Court: I just got through instructing a jury that in deliberating on their verdict, they should not take into consideration either sympathy or prejudice.

Mr. Kayser: Your Honor, I submit that a jury and most certainly, I respectfully say, that this court—

The Court: That rule also applies, I assume, to bench trials.

Mr. Kayser: I submit most respectfully to this court that this court should take into account equity. This is not a matter of sympathy. This is a matter of equity and a matter of justice; that this judgment, which will spell the death of this corporation, has had absolutely no basis whatsoever. It is subject to affirmative defenses. It was accomplished by a subtle switch in theory. Maybe it should have been caught; maybe it shouldn't. But is your Honor going to penalize this corporation—

The Court: I mean, it wasn't even caught 90 days after the proofs closed.

Mr. Kayser: I agree, that's true. I agree. This is a very unusual case; we recognize that.

* * * * *

Mr. Kayser: Well, they were volunteering on everything else.

Now, I think on this subject of damage in England, I think a little piece of evidence here in this record which pretty clearly indicates just how reliable this testimony is that they put in on share of the market and damage and so forth—your Honor may recall that there was quite a bit of testimony in this case in connection with this claim of loss of profits as to the adaptability of an American television set for use in England.

97 The record will show that your Honor asked a question or two on that subject himself.

Now, Mr. Wirght, who was the lead witness on this subject, said on examination, well, there were some simple repairs and operations which a distributor could make in his backroom.

The Court: With a screwdriver.

98 Mr. Kayser: With a screwdriver. You remember it, sir.

Mr. Kaplan repeated this and Mr. McConnell quite grandly added the finishing touch when he said that all the changes that were necessary the distributor could make in his back room with a screwdriver.

* * * * *

Before Judge Austin,
Wednesday, March 31, 1965,
10:00 o'clock a.m.

Hearing resumed pursuant to adjournment.

Present. Same as before.

The Court: What is your reply to his contention
238 that the 1957 release also released Hazeltine from anything proir to the date of the release?

Mr. McConnell: Well, any money damages which had accrued prior to 1957, if they were joint tortfeasor, which we allege that they were, would be released; but we are not asking for damages prior to 19—

The Court: You have answered my question.

Mr. McConnell: But not in the future, and I have got a case squarely on that. There is no question about it at all. You cannot release torts which arise in the future. It is against public policy and it is void. Nobody has ever argued a thing like that, to my knowledge, except—

[By Mr. McConnell.] We were precluded. We are talking about something now which they keep us out of. And the same thing is true in England. They talk about tariffs, they talk about restrictions, they talk about all that. That wasn't so, as he stated this morning.

I took that evidence over there. I know what the evidence was. You could get imports into England even during currency restrictions, by government permit. You had to apply, but that doesn't mean it was an embargo. There never was an embargo—never.

And the same thing is true down in Australia. You have to apply for a permit, or did up to a certain time. But that doesn't mean that imports are precluded. And if they were, why all of this machinery to pool patents, to use them, to cut trade between countries?

I submit to your Honor that there was a fact of damage which was so clear that nobody could misunderstand it.

266 * * (Caption—59-C-1847) * *

Before Judge Austin,
Thursday, April 1, 1965,
10:00 o'clock a.m.

Hearing resumed pursuant to adjournment.

Present: Same as before.

335 [By Mr. Kayser.] Now, what Mr. McConnell is really trying to sell this court is the idea that if he can show that these pools continued after 1957 and, as he defines the pools, yes, yes, they did. There is no question about it, that these arrangements in relation to patents—that characterized necessarily as he characterizes them, but that these arrangements have continued and, so far as I know,
336 are in existence today. There is no question about that.

* * * * *

358 Now, your Honor, if I may, I would for the sake of the record like to make a couple of oral motions.

First, in view of the fact that the question has been raised as to whether or not the cause of action for damages stated in the findings was in fact disclosed and pleaded, I would like to ask leave at this time to file within a short date our affirmative defenses as a formal pleading of release and statute of limitations.

And also, your Honor, I would like again, to complete the record, to move at this time that the counterclaim as pleaded be dismissed for lack of proof, and that the counterclaim as embodied in the findings be dismissed for lack of proof and by reason of the bars of the statute of limitations and the releases.

Thank you, your Honor. I have very much appreciated your courtesy and your vast patience in listening to me. This is a matter of vital importance to the client, and if I have transgressed either on your Honor's time or in any other respect, I am sorry. But I do appreciate very 359 much the consideration that you have given me and the client.

The Court: Mr. McConnell, do you care to address yourself very briefly on those two motions he just made? You will be limited to that.

Mr. Kayser: Sir?

The Court: Mr. McConnell—the ones that have to do with seeking to file these new pleadings on the statute of limitations.

Mr. McConnell: Well, the statute of limitations—this case is clearly distinguishable from the Emich case—

The Court: All he is doing is asking leave to file, and that is the only thing I wish to have you address yourself to.

Mr. McConnell: I think it's too late. He can make it for the record, but to actually file them in this case, the record is made. The case has been closed.

360 The Court: Well, the record will show that leave is given to file them at this time, after proofs are closed and after findings have been made.

Let me say that as far as the Court is concerned, that this has been perhaps the most gratifying two days that I have spent on the bench since I have been here. It is not often that I have before me men of the stature of those who have argued on behalf of their respective clients for the last two days.

You may say to what you have designated as the first team that had the first team been here, he could have done no better than the second team did. And I think I know enough to appraise that.

The Court at this time is prepared to enter the final judgment and decree offered with the exception of the eight numbered figure in paragraph two. The Court feels that in regard to a very limited degree, that perhaps there should be further proof solely on these two questions—the questions of the damages in regard to Australia and the damages in regard to England.

In regard to Canada, there will be no change as far as the Court is concerned. I feel that counsel should have
361 an opportunity to offer what proof he can adduce in support of the statements made here and the offers of proof made. And it will be limited to this, let me assure you: As to whether or not radios and televisions could have been imported into England and Canada in commercial quantities prior to the start of the damage period. And in the event it is established that they could not, I would think it would require a readjustment into the percentage figure of the market.

We are not going to go into 218 and contest the figures that were offered at the time of the trial as to their authenticity or their credibility. I can see no need of any further discovery in regard to the limited proof that I will permit. I will not permit CPA's, regardless of what firm they are from, to attack the figures that have been offered other than in regard—and not perhaps even from them—as to whether in the event the cartels or pools themselves were not the proximate cause of imports into Australia and England prior to the time the damage period starts.

There could be some testimony as to whether the percentage of the market claimed under those circum-
362 stances, if that is shown to be the fact, whether the percentage figure should be as high as they are. But this is not going to be a field day for accountants going into 218 in regard to the reliability of the figures offered on the profit and loss angle. It can result only perhaps in the diminution of the percentage figure for the four-year period if Zenith was unable to, because of the law of England and Australia involving currency restriction, to sell and establish a market.

For that reason, as I say, there may be a switch in the numbers in finding 36, the ultimate numbers. None in regard to Canada, and only to the limited extent that I have indicated from the bench today in regard to Australia and England.

Whether Mr. McConnell and his client want a partial judgment and decree in regard to all of the other aspects of the proffered final judgment and decree other than the six figure number contained therein, if he decides in the affirmative I will sign such a partial judgment and decree. But I do feel that in order to satisfy myself, in order to do equity in this matter, that I would like, to the limited, extent expressed, a reopening in regard to the matters that I have indicated that do trouble me by virtue of the 363 offers of proof that have been made and the statements that have been made in regard solely to Australia and England.

1851 UNITED STATES DISTRICT COURT,

Northern District of Illinois,

Eastern Division.

Name of Presiding Judge, Honorable Richard B. Austin.

Cause No. 59 C 1847 Date Apr. 1, 1965

Title of Cause Hazeltine *vs.* Zenith

Brief Statement of Motion HRG

Further argts hd on motions of Hazeltine for withdrawal of fndgs of fact & concls of law on antitrust issue & misuse. Argts concluded—Oral motions of Hazeltine for lv to fl affirmative defenses and to dism counterclaim for lack of proof & lv is granted to fl said motions in writing within 5 days nunc pro tunc as of Apr. 1, 1965. Evidence is reopened for the sole & limited purpose of submitting proof of damages as to Australia & England. Cause contd to June 1, 1965 for hrg of said proof. Counsel for Zenith to prepare partial judgment order & present same Apr. 2, 1965 at 11:00 A.M.

Reserve space below for notations by minute clerk.

Enter Order.

367 * * (Caption—59-C-1847) * *

Before Judge Austin,
Friday, April 2, 1965
10:00 o'clock a.m.

Hearing resumed pursuant to adjournment.

* * * * *

387 The Court: I am not going to put you to the point of filing counter-briefs unless you want to, or answering briefs.

Mr. McConnell: We can get the citations to your Honor on this question.

The Court: All right, call my clerk and give them to him.

388 Mr. McConnell: But I think we ought to hear from counsel. I don't want to be so presumptuous as to suggest how this matter should be handled, but he has also got this special appearance and he has also got this claim that he isn't bound by the stipulation. We are here.

The Court: I will listen to that right now so that you may have some citations in regard to that, Mr. McConnell.

Mr. Kayser: Your Honor, I would also appreciate receiving those citations promptly and I would also, if he refers to a record, I believe he did in the Milwaukee Towne case, if this is not in the court files or available, I would appreciate a chance to examine that record so that I can verify whether I agree with his construction of what Judge Barnes said in that case.

May I be accorded that courtesy?

The Court: He is instructed to advise you of whatever citations that he passes on to me.

Mr. McConnell: I would do that in any event, your Honor. I never file anything with the court without giving it to opposing counsel.

The Court: I am sure that you do.

389 Mr. Kayser: Well, you only commented you would give it to the court and I just wanted to make sure. Thank you.

Well, now, your Honor, on the matter of the objection of the parent Hazeltine Corporation to being held on the proposed judgment, I have filed—our firm has filed a special appearance for the purpose of raising that point only, and I have filed with his Honor and given copies to Mr. McConnell of the memorandum which we have filed on that point.

Now, as I understand it, Mr. McConnell's statement, his proposed judgment which would bind the parent, is based solely and entirely on a stipulation made in this case.

Now I want to say first that the first time that it was made known that Mr. McConnell regarded Hazeltine Corporation as being in fact a party to this litigation occurred when a Dow Jones release was shown to the Hazeltine Corporation people a day or two days after your Honor entered the findings and conclusions. It was then indicated that Zenith or its counsel would ask that the judgment ran against the parent as well.

390 Now, first, as concerns the subject matter of the stipulation, that is pretty much first and last and the whole thing. This stipulation, and a copy of it is attached to the memorandum, was entered into under date of May 7, 1963, at a time when, as now, the parties to the case were Hazeltine Research, Inc., plaintiff, and Zenith Radio Corporation, defendant. Those two were then, as they are now, the parties.

Now, this stipulation was stated to have been entered into pursuant to pretrial conference and in order to simplify and expedite that trial.

Paragraph 4 read that plaintiff, which is Hazeltine Research, Inc., agrees that for purposes of this litigation plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company. And who signed that stipulation? It was signed by Mr. L. D. Dodds, Counsel for Plaintiff, not counsel for plaintiff and Hazeltine Corporation, and it was signed by Mr. McDougall as well.

The Court: The basis of your argument, I assume is that a child cannot bind its parent?

391 Mr. Kayser: That is part of it, but it goes beyond that, your Honor.

We are prepared to show that neither party here, until Mr. McConnell thought of it, had any thought or intention that this stipulation would bring the parent into the case.

Now, your Honor, this stipulation was drafted by counsel for Zenith, not counsel for Hazeltine. It was drafted by Mr. McDougall, and the paragraph 4 in here is the exact language which he submitted.

392 The Court: Mr. Dodds did not have a gun to his head when he signed it, did he?

Mr. Kayser: No, he did not, your Honor.

All right. Then the question, what does the record show as to the meaning and intent of this stipulation?

Well, it shows first, your Honor, that the counterclaim which is here involved had been originally served—or, rather, notice to Hazeltine Research, Inc., back in March of 1963, or, roughly, a month or two before this stipulation was entered into.

Now, I will review the counterclaim from this point of view a moment later, but I will say in advance that no one reading that counterclaim would possibly suppose for a minute that Hazeltine Corporation was being named a counter-defendant. I will explain the very careful distinction which was made between the parent and the subsidiary in the counterclaim.

The Court: Well, of course, Hazeltine Corporation wasn't a party to the lawsuit.

Mr. Kayser: Yes, your Honor, you anticipated my 393 next point, and that is when this counterclaim was filed. It bears a date stamp of May 22, 1963. Actually, there is an indication that it may have been filed later, but there is a July date on it also. But, in any event, certainly it was filed after the stipulation.

Again, not only is the parent not named a party, but there are very clear distinctions between the parent and the subsidiary all the way through, as there were when it was originally submitted to Hazeltine Research back in March.

Now, what does this counterclaim say—and mind you, your Honor, this is post-stipulation—it names, still, Hazeltine Research, Inc., as plaintiff and counter-defendant.

Now, your Honor, we have heard at rather great length and with some repetition about the fact that Mr. McConnell has had forty years and forty very successful years at the bar.

Could anyone really believe for a minute that if he had any thought of bringing the parent into this lawsuit that he would not have named them and that he would be relying on this stipulation which was intended to simplify and expedite the trial? Would any lawyer who has 394 been practicing for two years expect to hold somebody liable on a judgment when he didn't even name them? He relied on some pretrial stipulation.

The Court: You mean that pretrial stipulations are worthless?

Mr. Kayser: No, they are not worthless, your Honor, but if Mr. McConnell ever had any thought of bringing Hazeltine Corporation into this case he would have done the obvious thing, he would have named them or he would at least have done the thing which he did in this afterthought in his findings of fact, talk about the two being treated as one. He didn't do that at all, your Honor. What did he do? In paragraph 3 he specifically refers to counter-defendant Hazeltine Research, Inc. and says that it is a wholly-owned subsidiary of Hazeltine Corporation.

And in paragraph 4 he distinguishes again. And then, your Honor, when he comes down to the prayer for judgment for damages—thtis is on page 9 of my memorandum, and I earnestly request this court to consider that very carefully because it is very revealing. What did he pray for? First, he prayed for a judgment against counter-
395 defendant, a judgment against counter-defendant for treble the amount of damages sustained by defendant, that is Zenith, as the proximate result of said act of counter-defendant and its co-conspirators and for costs and attorneys fees.

Now, everywhere through this complaint he has indicated clearly that he considers Hazeltine Corporation a parent to be a co-conspirator. But he does not ask for any judgment for damages against the co-conspirator, he wants judgment against the counter-defendant because of the acts of counter-defendant and its co-conspirators, including Hazeltine Corporation.

And then, further, your Honor, when you go to paragraph 2, the injunctive paragraph, he talks there, more broadly, about enjoining counter-defendant and anyone in privity with it from doing the acts there alleged.

Now, there he is specifically broadening it and, of course, as your Honor knows far better than I, under injunctive provisions there are circumstances where others who have notice, act in concert and so forth, may be served with a copy of the injunction and held liable to abide by it,
396 and so he says enjoining counter-defendant and anyone in privity. But when you get to the damage paragraph above he names solely Hazeltine Research, Inc.

Now, your Honor, this thing goes beyond this. I pointed out at page 10 that in Zenith's pretrial brief and post-trial brief they again recognize the distinction, because in both briefs Mr. McConnell, Zenith says, plaintiff, plaintiff is a patent-holding and licensing company wholly owned by a large New York electronics company called Hazeltine Corporation. If ever there was an acknowledgment, a distinction between the subsidiary on the one hand and the parent on the other, your Honor, there it is.

397 But, again, Hazeltine made its position clear in its memorandum in which it said that plaintiff Hazeltine is an independent legal entity which must stand on its own feet and be responsible for operations. It is not subsidized by its parent HC, or Hazentine Corporation.

Now, I say, your Honor, the record here is entirely clear. Now your Honor, I suppose, and properly, certainly, will ask, "Well then, what does that stipulation mean? What is the reasonable construction of it?"

Your Honor, all that stipulation can possibly be held to mean, and I submit it is clear on this record, that all that it did mean is that as concerns the parties to this litigation, the parties to this litigation, namely, Hazeltine Research, that it would agree and stipulate that the acts of its parent would be considered as its acts. This stipulation had to do with the conduct of this litigation between these parties. It had nothing whatsoever to do as concerns any litigation with any corporation which was not a party. This was

398 an agreement with Hazeltine Research made as to how it could be regarded.

Now, your Honor, there are no appearances on file by Hazeltine Corporation. Counsel for Hazeltine Research never purported to act for Hazeltine Corporation. It signed the stipulation as counsel for Hazeltine Research, Inc., and the act or the action of Zenith in now, at this late date, to try to reconstrue and rewrite the stipulation to this effect, well, frankly, it is another Park and Tilford situation where, again, at the last minute they try to bring in

Schenley and the court wouldn't do it, wouldn't permit it. But in this case he waits until the findings and conclusions are entered and then he comes up with this construction.

Now, your Honor, we have cited in our memorandum, we have cited the Supreme Court Case of *Hansberry* v. *Lee,* and I want to read a part of the quote. It says:

"It is a principle of general application—"

The Court: Was there a stipulation in that case?

399 Mr. Kayser: Sir?

The Court: Was there a stipulation in this case?

Mr. Kayser: Not to my knowledge.

The Court: All right.

Mr. Kayser: (Reading.)

> "It is a principle of general application in Anglo American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process."

Now, your Honor, we submit that this is, in addition to all of the considerations, this is a question of due process as well. There is nothing in this record that could possibly justify it.

The Court: I'm glad to find out that due process applies to something besides criminal cases. That is the only time it has been raised lately.

Mr. Kayser: Well, your Honor, there is nothing in the stipulation or in this record, we submit which would justify bringing in or justify any judgments against the

400 parent corporation.

• • • • •

1884 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

MOTION OF HAZELTINE RESEARCH, INC. FOR DISMISSAL OF COUNTERCLAIM.

Pursuant to leave of Court on April 1, 1965, Hazeltine Research, Inc. has filed the defenses of Statute of Limitations and Release, nunc pro tunc as of April 1, 1965.

Hazeltine Research, Inc. renews its motion to dismiss Zenith's counterclaim on the ground that the allegations of the counterclaim have not been proved, and on the further separate and additional grounds that the claim for damages (1) is barred by the Statute of Limitations and (2) is barred and discharged by the Releases referred to in said affirmative defenses.

1885 Counsel assumes that there is no need to repeat the offer of proof of Hazeltine Research, Inc. as to these Releases, but to avoid any doubt, hereby renews said offer.

Hazeltine Research, Inc.,
By: Victor P. Kayser,
135 South LaSalle Street,
Chicago, Illinois 60603,
Attorney for Hazeltine Research, Inc.

Of Counsel:
Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South La Salle Street,
Chicago, Illinois,
Telephone: RA 6-2545.

1886 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

6

DEFENSES OF HAZELTINE RESEARCH, INC.

Hazeltine Research, Inc., plaintiff and counterdefendant herein ("Hazeltine"), pursuant to leave granted by District Judge Richard B. Austin, United States District Judge, on April 1, 1965, on motion of counsel for Hazeltine Research, Inc., hereby files nunc pro tunc as of April 1, 1965, the following defenses:

First Defense.

All claims for damages alleged by Zenith Radio Corporation ("Zenith") in its counterclaim, or which were claimed by Zenith during the trial, or which were asserted in the Findings of Fact and Conclusions of Law proposed by Zenith and adopted by the Court on January 25, 1965, which accrued more than four years prior to the filing of the counterclaim, or which assert damages on the basis of or as a consequence of any act or acts occurring more than four years prior to the filing of the counterclaim, are 1887 barred by the provisions of Section 4B of the Clayton Act, 69 Stat. 287 (1955) 15 U. S. C. § 15b.

Second Defense.

All claims for damages alleged by Zenith in its counterclaim, or which were claimed by Zenith during the trial, or which were asserted in the Findings of Fact and Conclusions of Law proposed by Zenith and adopted by the Court on January 25, 1965, are barred, released and discharged to the extent that they are based on or are consequences of any act or acts done on or before September

27, 1957 (or whatever later date any of the releases hereinafter referred to were executed), by the general releases given by Zenith to Radio Corporation of America, General Electric Company and Western Electric Company, or to one or more of them, on or about September 27, 1957, said releases being in the form attached hereto as Exhibit A, or in similar form, and releasing all claims, causes of action, etc., which Zenith had had, then had or might have in the future for, upon or by reason of any matter, cause or thing from the beginning of the world to the date of the releases.

Said releases were given by Zenith and its subsidiary, The Rauland Corporation, in connection with the settlement of the litigation, then pending entitled Radio Corporation of America v. Zenith Radio Corporation and the Rauland Corporation, Civil Action 48 C 1818 in the United States District Court, Northern District of Illinois, Eastern Division, in which Zenith and Rauland had filed
1888 counterclaims against Radio Corporation of America,
General Electric Company and Western Electric Company.

Since in this litigation, Zenith has taken the position that Hazeltine, and its parent Hazeltine Corporation, were co-conspirators with Radio Corporation of America, General Electric Company and Western Electric Company, in the alleged wrongful activities charged by Zenith and Rauland in their counterclaim in said litigation (C. A. 48 C 1818), said releases bar all damage claims herein to the extent that they are based on alleged acts occurring on or prior to September 27, 1957, or any later date on which any of said releases may have been executed.

By filing these defenses, it is not admitted or agreed that the counterclaim as filed by Zenith in this case, alleged as acts constituting the direct and proximate cause of loss and damage, any acts occurring more than four years prior to the filing of said counterclaim.

Hazeltine Research, Inc.
By Victor P. Kayser,
Attorney for Hazeltine Research, Inc.,
Plaintiff-Counterdefendant.

Of Counsel:
Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603.
Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago, Illinois 60606.

1889 Exhibit A.

To All To Whom These Presents Shall Come Or May Concern, Greetings: Know ye, That Zenith Radio Corporation and the Rauland Corporation, each a corporation organized and existing under and by virtue of the laws of the State of Illinois, for and in consideration of the sum of One Dollar ($1.00) lawful money of the United States of America and other good and valuable consideration, to them in hand paid by* ...., the receipt whereof is hereby acknowledged, have each remised, released and forever discharged, and by these presents does each for itself and its respective subsidiaries, successors and assigns remise, release and forever discharge the said* .... and its subsidiaries and their respective successors and assigns of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds,

bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against said* ...., its subsidiaries and their respective successors and assigns, said Zenith Radio Corporation and The Rauland Corporation and each of them ever had, now has or which each of them and their respective subsidiaries, successors and assigns, hereafter can, shall or may have for, upon or by reason of any matter, cause
1890 or thing whatsoever from the beginning of the world to the day of the date of these presents, not including however, claims, if any, for unpaid balances on any goods sold and delivered.

This release may not be changed orally.

In Witness Whereof the said Zenith Radio Corporation and The Rauland Corporation have each caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the .... day of September, nineteen hundred and fifty-seven.

In the Presence of: Zenith Radio Corporation.
.... By..

In the Presence of: Zenith Radio Corporation.
.... By..

---

* Insert
"Radio Corporation of America," or
"General Electric Company," or
"Western Electric Company."

State of Illinois, }
County of Cook. } ss.

On the .... day of September, nineteen hundred and fifty-seven, before me came .... to me known, who, being by me duly sworn, did depose and say that he resides at ...., that he is .... of Zenith Radio Corporation, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

....,
Notary Public.

1891

State of Illinois, }
County of Cook. } ss.

On the .... day of September, nineteen hundred and fifty-seven, before me came ...., to me known, who, being by me duly sworn, did depose and say that he resides at ...., that he is .... of the Rauland Corporation, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

....,
Notary Public.

1892 IN THE UNITED STATES DISTRICT COURT.

• • • (Caption—59-C-1847) • • •

MEMORANDUM OF PLAINTIFF HAZELTINE RESEARCH, INC. CONCERNING FORM OF PROPOSED FINAL JUDGMENT AND DECREE SUBMITTED BY DEFENDANT ZENITH RADIO CORPORATION UNDER DATE OF APRIL 1, 1965.

As counsel for Hazeltine Research, Inc. ("Hazeltine") we received a copy of Zenith's new form of proposed "Final Judgment and Decree" late on the afternoon of April 1, 1965. We have today filed separate memorandum opposing the entry of a final judgment at this time on the ground that this Court has no power to do so because the counterclaim involves a single claim which cannot be so fragmented.

However, pursuant to our statement in Court yesterday, we are herein outlining the objections of Hazeltine to the injunctive paragraphs of the proposed "Final Judgment and Decree". It should be understood, of course, that by making these specific objections and suggesting alternate or additional language Hazeltine does not consent to the entry of the judgment or decree, or waive its right to question the entry of any judgment or decree 1893 against it, and does not waive its right on appeal or otherwise to object to or raise any error with respect to the entry of any such judgment or decree. In this memorandum, we address ourselves solely to the question of whether the proposed judgment is in conformity with the findings of fact and conclusions of law entered by this court and whether it meets the requirements of Rule 65(d) of the Federal Rules of Civil Procedure.

I. The Inclusion of Hazeltine's Parent, Hazeltine Corporation, in the Judgment Form.

Zenith proposes that the judgment be entered against Hazeltine's parent, Hazeltine Corporation, despite the fact that Hazeltine Corporation has never been a party to this litigation. However, that issue will be discussed in a separate brief filed on behalf of Hazeltine Corporation, and will not be discussed in this memorandum.

II. The Proposed Injunctive Provisions.

Before discussing the specific injunctive provisions which are labeled as paragraphs A, B and C of the Decree, we believe it is appropriate to first point out some of the general principles which govern the form and language of an injunction.

1894 The statutory requirements regarding the form and language of an injunction are set forth in Rule 65(d) of the Federal Rules of Civil Procedure. This rule, in part, provides that:

> "*Every order granting an injunction* . . . shall set forth the reasons for its issuance; shall be *specific in terms;* shall describe in *reasonable detail,* and not by reference to the complaint or other document, *the act or acts sought to be restrained.*" (Emphasis added.)

Because a party who violates an injunction is subject to contempt proceedings, the courts have uniformly held that the terms of an injunction must be specific so that the party enjoined will know precisely what is proscribed by it. Obviously the purpose of such a rule is to avoid guesswork and the necessity for obtaining later constructions by the court. In *Schine Theatres v. United States,* 334 U. S. 110 (1948), the defendants were enjoined against "monopolizing" first and second run films. The

Supreme Court held that "monopolizing" was not sufficiently specific and noted "the public interest requires a more specific decree . . ." 334 U. S. 110 at p. 126. See also *Hartford-Empire Co.* v. *U. S.*, 323 U. S. 386 (1945); *Farrell* v. *Danielson*, 296 F. 2d 39 (9th Cir. 1961); *Brumby Metals, Inc.* v. *Bargen*, 275 F. 2d 46 (7th Cir. 1961); *Schwegmann Bros. G. S. Mkts.* v. *Hoffman-LaRoche, Inc.*, 221 F. 2d 326 (5th Cir. 1955), *cert. denied*, 350 U. S. 839 (1955).

1895 The act or acts which are enjoined must be coextensive with those which were found to have been unlawful. Only "the precise practices found to have violated the act should be specifically enjoined." *Schine Theatres* v. *U. S.*, 334 U. S. 110, 126 (1948). The decree must be addressed only to those practices "indulged in or threatened" by the party who is enjoined, *Hartford-Empire Co.* v. *U. S.*, 323 U. S. 386, 418 (1945), and it must not be "so vague as to put the whole conduct of the defendant's business at the peril of a summons for contempt." *Swift & Co.* v. *United States*, 196 U. S. 375, 396 (1905). It must not prohibit a party from doing lawful acts "which are usual and necessary" in the operation of his business. *Corica* v. *Rogers*, 140 F. 2d 496 (7th Cir. 1944). Finally, the decree cannot enjoin "all possible breaches of the law." *Labor Board* v. *Express Publishing Co.*, 312 U. S. 426 (1941); *National Labor Relations Board* v. *Kinner Motors*, 152 F. 2d 816 (8th Cir. 1946) and *Bowles* v. *Montgomery Ward & Co.*, 143 F. 2d 38 (7th Cir. 1944).

With this general statement of rules and principles applicable to injunctions, we now turn to a discussion of the specific paragraphs of the proposed decree.

Paragraph A. This paragraph is unduly broad because it is not limited to domestic patents for use in the manufacture of radio or television receivers. As written,
1896 this paragraph would cover "any" domestic pat-

ents. However, the findings and conclusions entered by the court, as well as all of the evidence in this case, dealt with patents in the field of television and radio. The injunctive provision, therefore, should be no broader.

Exhibit 1 attached hereto contains a re-draft of paragraph A of the decree which is properly limited to domestic patents involving television and radio.

Paragraph B. This paragraph is seriously defective in a number of respects. First, like paragraph A, it refers to "any" domestic patents and is not, as it should be, limited to domestic patents in the television and radio field. Secondly, its provisions are very vague and uncertain and it is impossible to determine from the language just what is forbidden and what is not forbidden. In fact, the paragrapth as written is subject to a number of possible constructions entirely outside the scope of the litigation and findings and conclusions. Accordingly, we have set forth in Exhibit 1 attached hereto, a proposed new paragraph B which is consistent with the findings and conclusions entered in this case, and which, we believe, clearly states the full extent of the relief which Zenith could expect under such findings.

As far as is possible, we have left intact the language
of Zenith and have added provisions which are in-
1897 tended to eliminate any ambiguity. However, in some
instances, the only way the error could be corrected
or the ambiguity resolved is by changing the language in
the proposed judgment and decree submitted by Zenith.

The re-draft of paragraph B is intended to accomplish three main things:

(1) As drafted, paragraph B is not limited to license offers currently being made, but gives Zenith the benefit of any past royalty rate whether or not any longer in effect or lower than the rate currently being offered to others. In other words, Zenith's proposal could in-

volve discrimination in Zenith's favor over other licensees. The modification we propose would provide that Hazeltine could not condition the grant of a license to Zenith under a domestic patent upon payment of the same or greater royalty rate than the rate at which licenses are then being offered to others under a group of domestic patents which includes said patent.

(2) The first proviso is intended to eliminate any doubt that the rates for each of the patents if taken separately need not add up exactly to the rate for the group, so long as the price for an individual patent is not so disproportionate to the royalty for the group as to amount to a refusal to license less than the complete package.

1898 (3) The second proviso is intended to make it clear that the injunction does not require that beneficial royalty rates be given to Zenith for longer periods than they are available to others.

Paragraph C. Paragraph C, which deals with foreign patents, is also objectionable on at least two basic grounds. First, it is much broader than the issues in the case in that it refers to "electronic apparatus" generally and not specifically radio and television which were the only products involved in this case, and it broadly refers to "any foreign market" instead of Canada, England and Australia which are the only foreign markets involved here. Appropriate changes have been incorporated in the re-draft attached hereto.

Secondly, the meaning and effect of this provision is unclear and it could be construed in a way to bar activities which are outside the scope of the findings and conclusions and which are clearly lawful. To clarify this provision and to eliminate any ambiguity we have added a proviso, which is incorporated in Exhibit 1 attached hereto. The purpose of this proviso is to make it clear that the injunction does not prohibit all foreign licensing or as-

signments or the charging of a royalty on imports
1899 so long as there is no discrimination against importers, i.e., so long as they are offered the same terms as are available to those who manufacture in the country involved.

Respectfully submitted,

Hazeltine Research, Inc.,
By Victor P. Kayser,
One of Its Attorneys.

Of Counsel:

Laurence B. Dodds,
59-25 Little Neck Parkway,
Little Neck, New York,

Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South La Salle Street,
Chicago, Illinois 60603,

Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago, Illinois 60603.

1900 Exhibit 1.

It Is Herewith Decreed that Hazeltine Research, Inc. and its officers, agents, servants, employees and attorneys shall be and hereby are enjoined and restrained from:

A. Conditioning, directly or indirectly, the grant of licenses to defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, under any domestic patent for use in the manufacture of television or radio sets, upon the taking of a license under any other patent or upon the payment of royalties on the manufacture, use or sale of apparatus not covered by such patent.

B. Conditioning, directly or indirectly, the grant of any license or defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, under any domestic patent for use in the manufacture of television or radio sets, upon the same or greater royalty rate than the rate at which licenses are then being offered to others under a group of domestic patents which includes said patent.

Provided that this paragraph shall not be construed to prevent the offer of a license for such group of patents at a royalty which is less than the total of the royalties at which the patents are offered for licensing individually, 1901 so long as the price for the individual patent is not so disproportionate to the royalty for the group of patents as to amount to a refusal to license less than the complete package;

Provided, further, that the royalty rates available to Zenith for single patents, or for a group of patents including such individual patent, need not be available to Zenith or its subsidiaries, for longer periods of time than such royalty rates are available to others.

C. Entering into, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program, with any other person, company, patent pool, organization, association, corporation or equity, which directly or indirectly restricts or prevents defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, from exporting any radio or television sets from the United States into any foreign market;

Provided, however, that the provisions of this subparagraph C shall not be construed to prohibit the outright sale or assignment of patents, nor to prohibit patent license agreements so long as the licensee shall have agreed with respect to said licensed patents that if it sublicenses the same to third parties for use in the manufacture of television or radio sets, it will make sublicenses under
1902 said patents available as to the imports of apparatus
from the United States on terms and conditions no less favorable than the terms and conditions available as to television or radio sets manufactured within the country.

1920 UNITED STATES DISTRICT COURT.

Northern District of Illinois.

Eastern Division.

Name of Presiding Judge, Honorable Richard B. Austin.

Cause No. 59 C 1847 Date Apr. 2, 1965

Title of Cause
Hazeltine Research vs. Zenith Radio.

Brief Statement of Motion
Motion to Enter Partial Judg. for Counterpltff.

Reserve space below for notations by minute clerk.

Argts hd on objs to proposed order of Zenith for judg and argts hd with respect to certain stipulation and advisement. Cause contd to Apr. 5, 1965 at 10:15 A.M. for ruling. Motion of Hazeltine to dism counterclaim is denied.

319 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

MOTION TO QUASH SUBPOENA DUCES TECUM.

Now Comes Plaintiff, Hazeltine Research, Inc., by its attorneys, and moves that a certain Subpoena Duces Tecum served by Defendant on January 2, 1962, on Edward H. McDermott, Secretary of Hazeltine Research, Inc., be quashed on each of the following grounds:

1. Defendant is not entitled to make discovery of documents in the possession of Plaintiff without a showing of good cause as required by Rule 34 of the Federal Rules of Civil Procedure.

2. The Subpoena Duces Tecum is so broad and far ranging, both in time and in scope, as to be unreasonable and oppressive and not calculated to serve any justiciable purpose.

320 3. The documents sought by the Subpoena are germane only to affirmative defenses raised by paragraphs 12 and 13 of Defendant's Answer herein, which are shown by Defendant's Answers to Plaintiff's Interrogatories to be a sham and not bona fide defenses.

A Memorandum and an Affidavit of L. B. Dodds, counsel for Plaintiff, in support of the foregoing Motion are attached hereto.

Mason, Kolehmainen,
Rathburn & Wyss,
M. Hudson Rathburn,
20 North Wacker Drive,
Chicago 6, Illinois,
Attorneys for Plaintiff.

Of Counsel:
M. Hudson Rathburn,
20 North Wacker Drive,
Chicago 6, Illinois.

L. B. Dodds,
E. A. Ruestow,
59-25 Little Neck Parkway,
Little Neck 62, New York.

Service and receipt of a copy of the foregoing Motion to Quash Subpoena Duces Tecum, Affidavit and Memorandum are acknowledged this 11th day of January, 1962.

Philip J. Curtis (per P.S.),
Attorney for Defendant.

Exhibit A.

Subpoena Duces Tecum.

Deputy U. S. Marshal M. Fischer.

Case No. 59 C 1847.

Served at 3:45 p.m.
1/2/62
A. A. S.

UNITED STATES DISTRICT COURT.

Northern District of Illinois.

The President of the United States of America.

To Hazeltine Research, Inc., By its Secretary,
5445 W. Diversey Avenue,
Chicago, Illinois.

—Greeting:

We Command You, that all business and excuses being laid aside, you and each of you attend at the offices of McConnell, Paschen & Curtis, 134 S. LaSalle Street, Chicago 3, Illinois, on the 19th day of January, A. D. 1962, at 10:00 o'clock in the forenoon in Room 1110 of said offices to testify and give evidence in a certain cause now pending and undetermined in said Court, wherein Hazeltine Research, Inc. is plaintiff and Zenith Radio Corporation is Defendant, on the part of said Zenith Radio Corporation. And that you also diligently and carefully search for, examine, and inquire after and bring with you, and produce at the time and place aforesaid, the documents described in the schedule attached hereto and made a part hereof which are in the possession, custody or control of Hazeltine Research, Inc., or any of its subsidiaries or controlled companies, or the officers, directors, agents, representatives, employees or counsel of any of them, together with all copies, drafts, and vouchers relating to the said documents, and all other documents, letters, and paper writings whatsoever, that can or may afford any information or evidence in said cause. And this you shall in nowise omit, under the penalty of the law in that case made and provided.

To the Marshal of the Northern District of Illinois to execute and return in due form of law.

Roy H. Johnson,
Clerk,

[Seal]

By...
Deputy Clerk.

Dated: December 19, 1961.

325 Definitions.

The term "documents" includes all writings, and/or records of any kind, including, but not limited to, the originals and all copies and drafts of contracts, agreements, and amendments thereto, correspondence, cablegrams, radiograms, telegrams, memoranda, reports, recordings and other transcription of telephone and/or other conversations, conferences and/or meetings, affidavits, books of account, transcripts of testimony in judicial or administrative proceedings, minutes of meetings, including directors' meetings and committee meetings, diaries, intra-office communications, logs, advertisements, scrap-books, press and publicity releases, reports to stockholders and/or to governmental bodies, records, reports and/or summaries of negotiations and all other writings of every kind, including documents passing from or to or between Hazeltine

Corporation and Hazeltine Research, Inc. or their domestic or foreign subsidiaries or affiliated or controlled companies, or the officers, or representatives of any of them, and any documents passing from or to or between said companies and foreign companies, or the officers, directors, agents, representatives, employees or counsel of any of them.

The term "Hazeltine" as used herein includes Hazeltine Corporation, Hazeltine Research, Inc. and any and all domestic or foreign subsidiaries and/or affiliated companies under the control of Hazeltine Corporation or Hazeltine Research, Inc.

The term "patent" as used herein means any patent usable in the manufacture or sale of radio and television apparatus or any constituent part thereof.

Subpoena Duces Tecum.

1. All documents referring or relating to foreign patents or foreign patent licenses or rights of any kind covering any invention which is the subject of any United States patent licensed under the standard license agreements issued or proffered by Hazentine to any licensee or prospective licensee in the United States at any time during the life of the patent in suit.

2. All communications between Hazeltine and any company of person having licensing rights under foreign patents of Hazeltine, referring to or relating to the actual or proposed licensing of any foreign patent on inventions which are the subject of any United States patent licensed under any Hazeltine standard license agreement issued or proffered in the United States at any time during the life of the patent in suit.

3. All documents referring or relating to the following foreign patent licensing organizations and/or any of their patent pooling and/or licensing activities:

326 Canadian Radio Patents Ltd.
Australian Radio Technical Services and Patents Co., Ltd.
British radio and television patent pool*
Telefunken G. M. B. H.
N. V. Philips Gloeilamphen fabrieken
Any other foreign patent pool or company or organization having licensing rights under any of the patents of Hazeltine and any other patentee

and all communications between Hazeltine and/or any of its officers, agents, representatives or counsel and any of said foreign patent licensing organizations, and/or any of the officers, agents, representatives or counsel of any of said organizations.

4. All documents concerning the creation, administration, operation, purpose and/or policies of any and all patent pools or licensing organizations having rights in respect of patents of Hazeltine or foreign patents covering inventions of Hazeltine, including without limiting the generality of the foregoing, Canadian Radio Patents Ltd., Australian Radio Technical Services and Patents Co., Ltd., the British radio and television patent pool,* Telefunken G. M. B. H. and N. V. Philips Gloeilamphenfabrieken.

5. All documents referring or relating to the issuance or denial of any license to import or export under any foreign patent of Hazeltine.

6. All documents relating to the assertion against Zenith Radio Corporation or others engaged in the manufacture or sale of radio and/or television apparatus, and/or constituent parts thereof, in the United States of America, Canada and/or any other country of any foreign or do-

---

* Referred to in note number 2 to plaintiff's answer to defendant's interrogatory 14.

mestic patents or patent rights owned or licensed by Hazeltine.

7. All documents relating or referring to policies and/or practices of Hazeltine and/or of any person having a right to extend licenses under any patent rights of Hazeltine in the United States of America and/or any foreign country in respect of any actual and/or proposed license of the export and/or import of radio and/or television apparatus and/or constituent parts thereof.

8. All documents relating or referring to any request
or inquiry, by any person or company manufacturing and/or
selling radio and/or television apparatus, for a license
327 under some but less than all of the patent rights owned
by Hazeltine or in which Hazeltine has, or at any time
during the life of the patent in suit has had, a beneficial
interest.

9. All documents relating or referring to package licensing of Hazeltine patent rights.

896 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

ZENITH'S PRE-TRIAL BRIEF ON THE ANTITRUST ISSUES RAISED IN THE ANSWER AND COUNTERCLAIM.

Preliminary Statement.

The court has set for separate trial the antitrust issues raised in the answer to this patent infringement case and in the counterclaim for damages and injunctive relief. For the court's convenience, the pertinent paragraph of the answer (Paragraph 12) is set forth in Appendix I hereto which relates to plaintiff's illegal international activities, this paragraph is included in Appendix I because the counterclaim by reference incorporates its allegations. For convenience, the counterclaim is set forth in Appendix II of this brief.

897 I.

The Misuse Defense Interposed by Zenith in the Instant Suit.

(a) The Factual Bankground of the Defense.

Plaintiff is a patent holding and licensing company, wholly owned by a large New York electronics manufacturing company called Hazeltine Corporation. The gross income of the Hazeltine enterprises approximates $47,000,000 per year. It is not, as plaintiff's counsel describes it, a "minuscule" operation.

(b) Background of the International Conspiracy Alleged in the Counterclaim.

The international conspiracy alleged in the counterclaim is one of the most notorious in the history of illegal cartels. It has been before the federal courts in various antitrust proceedings on a number of occasions and has been the subject of five consent decrees in Government civil suits,* one involving an effective dedication of R. C. A. patents
926 for radio and black and white television receivers. In a
criminal action against R. C. A. in which a plea of *nolo contendere* was entered, a fine of $100,000 was imposed, 1958 Trade Cases, par. 69,116. Hazeltine was specifically named as a con-conspirator in the four most recent Government civil proceedings as well as in the criminal indictment of

---

* *United States of America* v. *General Electric Company, Westinghouse Electric Corporation, N. V. Philips' Gloeilampenfabricken,* 1962 Trade cases, par. 70546, 70428, and 70342; *United States of America* v. *Radio Corporation of America,* 1955 Trade Cases, par. 67945; *United States of America* v. *R. C. A. et al.* (DC Del. 1932), No, 793 In Equity.

R. C. A. The same conspiracy was the subject of a private treble damage action in this court brought in the form of a counterclaim filed by Zenith in a patent infringement action, similar to this suit. *R. C. A.* v. *Zenith and Rauland Corporation,* 48 C 1818. During the course of bitterly fought pretrial proceedings in that action seven judicial opinions were handed down.** After the evidence had been adduced in difficult and protracted discovery proceedings, on September 27, 1957, R. C. A., G. E. and Western Electric agreed to pay Zenith $10,000,000 in damages and to issue to it world-wide royalty free patent licenses for a period of six years in settlement of the litigation.

Pursuant to government decrees RCA, G. E., Westinghouse and Philips have been ordered out of the conspiracy and Hazeltine now enjoys the unique distinction of being the only known remaining American conspirator in this illegal international patent cartel system. Mr. Dodds, plaintiff's attorney and a director and officer of Hazeltine Corporation, stated under oath at his deposition in this case that he intends to keep his company in the patent pools which, as will be shown below, are the traditional instrumentalities employed by the conspirators to divide territories and restrain foreign and domestic commerce in the sale of radio and television products throughout the world.

While the cartel arrangements have a long and complex
927 history, and for years have been world wide in scope, Zenith proposes merely to show their operations in England, Canada and Australia, where its trade has been primarily restrained during the four-year statutory damage period,* and to seek appropriate injunctive relief prohibiting all such future illegal restraints on its foreign and domestic commerce by Hazeltine.

** 18 F. R. D. 440; 1956 Trade Cases pars, 68,306, 68,475, 68,490; 1957 Trade Cases, pars. 68-712, 68,744; 217 F. 2d 218, cert. den. 348 U. S. 973.

* 15 USC § 15(b).

1151 IN THE UNITED STATES DISTRICT COURT.

* * * (Caption—59-C-1847) * * *

DEFENDANT'S POST-TRIAL BRIEF ON THE ANTITRUST ISSUES RAISED IN THE ANSWER AND COUNTERCLAIM.

(Filed April 15, 1964.)

Preliminary Statement.

The evidence adduced at the separte trial of the antitrust issues raised in the answer and counterclaim to this patent infringement suit concerns two separate but related aspects of Hazeltine's illegal activities:

1. The misuse of its domestic patents as alleged in Paragraph 12 of the answer, and

2. Hazeltine's conpiratorial arrangements with members of patent pools in Canada, England and Australia, where, by combination between Hazeltine and large foreign manufacturers, exports of electronic apparatus from the United States into those markets have been illegally restrained and Zenith's foreign commerce effectively curtailed*

I.

The Misuse Defense Interposed by Zenith in the Instant Suit.

(a) The Factual Background of the Defense.

Plaintiff is a patent holding and licensing company, wholly owned by a large New York electronics manufacturing company called Hazeltine Corporation. The gross income of the Hazeltine enterprises approximates $47,000,00 per year. It is not, as plaintiff's counsel describes it, a "minuscule" operation (Def. Exh. 1).

---

* For convenient reference the relevant pleadings are set forth in Appendix I and II of Zenith's Pre-Trial Brief.

Pursuant to Government decrees R. C. A., G. E., Westinghouse and Philips were ordered out of the conspiracy—as the decrees plainly show—and Hazeltine now enjoys the unique distinction of being the only known remaining
1194 American conspirator in this illegal international
patent cartel system. Mr. Dodds, plaintiff's attorney and a director and officer of Hazeltine Corporation, stated under oath at his deposition in this case (R. 137) that he intends to keep his company in the patent pools which, as will be shown, are the traditional instrumentalities employed by the conspirators to divide territories and restrain foreign and domestic commerce in the sale of radio and television products throughout the world.

While the cartel arrangements have a long and complex history, and for years have been world wide in scope, Zenith limited its proofs to their operations in England, Canada and Australia, where its trade has been flagrantly restrained during the four-year statutory damage period.*

---

* 15 USC § 15(b).

EDWARD A. RUESTOW, called as an adverse witness at the instance of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McDougall.

Q. Mr. Ruestow, will you state for the record your full name in the form in which you normally use it in business and advise us as to your residence.

A. Edward A. Ruestow, R-u-e-s-t-o-w, Valley Road, R. D. 1, Glenhead, New York.

* * * * *

919 By Mr. McDougall.

Q. Mr. Ruestow, are you an officer of any of the
920 Hazeltine complex of corporations and, if so, please identify which corporations and in each instance what your title is.

A. I am executive vice president of Hazeltine Research, Inc., the plaintiff in this case. I am also a director. At the moment I have no other offices in the Hazeltine complex.

Q. Does general supervision of the granting of licenses fall within the compass of your normal duties as an officer of the plaintiff?

A. Yes.

921 Q. Name for us, please, the manufacturers of television receivers in the United States today which have a license from the plaintiff under the patent in suit, and for the time being limit your answer to those companies which have a license under the patent in suit and do not have, as part of the same contract, license rights under the Hazeltine package of patents or other patents than the one involved here.

A. There is—let me think.

The Court: Do you have some data here that will help you with this question?

The Witness: I don't have it on hand, your Honor. I must think from memory, and I may make some omissions.

By Mr. McDougall:

Q. Well, we had some notes made that we took at the time of the testimony of your first witness?

A. Yes.

Q. And there is a possibility that we can help you by filling in.

Go ahead.

A. Yes. We are talking only about the Loughren
922 patent—Warwick, Westinghouse, Wells-Gardner, Curtis Mathes, Sylvania—

Q. Excuse me is Sylvania—

A. No, that is a mistake. That includes something more than the Loughren patent.

I don't recall the others at the moment, but I know you have a list there.

Q. Well, you have called off all of the names that were on my previous list except a company that—this may just be my inability to read someone's handwriting, but it looks like Conrad, C-o-n-r-a-d.

A. Conrac.

Q. Will you spell that for us?

A. C-o-n-r-a-c. It is the Conrac Division of the Giannini Controls Corporation.

Q. Is this company a manufacturer of television receivers?

A. They have been, and I am a bit uncertain as to what they are doing now. I think they may have discontinued.

Q. Now, in addition to this group of companies, I understand there is an additional company or two that has a license under the patent in suit as a part of a more all-
923 embracing grant of license rights.

A. That is correct.

Q. Will you name all companies that fall in that category?

A. The Radio Corporation of America has license under all, the Olympic Radio—I have forgotten the exact name, Olympic Radio Company. The Sylvania Company in the field of black and white monochrome television, that is, is limited to the Loughren patent, but they also have license rights in the color television area.

That is all I think of at the moment. There are a number of small companies that are not of great importance and I just cannot remember them all.

Q. Now, I am going to call off the names of some manufacturers of television receivers. Is it your impression that you have named all of the prominent companies, at least, that are licensed under this patent?

A. That is my impression.

Q. Now, I am going to call off some names of manufacturers of television receivers and I would like you to
tell me, in each instance, whether the company that
924 I have just named has a license under the patent in
suit.

Zenith?

A. No.

Q. Motorola?

A. No.

Q. General Electric?

A. No.

Q. Trav-Ler?

A. No.

Q. Philco?

A. No.

Q. Admiral?

A. Yes.

Q. You didn't name Admiral. Was that just one you forgot?

A. That was one I forgot. That would come in the second category of people that have a license under a group.

Q. Admiral has a package license, then, rather than one specifically limited to this patent?

A. Correct.

Q. So that brackets them with RCA and Sylvania.

A. That is correct.

925 Q. Does Emerson have a license under the patent in suit?

A. No, no.

* * * * *

1353 E. A. RUESTOW, called as a witness on behalf of the Plaintiff in rebuttal, having been previously duly sworn, was examined and testified further as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Ruestow, did you examine the exchange of correspondence between myself and Mr. Crotty, represented by Defendant's Exhibits F-9 and F-10?

A. Yes, I did, this morning.

Q. And at the time period of those two exhibits, how many patents did the plaintiff have that were of general use in monochrome television receivers?

A. There were three, perhaps four.

Q. In the letter, you will notice what you might call for brevity a 50 per cent, 80 per cent, 100 per cent formula, What did that mean?

A. Well, at that time there was an attempt to reach a rough approximation as to what was a reasonable valuation of the patents involved at the time.

* * * * *

1354 By Mr. Dodds:

Q. What did that mean? What did the 50 per cent and the 80 per cent and the 100 per cent—what did they apply to in the numbers of patents?

A. Oh, well, 50 per cent, if it was only one patent licensed or used.

Q. Fifty per cent of what?

1355 A. Fifty per cent of the base rate of the then standard license agreement, which was .95 per cent; so, in other words, 50 per cent is .475 per cent for one patent.

Q. And for two patents it was—

A. Eighty per cent.

Q. Of the base rate?

A. Correct.

1356 Q. And at the time that you made—

The Court: And 100 per cent covered how many patents?

Mr. Dodds: All the patents which the plaintiff had.

The Court: All right.

The Witness: Four or more.

Mr. Dodds: Three or more, I think it was.

The Witness: Three or more? I have forgotten.

By Mr. Dodds:

Q. At the time you attempted to reach this reasonable allocation, did you seek the opinion of outside counsel?

A. Yes.

Q. At that time, in 1959, to the best of your knowledge, were any of the American companies besides RCA manufacturing color television reecivers?

A. At that time, RCA was the only manufacturer of color.

Mr. Dodds: That is all.

* * * * *

1373 Mr. McDougall: His testimony was non-controversial as far as we were concerned.

The Court: All right.

Mr. McDougall: In other words, we acknowledge the facts Mr. Ruestow testified to, and the legal consequences we may want to battle at some other time.

* * * * *

1961 In the United States District Court.

Northern District of Illinois,

Eastern Division.

Hazeltine Research, Inc., *Plaintiff,* *vs.* Zenith Radio Corporation, *Defendant.*	Civil Action No. 59 C 1847

FINAL JUDGMENT AND DECREE.

At Chicago, Illinois, in said Division and District on April 2, 1965, this matter coming on to be heard for the entry of a judgment and decree herein, and upon Findings of Fact and Conclusions of Law heretofore entered herein on January 25, 1965, as modified by this Court's opinion orally entered herein on April 1, 1965, and upon notice to all counsel of record, and the Court having heard the arguments of counsel and pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, and having hereby expressly determined that there is no just reason for delay in the entry of the following final judgment.

It Is Hereby Ordered that a joint and several judgment be entered herein in favor of Zenith Radio Corporation, the defendant and counterclaimant herein, and against

Hazeltine Corporation and Hazeltine Research, Inc.
1962 in the amount of Nineteen Million Forty Two Thousand One Hundred Seventy Three Dollars ($19,042,173.00), together with the costs of this suit and a reasonable attorneys' fee, to be fixed by the further order of this Court.

It Is Further Ordered that Claim Nos. 1, 2 and 4 of United States Letters Patent No. 2,547,648 are invalid and void and that even if valid, none of claims 1, 2 or 4 of said Letters Patent has been infringed by the defendant, Zenith Radio Corporation.

It Is Further Ordered that the plaintiff's complaint herein is dismissed for want of equity.

It Is Herewith Decreed that Hazeltine Corporation and its subsidiary Hazeltine Research, Inc. and their respective successors, affiliated or controlled subsidiary companies, their respective officers, directors, agents, servants, employees, attorneys and all persons or corporations acting or claiming to act on behalf of them, shall be and hereby are enjoined and restrained from:

A. Conditioning directly or indirectly the grant of a license to defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, under any domestic patent upon the taking of a license under any other patent or upon the paying of royalties on the manufacture, use or sale of apparatus not covered by such patent.

1963 B. Conditioning directly or indirectly the grant of any license to defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, under any domestic patent upon the payment of the same or greater royalty rate than the rate at which licenses have been granted or offered to others under a group of domestic patents which includes said patent.

C. Entering into, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program, with any other person, company, patent pool, organization, association, corporation or entity which directly or indirectly restricts or prevents defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, from exporting any electronic apparatus from the United States into any foreign market.

It Is Further Ordered that jurisdiction of this cause be and it is hereby reserved for a further hearing on June 1, 1965, on the amount of damages asserted in the claims for damage accruing by virtue of cartel restrictions in Australia and England during the damage period alleged, said hearing to be limited in accord with this Court's oral opinion entered herein on April 1, 1965.

Enter:

R. B. Austin,
Judge.

Dated: April 5, 1965.

1964

UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

Name of Presiding Judge, Honorable Richard B. Austin.

Cause No. 59 C 1847 Date Apr. 5, 1965

Title of Cause
Hazeltine Research vs. Zenith Radio

Brief Statement of Motion
Ruling on Objs to Proposed Judg Order, Etc

Enter judg & Decree—Deft-Counterclaimant recover of pltffs-counterdefts Hazeltine Corp., et al the sum of $19,042,173.00 & costs & atty's fees—claims 1, 2 & 4 of U. S. Letters Patent No. 2,547,648 invalid, etc. Pltff's complaint dismd—Hazeltine Corp., et al, enjoined, etc. Jurisdiction retained & further hrg contd to June 1, 1965.

Reserve space below for notations by minute clerk.

Enter order (Dft)

2018 UNITED STATES DISTRICT COURT.

Northern District of Illinois,

Eastern Division.

Hazeltine Research, Inc., *Plaintiff,* *vs.* Zenith Radio Corporation, *Plaintiff.*	Civil Action No. 59 C 1847

NOTICE OF APPEAL OF HAZELTINE RESEARCH, INC.

Notice is hereby given that Hazeltine Research, Inc., plaintiff and counterdefendant in the above-entitled action, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the "Final Judgment and Decree" entered on April 5, 1965, which recites that it is entered under Rule 54(b) of the Federal Rules of Civil procedure.

By this notice of appeal Hazeltine Research, Inc. does not waive its right to pursue its petition for writs of mandamus and prohibition, now pending before the Court of Appeals for the Seventh Circuit in *Hazeltine Research, Inc.* v. *Hon. Richard B. Austin, Judge,* No. 15106, and
2019 does not admit that said judgment is a valid final judgment under Title 28 U. S. C. § 1291 and Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: April ......, 1965.

John T. Chadwell,
Victor P. Kayser,
M. Hudson Rathburn,
Attorneys for Hazeltine Research, Inc., Plaintiff-Counterdefendant.

Of Counsel:

Laurence B. Dodds,
59-25 Little Neck Parkway,
Little Neck, New York.

Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603.

Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago, Illinois 60606.

2022 UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

Hazeltine Research, Inc.,
Plaintiff,
vs.
Zenith Radio Corporation,
Defendant.

Civil Action
No. 59 C 1847

NOTICE OF APPEAL OF HAZELTINE CORPORATION.

Notice is hereby given that Hazeltine Corporation, against whom a "Final Judgment and Decree" in the above-entitled action was entered on April 5, 1965, hereby appears specially and hereby appeals to the United States Court of Appeals for the Seventh Circuit from said Judgment and decree, which recites that it is entered under Rule 54(b) of the Federal Rules of Civil Procedure.

By this notice of appeal Hazeltine Corporation does not admit that it is subject to the jurisdiction of this Court or that it is a party to the above-entitled action. Nor does it by this notice waive its right to pursue its petition for writs of mandamus and prohibition now pending
2023 before the Court of Appeals for the Seventh Circuit in *Hazeltine Corporation* v. *Hon. Richard B. Austin, Judge,* No. 15107, nor admit that said judgment is a valid final judgment under Title 28 U. S. C. § 1291 and Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: April ....., 1965.

John T. Chadwell,
Victor P. Kayser,
Attorneys for Hazeltine Corporation.

Of Counsel:

Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603,
RAndolph 6-2545.

In the United States District Court.

* * (Caption—59 C 1847) * *

TRANSCRIPT OF PROCEEDINGS OF APRIL 16, 1965.

* * * * *

26 The Court: * * * I have little hesitancy in saying that I think that the evidence warranted doing what I did and if I had to do it all over again I would do it all over again.

* * * * *

1 In the United States District Court.

* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause, before the Honorable Richard B. Austin, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Monday, May 3, 1965, at 10:00 o'clock, a.m.

* * * * *

5 The Court: The first hearing is going to be limited to this embargo business.

Mr. Kayser: Yes.

The Court: And if after that it appears that there is some reason for additional testimony, there being no embargoes for a certain period of time, why, then we will get to that step next.

* * * * *

6 Mr. McConnell, Sr.: That is quite a question. Now, this is not a new experience for me. I took depositions in the case with RCA in London on this very issue

and, No. 1, the Government employees are not free 7 to testify on this. They take what they call a Crown privilege, and they are not disposed to testify about their policies.

The Court: That is not unique to England, Mr. McConnell.

Mr. McConnell: I know that, but it is very definite in England, particularly when Americans are trying to try an issue.

And we couldn't get anywhere with it, and I am sure that counsel is not going to get anywere with it, but we will have a safari before we get through, all over the world, probably on all of these regulations. There isn't any question of what there was an embargo, but there is also no question but what that embargo, the policy behind it, was to lift it a year before the embargo actually was lifted, and in the meantime, as a customary thing, they granted one that I can stipulate about, but I could stipulate on the permits; so it is not a simple question at all, and it isn't one that I can stipulate about, but I could stipulate on the regulation itself.

• • • • •

6 – UNITED STATES DISTRICT COURT,

Northern District of Illinois,

Eastern Division.

Name of Presiding Judge, Honorable Richard B. Austin.

Cause No. 59-C-1847. May 3, 1965.

Title of Cause:

Hazeltine Research Inc. v. Zenith Radio Corporation.

Brief Statement of Motion:

Motion of Plaintiff Hazeltine Research, Inc. for production of documents.

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel:

John T. Chadwell and Victor P. Kayser, 135 South LaSalle Street, Chicago, Illinois.

Representing:

Plaintiff Hazeltine Research, Inc.

Names and Addresses of other counsel entitled to notice and names of parties they represent:

Thomas C. McConnell and Phillip J. Curtis, 134 South LaSalle Street, Chicago, Illinois

and

Dugal S. McDougall, 135 South LaSalle Street, Chicago, Illinois, Attorneys for Defendant Zenith Radio Corporation.

Reserve space below for notation by minute clerk.

Leave to Zenith to fl. answer to mo. of pltff. o produce, instr. to lv. to Hazeltine to fl. reply in 10 days and said mo. taken under advisement. Cause contd. to May 25, 1965 for rept. on status.

IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause, before the Honorable Richard B. Austin, one of the Judges of said court, in his courtroom in the United States Courthouse at Chicago, Illinois, on Tuesday, May 25, 1965, at 10:00 o'clock, a.m.

* * * * *

2 Mr. Kayser: I am glad to be able to report that we have confirmed and are prepared to prove what we previously stated to be our understanding, namely, that in the case of England, until June 7, 1959, by reason of the embargoes or import restrictions, Zenith could not have imported radio and television sets in commercial quantities into England, and that in the case of Australia the date until which such importation could not have taken place was not February 1, as we previously indicated, but, actually, February 23, 1960, except that there were some exceptions beginning August 1, 1959, whereby importers having certain quotas could have imported certain limited numbers of sets from the United States.

We have also verified and are prepared to prove 3 that Zenith could not, as Mr. McConnell suggested, could not have gotten special licenses during those periods to import radio and television sets, the essential fact being that these policies against importation had been put in these countries to conserve dollar balances, and importations were allowed only as to essential goods and were not locally available, or not available from non-dollar countries.

* * * * *

6 The Court: Well, in regard to the embargoes, is there a contest in regard to that as to the dates they started, Mr. McConnell?

Mr. Kayser: I submitted a sitpulation on that subject and Mr. McConnell has—

7 Mr. McConnell: Definitely. I don't agree with a word that the man said, not one word.

The Court: That does not surprise me either.

Mr. McConnell: I made some investigations, too. We can prove exactly the opposite of what he said.

* * * * *

9 The Court: Will you be back from Europe in July, Mr. McConnell?

Mr. McConnell: Well, your Honor, this deposition thing, I understood, is not a one-way street. I mean, our information is exactly the opposite from what counsel has been telling your Honor.

As early as 1956 it was perfectly possible to get radios and television sets into Australia in commercial quantities, and we are prepared to show that. We have had some investigations made in Australia, too.

* * * * *

10 Mr. McConnell: And, of course we want to take depositions, too. We are not going—this is no default matter. This is a very serious controversy on this, and if he tells your Honor that he is going to bring somebody from Australia, we would like to take depositions during the summer months.

* * * * *

11 Mr. McConnell: On this other thing, your Honor—of course, I haven't been to Europe. Counsel has. But we have been in contact with counsel in London, and my information at the present moment is that this testimony in London is not what counsel has represented it to be, and while I haven't interviewed witnesses, I have a pretty

fair idea what witnesses are available and we want to take depositions in London if he is taking them on the 25th.

The Court: We are not going to stop you. You are going to have an equal chance.

Maybe if this is a highly controversial issue regarding which there is considerable doubt one way or the other, maybe we should proceed with the embargo phase first and the other phase second.

* * * * *

Mr. Kayser: Well, I would like to ask the question,
if I may, Your Honor: Do I understand that it is your
14 present thinking that if we establish this embargo that
we have the affirmative burden of destroying the case,
so to speak, that they have made on damages?

The Court: Well, as I understand, tentative findings were made and you came in and persuaded me to, as of this time, vacate them, and those findings were made on the evidence that I heard in court of witnesses who were cross-examined by counsel for your client, and it isn't as though they were snuck in the back door and you never had a chance to cross-examine about it, inquire about it, or anything else. This wasn't doen surreptitiously, and I think the burden is on you to show that the Court is in error in following the evidence that was presented to me at the time of the hearing. That is what I acted on.

Mr. Kayser: Yes.

117 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

MOTION FOR LETTERS ROGATORY.

Now comes Zenith Radio Corporation, Defendant and Counterclaimant herein, and asks that this Court issue Letters Rogatory directed to the appropriate judicial authority in the United Kingdom, in London, England, requesting that Norman H. Nail or such other person having custody of the records of the Import Licensing Branch of the English Board of Trade be ordered and directed by appropriate judicial order to appear before a Consul General, Consul, Vice-Consul, or Consular Agent of the United States of America, at the American Embassy, Grosvenor Square, London, England, at 10:00 o'clock A.M. on June 22, 1965 and/or on such other dates and times as may be appointed and bring with him the documents and records of said Board of Trade constituting applications for issuance of permits and permits issued thereon to import into the United Kingdom from the United States
118 and Canada during the years 1956, 1957, 1958 and the first five months of 1959 radio receiving sets, television receiving sets, gramaphones with electrical amplification, amplifiers, and loudspeakers, other gramophones (including record players and tapes) and also component parts for the above, and for cause says:

1. That Hazeltine Research, Inc. and Hazeltine Corporation have moved to set aside certain finding of fact entered by this Court in this cause and in support of said motion have represented to this Court that a witness by the name of Norman H. Nail to be produced to testify from the English Board of Trade will testify under oath that it was impossible to export luxury goods not on the free license list from the United States into the United Kingdom in commercial quantities prior to June 8, 1959.

2. That the records of the English Board of Trade show that during the years 1956, 1957, 1958, and the first five months of 1959 gramaphones (including record players and tapes) which could only be exported into the United Kingdom by private license and which were classified as luxury goods in exactly the same way as radios and television sets were imported from the United States into the United Kingdom in an amount in excess of $1,500,000, and gramaphones with electrical amplification, amplifiers and loudspeakers during the same period in an amount in excess of $40,000.

3. That during the years 1956, 1957, 1958, and the first five months of 1959 television sets were imported into the United Kingdom from the dollar area of Canada and the United States in an amount in excess of $328,000.

119 4. That during the year 1958 and the first five months of 1959 component parts for gramophones, radios, and television sets were imported into the United Kingdom from the United States in the approximate amount of 1,445,089.

5. That the above records are relevant and material to the issues in this case in that they will constitute evidence impeaching the tendered testimony of the witness Norman H. Nail and will show affirmatively that the import of radio and television sets and components was commercially possible during the entire damage period used by Zenith in the computation of its damages in the United Kingdom and for a substantial period of time prior thereto.

Thomas C. McConnell,
Attorney for Zenith Radio Corporation, Defendant and Counterclaimant.

Of Counsel:
McConnell, Freeman, Curtis & McConnell,
134 South LaSalle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

State of Illinois, }
County of Cook. } ss.

Thomas C. McConnell, being first duly sworn, on oath
deposes and says that he is the attorney for Zenith Radio
Corporation, Defendant and Counterclaimant in the above-
entitled cause, and is duly authorized to make this affidavit
for and on its behalf; that he has read the above and fore-
going Motion for Letters Rogatory by him subscribed;
120 that the information thereon contained was secured
by him from the United States Department of Com-
merce Report No. FT410 (Bureau of the Census) and from
a certain Report on the Production and Marketing of Radio
and Television Receivers, Phonographs, and Tape-Record-
ers in the United Kingdom published April, 1959, by the
Economist Intelligence Unit, Ltd., London, England, all of
which information he is informed and believes to be true
and correct.

Thomas C. McConnell.

Subscribed and sworn to before me this 8th day of June, 1965.

Francis J. Mahon,
(Seal) *Notary Public.*

In the United District Court.

* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable Richard B. Austin, one of the judges of said court, in his courtroom in the United States Courthouse at Chicago, Illinois, on Wednesday, June 9, 1965, at the hour of 10:00 o'clock a.m.

* * * * *

Mr. Kayser: Your Honor, we have a couple of problems with it. We realize, of course, that on discovery the rule is in favor of liberality. But in brief we are taking the deposition of a man from the Board of Trade who we believe will testify that the radio and television sets could not have been imported in commercial quantities. The letters roatory ask for the production by the Board of Trade of applications and grants of licenses for such matters as gramophones, which is phonographs, tape recorders and tapes, and component parts of radio, television, gramophones, and only one paragraph actually deals with
2 television as such, and none with radio as such. So we do question whether the documents—

The Court: What is your interest in these other products?

Mr. McConnell: The other products are the same classification, your Honor. They have the same category rating. They have come in by private application and license.

The point made here is, by this witness, that it is impossible to get a private license application granted. And in the year preceding our damage period, a million dollars of phonographs were admitted on private applications which were the same kind and the same category, and fell within the same classification as radios and televisions.

And our point is that this claim that, because of currency restrictions and all of that, private applications would not be granted as a matter of policy, is absolutely false; that these very same classified goods came in after a private application, after a hearing before the Board and the issuance of a permit.

* * * * *

128 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

MOTION FOR LETTERS ROGATORY.

Now comes Zenith Radio Corporation, defendant and counterclaimant herein, and asks that this Court issue Letters Rogatory directed to the appropriate judicial authority in the Commonwealth of Australia requesting that (a) Francis A. Meere, an officer or employee of the Department of Trade of Australia, or such other proper person as may have custody of the records of the Import Licensing Branch of the Department of Trade of Australia, and (b) Admiral of Australia Pty. Ltd., by an officer or such other competent person as may have custody of its records, be ordered and directed by appropriate judicial order to appear before a Consul General, Consul, Vice-Consul, or Consular Agent of the United States of America, or
129 before some other competent officer, at a time, date and place to be appointed and bring with them for use as evidence the documents and records constituting applications to said Department of Trade for issuance of permits made or filed by Admiral of Australia Pty. Ltd., or copies thereof, together with all permits issued by said Department thereon, or copies thereof, to import into Australia from the United States during the years 1956, 1957, 1958, 1959 and the first two months of the year 1960

television receiving sets, chassis, and component parts therefor and for cause says:

1. That Hazeltine Corporation and Hazeltine Research, Inc. has moved to set aside certain findings of fact entered by this Court in this cause and in support of said motion has represented to this Court that an official or employee of the Department of Trade of Australia will testify under oath that it was impossible to export luxury goods such as television receiving sets not on the free license list from the United States into Australia in commercial quantities prior to February 23, 1960.

2. That defendant-counterclaimant is informed and believes that the records of the Department of Trade of Australia and the records of Admiral of Australia Pty. Ltd. establish that during the years 1956, 1957, 1958, 130 1959, and the first two months of 1960 Admiral of Australia Pty. Ltd. actually obtained import permits for television receiving sets, chassis, and component parts therefor in substantial commercial quantities.

3. That the documents constitute evidence relevant and material to the issues in this cause, in that they will affirmatively show that the importation of television receiving sets, chassis, and components therefor was commercially possible during the entire damage period used by Zenith in the computation of its damages in Australia and for a substantial period of time prior thereto.

Thomas C. McConnell,
Attorney for Zenith Radio Corporation, Defendant and Counterclaimant.

Of Counsel:

McConnell, Freeman, Curtis & McConnell,
134 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

In the United States District Court.

* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable Richard B. Austin, one of the judges of said court, in his courtroom in the United States Courthouse at Chicago, Illinois, on Monday, June 14, 1965, at 10:00 o'clock, a.m.

* * * * *

2 Mr. McConnell: And I find the Admiral Company has imported a lot of sets into Australia, made a lot of money there, and I want to prove it to offset the claim here that some member from the Board of Trade is going to be produced here at the hearing to testify that that is impossible.

Mr. Kayser: Your Honor, that doesn't accord with our understanding of the facts.

* * * * *

*

In the United States District Court.

* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause, before the Hon. J. Sam Perry, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Wednesday, August 11, 1965, at 11:45 o'clock, a.m.

* * * * *

7 Mr. McConnell: Judge Austin said on that limited issue, i.e., whether or not there was a governmental embargo which would have absolutely precluded importation into these two markets only, England and Australia, I will permit proof to be taken and we will have a hearing on that issue only in October.

The Court: Do you propose to go beyond that in your—

Mr. McConnell: Yes, that is the basis of the objection. They propose to take not only testimony in evidence under this commission on the question of embargo, but also on the question of what market share or percentage Zenith could have had in that foreign market, and Judge Austin has made it clear that we only get to that issue if it
8 is first established that there was an embargo prior
to or during any part of the damage period, and then we may get into the question of whether or not the—there should be some readjustment in the market share or percentage which was the damage computation.

* * * * *

9 Mr. Cook: Secondly, your Honor, we have already taken certain depositions in England with respect to the embargo point, and at that time Mr. McConnell noticed and did take depositions which were related solely to the second issue. He did—

The Court: Have you taken some deposition on that second issue?

Mr. McConnell: No. Your Honor, that is not quite correct.

* * * * *

The Court: I am asking you a question. He makes a statement.

Mr. McConnell: That's right, and he said solely on that second issue, and the answer is no. We took the depositions of three witnesses by agreement in England when they were over there before on this question of an embargo, and the testimony of those three witnesses—all three witnesses' testimony related to the question of whether or not there was in fact an embargo or whether or not in fact you could import a commercial quantity into England.

The testimony also related to the question of market
10 percentage, that is, one witness.

* * * * *

12 Mr. McConnell: Well, your Honor, on the depositions that were taken by Zenith in England, first of all there was a man named Mills, and by his testimony we authenticated and we proved up government statistics which showed that electronic products of a comparable category to radios an T.V. receivers during the period of the 13 alleged embargo were in fact imported in commercial quantity. That related directly to the issue of embargo.

It is true that while the witness was on the stand, he was also examined on other matters.

The Court: I believe that was by agreement, though.

Mr. McConnell: By agreement.

The second witness, Clarkson, actually resided in Australia, but he happened to be in England at the time, and we used that opportunity to take his deposition.

He testified that a subsidiary of Admiral of Chicago, Admiral of Australia, imported in commercial quantity T.V.'s and radios during this period of the alleged embargo. That related directly to the embargo issue.

The third witness, the Spanish witness, in Spain they have import provisions, not embargoes. They don't have embargoes in any of these markets. They have them comparable to the import licensing provisions in England, and during the period of those provisions or restrictions this witness testified that he was able to import from Zenith assembled kits of components, and then add the cabinet to them and sell them in commercial quantity in that 14 market. That related directly to the question of whether or not, with these restrictions, you could carry on any kind of business in that market, so that all three witnesses' testimony related to the embargo issue, and Judge Austin I think has made it clear that until and only if he determines that it was impossible to import into these two markets, England and Australia, in commercial quantity, is he going to the question of what market share Zenith could have enjoyed during the damage period.

182 IN THE UNITED STATES DISTRICT COURT

* * (Caption—59-C-1847) * *

MOTION TO POSTPONE TAKING OF MARKET SHARE EVIDENCE UNTIL AFTER DETERMINATION OF THE EMBARGO ISSUE.

1. This Court previously indicated that the only issue to be tried on October 11 would be the embargo issue and that only if Hazeltine proved an embargo would the Court go into the issue of market share. Accordingly, the Court took under advisement until after the October hearing Hazeltine's Rule 34 motion which would have required Zenith to produce documents relating to the market share issue. In denying Hazeltine's motion to vacate the antitrust findings and take further evidence, except in the following limited respect, the Court, on April 1, 1965, said (Tr. pp. 360-361):

> "The Court feels that in regard to a very limited degree, that perhaps there should be further proof solely on these two questions—the questions of the damages in regard to Australia and the damages in regard to England.
>
> "In regard to Canada, there will be no change
> 183 as far as the Court is concerned. I feel that counsel should have an opportunity to offer what proof he can adduce in support of the statements made here and the offers of proof made. And it will be limited to this, let me assure you: As to whether or not radios and televisions could have been imported into England and Canada (sic) [Australia] in commercial quantities prior to the start of the damage period. And in the event it is established that they could not, I would think it would require a readjustment into the percentage figure of the market."

On May 10, 1965, the Court said (Tr. p. 5):

> "The Court: The only thing I am going to have a hearing on on June 1 is the question of—is on the counterclaim, period, and in regard to the embargoes against imports to Australia and England, period. That is all I am going to hear."

At the hearing on May 25 on Hazeltine's Rule 34 motion and to reset the June 1 hearing date the Court said Hazeltine had the burden of showing an embargo (Tr. pp. 13-14):

> "Mr. Kayser: Well, I would like to ask the question, if I may, your Honor: Do I understand that it is your present thinking that if we establish this embargo that we have the affirmative burden of destroying the case, so to speak, that they have made on damages?"
>
> "The Court: Well, as I understand, tentative findings were made and you came in and persuaded me to, as of this time, vacate them, and those findings were 184 made on the evidence that I heard in court of witnesses who were cross-examined by counsel for your client, and it isn't as though this were snuck in the back door and you never had a chance to cross-examine about it, inquire about it, or anything else. This wasn't done surreptitiously, and I think the burden is on you to show that the Court is in error in following the evidence that was presented to me at the time of the hearing. That is what I acted on."

With respect to the Rule 34 motion and the issue to be tried, the Court said (Tr. pp. 16-17):

> "We will just put this over. I will take these under advisement until the fall and we will have a hearing on the 11th of October on the embargo issue."

2. On August 11, 1965 Hazeltine appeared before Judge Perry, who was sitting as Emergency Judge, and obtained commissions for taking evidence both in England and Australia on the issue of market share. The application was

opposed by Zenith on the ground that the motion was premature and that the only issue set for trial was the embargo issue. The matter of scheduling these depositions, if necessary, is the subject of a separate motion which was continued by Judge Decker until August 25 before this Court (see motion of Hazeltine and affidavit of Francis J. McConnell in opposition thereto).

185 3. By letter last Friday, August 20, counsel for Hazeltine advised Zenith's counsel that at the Wednesday hearing on August 25 they would request a postponement of the October 11 hearing on the embargo issue to permit them to take evidence on the market share issue, and ask that both issues be set for trial, with no interval between trials, some time before the year end.

4. Zenith objects to any postponement of the October 11 hearing date and the taking of evidence on the market share issue at this time on the grounds that such procedure involves unnecessary expense and delay and that the evidence taken thus far conclusively refutes any claim of an embargo in either England or Australia.

5. Contrary to representations made in open court by counsel for Hazeltine there never has been an embargo, i.e., a governmental prohibition against importation of radios and TV receivers, in either England or Australia. At the most, there was during a period of time a requirement that licenses be obtained as a condition to importation. In the case of England this licensing requirement applied for only seven days of the damage period. Effective June 8, 1959, radios and TV receivers were added to the open general license (a general license to all importers to import the items listed thereon without specific application and permit) and from and after that date no license was
186 required to import these items. Prior to June 8, 1959, these items could be imported pursuant to individual licenses issued to importers. At least as early as November, 1958, the English Board of Trade, the licensing

authority, was considering removing all licensing requirements because of Great Britain's improved balance of payments position. The Board of Trade decision to add radios and TV receivers to the open general license was announced to improters in May, 1959, so that importers could have placed orders at that time or before for delivery after June 8, and no license would have been required.

In these circumstances, it is apparent that but for the British patent pool restriction on imports Zenith could have imported the number of radio and TV sets shown in its damage computation during the damage period (June, 1959-May, 1963).

Hazeltine's position, as we understand it, therefore, is reduced to the argument that Zenith's damage computation was based on the assumption of a mature or fully developed market, which is was not, and that prior to June 8, 1959 it would have been impossible to obtain individual licenses to import radio and TV receivers in commercial quantities and so develop a mature market. However, the testimony of Hazeltine's own witness, Norman H. Nail, coupled
187 with government statistics showing the fact of importation of electronic equipment and components, in the same category as radios and TV receivers, in commercial quantities completely refutes such a claim.

Nail, an administrative official with the Import Licensing Branch of the Board of Trade, testified that gramophones, tape recorders, record players, radiograms, and components for radio and TV receivers, including picture tubes, transistors, crystal diodes, electronic capacitors, electronic resistors, electronic inductors, and electronic loud speakers, were all in the same category as completed radio and TV receivers and, therefore, could only be imported prior to June, 1959, pursuant to specific individual license or permit (Nail Dep. pp. 59-60; pp. 78-79):

"Q. I take it that from your testimony down to date prior to that time [June 8, 1959] every one of those commodities would fall within your classification of consumer durables. Is that right?"

"A. Yes."

"Q. And according to the policy you have told us about here would be treated in the same way."

"A. Yes."

(Nail Dept. pp. 60-61.)

188 Official government statistics published by Her Majesty's Customs and Excise show that all of the above-mentioned items which Nail said were in the same category as radios and TV and subject to the same policy, were imported in commercial quantities from the dollar area (United States and Canada) in the years 1955, 1956, 1957 and 1958.

Nail further testified that the Board of Trade in granting licenses would not discriminate between importers and that, therefore, if one importer obtained a permit to import 200 American television sets, for example, other importers could import a like number or, "in other words, you would have to multiply that by several hundred, by the number of importers who wanted to do the same." Nail Dep. p. 81.)

Similarly, Nail testified that the Board of Trade would not discriminate between country or origin if both countries were in the dollar area and that, therefore, an importer could obtain a license to import as many American made sets as were imported from Canada.

"Q. If say 8,000 sets came in from Canada you would permit 8,000 sets from the United States?"

"A. If we had the aplication." (Nail Dep. p. 82.)

189 Official government statistics published by Her Majesty's Customs and Excise show that in fact TV receivers were imported in commercial quantities from Canada in 1957, when individual licenses were required.

5. In the case of Australia there were similar licensing provisions, but there never was any embargo, as such. It is undisputed that after February, 1960 there was no license requirement with respect to importation of radio and TV receivers, or components therefor, from the dollar area. Prior to that time a license permit was required as a condition to importation. That such permits could be obtained to allow importation in commercial quantities is conclusively shown by the experience of Admiral of Australia, Pty., Ltd.

In 1955 Admiral Corporation (U. S. Admiral) formed a 50/50 joint venture with General Industries. The joint venture organized Admiral of Australia, Pty., Ltd., which set up a local radio and TV assembly operation in Sydney, Australia. Starting in 1956, U. S. Admiral shipped components and assembled kits of components for radio and television receivers, and some completed television sets, to Admiral of Australia. The components were imported pursuant to import licenses obtained by Admiral of Australia and assembled locally into completed sets. (Clarkson dep. pp. 103-104.)

190 In 1957 U. S. Admiral's sales to Admiral of Australia of radio and TV components (which were invoiced at manufacturer's cost plus an eight per cent markup) amounted to $687,184. In 1958, sales were $346,879, and in 1959, $34,463 (Humrecht Dep. pp. 1-10).

Radio and TV components were in the same category as completed radios and TV sets and other electronic equipment and could only be imported during this period pursuant to individual license.

John Clarkson, Managing Director Admiral of Australia, testified that "Admiral of Australia, Pty., Ltd. was granted import licenses to import components in commercial quantities" and that during the period 1955-1957 "it was widely accepted that Admiral was either first or second in [television] sales." (Clarkson Dep. p. 104.) According to U. S. Admiral's 1957 Annual Statement, Admiral of Australia's net earnings for 1957 were $1,134,410 after taxes, and U. S. Admiral received as a dividend or profit from the joint venture for 1957, $336,900.

It is, therefore, inconceivable that Hazeltine can establish an embargo in Australia either before or during the damage period, and any testimony that licenses could not be obtained would be impeached by the Admiral experience.

191 6. Under these circumstances, Zenith submits that to take evidence at this time on the market share issue is not only an academic exercise but an extremely burdensome and expensive procedure. Although Zenith is prepared to meet this issue, if necessary, and, has already taken evidence which fully corroborates its market share estimate in both markets, it is submitted that on the presently known facts and in the interest of orderly procedure no useful purpose would be served by going forward with this proof at this time.

Wherefore, Zenith Radio Corporation prays that the taking of testimony on the market share issue be postponed pending determination of the embargo issue and that the trial proceed on the embargo issue, as scheduled, on October 11.

Respectfully submitted,

Thomas C. McConnell,
Francis J. McConnell.

Of Counsel:
McConnell, Freeman, Curtis &
McConnell,
134 South La Salle Street,
Chicago, Illinois 60603.
RAndolph 6-9131.

IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable Richard B. Austin, one of the Judges of said Court, in his courtroom in the United States Courthouse at Chicago, Illinois, on Wednesday, August 25, 1965, at 10:00 o'clock, a.m.

* * * * *

17 Mr. McConnell: I think we have got a more basic problem which these commissions issued by Judge Perry raised, and that is whether or not we should take evidence at this time on the question of market share, which brings me to our motion, Zenith's motion to postpone 18 the taking of such evidence until after the determination of the embargo issue.

The Court: Well, in view of the fact that depositions have already been taken on behalf of Zenith in regard to the market share issue, why now drop the matter?

Mr. McConnell: Because the qeustion is whether or not we go back to England, make a second trip back there to take evidence on market share when it appears that we will never reach that issue. They haven't made out an embargo. They can't make out an embargo and they have done everything they con on that issue in England already. They have taken the testimony of the official with the licensing department of the English Board of Trade, and as we set out in this motion, his testimony conclusively shows that they cannot make out an embargo; so what we are objecting to is going through an academic exercise and getting involved in an issue which we are never going to reach, at least it appears likely that we will never reach it.

Now, if the Court please, when we had this matter up before, last spring, your Honor said that the only issue 19 that you were going to try at this time was the question of embargo, i.e., was there a Governmental prohibition on importation of radios and TV recivers into these two markets, England and Australia, and only if Hazeltine carried the burden on that would we get to the question of market share.

* * * * *

The Court: Well, is it your position that in the event there is no establishment of an embargo that the evidence that has heretofore been submitted in regard to market 20 share is the only evidence that should be considered by the Court.

Mr. McConnell: No, I don't think your Honor is ever going to consider the market share evidence.

The Court: Well, I mean, I did hear some, otherwise I couldn't have come up with some figures at the time of the trial or at the conclusion of the trial. Somebody testified in regard to what they assumed that the market share would be in the event that there wasn't an embargo.

Mr. McConnell: All right.

Well, now, as I understand your Honor's ruling, unless they can first show an embargo we never get to the question of market share or whether or not there should be some readjustment, as your Honor put it, in the market percentages or shares on which our damage computation was based. We have got to cross the first hurdle first, and that is to show that there was this embargo. And what we are saying is that unless they can carry the burden on that, we will never get to the second issue.

* * * * *

27 Mr. F. J. McConnell: Now, Mr. Kayser hasn't suggested any other testimony that he is going to take in England on the question of embargo except letters now that

he wants against our distributor Ramsay. He couldn't possibly prove an embargo by our distributor Ramsay. The only way I know to prove an embargo, and it has already been disproved by the testimony taken, would be by the statutes, regulations, and orders of the British Board of Trade and testimony of an official of the British Board of Trade.

* * * * *

31 The Court: Why in the world did you go into the question of market share when you were over there?

Mr. McConnell: Because, No. 1, we didn't know what testimony would be produced by Hazeltine at the time we noticed thise depositions. No. 2—

* * * * *

Mr. McConnell: (Continuing) No. 2, the testimony of those witnesses did, in fact, relate to the question of embargo, and while we had them on the stand, those same witnesses, we also went into the question of market share. Briefly, your Honor, the one witness Mills, by him we proved up British Government statistics which show imports of electronic equipment and components for radio and TV in commercial quantities during the period of this claimed embargo when they said you couldn't get a license to import. Now, we proved that up. That directly related to the question of embargo with that witness.
32 While he was on the stand we also asked him, because he had ben in charge of a study—market study that had been made for Zenith, in which these Government statistics had been included, we also asked him his opinion as to the share of the market that Zenith could have obtained.

The Court: Whether or not that will be admissible is something that has not been—

Mr. McConnell: We never get to it if we don't get beyond—

The Court: We may never even get to it if it appears that there wasn't an embargo, too.

Mr. McConnell: Exactly, exactly. Maybe it was an abundance of caution on our part; but, anyway, that is it.

All right, now, the second witness, Clarkson, really was from Australia but he happened to be in London at the time, every fortuitous, and he was the managing director of Admiral of Australia, and during the period of the claimed embargo in Australia U. S. Admiral was shipping TV and radio components for local assembly in Australia by Admiral of Australia in commercial quantities,
33 $800,000 in 1957 alone, and we got that testimony from him. And he said that all came in pursuant to application and permits issued by the Department of Trade of Australia, directly relating and solely relating to the question of embargo.

The third witness was our distributor in Spain, a man by the name of Ribalta, and the testimony there related to the nature of his local assembly operation in Spain and the share of the market that he had been able to obtain over a four-year period of time. But in Spain they had license—there is no embargo in any of these countries, but they have licensing provisions and you have to get a license, during part of the period involved, and they had similar licensing in Spain, and yet despite those licensing provisions he was able to obtain permits and import these components and assemble the kits of components for local assembly.

• • • • •

47 The Court: Do you understand that on the basis of my ruling heretofore that nothing in regard to market share is going to be heard by this Court until the embargo thing is determined? Do you understand that?

Mr. Kayser: Yes, your Honor, you have made that clear.

The Court: You understood it?

Mr. McConnell: I understand it.

Mr. Kayser: Yes.

• • • • •

48 Mr. McConnell: No, I know that, but we are going to have a small-scale trial over there in London, calling witnesses and Zenith calling witnesses to counter 49 the Hazeltine witnesses.

The Court: If I assure you, Mr. McConnell, that if you are not sustained on the embargo issue that I will give you additional time to depose whatever witnesses you want to prior to the opening of the market share evidence, you don't have to plan on doing that at this time, and I give you that assurance, that you are not foreclosed by virtue of the fact that on this occasion you don't get your witnesses in to go into market shares, under those circumstances would you feel that maybe you could go along with this?

* * * * *

55 The Court: Yes. And I suggest to you that you list them in separate columns, I mean, embargo witnesses and share-of-the-market witnesses. It may be that they are not going to be at all concerned because of 56 their attitude that you have insufficient proof to even care who you put on in regard to having in mind that I have assured them that they are going to have ample opportunity to produce or take other depositions or produce witnesses after I have ruled on the embargo issue.

* * * * *

60 Mr. Kayser: Next, we understand that if we prove 61 the Governmental restrictions on exports, as we expect to, that then the Court would set a future date for hearing on the—

The Court: I think that is everybody's understanding.

Mr. Kayser: Yes, on the market share matter, the date to be such as to give the parties a reasonable opportunity to take depositions on the market share matter.

The Court: To go traveling around the world again. All right.

* * * * *

204 IN THE UNITED STATES DISTRICT COURT.

(Caption—59-C-1847)

ORDER.

This cause coming on to be heard on plaintiff's motion to fix the date for certain depositions and defendant's motion to postpone the taking of evidence on the market share issue, and the Court having heard oral argument on the motions and being fully advised in the premises;

It Is Hereby Ordered that:

1. The depositions of plaintiff in England on the import restrictions issue shall commence on September 13, 1965.

2. The depositions of defendant and of plaintiff in Australia on the import restrictions issue shall commence on September 27.

205 3. Plaintiff shall give defendant notice of the names of the persons to be deposed seven (7) days prior to taking of such depositions so far as is possible. As to witnesses whose identities are determined within said seven day period, plaintiff shall give as much notice as possible.

4. The foregoing dates and notice provisions are conditioned upon production of the documents by the Board of Trade of England on or before September 1 as represented by counsel for Zenith.

5. Said depositions in each country shall be limited to witnesses whose examination relates to the issue of import restrictions, except that a witness who is called to testify relative to import restrictions may also be interrogated concerning the market share question. However, no witness shall be called by either side for the purpose of obtaining evidence solely on the question of market share.

6. Neither party shall be subject to any time limitation

with respect to the aforesaid depositions in England and Australia.

206 7. The date set for the hearing on the issue of import restrictions is continued from October 11, 1965 to October 13, 1965 at 10:00 A.M. At that time, the Court will hear evidence solely on the question of the existence of import restrictions imposed by the governments of England and Australia preventing the importation of radio and television sets from the United States in commercial quantities. In the event that plaintiff succeeds in proving the existence of such import restrictions in either country, the Court will fix a date for a future hearing on the question of market share which date will provide sufficient time for the parties to conduct necessary discovery and to take necessary depositions in the foreign countries involved.

Entered this 26th day of August, 1965, at Chicago, Illinois.

R. B. Austin,
United States District Judge.

---

225 In the United States District Court.

* * (Caption—59-C-1847) * *

MOTION TO DISMISS THE COUNTERCLAIM FOR FAILURE TO JOIN ZENITH SALES CORPORATION, WHICH IS AN INDISPENSABLE PARTY, AND FOR ALTERNATIVE RELIEF IF ZENITH SALES CORPORATION IS JOINED.

Now comes plaintiff-counterdefendant, Hazeltine Research, Inc., by its attorneys, and pursuant to evidence discovered and matters disclosed at the London depositions taken during the week of September 13, 1965, respectfully shows this Court as follows:

(a) In this case, Zenith Radio Corporation has asserted,

and obtained the entry of findings and conclusions and partial judgment on the basis of representation, that it was the exporter of Zenith radio and television sets into England, Australia and Canada during the entire alleged damage period from May 22, 1959 to May 22, 1963, that its exports of radio and television sets were interferred with, and that it suffered loss of profits which it could have
226 realized from such exports.

(b) On September 16, 1965, at the said London depositions it was disclosed for the first time, by the English distributor of Zenith products, and by counsel for Zenith Radio Corporation, that since about January 1, 1960 Zenith Sales Corporation has been the exporter of Zenith radio and television sets to England, and that since that date Zenith Radio Corporation has merely been the manufacturer and supplier of radio and television sets sold to Zenith Sales Corporation for resale; all of which evidence and admissions were directly contrary to the previous assertions and representations made by Zenith to this Court and to plaintiff-counterdefendant.

(c) On information and belief, the same conditions applied as concerns exports to Australia and Canada, namely, that beginning about January 1, 1960, Zenith Sales Corporation became the exporter of Zenith radio and television sets to Australia and Canada, and Zenith Radio Corporation manufactured such sets and sold them to Zenith Sales Corporation for resale.

(d) Under the fact situation now revealed, and under Rule 19 of the Federal Rules of Civil Procedure, Zenith Sales Corporation is an indispensable party to the
227 counterclaim, and as a matter of law the counterclaim must be dismissed unless Zenith Sales Corporation is made a party, all as set forth in more details in the Memorandum in Support of this Motion, and the affidavit of Victor P. Kayser filed herewith.

Wherefore, plaintiff-counterdefendant moves the Court as follows:

1. That the counterclaim be dismissed on the ground that Zenith Sales Corporation is an indispensable party to the counterclaim, and it is not joined as a party.

2. That is Zenith Sales Corporation is joined as a party, such joinder shall be subject to the rights of Hazeltine Research, Inc. to plead, have discovery and make its defenses.

3. That if Zenith Radio Corporation's claim for damages is not dismissed, further hearings be ordered, both on the question of extent of alleged interference with the purported export business of Zenith Radio Corporation, and its alleged loss of export profits, and that such other proceedings be provided as are required by reason of the disclosure of Zenith Sales Corporation's interest in the subject matter. It is clear that Zenith Radio Corporation cannot, irrespective of any other issue, claim interference with, or damage to export business for the period when it was not the exporter.

228 There is filed herewith in support of this Motion the affidavit of Victor P. Kayser, one of the attorneys for Hazeltine Research, Inc., together with a Memorandum in Support of this motion.

Hazeltine Research, Inc.,
By John T. Chadwell,
Victor P. Kayser,
Attorneys for Plaintiff-Counterdefendant.

257 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

State of Illinois,
County of Cook. } ss.

AFFIDAVIT OF VICTOR P. KAYSER.

Victor P. Kayser, being first duly sworn on oath deposes and states as follows:

1. That there are attached hereto true and correct copies of the following:

(a) Pages 104, 106, 107, 109-117, 137-38, 173, 192-95 and 287 from the transcript of the deposition of Adam R. Ramsay taken in London, England on September 15-17, 1965.

(b) The order of the High Court of Justice in England, Queen's Bench Division, Master Lawrence, Master in Chambers, dated September 6, 1965, entered pursuant to the letters rogatory of this Court, and calling for the appearance and production of documents by Adam R. Ramsay on September 14, 1965 at 2:00 P.M.

258 (c) Document produced by Adam Ramsay at said deposition entitled "Zenith Distributor Agreement (Export Trade)", between Zenith Sales Corporation and United Merchantile Company, Ltd., dated January 2, 1960 and marked as Zenith London Deposition Exhibit No. 27 for identification.

(d) Invoices issued by Zenith Radio Corporation to United Merchantile Co., Ltd. dated July 24 and December 16, 1959, and invoices issued by Zenith Sales Corporation to United Merchantile Company, Ltd., dated April 19, 1960, September 29, 1961 and June 26, 1962 which were among the group of invoices produced by Adam R. Ramsay on September 17, 1965, and marked as Plaintiff's London Deposition Exhibit 66 for identification.

(e) The following copies of documents or portions of documents which affiant states on information and belief to be true copies of documents filed by Zenith Radio Corporation with the Securities and Exchange Commission:

Page 3 of the 1960 Proxy Statement dated March 20, 1960.

Page 3 of the 1961 Proxy Statement dated March 20, 1961.

May 13, 1964 amendment to Employment Agreement between Zenith Sales Corporation and Leonard C. Truesdell, attached as Exhibit C to Zenith Radio Corporation's Form 10-K for 1964.

2. That until September 16, 1965, neither Hazeltine Research, Inc., nor its counsel, knew that beginning 259 about January 1, 1960, Zenith Sales Corporation became the exporter to England of Zenith radio and television sets, and that Zenith Radio Corporation then became the supplier of such sets which it sold to Zenith Sales Corporation for resale; that the statements in the supporting memorandum as to the circumstances of discovery of the aforesaid information are true and correct; that until September 16, 1965, neither Hazeltine Research, Inc. nor its counsel knew that the same facts were true as to exports to Australia and Canada; and that the statements in the accompanying motion and memorandum that Zenith Sales Corporation became the exporter as to Australia and Canada, and Zenith Radio became the supplier of the radio and television sets to Zenith Sales Corporation, about January 1, 1960 are made on information and belief.

Victor P. Kayser.

1 In the United States District Court.

* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause, before the Honorable Richard B. Austin, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, commencing on Friday, October 15, 1965, at 10:00 o'clock, a.m.

* * * * *

9 JOHN Q. EWENS, called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kayser.

Q. Will you please state your name?

A. John Q. Ewens.

Q. Where do you live, Mr. Ewens?

A. 57 Franklin Street, Canberra, Australia.

Q. By whom are you employed?

A. I'm employed by the Commonwealth Government of Australia in the Attorney General's department.

Q. What position do you hold in the Attorney General's Department?

A. Parliamentary draftsman.

Q. How long have you held that position?

A. Since 1949.

Q. And where is your office?

A. My office is in Canberra, the Federal Capital of Australia.

Q. Now, you were with the Commonwealth Government prior to 1949?

A. Yes, I was first appointed as an officer of the
10 Commonwealth Government in the Attorney General's Department in 1933.

Q. Will you trace your career from '33 to '49.

A. In 1933, I was appointed as a legal officer and received several promotions until my promotion to the position of parliamentary draftsman in 1949.

Q. What was the nature of your duties during the period 1933 to 1949?

A. They were generally legal professional duties and concerned with the drafting of laws for Australia, and matters concerning their enactment by Parliament, and generally putting them into effect, and other associated duties.

Q. Your work had to do with the drafting of legislation?

A. Yes.

Q. What was your educational background?

A. I obtained the degree of Bachelor of Laws in the University of Adelaide, South Australia, in 1929. And in the same year, 1929, I was admitted as a Barrister, Solicitor, Attorney and Proctor of the Supreme Court of South Australia, and in the following year as a Practitioner
11 of the High Court of Australia.

Q. As Parliamentary Draftsman, are you connected with any particular division of the Attorney General's office?

A. Yes. The office is divided into three divisions, and one of them is called the Parliamentary Drafting Division.

Q. What is your position in that division?

A. I am in charge of that division.

12 Q. So that the court can understand the set-up of the Attorney General's department, will you state briefly what the divisions are in the Attorney General's department, and describe very generally the duties of those

divisions other than the parliamentary draftsmen—drafting division.

A. Yes. I am speaking of the central office of the department ~~in~~ Canberra. There are three divisions. The parliamentary drafting division to which I have already referred; another is called the Crown Solicitor's Division, which is concerned with litigation to which the Commonwealth of Australia is a party, and also with conveyancing matters for the Commonwealth, and matters similar to those.

The third division has just had its name changed, and I'm afraid I don't carry the new name, which is rather long, in my head, but its previous name was the Legal Division and, with his Honor's permission, if I might refer to it as the Legal Division.

The functions of that division are broadly to give legal advice to the Commonwealth Government and Common-
13 wealth instrumentalities and agencies, and it also deals with the administration of those laws that are administered by the Attorney General's department of the Commonwealth of Australia.

Q. Yes. Who is your superior in the Attorney General's department?

A. My superior is the permanent head of the Attorney General's department, and the precise name of his office is Secretary to the Attorney General's Department.

Q. And who is his superior?

A. His superior is the Attorney General of the Commonwealth.

Q. What is the place of the Attorney General in the Government?

A. Well, the Attorney General is, first of all, a minister of the Crown, a minister of State, and he is also the chief or first law office of the Commonwealth of Australia.

Q. All right.

Turning now to the Parliamentary Drafting Division of which you have stated you are the head, will you state generally what the functions of that division are.

14 A. The functions of that division are the preparation of legislation—that is to say, bills for introduction into the Commonwealth Parliament, bills, that is, that are required by the executive government to be introduced. Secondly, it's concerned with the drafting of rules and regulations and acts of the Parliament Commonwealth. Thirdly, it drafts ordinances and rules and regulations under ordinances for commonwealth territories, and it has a number of ancillary and associated duties concerned with the bringing of legislation into force, the publication of legislation, and things like that.

Q. Now, as parliamentary draftsman, what staff do you have under you?

A. My professional staff is of the order of about twenty people.

Q. They are lawyers?

A. Yes, they are all legal practitioners.

Q. All right.

Now, who in your division attends to the drafting of legislation and regulations?

A. Oh, anyone could attend to the drafting of
15 legislation and regulations.

Q. Well, what part if any do you play in that?

A. My part is, in the first place, to have the overall control and supervision of the division. Then I also draft the more important legislation myself, and I settle the greater part of the legislation—I say legislation; I mean bills as distinct from legislation, the greater part of the legislation; I mean bills as distinct from legislation, the greater part of the legislation drawn by other officers in the division.

16 Q. Now, could you state or describe very briefly the procedure which is involved when your division goes about drafting a piece of legislation, a bill?

A. The first step in the drafting of a piece of legislation is a decision by the Cabinet that it wants legislation on the particular subject.

The department that will administer that legislation then gives me detailed instructions for its preparation.

The drafting then begins and the drafts are prepared by my offices, which might perhaps range from one, for a simple bill to 20 or so with a long intricate bill, exchanged with the department until the department is satisfied and guided, of course, by my advice, that the bill will achieve the object that the Cabinet wishes to achieve.

When that point is reached, I submit the bill to a committee of the Cabinet known as the Legislation Committee and the duties of that committee is to examine the legislation and satisfy itself, guided by my advice and by the advice of the Attorney General, that the bill will
17 achieve what the Cabinet has set out to achieve.

After the Legislation Committee is satisfied with the bill a Minister would introduce it into one or other of the two Houses of the Australian Parliament, and assuming it didn't fall by the wayside, it would be passed by both houses and then it would be presented to the Governor General for the Royal assent.

Q. Now, what proportion of legislation enacted by the Parliament of the Commonwealth is drafted by your department?

A. My division would draft all the legislation that is introduced into the Commonwealth of the Australian Parliament except bills that might be drafted and introduced by private members, and they would be perhaps one or two in each year.

Q. You mean private members of the nongovernment members of the Parliament?

A. When I say "a private member," he can be a member—a private member means a member who is not a Minister, and he can be either on the Government side or on the opposition side.

Q. On the average, how many bills per year are introduced by such private members?

18 A. About one or two.

Q. Now, who drafts the rules and regulations which are made under statutes?

A. They are drafted by officers of my division.

Q. Now, in addition to the duties that you have described as head of the Parliamentary Drafting Division, have you performed any other legal duties or functions for the Australian Government since 1949?

A. Yes, in the period from 1949 to date I have acted on a number of occasions as Solicitor General of the Commonwealth of Australia.

19 Q. Whatare the duties of the Solicitor General?

A. Well, the Solicitor General is the second lower officer of the Commonwealth. I have already referred to the Attorney General as being the first lower office of the Commonwealth.

The Solicitor General is the second lower officer and his duties are generally to advise the Commonwealth on questions of law and also to appear as counsel in court in litigation in which the Commonwealth or its agencies might be parties.

Q. Now, how are statutes which have been enacted by the Australian Parliament, how are they published?

A. Oh, they are published in a number of ways.

Q. Would you describe them?

A. In the first place, a statute is published in pamphlet form. At the end of each calendar year all these acts are collected and published in an annual volume of statutes.

Thirdly, they are published in the form of reprints, that is in the form of a statute as amended by subsequent statutes, and, fourthly, at intervals all the acts are collected and published in reprint form in bound volumes. 20

Q. By whom are the statutes published?

A. They are published by the government printer of the Commonwealth of Australia.

* * * * *

21 By Mr. Kayser:

Q. I will hand the witness a duly attested and certified copy of an Act of the Commonwealth of Australia entitled, "Amendments Incorporation." 22

They have been marked as Plaintiff's Exhibit 64 for identification and I will ask him if he can identify that statute and state what it does.

* * * * *

24 By the Witness:

A. These two statutes of the Australian Parliament, copies of two statutes of the Australian Parliament, entitled respectively "Amendments in Corporation Act, 1905" and "Amendments in Corporation Act, 1918," the latter statute amends the first statute.

* * * * *

By Mr. Kayser:

Q. I will ask the witness whether or not this statute, as amended, provides any guide either in the drafting or in the interpretation of other statutes? 25

* * * * *

By the Witness:

A. I wouldn't say that the two statutes provide any guide in the drafting or the interpretation of statutes. What these two statutes taken together provide is for the reprinting of statutes that have been amended.

The law provides that if a statute that has been amended is reprinted it must be reprinted with the amendment shown, and an indication of those amendments must be given either by a marginal note of a footnote, and there must be included in the reprint a short reference to every amending act that has been incorporated in the reprint.

Mr. Kayser: I will offer Plaintiff's Exhibit 64 for identification into evidence.

* * * * *

Mr. McConnell: I have no objection to its competency
I cannot see that it has any relevance whatever to the
26 issues.

The Court: You have taken the words out of my mouth, Mr. McConnell, but if counsel assures me that he will connect it up and that it does have some relevance in connection with the subject matter before the Court, and will be clarified by additional testimony or additional exhibits, I will permit it to be received.

I have that assurance, do I?

Mr. Kayser: Yes. your Honor.

(The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT 64.)

By Mr. Kayser:

Q. What is the procedure involved in the making of rules and regulations under the statutes?

A. My division would receive instructions from the relevant departments for the rules or regulations that were required and they would then be drafted in my division and drafts exchanged with the department in much the
same way as were bills, and when the department and
27 the Minister concerned were satisfied that the draft
achieved the desired effect, the regulations would be submitted by the Minister to the Federal Executive Council, which in turn would submit them to the Governor General who would make them by signing them.

28 Q. Do such rules and regulations have the force of law in Australia?

A. The next step after their being signed by the Attorney General is for them to be notified in the Commonwealth of Australia Gazette.

From that point they have the force of law—they do have the force of law and they have the force of law as from the first moment of the day of notification unless some other date is specified in the rules or regulations as the date from which they are to have effect.

Q. Are the rules and regulations printed after notification?

A. Yes, after notification they are printed by the Commonwealth of Australia government printed.

Q. And must they then be laid before Parliament?

A. Well, the laying before Parliament is not a necessary connection with the printing, but they do have to be laid before Parliament within a certain number of days after they have been made.

Q. And who attends to laying the rules and regulations before Parliament?

A. That is the duty of one of the officers of my division and it is also the duty of another officer of my division
29 to supervise this work and to see that it is carried out.

Q. Are the terms, "rules and regulations," do they refer to two different things or are they references to the same?

A. Virtually interchangeable terms.

* * * * *

30 By Mr. Kayser:

Q. I hand you a copy of the Commonwealth of Australia Acts, Interpretation Acts 1901-1964, which has been duly attested and certified and marked as Plaintiff's Exhibit
31 65 for identification.

I will ask the witness whether that Act has any application in the interpretation of the laws of Australia.

Mr. McConnell: I object to his interpretation of the Act. It speaks for itself, if the Court please.

The Court: No, the objection is overruled.

By the Witness:

A. The anwser to the question is that Section 2 of this Act provides that this Act and this Act as amended applies and is to be deemed to have applied to all Acts of the Commonwealth Parliament including this Act itself.

32 Mr. Kayser: I will offer Plaintiff's Exhibit 65 in evidence.

Mr. McConnell: May I see it.

Mr. Kayser: Surely.

Mr. McConnell: I haven't any objection except to its relevance.

The Court: Well, on your assurance that it will be connected up, it may be received.

The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 65.)

* * * * *

By Mr. Kayser:

Q. Is there any commonwealth legislation in Australia which controls or regulates the importation of goods? 33

A. Yes.

Q. Are you familiar with this legislation?

A. Yes, I'm familiar with it.

Q. I will hand the witness a copy of the Commonwealth of Australia Customs Act, 1901-1936, which has been duly attested and certified, and marked as Plaintiff's Exhibit 66 for identification. I will ask the witness whether this document has to do with the control or regulation of the import of goods into Australia.

Mr. McConnell: I object to that. The document speaks for itself.

The Court: Overruled.

By the Witness:

A. This Act contains certain sections that do refer to the matter asked in the question.

By Mr. Kayser:

Q. Well, can you state as of what date is the Customs Act of Australia shown in that document?

A. This Act is the Customs Act, 1901-1936, and in this form it came into operation on the 7th of December, 1936.

Q. In other words, this shows the Customs Acts
34 as amended up to December 7, 1936?

Mr. McConnell: Well, what—I object to it. What it shows is on the face of the Act I assume.

By Mr. Kayser:

Q. Well, will you refer—

The Court: The objection is overruled.

By Mr. Kayser:

Q. Will you refer to the Act by section.

A. As next is printed on this Act, as required by the Amendments Incorporation Act, it shows that this is the Customs Act as in force on 7th of December, 1936.

Mr. Kayser: I will offer Plaintiff's Exhibit 66 in evidence.

Mr. McConnell: I have no objection, except we are not concerned with the period of 1901 to 1936. I don't see any relevance.

The Court: The Court recognizes that. It may be received.

(The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 66.)

35 By Mr. Kayser:

Q. Now, I will hand the document back to the witness. I think the relevancy will be apparent in a minute. I hand the document back to the witness and ask him to take a look at Sections 50, 52(g), and 270.

A. Yes.

Q. And ask him to state the effect of those three sections.

Mr. McConnell: I object to that, what the effect is. The effect could be shown, I assume, by whether they were imports or whether they weren't imports.

The Court: Objection overruled.

By the Witness:

A. The effect of the three—

Mr. McConnell: Could I see that particular section. You have given me a big document here that I couldn't possibly read.

36 The Court: There are three sections he is talking about, aren't there?

Mr. Kayser: That is right.

The Court: Three sections. Do you have a copy of this?

Mr. Kayser: No, your Honor, we don't. These came with all these red ribbons, and it just wasn't possible to reproduce them.

The Court: You will get a chance to look at it, Mr. McConnell, before cross-examination. You have my assurance.

Mr. McConnell: All right.

By the Witness:

A. The effect of the three sections mentioned in the question is to enable the Governor General to make regulations prohibiting the importation of goods into Australia, and penalizing the importation of goods contrary to the regulations.

By Mr. Kayser:

Q. Now, can you state whether those three section, 50, 52(g) and 270—whether or not they remained in full force and effect from 1939 until December 14, 1956?

37 Mr. McConnell: I object to that. He hasn't shown the document. We are entitled to have the statute here, I would say.

This runs, as I understand it, up to 1936.

Mr. Kayser: I have asked him whether he can testify whether or not—

The Court: '36, as I recall, or as I understand it, was the last amendment.

Mr. Kayser: That is right, and I have asked—

The Court: And there is no amendments between '36 and apparently '56, so the '36 law would continue in effect unless it was repealed or amended or something else.

Is that right?

Mr. Kayser: Precisely.

The Witness: The sections referred to in the question were not amended or repealed in the period referred to in the question, and remained in full force during that period.

38 The Court: So that the law as it was in '36 was still the law in regard to 1956; is that right?

The Witness: Yes, sir.

The Court: All right.

Mr. Kayser: That is the point we wanted to make, your Honor.

The Witness: As to those three sections.

The Court: As to those three sections.

If that document is back there now, Mr. McConnell might like to look at it. I assured him he would have a right to—

Mr. McConnell: I don't understand this. 1956—he's got a law up to 1956, and I guess that's where we end.

Mr. Kayser: Oh, I don't think so, Mr. McConnell. That's not permitted.

The Court: Apparently in 1956 there may have been a repeal, there may have been an amendment. I'm waiting anxiously to find out what happened.

Mr. Kaiser: Your Honor, I hope to satisfy that curiosity next.

39 I have forgotten. Have you ruled on the offer of the exhibit?

The Court: It may be received.

By Mr. Kayser:

Q. I show the witness the Commonwealth of Australia Customs Act, 1901-1957, which has been duly attested and certified—

The Court: When you read it that way, does that mean it was first enacted in 1901, and this includes all amendments up to 1957? Is that what that means?

Mr. Kayser: Yes. And that, your Honor, is why we put in this reprint amendment to explain that that is what it does mean.

The Court: I mean, just so I understand.

Mr. McConnell: A[illegible] of which I am willing to agree to, that you had a regulation in whatever period you want to tell us about.

40 Mr. Kayser: Mr. McConnell, we can never know what you are prepared to agree to, so we have to do our best to make our evidence.

Mr. McConnell: I told you I wasn't raising any question about any statute or any rule or any regulations, as to its authenticity. All you have to do is offer it.

By Mr. Kayser:

Q. As I started to say, I'm handing you, Mr. Ewens, the Commonwealth of Australia Customs Act, 1901-1957, which has been duly attested, certified, and which is marked as Plaintiff's Exhibit 67 for identification, and ask you to state the date as of which the 1901 Act was amended. What is the date through which this statute carries?

A. This reprint includes all the amendments that were made up to the end of the year 1957. The last of those amendments was made by an Act that was assented to on 7 June 1957, except as to one portion of that amending act that came into force on 7 September, 1957. The last amending act came into force on the date I have men-
41 tioned, the 7th of June, 1957. This therefore shows the state of the law as of the end of 1957.

Mr. Kayser: I offer Plaintiff's Exhibit 67 in evidence.

The Court: It may be received.

(The said document so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 67.)

Mr. Kayser: Now, your Honor, for the purpose of putting, I think, most quickly before you the outline of our proof, I would like to read from a couple of sections of this Act.

I am reading first Section 50 which states:

> "The Governor General may by regulation prohibit the importation of goods into Australia."

Subsection 2 of Section 50:

> "The power conferred by the last preceding subsection may be exercised;
>
> "(a) By prohibiting the importation of goods absolutely;
>
42 "(b) By prohibiting the importation of goods from a specified place; or
>
> "(c) By prohibiting the importation of goods unless specified conditions or restrictions are complied with.

"Subsection 3: Without limiting the generality of Paragraph (c) of the last preceding subsection, the regulations (a) may provide that the importation of the

> goods is prohibited unless a license or permission to import as been granted as prescribed by the regulations; (b) may provide that a license or permission so granted may be subject to conditions or requirements to be complied with by the person to whom the license or permission was granted, either before or after the importation of the goods in respect of which the license or permission has been so granted; and (c) may provide that the grant or continuance in force of a license or permission so granted shall be subject to the
> 43 condition that the applicant for or the holder of the license or permission furnishes to the Customs authority for compliance with this Act and for compliance with the conditions or permission to which the license or permission is granted."

44 Section 51 reads:

> "Goods the importation of which is prohibited under the last preceding section are prohibited imports."

Now, I want to read just the first part of Section 270.

> "The Governor General may make regulations not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or as may be necessary or convenient to be prescribed for giving effect of this Act or for the conduct of any business relating to the customs, and, in particular, for prescribing"—

and then some particular actions which the Governor General may take are referred to, or are listed, rather.

By Mr. Kayser:

Q. Now, Mr. Ewens, I will hand you again Plaintiff's Exhibit 67 and ask you whether or not Sections 50, 51 and 270 of the Customs Act of 1901-1957 have been in full
45 force and effect from and after December 14, 1956, through to the end of the year 1960?

A. Yes, that is so.

Q. Sir?

A. Yes, that is so.

Q. I note, incidentally, that some of the sections are shown to have been adopted in 1952, but as not becoming effective until December 14, 1956.

Do you know the explanation of that?

A. It is as a fact that they did not come into operation until the 14th of December, 1956, but I don't know the reason for the delay in bringing them into operation.

Q. I hand the witness Statutory Rules, 1939, No. 163, which have been duly attested, certified, and marked as Plaintiff's Exhibit 68 for identification.

I will ask him whether or not these are statutory rules made pursuant to the Customs Act of the Commonwealth.

A. Yes, these are statutory rules entitled,

> "Customs Import Licensing Regulations Made Under the Customs Act of 1901 to 1936."

Q. Mr. Ewens, can you state whether or not these
46 rules continued in force and effect until the 14th of
December, 1965?

A. Yes, they did.

Mr. Kayser: I will offer Plaintiff's Exhibit 68 in evidence.

The Court: It may be received.

(The said documents, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT 68.)

By Mr. Kayser:

Q. I will hand these back to the witness, the statutory rules just referred to. Referring to Regulations 3 and 15, I ask him in his expert opinion to state the effect of the provisions of those two regulations.

Mr. McConnell: I object to his testifying to the effect of these rules and regulations. He is incompetent to so testify.

The Court: I mean, don't the rules themselves indicate, without an opinion—Do you want him to put a unique meaning on them? I don't even know what the rules
47 say. Don't they speak for themselves?

Mr. McConnell: I want to call the court's attention to the opinion of Mr. Chief Justice Latham of the High Court in Australia, in which an attempt was made to interpret or construe plain words of a statute, and he lays down this rule which I understand to be the law in Australia, and it certainly is the law here, in which he says:

> "The words of a statute, when applied to the state of facts with which the statute deals, speak for themselves. They express the intention of the Parliament. A statute may be based upon the report of a committee, or of many committees, or upon cabinet memorandum, upon a resolution of a political party, or upon an article in a newspaper. The intention of Parliament as expressed in a statute cannot be modified or controlled in a court by reference to any such material."

Then it goes on—

48 The Court: I don't think he is about to go to any material that was used in the debate on the adoption of this.

Mr. McConnell: No, but it also goes on here and says you can't do it by other testimony either.

The Court: Isn't the statute self-explanatory, Mr. Kayser, or is there something confusing about it?

Mr. Kayser: Your Honor, I would like to address myself, if I may, for a moment, on this subject of testimony of experts as to foreign law.

Now, I think that we must remember that what we have here is a matter of foreign law, the law of Australia not being interpreted here in the United States. And I have prepared, your Honor, and would like to hand to the Court a short memorandum which shows that authorities

show clearly that the opinions of foreign experts—of
49 experts on foreign law should be looked to not only if
there is a question—an ambiguity, but also to aid in the
interpretation. As Wigmore said, for example, the answer
has always—

The Court: I mean, is this law so involved that I need an expert's interpretation?

Mr. Kayser: Your Honor, I think it would be of great assistance, frankly.

The Court: I mean, I don't know, It may just say televisions and radios are banned from the country. I don't need any interpretation of that.

Mr. Kayser: No, your Honor, I think it would be of a great assistance and aid to this court if the witness is permitted to state the effect of these sections, rather than having this court being required to wade through all this language with the paragraph and subparagraphs, and with the unfamiliarity which we have with the Australian legislation.

The Court: How long and how involved is this
50 thing, Mr. Kayser, that you are asking his interpretation on?

Mr. Kayser: Your Honor, possibly if we could just hand it to the Court, and he can decide for himself whether or not a brief explanation might be an aid.

The Court: I mean, does the question that you asked this witness require the reading of this entire document that you are about to hand me, or is he just going to refer to certain paragraphs?

Mr. Kayser: Well, he will refer to certain paragraphs in the light of his over-all knowledge of the statute and the subject matter, your Honor.

Mr. McConnell: Well, may I be heard for a moment on this, your Honor?

The Court: Yes.

Mr. McConnell: I want to cite the case of *Groome* v. *Freyn Engineering Co.*, 374 Ill. 113, at Page 124. The question there was a proof of law in Russia, and the Supreme Court of Illinois dealt with it, and says:

51 "Where the laws of a foreign country are involved, they must be proved as any other fact. If they are written laws, the best evidence is a copy of the Constition or the Statute under consideration," citing a number of Illinois cases.

"If the foreign law is established by court rulings or otherwise, they may be proved by a person having expert kowledge of such law, and he may properly refer to the decisions or precedents which declare it. Measured by these rules the evidence is wholly insufficient to establish as a fact any law of Russia which would render the performance of the contract under consideration void. It appears from the record that Russia has a written constitution, and a written civil and criminal code which have been in effect in and after 1923. The text of such written laws is not in the record."

Then they go on holding other evidence is incom-
52 petent. Now, this is a very simple question which we have. We have some regulations and we can't import without getting an import license. It's just as simple as that.

But the question in this case is whether or not, in view of those statutes, goods came in in commercial quantities. That is the only issue, as I see it, in this case.

53 We are prepared to stipulate that there were regulations, that there was an Act, and this witness can't add anything to the Act. Your Honor is not going to take his statement of what the Act is against the document itself.

The Court: You are stipulating to one of the ultimate facts here, that there was a regulation—

Mr. McConnell: Yes, no qeustion about that.

The Court: Is that all you are seeking to prove by this witness, that there was a regulation?

Mr. Kayser: We are seeking to prove the statute and the regulations and the terms of them.

Your Honor, we can't—

Mr. McConnell: The terms are in the document.

Mr. Kayser: I would suggest, your Honor, that the witness be allowed to answer the question, I mean, as an offer of proof, if nothing else. But actually, as the
54 authorities indicate, the testimony of an expert is proper not only in case of ambiguity, but as an aid in interpreting.

Mr. McConnell: Your Honor, we have it right here in black and white what the regulation is. This witness can't change it. There is no ambiguity in it. Anybody can read this and see exactly what it says.

Mr. Kayser: The witness can state the effect of it.

Mr. McConnell: No, he hasn't anything to do with the effect of it. He was never in the Customs. He never was anywhere near—

Mr. Kayser: He can state the effect of the regulations. After all, this man is parliamentary draftsman, and has been drafting legislation in Australia for a couple of decades.

The Court: I assume he can testify as to what the law is. If the law was being violated by stuff coming
55 through customs, he wasn't—

Mr. Kayser: That is right, your Honor.

But first, as part of our proof, we have to establish what the law is.

The Court: Well, as I understand it—

Mr. McConnell: No quarrel about it.

The Court: Mr. McConnell is willing to stipulate as to what the law is, or ~~was, or~~ both.

Mr. McConnell: Exactly. We have no quarrel about what the law is. What happened under it is this lawsuit.

The Court: I would think that you would have a tighter case if you could get a stipulation from him. Then he couldn't subsequently object to the introduction of these, 64, 65, 66, 67, and 68, because you have the ultimate facts stipulated to by Mr. McConnell.

56 Mr. McConnell: Well, I guess the shortest way, your Honor, is to let him go ahead. I don't know.

The Court: Well, if this is the way he wants to try his case, I am not going to stop him.

Mr. Kayser: Your Honor, we could have been on much farther during the time that we have been—

The Court: Well, because a lawyer makes an objection, that is not the kind of delay that in my opinion merits any—

Mr. Kayser: I agree, sir.

The Court: All right, go ahead, with this witness.

Mr. Kayser: I believe we had a question pending.

The Court: Well, it is a long way back. Can you think of what it was and ask it again?

Mr. Kayser: All right.

Mr. McConnell: Well, I object to the question. He asked him what the effect of it was and I object to it
57 because the man hasn't been shown to have any knowledge at all of what happened under this law. He wasn't anywhere near the import licensing bureau and he had nothing to do with it.

The Court: I will sustain an objection to form of that question.

Ask him what this purports to do. Whether it does it or not is something that he may have no knowledge of, but what is it supposed to do.

Mr. Kayser: All right.

By Mr. Kayser:

Q. Mr. Ewens, will you state what regulations 3 and 15 of those statutory rules purport to do.

A. They purport to place in the control of the Minister of State for trade and customs the importation of goods into Australia by a system of what might be called import licensing.

Q. I will hand the witness a document, Statutory Rules
1956, No. 93, which has been duly attested and certified
and marked as Plaintiff's Exhibit 69 for identification, and
I will ask him whether or not these are statutory rules
58 made pursuant to the Commonwealth Customs Act
as amended.

A. Yes, they are.

Mr. Kayser: I offer Plaintiff's Exhibit—

The Court: 69?

Mr. Kayser: 69 in evidence.

The Court: It may be received.

(The said document, so offered and received in evidence, was marked as PLAINTIFF'S EXHIBIT 69.)

Mr. Kayser: I would like to call the Court's attention —I think it might be helpful if we were to read 7 and 17 into the record, your Honor.

The Court: Well, if you think it would be helpful, you go right ahead.

Mr. Kayser: Thank you.

> "7. The importation of any goods (not being
> goods which are excepted from the application of
> these regulations) is prohibited unless, (a) a license
> under these regulations to import the goods is in
> force and, (b) the conditions and restrictions (if any)
> 59 to which the license is subject are complied with.
>
> "17. () The Minister may except from the application of these registrations any goods or any goods included in a class of goods; (2) Without limiting the

generality of the last preceding subregulation, the exception of any goods from the application of these regulations may be limited to, (a) goods produced or manufactured in a country or countries specified by the Minister; (b) goods to be imported in a manner or at or within a time specified by the Minister; or (c) goods to be used for a purpose specified by the Minister.

"(3). The Minister may vary or revoke any exception made in pursuance to this regulation."

By Mr. Kayser:

Q. I notice, Mr. Ewens, that there is a reference on the first page of this exhibit to the Minister of State for Customs and Excise; can you state whether or not that
60 is the minister administering these regulations?

A. Yes, he was the Minister administering these regulations. He is the Minister referred to in the regulations.

61 Q. Can you state whether or not the provisions of these 1956 statutory rules, Plaintiff's Exhibit 69, have been in force and effect from December 14, 1956, until the end of 1960?

A. Yes, that is so.

Q. Now, directing your attention to Regulation 7, where reference is made to licenses under the regulations, who had the power to issue licenses?

A. The power to issue licenses under the regulations is vested in the minister or in a licensing officer, that is to say, an officer authorized by the minister to act as a licensing officer for the purposes of the regulations.

Q. Under Australian law, can one minister of the government act for another minister?

A. Yes.

Q. Now under Section, or Regulation 6, there is reference to the delegation by the minister of his powers to a licensing—powers or functions to a—strike that.

There is reference to the delegation of a power of function by the minister; can you state whether that power could be delegated to an officer or officers in a department 62 other than customs and excise?

A. Yes, it could be delegated to any officer of the Commonwealth of Australia regardless of the department in which he worked.

The Court: Maybe, Mr. Kayser, we will take a five-minute recess.

Mr. Kayser: Yes, sir.

(Thereupon a short recess was had herein, after which the following further proceedings were had, to-wit:)

The Court: You may proceed.

Mr. Kayser: Thank you.

Your Honor, the next subject on which I propose to examine this witness has to do with the matter of customs, duties and legislation, but the fact is that I believe with the exception of one exhibit these acts also have a bearing on the application of the import restrictions but with your Honor's permission I will also, in connection with those exhibits, ask him pertinent questions relative 63 to the duties themselves.

Mr. McConnell: Well, I object to that. That is not in the scope of this inquiry.

The Court: Well, I indicated that while it is beyond the major purpose of this inquiry, rather than in the event of a ruling one way or the other bring him back for an inquiry in regard to this, since I have some assurance that this would not take very long, that I would not take very long, that I would save him another possible trip back.

Mr. Kayser: Yes.

Well, this whole next section we would largely have to go into in any event in relation to import restrictions.

The Court: All right.

The objection is overruled.

By Mr. Kayser:

Q. Mr. Ewens, does the Government of Australia impose tariffs on the importation of goods from other countries?

A. Yes, tariffs are imposed by statute.

Q. Are you familiar with the statutes in relation to such tariffs?

A. Yes, I am generally familiar with them.

64 Q. Where is such legislation drafted?

A. The legislation is drafted in the Parliamentary Drafting Division, the division that I control?

Mr. McConnell: Well, I object to the process of drafting customs. There must be an act. If there is an act, I haven't any objection to the competency. He doesn't have to prove that it was drafted or that he did it.

By Mr. Kayser:

Q. I hand you a document, Customs Tariff, 1953-1958, which has been duly attested and certified and marked as Plaintiff's Exhibit 70 for identification—Mr. Thomas said that I misspoke—Customs Tariff, 1933 to 1958.

* * * * *

65 By Mr. Kayser:

Q. I will ask as of what date does this Act show the Customs Tariff of Australia?

A. This Act covered by this attestation shows the Customs Tariff as at 18th June 1958.

Q. June 18th?

A. June 18, 1958.

Mr. Kayser: I offer Plaintiff's Exhibit 70 in evidence.

Mr. McConnell: I object to its relevance.

The Court: Am I to assume that unless there has been an amendment or change or repeal that it was in effect in June of '59 also?

66 The Witness: It continues in force, your Honor, until some amendment is made to it.

The Court: And that was my assumption.

The Witness: Yes, sir.

The Court: And so that until there was an amendment —well, do you know whether there was an amendment after June of '58?

The Witness: Oh, yes, there have been amendments. This is the beginning date of its operation.

The Court: All right. It may be received.

(The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 70.)

By Mr. Kayser:

Q. Now, first, directing your attention to Section 6, what does this section purport to do?

A. Section 6 is the section that imposes duties of customs in accordance with the schedule to the Act upon the goods described in items in the schedule.

67 Q. Directing your attention, then, to Page 96 of that schedule, can you state for the record what Tariff Item 180(e) covers?

Mr. McConnell: It states it right in the document. I object to this.

The Court: Overruled.

By the Witness:

A. Tariff Item 180(e) covers generally wireless receivers, parts thereof and accessories therefor as shown in paragraphs of the sub-item.

By Mr. Kayser:

Q. Can you state whether or not 180(e) includes radio receivers or television receivers?

A. Yes, it includes both of those.

68 Q. What is the designation which you find to cover them?

A. Paragraph 15 refers to wireless receiving sets wholly assembled, partly unassembled, excluding cabinets, cathode ray tubes, that is to say picture tubes, valves, loud speakers, headphones, batteries or any device for eliminating batteries.

Q. In other words, the term "wireless receiver" includes radio receivers and television receivers?

A. Yes, that is right.

Q. Now, were the provisions of Section 6 of the Act and 180(e) of the schedule in full force and effect during the period from June, 1958, until May 20, 1960?

A. Yes.

Q. Now, is there a method of determining the amount of duty imposed on a given item under the tariff schedules?

A. Yes, you first identify the goods with which you are dealing by reference to the item that describes them and then you read off the duty applicable to them from one or other of the three columns that form part of the schedule.

Q. Referring you back to 180(e) on page 96, what 69 is the meaning of the term "ad val" which appears there?

By the Witness:

A. The phrase "ad val" is an abbreviation of two Latin words, "ad valorem."

By Mr. Kayser:

Q. That has to do with the valuation of goods for duty purposes?

A. It means according to value, in English.

Q. Are you familiar in a general way with the method of valuation of goods under Australian tariff?

A. I am familiar with the provisions of the statute relating to this.

Q. I hand to you Exhibit 67, which is a 1901-1957
70 Customs Act already in evidence, and I direct your attention to Section 154 and ask you if you can state what that section provides in connection with the application of the ad valorem duty.

A. This section applies when duty is imposed according to value, that is, when duty is applied ad valorem, or ad val, as it states it, and the section goes on to provide that the values for duty is the sum of two elements, the first of those elements is the actual money price paid or to be paid for the goods by the Australian importer plus any special deductions, or the current domestic value of the goods, whichever is the higher; and the second element is all charges payable or ordinarily payable for placing the goods free on board at the port of export.

71 Q. Now, as an illustration of how these tariff schedules are applied, I would like to direct your attention to Item 180(e)(8) of Exhibit—of the Tariff Act, Exhibit 70, and ask you to first indicate what the item is—or what the goods are shown at that item.

A. That Paragraph (8) applies to goods described as "combined power transformers and chokes, and any device for eliminating AB, BC, or ABC batteries such as power packs and similar devices, whether imported separately or incorporated in a wireless receiving set."

Q. Now, looking at that schedule, will you state what the duty is applied to that item.

A. The duty applied to the goods I have just mentioned is, under the British preferential tariff, 15 schillings each; under the intermediate tariff, 25 schillings each; and under the general tariff 26 schillings and sixpence each, subject to a qualification that I am about to state, and that is that if the duty calculated ad valorem at the rates menioned is higher, then the ad valorem duty applies.

The ad valorum duty rates are under the British 72 preferential tariff 27½ per cent, under the intermediate tariff 45 per cent, and under the general tariff 50 per cent.

Q. I gather then that the small letter "s" means schillings, and that the small letter "d" means pence, is that right?

A. Yes, that is right.

Q. Could you state how many pence in a schilling and how many schilling in a pound?

A. Twelve pence is a schilling and 20 schillings in a pound.

Q. And can you state what the approximate rate of exchange has been as between the Australian pound and the U. S. dollar since about 1956?

A. 2.24 United States dollars to the Australian pound.

Q. You mean $2.24?

A. Yes, $2.24.

Q. Per Australian pound?

A. Per Australian pound.

Q. Incidentally, I notice in here on some of these schedules a figure which looks like a capital "L" with a line drawn through it; I ask you, is that the indication of the pound?

73 A. That is the indication of the pound.

• • • • •

By Mr. Kayser:

Q. Calling your attention to the heading on the schedule, the heading "British Preferential Tariff," can you state whether or not the British Preferential Tariff is normally higher, lower or equal to the other tariffs?

A. Well, it is a preferential tariff and it would—I can't conceive of any circumstances in which it would be higher than the other two tariffs. It would be at least less or perhaps equal to them.

Q. To what areas of the world or what countries does Australia apply the British preferential tariff?

* * * * *

74 A. The countries to which the British preferential tariff applies are provided by statute, and what the statute provides is that they apply to imports from the United Kingdom and also to imports from British non-self-governing colonies.

By Mr. Kaiser:

Q. But the United States is not included under the British preferential tariff?

A. The United States is not included in the description that I have just given of the countries to which that tariff applies.

Q. How is it determined whether the general or intermediate tariff applies? I am referring to the other two columns in the schedule.

A. The position is that the general tariff applies to all goods that are not subject to the British preferential tariff, and this, again, is a matter provided by statute
75 unless some administrative order or instrument is in force applying the intermediate tariff.

Q. I hand the witness a Commonwealth of Australia Act Customs Tariff No. 3, No. 52 of 1960, which has been duly attested and certified and marked as Plaintiff's Exhibit 71 for identification, and I will ask the witness whether or not this is an amendment to the 1933-1958 Customs Tariff Act about which he has previously testified.

A. Yes, it is an act that amends the Customs Tariff, although there had been intermediate amendments between the previous document and this document.

76 Mr. Kayser: I will offer Plaintiff's Exhibit 71 in evidence.

The Court: It may be received.

(The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 71.)

Mr. McConnell: I object to it as not being within the issues here. If it is offered on the other issue, if we ever get to it, I haven't any objection.

The Court: Well, it will be received for the other issue. I don't think it is relevant to this one.

Mr. Kayser: Your Honor, some of these statutes are also relevant here in relation to these schedules. Identification purposes—

The Court: It will be your duty, then, at the conclusion of the evidence to point out why.

Mr. Kayser: Well, this act—not this act, the preceding acts have had to do with both, because the matter of the
schedule, the tariff schedule, is used also to identify
77 goods for import duty, or import restriction application.
So that there is a dual relevancy.

The Court: I assume that if there is a tariff on something coming into the country, that means it can come in if they pay the tariff.

Mr. Kayser: Not necessarily, your Honor, no.

The Court: You can develop that for me then.

Mr. Kayser: Your Honor, as we have pointed out, these regulations—the power of the Government has involved complete restriction, prohibition, or it has allowed prohibition from particular countries or areas, or has permitted conditional imports. In other words, there are a great variety of regulations depending on the goods. The goods might be admissible from one country, and those same goods might not be admissible from another.

78 The Court: I understand.

Mr. McConnell: If the Court please, the difficulty with this situation is we have a limited issue which counsel has told your Honor time and time again he's going to prove an embargo. Now, he's getting intertwined into that issue questions of tariffs, to which I have a perfectly good answer, too, if we ever get to that issue.

My objection is that entering it into this issue, it creates a situation where I cannot meet that sort of evidence. It has no relevance whatever on whether or not there is an embargo, or anything approaching an embargo.

I have no objection if he wants to hold it in reserve until your Honor rules on whether or not we are going to go to that issue, at which time I would have a chance to meet it. But going into this record, it puts me in a very awkward position.

The Court: All we are doing is trying to save some-
79 body that came from a long ways off from coming back,
if we can get it in while he is here.

You may proceed, Mr. Kayser.

By Mr. Kayser:

Q. Directing your attention to Page 17 of Plaintiff's Exhibit 71, will you please tell the Court what this provides relative to tariff Item 80(e)?

A. 180(e).

Q. 180(e), I'm sorry.

A. It provides in relation to Paragraph 180(e) for its omission.

Q. And that omission was as of what date? I call your attention to Section 3, Subsection 2 of the Act itself.

A. Yes. The effective date of the omission of the provision referred to in the last question was 20 May 1960.

80 Q. All right.

Now, I call you attention to Item 180(e) and ask whether that has to do with wireless receivers.

A. Yes, it does.

Q. Now, calling your attention specifically to 181(e)(1), what does that cover?

A. 181(e)(1) is expressed to apply to radio broadcast receivers with or without sound recorders—

Q. Yes. Well, it isn't neces[illegible]o do more than identify the type of goods.

What about 181(e)(2)?

A. That applies to television receivers, but not including cathode ray tubes; that is, picture tubes.

Q. What is the effective date of those classifications 181(e)(1) and -(2)?

A. They are the same date as the omission of 180(e); that is, 20th of May, 1960.

Q. All right.

Referring to Item 181, about seven lines down there is the statement:

> "By omitting Paragraphs 2 and 3 of Sub-Item (a)."

What is the effect of that sentence?

81 A. The effect of that is to—that those provisions would cease to apply to those, the goods that were previously covered by those paragraphs.

Q. You don't—obviously you can't recall what they were.

Mr. Kayser: If I may, I will state for the record that had to do with cathode ray tubes—

Mr. McConnell: Wait a minute. I will object to your testimony here.

Mr. Kayser: All right. The item will speak for itself in this case.

By Mr. Kayser:

Q. Now, I call your attention to Item 181(j) on page 20, and ask what that covers.

A. Well, that covered a number of goods described in the item; in particular, cathode ray picture tubes as used in television receivers, whether imported separately or otherwise.

Q. I would like to direct your attention to the Items (a) (2) and (3) of Item 181 on Plaintiff's Exhibit 70, so that the record is complete, and state what those two paragraphs cover.

A. 181(a)(2) covered valves for wireless telegraphy
and telephony, including rectifying tubes, and (3) cov-
82 ered cathode ray tubes—that is, picture tubes—as
used in television receiving sets, whether imported
separately or otherwise.

Q. Now, going back again to Plaintiff's Exhibit 71, page 20, Item 181(j), as a further illustration of interpretation of these schedules, will you state what the duty was as shown there for cathode ray picture tubes?

A. Yes, the duty under the British preferential tariff was 11 pounds. Under the intermediate tariff it was 11 pounds plus 10 per cent ad valorem, and under the general tariff it was the same, 11 pounds each plus 10 per cent ad valorem.

Q. Do you know, did this duty applicable to cathode ray tubes continue until October 21, 1960?

Well, we better show you the next Act and ask you then. I would like to—

A. It's in the same Act.

83 Q. Well, then, can you answer the question?

A. Yes. The duty I've referred to on the goods I've referred to continued from the date I've referred to, and until it was changed with the effect from the 21st day of October, 1960.

Q. All right. Now, as concerns the duty on radio and television, if you will go to Page 18 of Plaintiff's Exhibit 71, (e)(1), will you state what the duty was on radio broadcast receivers.

A. The duty on radio broadcast receivers was five pounds in each case, plus in the case of the British Preferential Tariff an ad valoum duty of 27½ per cent. And in the case of the intermediate and general tariff, plus an ad valorum duty of 45 per cent.

Q. Can you state whether or not these customs duties on radio sets continued in effect until June 1, 1963?

A. Yes, they did.

Q. Now, turning the page, the duties are stated there, are they not, under 181(e)(2) as to television receivers?

A. Television receivers excluding the cathode ray or picture tubes.

84 Q. Yes. All right. Can you state whether or not these duties remained in effect until June 1, 1963?

A. Yes, they did so.

Q. Now, can you state whether or not the customs duties on cathode ray picture tubes shown in this exhibit continued until June 1, 1963?

A. Well, there are two duties. First of all, the one that applied from May until October. That, of course, continued only until October. But the duties that were applied as from October continued until the date in 1963 mentioned in the question.

Q. In addition to the customs tariff concerning which you have been testifying, is there any additional legislation in Australia, or has there been, which imposed duties generally on goods imported into the country?

A. Yes, there are. There are other statutes imposing duties of customs known as primage duties of customs.

Q. I will hand the witness a copy of the Customs Tariff Primage Duties Act of 1934-1958, duly attested and certified, and marked as Plaintiff's Exhibit 72 for identi-
85 fication, and ask him if this is an act which imposes primage duties as you have described them?

A. This is an act that imposes primage duties of customs.

Q. This Act was effective—the compilation you have there was effective as of what date?

A. The beginning date of this is 18 June 1958.

Mr. Kayser: I offer that exhibit in evidence.

The Court: It may be received.

(The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 72.)

* * * * *

90 By Mr. Kayser:

Q. I hand the witness a document which has been marked as Plaintiff's Exhibit 73-A, -B and -C, or more strictly, there are three pamphlets which have been 91 bound together, duly attested and certified.

The first pamphlet has to do with nine sales tax assessment acts, the second has to do with nine sales tax acts, 1930-1950, and the third, 73-C, has to do with nine sales tax acts or reprints, 1930-1962.

Rather than to read all of the titles into the record, I will ask the reporter to copy them in.

Mr. Kayser: I will offer this Exhibit 73-A, -B and -C in evidence.

Mr. McConnel: I object to it as not in any issue now open for trial.

The Court: The record will show that these are received solely in regard to an issue that we may at some time reach, but are not considering today, and they will be received for that purpose and that purpose alone, limited to that purpose.

(The said document, so offered and received in evidence, were marked PLAINTIFF'S EXHIBITS 73-A, -B and -C, inclusive.)

92 By Mr. Kayser:

Q. Now, is it correct, Mr. Ewens, that 73-B shows the nine sales tax assessment acts 1 to 9 brought up to one date, and that 73-C shows them brought up to the 1962 date?

A. Yes, but they are not assessment acts. They are a sales tax act.

Q. They are a sales tax act?

A. Yes.

Q. And is it correct that the sales tax acts 5, 6, 7 and 8, all have to do with the imposition of sales tax on the sales value of imported goods?

A. Yes, on the sale value of imported goods. The text was a text on sales value.

Mr. McConnel: What kind of value?

The Witness: Sale value.

The Court: Sale value, sale.

Mr. Kayser: S-a-l-e.

By Mr. Kayser:

Q. And it correct that the assessment acts have to do with the collection of taxes under the Sales Tax Acts bearing the same numbers?

A. Yes, that is so. That is to say, the sales tax assessment act No. 5 deals with the imposition assessment and collection under Sales Tax Act No. 5, and so on with 6, 7 and 8. 93

Q. Yes. Now, I want to call your attention to Section 11 of Sales Tax Assessment Act No. 1, which is in 73-A. I will ask you, under that section who was required to register under that act?

A. The persons who were required to register under the Act are manufacturers and wholesalers.

Q. And was a retailer required to register?

A. No, a retailer was not required to register.

Q. And he was referred to as an unregistered person?

A. Anybody who was not registered is referred to in the statute as an unregistered person and, therefore, that would include retailers.

Q. All right. I will call your attention to, as an illustration, to Sales Tax Assessment Act No. 5 in 73-C, Page —it's in Exhibit 73, the third one.

A. That is the Sales Tax Act, not an assessment act.

Q. I'm sorry. I mean Sales Tax Act.

A. Yes.

94 The Court: Now, are you talking about 73-A or 73-C? I'm confused.

By Mr. Kayser:

Q. Yes. I call your attention to the Sales Tax Assessment Act which is 73-A, Exhibit 73-A, Page 64, and ask what the value of an item is for sales tax purposes where it is imported by an unregistered person or a registered person who has not quoted his certificate of registration on the customs entry?

A. The value is 120 per cent of the sum of two elements. The first element is the value for duty of those goods in terms of Australian currency, and the second element is the duty of customs payable in respect of the goods.

Q. Now, in what part of Sales Tax Assessment Act No. 1 is that Section 11 contained, or rather Section 11? I haven't even asked you about it.

In what part of the act is Section 11 contained, of Sales Tax Assessment Act No. 1?

A. Section 11 of Sales Tax Assessment Act No. 1 is contained in Part III of the Act.

95 Q. Now, calling your attention to Section 12 of the Sales Tax Assessment Act No. 5, will you state the effect—that is page 68, I am sorry—will you state the effect of that Section 12 in relation to Part 3 of the Sales Tax Assessment Act No. 1.

A. Yes. The effect of Section 12 of the Sales Tax Assessment Act No. 5 is to apply, among other provisions, Part 3 of the Sales Tax Assessment Act No. 1 to goods that are dealt with under Sales Tax Assessment Act No. 5.

Q. And is the same thing true as concerns Section 12 of Sales Tax Assessment Acts Nos. 6, 7, and 8?

A. Let me just look at these.

Yes, the same provision is made by Section 12 of Acts 6, 7 and 8.

Q. Now, were the provisions that we have just discussed here of Sales Tax Assessment Act No. 1 and Sales Tax Assessment Acts No. 5, 6, 7 and 8; did they remain in full force and effect from January, '58 to June 1, 1963?

A. You are referring to the assessment acts?

Q. Yes.

A. Yes, that is right.

96 Q. I hand the witness a group of sales tax acts which have been duly attested and certified, which have been marked as Plaintiff's Exhibits 74-A through -K for identification, and ask whether or not these documents have to do with the classification of goods for sales tax purposes.

A. Only the first Act in that group, Mr. Kayser. That would be 74-A.

Q. What about the others?

A. The others have no direct application to the classification, they are the Acts that impose the sales tax.

Mr. Kayser: I offer Plaintiff's Exhibits 74-A through -K in evidence.

Mr. McConnell: Same objection. It is outside the scope of any issue.

The Court: They may be received, not on the embargo issue but for some possible issue that may arise sometime in the future.

(Said documents, so offered and received in evidence, were marked as PLAINTIFF'S EXHIBITS 74-A through -K, inclusive.)

• • • • •

98 * * (Caption—No. 59-C-1847) * *

Before the Hon. Richard B. Austin,
Friday, October 15, 1965,
2:00 o'clock, p.m.

The hearing was resumed pursuant to recess.

* * * * *

99 By Mr. Kayser:

Q. I will hand the witness a copy of the Sales Tax Exemptions and Classifications Act, 1935-1963, which has been duly attested and certified, and has been marked as Plaintiff's Exhibit 75 for identification, and ask him whether or not that is a 1963 compilation or reprint of the Sales Tax Exemptions and Classifications Act.

A. This is in force from 14 August 1963.

Mr. Kayser: I offer Plaintiff's Exhibit 75 in evidence. 100

The Court: It may be received on this issue that we are really not trying.

(The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 75.)

By Mr. Kayser:

Q. Mr. Ewens, based on the relevant sales tax legislation which has been received in evidence, can you state a sales tax under Sales Tax Acts 5 and 6 on radio sets and television sets, excluding the picture tube in the latter case, in effect during the period from May 22, 1959, to June 1, 1963?

A. Yes, it was 25 per cent.

Q. Twenty-five per cent of sales value?

A. Sales value.

The Court: Ad valorum?

The Witness: Yes.

The Court: All right.

By Mr. Kayser:

Q. And did the same rate apply for the same goods for the same period of time under Sales Tax Acts 7 and 8?

101 A. Yes.

* * * * *

141 Mr. Kayser: Your Honor, at this point we would like to read into the record portions of the depositions of Mr. Bernard Francis Meere, taken at Canberra on September 28, 1965, and I will ask that Mr. Thomas, who took the deposition, read the questions, and Mr. Cook to act as the witness.

* * * * *

Mr. Thomas: (Reading.)

"Q. Would you please state your name and address.

"A. Bernard Francis Meere, 15 Babbage Crescent, Griffith, A. C. T.

"Q. By whom are you employed?

"A. The Comonwealth of Australia and the Department of Trade and Industry.

142 "Q. What position do you hold in the Department of Trade and Industry?

"A. Assistant Secretary, Imports Branch.

"Q. Would you please explain for the record where in the organization or hierarchy of the Department of Trade that position is located.

"A. The department is headed by its Secretary. There are two deputy secretaries and a number of first assistant secretaries, one of whom is the first assistant secretary, Tariff and Imports Division, who is my immediate superior."

* * * * *

146 "Q. In the course of your duties with the Australian Government, have you become familiar with the policy of that government with respect to imports generally?"

* * * * *

"Q. Would the witness like the question repeated?

"A. No, thank you, I recall the question. The answer is yes.

"Q. What was the policy of the Australian Government with respect to imports prior to the year 1960?"

* * * * *

147 "A. Briefly, the policy of the Australian Government in relation to import licens—prior to 1960 was that imports should be restricted by means of licensing to levels determined by the government from time to time in the light of the Australian balance of payment situation.

"Q. How was that policy applied to the dollar area?

"A. The essential purpose of the policy, as I said, was to restrict imports. Therefore, there were general criteria that the goods had to be essentially in terms of the economy and not available from production in Australia. In terms of the dollar area, there was a further criterion that the goods should not me available from non-dollar sources of supply.

* * * * *

"Q. How was this policy which you have described, applied to the importation into Australia of wireless receivers and television receivers from the dollar area prior to 1st August 1959?"

* * * * *

"A. The licensing treatment of wireless receivers and television receivers prior to 1st August 1959, as shown in the schedule of categories which was the listing of licensing treatment at the time, was subject to administrative control which as I have said, meant that applications were dealt with on a case-by-case basis in accordance with the criteria I have already spoken of.

"Q. On that basis, were licenses actually issued for the importation of wireless receivers or television receivers from the dollar area?"

• • • • •

"A. I have no personal knowledge of the issue of
these licenses, but I do know from records available
152 to me that licenses were issued for the importation
of wireless receivers and television receivers.

153 "Q. Generally, to whom were such licenses issued?

"A. I take it that the question, 'To whom were these issued?' means to what class of applicants. These licenses were issued to manufacturers of wireless receiving and television receiving sets in Australia for use as models or prototypes in their manufacturing business.

• • • • •

157 Mr. Thomas: (Reading.)

"Q. I will ask you, Mr. Meere, what are the tariff item numbers for wireless receivers and television receivers, under which these statistics are listed?

"A. The tariff item numbers for wireless receivers and television receivers were 180E(15) until May 1960, and 181E(1) and 181E(2) subsequent to that date.

"Q. Were wireless receivers and television receivers for home use classified under any other tariff item numbers at any time during the period 1959 through 1963?

"A. Not to the best of my knowledge.

• • • • •

170 "Q. So, was it from and after February, 1960, all import licensing controls were abandoned with respect to the importation of complete television sets, radio sets and components therefor from the dollar area?

"A. Yes.

* * * * *

177 Mr. Thomas: Page 38, a document entitled "History of Australia's Import Licensing Measures" was identified as Zenith Exhibit L. In reference to that exhibit, at the bottom of page 40, we have the following question:

"Q. Mr. Meere, calling your attention to page 44 of Zenith Meere Exhibit L for identification, about which you were asked questions in cross-examination, and concerning the 330 items to which Mr. McConnell

178 referred, would you read the preceding sentence that concerns those items?"

Mr. Cook: (Reading.)

"The preceding sentence reads: 'Several important administrative changes were implemented as from 1st April. The most significant was the removal of licensing discrimination against a wide range of dollar goods.'

"Q. Do you know whether or not complete television receivers and wireless receivers were within the group of 330 items from which the licensing discrimination was removed?

"A. Yes, I do. They were not.

* * * * *

195 "Q. Now, prior to August 1, 1959, the licensing treatment for complete television sets and radios was administered; is that correct?

"A. Yes.

196 "Q. Now, for how long had that been true?

"A. That would have been true from at least some time in 1947. If I may add to that; there were, of course, import restrictions on goods dating from December 1939. They had foreign exchange implications, initially, and then defense implications thereafter, so that there was really no period from December 1939 onwards in which licenses were not required. My concern about the date of which these—in which television receiving sets and wireless receiving sets as the licensing treatment was described as 'administrative' in the schedule, is that I recollect there was some period early after the war where the licensing section actually showed the letters 'N.L.'.

"Q. What did that mean?

"A. 'No License' against a large number of goods from the dollar area.

197 "Q. That would be an absolute prohibition?

"A. Yes.

"Q. An embargo?

"A. Yes.

"Q. No licenses?

"A. No licenses.

"Q. I take it that the licensing treatment with respect to radio receivers and television receivers and components therefor was administered; is that right?

"A. In what period?

"Q. From at least 1947 on.

"A. To the best of my recollection, yes.

• • • • •

214 * * (Caption—59-C-1847) * *

Before the Honorable Richard B. Austin,
Monday, October 18, 1965,
10:00 o'clock, a.m.

The hearing was resumed pursuant to adjournment.

* * * * *

219 Mr. Cook: (reading)

"A Statistical Item 5261 is headed Wireless Radio Equipment and lists receiving sets excluding cabinets, valves, loud speakers, headphones, batteries or any other devices for eliminating batteries.

220 "Q. Is that category item complete radio sets or parts?

"A. I would give it as my opinion that that item is complete radio receiving sets.

* * * * *

225 "Q. Now, would the wireless receivers be both TV and radio?

"A. I would think so, on my interpretation.

"Q. This exhibit we are referring to is with respect to imports for the period 1956-57?

"A. Yes.

* * * * *

229 "Q. Mr. Meere, I show you what has been marked as Zenith Deposition Exhibit J for identification, which 230 purports to show imports into Australia for the period 1958 to 1959. Incidentally, do you know what the statistical periods are, when the years begin and when they end?

"A. Yes, it is a year beginning on 1st July and ending on 30th June of the next succeeding year.

"Q. So I take it that this exhibit would cover July 1, 1958, through June 30 of 1959?

"A. Yes.

"Q. Your explanation would be the same as to the other imports statistics exhibits that we have referred to?

"A. Yes.

* * * * *

240 Mr. Thomas: (reading.)

"Q. Directing your attention to Hazeltine Meere Exhibit No. 1 which you identified in your direct examination, this being imports cleared for ~~home~~ consumption, can you tell us if there is any difference between these statistics and the statistics entitled Imports into Australia, extracts of which were contained in
241 Zenith Meere Exhibits F, G, H and J for identification?

"A. Yes, there is a difference.

"Q. Would you explain for the record what is that difference?

"A. This document, Imports Cleared for Home Consumption is a recording of the imports as, as the document says, they are cleared for home consumption through the customs barrier, and they are recorded in this document by tariff item and statistical item. The other publication to which you referred entitled Imports is a listing of all imports at the time they are made, whether they are cleared through the customs barrier for home consumption or whether they are bonded or warehoused, and the listing is by statistical item number only."

272 **CLARENCE EDWARD GAUDRY**, called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kayser.

Q. What is your name?

A. Clarence Edward Gaudry, G-a-u-d-r-y.

Q. Where do you live?

A. 7 St. Neot Avenue, Potts Point, Sydney, Australia.

Q. Who is your employer?

A. I am employed by the Examiner of Manufacturers of New South Wales, 12 O'Connell Street, Sydney.

Q. And what position do you hold with the Chamber of Manufacturers?

A. Chief officer, tariff and trade department.

Q. Generally, what are your duties?

A. I head up the tariff and trade department, which is concerned with import and export matters as they concern manufacturers.

273 Q. You were in the Australian Navy for a number of years?

A. Yes, between January, 1939, and January, 1951.

Q. What was your last job rating in the Australian Navy?

A. I was a chief wireless instructor.

Q. What was your next job after you left the Navy?

A. When I left the Navy I immediately joined the Department of Trade and Customs, which later became the Department of Customs and Excise.

Q. You mean that is the Department of Trade and Customs of the Commonwealth?

A. Of the Commonwealth Government, yes.

Q. And how long were you in that department?

A. I was in that department from January, 1951 until November, 1956.

Q. Now, during your service with the Department of Trade and Customs, did you have any duties in connection with the importation of television receivers?

A. Yes.

Q. Will you explain.

274 A. In the early days when television was introduced into Australia, there was a problem associated with the classification, tariff classification of television receivers, in terms of an item in the tariff which was originally designed to apply to radio receivers. As an investigation officer I was charged with the responsibility of engaging in discussions with the industry to establish the principles under which these television receivers should be classified within that broad classification.

Q. Who was your employer after you left the Department of Trade and Customs?

A. Still the Commonwealth Government, but I was transferred to the Department of Trade.

Q. When was that?

A. That was in November of 1956.

Q. What was your first job and what were your duties after you went over to the Department of Trade?

A. I was employed as a clerk in B1 subsection.
Under the instructions from the section leader in Section B, I was charged with the responsibility of pre-
275 paring budget estimates and the authorizing of licenses for all proponents and materials associated with the introduction of the television industry in Australia.

Q. Now, did you later hold any other position in the Department of Trade?

A. Yes, in April of 1958 I was promoted to the position of Subsection Leader of B1 subsection.

Q. You then in April of 1958 became the subsection leader of the B1 subsection?

A. That is correct.

Q. How long did you hold that position?

A. From April of 1958 until, I would say, March of 1960. That was after import licensing had ceased to exist in Australia except for a few commodities.

* * * * *

349 Q. Now, I think I asked you, Mr. Gaudry—rather you had stated that it would not have been possible to import a standard U.S.-made television receiver into Australia during this period after August 1, 1959. And I had asked you why not.

A. Well, because American television—the American television system differs from that in existence in Australia. Therefore, those receivers would not in fact conform with the standards laid down by the Broadcasting Control Board.

Q. Can you give a couple of indications of the differences between the Australian and the U. S. system?

* * * * *

350 Mr. McConnell: We have in the record here also, your Honor, that our people are expert, too, and they make sets for whatever the market is, and they put them on a special assembly line.

The Court: I assume that you are talking about—those sets that were made for the American market would need some adjustments in Australia; is that what you mean?

The Witness: That's right, your Honor, yes.

* * * * *

Q. Can you give a couple of illustrations.

A. Yes. As Mr. McConnell said, I'm not a technical expert, but the system used in America employs 525 lines in the raster. The Australian system is a 625-line system.

Q. Would you please explain to the Court and to me what a raster is.

351 A. I think I can do that, Mr. Kayser. When you switch on a television receiver and there is no station transmitting on the particular channel to which you are turned—that is to say, under no signal conditions, there appears on the face of the television picture tube a number of lines. These are—this is a frame, and the number—

The Court: Horizontal lines.

352 By the Witness:

A. Horizontal lines. And the number of lines in the frame is the raster on that particular receiver. The channel frequencies allocated in Australia were different from those allocated in the United States, and the intermediate frequency allocation in America was different from that in Australia.

By Mr. Kayser:

Q. Do I understand correctly that what you are saying is that the changes necessary to have a set comply with the Australian standards would, under the requirement, have to have been made before the set was imported?

• • • • •

A. Oh, yes.

354 The Court: By that, do you mean that they no longer had to comply with this standard of, for instance, 625 lines across?

The Witness: No. I meant that no longer did the import licensing branch or the licensing authority have any authority over it. But since this was an infringement
355 of the Australian broadcasting control board's specification, the Postmaster General in Australia—his department, had sets of this type been brought in—he would have taken action in the matter.

The Court: I mean, that regulation was still on?

The Witness: Oh, the Australian broadcasting control board is in existence to this very moment, your Honor.

356 The Court: In regard to the 625 lines, that sort of thing?

The Witness: That's right.

* * * * *

376 Q. Now, you spoke about television. When did television come into Australia?

A. Oh, I think the decision to introduce it was probably in 1956, but I don't—it might have been even earlier. But I think the first—1955, I should say. I don't think the 377 first transmissions occurred until 1956.

Q. Along in November sometime, in 1956?

A. I feel it was towards November. There is a difference between the states. I think Melbourne came on the air before Sydney. I think the Olympic Games had some impact on this.

Q. Well, they didn't have any market in television prior to the time they were broadcasting, did they?

A. Oh, they sold a number of sets before the stations came on the air.

Q. To pick up test patterns?

A. To pick up test patterns.

Q. But you would say the industry in its production of sets didn't have much of a market until they had television broadcasts, wouldn't that be true?

A. Well, I don't think that's true, Mr. McConnell.

Q. You don't think it is?

A. No.

Q. All right. So there was an established market, according to you, in television sets prior to the time there was any television broadcasting?

A. For a short time before the broadcasts started, 378 because I don't think people thought about buying television receivers immediately when the transmission came on. They were prepared for the stations to come on the air and, hence, they had sets in their homes, a number of people.

Q. Yes. Well, how long before television came on would you say that there was a market for television sets in Australia?

A. I would say probably at the earliest the beginning of 1956, probably at the earliest.

Q. January of '56?

A. Well, I couldn't be precise on this, but rather a guess at that.

• • • • • •

382 Q. Now, what was the system of broadcasting television in Australia after it came in, in November of 1956?

A. What do you mean by system, Mr. McConnell?

Q. Well, who did the broadcasting? Was it the Government or somebody else?

A. There was a Government station and two private stations in each of the states—in each of the cities, Sydney and Melbourne. Other capital cities came on the air at a later date.

• • • • • •

398 Q. Did you know that the Admiral Company of Australia became the second largest seller of television sets in Australia?

A. For a very short time.

Q. What time?

A. I would say prior to the end of 1957.

• • • • • •

426 By Mr. McConnell:

Q. I show you two documents marked for identification Zenith Counterclaimant Exhibits 6 and 7 which purport to be issued by the Australian Broadcasting Control Board, and ask you if those are the standards to which you referred.

• • • • • •

A. I've never seen these documents before, but, yes—I will answer yes, although I notice there is a difference in the frequency allocated to Channel 10, although both documents are of the same date. Oh, this is amended and 427 reissued August 1961. That makes a difference, yes.

By Mr. McConnell:

Q. So they are—your answer—

A. Yes, they are.

* * * * * *

Q. Are you familiar with the CCIR standards which are used in Europe?

A. No.

Q. You don't know anything about them?

A. No.

Q. Well, you told us yesterday that Zenith sets could not come into Australia because you had 625 lines?

* * * * * *

429 By the Witness:

A. This was one of the reasons, yes.

By Mr. McConnell:

Q. All right. Well, let's stay with that reason for the moment.

Did you know how many lines the Zenith set had?

A. Not the Zenith set in particular.

Q. Well, did you have in mind an American set as distinguished from the Zenith set?

A. Yes, I—my knowledge was that these sets were 525 line receivers.

Q. All right.

Now, picture tubes came in from the United States, didn't they, in commercial quantities while you were there?

A. Yes.

Q. And they were designed, were they not, to give a picture of 525 lines?

A. This is a technical non sequitur, it doesn't follow.

Q. It doesn't follow? I think you are right, but I just want to take one thing at a time.

The tube could broadcast a picture of 625 lines?

430 A. Oh, certainly, yes, yes.

Q. Yes.

* * * * *

The Court: Let me clear this up.

Were all the tubes that were sent in in commercial quantities tubes that would permit broadcasting on 625 lines?

The Witness: Yes, your Honor. The tube is of no consequence in this matter. The tube could be used for 525, 425, 625, didn't matter.

The Court: That clears it up. You have answered my question.

* * * * *

Q. Now, do you know that the change in television sets from 525 lines to 625 lines, all that is necessary is to change one oscillator in the set?

A. Yes, a vertical-horizontal oscillator would need to be changed.

Q. That is a little bit of an item about that big, isn't it?

A. I don't know. I am not a technical specialist. I
431 said that yesterday.

Q. Well, you take one out, you screw one out, and put another one in. That is the way that you make the change, isn't it?

A. I don't know.

Q. And that takes care of 625 lines with that change?

A. Well, you are telling me that this happens.

Q. All right. Well, is there any reason why Zenith couldn't do that in their factory in Chicago?

A. I imagine they could do it, yes, of course.

Q. Now, the other thing that you referred to was the IF, intermediate frequency.

A. That is right.

Q. Now, what significance does that have?

A. With my limited technical knowledge, I will try to explain: You have got two components in your signal when it comes in at the television receiving area. You have got your sound component and your vision component.

Now, these are at a particular frequency or at two particular frequencies, perhaps, once again, as I say, I am limited in my technical knowledge.

432 To amplify the signals within the receiver you don't do them at the input frequency, but you have local oscillators which beat against these incoming frequencies to give a third or intermediate frequency.

Q. To step it down, isn't it?

A. Well, it steps—the intermediate frequency is, as it is suggested, it is intermediate, but then this intermediate frequency is amplified through a number of stages, through coils and condensers and valves, or tubes as you call them, and finally the thing is reversed back, in other words, the intermediate frequency is resolved back into its original frequency components and carried on from there.

* * * * *

436 EXCERPTS FROM NAIL DEPOSITION

Mr. Kayser: I would like to read portions of the deposition which was taken at the American Embassy of the witness Norman H. Nail, who was examined on June 22, 1965, pursuant to commission issued out of this Court.

* * * * *

"Q. Will you state your full name and residence address.

"A. Norman Henry Nail, 123 Hookfield, Epsom, Surrey.

"Q. What is your present employment?

"A. My present employment?

"A. My present employment, I am chief executive officer in the insurance and companies department of the Board of Trade.

"Q. How long have you held that position?

"A. Since September 1959.

437 "Q. Do I understand correctly that the Board of Trade is a department of the English Government?

"A. Yes.

"Q. And that the president of the Board of Trade is a member of the British Cabinet?

"A. Yes.

* * * * *

442 "Q. Could you state what youı position was, and trace your various positions and activities down to the year about 1955.

"A. Well, not with actually exact dates, but I can tell you approximately my career in the Board of Trade. I was in the Board of Trade in 1938 as an executive officer—"

The Court: The original shows a correction there, "as an assistant examiner." And let me read the next sentence, because there is some correction there:

"I had actually come to the Civil Service—" that is an insert—"two years before, into the Ministry of 443 Labor off a direct entry exam as an executive officer."

Then you can go on.

Mr. Cook: (Reading.)

"A. (Continuing.) During the years 1940 to '45, I was in the Army. After I came out of the Army I came back to the Board of Trade, first of all, for a few months as an executive officer. Then I was promoted to Higher Executive Officer, and I was working at that time in one of the departments dealing with the controls on industry. From there, when I was promoted, I was promoted to Senior Executive Officer. I went to the Department which is now called Expert Services Branch—it was then called Industries Branch—"

The Court: Here is the insert is "the then called Commercial Relations Industry Branch." Go ahead.

Mr. Cook: (Reading.)

"A. (Continuing.)—that deals with the promotion of the exports trade by contact with individual industries.

"Q. When was that?

444 "A. That was in 1950. From there for a short time I went to Import Licensing Branch as a senior executive officer. I was there only a short time, and then I went back to an Industries Branch."

The Court: And here there is an insert: "I went back to an Industries and Manufacturers Branch."

The next sentence corrected reads:

"I was in the Industrial and Manufacturers Branch from 1952 to 1955."

You can go on.

Mr. Cook: (Reading.)

"A. —when I was promoted Chief Executive Officer, and I went back to the Import Licensing Branch.

"Q. When in 1955 did you go back to the Import Licensing Branch?

"A. In August.

"Q. And your position was what at that time?

"A. Chief Executive Officer.

"Q. How long did you remain in the Import Licensing Branch of the Board of the Board of Trade?

"A. Until September 1959.

445 "Q. You are a Chief Executive Officer during the entire period?

"A. Yes.

"Q. At the time of this transfer to the Import Licensing Branch in August, 1955, what were the functions of the branch?

"A. The branch was applying the control on imports into the United Kingdom by virtue of the powers that the Board of Trade had under the Import Duties and Customs"—

The Court: Just a minute. "Duties" is stricken and "Export" is written in the place of "duties."

Mr. Cook: (Reading.)

"A. —under the Import, Export and Customs Power Defense Act, which was an immediate pre-war transitional power taken by the Government to deal with the emergency.

483 "Q. At the time you were assigned to the Import Licensing Branch of the Board of Trade in August 1955, was the import of television receiving sets from dollar areas authorized under the Open General Import License then in effect?

"A. No, it was not authorized under the open general license.

484 "Q. Does the same answer apply as concerns the importation of radio receiving sets from dollar areas?

"A. Yes.

"Q. At any time during the period that you were acting as a Chief Executive Officer in the Import Licensing Branch, was an open general import license granted by the Board of Trade which did authorize the import of radio and television receiving sets from dollar areas?

"A. Television and radio sets became subject to open general license as from the 8th of June 1959. That is the latest of those ones, the last.

508 "Q. It is correct to say, Mr. Nail, that until the open general license agreement which became effective on June 8, 1959, it is your recollection that it was not possible to import either radio receiving sets or tele-
509 vision receiving sets from dollar areas in commercial quantities?"

Mr. McConnell: I object to that as permitting the witness, without any qualification whatever, to take the function of the judge and determine by conclusory reply a whole branch of this issue, and also that it is highly leading and suggestive, and directs the witness—

The Court: Objection overruled.

Mr. Kayser: Then I added:

"I would like to add that by 'dollar area' I include the United States in my question as being in the dollar area.

"A. Yes."

* * * * *

574 ANTHONY RAYMOND JABEZ-SMITH, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kayser:

Q. What is your name, your full name?

A. Anthony Raymond Jabez-Smith.

Q. Where do you live?

575 A. 4 Kensington Court Gardens, London West 8.

Q. And you are admitted to practice as a solicitor in England?

A. I am.

Q. When were you admitted to practice?

A. 1937.

Q. Will you state your present firm?

A. Yes, Herbert Oppenheimer, Nathan & Vandyk.
Q. The address?
A. 20 Copthall Avenue, London Wall E. C. 2.
Q. You are a partner in that firm?
A. I am.
Q. And that is a firm of solicitors?
A. It is.

• • • • •

578 Q. Now, has your private practice since 1954 involved emphasis in any particular area or field of the law?

A. Yes, it has indeed. I specialized on all matters 579 relating to importation in relationship with government departments generally, particularly with the customs and excise and the Board of Trade.

Q. Has this work involved matters relating to the import restrictions imposed by the Board of Trade?

A. Yes, it has.

Q. And have you through your practice and through your studies of the law and regulations acquired a familiarity with the laws and regulations from time to time governing the import of goods into the United Kingdom?

A. I have.

Q. And have you, through your practice, become familiar with the policies which were from time to time applied by the Board of Trade as to imports of goods during the period prior to June 8, 1959?

A. Yes.

Q. I show you the document which is presently in evidence as Plaintiff's Exhibit 87, which is the Import-Export and Customs Powers Defense Act, 1939, and ask if that Act has been in effect since 1939?

A. Yes, it has, since the 1st of September, 1939.

Q. As you said, this Act was adopted on September 1, 1939; can you state the circumstances which gave rise 580 to the Act?

A. Yes, the outbreak of the European War, the Second World War. It had been prepared, of course, in advance against an emergency of that kind.

581 Q. And in what way did the outbreak of the war call for this act?

A. Well, it was essential that all our foreign currencies available to us would be used only for the purchasing of war material and for food for our people in England, and that all shipping space should be used to the best available purpose, nothing to be spent on luxuries.

Q. Did any of the problems which gave rise to the act in 1939 continue after World War II?

A. They did.

Q. Can you elaborate?

A. Yes. After the end of the war we were extremely short of some foreign currencies, particularly dollars, because during the war we had had to sell all our—when I say "our" I mean the United Kingdom's dollar investments to buy warlike materials, and we had to continue these restrictions?

Q. Sir?

A. We had to continue these restrictions, therefore, to save dollars and other currencies.

* * * * *

633 *Opening Statement on Behalf of Defendant by Mr. McConnell..*

We have the issue of embargo here, and I think I will start with Australia, as to what our proofs would show there.

Mr. McConnell: Now, as I say, the proofs will show, first, that there is an embargo in Australia on certain goods, and we have the documents here to offer in 634 evidence, but they do not include radios or televisions.

The Court: I mean, for what period, or any period?

Mr. McConnell: Or for any period that's involved or anywhere remotely concerned with this issue.

Next, we haven't any quarrel with the Hazeltine Company or their counsel as to the regulations which have been put in evidence. Our proofs tend to show that those regulations properly construed, and the way they were administered, and under the categories of the products which are involved in this lawsuit, that there was no embargo; that the proofs will show that those regulations contemplated the entry of all goods under them which were consistent with the over-all policy of maintaining or preserving or conserving pounds Australian, or in England pounds Sterling, and that under those regulations goods of the same kind that we are talking about here came in prior to the damage period.

• • • • • •

656 Mr. McConnell: I am referring now to the deposition of a witness by the name of William Gundry Mills, your Honor, in England, and we will start at Page 2.

"Q. Will you state for the record your full name 657 and London address.

"A. William Gundry Mills, 19 Albion Street, Hyde Park W 2.

"Q. What is your business or your occupation, Mr. Mills?

"A. I am the Deputy Managing Director of the Economist Intelligence Unit Limited.

"Q. Where is that concern located, that is, what is its address?

"A. Spencer House, 27 St. James Place, S.W. 1.

"Q. Will you tell us generally what the nature of its business is.

"A. It is a research and consultancy organization which undertakes all forms of industrial market research, market advice, forecasting, development and transport studies throughout the world by means of 31 offices and subsidiary companies.

"Q. Are those 31 offices in other places than in London?

"A. That is correct.

"Q. Is that an incorporated company?

"A. It is an incorporated company and a fully-
685 owned subsidiary of the Economist Newspaper Limited."

Mr. McConnell: Now will you turn to page 6.

"Q. I show you a document—"

This is the top of the page.

"Q. I show you a document which is marked for identification Zenith's Deposition Exhibit 2, which purports to be a tabulation of imports into the United Kingdom for radio receiving sets, mains and radio receiving sets other, and ask you whether you can identify that as a page from your report.

"A. Yes, I think so. To me it seems an exact copy of page 135 of our report."

659 Mr. McConnell: Now, mark this Zenith Cross-Claimant Exhibits 25, et cetera.

(The said documents marked Zenith Cross-Claimant's Exhibits 25, 26, 27, 28 and 29 for identification.)

Mr. McConnell: If the Court please, I have had marked for identification in this record the Exhibit 2 referred to in the deposition as Zenith Cross-Claimant's Exhibit 25 for identification.

"Q. I ask you whether you can identify that as a page from your report."

Mr. Francis McConnell: (reading)

"A. Yes, I think so. To me it seems an exact copy of page 135 of our report."

Mr. McConnell: And then there is an objection and we go over to the next page, page 7:

> "Q. I show you a document which is marked for identification Zenith Deposition Exhibit No. 3—"

Which, your Honor, I have had marked here as Zenith Cross-Claimant's Exhibit 26 for identification.

"—which I have shown to counsel and ask you if you
660 can identify that as a true copy of a page of that report.

> "A. Yes, page 136."

The Court: May I go back a minute? I must have not paid attention, or maybe we haven't got to it; what is this report?

Mr. McConnell: It is your Honor, a report survey of the whole industry made by an expert surveying company.

The Court. For what period of time?

Mr. McConnell: For a period of time which came up to 19—

Mr. Francis McConnell: 1959.

Mr. McConnell: 1959.

Mr. Francis McConnell: April of 1959.

Mr. McConnell: I am going to identify that further.

* * * * *

661 "I will ask to mark the report, the black book which
662 is entitled 'Report on the Production and Marketing of Radio and Television Receivers, Phonographs and Tape Recorders in the United Kingdom, by the Economist Intelligence Unit', be marked for identification as Zenith Deposition Exhibit No. 6."

I will ask that the court reporter mark this for identification as Zenith Cross-Claimant Exhibit 30.

(Said document marked Zenith Cross-Claimant Exhibit No. 30 for identification.)

Mr. McConnell: (reading)

"Q. Referring to the document which is marked for identification Zenith Deposition Exhibit No. 6, can you identify this document as prepared under your supervision and in the ordinary course of business of your company?

"A. Yes.

663 "Q. In whose custody has that document been since its preparation?

"A. This is the master copy. It is held on trust for the Zenith Corporation.

"Q. It has been in your possession and custody?

"A. In our possession, yes.

"Q. Can you tell us whether it is in the same condition now as when it was prepared?

"A. There are no pages missing. It is in exactly the same condition.

"Q. Now, referring to the documents which you have identified as separate pages, Zenith's Deposition Exhibit No. 2—"

which here is Exhibit 25,

"—which purports to be imports into the United Kingdom of radio receiving sets, mains, and radio receiver sets other than mains, can you tell us from what source the figures were obtained that are used in that exhibit?

"A. Nowadays the source would normally have 664 been mentioned at the bottom of the table. In this particular report the source is not mentioned, consequently I requested a senior member of our statistical department to examine the document in relation to the publications of the Board of Trade. The figures here were carefully checked with the annual statement of the trade of the United Kingdom with Commonwealth countries and foreign countries, 1958, compared with the years 1955 to 1957, Volume II.

"Q. Do you have that document here?

"A. Yes.

"Q. You produced that? May I have it, please."

Then I had marked there No. 7. I will ask that it be marked here as 31, Zenith Cross Claimant's Exhibit 31 for identification.

(The said document was thereupon marked Zenith's Cross Claimant Exhibit 31 for identification.)

"Q. I am now handing you Zenith's Deposition Exhibit 7—"

which here is 31 for identification.

665 "—Mr. Mills; can you turn to the page or pages in that document from which you obtained the figures which are contained in Zenith's Deposition Exhibit No. 2?",

which here is Exhibit 25.

"A. I can. It will take some time. I would like to point out that I am myself not a statistician and I do not normally do statistical work. That was the reason for having these figures carefully checked by a senior member of our statistical department, but I have no doubt that I can find them. On page 377.

"Q. Will you tell us whether or not your Zenith deposition Exhibit 2—"

which here is 25 for identification.

"—is a transcript of that page that you just referred to.

"A. It is a part of that page.

"Q. Have you added anything on your exhibit 2 which is not contained on the page to which you have referred?

"A. I can see no difference except that certain fig-
666 ures are included in the page 377 for later years which are not included in our report, presumably due to the

fact that at the time the report was prepared this document was not available in full.''

667 Mr. McConnell: I'm on Page 11.

"Q. Would you tell us from what source you obtained or your company obtained, if you know, that Zenith Deposition Exhibit 7?

"A. We purchased this from the Stationary Office.

"Q. Is that an official government publication?

"A. Yes.''

Mr. McConnell: And the Commissioner interposed:

"The official title is Her Majesty's Stationary Office.

"A. Yes.

"Q. I show you the document marked for identification Zenith Deposition Exhibit No. 3.''

which here is 26,

"which purports to be Imports of Radiograms Complete and Television Sets Complete, and ask you whether you can identify this document as being obtained from any page of the exhibit, Zenith Deposition 7?

668

"A. The first page of the table is on Page 378, the second but last item. The figures here on 377, the last item, the totals for 1956 and 1957 conform exactly. In our report, they are broken down in more detail than they are in the government publication.

"Q. Is the source of your table from that government publication?

"A. The totals are from the Government publication. The breakdown would be from Her Majesty's Customs and Excise.

"Q. Are the figures from the Customs and Excise contained in that government publication?

"A. The government publication is based on the figures provided by the Customs and Excise. It is their only source of information.

"Q. You prepared your tabulation from that document you have been testifying from?

"A. We took this document as the basis for our
tabulation. We did not consider it provided sufficient
669 detail, so we made special arrangements for a more
detailed breakdown. You will note in comparison that
the totals are exactly similar, but we give rather fuller
breakdown.

"Q. Where did you obtain the information for the breakdown?

"A. Direct from the Customs and Excise.

"Q. Can you tell us whether those figures are accurate?

"A. The totals are absolutely accurate and the additions of the subtotals reach the same totals in our documents as they do in the publication."

* * * * *

687 Mr. Kayser: All right, now, we will pick up at Page 2 of the direct examination where Mr. McConnell had read some of the qualifications of this man. I will continue.

Mr. McConnell: Page 2?

Mr. Kayser: Yes.

"Q. Do you have some connection with the British Market Research Bureau?

"A. None of any kind—one moment, I am sorry.
Allow me to correct that statement; we have no finan-
cial connection with the British Market Research Bu-
reau, but for a number of years, which ceased this
year, we jointly produced a publication or series of
688 publications entitled 'Consumer Durables." They un-
dertook the interviewing and we did the economic
analysis and forecasting.

"Q. Does your organization do any interviewing itself or make surveys?

"A. It does interviews up to 150 to 200 what we call qualitative interviewing. Where we require consumer interviewing for our market studies we employ other organizations as and when required.

"Q. You referred to the term 'Consumer Durables'; would that definition include television sets?

"A. Yes, all white goods, motor vehicles, television sets, radios and radiograms.

"Q. By 'white goods' I take it you mean refrigerators?

"A. Yes, refrigerators and cookers.

"Q. Do you perform those services for a fee?

"A. Approximately 80 per cent of our work is done for a fee. The balance is done on subscription 689 to various publications of which 'Consumer Durables' was one."

Mr. Kayser: And then we turn over to Page 22, still Mr. McConnell's examination:

"I ask the court reporter to mark these documents 9 through 13, both inclusive.

"(These documents were marked Zenith Deposition Exhibit 9 through 13, respectively.)

"Q. I show you documents which are marked for identification Zenith Deposition Exhibits 9 through 13 and ask whether you can identify these documents as being prepared by your company during or about the time of the dates that they bear?

"A. Yes, I can.

"Q. What were they?"

Mr. Cook: I think you misread the question there.

Mr. Kayser: (Reading.)

"Q. And were they?

"A. They were.

690 "Q. I take it they were prepared in the way that

you testified to here a while back when you were talking about durable goods, consumer goods?

"A. That is correct."

Mr. Kayser: Now we would like marked for identification as Plaintiff's Exhibit 105 the document which was identified and marked on behalf of Zenith at that deposition, being a document headed—or a booklet headed "Durable Consumer Goods, July, 1959, Television Sets," prepared by the Economist Intelligence Unit, Limited in association with the British Market Research Bureau, Limited.

* * * * *

698 Mr. McConnell: If the Court please, at this time I want to offer in evidence documents which have been marked for identification Zenith Cross-Claimant Exhibit 25, which is a transcript of—according to the testimony of Mr. Mills, taken from documents furnished by Her Majesty's Stationery Office with reference to the trade of the United Kingdom in 1958 compared with the years '55 and '57, which purport to show the import of radio receiving sets of mains, that is, those are attached to a main source of current, and radio receiving sets other, including mains, battery and [illegible] radios.

I also want to offer at this time Zenith Cross-Claimant's Exhibit 26 for identification, which purports to be a tabulation of imports into the United Kingdom showing radiograms complete, which is a combination of a radio and a Gramophone, and also television sets complete showing imports from Canada at 1724 complete sets of a pound value in 1956 of 97,880 pounds.

* * * * *

699 Mr. Kayser: All right. We have certain objections,
700 your Honor, first as concerns No. 25, radio receiving sets, I may be mistaken, but there is no breakdown on this exhibit to show dollar imports. There is a heading of Commonwealth Countries, for example, which presum-

ably includes Canada, but Canada is not broken up in that one, so on the radio receiving sets, there is no indication of what the imports were from dollar countries; so we object to that on that ground.

* * * * *

704 Mr. McConnell: Directing your attention to Page 209 in the transcript—

Mr. Kayser: Could we identify the deposition.

Mr. McConnell: The deposition is of Mr. Ribalta, Joseph M. B. Ribalta.

"Q. Would you state your full name, please.

"A. Yes. My full name is Joseph M. B. Ribalta."

The Court: Spell that for my court reporter.

Mr. Francis McConnell: R-i-b-a-l-t-a.

Mr. Thomas McConnell (Reading):

"Q. And where do you live, Mr. Ribalta?

"A. I live in Barcelona, Spain, at Munter Nia 577. It is my home address."

Mr. Kayser: I was starting to say, your Honor, I don't know whether this is procedurally the right time or not, but we object in this hearing, having to do with import restrictions, to any of the reading of the deposition of Joseph Ribalta, who was a Spanish manufacturer of television sets from components imported into Spain, as the deposition shows, from the United States, parts obtained from Zenith.

705 What the situation was in Spain or what happened in Spain has absolutely nothing to do with the question as to whether or not there were import restrictions prior to the damage in Australia and England. If this has any relevancy at all, and we feel that it does not—we feel that it does not, so I'm going to strike the qualification. This deposition was taken and has to do, under Mr. McConnell's theory as we understood it, with the market share issue. We submit it has no relevancy at all to this case,

but it can have no conceivable relevancy to the question of import restrictions into England and Australia.

706 The Court: What is your theory that it has some relevancy in regard to that particular question we are going into?

Mr. McConnell: Well, if the Court please, I'm not offering anything in this deposition on any issue of market share. I am offering this deposition on my theory, and I understand in the trial of lawsuits counsel have different theories of proof and different theories of approaching issues, and maybe the theory is sound and maybe it isn't, and that's going to be determined by your Honor. And my thinking is that the time that should be determined is on final argument of the case.

Now, the theory upon which it is offered is this:

The Court: In substance, what does he say and what is your theory as to why what he says in substance is relevant in this case?

Mr. McConnell: What he says is this: That absent a pool without full restrictions, where the only thing we are dealing with is import restrictions, that he had import restrictions which made it impossible for him to import into Spain complete sets of television or radios, for that matter;

707 That to avoid that restriction, he ordered from Zenith Radio what he called knocked down kits, which was a radio or television chassis set up under the standards, CCIR standards, which is 625 lines, just the same as they are in Australia, and that Zenith produced those knocked down kits for him, sent him instructions on how to reassemble them.

He brought in the components under the import restrictions, they came through the Customs, and he paid the duty on them. Then he reassembled them in Spain, and he used Zenith copyrights, Zenith's name and so forth. And assembling these in competition with local manufacturers or other importers, he was able to sell those sets in that market over a period of some four years, five years, I believe, as the proofs show.

The theory of this is that absent a pool, dealing only with import restrictions, Zenith would have had its name, its good will, established in two different markets—Australia and in England—and I am meeting a theory here which I don't agree with at all, but I have to meet it in view of the issues that is posed, and that is that Zenith couldn't 708 have had its name before the public, it couldn't have created good will, it couldn't have had an established market for its product prior to the damage period because the claim is import restrictions, not a conspiracy—but a government import restriction prevented the creation of that kind of a market.

And I show by this witness that in Spain, where he had no pool restrictions—he only had the same sort of import restrictions which are involved here in this case—he was able to bring from Zenith these sets and assemble them, and obtain a very large proportion of that market.

Now, I am not interested in the share of his market. I am simply negative in the argument—all it is, your Honor, is an argument. We are prevented from getting into these markets, and they are saying that it didn't make any difference if we were prevented from getting in in the damage period. Before the damage period we couldn't have got in on any basis. There was no key that would unlock this door which the Government had created through its embargo. And I say that there was and Zenith was pre- 709 pared, equipped, and ready to—and did go into it where it was available, where they weren't prevented by the pool.

Now, your Honor will rule—

710 The Court: Are you suggesting that there was some assembler in England that would have imported your components and put them out under the Zenith name

and trade-mark, and thus create some good will prior to the damage period?

Mr. McConnell: Well, we did do it in Spain. We got an importer there to do it, and I am saying, of course we would have done it—

The Court: It is my understanding from what I have heard that this would have been in competition with the British manufacturers, and that that was one of the objectives that the government had in mind in these embargo limitations.

Mr. McConnell: No, I don't understand that at all, your Honor, and the evidence is exactly not that.

The evidence is that the only reason for this was—the only reason was to conserve sterling-dollar exchange.

The Court: That is one of the reasons.

Mr. McConnell: No, this was not an embargo in the sense of protecting the British industry, not at all.

The Court: The essentiality is a feature—

711 Mr. McConnell: The essentiality feature, we get in the market under the essentiality of it by—well, the witness admitted here on the witness stand that if there was a new industry, an assembler going into business, that was taken into account.

If we had an assembler there who was in business, why, of course, they would bring it in. That is a matter of argument on this case. It is my theory of the case.

All I want to do is produce the proof on my theory of the case.

The Court: I think that the best that your proof, your proposed proof—and I am going to take this as an offer of proof—would go to the question of a share of the market and creation of good will prior to the time the embargoes went off on completed sets.

Mr. McConnell: I'm not offering it for good will—I mean for market share. I am offering it to show that there was a method by which Zenith could have gotten business going in the absence of the pool.

Now, the pool barred the components. We couldn't do
this under the pool regulation at all. We were barred
712 by the pool from doing this in England and in Australia:
But where we weren't barred, we could do it.

My point is that—and I am going to get to the authorities on it in the argument, and there is plenty of law on this—that where conspirators have destroyed an opportunity to show what you could have done—they are charged with all the onus and incubus of that situation, and all we can do is show by the best evidence—

The Court: You have cited me that law, and I have ridden with you regarding that law, so you don't have to cite it to me again.

Mr. McConnell: I know.

Mr. Kayser: Your Honor—

Mr. McConnell: That is my position, and I am offering it to show that Zenith was equipped to compete in the absence of this pool, in spite of any regulations or import restrictions or anything of the kind.

The Court: Well, eighteen months have gone by—more than eighteen months, I think, since we heard the last evidence in regard to this phase of this double-barreled law-
suit. And it is my recollection, and you may disabuse
713 it from the record if you can—I may be in error—that
when Mr. Wright, or one of the parties who testified, indicated that they could sell sets in Canada if they wanted to open up a factory there, and his reply to that was, "No, we make them so profitably in our factory, all we want to ship is completed sets." And in regard to England, my recollection is that he wanted to send completed sets over there, and some little guy in the back of a shop with a screwdriver could fix it up so it wasn't necessary to have a manufacturing plant in England.

714 That is my recollection of the evidence, and I may

be in error. But there was no desire on the part of Zenith, based on what I remember, to want to have things assembled in Britain or Australia or Canada, or open up a plant for that purpose. They just wanted to ship complete sets. And if somebody with a screwdriver could fix it in a back room, why, that was all right with them.

Mr. Kayser: Your Honor, that is true, and I'm afraid Mr. McConnell is rewriting this lawsuit.

Mr. McConnell: No, I'm not rewriting any lawsuit.

Mr. Kayser: As you have said, your Honor, the issue was whether or not completed sets could have been—could get into the three countries, and that is—

The Court: And I think that is the basis—

Mr. Kayser: That is the issue of this hearing.

The Court: That is the basis for my making that restriction. Does your recollection of the evidence coincide with mine?

Mr. Kayser: It does, sir, and I suggest that Mr. McConnell apparently has recognized that he cannot establish that, so now he is retreating to a new theory of action;
715 namely, that this case has to do with components. Because he knows that some components did get in admittedly into the two countries, but that is not the issue.

Mr. McConnell: I'm not retreating to anything. I have never retreated in a lawsuit yet. I'm certainly not going to start retreating now.

My position has always been the same. Of course we want to get them in in England, and we wanted to get into Australia with completed sets. And under the evidence in this case, we would have been in England with completed sets one week, seven days, after the damage period started. Under the evidence in this case, in Australia we would have been in there 60 days after.

We are talking about a new contention which I never heard in this lawsuit. It wasn't urged in the lawsuit. This is an absolutely brand new contention that, because we

are dealing here with a mature market, an assumption of a mature market, you have to have evidence that you could have done something in those markets prior to the damage period. There isn't one iota of evidence in this record,
716 going back to the old record, that either Mr. Wright
or Mr. Kaplan assumed in the answer to my inquiry as to their market share a mature market. They took—just a minute, counsel—they took into consideration, they said, all of the relevant factors, and they came up with 2 per cent of the market in Australia and 5 per cent of the market in England, after Wright, who is president of the company, said they would have gotten 10 per cent. But we were very conservative, and having taken into consideration all of the factors involved we cut it down.

Of course we wanted to bring in complete sets. There is no question about that, and I am not trying to prove new damages for components. All I am trying to do is meet a very, very artificial argument conjured up here with no evidence in back of it at all that I have to be in that market to establish good will and all that in order to make my damage proof valid.

Now, that is all that I am meeting, nothing else.

717 The Court: No, Mr. McConnell. I think there is
this distinction. I think the impression was given me that while he was figuring this on the basis of a mature market, the theory was that there was no mature market solely because of the pools, and solely because of the conspiracy.

Now, apparently some evidence has been introduced that there was another factor other than that which kept them from having a mature market, and I agree with you—

Mr. McConnell: There is no evidence of that, your Honor, not in this record.

The Court: I agree with you that if the sole basis for there not being a mature market was the conduct of the pool, that they can then not say, "You have no proof of a mature market," because you can say in response to them, "You are responsible for me not having evidence of a mature market."

Mr. McConnell: That is right.

The Court: I think we are in no difficulty in regard to this mature market thing.

But the thing in controversy is exactly what was the responsibility of there being no evidence of a mature
718 market. Was it solely the conduct of Hazeltine, or was there some other factor that prevented them from having a mature market.

Mr. McConnell: Now, your Honor, let me say this.

If you don't agree with my theory when we get through with this, then, of course, you are not going to pay any attention to this proof.

The Court: Why isn't what you have told me—why can't that be considered an offer of proof?

Mr. McConnell: Well, it isn't very long. It won't take but about five minutes.

The Court: I assume that under the rules, specifically—let me say that am inclined to sustain Mr. Kayser's objection, and under the rules you have a right, under those circumstances, to make an offer of proof.

The reading of this deposition I will consider your offer of proof.

Go ahead and get it in the record.

Mr. McConnell: All right.

You have gotten your residence in Barcelona, Spain, I believe.

"Q. What is your occupation?

719 "A. My occupation is general manager of Telerasa.

"Q. And where is that company located?

"A. This company—

"Q. What is its address?

"A. This company is located in Barcelona, Spain. The name of the street is Enfanta Carlotta 32.

"Q. What does that company do?

"A. The only business of ours is to assemble or manufacture — it depends — the Zenith products. I mean television sets, radio sets, photographs, under the license of the Zenith Radio Corporation.

"Q. And how long have you been engaged in handling Zenith products?

"A. We have been engaged handling Zenith products—I exactly don't recall the exact date, but I would say at least since 1952 or 1953. We became exclusive distributors for the Spanish territory. And in 1959-1960, to be more exact, we arrived to a licensing agreement we have now.

* * * * *

735 Mr. Thomas: Your Honor, Zenith Exhibit No. 4 are the import figures about which Mr. Kayser stated they contained the military imports, and that's what we propose to prove here. Those were the over-all import figures by statistical item number which were duly authenticated and introduced as Zenith No. 4.

The Court: The 210, and then you subtract the military, and it brings it down to a slightly smaller figure?

Mr. Thomas: That is correct, your Honor. The Zenith Exhibit 8 then contains the preface to the volume Overseas Trade in which those very statistics are located. And each one of the preface statements for each of the years indicates clearly on its face that these import statistics contained in Zenith's Exhibit 4 include imports on government account. It states that "They are treated as normal transactions and are an integral part of the overseas trade statistics."

It is also true, although slightly less important, that

the same statistics contained in Zenith's Exhibit 4
736 as explained in the prefaces of Zenith Exhibit 8, include imports into bonded warehouses and migrant effects. That is minor compared to the Government, your Honor.

Now, directly in connection with the inclusion of the Government's Statistics, and to support our statements of this morning and the other day to your Honor that the figures in Zenith's Exhibit 4 are largely military, I would like to have marked for identification as Plaintiff's Exhibits 107, 108, 109, 110, and 111, pages from another publication which we have in the courtroom.

These are just extract pages—''Overseas Trade Statistics.'' It is another publication of the Commonwealth Statistician, a complementary publication to the underlying documents for Zenith Nos. 4 and 8. This is entitled ''Imports Cleared for Home Consumption.''

We would like to have marked for identification as Plaintiff's Exhibit 107 Imports Cleared for Home Consumption for 1954-1955;

As Plaintiff's Exhibit 108 for identification, Imports Cleared for Home Consumption, 1955-1956;

737 As Plaintiff's Exhibit 109 for identification, Imports Cleared for Home Consumption, 1956-1957;

As Plaintiff's Exhibit 110 for identification, Imports Cleared for Home Consumption, 1957-1958;

And as Plaintiff's Exhibit 111 for identification, Imports Cleared for Home Consumption, 1958-1959.

738 These documents show, your Honor, under Tariff Item 370-A, which is entitled ''Articles Imported by or being the property of the Commonwealth, not being for purposes of trade''—

The Court: Where are you reading from?

Mr. Thomas: Take 107 for identification, your Honor, turn to page 636, which starts the listing under Tariff Item 370-A. About the middle of the page it gives you the title, Then every item which was imported by or was the property of the Commonwealth not for the purposes of trade is listed by statistical item, so we finally get over to page 661, where our communication equipment is listed. You get to 5261, which is the same statistical item number as in Zenith No. 4, and that is complete wireless receiving sets, and this shows that for the year 1954-55, that the government imported from Canada not for the purposes of trade 201,290 pounds of complete wireless receivers.

739 Now, from the figure of 201,420 pounds which Mr. McConnell read into the record this morning, being from page 74 of the Zenith Exhibit 4, the total import figure, if you subtract the imports by the Commonwealth Government, you would have a residue of 131 pounds worth of complete wireless sets; 131 pounds would include sets allowed into a bonded warehouse or contained in migrant's effects, or even possibly cleared for general purpose of home consumption and for trade. That would include the prototype sets and the manufacturers' samples previously referred to.

We offer these exhibits, your Honor, 107 through 111, inclusive, to explain and clarify the figures that have been admitted in Zenith Exhibit 4, and we have the entire books here in the courtroom so that counsel for Zenith may satisfy themselves that the pages included are from Item 378 and what they purport to be.

I would like to offer those at this time, your Honor.

Mr. McConnell: We have no objection.

The Court: They may be received.

(Said documents, so offered and received in evi-
740 dence, were marked PLAINTIFF'S EXHIBIT 107 through 111.)

* * * * *

744 Mr. Kayser: Now, on England, we would like to offer in evidence the two exhibits which we marked this

morning in connection with our cross examination on the Mills deposition, namely, 105, which is the Durable 745 Consumer Goods booklet, July 1959, on television sets; and 106, which are the pages from the London Economist paper.

The Court: They may be received.

(The said documents, so offered and received in evidence, were marked PLAINTIFF'S EXHIBITS 105 and 106.)

• • • • • • •

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—59-C-1847) • •

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause, before the Honorable Richard B. Austin, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Thursday, October 21, 1965, at 10:00 o'clock, a.m.

857 The Court: The Court wants to review what I recall of this case and what I have heard during the past four days.

As I recall, the patent pool set up in each of these countries, these pools were willing to license anyone who made an application, provided that they complied with the terms of the license, that they not import anything into the country in which the license was granted. The net effect of that was that any licensee would have to manufacture in the country in which the license was granted. This, in effect, prevented the import of what I consider the evidence showed of completed television and radio sets into any of these countries in which these pools operated.

In regard to Canada, there was no barrier which kept out physically any completed radio or television sets. Zenith could have shipped boxcars and boatloads of completed television sets to Canada, and then their problem was who was going to sell them for them. The dealers were under threats that if they did, they would not receive radios 858 and television sets manufactured by licensees of the Canadian pool.

There was nothing that prevented Zenith from shipping these in and setting up their own sales rooms and hiring their own sales force and selling Zeniths. However, the conduct of the pool was such that it unquestionably was a conspiracy in restraint of trade and tended to restrain trade, and for that reason the Court entered the findings that it did.

However, the Court finds that the reasons that completed television and radio sets were not sold in the United Kingdom and Australia prior to the damage period was due to the fact that they could not pass the iron curtain of government license restrictions or embargoes, and that while the pools were waiting in those countries they were not called upon to exercise the type of conduct that they exercised in Canada.

The Court specifically finds that the reason, prior to the damage period, that no completed television and radio sets entered these two countries was due to governmental restrictions.

859 The question of components, knocked down to be set up in the countries, was not an issue in the lawsuit.

In regard to Canada, in ascertaining damages, the theory advanced under cases of the Supreme Court as to the way to ascertain damages was to assume that Zenith could have, but for the pool, have established a market in Canada by virtue of advertising, and by other sales methods, and that as the damage period arrived their share of the market would have been subject to proof, but due to the conduct of the pool that proof, with that degree of specificity, was not available.

However, the Court does not find that the pool in England and Australia was responsible for Zenith's being unable to establish a share of the market prior to the damage period. It is my opinion, from my recollection of the record, that the same basis for establishing damages was used in England and Australia as was used in Canada; that is, there would have been an established market but for the pool.

It is my impression from the record, since embargoes were mentioned only in a casual way and that in
860 regard to a settlement in 1957 of another lawsuit, that the figures offered as to damages by those who testified regarding them was based upon this prior ability to establish a market which was prevented by the pool.

I intend to request those witnesses who testified to indicate more clearly than the record does what method was used in determining the share of the market in the two countries involved in this hearing, whether it was on the basis that Zenith could have established a share of the market prior to the damage period, or whether the figures they used were figures that would be used in regard to a product newly introduced into the country.

If it is ascertained that damages were figured in regard to these two countries as they were in regard to Canada, where the original premise did not exist, the Court will permit Hazeltine to present proof in rebuttal or present proof to contradict the estimates of damages heretofore given in regard to those two countries.

This may be taken in oral form as my findings of fact and conclusions of law in regard to this particular hearing.

861 As you well know, I have refused to go down the cul-de-sac at this time in regard to the indispensible party regarding which motions are pending, and I now have before me today something that my clerk found in regard to requests for admissions under Rule 36 and objections to interrogatories.

Do those apply to this sale or indispensible party aspect of this case, Mr. Kayser?

Mr. Kayser: Yes, the request for admissions does, your Honor.

The Court: Well, then, I am not going to go into that today either.

I think this disposes of the matter before me in regard to the question of embargoes.

The Court finds that the embargoes and nothing else were the cause of keeping completed sets out of the country prior to the damage period.

I will suggest that we set a date for further testimony regarding the method in which damages were computed in these two countries, Mr. McConnell.

Mr. McConnell: I take it that is preliminary to any other hearings?

The Court: I would think so. I want to get this 862 over with.

Mr. McConnell: Your Honor can set any date and we will meet it.

The Court: I think perhaps—I don't know how this is going to be done, I suppose by marketing experts and that sort of thing.

Mr. Kayser: Your Honor, in connection with that, would it not be appropriate to require Zenith then to bring in their documentation?

The Court: Well, as I understand it, they have used government figures as to—what is this, Exhibit 418?

Mr. Kayser; 218.

The Court: I haven't looked at it in 18 months.

Mr. Kayser: 218, your Honor.

The Court: 218. But I thought that contained government figures as to how many radios and television sets were sold in each country during the damage period.

Mr. McConnell: If your Honor will recall, we had some

discussion of this and your Honor said that we are not going to go into the figures in Exhibits 220 or 218, and we are not going to have a field day with accountants.
863 And I think that is the present state of the record. It would seem to me—

The Court: I think that we might as well keep on approaching this by stages, and I think Stage 1 is to have these witnesses back who testified to the 2 per cent and the 5 per cent and that sort of thing to indicate in greater detail than the record discloses to me the method used; if it was by virtue of the fact that they would have had a market prior to the damage period but for the pool, why, we start with a faulty premise there.

Mr. McConnell: Yes. I think that is the condition precedent, because that is what I want to show, that the damages were not computed on—

The Court: Well, let me say that I am going to set the matter for hearing, first of all, and there may be a recess after we find out what their response is to this, Mr. Kayser, but I am going to set the matter for hearing on Friday, November 12th, at 2:00 o'clock, in regard to the aspects that I have just discussed.

Mr. McConnell: Thank you, your Honor.

The Court: All right.

(Which were all the proceedings had and testimony taken in the above-entitled cause on the days and dates aforesaid.)

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 64d
C. A. No. 59-C-1847

RJe

THE COMMONWEALTH OF AUSTRALIA.

AMENDMENTS INCORPORATION.

No. 13 of 1905.

An Act to incorporate Amendments in Amended Acts.

[Assented to 23rd November, 1905.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Amendments Incorporation Act* 1905. **Short title**

2.—(1.) When any Act has, before or after the commencement of this Act, been amended by— **Incorporation of amendments in reprint of Acts.**

(*a*) the repeal or omission of certain words or figures, or

(*b*) the substitution of certain words or figures in lieu of any repealed or omitted words or figures, or **Cf. Q. 1903, No. 10, s. 7.**

(*c*) the insertion of certain words or figures,

then in any reprint of the Act by the Government Printer the Act shall be printed as so amended.

(2.) In every reprint of an Act so amended, reference shall be made in the margin or a footnote to the enactment by which each amendment is made.

(3.) In this Act, "words" includes Part, Division, heading, section, sub-section, paragraph, and schedule.

3. There shall be printed on every reprint issued by the Government Printer of any Act which has before or after the commencement of this Act been amended a short reference to every Act by which it has been amended. **Reference to Amending Act.**

Printed and Published for the GOVERNMENT of the COMMONWEALTH of AUSTRALIA
by ROBT. S. BRAIN, Government Printer for the State of Victoria.

Hazeltine Research Inc. vs. Zenith Radio Corporation Plaintiff's Exh. No. 64 id } C. A. No. 59-C-1847

RJC

THE COMMONWEALTH OF AUSTRALIA.

AMENDMENTS INCORPORATION.

No. 32 of 1918.

An Act to amend the *Amendments Incorporation Act* 1905.

[Assented to 11th December, 1918.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Amendments Incorporation Act* 1918.

(2.) The *Amendments Incorporation Act* 1905, as amended by this Act, may be cited as the *Amendments Incorporation Act* 1905-1918.

Amendment o s. 2.

2. Section two of the *Amendments Incorporation Act* 1905 is amended by inserting, after sub-section (2.), the following sub-section:—

"(2A.) When an Act, which amends a Principal Act in the manner mentioned in sub-section (1.), prescribes a method of citation for the Principal Act as amended by that Act, the Principal Act shall be deemed to be amended by substituting that method of citation for the short title of the Principal Act, and in every reprint of the Act as so amended that method of citation shall be substituted accordingly."

Printed and Published for the Government of the Commonwealth of Australia
by H. J. Green, Acting Government Printer for the State of Victoria.
F.19416.—Price 3d.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 65
C. A. No.
59-C-1847

RJC

THE COMMONWEALTH OF AUSTRALIA.

ACTS INTERPRETATION ACT 1901-1964.*

An Act for the Interpretation of Acts of Parliament and for Shortening their Language.

BE it enacted by the King's Most Excellent Majesty the Senate and the House of Representatives of the Commonwealth of Australia as follows:—

PART I.—PRELIMINARY.

Heading substituted by No. 52, 1964, s. 6 and Schedule.

Short title.

Short title amended; No. 32, 1918, s. 2.

1. This Act may be cited as the *Acts Interpretation Act* 1901-1964.*

Application of Act.

Substituted by No. 10, 1937, s. 4.

2.—(1.) The *Acts Interpretation Act* 1901, and that Act as amended from time to time, shall, unless the contrary intention appears, apply, and be deemed to have applied, to all Acts of the Parliament including this Act.

(2.) This Act shall bind the Crown.

Parts.

Inserted by No. 52, 1964, s. 2.

2A. This Act is divided into Parts, as follows:—

Part I.—Preliminary (Sections 1-2A).
Part II.—Commencement of Acts (Sections 3-6).
Part III.—Repeal and Expiration of Acts (Sections 7-11).
Part IV.—General Provisions (Sections 12-15A).
Part V.—Words and References in Acts (Sections 16-25).
Part VI.—Judicial Expressions (Sections 26-30).

---

* The *Acts Interpretation Act* 1901-1964 comprises the *Acts Interpretation Act* 1901, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Number and Year.	Date of Assent.	Date of Commencement.
Acts Interpretation Act 1901 ..	No. 2, 1901	12th July, 1901 ..	12th July, 1901
Acts Interpretation Act 1916 ..	No. 4, 1916	30th May, 1916 ..	30th May, 1916
Acts Interpretation Act 1918 ..	No. 8, 1918	11th June, 1918 ..	11th June, 1918
Acts Interpretation Act 1930 ..	No. 23, 1930	14th August, 1930 ..	14th August, 1930
Acts Interpretation Act 1932 ..	No. 24, 1932	30th May, 1932 ..	30th May, 1932
Acts Interpretation Act 1937 ..	No. 10, 1937	27th August, 1937 ..	11th October, 1937
Acts Interpretation Act 1941 ..	No. 7, 1941	4th April, 1941 ..	4th April, 1941
Defence (Transitional Provisions) Act 1947	No. 78, 1947	11th December, 1947	1st January, 1948
Acts Interpretation Act 1948 ..	No. 79, 1948	17th December, 1948	14th January, 1949
Statute Law Revision Act 1950	No. 80, 1950	16th December, 1950	31st December, 1950
Acts Interpretation Act 1957 ..	No. 69, 1957	5th December, 1957	5th December, 1957
Acts Interpretation Act 1963 ..	No. 19, 1963	28th May, 1963 ..	25th June, 1963
Acts Interpretation Act 1964 ..	No. 52, 1964	30th May, 1964 ..	27th June, 1964

Part VII.—Powers Conferred and Duties Imposed by Acts (Sections 33-34B).
Part VIII.—Distance and Time (Sections 35-37).
Part IX.—Citation of Acts (Sections 38-40).
Part X.—Offences and Penalties (Sections 41-45).
Part XI.—Instruments and Resolutions (Sections 46-47).
Part XII.—Regulations (Sections 48-50).

Heading substituted by No. 52, 1964, s. 6 and Schedule.

PART II.—COMMENCEMENT OF ACTS.

Meaning of "commencement".
52 & 53 Vict. c. 63, s. 36.

3.—(1.) In every Act the word "commencement", when used with reference to an Act, shall mean the time at which the Act comes into operation.

(2.) Where an Act, or any instrument (including any rules regulations or by-laws) made granted or issued under a power conferred by an Act, is expressed to come into operation on a particular day, it shall come into operation immediately on the expiration of the last preceding day.

Exercise of statutory powers between passing and commencement of Act.
Ibid., s. 37.

4. When an Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make grant or issue any instrument (including any rules regulations or by-laws), to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act for the purpose of bringing the Act into operation at the commencement thereof.

Provided that any instrument made under the power shall not, unless the contrary intention appears in the Act or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.

Commencement of Acts assented to by the Governor-General.
Sub-section (1.) substituted by No. 10, 1937, s. 6.

5.—(1.) Every Act to which the Royal Assent has been given by the Governor-General for and on behalf of the King on or before the thirty-first day of December, One thousand nine hundred and thirty-seven, shall be deemed to have come into operation on the day on which that Act received the Royal Assent, unless the contrary intention appears in the Act.

Inserted by No. 10, 1937, s. 6.

(1A.) Every Act (other than an Act to alter the Constitution) to which the Royal Assent is given by the Governor-General for and on behalf of the King on or after the first day of January, One thousand nine hundred and thirty-eight, shall come into operation on the twenty-eighth day after the day on which that Act receives the Royal Assent, unless the contrary intention appears in the Act.

Inserted by No. 10, 1937, s. 6.

(1B.) Every Act to alter the Constitution to which the Royal Assent is given by the Governor-General for and on behalf of the King on or after the first day of January, One thousand nine hundred and thirty-eight, shall come into operation on the day on which that Act receives the Royal Assent, unless the contrary intention appears in that Act.

Commencement of Acts reserved.

(2.) Every Act reserved for the signification of the King's pleasure thereon shall come into operation on the day on which His Majesty's Assent is proclaimed in the *Gazette* by the Governor-General, unless the contrary intention appears in such Act.

Evidence of date of assent or proclamation.

6. The date appearing on the copy of an Act printed by the Government Printer, and purporting to be the date on which the Governor-General assented thereto, or made known the King's Assent, shall be evidence that such date was the date on which the Governor-General so assented or made known the King's assent, and shall be judicially noticed.

Heading substituted by No. 52, 1964, s. 6 and Schedule.

PART III.—REPEAL AND EXPIRATION OF ACTS.

Effect of repeal of Act.
52 & 53 Vict. c. 63, s. 11 (1.).

7. The repeal of an Act or part thereof by which a previous Act or part thereof was repealed shall not have the effect of reviving such last-mentioned Act or part thereof without express words.

Effect of repeal. Ibid., s. 38 (2.).

8.* Where an Act repeals in the whole or in part a former Act, then unless the contrary intention appears the repeal shall not—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or

(*b*) affect the previous operation of any Act so repealed, or anything duly done or suffered under any Act so repealed; or

(*c*) affect any right privilege obligation or liability acquired accrued or incurred under any Act so repealed; or

(*d*) affect any penalty forfeiture or punishment incurred in respect of any offence committed against any Act so repealed; or

---

* It is provided by section 17 of the *Statute Law Revision Act* 1950 that nothing in that Act limits the application of this section.

(*e*) affect any investigation legal proceeding or remedy in respect of any such right privilege obligation liability penalty forfeiture or punishment as aforesaid;

and any such investigation legal proceeding or remedy may be instituted continued or enforced, and any such penalty forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

Repealed Acts in force until substituted provisions operate.
52 & 53 Vict. c. 63, s. 11 (2.).

9. Where an Act repeals in the whole or in part a former Act and substitutes provisions in lieu thereof, the repealed provisions shall remain in force until the substituted provisions come into operation.

References to repealed provisions.
Ibid.; s. 38 (1.).

10. Where an Act repeals and re-enacts with or without modification any provisions of a former Act, references in any other Act to the provisions so repealed shall unless the contrary intention appears be construed as references to the provisions so re-enacted.

References to amended Acts.
Inserted by No. 4, 1916, s. 2.

10A. Where in any Act reference is made to any other Act, and that other Act is subsequently amended, then unless the contrary intention appears the reference shall, from the date of the amendment, be deemed to be to that Act as so amended.

Expiration of Act.
No. 4, 1897 (N.S.W.), s. 9.

11. The expiration of an Act shall not affect any civil proceeding previously commenced under such Act, but every such proceeding may be continued and everything in relation thereto be done in all respects as if the Act continued in force.

Heading substituted by No. 52, 1964, s. 6 and Schedule.

PART IV.—GENERAL PROVISIONS.

Every section a substantive enactment.
52 & 53 Vict. c. 63, s. 8.

12. Every section of an Act shall have effect as a substantive enactment without introductory words.

Headings schedules marginal notes and footnotes.
Vict. No. 1058, s. 21.
N.Z. 15, 1888, s. 5.

13.—(1.) The headings of the Parts Divisions and Subdivisions into which any Act is divided shall be deemed to be part of the Act.

(2.) Every schedule to an Act shall be deemed to form part thereof.

(3.) Neither the marginal notes nor the footnotes to any Act shall be deemed to be part thereof.

Acts may be altered, &c., in same session.
52 & 53 Vict. c. 63, s. 10.

14. An Act may be altered amended or repealed in the same session of Parliament in which it was passed.

15. Every Act amending another Act shall, unless the contrary intention appears, be construed with such other Act and as part thereof.

Amending to be construed with amended Act.
No. 4, 1897 (N.S.W.), s. 12.

15A. Every Act shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

Construction of Acts to be subject to Constitution.
Inserted by No. 23, 1930, s. 3; substituted by No. 10, 1937, s. 7.

PART V.—WORDS AND REFERENCES IN ACTS.

Heading substituted by No. 52, 1964, s. 6 and Schedule.

16. In any Act references to the Sovereign reigning at the time of the passing of such Act, or to the Crown, shall unless the contrary intention appears be construed as references to the Sovereign for the time being.

References to the Sovereign.
52 & 53 Vict. c. 63, s. 30.

16A. Where, in an Act, the Governor-General is referred to, the reference shall, unless the contrary intention appears, be deemed to include—

(*a*) the person for the time being administering the Government of the Commonwealth; or

(*b*) where the reference occurs in or in relation to a provision conferring on the Governor-General a power or function which the Governor-General or the person administering the Government of the Commonwealth has for the time being assigned to a person as his deputy, that last-mentioned person in his capacity as deputy,

and shall, unless the contrary intention appears, be read as referring to the Governor-General, or a person so deemed to be included in the reference, acting with the advice of the Executive Council.

References to the Governor-General.
Inserted by No. 69, 1957, s. 3.

16B. Where, in an Act, the Governor of a State is referred to, the reference shall, unless the contrary intention appears, be deemed to include the Governor for the time being of the State or any other person who is, for the time being, the chief executive officer or administrator of the government of the State.

References to the Governor of a State.
Inserted by No. 69, 1957, s. 3.

Constitutional and official definitions.

Amended by No. 23, 1930, s. 4; No. 10, 1937, s. 8; No. 80, 1950, s. 3 and First Schedule; and No. 69, 1957, s. 4.

17. In any Act, unless the contrary intention appears—

"The Commonwealth."

(*a*) "The Commonwealth" shall mean the Commonwealth of Australia:

"Australia."

(*b*) "Australia" includes the whole of the Commonwealth:

"The Constitution."

(*c*) "The Constitution" shall mean the Constitution of the Commonwealth:

"The Constitution Act."

(*d*) "The Constitution Act" shall mean *The Commonwealth of Australia Constitution Act*:

"The Parliament."

(*e*) "The Parliament" shall mean the Parliament of the Commonwealth:

* * * * * *

"The Executive Council."

(*g*) "The Executive Council" shall mean the Federal Executive Council:

"Minister of State."

(*h*) "Minister of State" or "Minister" shall mean one of the King's Ministers of State for the Commonwealth:

"The Minister."

(*i*) "The Minister" shall mean the Minister for the time being administering the Act or enactment in which or in respect of which the expression is used:

"Proclamation."

(*j*) "Proclamation" shall mean Proclamation by the Governor-General published in the *Gazette*:

"The Consolidated Revenue Fund."

(*k*) "The Consolidated Revenue Fund" shall mean the Consolidated Revenue Fund of the Commonwealth:

"The Seat of Government."

(*l*) "The Seat of Government" shall mean the seat of Government of the Commonwealth:

"The *Gazette*."

(*m*) "The *Gazette*" shall mean the *Commonwealth of Australia Gazette*:

"The Government Printer."

(*n*) "The Government Printer" shall include any person printing for the Government of the Commonwealth:

"State."

(*o*) "State" shall mean a State of the Commonwealth:

(*p*) "Territory* of the Commonwealth" or "Territory under the authority of the Commonwealth" includes any Territory governed by the Commonwealth under a Trusteeship Agreement:

"Territory of the Commonwealth."

(*q*) "Prescribed" means prescribed by the Act, or by Regulations under the Act:

"Prescribed."

(*r*) "Regulations" means Regulations under the Act.

"Regulations."

Definitions.
52 & 53 Vict. c. 63, s. 18.

18. In any Act, unless the contrary intention appears—

(*a*) "The United Kingdom" shall mean the United Kingdom of Great Britain and Ireland:

"The United Kingdom."

(*b*) "British possession" shall mean any part of the King's dominions exclusive of the United Kingdom, and where parts of such dominions are under both a central and a local Legislature all parts under the central Legislature shall for the purposes of this definition be deemed to be one British possession.

"British possession."

Mention of Minister.
54 Vict. No. 1058 (Vict.) s. 7.
Amended by No. 8, 1918, s. 2.

19. Where in an Act any Minister is referred to, such reference shall unless the contrary intention appears be deemed to include any Minister or member of the Executive Council for the time being acting for or on behalf of such Minister.

Administration of Acts.
Inserted by No. 23, 1930, s. 5; substituted by No. 10, 1937, s. 9; amended by No. 7, 1941, s. 3.

19A. Where in any Act it is provided that the Act shall be administered by a specified Minister of State of the Commonwealth, or shall be administered, controlled or carried into effect by a specified Department of State of the Commonwealth—

(*a*) the reference to that Minister shall be read as a reference to any Minister to whom the administration of the Act is allotted by order of the Governor-General and shall be deemed to include any Minister or Member of the Executive Council for the time being acting for and on behalf of the Minister to whom the administration of the Act is so allotted; and

(*b*) the reference to that Department shall be read as a reference to any Department to which the administration of the Act is allotted by any such order.

References to Ministers and Departments.
Inserted by No. 7, 1941, s. 4.

19B. Where in any Act, reference is made to a specified Minister of State of the Commonwealth or a specified Department of State of the Commonwealth, and there is no longer any such Minister or Department—

---

*Section 12 of the *Papua and New Guinea Act* 1949–1963 reads as follows:—

"12. A reference in any other law of the Commonwealth (whether made before or after the commencement of this Act) to a Territory of the Commonwealth or a Territory under the authority of the Commonwealth shall, unless the contrary intention appears, be deemed to include a reference to—

(*a*) the Territory of New Guinea;
(*b*) the Territory of Papua; and
(*c*) the Territory of Pap[illegible] New Guinea as administered under this Act."

(*a*) the reference to the Minister shall be read as a reference to such Minister as is specified by order of the Governor-General, and shall be deemed to include any Minister or Member of the Executive Council for the time being acting for and on behalf of the Minister so specified in the order; and

(*b*) the reference to the Department shall be read as a reference to such Department as is specified by order of the Governor-General.

References in agreements to a Department, Minister, officer or body

Inserted by No. 78, 1947, s. 7.

19c. Where an agreement is or has been entered into, either before or after the commencement of this section, by or on behalf of the Commonwealth and, after the date of the agreement, the functions of a Department of State of the Commonwealth in relation to the administration of matters to which the agreement relates (in this section referred to as " the former Department ") are or have been allotted to another Department (in this section referred to as " the new Department ")—

(*a*) any reference in the agreement to the Minister administering the former Department shall be read as a reference to the Minister administering the new Department or to a member of the Executive Council acting for the time being for him and on his behalf;

(*b*) any reference in the agreement to the former Department shall be read as a reference to the new Department; and

(*c*) any reference in the agreement to an officer or body of persons shall be read as a reference to—

- (i) any other officer or body for the time being exercising the powers or performing the functions of the first-mentioned officer or body; or
- (ii) such other officer or body as the last-mentioned Minister, by order, specifies.

Mention of an officer in general terms.

No. 4, 1897 (N.S.W.), s. 16.

20. Where in an Act any person holding or occupying a particular office or position is mentioned or referred to in general terms, such mention or reference shall unless the contrary intention appears be deemed to include all persons who at any time occupy for the time being the said office or position.

Office, &c., means office &c., of the Commonwealth.

52 & 53 Vict. c. 63, s. 17.

21. In any Act, unless the contrary intention appears—

(*a*) references to any officer or office shall be construed as references to such officer or office in and for the Commonwealth; and (*b*) references to localities jurisdictions and other matters and things shall be construed as references to such localities jurisdictions and other matters and things in and of the Commonwealth.

Meaning of certain words. 52 & 53 Vict. c. 63, s. 3. No. 4, 1897 (N.S.W.), s. 21.

22. In any Act, unless the contrary intention appears—

"Person," "party."

(*a*) "Person" and "party" shall include a body politic or corporate as well as an individual:

"Month."

(*b*) "Month" shall mean calendar month:

"Land."

(*c*) "Land" shall include messuages tenements and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate or interest therein:

"Estate."

(*d*) "Estate" shall include any estate or interest charge right title claim demand lien or incumbrance at law or in equity:

"Financial year." Ibid., s. 22.

(*e*) "Financial year" shall mean, as respects any matters relating to the Consolidated Revenue Fund or moneys provided by the Parliament or to public taxes or finance, the twelve months ending the thirtieth day of June.

Rules as to gender and number. Ibid., s. 1.

23. In any Act, unless the contrary intention appears—

(*a*) Words importing the masculine gender shall include females; and

(*b*) Words in the singular shall include the plural, and words in the plural shall include the singular.

Corporations liable to and may sue for penalties. Amended by No. 7, 1941, s. 5.

24.* Every provision of an Act relating to offences punishable on indictment or summary conviction shall unless the contrary intention appears be deemed to refer to bodies corporate as well as to persons, but where the penalty prescribed in respect of any offence is a term of imprisonment only, the court before which the offence is tried may, if it thinks fit, in the case of a body corporate, impose a pecuniary penalty not exceeding—

(*a*) where the term of imprisonment does not exceed six months—One hundred pounds;

(*b*) where the term of imprisonment exceeds six months but does not exceed one year—Two hundred pounds;

(*c*) where the term of imprisonment exceeds one year but does not exceed two years—Five hundred pounds; and

---

* By virtue of sub-section (2.) of section 5 of the *Acts Interpretation Act* 1941, the amendment made to this section by sub-section (1.) of that section is to be deemed to have come into operation on 3rd September, 1939.

(*d*) where the term of imprisonment exceeds two years —One thousand pounds.

Where under any Act any forfeiture or penalty is payable to a party aggrieved it shall be payable to a body corporate where the body corporate is the party aggrieved.

References to "writing". 52 & 53 Vict. c. 63, s. 20.

25. In any Act expressions referring to writing shall, unless the contrary intention appears, be construed as including references to any mode of representing or reproducing words in a visible form.

Heading substituted by No. 52, 1964, s. 6 and Schedule.

PART VI.—JUDICIAL EXPRESSIONS.

Judicial definitions. Amended by No. 10, 1937, s. 10; and No. 80, 1950, s. 3 and First Schedule.

26. In any Act, unless the contrary intention appears—

"The High Court."

(*a*) "The High Court" shall mean the High Court of Australia:

"Federal Court".

(*b*) "Federal Court" shall mean the High Court or any court created by the Parliament:

"Court exercising federal jurisdiction."

(*c*) "Court exercising federal jurisdiction" shall mean any court when exercising federal jurisdiction and shall include federal courts:

"Court of summary jurisdiction." Ibid., s. 13.

(*d*) "Court of summary jurisdiction" shall mean any justice or justices of the peace or other magistrate of the Commonwealth or part of the Commonwealth, or of a State or part of a State, sitting as a court for the making of summary orders or the summary punishment of offences under the law of the Commonwealth or part of the Commonwealth or under the law of a State or by virtue of his or their commission or commissions or any Imperial Act:

"Justice of the Peace."

(*e*) "Justice of the Peace" includes a Justice of the Peace for a State or part of a State or for a Territory of the Commonwealth.

Meaning of certain words.

27. In any Act, unless the contrary intention appears—

(*a*) The word "indictment" shall include information:

"Oath," "affidavit," "swear," Ibid., s. 3.

(*b*) The words "oath" and "affidavit" shall, in the case of persons allowed by law to affirm declare or promise instead of swearing, include affirmation, declaration, and promise, and the word "swear" shall in the like case include affirm, declare, and promise:

(*c*) The words "statutory declaration"* shall mean a declaration made by virtue of any Act authorizing a declaration to be made otherwise than in the course of a judicial proceeding.

"Statutory declaration." 52 & 53, Vict. c. 63, s. 21.

(*d*) The words "committed for trial," used in relation to any person, shall mean committed to prison with the view of being tried before a judge and jury, or admitted to bail upon a recognisance to appear and be so tried.

"Committed for trial." Ibid., s. 27.

28.—(1.) In any Act, unless the contrary intention appears, the expression "Rules of Court" when used in relation to any court shall mean rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such court.

Rules of Court. Ibid., s. 14.

(2.) The power of such authority to make Rules of Court shall, unless the contrary intention appears, include a power to make Rules of Court for the purpose of any Act which directs or authorizes anything to be done by Rules of Court.

29. Where an Act authorizes or requires any document to be served by post, whether the expression "serve" or the expression "give" or "send" or any other expression is used, then unless the contrary intention appears the service shall be deemed to be effected by properly addressing prepaying and posting the document as a letter, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Meaning of service by post. Ibid., s. 26.

30.†—(1.) Where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence.

Offences under two or more laws. Ibid., s. 33.

(2.) Where an act or omission constitutes an offence under both—

Added by No. 10, 1937, s. 11.

(*a*) an Act and a State Act; or

(*b*) an Act and an Ordinance of a Territory of the Commonwealth, and the offender has been punished for that offence under the State Act or the Ordinance, as the case may be, he shall not be liable to be punished for the offence under the Act.

---

* Section seven of the *Statutory Declarations Act* 1959 reads as follows:—

"7. Where, in a law of the Commonwealth or of a Territory (whether passed or made before or after the commencement of this Act), a reference is made to a statutory declaration, the reference includes a reference to a statutory declaration made by virtue of this Act, unless the contrary intention appears in that law."

† *See also* section 11 of the *Crimes Act* 1914–1960.

Section 31 repealed by No. 52, 1964, s. 3.

* * * * * * *

Heading substituted by No. 52, 1964, s. 6 and Schedule.

PART VII.—POWERS CONFERRED AND DUTIES IMPOSED BY ACTS.

Section 32 repealed by No. 10, 1937, s. 12.

* * * * * * *

Exercise of powers and duties, 52 & 53 Vict. c. 63, s. 32.

33.—(1.) Where an Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

by holder of office.

(2.) Where an Act confers a power or imposes a duty on the holder of an office as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

Power to make includes power to rescind. Amended by No. 7, 1941, s. 6.

(3.) Where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Power to appoint includes power to remove, No. 4, 1897 (N.S.W.), s. 30.

(4.) Where an Act confers upon any person or authority a power to make appointments to any office or place, the power shall, unless the contrary intention appears, be construed as including a power to remove or suspend any person appointed, and to appoint another person temporarily in the place of any person so suspended or in place of any sick or absent holder of such office or place.

subject to conditions.

Provided that where the power of such person or authority to make any such appointment is only exercisable upon the recommendation or subject to the approval or consent of some other person or authority, such power of removal shall, unless the contrary intention appears, only be exercisable upon the recommendation or subject to the approval or consent of such other person or authority.

34. Any court, Judge, justice of the peace, officer, commissioner, arbitrator, or other person authorized by law, or by consent of parties, to hear and determine any matter, shall have authority to receive evidence and examine witnesses and to administer an oath to all witnesses legally called before them respectively.

Power to determine includes authority to administer oath.
No. 4, 1897 (N.S.W.), s. 33.

34A. Where, under any Act, the exercise of a power or function by a person is dependent upon the opinion, belief or state of mind of that person in relation to a matter and that power or function has been delegated in pursuance of that Act, that power or function may be exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

Exercise of certain powers and functions by a delegate.
Inserted by No. 78, 1947, s. 7.

34B.—(1.) Where, by an Act or a law of a Territory, provision is made requiring or permitting the presentation (however expressed) of a paper to the Parliament or to both Houses, or to each or either House, of the Parliament, it is sufficient compliance with the provision, in relation to a House, if—

Presentation of papers to the Parliament.
Inserted by No. 19, 1963, s. 2.

(*a*) the paper is presented in that House in accordance with the rules or orders of the House or, if, under the rules or orders of the House, papers are deemed to be presented to the House if they are delivered to the Clerk of the House and recorded in the records of the proceedings of the House, the paper is so delivered and recorded;

(*b*) where the provision provides for a specified person to present the paper or to cause the paper to be presented—that person, or any other person who could by virtue of this Act or of any other Act, or of a law of a Territory, act in the place of that person, makes or causes to be made, as the case may be, the presentation or the delivery of the paper referred to in the last preceding paragraph; and

(*c*) where the provision specifies a period within which the paper is to be presented—the presentation, or the delivery and recording, of the paper referred to in paragraph (*a*) of this sub-section takes place within that period.

(1A.) For the purposes of an Act or a law of a Territory that refers to papers presented (however the presentation is described) to the Parliament or to both Houses, or to each or either House, of the Parliament—

Inserted by No. 52, 1964, s. 4.

(*a*) presentation of a paper in a House of the Parliament in accordance with the rules or orders of the House; or

(*b*) if, under the rules or orders of a House of the Parliament, papers are to be deemed to be presented to the House if they are delivered to the Clerk of the House and recorded in the records of the proceedings of the House—such a delivery and recording of a paper,

shall be deemed to have been presentation of the paper to that House, as described in that Act or law, effected or caused by the person who so presented or delivered the paper or caused the paper to be so presented or delivered.

(2.) In this section, "paper" includes—

(*a*) an ordinance, rule, regulation or by-law;

(*b*) a report; and

(*c*) any other document or instrument whatsoever.

Heading substituted by No. 52, 1964, s. 6 and Schedule.

PART VIII.—DISTANCE AND TIME.

Measurement of distance.
52 & 53 Vict. c. 63, s. 34.

35. In the measurement of any distance for the purposes of any Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

Reckoning of time.
No. 4, 1897 (N.S.W.), s. 35.

36.—(1.) Where in an Act any period of time, dating from a given day, act, or event, is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusive of such day or of the day of such act or event.

Substituted by No. 79, 1948, s. 2.

(2.) Where the last day of any period prescribed or allowed by an Act for the doing of anything falls on a Saturday, on a Sunday or on a day which is a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following which is not a Saturday, a Sunday or a public holiday or bank holiday in that place.

Expressions of time.
43 & 44 Vict. c. 9.
Vict., No. 1370 s. 4.

37. Where in an Act any reference to time occurs, such time shall, unless it is otherwise specifically stated, be deemed in each State or part of the Commonwealth to mean the standard or legal time in that State or part of the Commonwealth.

PART IX.—CITATION OF ACTS.

Heading substituted by No. 52, 1964, s. 6 and Schedule.

Reference to Acts. No. 4, 1897 (N.S.W.), s. 24.

38.—(1.) An Act passed by the Parliament of the Commonwealth may be referred to by the word "Act" alone.

(2.) An Act passed by the Parliament of the United Kingdom may be referred to by the term "Imperial Act."

(3.) An Act passed by the Parliament of a State may be referred to by the term "State Act."

Numbering of Acts.

39. The Acts passed in each secular year shall be numbered in regular arithmetical series, beginning with the number one, in the order in which the Governor-General assents thereto, or makes known the King's assent thereto.

Citation of Acts. 52 & 53 Vict. c. 63, s. 35. Sub-section (1.) amended by No. 19, 1963, s. 3.

40.—(1.) In any Act, instrument or document—

(*a*) any Act may be cited by its short title, or by reference to the secular year in which it was passed and its number; and

(*b*) any Imperial Act may be cited by its short title (if any) or in such other manner as is sufficient in an Imperial Act; and

(*c*) any State Act may be cited by a reference to the State by the Parliament whereof the Act was passed, together with such mode of reference as is sufficient in Acts passed by such Parliament.

(2.) Any enactment may be cited by reference to the part, section, sub-section, or other division of the Act, Imperial Act, or State Act, in which the enactment is contained.

(3.) Every such reference shall be made according to the copy of such Act printed by the Government Printer of the Commonwealth or of the State, or of the King's Printer in London (as the case may be), or purporting to be so printed.

PART X.—OFFENCES AND PENALTIES.

Heading inserted by No. 10, 1937, s. 13; substituted by No. 52, 1964, s. 6 and Schedule.

Penalties at foot of sections or sub-sections. Inserted by No. 10, 1937, s. 13.

41. The penalty, pecuniary or other, set out—

(*a*) at the foot of any section of any Act; or

(*b*) at the foot of any sub-section of any section of any Act, but not at the foot of the section, shall indicate that any contravention of the section or of the sub-section respectively, whether by act or omission, shall be an offence against the Act, punishable upon conviction by a penalty not exceeding the penalty mentioned:

Provided that where the penalty is expressed to apply to a part only of the section or sub-section, it shall apply to that part only.

Indictable offences. Inserted by No. 10, 1937, s. 13.

42. Offences against any Act which are punishable by imprisonment for a period exceeding six months shall, unless the contrary intention appears, be indictable offences.

Offences punishable by summary conviction. Inserted by No. 10, 1937, s. 13.

43. Offences against any Act which—

(*a*) are punishable by imprisonment, but not for a period exceeding six months; or

(*b*) not being punishable by imprisonment, are not declared to be indictable offences,

shall, unless the contrary intention appears, be punishable on summary conviction.

Pecuniary penalties. Inserted by No. 10, 1937, s. 13.

44. All pecuniary penalties for any offence against any Act may, unless the contrary intention appears, be recovered in any court of summary jurisdiction.

Imprisonment. Inserted by No. 10, 1937, s. 13.

45. Where under any Act imprisonment may be awarded for any offence, it may be awarded with or without hard labour.

Heading inserted by No. 10, 1937, s. 13; substituted by No. 52, 1964, s. 6 and Schedule.

PART XI.—INSTRUMENTS AND RESOLUTIONS.

Construction of rules, regulations and by-laws. Inserted by No. 10, 1937, s. 13.

46. Where an Act confers upon any authority power to make, grant or issue any instrument (including rules, regulations or by-laws), then—

(*a*) unless the contrary intention appears, expressions used in any instrument so made, granted or issued shall have the same meanings as in the Act conferring the power, and this Act shall apply to any instrument so made, granted or issued as if it were an Act and as if each such rule, regulation or by-law were a section of an Act; and

(*b*) any instrument so made, granted or issued shall be read and construed subject to the Act under which it was made, and so as not to exceed the power of that authority, to the intent that where any such instrument would, but for this section, have been construed as being in excess of the power conferred upon that authority, it shall nevertheless be a valid instrument to the extent to which it is not in excess of that power.

47. Where any resolution is or has been passed by either House of the Parliament in purported pursuance of any Act, then, unless the contrary intention appears, the resolution shall be read and construed subject to the Constitution and to the Act under which it purports to have been passed, to the intent that where the resolution would, but for this section, have been construed as being in excess of authority, it shall nevertheless be a valid resolution to the extent to which it is not in excess of authority.

Construction of resolutions. Inserted by No. 10, 1937, s. 13.

PART XII.—REGULATIONS.

Heading inserted by No. 10, 1937, s. 13; substituted by No. 52, 1964, s. 6 and Schedule.

48.*—(1.) Where an Act confers power to make regulations, then, unless the contrary intention appears, all regulations made accordingly—

Regulations. Inserted by No. 10, 1937, s. 13.

(*a*) shall be notified† ~~in~~ the *Gazette*;

(*b*) shall, subject to this section, take effect from the date of notification, or, where another date is specified in the regulations, from the date specified; and

(*c*) shall be laid before each House of the Parliament within fifteen sitting days of that House after the making of the regulations.

(2.) Regulations shall not be expressed to take effect from a date before the date of notification in any case where, if the regulations so took effect—

Amended by No. 80, 1950, s. 3 and First Schedule.

(*a*) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) existing at the date of notification, would be affected in a manner prejudicial to that person; or

---

* Section 14 of the *Acts Interpretation Act* 1937 reads as follows:—

"14. Where, prior to the commencement of this Act, any regulations to which section ten of the *Acts Interpretation Act* 1904–1934 applied, were expressed to take effect from a date before the date on which those regulations were notified in the *Gazette*, those regulations shall be deemed to have the same force and effect as if this Act had been in force when those regulations were made: Provided that nothing in this section shall affect the operation of any judgment, order or conviction obtained or made before the commencement of this Act."

† As to the method of notification of regulations, *see* sub-section (3.) of section 5 of the *Rules Publication Act* 1903–1964.

Acts Interpretation Act 1901-1964.

(*b*) liabilities would be imposed on any person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of notification,

and where, in any regulations, any provision is made in contravention of this sub-section, that provision shall be void and of no effect.

(3.) If any regulations are not laid before each House of the Parliament in accordance with the provisions of sub-section (1.) of this section, they shall be void and of no effect.

Substituted by No. 19, 1963, s. 4.

(4.) If either House of the Parliament, in pursuance of a motion of which notice has been given within fifteen sitting days after any regulations have been laid before that House, passes a resolution disallowing any of those regulations, any regulation so disallowed shall thereupon cease to have effect.

Substituted by No. 19, 1963, s. 4.

(5.) If, at the expiration of fifteen sitting days after notice of a motion to disallow any regulation has been given in a House of the Parliament, being notice given within fifteen sitting days after the regulation has been laid before that House—

(*a*) the notice has not been withdrawn and the motion has not been called on; or

(*b*) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the regulation specified in the motion shall thereupon be deemed to have been disallowed.

Inserted by No. 19, 1963, s. 4.

(5A.) If, before the expiration of fifteen sitting days after notice of a motion to disallow any regulation has been given in a House of the Parliament—

(*a*) that House is dissolved or, being the House of Representatives, expires, or the Parliament is prorogued; and

(*b*) at the time of the dissolution, expiry or prorogation, as the case may be—

(i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the regulation shall, for the purposes of the last two preceding sub-sections, be deemed to have been laid before that House on the first sitting day of that House after the dissolution, expiry or prorogation, as the case may be.

(6.) Where a regulation is disallowed, or is deemed to have been disallowed, under this section, the disallowance of the regulation shall have the same effect as a repeal of the regulation.

Disallowed regulations not to be re-made unless resolution rescinded or House approves.
Inserted by No. 10, 1937, s. 13.
Sub-section (1.) amended by No. 19, 1963, s. 5.

49.—(1.) Where, in pursuance of the last preceding section, either House of the Parliament disallows any regulation, or any regulation is deemed to have been disallowed, no regulation, being the same in substance as the regulation so disallowed, or deemed to have been disallowed, shall be made within six months after the date of the disallowance, unless—

(*a*) in the case of a regulation disallowed by resolution —the resolution has been rescinded by the House of the Parliament by which it was passed; or

(*b*) in the case of a regulation deemed to have been disallowed—the House of the Parliament in which notice of the motion to disallow the regulation was given by resolution approves the making of a regulation the same in substance as the regulation deemed to have been disallowed.

(2.) Any regulation made in contravention of this section shall be void and of no effect.

Prescribing matters by reference to other instruments.
Inserted by No. 52, 1964, s. 5.

49A.—(1.) Where an Act authorizes or requires provision to be made for or in relation to any matter by regulations, the regulations may, unless the contrary intention appears, make provision for or in relation to that matter by applying, adopting or incorporating, with or without modification—

(*a*) the provisions of any Act, or of any regulations, as in force at a particular time or as in force from time to time; or

(*b*) any matter contained in any other instrument or writing as in force or existing at the time when the first-mentioned regulations take effect,

but, unless the contrary intention appears, regulations shall not, except as provided by this sub-section, make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

(2.) In this section, " regulations " means regulations or rules under an Act.

Effect of repeal of regulations.
Inserted by No. 10, 1937, s. 13.

50. Where an Act confers power to make regulations, the repeal of any regulations which have been made under the Act shall not, unless the contrary intention appears in the Act or regulations effecting the repeal—

(*a*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any regulations so repealed; or

(*b*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any regulations so repealed; or

(*c*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act or regulations had not been passed or made.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 66 [illegible]
C. A. No. 59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

RJC

THE CUSTOMS ACT 1901-1936.(a)

An Act relating to the Customs.

[Assented to 3rd October, 1901.(b)]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—INTRODUCTORY.

1. This Act may be cited as the *Customs Act* 1901–1936.(a)

Short title.
Short title amended. No. 32, 1918, s. 2.

2. This Act shall commence on a day to be fixed by proclamation.(c)

Commencement.

3. This Act is divided into parts as follows:—

Parts.
Amended by No. 12, 1923, s. 2. and Schedule.

Part I.—Introductory.
Part II.—Administration.
Part III.—Customs Control, Examination, Entries, and Securities generally.
Part IV.—The Importation of Goods.
  Division 1.—Prohibited Imports.
  Division 2.—The Boarding of Ships and Aircraft.
  Division 3.—The Report of the Cargo.
  Division 4.—The Entry, Unshipment, Landing and Examination of Goods.
Part V.—The Warehousing of Goods.
  Division 1.—Licensed Warehouses.
  Division 2.—King's Warehouses.
Part VI.—The Exportation of Goods.
Part VII.—Ships' and Aircraft's Stores.

(a) The *Customs Act* 1901–1936 comprises the *Customs Act* 1901 (No. 6 of 1901), as amended by the *Customs Act* 1910 (No. 36 of 1910), the *Customs Act* 1914 (No. 19 of 1914), the *Customs Act* 1916 (No. 10 of 1916), the *Customs Act* 1920 (No. 41 of 1920), the *Customs Act* 1922 (No. 19 of 1922), the *Customs Act* 1923 (No. 12 of 1923) and the *Customs Act* 1925 (No. 22 of 1925), the *Customs Act* 1930 (No. 6 of 1930), the *Customs Act* 1934 (No. 7 of 1934), the *Statute Law Revision Act* 1934 (No. 45 of 1934), the *Customs Act* 1935 (No. 7 of 1935), and the *Customs Act* 1936 (No. 85 of 1936). *See* Acts No. 36, 1910, s. 1; No. 19, 1914, s. 1 (2.); No. 10, 1916, s. 1 (2.); No. 41, 1920, s. 1 (3.); No. 19, 1922, s. 1 (3.); No. 12, 1923, s. 1 (3.); No. 22, 1925, s. 1 (3.); No. 6, 1930, s. 1; No. 45, 1934, s. 1, and First Schedule; No. 7, 1935, s. 1, and No. 85, 1936, s. 1. The *Customs Act* 1901 has also been amended by the *Spirits Act* 1906 (No. 21 of 1906), s. 5, and by the *Customs (Inter-State Accounts) Act* 1910 (No. 9 of 1910), s. 2. The amendments so made have been incorporated in this print.

(b) This is the date of assent to the *Customs Act* 1901; the *Customs Act* 1910 was assented to on 1st December, 1910, the *Customs Act* 1914 on 7th December, 1914, the *Customs Act* 1916 on 30th May, 1916, the *Customs Act* 1920 on 10th November, 1920 (proclaimed to commence 11th November, 1920; since repealed by Act No. 12, 1923, s. 3.), the *Customs Act* 1922 on 9th October, 1922, the *Customs Act* 1923 on 17th August, 1923, the *Customs Act* 1925, on 20th September, 1925, the *Customs Act* 1930 on 29th March, 1930, the *Customs Act* 1934 on 24th July, 1934, the *Statute Law Revision Act* 1934 on 6th August, 1934, the *Customs Act* 1935 on 5th April, 1935 (deemed to have commenced on 1st January, 1935), and the *Customs Act* 1936 on 7th December, 1936. The *Spirits Act* 1906 was assented to on 12th October, 1906 (proclaimed to commence on 1st January, 1907) and the *Customs (Interstate Accounts) Act* 1910 on 7th September, 1910.

(c) Proclaimed to commence on 4th October, 1901. *See Gazette*, 1901, p. 165.

F.2463.—PRICE 2s.

Part VIII.—The Duties.
  Division 1.—The Payment and Computation of Duties generally.
  Division 2.—Ad valorem Duties.
  Division 3.—Deposits Abatements Remissions and Refunds of Duties.
  Division 4.—Disputes as to Duties.
Part IX.—Drawbacks.
Part X.—The Coasting Trade.
Part XI.—Agents.
Part XII.—Officers.
  Division 1.—Powers of Officers.
  Division 2.—Protection to Officers.
Part XIII.—Penal Provisions.
  Division 1.—Forfeitures.
  Division 2.—Penalties.
Part XIV.—Customs Prosecutions.
Part XV.—Settlement of Cases by the Minister.
Part XVI.—Regulations.
Part XVII.—Miscellaneous.

Interpretation.

Amended by No. 41, 1920, s. 3 and by No. 12, 1923, s. 4.

4. In this Act except where otherwise clearly intended—

"Aerodrome" means any landing place for aircraft appointed for the purposes of this Act.

"Aerodrome owner" includes the occupier of any aerodrome.

"Aircraft" includes aeroplanes, seaplanes, airships, balloons or any other means of aerial locomotion.

"Answer questions" means that the person on whom the obligation of answering questions is cast shall to the best of his knowledge, information, and belief truly answer all questions on the subject mentioned that the Collector shall ask.

* * * * * * * *

Definition of "Bank rate of Exchange" inserted by No. 41, 1920, s. 3; omitted by No. 12, 1923, s. 3.

"By authority" means by the authority of the officer of Customs doing duty in the matter in relation to which the expression is used.

"Carriage" includes vehicles and conveyances of all kinds.

"Collector" includes the Comptroller and any Collector of Customs for the State and any principal officer of Customs doing duty at the time and place and any officer doing duty in the matter in relation to which the expression is used.

"Comptroller" means the Comptroller-General of Customs.

"Customs Acts" includes this Act and all laws and regulations relating to Customs in force within the Commonwealth or any part of the Commonwealth.

"Days" does not include Sundays or holidays.

"Documents" includes books.

"Drawback" includes bounty or allowance.

"Dutiable goods" includes all goods in respect of which any duty of Customs is payable.

"*Gazette* notice" means a notice signed by the Minister and published in the *Gazette.*

"Goods" includes all kinds of movable personal property.

"Goods under drawback" includes all goods in respect of which any claim for drawback has been made.

"Justice" means any Justice of the Peace having jurisdiction in the place.

"Master" means the person in charge or command of any ship except a pilot or Government officer.

* * * * * * * * *

Definition of "Mint par rate of exchange" inserted by No. 41, 1920, s. 3; omitted by No. 12, 1923, s. 3.

"Officer" includes all persons employed in the service of the Customs.

"Owner" in respect of goods includes any person (other than an officer of Customs) being or holding himself out to be the owner, importer, exporter, consignee, agent, or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods.

"Owner" in respect of a ship or aircraft includes every person acting as agent for the owner or to receive freight or other charges payable in respect of the ship or aircraft.

Amended by No. 12, 1923, s. 4.

"Parts beyond the seas" means any country outside of Australia.

"Package" includes every means by which goods for carriage may be cased covered enclosed contained or packed.

"Pilot" means the person in charge or command of any aircraft.

Inserted by No. 12, 1923, s. 4.

"Port" means any proclaimed port.

"Prescribed" means prescribed by this Act.

"Produce documents" means that the person on whom the obligation to produce documents is cast shall to the best of his power produce to the Collector all documents relating to the subject matter mentioned.

"Ship" includes every description of vessel used in navigation not propelled by oars only.

"Smuggling" means any importation or introduction or attempted importation or introduction of goods with intent to defraud the revenue.

* * * * * * * * *

Definition of "The Board" inserted by No. 41, 1920, s. 3; omitted by No. 12, 1923, s. 3.

"The Customs" means the Department of Trade and Customs.

"The United Kingdom" includes the Channel Islands and the Isle of Man.

Inserted by No. 7, 1935, s. 2.

"This Act" includes all regulations made thereunder.

"Warehouse" means a warehouse licensed for the purposes of this Act.

"Wharf" means a wharf appointed for the purposes of this Act.

"Wharf owner" includes any owner or occupier of any wharf.

Indication of penalties. 5. The penalties referred to at the foot of sections indicate that any contravention of the section whether by act or omission shall be an offence against this Act punishable upon conviction by a penalty not exceeding (except as hereinafter provided) the penalty mentioned.

PART II.—ADMINISTRATION.

Administration. 6. Until it is otherwise lawfully determined the Customs Acts shall be administered by the Minister of State for the Commonwealth administering the Customs.

Comptroller-General. 7. There shall be a Comptroller-General of Customs who under the Minister shall be the permanent head of the Customs and shall have the chief control of the Customs throughout the Commonwealth.

State Collector. 8. There shall in each State be a Collector of Customs who subject to the Comptroller shall be therein the Chief Officer of the Customs and shall be called the Collector of Customs for the State:

Added by No. 10, 1916, s. 2. Provided that if the Governor-General notifies by proclamation that for the purposes of the administration of the Customs any portion of a State or Territory is attached to any adjoining State, the Collector of Customs for that adjoining State shall, subject to the Comptroller-General, be the Chief Officer of the Customs in the portion so attached, and be deemed to be the Collector of Customs in that portion.

Powers and functions of principal officer in Northern Territory. **Inserted by No. 12, 1923, s. 5.** 8A. The principal officer of Customs doing duty in the Northern Territory shall, in relation to the Northern Territory, have such of the powers and functions of a Collector of Customs for a State as the Comptroller-General specifies by notice published in the *Gazette*.

Delegation by Minister. 9. In relation to any particular matters or class of matters or to any particular State or District the Minister may by writing under his hand delegate any of his powers under any Customs Act (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified or the State or District defined in the instrument of delegation.

Delegation by Comptroller. 10. The Comptroller with the written approval of the Minister may similarly delegate any of his powers under any Customs Act.

Revocation of delegation. 11. Every delegation, whether by the Minister or Comptroller shall be revocable in writing at will, and no delegation shall prevent the exercise of any power by the Minister or Comptroller.

Continuance of Officers. 12. All persons acting in the service of the Customs at the commencement of this Act shall be deemed to have been duly appointed.

Cancellation of bonds.

45. All Customs securities may after the expiration of three years from the date thereof or from the time specified for the performance of the conditions thereof be cancelled by the Comptroller.

New sureties.

46. If the Collector shall not at any time be satisfied with the sufficiency of any security the Collector may require a fresh security and a fresh security shall be given accordingly.

Form of Customs security.

47. The form of Customs security in Schedule I. hereto shall suffice for all the purposes of a bond or guarantee under this Act and without sealing shall bind its subscribers as if sealed and unless otherwise provided therein jointly and severally and for the full amount.

Effect of Customs security.

48.—(1.) Whenever any such Customs security is put in suit by the Collector the production thereof without further proof shall entitle the Collector to judgment for their stated liability against the persons appearing to have executed the same unless the defendants shall prove compliance with the condition or that the security was not executed by them or release or satisfaction.

Added by No. 12, 1923, s. 8.

(2.) If it appears to the Court that a non-compliance with a Customs security has occurred, the security shall not be deemed to have been discharged or invalidated, and the subscribers shall not be deemed to have been released or discharged from liability by reason of—

(*a*) an extension of time or other concession;

(*b*) the Customs having consented to, or acquiesced in, a previous non-compliance with the condition; or

(*c*) the Collector having failed to bring suit against the subscribers upon the occurrence of a previous non-compliance with the condition.

PART IV.—THE IMPORTATION OF GOODS.

Importation. **Amended by No. 12, 1923, s. 2 and Schedule.**

49. For the purpose of securing the due importation of goods—

(1) The ship or aircraft may be boarded.

(2) The cargo shall be reported.

(3) The goods shall be entered unshipped and may be examined.

Division 1.—Prohibited Imports.

Importations.

50. No prohibited imports shall be imported.

Penalty: One hundred pounds.

Unregistered ships. **Amended by No. 12, 1923, s. 2 and Schedule.**

51. No goods may be imported in any ship or aircraft which has not been lawfully registered in the country to which she belongs or which has not her certificate of registry on board unless the absence of the certificate is satisfactorily accounted for.

Penalty: One hundred pounds.

52. The following are prohibited imports :— **Prohibited imports.**

(*a*) Copies made out of the Commonwealth of any work in which copyright subsists which, if made in the Commonwealth, would infringe copyright, and as to which the owner of the copyright has, by himself or his agent, given to the Comptroller evidence of the existence of the copyright and of his ownership thereof and a notice in writing stating that he is desirous that such copies should not be imported into the Commonwealth. **Para. (a) substituted by No. 7, 1934, s. 4.**

(*b*) False money and counterfeit sterling and any coin or money of the King's dominions not being of the established standard in weight or fineness.

(*c*) Blasphemous indecent or obscene works or articles.

(*d*) Goods manufactured or produced wholly or in part by prison labour or which have been made within or in connexion with any prison, gaol, or penitentiary.

(*e*) Exhausted tea, and tea adulterated with spurious leaf or with exhausted leaves, or being unfit for human use, or unwholesome.

(*f*) Oleomargarine butterine or any similar substitute for butter unless coloured and branded as prescribed.

(*g*) All goods the importation of which may be prohibited by regulation. **Amended by No. 7, 1934, s. 4.**

(*h*) All goods having thereon or therewith any false suggestion of any warranty guarantee or concern in the production or quality thereof by any persons public officials Government or country.

(*i*) Mineral oil and mineral spirits unless imported under and subject to such restrictions as may be declared by proclamation.

53. No spirits, opium, tobacco, snuff, cigars or cigarettes shall be imported except in packages as prescribed. **Restrictions of spirits, &c.**

Penalty : One hundred pounds.

54. As to all tea imported :— **Tea subject to examination on importation.**

(*a*) Samples shall be taken without payment and examined by the Collector.

(*b*) Unless the Collector is as a result of the examination satisfied that the tea is not a prohibited import he shall submit the samples for analysis to an official analyst appointed by the Governor-General for the purposes of this Act.

(*c*) If as the result of the analysis it appears that the tea is a prohibited import it shall after compliance with the next succeeding paragraph be dealt with accordingly.

266. Every such order shall be final and without appeal and shall not be liable to be quashed on any account and a copy thereof shall be delivered to such person and may be enforced in the same manner as the order of a court of summary jurisdiction.

Minister's order to be final.

267. The Minister in holding any inquiry under this Part of this Act shall hold such inquiry in public and may

Powers of Minister at inquiries.

(*a*) Summon the parties and any witnesses before him.
(*b*) Take evidence on oath.
(*c*) Require the production of documents.
(*d*) Allow reasonable expenses to witnesses and costs to successful parties.

268. No person being summoned as a witness at any inquiry under this Act shall

Obligations on witnesses.

(*a*) Disobey such summons :
(*b*) Refuse to be sworn as such witness :
(*c*) Refuse or fail to produce any document he may be required to produce ;
(*d*) Being sworn as a witness refuse or fail to answer any question lawfully put to him.

Penalty : Twenty pounds.

269. Any matter of difference arising under this Act, or in relation to the Customs, and not involving a contravention of this Act, may, at the request of the parties interested, be referred to the Minister for decision, and thereupon the Minister may in such manner as he shall think fit inform his mind of the circumstances, and finally decide the difference.

Minister may determine differences.

PART XVI.—REGULATIONS.

270.—(1.) The Governor-General may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Customs, and in particular for prescribing—

Regulations to have force of law.
Amended by No. 36, 1910, s. 15.

(*a*) the nature, size, and material of the packages in which imported goods or goods for export, or goods for conveyance coastwise from any State to any other State, are to be packed, or the coverings in which they are to be wrapped ;
(*b*) the maximum or minimum weight or quantity of imported goods, or goods for export, or goods for conveyance coastwise from any State to any other State which may be contained in any one package ;
(*c*) the conditions of preparation or manufacture for export of any articles used for food or drink by man or used in the manufacture of articles used for food or drink by man ;

(*d*) the conditions as to purity, soundness, and freedom from disease to be conformed to by goods for export; and

Added by No. 12, 1923, s. 36.

(*e*) the conditions of carriage of goods subject to the control of the Customs, and the obligations of persons accepting such goods for carriage.

(2.) The regulations may prescribe penalties not exceeding Fifty pounds in respect of any contravention of any of the regulations.

Section 271 omitted by No. 12, 1923, s. 37.

* * * * * * * *

PART XVII.—MISCELLANEOUS.

Ss. 272 and 273 repealed; No. 9, 1910, s. 2.

* * * * * * * *

Commissioned ships to be reported.

Amended by No. 12, 1923, s. 2 and Schedule.

274. The person in command of any ship or aircraft holding commission from His Majesty or from any foreign State having on board any goods other than ship's or aircraft's stores laden in parts beyond the seas shall when called upon by the Comptroller or a State Collector or an officer specially authorized by the Minister or the Comptroller or a State Collector so to do—

(*a*) deliver an account in writing of the quantity of such goods, the marks and numbers thereof, and the names of the shippers and consignees, and declare to the truth thereof;

(*b*) answer questions relating to such goods.

Commissioned ships may be searched.

Amended by No. 12, 1923, s. 2 and Schedule.

275. Ships or aircraft under commission from His Majesty or any foreign State having on board any goods other than ships' or aircraft's stores laden in parts beyond the seas may be boarded and searched by an officer especially authorized as mentioned in the last section in the same manner as other ships or aircraft, and the officer may bring any such goods ashore and place them in a King's Warehouse.

Collectors' sales.

276. As to sales by the Collector—

(*a*) The goods shall be sold by auction or by tender and after such public notice as may be prescribed, and where not prescribed after reasonable public notice.

(*b*) The goods may be sold either free of or subject to duty and charges and the price shall be paid in cash on the acceptance of the bidding or tender.

(*c*) No bidding or tender shall be necessarily accepted and the goods may be re-offered until sold at a price satisfactory to the Collector.

Proceeds of sales.

Amended by No. 12, 1923, s. 38.

277. The proceeds of any goods sold by the Collector shall be applied as follows:—

Firstly, in the payment of the expenses of the sale.

Secondly, in payment of the duty.

Thirdly, in payment of the warehouse rent and charges.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 67
C. A. No.
59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

CUSTOMS ACT 1901-1957.*

An Act relating to the Customs.

BE it enacted by the King's Most Excellent Majesty the Senate and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—INTRODUCTORY.

Short title.

Short title amended; No. 32, 1918, s. 2.

1. This Act may be cited as the *Customs Act* 1901-1957.*

Commencement.

2. This Act shall commence on a day to be fixed by proclamation.†

Parts.

Amended by No. 12, 1923, s. 2 and Schedule; and No. 108, 1952, s. 3.

3.‡ This Act is divided into parts as follows:—

Part I.—Introductory.
Part II.—Administration.
Part III.—Customs Control, Examination, Entries, and Securities generally.

---

* The *Customs Act* 1901–1957 comprises the *Customs Act* 1901, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
Customs Act 1901	1901, No. 6	3rd October, 1901 ..	4th October, 1901 (*See Gazette*, 1901, p. 165)
Spirits Act 1906	1906, No. 21	12th October, 1906 ..	1st January, 1907 (*See Gazette*, 1907, p. 1)
Customs (Inter-State Accounts) Act 1910	1910, No. 9	7th September, 1910..	7th September, 1910
Customs Act 1910	1910, No. 36	1st December, 1910 ..	1st December, 1910
Customs Act 1914	1914, No. 19	7th December, 1914 ..	7th December, 1914
Customs Act 1916	1916, No. 10	30th May, 1916 ..	30th May, 1916
Customs Act 1922	1922, No. 19	9th October, 1922 ..	9th October, 1922
Customs Act 1923	1923, No. 12	17th August, 1923 ..	17th August, 1923
Customs Act 1925	1925, No. 22	26th September, 1925	26th September, 1925
Customs Act 1930	1930, No. 6	29th March, 1930 ..	29th March, 1930
Customs Act 1934	1934, No. 7	24th July, 1934 ..	24th July, 1934
Statute Law Revision Act 1934	1934, No. 45	6th August, 1934 ..	6th August, 1934
Customs Act 1935	1935, No. 7	5th April, 1935 ..	1st January, 1935
Customs Act 1936	1936, No. 85	7th December, 1936 ..	7th December, 1936
Customs Act 1947	1947, No. 54	13th November, 1947	15th November, 1947 (*See Gazette*, 1947, p. 3377)
Customs Act 1949	1949, No. 45	27th October, 1949 ..	1st April, 1950 (*See Gazette*, 1950, p. 723)
Customs Act 1950	1950, No. 56	14th December, 1950	30th November, 1950
Statute Law Revision Act 1950..	1950, No. 80	16th December, 1950	31st December, 1950
Customs Act 1951	1951, No. 56	11th December, 1951	11th December, 1951
Customs Act 1952	1952, No. 108	19th November, 1952	*See* NOTE 1. on p. 2.
Customs Act 1953	1953, No. 47	26th October, 1953 ..	23rd November, 1953
Customs Act 1954	1954, No. 66	8th November, 1954	6th December, 1954
Customs Act 1957	1957, No. 37	7th June, 1957 ..	*See* NOTE 2. on p. 2.

[Footnote continued at foot of next page.

Part IV.—The Importation of Goods.
  Division 1.—Prohibited Imports.
  Division 2.—The Boarding of Ships and Aircraft.
  Division 3.—The Report of the Cargo.
  Division 4.—The Entry, Unshipment, Landing and Examination of Goods.
Part V.—The Warehousing of Goods.
  Division 1.—Licensed Warehouses.
  Division 2.—King's Warehouses.
Part VI.—The Exportation of Goods.
Part VII.—Ships' and Aircraft's Stores.
Part VIII.—The Duties.
  Division 1.—The Payment and Computation of Duties generally.
  Division 2.—Ad valorem Duties.
  Division 3.—Deposits Abatements Remissions and Refunds of Duties.
  Division 4.—Disputes as to Duties.
Part IX.—Drawbacks.
Part X.—The Coasting Trade.
Part XI.—Agents.
Part XII.—Officers.
  Division 1.—Powers of Officers.
  Division 2.—Protection to Officers.
Part XIII.—Penal Provisions.
  Division 1.—Forfeitures.
  Division 2.—Penalties.
Part XIV.—Customs Prosecutions.
Part XV.—Settlement of Cases by the Minister.
Part XVI.—Regulations and By-laws.
Part XVII.—Miscellaneous.

[‡ *Footnote continued from previous page.*]

NOTE 1.—Section 2 of the *Customs Act* 1952 reads as follows:—

"2.—(1.) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

"(2.) Sections seven and eleven of this Act shall come into operation on a date to be fixed by Proclamation."

The date fixed under sub-section (2.) of section 2 of the *Customs Act* 1952 was 14th December, 1956. *See Gazette* 1956, p. 3889.

NOTE 2.—The *Customs Act* 1957, except section 4, came into operation on 7th June, 1957. By virtue of sub-section (2.) of section 2 of that Act, section 4 came into operation on 7th September, 1957.

† The day fixed was 4th October, 1901. *See Gazette* 1901, p. 165.

‡ The sections contained in the various Parts, and Divisions of Parts, of the *Customs Act* 1901–1957 are as follows:—

Part I., ss. 1–5. Part II., ss. 6–29. Part III., ss. 30–48.
Part IV., s. 49; Division 1, ss. 50–51; Division 2, ss. 58–63; Division 3, ss. 64–67; Division 4, ss. 68–77.
Part V., Division 1, ss. 78–105; Division 2, ss. 106–110. Part VI., ss. 112–126. Part VII., ss. 127–130A.
Part VIII., Division 1, ss. 131–153; Division 2, ss. 153A–161; Division 3, ss. 162–166; Division 4, s. 167.
Part IX., ss. 168–174. Part X., ss. 175–179. Part XI., ss. 180–183.
Part XII., Division 1, ss. 184–219; Division 2, ss. 220–227.
Part XIII., Division 1, ss. 228–230; Division 2, ss. 231–243.
Part XIV., ss. 244–264. Part XV., ss. 265–269. Part XVI., ss. 270–273F. Part XVII., ss. 274–277.

New sureties.

46. If the Collector shall not at any time be satisfied with the sufficiency of any security the Collector may require a fresh security and a fresh security shall be given accordingly.

Form of Customs security.

47. The form of Customs security in Schedule I. hereto shall suffice for all the purposes of a bond or guarantee under this Act and without sealing shall bind its subscribers as if sealed and unless otherwise provided therein jointly and severally and for the full amount.

Effect of Customs security.

48.—(1.) Whenever any such Customs security is put in suit by the Collector the production thereof without further proof shall entitle the Collector to judgment for their stated liability against the persons appearing to have executed the same unless the defendants shall prove compliance with the condition or that the security was not executed by them or release or satisfaction.

Added by No. 12, 1923, s. 8.

(2.) If it appears to the Court that a non-compliance with a Customs security has occurred, the security shall not be deemed to have been discharged or invalidated, and the subscribers shall not be deemed to have been released or discharged from liability by reason of—

- (*a*) an extension of time or other concession;
- (*b*) the Customs having consented to, or acquiesced in, a previous non-compliance with the condition; or
- (*c*) the Collector having failed to bring suit against the subscribers upon the occurrence of a previous non-compliance with the condition.

PART IV.—THE IMPORTATION OF GOODS.

Importation.

Amended by No. 12, 1923, s. 2 and Schedule.

49. For the purpose of securing the due importation of goods—

- (1) The ship or aircraft may be boarded.
- (2) The cargo shall be reported.
- (3) The goods shall be entered unshipped and may be examined.

Division 1.—*Prohibited Imports.*

Division 1 substituted by No. 108, 1952, s. 7.

Prohibition of the importation of goods.

50.—(1.) The Governor-General may, by regulation, prohibit the importation of goods into Australia.

Substituted by No. 108, 1952, s. 7.

(2.) The power conferred by the last preceding sub-section may be exercised—

- (*a*) by prohibiting the importation of goods absolutely;
- (*b*) by prohibiting the importation of goods from a specified place; or
- (*c*) by prohibiting the importation of goods unless specified conditions or restrictions are complied with.

(3.) Without limiting the generality of paragraph (*c*) of the last preceding sub-section, the regulations—

(*a*) may provide that the importation of the goods is prohibited unless a licence or permission to import the goods has been granted as prescribed by the regulations;

(*b*) may provide that a licence or permission so granted may be subject to conditions or requirements to be complied with by the person to whom the licence or permission is granted, either before or after the importation of the goods in respect of which the licence or permission has been so granted; and

(*c*) may provide that the grant or continuance in force of a licence or permission so granted shall be subject to the condition that the applicant for, or the holder of, the licence or permission furnishes to the Customs security for compliance with this Act and for compliance with the conditions or requirements to which the licence or permission is subject.

Prohibited imports.
Substituted by No. 108, 1952, s. 7.

51. Goods, the importation of which is prohibited under the last preceding section, are prohibited imports.

Sections 52 to 57 (inclusive) repealed by No. 108, 1952, s. 7.

* * * * * * *

Heading amended by No. 12, 1923, s. 10.

Division 2.—The Boarding of Ships and Aircraft.

Ships to enter ports.
Amended by No. 12, 1923, s. 2 and Schedule; and No. 108, 1952, s. 20 and Schedule.

58. The master of a ship or the pilot of any aircraft shall not suffer his ship or aircraft to enter any place other than a port or airport unless from stress of weather or other reasonable cause.

Penalty: One hundred pounds.

Ship to bring to on being signalled.
Sub-section (1.) amended by No. 7, 1934, s. 6.

59.—(1.) The master of every ship arriving within three nautical miles of the coast shall bring his ship to for boarding on being approached by or hailed or signalled from any vessel in the service of the Customs having hoisted the Customs flag, or from any vessel in the service of His Majesty or of the Commonwealth having hoisted the proper ensign and pendant.

Penalty: One hundred pounds.

Added by No. 12, 1923, s. 11; amended by No. 7, 1934, s. 6; and No. 108, 1952, s. 20 and Schedule.

(2.) The pilot of every aircraft arriving within three nautical miles of the shore shall bring his aircraft to the nearest airport for boarding on being approached by or signalled from any vessel or aircraft in the service of His Majesty or of the

128. Ships' stores and aircraft's stores which are unshipped or unloaded with the consent of the Collector shall be entered—

(*a*) for home consumption;
(*b*) for warehousing; or
(*c*) for transhipment to another ship or aircraft.

Unshipment of ships' and aircraft's stores.
Substituted by No. 108, 1952, s. 11.

129. Ships' stores and aircraft's stores used by the passengers or crew, or for the service, of the ship or aircraft, other than ships' stores or aircraft's stores which are specified in the regulations as being stores to which this section does not apply, are not liable to duties of Customs.

Exemption of certain stores from duty.
Substituted by No. 108, 1952, s. 11.

130. Where ships' stores or aircraft's stores, being ships' stores and aircraft's stores which are specified in the regulations as being stores to which the last preceding section does not apply, are consumed, used or otherwise disposed of in the Commonwealth, the master or owner of the ship or the pilot or owner of the aircraft shall, immediately before the ship or aircraft leaves the last port of departure in the Commonwealth, deliver to the Collector a list, verified by declaration, in accordance with the prescribed form, setting out the ships' stores or aircraft's stores so consumed, used or disposed of since the arrival of the ship or aircraft at the first port of call in the Commonwealth, and duty shall be paid on those stores at the rate in force at the time when the declaration is made.

Payment of duty on ships' and aircraft's stores.
Repealed by No. 45, 1944, s. 2 and Fourth Schedule; inserted by No. 108, 1952, s. 11.

130A.—(1.) The master or owner of a ship, or the pilot or owner of an aircraft entered outwards for parts beyond the seas may make application to the Collector in the prescribed form for permission to take on board stores for the use of the passengers and crew, and for the service, of the ship or aircraft on the voyage to be undertaken.

(2.) The Collector may grant permission to the master, pilot or owner to take on board such stores as the Collector, having regard to the voyage to be undertaken and to the number of passengers and crew to be carried, determines.

Taking on board of ships' and aircraft's stores.
Inserted by No. 108, 1952, s. 11.
Sub-section (1.) amended by No. 47, 1953, s. 4.

PART VIII.—THE DUTIES.

Division 1.—The Payment and Computation of Duties generally.

131.—(1.) No goods the property of the Commonwealth shall be liable to any duty of Customs.

Exemption.

(2.) This section shall not apply to goods intended for purposes of trade, or goods intended for consumption in Australian waters on trading vessels, or intended for consumption within the Commonwealth on trading aircraft, owned or managed by the Commonwealth.

Added by No. 12, 1923, s. 24.

Fish caught by Australian vessel not subject to duty or Customs control.
Inserted by No. 7, 1934, s. 11.

131A. Fish and other goods the produce of the sea which are caught or gathered by a vessel which—

(*a*) is registered in Australia, and

(*b*) was fitted out for the voyage during which those fish or goods were caught or gathered at a port or place in Australia,

shall not, when brought into Australia by that vessel, or by a tender (which is registered in Australia) of that vessel, be liable to any duty of Customs, or be subject to the control of the Customs.

Import duties.

132. All import duties shall be paid at the rate in force when the goods are entered for home consumption.

Export duties.

133. All export duties shall be finally payable at the rate in force when the goods are actually exported but in the first instance payment shall be made by the owner to the Collector at the rate in force when the goods are entered for export.

Weights and measures.

134. Where duties are imposed according to weight or measure the weight or measurement of the goods shall be ascertained according to the standard weights and measures by law established.

Proportion.

135. Where duties are imposed according to a specified quantity weight size or value the duties shall apply in proportion to any greater or lesser quantity, weight, size or value.

Duty how fixed.

136. Whenever goods are sold or prepared for sale as or are reputed to be of a size or quantity greater than their actual size or quantity duties shall be charged according to such first-mentioned size or quantity.

Australian currency.
Amended by No. 54, 1947, s. 3.

137. All duties shall be paid in Australian currency.

Highest duties to be charged.

138. If any goods enumerated in the Tariff are or can be classed under two or more names headings or descriptions with a resulting difference as to duty duty shall be charged when it is a difference between liability to or freedom from duty and the higher or highest of the duties applicable shall be charged when it is a difference as to two or more duties.

Substitutes for dutiable goods.

139. Whenever any goods are imported which in the opinion of the Minister are a substitute for any dutiable goods or are intended to be or can be used as such substitute or for any purpose for which such dutiable goods can be used or for any similar purpose the Minister may by *Gazette* notice direct that such first mentioned goods shall be charged with the duty chargeable upon such dutiable goods and the same shall be so charged accordingly.

Duty on parts.

140.—(1.) Whenever any dutiable goods are composed of two or more separate parts any part though imported by itself shall if so directed by the Minister be chargeable with duty at the rate applicable to the complete goods.

Substituted by No. 7, 1934, s. 12.

(2.) When the duty on the complete goods is specific only or either specific or *ad valorem*, according to whichever returns the higher duty, or both specific and *ad valorem*, the Minister may fix the proportion of the specific rate that shall be applied in determining the amount of duty payable on any part of such goods.

Duty on condensed articles.

141. Duty shall be charged on all essences condensations concentrations or preparations of goods liable to duty according to the quantity or equivalent of dutiable goods into which such essences condensations concentrations or preparations can be converted according to a standard to be prescribed.

Measurement for duty.

142. Goods charged with duty by measurement shall at the expense of the owner be heaped piled sorted framed or otherwise placed in such manner as the Collector may require to enable measurement and account thereof to be taken; and in all cases where the same are measured in bulk the measurement shall be taken to the full extent of the heap or pile.

Goods *in transitu.*

143. Goods exported to Australia from any country but passing through another country shall be valued for duty as if they were imported directly from such first mentioned country.

Proprietary medicines.

144. All medicinal or toilet preparations not completely manufactured but imported for completing the manufacture thereof or for the manufacture of any other article by the addition of any ingredient or by mixing such preparations or by putting up or labelling the same alone or with other articles or compounds under any proprietary or trade name shall be irrespective of cost valued for duty and duty shall be paid thereon at the ordinary market value in the country whence imported of the completed preparation when put up and labelled under such proprietary or trade name less the actual cost of labour and material used or expended in Australia in completing the manufacture thereof or of putting up or labelling the same.

Value of goods sold.

145. When the duty on any goods sold at any Collector's sale shall be *ad valorem* the value of such goods shall if approved by the Collector be taken to be the value as shown by the sale.

Strength of spirits.

146. The strength of spirits may be ascertained for the purposes of duty by means of a hydrometer approved by the Comptroller.

Obscuration.

147. If in the opinion of the Collector the strength of any spirits cannot immediately be accurately ascertained by hydrometer the strength may be ascertained after distillation or in any prescribed manner.

Derelict goods dutiable.

148. All goods derelict flotsam jetsam or lagan or landed saved or coming ashore from any wreck or sold as droits of Admiralty shall be charged with duty as if imported in the ordinary course.

As to payment of duty on goods in manifest but not produced or landed.

Amended by No. 12, 1923, s. 2 and Schedule.

149. If any dutiable goods which are included in the report of any ship or aircraft shall not be produced to the officer the master or owner of the ship or the pilot or owner of the aircraft shall on demand by the Collector pay the duty thereon as estimated by the Collector unless the goods are accounted for to the satisfaction of the Collector.

Samples.

150. Small samples of the bulk of any goods subject to the control of the Customs may subject to the prescribed conditions be delivered free of duty.

Samples.

151. Goods the produce of Australia or samples of duty paid goods sent out of Australia may subject to any prescribed conditions be re-imported or brought back to Australia without payment of duty.

Conditions relating to application of Preferential Tariff.

Substituted by No. 7, 1934, s. 13.

Sub-section (1.) amended by No. 85, 1936, s. 2.

151A.—(1.) For the purposes of any Customs Tariff (whether passed before or after the commencement of this section) which specifies in respect of any goods rates of duties of Customs lower than the Intermediate Tariff in respect of those goods, the following goods shall, subject to this section, be deemed to be the produce or manufacture of the United Kingdom:—

(*a*) Goods which are wholly produced or wholly manufactured in the United Kingdom from materials in one or more of the following classes:—

(i) Materials wholly produced or wholly manufactured in the United Kingdom or in Australia;

(ii) Imported unmanufactured raw materials;

(iii) Imported manufactured raw materials as determined by the Minister;

(*b*) Goods of the factory or works cost of which not less than seventy-five per centum is represented—
  (i) by labour or material of the United Kingdom; or
  (ii) by labour or material of the United Kingdom and labour or material of Australia;

(*c*) Goods of a class or kind not commercially produced or manufactured in Australia and of the factory or works cost of which not less than twenty-five per centum is represented—
  (i) by labour or material of the United Kingdom; or
  (ii) by labour or material of the United Kingdom and labour or material of Australia.

(2.) Where in relation to any class or kind of goods to which paragraph (*c*) of the last preceding sub-section applies the Minister is satisfied that it is desirable that fifty per centum should be substituted for the percentage specified in that paragraph, the Minister may so determine and thereupon that paragraph shall apply to that class or kind of goods as if fifty per centum were so substituted accordingly.

(3.) No goods shall be deemed to be the produce or manufacture of the United Kingdom unless the final process of their production or manufacture was performed in the United Kingdom.

Substituted by No. 85, 1936, s. 2.

(4.) The provisions of this section shall apply, *mutatis mutandis,* in relation to goods which are imported from any country in respect of which a Customs Tariff within the meaning of sub-section (1.) of this section applies, in like manner as they apply in relation to goods imported from the United Kingdom.

(5.) For the purposes of the last four preceding sub-sections the Minister may, from time to time, determine—

(*a*) what shall be deemed to be manufactured raw materials;

(*b*) the method of determining factory or works cost and the value of labour or material; and

(*c*) whether any goods are of a class or kind not commercially produced or manufactured in Australia.

(6.) Any determination of the Minister in pursuance of sub-section (2.) or (5.) of this section shall be notified in the *Gazette*.

(7.) In this section "unmanufactured raw materials" means natural and primary products which have not been subjected to any industrial processes except the ordinary processes of primary production, as, for example, animals (including parts obtained in the killing thereof, for instance, bones, hides and skins, raw or sun dried), minerals in their natural state, ores, plants (including parts of plants as, for example, barks, fruits, nuts, grain or seeds, in their natural state), unwrought logs, crude petroleum, greasy wool, raw cotton and other natural and primary products.

(8.) Where, in the application of this section, any question arises—

(*a*) as to whether a material is an unmanufactured raw material; or

(*b*) as to the country of production or manufacture of any goods,

the question shall be determined by the Minister and his decision thereon shall be final.

(9.) Notwithstanding anything contained in this section, the Minister may admit, as the produce or manufacture of the United Kingdom, any cinematograph film which is, under any law of the United Kingdom relating to the registration of cinematograph films, certified by the Board of Trade of the United Kingdom to be registered as a British film.

Added by No. 85, 1936, s. 2.

(10.) In this section, " Intermediate Tariff " means the rates of duty set out in the column headed " Intermediate Tariff " in the schedule to any Act imposing duties of Customs, in respect of goods in relation to which the expression is used.

Conditions relating to application of Intermediate Tariff.

Inserted by No. 85, 1936, s. 3.

151B.—(1.) Where the Governor-General, in pursuance of any power conferred by any other Act, by proclamation declares that the Intermediate Tariff shall apply to such goods specified in the proclamation as are the produce or manufacture of the country specified in the proclamation, those goods shall be deemed to be the produce or manufacture of that country if they are produced or manufactured as prescribed or if such conditions as are prescribed are complied with in respect of those goods, and they are not goods to which, by reason of their compliance with the conditions prescribed by this Act or otherwise for the application of rates of duty lower than the Intermediate Tariff, such lower rates of duty apply.

(2.) In this section, " Intermediate Tariff " means the rates of duty set out in the column headed " Intermediate Tariff " in the schedule to any Act imposing duties of Customs, in respect of goods in relation to which the expression is used.

Alteration of agreements where duty altered.

Amended by No. 56, 1950, s. 4.

152. If after any agreement is made for the sale or delivery of goods duty paid any alteration takes place in the duty collected affecting such goods before they are entered for home consumption, or for export, as the case may be, then in the absence of express written provision to the contrary the agreement shall be altered as follows:—

(*a*) In the event of the alteration being a new or increased duty the seller after payment of the new or increased duty may add the difference caused by the alteration to the agreed price.

(*b*) In the event of the alteration being the abolition or reduction of duty the purchaser may deduct the difference caused by the alteration from the agreed price.

(*c*) Any refund or payment of increased duty resulting from the alteration not being finally adopted shall be allowed between the parties as the case may require.

153. All duties shall constitute Crown debts charged upon the goods in respect of which the same are payable and payable by the owner of the goods and recoverable at any time in any court of competent jurisdiction by proceedings in the name of the Collector.

Recovery of duties.

Division 2.—Ad Valorem Duties.

153A. The provisions of this Division relating to value for duty apply to the value for duty of imported goods.

Application of Division.

Inserted by No. 56, 1950, s. 5.

154.—(1.) When any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction, or

(ii) the current domestic value of the goods, whichever is the higher; and

(*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

Value for duty, how ascertained.

Substituted by No. 19, 1922, s. 2.

Sub-section (1.) amended by No. 54, 1947, s. 4.

(2.) In the case of goods consigned for sale in Australia the value for duty shall be the amount which would be the value for duty if the goods were at date of exportation sold to an Australian importer instead of being consigned for sale in Australia.

(3.) In this section—

"Current domestic value" means the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of those goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country; and

" Special deduction " means any discount or other deduction allowed to the Australian importer which would not ordinarily have been allowed to any and every purchaser at the date of exportation of an equal quantity of identically similar goods.

Production of genuine invoice. Substituted by No. 19, 1922, s. 3.

155.—(1.) When entry is made of goods upon which duty is imposed according to value, the owner shall deliver to the Collector with the entry the genuine invoice for the goods and shall make, in the presence of the Collector, a declaration in the prescribed form.

(2.) The invoice produced shall be stamped by the Collector with the Customs stamp, and shall be again produced when required prior to the delivery of the goods for home consumption or for warehousing.

(3.) The absence from an invoice of the Customs stamp shall be *prima facie* evidence that the invoice was not so delivered or produced.

(4.) If the Collector is satisfied—

(*a*) that no genuine invoice has been issued for the goods; or

(*b*) that the genuine invoice for the goods cannot be produced,

he may, upon receipt of evidence to his satisfaction of the value for duty of the goods, dispense with the production of the genuine invoice.

Meaning of genuine invoice. Substituted by No. 19, 1922, s. 4.

156.—(1.) The " genuine invoice " means the original invoice, in the prescribed form, prepared and issued by the seller in the country whence the goods were exported, showing *inter alia* the true description of the goods, the country of their origin, the actual money price paid or to be paid for the goods by the Australian importer and the current domestic value as defined in section one hundred and fifty-four of this Act, and complying with the provisions of the next succeeding sub-section.

(2.) If in arriving at the actual money price paid or to be paid allowance has been made in respect of any special deduction, as defined in section one hundred and fifty-four of this Act, there shall be indicated on the genuine invoice the nature and amount of that deduction.

(3.) In the case of goods consigned for sale in Australia the " genuine invoice " means a document in all respects complying with the requirements of the foregoing sub-sections of this section and the particulars to be shown in that invoice are those which would be required if the goods were sold to an Australian importer instead of being consigned for sale in Australia.

Plaintiff's Exhibit No. 67

Value for duty to be in Australian currency.
Substituted by No. 54, 1947, s. 5.

157.—(1.) Where any amount which is, under any other provision of this Act, required to be taken into account for the purpose of ascertaining the value for duty of any goods is not an amount in Australian currency, the amount to be so taken into account shall be the equivalent in Australian currency of that amount, ascertained according to a fair rate of exchange at the date of exportation of the goods.

(2.) For the purposes of this section, the Minister may, where he considers it desirable so to do for the avoidance of doubt, specify, by notice published in the *Gazette*, a rate which is to be deemed to be, or to have been, a fair rate of exchange in relation to any currency—

(*a*) on a date, or during a period, preceding the date of publication of the notice; or

(*b*) from the date of publication of the notice, or an earlier date specified in the notice, until the revocation of the notice.

(3.) The rate of exchange specified in relation to any currency in pursuance of the last preceding sub-section shall, in relation to the value for duty of any goods exported on the date or during the period to which the rate so specified applies, be the rate of exchange which shall be applied for the purposes of sub-section (1.) of this section in respect of the currency specified in the notice.

(4.) In any case in which the rate of exchange to be applied is not ascertained by virtue of the last preceding sub-section, and in which doubt exists as to that rate, the Minister may specify a fair rate of exchange to be applied for the purposes of the particular case.

* * * * * *

Sections 157A-157F inserted by No. 41, 1920, s. 4; repealed by No. 12, 1923, s. 3.

Value may be assessed.

158. Whenever the Collector has a doubt as to the accuracy of the declared value of dutiable goods he may detain such goods and assess the value thereof.

Should the owner object to the value so assessed he may request that the value may be ascertained by experts in manner prescribed.

Should the owner refuse to pay the duty as assessed by the Collector or ascertained by experts the Collector may sell the goods.

The provisions of this section shall not apply in cases where the Minister is of opinion that any evasion of this Act has been committed or attempted.

Blank invoices.

159. No person shall send or bring into Australia or have in his possession without reasonable excuse any blank or partly blank invoice form capable of being filled up and used as a genuine invoice.

Penalty: One hundred pounds.

Minister to determine value in some cases.

160. Whenever it is difficult to determine the value of goods for duty, either because the goods are not sold for use or consumption in the country of production or because a lease of the goods or the right of using the same is sold or given but not the right of property therein, or because the goods have a royalty imposed thereon and the royalty is uncertain or is not a reliable means of estimating the value of the goods, or because the goods are usually or exclusively sold by or to agents or by subscription or are sold or imported in or under any other unusual or peculiar manner or conditions (of all which matters the Minister shall be judge) the Minister may determine the value for duty of the goods.

Customs may take goods on paying the declared value plus 10 per cent.

161.—(1.) For the protection of the revenue against the under-valuation of goods subject to *ad valorem* duties any goods entered as of a specified value may at any time before sale and delivery to a person who shall prove to the satisfaction of the Collector that he purchased and took delivery in good faith and without any knowledge of the entry and subject as may be prescribed be purchased by the Customs at their declared value with an addition of Ten pounds per centum on the amount of such value.

(2.) The purchase shall be effected by the seizure of the goods by an officer and written notice of the seizure given to the owner.

(3.) The officer shall remove the goods to a warehouse or some place of security, and the owner shall thereupon be entitled to the purchase money.

(4.) The goods shall become the property of the King immediately on seizure, and shall afterwards be disposed of as may be prescribed or as the Collector may direct.

(5.) A refund in whole or in part of any duty paid on the goods may be made by the Collector.

(6.) This section shall not limit or restrict any other power possessed by the Customs relating to the goods.

Division 3.—Deposits, Abatements, Remissions, and Refunds of Duties.

Delivery of goods upon giving of security or undertaking for payment of duty.

Substituted by No. 108, 1952, s. 12.

162.—(1.) Where goods the property of a person included in a prescribed class of persons are imported or a person imports goods included in a prescribed class or goods intended for a prescribed purpose and intends to export those goods, the Collector may grant to the person importing the goods permission to

Minister may determine differences.

269. Any matter of difference arising under this Act, or in relation to the Customs, and not involving a contravention of this Act, may, at the request of the parties interested, be referred to the Minister for decision, and thereupon the Minister may in such manner as he shall think fit inform his mind of the circumstances, and finally decide the difference.

PART XVI.—REGULATIONS AND BY-LAWS.

Heading amended by No. 108, 1952, s. 18.

Regulations to have force of law.

Sub-section (1.) amended by No. 36, 1910, s. 15; and No. 12, 1923, s. 36.

270.—(1.) The Governor-General may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Customs, and in particular for prescribing—

(*a*) the nature, size, and material of the packages in which imported goods or goods for export, or goods for conveyance coastwise from any State to any other State, are to be packed, or the coverings in which they are to be wrapped;

(*b*) the maximum or minimum weight or quantity of imported goods, or goods for export, or goods for conveyance coastwise from any State to any other State which may be contained in any one package;

(*c*) the conditions of preparation or manufacture for export of any articles used for food or drink by man or used in the manufacture of articles used for food or drink by man;

(*d*) the conditions as to purity, soundness, and freedom from disease to be conformed to by goods for export; and

(*e*) the conditions of carriage of goods subject to the control of the Customs, and the obligations of persons accepting such goods for carriage.

Added by No. 36, 1910, s. 15.

(2.) The regulations may prescribe penalties not exceeding Fifty pounds in respect of any contravention of any of the regulations.

Minister may make by-laws.

Substituted by No. 47, 1953, s. 6.

271. Where—

(*a*) an item of a Customs Tariff, or a proposed item of a Customs Tariff, is expressed to apply to goods, or to a class or kind of goods, as prescribed by departmental by-laws; or

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 62
C. A. No.
59-C-1847

STATUTORY RULES.

1939. No. 163.

REGULATIONS UNDER THE CUSTOMS ACT 1901-1936.*

I, THE GOVERNOR-GENERAL, in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Customs Act* 1901-1936.

Dated this twenty-ninth day of November, 1939.

GOWRIE
Governor-General.

By His Excellency's Command,

JOHN N. LAWSON
Minister of State for Trade and Customs.

Customs (Import Licensing) Regulations.

Short title.

1. These Regulations may be cited as the Customs (Import Licensing) Regulations.

Definitions.

2. In these Regulations, unless the contrary intention appears—

"licence" means a licence granted in pursuance of these Regulations;

"licensing officer" means an officer authorized by the Minister to act as a licensing officer for the purpose of these Regulations.

Prohibition of imports.

3. The importation of any goods shall be prohibited unless—

(*a*) a licence to import the goods is in force and the terms and conditions (if any) to which the licence is subject are complied with; or

(*b*) the goods are excepted from the application of these Regulations.

Application of Regulations.

4. These Regulations shall apply with respect to the importation of any goods notwithstanding that a licence or other authority for the importation of the goods is in force under the provisions of any other law.

Saving of other laws.

5. The grant of a licence under these Regulations with respect to any goods or the exception of any goods from the application of these Regulations shall not absolve any person from the obligation to comply with the provisions of any other law relating to the importation of goods.

Applications for licences.

6.—(1.) Any person desiring to import goods not excepted from the application of these Regulations shall make application in accordance with such form as the Minister directs for a licence to import the goods.

---

* Notified in the *Commonwealth Gazette* on 1st December, 1939.

2307/56.—Price 3d.

(2.) The application shall be delivered, in such manner as the Minister directs, to the Collector at the port at which it is proposed to import the goods:

Provided that where the Minister so directs the application shall be delivered to the Comptroller-General of Customs.

Licence not to be applied for unless goods ordered.

7. A person shall not, except where the Minister otherwise approves, apply for a licence to import any goods unless he intends forthwith to give, to the overseas supplier, firm directions for the exportation to Australia of all the goods (other than goods so exported at the date of the grant of the licence).

Notification of directions for exportation to Australia.

8.—(1.) Any person to whom a licence is granted shall, except insofar as the Minister otherwise directs—

(*a*) if firm directions for the exportation, to Australia, of all of the goods to which the licence relates (other than goods so exported at the date of the grant of the licence) are not despatched to the overseas supplier within one month after that date;

(*b*) if any firm directions so despatched are countermanded; or

(*c*) if all the goods are not imported within the time specified in the licence,

notify the Collector in writing accordingly.

(2.) In the last preceding sub-regulation the term "Collector" means the Collector at the port at which the licence was granted.

Additional information.

9. Every applicant for a licence shall supply to a licensing officer such information additional to that required in accordance with the form of application as the licensing officer requires.

Licences.

10. The Minister may grant a licence in respect of all the goods included in an application made in accordance with these Regulations or in respect of part only of such goods or may refuse to grant a licence.

Terms and conditions of licences.

11.—(1.) The Minister may grant any licence subject to such terms and conditions as he approves or determines.

(2.) The Minister may vary or modify the terms and conditions of any licence and may order that a licence granted free from terms and conditions shall be subject to such terms and conditions as he determines.

Revocation of licences.

12. The Minister may revoke any licence.

Licences not transferable.

13. A licence shall not be transferable.

Delegation.

14.—(1.) The Minister may, by writing under his hand, delegate to any licensing officer all or any of his powers of granting, refusing to grant and revoking licences and of approving, determining, varying and modifying the terms and conditions of licences, so that the delegated powers may be exercised by the delegate.

(2.) An appeal shall lie to the Minister from any decision of a licensing officer in pursuance of any power delegated to him by the Minister.

(3.) The decision of the Minister in any such appeal shall be final.

(4.) Every delegation under this regulation shall be revocable at will, and no delegation shall prevent the exercise of any power by the Minister.

15.—(1.) The Minister may except from the application of these Regulations any goods or any classes of goods. Exceptions.

(2.) Without prejudice to the generality of sub-regulation (1.) of this regulation, the exception of any goods from the application of these Regulations may be limited to—

- (*a*) goods produced or manufactured in any particular country or countries specified by the Minister;
- (*b*) any goods to be imported in a manner, or at or within a time, specified by the Minister;
- (*c*) any goods to be used for a particular purpose specified by the Minister.

(3.) The Minister may vary or revoke any exception made in pursuance of this regulation.

16.—(1.) Before any licence is granted the applicant for the licence shall, if required so to do by the licensing officer, give security that he will order and import the goods in accordance with the particulars contained in the application, and will comply with the terms and conditions (if any) to which the licence is subject and with the requirements of these Regulations. Security.

(2.) Any security given in respect of a licence shall, unless the licensing officer otherwise determines, be for a sum equal to twice the estimated value of the goods to which the licence relates.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 69
C. A. No. 59-C-1817

STATUTORY RULES.

1956. No. 93.

REGULATIONS UNDER THE CUSTOMS ACT 1901-1954.*

I, THE GOVERNOR-GENERAL, in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Customs Act* 1901-1954.

Dated this fourteenth day of December, 1956.

W. J. SLIM
Governor-General.

By His Excellency's Command,
DENHAM HENTY
Minister of State for Customs and Excise.

CUSTOMS (IMPORT LICENSING) REGULATIONS.

1. These Regulations may be cited as the Customs (Import Licensing) Regulations. Citation.

2. The Customs (Import Licensing) Regulations, being Statutory Rules 1939, No. 163, are repealed. Repeal.

3.—(1.) A licence which was granted under the Regulations repealed by the last preceding regulation and was in force immediately before the commencement of these Regulations, shall be deemed to be a licence granted under these Regulations and the conditions and requirements, or the conditions or requirements, to which the licence was subject shall be deemed to be the conditions and requirements, or the conditions or requirements, as the case may be, to which the licence is subject under these Regulations. Licences granted, and applications and exceptions made, before commencement of these Regulations.

(2.) An application for a licence under the Regulations repealed by the last preceding regulation which has not been granted or refused before the commencement of these Regulations shall be deemed to have been made under these Regulations.

(3.) Where any goods were, immediately before the commencement of these Regulations, excepted from the application of the Regulations repealed by regulation 2 of these Regulations, those goods shall, subject to sub-regulation (3.) of regulation 17 of these Regulations, be deemed to be excepted from the application of these Regulations.

---

* Notified in the *Commonwealth Gazette* on 14th December, 1956.

3356/57.—Price 3d.

Definitions.

4. In these Regulations, unless the contrary intention appears—

"licence" means a licence granted or deemed to have been granted under these Regulations which is in force;

"licensing officer" means an officer authorized by the Minister to act as a licensing officer for the purposes of these Regulations.

Application of Regulations.

5.—(1.) The provisions of these Regulations are in addition to the provisions of any other law of the Commonwealth relating to the importation of goods into Australia.

(2.) The grant of a licence under these Regulations to import goods into Australia or the exception of goods from the application of these Regulations shall not absolve a person from the obligation to comply with any other law relating to the importation of those goods.

Delegation.

6.—(1.) The Minister may, in relation to a matter or a class of matters, or to a State or part of the Commonwealth, by writing under his hand, delegate to a licensing officer any of his powers and functions under these Regulations (except this power of delegation).

(2.) A power or function so delegated may be exercised or performed by the delegate with respect to the matter or to the matters included in a class of matters, or with respect to the State or part of the Commonwealth specified in the instrument of delegation.

(3.) A delegation under this regulation is revocable at will and does not prevent the exercise of a power or the performance of a function by the Minister.

Prohibition of the importation of goods.

7. The importation of any goods (not being goods which are excepted from the application of these Regulations) is prohibited unless—

(*a*) a licence under these Regulations to import the goods is in force; and

(*b*) the conditions and restrictions (if any) to which the licence is subject are complied with.

Application for licence.

8.—(1.) An application for a licence under these Regulations shall be in accordance with such form as the Minister directs.

(2.) The application shall be delivered, in such manner as the Minister directs, to the Collector at the port at which it is proposed to import the goods.

Licence not to be applied for unless goods ordered.

9. Except—

(*a*) where the Minister otherwise approves; or

(*b*) where goods in respect of which the licence is applied for have been exported at the date of the application for the licence,

a person shall not apply for a licence to import any goods unless he intends forthwith after the grant of the licence to give to the overseas supplier firm directions for the exportation to Australia of the goods.

Additional information.

10. An applicant for a licence shall supply to a licensing officer such information additional to that required to be supplied in the form of application as the licensing officer requires.

Grant of licence.

11. The Minister may—

(*a*) grant a licence in respect of all the goods included in an application for a licence;

(*b*) grant a licence in respect of part only of the goods so included; or

(*c*) refuse to grant a licence.

Conditions of licences.

12.—(1.) The Minister may grant a licence subject to such conditions or requirements to be complied with by the person to whom the licence is granted, either before or after the importation of the goods in respect of which the licence is granted, as are specified in the licence.

(2.) After the grant of a licence under these Regulations, the Minister, may by notice in writing—

(*a*) where the licence was granted subject to conditions and requirements or conditions or requirements—

(i) vary any or all of those conditions or requirements, or

(ii) direct that the licence be subject to conditions or requirements additional to those conditions or requirements; or

(*b*) where the licence was granted without being subject to conditions or requirements—direct that the licence be subject to specified conditions or requirements,

and the conditions or requirements as so altered or directed are the conditions or requirements to which the licence is subject.

(3.) A copy of a notice under the last preceding sub-regulation shall be served on the person to whom the licence has been granted.

Notification of directions for exportation to Australia.

13.—(1.) A person to whom a licence is granted shall, except insofar as the Minister otherwise directs—

(*a*) if the firm directions for the exportation to Australia of all of the goods to which the licence relates (other than goods so exported at the date of the grant of the licence) are not despatched to the overseas supplier within one month after that date;

(*b*) if firm directions so despatched are countermanded; or

(*c*) if all the goods are not imported within the time (if any) specified in the licence,

notify the Collector to whom the application for the licence was made in writing accordingly.

(2.) Where a person fails to comply with the last preceding sub-regulation, the licence shall, by force of this sub-regulation, be deemed to have been revoked.

Security.

14. Where a licensing officer so requires, the grant or the continuance in force of a licence shall be subject to the condition that the applicant for, or the holder of, the licence furnishes to the Customs security, in such sum as the licensing officer considers sufficient, for compliance with the *Customs Act* 1901-1954 and for compliance with the conditions or requirements to which the licence is subject.

Revocation of licence.

15. The Minister may revoke a licence.

Licence not transferable.

16. A licence is not transferable.

Exceptions of goods from application of Regulations.

17.—(1.) The Minister may except from the application of these Regulations any goods or any goods included in a class of goods.

(2.) Without limiting the generality of the last preceding sub-regulation, the exception of any goods from the application of these Regulations may be limited to—

(*a*) goods produced or manufactured in a country or countries specified by the Minister;

(*b*) goods to be imported in a manner, or at or within a time, specified by the Minister; or

(*c*) goods to be used for a purpose specified by the Minister.

(3.) The Minister may vary or revoke an exception made in pursuance of this regulation.

Review of decisions by the Minister.

18. A person who is dissatified with a decision of a licensing officer given in the exercise of a power which has been delegated to him under these Regulations by the Minister may request the Minister to review the decision, and, upon such a request being made, the Minister may affirm, vary or revoke the decision.

Decision of the Minister to be final.

19. The decision of the Minister on a matter arising under these Regulations is final.

By Authority: A. J. ARTHUR, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 70
C. A. No. 59 C 1347

THE COMMONWEALTH OF AUSTRALIA.

RJC

CUSTOMS TARIFF 1933-1958.*

An Act relating to Duties of Customs.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Customs Tariff* 1933–1958.* **Short title.** **Short title amended; No. 32, 1918, s. 2.**

2. The *Customs Act* 1901–1930 shall be incorporated and read as one with this Act. **Incorporation.**

---

* The *Customs Tariff* 1933–1958 comprises the *Customs Tariff* 1933, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
Customs Tariff 1933	1933, No. 27	4th December, 1933 ..	14th October, 1932
Customs Tariff (No. 2) 1933 ..	1933, No. 31	5th December, 1933 ..	5th October, 1933
Customs Tariff 1936	1936, No. 14	27th May, 1936 ..	29th November, 1935
Customs Tariff (No. 2) 1936 ..	1936, No. 68	5th December, 1936 ..	23rd May, 1936
Customs Tariff (No. 3) 1936 ..	1936, No. 76	7th December, 1936 ..	1st January, 1937 (*See Gazette*, 1936, p. 2278)
Customs Tariff (No. 4) 1936 ..	1936, No. 80	7th December, 1936 ..	1st January, 1937 (*See Gazette*, 1936, p. 2278)
Customs Tariff 1938	1938, No. 3	6th June, 1938 ..	9th December, 1937
Customs Tariff (No. 2) 1938 ..	1938, No. 67	10th December, 1938 ..	18th November, 1938
Customs Tariff (No. 3) 1938 ..	1938, No. 68	10th December, 1938 ..	22nd September, 1938
Customs Tariff (No. 4) 1938 ..	1938, No. 69	10th December, 1938 ..	30th December, 1938 (*See Gazette*, 1938, p. 2838)
Customs Tariff 1939	1939, No. 2	20th May, 1939 ..	8th December, 1938
Customs Tariff (No. 2) 1939 ..	1939, No. 28	26th September, 1939	4th May, 1939
Customs Tariff (No. 3) 1939 ..	1939, No. 53	15th December, 1939 ..	9th September, 1939
Customs Tariff (No. 4) 1939 ..	1939, No. 56	15th December, 1939 ..	15th September, 1939
Customs Tariff (No. 5) 1939 ..	1939, No. 59	15th December, 1939 ..	23rd September, 1939
Customs Tariff (No. 6) 1939 ..	1939, No. 62	15th December, 1939 ..	1st January, 1940 (*See Gazette*, 1939, p. 2773)
Customs Tariff (No. 7) 1939 ..	1939, No. 64	15th December, 1939 ..	1st December, 1939
Customs Tariff 1948	1948, No. 1	27th April, 1948 ..	15th November, 1946
Customs Tariff (No. 2) 1948 ..	1948, No. 5	27th April, 1948 ..	15th November, 1947
Customs Tariff (No. 3) 1948 ..	1948, No. 9	27th April, 1948 ..	19th November, 1947
Customs Tariff (No. 4) 1948 ..	1948, No. 12	27th April, 1948 ..	19th February, 1948
Customs Tariff (No. 5) 1948 ..	1948, No. 92	21st December, 1948 ..	9th September, 1948
Customs Tariff 1949	1949, No. 76	28th October, 1949 ..	8th September, 1949
Customs Tariff (No. 2) 1949 ..	1949, No. 79	28th October, 1949 ..	13th October, 1949
Customs Tariff 1950	1950, No. 22	11th November, 1950	12th May, 1950
Customs Tariff (No. 2) 1950 ..	1950, No. 32	7th December, 1950 ..	9th June, 1950
Customs Tariff (No. 3) 1950 ..	1950, No. 60	14th December, 1950 ..	27th October, 1950
Statute Law Revision Act 1950	1950, No. 80	16th December, 1950 ..	31st December, 1950
Customs Tariff 1952	1952, No. 82	6th November, 1952 ..	26th September, 1952
Customs Tariff 1953	1953, No. 76	10th December, 1953 ..	25th November, 1953
Customs Tariff 1954	1954, No. 3	20th April, 1954 ..	16th February, 1954
Customs Tariff (No. 2) 1954 ..	1954, No. 4	20th April, 1954 ..	7th April, 1954
Customs Tariff 1956	1956, No. 15	12th May, 1956 ..	15th March, 1956
Customs Tariff (No. 2) 1956 ..	1956, No. 58	13th September, 1956	17th May, 1956
Customs Tariff (No. 3) 1956 ..	1956, No. 62	13th September, 1956	14th June, 1956
Customs Tariff (No. 4) 1956 ..	1956, No. 86	8th November, 1956 ..	31st August, 1956
Customs Tariff 1957	1957, No. 53	20th November, 1957	23rd May, 1957
Customs Tariff (No. 2) 1957 ..	1957, No. 54	20th November, 1957	23rd May, 1957
Customs Tariff (No. 3) 1957 ..	1957, No. 81	12th December, 1957 ..	4th September, 1957
Customs Tariff (No. 4) 1957 ..	1957, No. 84	12th December, 1957 ..	18th October, 1957
Customs Tariff 1958	1958, No. 15	21st May, 1958 ..	21st March, 1958
Customs Tariff (No. 2) 1958 ..	1958, No. 20	21st May, 1958 ..	18th June, 1958

630/58.—Price 5s. 9d.

Definitions.
Amended by No. 79, 1949, s. 2; No. 80, 1950, s. 7; and No. 20, 1958, s.2.

3. In this Act, except where otherwise clearly intended—

"British non-self-governing colony" includes British Protectorates, the Trust Territory of Tanganyika and so much of the Trust Territory of the Cameroons as is administered by His Majesty's Government in the United Kingdom;

"item" includes portion of an item;

"proclaimed duty" means a duty which, in accordance with the Schedule, may commence on a date to be fixed by proclamation;

"the Schedule" means the Schedule to this Act;

"the Tariff Board" means the Tariff Board appointed in pursuance of the *Tariff Board Act* ~~1921–1929.~~

Headings of Divisions not to affect interpretation.

4. The headings of the respective Divisions in the Schedule are used solely for convenience of classification, and shall not in any way affect the interpretation of the Tariff.

Time of imposition of duties.

5.*—(1.) The time of the imposition of the Duties of Customs imposed by this Act, except in respect of items in the Schedule in respect of which a later date is specified, is the fourteenth day of October, One thousand nine hundred and thirty-two, at nine o'clock in the forenoon, reckoned according to standard time in the Territory for the Seat of Government, and this Act shall be deemed to have come into operation at that time.

(2.) The time of the imposition of the Duties of Customs imposed by this Act in respect of items in the Schedule in respect of which a date later than the fourteenth day of October, One thousand nine hundred and thirty-two is fixed, is the later date so fixed, at nine o'clock in the forenoon, reckoned according to standard time in the Territory for the Seat of Government.

Imposition of duties.

6. Each Duty of Customs specified in the Schedule in relation to an item contained therein, is hereby imposed in accordance with the Schedule as from such time as is specified in the last preceding section as the time of imposition of the Duty of Customs in respect of that item, and that duty shall be deemed to have been imposed at that time, and shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth on all goods, dutiable under that item in the Schedule, imported into Australia after the time when that duty is deemed to have been imposed, or before that time if not entered for home consumption until after that time.

---

* For the times of the imposition of Duties of Customs imposed by amending Acts, *see* Acts No. 31, 1933, s. 3; No. 14, 1936, s. 6; No. 68, 1936, s. 4; No. 76, 1936, s. 3; No. 80, 1936, s. 3; No. 3, 1938, s. 3; No. 67, 1938, s. 4; No. 68, 1938, s. 3; No. 69, 1938, s. 3; No. 2, 1939, s. 3; No. 28, 1939, s. 3; No. 53, 1939, s. 3; No. 56, 1939, s. 3; No. 59, 1939, s. 3; No. 62, 1939, s. 3; No. 64, 1939, s. 3; No. 1, 1948, s. 3; No. 5, 1948, ss. 3 and 4; No 9, 1948, s. 3; No. 12, 1948, s. 3; No. 92, 1948, s. 3; No. 76, 1949, s. 3; No. 79, 1949, s. 5; No. 22, 1950, s. 3; No. 32, 1950, s. 3; No. 60, 1950, s. 3; No. 82, 1952, s. 3; No. 76, 1953, s. 3; No. 3, 1954, s. 3; No. 4, 1954, s. 3; No. 15, 1956, s. 3; No. 58, 1956, s. 3; No. 62, 1956, s. 3; No. 86, 1956, s. 3; No. 53, 1957, s. 3; No. 54, 1957, s. 3; No. 81, 1957, s. 3; No. 84, 1957, s. 3; and No. 15, 1958, s. 3.

* * * * * * * *

Section 7 repealed by No. 80, 1958, s. 7.

Application of British Preferential Tariff to United Kingdom.

8.—(1.) The rates of duty set out in the Schedule, in the column headed "British Preferential Tariff", shall, subject to this section, apply to goods the produce or manufacture of the United Kingdom.

(2.) The rates of duty set out in the Schedule, in the column headed "British Preferential Tariff", shall not apply to any goods unless the goods—

(*a*) comply with the laws and statutory regulations for the time being in force affecting the grant of British preference; and

(*b*) have been shipped in the United Kingdom to Australia, and have not been transhipped, or, unless, if the goods are transhipped, it is proved to the satisfaction of the Collector that the intended destination of the goods, when originally shipped from the United Kingdom, was Australia.

Application of British Preferential Tariff to certain British countries.

Substituted by No. 20, 1958, s. 3.

9.*—(1.) The Minister may, by order published in the *Gazette*, declare that, from a specified time and date, the rate of duty set out in the column headed "British Preferential Tariff" in the Schedule, or in the Schedule as proposed to be amended by a Customs Tariff alteration proposed in the Parliament, in relation to a specified item in the Schedule, or in the Schedule as so proposed to be amended, as the case may be, shall apply to goods, or to specified goods, included in that item that are the produce or manufacture of—

(*a*) a specified British non-self-governing colony; or

(*b*) a specified part of the Queen's dominions, being a place that was, on the fifteenth day of October, One thousand nine hundred and forty-six, a British non-self-governing colony.

(2.) The Minister shall not make an order under this section that would have the effect of applying the rate of duty set out in the column headed "British Preferential Tariff" in the Schedule in relation to sub-item (A) of item 52 in the Schedule to bananas the produce of a country other than Fiji.

Application of Intermediate Tariff.

Substituted by No. 20, 1958, s. 3.

9A.* The Minister may, by order published in the *Gazette*, declare that, from a specified time and date, the rate of duty set out in the column headed "Intermediate Tariff" in the

---

* Section 5 of the *Customs Tariff* (No. 2) 1958 reads as follows :—

"5. A Proclamation made under, or having effect for the purposes of, section nine or nine A of the Principal Act, or a Proclamation made under Customs Tariff Proposals introduced into the House of Representatives applying rates of duty set out in the column headed 'British Preferential Tariff' or 'Intermediate Tariff' in the Schedule to those Proposals, being a Proclamation in force immediately before the commencement of this Act, continues in force, subject to section nine B of the Principal Act as amended by this Act, as if the Proclamation were an order made by the Minister under the Principal Act as amended by this Act."

Schedule, or in the Schedule as proposed to be amended by a Customs Tariff alteration proposed in the Parliament, in relation to a specified item in the Schedule, or in the Schedule as so proposed to be amended, as the case may be, shall apply to goods, or to specified goods, included in that item that are the produce or manufacture of a specified country.

Orders under sections 9 and 9A.
Inserted by No. 20, 1958, s. 3.

9B.—(1.) Subject to the next succeeding sub-section, an order under either of the last two preceding sections has effect according to its tenor.

(2.) Where an order under either of the last two preceding sections specifies—

(*a*) an item that, by a Customs Tariff alteration proposed in the Parliament, is proposed to be inserted in the Schedule, either in lieu of an item in the Schedule or otherwise; or

(*b*) an item in the Schedule that, by such a Customs Tariff alteration, is proposed to be amended,

the order, in relation to that item, shall, if the Schedule is amended by the insertion or amendment, as the case may be, of that item, have effect, and be deemed to have so had effect from the time and date specified in the order, for the purposes of the Schedule as so amended, but shall not otherwise have effect in relation to that item.

(3.) The Minister may, by order published in the *Gazette*, vary, from a specified time and date, an order under either of the last two preceding sections (including such an order as varied by order under this section), and an order so varied has effect as varied, and, in the case of an order to which the last preceding sub-section applies, shall be deemed to have had effect as varied, from the time and date so specified.

(4.) The Minister may, by order published in the *Gazette*, revoke, from a specified time and date, an order under either of the last two preceding sections or under the last preceding sub-section, and an order so revoked ceases to have effect, and, in the case of an order to which sub-section (2.) of this section applies, shall be deemed to have ceased to have had effect, from the time and date so specified.

(5.) The date specified in an order under this Act shall be a date not earlier than the date on which the order is published in the *Gazette*.

(6.) Orders under this Act shall not be deemed to be Statutory Rules within the meaning of the *Rules Publication Act* 1903-1939.

(7.) The provisions of sections forty-eight and forty-nine of the *Acts Interpretation Act* 1901-1957 (other than paragraphs (*a*) and (*b*) of sub-section (1.), sub-section (2.) and sub-section (6.) of that first-mentioned section) apply, by force of this section, to an order under this Act in like manner as those provisions apply to a regulation.

(8.) Where an order under this Act is disallowed, or is deemed to have been disallowed, under a provision of the *Acts Interpretation Act* 1901-1957 as applied by the last preceding sub-section, the disallowance of the order has effect as if that order had been revoked by an order under sub-section (4.) of this section from the time and the date of the disallowance.

Power to fix a date for proclaimed duty.

10.—(1.) The Governor-General may by proclamation fix a date as the date on which a proclaimed duty shall commence.

(2.) Any proclamation issued prior to the commencement of this Act, in accordance with the Tariff, fixing a date on which any duty shall commence shall be deemed to have been lawfully issued.

Application of General Tariff.
Substituted by No. 14, 1936, s. 3.

11. The rates of duty set out in the Schedule to this Act, in the column headed " General Tariff ", shall apply to all goods to which the rates set out in neither the column headed " British Preferential Tariff " nor the column headed " Intermediate Tariff " apply.

Deferred duties.
Sub-section (1.) substituted by No. 20, 1958, s. 4.

12.—(1.) Where a deferred duty on any goods is provided in the Schedule, the question whether the deferred duty should or should not operate on and after the date to which it has been deferred shall be referred to the Tariff Board in accordance with the *Tariff Board Act* 1921–1958 for inquiry and report.

(2.) In making its inquiry and report the Board shall consider whether the goods in respect of which the deferred duty is provided are being made or produced in Australia or will be so made or produced on, or immediately after, the date to which the duty has been deferred—

(*a*) in reasonable quantities;

(*b*) of satisfactory quality; and

(*c*) at a reasonable price having regard, among other things, to the probable economic effect of the imposition of the deferred duty upon other industries concerned, and upon the community in general.

Amended by No. 20, 1958, s. 4.

(3.) The Minister may, upon the making by the Tariff Board of its report in respect of the deferred duty, by notice published in the *Gazette* defer the duty to such date as is specified in the notice, and may so act in respect of all, or any portion of, the goods, specified in the notice, in respect of which a deferred duty is provided.

Substituted by No. 20, 1958, s. 4.

(4.) Where the duty on any goods has been deferred by the Minister, the question whether the duty should or should not operate on and after the date to which it has been deferred shall, before that date, be referred to the Tariff Board in accordance with the *Tariff Board Act* 1921–1958 for inquiry and report and, upon the making by the Tariff Board of its report, the Minister may, by notice published in the *Gazette*, again defer the duty to such date as is specified in the notice.

(5.) In this section "deferred duty" means a duty which, in relation to any goods, is expressly described in the Schedule as a deferred duty.

Sections 13, 14, 15 and 16 repealed by No. 80, 1950, s. 7.

* * * * * * * *

Saving.

17. Nothing in this Act shall affect the operation of the *Customs Tariff* (*New Zealand Preference*) 1922–1926, the *Customs Tariff* (*New Zealand Preference*) 1922 (No. 2), the *Customs Tariff* (*Papua and New Guinea Preference*) 1926, the *Customs Tariff* (*New Zealand Preference*) 1928 or the *Customs Tariff* (*Canadian Preference*) 1931.*

THE SCHEDULE.†

THE CUSTOMS TARIFF.

(1) All imitations to be dutiable at the rate chargeable on the goods they imitate, unless such rate is less than the rate which would otherwise be chargeable on the imitations.

(2) "Proof" or "Proof Spirit" means spirit and gazetted substitutes therefor of a strength equal or equivalent to that of pure ethyl alcohol compounded with distilled water so that the resultant mixture at a temperature of 60 degrees Fahrenheit has a specific gravity of 0.91976 as compared with that of distilled water at the same temperature.

---

* Section 4 of the *Customs Tariff* (*No.* 2) 1933 reads as follows:—
"4. Nothing in this Act shall affect the operation of the *Customs Tariff* (*New Zealand Preference*) 1922–1926, the *Customs Tariff* (*New Zealand Preference*) 1922 (No. 2) or any Acts amending or in substitution for those Acts."

† The Schedule has been amended by each of the Acts specified in the table at the foot of page 1 except the *Customs Tariff* (*No.* 2) 1958.

THE SCHEDULE.—*continued.*

(3) The term "Iron" includes Steel.

(4) Unless otherwise expressly provided for in the Tariff, goods manufactured from hair or containing hair shall be dutiable under the Tariff Item which would be applicable to those goods had they been manufactured from wool or contained wool.

(5) "N.E.I." means "not elsewhere included".

(6) "Departmental By-law" means By-law made by the Minister, and published in the *Gazette*.

(7) Unless the Tariff otherwise provides or the Minister otherwise directs, any goods composed of two or more materials shall be deemed for the purpose of classification to be composed wholly of the material of chief value in the goods, provided that when the respective materials are of equal value the goods shall be deemed for the aforesaid purpose to be composed wholly of the material that would make the goods liable to the higher or highest rate of duty.

(8) Whenever any goods are composed of two or more separate parts any part though imported by itself shall, if so directed by the Minister, be dealt with under the item applicable to the complete goods.

(9) "Non-spirituous" means free from spirit or containing not more than two per cent. of proof spirit.

(10) "Spirituous" means containing more than two per cent. of proof spirit.

(11) Whenever goods are composed of two or more separate articles, even though such articles are specifically mentioned in the Tariff, the Minister may classify the goods under such item or items as he directs.

(12) (*a*) Mechanical driving units and apparatus for transmitting power from such driving units to the driven units, when incorporated in or forming part of machines, machinery or machine tools, shall not, unless the Tariff specifically so directs, be dutiable under the Tariff Item applicable to the machines, machinery or machine tools in which they are incorporated or of which they form a part, but shall be dutiable under the Tariff Item or Tariff Items applicable respectively to similar mechanical driving units and to similar apparatus for transmitting power from such driving units to the driven units, when not incorporated in or forming part of machines, machinery or machine tools.

(*b*) Nothing in the last preceding paragraph shall apply to mechanical driving units or to apparatus for transmitting power from such driving units to the driven units, when incorporated in or forming part of machines, machinery or machine tools to which the Minister directs, by notice published in the *Gazette*, that it shall not apply.

(*c*) For the purposes of the last two preceding paragraphs, the expression "mechanical driving units" means any apparatus or appliance producing motive power and operated by means of steam, oil, electricity, petrol, air, water, alcohol or any other liquid or gas, and includes all devices for regulating starting or controlling such mechanical driving units, whether such devices be incorporated in or form part of the mechanical driving units or the driven units.

(13) Unless the Tariff otherwise expressly provides, or the Minister otherwise directs, the term "artificial silk" shall include synthetic fibres made from substances having either a cellulosic or protein base and synthetic fibres made from substances produced by either or both of the chemical processes known as polymerisation and condensation.

THE SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
179.—*continued.*			
(E) Electric Fittings not containing metal to be dutiable according to material.			
(F) Magnetos, viz.:—			
(1) Single cylinder (other than the rotating armature type fitted with variable timing mechanism, the flywheel type or the trip type) - - ad val.	15 per cent.	27½ per cent.	32½ per cent.
(2) Other - - - - ad val.	Free	7½ per cent.	7½ per cent.
(G) Motors and speed controls, combined or separate, of the types used with domestic type electric sewing machines including lighting attachments (known as needlelights) imported with and for use therewith - ad val.	22½ per cent.	35 per cent.	50 per cent.
(H) Automatic voltage regulators:—			
(1) Motor vehicle type—			
(*a*) Three unit type for 6 volt or 12 volt systems - ad val.	27½ per cent.	40 per cent.	40 per cent.
(*b*) Other - - ad val.	Free	7½ per cent.	7½ per cent.
(2) Other - - - - ad val.	Free	12½ per cent.	12½ per cent.
180. Electrical and Gas Appliances, viz.:—			
(A) Telephone and Telegraph, viz.:—			
(1) (*a*) (1) Handset telephones provided suitably equivalent handset telephones the produce or manufacture of Australia are not reasonably available and parts of handset telephones, as prescribed by Departmental By-laws - ad val.	Free	7½ per cent.	7½ per cent.
(2) Handset telephones n.e.i.; bell sets for telephones; parts n.e.i. of handset telephones and of bell sets for telephones ad val.	12½ per cent.	37½ per cent.	42½ per cent.
(*b*) Telephones n.e.i.; telephone distributing boards; telephone appliances n.e.i. - - ad val.	Free	17½ per cent.	17½ per cent.
(2) Keys (including radio); magneto bells and parts therefor, whether imported separately or mounted with a key or switch; indicators or drops with or without shutters; relays; bell coils; impedance and resistance coils and spools; lamp sockets for switchboards; protective apparatus; cable boxes, unprotected; devices for junctioning telephone and telegraph wires and cables; ear caps and mouth pieces; switchboards - ad val.	22½ per cent.	47½ per cent.	52½ per cent.
(B) (1) Gas meters of the consumers' type - ad val.	22½ per cent.	37½ per cent.	47½ per cent.
(2) Parts of gas meters of the consumers' type—			
(*a*) As prescribed by Departmental By-laws - - - ad val.	Free	7½ per cent.	7½ per cent.
(*b*) N.E.I. - - - - ad val.	10 per cent.	22½ per cent.	32½ per cent.

THE SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
180.—*continued.*			
(C) (1) Electroliers; gasaliers; chandeliers; pendants; brackets - - - ad val.	22½ per cent.	45 per cent.	52½ per cent.
(2) Gas cooking and heating appliances, including gas ranges, viz.:—			
(*a*) Water heaters - - ad val.	17½ per cent.	47½ per cent.	52½ per cent.
(*b*) Other - - - ad val.	17½ per cent.	37½ per cent.	42½ per cent.
(D) Filament lamps—			
(1) Of the types ordinarily used in motor vehicles for lighting purposes -	Free	Free	Free
(2) Other, for lighting or heating purposes per lb.	1s.	2s. 6d.	4s.
(E) Wireless Receivers, parts thereof, and accessories therefor, viz.:—			
(1) Chargers, Battery, exceeding 1 ampere and up to and including 5 amperes each	*15s.	*24s.	*26s. 6d.
(2) Condensers, fixed mica - each	*3d.	*4d.	*4¼d.
(3) Articles for tuning devices, viz.:—			
(*a*) Dials complete - per unit	*2s.	*2s. 6d.	*2s. 8d.
(*b*) Dial or Scale Assembly per unit	*6d.	*9d.	*9½d.
(*c*) Drives, ratio reducing per unit	*1s. 6d.	*1s. 9d.	*1s. 10½d.
(4) Resistors, fixed - - each	*¾d.	*1d.	*1⅛d.
(5) Rheostats, potentiometers, variable resistances, volume controls and tone controls of types incorporated in wireless receivers - each	*4d.	*6¾d.	*6¾d.
(6) Sockets, valve - - - each	*2d.	*3½d.	*4d.
(7) Transformers, audio and radio - each	*1s. 6d.	*2s. 6d.	*2s. 9d.
(8) Combined power transformers and chokes or any device for eliminating "AB," "BC" or "ABC" batteries, such as power packs and similar devices, whether imported separately or incorporated in a wireless receiving set - - each	†15s.	†25s.	†26s. 6d.
or, as to all the goods covered by paragraphs (1) to (8) of sub-item (E) the following rates if same return a higher duty, viz.:— - ad val.	27½ per cent.	45 per cent.	50 per cent.
(9) Choke coils suitable for use in connexion with battery eliminating devices - - - each	3s. 9d.	10s.	10s.
or ad val.	27½ per cent.	45 per cent.	52½ per cent.
whichever rate returns the higher duty.			
(10) Condensers, variable, of capacities exceeding .0001 microfarad, but not exceeding .001 microfarad—			
(*a*) With gang or drum control—per each condenser contained therein - -	1s. 1½d.	2s. 7½d.	3s.
(*b*) Without gang or drum control each	1s. 1½d.	2s. 7½d.	3s.
(11) Condensers, variable, midget, of .0001 microfarad capacity or less each	9d.	1s. 3d.	1s. 6d.

---

* *See* provision after paragraph (8) of this sub-item for alternative *ad valorem* rates.

† *See* provision after this paragraph for alternative *ad valorem* rates.

THE SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued*			
180.—*continued.*			
(E)—*continued.*			
(12) Loudspeakers and parts thereof:—			
(*a*) Loudspeakers including transformers - - each	7s. 6d.	10s.	12s. 6d.
(*b*) Parts of loudspeakers imported other than in complete loudspeakers, viz.:—			
(1) Field coils - each	1s. 6d.	2s. 6d.	3s.
(2) Field coil cores each	6d.	1s.	1s. 3d.
(3) Field coil housings each	9d.	1s. 3d.	1s. 6d.
(4) Cones with or without voice coils each	11d.	1s. 5d.	1s. 9d.
(5) Cone housings each	1s. 3d.	1s. 9d.	2s. 3d.
(6) N.E.I., other than transformers ad val.	27½ per cent.	45 per cent.	47½ per cent.
Provided however that in the case of combinations of any of the above-mentioned parts duty shall be payable on such combinations as though the parts were imported separately.			
(13) Transformers, power - each	7s. 6d.	12s. 6d.	15s.
or as to all the goods covered by paragraphs (10) to (13) of sub-item (E) with the exception of the goods covered by clause (6) of sub-paragraph (*b*) of paragraph (12) the following rates if same return a higher duty, viz.:— - - - - ad val.	27½ per cent.	45 per cent.	47½ per cent.
(14) Headphones; Parts n.e.i. of wireless receivers, other than cabinets ad val.	27½ per cent.	45 per cent.	50 per cent.
(15) Wireless Receiving Sets wholly assembled, partly assembled, or unassembled, excluding cabinets, cathode ray tubes (picture tubes), valves, loudspeakers, headphones, batteries or any device for eliminating batteries—			
Per valve socket excluding sockets for valves forming part of any battery eliminating device - -	9s. 3d.	24s. 10½d.	25s.
or ad val.	27½ per cent.	52½ per cent.	52½ per cent.
whichever rate returns the higher duty.			
Provided—(1) In the absence of valve sockets the sets shall be charged duty at the above rates on the basis of the number of valves for which they are constructed or designed.			
(2) In the instance of sets constructed or adapted for use with multiple purpose valves, the sets shall be charged duty equal to that payable on sets having an equal number of unit stages using unit function valves.			

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
180.—*continued.*			
(E)—*continued.*			
(16) Wireless Receiving Sets and Gramophones combined, excluding cabinets, cathode ray tubes (picture tubes), valves, loudspeakers, headphones, batteries or any device for eliminating batteries - each	15s.	25s.	25s.
and in addition per valve socket excluding sockets for valves forming part of any battery eliminating device - - - - -	9s. 3d.	24s. 10½d.	25s.
or as an alternative to the cumulative fixed rates provided above ad val.	27½ per cent.	52½ per cent.	52½ per cent.
whichever rate returns the higher duty.			
Provided—(1) In the absence of valve sockets the combined sets shall be charged duty at the above rates on the basis of the number of valves for which they are constructed or designed.			
(2) In the instance of combined sets constructed or adapted for use with multiple purpose valves, the combined sets shall be charged duty equal to that payable on combined sets having an equal number of unit stages using unit function valves.			
(F) N.E.I. not included under item 192 ad val.	17½ per cent.	..	42½ per cent.
(G) Storage Batteries and parts thereof, viz.:—			
(1) Storage Batteries for wireless receiving sets, whether imported separately or incorporated in or forming part of a wireless receiving set - ad val.	32½ per cent.	..	62½ per cent.
(2) Storage batteries suitable for use (otherwise than for propulsion purposes) in motor vehicles (other than motor cycles) or electric trolley buses, whether imported separately or incorporated in or forming part of any goods covered by items 359 (D) and 359 (H) - - ad val.	22½ per cent.	50 per cent.	62½ per cent.
(3) Composition parts including containers for storage batteries for wireless receiving sets and for storage batteries suitable for use in motor vehicles (other than motor cycles) otherwise than for propulsion purposes - - - per lb.	1½d.	..	2½d.
and ad val.	27½ per cent.	..	52½ per cent.
(4) Alkaline batteries - ad val.	17½ per cent.	40 per cent.	42½ per cent.
(H) Sparking plugs whether imported separately or incorporated in or forming part of any goods covered by items 177 (B) (3) (*a*) and 359 (D) - - - - - each	9d.	1s.	1s. 1d.
or ad val.	27½ per cent.	45 per cent.	50 per cent.
whichever rate returns the higher duty.			

THE SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Division VI.—Metals and Machinery—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
180.—*continued.*			
(I) Dry batteries and dry cells of all descriptions whether imported separately or incorporated in any article or appliance - - per lb. or ad val. whichever rate returns the higher duty.	2d. 17½ per cent.	5½d. 37½ per cent.	5½d. 42½ per cent.
(J) Wall, Stand or Table Lamps, but not including lamps having glass shades and glass bases ad val.	22½ per cent.	..	47½ per cent.
(K) Electrical fittings and accessories, viz.:—Flush plates, connectors, ceiling roses, moulded lamp-holders (with or without switches), adapters, wall sockets, wall plugs and wall plug tops - - - - ad val.	22½ per cent.	45 per cent.	50 per cent.
(L) Condensers, viz.:—			
(1) Electrolytic—			
(*a*) Suitable for operation at voltages exceeding 100 volts - - each or ad val. whichever rate returns the higher duty.	.. 22½ per cent.	7d. 52½ per cent.	7d. 57½ per cent.
(*b*) Other - - - each or ad val. whichever rate returns the higher duty.	.. 22½ per cent.	3d. 52½ per cent.	3d. 57½ per cent.
For the purposes of paragraph (1) of this sub-item each electrolytic condenser, when forming portion of a set of electrolytic condensers or contained, with other electrolytic condensers, in the one housing, shall be charged with duty as a separate unit.			
(2) N.E.I. - - - ad val.	22½ per cent.	45 per cent.	50 per cent.
(M) Registers or Meters, of the type which totals electrical impulses, such as those used in telephone exchanges for recording subscribers' calls and in totalisators - ad val.	22½ per cent.	45 per cent.	50 per cent.
(N) Jacks - - - - ad val.	27½ per cent.	45 per cent.	50 per cent.
(O) Piezo electric quartz plates bars and rods ad val.	12½ per cent.	27½ per cent.	42½ per cent.
181. Electrical Articles and Materials, viz.:—			
(A) (1) (*a*) Covered cable and covered wire, n.e.i.—			
(1) When designed for use at working pressures up to and including 11,000 volts but not including— heating cable compensating or extension leads for thermocouples ad val.	10 per cent.	22½ per cent.	22½ per cent.
(2) Other - - - ad val.	Free	7½ per cent.	7½ per cent.
(*b*) (1) Arc lamps n.e.i.; electric vacuum tubes n.e.i.; cathode ray oscilloscopes and oscillographs - ad val.	Free	12½ per cent.	12½ per cent.
(2) Measuring and recording instruments not elsewhere specified ad val.	Free	10 per cent.	12½ per cent.

THE SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
181.—*continued.*			
(A) (1)—*continued.*			
(*c*) Meters of the moving coil type suitable for mounting on panels, the value for duty of which exceeds 5s. 8d. each and is less than 22s. 9d. each, whether imported separately or forming part of a complete appliance - each	Free	5s.	5s.
and ad val.	..	..	7½ per cent.
Provided that for the purposes of sub-paragraph (*c*) when any electrical appliance incorporates more than one moving coil unit the number of meters upon which duty is payable shall be the number of moving coil units incorporated in the electrical appliance.			
(2) Valves for wireless telegraphy and telephony including rectifying valves - each	3s. 3d.	4s. 6d.	5s.
or ad val.	17½ per cent.	35 per cent.	35 per cent.
whichever rate returns the higher duty.			
(3) Cathode ray tubes (picture tubes) as used in television receiving sets, whether imported separately or otherwise - - each	£11	£11	£11
and ad val.	..	10 per cent.	10 per cent.
(AA) Alternating Current Watt-hour Meters—			
(1) (*a*) Two rate; two rate and three element combined - - ad val.	Free	10 per cent.	12½ per cent.
(*b*) Three element other than two rate ad val.	Free	7½ per cent.	7½ per cent.
(2) Other - - - each	6s. 8d.	11s. 8d.	13s. 4d.
(B) (1) (*a*) Copper wire (in round, square or other shapes) including stranded or twisted copper wire, whether plain or tinned (but not including weatherproof braided aerial cable prescribed by Departmental By-laws under sub-paragraph (*d*) of this sub-item), viz.:— When covered with cotton only, the covering being impregnated; when covered with paper only or with paper and cotton only, the covering being either impregnated or not - - ad val.	17½ per cent.	32½ per cent.	40 per cent.
(*b*) Copper strip, whether plain or tinned, when covered with paper only or with cotton only or with paper and cotton only, the covering being either impregnated or not - - ad val.	17½ per cent.	32½ per cent.	40 per cent.
(*c*) Cable and wire when covered with cotton only, but not further treated - ad val.	17½ per cent.	32½ per cent.	40 per cent.
(*d*) Weatherproof braided aerial cable, as prescribed by Departmental By-laws ad val.	12½ per cent.	27½ per cent.	35 per cent.
(2) Cables, telegraph and telephone, paper-insulated lead-covered - - ad val.	17½ per cent.	37½ per cent.	40 per cent.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 71
C. A. No.
59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

CUSTOMS TARIFF (No. 3).

No. 52 of 1960.

An Act relating to Duties of Customs.

[Assented to 19th November, 1960.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Customs Tariff (No. 3)* 1960.

(2.) The *Customs Tariff* 1933–1959,[*] as amended by the *Customs Tariff* 1960,[†] is in this Act referred to as the Principal Act.

(3.) Section one of the *Customs Tariff (No. 2)* 1960[‡] is amended by omitting sub-section (4.).

(4.) The Principal Act, as amended by the *Customs Tariff (No. 2)* 1960 and by this Act, may be cited as the *Customs Tariff* 1933–1960.

Commencement.

2. Except as otherwise provided in this Act, this Act shall come into operation on the day on which it receives the Royal Assent.

3.—(1.) The

---

[*] Act No. 27, 1933, as amended by No. 31, 1933; Nos. 14, 68, 76 and 80, 1936; Nos. 3, 67, 68 and 69, 1938; Nos. 2, 28, 33, 56, 59, 62 and 64, 1939; Nos. 1, 5, 9, 12 and 92, 1948; Nos. 76 and 79, 1949; Nos. 22, 32, 60 and 80, 1950; No. 82, 1952; No. 76, 1953; Nos. 3 and 4, 1954; Nos. 15, 58, 62 and 86, 1956; Nos. 53, 54, 81 and 84, 1957; Nos. 15, 20 and 37, 1958; and Nos. 21, 22, 62, 63 and 64, 1959.

[†] Act No. 22, 1960.

[‡] Act No. 43, 1960.

F.9855/60.—Price 1s. 6d.

Amendment of Tariff in accordance with First Schedule.

3.—(1.) The Schedule to the Principal Act is amended as set out in the First Schedule to this Act and duties of Customs are imposed in accordance with the Schedule to the Principal Act as so amended.

(2.) Subject to the next two succeeding sub-sections, the time of the imposition of the duties of Customs imposed by the last preceding sub-section is the twentieth day of May, One thousand nine hundred and sixty, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this section shall be deemed to have come into operation at that time.

(3.) The time of the imposition of the duties of Customs imposed by sub-section (1.) of this section in respect of which a date later than the twentieth day of May, One thousand nine hundred and sixty, is specified in the First Schedule to this Act is, subject to section twelve of the *Customs Tariff* 1933–1960, the later date so specified, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory.

(4.) The time of the imposition of the duties of Customs imposed by sub-section (1.) of this section in respect of which a date is required to be fixed by proclamation is the date so fixed, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory.

Amendment of Tariff in accordance with Second Schedule.

4.—(1.) The Schedule to the Principal Act as amended by the last preceding section is further amended as set out in the Second Schedule to this Act and duties of Customs are imposed in accordance with the Schedule to the Principal Act as so amended and as so further amended.

(2.) The time of the imposition of the duties of Customs imposed by the last preceding sub-section is the seventeenth day of August, One thousand nine hundred and sixty, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this section shall be deemed to have come into operation at that time.

Amendment of Tariff in accordance with Third Schedule.

5.—(1.) The Schedule to the Principal Act as amended by the last two preceding sections is further amended as set out in the Third Schedule to this Act and duties of Customs are imposed in accordance with the Schedule to the Principal Act as so amended and as so further amended.

(2.) The time of the imposition of the duties of Customs imposed by the last preceding sub-section is the ninth day of September, One thousand nine hundred and sixty, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this section shall be deemed to have come into operation at that time.

6.—(1.) The

Amendment of Tariff in accordance with Fourth Schedule.

6.—(1.) The Schedule to the Principal Act as amended by the last three preceding sections is further amended as set out in the Fourth Schedule to this Act and duties of Customs are imposed in accordance with the Schedule to the Principal Act as so amended and as so further amended.

(2.) Subject to the next succeeding sub-section, the time of the imposition of the duties of Customs imposed by the last preceding sub-section is the twenty-first day of October, One thousand nine hundred and sixty, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this section shall be deemed to have come into operation at that time.

(3.) The time of the imposition of the duties of Customs imposed by sub-section (1.) of this section in respect of which a date later than the twenty-first day of October, One thousand nine hundred and sixty, is specified in the Fourth Schedule to this Act is the later date so specified, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory.

THE

THE SCHEDULES.

Section 3.

FIRST SCHEDULE.

Amendments of the Schedule to the Principal Act.

IMPORT DUTIES.

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
DIVISION I.—ALE, SPIRITS, AND BEVERAGES.			
17. By inserting in sub-item (A) after the word "Vals" the word ", Vichy.".			
DIVISION V.—TEXTILES, FELTS AND FURS, AND MANUFACTURES THEREOF, AND ATTIRE.			
105. By omitting paragraph (1) of sub-item (D) and inserting in its stead the following paragraph:—			
"(1) (*a*) Woven, wholly of or containing not less than 20 per cent. by weight of man-made fibres, including quilted piece goods containing woven piece goods wholly of or containing not less than 20 per cent. by weight of man-made fibres, but not including— tyre cord fabric, bed tickings, piece goods covered by sub-item (A) (1) (*b*), (A) (3), (D) (2) (*a*) or (F) - per square yard	2s. 6d.	2s. 8½d.	3s. 1½d.
(*b*) Wholly of or containing man-made fibres, but not including piece goods covered by sub-item (A) (1) (*b*), (A) (3), (AA), (D) (1) (*a*), (D) (1) (*c*), (D) (2) (*a*) or (F) - - - per square yard	1½d.	4d.	9d.
(*c*) Tickings, bed, woven, wholly of or containing more than 50 per cent. by weight of man-made fibres, not containing wool - per square yard *less* ad val. or per square yard whichever rate returns the higher duty."	2s. 6d. 15 per cent. 1s. 6d.	2s. 8½d. 15 per cent. 1s. 8½d.	3s. 1½d. 15 per cent. 2s. 1½d.
By omitting paragraph (2) of sub-item (E) and inserting in its stead the following paragraph:—			
"(2) Lace for attire, lace flouncings, millinery nets, dress nets, veilings, tucked linens or cottons, not covered by item 107(c) - - - ad val.	5 per cent.	17½ per cent.	35 per cent."
106. By omitting sub-item (B) and inserting in its stead the following sub-item:—			
"(B) Trimmings and ornaments, n.e.i. for hats shoes and other attire, not being partly or wholly of gold or silver; braids n.e.i.; fringes n.e.i.; frillings ruffling pleatings ruchings and water-waved ribbons, not covered by item 107 (C); webbings n.e.i.; jabots and textile bows (not including bow ties), being articles of women's apparel - - - - - ad val.	Free	12½ per cent.	22½ per cent."
107. By omitting from sub-item (A) the following words:—			
"Woven and embroidered materials in the piece or otherwise:— Badges, hat and cap fronts (badged), looping for boots and shoes; labels and hangers for all purposes including plain hanger material; tubular tie material in the piece; bands bandings tapes having printed woven or embroidered"			

FIRST SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
179.—*continued.*			
" (G)—*continued.*			
(4) Motors, direct current or universal, not being rotary converters—			
(*a*) Of the type ordinarily used with motor vehicles - - - ad val.	27½ per cent.	45 per cent.	57½ per cent.
(*b*) Traction motors including traction motors for electric trolley buses ad val.	22½ per cent.	40 per cent.	57½ per cent.
(*c*) Suitable for use with gearless lifts, including bed plate, shaft, driving sheaf and brake drum imported with and for use therewith—			
(1) Not exceeding 50 horse-power ad val.	22½ per cent.	40 per cent.	57½ per cent.
(2) Exceeding 50 horse-power ad val.	Free	7½ per cent.	7½ per cent.
(*d*) Totally enclosed direct current mill type motors - - - ad val.	22½ per cent.	35 per cent.	45 per cent.
(*e*) Other—			
(1) Less than 0.746 kW. - ad val.	22½ per cent.	35 per cent.	50 per cent.
(2) Not less than 0.746 kW. and not exceeding 20 kW. - ad val.	22½ per cent.	40 per cent.	57½ per cent.
(3) Exceeding 20 kW. - ad val.	Free	7½ per cent.	7½ per cent.
(5) Rotary converters—			
(*a*) Not exceeding 10 kW. - - ad val.	22½ per cent.	40 per cent.	57½ per cent.
(*b*) Exceeding 10 kW. - - ad val.	Free	7½ per cent.	7½ per cent."
By inserting new sub-items as follows:—			
" (I) Electric fittings not containing metal to be dutiable according to material.			
" (J) Speed controls, separate or combined with motors, of the types used with domestic type electric sewing machines, including lighting attachments (known as needlelights) imported with and for use therewith ad val.	22½ per cent.	35 per cent.	50 per cent."

180. By omitting sub-item (E).

By omitting from sub-item (F) the following words and figures:—

" not included under Item 192 "

and inserting in their stead the following words:—

" but not including brasswork bronzework and gun-metal work for general engineering and plumbing and other trades ".

By omitting from paragraph (1) of sub-item (G) the following words:—

", whether imported separately or incorporated in or forming part of a wireless receiving set ".

By omitting from sub-item (I) the following words:—

" incorporated in any article or appliance "

and inserting in their stead the following words, figures and letter:—

" otherwise than when incorporated in goods covered by item 181 (B)".

FIRST SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
180.—*continued.*			
By omitting sub-item (L).			
By omitting sub-item (O) and inserting in its stead the following sub-item:—			
" (O) Piezo-electric crystals, cut or otherwise worked, but not mounted - - - - ad val.	27½ per cent.	45 per cent.	45 per cent."
181. By omitting sub-paragraph (*a*) of paragraph (1) of sub-item (A).			
By omitting clause (1) of sub-paragraph (*b*) of paragraph (1) of sub-item (A) and inserting in its stead the following clause:—			
" (1) Cathode ray oscilloscopes and oscillographs - ad val.	Free	10 per cent.	12½ per cent."
By omitting paragraphs (2) and (3) of sub-item (A).			
By omitting sub-item (B) and inserting in its stead the following sub-item:—			
" (B) Insulated (including enamelled or anodized) electric wire cable bars strips and the like (including coaxial cable)—			
(1) Weatherproof braided aerial cable, as prescribed by Departmental By-laws - ad val.	12½ per cent.	27½ per cent.	35 per cent.
(2) Cable and wire covered with cotton only ad val.	17½ per cent.	40 per cent.	40 per cent.
(3) Copper, covered with paper cotton or paper and cotton only, impregnated or not, not covered by paragraph (2) - - ad val.	17½ per cent.	32½ per cent.	40 per cent.
(4) Telegraph and telephone cables, paper insulated, lead covered—			
(*a*) Having an additional protective covering outside the lead covering ad val.	17½ per cent.	32½ per cent.	40 per cent.
(*b*) Other - - - ad val.	17½ per cent.	37½ per cent.	40 per cent.
(5) Other—			
(*a*) Designed for working pressures exceeding 33,000 volts; heating cable; compensating or extension leads for thermocouples - - ad val.	Free	7½ per cent.	7½ per cent.
(*b*) Magnet winding wire as defined by Departmental By-laws - ad val.	12½ per cent.	25 per cent.	25 per cent.
(*c*) Other - - - ad val.	10 per cent.	22½ per cent.	22½ per cent."
By inserting new sub-items as follows:—			
" (E) Radio-telegraphic and radio telephonic transmission and reception apparatus; radio broadcasting and television transmission and reception apparatus (including those incorporating gramophones) and television cameras; radio navigational aid apparatus radar apparatus and radio remote control apparatus—			
(1) Radio broadcast receivers, with or without sound recorders and reproducers, including furniture incorporating such goods, assembled and complete, including partly assembled or incomplete goods which the Minister directs shall be deemed to be assembled and complete - - each *and* ad val.	£5 27½ per cent.	£5 45 per cent.	£5 45 per cent.

Plaintiff's Exhibit No. 71

FIRST SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Division VI.—Metals and Machinery—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
181.—*continued.*			
" (E) Radio telegraphic, &c.—*continued.*			
(2) Television receivers designed for the reception of signals without line connection, with or without radio broadcast receivers and sound recorders and reproducers, including furniture incorporating such goods, but not including cathode ray tubes (picture tubes), assembled and complete, including partly assembled or incomplete goods which the Minister directs shall be deemed to be assembled and complete - - each	£25	£25	£25
and ad val.	27½ per cent.	45 per cent.	45 per cent.
(3) Television cameras (pick-up head only) ad val.	Free	Free	17½ per cent.
(4) Other, but not including parts imported separately suitable for use in line telephonic and telegraphic apparatus - - ad val.	27½ per cent.	45 per cent.	45 per cent.
" (F) Microphones and stands therefor; loudspeakers and parts therefor; audio frequency amplifiers; audio frequency amplifier sets comprising essentially amplifiers with either or both microphones (with or without stands therefor) and loudspeakers—			
(1) Loudspeakers imported separately - each	7s. 6d.	10s.	10s.
or ad val.	27½ per cent.	45 per cent.	45 per cent.
whichever rate returns the higher duty.			
(2) Parts for loudspeakers, not including transformers - - - - ad val.	27½ per cent.	45 per cent.	45 per cent.
(3) Other - - - - ad val.	27½ per cent.	45 per cent.	45 per cent.
" (G) Components of types suitable for use, or generally similar to those used, in radio and television transmitters or receivers or audio amplifiers, viz.:—			
(1) Valve sockets - - - - - each	2d.	3½d.	3½d.
or ad val.	27½ per cent.	45 per cent.	45 per cent.
whichever rate returns the higher duty.			
(2) Power packs - - - - - each	15s.	25s.	25s.
or ad val.	27½ per cent.	45 per cent.	45 per cent.
whichever rate returns the higher duty.			
(3) Resistors, fixed or variable; fixed resistors combined in the one external covering with fixed capacitors or inductors - each	½d.	1d.	1d.
or ad val.	27½ per cent.	45 per cent.	45 per cent.
whichever rate returns the higher duty.			
" (H) Capacitors, fixed or variable—			
(1) Static, power factor correction, having a rating of 1 kVAr. or higher - per kVAr.	£1 1s. 3d.	£1 1s. 3d.	£1 1s. 3d.
less ad val.	27½ per cent.	..	..
or ad val.	22½ per cent.	50 per cent.	50 per cent.
whichever rate returns the higher duty.			

FIRST SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Division VI.—Metals and Machinery—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
181.—*continued.*			
" (H) Capacitors, &c.—*continued.*			
(2) Electrolytic, including multiple units—			
(*a*) Having a rating exceeding 100 volts per capacitor in the unit	. .	7d.	7d.
or ad val.	22½ per cent.	57½ per cent.	57½ per cent.
whichever rate returns the higher duty.			
(*b*) Other per capacitor in the unit	. .	3d.	3d.
or ad val.	22½ per cent.	57½ per cent.	57½ per cent.
whichever rate returns the higher duty.			
(3) Variable or adjustable, of capacities exceeding 0.0001 microfarad but not exceeding 0.001 microfarad; including such capacitors when ganged per capacitor in the unit or gang	1s. 1½d.	2s. 7½d.	2s. 7½d.
or ad val.	27½ per cent.	45 per cent.	45 per cent.
whichever rate returns the higher duty.			
(4) Variable or adjustable, midget, of 0.0001 microfarad capacity or less - each	9d.	1s. 3d.	1s. 3d.
or ad val.	27½ per cent.	45 per cent.	45 per cent.
whichever rate returns the higher duty.			
(5) Mica, fixed - - - - - each	3d.	4d.	4d.
or ad val.	27½ per cent.	45 per cent.	45 per cent.
whichever rate returns the higher duty.			
(6) Other, including paper and ceramic - ad val.	22½ per cent.	50 per cent.	50 per cent.
" (I) X-ray tubes - - - - - ad val.	Free	12½ per cent.	12½ per cent.
" (J) Thermionic, cold cathode and photo cathode valves and tubes (including vapour or gas filled valves and tubes, cathode ray tubes, television camera tubes and mercury arc rectifying valves and tubes, but not including valves covered by sub-item (I)); photo cells; transistors, thermistors and other semi-conductor devices; mounted piezo-electric crystals—			
(1) Cathode ray (picture) tubes as used in television receivers, whether imported separately or otherwise - - - - each	£11	£11	£11
and ad val.	. .	10 per cent.	10 per cent.
(2) Thermionic valves and tubes including rectifying valves, as used in transmission or reception apparatus for radio broadcasting, television, radio telegraphy or radio telephony - - - - each	2s. 6d.	3s. 9d.	3s. 9d.
or ad val.	27½ per cent.	45 per cent.	45 per cent.
whichever rate returns the higher duty.			
And an additional duty of - each	2s. 9d.	2s. 9d.	2s. 9d.

THIRD SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division XVI.—Miscellaneous—*continued.*			
418. By omitting sub-item (B).			
By omitting sub-item (D) and inserting in its stead the following sub-item:—			
" (D) Bacteriological apparatus, including counting apparatus, culture dishes, flasks and tubes, slide cabinets and trays, staining dishes and plates, stains, incubators, but not including goods covered by item 246 - - - - ad val.	Free	7½ per cent.	7½ per cent."
By omitting sub-item (F).			

FOURTH SCHEDULE.

Section 6.

AMENDMENTS OF THE SCHEDULE TO THE PRINCIPAL ACT AS AMENDED BY SECTIONS THREE, FOUR AND FIVE OF THIS ACT.

IMPORT DUTIES.

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
DIVISION VI.—METALS AND MACHINERY.			
137. By inserting a new sub-item as follows:—			
" (E) Foil, whether or not embossed, cut to shape, perforated, coated or printed, or backed with paper or other reinforcing material, of a thickness (excluding any backing) not exceeding 0.15 millimetre—			
(1) Copper, of a thickness (excluding any backing) of not less than 0.05 millimetre - ad val.	12½ per cent.	12½ per cent.	12½ per cent.
And an additional duty as follows:—			
When the value for duty is less than £560 per ton - - - - - ad val.	..	10 per cent.	10 per cent.
When the value for duty is not less than £560 per ton - - - per ton	..	£56	£56
And a further additional duty calculated at the rates applying to unwrought copper.			
(2) Brass, of a thickness (excluding any backing) of not less than 0.05 millimetre - ad val.	15 per cent.	25 per cent.	25 per cent.
And an additional duty on the copper content calculated at the rates applying to unwrought copper.			
(3) Other - - - - ad val.	Free	7½ per cent.	7½ per cent."
138. By inserting a new sub-item as follows:—			
" (F) Foil, whether or not embossed, cut to shape, perforated, coated or printed, or backed with paper or other reinforcing material, of a thickness (excluding any backing) not exceeding 0.15 millimetre - ad val.	Free	7½ per cent.	7½ per cent."

FOURTH

FOURTH SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
179.—*continued.*			
" (5)—*continued.*			
controls of the Scherbius, Kraemar, Ward Leonard or other similar types for motors exceeding 300 horse-power - - - - - ad val.	Free	7½ per cent.	7½ per cent."
By omitting from paragraph (7) of sub-item (B) the following words and letters:—			
" lightning arresters n.e.i.; ".			
By omitting sub-paragraph (*a*) of paragraph (4) of sub-item (D) and inserting in its stead the following sub-paragraph:—			
"(*a*) Selenium power rectifiers; copper oxide power rectifiers - - - - - - ad val.	Free	7½ per cent.	7½ per cent."
By inserting a new sub-item as follows:—			
" (K) Lightning arresters—			
(1) Suitable for the protection of electricity supply equipment—			
(*a*) Valve type, rated at 5,000 amperes, suitable for use in electricity systems operating at pressures between 6.6 kV. and 33 kV. (both inclusive) - ad val.	10 per cent.	20 per cent.	20 per cent.
(*b*) Other - - - - - ad val.	Free	7½ per cent.	7½ per cent.
(2) Other - - - - - - ad val.	22½ per cent.	45 per cent.	50 per cent."
181. By omitting sub-paragraphs (*b*) and (*c*) of paragraph (1) of sub-item (A).			
By omitting sub-item (AA).			
By inserting a new sub-item as follows:—			
" (A) Alternating current watt-hour meters—			
(1) (*a*) Two rate; two rate and three element combined - - - - ad val.	Free	10 per cent.	12½ per cent.
(*b*) Three element other than two rate - ad val.	Free	7½ per cent.	7½ per cent.
(2) Other - - - - - - - each	6s. 8d.	11s. 8d.	13s. 4d."
By omitting paragraph (2) of sub-item (E) and inserting in its stead the following paragraph:—			
" (2) Television receivers designed for the reception of signals without line connexion, with or without radio broadcast receivers and sound recorders and reproducers, including furniture incorporating such goods, assembled and complete, including partly assembled or incomplete goods which the Minister directs shall be deemed to be assembled and complete			
On the receiver less picture tube - - each *and* ad val.	£25 27½ per cent.	£25 45 per cent.	£25 45 per cent.
And on the picture tube - - - each *and* ad val.	£6 . .	£6 12½ per cent.	£6 12½ per cent."
By inserting in sub-item (G) a new paragraph as follows:—			
" (4) Chokes and choke coils, not covered by item 181 (F) (2) ad val.	27½ per cent.	45 per cent.	45 per cent."
By omitting paragraphs (3) and (4) of sub-item (H) and inserting in their stead the following paragraphs:—			
" (3) Variable or adjustable, of capacities exceeding 0.0001 microfarad and not exceeding 0.001 microfarad, including such capacitors when ganged provided at			

FOURTH SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
181.—*continued.*			
“ (3)—*continued.*			
least one capacitor in the gang is of capacity exceeding 0.0001 microfarad and not exceeding 0.001 microfarad, not covered by paragraph (7) per capacitor in the unit or gang	1s. 1½d.	2s. 7½d.	2s. 7½d.
or ad val.	27½ per cent.	45 per cent.	45 per cent.
whichever rate returns the higher duty.			
“ (4) Variable or adjustable, midget, of 0.0001 microfarad capacity or less, not covered by paragraph (7) each	9d.	1s. 3d.	1s. 3d.
or ad val.	27½ per cent.	45 per cent.	45 per cent.
whichever rate returns the higher duty.”			
By inserting in sub-item (H) a new paragraph as follows:—			
“ (7) Of types used as standards or references for comparison and measuring purposes - - - ad val.	27½ per cent.	45 per cent.	45 per cent.”
By omitting paragraph (1) of sub-item (J) and inserting in its stead the following paragraph:—			
“ (1) Cathode ray tubes—			
(*a*) Picture tubes as used in television receivers each	£6	£6	£6
and ad val.	..	12½ per cent.	12½ per cent.
(*b*) Other - - - - ad val.	Free	7½ per cent.	7½ per cent.”
By omitting paragraph (4) of sub-item (J) and inserting in its stead the following paragraph:—			
“ (4) Photo cells, but not including goods covered by paragraph (3) and vacuum or gas filled photo cells ad val.	17½ per cent.	42½ per cent.	42½ per cent.”
By inserting a new sub-item as follows:—			
“ (L) (1) Electron guns for goods covered by sub-item (J) (1) (*a*) - - - - ad val.	Free	12½ per cent.	12½ per cent.
(2) Electron guns for goods covered by sub-item (J) (1) (*b*) - - - - ad val.	Free	7½ per cent.	7½ per cent.”
By inserting new sub-items as follows:—			
“ (M) Electrical measuring or checking instruments and apparatus, for measuring or checking electrical quantities or alpha, beta, gamma, X-ray, cosmic or similar radiations, but not including goods designed for the purposes of measuring or checking some non-electrical quality and goods covered by sub-item (A)—			
(1) Cathode ray oscilloscopes; cathode ray oscillographs - - - ad val.	32½ per cent.	45 per cent.	45 per cent.
(2) Other - - - - - - ad val.	35 per cent.	45 per cent.	45 per cent.
“ (N) Source signal generators (e.g. audio frequency oscillators, standard signal generators) n.e.i. (non-mechanical), of the types used in connexion with the observation or checking of electrical and radiation phenomena; signal (audio and radio frequency and radiation) modifiers n.e.i. - - - ad val.	27½ per cent.	45 per cent.	45 per cent.
“ (O) Resistors and resistance boxes of the types used as standards or references for comparison and measuring purposes - - - ad val.	27½ per cent.	45 per cent.	45 per cent.”
189. By omitting paragraph (1) of sub-item (E) and inserting in its stead the following paragraph:—			
“ (1) Air or gas operated - - - - ad val.	Free	7½ per cent.	7½ per cent.

FOURT.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 72 ic
C. A. No.
59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

CUSTOMS TARIFF (PRIMAGE DUTIES) 1934-1958.*

An Act relating to Primage Duties of Customs.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Customs Tariff (Primage Duties)* 1934-1958.* **Short title. Short title amended; No. 32, 1918, s. 2.**

2. The *Customs Act* 1901-1930 shall be incorporated and read as one with this Act. **Incorporation.**

3. In this Act, except where otherwise clearly intended— **Definitions.**

"British Preferential Tariff" means the rates of duty set out in the Schedule to the *Customs Tariffs* 1933 in the column headed "British Preferential Tariff";

"Item" means Tariff Item as set out in the Schedule to the *Customs Tariffs* 1933;

"the Schedule" means the Schedule to this Act.

4.—(1.) The time of the imposition of the primage duties imposed by this Act, except in respect of goods in respect of which a later date is specified in the Schedule, is the fifth day of October, One thousand nine hundred and thirty-three, at nine o'clock in the forenoon, reckoned according to standard time in the Territory for the Seat of Government, and this Act shall be deemed to have come into operation at that time. **Time of imposition of Primage Duties.**

(2.) The time of the imposition of the primage duties imposed by this Act in respect of goods in respect of which a date later than the fifth day of October, One thousand nine hundred and thirty-three is specified in the Schedule, is the later

---

* The *Customs Tariff (Primage Duties)* 1934-1958 comprises the *Customs Tariff (Primage Duties)* 1934, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Number and Year.	Date of Assent.	Date of Commencement.
Customs Tariff (Primage Duties) 1934	No. 6, 1934	14th July, 1934 ..	5th October, 1933
Statute Law Revision Act 1950	No. 80, 1950	16th December, 1950 ..	31st December, 1950
Customs Tariff (Primage Duties) 1958	No. 21, 1958	21st May, 1958 ..	18th June, 1958

4447/58.—Price 8d.

date so specified at nine o'clock in the forenoon, reckoned according to standard time in the Territory for the Seat of Government.

Imposition of duties.

5. In addition to the duties of Customs collected in accordance with any other law of the Commonwealth for the time being in force, primage duties are hereby imposed at the rates and on the goods specified in the Schedule (except such goods as are by or under the Schedule exempt from primage duty) as from the respective times specified in section four of this Act, and shall respectively be deemed to have been imposed at those times, and shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth on all goods dutiable under the Schedule which are entered for home consumption after the times when those duties are respectively deemed to have been imposed.

Orders by the Minister.
Repealed by No. 80, 1950, s. 3 and First Schedule; inserted by No. 21, 1958, s. 2.

6.—(1.) In this section, " order " means an order made by the Minister for the purposes of the Schedule.

(2.) Orders shall not be deemed to be Statutory Rules within the meaning of the *Rules Publication Act* 1903-1939.

(3.) The provisions of sections forty-eight and forty-nine of the *Acts Interpretation Act* 1901-1957 (other than paragraphs (*a*) and (*b*) of sub-section (1.), and sub-section (2.), of that first-mentioned section) apply, by force of this section, to an order in like manner as those provisions apply to a regulation.

(4.) An order takes effect from the date of publication in the *Gazette* or such later date, if any, as is specified in the order.

* * * * * * *

Sections 7 and 8 repealed by No. 80, 1950, s. 3 and First Schedule.

Saving.

9. Nothing in this Act shall, on and after the first day of December, One thousand nine hundred and thirty-three, apply to any goods the produce or manufacture of the Dominion of New Zealand.

THE SCHEDULE.

Amended by No. 21, 1958, s. 3.

1. Goods exempt from primage duty—

Goods covered by Items 31 (A), 100, 129 (A), 157, 158, 160 (A), 162, 163, 164, 165, 166, 167, 171, 285 (C), 320 (C)(2)(*b*), 334 (G)(2), 338 (C), 339, 368, 370, 371, 371A, 372, 373, 394 (A), 400, 401, 409, 410 (B)(1), 410 (C), 417 (B), 423, 424 (E) and 427 (A);

THE SCHEDULE—*continued.*

Agricultural and horticultural seeds not covered by any Item;

Agricultural horticultural and viticultural spraying and dusting materials and preparations to be used in the checking of plant and seed insect pests and of plant and seed diseases;

Annatto cheese cloth and rennet to be used in the cheese industry;

Bags sacks packs and bales for bran, chaff, potatoes, onions, ore, coal, corn, flour, sugar and wool;

Blue prints;

Books and periodicals imported by or for:—
  Any public library including the Mitchell Library of New South Wales,
  The National Library, Federal Capital Territory,
  The libraries of the Universities of Sydney, Melbourne, Adelaide, Queensland, Western Australia and Tasmania,
  State Parliamentary Libraries;

Bullion and specie;

Calico for use in the manufacture of bags of a size capable of holding at least forty-five pounds of flour;

Caustic soda and caustic potash for fellmongering purposes;

Chemicals to be used in the recovery of metals by the flotation cyaniding and similar processes;

Cream separators and parts thereof;

Dips washes and drenches for live stock and materials for use in the manufacture of such dips washes and drenches;

Fauna for Zoological Gardens at Sydney, Melbourne, Brisbane, Adelaide, Perth and Hobart;

Fishing nets and netting for fishing and twine for the manufacture or repair of such nets or netting;

Garden and field spraying machines and spray pumps;

Hay presses;

Historical records, in print picture or manuscript, imported by or for public libraries, including the Mitchell Library of New South Wales;

Linseed—On and after 8th December, 1933;

Literature published by or issued under the authority of the League of Nations;

Machinery and parts thereof for use in the mining industry;

Manures and fertilizers;

Materials for use in the manufacture of agricultural horticultural and viticultural spraying preparations;

Materials for use in the manufacture of cornsacks floursacks and other sacks;

Milking machines and parts thereof;

Miners' hats and caps;

Nitrate of soda }
Potash } for use as a fertilizer or in the manufacture of fertilizers;

Outside packages and outer coverings, including the sole containing package, containing solely goods exempt from primage duty;

Postage stamps;

Potato raisers diggers sorters and planters;

Rabbit poisons;

Rabbit and dingo traps;

Radium;

Rape seed for pasture purposes;

Rock phosphate;

Rock salt;

Sheep shearing machines and parts thereof;

Soda ash covered by Item 278 (A)(2)(*a*);

Stockinette for use in the manufacture of meat wraps;

THE SCHEDULE—*continued.*

Straw stackers;

Stud stock, viz.:—horses, cattle, donkeys, sheep, pigs and poultry;

Sub-surface packers for agricultural purposes;

Sulphur;

Tractors and parts thereof;

Vessels exceeding 500 tons gross register;

Water bore casings;

Water pipes to be used in the agricultural, dairying, grazing and mining industries;

Wire, iron and steel, of gauges (Imperial Standard Wire Gauge) Nos. 8 to 14 both inclusive;

Wool presses;

Works of art for national art galleries;

The following goods when admissible under the British Preferential Tariff:—

Goods covered by Items 174, 176 (J)—On and after 8th December, 1933, 178 (D)(2)—On and after 8th December, 1933, 178 (D)(3)—On and after 8th December, 1933, 178 (F)(1)—On and after 8th December, 1933, 178 (F)(2)(*a*)—On and after 8th December, 1933, 178 (F)(3)(*a*)—On and after 8th December, 1933, 179 (B)(1) to (5) inclusive, 179 (D)(1)(*a*)(1)(*b*) (when exceeding 175 horse-power)—On and after 8th December, 1933, 179 (D)(1)(*a*)(2)—On and after 8th December, 1933, 179 (D)(1)(*a*)(3)—On and after 8th December, 1933, 179 (D)(1)(*a*)(4)(*b*)—On and after 8th December, 1933, 179 (D)(1)(*b*)(2)—On and after 8th December, 1933, 179 (D)(1)(*c*)(3)—On and after 8th December, 1933, 179 (D)(1)(*c*)(4)(*b*)—On and after 8th December, 1933, 179 (D)(2)(*a*)(2) (when exceeding 12,750 k.v.a.)—On and after 8th December, 1933, 179 (D)(2)(*b*)(2) (when exceeding 1,275 k.v.a.)—On and after 8th December, 1933, 179 (D)(2)(*c*)(2)—On and after 8th December, 1933, 194 (A)—On and after 8th December, 1933, 194 (B)(1)—On and after 8th December, 1933, 219 (C), 278 (A)(2)(*b*), 294 (C)—On and after 8th December, 1933, 404, 404A and 415A;

Fuel oil and coal consumed in Australian waters;

Goods, not otherwise exempt from primage duty, for public hospitals; and

Any other goods which are from time to time exempted from primage duty by order made by the Minister* and published in the *Gazette*;†

Amended by No. 21, 1958, s. 3.

2. Goods subject to primage duty at the rate of four per centum ad valorem:—

Goods covered by Items 55, 108 (A), 334 (C), 335, 344 and 419 (C);

Fibres for use in the manufacture of binder twine;

Outside packages and outer coverings, including the sole containing package, containing any goods subject to primage duty at the rate of four per centum ad valorem but not containing any goods subject to primage duty at the rate of five per centum or ten per centum ad valorem;

Power kerosene;

---

* By virtue of section 3 of the *Customs Tariff (Primage Duties)* 1958 the words "order made by the Minister" were substituted for the words "Proclamation made by the Governor-General acting with the advice of the Federal Executive Council".

Section 4 of that Act reads as follows:—

"4. A Proclamation made for the purposes of the Schedule to the Principal Act and in force immediately before the commencement of this Act continues in force as if it were an order made by the Minister for the purposes of the Schedule to the Principal Act as amended by this Act.".

† For Proclamations made before 1st January, 1951, exempting further goods *see* Commonwealth Acts 1901–1950, Volume II., p. 1529.

For Proclamations and orders made between 1st January, 1951, and 31st October, 1958, *see*—

Gazette 1951, pp. 2475, 2665 and 2885;
Gazette 1952, pp. 1952, 2709, 3109, 3929 and 4337;
Gazette 1953, pp. 602, 2494 and 3162;
Gazette 1954, pp. 527, 2429, 3145 and 3146;
Gazette 1955, pp. 1668, 3334 and 3336;
Gazette 1956, pp. 1466, 1830, 2701 and 3350;
Gazette 1957, pp. 1499, 1577, 1579, 1580, 2090, 3204, 3206 and 3862; and
Gazette 1958, pp. 878, 1629, 2041, 2689, 3059, 3377 and 3466.

THE SCHEDULE—*continued.*

The following goods when admissible under the British Preferential Tariff which are not exempt from primage duty:—

Goods covered by Items 136 (F)(2) (first occurring), 358 (A) and 358 (B);

Covered cable and wire covered by Item 181 (A)(1);

Gelignite; blasting and dynamite gelatine;

Knitting machines and parts thereof;

The following goods when not admissible under the British Preferential Tariff which are not exempt from primage duty:—

Goods covered by Items 174, 176 (J)—On and after 8th December, 1933, 178 (D)(2)—On and after 8th December, 1933, 178 (D)(3) —On and after 8th December, 1933, 178 (F)(1)—On and after 8th December, 1933, 178 (F)(2)(*a*)—On and after 8th December, 1933, 178 (F)(3)(*a*)—On and after 8th December, 1933, 179 (B)(1) to (5) inclusive, 179 (D)(1)(*a*)(1)(*b*) (when exceeding 175 horse-power)—On and after 8th December, 1933, 179 (D)(1)(*a*)(2)—On and after 8th December, 1933, 179 (D)(1)(*a*)(3) —On and after 8th December, 1933, 179 (D)(1)(*a*)(4)(*b*)—On and after 8th December, 1933, 179 (D)(1)(*b*)(2)—On and after 8th December, 1933, 179 (D)(1)(*c*)(3)—On and after 8th December, 1933, 179 (D)(1)(*c*)(4)(*b*)—On and after 8th December, 1933, 179 (D)(2)(*a*)(2) (when exceeding 12,750 k.v.a.)—On and after 8th December, 1933, 179 (D)(2)(*b*)(2) (when exceeding 1,275 k.v.a.)—On and after 8th December, 1933, 179 (D)(2)(*c*)(2)—On and after 8th December, 1933, 194 (A)—On and after 8th December, 1933, 194 (B)(1)—On and after 8th December, 1933, 219 (C), 294 (C)—On and after 8th December, 1933, 404, 404A and 415A;

Fuel oil and coal consumed in Australian waters;

Goods for public hospitals; and

Any other goods which are from time to time, by order made by the Minister* and published in the *Gazette*, added to the list of goods upon which primage duty at the rate of four per centum is imposed;†

3. Goods subject to primage duty at the rate of five per centum ad valorem:— **Amended by No. 21, 1958, s. 3.**

Goods covered by Items 106 (C), 147, 224, 231 (A)(2), 281 (L)(1), 392 (A)(1), 392 (A)(2), 392 (A)(3), 392 (G) and 435, which are not subject to primage duty at the rate of four per centum ad valorem or exempt from primage duty;

Iron and steel boiler tubes;

Jute fibre;

The following goods when admissible under the British Preferential Tariff which are not subject to primage duty at the rate of four per centum ad valorem or exempt from primage duty:—

Goods covered by the following Items, viz.:—

2,
4,
5,
6 (B) (as to deferred duty),
7,
8,
9,
10,
11,
16,
17,
27,
28,
29,
30,
31,
33,
36,
37,
38,
39,
40,
41,
42,
44 (B)(2),
44 (C)(2),
44 (C)(3),
44 (D),
44 (E),
44 (F),
46,
47,
49,
50,
51 (C)(2),
51 (E),
52,
53 (A),
53 (C),
53 (D),
54,
56 (B),
56 (C),
57 (B),

---

* *See footnote* * on p. 4.

† For Proclamations made before 1st January, 1951, specifying further goods upon which primage duty at the rate of 4% is imposed *see* Commonwealth Acts 1901–1950, Volume II., p. 1529.

For Proclamations made between 1st January, 1951, and 31st October, 1958, *see Gazette* 1951, pp. 24[illegible]6 and 2666.

Customs Tariff (Primage Duties) 1934-1958.

THE SCHEDULE—*continued.*

Items—*continued.*

57 (C),
57 (D),
58 (A),
58 (C),
58 (D),
59,
60,
61,
62,
63 (A),
64 (A),
65,
67,
68,
69 (C),
70,
71,
72,
74,
75,
76,
78 (D),
78 (E),
78 (F),
78 (G),
78 (H)(1),
78 (H)(3),
79,
80,
81,
82 (A),
82 (B),
82 (C),
82 (D),
82 (E),
82 (F),
82 (G),
82 (H),
83,
84,
85,
87 (A),
88,
89 (B),
91 (B),
93,
94,
96 (B),
97,
98,
99,
101,
102,
103 (A),
104,
105 (A)(1)(*b*),
105 (AA)(2),
105 (F)(1),
105 (F)(2),
105 (F)(4),
105 (F)(5),
105 (G),
105 (H)(1),
105 (H)(2)(*a*),
105 (J)(1),
105 (J)(2)(*b*),
106 (D)(2),
106 (E)(2),
106 (E)(3),
106 (F)(2),
106 (F)(3),
107—Up to and including 3rd November, 1933,
107(A)—On and after 4th November, 1933,
108 (B),
109,
110,
111,
112 (A),
112 (B)(2),
113 (A),
114 (B),
114 (C),
114 (D),
114 (E),
114 (F),
114 (G),
114 (H),
115,
116,
117,
118 (B),
118 (C),
119,
120 (A),
120 (AA),
120 (B),
120 (C)(1)(*b*),
120 (E),
121 (A),
122,
123,
124,
126 (B),
130 (A),
131,
133,
136 (A),
136 (B),
136 (C),
136 (D),
136 (E),
136 (F)(1),
136 (F)(2) (as to deferred duty),
136 (G),
137 (A)(2),
137 (B),
138,
139,
140,
141,
143,
144 (A),
144 (B),
146,
148 (A),
152 (A)(2),
152 (A)(3),
152 (B),
152 (C),
153,
154,
155,
156 (B),
159 (B),
161 (A),
161 (B)(1),
161 (B)(2),
161 (C),
170 (A)(1),
170 (A)(2)(*a*),
170 (A)(2)(*b*),
170 (B),
170 (C),
170 (D),
172 (B),
173 (A),
176 (C),
176 (D),
176 (E),
176 (F),
176 (H),
176 (I),
177 (A),
178 (B),
178 (C),
178 (D)(1),
178 (E),
178 (F) (2) (*b*)—On and after 4th November, 1933,
178 (F) (3) (*b*)—On and after 4th November, 1933,
179 (A),
179 (B)(7),
179 (C),
179 (D)(1)(*a*)(1)(*a*),
179 (D)(1)(*a*)(1)(*b*) (when not exceeding 175 horsepower),
179 (D) (1)(*a*)(3)(*a*) —Up to and including 3rd November, 1933,
179 (D) (1)(*a*)(4)(*a*) —On and after 4th November, 1933,
179 (D)(1)(*b*)(1),
179 (D)(1)(*c*)(1),
179 (D)(1)(*c*)(2),
179 (D) (1)(*c*)(3)(*a*) —Up to and including 3rd November, 1933,

THE SCHEDULE—*continued.*

Items—*continued.*

179 (D)(1)(*c*)(4)(*a*)—On and after 4th November 1933,
179 (D)(1)(*d*),
179 (D)(2)(*a*)(1),
179 (D) (2) (*a*) (2) (when not exceeding 12,750 k.v.a.),
179 (D) (2) (*b*) (2)
179 (D) (2) (*b*) (2) (when not exceeding, 1,275 k.v.a.),
179 (D)(2)(*c*)(1),
179 (D)(2)(*d*),
179 (D)(3)(*a*),
179 (D)(3)(*c*) (as to deferred duty),
179 (D)(4),
179 (D)(5),
179 (F),
180 (A)(2),
180 (B)(1),
180 (B)(2)(*b*),
180 (C),
180 (D),
180 (E),
180 (F),
180 (G),
180 (H),
180 (I),
180 (J),
180 (K),
180 (L),
180 (M),
180 (N),
181 (AA),
181 (B),
181 (C),
182,
184,
185,
186 (as to deferred duty),
187 (B),
187 (C),
187 (D),
188,
190,
191,
192,
194 (B)(2),
194 (C),
197 (A),
199,
200,
201,
203,
204 (B),
206,
208 (A),
208 (C),
208 (D),
208 (E),
209,
210 (A),
211,
213,
215—Up to and including 3rd November, 1933,
215 (B)—On and after 4th November, 1933,
216 (B),
219 (A),
219 (B),
222,
225,
226,
227 (A) (as to tallow only),
227 (B),
228 (D),
229 (F)(2),
229 (H)(1),
229 (H)(2),
230,
231 (B)(1),
231 (B)(2),
231 (C),
231 (D),
231 (E),
231 (F),
231 (G),
231 (H),
232 (A),
232 (B),
232 (C),
233,
234,
235,
237 (C),
239,
240,
241 (B),
241 (C),
242 (B) (as to deferred duty),
242 (C),
242 (F),
242 (G),
244 (B),
244 (C),
249 (B),
250 (B),
250 (C),
250 (E),
250 (F),
251 (A),
251 (C),
252,
254 (B),
255,
256,
257,
258,
259,
262 (B)(2),
262 (C),
262 (D),
262 (E),
262 (F),
264 (A),
264 (B),
264 (C),
264 (D)(1),
265,
266 (A),
266 (B),
266 (C),
267 (A),
268,
269 (B),
269 (C),
270,
271,
272,
273,
275 (B),
276,
277,
278 (A)(1),
278 (B),
278 (C),
279 (A) (as to deferred duty),
279 (B),
280 (B),
280 (D)(1),
281 (A),
281 (B),
281 (C),
281 (D),
281 (E),
281 (F),
281 (G),
281 (H),
281 (L)(2),
281 (M),
281 (N),
281 (O),
283,
284 (B),
285 (A),
286 (B),
286 (C),
289 (A),
289 (B),
290 (C),
290 (E),
291 (C)(2),
291 (D),
291 (F)(2),
291 (F)(3),
291 (H),
291 (I)(2),
291 (J),
291 (K),
291 (L),
291 (M),
291 (N),
292,

THE SCHEDULE—*continued.*

Items—*continued.*

293 (B),
293 (C),
294 (A),
294 (B),
295,
296,
297,
298 (B),
299,
300 (A),
300 (B),
300 (C),
300 (D),
300 (E),
300 (G),
300 (H),
300 (I),
300 (J),
301 (D),
302,
303,
304,
305,
306,
318 (A)(1),
318 (A)(2),
318 (A)(4)(*a*),
319 (A)(1),
319 (A)(2),
319 (A) (3)—Up to and including 3rd November, 1933,
319 (A) (4)—On and after 4th November, 1933,
319 (A)(5),
319 (A) (6)—Up to and including 3rd November, 1933
319 (B)(1),
320 (B),
322,
323 (B),
324 (A),
324 (C),
324 (D),
325,
326,
328,
329,
330,
331 (B)(2)(*a*),
331 (C),
332 (A),
332 (B),
332 (C),
332 (E),
332 (F),
332 (G),
333,
334 (F) (1) (as to deferred duty),
334 (F)(2),
334 (G)(1)(*a*),
334 (G)(3),
334 (I),
334 (J) (as to blotting paper only),
334 (L)(2),
334 (L)(3),
334 (M)(1),
334 (N),
334 (O)(1),
334 (O)(4),
334 (Q),
334 (S),
334 (T),
334 (U),
336 (B),
337 (B),
338 (A),
340,
341,
342,
343,
346 (D),
346 (E),
346 (F),
352 (A)(1),
352 (A)(4),
352 (B),
353,
354 (A),
355,
356,
357,
359 (B),
359 (C),
359 (D)(1),
359 (D)(2),
359 (D)(3),
359 (E),
359 (F)(1),
359 (F)(2),
359 (F)(3),
359 (F)(5),
359 (F)(7),
359 (F)(8),
359 (F)(9),
359 (G)(1),
359 (G)(2),
359 (G)(3),
359 (G)(4),
359 (G)(5),
359(G)(6)(*a*)—Up to and including 3rd November, 1933,
359 (G) (7)—Up to and including 3rd November, 1933,
359 (G) (8)—Up to and including 3rd November, 1933,
360,
363,
364,
365 (A),
365 (B),
365 (C),
365 (D),
374 (B),
374 (C),
374 (D)(1),
374 (D)(3),
375 (B),
375 (C),
376 (A),
376 (B),
376 (C),
376 (D),
376 (F),
376 (G),
380 (A)(1),
381 (B),
381 (C),
381 (E),
384 (A),
385,
386,
388 (B),
390 (A),
391,
392 (A)(4),
392 (C),
392 (D),
392 (E),
392 (F)(1),
393 (A),
393 (D),
394 (B),
394 (C),
394 (D),
397 (A),
397 (B),
397 (C);
397 (F),
398,
402,
410 (B)(3),
410 (D),
411,
419 (B),
419 (D),
420,
422 (A),
424 (A),
424 (B)(1),
424 (D),
425,
426 (B),
427 (C),
428,
429,
430,
431,
432 (A),
432 (B), and
433; and

THE SCHEDULE—*continued.*

Any other goods which are from time to time, by order made by the Minister[*] and published in the *Gazette*, added to the list of goods upon which primage duty at the rate of five per centum is imposed;† and

4. Goods subject to primage duty at the rate of ten per centum ad valorem—
All goods whatsoever, which are not, in pursuance of the foregoing provisions of this Act—
   - (i) exempt from primage duty;
   - (ii) subject to primage duty at the rate of four per centum ad valorem; or
   - (iii) subject to primage duty at the rate of five per centum ad valorem.

For the purposes of determining the rate of duty applicable under this Act to any goods to which Items 168 (B)(1), 179 (B)(6), 179 (E), 332 (D) or 376 (E) apply, the goods shall be deemed to be covered by the Item which determines, for the purposes of the *Customs Tariffs* 1933, the rate of duty on those goods.

---

[*] *See* footnote * on p. 4.

† For Proclamations made before 1st January, 1951, specifying further goods upon which primage duty at the rate of 5% is imposed, *see* Commonwealth Acts 1901-1950, Volume II., p. 1533.
For Proclamations and order made between 1st January, 1951, and 31st October, 1958, *see*—
Gazette 1951, pp. 2477 and 2665;
Gazette 1952, pp. 1952, 3109 and 4337;
Gazette 1954, p. 3145;
Gazette 1955, pp. 1668 and 3335;
Gazette 1957, pp. 1578, 2090 and 3204; and
Gazette 1958, pp. 878 and 3377.

By Authority: A. J. ARTHUR, Commonwealth Government Printer, Canberra.
4447/58.—2

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 73A

C. A. No.
59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX ASSESSMENT ACT (No. 1) 1930-1953.

SALES TAX ASSESSMENT ACT (No. 2) 1930-1936.

SALES TAX ASSESSMENT ACT (No. 3) 1930-1936.

SALES TAX ASSESSMENT ACT (No. 4) 1930-1936.

SALES TAX ASSESSMENT ACT (No. 5) 1930-1939.

SALES TAX ASSESSMENT ACT (No. 6) 1930-1936.

SALES TAX ASSESSMENT ACT (No. 7) 1930-1936.

SALES TAX ASSESSMENT ACT (No. 8) 1930-1936.

SALES TAX ASSESSMENT ACT (No. 9) 1930-1946.

4484.—Price 3s. 3d.

SALES TAX ASSESSMENT ACT (No. 1) 1930-1953.*

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of Goods manufactured in Australia and sold by the Manufacturer, or applied to his own use, and for other purposes.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Sales Tax Assessment Act* (*No.* 1) 1930–1953.* **Short title.** **Short title amended: No. 22, 1918, s. 2.**

2. This Act is divided into Parts, as follows :— **Parts.**

Part I.—Preliminary.
Part II.—Administration.
Part III.—Registration and Certificates.
Part IV.—Liability to Taxation.
Part V.—Returns.
Part VI.—Collection and Recovery of Tax.
Part VII.—Objections and Appeals.
Part VIII.—Penal Provisions.
Part IX.—Taxation Prosecutions.
Part X.—Miscellaneous.

---

* The *Sales Tax Assessment Act* (*No.* 1) 1930–1953 comprises the *Sales Tax Assessment Act* (*No.* 1) 1930 as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table :—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
Sales Tax Assessment Act (*No.* 1) 1930	1930 No. 25	18th August, 1930 ..	18th August, 1930
Sales Tax Assessment Act (*No.* 1A) 1930	1930, No. 62	16th December, 1930 ..	18th August, 1930
Sales Tax Assessment Act (*No.* 1) 1931	1931, No. 25	10th August, 1931 ..	10th August, 1941
Sales Tax Assessment Act (*No.* 1) 1932	1932, No. 39	5th October, 1932 ..	5th October, 1932
Financial Relief Act 1932 ..	1932, No. 64	5th December, 1932 ..	5th December, 1932
Financial Relief Act 1933 ..	1933, No. 17	26th October, 1933 ..	26th October, 1933
Sales Tax Assessment Act (*No.* 1) 1933	1933, No. 47	12th December, 1933 ..	12th December, 1933
Financial Relief Act 1934 ..	1934, No. 16	1st August, 1934 ..	1st August, 1934
Sales Tax Assessment Act (*No.* 1) 1934	1934, No. 29	4th August, 1934 ..	4th August, 1934
Sales Tax Assessment Act (*No.* 1) 1935	1935, No. 8	10th April, 1935 ..	10th April, 1935
Sales Tax (*Financial Relief*) *Act* 1935	1935, No. 45	25th October, 1935 ..	25th October, 1935
Sales Tax (*Securities and Exemptions*) Act 1935	1935, No. 61	7th December, 1935 ..	7th December, 1935
Sales Tax Amendment Act 1936	1936, No. 78	7th December, 1936 ..	7th December, 1936
Sales Tax Assessment Act (*No.* 1) 1940	1940, No. 30	1st June, 1940 ..	1st June, 1940
Sales Tax Assessment Act (*No.* 1A) 1940	1940, No. 64	13th December, 1940 ..	22nd November, 1940
Sales Tax Assessment Act (*No.* 1) 1942	1942, No. 54	6th October, 1942 ..	30th October, 1941
Taxation Administration Act 1953	1953, No. 1	4th March, 1953 ..	1st April, 1953

Definitions. **Sub-section (1.) amended by No. 62, 1930, s. 3; No. 39, 1932, s. 2; No. 47, 1933, s. 2; No. 29, 1934, s. 2; No. 78, 1936, s. 5; No. 54, 1942, s. 3; and No. 1, 1953, s. 2 and First Schedule.**

3.—(1.) In this Act, unless the contrary intention appears—

"Agent" includes every person who in Australia, for or on behalf of any person out of Australia (in this section called "the principal"), holds or has the management or control of the business of his principal, and every person declared by the Commissioner to be an agent or the sole agent for any person for the purposes of this Act;

"Board of Review" means a Board of Review constituted under the *Income Tax Assessment Act* 1922–1929;

"Certificate" means a certificate of registration under this Act;

"Company" includes all bodies or associations corporate or unincorporate, but does not include partnerships;

"Deputy Commissioner" means a Deputy Commissioner of Taxation;

"Goods"* includes commodities, but does not include—

(*a*) goods which have, either through a process of retailing or otherwise, gone into use or consumption in Australia; or

(*b*) goods which are sold as second-hand goods and are manufactured exclusively or principally from goods which—

  (i) have, whether alone or as parts of other goods, gone into use or consumption in Australia; and

  (ii) in the opinion of the Commissioner, in their condition as parts of the goods so manufactured, retain their character as goods or parts of goods which have gone into use or consumption in Australia.

For the purposes of this definition a container, which is used for the first time in Australia in the marketing or delivery of goods, shall not, by reason of that use, be deemed to have gone into use or consumption in Australia until the goods for the marketing or delivery of which the container has been so used have been removed therefrom for use, sale or other disposition separately from the container;

"Liquidator" means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a company;

"Manufacture" includes—

(*a*) production;

---

* By sub-section (2.) of section 5 of the *Sales Tax Amendment Act* 1936, the amendment made to this definition by sub-section (1.) of that section is deemed to have commenced on 13th December, 1934.

(*b*) the combination of parts or ingredients whereby an article or substance is formed which is commercially distinct from those parts or ingredients, except such combination (not being a combination whereby concrete, cement mortar, lime mortar or any similar preparation of a kind used in the construction, repair or maintenance of buildings or other structures is formed, or whereby any other prescribed article or substance is formed) as, in the opinion of the Commissioner, it is customary or reasonably practicable for users or consumers of those articles or substances to undertake: and

(*c*) any treatment applied to foodstuffs as a process in the preparation of the foodstuffs for human consumption;

"**Manufactured**" and "**Manufactures**" have meanings corresponding to that of "Manufacture";

"**Manufacturer**" means a person who engages, whether exclusively or not, in the manufacture of goods, and includes a printer, publisher, lithographer or engraver, and a person (not being an employee) who manufactures goods, whether or not the materials out of which the goods are manufactured are owned by him, but, where one person manufactures goods for another, wholly or in part out of materials supplied by that other, and the goods are not for the use of, but are for sale by, that other, the person supplying the materials shall be deemed to be the manufacturer, and the person who so manufactures the goods shall be deemed not to be the manufacturer;

"**Person**" includes a company;

"**Registered person**" means a manufacturer or wholesale merchant who is registered under this Act;

"**Sale of goods by wholesale**" includes—

(i) a sale of goods to a person who buys the goods for the purpose of resale or for supply to some other person in the circumstances specified in sub-section (4.) of this section; and

* * * * *

(iii) a sale of goods to a manufacturer (whether or not he is required to be registered in accordance with the provisions of this Act) to be used ~~in~~ wrought into or attached to goods to be manufactured by him;

Sales Tax Assessment Act (No. 1) 1930–1953.

but, notwithstanding anything contained in the foregoing provisions of this definition, does not include—

* * * * * * *

(*b*) the sale of goods, by a retailer, whether or not at a discount from the retail selling price, for the accommodation of the purchaser owing to temporary shortage of stock of the purchaser such goods being of a kind usually manufactured by the purchaser or usually purchased by him from a manufacturer or wholesale merchant for sale;

(*c*) the sale of goods by a retailer on cash orders issued by firms or persons carrying on the business of issuing cash orders authorizing or requesting goods to be supplied to the holders of such cash orders;

(*d*) the sale whether for cash or on credit, and whether at a discount from the retail selling price or not, of goods of a kind used in the construction and repair of and wrought into or attached to so as to form part of buildings, unless such goods are sold to a person (not being a person who buys goods for supply to some other person in the circumstances specified in sub-section (4.) of this section) who buys the goods for the purpose of resale;

(*e*) the sale by a retailer, whether for cash or on credit, and whether at a discount from the retail selling price or not, of goods of a kind used in the manufacture of and wrought into or attached to clothes for human wear, if the sale is made to a person whose principal business is the manufacture of articles of human wear to the order of individual customers;

(*f*) the supply of goods by a person to some other person in the circumstances specified in sub-section (4.) of this section; and

(*g*) the sale of school requisites or sporting equipment by a retailer to school authorities or school teachers for resale to students or the sale of sporting equipment by a retailer to sporting clubs for resale to members of those clubs,

and any sale or supply of goods as specified in paragraph (*b*), (*c*), (*d*), (*e*), (*f*) or (*g*) of this definition shall be deemed to be a sale of goods by retail.

For the purposes of this definition "retailer" means a person whose sales of goods (not including sales to which paragraphs (*b*), (*c*), (*e*) or (*g*) of this definition applies) are, in the opinion of the Commissioner, made principally by retail and "sale of goods by a retailer" means a sale of goods from stock in a retail store or a retail section of a store.

"Taxpayer" means a person chargeable with sales tax under this Act;

"the Commissioner" means the Commissioner of Taxation;

"the Second Commissioner" means the Second Commissioner of Taxation;

"Trustee", in addition to every person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law, includes—

(*a*) an executor or administrator, guardian, committee, receiver or liquidator;

(*b*) every person having or taking upon himself the administration or control of goods affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the goods of a person under any legal or other disability;

"Unregistered person" means a person who is not registered under this Act;

"Wholesale Merchant" means a person who engages, whether exclusively or not, in the sale of goods by wholesale, and includes—

(*a*) a trustee in whom the ownership of the business of any wholesale merchant or manufacturer becomes vested, or who becomes entitled to the possession, management or control of that business or of the goods of that business, and who sells those goods, whether in the course of carrying on or in the course of winding-up or realizing that business;

(*b*) a person who notwithstanding that he manufactures goods for another person is, pursuant to the definition of "Manufacturer", deemed not to be the manufacturer of the goods; and

(*c*) a person who applies any process or treatment to goods which are—

(i) to be used in, wrought into or attached to goods to be manufactured by a manufacturer;

(ii) supplied to him by the manufacturer of those goods for the purpose of having them brought into the form or condition in which they are to be marketed or used or further processed or treated by the manufacturer; or

(iii) to be exported from Australia and which are to be used in, wrought into or attached to goods to be manufactured outside Australia.

(2.) For the purpose of this Act, a person shall be deemed to have quoted his certificate where, in any transaction, act or operation in relation to goods the sale value of which is subject to tax, he represents in the prescribed manner that he is the holder of a certificate issued under this Act.

(3.) Any reference in this Act to the amount for which goods are sold shall, where the goods are sold subject to the payment of a royalty, be deemed to include such amount as, in the opinion of the Commissioner, is the value of the royalty.

Added by No. 30, 1932, s. 2; amended by No. 78, 1936, s. 5.

(4.) For the purposes of this Act, a person shall be deemed to have sold goods if, in the performance of any contract (not being a contract for the sale of goods) under which he has received, or is entitled to receive, valuable consideration, he supplies goods the property in which (whether as goods or in some other form) passes, under the terms of the contract, to some other person.

Added by No. 29, 1934, s. 2; substituted by No. 64, 1940, s. 3.

(5.) *Where a sale and purchase, for one inclusive price, is made of goods upon the sale value of which sales tax is payable at a particular rate together with goods upon the sale value of which sales tax is payable at some other rate or is not payable, the respective amounts for which the goods are sold and purchased shall be deemed to be the amounts which, in the opinion of the Commissioner, would have been the sale prices of those goods if sold separately.

Added by No. 29, 1934, s. 2; substituted by No. 64, 1940, s. 3.

(6.) *For the purposes of the last preceding sub-section, "goods" (in so far as that word refers to goods upon the sale value of which sales tax is not payable) shall include any property on which sales tax is not payable.

Added by No. 78, 1936, s. 5.

(7.) Any person who, at any time, ceases to be a manufacturer or wholesale merchant shall be deemed to continue to be a manufacturer or a wholesale merchant (as the case may be) until he has—

(*a*) sold;
(*b*) treated as stock for sale by retail;
(*c*) applied to his own use: or
(*d*) leased

the goods held in stock by him at that time or until the Commissioner is satisfied that none of those goods will become the subject of any transaction, act or operation specified in this sub-section.

Added by No. 78, 1936, s. 5.

(8.) †Where a person manufactures goods of the kind covered by paragraph (*b*) of the definition of "Goods" partly out of materials which have not gone into use or consumption in Australia, that person shall, in the manufacture of those goods, be deemed to have applied those materials to his own use.

---

* These sub-sections were inserted by paragraph (*b*) of sub-section (1.) of section 2 of the *Sales Tax Assessment Act* (*No.* 1) 1934. Sub-section (3.) of that section reads—

"(3.) The amendment effected by paragraph (*b*) of sub-section (1.) of this section shall have effect and be deemed to have had effect at all times as if the sub-sections thereby inserted in section three of the Principal *Act* had, at the date of the commencement of the *Sales Tax Assessment Act* (*No.* 1) 1930, been included in section three of that Act:

Provided that the amendment shall not have effect in respect of any sale and purchase, prior to the twenty-sixth day of October, One thousand nine hundred and thirty-three, for one inclusive price, of goods, being plant, machinery or equipment which has been used as such by the vendor in the ordinary course of his business, together with any other property.".

† This sub-section was amended by sub-section (1.) of section 5 of the *Sales Tax Amendment Act* 1936. By sub-section (2.) of that section, that amendment is deemed to have commenced on 13th December, 1934.

in the performance of his duties under this Act except as may be necessary for the purpose of carrying into effect the provisions of this Act.

PART III.—REGISTRATION AND CERTIFICATES.

Issue of certificates.

Sub-section (1.) amended by No. 25, 1931, s. 2; and No. 61, 1935, s. 2.

11.—(1.) *Every person who is, at the commencement of this Act, a manufacturer or wholesale merchant shall, within twenty-eight days after that commencement, become registered as prescribed.

Amended by No. 25, 1931, s. 2; and No. 61, 1935, s. 2.

(2.) *Every person who becomes a manufacturer or wholesale merchant after the commencement of this Act shall, within twenty-eight days after he becomes a manufacturer or wholesale merchant, become registered as prescribed.

Amended by No. 25, 1931, s. 2.

(3.) Upon registration a certificate of registration shall be issued to such manufacturer or wholesale merchant and shall, subject to this Act, remain in force until—

(*a*) the death or bankruptcy of the registered person; or

(*b*) the cancellation of the certificate in accordance with the provisions of this Act.

Inserted by No. 78, 1936, s. 6.

(3A.) Notwithstanding anything contained in this Act, the Commissioner may, if he thinks fit, dispense with the registration, or cancel the certificate of registration, of any person who is a manufacturer or wholesale merchant and is engaged only in transactions, acts or operations in connexion with which sales tax is not payable by him:

Provided that if that person subsequently commences to engage in transactions, acts or operations in connexion with which sales tax is payable by him, he shall forthwith become registered as prescribed:

Provided further, and without limiting the application of the last preceding proviso, that in the case of any person whose registration has been so dispensed with or whose certificate of registration has been so cancelled, and who is a wholesale merchant by virtue of paragraph (*b*) or (*c*) of the definition of "Wholesale merchant", the Commissioner may, if he thinks fit, at any time while that person continues to be a wholesale merchant by virtue of either of those paragraphs, by notice in writing require that person to become registered and that person shall become registered as prescribed within the time specified in that notice.

Substituted by No. 25, 1931, s. 2; amended by No. 78, 1936, s. 6.

(4.) Notwithstanding any statement contained in any certificate in force at the date of the commencement of this sub-section in regard to the period for which the certificate shall remain in force, every certificate in force at that date shall, subject to sub-section (3A.) of this section and section sixteen of this Act, remain in force until the death or bankruptcy of the registered person to whom it was issued.

---

* Sub-sections (1.), (2.), (4B.), (8A.), (8B.) and (11.) of this section were amended, and sub-section (4A.) of this section was omitted, by sub-section (1.) of section 2 of the *Sales Tax (Securities and Exemptions) Act* 1935. Sub-section (2.) of that section reads—

"(2.) Nothing in this section shall affect the liability of any person under any security given under the Principal Act and in force immediately prior to the commencement of this Act in so far as that liability directly or indirectly relates to tax payable in respect of transactions, acts or operations entered into, done or carried out prior to the commencement of this Act, but otherwise no liability shall attach to any person under any such security.".

SALES TAX ASSESSMENT ACT (NO. 5) 1930-1939.*

An Act relating to the Imposition Assessment and Collection of a Tax upon the Sale Value of Goods Imported into Australia, and for other purposes.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Sales Tax Assessment Act* (*No.* 5) 1930-1939.* Short title. Short title amended: No. 26, 1939, s. 2.

2. This Act is divided into Parts, as follows:— Parts.

Part I.—Preliminary.
Part II.—Liability to Taxation.
Part III.—Entries.
Part IV.—Collection and Recovery of Tax.
Part V.—Application of *Sales Tax Assessment Act* (*No.* 1) 1930.
Part VI.—Miscellaneous.

PART II.—LIABILITY TO TAXATION.

3. Subject to, and in accordance with the provisions of this Act, the sales tax imposed by the *Sales Tax Act* (*No.* 5) 1930 shall be Sales tax. Amended by No. 67, 1930, s. 2.

---

* The *Sales Tax Assessment Act* (*No.* 5) 1930-1939 comprises the *Sales Tax Assessment Act* (*No.* 5) 1930 as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
Sales Tax Assessment Act (*No.* 5) 1930	1930, No. 33	18th August, 1930 ..	18th August, 1930
Sales Tax Assessment Act (*No.* 5A) 1930	1930, No. 67	16th December, 1930 ..	18th August, 1930
Sales Tax Assessment Act (*No.* 5) 1931	1931, No. 33	10th August, 1931 ..	10th August, 1931
Sales Tax Assessment Act (*No.* 5) 1932	1932, No. 43	5th October, 1932 ..	5th October, 1932
Financial Relief Act 1932 ..	1932, No. 64	5th December, 1932 ..	5th December, 1932
Financial Relief Act 1933 ..	1933, No. 17	26th October, 1933 ..	26th October, 1933
Sales Tax Assessment (*New Zealand Imports*) *Act* 1933	1933, No. 25	24th November, 1933	1st December, 1933
Sales Tax Assessment Act (*No.* 5) 1933	1933, No. 51	12th December, 1933.	12th December, 1933
Financial Relief Act 1934 ..	1934, No. 16	1st August, 1934 ..	1st August, 1934
Sales Tax Assessment (*Fiji Imports*) *Act* 1934.	1934, No. 62	17th December, 1934	17th January, 1935
Sales Tax (*Financial Relief*) *Act* 1935	1935, No. 45	25th October, 1935 ..	25th October, 1935
Sales Tax (*Securities and Exemptions*) *Act* 1935	1935, No. 61	7th December, 1935 ..	7th December, 1935
Sales Tax Amendment Act 1936	1936, No. 78	7th December, 1936 ..	7th December, 1936
Sales Tax Assessment Act (*No.* 5) 1939	1939, No. 26	21st September, 1939	1st October, 1939

levied and paid on the sale value of goods imported into Australia by a taxpayer on or after the first day of August One thousand nine hundred and thirty.

Sale value of imported goods.
Sub-section (1.) amended by No. 26, 1939, s. 3.

4.—(1.) For the purposes of this Act, ~~the~~ sale value of goods imported into Australia on or after the first day of August One thousand nine hundred and thirty—

(*a*) by an unregistered person; or

(*b*) by a registered person who does not quote his certificate on the Customs entry relating to the goods,

shall be an amount which exceeds by twenty per centum the sum of the following:—

(i) the value for duty of those goods converted into Australian currency; and

(ii) the duty of Customs payable in respect of the goods.

Amended by No. 33, 1931, s. 2; and No. 26, 1939, s. 3.

(2.)* For the purposes of this section, "value for duty" means—

(*a*) where the goods are subject to an ad valorem duty upon importation into Australia under the law relating to duties of Customs—the value ascertained in accordance with that law for the purpose of calculating that duty; and

(*b*) where the goods are not so subject—the value upon which, in the opinion of the Commissioner, an ad valorem duty would have been calculated if the goods had been so subject:

Provided that, pending the ascertainment of the value required to be ascertained under paragraph (*a*) or (*b*) of this sub-section, the value for duty of the goods to which this section applies shall be taken to be the value at which the goods are entered for home consumption under the law relating to the Customs:

Provided further that, in the case of goods in respect of which a Customs entry has been passed, and which have subsequently been sent out of the Commonwealth for repairs with the approval of the Minister for Trade and Customs, the sale value of the goods upon their re-importation into Australia shall be the sum of the value for duty of the goods converted into Australian currency and the duty of Customs payable in respect of the goods.

Added by No. 26, 1939, s. 3.

(3.) For the purposes of this section the rate of exchange to be used in converting the value for duty into Australian currency shall be the telegraphic transfer selling rate in Australia, at the date of exportation of the goods from the country of export, as fixed by the Commonwealth Bank of Australia.

---

* This sub-section was amended by section 2 of the *Sales Tax Assessment Act (No. 5)* 1931. By section 5 of that Act, that amendment is deemed to have commenced on the date of the commencement of the *Sales Tax Assessment Act (No. 5)* 1930.

Liability for tax.

5. Sales tax shall be paid by the importer of goods the sale value of which is specified in sub-section (1.) of section four of this Act.

Exemptions.

Substituted by No. 51, 1935, s. 8.

6.* Notwithstanding anything contained in section five of this Act, sales tax shall not be payable under this Act by the person specified in that section upon the sale value of goods the sale value of which is, by virtue of the *Sales Tax Exemptions Act* 1935, exempt from sales tax under this Act.

Refund of tax in certain cases where goods re-exported.

Inserted by No. 33, 1931, s. 3.
Sub-section (1.) amended by No. 51, 1933, s. 2.

6A.†—(1.) Sales tax payable in respect of imported goods entered for home consumption under the law relating to the Customs may, in prescribed cases, be paid to the Collector of Customs and retained by him on deposit for a period not exceeding twelve months.

(2.) If the goods are exported from Australia by the taxpayer within such time as is prescribed, the Collector may return to the taxpayer the amount deposited.

(3.) If the goods are not exported as specified in the last preceding sub-section, the Collector shall pay the amount deposited into the Consolidated Revenue Fund.

Added by No. 78, 1936, s. 33.

(4.) In lieu of payment and retention on deposit of tax pursuant to sub-section (1.) of this section the Collector may, in any case in which he thinks fit, accept such security as he deems sufficient as security that within the prescribed time the taxpayer will—

(*a*) export the goods from Australia; or

(*b*) pay the sales tax payable in respect of the goods.

Added by No. 78, 1936, s. 33.

(5.) The provisions of the *Customs Act* 1901-1935 (including any regulations made under that Act) relating to securities shall apply to a security under the last preceding sub-section as if that security were a security for compliance with that Act.

PART III.—ENTRIES.

Entries.

7.—(1.) Where any person imports into Australia goods to the importation of which section four of this Act applies, he shall, at the time of the entry of the goods under the law relating to the Customs, lodge, for the purposes of this Act, with the Collector of Customs at the port of importation, an entry in the prescribed manner and form.

(2.) For the purposes of the section, the expression "Collector of Customs" has the same meaning as it has in the *Customs Act* 1901-1930.

---

* This section was substituted by section 8 of the *Sales Tax (Securities and Exemptions) Act* 1935. Section 18 of that Act affects the operation of that amendment and is set out in the footnote on p. 19 of this reprint.

† This section was inserted by section 3 of the *Sales Tax Assessment Act (No. 5)* 1931. By section 5 of that Act, section 6A of this Act is deemed to have commenced on the date of the commencement of the *Sales Tax Assessment Act (No. 5)* 1930.

Added by No. 51, 1933, s. 4.

(2.) Where sales tax has been paid under this Act in respect of goods which are not subject to import duty, and, in the opinion of the Collector of Customs, drawback of duty would have been allowable under section one hundred and sixty-eight of the *Customs Act* 1901-1930 and the regulations thereunder if the goods had been subject to such duty, drawback of the sales tax so paid shall be allowed and the provisions of the *Customs Act* 1901-1930 and the regulations thereunder, in relation to drawback of import duty, shall apply in respect of drawback of sales tax as if the goods had been subject to import duty.

PART V.—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930.

Application of provisions of *Sales Tax Assessment Act* (*No.* 1) 1930.

Sub-section (1.) amended by No. 78, 1936, s. 35.

12.—(1.) The following Parts, sections and sub-sections of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936, namely, section three, Parts II. and III., sub-sections (5B.) and (5C.) of section eighteen, section twenty-three, sections twenty-seven to thirty-nine inclusive, and Parts VII., VIII., IX. and X., and the Second Schedule, shall *mutatis mutandis* apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but for the purposes of this Act—

(*a*) section eleven of the *Sales Tax Assessment Act* (*No.* 1) 1930 shall be read as if sub-sections (7.) and (8.) were omitted and the following sub-section inserted in their stead:—

"(7.) In respect only of the period commencing on the first day of August One thousand nine hundred and thirty and ending on the expiration of twenty-eight days after the commencement of this Act the following provisions shall apply:—

(*a*) Any person required by this Act to be registered shall be deemed to be a registered person until in fact so registered;

(*b*) every person so deemed to be a registered person shall upon every importation of goods by him for the purpose of sale or for use in the manufacture of goods for sale certify in writing to the Collector of Customs on the entry of those goods that the goods have been imported for that purpose;

(*c*) where in respect of any importation of goods the importer does not so certify he shall be deemed for the purposes of this Act not to have quoted his certificate in respect of the importation of those goods.";

SALES TAX ASSESSMENT ACT (NO. 6) 1930-1936.*

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of Goods imported into Australia and sold by the Importer, or applied to his own use, and for other purposes.

Title amended by No. 44, 1932, s. 2.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

Short title.

Short title amended: No. 32, 1918, s. 2.

1. This Act may be cited as the *Sales Tax Assessment Act* (*No.* 6) 1930-1936.*

Parts.

2. This Act is divided into Parts, as follows:—

Part I.—Preliminary.
Part II.—Liability to Taxation.
Part III.—Returns.
Part IV.—Collection and Recovery of Tax.
Part V.—Application of *Sales Tax Assessment Act* (*No.* 1) 1930.

PART II.—LIABILITY TO TAXATION.

Sales tax.

Amended by No. 68, 1930, s. 3; and No. 44, 1932, s. 3.

3. Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by the *Sales Tax Act* (*No.* 6) 1930 shall be levied and paid upon the sale value of goods imported into Australia by a taxpayer—

(*a*) either before or after the commencement of this Act and sold by him on or after the first day of August, One thousand nine hundred and thirty; or

---

* The *Sales Tax Assessment Act* (*No.* 6) 1930-1936 comprises the *Sales Tax Assessment Act* (*No.* 6) 1930 as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
Sales Tax Assessment Act (*No.* 6) 1930	1930, No. 35	18th August, 1930	18th August, 1930
Sales Tax Assessment Act (*No.* 6A) 1930	1930, No. 68	18th December, 1930	18th August, 1930
Sales Tax Assessment Act (*No.* 6) 1931	1931, No. 25	10th August, 1931	10th August, 1931
Sales Tax Assessment Act (*No.* 6) 1932	1932, No. 44	5th October, 1932	5th October, 1932
Financial Relief Act 1932	1932, No. 64	5th December, 1932	5th December, 1932
Financial Relief Act 1933	1933, No. 17	26th October, 1933	26th October, 1933
Sales Tax Assessment (*New Zealand Imports*) *Act* 1933	1933, No. 25	24th November, 1933	1st December, 1933
Sales Tax Assessment Act (*No.* 6) 1933	1933 No. 52	12th December, 1933	12th December, 1933
Financial Relief Act 1934	1934, No. 16	1st August, 1934	1st August, 1934
Sales Tax Assessment (*Fiji Imports*) *Act* 1934	1934, No. 62	17th December, 1934	17th January, 1935
Sales Tax (*Financial Relief*) *Act* 1935	1935, No. 45	25th October, 1935	25th October, 1935
Sales Tax (*Securities and Exemptions*) *Act* 1935	1935, No. 61	7th December, 1935	7th December, 1935
Sales Tax Amendment Act 1936	1936, No. 78	7th December, 1936	7th December, 1936

(*b*) after the commencement of this Act, and applied by him to his own use on or after the date of the commencement of the *Sales Tax Act* (*No.* 6) 1932.

Sale value of goods.
Sub-section (1.) amended by No. 36, 1931, s. 2; and No. 44, 1932, s. 4.

4.*—(1.) For the purposes of this Act, the sale value of goods which are sold on or after the first day of August One thousand nine hundred and thirty shall be the amount for which those goods are sold by a registered person, or a person required to be registered, who imported those goods, to an unregistered person or to a registered person who has not quoted his certificate in respect of the purchase of those goods:

†Provided that where goods are sold by retail by a registered person who has quoted his certificate when importing the goods the sale value of the goods shall be the amount which would be the fair market value of those goods if sold by him by wholesale, but if the Commissioner is of opinion that the amount set forth in any return by the registered person as the sale value of any such goods is less than the amount which which would be their fair market value if sold by wholesale, the Commissioner may alter the amount set forth in the return to the amount which, in his opinion, would be the fair market value of the goods if sold by wholesale, and the amount as so altered shall be the sale value of the goods for the purposes of this Act.

Inserted by No. 44, 1932, s. 4.

(1A.) For the purposes of this Act the sale value of goods imported by a registered person who quoted his certificate on the Customs entry relating to those goods, and who applies those goods to his own use, shall be the amount which would have been the sale value of those goods for purposes of the *Sales Tax Assessment Act* (*No.* 5) 1930-1931 if that person had not so quoted his certificate.

Sub-section (2.) omitted by No. 78, 1936, s. 37.

• • • • • • • •

Substituted by No. 36, 1931, s. 2; amended by No. 78, 1936, s. 37

(3.)† For the purposes of this section, the sale value of goods shall not be increased by‡ any amount payable in respect of sales tax, but, when the goods are sold either in bond or while otherwise subject to the control of the Customs, the sale value shall be increased by‡ the amount of any duty of Customs to which the goods would be subject if entered for home consumption at the time at which they are sold.

(4.) In the case of goods delivered on or after the first day of August One thousand nine hundred and thirty under a contract of sale made on or after the tenth day of July One thousand nine hundred and thirty and before the first day of August One thousand nine hundred and thirty the goods shall, for the purposes of this Act, be deemed to have been sold on the date of their delivery.

---

* This section was amended by section 4 of the *Sales Tax Assessment Act* (*No.* 6) 1932. By section 5 of the *Sales Tax Assessment Act* (*No.* 6) 1933, this amendment is deemed to have commenced on the date of the commencement of the *Sales Tax Assessment Act* (*No.* 6) 1930.

† Sub-section (1.) of this section was amended, and sub-section (3.) of this section was substituted, by section 2 of the *Sales Tax Assessment Act* (*No.* 6) 1931. By section 7 of that Act the amendments made by section 2 of that Act are deemed to have commenced on 11th July, 1931.

‡ This sub-section was amended by paragraph (*c*) of sub-section (1.) of section 37 of the *Sales Tax Amendment Act* 1936. By sub-section (2.) of that section the amendment effected by that paragraph is deemed to have commenced on 11th July, 1931. That amendment omitted from this sub-section the words "taken to include" and inserted in their stead the words "increased by". The words "taken to include" occurred twice in this sub-section and, in this reprint, the amendment has been made in both cases where those words occurred.

Liability for tax.

Amended by No. 44, 1932, s. 5.

5. Sales tax shall be paid by the importer of goods the sale value of which is specified in the last preceding section.

Rebates.

Inserted by No. 35, 1931, s. 3.

5A.*—(1.) Where a registered person has quoted his certificate in respect of goods imported by him prior to the eleventh day of July, One thousand nine hundred and thirty-one, he shall be entitled, in respect of any sale of those goods by retail made by him on or after that date, to a rebate of tax of the difference between the amount of tax payable by him in respect of that sale and the amount of tax which would have been payable if the rate of tax payable in respect of such sale had been two and one-half per centum of the sale value of the goods.

Added by No. 44, 1932, s. 6.

(2.) Where, upon the death or bankruptcy of a registered person to whom this section applies, or otherwise by devolution of the estate of that person, the ownership of goods purchased as specified in this section becomes vested in some other person, that other person shall, if he becomes liable to pay tax in respect of any sale by retail of those goods, be entitled to a rebate of that tax to the extent specified in this section.

Exemptions.

Substituted by No. 61, 1935, s. 9.

6.† Notwithstanding anything contained in section five of this Act, sales tax shall not be payable under this Act by the person specified in that section upon the sale value of goods the sale value of which is, by virtue of the *Sales Tax Exemptions Act* 1935, exempt from sales tax under this Act.

PART III.—RETURNS.

Returns, &c.

Substituted by No. 44, 1932, s. 7; amended by No. 52, 1933, s. 2.

7. Every person who, during any month—

(*a*) makes any of the sales specified in sub-section (1.) of section four of this Act; or

(*b*) applies to his own use any goods specified in sub-section (1A.) of section four of this Act,

shall, within twenty-one days after the close of that month, furnish to the Commissioner a return of those sales or, as the case may be, of those goods in the prescribed form, setting forth such information as is prescribed or is required for the due completion of that form.

---

* This section was inserted by section 3 of the *Sales Tax Assessment Act (No. 6)* 1931. By section 7 of that Act, this section is deemed to have commenced on 11th July, 1931.

† This section was substituted by section 9 of the *Sales Tax (Securities and Exemptions) Act* 1935. Section 18 of that Act, affects the operation of this amendment and is set out in the footnote on p. 19 of this reprint.

the Commissioner may, if so satisfied—

(i) within a period of three years; or

(ii) on consideration of a claim in writing lodged with the Commissioner within a period of three years,

from the date on which the goods were so sold, pay to that registered person an amount equal to the tax so paid and included.

Added by No. 44, 1932, s. 9; amended by No. 61, 1935, s. 16.

(3.) Where goods are sold by any person to the Government of the Commonwealth or the Government of a State, and the Commissioner is satisfied—

(*a*) that the goods are for the official use of a Government Department or of an authority specified in item 74 in the Schedule to the *Sales Tax Exemptions Act* 1935. and are not for re-sale, and, in the case of goods sold to the Government of a State, an arrangement of the kind specified in that item has been made between the Governor-General and the Governor of the State,

(*b*) that tax has been paid or is payable under this Act in respect of some prior act, operation or transaction in relation to those goods, or goods used in, wrought into or attached to those goods,

(*c*) that the amount of that tax has been paid or is payable by the person who so sold the goods, or has been wholly or partly included in the price for which that person purchased those goods, or the goods used in, wrought into or attached to those goods, and

(*d*) that the amount of that tax has been excluded wholly or in part from the price for which the goods were sold by that person to the Government or Government authority,

the Commissioner may refund or pay to that person the amount which, in the opinion of the Commissioner, was so excluded.

Added by No. 52, 1933, s. 4.

(4.) Notwithstanding anything contained in this section, if either before or after the commencement of this sub-section, any alteration is made in the rate of sales tax payable in respect of any goods, no refund, repayment or reduction shall, by reason of that alteration, be made of any amount paid or payable by any person as sales tax in respect of goods sold by a taxpayer or applied by him to his own use before the date of assent to the law making the alteration.

PART V.—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930.

Application of provisions of *Sales Tax Assessment Act* (*No.* 1) 1930.

Sub-section (1.) amended by No. 78, 1936, s. 40.

12.—(1.) The following Parts, sections and sub-sections of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936, namely, section three, Parts II. and III., sub-sections (4.), (5B.) and (5C.) of section eighteen, section twenty-three, sections twenty-seven to thirty-nine, inclusive, and Parts VII., VIII., IX. and X., and the Second Schedule shall *mutatis mutandis* apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but for the purposes of this Act—

(*a*) sub-section (4.) of section eighteen of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936 shall be read as if the words "sub-section (1.) of section four of this Act" were substituted for the words "sub-section (1.) of this section";

(*b*) section twenty-nine of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936 shall be read as if the words "section nine or ten of this Act" were substituted for the words "section twenty-four or twenty-five of this Act" (wherever occurring); and

(*c*) sub-section (2.) of section thirty-five of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936 shall be read as if the words "Part III. of this Act" were substituted for the words "Part V. of this Act".

(2.) The power to make regulations, conferred by the application, by the last preceding sub-section, of section seventy-three of Part X. of the *Sales Tax Assessment Act* (*No.* 1) 1930, shall include the power to make regulations for enabling registrations, certificates and securities made, issued or given for the purposes of that Act, to be treated as, or to be deemed to be, made, issued or given for the purposes also of this Act, and shall include the power generally to make regulations for treating acts, matters and things done, for the purposes of the *Sales Tax Assessment Act* (*No.* 1) 1930, under the sections and Parts of that Act made applicable to this Act, as done or deemed to be done under this Act.

• • • • • • • •

Schedule repealed by No. 61, 1935, s. 17.*

---

* The Schedule, which exempted certain goods from sales tax, was repealed by section 17 of the *Sales Tax (Securities and Exemptions) Act* 1935. Section 18 of that Act affects the operation of that repeal and is set out in the footnote on p. 10 of this reprint.

For the goods which are now exempted from sales tax see the *Sales Tax (Exemptions and Classifications) Act* 1935-[illegible]

SALES TAX ASSESSMENT ACT (NO. 7) 1930-1936.*

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of Goods imported into Australia and sold by a person other than the Importer, and for other purposes.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

Short title.

Short title amended: No. 32, 1936, s. 2.

1. This Act may be cited as the *Sales Tax Assessment Act* (*No.* 7) 1930-1936.*

Parts.

~~2. This Act is divided into Parts, as follows:—~~

Part I.—Preliminary.
Part II.—Liability to Taxation.
Part III.—Returns.
Part IV.—Collection and Recovery of Tax.
Part V.—Application of *Sales Tax Assessment Act* (*No.* 1) 1930.

PART II.—LIABILITY TO TAXATION.

Sales tax.

Amended by No. 69, 1930, s. 3.

3. Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by the *Sales Tax Act* (*No.* 7) 1930 shall be levied and paid upon the sale value of goods imported into Australia, either before or after the commencement of this Act, and sold on or after the first day of August One thousand nine hundred and thirty by a taxpayer not being the importer of the goods.

---

* The *Sales Tax Assessment Act* (*No.* 7) 1930-1936 comprises the *Sales Tax Assessment Act* (*No.* 7) 1930 as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
Sales Tax Assessment Act (*No.* 7) 1930	1930, No. 37	18th August, 1930 ..	18th August, 1930
Sales Tax Assessment Act (*No.* 7A) 1930	1930, No. 69	16th December, 1930 ..	18th August, 1930
Sales Tax Assessment Act (*No.* 7) 1931	1931, No. 37	10th August, 1931 ..	10th August, 1931
Sales Tax Assessment Act (*No.* 7) 1932	1932, No. 45	5th October, 1932 ..	5th October, 1932
Financial Relief Act 1932 ..	1932, No. 64	5th December, 1932 ..	5th December, 1932
Financial Relief Act 1933 ..	1933, No. 17	26th October, 1933 ..	26th October, 1933
Sales Tax Assessment (*New Zealand Imports*) *Act* 1933	1933, No. 25	24th November, 1933	1st December, 1933
Sales Tax Assessment Act (*No.* 7) 1933	1933, No. 53	12th December, 1933 ..	12th December, 1933
Financial Relief Act 1934 ..	1934, No. 16	1st August, 1934 ..	1st August, 1934
Sales Tax Assessment (*Fiji Imports*) *Act* 1934	1934, No. 62	17th December, 1934	17th January, 1935
Sales Tax (*Financial Relief*) *Act* 1935	1935, No. 45	25th October, 1935 ..	25th October, 1935
Sales Tax (*Securities and Exemptions*) *Act* 1935	1935, No. 61	7th December, 1935 ..	7th December, 1935
Sales Tax Amendment Act 1936	1936, No. 78	7th December, 1936 ..	7th December, 1936

Sale value of goods.

Sub-section (1.) amended by No. 37, 1931, s. 2; and No. 45, 1932, s. 2.

4.—(1.)* For the purposes of this Act, the sale value of goods which are sold on or after the first day of August One thousand nine hundred and thirty shall be the amount for which those goods are sold by a registered person, or a person required to be registered, not being the importer of those goods, to an unregistered person or to a registered person who has not quoted his certificate in respect of the purchase of those goods:

†Provided that, where goods are sold by retail by a registered person who has quoted his certificate when purchasing the goods, the sale value of the goods shall be the amount which would be the fair market value of those goods if sold by him by wholesale, but if the Commissioner is of opinion that the amount set forth in any return by the registered person as the sale value of any such goods is less than the amount which would be their fair market value if sold by wholesale, the Commissioner may alter the amount set forth in the return to the amount which, in his opinion, would be the fair market value of the goods if sold by wholesale, and the amount as so altered shall be the sale value of the goods for the purposes of this Act.

Sub-section (2.) omitted by No. 78, 1936, s. 42.

• • • • • • • •

Substituted by No. 37, 1931, s. 2; amended by No. 78, 1936, s. 42.

(3.) For the purposes of this section, the sale value of goods shall not be increased by‡ any amount payable in respect of sales tax, but, when the goods are sold either in bond or while otherwise subject to the control of the Customs, the sale value shall be increased by‡ the amount of any duty of Customs to which the goods would be subject if entered for home consumption at the time at which they are sold.

(4.) In the case of goods delivered on or after the first day of August One thousand nine hundred and thirty under a contract of sale made on or after the tenth day of July One thousand nine hundred and thirty and before the first day of August One thousand nine hundred and thirty the goods shall, for the purposes of this Act, be deemed to have been sold on the date of their delivery.

Liability for tax.

5. Sales tax shall be paid by the vendor of goods the sale value of which is specified in the last preceding section.

Rebates.

Inserted by No. 37, 1931, s. 3.

5A.§—(1.) Where a registered person has quoted his certificate in respect of goods purchased by him prior to the eleventh day of July, One thousand nine hundred and thirty-one, he shall be entitled, in respect of any sale of those goods by retail made by him on or after that date, to a rebate of tax of the difference between

---

* This sub-section was amended by section 2 of the *Sales Tax Assessment Act (No. 7)* 1932. By section 5 of the *Sales Tax Assessment Act (No. 7)* 193[illegible], this amendment is deemed to have commenced on the date of the commencement of the *Sales Tax Assessment Act (No. 7)* [illegible].

† The proviso to this sub-section was added by section 2 of the *Sales Tax Assessment Act (No. 7)* 1931. By section 7 of that Act, the amendment effected by section 2 of that Act is deemed to have commenced on 11th July, 1931.

‡ This sub-section was amended by paragraph (*c*) of sub-section (1.) of section 42 of the *Sales Tax Amendment Act* 1936. By sub-section (2.) of that section, the amendment effected by that paragraph is deemed to have commenced on 11th July, 1931. That amendment omitted from this sub-section the words "taken to include" and inserted in their stead the words "increased by". The words "taken to include" occurred twice in this sub-section and, in this reprint, the amendment has been made in both cases where those words occurred.

§ This section was inserted by section 3 of the *Sales Tax Assessment Act (No. 7)* 1931. By section 7 of that Act, this section is deemed to have commenced on 11th July, 1931.

(*c*) that the amount of that tax has been paid or is payable by the person who so sold the goods, or has been wholly or partly included in the price for which that person purchased those goods, or the goods used in, wrought into or attached to those goods, and

(*d*) that the amount of that tax has been excluded wholly or in part from the price for which the goods were sold by that person to the Government or Government Authority,

the Commissioner may refund or pay to that person the amount which, in the opinion of the Commissioner, was so excluded.

Added by No. 53, 1933, s. 4.

(4.) Notwithstanding anything contained in this section, if, either before or after the commencement of this sub-section, any alteration is made in the rate of sales tax payable in respect of any goods, no refund, repayment or reduction shall, by reason of that alteration, be made of any amount paid or payable by any person as sales tax in respect of goods sold before the date of assent to the law making the alteration.

PART V.—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930.

Application of provisions of *Sales Tax Assessment Act* (*No.* 1) 1930.

Sub-section (1.) amended by No. 78, 1936, s. 45.

12.—(1.) The following Parts, sections and sub-sections of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936, namely, section three, Parts II. and III., sub-sections (4.), (5B.) and (5C.) of section eighteen, section twenty-three, sections twenty-seven to thirty-nine inclusive, and Parts VII., VIII., IX. and X., and the Second Schedule shall *mutatis mutandis* apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but for the purposes of this Act—

(*a*) sub-section (4.) of section eighteen of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936 shall be read as if the words "sub-section (1.) of section four of this Act" were substituted for the words "sub-section (1.) of this section";

(*b*) section twenty-nine of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936 shall be read as if the words "section nine or ten of this Act" were substituted for the words "section twenty-four or twenty-five of this Act" (wherever occurring); and

(*c*) sub-section (2.) of section thirty-five of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936 shall be read as if the words "Part III. of this Act" were substituted for the words "Part V. of this Act",

SALES TAX ASSESSMENT ACT (NO. 8) 1930-1936.*

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of Certain Goods imported into Australia, purchased by a Taxpayer, and applied to his own use, and for other purposes.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Sales Tax Assessment Act* (*No.* 8) 1930-1936.* Short title. Short title amended: No. 32, 1918, s. 2.

~~2. This Act is divided into Parts, as follows:—~~ Parts.

Part I.—Preliminary.
Part II.—~~Liability~~ to Taxation.
Part III.—Returns.
Part IV.—Collection and Recovery of Tax.
Part V.—Application of *Sales Tax ~~Assessment~~ Act* (*No.* 1) 1930.

PART II.—LIABILITY TO TAXATION.

3. Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by the *Sales Tax Act* (*No.* 8) 1930 shall be levied and paid upon the sale value of goods which have been, either before or after the commencement of this Act, imported into Sales tax. Amended by No. 78, 1936, s. 3.

---

* The *Sales Tax Assessment Act* (*No.* 8) 1930-1936 comprises the *Sales Tax Assessment Act* (*No.* 8) 1930 as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
Sales Tax Assessment Act (*No.* 8) 1930	1930, No. 39	18th August, 1930 ..	18th August, 1930
Sales Tax Assessment Act (*No.* 8A) 1930	1930, No. 70	10th December, 1930 ..	18th August, 1930
Sales Tax Assessment Act (*No.* 8) 1931	1931, No. 39	10th August, 1931 ..	10th August, 1931
Sales Tax Assessment Act (*No.* 8) 1932	1932, No. 46	5th October, 1932 ..	5th October, 1932
Financial Relief Act 1932 ..	1932, No. 64	5th December, 1932 ..	5th December, 1932
Financial Relief Act 1933 ..	1933, No. 17	26th October, 1933 ..	26th October, 1933
Sales Tax Assessment (*New Zealand Imports*) *Act* 1933	1933, No. 25	24th November, 1933	1st December, 1933
Sales Tax Assessment Act (*No.* 8) 1933	1933, No. 54	12th December, 1933 ..	12th December, 1933
Financial Relief Act 1934 ..	1934, No. 16	1st August, 1934 ..	1st August, 1934
Sales Tax Assessment (*Fiji Imports*) *Act* 1934	1934, No. 62	17th December, 1934	17th January, 1935
Sales Tax (*Financial Relief*) *Act* 1935	1935, No. 45	25th October, 1935 ..	25th October, 1935
Sales Tax (*Securities and Exemptions*) *Act* 1935	1935, No. 61	7th December, 1935 ..	7th December, 1935
Sales Tax Amendment Act 1936	1936, No. 78	7th December, 1936 ..	7th December, 1936

Australia and sold to a taxpayer who has, on or after the first day of August One thousand nine hundred and thirty, applied those goods to his own use.

Sale value of goods.
Amended by No. 48, 1932, s. 2.

4.[*] For the purposes of this Act, the sale value of goods purchased by a registered person who has quoted his certificate in respect of those goods, and has applied the goods to his own use shall be the amount for which the goods were so purchased.

Liability for tax.

5. Sales tax shall be paid by the registered person specified in the last preceding section.

Exemptions.
Substituted by No. 61, 1935, s. 11.

6[†]. Notwithstanding anything contained in section five of this Act, sales tax shall not be payable under this Act by the person specified in that section upon the sale value of goods the sale value of which is, by virtue of the *Sales Tax Exemptions Act* 1935, exempt from sales tax under this Act.

PART III.—RETURNS.

Returns, &c.

7. Every person who during any month applies to his own use any goods purchased by him in respect of the purchase of which he has quoted his certificate shall, within twenty-one days after the close of that month, furnish to the Commissioner a return in the prescribed form setting forth full particulars of the goods so applied and such other information as is prescribed.

Further returns.

8. In addition to any return that may have been required under the last preceding section, the Commissioner may by notice in writing call upon any person to furnish to him, within the time specified in the notice, such return or such further or fuller return as the Commissioner requires, whether in that person's own behalf or as an agent or a trustee.

PART IV.—COLLECTION AND RECOVERY OF TAX.

Time of payment of tax.
Amended by No. 78, 1936, s. 47.

9. Every person liable to pay tax under section five of this Act upon the sale value of any goods applied by him to his own use during any month shall, within twenty-one days after the close of that month, pay sales tax on that sale value.

---

[*] This section was amended by section 2 of the *Sales Tax Assessment Act (No. 8)* 1932. Section 4 of the *Sales Tax Assessment Act (No. 8)* 1933 reads—

"4. Notwithstanding anything contained in section two of the *Sales Tax Assessment Act (No. 8)* 1932, the provisions of section four of the *Sales Tax Assessment Act (No. 8)* 1930–1931, as in force immediately prior to the commencement of the *Sales Tax Assessment Act (No. 8)* 1932, shall continue, and be deemed to have at all times continued, in force for all purposes in connexion with liability to sales tax in respect of goods applied by a person to his own use prior to such commencement.".

[†] This section was substituted by section 11 of the *Sales Tax (Securities and Exemptions) Act* 1935. Section 18 of that Act affects the operation of that amendment and is set out in the footnote on p. 19 of this reprint.

PART V.—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930.

Application of provisions of *Sales Tax Assessment Act* (*No.* 1) 1930.

Sub-section (1.) amended by No. 78, 1936, s. 49.

12.—(1.) The following Parts, sections and sub-sections of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936, namely, section three, Parts II. and III., sub-sections (5B.) and (5C.) of section eighteen, section twenty-three, sections twenty-seven to thirty-nine inclusive, and Parts VII., VIII., IX. and X., and the Second Schedule, shall *mutatis mutandis* apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but, for the purpose of this Act, section twenty-nine of the *Sales Tax Assessment Act* (*No.* 1) 1930 shall be read as if the words "section nine or ten of this Act" were substituted for the words "section twenty-four or twenty-five of this Act" (wherever occurring), and sub-section (2.) of section thirty-five of that Act shall be read as if the words "Part III. of this Act" were substituted for the words "Part V. of this Act".

(2.) The power to make regulations, conferred by the application, by the last preceding sub-section, of section seventy-three of Part X. of the *Sales Tax Assessment Act* (*No.* 1) 1930, shall include the power to make regulations for enabling registrations, certificates and securities made, issued or given for the purposes of that Act, to be treated as, or to be deemed to be, made, issued or given for the purposes also of this Act, and shall include the power generally to make regulations for treating acts, matters and things done, for the purposes of the *Sales Tax Assessment Act* (*No.* 1) 1930, under the sections and Parts of that Act made applicable to this Act, as done or deemed to be done under this Act.

Schedule repealed by No. 61, 1935, s. 17.[*]

* * * * * * * *

---

[*] The Schedule, which exempted certain goods from sales tax, was repealed by section 17 of the *Sales Tax (Securities and Exemptions) Act* 1935. Section 18 of that Act affects the operation of that repeal and is set out in the footnote on p. 19 of this reprint.

For the goods which are now exempt from sales tax *see* the *Sales Tax (Exemptions and Classifications) Act* 1935–1952.

Plaintiff's Exhibit No. 73B

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 73B
C. A. No.
59-C-1847

RJC

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX ACT (No. 1) 1930-1950.
SALES TAX ACT (No. 2) 1930-1950.
SALES TAX ACT (No. 3) 1930-1950.
SALES TAX ACT (No. 4) 1930-1950.
SALES TAX ACT (No. 5) 1930-1950.
SALES TAX ACT (No. 6) 1930-1950.
SALES TAX ACT (No. 7) 1930-1950.
SALES TAX ACT (No. 8) 1930-1950.
SALES TAX ACT (No. 9) 1930-1950.

3238.—Price 1s.

Plaintiff's Exhibit No. 73B

SALES TAX ACT (No. 5) 1930-1950.*

An Act to impose a Tax upon the Sale Value of Goods imported into Australia.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Sales Tax Act* (*No.* 5) 1930-1950.*

Short title. Amended by No. 22, 1918, s. 2.

2. The *Sales Tax Assessment Act* (*No.* 5) 1930-1931 shall be incorporated and read as one with this Act.

Incorporation. Amended by No. 34, 1931, s. 2.

3.† Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia on or after the thirteenth day of October, One thousand nine hundred and fifty, by a taxpayer.

Imposition of tax. Substituted by No. 42, 1950, s. 2.

---

* The *Sales Tax Act* (*No.* 5) 1930–1950 comprises the *Sales Tax Act* (*No.* 5) 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table:—

Short Title of Act.	Number of Act.	Date of Assent.	Date of Commencement.
Sales Tax Act (*No.* 5) 1930 ..	No. 34, 1930	18th August, 1930 ..	18th August, 1930
Sales Tax Act (*No.* 5) 1931 ..	No. 34, 1931	10th August, 1931 ..	11th July, 1931
Sales Tax Act (*No.* 5) 1936 ..	No. 36, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (*No.* 5) 1938 ..	No. 34, 1938	3rd October, 1938 ..	3rd October, 1938
Sales Tax Act (*No.* 5) 1939 ..	No. 20, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (*No.* 5) 1940 ..	No. 7, 1940	20th May, 1940 ..	20th May, 1940
Sales Tax Act (*No.* 5A) 1940 ..	No. 81, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (*No.* 5) 1941 ..	No. 37, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (*No.* 5) 1942 ..	No. 11, 1942	18th May, 1942 ..	18th May, 1942
Sales Tax Act (*No.* 5) 1943 ..	No. 49, 1943	19th October, 1943 ..	21st July, 1943
Sales Tax Act (*No.* 5) 1946 ..	No. 62, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (*No.* 5) 1949 ..	No. 59, 1949	28th October, 1949 ..	8th September, 1949
Sales Tax Act (*No.* 5) 1950 ..	No. 42, 1950	14th December, 1950	18th October, 1950

† Section four of the *Sales Tax Act* (*No.* 5) 1950, which Act repealed section three of the *Sales Tax Act* (*No.* 5) 1930–1949, reads as follows:—

"4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia before the date of commencement of this Act by a taxpayer shall continue to be imposed as if those provisions had not been repealed."

Rates of tax. Added by No. 42, 1950, s. 3.

4. The rates of the sales tax are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—10 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—25 per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—33⅓ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950 and on the sale value of which it is not provided by that Act that sales tax shall not be payable—8⅓ per centum.

3317

SALES TAX ACT (No. 6) 1930-1950.*

An Act to impose a Tax upon the Sale Value of Goods imported into Australia and sold by the Importer, or applied to his own use.

Title amended by No. 48, 1932, s. 2.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Sales Tax Act* (*No.* 6) 1930-1950.*

Short title. Amended by No. 32, 1918, s. 2.

2. The *Sales Tax Assessment Act* (*No.* 6) 1930-1931 shall be incorporated and read as one with this Act.

Incorporation. Amended by No. 28, 1931, s. 3.

3.† Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia by a taxpayer and, on or after the thirteenth day of October, One thousand nine hundred and fifty, sold by him or applied by him to his own use.

Imposition of tax. Substituted by No. 42, 1950, s. 3.

---

* The *Sales Tax Act* (*No.* 6) 1930-1950 comprises the *Sales Tax Act* (*No.* 6) 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table:—

Short Title of Act.	Number of Act.	Date of Assent.	Date of Commencement.
Sales Tax Act (*No.* 6) 1930 ..	No. 36, 1930	18th August, 1930 ..	18th August, 1930
Sales Tax Act (*No.* 6) 1931 ..	No. 28, 1931	10th August, 1931 ..	11th July, 1931
Sales Tax Act (*No.* 6) 1932 ..	No. 48, 1932	5th October, 1932 ..	5th October, 1932
Sales Tax Act (*No.* 6) 1936 ..	No. 37, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (*No.* 6) 1938 ..	No. 35, 1938	3rd October, 1938 ..	3rd October, 1938
Sales Tax Act (*No.* 6) 1939 ..	No. 21, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (*No.* 6) 1940 ..	No. 8, 1940	20th May, 1940 ..	20th May, 1940
Sales Tax Act (*No.* 6A) 1940 ..	No. 82, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (*No.* 6) 1941 ..	No. 38, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (*No.* 6) 1942 ..	No. 12, 1942	18th May, 1942 ..	18th May, 1942
Sales Tax Act (*No.* 6) 1943 ..	No. 50, 1943	19th October, 1943 ..	21st July, 1943
Sales Tax Act (*No.* 6) 1946 ..	No. 68, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (*No.* 6) 1949 ..	No. 60, 1949	28th October, 1949 ..	8th September, 1949
Sales Tax Act (*No.* 6) 1950 ..	No. 43, 1950	14th December, 1950	13th October, 1950

† Section four of the *Sales Tax Act* (*No.* 6) 1950, which Act repealed section three of the *Sales Tax Act* (*No.* 6) 1930-1949, reads as follows:—

"4. The sales tax imposed by the provisions repealed by this Act on the sale value of goods imported into Australia by a taxpayer and, before the date of commencement of this Act, sold by him or applied by him to his own use shall continue to be imposed as if those provisions had not been repealed."

Rates of tax. Added by No. 43, 1950, s. 3.

4. The rates of the sales tax are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—10 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—25 per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—33⅓ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950 and on the sale value of which it is not provided by that Act that sales tax shall not be payable—8⅓ per centum.

SALES TAX ACT (No. 7) 1930-1950.*

An Act to impose a Tax upon the Sale Value of Goods imported into Australia and sold by a person other than the Importer.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Sales Tax Act* (*No.* 7) 1930-1950.*

Short title. Amended by No. 22, 1918, s. 2.

2. The *Sales Tax Assessment Act* (*No.* 7) 1930-1931 shall be incorporated and read as one with this Act.

Incorporation. Amended by No. 38, 1931, s. 3.

3.† Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia and, on or after the thirteenth day of October, One thousand nine hundred and fifty, sold by a taxpayer not being the importer of the goods.

Imposition of tax. Substituted by No. 44, 1950, s. 3.

---

* The *Sales Tax Act* (*No.* 7) 1930-1950 comprises the *Sales Tax Act* (*No.* 7) 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table:—

Short Title of Act.	Number of Act.	Date of Assent.	Date of Commencement.
Sales Tax Act (*No.* 7) 1930 ..	No. 38, 1930	18th August, 1930 ..	18th August, 1930
Sales Tax Act (*No.* 7) 1931 ..	No. 38, 1931	10th August, 1931 ..	11th July, 1931
Sales Tax Act (*No.* 7) 1936 ..	No. 38, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (*No.* 7) 1938 ..	No. 36, 1938	3rd October, 1938 ..	3rd October, 1938
Sales Tax Act (*No.* 7) 1939 ..	No. 22, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (*No.* 7) 1940 ..	No. 9, 1940	20th May, 1940 ..	20th May, 1940
Sales Tax Act (*No.* 7A) 1940 ..	No. 83, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (*No.* 7) 1941 ..	No. 39, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (*No.* 7) 1942 ..	No. 13, 1942	18th May, 1942 ..	18th May, 1942
Sales Tax Act (*No.* 7) 1943 ..	No. 51, 1943	19th October, 1943 ..	21st July, 1943
Sales Tax Act (*No.* 7) 1946 ..	No. 64, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (*No.* 7) 1949 ..	No. 61, 1949	28th October, 1949 ..	8th September, 1949
Sales Tax Act (*No.* 7) 1950 ..	No. 44, 1950	14th December, 1950	13th October, 1950

† Section four of the *Sales Tax Act* (*No.* 7) 1950, which Act repealed section three of the *Sales Tax Act* (*No.* 7) 1930-1949, reads as follows:—

"4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia and, before the commencement of this Act, sold by a taxpayer not being the importer of the goods shall continue to be imposed as if those provisions had not been repealed."

Rates of tax.
Added by No. 44, 1950, s. 2.

4. The rates of the sales tax are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1950—10 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1950—25 per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1950—33⅓ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fourth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1950 and on the sale value of which it is not provided by that Act that sales tax shall not be payable—8⅓ per centum.

SALES TAX ACT (No. 8) 1930-1950.[*]

An Act to impose a Tax upon the Sale Value of certain Goods imported into Australia, purchased by a Taxpayer, and applied to his own use.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Sales Tax Act* (*No.* 8) 1930-1950.[*]

Short title.
Amended by No. 32, 1918, s. 2.

2. The *Sales Tax Assessment Act* (*No.* 8) 1930-1931 shall be incorporated and read as one with this Act.

Incorporation.
Amended by No. 40, 1931, s. 3.

3.[†] Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia and sold to a taxpayer who has, on or after the thirteenth day of October, One thousand nine hundred and fifty, applied those goods to his own use.

Imposition of tax.
Substituted by No. 45, 1950, s. 3.

---

[*] The *Sales Tax Act* (*No.* 8) 1930–1950 comprises the *Sales Tax Act* (*No.* 8) 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table :—

Short Title of Act.	Number of Act.	Date of Assent.	Date of Commencement.
Sales Tax Act (*No.* 8) 1930 ..	No. 40, 1930	18th August, 1930 ..	18th August, 1930
Sales Tax Act (*No.* 8) 1931 ..	No. 40, 1931	10th August, 1931 ..	11th July, 1931
Sales Tax Act (*No.* 8) 1936 ..	No. 39, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (*No.* 8) 1938 ..	No. 37, 1938	3rd October, 1938 ..	3rd October, 1938
Sales Tax Act (*No.* 8) 1939 ..	No. 23, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (*No.* 8) 1940 ..	No. 10, 1940	20th May, 1940 ..	20th May, 1940
Sales Tax Act (*No.* 8A) 1940 ..	No. 84, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (*No.* 8) 1941 ..	No. 40, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (*No.* 8) 1942 ..	No. 14, 1942	18th May, 1942 ..	18th May, 1942
Sales Tax Act (*No.* 8) 1943 ..	No. 52, 1943	19th October, 1943 ..	21st July, 1943
Sales Tax Act (*No.* 8) 1946 ..	No. 65, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (*No.* 8) 1949 ..	No. 62, 1949	28th October, 1949 ..	8th September, 1949
Sales Tax Act (*No.* 8) 1950 ..	No. 45, 1950	14th December, 1950	13th October, 1950

[†] Section four of the *Sales Tax Act* (*No.* 8) 1950, which Act repealed section three of the *Sales Tax Act* (*No.* 8) 1930–1949, reads as follows :—

"4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia and sold to a taxpayer who has, before the date of commencement of this Act, applied those goods to his own use shall continue to be imposed as if those provisions had not been repealed."

Rates of tax. Added by No. 45, 1950, s. 3.

4. The rates of the sales tax are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—10 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—25 per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—33⅓ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950 and on the sale value of which it is not provided by that Act that sales tax shall not be payable—8⅓ per centum.

THE COMMONWEALTH OF AUSTRALIA.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 73C-4
C. A. No. 59-C-1847

RJC

SALES TAX ACT (No. 1) 1930-1962.
SALES TAX ACT (No. 2) 1930-1962.
SALES TAX ACT (No. 3) 1930-1962.
SALES TAX ACT (No. 4) 1930-1962.
SALES TAX ACT (No. 5) 1930-1962.
SALES TAX ACT (No. 6) 1930-1962.
SALES TAX ACT (No. 7) 1930-1962.
SALES TAX ACT (No. 8) 1930-1962.
SALES TAX ACT (No. 9) 1930-1962.

747/63.—Price 1s.

SALES TAX ACT (No. 5) 1930-1962.*

An Act to impose a Tax upon the Sale Value of Goods imported into Australia.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Sales Tax Act* (*No.* 5) 1930-1962.*

Short title.

Short title amended; No. 32, 1918, s. 2.

2. The *Sales Tax Assessment Act* (*No.* 5) 1930-1931 shall be incorporated and read as one with this Act.

Incorporation.

Amended by No. 34, 1931, s. 3.

3.† Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia on or after the seventh day of February, One thousand nine hundred and sixty-two, by a taxpayer.

Imposition of tax.

Substituted by No. 9, 1962, s. 3.

---

* The *Sales Tax Act* (*No.* 5) 1930–1962 comprises the *Sales Tax Act* (*No.* 5) 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table:—

Short Title of Act.	Number of Act.	Date of Assent.	Date of Commencement.
Sales Tax Act (*No.* 5) 1930 ..	No. 34, 1930	18th August, 1930 ..	18th August, 1930
Sales Tax Act (*No.* 5) 1931 ..	No. 34, 1931	10th August, 1931 ..	11th July, 1931
Sales Tax Act (*No.* 5) 1936 ..	No. 36, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (*No.* 5) 1938 ..	No. 34, 1938	3rd October, 1938 ..	3rd October, 1938
Sales Tax Act (*No.* 5) 1939 ..	No. 20, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (*No.* 5) 1940 ..	No. 7, 1940	20th May, 1940 ..	20th May, 1940
Sales Tax Act (*No.* 5A) 1940 ..	No. 81, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (*No.* 5) 1941 ..	No. 37, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (*No.* 5) 1942 ..	No. 11, 1942	18th May, 1942 ..	18th May, 1942
Sales Tax Act (*No.* 5) 1943 ..	No. 49, 1943	19th October, 1943	21st July, 1943
Sales Tax Act (*No.* 5) 1946 ..	No. 62, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (*No.* 5) 1949 ..	No. 59, 1949	28th October, 1949 ..	8th September, 1949
Sales Tax Act (*No.* 5) 1950 ..	No. 42, 1950	14th December, 1950	13th October, 1950
Sales Tax Act (*No.* 5) 1951 ..	No. 68, 1951	11th December, 1951	27th September, 1951
Sales Tax Act (*No.* 5) 1952 ..	No. 49, 1952	30th September, 1952	7th August, 1952
Sales Tax Act (*No.* 5) 1953 ..	No. 58, 1953	28th October, 1953	10th September, 1953
Sales Tax Act (*No.* 5) 1954 ..	No. 50, 1954	6th November, 1954	19th August, 1954
Sales Tax Act (*No.* 5) 1956 ..	No. 10, 1956	12th May, 1956 ..	15th March, 1956
Sales Tax Act (*No.* 5) 1957 ..	No. 76, 1957	12th December, 1957	4th September, 1957
Sales Tax Act (*No.* 5) 1960 ..	No. 93, 1960	14th December, 1960	16th November, 1960
Sales Tax Act (*No.* 5) 1961 ..	No. 6, 1961	4th May, 1961 ..	22nd February, 1961
Sales Tax Act (*No.* 5A) 1961 ..	No. 81, 1961	27th October, 1961	16th August, 1961
Sales Tax Act (*No.* 5) 1962 ..	No. 9, 1962	23rd March, 1962 ..	7th February, 1962

† Section 4 of the *Sales Tax Act* (*No.* 5) 1962, by which this section was repealed and substituted, reads as follows:—

"4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Austriaia by a taxpayer on or after the sixteenth day of August, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, continues to be imposed as if those provisions had not been repealed."

Rates of tax.
Substituted by No. 9, 1962, s. 3.

4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1962—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1962—2½ per centum;

(*c*) in respect of goods covered by the Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1962—22½ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1962 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.

SALES TAX ACT (No. 6) 1930-1962.*

An Act to impose a Tax upon the Sale Value of Goods imported into Australia and sold by the Importer, or applied to his own use.

Title amended by No. 48, 1932, s. 2.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title.

Short title amended; No. 32, 1918, s. 2.

1. This Act may be cited as the *Sales Tax Act* (*No.* 6) 1930-1962.*

Incorporation.

Amended by No. 36, 1931, s. 3.

2. The *Sales Tax Assessment Act* (*No.* 6) 1930-1931 shall be incorporated and read as one with this Act.

Imposition of tax.

Substituted by No. 10, 1962, s. 3.

3.† Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia by a taxpayer and, on or after the seventh day of February, One thousand nine hundred and sixty-two, sold by him or applied by him to his own use.

---

* The *Sales Tax Act* (*No.* 6) 1930–1962 comprises the *Sales Tax Act* (*No.* 6) 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table:—

Short Title of Act.	Number of Act.	Date of Assent.	Date of Commencement.
Sales Tax Act (*No.* 6) 1930 ..	No. 36, 1930	18th August, 1930 ..	18th August, 1930
Sales Tax Act (*No.* 6) 1931 ..	No. 36, 1931	10th August, 1931 ..	11th July, 1931
Sales Tax Act (*No.* 6) 1932 ..	No. 48, 1932	5th October, 1932 ..	5th October, 1932
Sales Tax Act (*No.* 6) 1936 ..	No. 37, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (*No.* 6) 1938 ..	No. 35, 1938	3rd October, 1938 ..	3rd October, 1938
Sales Tax Act (*No.* 6) 1939 ..	No. 21, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (*No.* 6) 1940 ..	No. 8, 1940	20th May, 1940 ..	20th May, 1940
Sales Tax Act (*No.* 6A) 1940 ..	No. 82, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (*No.* 6) 1941 ..	No. 38, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (*No.* 6) 1942 ..	No. 12, 1942	18th May, 1942 ..	18th May, 1942
Sales Tax Act (*No.* 6) 1943 ..	No. 50, 1943	19th October, 1943 ..	21st July, 1943
Sales Tax Act (*No.* 6) 1946 ..	No. 63, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (*No.* 6) 1949 ..	No. 60, 1949	28th October, 1949 ..	8th September, 1949
Sales Tax Act (*No.* 6) 1950 ..	No. 43, 1950	14th December, 1950	13th October, 1950
Sales Tax Act (*No.* 6) 1951 ..	No. 69, 1951	11th December, 1951	27th September, 1951
Sales Tax Act (*No.* 6) 1952 ..	No. 50, 1952	30th September, 1952	7th August, 1952
Sales Tax Act (*No.* 6) 1953 ..	No. 59, 1953	28th October, 1953 ..	10th September, 1953
Sales Tax Act (*No.* 6) 1954 ..	No. 51, 1954	6th November, 1954	19th August, 1954
Sales Tax Act (*No.* 6) 1956 ..	No. 11, 1956	12th May, 1956 ..	15th March, 1956
Sales Tax Act (*No.* 6) 1957 ..	No. 77, 1957	12th December, 1957	4th September, 1957
Sales Tax Act (*No.* 6) 1960 ..	No. 94, 1960	14th December, 1960	16th November, 1960
Sales Tax Act (*No.* 6) 1961 ..	No. 7, 1961	4th May, 1961 ..	22nd February, 1961
Sales Tax Act (*No.* 6A) 1961 ..	No. 82, 1961	27th October, 1961 ..	16th August, 1961
Sales Tax Act (*No.* 6) 1962 ..	No. 10, 1962	23rd March, 1962 ..	7th February, 1962

† Section 4 of the *Sales Tax Act* (*No.* 6) 1962, by which this section was repealed and substituted, reads as follows:—

"4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer and, on or after the sixteenth day of August, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, sold by him or applied by him to his own use continues to be imposed as if those provisions had not been repealed."

Rates of tax.
Substituted by No. 10, 1962, s. 3.

4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-19[illegible]—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1962—2½ per centum;

(*c*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1962—22½ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1962 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.

SALES TAX ACT (No. 7) 1930-1962.*

An Act to impose a Tax upon the Sale Value of Goods imported into Australia and sold by a person other than the Importer.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Sales Tax Act* (*No.* 7) 1930-1962.*

Short title.

Short title amended; No. 32, 1918, s. 2.

2. The *Sales Tax Assessment Act* (*No.* 7) 1930-1931 shall be incorporated and read as one with this Act.

Incorporation.

Amended by No. 38, 1931, s. 3.

3.† Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia and, on or after the seventh day of February, One thousand nine hundred and sixty-two, sold by a taxpayer not being the importer of the goods.

Imposition of tax.

Substituted by No. 11, 1962, s. 3.

---

* The *Sales Tax Act (No. 7)* 1930–1962 comprises the *Sales Tax Act (No. 7)* 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table:—

Short Title of Act.	Number of Act	Date of Assent.	Date of Commencement.
Sales Tax Act (*No.* 7) 1930	No. 38, 1930	18th August, 1930	18th August, 1930
Sales Tax Act (*No.* 7) 1931	No. 38, 1931	10th August, 1931	11th July, 1931
Sales Tax Act (*No,* 7) 1936	No. 38, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (*No.* 7) 1938	No. 36, 1938	3rd October, 1938	3rd October, 1938
Sales Tax Act (*No.* 7) 1939	No. 22, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (*No.* 7) 1940	No. 9, 1940	20th May, 1940	20th May, 1940
Sales Tax Act (*No.* 7A) 1940	No. 83, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (*No.* 7) 1941	No. 39, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (*No.* 7) 1942	No. 13, 1942	18th May, 1942	18th May, 1942
Sales Tax Act (*No.* 7) 1943	No. 51, 1943	19th October, 1943	21st July, 1943
Sales Tax Act (*No.* 7) 1946	No. 64, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (*No.* 7) 1949	No. 61, 1949	28th October, 1949	8th September, 1949
Sales Tax Act (*No.* 7) 1950	No. 44, 1950	14th December, 1950	13th October, 1950
Sales Tax Act (*No.* 7) 1951	No. 70, 1951	11th December, 1951	27th September, 1951
Sales Tax Act (*No.* 7) 1952	No. 51, 1952	30th September, 1952	7th August, 1952
Sales Tax Act (*No.* 7) 1953	No. 60, 1953	28th October, 1953	10th September, 1953
Sales Tax Act (*No.* 7) 1954	No. 52, 1954	6th November, 1954	19th August, 1954
Sales Tax Act (*No.* 7) 1956	No. 12, 1956	12th May, 1956	15th March, 1956
Sales Tax Act (*No.* 7) 1957	No. 78, 1957	12th December, 1957	4th September, 1957
Sales Tax Act (*No.* 7) 1960	No. 95, 1960	14th December, 1960	16th November, 1960
Sales Tax Act (*No.* 7) 1961	No. 8, 1961	4th May, 1961	22nd February, 1961
Sales Tax Act (*No.* 7A) 1961	No. 83, 1961	27th October, 1961	16th August, 1961
Sales Tax Act (*No.* 7) 1962	No. 11, 1962	23rd March, 1962	7th February, 1962

† Section 4 of the *Sales Tax Act* (*No.* 7) 1962, by which this section was repealed and substituted, reads as follows:—

"4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia and, on or after the sixteenth day of August, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, sold by a taxpayer, not being the importer of the goods, continues to be imposed as if those provisions had not been repealed."

Rates of tax. Substituted by No. 11, 1962, s. 3.

4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1962—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1962—2½ per centum;

(*c*) in respect of goods covered by the Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1962—22½ per centum; and

(*d*) in respect of goods not covered by the Second Third or Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1962 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.

SALES TAX ACT (No. 8) 1930-1962.*

An Act to impose a Tax upon the Sale Value of certain Goods imported into Australia, purchased by a Taxpayer, and applied to his own use.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Sales Tax Act* (*No.* 8) 1930-1962.*

Short title.
Short title amended; No. 32, 1918, s. 2.

2. The *Sales Tax Assessment Act* (*No.* 8) 1930-1931 shall be incorporated and read as one with this Act.

Incorporation.
Amended by No. 40, 1931, s. 3.

3.† Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia and sold to a taxpayer who has, on or after the seventh day of February, One thousand nine hundred and sixty-two, applied those goods to his own use.

Imposition of tax.
Substituted by No. 12, 1962, s. 3.

---

* The *Sales Tax Act* (*No.* 8) 1930–1962 comprises the *Sales Tax Act* (*No.* 8) 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table:—

Short Title of Act.	Number of Act.	Date of Assent.	Date of Commencement.
Sales Tax Act (*No.* 8) 1930	No. 40, 1930	18th August, 1930	18th August, 1930
Sales Tax Act (*No.* 8) 1931	No. 40, 1931	10th August, 1931	11th July, 1931
Sales Tax Act (*No.* 8) 1936	No. 39, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (*No.* 8) 1938	No. 37, 1938	3rd October, 1938	3rd October, 1938
Sales Tax Act (*No.* 8) 1939	No. 23, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (*No.* 8) 1940	No. 10, 1940	20th May, 1940	20th May, 1940
Sales Tax Act (*No.* 8A) 1940	No. 84, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (*No.* 8) 1941	No. 40, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (*No.* 8) 1942	No. 14, 1942	18th May, 1942	18th May, 1942
Sales Tax Act (*No.* 8) 1943	No. 52, 1943	19th October, 1943	21st July, 1943
Sales Tax Act (*No.* 8) 1946	No. 65, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (*No.* 8) 1949	No. 62, 1949	28th October 1949	8th September, 1949
Sales Tax Act (*No.* 8) 1950	No. 45, 1950	14th December, 1950	13th October, 1950
Sales Tax Act (*No.* 8) 1951	No. 71, 1951	11th December, 1951	27th September, 1951
Sales Tax Act (*No.* 8) 1952	No. 52, 1952	30th September, 1952	7th August, 1952
Sales Tax Act (*No.* 8) 1953	No. 61, 1953	28th October, 1953	10th September, 1953
Sales Tax Act (*No.* 8) 1954	No. 53, 1954	6th November, 1954	19th August, 1954
Sales Tax Act (*No.* 8) 1956	No. 13, 1956	12th May, 1956	15th March, 1956
Sales Tax Act (*No.* 8) 1957	No. 79, 1957	12th December, 1957	4th September, 1957
Sales Tax Act (*No.* 8) 1960	No. 96, 1960	14th December, 1960	16th November, 1960
Sales Tax Act (*No.* 8) 1961	No. 9, 1961	4th May, 1961	22nd February, 1961
Sales Tax Act (*No.* 8A) 1961	No. 84, 1961	27th October, 1961	16th August, 1961
Sales Tax Act (*No.* 8) 1962	No. 12, 1962	23rd March, 1962	7th February, 1962

† Section 4 of the *Sales Tax Act* (*No.* 8) 1962, by which this section was repealed and substituted, reads as follows:—

"4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia and sold to a taxpayer who has, on or after the sixteenth day of August, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, applied those goods to his own use continues to be imposed as if those provisions had not been repealed."

Rates of tax.
Substituted by No. 12, 1962, s. 3.

4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales' Tax* (*Exemptions and Classifications*) *Act* 1935-1962—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1962—2½ per centum;

(*c*) in respect of goods covered by the Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1962—22½ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1962 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.

THE COMMONWEALTH OF AUSTRALIA.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74A
C. A. No. 59-C-1847

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS).

No. 5 of 1956.

An Act to amend the *Sales Tax (Exemptions and Classifications) Act* 1935-1954.

[Assented to 12th May, 1956.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Sales Tax (Exemptions and Classifications) Act* 1956.

(2.) The *Sales Tax (Exemptions and Classifications) Act* 1935–1954* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Sales Tax (Exemptions and Classifications) Act* 1935–1956.

Commencement.

2. This Act shall be deemed to have come into operation on the fifteenth day of March, One thousand nine hundred and fifty-six.

3. Section

---

* Act No. 60, 1935, as amended by No. 41, 1936; No. 78, 1938; No. 32, 1939; Nos. 29 and 76, 1940; No. 32, 1941; No. 6, 1942; Nos. 35 and 44, 1943; No. 31, 1944; No. 36, 1945; Nos. 12 and 67, 1946; No. 65, 1947; No. 42, 1948; No. 54, 1949; No. 37, 1950; No. 42, 1951; No. 44, 1952; No. 53, 1953; and No. 45, 1954.

F.2905/56.—Price 3d.

Classification of goods.

3. Section six B of the Principal Act is amended by omitting from sub-section (1.) the words "the Second or Third Schedule to this Act" and inserting in their stead the words "a Schedule to this Act other than the First Schedule".

Second Schedule.

4. The Second Schedule to the Principal Act is amended—

(*a*) by omitting item 43; and

(*b*) by omitting item 48 and inserting in its stead the following item:—

"48	Wireless receiving sets; television receiving sets; record players and pick-ups; combined wireless receiving sets and gramophones; combined television receiving sets and gramophones; combined wireless receiving sets and television receiving sets; combined wireless receiving sets, television receiving sets and gramophones".

Fourth and Fifth Schedules.

5. After the Third Schedule to the Principal Act the following Schedules are added:—

FOURTH SCHEDULE.

Section 6B.

Item No.	Specification of Goods.
1	Motor vehicles of a kind used for commercial purposes (not being goods covered by item 1 in the Fifth Schedule to this Act), including prime movers and semi-trailers for attachment to prime movers
2	Motor cycles, auto-cycles and motor scooters, and side cars and side boxes for attachment to those goods
3	Parts and accessories (other than tyres and tubes) for goods covered by any item in this Schedule or by item 1 in the Fifth Schedule to this Act

FIFTH SCHEDULE.

Section 6B.

Item No.	Specification of Goods.
1	Motor cars designed primarily and principally for the transport of persons, including sedans, coupés, tourers, roadsters, racing cars, taxi-cabs, station waggons, estate cars, and vehicles similar in design to station waggons or estate cars, but not including panel vans, delivery vans, utilities, ambulances, hearses, jeeps, trucks, lorries or motor buses

By Authority: A. J. ARTHUR, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 746 ad
C. A. No. 59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

RJC

SALES TAX (No. 5).

No. 76 of 1957.

An Act to amend the *Sales Tax Act* (*No.* 5) 1930-1956.

[Assented to 12th December, 1957.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 5) 1957.

(2.) The *Sales Tax Act* (*No.* 5) 1930–1956,[*] as amended by this Act, may be cited as the *Sales Tax Act* (*No.* 5) 1930–1957.

Commencement.

2. This Act shall be deemed to have come into operation on the fourth day of September, One thousand nine hundred and fifty-seven.

3. Sections three and four of the *Sales Tax Act* (*No.* 5) 1930–1956 are repealed and the following sections inserted in their stead:—

Imposition of tax.

"3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia on or after the fourth day of September, One thousand nine hundred and fifty-seven, by a taxpayer.

"4. The

---

[*] Act No. 34, 1930, as amended by No. 34, 1931; No. 36, 1936; No. 34, 1938; No. 20, 1939; Nos. 7 and 81, 1940; No. 37, 1941; No. 11, 1942; No. 49, 1943; No. 62, 1946; No. 59, 1949; No. 42, 1950; No. 68, 1951; No. 49, 1952; No. 58, 1953; No. 50, 1954; and No. 10, 1956.

F.7450/57.—Price 3d.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—8⅓ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—30 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving.

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer on or after the fifteenth day of March, One thousand nine hundred and fifty-six, and before the date of commencement of this Act continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74C
C. A. No.
59-C-1847

RJC

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX (No. 5).

No. 93 of 1960.

An Act to amend the *Sales Tax Act* (*No.* 5) 1930–1957.

[Assented to 14th December, 1960.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation. 1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 5) 1960.

(2.) The *Sales Tax Act* (*No.* 5) 1930–1957,* as amended by this Act, may be cited as the *Sales Tax Act* (*No.* 5) 1930–1960.

Commencement. 2. This Act shall be deemed to have come into operation on the sixteenth day of November, One thousand nine hundred and sixty.

3. Sections three and four of the *Sales Tax Act* (*No.* 5) 1930–1957 are repealed and the following sections inserted in their stead:—

Imposition of tax. "3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia on or after the sixteenth day of November, One thousand nine hundred and sixty, by a taxpayer.

"4. The

---

* Act No. 34, 1930, as amended by No. 34, 1931; No. 36, 1936; No. 34, 1938; No. 20, 1939; Nos. 7 and 81, 1940; No. 37, 1941; No. 11, 1942; No. 49, 1943; No. 62, 1946; No. 59, 1949; No. 42, 1950; No. 68, 1951; No. 49, 1952; No. 58, 1953; No. 50, 1954; No. 10, 1956; and No. 76, 1957.

Rates of tax.

" 4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1960—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1960—8⅓ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1960—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1960—40 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1960 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving.

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer on or after the fourth day of September, One thousand nine hundred and fifty-seven, and before the date of commencement of this Act continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74 Ded
C. A. No.
59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX (No. 5).

No. 6 of 1961.

An Act to amend the *Sales Tax Act* (*No.* 5) 1930–1960.

[Assented to 4th May, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 5) 1961.

(2.) The *Sales Tax Act* (*No.* 5) 1930–1960,* as amended by this Act, may be cited as the *Sales Tax Act* (*No.* 5) 1930–1961.

Commencement.

2. This Act shall be deemed to have come into operation on the twenty-second day of February, One thousand nine hundred and sixty-one.

3. Sections three and four of the *Sales Tax Act* (*No.* 5) 1930–1960 are repealed and the following sections inserted in their stead:—

Imposition of tax.

" 3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia on or after the twenty-second day of February, One thousand nine hundred and sixty-one, by a taxpayer.

" 4. The

---

* Act No. 34, 1930, as amended by No. 34, 1931; No. 36, 1936; No. 34, 1938; No. 20, 1939; Nos. 7 and 81, 1940; No. 37, 1941; No. 11, 1942; No. 49, 1943; No. 62, 1946; No. 59, 1949; No. 42, 1950; No. 68, 1951; No. 49, 1952; No. 58, 1953; No. 50, 1954; No. 10, 1956; No. 76, 1957; and No. 93, 1960.

F.3861/61.—PRICE 3D.

Rates of tax. "4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—8⅓ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—30 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving. 4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer on or after the sixteenth day of November, One thousand nine hundred and sixty, and before the date of commencement of this Act continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74E
C. A. No.
59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX (No. 5A).

No. 81 of 1961.

An Act relating to Sales Tax.

[Assented to 27th October, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 5A) 1961. **Short title and citation.**

(2.) Section one of the *Sales Tax Act* (*No.* 5) 1961* is amended by omitting sub-section (2.).

(3.) The *Sales Tax Act* (*No.* 5) 1930–1960,† as amended by the *Sales Tax Act* (*No.* 5) 1961 and by this Act, may be cited as the *Sales Tax Act* (*No.* 5) 1930–1961.

2. This Act shall be deemed to have come into operation on the sixteenth day of August, One thousand nine hundred and sixty-one. **Commencement.**

3. Sections

---

[*] Act No. 6, 1961.

[†] Act No. 34, 1930, as amended by No. 34, 1931; No. 36, 1936; No. 34, 1938; No. 20, 1939; Nos. 7 and 81, 1940; No. 37, 194[illegible]; No. 11, 1942; No. 49, 1943; No. 62, 1946; No. 59, 1949; No. 42, 1950; No. 68, 1951; No. 49, 1952; No. 58, 1953; No. 50, 1954; No. 10, 1956; No. 76, 1957; and No. 93, 1960.

F.10976/61.—Price 3d.

3. Sections three and four of the *Sales Tax Act* (*No.* 5) 1930–1960, as amended by the *Sales Tax Act* (*No.* 5) 1961, are repealed and the following sections inserted in their stead:—

Imposition of tax.

"3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia on or after the sixteenth day of August, One thousand nine hundred and sixty-one, by a taxpayer.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—2½ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—30 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving.

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer on or after the twenty-second day of February, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. ARTHUR, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74 Fid
C. A. No.
59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

RJC

SALES TAX (No. 5).

No. 9 of 1962.

An Act to amend the *Sales Tax Act* (*No.* 5) 1930–1961.

[Assented to 23rd March, 1962.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 5) 1962.

(2.) The *Sales Tax Act* (*No.* 5) 1930–1961,* as amended by this Act, may be cited as the *Sales Tax Act* (*No.* 5) 1930–1962.

Commencement.

2. This Act shall be deemed to have come into operation on the seventh day of February, One thousand nine hundred and sixty-two.

3. Sections three and four of the *Sales Tax Act* (*No.* 5) 1930–1961 are repealed and the following sections inserted in their stead:—

Imposition of tax.

"3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia on or after the seventh day of February, One thousand nine hundred and sixty-two, by a taxpayer.

"4. The

---

* Act No. 34, 1930, as amended by No. 34, 1931; No. 36, 1936; No. 34, 1938; No. 20, 1939; Nos. 7 and 81, 1940; No. 37, 1941; No. 11, 1942; No. 49, 1943; No. 62, 1946; No. 59, 1949; No. 42, 1950; No. 68, 1951; No. 49, 1952; No. 58, 1953; No. 50, 1954; No. 10, 1956; No. 76, 1957; No. 93, 1960; and Nos. 6 and 81, 1961.

F.2613/62.—Price 3d.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1962—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1962—2½ per centum;

(*c*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1962—22½ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1962 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving.

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer on or after the sixteenth day of August, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. ARTHUR, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74G
C. A. No. 59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

RJC

SALES TAX (No. 6).

No. 77 of 1957.

An Act to amend the *Sales Tax Act* (*No.* 6) 1930-1956.

[Assented to 12th December, 1957.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 6) 1957. Short title and citation.

(2.) The *Sales Tax Act* (*No.* 6) 1930–1956, as amended by this Act, may be cited as the *Sales Tax Act* (*No.* 6) 1930–1957.

2. This Act shall be deemed to have come into operation on the fourth day of September, One thousand nine hundred and fifty-seven. Commencement.

3. Sections three and four of the *Sales Tax Act* (*No.* 6) 1930–1956 are repealed and the following sections inserted in their stead:—

"3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia by a taxpayer and, on or after the fourth day of September, One thousand nine hundred and fifty-seven, sold by him or applied by him to his own use. Imposition of tax.

"4. The

---

[*] Act No. 36, 1930, as amended by No. 36, 1931; No. 48, 1932; No. 37, 1936; No. 35, 1938; No. 21, 1939; Nos. 8 and 82, 1940; No. 38, 1941; No. 12, 1942; No. 50, 1943; No. 63, 1946; No. 60, 1949; No. 43, 1950; No. 69, 1951; No. 50, 1952; No. 59, 1953; No. 51, 1954; and No. 11, 1956.

F.7451/57.—Price 3d.

Rates of tax. "4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—8⅓ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—30 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving. **4.** The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer and, on or after the fifteenth day of March, One thousand nine hundred and fifty-six, and before the date of commencement of this Act, sold by him or applied by him to his own use continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74H-d
C. A. No
59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX (No. 6).

No. 94 of 1960.

An Act to amend the *Sales Tax Act* (*No.* 6) 1930-1957.

[Assented to 14th December, 1960.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 6) 1960.

(2.) The *Sales Tax Act* (*No.* 6) 1930–1957,* as amended by this Act, may be cited as the *Sales Tax Act* (*No.* 6) 1930–1960.

Commencement.

2. This Act shall be deemed to have come into operation on the sixteenth day of November, One thousand nine hundred and sixty.

3. Sections three and four of the *Sales Tax Act* (*No.* 6) 1930–1957 are repealed and the following sections inserted in their stead:—

Imposition of tax.

" 3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia by a taxpayer and, on or after the sixteenth day of November, One thousand nine hundred and sixty, sold by him or applied by him to his own use.

" 4. The

---

* Act No. 36, 1930, as amended by No. 86, 1931; No. 48, 1932; No. 37, 1936; No. 35, 1938; No. 21, 1939; Nos. 8 and 82, 1940; No. 38, 1941; No. 12, 1942; No. 50, 1943; No. 63, 1946; No. 60, 1949; No. 43, 1950; No. 69, 1951; No. 50, 1952; No. 39, 1953; No. 51, 1954; No. 11, 1956; and No. 77, 1957.

~~F.10459/60.—Price 3d.~~

Rates of tax. "4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1960—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1960—8⅓ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1960—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1960—40 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1960 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving. **4.** The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer and, on or after the fourth day of September, One thousand nine hundred and fifty-seven, and before the date of commencement of this Act, sold by him or applied by him to his own use continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 741
C. A. No. 59 C 1847

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX (No. 6).

No. 7 of 1961.

An Act to amend the *Sales Tax Act* (*No.* 6) 1930-1960.

[Assented to 4th May, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 6) 1961.

(2.) The *Sales Tax Act* (*No.* 6) 1930–1960,* as amended by this Act, may be cited as the *Sales Tax Act* (*No.* 6) 1930–1961.

Commencement.

2. This Act shall be deemed to have come into operation on the twenty-second day of February, One thousand nine hundred and sixty-one.

3. Sections three and four of the *Sales Tax Act* (*No.* 6) 1930–1960 are repealed and the following sections inserted in their stead:—

Imposition of tax.

" 3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia by a taxpayer and, on or after the twenty-second day of February, One thousand nine hundred and sixty-one, sold by him or applied by him to his own use.

" 4. The

---

* Act No. 36, 1930, as amended by No. 36, 1931; No. 48, 1932; No. 37, 1936; No. 35, 1938; No. 21, 1939; Nos. 8 and 82, 1940; No. 38, 1941; No. 12, 1942; No. 50, 1943; No. 63, 1946; No. 60, 1949; No. 43, 1950; No. 69, 1951; No. 50, 1952; No. 59, 1953; No. 51, 1954; No. 11, 1956; No. 77, 1957; and No. 94, 1960.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—8⅓ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—30 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum."

Saving.

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer and, on or after the sixteenth day of November, One thousand nine hundred and sixty, and before the date of commencement of this Act, sold by him or applied by him to his own use continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

THE COMMONWEALTH OF AUSTRALIA.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74J
C. A. No. 59-C-1847

RJC

SALES TAX (No. 6A).

No. 82 of 1961.

An Act relating to Sales Tax.

[Assented to 27th October, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Sales Tax Act (No. 6A)* 1961.

(2.) Section one of the *Sales Tax Act (No. 6)* 1961* is amended by omitting sub-section (2.).

(3.) The *Sales Tax Act (No. 6)* 1930–1960,† as amended by the *Sales Tax Act (No. 6)* 1961 and by this Act, may be cited as the *Sales Tax Act (No. 6)* 1930–1961.

Commencement.

2. This Act shall be deemed to have come into operation on the sixteenth day of August, One thousand nine hundred and sixty-one.

3. Sections

---

* Act No. 7, 1961.

† Act No. 36, 1930, as amended by No. 36, 1931; No. 48, 1932; No. 37, 1936; No. 35, 1938; No. 21, 1939; Nos. 8 and 82, 1940; No. 38, 1941; No. 12, 1942; No. 50, 1943; No. 63, 1946; No. 60, 1949; No. 43, 1950; No. 69, 1951; No. 50, 1952; No. 59, 1953; No. 51, 1954; No. 11, 1956; No. 77, 1957; and No. 94, 1960.

F.10377/61.—PRICE 3D.

3. Sections three and four of the *Sales Tax Act* (*No.* 6) 1930–1960, as amended by the *Sales Tax Act* (*No.* 6) 1961, are repealed and the following sections inserted in their stead:—

Imposition of tax.

"3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia by a taxpayer and, on or after the sixteenth day of August, One thousand nine hundred and sixty-one, sold by him or applied by him to his own use.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—2½ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961—30 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1961 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum."

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer and, on or after the twenty-second day of February, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, sold by him or applied by him to his own use continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

THE COMMONWEALTH OF AUSTRALIA.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74K
C. A. No. 59-C-1847

SALES TAX (No. 6).

No. 10 of 1962.

An Act to amend the *Sales Tax Act* (*No.* 6) 1930-1961.

[Assented to 23rd March, 1962.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 6) 1962.

(2.) The *Sales Tax Act* (*No.* 6) 1930–1961,* as amended by this Act, may be cited as the *Sales Tax Act* (*No.* 6) 1930–1962.

Commencement.

2. This Act shall be deemed to have come into operation on the seventh day of February, One thousand nine hundred and sixty-two.

3. Sections three and four of the *Sales Tax Act* (*No.* 6) 1930–1961 are repealed and the following sections inserted in their stead:—

Imposition of tax.

" 3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia by a taxpayer and, on or after the seventh day of February, One thousand nine hundred and sixty-two, sold by him or applied by him to his own use.

" 4. The

---

* Act No. 36, 1930, as amended by No. 36, 1931; No. 48, 1932; No. 37, 1936; No. 35, 1938; No. 21, 1939; Nos. 8 and 82, 1940; No. 38, 1941; No. 12, 1942; No. 50, 1943; No. 63, 1946; No. 60, 1949; No. 43, 1950; No. 69, 1951; No. 50, 1952; No. 59, 1953; No. 51, 1954; No. 11, 1956; No. 77, 1957; No. 94, 1960; and Nos. 7 and 82, 1961.

F.2614/62.—PRICE 3D.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1962—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1962—2½ per centum;

(*c*) in respect of goods covered by the Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1962—22½ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1962 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving.

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer and, on or after the sixteenth day of August, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, sold by him or applied by him to his own use continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Plaintiff's Exhibit No. 75

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 7~~4~~ 75

C. A. No.
59 C 1847

THE COMMONWEALTH OF AUSTRALIA

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT 1935-1963.*

An Act relating to exemptions from, and classifications of goods for the purposes of, Sales Tax.

Title amended by No. 76, 1940, s. 3.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Sales Tax (Exemptions and Classifications) Act* 1935-1963.*

Short title.
Short title amended; No. 32, 1918, s. 2.

2. In this Act, unless the contrary intention appears—

"Sales Tax Assessment Act" means any Act, as in force for the time being, relating to the imposition, assessment and collection of a tax upon the sale value of goods;

Definitions.
Amended by No. 76, 1940, s. 4; and No. 71, 1957, s. 3.

---

* The *Sales Tax (Exemptions and Classifications) Act* 1935-1963 comprises the *Sales Tax Exemptions Act* 1935 as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Number and Year.	Date of Assent.	Date of Commencement.
Sales Tax Exemptions Act 1935 ..	No. 60, 1935	7th December, 1935	7th December, 1935
Sales Tax Exemptions Act 1936 ..	No. 41, 1936	2nd October, 1936 ..	26th September, 1936, except as otherwise provided by section 5
Sales Tax Exemptions Act 1938 ..	No. 78, 1938	13th December, 1938	13th December, 1938, except as otherwise provided by section 4
Sales Tax Exemptions Act 1939 ..	No. 32, 1939	26th September, 1939	26th September, 1939, except as otherwise provided by section 4
Sales Tax Exemptions Act 1940 ..	No. 29, 1940	1st June, 1940 ..	3rd June, 1940, except as otherwise provided by section 4
Sales Tax (Exemptions and Classifications) Act 1940	No. 76, 1940	16th December, 1940	22nd November, 1940
Sales Tax (Exemptions and Classifications) Act 1941	No. 32, 1941	25th November, 1941	30th October, 1941, except as otherwise provided by section 3
Sales Tax (Exemptions and Classifications) Act 1942	No. 6, 1942	18th May, 1942 ..	1st May, 1942, except as otherwise provided by section 6
Sales Tax (Exemptions and Classifications) Act 1943	No. 35, 1943	3rd July, 1943 ..	3rd July, 1943, except as otherwise provided by section 6
Sales Tax (Exemptions and Classifications) Act (No. 2) 1943	No. 44, 1943	19th October, 1943	21st July, 1943
Sales Tax (Exemptions and Classifications) Act 1944	No. 31, 1944	6th October, 1944 ..	8th September, 1944
Sales Tax (Exemptions and Classifications) Act 1945	No. 36, 1945	11th October, 1945	13th September, 1945, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1946	No. 12, 1946	18th April, 1946 ..	10th April, 1946, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act (No. 2) 1946	No. 67, 1946	11th December, 1946	15th November, 1946, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1947	No. 65, 1947	4th December, 1947	20th September, 1947, except as otherwise provided by section 2

See foot of page 2 for continuation of footnotes.

12171/63.—Price 4s. 6d.

" the Customs Tariff " means the *Customs Tariff* 1933-1954 as amended by any Act, and as proposed to be amended by Customs Tariff Proposals introduced into the House of Representatives;

" the Excise Tariff " means the *Excise Tariff* 1921-1956 as amended by any Act, and as proposed to be amended by Excise Tariff Proposals introduced into the House of Representatives.

* * * * * * *

Interpretation. **Sub-section (1.) substituted by No. 76, 1940, s. 5.**

3.—(1.) Any expression used in this Act shall, unless the contrary intention appears, have the same meaning as in the relevant Sales Tax Assessment Act.

Substituted by No. 44, 1943, s. 3.

(2.) The heading to any Schedule to this Act or to any Division in any Schedule to this Act shall not be read as affecting the interpretation of that Schedule or of any item in that Schedule.

Amended by No. 76, 1940, s. 5.

(3.) Any reference in the second column of the First Schedule to this Act to the numbers 1, 2, 3, 4, 5, 6, 7, 8 or 9 shall be read respectively as a reference to the—

Sales Tax Assessment Act (No. 1) 1930-1935,
Sales Tax Assessment Act (No. 2) 1930-1935,
Sales Tax Assessment Act (No. 3) 1930-1935,

Footnote continued from previous page.

Act.	Number and Year.	Date of Assent.	Date of Commencement.
Sales Tax (Exemptions and Classifications) Act 1948	No 65, 19[illegible]	4th December, 1947	20th September 1947, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1948	No. 42, 1948	4th November, 1948	9th September, 1948, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1949	No. 54, 1949	28th October, 1949	8th September, 1949, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1950	No. 37, 1950	14th December, 1950	13th October, 1950
Sales Tax (Exemptions and Classifications) Act 1951	No. 42, 1951	5th December, 1951	27th September, 1951, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1952	No. 44, 1952	30th September, 1952	7th August, 1952
Sales Tax (Exemptions and Classifications) Act 1953	No. 53, 1953	28th October, 1953	10th September, 1953
Sales Tax (Exemptions and Classifications) Act 1954	No. 45, 1954	6th November, 1954	19th August, 1954, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1956	No. 5, 1956	12th May, 1956 ..	15th March, 1956
Sales Tax (Exemptions and Classifications) Act 1957	No. 71, 1957	12th December, 1957	4th September, 1957, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1959	No. 17, 1959	23rd April, 1959 ..	*See* Note 1 below
Sales Tax (Exemptions and Classifications) Act (No. 2) 1959	No. 92, 1959	4th December, 1959	14th December, 1959, except as otherwise provided by Sub-section (6) of section 1
Sales Tax (Exemptions and Classifications) Act 1960	No. 65, 1960	30th November, 1960	17th August, 1960, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act (No. 2) 1960	No. 88, 1960	14th December, 1960	16th November, 1960
Sales Tax (Exemptions and Classifications) Act 1961	No. 1, 1961	4th May, 1961	22nd February, 1961
Sales Tax (Exemptions and Classifications) Act (No. 2) 1961	No. 76, 1961	27th October, 1961..	16th August, 1961
Sales Tax (Exemptions and Classifications) Act 1962	No. 4, 1962	23rd March, 1962 ..	7th February, 1962
Sales Tax (Exemptions and Classifications) Act 1963	No. 44, 1963	20th December, 1962	14th August, 1963, except as otherwise provided by section 2

Note 1. Section 2 of the *Sales Tax (Exemptions and Classifications) Act* 1959 provides as follows:—
" This Act shall come into operation on the day on which the *Reserve Bank Act* 1959 comes into operation.".

The date of commencement of the *Reserve Bank Act* 1959 was 14th January, 1960. See *Commonwealth Gazette* 1960 page 47.

but to no other Sales Tax Assessment Act, the goods covered by that item or sub-item shall not be deemed to include goods which are imported into Australia.

(3.) Where, in the second column of the First Schedule to this Act reference is made, opposite an item or sub-item in the first column of that Schedule, to the *Sales Tax Assessment Act* (*No.* 9) 1930-1935 and to any one or more of the following Acts:—

Sales Tax Assessment Act (*No.* 5) 1930-1935,
Sales Tax Assessment Act (*No.* 6) 1930-1935,
Sales Tax Assessment Act (*No.* 7) 1930-1935,
Sales Tax Assessment Act (*No.* 8) 1930-1935,

but to no other Sales Tax Assessment Act, the goods covered by that item or sub-item shall not be deemed to include goods which are manufactured or produced in Australia.

Goods incorporating cathode ray tubes.
Substituted by No. 71, 1957, s. 5; amended by No. 65, 1960, s. 3.

6. Notwithstanding anything contained in any Sales Tax Assessment Act, sales tax is not payable upon so much of the sale value under any Sales Tax Assessment Act of goods in which are incorporated any cathode ray tubes as specified in item 121 in the First Schedule to this Act as is equal to the amount which would have been the sale value of those cathode ray tubes under that Act if the transaction, act or operation in relation to which the first-mentioned sale value arose had been a transaction, act or operation in relation to those cathode ray tubes only.

Pre-fabricated buildings.
Inserted by No. 36, 1945, s. 3.

6A.—(1.) Notwithstanding anything contained in any Sales Tax Assessment Act, sales tax shall not be payable upon so much of the sale value under any Sales Tax Assessment Act of any pre-fabricated building or pre-fabricated building section which is made of timber, metal, fibro-cement or any other materials or combinations of materials as exceeds the amount which, in the opinion of the Commissioner, would have been the sale value of the taxable goods (if any) incorporated in the building or section if the transaction, act or operation in relation to the sale value of the building or section had been a transaction, act or operation in relation to those taxable goods only.

(2.) In this section "taxable goods" means goods which, if sold separately, would not be covered by any item in the First Schedule to this Act.

Goods incorporating tanks.
Inserted by No. 65, 1960, s. 4.

6AA. Notwithstanding anything contained in any Sales Tax Assessment Act, sales tax is not payable upon so much of the sale value under any Sales Tax Assessment Act of goods in which are incorporated any tanks as specified in sub-item (11) of item 7 in the First Schedule to this Act as is equal to the amount which, in the opinion of the Commissioner, would have been the sale value of those tanks under that Act if the transaction, act or operation in relation to which the first-mentioned sale value arose had been a transaction, act or operation in relation to those tanks only.

THE FIRST SCHEDULE—*continued.*

	Sales Tax Exemption Items.	Acts to which Exemption Applies.
	DIVISION XV.—MISCELLANEOUS—*continued.*	
	144.—(1) Goods, &c.—*continued.*	
	(2) Goods for use in the repair of, so as to form part of, the defective part first-mentioned in the last preceding sub-item if that part will, after repair— (*a*) be used in replacing free of charge another defective part; or (*b*) be used in, wrought into or attached to goods to be manufactured	Nos. 1 to 9
Added by No. 71, 1957, s. 6; substituted by No. 44, 1963, s. 3.	145. Samples and other consumable goods, being goods covered by item 404 in the Schedule to the Customs Tariff	No. 5
Added by No. 71, 1957, s. 6.	146.—(1) Equipment and apparatus, being goods of a kind used exclusively, or primarily and principally, in preventing or combating fire	Nos. 1 to 9
	(2) Parts and accessories for, and materials for use in the repair or maintenance of, goods covered by the last preceding sub-item	Nos. 1 to 9
	(3) Chemicals and other preparations for use in fire fighting appliances	Nos. 1 to 9

Added by No. 76, 1940, s. 9; substituted by No. 53, 1953, s. 5.

SECOND SCHEDULE.

Section 6B.

	Item No.	Specification of Goods.
Amended by No. 71, 1957, s. 7.	1	Jewellery and imitation jewellery (but not including wedding rings covered by item 138 in the First Schedule to this Act), precious stones, semi-precious stones, pearls, cultured pearls, imitation, reconstructed or synthetic stones and pearls and personal adornments, but not including goods of a kind used exclusively, or primarily and principally, as parts of clothes for human wear
Amended by No. 65, 1960, s. 6.	2	Plate made wholly or principally of platinum, gold, silver or other precious metal and plated ware plated with platinum, gold or other precious metal (other than silver), including articles of rolled gold and gold filled articles, but not including— (*a*) knives, forks, spoons or other cutlery; (*b*) scissors; (*c*) cutlery sharpeners; (*d*) school or university badges or badges which denote membership of organizations or associations of persons; or (*e*) goods covered by any item in the First Schedule to this Act
Items 3 and 4 omitted by No. 65, 1960, s. 6.		• • • • • • • • • • • • • • • •
	5	Studs, sleeve links, tie chains, tie clips, collar pins, tie pins, gold or silver safety pins and chains for those pins
	6	Field glasses, marine glasses and opera glasses and cases for those goods

SECOND SCHEDULE—*continued.*

	Item No.	Specification of Goods.
	33	Shaving sticks, shaving creams, shaving soaps, shaving powders, shaving tablets, styptic pencils and liquids and other preparations for use before or after shaving
	34	Shaving sets containing any goods covered by item 31, 32 or 33 in this Schedule
	35	Toilet or dressing cases and toilet or dressing sets, including home hair waving sets, hair brushes, hair combs, eye-brow brushes, hand mirrors, clothes brushes, hat brushes, manicure and pedicure sets and pieces, dressing table sets and hair tidies
	36	Cameras (including cinematograph and stereo cameras), photomatons and machines for taking photographs, but not including photographic equipment of a kind used exclusively or primarily and principally in the reproduction of documents, drawings and plans
	37	Photographic enlarging and reducing apparatus, but not including photographic equipment of a kind used exclusively or primarily and principally in the reproduction of documents, drawings and plans
	38	Accessories and parts for goods covered by item 36 or 37 in this Schedule
	39	Photographs not covered by item 52 in the First Schedule to this Act, including stereoscopic views produced by means of photography and photographs wholly or partly coloured by hand
	40	Lantern, screen and camera slides
	41	The following goods (not being goods covered by item 52 in the First Schedule to this Act or negatives or positives produced by processing cinematograph film), namely:— (*a*) photographic negatives produced for sale; (*b*) positives produced by processing photographic film; and (*c*) transparencies and reversals
	42	Photographic materials and products not covered by item 43 in the First Schedule to this Act, namely:— (*a*) unexposed photographic plates and film, including sensitized film for cinematograph cameras; (*b*) photographic sensitized paper, cards, board, linen and other sensitized materials; and (*c*) mounts, plaques and medallions, but not including sensitized materials of a kind produced and marketed specifically for use in the reproduction of documents, drawings and plans
Item 43 omitted by No. 5, 1956, s. 4. Items 44, 45 and 46 omitted by No. 71, 1957, s. 7.		• •
Amended by No. 45, 1954, s. 5; substituted by No. 5, 1956, s. 4; amended by No. 44, 1963, s. 4.	47	Gramophones, phonographs, musical boxes and musical machines
	48	Wireless receiving sets (not being goods for use in the conduct of public commercial telecommunications services by an authority constituted under any law of the Commonwealth or of a State); television receiving sets; record players and pick-ups; combined wireless receiving sets and gramophones; combined television receiving sets and gramophones; combined wireless receiving sets and television receiving sets; combined wireless receiving sets, television receiving sets and gramophones
	49	Records for gramophones and phonographs; protective envelopes, stands, cabinets and other equipment designed for the storage of those records
Items 50 and 51 omitted by No. 45, 1954, s. 5.		• • • • • • • • • • • • • • • • • •
Amended by No. 45, 1954, s. 5; and No. 65, 1960, s. 6	52	Accessories and parts (but not including batteries or cathode ray tubes) for goods covered by item 47, 48 or 49 in this Schedule

PLAINTIFF'S EXHIBIT No. 76

2 Introduction of Import Licensing

Import licensing was ultimately brought into operation on and from the 1st December, 1939 following the promulgation of the Customs (Import Licensing) Regu-
3 lations by Stat. Rules No. 163 of 1939 under the Customs
Act 1901—1936, Section 52 (g) which read:

> "52. The following goods are prohibited imports . . . .
>
> (g) All goods the importation of which may be prohibited by Regulation."

The main provision of the Regulations read as follows (Reg. 3):

> "The importation of any goods shall be prohibited unless:
>
> (a) a licence to import the goods is in force and the terms and conditions (if any) to which the licence is subject are complied with; or
>
> (b) the goods are excepted from the application of these Regulations."

* * *

6 Apart from categories A to D and references to a percentage of base year imports, there were several other symbols used from time to time in the Schedule of Categories, to indicate the basis of licensing. These were as follows:—

> "Admin" indicated that quota restrictions did not apply and that applications for licenses were dealt with individually on their merits by the Central Licensing Administration.
>
> "N.L." indicated that the importation of the goods was totally prohibited.

* * *

11 The End of the War and the Post-War Period to March, 1952.

Following the end of the war, an examination of the question of relaxing the import licensing controls revealed the following points associated with the different monetary areas:—

* * *

B.(i) Dollar Area—United States.

The sterling area's holdings of United States dollars were held in a common "pool" from which all members of the sterling area drew to meet their own particular essential requirements. The end of Lend Lease, resulting in the resumption of trading in many commodities on a normal commercial basis, meant that a reasonably large reserve of dollars should be held to meet even essential requirements. Current trends indicated that the balance available would not be adequate to meet requirements unless each member of the sterling area continued to apply measures to eliminate expenditure of dollars on less essential items.

* * *

12 As a clearer picture of Australia's post-war trade emerged, it was possible to distinguish between four different currency (and thus licensing) groups vis:—

(a) United Kingdom.
(b) Sterling area other than the United Kingdom.
(c) Easy currency countries.
(d) Hard currency countries.

* * *

13 The "hard" currency group.

The instruction of August, 1946, referred to above stated that "all other countries are to be treated as hard currency countries, and it should be noted that the United States dollar area, Sweden, Switzerland, Portugal and the Portuguese colonies, Argentine and Uruguay are regarded as being hardest of all.

* * *

14 On 5th September, 1947 imports from the dollar area became subject to much more severe restrictions than

those applying to other hard currency countries, the general criteria for these latter themselves being comparatively severe in that the issue of licences was restricted to essential goods not available from easier currency sources.

* * *

20 During 1950 imports from the dollar area continued to
be licensed against the dollar budget, the value of alloca-
21 tions for individual items varying in accordance with
moves in the degree of essentiality, availability etc.

* * *

The position as at March, 1952 can therefore be summarised as follows.

* * *

(e) Goods of dollar area origin (petroleum products excluded) were strictly limited under the dollar budget to, as a general rule, essentials not obtainable from other sources;

* * *

23 The import restrictions which were already applied to good of dollar area and Japanese origin were unchanged as a result of the general extension of 8th March, 1952 except that there was a consequent general tightening on the volume of imports which could be secured from both sources. The controls which had applied to a number of commodities of sterling and easy currency country origin and to the intermediate countries were absorbed into the system applied to non-dollar, non-Japanese imports as a whole.

* * *

36 At the end of 1956 revised Import Licensing Regulations were promulgated under Stat. Rules 93 of 1956, the original Regulations of 1939 being superseded by these Regulations. The change in the Regulations basically aimed at enabling a security to be applied against an import licence

so that conditions as to disposal, end-use etc. after importation could be enforced.

• • •

44 The 1st April, 1959 Changes.

• • •

Several important administrative changes were implemented as from 1st April. The most significant was the removal of licensing discrimination against a wide range of dollar goods. Some 330 items were involved covering trade worth about £170m. f.o.b. at an annual rate. This action, which was in line with the decision taken at the Montreal Trade and Economic Conference in September, 1958, was another major step in the orderly dismantling of Australia's dollar discrimination. The move meant that approximately 70% of imports were freed from discrimination.

• • •

PLAINTIFF'S EXHIBIT NO. 87

IMPORT, EXPORT AND CUSTOMS POWERS (DEFENCE) ACT, 1939.

2 & 3 Geo. 6. Ch. 69.

• • •

CHAPTER 69.

An Act to provide for controlling the importation, exportation and carriage coastwise of goods and the shipment of goods as ships' stores; to provide for facilitating the enforcement of the law relating to the matters aforesaid and the law relating to trading with the enemy; and to provide for purposes connected with the matters aforesaid.

[1st September 1939.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) The Board of Trade may by order make such provisions as the Board think expedient for prohibiting or regulating, in all cases or any specified classes of cases, and subject to such exceptions, if any, as may be made by or under the order, the importation into, or exportation from, the United Kingdom or any specified part thereof, or the carriage coastwise or the shipment as ships' stores, of all goods or goods of any specified description.

• • •

3.—(1) If any goods—

(*a*) are imported, exported, carried coastwise or shipped as ships' stores in contravention either of an order under this Act or of the law relating to trading with the enemy, or

(*b*) are brought to any quay or other place, or waterborne, for the purpose of being exported or of being so carried or shipped in contravention either of an order under this Act or of the law relating to trading with the enemy,

those goods shall be deemed to be prohibited goods and shall be forfeited; and the exporter of the goods or his agent, or the shipper of the goods, shall be liable, in addition to any other penalty under the enactments relating to customs, to a customs penalty of five hundred pounds.

• • •

STATUTORY INSTRUMENTS

1954 No. 23

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 88
C. A. No. 59-C-1847
RJC

CUSTOMS

IMPORT OF GOODS (CONTROL)

The Import of Goods (Control) Order, 1954

Made - - - -	14*th January*, 1954
Coming into Operation	21*st January*, 1954

The Board of Trade, in exercise of the powers conferred upon them by Section 1 of the Import, Export and Customs Powers (Defence) Act, 1939(a), and all other powers enabling them in that behalf, do hereby order as follows:—

Prohibition on importation

1. Subject to the provisions of this Order, all goods are prohibited to be imported into the United Kingdom.

Licensed imports

2. Nothing in Article 1 hereof shall be taken to prohibit the importation of any goods under the authority of any licence granted by the Board of Trade under this Article and in accordance with any condition attached thereto.

Channel Islands

3. Nothing in Article 1 hereof shall be taken to prohibit the importation of any goods which are proved to the satisfaction of the Commissioners of Customs and Excise to have been consigned from the Channel Islands, other than—

(*a*) dyes, dyestuffs and intermediates, the following:—
  (i) synthetic organic dyestuffs (including pigment dyestuffs), whether soluble or insoluble;
  (ii) compounds, preparations and articles manufactured from any such dyestuffs, except any such compounds, preparations and articles as are not suitable for use in dyeing;
  (iii) organic intermediate products used in the manufacture of any such dyestuffs;

(*b*) arms and ammunition, the following:—
  (i) firearms, lethal, including any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged and other weapons of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing;
  (ii) component parts of any such firearm or other weapon as aforesaid, and any accessory to any such firearm or other weapon designed or adapted to diminish the noise or flash caused by firing the weapon;
  (iii) ammunition, including grenades, bombs and other like missiles, and any ammunition containing or designed or adapted to contain any noxious liquid, gas or other thing, and component parts of any such ammunition;

(a) 2 & 3 Geo. 6. c. 69.

(*c*) plumage, other than plumage of birds imported alive and other than plumage of birds ordinarily used in the United Kingdom as articles of diet.

False statements etc.

4. If for the purpose of obtaining a licence under this Order, any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment; and any licence which may have been granted in connection with the application for which the false statement was made or the false document or information was furnished shall be void as from the time when the licence was granted.

Licences

5.—(1) Any licence granted under Article 2 hereof may be modified or revoked by the Board of Trade at any time.

(2) Any current licence granted under any Order hereby revoked shall, for the purposes of this Order, have effect as if it had been granted under Article 2 hereof.

Interpretation and revocation

6.—(1) In this Order "goods", unless otherwise specified, means both used and unused goods.

(2) The Interpretation Act, 1889(b), shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament and as if this Order and the Orders hereby revoked were Acts of Parliament.

7. The Import of Goods (Control) Order, 1940(c), the Import of Goods (Control) Order, 1945(d), the Import of Goods (Control) (No. 2) Order, 1945(e), and the Import of Goods (Control) (Amendment) Order, 1952(f), are hereby revoked.

Citation and Commencement

8. This Order may be cited as the Import of Goods (Control) Order, 1954, and shall come into operation on the 21st day of January, 1954.

Dated this 14th day of January, 1954.

Ralph M. Nowell,
An Under-Secretary of the Board of Trade.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order supersedes the Import of Goods (Control) Order, 1940, as amended.

28, 30

The principal change is that where false information has been given for the purpose of obtaining a licence, the licence is void from the time when it was granted.

(b) 52 & 53 Vict. c. 63.
(c) S.R. & O. 1940/873; Rev. V. p. 472; 1940 I, p. 316.
(d) S.R. & O. 1945/1356; Rev. V, p. 472; 1945 I, p. 156.
(e) S.R. & O. 1945/1571; Rev. V, p. 472; 1945 I, p. 157.
(f) S.I. 1952/1204; 1952 I, p. 759.

Printed in England and published by
HER MAJESTY'S STATIONERY OFFICE: 1964
(Reprint)
THREEPENCE NET

H.M.P (LP Wt.53-K2-4681

③

RETURN TO BOARD OF TRADE

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 92 id
C. A. No. 59-C-1847

BOARD OF TRADE

IMPORT LICENSING BRANCH

KJC

SUMMARY OF IMPORT LICENSING REGULATIONS

Notice to Importers No. 401.

This Notice supersedes one published in June, 1948, (Notice to Importers No. 292). Its purpose is to summarise the various import licensing regulations which are of general application, and to present in a consolidated form the various Open General Licences in force on 21st September, 1950.

1. Scope of Control. The Import, Export and Customs Powers (Defence) Act, 1939, gives the Board of Trade power to make Orders prohibiting or regulating the import and export of goods. Under the Import of Goods (Control) Order 1940 (S.R. & O. 1940, No. 873), as amended, the importation into the United Kingdom of all goods is prohibited except under the authority of a licence granted by the Board of Trade. This Order was varied by the Import of Goods (Control) Order, 1945, (S.R. & O. 1945, No. 1356), which permits the importation of goods other than dyes and dyestuffs, arms and ammunition and plumage, consigned from the Channel Islands.

2. Open General Licence. A separate licence is not required for any goods covered by an Open General Licence issued by the Board of Trade and these goods may be imported without application to the Import Licensing Branch of that Department. An Open General Licence has been issued in respect of:

-p7-9.

(*a*) Goods shown in Appendix I consigned from any country.

28, 30

(*b*) Goods shown in Appendix II consigned from and originating in particular countries and territories.

(*Note.*—Goods consigned from a permitted country and originating in another permitted country are covered but not goods originating in one of the excepted countries even if they are consigned from a permitted country). This Open General Licence was issued in accordance with the policy for the liberalisation of trade.

Electrical [illegible] covered
[illegible] included USA

(*c*) Goods shown in Appendix III consigned from and originating in countries and territories which differ from those in Appendix II. (See Note under (*b*)).

(*d*) Goods shown in Appendix IV which are consigned from any part of the British Commonwealth, Burma, or the Irish Republic, subject to the condition that a claim to Imperial Preference is established in respect of any duty of Customs to which the goods as a whole may be liable on importation into the United Kingdom.

Plaintiff's Exhibit No. 104

WORLD
TRADE
INFORMATION
SERVICE

OPERATIONS REPORTS

Part 2, No. 58-51

licensing and exchange controls . . . United Kingdom

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 104 id
C. A. N
59 C 18

United Kingdom's Import Controls

Import Licensing Policy

Since the beginning of World War II, and throughout the postwar period, the United Kingdom has rationed what are considered to be scarce supplies of dollar exchange for what their import licensing authorities believe to be the most essential needs of the British economy. At present, according to the British Board of Trade (BOT), about two-thirds of imports from the dollar area[1], by value, have been freed of controls. In the remaining sector, which consists mostly of manufactured goods, import licenses issued by the BOT are still required for entry. The issuance of a license by the BOT automatically entitles the holder to an exchange permit to make payment for the goods in dollars.

Import licenses are also required for a limited list of imports from nondollar countries, although goods from the British Commonwealth (except Canada) are mainly free of controls. Imports from the other Organization for European Economic Cooperation (OEEC) countries in Western Europe are 94 percent free of controls.

Under the import licensing policies adopted to carry out the essentiality criterion, licenses have generally been issued for the import from the United States or other dollar countries of only those goods which the Import Licensing Branch of the BOT considers to be essential to the United Kingdom's economy, and for which a suitable substitute is not alternatively available from domestic or other nondollar sources of supply.

Since each case is considered on its own merits, however, there are some exceptions made to this general rule. In the case of an item considered essential, for example, an import license may be granted despite the availability from nondollar sources of a suitable substitute because the American product offers a substantial price advantage or the delivery date is a crucial factor. Licenses are sometimes also issued to import either an essential or nonessential American product, for example, when the British importer can demonstrate that the use of such dollar components would result in an export which could not otherwise have taken place because of the oversea customer's preference for the superior or unique qualities of the U.S.-made item. In addition, for such an important dollar import as machinery, applicants for licenses are asked to indicate only that these items are not available from domestic production. No indication is required as to whether alternative machines are obtainable from nondollar sources outside the United Kingdom.

Under this licensing regime, imports from the United States have been restricted largely to raw materials, basic food and feedstuffs, and industrial equipment and other capital goods. However, special quotas have been established for the import of a considerable number of so-called less-essential or consumer goods from the United States.

It is the stated objective of the British Government to move as rapidly as it believes its balance-of-payments position will allow to further reduce its controls on imports from the United States and other dollar countries. The official statements made to this effect recognise the economic benefits, in terms of the cost-price structure and productivity of the British economy, to be derived from permitting producers to choose their raw materials and supplies on the basis of price and quality considerations without reference to the currency which must be paid for such purchases. The statements also recognise the desirability of freeing their importers and the Government agencies involved from the burdensome paperwork necessitated by import controls.

Until mid-1955, when the United Kingdom's external finances took a turn for the worse, considerable progress was made toward freeing Britain's dollar imports. The United Kingdom resumed its program of progressive dollar trade liberalization in August 1957 by removing import controls on some 500 additional commodities from the dollar area. These and a few additional items removed from time to time since then have increased

---

[1] The following countries comprise the dollar area: United States and possessions, Canada, Bolivia, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras Republic, Liberia, Mexico, Nicaragua, Panama, El Salvador, Venezuela, and the Philippine Republic.

UNITED STATES DEPARTMENT OF COMMERCE • Sinclair Weeks, Secretary
BUREAU OF FOREIGN COMMERCE • Loring K. Macy, Director

For sale by the Superintendent of Documents, U. S. Government Printing Office, Washin[illegible], D. C., and by U. S. Department of Commerce Field Offices. WTIS, Part 2: Annual subscription, $6 ($2.50 additional for foreign mailing); single copy, 10 cents.

Contents of this publication are not copyrighted and may be reprinted freely. Mention of source will be appreciated.

the share of imports from the dol[illegible]rea which are free of quantitative restriction to about two-thirds by value of the United Kingdom's total dollar imports.

The pattern of the United Kingdom's program for dollar trade liberalization is shown in the nature of the goods which have been included in the world open general license list. That list includes goods that may be imported from any source, including the dollar area, without license. The object is to liberalize in the first instance the raw materials, semimanufactures, and basic food and feedstuffs required to keep British industry and agriculture operating efficiently and at capacity. A large number of these items have until now been imported under open individual licenses, which do not restrict quantity, or under specific licenses, which have in practice been freely issued. The August 1957 additions to the open general license list virtually eliminated the controls on the basic raw materials of industry.

Existing restrictions will continue to apply to dollar imports of machinery, fuels, many food items, and most manufactured products. It is reasonable to assume that any further progressive decontrol of dollar imports, items in the machinery, fuel and chemicals categories, for example, will have a higher order of priority than most categories of consumer goods.

Import Licensing and Exchange Controls

The importer applies for licenses at the Board of Trade, Import Licensing Branch, 42 Marsham St. London, S.W. 1., for all imports subject to import licensing controls. If the BOT grants a license, and the import is of a value of not less than £500 (1£ equals US$2.80) the importer takes the license to his local bank which upon application will then issue an exchange permit entitling him to the exchange with which to pay for the goods. Application forms are not required to be completed for payments for imports valued at £500 or less. However, approval for payment for shipments of whatever value (including those requiring the completion of application forms) must be supported (1) by valid import licenses (or if import licenses are not required, confirmation that the import is permitted under open general license), and (2) by such documentary evidence of the purchase and value of the goods as may be available, e. g., pro-forma invoices, contracts, and confirmations of orders.

Most import licenses are valid for 6 months. Extensions of the validity period may be obtained, however, on application to the BOT when there has been an unavoidable delay in shipment or for some other valid reason.

Within the category of goods subject to control there are a number of dollar commodities and manufactured goods for which the restrictions on importing from the United States have been partially eased but these also require individual license applications. Licenses for them are usually granted freely however. These include goods on open individual license, which means that licenses are required by the BOT mainly for accounting purposes and are therefore freely issued. Goods on open individual license include ash and hickory tool handles, raw cotton, and sugar. Quotas have also been set up for a number of other items from the United States and licenses within the limit of the specified quotas are freely issued.

Quotas are now in e[illegible] for the following dollar goods in the amounts an[illegible] for the periods stated:

Leather—$5.6 million a year f. o. b. from all dollar countries.

Automobiles—850 automobiles per year from the United States and Canada.

Motorcycles—annual quota of 50 from the United States.

Periodicals for newsstand sale—a yearly quota of $1,750,000 for the import of U. S. magazines and periodicals in bulk for newsstand sale, but single copies of magazines and periodicals imported through the mail do not require import licenses.

Honey—annual dollar quota of at least $224,000, valid until June 30, 1958.

Canned salmon—seasonal quota on dollar canned salmon currently $12.6 million, licenses valid until June 30, 1958.

Natural cheese—annual North American quota of $4.2 million, and licenses valid until June 30, 1958.

Fresh, dried and canned fruits—seasonal quotas of $20 million f.o.b. a year from all dollar countries.

British Token Import Plan.—The Token Plan was set up by the British Government in 1946 to afford an opportunity to firms which had established a prewar market in the United Kingdom, to maintain token quantities of their products on the British market until such time as they could again be imported freely. The approved list contains some 200 commodity groups, principally consumer goods, which would not ordinarily be licensed for import from the United States or Canada under the operation of the present United Kingdom import licensing regime.

Under the plan, the British Government will permit imports in a yearly amount not to exceed 30 percent of the value of the average annual shipments of the specified commodities of each qualified exporter during the 1936-38 base period. The British Government requires appropriate evidence, issued under authority of the United States Government, that manufacturers wishing to take advantage of opportunities under the arrangement did in fact make shipments of the commodities to the United Kingdom during the base period. The U. S. Bureau of Foreign Commerce has agreed to act as certifying agent and to issue appropriate certificates, in the form of token quota vouchers, which the exporter forwards to the British importer of his choice for presentation to the BOT as a basis for obtaining an import license.

Originally designed as a temporary measure for the immediate post World War II period, the plan has had to be extended much longer than anticipated. When it became apparent that there were some firms which were eligible to participate in the plan on the basis of their prewar exports but were either unable or not interested in using these quotas, the Department of Commerce obtained the approval of the BOT to a procedure under which the Bureau of Foreign Commerce redistributes these unused quotas to qualified applicants.

In all, the plan provides quotas of about $5.5 million for all of the items involved. These include canned soups and vegetables; cigarettes and smoking tobacco; apparel and footwear; textile piece goods; household electrical appliances; stationery and office supplies; medicinal preparations; toys and sporting goods; and, artificial teeth and dental equipment.

License-Free-Goods.—Within the area of goods which have been freed of controls, there is a wide range of items of interest to American exporters. On the world open general license list, which are the goods that may be imported from any source without a license, are the following:

Nearly all feedstuffs, grains and cereals; wheat flour; natural or artificial bladders and casings; lard; molasses; whisky; starches and starch preparations (in bulk, unsweetened); dried beans and peas; various nonferrous metal ores and scrap and rare earths as well as [illegible]; [illegible]; cottonseed, peanut, linseed, and soya bean oils; nearly all industrial chemicals and tanning and dyestuffs.

Most of the basic inorganic fertilizers; [illegible] maceutical glands and offals; some cellulose acetate and polyvinyl plastics materials; a variety of hides and skins, including fur skins; both hardwood and softwood lumber not further prepared than hewn, sawn, planed, or dressed, including flooring block, staves, and caskheads; railroad ties; telegraph, transmission, ladder, and scaffold poles; mining timber; boxboards; shingles; and certain other types of siding.

Besides chemicals, other manufactured items on this list which may be imported freely from the United States include printing blocks, plates and cylinders, and impressed flongs and matrices, for use in printing processes; refractory or heat insulating bricks, blocks, and other shapes; a wide range of iron and steel (including alloy steel) and nonferrous metals, primary forms and shapes, pipes, tubes, and hollow sections, wire and cable; railway rails; solder; nonfiction books; some paper and paperboard; a number of types of fiber building boards; plywood; and wood veneers.

Although these goods may be imported freely without regard to licensing procedures, exchange control approval for all payments must still be obtained from the importer's local bank and application forms completed for all shipments valued at £500 or over.

United Kingdom's Export Controls

Export Licensing Policy

The British export licensing system (as it is today) evolved mainly from the controls maintained over exports during World War II under the Import, Export and Customs Powers (Defence) Act, 1939, and implemented by the various export control orders issued under the act since then.

After the cessation of hostilities and until April 1949 the list of controlled goods diminished considerably, relaxations covering some raw materials, most types of machinery, many articles of clothing and apparel, a long list of chemicals and chemical products, and wide ranges of electrical and metal manufactures. In April 1949, controls were reinstituted and have continued to be maintained over a wide range of strategic goods when exported to Soviet bloc countries. These controls on strategic goods are maintained in agreement with friendly countries (Cocom) which cooperate to control their exports to the bloc.

The items controlled for strategic reasons include those on which export is prohibited entirely and some on which export is permitted provided the total being received by the bloc countries from all sources does not exceed reasonable requirements.

Changes in the United Kingdom's licensing and other controls are reported in *Foreign Commerce Weekly*, published by the Bureau of Foreign Commerce.

A subscription for this magazine may be entered at $4.50 a year ($6 to foreign addresses) with the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., or through the nearest Department of Commerce Field Office. Remittance should accompany the order.

While there was a tightening up and many additions to the list in 1949 a considerable reduction in the number of strategic items controlled took place in 1954 as a result of discussions in Cocom. The United Kingdom's embargo list was reduced by one-third from about 260 to 170 items, and the quantitative control list was cut from 90 to 20. From May 1951 to May 1957 Britain also maintained in addition seperate embargo controls over strategic goods goi[illegible] China. The export control list as it is today makes no distinction between China and Soviet bloc countries as destinations, however.

In addition to the goods controlled for strategic reasons, the export licensing list has always included a number of items in short supply in the United Kingdom. Although the list of goods subject to control for short supply reasons has diminished through the years to take account of the improved supply position, there is no indication from the present published list of the degree of control on the restricted goods, or whether the authorities discriminate between destinations since licenses are required for restricted exports going to any country.

There also is a limited list of goods controlled to prevent the flight of capital from the country, e. g., antiques, diamonds, furs, gold, works of art. These goods, as in the case of short supply items, require licenses whatever their destination.

Export Licensing and Exchange Controls

During World War II, the export control orders contained a list of countries to which the export of all goods required licenses. In 1945, the country schedule was abolished altogether, and goods specifically mentioned in the later export control orders were required to be licensed on being shipped to any country. Countries of destination were reinserted in the export control schedule in April 1949. At present, all goods subject to control are required to be licensed with the exception of some goods of potential military value which are exempt from licensing if they are shipped to the United States, Ireland, or the British Commonwealth.

Since the principal purpose of the export control mechanism is to control the exportation of goods which are in short supply or strategic, each license application for goods on the control list is considered on its own merits with due regard either to the supply position or the extent of the control on the item when it is to be exported to certain destinations.

The BOT is the agency of the British Government responsible for administering the export control regulations, and the British exporter applies for export licenses at the Board of Trade, Export Licensing Branch, Gavrelle House, 14 Bunhill Row, London, E.C.1. If a license is granted, the exporter must then comply with certain exchange control formalities. He must file an exchange control declaration with the British Treasury (through his local bank) for all shipments (licensed or not) exported to destinations outside the sterling area which are valued at £500 f. o. b. or over. In addition, he must show that payment for the goods, whatever their value, either has been made in an approved manner, or payment will be so made within 6 months from the date of export or some other period which the Treasury may specify. He must also show that the payment represents a satisfactory return for the goods.

United States Controls

Exports

At present all exports from the United States or its possessions to the United Kingdom are subject to the rules and regulations of the Bureau of Foreign Commerce, U. S. Department of Commerce, except for exports of arms, ammunition and implements of war, which are licensed by the U. S. Department of State; gold and narcotics, licensed by the U. S. Department of the Treasury; and certain source material and facilities for the production of fissionable material, licensed by the Atomic Energy Commission.

Department of Commerce export licenses fall into two categories—general and validated licenses. A general license is a privilege which permits exporters to make certain shipments without applying for or receiving a validated license document. The commodities subject to validated license requirements, as well as all other regulations concerning export control, are shown in the *Comprehensive Export Schedule*, which is available for examination at any Department of Commerce Field Office. The *Comprehensive Export Schedule* and supplementary *Current Export Bulletins* may be purchased from any Field Office or from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D.C., at an annual subscription rate, beginning each March 31, of $[illegible] ($1.50 additional for foreign mailing). Airmail service on the supplementary bulletins is available, to domestic subscribers only, at an additional cost of $4 a year.

Additional information concerning export control requirements for shipments to the United Kingdom may be obtained direct from the Bureau of Foreign Commerce, U. S. Department of Commerce, Washington 25, D.C., or from any of the Department's Field Offices.

Imports

Information on United States import duties is obtainable from the Commissioner of Customs, U. S. Department of the Treasury, Washington 25, D.C., or from local collectors of customs.

With few exceptions, imports into the United States are free from control. Absolute import quota restrictions on commercial products are limited, for the most part, to certain farm products for which officially supported prices in the United States are provided by law. Information on import quotas on controlled dairy products, and on permits for imports of oats, rye, barley, and wheat for planting purposes, may be obtained from the Import Division, Foreign Agricultural Service, U. S. Department of Agriculture, Washington 25, D.C. Information regarding import quotas on sugar is furnished by the Sugar Division, Commodity Stabilization Service, U. S. Department of Agriculture. Information on other commodities subject to import quotas is available from the Bureau of Customs, U. S. Department of the Treasury.

For imports of arms, ammunition, and implements of war, an import license must be obtained from the Office of Munitions Control, U. S. Department of State, Washington 25, D.C.

Other Controls

The Treasury Department's Division of Foreign Assets Control, Washington 25, D.C., should be consulted for information on the foreign assets control regulations, which prohibit all unlicensed transactions directly or indirectly involving mainland Chinese or North Korean financing or trade. These regulations, among other things, specifically prohibit the unlicensed purchase in any foreign country of all goods of mainland Chinese origin and all goods of types which in the past were chifly imported into the United States from Mainland China. The Division of Foreign Assets Control should also be consulted with respect to the transactions control regulations, which prohibit Americans from shipping strategic materials from any foreign country to a Soviet bloc country.

July 1958.

Prepared by Deane M. Black, British Commonwealth Division, Office of Economic Affairs, Bureau of Foreign Commerce Department of Commerce.

PLAINTIFF'S EXHIBIT NO. 105.

DURABLE CONSUMER GOODS

July 1959

Television Sets

Prepared by The Economist Intelligence Unit Limited in Association with The British Market Research Bureau Limited

* * *

Part II.

The Economics of Supply of Television Sets

* * *

1. *Structure of the Industry*

Since January of this year there have been further mergers in the industry. Philips Electrical Limited bought Cossor Radio and Television Limited, a subsidiary of A. C. Cossor Limited. Cossor is ceasing the manufacture of radio and television receivers and Philips will be able to use Cossor trade marks in all countries of the world with the exception of Canada and Pakistan.

Ultra Electric Limited increased its interests in the industry by acquiring the entire share capital of Pilot Radio Limited from the Pilot Radio Corporation of the U.S. It is not known, however, whether this will lead to any direct co-operation between Ultra and the American Corporation with which Pilot Radio has maintained close ties in the past. The Rank Organisation have acquired the Wharfedale Wireless Works in Bradford, manufacturers of loudspeaker systems.

Thus, the tendency to amalgamation of companies with the object of gaining the advantages of large scale operations and longer production runs, coupled with the need for increased resources in order to be able to undertake expenditure on research and new techniques, continued during the first half of 1959.

• • •

Relay television, where the two principal firms concerned are British Relay Wireless and Rediffusion, has been expanding at the rate of 100 per cent per annum and it is still regarded as having perhaps the greatest expansion potential of any sector of the industry.

• • •

4. *Trends in Production, Exports, Imports and Supply*

• • •

(iii) *Imports*

Imports of television sets are still not sufficiently important to be shown separately in the trade figures, and represent only a negligible addition to the total supply of sets to the U.K. market.

(iv) *Supply*

For the first time in the U.K., home sales of television sets topped the two million mark at 2,020,000 sets. This, with the exception of 1956, continues the unbroken rise in sales since 1947.

Home sales in the last quarter of 1958 were a record at 937,000 sets and were half as much again as those in the corresponding quarters of 1956 and 1957. Sales continued at a high level in the first quarter of 1959, and though seasonally down on the previous quarter's figures were 62.4 per cent higher than a year earlier. In April, the advance on 1958 was even more spectacular, and sales at 176,600 sets were 141.6 per cent greater than in the previous year.

Since the removal of restrictions on hire purchase transactions last October, sales have been running at a much higher level than previously. This has shown itself by the growing divergence between the actual level of manufacturers' home sales and the calculated level based on the past relationship between sales of television sets and total expenditure on durable household goods. The number of television sets in use has, however, risen very sharply in recent years and the domestic market is approaching the point of saturation. Unless, therefore, some new factor, such as the introduction of colour television, stimulates a quicker replacement of existing sets, sales may well tend to fall back in the longer run.

PLAINTIFF'S EXHIBIT No. 106

THE ECONOMIST
May 30, 1959

• • •

Dollar Imports

SETTING THE CONSUMER FREE

The liberation of dollar imports announced on Thursday is a major and very welcome move. It is also an eminently logical one. Ever since the achievement of technical convertibility for sterling, there has been no lasting economic reason for discrimination between dollar imports and any other sorts of imports; it could therefore be regarded as a bit absurd that up to this week quota restrictions were still maintained on 27 per cent of our imports from the dollar area (including virtually all consumer goods), while only 5 per cent of our imports from most non-dollar countries (other than the Soviet block and Japan) were so restricted, and all our imports from the sterling area were quota-free. But the British consumer has been cut off from an opportunity to buy American domestic appliances and other consumer goods for nearly twenty years; nobody can be quite sure how excitedly he will rear when he smells some of the oats of freedom, and it was not expected that the Government would have the courage to make a nearly clean sweep of discrimination at one swoop.

• • •

MORE IMPORTS FREED

The latest move towards liberalising imports from the dollar area falls into three parts. The first frees from next Monday imports of a wide range of mainly consumer goods which already enter freely from Western Europe. They include:

Domestic appliances, radio, television and radar apparatus

• • •

PLAINTIFF'S EXHIBIT No. 107.

Oversea Trade Statistics

Imports Cleared for Home Consumption

1954-55

Classified according to individual items of the Customs Tariff

Part 2:—Tariff Items 250A to "Unspecified"

Prepared Under Instructions from the Right Honorable
The Treasurer

By

S. R. Carver
Acting Commonwealth Statistician

IMPORTS CLEARED FOR HOME CONSUMPTION: 1954-1955

Nature of Tariff (Preferences):—

Code: Normal Admission: 1. U.K., 2. N.Z., 3. Can., 4. Other Preferential, 5. M.F.N., 6. General By-Law Admission (Tariff Item 449): 7. Preferential, 8. M.F.N., 9. General.

Type: Cleared under Tariff Item quoted, at rates applicable thereto, viz:—A. Ad valorem (or Free); F. Fixed (or Specific); C. Composite; ED Extra Duty.

Classified under Tariff Item quoted, but cleared under Tariff Item 449 at rates applicable thereto, viz.:—X: 449 (A) (1) all countries or 449 (A) (2) B.P.T. only; Y. 449 (A) (2), M.F.N. or General; Z. 449 (b).

Tariff Item	Statistical Item	Country of Origin	Nature of Tariff Code	Nature of Tariff Type	Quantity	Value £A F.O.B.	Duty £A
370 A		Articles imported by or being the property of the Commonwealth, not being for the purposes of trade					
		• • •					
		Communication equipment—					
	5261	Sets, excluding cabinets, valves, etc.					
		U.K.	1	A		7,309	—
		Norfolk Is.	4	A		300	—
		Canada	3	A		201,290	—
		Aust. (re-imp.)	5	A		247	—
		Netherlands	5	A		340	—
		U.S.A.	5	A		26,720	—
		Origin Unknown	6	A		250	—
						236,456	—

• • •

PLAINTIFF'S EXHIBIT No. 108.

Oversea Trade Statistics
Imports Cleared for Home Consumption
1955-56

Classified according to individual items of the Customs Tariff
Part 2:—Tariff Items 250A to "Unspecified"
Prepared Under Instructions from the Right Honorable
The Treasurer
By
S. R. Carver
Acting Commonwealth Statistician

Imports Cleared for Home Consumption—1955-56
Classified according to individual items of the Customs Tariff

Foreword

1. This publication has been prepared by the Commonwealth Bureau of Census and Statistics in order to meet an urgent demand for advance statistics in respect of goods cleared for home consumption classified according to the items incorporated in the Schedule to the Customs Tariff.
2. The statistics embrace clearances from the ship's side and from bonded warehouse. Statistics of imports classified according to Statistical Items will as usual be published in the printed Oversea Trade Bulletin.

* * *

4. Under each Tariff Item description is listed the Statistical Item or Items to which the revelant goods are classified for statistical purposes. In cases where only one Statistical Item is included under a Tariff Item no additional description is shown. In all other cases a brief description of each of the component Statistical Items is shown, which should be read in conjunction with the Tariff Item description.

5. For a detailed description of the goods covered by the various Tariff Items reference should be made to the Schedule to the Customs Tariff. For a detailed description of the Statistical Items under which the clearances are recorded reference should be made to the Statistical Classification of Imports.

6. For Tariff Items which include more than one Statistical Item, sub-totals of quantity and value are given for each Statistical Item shown; total value of all goods cleared under the Tariff Item is shown immediately beneath the last Statistical Item sub-total.

• • •

9. "Value" is the declared Value for Duty, expressed in terms of Australian currency.

10. "Duty" represents the gross amount of Customs Tariff duty collected, expressed in Australian currency. It does not include primage duty or sales tax.

• • •

Bureau of Census and Statistics
Canberra. A.C.T. October, 1956.

IMPORTS CLEARED FOR HOME CONSUMPTION: 1955-1956

Nature of Tariff (Preferences):—

Code: Normal Admission: 1. U.K., 2. N.Z., 3. Can., 4. Other Preferential, 5 M.F.N., 6. General * * *.

Type: Cleared under Tariff Item quoted, at rates applicable thereto, viz:—A. Ad valorem (or free); F. Fixed (or Specific); C. Composite; ED Extra Duty.

Classified under Tariff Item quoted, but cleared under Tariff Item 449 at rates applicable thereto, viz.:—X. 449 (A)(1) and 449 C1 all countries or 449 A2 and 449 C2 B.P.T. only; Y. 449 A2 and 449 C2 M.F.N. or General; Z. 449(B).

Tariff Item	Statistical Item	Country of Origin	Nature of Tariff Code	Nature of Tariff Type	Quantity	Value £A F.O.B.	Duty £A
370 A		Articles imported by or being the property of the Commonwealth, not being for the purposes of trade					—

* * *

Tariff Item	Statistical Item	Country of Origin	Nature of Tariff Code	Nature of Tariff Type	Quantity	Value £A F.O.B.	Duty £A
		Communication Equipment—					
	5261	Sets, excluding cabinets, valves, etc.					
		U.K.	1	A		21,547	—
		Aust. (Re-imp.)	4	A		57	—
		Germany, F.R.	5	A		1,465	—
		Netherlands	5	A		203	—
		U.S.A.	5	A		108,345	—
						131,617	—

* * *

PLAINTIFF'S EXHIBIT No. 109.

Oversea Trade Statistics

Imports Cleared for Home Consumption

1956-57

Classified according to individual items of the Customs Tariff
Part 2:—Tariff Items 250A to "Unspecified"

Prepared Under Instructions from the Right Honorable
The Treasurer
By
S. R. Carver
Commonwealth Statistician

Imports Cleared for Home Consumption—1956-57
Classified according to individual items of the Customs Tariff

Foreword

1. This publication has been prepared by the Commonwealth Bureau of Census and Statistics in order to meet an urgent demand for advance statistics in respect of goods cleared for home consumption clas-

sified according to the items incorporated in the Schedule to the Customs Tariff.

2. The statistics embrace clearances from the ship's side and from bonded warehouse. Statistics of imports classified according to Statistical Items will as usual be published in the printed Oversea Trade Bulletin.

• • •

4. Under each Tariff Item description is listed the Statistical Item or Items to which the relevant goods are classified for statistical purposes. In cases where only one Statistical Item is included under a Tariff Item no additional description is shown. In all other cases a brief description of each of the component Statistical Items is shown, which should be read in conjunction with the Tariff Item description.

5. For a detailed description of the goods covered by the various Tariff Items reference should be made to the Schedule to the Customs Tariff. For a detailed description of the Statistical Items under which the clearances are recorded reference should be made to the Statistical Classification of Imports.

6. For Tariff Items which include more than one Statistical Item, sub-totals of quantity and value are given for each Statistical Item shown; total value of all goods cleared under the Tariff Item is shown immediately beneath the last Statistical Item sub-total.

• • •

8. In order to extract details of total clearances of goods which have been classified to a particular Statistical Item it is necessary first to ascertain the Tariff Items under which the goods are usually cleared. This information is obtainable from the Official Tariff Guide issued by Department of Trade and Customs

or from the Statistical Classification of Imports. An index to the latter appears in the preliminary Oversea Trade Bulletin 1956-57 published by the Bureau in September, 1957. It should be noted, however, that in addition to the particular Tariff Items shown in the Statistical Classification of Imports, specified goods may be cleared under Tariff Items 370, 371, 372 and 373 which cover clearances of goods for the Commonwealth Government, the Governor-General and staff, State Governors and staff and Diplomatic, etc. Representatives and Staff.

9. "Value" is the declared Value for Duty, expressed in terms of Australian currency.
10. "Duty" represents the gross amount of Customs Tariff duty collected, expressed in Australian currency. It does not include primage duty or sales tax.

• • •

Bureau of Census and Statistics
Canberra, A.C.T. November, 1957

IMPORTS CLEARED FOR HOME CONSUMPTION: 1956-57

Nature of Tariff (Preferences):—

Code: Normal Admission: 1. U.K., 2. N.Z., 3. Can., 4. Other Preferential, 5 M.F.N., 6. General • • •

Type: Cleared under Tariff Item quoted, at rates applicable thereto, viz.:—A. Ad valorem (or Free); F. Fixed (or Specific); C. Composite; ED Extra Duty

Classified under Tariff Item quoted, but cleared under Tariff Item 449 at rates applicable thereto, viz:—X. 449 A(1) and 449 C1 all countries or 449 A2 and 449 C2 B.P.T. only; Y. 449 A2 and 449 C2 M.F.N. or General; Z. 449 (B)

Tariff Item	Statistical Item	Country of Origin	Nature of Tariff Code	Nature of Tariff Type	Quantity	Value £A F.O.B.	Duty £A
370 A		Articles imported by or being the property of the Commonwealth, not being for the purposes of trade					
		• • •					
	5249	Arc lamps, including arc and incandescent combined, other than for projection purposes			No.		
		U.K.	1	A	8	64	—
		U.S.A.	5	A	1	444	—
					9	508	—
		ommunication equipment—					
	5263	Sets, excluding cabinets, valves, etc.			No.		
		U.K.	1	A	156	25,304	—
		Germany, F.R.	5	A	1	475	—
		U.S.A.	5	A	12	3,626	—
					169	29,405	—
	5265	Wireless transmitting sets, etc.			No.		
		U.K.	1	A	743	293,760	—
		Aust. (re-imp.)	4	A	25	5,135	—
		Denmark	5	A	1	124	—
		Germany, F.R.	5	A	—	1,183	—
		U.S.A.	5	A	97	16,150	—
		Unknown	6	A	45	1,360	—
					911	317,712	—
	5270	Parts of wireless receivers and accessories (not valves)					
		U.K.	1	A	—	329,214	—
		New Guinea	4	A		12	—
		Papua	4	A		41	—
		Cocos I.	4	A		365	—
		Canada	3	A		154	—
		N.Z.	2	A		2,400	—
		Aust. (re-imp.)	4	A		6,894	—
		Denmark	5	A		492	—

• • •

PLAINTIFF'S EXHIBIT No. 110.

Oversea Trade Statistics

Imports Cleared for Home Consumption

1957-58

Classified according to individual items of the Customs Tariff
Part 2:—Tariff Items 250A to "Unspecified"

Prepared Under Instructions from the Right Honorable
The Treasurer
By
S. R. Carver
Commonwealth Statistician

Imports Cleared for Home Consumption—1957-58

Classified according to individual items of the Customs Tariff

Foreword

1. This publication has been prepared by the Commonwealth Bureau of Census and Statistics in order to meet a demand for statistics in respect of goods cleared for home consumption classified according to the items incorporated in the Schedule to the Customs Tariff.
2. The statistics embrace clearances from the ship's side and from bonded warehouse. Statistics of imports classified according to Statistical Items have been published in Bulletin No. 55 "Oversea Trade 1957-58."

* * *

5. Under each Tariff Item description is listed the Statistical Item or Items to which the relevant goods are classified for statistical purposes. In cases where only one Statistical Item is included under a Tariff Item no additional description is shown. In all other cases a brief description of each of the component

Statistical Items is shown, which should be read in conjunction with the Tariff Item description.

* * *

7. For Tariff Items which include more than one Statistical Item, sub-totals of quantity and value are given for each Statistical Item shown; total value of all goods cleared under the Tariff Item is shown immediately beneath the last Statistical Item sub-total.
8. In order to extract details of total clearances of goods which have been classified to a particular Statistical Item it is necessary first to ascertain the Tariff Items under which the goods are usually cleared. This information is obtainable from the Official Tariff Guide issued by the Department of Customs and Excise or from the Statistical Classification of Imports. An index to the latter appears on pages 587 to 597 of Bulletin No. 55 "Oversea Trade 1957-58" published by the Bureau in December, 1958. It should be noted, however, that in addition to the particular Tariff Items shown in the Statistical Classification of Imports, specified goods may be cleared under Tariff Items 370, 371, 372 and 373 which cover clearances of goods for the Commonwealth Government, the Governor-General and staff, State Governors and staff and Diplomatic, etc. Representatives and Staff.
9. "Value" is the declared Value for Duty, expressed in terms of Australian currency.
10. "Duty" represents the gross amount of Customs Tariff duty collected, expressed in Australian currency. It does not include primage duty or sales tax.

* * *

Bureau of Census and Statistics
Canberra, A.C.T. April, 1959.

IMPORTS CLEARED FOR HOME CONSUMPTION: 1957-58

Tariff Item Stat. Item	Item and Country of Origin		Quantity	Value £A F.O.B.	Duty £A
	• • •				
370 A	Articles imported by or being the property of the Commonwealth, not being for the purposes of trade				
	• • •				
	Communication Equipment				
5262	Television Sets				
			No.		
	United Kingdom	1	10	445	
5263	Other Receiving Sets				
			No.		
	United Kingdom	1	196	25790	
	Aust. Re-import	1	10	355	
			206	26154	
5265	Wireless Transmitting Sets Etc.				
			No.		
	United Kingdom	1	230	119658	
	Aust. Re-import	1	61	10400	
	U.S.A.	1	21	22302	

PLAINTIFF'S EXHIBIT No. 111.

Oversea Trade Statistics

Imports Cleared for Home Consumption

1958-59

Classified according to individual items of the Customs Tariff

Part 2:—Tariff Items 250A to "Unspecified"

Prepared Under Instructions from the Right Honorable
The Treasurer
By
S. R. Carver
Commonwealth Statistician

Imports Cleared for Home Consumption 1958-59

Classified according to Individual Items of the Customs Tariff

Preface

1. This publication has been prepared in the Commonwealth Bureau of Census and Statistics in order to meet a demand for statistics in respect of goods cleared for home consumption classified according to the items incorporated in the Schedule to the Customs Tariff.

2. *Coverage*—The statistics embrace clearances from the ships' sides and from bonded warehouses. Imports on Government account are treated as normal transactions and are an integral part of oversea trade statistics. Notes and coins are included in the clearances at their commodity value. Passengers' effects are included under Tariff Item 409. Particulars of direct transit trade through Australia are not included.

3. *Presentation of Data*—

* * *

For Tariff Items which include more than one statistical item sub-totals of quantity and value are given for each statistical item shown; total value of all goods cleared under the Tariff Item is shown immediately beneath the last statistical item sub-total.

Under each Tariff Item description is listed the statistical item or items to which the relevant goods are classified for statistical purposes. In cases where only one statistical item is included under a Tariff Item no additional description is shown. In all other cases a brief description of each of the component statistical items is shown, which should be read in conjunction with the Tariff Item description.

Imports cleared for home consumption have been arranged in this Bulletin in ascending order of Customs Tariff Item and show:

(a) Tariff Item number and brief description.
(b) Statistical item number and brief description.

(c) Country of origin.
(d) Nature of Tariff.
(e) Rate of duty.
(f) Quantity, where applicable.
(g) Value for duty.
(h) Amount of duty.

In order to extract details of total clearances of goods which have been classified to a particular Statistical Item it is necessary first to ascertain the Tariff Items under which the goods are usually cleared. This information is obtainable from the Official Tariff Guide issued by the Department of Customs and Excise or from the Statistical Classification of Imports. An index to the latter appears on pages 603 to 613 of Bulletin No. 56 "Oversea Trade 1958-59" published by the Bureau in December, 1959. It should be noted, however, that in addition to the particular Tariff Items shown in the Statistical Classification of Imports, specified goods may be cleared under Tariff Items 370, 371, 372 and 373 which cover clearances of goods for the Commonwealth Government, the Governor-General and staff, State Governors and staff and Diplomatic, etc. Representatives and Staff.

4. *Country of Origin.*—Country of origin is defined as the country in which the goods were given the form in which they were finally imported into Australia, ignoring minor transformations such as packaging etc.

• • •

7. *Quantities.*—Where quantities are shown they are generally but not invariably expressed in terms of the normal trade unit. Quantities are not tabulated in respect of statistical items for which there is no appropriate unit of quanity (for example those statistical items which cover a number of commodities and cannot be recorded under a uniform unit of quantity).

Unless provision is made for a separate statistical item for "parts" clearances of "parts" of articles are recorded under the same statistical item as the complete unit. In such cases, if quantities for the items are tabulated, the quantity/value relationship may be distorted as the quantity represents the number of complete units whereas the value includes, in addition, the value of parts.

8. *Value for Duty.*— The value shown represents the amount on which duty is payable or would be payable if this duty were ad valorem. Section 154(1) of the Customs Act 1901-1959 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following—

(a) (i) The actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) The current domestic value of the goods, whichever is the higher.

(b) All charges payable or ordinarily payable for placing the goods free on board at the port of export.

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash at the date of exportation of these goods, the same quantity of identically similar goods, to any and every purchaser in the country of export for consumption in that country."

• • •

9. *Duty.*— Duty represents the gross amount of Customs Tariff duty collected expressed in Australian currency. It does not include primage duty or sales tax.

• • •

Bureau of Census and Statistics
Canberra, A.C.T. January, 1960.

IMPORTS CLEARED FOR HOME CONSUMPTION, 1958-59

• • •

Tariff Item Stat. Item	Item and Country of Origin	Rate of Duty (Code)	Quantity	Value £A F.O.B.	Duty £A

• • •

370 A	Articles imported by or being the property of the Commonwealth, not being for the purposes of trade				

• • •

Tariff Item Stat. Item	Item and Country of Origin	Rate of Duty (Code)	Quantity	Value £A F.O.B.	Duty £A
5257	Arc Lamps, except for cinematograph projection purposes		No.		
	U.K.	1 000	229	1414	
	Belgium-Lux	1 000	26	243	
	France	1 000	1	12	
	Germany, F.	1 000	3	5	
	Netherlands	1 000	6	61	
			265	1735	
5263	Wireless Receiving Sets—except Television		No.		
	U.K.	1 000	232	72780	
	New Zealand	1 000	1	51	
	Aust. Re-imp.	1 000	5	315	
	U. S. A.	1 000	14	4997	
			252	78143	
5265	Wireless Transmitting Sets, etc.		No.		
	U.K.	1 000	33	77156	
	Aust. Re-imp.	1 000	4	775	
	Germany, F.	1 000	1	815	
	U. S. A.	1 000	77	11493	
			115	909239	

• • •

ZENITH CROSS-CLAIMANT EXHIBIT NO. 4.

IMPORTS INTO AUSTRALIA, 1953-54.

Table III.

Article and Country of Origin.	Quantity.	Value.
CLASS XII.—(b) Dynamo Electrical Machinery, &c.		
Electric lamps and arc lamps—*continued.*		
• • •		
Wireless (radio) equipment.		
5261 Receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries.		£
United Kingdom		39,257
Other British Countries		2,903
Foreign Countries		7,663
Importing States—		
New South Wales		30,444
Victoria		14,441
Queensland		994
South Australia		743
Western Australia		3,060
Tasmania		59
Northern Territory		82
Total		49,823
Previous Year		44,442

• • •

IMPORTS INTO AUSTRALIA, 1954-55.

Table III.

Article and Country of Origin.	Quantity.	Value.
CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
Electric lamps and arc lamps—*continued.*		
• • •		
Wireless (radio) equipment.		
5261 Receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries.		£
United Kingdom		43,314
Canada		201,421
Other British Countries		2,162
United States of America		29,538
Other Foreign Countries		8,737
Importing States—		
New South Wales		264,106
Victoria		15,734
Queensland		412
South Australia		1,497
Western Australia		3,335
Tasmania		88
Total		285,172
Previous Year		49,823

• • •

IMPORTS INTO AUSTRALIA, 1955-56.

Table III.

Article and Country of Origin.	Quantity.	Value.
CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
Electric lamps, &c.—*continued.*		
* * *		
Wireless (radio) equipment.		
5261 Receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries.		£
United Kingdom		107,552
Other British Countries		1,211
Germany, Federal Republic of		15,199
United States of America		110,074
Other Foreign Countries		1,982
Importing States—		
New South Wales		165,266
Victoria		49,818
Queensland		900
South Australia		700
Western Australia		19,327
Tasmania		5
Northern Territory		2
Total		236,018
Previous Year		285,172

* * *

IMPORTS INTO AUSTRALIA, 1956-57.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
	Electric lamps, &c.—continued.		
	• • •		
	Wireless (radio) equipment.		
	Receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries.		
5262	Television sets.	No.	£
	United Kingdom	5,048	169,842
	Other Commonwealth Countries	6	395
	Germany, Federal Republic of	1,323	41,326
	Other Foreign Countries	116	2,193
	Importing States—		
	New South Wales	2,550	76,344
	Victoria	3,619	127,046
	South Australia	324	10,366
	Total	6,493	213,756
	Previous Year	Included in item 5263.	
5263	Other.	No.	£
	United Kingdom	5,143	42,394
	Other Commonwealth Countries	18	166
	Japan	679	6,371
	Other Foreign Countries	367	10,201
	Importing States—		
	New South Wales	5,161	34,330
	Victoria	882	20,378
	Queensland	19	610
	South Australia	60	1,017
	Western Australia	84	2,757
	Tasmania	1	40
	Total	6,207	59,132
	Previous Year(c)	Not available	236,018

• • •

(c) Includes item 5262.

IMPORTS INTO AUSTRALIA, 1957-58.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
	Electric lamps, &c.—continued.		
	• • •		
	Wireless (radio and TV) equipment.		
	Receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries.		
5262	Television sets.	No.	£
	United Kingdom	4,515	146,917
	Australia (re-imported)	1	300
	Germany, Federal Republic of	964	33,299
	Other Foreign Countries	123	2,058
	• • •		
	Total	5,603	182,574
	Previous Year	6,493	213,756
5263	Other.	No.	£
	United Kingdom	12,852	62,063
	Other Commonwealth Countries	96	3,028
	Denmark	6,772	24,500
	Germany, Federal Republic of	515	8,037
	Japan	15,026	94,213
	Netherlands	2,844	29,762
	United States of America	459	9,251
	Other Foreign Countries	33	614
	• • •		
	Total	38,597	231,468
	Previous Year	6,207	59,132

• • •

IMPORTS INTO AUSTRALIA, 1958-59.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
	Electric lamps, &c.—continued.		
	• • •		
	Wireless (radio and TV) equipment.		
	Receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries.		
5262	Television Sets.	No.	£
	Commonwealth Countries	124	1,623
	Germany, Federal Republic of..	1,366	52,383
	Other Foreign Countries	89	2,572
	Importing States—		
	New South Wales	1,271	46,081
	Victoria	303	10,372
	Queensland	1	23
	South Australia	3	92
	Western Australia	1	10
	Total	1,579	56,578
	Previous Year	5,603	182,574
5263	Other.	No.	£
	United Kingdom	22,426	118,060
	Other Commonwealth Countries.	29	886
	Germany, Federal Republic of..	3,801	17,774
	Japan	60,220	247,944
	Netherlands	3,263	37,358
	United States of America	893	23,554
	Other Foreign Countries	321	3,401
	Importing States—		
	New South Wales	61,932	242,455
	Victoria	21,250	145,783
	Queensland	2,606	14,963
	South Australia	3,510	33,241
	Western Australia	1,524	11,683
	Tasmania	131	852
	Total	90,953	448,977
	Previous Year	38,597	231,468

• • •

IMPORTS INTO AUSTRALIA, 1959-60.

Table III.

Article and Country of Origin.	Quantity.	Value.
CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
• • •		
Wireless (radio and TV) equipment.		
52620 Receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries—Television sets.(a)	No.	£
United Kingdom	49	1,255
Germany, Federal Republic of..	506	18,276
Other Foreign Countries	60	2,722

(a) See also item 52621.

• • •

Total(a)	615	22,253
Previous Year	1,579	56,578
52621 Television receivers, designed for the reception of signals without line connexion, including cabinets, valves, loud-speakers, headphones etc.(b)	No.	£
United Kingdom	3	139
Germany, Federal Republic of..	79	4,070
Other Foreign Countries	32	861
• • •		
Total(c)	114	5,070
Previous Year	(b)	

(a) To 19. 5.60
(b) See also item 52620
(c) From 20. 5.60

IMPORTS INTO AUSTRALIA, 1959-60.

Table III.

Article and Country of Origin.	Quantity.	Value.
CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
Wireless, &c.—continued.		
52631 Radio Broadcast receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries—Transistor sets (sets wholly or partly transistorized). (d)	No.	£
United Kingdom	2,195	12,460
New Zealand	5,010	32,764
Other Commonwealth Countries	595	3,711
Austria	710	5,527
Japan	69,079	330,050
Netherlands	1,957	21,866
Other Foreign Countries	1,088	9,319
• • •		
Total(a)	80,634	415,697
Previous Year	Included in item 52639.	
Radio broadcast receivers including cabinets, valves, loud-speakers, headphones, etc.		
52632 Incorporating transistors(e).	No.	£
United Kingdom	2,138	24,085
Hong Kong	1	10
Japan	1,392	11,836
Netherlands	326	5,798
Other Foreign Countries	144	3,583
• • •		
Total(c)	4,001	45,312
Previous Year	(e)	

(a) To 19. 5.60

(c) From 20. 5.60

(d) See also item 52632

(e) See also item 52639

IMPORTS INTO AUSTRALIA, 1959-60.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII. — (b) Dynamo Electrical Machinery, &c. Wireless, &c.—continued.		
52637	Valve (only) operated(f).	No.	£
	United Kingdom	57	1.040
	Germany, Federal Republic of..	100	4,058
	Other Foreign Countries	18	261
	• • •		
	Total(c)	175	5,359
	Previous Year		(f)
52638	Other, including crystal sets(f).	No.	£
	Total(c)	2	164
	Previous Year		(f)
52639	Receiving sets excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries —other(g).	No.	£
	United Kingdom	24,629	196,841
	Other Commonwealth Countries.	18	537
	Germany, Federal Republic of..	365	5,725
	Japan	13,520	14,879
	United States of America	740	17,459
	Other Foreign Countries	53	1,441
	• • •		
	Total(a)	39,325	236,882
	Previous Year(e)	90,953	448,977
	• • •		

(a) To 19. 5.60.

(c) From 20. 5.60.

(e) See also item 52631.

(f) See also item 52639.

(g) See also items 52637 and 52638.

IMPORTS INTO AUSTRALIA, 1960-61.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
	Communication equipment—continued.		
	* * *		
	RADIO TELEGRAPHIC AND TELEPHONIC APPARATUS, RADIO BROADCASTING AND TELEVISION APPARATUS (INCLUDING THOSE INCORPORATING GRAMOPHONES) AND TELEVISION CAMERAS.		
	* * *		
52710	Television receivers designed for the reception of signals without line connection, with or without radio broadcast receivers and sound recorders and reproducers.	No.	£
	Commonwealth Countries	23	1,578
	Germany, Federal Republic of..	338	20,065
	United States of America	53	8,342
	Other Foreign Countries	40	2,464
	* * *		
	Total	454	32,449
	Previous Year	729	27,323
	Radio broadcast receivers with or without sound recorders or reproducers.		
52721	Incorporating transistors.	No.	£
	United Kingdom	2,185	27,918
	Other Commonwealth Countries.	66	753
	Germany, Federal Republic of..	695	14,044
	Japan	21,347	188,449
	Netherlands	5,909	83,441
	United States of America	99	6,033
	Other Foreign Countries	33	355
	* * *		
	Total	30,334	320,993
	Previous Year	84,635	461,009

IMPORTS INTO AUSTRALIA, 1960-61.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII.—(b) Dynamo Electrical Machinery, &c.		
	Communication equipment—continued.		
	Radio telegraphic, etc—continued.		
	Radio broadcast receivers, etc.—continued.		
52722	Valve (only) operated.	No.	£
	United Kingdom	362	158,677
	Other Commonwealth Countries	10	478
	Germany, Federal Republic of	722	29,396
	Japan	801	6,367
	Netherlands	471	39,581
	United States of America	157	144,611
	Other Foreign Countries	18	1,089
	• • •		
	Total	2,541	380,199
	Previous Year(b)	39,502	242,405
52723	Other, including crystal sets.	No.	£
	United Kingdom	29	8,058
	Other Commonwealth Countries	1	125
	Japan	18,558	8,919
	Other Foreign Countries	119	5,132
	• • •		
	Total	18,707	22,234
	Previous Year	Included in item 52722.	

(b) Includes item 52723

• • •

IMPORTS INTO AUSTRALIA, 1961-62.

Table III.

Article and Country of Origin.	Quantity.	Value.
CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
Communication equipment—continued.		
• • •		
RADIO TELEGRAPHIC AND TELEPHONIC APPARATUS, RADIO BROADCASTING AND TELEVISION APPARATUS (INCLUDING THOSE INCORPORATING GRAMOPHONES) AND TELEVISION CAMERAS.		
• • •		
52710 Television receivers designed for the reception of signals without line connection, with or without radio broadcast receivers and sound recorders and reproducers.	No.	£
Commonwealth Countries	10	541
Germany, Federal Republic of	27	7,625
Other Foreign Countries	38	1,663
• • •		
Total	75	9,829
Previous Year	454	32,449
• • •		
Radio broadcast receivers with or without sound recorders or reproducers.		
52721 Incorporating transistors.	No.	£
Commonwealth Countries	218	3,046
Germany, Federal Republic of	693	17,389
Japan	32,098	282,012
Netherlands	752	12,472
Other Foreign Countries	116	2,487
• • •		
Total	33,877	317,406
Previous Year	30,334	320,993

IMPORTS INTO AUSTRALIA, 1961-62.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
	Communication equipment—continued.		
	Radio telegraphic, etc.—continued.		
	Radio broadcast receivers, etc.—continued.		
52722	Valve (only) operated.	No.	£
	Commonwealth Countries	143	4,161
	Germany, Federal Republic of	455	18,167
	Japan	1,965	29,086
	United States of America	61	6,098
	Other Foreign Countries	21	1,254
	• • •		
	Total	2,645	58,766
	Previous Year	2,541	380,199
52723	Other, including crystal sets.	No.	£
	Commonwealth Countries	60	1,254
	Japan	43,215	17,600
	Other Foreign Countries	1,158	2,408
	• • •		
	Total	44,433	21,262
	Previous Year	18,707	22,234

• • •

IMPORTS INTO AUSTRALIA, 1962-63.

Table III.

Article and Country of Origin.	Quantity.	Value.
CLASS XII.—(B) Dynamo Electrical Machinery, &c.		
Communication equipment—continued.		
• • •		
RADIO TELEGRAPHIC AND TELEPHONIC APPARATUS, RADIO BROADCASTING AND TELEVISION APPARATUS (INCLUDING THOSE INCORPORATING GRAMOPHONES) AND TELEVISION CAMERAS.		
• • •		
52710 Television receivers designed for the reception of signals without line connection, with or without radio broadcast receivers and sound recorders and reproducers.	No.	£
Commonwealth Countries	14	602
Germany, Federal Republic of..	48	7,588
Japan	413	12,498
Other Foreign Countries	233	3,649
• • •		
Total	708	24,337
Previous Year	75	9,829
• • •		
Radio broadcast receivers with or without sound recorders or reproducers.		
52721 Incorporating transistors.	No.	£
Hong Kong	457	5,129
Other Commonwealth Countries.	116	3,171
Germany, Federal Republic of..	651	17,512
Japan	75,471	528,273
United States of America	133	11,469
Other Foreign Countries	377	5,471
• • •		
Total	77,205	571,025
Previous Year	33,877	317,406

IMPORTS INTO AUSTRALIA, 1962-63.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII.—(B) Dynamo Electrical Machinery, &c.		
	Communication equipment—continued.		
	Radio telegraphic, etc.—continued.		
	Radio broadcast receivers, etc.—continued.		
52722	Valve (only) operated.	No.	£
	United Kingdom	59	8,436
	Other Commonwealth Countries.	11	802
	Germany, Federal Republic of..	664	25,789
	Japan	676	10,505
	Netherlands	262	7,987
	United States of America	99	15,532
	Other Foreign Countries	60	1,790
	• • •		
	Total	1,831	70,841
	Previous Year	2,645	58,766
52723	Other, including crystal sets.	No.	£
	Commonwealth Countries	15	3,713
	Japan	81,044	25,917
	Other Foreign Countries	104	2,760
	• • •		
	Total	81,163	32,390
	Previous Year	44,433	21,262

• • •

IMPORTS INTO AUSTRALIA, 1963-64.

Table III.

CLASS XII.—(B) Dynamo Electrical Machinery, &c.

Communication equipment, &c.—continued.

RADIO TELEGRAPHIC AND TELEPHONIC APPARATUS, RADIO BROADCASTING AND TELEVISION APPARATUS (INCLUDING THOSE INCORPORATING GRAMOPHONES) AND TELEVISION CAMERAS.

• • •

Article and Country of Origin.		Quantity.	Value.
52710	Television receivers designed for the reception of signals without line connection, with or without radio broadcast receivers and sound recorders and reproducers.	No.	£
	Commonwealth Countries	30	4,348
	France	2	7,221
	Japan	2,773	80,177
	United States of America	35	12,342
	Other Foreign Countries	14	1,105
	• • •		
	Total	2,854	105,193
	Previous Year	708	24,337

• • •

Radio broadcast receivers with or without sound recorders or reproducers.

52721	Incorporating transistors.	No.	£
	United Kingdom	69	5,002
	Hong Kong	2,610	8,758
	New Zealand	807	10,500
	Other Commonwealth Countries.	14	181
	Germany, Federal Republic of..	419	5,918
	Japan	121,518	739,716
	Netherlands	1,443	28,636
	United States of America	620	22,109
	Other Foreign Countries	710	3,523
	• • •		
	Total	128,210	824,343
	Previous Year	77,205	571,025

IMPORTS INTO AUSTRALIA, 1963-64.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII.—(B) Dynamo Electrical Machinery, &c.		
	Communication equipment, &c.—continued.		
	Radio Telegraphic, etc.—continued.		
52722	Valve (only) operated.	No.	£
	United Kingdom	76	16,424
	Other Commonwealth Countries.	56	4,187
	Germany, Federal Republic of . .	1,122	42,251
	United States of America	178	36,673
	Other Foreign Countries	320	5,189
	• • •		
	Total	1,752	104,724
	Previous Year	1,831	70,841
52723	Other, including crystal sets.	No.	£
	Commonwealth Countries	15	874
	Japan	89,008	25,618
	Other Foreign Countries	222	4,914
	• • •		
	Total	89,245	31,406
	Previous Year	81,163	32,390

• • •

ZENITH CROSS-CLAIMANT EXHIBIT NO. 8

OVERSEA TRADE, 1953-54

Preface.

Source of Data.—These statistics of Australia's Trade with Other Countries, and of Customs and Excise Revenue, for the year ended 30th June, 1954, together with comparative figures for previous years in abridged form, have been compiled from documents obtained under the Customs Act and supplied to this Bureau by the Department of Trade and Customs.

• • •

The Trade System.— There are two generally accepted systems of recording oversea trade statistics, namely, (a) special trade and (b) general trade. The Statistical Office of the United Nations defines the two systems as follows:—

• • •

> (b) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. Direct transit trade and trans-shipment under bond are excluded. • • •

General imports and special and general exports are contained in this Bulletin.

• • •

Imports and Exports on Government Account are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

Migrants' Effects are included in imports and exports.

Direct Transit Trade.— Particulars of direct transit trade through Australia are not recorded.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to a revised statistical classification divided into 21 classes, which came into operation on 1st July, 1945. The classification now comprises 2676 items of imports and 1462 items of exports. An extensive index of imports and exports is given on page 575. Many items are recorded according to value only, but in all cases where quantities are recorded particulars concerning both quantities and values are shown.

• • •

In Table III., imports of each statistical item are classified according to country of origin and importing State.

• • •

Valuation.—(*a*) *General.*—All values throughout this Bulletin are expressed in £ (Aust.).

• • •

(*c*) *Imports.*—The value included in the tabulation of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154(I) of the Customs Act 1901-1953 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or
(ii) the current domestic value of the goods, whichever is the higher;
(b) all charges payable or ordinarily payable for placing the goods free on board at the port of export;

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b.)" or "domestic value (f.o.b.)", whichever is the higher

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's Oversea Trade two mimeographed bulletins containing 1953-54 statistics in considerable detail have been issued. The first of these bulletins, *Oversea Trade—Preliminary Bulletin* 1953-54, was published in September, 1954, and contains particulars of imports and exports classified according to statistical item and country. The other mimeographed bulletin, *Imports Cleared for Home Consumption* 1953-54, was published in two volumes in December, 1954, and shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

• • •

S. R. CARVER,
Acting Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 19th October, 1954.

OVERSEA TRADE, 1954-55.

Preface.

Source of Data.—These statistics of Australia's trade with other countries, and of Customs and Excise Revenue, for the year ended 30th June, 1955, together with comparative figures for previous years in abridged form, have been compiled from documents obtained under the Customs Act and supplied to this Bureau by the Department of Trade and Customs.

• • •

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two system as follows:—

• • •

(*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. Direct transit trade and trans-shipment under bond are excluded. • • •

General imports and exports are contained in this Bulletin.

• • •

Imports and Exports on Government Account are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

Migrants' Effects are included in imports and exports.

Direct Transit Trade.—Particulars of direct transit trade through Australia are not recorded.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to a revised statistical classification divided into 21 classes, which came into operation on 1st July, 1945. The classification now comprises 2123 items of imports and 1089 items of exports. An extensive index of imports and exports is given on page 529. Many items are recorded according to value only, but in all cases where quantities are recorded particulars concerning both quantities and values are shown.

• • •

In Table III., imports of each statistical item are classified according to country of origin and importing State.

• • •

Valuation.—(*a*) *General.*— All values throughout this Bulletin are expressed in £ (Aust.)

• • •

(*c*) *Imports.*—The value included in the tabulation of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154(I) of the Customs Act 1901-1954 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) the current domestic value of the goods, whichever is higher;

(b) all charges payable or ordinarily payable for placing the goods free on board at the port of export;

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b.)" or "domestic value (f.o.b.)", whichever is the higher.

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's Oversea Trade two mimeographed bulletins containing 1954-55 statistics in considerable detail have been issued. The first of these bulletins, *Oversea. Trade—Preliminary Bulletin* 1954-55, was published in August, 1955, and contains particulars of imports and exports classified according to statistical item and country. The other mimeographed bulletin, *Imports Cleared for Home Consumption* 1954-55, published in two volumes in November, 1955, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

• • •

S. R. CARVER,
Acting Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 6th October, 1955.

OVERSEA TRADE, 1955-56.

Preface.

Source of Data.—These statistics of Australia's trade with other countries, and of Customs and Excise Revenue, for the year ended 30th June, 1956, together with comparative figures for previous years in abridged form, have been compiled from documents obtained under the Customs Act and supplied to this Bureau by the Department of Customs and Excise.

• • •

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two system as follows:—

• • •

(*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. Direct transit trade and trans-shipment under bond are excluded. • • •

General imports and exports are contained in this Bulletin.

• • •

Imports and Exports on Government Account are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

Migrants' Effects are included in imports and exports.

Direct Transit Trade.—Particulars of direct transit trade through Australia are not recorded.

Classification of Imports and Exports.— The tables of imports and exports have been compiled according to a revised statistical classification divided into 21 classes, which came into operation on 1st July, 1945. The classification now comprises 2201 items of imports and 1056 items of exports. An extensive index of imports and exports is given on page 543. Many items are recorded according to value only, but in all cases where quantities are recorded particulars concerning both quantities and values are shown.

• • •

In Table III., imports of each statistical item are classified according to country of origin and importing State.

• • •

Valuation.—(*a*) *General.*—All values throughout this Bulletin are expressed in £ (Aust.).

• • •

(*c*) *Imports.*—The value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154 (I) of the Customs Act 1901-1954 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) the current domestic value of the goods, whichever is the higher;

(*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export;

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b.)" or "domestic value (f.o.b.)", whichever is the higher

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's Oversea Trade two mimeographed bulletins containing 1955-56 statistics in considerable detail have been issued. • • • The other mimeographed bulletin, *Imports Cleared for Home Consumption* 1955-56, published in two volumes in November, 1956, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

• • •

S. R. CARVER,
Acting Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 27th November, 1956.

OVERSEA TRADE, 1956-57.

Preface.

Source of Data.—These statistics of Australia's trade with other countries, and of Customs and Excise Revenue, for the year ended 30th June, 1957, together with comparative figures for previous years in abridged form, have been compiled from documents obtained under the Customs Act 1901-1954 and supplied to this Bureau by the Department of Customs and Excise.

• • •

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two systems as follows:—

• • •

> (*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouses or free zones. Direct transit trade and trans-shipment under bond are excluded. • • •

General imports and exports are contained in this Bulletin.

• • •

Imports and Exports on Government Account are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

Migrants' Effects are included in imports and exports.

Direct Transit Trade.—Particulars of direct transit trade through Australia are not recorded.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to a revised statistical classification divided into 21 classes, which came into operation on 1st, July, 1945. The classification now comprises 2264 items of imports and 1072 items of exports. An extensive index of imports and exports is given on page 553. Many items are recorded according to value only, but in all cases where quantities are recorded particulars concerning both quantities and values are shown .

• • •

In Table III., imports of statistical items are classified according to country of origin and importing State.

• • •

Valuation—(a) General.—All values throughout this Bulletin are expressed in £ (Aust.).

* * *

(*c*) *Imports.*—The value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154(1) of the Customs Act 1901-1954 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or
(ii) the current domestic value of the goods, whichever is the higher;
(b) all charges payable or ordinarily payable for placing the goods free on board at the port of export;

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b.)" or "domestic value (f.o.b)", whichever is the higher.

* * *

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's oversea trade, two mimeographed bulletins containing 1956-57 statistics in considerable detail have been issued. * * * The other mimeographed bulletin, *Imports Cleared for Home Consumption* 1956-57, published in two volumes in November, 1957, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical items and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

* * *

S. R. CARVER,
Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 21st November, 1957.

OVERSEA TRADE, 1957-58.

Preface

Source of Data.—These statistics of Australia's trade with other countries, and of Customs and Excise Revenue, for the year ended 30th June, 1958, together with comparative figures for previous years in abridged form, have been compiled by the Commonwealth Bureau of Census and Statistics from documents obtained under the Customs Act 1901-1957 by the Department of Customs and Excise.

* * *

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two systems as follows:—

* * *

(*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouses or free zones. Direct transit trade and trans-shipment under bond are excluded. * * *

General imports and exports are contained in this Bulletin.

* * *

Imports and Exports on Government Account are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

Migrants' Effects are included in imports and exports.

Direct Transit Trade.—Particulars of direct transit trade through Australia are not recorded.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to the Statistical Classification of Imports and Exports. The classification comprises over 2,000 items of imports and over 1,000 items of exports. An extensive index of imports and exports is given on page 587 with the statistical item number shown against each item listed.

• • •

In Table No. 3, imports of statistical items are classified according to country of origin and importing State.

• • •

Valuation.—(*a*) *General.*—All values throughout this Bulletin are expressed in £ (Aust.).

• • •

(*c*) *Imports.*—The value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154(1) of the Customs Act 1901-1957 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) the current domestic value of the goods, whichever is the higher;

(*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b)" or "domestic value (f.o.b.)", whichever is the higher.

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's oversea trade, two mimeographed bulletins are issued containing statistics in considerable detail for the latest financial year. • • • The other mimeographed bulletin, *Imports Cleared for Home Consumption* 1957-58, shortly to be published in two volumes, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

S. R. CARVER,
Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 21st November, 1958.

OVERSEA TRADE, 1958-59.

Preface.

Source of Data.—These statistics of Australia's trade with other countries, and of customs and excise revenue, for the year ended 30th June, 1959, together with comparative figures for previous years in abridged form, have been compiled by the Commonwealth Bureau of Census and Statistics from documents obtained under the Customs Act 1901-1959 by the Department of Customs and Excise.

• • •

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two systems as follows:—

• • •

> (*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. Direct transit trade and trans-shipment under bond are excluded. • • •

General imports and exports are contained in this Bulletin.

• • •

Imports and Exports on Government Account are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

Migrants' Effects are included in imports and exports.

Direct Transit Trade.—Particulars of direct transit trade through Australia are not recorded.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to the Statistical Classification of Imports and Exports. The classification comprises over 2,000 items of imports and over 1,000 items of exports. An extensive index of imports and exports is given on page 603 with the statistical item number shown against each item listed.

• • •

In Table No. 3, imports of statistical items are classified according to country of origin and importing State.

• • •

Valuation.—(*a*) *General.*—All values throughout this Bulletin are expressed in £ (Aust.).

• • •

(c) *Imports.*—The value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154(1) of the Customs Act 1901-1959 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or
  (ii) the current domestic value of the goods, whichever is the higher;
(*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b)" or "domestic value (f.o.b.)", whichever is the higher.

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's oversea trade, three supplementary bulletins are issued containing statistics in considerable detail for the latest financial year. * * * The other bulletin, *Imports Cleared for Home Consumption* 1958-59, shortly to be published, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

* * *

S. R. CARVER,
Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 12th November, 1959.

OVERSEA TRADE, 1959-60.

Preface.

Source of Data.—These statistics of Australia's trade with other countries, and [illegible] customs and excise revenue, for the year ended 30th June, 1960, together with comparative figures for previous years in abridged form, have been compiled by the Commonwealth Bureau of Census and Statistics from documents obtained under the Customs Act 1901-1960 by the Department of Customs and Excise.

* * *

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two systems as follows:—

• • •

> (*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. Direct transit trade and trans-shipment under bond are excluded. • • •

General imports and exports are contained in this Bulletin.

• • •

Imports and Exports on Government Account are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

Migrants' Effects are included in imports and exports.

Direct Transit Trade.—Particulars of direct transit trade through Australia are not recorded.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to the Statistical Classification of Imports and Exports. The classification comprises over 2,500 items of imports and over 1,200 items of exports. To increase the flexibility of the classification the number of digits in the classification code was increased from 4 to 5 on 1st July, 1959. An extensive index of imports and exports is given on page 643 with the statistical item number shown against each item listed.

• • •

In Table No. 3, imports of statistical items are classified according to country of origin and importing State.

• • •

Valuation.—(*a*) *General.*—All values throughout this Bulletin are expressed in £ (Aust.).

• • •

(*c*) *Imports.*—The value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154(1) of the Customs Act 1901-1960 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) the current domestic value of the goods, whichever is the higher;

(*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b)" or "domestic value (f.o.b.)", whichever is the higher.

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's oversea trade, three supplementary bulletins are issued containing statistics in considerable detail for the latest financial year. * * * The other bulletin, *Imports Cleared for Home Consumption* 1959-60, shortly to be published, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

* * *

S. R. CARVER,
Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 25th November, 1960.

OVERSEA TRADE, 1960-61.

Preface.

Source of Statistics.—Oversea trade statistics are compiled from documents obtained under the Customs Act 1901-1960 and supplied to the Commonwealth Bureau of Census and Statistics by the Department of Customs and Excise.

* * *

Import entries show date and port of entry, country of origin, description of goods, quantity (where required), value of the goods and amount of duty paid thereon. The statistical item number is inserted by the importer or his agent, together with the tariff number under which the goods are admitted and these are verified by statistical officers of the Department of Customs and Excise in the local offices of the Collectors of Customs.

* * *

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two systems as follows:—

* * *

(*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. Direct transit trade and trans-shipment under bond are excluded. • • •

General imports and exports are contained in this Bulletin.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to the Statistical Classification of Imports and Exports. The classification comprises over 2,500 items of imports and over 1,200 items of exports. To increase the flexibility of the classification the number of digits in the classification code was increased from 4 to 5 on 1st July, 1959. An extensive index of imports and exports is given on page 671 with the statistical item number shown against each item listed.

• • •

Inclusions and Exclusions.—

• • •

(*c*) *Imports and Exports on Government Account* are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

(*f*) *Migrants' Effects* are included in imports and exports.

(*g*) *Direct Transit Trade.* Particulars of direct trade through Australia are not recorded.

• • •

In Table No. 3, imports of statistical items are classified according to country of origin and importing State.

• • •

Valuation.—(*a*) *General.* All values throughout this Bulletin are expressed in £ (Aust.).

• • •

(*c*) *Imports.* The value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154(1) of the Customs Act 1901-1960 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or
  (ii) the current domestic value of the goods, whichever is the higher;
(*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b)" or "domestic value (f.o.b.)", whichever is the higher. These values are f.o.b. port of shipment Australian currency.

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's oversea trade, three supplementary bulletins are issued containing statistics in considerable detail for the latest financial year. • • • The other bulletin, *Imports Cleared for Home Consumption* 1960-61, to be published shortly, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

* * *

K. M. ARCHER,
Acting Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 30th November, 1961.

OVERSEA TRADE, 1961-62.

Preface.

Source of Statistics.—Oversea trade statistics are compiled from documents obtained under the Customs Act 1901-1960 and supplied to the Commonwealth Bureau of Census and Statistics by the Department of Customs and Excise.

* * *

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two systems as follows:—

* * *

(*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. Direct transit trade and trans-shipment under bond are excluded. * * *

Statistics in this bulletin are compiled on the "General Trade" basis.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to the Statistical Classification of Imports and Exports. The classification comprises nearly 3,000 items of imports and over 1,500 items of exports. To increase the flexibility of the classification, the number of digits in the classification code was increased from 4 to 5 on 1st July, 1959. An extensive index of imports and exports is given on page 719 with the statistical item number shown against each item listed.

• • •

Valuation.—General. All values throughout this Bulletin are expressed in £ (Aust.).

• • •

Imports. The recorded value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154 (1) of the Customs Act 1901-1960 provides that "when any duty is imposed according to value, the value for duty shall be the sum of the following:—

- (*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or
  - (ii) the current domestic value of the goods, whichever is the higher;
- (*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b)" or "domestic value (f.o.b.)", whichever is the higher. These values are f.o.b. port of shipment Australian currency.

Inclusions and Exclusions.—

• • •

(*c*) *Imports and Exports on Government Account* are treated as normal transactions and are an integral part of oversea trade statistics,

• • •

(*f*) *Migrants' Effects* are included in imports and exports.

(*g*) *Direct Transit Trade.* Particulars of direct transit trade through Australia are not recorded.

• • •

In Table No. 3, Imports, of Statistical Items are classified according to Country of Origin and Importing State..

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's oversea trade, three supplementary bulletins are issued containing statistics in considerable detail for the latest financial year. • • • The third bulletin, *Imports Cleared for Home Consumption,* 1961-62, published in December, 1962, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

• • •

Abbreviation.—N.E.I. means "not elsewhere included".

• • •

K. M. ARCHER,
Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 12th November, 1962.

OVERSEA TRADE, 1962-63.

Preface.

Source of Statistics.—Oversea trade statistics are compiled from documents obtained under the Customs Act 1901-1963 and supplied to the Commonwealth Bureau of Census and Statistics by the Department of Customs and Excise.

• • •

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. Statistics of both are published by the Bureau, although greater emphasis is placed on general trade. The Statistical Office of the United Nations defines the two systems as follows:—

> "*System of Trade.* Two systems of recording trade are in common use, differing mainly in the way warehoused and re-exported goods are recorded.
>
> • • •
>
> (*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. • • •
>
> *Direct transit trade,* i.e., goods merely being transhipped or moving through the country for purposes of transport only, is excluded from the statistics of both special and general trade."

Statistics in this bulletin are compiled on the "General Trade" basis.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to the Statistical Classification of Imports and Exports. The classification comprises nearly 3,700 items of imports and over 1,300 items of exports.

• • •

Valuation.—General. All values throughout this Bulletin are expressed in £ (Aust.).

• • •

Imports. The recorded value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154 (1) of the Customs Act 1901-1963 provides that "when any duty is imposed according to value, the value for duty shall be the sum of the following:—

- (*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or
  - (ii) the current domestic value of the goods, whichever is the higher;
- (*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country". The recorded values of Australia's imports, as shown throughout this bulletin, are therefore "transaction value (f.o.b.)" or "domestic value (f.o.b.)" whichever is the higher. These values are f.o.b. port of shipment Australian currency.

Inclusions and Exclusions—

• • •

- (*c*) *Imports and Exports on Government Account* are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

- (f) *Migrants' Effects* are included in imports and exports.
- (*g*) *Direct Transit Trade.* Particulars of direct transit trade through Australia are not recorded.

• • •

In Table No. 3, Imports of Statistical Items are classified according to Country of Origin and Importing State.

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's oversea trade, three supplementary bulletins are issued containing statistics in considerable detail for the latest financial year. • • • The third bulletin, *Imports Cleared for Home Consumption,* 1962-63, also to be published in December, 1963, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

• • •

Abbreviation.—N.E.I. means "not elsewhere included".

• • •

K. M. ARCHER,
Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., November, 1963.

ZENITH CROSS-CLAIMANT EXHIBIT NO. 25.

(Embargo Hearing)

IMPORTS INTO UK

Radio Receiving Sets—Mains

	Number						£s value					
	1953	1954	1955	1956	1957	1958 (Jan.-Sept.)	1953	1954	1955	1956	1957	1958 (Jan.-Sept.)
Commonwealth countries	296	161	93	153	—	—	4,241	1,580	1,272	2,352	—	—
Irish Republic	323	4,992	13,817	11,103	—	—	999	68,696	148,748	125,137	—	—
Total above	619	5,153	13,910	11,256	440	642	5,240	70,576	150,020	127,489	5,523	5,754
Western Germany	15	238	16,978	7,274	17,443	2,713	308	2,870	257,706	122,797	276,739	57,316
Other foreign countries	300	244	796	393	951	249	3,904	2,248	4,844	3,740	7,516	2,523
Total foreign countries	315	482	17,774	7,667	18,394	2,962	4,212	5,118	262,550	126,537	284,255	59,839
Grand Total	934	5,635	31,684	18,923	18,834	3,604	9,452	75,694	412,570	254,026	289,778	65,593
							$26,466	211,943	1,155,196	711,273	811,378	183,660

Radio Receiving Sets—Other (incl. mains/battery and car radio)

	1953	1954	1955	1956	1957	1958	1953	1954	1955	1956	1957	1958
Commonwealth countries & Irish Republic	107	26	60	91	121	138	1,969	387	881	1,773	3,044	1,438
Western Germany	6	215	2,399	615	10,674	4,681	203	1,470	14,151	6,976	51,765	29,983
Netherlands	46	42	17	3,020	2,016	31	325	378	122	16,943	25,998	390
Other foreign countries	42	67	153	587	209	217	842	1,330	1,929	4,412	8,533	2,731
Total foreign countries	94	324	2,569	4,222	12,899	4,929	1,370	3,178	16,202	28,331	86,296	33,104
Grand Total	201	350	2,629	4,313	13,020	5,067	3,339	3,565	17,083	30,104	89,340	34,542
							$9,349	9,982	47,832	84,291	250,152	96,718

ZENITH CROSS-CLAIMANT EXHIBIT NO. 26.

(Embargo Hearing)

IMPORTS INTO UK (contd. 1)

Television Sets—complete

	Number						£s value					
	1953	1954	1955	1956	1957	1958 (Jan.-Sept.)	1953	1954	1955	1956	1957	1958 (Jan.-Sept.)
Channel Islands	34	13	32	252	63	25	1,760	659	1,886	11,239	3,273	933
Canada	4	4	—	1,724	71	2	287	310	—	97,880	4,031	151
Other Commonwealth countries	4	—	26	16	6	5	208	—	547	1,776	372	134
Irish Republic	10	7	21	5,228	5,957	30	371	436	861	149,021	155,555	1,061
Total above	52	24	79	7,220	6,117	62	2,626	1,405	3,294	259,916	163,231	2,279
Italy	5	1	3	207	6	2	211	55	61	5,700	225	151
USA	12	18	35	32	19	16	667	938	6,185	5,272	1,291	1,087
Other foreign countries	43	95	87	41	115	64	2,619	3,576	5,640	2,530	5,575	2,202
Total foreign countries	60	114	125	280	140	82	3,497	4,509	11,886	13,502	7,091	3,440
Grand Total	112	138	204	7,500	6,257	144	6,123	5,914	15,180	273,418	170,322	5,719
							$17,144	16,559	42,504	765,570 D	476,902	16,013

1 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause, before the Honorable Richard B. Austin, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Monday, November 22, 1965, at 10:00 o'clock, a.m.

* * * * *

5 **SAMUEL KAPLAN**, witness called on behalf of the defendant, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. McConnell.

Q. Do you recall, Mr. Kaplan, that you estimated certain—

The Court: Is this in regard to both countries or just one country?

Mr. McConnell: Both, your Honor.

The Court: All right.

By Mr. McConnell:

6 Q. (Continuing.)—that you estimated certain percentages of the English market and the Australian market which you thought that Zenith could obtain during approximately a four month period—or four year period?

A. Yes.

Q. Do you recall what your percentage, your estimate, was in England?

A. Well, actually, Mr. McConnell, we—the final percentage that we arrived at for England was—

The Court: This is your testimony that he is asking you about, not what you may have arrived at at some other time and place, but what you testified to in court. Do you know what that was?

The Witness: Yes.

The Court: All right.

By the Witness:

A. I testified in England we could obtain twenty-five per cent of the market share that we did obtain in the United States.

In Australia that we could obtain ten per cent of the market share that we did obtain in the United States.

7 By Mr. McConnell:

Q. Now, in making those estimates, Mr. Kaplan, let's take England first, did you assume that Zenith would be starting from scratch?

Mr. Kayser: Just a minute. I object to leading the witness.

The Court: Well, in view of the fact that that really is the crux of what we are here for, I think I am going to let him answer that despite the fact that it is a leading question, because that is getting down to the nub of the situation and the objection is overruled.

8 By Mr. McConnell:

Q. You may answer the question, Mr. Kaplan.

A. May I have the question, please.

(Question read.)

By the Witness:

A. Yes, I did.

By Mr. McConnell:

Q. And in making your estimate with reference to Australia, did you make that assumption that you would be starting from scratch?

A. Yes, I did.

Mr. McConnell: You may cross-examine.

The Court: Did I make a proper assumption, Counsel?

Mr. Kayser: Sir?

The Court: Did I make a proper assumption?

Mr. Kayser: You most certainly did.

The Court: All right.

Cross-Examination by Mr. Kayser.

Q. What do you mean by starting from scratch, Mr. Kaplan?

A. That we didn't have an established dealer organization or marketing organization in England. 9

The Court: Or Australia?

The Witness: Or Australia.

By Mr. Kayser:

Q. In order words—strike that.

Starting from scratch at what point in time?

A. Starting from scratch as of June 1959.

Q. What date in June, 1959?

A. June 1st.

Q. Starting from scratch at what date in Australia?

A. June 1st, 1959.

Q. Do I understand, then, that you are testifying that in giving these estimated percentages, these were the percentages which you assert—percentages of the market which you assert Zenith Radio Corporation could have obtained newly entering the market June 1, with no previous activities in the market?

A. Yes, with no previous activities in the market in the form of marketing, although we had over a period of years conducted discussions with people who wanted to
10 handle our product in those countries and we knew there was a demand there.

Q. Well, aside from the embroidery on your answer, I understand, then, that you are saying that the testimony which you gave as to England and Australia back in February 1964, was that with no previous sales, imports, advertising, distributorship, warehousing, servicing organization, starting absolutely as a complete newcomer, you could have come into those markets on June 1, 1959, and achieved the share of the market you testified to during the four years?

A. Well, I don't feel that we should assume that the effect of advertising was not existent there. But otherwise my answer is that we could have attained that share of the market.

Q. Assuming no markets of completed radio or television sets prior to June 1, 1959?

A. Yes.

Q. Did you make the same assumption as to Canada?

A. No.

Q. You didn't

A. No.

Q. What was your assumption as to Canada?

11 Mr. McConnell: I object as to Canada, your Honor. We have a judgment on the Canadian part of the case. It's gone to the Court of Appeals.

The Court: It's admissible only for the purpose of—not changing the judgment in regard to Canada, but in regard to his thinking in regard to Australia and England, and Canada the Court is aware of, had no Governmental restrictions.

So as a basis for comparison of his answer, the objection is overruled. Don't be concerned about your Canadian judgment.

Mr. McConnell: Thank you, your Honor.

12 The Court: That's not what we are going into.

Mr. Kayser: Would you read the question, Mr. Reporter?

Mr. McConnell: I may observe, however, for the record, that I think—and this is just my personal observation—that Mr. Kayser's trying in this proceeding to get something with which he can attack the judgment in the Court of Appeals in Canada.

The Court: I mean, that might be your assumption, but maybe it would be safer if you did as Mr. Kayser does, and make no assumptions.

Read the question.

Mr. Kayser: Read the question, please.

The Court: So much goes on, he can't find it.

(Question read.)

The Court: Do you understand that question?

The Witness: Yes, your Honor. In Canada, our as-
sumption was that we commenced the period starting
13 June 1, 1959 as if we had had a full blown organiza-
tion, and had enjoyed the benefits of doing business
there for years prior to that date.

By Mr. Kayser:

Q. All right. Why did you engage in that assumption in Canada and not in England and in Australia?

A. Because we knew that in England and in Australia, there were restrictions on the importation of our products.

Q. Are you referring to the governmental restrictions on the import of completed radio and television sets?

A. Excuse me. I am referring to the governmental restrictions on the availability of exchange, and the unavailability of import quotas.

Q. You kept that in mind both in England and Australia?

A. Yes, sir.

Q. You say that for that reason, in England and Australia you chose June 1 as the date at which you would theoretically have entered the market in this four-year damage computation?

14 Mr. McConnell: I don't think he so testified, your Honor.

The Court: If he didn't he can say that he didn't.

By the Witness:

A. It's not my recollection that that was the reason that we chose that date. That was the date that was given to us by our attorneys as an appropriate date for a damage claim.

By Mr. Kayser:

Q. That was given to you by your attorneys? You didn't know why?

A. Yes. We also knew that at approximately that date, from approximately that date forward, there was a substantial change in the availability of exchange and the availability of import quotas.

Q. In both England and Australia?

A. In both England and Australia.

Q. Well, deserting that for the moment, but only for the moment, is it your testimony then that with those assumptions, and beginning on that date, you could have obtained in the United Kingdom and in Australia the shares of market shown on Zenith's Exhibit 220?

A. For the four-year period, yes.

15 Q. Is it your testimony, then, that beginning—that for the last seven months of 1959, starting from scratch as you put it, you could in England have sold one quarter of the percentage of the English market which was sold of the U. S. market?

A. No, not necessarily on a day by day, or a week by week, or a month by month, or even a year by year basis. But in the four-year period, it was our judgment that we could do the amount of business that is shown in that Exhibit.

Q. Well, I would like an answer. For the last seven months of 1959 where your Exhibit 220 shows Zenith is selling 3,904 per cent of the television sets, or 53,210 sets as its potential, is it your testimony that starting from June 1, 1959, starting from scratch, Zenith could have sold 63,210 sets in those seven months?

A. I thought I just answered that.

16 Q. I don't think you did. I wish you would. Is that your testimony or is it not?

A. We felt that it was impossible, on a day-by-day, or a month-by-month or a year-by-year basis, to determine the amount of business to be done in each of these shorter periods. But we felt that it was reasonable in relation to the total amount of business done in England or in Australia that we could, in the four-year period, do the amount of business that we claimed we could have done.

Q. Could you have sold 63,210 sets in the last seven months of 1959?

A. I don't know.

Q. What was your testimony? That you could or that you couldn't?

A. I don't recall that I testified to that.

Q. You didn't testify. Could you in 1960 have sold 81,720 sets?

A. I don't know.

Q. You don't know. Is what you are testifying to this thing that Mr. McConnell kept bringing up once he was faced with the embargo, that what you were saying was not what you could sell in these periods, but you could
17 sell something which on an over-all average came to one-quarter of what you were selling in the United States?

A. I am testifying to our process of our judgment, as to how we arrived at this.

Q. I'm trying to find out how you arrived at it. You say you don't know whether or not you could have sold 63,210 sets, television sets, in England in the last seven months of '59, starting from scratch on June 1. You say you don't know; is that it?

The Court: That's what he said. Let's not have him say it twice.

By Mr. Kayser:

Q. All right. Now, is it your testimony that on an over-all average during the four-year period, you could have obtained one-quarter of the English percentage which you claimed in the United States?

A. Well, if your definition of average does not insinuate that this is that much on each day, yes.

Q. I'm speaking during each period.

A. No, I didn't testify to that, and that was not
18 the process of our judgment.

Q. Do you know how many sets you could have sold in 1961, television sets, starting from scratch June 1, 1959?

A. I don't know.

Q. You don't know.

Mr. Kayser: Your Honor, I move that the testimony of this witness be stricken. Your Honor directed that these hearings be held after you found the embargo was established for the purpose of determining, in connection with the proof which was in this case now, whether it was on the basis that Zenith could have established its share of the market prior to the damage period or whether that evidence—or whether the figures they used, namely Zenith's, were figures that would be used in regard to a product newly introduced into the country.

Now I submit, your Honor, what this witness is proposing to do, and I gather Zenith is proposing to do, is in effect to disavow the figures which are in Zenith's Exhibit 220.

19 The Court: Is there a copy of that around? May I have a copy?

Mr. Kayser: There is a typed copy of the relevant page.

The Court: Maybe if I look at it I will understand what you are talking about.

Mr. McConnell: May I say this before we get into this discussion, that the ordinary procedure, I think, is after a witness is cross examined, if he is through with it, that I have an opportunity to—

The Court: Are you through with this witness?

Mr. Kayser: No, your Honor, I have barely begun, but it is obvious that what they are proposing to do is outside the scope of the record.

The Court: I don't know whether I can determine that at this time. As I understood it, we were having this hearing for the purpose of determining whether they stayed with their testimony of last time that in each of these periods, or for the total period, they would have had a certain percentage of the market regardless of the fact that they had never sold a set or been able to sell a set in England or Australia prior to the time the damage period began.

Mr. Kayser: Well, your Honor, I will withdraw the motion and renew it later.

The Court: Well, I think at this time it is premature, and it is so unclear to me as to what you are driving ~~at~~— it may develop further, with further cross-examination, that I could more intelligently rule on such a motion at a later time.

Mr. Kayser: All right.

By Mr. Kayser:

Q. I believe you are executive vice president of Zenith—

A. That is right.

Q. —Radio Corporation?

A. That is right.

Q. And have been with the company for a good many years?

A. Yes.

21 Q. And you were, of course, familiar before today that this litigation was going on?

A. Yes.

Q. And this is an important piece of litigation, is it not, as far as Zenith is concerned?

A. Yes.

Mr. McConnell: I don't think this witness' opinion on that has anything to add to this litigation, your Honor.

The Court: And I think without his opinion, why, it is the consensus of several thousand people that that is true regardless of what he thinks.

Mr. Kayser: Yes, I assume we refer to the Hazeltine shareholders.

The Court: Yes, and maybe the Zenith shareholders too.

Mr. Kayser: Yes.

By Mr. Kayser:

Q. Now, isn't it a fact, Mr. Kaplan, that Zenith has taken the position from the beginning of this litigation that for many years it was excluded by patent pools from importing radio and television sets into all three countries,
22 Canada, England and Australia?

The Court: Well, it has not only taken that position, Counsel, but they persuaded the Court to so find.

Mr. McConnell: Well, I object to this, what this witness' opinion of that is. We had a trial. We have got a very limited issue involved here, your Honor.

The Court: I know, and I am trying to stay hewed to the line. I will let him answer the question.

Can you find it and read it, Mr. Court Reporter? I didn't know that was the matter of a controversy?

(Question was read.)

By the Witness:

A. I think that that is correct.

23 By Mr. Kayser:

Q. Well, is Zenith withdrawing its contention that the pools kept Zenith out of England and Australia prior to June, 1959?

A. I don't feel that I am competent to answer that.

Q. You don't know what the answer to that is?

A. I don't feel I should answer.

Q. I did not ask you whether you should. Can you answer it?

The Court: Speaking on behalf of management or of Zenith, can you answer that?

By Mr. Kayser:

Q. And executive vice president, also.

A. Well, I would have to answer it by saying that there is no question that these pools existed and operated in this manner. Now, there were some periods when there were other restrictions to our doing business in England and Australia.

Q. That period was prior to June 1959?

A. Yes.

Q. In other words, Zenith now agrees that its previous contentions that the pools kept Zenith out of England
24 prior to June, 1959, was not correct, is that so?

Mr. McConnell: I object to that. That is a legal question. You are asking this man to interpret the law on this. This is a question a lawyer would answer.

Mr. Kayser: I think this is very relevant when the witness gets on the stand and says they started with their computations on June 1, 1959, because of restrictions.

Mr. McConnell: He did not say that. We went all over that. He said that he did it because his lawyers told him to do that.

Mr. Kayser: No, he didn't. Previous to that, Mr. McConnell, he had—

The Court: My understanding of the evidence and the complaints and the answers, and everything else that went on in this case is that it was their contention that that was true at the time the lawsuit was filed, and I haven't heard anybody say that they still contend that it isn't so. A new element entered into this thing at the last hearing in re-
gard to something other than what they contended was
25 keeping them out of the market, but I haven't heard
anybody say that Zenith contends now or contended at any time that the patent pools were not keeping them out in the event the Government didn't keep them out in the first place.

The objection is sustained to the question.

By Mr. Kayser:

Q. At the time you testified in February, 1964, Mr. Kaplan, did you know that there had been such restraint, currency restrictions, I think you called them, in effect in England until June 1959?

A. Yes.

Q. And for that reason you started with the June 1, 1959, date on your computation damage?

A. Well, the answer—

26 Mr. McConnell: Well, I object to this. He answered
this once before, that he started June 1st because the lawyers gave him that period.

Mr. Kayser: That is not what he testified to, Mr. McConnell.

Mr. McConnell: The record wil show what he testified to, but that is what it was.

The Court: Read the question, Mr. Reporter, the one that he is objecting to.

(Record was read.)

The Court: No, the objection is overruled.

By the Witness:

A. The June 1 date was given to us by our attorneys and they told me that there were no restrictions after that date.

By Mr. Kayser:

Q. Did they tell you when the restrictions had been removed?

A. I don't recall that they did at that time.

Q. Who told you that? Who is "they"?

A. Our attorneys.

27 Q. Who is your attorney?

A. Well, I think at that time it was Mr. Curtis that we discussed this with.

Q. All right, did you then know how long the import restrictions lasted in England?

A. I am not sure I understand that question.

Q. I said, at the time that you testified, did you know how long the import restrictions had lasted in England?

A. They had been in existence for many years prior to 1959.

Q. Do you know when they terminated?

A. I think the official date they terminated was June the 8th, 1959.

Q. Did you know that then?

A. Yes.

Q. In February of 1964?

A. Yes.

Q. Now, why did you take the June 1 date in Australia?

A. Because that was the date that our attorneys suggested that we use for the damage claim.

Q. By the way, did you tell this Court that you were— in the case of Canada you were making your assump-
28 tion based on many, many years in the market, but

in the case of England or Australia you were starting June 1, 1959?

Mr. McConnell: I object to that, whatever the record shows—

The Court: The record shows what he said.

Mr. Kayser: All right, the record shows that he did not. Strike the question.

Mr. McConnell: I move to strike your statement.

By Mr. Kayser:

Q. Well, in February, 1964, what did you know about the currency restrictions in Australia?

A. Well, Mr. Kayser, I am not an expert on these matters. I am given certain information on which to make a judgment, and based on that information, based on the background that we had, we had conducted market studies in these countries, we had talked to many people in these countries, and I was given this information on tariffs. I don't recall specifically now what it was, and based on that we made a conclusion.

29 Q. You did not know whether or not there were import restrictions or not in Australia on June 1, 1959?

A. I was told there were not.

Q. But you did not know personally?

A. There are many things I do not know personally.

Q. You had been told by your attorney?

A. Yes.

Q. And was that Mr. Curtis or Mr. McConnell or whom?

A. Mr. Curtis.

30 Q. In other words, you were told that as to both countries you should start with June 1, 1959, because previous to that there had been import restrictions?

A. That is right.

Q. Are you aware, Mr. Kaplan, that your counsel, from the beginning of the trial in 1964, right down to October 20, 1965, has contended vigorously, orally and in his memorandum, that there were no import restrictions in England and Australia prior to June 1, 1959.

Mr. McConnell: Well, now, if we are going to get into what counsel did or did not do in this case, I think we are going far afield because this—

The Court: I don't see that it is very profitable, but I am going to find out how closely this witness read your briefs and the complaint and everything, to see whether he knows the answer to that.

Your objection is overruled.

By the Witness:

A. May I have the question read?

(Question read.)

31 Mr. McConnell: Well, then, I make the further objection that I did not take any such position at all. I said there was no embargoes. I didn't say there were no restrictions. I never took that position in this court.

Tht Court: I haven't heard anybody so testify under oath, counsel, unless this witness so testifies, if he ever gets a chance to answer.

Read the question, Mr. Court Reporter.

(Question read.)

By the Witness:

A. No, I am not aware of that position.

The Court: All right, that takes care of that.

By Mr. Kayser:

Q. Well, if you knew, as you testified, that the import restrictions in England did not go off until June 8th, why did you start with June 1 as your damage period?

A. Because I don't think it makes any difference.

32 Q. Why not?

A. As I said, we thought that we could do this amount of business in this four-year period. Now, actually, my recollection of the consideration is like this: Our first judgment was that in our opinion we could get in England 50 per cent of the market portion that we got in the United States, and in Australia 25 per cent, and we prepared our claim on—

Mr. Kayser: I move to strike that. There is nothing in this record about 25 per cent in Australia.

Mr. McConnell: He is telling you why he made this estimate. You asked him a question.

Mr. Kayser: I asked him about England, why he started with June 1 when he says that he knew the embargo was off on June—

The Court: Confine yourself to England, Mr. Kaplan. That is the only thing before you.

The Witness: Yes, your Honor.

By the Witness:

A. Well, it was our first judgment that in England—

33

By Mr. Kayser:

Q. Who is "we"?

A. Our management, our export people.

Q. No, no, I am asking your testimony.

Mr. McConnell: Your Honor, the man cannot answer the question. He gets another question, an interruption. I think it is fair to the witness to let him answer the question first.

Mr. Kayser: And he gets a great deal of hearsay—

The Court: No, he can withdraw a question. This is cross-examination. You can do what you want when you get him back.

By Mr. Kayser:

Q. I asked you why you took the June 1, 1959, date in England if as you testified you knew that the import restriction continued until June 8th.

34 Mr. McConnell: I object to it as argumentative.

The Court: It isn't argumentative and I think the witness was making a responsive answer until all of the outburst occurred.

Go back and answer the question over again as you started to, or change your answer, I don't care which you do.

By the Witness:

A. My answer was that I didn't feel that it made any difference. On our premise that we were taking a whole four year period, in our opinion one week or one month did not make any effective difference.

By Mr. Kayser:

Q. Well, as concerns this four year period, exactly what do you say you were claiming? Were you claiming a certain percentage of the English market, or what were you claiming?

A. Well, I started to tell you our processes of consideration and judgment; we held numerous conferences, and as a result of the research that we did and our experience

35 we came to the conclusion that in England we could obtain fifty per cent of the market share that we did in the United States, considering the fact that we were starting from scratch on June 1, 1959.

A claim was prepared on that basis and upon examining the claim we felt that it did not give due respect to the fact that we were starting cold on June 1, 1959, and at that time we—it was our judgment that we should take a smaller market share, and in examining the relationship of the number of units that we claimed we could sell in this four year period, which was something like 300,000 units out of a total industry sales of almost seven million, we felt that that was reasonable considering all the facts involved.

36 By Mr. Kayser:

Q. Do I understand that starting—

The Court: You are talking now about television in England, as I understand it.

The Witness: Television, that's right.

The Court: Go ahead. I mean, there are two things.

The Witness: Yes. And there was a similar consideration with respect to radio.

By Mr. Kayser:

Q. My questions have been addressed to television. You say taking into consideration the fact that you were starting cold. Do I understand now that it was your assumption starting with zero, you would have a gradually rising market?

A. Yes.

Q. How large a market did you assume you would have during the last seven months of 1959?

A. We didn't—we didn't attack it that way, Mr. Kayser.

Q. How large a market did you assume you would have in 1960?

A. We didn't attack it that way, Mr. Kayser.

Q. How about 1961?

37 A. The same answer.

Q. '62?

A. The same answer.

Q. The first five months of 1963?

A. Mr. Kayser, I will repeat, that we felt the relationship of the 300,000 units that were the result of this formula as compared to the total business done in that period was conservatively attainable.

Q. Now, is it your testimony that you estimated that starting from zero that with a rising market in the four-year period, you would sell a total of 300,000 television sets?

A. In the four-year period, yes, sir.

Q. And how much of that during the first five months, or the last five months—

A. We didn't make—

~~Q. If~~ you ~~don't~~ know how much in any one of the periods, how do you get to the total?

A. Because the relationship of the total television that we expected to sell was very conservative and reasonable in relation to the total amount of business done in the country.

Q. But you had no breakdown at all?

38 A. No, we didn't. We didn't attack it that way.

Q. I assume that management knew that your Mr. Stevenson was going to testify here in this case in February, '64.

A. I don't know that we knew that or not.

Q. You didn't? You made some comment about the fact that you did not have a distributor in England prior to June, 1959. When did you have a distributor in England?

A. I think that he came with us some time in 1959.

Q. Do you know when?

A. No, I don't.

Q. You say you didn't know that Mr. Willis Stevenson was going to testify here in February, 1964?

A. I'm not sure I understand your question.

Q. I asked whether you knew that Mr. Willis Stevenson was to be a witness in this case in the trial in February, 1964?

The Court: Are you asking whether he knew whether he was going to testify prior to the time he testified?

39 Mr. Kayser: Yes.

The Court: All right.

By Mr. Kayser:

Q. Yes. Did you know—did you know prior to the time that Mr. Willis Stevenson testified in February 1964, that he was to be a witness?

A. I don't recall, Mr. Kayser. All I knew is that he prepared the damage claim.

Q. But you knew he prepared the damage claim?

A. Yes.

Q. I'm handing you, Mr. Kaplan, a typed copy of a sheet from Zenith's Exhibit 220 entitled "Lost Sales and Lost Profits in Television and Radio in Canada, United Kingdom, and Australia, June 1, 1959, to May 31, 1963."

I'm also handing you a typed sheet, Zenith's Exhibit 218, "Zenith's Share of Domestic Market."

I don't believe the Court has a copy of 218.

40 The Court: I have one back in my archives, but I haven't got one here.

(Document tendered.)

The Court: Thank you.

By Mr. Kayser:

Q. Do you recognize this as part of the exhibit which Mr. Stevenson prepared?

A. I think that they are the exhibits that he prepared.

Q. And it is true, is it not, that as to each of the three countries—Canada, United Kinkdom and Australia—referring now to Exhibit 220, you have a showing there of the market in units for radio and television for each of five periods, 1959, '60, '61, '62, '63?

A. I don't have the exhibit marked 220.

Q. Pardon me?

A. I don't have an exhibit marked 220.

Q. It is the sheet which is headed "Lost Sales and Lost Profits," et cetera.

Mr. McConnell: Maybe I better look at it, too.

By Mr. Kayser:

Q. I will restate the question.

41 Mr. McConnell: Well, if you don't mind, I would rather he testified from the court exhibit that is here.

Mr. Kayser: All right.

The Court: You have indicated a desire to restate your question. Will you do so.

By Mr. Kayser:

Q. All right. I say it's true, is it not, that on this Exhibit 220 which you now have before you, as to all three countries there is shown for radio and television, for each of the five periods, first, the total sales or what purports to be the total sales of sets in those countries?

A. Yes.

Q. Next you have Zenith's share of market, a percentage, and that purports to show the share of market which Zenith could have obtained in those countries?

A. Yes.

Q. And then that same figure—that same statistic is shown in terms of number of sets; is that right?

A. Yes.

42 Q. First in percentage and then in number of sets:

A. Yes.

Q. Then you show the actual sales.

A. Yes.

Q. And the lost sales in the market?

A. That's right.

Q. Then for each period specifically, you show an average selling price during that period by Zenith to Canada. In the case of '59, for example, it's $148.73 for television sets.

A. That's right.

Q. Then you next show the total amount in terms of dollars, and then profit percentage, and then lost profit, on lost sales; is that right?

A. That's right.

Q. Now, the final column shows—for example, in the case of the United Kingdom on television, it shown an exact lost profit for the last five months of 1959 of $1,517,357; right?

A. I'm sorry, I lost you there.

Q. United Kingdom, television—

The Court: The last column to the right, the third item down from the top.

By Mr. Kayser:

43 Q. Yes. It shows $1,517,357 as your lost profit on lost sales in the United Kingdom for the last seven months of 1959; right?

A. That's right.

Q. Do I understand, then, that it is Zenith's position that starting from June 1, 1959, Zenith could during these seven months of '59, have sold enough television sets so that its profits for the seven months would have been that figure, $1,517,357?

A. Well, that's not exactly our position, Mr. Kayser. As I explained to you, we made our judgment as to the total amount of business that we could do in the four-year period. And we felt that it was conservative and reasonable that we could, in the four-year period, sell 300,000 television sets out of a total market of six million-eight. In Australia it was 23,000 television sets out of a total market of 1,311,000.

44 Now, we have to admit that this was a judgment, an estimate. And in reducing this to a claim, then we tried to, where possible, relate it to facts that we knew. Now, we knew what the selling price and the average

mix was of sets that we sold into Canada. So rather than introduce another unknown, we used that. We knew what the average selling price of radio sets into Canada was in this period. And rather than introduce another unknown, we used that.

Had we used, for instance, our export average, it would have been forty per cent higher. We also used our actual cost experience in our Canadian operation to the best extent that we knew, and included in this was a portrait of a company getting started into business. And as a result of getting started into business in Canada, we spent ten per cent in advertising in the first nineteen months period —ten to eleven per cent. I forget the figure now. And that was gradually—

The Court: Ten to eleven per cent of what?

The Witness: Of our billings, your Honor.

The Court: All right. That clears that up.

By Mr. Kayser:

Q. During what period was that?

A. This is the first nineteen months.

Q. You mean—what nineteen months are you referring to?

A. I'm referring to the nineteen months starting June 1, 1959 to December 31, 1960.

Q. In Canada?

A. In Canada. And we applied those percentages in our profit computation in England and Australia because those were facts that we knew. These were historical facts.

Q. I thought you started in Canada before June 1, 1959.

A. But that is the basis—we did start prior to that, so we probably had higher advertising expenses prior to that.

Q. Prior to June 1, 1959?

A. That's right.

Q. Well, I gather then that it is your testimony that the $1,517,357 is not the amount of profit that you
46 would have made in England during the last seven months of 1959?

A. I'm saying that this is a proper method of computation of our damages.

Q. I'm asking whether or not $1,517,357 is the profit which you claim you could have gotten in England from television, starting from scratch on June 1, 1959 to the end of the year.

A. Well, if we continued and arbitrarily allocated in that period that amount of merchandise—and it could very well have been; we only say we are not capable of doing that—then that would have been the amount of lost profits.

Mr. Kayser: Read that answer again.

(Answer read.)

By Mr. Kayser:

Q. You are not capable of doing what?

A. Making that specific and exact allocation.

Q. Why aren't you capable of making that specific and exact allocation?

A. Well, I don't believe that any business experience would enable you to reconstruct exactly what might have happened. You have to use your best business judgment.

And we felt that to try to allocate this to short periods
47 within the damage period just added confusion.

Q. That's exactly what you did, though, isn't it?

A. No, it's not what we did.

Q. Well, this Exhibit 220, if I'm not mistaken—this is a Zenith Exhibit, isn't it?

A. That's right.

Q. Well, I still haven't got an answer. Is it Zenith's position that it could have obtained a profit in the last seven months of 1959, starting from scratch, of $1,517,357 from television sales, starting from scratch on June 1 and with not even a distributor on that date?

48 Mr. McConnell: Well, we have our position on record here as far as Zenith is concerned. If you want to ask this witness what his position is, that's all right.

Mr. Kayser: Well—

Mr. McConnell: I have been trying to maintain Zenith's position for a long time, and I am sure you are familiar with it. I'm sure the Court is too.

The Court: Well, all he has told you so far is what this witness' position is—

Mr. Kayser: Well, he speaks for the corporation, I assume.

The Court: I assume that this corporation has a lot of spokesmen, and some that speak with a louder voice than he and maybe the chairman of the board speaks with a louder voice than he. And I assume that in my courtroom the loudest voice is their counsel.

Mr. McConnell: Thank you, your Honor.

By the Witness:

A. My position, Mr. Kayser, is that $8,079,859 is 49 the damages for the four-year period, and any interim computations are merely a means of getting to that point.

By Mr. Kayser:

Q. Well, you still haven't answered the question. Is it Zenith's position, or your position, or your conglomerate position that for the last seven months of 1959, Zenith, starting from scratch on June 1, 1959 could have made a profit of $1,517,357 from the sale of television sets, starting from scratch?

A. If we took the position that we could sell 63,210 units in that exact seven-month period, that would be so. We have not taken that position except for the purpose of an accounting computation, which I say is better off considered in its entirety.

Q. This is an accounting computation in this Exhibit 220; is that it?

A. That's right.

Q. Was your figure in Canada also an accounting computation?

A. No, that's historical.

Q. Oh, Canada is historical, but England and Australia are an accounting—is it a visualization? Would 50 you consider that to be a fair word?

Mr. McConnell: Is that a question?

Mr. Kayser: Yes.

The Witness: I don't know what you mean.

The Court: That makes him ask you another question that you can understand, so go ahead.

Mr. Kayser: Will you read the question back, please.

The Court: I mean, I don't know why you—

Mr. Kayser: Well, strike the question.

The Court: He says he doesn't know what it means. The next stage of the proceedings is to ask another question.

Mr. Kayser: All right.

By Mr. Kayser:

Q. In other words, then, it is your testimony that your figures as to Canada were historical and assumed that Zenith would have been in business there fore many, many years. But in the case of England and Australia, your 51 figures are not intended to be historical, and are based on the assumption that they started June 1, 1959?

A. Well, you have actually got several questions there, Mr. Kayser. These figures—our position is that starting cold on June 1, 1959, we could have sold in the ensuing four years in England 300,000 television sets out of a total of 6,800,000.

Our position is that we could not have sold 600,000, which was our first consideration and our first judgment.

By Mr. Kayser:

Q. Where in this record, Mr. Kaplan, did you tell the Court that Canada was historical and England and Australia was not, as concerns Exhibit 220?

Mr. McConnell: I object to that.

The Court: The objection is sustained unless there is some indication that witness is familiar with the record.

52 By Mr. Kayser:

Q. Well, you gave the figures to Mr. Stevenson, did you not, that he used?

A. I gave him the share of market, yes.

Mr. Kayser: Excuse me. We have an exhibit here, or a chart, which we would like the witness to take a look at.

By Mr. Kayser:

Q. Do you know what was done in England starting June 1, 1959, which formed the basis of your supposition that you could have obtained the share of the market?

A. I'm not sure I understand that question.

Q. Do you know what steps were taken to sell the sets which are shown here as having been sold during the four-year period?

A. Well, there was a distributor in England who sold radios—Zenith radio sets.

Q. Mr. Kaplan, I have here a chart which we have prepared, which shows in bar form the number of television sets in England which Zenith asserted it could have sold during the four-year period. Now, with this Exhibit 220—

53 Mr. McConnell: Well, now, wait a minute. I'm going to object to any charts. We don't know how they are prepared or what they are from.

The Court: I think the chart ought to be explained to the witness if he is going to be asked to—

Mr. Kayser: Yes.

Your Honor, Mr. Kaplan, Mr. McConnell, we have had this prepared. It shows in red the number of television sets—

The Court: 63,210 appears to be the seven-month figure from my chart.

Mr. Kayser: Yes.

The Court: And 81 seems to be the figure for 1960 and 66 for '61, and 59,000 for the year '62, and 30,000 for—

Mr. Kayser: For '63, the first five months.

By Mr. Kayser:

Q. Now, do I understand that this is intended as a portrayal—that these figures are intended as a portrayal of what Zenith could have done in England in television starting from scratch on June 1, 1959? 54

A. No, that is not. That is not what I just testified to.

Q. In other words, these figures here are not the figures which you now say are the estimate which you took into account in reaching the total of eight million dollars which was shown in Exhibit 220?

A. Those figures are the figures used in the damage computation, because we had to relate some figures to our accounting and cost history.

Q. Those are not the number of sets which you claim you could have sold?

A. I told you that our—

Q. On a per-period basis?

Mr. McConnell: Wait a minute. Let him answer the question, please.

By the Witness:

A. I told you, Mr. Kayser, how our judgment was
arrived at. Now, in order to have the least amount of un-
knowns in our equation, we then tried to relate a certain
amount of business to each one of these periods, because
we had cost figures for those periods. But that is not
55 necessarily the way we claim that we might have done
the business.

By Mr. Kayser:

Q. But these were the figures you presented to the Court; right?

A. For a mathematical computation.

Q. And these were the figures that were totaled in your finding in this case for damages; right?

A. They are in the mathematical computation.

Q. But you can't tell us how much—how high that bar should go up for 1959 under your computations?

A. No.

Q. Or for any other year?

A. That's right.

Q. But in thet case of Canada, if we had a similar chart, the bar would show a historical figure; is that right?

A. Well, in Canada we agreed that we had a different set of assumptions.

56 Q. I asked the question whether in the case of Canada the figures would show a historical amount.

A. I'm sure that the word "historical" is the correct word. But Canada was based on a different background, a different set of assumptions, that we were not enjoined from doing business there by anything except the pool, and that we would have been doing business there for a great many years prior to the damage period.

The Court: Maybe at this time I will call a short recess on this. I have a couple of intervening matters. You gentlemen take a five-minute recess and I will get to what I—

The Witness: May I leave the stand?

The Court: Surely, surely.

(Whereupon the Court gave attention to other matters on the call, after which the following further proceedings were had herein:)

57 The Court: You may resume the stand, Mr. Kaplan.

By Mr. Kayser:

Q. Mr. Kaplan, under your theory of a gradually rising market, what percentage of the television market would Zenith have had to have—

The Court: This looks to me as though it wasn't a gradually rising—

Mr. Kayser: Well, under his newfound—what he is trying to tell us today, your Honor.

By Mr. Kayser:

Q. (Continuing.)—under the testimony that you have told us about this morning, you started from zero, you say, June 1, 1959; what percentage of the market do you say you would have had to have in the first five months of 1963 to give you your average?

A. I didn't say.

Q. Do you know?

A. No. I don't know because there was no way to know. We were prevented from doing business by the pool.

Q. No, I am speaking of these assumptions that you are engaging in.

58 What was your assumption?

A. Well, I don't—it doesn't seem to help. I have told you what our assumptions were.

Q. I have asked you a new question here: What your assumption was as to the percentage of the market you would have had in the first five months of 1963 to get up to this average you are talking about.

A. I don't know.

Q. You don't know.

Couldn't you, if you were actually starting with a zero share, the assumption of a zero share of the market on June 1, 1959, and if you were actually starting or operating under the theory of an increasing market share over the five periods, couldn't you have given figures to show what that market—that assumed market share was during each of the five periods?

A. Could we have?

Q. Yes.

A. Well, I assume that you can do anything with mathematics, Mr. Kayser.

Q. Apparently so.

I have asked, could you have, if as you now say, 59 you started with a—with the assumption of a zero share of the market on June 1, 1959, and ended up May 31, 1963, with some sort of total over-all average, couldn't you have shown the progression of that market year by year, period by period?

A. It would have been completely arbitrary.

Q. It would have been completely arbitrary?

A. It would have been completely arbitrary.

Q. What do you have to say of your Exhibit 220?

A. The Exhibit 220 is based on a percentage of what we did in the United States.

Now, actually, assuming that we started cold on June 1, 1959, it does not mean that on that day we would start to make blueprints to manufacture sets. There was plenty of advance notice that these import restrictions were going to be lifted, and we could have had during that period made arrangements for distribution. We could have made sets. We could have started them to England, and then we would have had a long period of filling distributors' inventories and dealers' stores with samples, but this is writing a story that did not exist and couldn't exist.

60 Q. You said that your Exhibit 220 was based on your experience in the United States. How long had you—

A. Those fractions were based on the percentage—

Q. Yes. How long had you been selling radios in the United States prior to June 1, 1959?

A. Prior to June 1, 1959?

Q. Yes.

A. About thirty-six years.

Q. And how long had you been selling television sets?

A. Seventeen years—no, eleven years.

Q. And it was your United States experience that was projected in giving your figures as to Canada, England and Australia, was it not?

A. No, no, that is not the testimony.

Q. Didn't you in Canada show the same percentage for each of the five periods that you had in the United States for the same periods?

A. That is true for Canada.

Q. And didn't you in England show, in Exhibit 220, one quarter of the percentage for each period?

A. That is right.

61 Q. And ten per cent of that period for Australia?

A. But that took into consideration—

Q. I asked you—

Mr. McConnell: Let him answer.

Mr. Kayser: I am asking him if he showed that in Exhibit 220.

The Court: You cannot tell if he is not answering until he finishes his answer.

Mr. McConnell: I know, but he interjects. He interrupts his answer.

The Court: Well, I don't know why you are now protesting further when I have already ruled in your favor, Mr. McConnell.

Mr. McConnell: No, I am not, I am just stating my position.

The Court: I mean, you have stated your position and your position has been upheld and let's go on with it.

By the Witness:

A. I would have to have the question read.

The Court: I am sure that you would.

By Mr. Kayser:

62 Q. I asked whether it was not a fact that in Canada, for each of the five periods, you showed exactly the same percentage of the Canadian market as you got in the United States.

A. That is true.

Q. And as to England you showed one quarter of the percentage of the English market as you got from the United States.

A. That is true.

Q. For each of the five periods?

A. That is true.

Q. And as to Australia for each of the five periods you showed ten per cent of the—one tenth of the percentage which you had obtained in the United States during the particular period.

A. That is true, but that was done because we had to have a basis of using the facts and costs that we had available so that everything was not a product of judgment.

Q. What was that again?

The Court: Read the answer, Mr. Comeau?

(Answer was read.)

By Mr. Kayser:

Q. Couldn't you have, on your cost—you couldn't 63 have given a four-year average?

A. I don't know that that would have produced the same results.

The Court: Well, the chart indicates to me that the price to dealers went down each year during the four-year period and the less they collected from the dealers the greater their profit went up. I mean, that is what that chart indicates to me.

The Witness: May I add something, your Honor.

The Court: I mean, I am just talking about the chart. The chart indicates that you were selling sets in 1963 for $128 against $148 in 1959, and that your profit margin increased each year that the cost to dealers went down. Doesn't the chart indicate that?

The Witness: Yes, sir.

The Court: All right, that is all I said.

64 By Mr. Kayser:

Q. Now, you have testified that you could, with this rising share of the market, have sold a total of 300,000, roughly, television sets in England during the four-year period.

The Court: That is his testimony.

Mr. Kayser: Right?

By the Witness:

A. I didn't use the words "rising share". I said that in the four-year period we felt that, conservatively and reasonably, we could have sold 300,000 out of 6,800,000 sets.

We could not tell you what week of what month we would get what share.

As a matter of fact, in the United States in different weeks and different months we get a different share than we do for the entire year.

By Mr. Kayser:

Q. But you did assume a gradually increasing number of sets year by year?

A. No, we assumed—my answer to you was that that would probably be the pattern, but it could very well be a high start in the stocking period and then a dip and
65 then a rise and then it could follow any pattern.

Q. Well, now, at the original trial you told the Court, did you not, that Zenith had actually sent to England sets, to your distributor, sets which had been converted to the English standards?

A. That is what I told the Court, yes.

The Court: And this exhibit indicates that there was one such set in 1960 and 21 in 1962 and 1961, and so forth. During a four-year period in England they sold 65 sets. That is what these figures shows.

By Mr. Kayser:

Q. These were sets converted to the English standards?

A. Not all of them, no, sir.

Q. Were any of them converted to the English standards?

A. Some of them were, yes.

Q. What was the English standard?

A. During a part of the period it was 405 lines, and during the latter part of the period, although it was still in the test, it was 625 lines.

66 Q. There never was any time during the damage period when there was a commercial broadcast of the 625-line transmission, was there?

A. It is my impression that it was a test transmission.

Q. I believe you also, in supporting your contentions in 1964, told the Court—I believe Mr. Wright did—that Zenith had sent parts and conversion kits to its English distributor, is that correct?

A. Did I testify to that?

Q. No. I asked you if it is a fact that you did?

A. I don't know.

Q. You don't know?

You also told the Court that your English distributor had converted sets for use in England in its back room, did you not?

A. That was my impression, that is right.

67 Q. That was your testimony, was it not?

The Court: I mean, somebody said that because I remember that. I don't know who it was, but I know that I heard it. I suppose the best way to determine that is to read the record, as to whether it was said and who said it.

By Mr. Kayser:

Q. This was at Page 846 of the record, where Mr. Dodds was asking you some questions about the requirements of the English system, and you said:

> "Mr. Dodds, I would like to answer by saying that this difference is so profound that our distributor changes them in his back room."

The Court: I assume that you acknowledge that you said that, having heard the record.

By Mr. Kaiser:

Q. Do you recall that testimony?

A. Yes.

Q. Do you know, did Zenith ever, before June 1, 1963, send either Mr. Ramsey or United Mercantile Company, your distributor, any television sets which had been 68 converted to receive the 405-line transmission?

A. I don't know.

Q. You don't know?

A. No.

Q. Page 821, you were asked by your counsel:

"Well, let me ask you this, haven't you actually made sets of Zenith that can be used in the British market?

"Yes, we have."

The Court: What is the question, did he say that, or what?

Mr. Kayser: The answer is: "Yes, we have."

The Court: I mean, are you asking him now did he say that?

Mr. Kayser: I am asking him if he recalls that testimony.

The Witness: Yes, I recall it.

By Mr. Kayser:

Q. Do you recall whether those were sets that would receive the 405-line transmission?

A. Well, isn't that the reference in that testimony?

Q. I am asking you what the fact is.

69 A. I don't recall. That was a year and a half ago.

Q. You don't recall now whether Zenith ever made any sets which would receive the 405-line transmission.

A. That was not your question.

Q. Well, do you recall?

A. I think we had better get the question straightened out.

Q. I am asking you a question: Whether or not—

The Court: Do you now recall at this moment, regardless of what has occurred in the past in regard to testimony, whether you ever made any 405-line television sets for transportation to England.

Is that the question?

Mr. Kayser: Yes.

By the Witness:

A. It was my impression that they did.

By Mr. Kayser:

Q. Well, if I were to tell you that your British distributor says that no such sets ever were received, would that refresh your recollection?

70 Mr. McConnell: I object to counsel stating—he should also tell him that the British distributor said he never had a contract to ~~sell~~ televisions in England.

The Court: All I know is that he is asking him if his British representative said that, would that refresh his recollection. He could just as well have said, "Does this pencil refresh your recollection?"

Your objection is overruled.

That doesn't prove the fact that he is stating—

Mr. Kayser: I am aware of that, your Honor.

The Court: I was just trying to reassure Mr. McConnell in case that he was not aware of it, that it does not prove the fact.

Mr. McConnell: My only objection is, your Honor, that it assumes a fact which is not a fact.

The Court: Well, I mean, you may, when you get him back, use whatever you wish to use in the way of what this representative said to refresh his recollection and
71 couch it in your own terms.

If this were said, would that refresh your recollection? That is the only question before you. If this were said by whoever said it, would it refresh your recollection?

The answer to that is either yes or no.

The Witness: Well, I am not sure. I think the question was, would I be surprised.

Mr. Kayser: No, I asked whether that would refresh your recollection.

The Court: He asked would that refresh your recollection.

The Witness: Would—

The Court: Would the fact that this fellow said this, refresh your recollection? It may refresh it and it may not.

The Witness: No, it does not refresh my recollection.

The Court: All right, that answers the question.

72 By Mr. Kayser:

Q. Well, prior to June 1, 1963, did Zenith send to Mr. Ramsey or to United Mercantile any kits for the conversion of 525 line sets to the 405 line system?

A. I don't know.

Q. Prior to June 1, 1963, did Zenith ever send any instruction booklets or instructions of any kind to Mr. Ramsey for the adaptation of the 525 line system to the 405 line system?

A. I don't know.

Q. Well, prior to June 1, 1963, did Mr. Ramsey or United Mercantile ever convert any 525 line sets to the 405 line system?

A. I answered that it was my impression that they had.

Q. That was your impression that he had?

A. That is right.

Q. Would it refresh your recollection if I were to tell you that he testified that he had not.

A. Well, this is where we were.

Q. Yes, I know.

A. That does not refresh my recollection.

The Court: At least you understand the question

73 now without further explanation from the Court.

By Mr. Kayser:

Q. Isn't it a fact that the only television sets which Zenith ever sent to England, which had been converted to any other system, were sets which had been converted to the 625 line system?

A. I don't know.

Q. You don't know.

But I gather that we can agree that there was no commercial broadcast on the 625 line system until after June 1, 1963.

A. I said it was a test broadcast.

Q. Do you know of any country other than England that uses the 405 line transmission system?

A. I don't know of any.

Q. Do you know whether or not the 625 line system is used in a number of countries?

A. Yes, it is.

Q. Is it the most widely used transmission system today in the world?

A. No, our system is the most widely used.

Q. The 625 line system is used in a number of countries on the Continent?

74 A. It is used in some countries on the Continent. I don't know how many.

Q. Did you really know in February, 1964, what the comparative prices would have been during the four-year period of Zenith's sets sent overseas as against English sets?

A. Did we know?

Q. Did you know in February of 1964?

A. No, but we could make a pretty good computation.

Q. Did you know?

A. No, we did not know, so we had to use the figures that we did know.

Q. No, I asked you, did you know—

The Court: And the answer is that he did not know.

By Mr. Kayser:

Q. Did you know what had happened to the English market during the period of 1959 to 1963 in the way of volume of sales?

A. Yes.

75 Q. What had happened?

A. Well, I think that it was in 1959 they had a very big year, about 2,800,000 units, and it well off after that. As you know, we had ordered and had available to us a market study of the English market and of the Australian market, and this was part of the background for our considerations and judgment.

Q. What was the date of your English market study?

A. I don't recall.

Q. Wasn't it April, 1959?

A. I don't know.

Q. You don't know?

The Court: What is April, 1959, what document?

Mr. Kayser: That is the date of the market study, at least which has been disclosed to us.

The Court: I see. I was wondering how that got into it.

Mr. Kayser: Well, the point is, before the four-year period.

76 By Mr. Kayser:

Q. What is the date of your Australian study?

A. I don't know.

Q. Did you actually have one made?

A. I said so, Mr. Kayser.

Q. All right, was it made by some sort of a market survey agency?

A. Yes.

Q. And do you know when?

A. I don't know the date.

Q. You testified that you started with June 1, 1959, as the date in Australia because that was the date the embargoes went off and the date that your counsel told you to use.

A. You will have to separate those questions, because they are both not applicable.

Q. All right, because that was the date the market restrictions went off.

A. No, I didn't testify as to that.

Q. You didn't?

The Court: You do have a tendency this morning, Mr.
Kayser, to put two or three questions in one question.
77 I wish you would try and ask a simple question that
this witness could answer yes or no and not have to
qualify his answer because there is another question in
the question.

Mr. Kayser: Yes, sir.

By Mr. Kayser:

Q. I show you, Mr. Kaplan, copies of documents from Zenith Exhibit 113, consisting of a bulletin dated March 28, 1960, by the foreign information service, copy of a letter by Mr. Peirels to the Trade Commissioner of Australia, dated April 21, 1960, and a copy of a letter dated July 18, 1960, from the Australian Government Trade Commissioner to Mr. Peirels, and I ask you to read those.

The Court: Take your time, Mr. Witness.

The Witness: Thank you, sir.

Mr. McConnell: Are those exhibits in the case?

Mr. Kayser: Yes, they were exhibits produced by Zenith Radio, Mr. McConnell.

Mr. McConnell: Have they got a number so that I can find them?

Mr. Kayser: Well, they were part of your bulk Exhibit No. 112, I am told.

78 Mr. McConnell: Is that the one you threw on the
floor?

Mr. Kayser: No, no, it's not, Mr. McConnell. The one I threw on the floor is the one which your witness is, this morning, throwing into the waste basket.

Mr. McConnell: Well, we'll see if he has thrown it in the waste basket.

Can I see it, Mr. Kaplan, before you answer questions on it.

The Witness: It's pretty bad copy.

Mr. Kayser: I'm told, Mr. McConnell, that that is out of Defendant's Exhibit 215.

By Mr. Kayser:

Q. Have you read it?

A. Yes.

Q. Who is Mr. Peirels that is referred to—shown as the writer of the April 21, 1960 letter?

A. He signs himself as assistant sales manager of the International Division.

The Court: I'm still in the dark, because it doesn't say the International Division of what.

79 Mr. Kayser: Yes.

The Witness: Zenith Sales Corporation.

The Court: All right.

By Mr. Kayser:

Q. Zenith Sales Corporation. Now, I note in that letter, it says that,

> "The Foreign Information Service has advised us with their bulletin of March 28th that a further relaxation of import restrictions has been announced by the Australian government. It was stated that about ninety per cent of all imports entering Australia are now free from import licensing and banks in Australia are free to make exchange available for such imports simply on evidence of shipment. We are manufacturers of electronic products, radios, television receivers, and record playing instruments which we offer in the form of completely assembled units,

and also in the form of units of parts for local assembly."

80 Now, on that date, was Zenith Radio Corporation as yet ready to go into the Australian market? I am speaking of the date of April 21, 1960.

A. Of course.

Q. Did Zenith Radio Corporation know, at that time, whether or not there were import restrictions still existing in Australia?

A. Well, Mr. Peirels' letter refers to a further relaxation, which obviously indicates a previous relaxation.

In addition to that, it is my recollection that we had been making 625 line kits for some of our distributors, and that we could have been in business at any time minus the pool.

Q. Did you at that time know the extent of the restrictions in Australia?

A. Did I at what time now?

Q. On April 21, 1960.

A. Well, that's not a part of my everyday function. I may have know it or I may not have. I don't know.

Q. You may or you may not have? Yet you gave the estimates that you gave for Australia not knowing
81 whether or not there were any import restrictions?

A. Well, you asked me if I knew it in 1960.

Q. Yes.

A. Those estimates were made in 1963 and '64.

Q. Did you know in 19—did Zenith know in 1960 whether or not there were import restrictions?

A. Did Zenith know?

Q. Yes.

A. I'm sure they did, yes.

Q. Did Zenith know—or did you know?

A. I don't know.

Q. You were told to use the June 1, 1959 date, and you didn't know whether or not there were any restrictions after that or not; is that right?

A. I was told there were not.

The Court: That is governmental restrictions?

The Witness: That is right.

82 By Mr. Kayser:

Q. Who else in your organization did you consult with in connection with these estimates that you gave as to England and Australia?

A. Mr. Migul, the international trade manager, Mr. Wright. I can't remember everybody else. We also discussed it with people who were not in our organization.

Mr. Kayser: Well, I think I will stop my cross-examination and wait for the next witness, your Honor.

The Court: Have you any redirect, Mr. McConnell?

Mr. McConnell: Yes, your Honor.

The Court: You may proceed with it.

Redirect Examination by Mr. McConnell.

Q. Did I leave that Exhibit 220 up there?

A. Yes.

Q. Will you turn to Exhibit 220, which we have discussed here, where there is a computation of the amount of damage. Do you find that?

A. Yes.

83 The Court: There are six computations, aren't there? There is one at the bottom of the page, and then above that on the righthand side there are six others.

By Mr. McConnell:

Q. Well, do you have one sheet where all the computations—

A. This is it.

Q. And that is the first page of Exhibit 220.

Now, Mr. Kaplan, you are not only an executive officer of Zenith Radio Corporation, you are also an accountant, are you not?

A. By training and experience, yes.

Q. You are familiar with accounting practices?

A. Yes.

Q. Is there any accounting reason for allocating those different amounts in the different columns on that damage computation?

A. Well, the basic accounting reason is, as I have explained, is that we wanted to eliminate from the computation as many unknowns and judgment factors as we could.

And the things that we knew were our costs in these
84 periods, our average selling prices in these periods to Canada—and we knew the pattern of the business in the United States as to our penetration of the market, and we had previously made judgments as to what portion of that penetration could be attained in these other markets considering, for instance, that in the United Kingdom and Australia we didn't have a previous market position, and there were tariffs and transportation charges and distances and differences, for instance, in the technical qualifications of the instrument.

But the differences in the specifications would merely be handled by making these products on a different line, because the quantities were sufficient to support such a line. It would not be done—it would not be done by conversion at destination.

Q. Now, you refer in there to average selling prices, and you have used the Canadian price, average selling price ; is that correct?

A. That's right.

Q. You didn't have any English selling price on television sets, did you?

A. It would have to be arbitrarily constructed.

85 Q. Well, you didn't have one.

A. That's right.

Q. But you did have a Canadian one?

A. That's right.

Q. And you didn't have a selling price in England because you couldn't sell sets there regardless of Government restrictions; isn't that true?

A. That's true.

Q. And why?

A. Because of the actions of the pool.

Q. So that you are trying to reconstruct here, as best you can, as an accountant and a business executive, a market which you were prevented from having; is that right?

A. That's correct.

Q. And the uncertainties which you have indicated in this computation arise because of that fact?

A. That's right.

Q. Now, would you say as an accountant that the method of presentation of the computation of this damage reaches a fairer result by virtue of allocating the busi-
86 ness to particular periods rather than averaging it over a whole period?

A. I would say, Mr. McConnell, that this is an acceptable method of doing it, and reaches such a fair result.

Q. You are not purporting to say that in any given hour, or in any given day or in any given week, you would have sold X number of television sets?

A. You can't.

Q. No one can, can they?

A. That's right.

Q. Because the experience is not available, isn't that right?

A. That's correct.

87 Q. Now, you were examined at some length about different lines, 625-line and 405-line television sets. You had no occasion to make a 405-line plus a 625-line set, did you?

A. We had no business in that type of receiver, except in the 625 we did have a business.

Q. But you had no business in England because of the pool, is that right?

A. That's correct.

Q. So there was no occasion for making a 405-line and a 625-line, was there?

A. Well, there was no compelling reason to do so, yes.

Q. And actually, your distributor, or so-called distributor, had no contract to sell television sets; isn't that true?

A. That's true.

Q. Now, you are familiar with production methods at Zenith Radio Corporation as an executive officer, are you not?

A. Yes, sir.

Q. If you had had the business in England, could Zenith Radio have put together 405 lines and 625 lines in a set on one assembly line for export to England?

88 A. There is no question about it.

Q. Actually, the competitors that you would have had in England do that, do they not? Put the 405-line and the 625-line in one set?

A. Recently they do, yes.

Q. And that is because they have two different systems of transmission, isn't it?

A. That's correct.

Q. You spoke of kits, 625-line kits. Does Zenith make such kits at the present time?

A. Yes, sir.

Q. And they have made them for how long a time? Back during this damage period?

A. At least since 1960, and I think prior to that.

Q. And they export those kits where?

A. They export them to Spain and to other countries, but I can't name them now.

Q. In answer to one of Mr. Kayser's questions, you said that you not only consulted people in your own organization, but that you had also consulted people outside your organization. Who were you referring to?

89 A. Well, we were referring to Mr. Beane, who was a manufacturer in Australia.

Q. Is he with the Stromberg-Carlson Company?

A. That's right. We were referring to Mr. Webb of the-Rola Company in Australia, that was a component supplier there, and with whom we did business in other areas.

Q. Did you talk to Mr. Clarkson at any time, or did you know about Mr. Clarkson of Admiral?

A. I don't recall.

Q. Anybody else that you talked to?

A. I can't think of them now, Mr. McConnell.

Mr. McConnell: I have no further questions, your Honor.

The Court: Anything further?

Mr. Kayser: Well, I have a couple of questions, your Honor.

The Court: Limited to the redirect.

Recross Examination by Mr. Kayser.

Q. Speaking as an accountant, Mr. Kaplan, I gather you are now saying that you can figure an over-all average for a four-year period; is that right?

90 A. I'm not sure. I would have to consider that. I'm not sure that you could factor, in all these differ-

ences—for instance, there is the difference of the heavy advertising at the beginning of the period. There is these differences in average prices. There is differences in cost, because you are making different products in different parts of it. There is differences in Zenith's cost because our volume changes, and these all are reflected in here, and this is considered as incremental business. So I'm not sure that an average would be meaningful.

91 Q. Well, isn't it your testimony this morning—or am I entirely mistaken—that you are now saying that Zenith's damage is based on an overall average for four years?

A. I was talking about share of the market, Mr. Kayser.

Q. You are talking about an overall share of the market for four years?

A. Yes, that's right.

Q. You can't figure an overall share of the market for four years; is that right?

A. Well, Mr. Kayser, we are being asked here to construct a business that didn't exist because it couldn't exist. And rather than try to allocate a certain amount of business to a month, or a year, or a day, we have felt—and I told you that we made several judgments and discarded some of them, in the interest of giving full respect to the fact that we were just starting into business, that there were the problems of doing business in these countries, the distances and the tariffs. For instance, in Australia it's obvious that any manufacturer that wanted to, with
our experience and our acceptance and our quality,
92 could sell 23,000 sets out of 1,300,000 in the four-year
period. But if you asked me what they could sell in September, I couldn't tell you.

Q. But you say you can figure how much you can sell in four years?

A. Yes.

Q. Can you figure how much you can sell in two years?

A. I might.

Q. Can you figure how much you could sell in one year?

A. I might, but in each case, then, you would be introducing an additional element of judgment.

Q. Could you figure out how much you could sell in seven months?

A. I don't know. I would say this: That those figures would not be as good as the overall four-year period.

Q. In any event, the figures that Mr. Stevenson presented to this Court were based on the year period and part of the year period.

A. Mr. Stevenson was not concerned with the share of the market. That was given to him as the result of our conferences and our judgments.

93 Q. But the figures which he presented were on a year's basis.

A. In order to take advantage of the known historical facts, so that everything was not a matter of judgment.

Q. But they were on a year basis?

A. Yes, they were.

Mr. Kayser: That's all.

The Court: Mr. Kaplan, going back—have you got 220 before you?

The Witness: Yes, sir.

The Court: Going back to the top figure, Canadian television sales, column 2 which has the per cent of the market, I would assume to reach—well, first of all, you figure your per cent of the market in Canada with the 15.6 per cent because that was your per cent in America?

The Witness: Yes, sir.

The Court: And going down to the final figure of 21.7 per cent, that was your figure in America so you figured that in Canada?

The Witness: Yes, your Honor.

94 The Court: I assume that if in starting in the new countries, the first year you hadn't—the first two years hadn't reached 15.6 or 17.5, that in the last year you would have to have had to exceed 21.7 in order to make your figures come out even; is that true?

The Witness: Well, I assume you are referring to 25 per cent or 21 per cent or 10 per cent.

95 The Court: Well, that's right. Well, let's go down to the Australian figure, 1.562, and it goes up to 2.171. If you didn't make it the first two years, why, then, you would have to of necessity increase that percentage figure in the last two; right?

The Witness: That is right.

The Court: All right. That is my only question.

Mr. McConnell: Let me ask one more question.

The Court: Go ahead.

Redirect Examination by Mr. McConnell.

Q. Assuming now we are starting cold and from scratch in England, you spoke in your cross-examination of getting sets into dealer's hands so that you could sell something in England. Would that tend to increase that first year's amount?

A. Oh, yes.

Q. Over your estimated percentage?

A. Yes. That would be a stocking period that might not necessarily be reflected in the same rate of sales

96 until a period of experience had been built up.

Q. Well, to put it another way, to get the pipe full of products which is being shipped into that market, you would have to have a larger amount of product in the first opening period sold to your distributors?

A. That is correct.

Mr. McConnell: I have no further questions.

The Court: All right. Step down.

(Witness excused.)

The Court: I doubt, perhaps, if anything fruitful could be accomplished in five minutes with the next witness. Maybe we ought to recess until 2:00 o'clock.

Mr. McConnell: Thank you, your Honor.

(Whereupon, a recess was taken to 2:00 o'clock p.m. of the same day, November 22, 1965.)

97 Before the Hon. Richard B. Austin,
Monday, November 22, 1965,
2:00 o'clock, p.m.

The hearing was resumed pursuant to recess.

Present:

Same as before.

98 The Clerk: Hazeltine v. Zenith.

Mr. McConnell: Mr. Wright, will you take the stand.

The Court: This witness has heretofore been sworn in the other hearing.

Mr. McConnell: That is correct.

The Court: And he realizes that he is still under oath?

Mr. Wright: Yes.

The Court: All right, go ahead.

JOSEPH S. WRIGHT, called as a witness on behalf of the Defendant, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. You are the same Mr. Wright that heretofore testified at the trial of this case?

A. I am.

Q. I show you a document which has been marked in evidence here as Defendant's Exhibit 220. Did you have anything to do with the preparation of that document?

99 A. I had nothing to do with the physical preparation. I had something to do with the decisions as to some of the factors that were taken into account in its preparation.

Q. Did you concur in the percentages of market that were used in the computations that were shown in that document in England and Australia?

A. Yes.

Q. Now, in the use of those percentages which are shown in the computations in that document, Exhibit 220, did you assume that Zenith would have a mature market, or did you assume that it would start from scratch in the damage period in England and in Australia?

A. I assumed that we would be starting from scratch.

Mr. McConnell: You may cross-examine.

100 *Cross-Examination by Mr. Kayser.*

Q. Mr. Wright, what did you assume as concerns Canada?

A. I assumed that insofar as Canada was concerned, that we would have had a going market there.

The Court: But for the pool?

The Witness: But for the pool, yes, sir; yes, sir.

By Mr. Kayser:

Q. You assumed that you would, on June 1, 1959, have an established market in Canada?

A. Yes, sir, but for the pool.

Q. But you assumed that you would be starting at the point of zero on June 1, 1959, in England and Australia?

A. Yes, sir.

Q. Why did you assume that as contrasted to Canada?

A. Well, I was aware that there were requirements of obtaining import licenses in England and Australia up to about that point.

Q. What did you understand the effect of those
101 requirements for import licenses to be?

A. I understood the effect of them to be that it was difficult to carry on an extensive business with the requirement of such licenses.

Q. Difficult but not impossible?

A. That is correct.

Q. In other words, you understood that on June 1, 1959, and prior to that time, it was possible to get licenses to import completed radio and television sets from the United States into England, for example?

A. Well, I—when we made this computation, we did not assume and I did not assume that we would have any going business at that time. I did—however, I did not have the understanding that it was impossible to do any business in the face of requirements of export licensing.

Q. You assumed that you would have no going business, but you also assumed that it would have been possible previous to that date to import completed radio and television sets?

A. Well, yes. And the reason I say that is that in other markets where we have the same difficulties of import licensing but where we can attack the problem and
102 address ourselves to it, particularly with strong local people who are interested in handling our goods, we find that we do get import licenses despite the fact that these restrictions exist. In England we had no opportunity to try to do that.

Q. I'm asking what you assumed, Mr. Wright. Did you assume that you could have gotten in television sets into England, or that you could not?

A. Why, I knew that we couldn't get them into England because of the existence of this patent pool thing.

Q. I am—all right. Did you assume that you could get television sets into England despite import restrictions?

A. Well, I'm not sure I understand the question, but we made this assumption on the basis that we would not be importing prior to that date, but—

Q. Excuse me—

Mr. McConnell: Let him answer the question please.

Mr. Kayser: Yes.

By the Witness:

103 A. (Continuing.) —but in my own mind, I had not assumed that this amounted to an embargo, that we couldn't—lacking the other restrictions, not have done any business at all. I'm telling you now what was in my mind at the time this exhibit was prepared, Mr. Kayser.

By Mr. Kayser:

Q. I'm asking whether or not you assumed that the governmental import restrictions would have kept you out prior to June 1.

A. I assumed that they would certainly make it quite difficult to do any sizable business before that time.

104 Q. Did you assume that they would keep you out entirely?

A. Entirely?

Q. Yes.

A. No.

Q. What volume of business did you assume that you could have gotten in over import restrictions?

A. We assumed here in this, Mr. Kayser, that we would have gotten none.

Q. In other words, you assumed that under the import restrictions you could get in no sets prior to June 1, 1959?

A. That was the assumption on which this Exhibit was prepared.

Q. You made the same assumption as to radio in England?

A. Yes,

Q. You made the same assumption as to television in Australia?

A. Yes.

Q. You made the same assumption as to radio in Australia?

A. Yes.

Q. You are president of Zenith?

A. Yes, sir.

105 Q. And you were previously executive vice president?

A. Yes, sir.

Q. And previous to that you were—you came in as general counsel?

A. I think I came in as assistant general counsel originally.

Q. You became general counsel?

A. Yes, sir.

Q. Were you aware of the steps being taken by Zenith to prosecute this case?

A. I'm sorry, I didn't get the last part.

Q. I will rephrase it. Were you aware of the fact that Zenith had taken the position right up to October 20, 1964, that there were no import restrictions which would have kept Zenith from importing radio and television into England and Australia?

Mr. McConnell: I object to that. That wasn't the position taken—.

The Court: I mean, merely because Mr. Kayser says in his question that that was the position doesn't prove it to be so, and your objection is overruled.

106 By the Witness:

A. I was not aware of that position.

By Mr. Kayser:

Q. Were you aware of the fact that Hazeltine Research and Zenith both took depositions in England and Australia on the question of whether or not there were import restrictions?

A. Yes, that was my understanding.

Q. And were you aware of the fact that Zenith was taking the position that there was no such import restrictions?

Mr. McConnell: And I object. It assumes that we took that position. It never was our position.

The Court: You can reiterate it, and he can reiterate it in his question, and that doesn't commit either one of you, and the objection is overruled.

The Witness: May I have the question again, please. I'm sorry.

The Court: I can understand why. Don't apologize. Read the question.

(Question read.)

By the Witness:

107 A. No, I was not.

By Mr. Kayser:

Q. But you did—you say now you did testify in February, 1964 that you started with a June 1, 1959 date in England and Australia because of restrictions on imports?

Mr. McConnell: I object to that. There is no such testimony in the record.

The Court: If what you are seeking to do is impeach him, you ought to read the question which you consider impeaching. I don't know what you are trying to do.

The Witness: May I have the question?

The Court: Are you referring back to some prior testimony?

Mr. Kayser: I'm trying to show, your Honor, a great inconsistency between what is said and what was done.

The Court: I mean the way to show that is to let him know what he said, and maybe call it forcefully to my attention at the proper time in regard to what he said then and what he says now. The objection to the form of this question is sustained.

108 By Mr. Kayser:

Q. Do you recall, Mr. Wright, your testimony in February, 1964?

A. I recall some parts of it, Mr. Kayser. I don't recall it all.

Q. Do you recall that you testified as concerns Canada that Zenith had been kept out of Canada for a great many years prior to 1959?

A. Yes, I believe I testified to that effect.

Q. Do you recall similar testimony as to England?

A. Yes, sir.

Q. And as to Australia?

A. Yes, sir.

Q. Now, you also testified, as I recall, on the damage issue, that you believed, based upon your experience in the U. S., that but for alleged pool restrictions, you could have gotten the same share of the market in Canada?

A. Yes, as in the United States, I believe I stated.

Q. Yes. Now, in the United States you had been in the radio business for a great many years, had you
109 not, or Zenith had?

A. Yes.

Q. And also had been in television since about 1948?

A. Yes, I believe the latter part of 1948 was our first entry into television.

Q. And you participated in the determination of the percentages which would be given to Mr. Stevenson and which were transposed into Exhibit 220?

A. I did.

Q. I believe you told your counsel that you had concurred in those percentages?

A. Yes.

Q. And in the case of Canada, you started in 1959 with the same percentage of the Canadian market as you had in the United States in '59?

A. I believe that's correct, yes.

Q. And in England you started with one-quarter of that percentage?

A. Yes, that's correct.

Q. And in Australia with one-tenth of that percentage?

A. Yes. Well, no, that isn't quite accurate either. 110 We started actually in the computation of damages, in the original computation, on the basis of a 50 per cent share of what our U. S. percentage is in the English market, and a 25 per cent share of our U. S. share in the Australian market.

And after considerable discussion and examination of the matter between Mr. Kaplan, Mr. Migul, Mr. Stevenson, and myself, we determined that because of the import licensing difficulties and problems in that respect, that we should revise that downward to 25 per cent in the English market and 10 per cent in the Australian market. And that is the way the exhibit was finally prepared.

111 Q. Do you find anywhere in that exhibit any reference to the import licensing restrictions in England and Australia?

A. No, sir.

Q. Do you recall, did you tell the Court about that distinction?

A. I'm sorry. May I have the question?

Q. Do you recall, did you tell the Court that in the case of England and Australia you were cutting your percentage down because of import licensing restrictions?

A. I don't recall that I testified on that subject, Mr. Kayser.

The only thing that I recall that I testified originally about England and Australia was that I thought that we could get up to 10 per cent of the British market.

Q. Well, now, in connection with your testimony as to England, you told the Court that Zenith had appointed a Mr. Adam Ramsey as a distributor.

A. Yes.

Q. I would like to read a question and answer on direct, Page 691:

112 "All right. Have you made any efforts at all to go into the English market with television?

> "A. Well, we have only sent a very few television receivers to Mr. Ramsey, which he has attempted to market, but we have not made any effort on television because we were informed that the pool license then in effect and the one currently in effect would not permit that and there was no possibility of getting such a license."

As a matter of fact, do you know today, Mr. Wright, whether or not licenses are available from the so-called British pool?

A. Well, as of today, I don't know, but as of—no, as of today I don't know.

Q. Do you even know if there is such a pool in existence?

The Court: As of today you mean?

Mr. Kayser: As of today.

By the Witness:

A. Well, may I—

Mr. McConnell: I object to this.

113 The Court: What is your objection?

Mr. McConnell: My objection is that the only thing that we had to show in this case was that there was a pool which prevented us from operating during the damage period.

The Court: Mr. Kayser is not going to be foreclosed in testing the witness' knowledge.

The objection is overruled.

By the Witness:

A. Well, I can't tell you, Mr. Kayser, precisely the date when I last heard something about the pool's existence, but it certainly is not more than a year ago, and I am sure that if there had been any change in the status of the pool, of the British patent pool particularly with reference to whether or not a license would be granted that would permit importing, that I would have heard this. It would have been a matter of news in our industry, so I assume that the pool is operating as it always has.

By Mr. Kayser:

Q. Well, referring back to your testimony about "We have only sent a very few television receivers to

114 Mr. Ramsey, which he has attempted to market," did Zenith in fact send to Mr. Ramsey during the period from June 1, 1959, to June 1, 1963, any television sets which were usable to receive commercial broadcasts in England?

A. We sent many television receivers during that period of time. I do not believe that those receivers had been converted to receive the 405-line transmissions that were the principal commercial broadcasts in England at that time.

115 Q. What do you believe they were equipped to receive?

A. Well, they were—it is my understanding now, and I did not read the shipping tickets or the orders on these sets to know what was done with them, that these were ordinary television receivers which are made to our U. S. standards.

Q. For what purpose did you understand they were sent?

A. I understood they were sent for either demonstration or use or sale.

Q. As 525 line sets?

A. I didn't make any specific inquiry about that.

Q. Do you know what the line transmission is in England?

A. Yes.

Q. What is it?

A. It is a 405 line transmission, the principle part, and they have also more recently had 625 line.

Q. But that was since June 1, 1963, wasn't it, the commercial use of a 625 line? Do you know?

A. I don't know precisely the date. At some point in there they decided that they were going to have it and there was a great intreest in 625 line sets
116 in the British market up to the time when it finally was made a commercial service.

Q. In other words, when you testified back in—you told the Court back in February of 1964 that Zenith had sent a few television sets to Mr. Ramsey which he had attempted to market, you did not know whether or not those sets were equipped to receive English television?

A. No, sir, I did not.

Q. Well, didn't you give that testimony for the purpose of indicating to the Court your readiness to enter the English market with sets which would receive English programs?

A. I did not give that testimony for any other purpose than to state the fact, Mr. Kayser.

Q. What was the fact?

A. Well, the fact was that if we were going to market

in the English market in the kind of quantities and numbers that we are talking about and that this case is all about, we obviously would have been shipping sets to England that were equipped commercially for the broadcasting that they are using in England. This is no great problem. We do this in—we ship sets to the Argentine,
117 kits, and they are made for CCIR.

Q. That is 625 lines, isn't it?

A. This is correct.

Q. Well, when you told the Court that Mr. Ramsey had attempted to market these sets, did you know whether or not he did in fact attempt to market them?

A. Do I know whether he had or not in fact—

Q. Attempted to market them.

A. I didn't know specifically what he had done.

Q. But you told the Court that he attempted to market them, is that right? I will show you your testimony if you have any question.

118 Mr. McConnell: Read him his testimony and ask him if he said it.

The Court: He read it a few minutes ago, Mr. McConnell.

By the Witness:

A. I don't specifically know what Mr. Ramsey did with those sets. I assumed when he bought the sets from us that he was at least testing the market with them, or displaying them, or in some way trying to further his ambition of building up a business in our products in England.

By Mr. Kayser:

Q. When did you send those sets to him?

A. I don't know.

Q. How did you know that you had sent them?

A. I can't tell you specifically how I came by that knowledge, but I have had conversations with Mr. Ramsey when he comes to our distributor conventions here, usually at least once a year. I have had conversations with him at his place of business in London.

Q. Didn't you file an affidavit in this case, Mr. Wright, on October 8, 1965, saying that from and after January 119 1, 1960, Mr. Ramsey wasn't your distributor?

A. I filed—

Mr. McConnell: Wait a minute, let the man see his affidavit instead of characterizing it.

Mr. Kayser: All right.

By Mr. Kayser:

Q. I show you the affidavit—

A. At some point Mr. Ramsey's status changed in that he became a distributor of Zenith Sales Corporation instead of Zenith Radio Corporation. I made an affidavit about that apparently.

Yes, I recall this affidavit.

Q. All right, is it correct?

A. Insofar as I know, it is correct, yes.

Q. Isn't it a fact that any television sets that were sent to England bearing the Zenith trademark were sent by Zenith Sales Corporation after January 1, 1960?

A. That may well have been. They may have actually invoiced them and done the shipping.

Q. In other words, Zenith Radio Corporation did not send sets over regardless of the line transmission, is that right?

120 A. Well, when I said "we" in that testimony, I was thinking of Zenith Radio Corporation, and/or Zenith Sales Corporation, and I was making no distinction in my testimony between one and the other.

Q. Well, is it your position that there is no distinction between Zenith Radio and Zenith Sales Corporation?

A. No, sir, I didn't say that. I said that when I was making that testimony previously I was making no distinction in my mind between the two.

Q. Now, also on this question of your efforts to enter the English market and which has a bearing on your alleged percentages—

The Court: Now, when is this, in the affidavit or the testimony—

Mr. Kayser: I am now going back to the record, your Honor.

The Court: All right, just so the witness has a hint as to what you are talking about.

Mr. Kayser: Yes.

By Mr. Kayser:

Q. On Page 693, examination by Mr. McConnell, you had stated—having to do with the modification of 121 sets:

> "These are modifications that aren't too difficult ordinarily, it is just like having another model on the line. I believe in England they have a different number of lines and they use AM sound instead of FM sound, but these are modifications. We have the same situation—
>
> "The Court: I mean, one of your lines here wouldn't function in England.
>
> "The Witness: No, sir.
>
> "By Mr. McConnell:
>
> "Q. You could set up a line that would—
>
> "A. Oh, Mr. Ramsey, in the back room of his little establishment, could make the simpler repairs and alterations that are necessary to make this work. We supply him with parts and kits to do that at times."

122 The Court: Well, what is the question?

Mr. Kayser: All right.

By Mr. Kayser:

Q. Now, my question is, what kits were you referring to? Were you referring to 405 line sets there?

A. No, sir, when I was referring to kits and parts that we had supplied Mr. Ramsey up to that time I was talking —thinking principally in terms of the things necessary to install a long wave band on radio receivers. Actually the television business never warranted setting up any such operation, although I did visit Mr. Ramsey's place of business and saw facilities that he had set up for this purpose should it ever become important.

Q. Did you say that that testimony had to do with radios?

A. Well—

Q. I would like to show you--

A. We were testifying about a lot of different things, but when I testified specifically about our sending him parts and kits to modify sets, the only thing I knew of and
what I meant at the time were the things necessary
123 to add long wave to radio sets.

Q. I would like to have you read starting at 691 with the question, "All right." This is by Mr. McConnell, "Have you made any effort at all to get into the English market with television," and read on from the question and answer on 693, if you will.

A. Yes, I have read it.

Q. That testimony had to do with radio or television?

A. No, the testimony appears generally to have to do with television receivers and radio isn't specifically mentioned.

Q. Well, do you know, sir, did Mr. Ramsey ever, during this four-year damage period, ever convert a Zenith set to the 405 line standard?

A. I don't of my own personal knowledge know whether he did or not.

Q. Were you aware, Mr. Wright, of the so-called Pilkington report which came out in England discussing the question of the number of lines in television sets?

A. I knew there was such a report. I have seen references to it in the trade press and portions of it quoted, but I don't believe I have ever read it in its entirety.

124 Q. Were you aware of the fact that it recommended a change over the 625 line transmission in England?

A. I had understood that it had reference to that, but I don't have any very detailed recollection of it.

Q. Isn't it a fact, Mr. Wright, that despite all of your figures on England television that Zenith actually had no interest in entering the English television market until such time as the 625 line system should be adopted and used for commercial broadcasting?

A. No, sir, that is not correct.

125 By Mr. Kayser:

Q. I would like to show you, to see if this refreshes your recollection, a document which is marked Plaintiff's Deposition Exhibit 38 at the deposition of Adam Ramsey taken in London, in September. This was page 329 of the September, 1959 issue of Radio Retailing.

I would like to call your attention specifically to a paragraph which I will read to the Court:

> "Mr. A. Ramsey, Managing Director of United Mercantile, who has recently been for some time in the USA studying market problems told our representative, 'We shall keep a very close watch on the U. K. market so that as the situation warrants it, we can bring in more Zenith products. At the moment, we are waiting to see what the government's decision will be regarding the third TV Channel before committing ourselves on importing TV receivers.'"

A. That does not refresh my recollection.

Q. That does not. You see there it refers to a trade 126 reception which was held by Mr. Ramsey in August, 1959?

The Court: The question is, does this refresh his recollection.

Mr. Kayser: Yes.

The Court: Do you want to change your answer or reiterate it?

By the Witness:

A. No, sir, it does not refresh my recollection.

The Court: All right. That is the end of that.

By Mr. Kayser:

Q. Were you aware of that trade reception?

A. No, I was not.

Q. You were not. I show you a document marked as Plaintiff's Deposition Exhibit 54 at the Ramsey deposition in September, which was page 21 from Electrical and Radio Trade, and I show you the article headed "Zenith TV here if 625 comes in." Does that refresh your recollection?

The Court: In regard to what?

By Mr. Kayser:

Q. As to whether or not Zenith was waiting for 625 line television before it entered the UK market.

127 A. No, it does not.

Q. I call your attention to Plaintiff's Deposition Exhibit 55 in the Ramsey deposition, which is the May 19, 1962 issue of Electrical and Radio Trade. I point out —I call your attention to the story "Zenith Ready." It says,

> "Zenith, the leading American TV manufacturer, is all set to provide 625 line sets to Britain as soon as the outcome of the Pilkington Report is known. A. R.

Ramsey, Managing Director of United Mercantile Company, sole distributors in the UK, told E. R. T. this week that color sets as well as black and white will be imported immediately the market opens."

Does that refresh your recollection as to whether or not—

Mr. McConnell: I object to reading things into the record which Ramsey said, which he never gave out in his deposition.

The Court: All I know is that Mr. Kayser, on cross-examination, can ask any question he wants. And what 128 he is reading doesn't tend to prove that this ever happened, and the objection is overruled.

By Mr. Kayser:

Q. Does that refresh your recollection as to whether or not Zenith was in fact waiting for the advent of 625 line TV before it entered the English market?

A. No, sir.

129 Q. I suppose your answer would be the same if I showed you four or five similar types of articles?

A. Yes, if they were from the same source and of the same type, and dealt with the same subject.

Q. You weren't aware of the fact that these stories were appearing in the English trade press, newspapers?

A. I have no recollection of them.

Q. Did Zenith ever indicate—or Zenith Sales Corporation ever indicate to Mr. Ramsey that it would enter the English market when the 625-line sets became usable?

A. I don't know of any such instance—any instance of that. As far as I know, it's been the policy of Zenith and its whole organization that we would get into that British market when we could.

Obviously, the 625-line sets would make it easier in a sense, because the conversion factor there is a relatively simpler one. But that had nothing to do with the question of whether we were in England or not.

130 Q. Now, as I understand it, Zenith Sales Corporation took over the export of radio and television to England starting January 1, 1960; is that right?

Mr. McConnell: Well, I object to that. There are documents, written documents, which govern the rights of the parties.

The Court: He's putting his case on. The objection is overruled.

By the Witness:

A. I don't recall any decision like that. I think that at some date in there, the export department of Zenith Sales Corporation started actually handling the sales to Mr. Ramsey and the billing, and so forth. And I believe the distributor contract was made with the Zenith Sales Corporation at some point in there.

By Mr. Kayser:

Q. Well, you mean handling the billing? Did Zenith Sales Corporation buy and resell?

A. I believe they did. The machanics of it is that the sets were sold by the parent company to the subsidiary, and then by the subsidiary to Mr. Ramsey.

131 Q. Well, that was the mechanics and also the legal effect, was it not?

A. Yes, sir.

Q. So that actually, after January 1, 1960, Zenith Radio Corporation had no distributor in the United Kingdom?

A. That's correct.

Q. Yet you told this Court in February of 1964 that Mr. Ramsey was your current man, did you not?

Mr. McConnell: Let's have his testimony if you are going to impeach him on it.

Mr. Kayser: All right.

Mr. McConnell: Or try to impeach him on it.

Mr. Kayser: I accept your first comment.

By Mr. Kayser:

Q. Well, at 689 you stated on direct examination:

"Q. Now, since the lawsuit which we have been talking about"—that was the RCA case—"has Zenith made any effort to sell radios in England?

"A. Yes, we have.

132 "Q. And with what results?

"A. Well, we made an arrangement with a man—I've forgotten the name of the company—the man's name is Adam Ramsey, who is the owner of it, or the proprietor of the business, who has been over here many times at our conventions and has been very enthusiastic about the possibility of developing our business in England."

And then—

Mr. McConnell: Wait a minute. Now, if he is going to attempt to impeach the witness, your Honor, the question is did he make that statement or did he so testify.

The Court: I'm waiting for the next question, because I don't know the purpose for which this was read.

By Mr. Kayser:

Q. Is that your testimony?

A. I recall that it is, yes.

133 Q. And over at page 709:

"Q. All right. Now let's come to England. When was the last time when the British Pool interfered with a dealer or prospective dealer of Zenith with respect to importation of radio receivers into England? And by interfere, so that there will be no misunderstanding, I mean made any sort of direct approach, oral, correspondence, or other threatening approach, neglecting general advertisements or notices in the trade press?"

And your answer was:

> "Well, we were completely cut out of England, where we did no business whatever, until, I would say, from a period—of my knowledge of the company—from the end of the War until approximately 1958 is my recollection—or '59, perhaps, when the current man who is representing us over there on some products took on the job of trying to build up some distribution."

Do you call that testimony?

134 A. Yes, sir.

Q. The current man you were referring to was Adam Ramsey?

A. Yes, sir.

Q. And in February, 1964, he was not your distributor; is that right?

Mr. McConnell: Wait a minute now. He's referring to "your" now. There is two companies involved here. If he wants to ask him Zenith Radio Corporation, all right.

By Mr. Kayser:

Q. All right. In February, 1964, he was not the current man of Zenith Radio Corporation?

A. Well, he apparently was the distributor who had an agreement with Zenith Sales Corporation rather than Zenith Radio Corporation. But I can never—when I testified before, as I said, I was making no distinction between Zenith Sales Corporation and Zenith Radio Corporation in that category. I will speak of "our distributor" in Portland, Oregon. Well, he's probably a distributor for Zenitth Sales Corporation.

Q. Well, Mr. Wright, you knew who the counter-claimant was here, did you not, in this case?

135 A. Yes, sir.

Q. It was Zenith Radio Corporation?

A. Yes, sir.

Q. Of which you were the president?

A. Yes, sir.

Q. And you knew, did you not, that this was an extremely important piece of litigation both to Zenith and to Hazeltine Research?

A. Yes, sir.

Q. Yet you say you didn't even know whether or not Mr. Ramsey was your distributor or your subsidiary's distributor?

A. Yes, I knew that perfectly well. When I used the term "our" in that previous testimony, I was speaking of "our" as including the whole family, the parent company and the wholly owned subsidiaries.

Q. Now, you told this Court that you had been excluded from England, Canada and Australia for many, many years by the patent pools?

A. Yes, sir.

Q. You told this Court that based on that exclusion, you were entitled to damages during the statutory period of four years?

136 A. Yes, sir.

Q. And you told this Court that you were claiming damage based on your U. S. experience in selling radio and television sets?

A. Well, I don't believe I testified to that previously.

Mr. McConnell: I object to characterizing his testimony. If we are going to get into his testimony—

The Court: I think you should read rather than summarize in a way, perhaps, that it might be favorable to the question as far as you are concerned. I think you ought to read the testimony.

By Mr. Kayser:

Q. All right. As to Canada, I would like to read to you from your testimony on 678.

Question by Mr. McConnell:

"From your experience in this business with Zenith, have you an opinion as to whether or not, in a free market, without any restrictions of the kind that we are talking about here, you could do proportionately as well in Canada? 137

"A. I don't have any doubt about it, Mr. McConnell.

"Q. What is your opinion?

"A. Excuse me. I believe—I am convinced that with the kind of quality products we make and the reputation we enjoy both here and in Canada, that taking away these clouds and difficulties that he have had with the Pool, these patent matters, that we could build up to a similar percentage of industry in Canada that we have in the United States."

Were you asked those questions and did you give those answers?

A. I recall that I did, yes.

138 Q: And it was based on that testimony that you concurred in the figures given in Exhibit 220?

The Court: In regard to Canada, do you mean?

By Mr. Kayser:

Q. In regard to Canada.

A. Well, I don't know which came first. As I recall it, I had the conferences relating to the exhibits and the damage claim before my testimony. It may have been the other way around, I don't remember which is which.

Q. But you concurred in the Exhibit 220?

A. Yes, sir.

Q. All right. Now, I would like to read from your testimony in relation to the United Kingdom.

The Court: Is it the same time and place?

Mr. Kayser: Yes, also in February 1964.

The Court: Well, read his question and answer.

By Mr. Kayser:

Q. Reading, starting at Page 694:

139 "Q. Well, have you an opinion as to whether or not you could obtain a comparable share of the English market if you were free from the restrictions which we have been talking about here?

"A. Well, I think we could attain a fairly respectable share of the British market. But I can't say that I think we would get, say, around 20 per cent of the market that we get here in the United States. The distances are too great.

"But I think—I don't have any question in my mind that we could do a substantial share of the British business if we were given an opportunity to compete without these restrictions.

"Q. What proportion of that market do you think you could attain?

"A. I would say we could get a half of our per cent of the industry in the United States. In other words, if we did 20 per cent here, I would think that we could build up to a 10 per cent share of the British market." 140

Were you asked those questions and did you give those answers?

A. Yes.

Q. You referred in your first answer about what you could do if "we were given an opportunity to compete without these restrictions." What restrictions were you talking about?

A. I was talking about the pool restrictions.

Q. And I believe you did not testify as to Australia; is that correct?

A. I don't believe I was asked anything about market share in Australia, no.

Q. But you concurred in the figures in Exhibit 220?

A. Yes, I did.

Q. Well, if as you, I believe, have agreed, Mr. Wright, you took the position that for many, many years prior to June '59 you were excluded from all three markets, why did you not in all three countries assume entry into the market place on June 1 with an established market?

A. Well, we were aware that there were difficulties in obtaining import licenses in England and Australia
141 up to that time.

Q. Up to that very date?

A. Up to that period of time. I don't know that I was ever aware of just what particular day was involved.

Q. How did you happen to choose June 1 if you didn't know the exact date of the removal of the restrictions?

A. I don't know. I can't add anything to what Mr. Kaplan said this morning. That was something the attorneys apparently supplied.

Q. They supplied the June 1, 1959, date?

A. Yes.

Q. Which attorneys supplied that?

A. I don't recall. I assume it was either Mr. Curtis or Mr. McConnell, but I can't tell you which one.

Q. In other words, they told you that by reason of the problems of import, you should use June 1, 1959, as the—

A. No—

Mr. McConnell: I object.

By the Witness:

A. No, I don't recall any conversation such as
142 that.

By Mr. Kayser:

Q. You don't. During this four-year period, in referring to England, did you know what the average price was of an English television set sold at the retail level?

A. During all of that period?

Q. During any part of it.

A. Yes. I had, at least at one point I had seen figures on what the competition was in terms of receivers. I had been in England myself. I had seen them in retail establishments.

143 Q. How recently had you been in England?

The Court: Recently in regard to what?

By Mr. Kayser:

Q. How recently at the time you testified in February, prior to February 1964?

A. Well, it was quite a few years before February '64.

Q. Well, how many?

A. About nine.

Q. That's about 1955, right?

A. Yes.

Q. And on the basis of seeing some sets in '55, you figured that you knew what the prices were in 1959?

A. No, that wasn't my basis. We had market surveys; we got information on the British market from people like Mr. Ramsey who came over to call on us at least once a year; I had a visit from at least one representative of an English manufacturer almost every year during those ten years in which we discussed the situation in the British market.

Q. Well, I believe here in 1959, for the last seven months of '59, your average Canadian price was $148.73.

You can refer to your Exhibit 220 if you are un-
144 certain.

A. Yes.

Q. Now, is it not a fact that Mr. Ramsey in his sales applied a multiplier of 3.7 to that Chicago price in deciding what the suggested resale—retail price should be?

A. I don't know that that is what he did.

Q. You don't know?

A. No, sir.

Q. You don't know that a Zenith selling in Chicago for $148 with that multiplier would sell in the neighborhood of $540 in England?

A. Well, that doesn't sound like a proper multiplier to me.

Q. And you don't know what the English price was during the four-year period?

A. Are you now talking about the price of the competition in England—

Q. I am talking about the price which competition would charge at the retail level, including the purchase tax.

A. I have seen figures on this with the ranges from the bottom to the top and median over at least a part
145 of this period of time, but I don't have it in my mind now.

Q. The median was under $200, was it not?

A. Oh, that's not my recollection of it. There were some table models that were under that, but I was surprised at the price levels over there, at the height of them.

Mr. Kayser: That is all, your Honor.

The Court: Anything further?

Mr. McConnell: Yes, I have a few questions.

The Court: Go right ahead.

Redirect Examination by Mr. McConnell.

Q. You were asked about a contract between Zenith Radio and Mr. Ramsey. Are you aware that that contract did not cover television sets at all, the distributor contract?

A. I had heard that, but I don't recall that I ever specifically saw the contract.

Mr. Kayser: Objection unless it is produced, because I'm not asking about a written contract. If you do—

Mr. McConnell: You asked him about his general
146 knowledge of what he did with Ramsey.

Mr. Kayser: Well, the best evidence of the contract would be the contract itself.

The Court: The best evidence on the contract is the contract itself, but this certainly isn't very helpful when he says he has no knowledge of it.

Of course, some of your questions didn't produce any solid results either, so if he wants to get soft on these questions, I will give him his chance.

Mr. McConnell: Thank you, your Honor.

The Court: All right.

147 Mr. McConnell: If it is important, I think the document is in the file with the Ramsey deposition.

The Court: Anything further?

Mr. McConnell: Yes, just a minute, your Honor. I am looking at my notes.

By Mr. McConnell:

Q. Now, you were asked about the restrictions of the Pool. In your previous testimony here in this Court, didn't you tell the Court that if you sent television sets over to England that they were subject to forfeiture under the English Patent Laws?

A. Yes, sir.

Mr. Kayser: Will you read his testimony, please?

Mr. McConnell: Well, I am not trying to impeach him.

By Mr. McConnell:

Q. Is that the sort of restriction that you were referring to?

A. Yes, sir.

Q. That would impede your attempt to market television sets in England?

A. Yes, sir.

148 Q. And you were thoroughly aware of that, weren't you?

A. Yes, sir.

Q. You were asked about the different lines of 405 and 625; are you aware that manufacturing companies in England do produce sets with 405 lines and 625 lines?

A. Yes, it is my understanding that they produce sets which are capable of receiving both the 625 and the 405.

Q. Is there any reason at all that you know of that Zenith couldn't produce such a set?

A. None whatever. We produce sets to meet—and kits and parts and knock-downs to meet local conditions in varying export markets in many places in the world.

Q. And you would put that on a separate assembly line, would you not?

A. If there was any kind of volume such as we are talking about here in Canada and places where there are some slight differences, we would make a separate line.

Q. But you did not have the volume in England that would justify that?

149 A. No, sir.

Q. You didn't have any market at all, did you?

A. Not in television, no.

Q. What was the reason for that?

A. The reason was that we just could not get in there because of the threats that this Patent Pool would make against any person that would try to distribute our goods.

Q. Now, you were asked about who was selling radio in England and I think you said the Zenith Sales Corporation after 19—January of 1960 had a contract with Mr. Ramsey to distribute radios. Who sold your sets in Canada as between Zenith Sales Corporation and Zenith Radio?

A. All sales to Canada, in my understanding, had been directly by Zenith Radio Corporation.

Q. Is there any agreement that you know of, any contract or agreement, written, oral or by understanding that would prevent Zenith Radio Corporation as distinguished from Zenith Sales Corporation from selling television sets in England or anywhere else?

A. No, sir, none whatever.

150 Q. In other words, the only thing that would prevent it is what you testified to, the pool?

A. That is correct.

The only function that Zenith Sales Corporation ever provides is as an instrumentality in some instances of sales and reselling goods made by the parent company, and there is no—it is entirely within the control of the parent company as to when and if that procedure is employed.

Q. And you as president—

The Court: I suppose that this is being offered pursuant to the pending motion which I haven't even got to.

Mr. Kayser: I was wondering myself, your Honor, what the examination was for.

The Court: Well, I assume that is what it is for.

Mr. McConnell: If your Honor is right, and I just don't want the record to be—he put it in for that same reason, I assume.

Mr. Kayser: No, I didn't.

The Court: All right, you have got it in the record
151 and he has it in the record and everybody is happy,
and let's get down to this lawsuit that we are trying
today.

Mr. McConnell: Thank you, your Honor.

By Mr. McConnell:

Q. Now, there was some talk here about the effect of starting from scratch, to use the colloquialism. From your experience in handling the products of Zenith Radio Corporation, would the beginning period of the market have to be small because you were starting from scratch?

A. Well, not necessarily.

Ordinarily, in order to sustain any sizable merchandising operation, you have got to have an inventory situation at the distributor level and at the dealer level, and when you are going into a market with the idea of doing a first class job and getting a major share of that market, your first step is to get distributors and dealers and then to load the pipes with merchandise.

In the United States it has been our experience in television that our distributors need to have a minimum of four
weeks' supply and up to—we feel better about a six or
152 eight-week or even ten-week supply of inventory in
order to service their account.

There is a similar inventory situation, although we don't have as good figures on it, at the dealer level; so that what you like to have is eight weeks of inventory in the hands of the distributors and at least an equal amount in the hands of your dealer accounts so that if you were starting in this case you would undoubtedly have the higher level of sales in the initial period that actually would not have moved to the consumer level yet, but would be in the hands of the people along the way.

Q. Well, you were selling your product f.o.[illegible] factory here in Chicago, were you not?

A. That is correct.

Q. And in making your estimates here you took into consideration, I take it, the freight, insurance, tariff in England?

A. Yes, sir.

Q. Did you allow a markup for the retailer on the product?

A. Yes, sir.

Yes, we assumed that our goods had to be competi-
153 tive in the market, not that we would sell at the same
price. We figured that we could do this kind of business

in England and Australia, selling at a premium over the ordinary level of prices of the other manufacturers there. We get a higher average price here in the United States than our competition does.

154 Mr. McConnell: I have no further questions, your Honor.

Recross-Examination by Mr. Kayser.

Q. How big a premium did you think you would be selling at in England over competitors?

A. Well, this would vary from model to model. I would think it might be anywhere from 15 to 35 per cent.

Q. 15 to 35 per cent.

How about 100 per cent?

A. I would doubt that we would be 100 per cent over the competition.

Q. Well, would you also—

A. On any item.

Q. Would you also doubt that you could sell at 100 per cent over competition?

A. Excuse me?

Q. I say, do you think that you could sell if your prices were double those of the competition?

A. I think we could sell, but it certainly would be a handicap in selling.

Q. You think that you could sell any volume of tele-
155 vision sets charging twice as much as your competitors?

A. We could not do a very substantial part over the industry business selling at a 100 per cent over the market, no, sir.

Q. But what about if you were a 150 per cent over?

A. It seems to me that that almost answers itself.

Q. Well, a 100 per cent almost answers itself, doesn't it?

The Court: He has given an answer.

By Mr. Kayser:

Q. Now, Mr. McConnell asked you about what happens in an initial period; I believe you know that the English import restrictions did not go off until June 8th, is that correct?

A. I have heard that.

Q. And you also know that you appointed a distributor after that time.

A. I don't recall exactly when Mr. Ramsey was appointed.

Q. You don't know whether it was before or after June 8th?

A. No, sir.

156 I think the record shows it, but I don't recall the dates.

Q. Do you know that he was literally a one man operation?

A. Well, I knew he was—it was a small operation, yes. I did not know it was literally one man.

Q. Well, it was not a—do you know whether he had ever distributed radios or televisions before?

A. No, I don't. He had extensive merchandising experience and I think he came to us recommended by a man who had been a distributor of ours in Israel for thirty years.

Q. Well, is it your testimony that you could have sold, in the last seven months of 1959, 63,210 television sets in England, starting from scratch on June 8th or June 1?

A. I don't see how anybody could, under oath, try to reconstruct a situation and say that on this day you would sell 3,000 sets and on this day you would sell 2,000, or in this particular month or three months or six months that this is precisely what would be sold.

157 This represented our best judgment, applying what we know about this business and taking into account the factors that we thought were important as to how this

business would break down, but as—actually our sales vary from week to week and from month to month here in the United States, and I am sure that the situation would be no different in England.

If we were in a loading program getting in there in the last half of that year and getting up to the Christmas Season and building up and sending a lot of goods over by ship, I don't think it is inconceivable that the figure might come out right at that point, but I can't say that it would.

158 Q. Now, in Australia, isn't it a fact that you did not even inquire as to whether or not the import restrictions were off until March of 1960?

A. I don't know that that is a fact, Mr. Kayser.

Q. You don't know?

A. No.

Mr. Kayser: That is all.

The Court: Are you through?

Mr. McConnell: Nothing further, your Honor.

* * * * *

COLLOQUY AND REMARKS BY COURT.

* * * * *

The Court: Very good. We will have a short recess and you will call your next witness.

Mr. McConnell: We have no more witnesses.

* * * * *

159 The Court: Anything, Mr. Kayser?

Mr. Kayser: Well, your Honor, under the Court's direction I have understood that the only witnesses to be here today were the Zenith witnesses. This was the effect of your Honor's ruling.

The Court: You have no witnesses to offer today or any other time?

Mr. Kayser: No, I did not—under this ruling it provided merely that the Zenith witnesses would return.

The Court: Well, then, this is the end of the hearing, in your opinion?

Mr. Kayser: Well, Zenith has produced its witnesses other than the third witness who I—from what I have heard probably has nothing—

The Court: Everybody rests? Is that what I understand?

Mr. McConnell: Yes, I rest.

The Court: You rest?

Mr. Kayser: I rest to the extent that I have cross-examined the Zenith witnesses that were produced.

The Court: Does anybody have anything to say as 160 a result of what has occurred, then?

Mr. Kayser: Your Honor, I would certainly like a chance to argue this and call to your Honor's attention a great many things that are in this record that have been overlooked today.

The Court: You are certainly going to get an opportunity to do so, and I suggest that you, having expressed a desire to do so, that you proceed to do so.

Mr. Kayser: Well, Mr. McConnell wish to argue? After all, he is the moving party here.

The Court: Well, Mr. McConnell can sum up, if he wishes, what the Zenith witnesses have said, which as the Court understands is their testimony that at the time they gave these percentages they had in mind that they applied to a zero situation.

Mr. McConnell: I cannot add anything to it by argument.

The Court: All right, that is his argument. The Court made it for him. Now you respond to Mr. McConnell.

* * * * *

263 The Court: There could be no question in my mind that Zenith suffered damages during the damage period by virtue of the pools which I have found, and reiterate, existed at the time of the damage period. There was precedent for using the method that was used by the Court for ascertaining the damages as far as Canada was concerned. A further hearing has indicated that the situation in regard to the United Kingdom and Australia was different than it was in regard to Canada; that the pool was not the sole reason that sales could not be made prior to the damage period in the United Kingdom and Australia.

I'm unaware of any authorities that cover a thing such
as this. I suppose it could be argued that had the Gov-
ernment embargoes not existed, that that would have made
no difference in regard to the ability of Zenith to import
into England and Australia, and there would be merit to
that argument. However, I can't say that the inability to
establish what the market would have been, had it not
264 been for these pools, is in the same category as it was
in Canada because the pools themselves were not re-

sponsible for the ability to determine what the market might have been prior to the lifting of the embargoes.

I have difficulty believing that, with the competition in radio and television, and with the acknowledged fact that Zenith is a premium product selling even in America for more than the competition, and who because of tariffs and other regulations must of necessity have sold for much more in the United Kingdom and Australia. However, because of the fact that it's a premium article, I feel certain that there would have been those, after becoming convinced, who would have paid that premium to obtain a Zenith.

I feel that in regard to both countries, it is unrealistic to believe that starting out from scratch they could have achieved the percentage of the market and the percentage of profits that Exhibit 220 indicates they might receive. And as I have indicated, there is no question they lost money by virtue of the pools' excluding them.

In regard to the United Kingdom, the Court is not disposed to quarrel about the difference between June
265 1st and June 8. It appears to the Court that under the evidence, that a more realistic date in regard to Australia would be April 1st of 1960, and that for the period prior to April 1st of 1960, it would be unrealistic to indicate that Zenith suffered any economic loss by virtue of the pools.

The Court has difficulty in believing—and as I understand it, I'm not bound by the fact that evidence is uncontradicted and undenied; it must be believable in the first instance. And the Court is aware of the pride of officers in their corporation, and the belief in their product, but it is unrealistic to the Court for me to believe that Zenith, as a quality item, selling in excess of locally manufactured items, could have attained the profits for Zenith that are indicated by the guesstimate which everybody indicates is what Exhibit 220 is.

The Court feels that for the first calendar year after the damage period started, which would be June 1st in the United Kingdom and April 1st in Australia, that Zenith
or anyone else would have been and should have been
266 satisfied with not incurring a loss for that calendar
year. In regard to a quality item, more than mere advertising is necessary to persuade the buying public. There must also have been word-of-mouth and word-of-praise from those who had become owners of the quality product to those who were prospective purchasers.

And for that reason, the Court rules—and I'm going to let you gentlemen figure out the mathematics of it—that in regard to the first calendar year after the damage period started, as I have indicated the dates, that there should be no lost profit in either the United Kingdom or Australia. That is the first calendar year.

I believe that there is a growing increase in the market of a quality product such as Zenith, which would not have jumped as rapidly as Exhibit 220 indicates. So in regard to the second calendar year, the Court finds that the damages would be 50 per cent of those indicated for the second period on Chart 220.

In regard to the third calendar year, they would be 75
per cent of the profits indicated by the amount indi-
267 cated in the last column on 220.

And in regard to the fourth calendar year, and I guess that only applies to the United Kingdom because of the differential of nine months involved, that the figures, the lost profits indicated in regard to the fourth calendar year would be 100 per cent of the amount indicated on the lost profit or loss-of-sales item in the last column on Exhibit 220.

Counsel are requested to draw an order complying with what the Court has announced and save the Court the difficulty of the mathematics involved. And having perhaps arrived at a conclusion that is unsatisfactory to both sides, it gives me heart that this is a good decision.

Call the next case, Mr. Clerk.

Mr. Kayser: Your Honor—

Mr. McConnell: If the Court please—

Mr. Kayser: May we have some time to file offers of proof?

The Court: You may file your offers of proof.

The record I want to indicate at this time—there has 268 to be an end of litigation. I don't intend to permit a second chance to do the things that might have been done at the first trial. I have the tag end of this litigation in the back room that, now that I have disposed of this, I will dispose of, and that is a matter of an indispensable party. That I hope to dispose of very rapidly.

Then, whatever occurs from now on, I hope will occur on the 27th floor of this building and not on the 21st floor. Both of you may say whatever you wish.

* * * * *

269 The Court: That's what I will do, and you may have 20 days to file written offers of proof so that we can get this show on the road and off the 21st floor. All right.

* * * * *

404 UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

Name of Presiding Judge, Honorable Richard B. Austin.

Cause No. 59 C 1847 Date Nov. 28, 1965

Title of Cause Hazeltine v. Zenith.

Brief Statement of Motion

Adjourned HRG

Reserve space below for notations by minute clerk.

Further argts hd & concld—Lv to Hazeltine to fl offers of proof within 20 days—Motion of Zenith for attys fees and costs under advisement & ruling reserved.

Austin, *J.*

405 United States District Court.

* * Caption—59-C-1847) * *

NOTICE OF MOTION.

To: Victor P. Kayser, Esq.
Chadwell, Keck, Kayser, Ruggles & McLaren
135 South La Salle Street
Chicago, Illinois
Attorneys for Plaintiff-Counterdefendant.

Please take notice that on Tuesday, November 30, 1965, at 10:00 o'clock A.M., or as soon thereafter as counsel can be heard, Zenith Radio Corporation, Defendant-Counterclaimant, by its attorneys, will appear before the Honorable Richard B. Austin, Judge of this Court, in the courtroom usually occupied by him, and will move the court to enter the enclosed finding of fact and judgment order, copies of which, together with this motion, are herewith served upon you.

Dated this 29th day of November, 1965.

Francis J. McConnell,
Attorney for Defendant-Counterclaimant
Zenith Radio Corporation.

Of Counsel:
McConnell, Freeman, Curtis & McConnell,
134 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

United States District Court,
Northern District of Illinois,
Eastern Division.

Name of Presiding Judge, Honorable Richard B. Austin.

Cause No. 59 C 1847 Date Nov. 30, 1965

Title of Cause Hazeltine *vs.* Zenith Radio Corporation

Brief Statement of Motion

Defts motion to enter amended finding of fact and to enter final judgment entd & contl to Dec. 13, 1965 on mo of pltff—motion of Hazeltine to dism counterclaim for lack indispensable party is denied—

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and addresses of moving counsel
McConnell, Freeman, Curtis and McConnell
134 South La Salle Street, Chicago, Illinois 60603

Representing
Defendant

Names and Addresses of other counsel entitled to notice and names of parties they represent.
Victor P. Kayser, 135 S. La Salle Street, Chicago, Ill.
Reserve space below for notations by minute clerk.

Enter order.

Austin, J.

408 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

MEMORANDUM OF PLAINTIFF, HAZELTINE RESEARCH, INC., CONCERNING FORM OF PROPOSED AMENDED FINDING OF FACT XXXVI AND PROPOSED FINAL JUDGMENT SUBMITTED BY ZENITH RADIO CORPORATION ON NOVEMBER 30, 1965.

This Court on November 30, 1965 gave Hazeltine Research, Inc., leave to file objections to the proposed form of Amended Finding XXXVI, and Final Judgment, submitted by Zenith. It should, of course, be understood that in making its objections and suggesting alternate or additional language, Hazeltine Research is addressing itself solely to the question whether the proposed Amended Finding and Final Judgment are in conformity with the oral opinion of this Court rendered November 23, 1965, and does not consent to the entry of the Amended Finding and Final Judgment or waive its right to question its entry and to appeal therefrom.

409 The Proposed Amended Finding of Fact XXXVI.

In proposing its Amended Finding of Fact, Zenith has submitted to counsel for Hazeltine Research, and we assume to this Court, a two-page document headed "Award by Federal District Court for United Kingdom and Australia—Allocation to Damage Years," a copy of which is attached hereto. This document purports to show revised computations of alleged damage for each of the periods referred to in the Court's November 23, 1965 opinion and the totals so shown are incorporated in the proposed Amended Finding. However, this two-page document is not referred to in the Amended Finding.

We suggest, so the record may be complete and the Court of Appeals on a review may have all of the information before it, that first, the Finding should recite that it is entered pursuant to the Court's oral opinion of November 23, 1965 and, second, the computations involved in arriving at the totals shown in the Amended Finding should be included as a part of the record.

Accordingly, we believe that the last sentence of page 1 of the proposed Finding should be amended so that the language starting “but modifies and amends its finding,”
410 etc., be rewritten to read:

> “but, pursuant to its oral opinion rendered November 23, 1965 and to the revised computations shown in the document entitled ‘Award by Federal District Court for the United Kingdom and Australia—Allocation to Damage Years,’ attached hereto, modifies and amends its finding as to the amount of damages in these markets as follows:”.

A copy of said document should be attached to the Amended Finding.

The date shown on the heading to the proposed Finding of Fact should, of course, be changed.

The Proposed Final Judgment.

As concerns the matter of costs and attorneys fees, referred to in both the second and third paragraphs of the proposed judgment, we understand that under the Court's ruling of November 23, 1965 this whole subject has been reserved for later consideration by this Court after an appeal. If Zenith intends that its proposed language relative to costs and fees should be construed to have any other meaning, then to that extent, we object to it.

As concerns the second paragraph of the order, the date of the original judgment was, of course, April 5, 1965, not April 2, as indicated in Zenith's draft.

411 In the first paragraph of the judgment, the reference to the date of the Finding should be changed to the actual date of entry.

Respectfully submitted,

Hazeltine Research, Inc.,
By /s/ Victor P. Kayser,
by C. L. C.,
135 South La Salle Street,
Chicago, Illinois.
One of its attorneys.

413

AWARD BY FEDERAL DISTRICT COURT FOR UNITED KINGDOM AND AUSTRALIA.

	Per Claim	Allocation to Damage Years				Judgment	
		Months	Amount		Total	%	Amount
United Kingdom Television							
1959 (7 mo.)	$ 1,517,357	7	$1,517,357	6/1/59-5/31/60	$2,317,957	0	$ —
1960	1,921,439	5	800,600				
		7	1,120,839	6/1/60-5/31/61	1,944,878	50%	972,439
61	1,977,694	5	824,039				
		7	1,153,655	6/1/61-5/31/62	1,906,158	75%	1,429,619
62	1,806,007	5	752,503				
		7	1,053,504	6/1/62-5/31/63	1,910,866	100%	1,910,866
63 (5 mo.)	857,362	5	857,362				
Total	$ 8,079,859				$8,079,859		$ 4,312,924
Radio							
1959 (7 mo.)	$ 127,203	7	7 127,203	6/1/59-5/31/60	$ 215,891	0	$ —
1960	212,851	5	88,688				
		7	124,163	6/1/60-5/31/61	254,963	50%	127,482
61	313,921	5	130,800				
		7	183,121	6/1/61-5/31/62	322,372	75%	241,779
62	334,203	5	139,251				
		7	194,952	6/1/62-5/31/63	375,841	100%	375,841
63 (5 mo.)	180,889	5	180,889				
Total	$ 1,169,067				$1,169,067		$ 745,102
Total U. K.	$ 9,248,926						$ 5,058,026

Australia							
Television							
1959 (7 mo.)	$ 89,875	7	$ 89,875	4/1/59-3/31/60	$ 128,983	Elim.	
1960	156,430	3	39,108				
		9	117,322	4/1/60-3/31/61	156,616	0	$ —
61	157,177	3	39,294				
		9	117,883	4/1/61-3/31/62	155,410	50%	77,705
62	150,106	3	37,527				
		9	112,579	4/1/62-3/31/63	155,898	75%	116,924
63 (5 mo.)	72,198	3	43,319				
		2	28,879	4/1/63-5/31/63	28,879	100%	28,879
Total	$ 625,786				$ 625,786		$ 223,508
Radio							
1959 (7 mo.)	$ 10,004	7	$ 10,004	4/1/59-3/31/60	$ 13,966	Elim.	
1960	15,846	3	3,962				
		9	11,884	4/1/60-3/31/61	15,669	0	$ —
61	15,138	3	3,785				
		9	11,353	4/1/61-3/31/62	15,413	50%	7,707
62	16,238	3	4,060				
		9	12,178	4/1/62-3/31/63	17,904	75%	13,428
63 (5 mo.)	9,543	3	5,726				
		2	3,817	4/1/63-5/31/63	3,817	100%	3,817
Total	$ 66,769				$ 66,769		$ 24,952
Total Australia	$ 692,555						$ 248,460
Total U.K. and Australia	$ 9,941,481						$ 5,306,486
Total Trebled	$29,824,443						$15,919,458

415 UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

MEMORANDUM OF HAZELTINE CORPORATION, APPEARING SPECIALLY.

At the time of the proposed entry of judgment against it earlier in 1965, Hazeltine Corporation, a Delaware Corporation, appeared specially for the sole purpose of opposing the entry against it of any judgment in this action, on the grounds set forth in said special appearance and the accompanying brief and affidavits, all of which were filed herein on April 2, 1965. Pursuant to the preceding special appearance, Hazeltine Corporation hereby opposes the entry against it of the "Final Judgment" proposed by Zenith Radio Corporation on November 30, 1965, or the entry of any judgment against it in this action, on the grounds previously stated.

Hazeltine Corporation
By /s/ Victor P. Kayser,
Victor P. Kayser,
135 South LaSalle Street,
Chicago, Illinois 60603.
One of Its Attorneys.

Of Counsel:
Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South La Salle Street,
Chicago, Illinois 60603.
RAndolph 6-2545.

1000 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

AMENDED FINDING OF FACT DATED NOVEMBER 30, 1965.

The Finding of Fact, No. XXXVI, heretofore entered herein on February 25, 1965, with respect to the damages sustained by Zenith Radio Corporation during the damage period June 1, 1959 through May 31, 1963, is hereby modified and amended with respect to England and Australia only as follows: The Court reconfirms its finding that the foreign commerce of Zenith was restrained and that Zenith was in fact damaged by the patent pools in England and Australia during the damage period but modifies and amends its finding as to the amount of damages in these markets as follows:

1001

England		
Television	$4,312,924	
Radio	745,102	$5,058,026
Australia		
Television	223,508	
Radio	24,952	248,460
Total England and Australia		$5,306,486

Enter:

R. B. Austin,
Judge.

Dated: Dec. 13, 1965.

1002 UNITED STATES DISTRICT COURT,

Northern District of Illinois,

Eastern Division.

Name of Presiding Judge, Honorable Richard B. Austin.

Cause No. 59 C 1847 Date Dec. 13, 1965

Title of Cause Hazeltine vs. Zenith Radio.

Brief Statement of Motion

Offers of proof of Hazeltine.

Motion of Zenith for entry of Fndgs of Fact & Concls of Law & Judg.

Reserve space below for notations by minute clerk.

Offer of proof recd on behalf of Hazeltine together with certain affidavits in supp thereof.

Enter fndgs of fact & concls of law (Draft).

Enter Final Judg in favor of Zenith Radio Corp., deft-counterclaimant & against Hazeltine Corp., et al. in sum of $15,919,458 and costs & attys fees—Jurisdiction of this Court reserved for hrg on costs & attys fees (Draft).

Austin, *J.*, Dec. 14, 1965.

998 IN THE UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

Hazeltine Research, Inc.,
Plaintiff,
vs.
Zenith Radio Corporation,
Defendant.

No. 59 C 1847.

FINAL JUDGMENT.

At Chicago, Illinois, in said Division and District on December 13, 1965, this matter coming on to be heard for the entry of a judgment herein, and upon Findings of Fact and Conclusions of Law heretofore entered herein on January 25, 1965, as modified by Amended Findings of Fact entered herein on December 13, 1965, and upon notice to all counsel of record, and the Court having heard the argument of counsel,

It Is Hereby Ordered that a joint and several judgment be entered herein in favor of Zenith Radio Corporation, the defendant and counterclaimant herein, and against Hazeltine Corporation and Hazeltine Research, Inc. in the amount of Fifteen Million Nine Hundred Nineteen Thousand Four Hundred Fifty-Eight Dollars ($15,919,458), together with the costs of this suit and a reasonable attorneys' fee, to be fixed by the further order of this Court.

999 It Is Further Ordered that jurisdiction of this cause be and it is hereby reserved for a further hearing on the amount of costs of this suit and reasonable attorneys' fees with respect to this judgment and the judgment heretofore entered herein on April 5, 1965.

Enter:

R. B. Austin,
Judge.

Dated: December 13, 1965.

IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause, before the Honorable Richard B. Austin, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Monday, December 13, 1965, at 10:00 o'clock, a.m.

Present:

Messrs. Chadwell, Keck, Kayser, Ruggles & McLaren (135 S. LaSalle Street, Chicago, Illinois), by Mr. Victor P. Kayser, and Mr. C. Lee Cook, Jr., on behalf of the Plaintiff;

Messrs. McConnell, Freeman, Curtis & McConnell (134 S. LaSalle St., Chicago, Illinois), by Mr. Thomas C. McConnell, and Mr. Francis J. McConnell, on behalf of the Defendant.

2 The Clerk: 59 C 1847, Hazeltine v. Zenith, plaintiff's offer of proof, motion of defendant for entry of findings of fact and conclusions of law, and order of judgment.

Mr. Kayser: Good morning, your Honor.

The Court: Good morning.

Mr. Kayser: We would like at this time to file our offer of proof consistent with a document entitled "Offer of Proof on Market Share and Damages." With this we are also filing a number of affidavits from persons in England and Australia and from an economist, marketing expert and—

The Court: This has to do, I assume, with tending to diminish the damages in that Zenith perhaps could not have sold what I have indicated they would sell during the damage period, is that right?

Mr. Kayser: Yes, your Honor.

The Court: This, in my opinion, is something that should have been offered at the original trial.

Mr. Kayser: Yes.

The Court: And I, of course, will—have never denied an offer of proof, and if you desire to file this offer
3 of proof, the Court will permit you to do so.

Mr. Kayser: Yes, we do.

Your Honor, if I may, I would like to make a statement for the record in connection with the offer.

The Court: All right, you may do so.

Mr. Kayser: And that is this, your Honor, that back on April 1, 1965, when your Honor held that there should be a hearing on whether or not radios and televisions could be imported into England and Australia during the damage period—

The Court: This was on the embargo issue?

Mr. Kayser: Yes. At that time your Honor said that if the restrictions were proved, then there could be some testimony as to whether the percentages of the market claimed under those circumstances, if that is shown to be the fact, whether the percentage figures should be as high as they are.

And then again on May 3 at a hearing on the motion to produce your Honor said, and I quote from Page 5 of the transcript:

> "The first hearing is going to be limited to this
> 4 embargo business, and if after that there is some reason for additional testimony, there being no embargoes for a certain period of time, why, then we will get to that step next."

Then on August 26th your Honor stated in the order entered on that date, when there was a consideration as to what should be the subject matter of depositions, after setting the date for the depositions, he said:

"At that time the Court will hear evidence solely on the question of the existence of import restrictions imposed by the Governments of England and Australia preventing the importation of radio and television sets from the United States in commercial quantities. In the event that plaintiff succeeds in proving the existence of such import restrictions in either country, the Court will fix a date for a future hearing on the question of market share, which date will provide sufficient time for the parties to conduct necessary
5 discovery and to take necessary depositions in the foreign countries involved."

Then, of course, as your Honor recalls, on October 21 you ruled the existence of the import restrictions preventing the import in commercial quantities had been established.

The Court: And we also had a hearing to this extent, that the original witnesses who estimated damages said that their estimates would have been the same regardless of the fact that there was or was not an embargo, or that they took that into consideration in arriving at their figure. I mean, Mr. Wright and the other gentlemen so testified, and had their testimony been different—

Mr. Kayser: That is correct.

The Court: —the Court might have gone on and had a further hearing.

Mr. Kayser: Yes.

Well, your Honor said as concerns that evidence on November 22nd, said:

"I feel that in regard to both countries it is unrealistic to believe that starting out from scratch they
6 could have achieved the percentage of the market and the percentage of profits that Exhibit 220 indicates they might receive."

The Court: And as a result of that belief I took some action.

Mr. Kayser: Yes, your Honor, that is also true.

The Court: And I think I was consistent.

Mr. Kayser: Well, this really completes my statement. I did want to state for the record that we felt that in view of the fact that we had established the import restrictions that the judgment should not be entered at this time and that we should be permitted the market share hearings referred to.

The Court: And the record, of course, shows that it is not entered in the amount that was originally fixed by the Court.

And now I have before me a final—I have two final judgment orders.

Mr. McConnell: Your Honor, I changed the judgment order because of the objection that was made by Mr. Kayser as to the date. I have acceded to his suggestion and changed the date.

The Court: Then the judgment order that is before me today is the one that is—

Mr. McConnell: December—

The Court: December 13th?

Mr. McConnell: That is correct, your Honor.

The Court: And the other one is withdrawn, is that right?

Mr. McConnell: That is correct.

The Court: Will you see that he withdraws it?

The Clerk: Yes, sir.

The Court: And the other matter before me is the amended findings of fact.

Mr. McConnell: That is correct.

The Court: Those orders are signed, Counsel.

Does that clean this up other than the attorney's fees and costs?

Mr. McConnell: I think so, your Honor. I don't know of anything else that is pending.

Mr. Kayser: There will be the matter of the stay, too, which we will bring up in the next day or so.

Mr. McConnell: There is an automatic stay.

Mr. Kayser: Yes.

The Court: I think I gave you leave to file your
8 offer of proof.

Mr. McConnell: I have never had any copies of these offers.

Mr. Kayser: Well, you do, Mr. McConnell.

I did not understand that we needed to, but as a matter of courtesy, we have served your office with copies.

Mr. McConnell: All right.

Mr. Francis McConnell: When?

Mr. Kayser: This morning.

The Court: The notice of an offer of proof isn't of such paramount importance that I am going to further retain jurisdiction.

Mr. McConnell: No, your Honor. I don't suggest that. I was just curious as to what they were.

Mr. Kayser: I assume, for the record, your Honor, that our offer of proof is denied?

The Court: I mean, you are given leave to file an offer of proof. I have never denied anybody leave to file an offer of proof, and I think that that makes your record the way that you want it to be.

Mr. Kayser: Yes, thank you.

* * * * *

1085 United States District Court,

Northern District of Illinois,

Eastern Division.

Hazeltine Research, Inc., *Plaintiff-Counterdefendant,* *vs.* Zenith Radio Corporation, *Defendant-Counterclaimant.*	Civil Action No. 59 C 1847

NOTICE OF APPEAL.

Notice is hereby given that Hazeltine Research, Inc., against whom a "Final Judgment" in the above entitled action was entered on December 13, 1965, hereby appeals to the United States Court of Appeals for the Seventh Circuit from said final judgment.

Dated: December 29, 1965.

John T. Chadwell,
Victor P. Kayser,
Attorneys for Hazeltine Research, Inc.

Of Counsel:

Laurence B. Dodds,
59-25 Little Neck Parkway,
Little Neck, New York 11362,
212-FAculty 1-2300,

Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603,
RAndolph 6-2545,

Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago, Illinois 60606,
FInancial 6-1677.

1087 UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

Hazeltine Research, Inc., *Plaintiff-Counterdefendant,* *vs.* Zenith Radio Corporation, *Defendant-Counterclaimant.*	Civil Action No. 59 C 1847

NOTICE OF APPEAL.

Notice is hereby given that Hazeltine Corporation, against whom a "Final Judgment" in the above entitled action was entered on December 13, 1965, hereby appears specially and hereby appeals to the United States Court of Appeals for the Seventh Circuit from said final judgment.

Dated: December 29, 1965.

John T. Chadwell,
Victor P. Kayser,
Attorneys for Hazeltine Corporation.

Of Counsel:
Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603,
RAndolph 6-2545.

INDEX.

Further Offers of Proof Made After Findings.

Offer of Proof in Support of Motion for Withdrawal of Findings and Conclusions As To Misuse 3547
Offer of Proof on Market Share and Damages 3550
Affidavit of John Sinclair Ewing (United Kingdom) .. 3570
Affidavit of B. T. Reilly 3595
Affidavit of Thomas Ludlow 3606
Affidavit of John H. Carter 3616
Affidavit of James Thomson Masterton 3620
Affidavit of Charles Arthur White 3625
Affidavit of S. E. Allchurch 3627
Affidavit of W. J. C. Chapple 3700
Affidavit of E. P. Dale-Harris 3701
Affidavit of Alan Alfred Packer 3707
Affidavit of John Sinclair Ewing (Australia) 3708
Affidavit of Sir Arthur Warner 3716
Affidavit of James Inglis 3721
Affidavit of Alfred Garraway 3733
Affidavit of Arthur Barrs 3745
Affidavit of S. W. Goodwin 3746
Affidavit of John Thorpe 3749
Affidavit of Bede Solomons 3751
Affidavit of Norman Levy 3754
Affidavit of William Gordon Wallace 3755
Deposition of Adam Ramsay 3758
Deposition of William Gundry Mills 3818
Zenith's London Deposition Ex. No. 6 3887
Zenith's London Deposition Ex. No. 9 3891

Zenith's London Deposition Ex. No. 10 3896
Zenith's London Deposition Ex. No. 12 3898
Zenith's London Deposition Ex. No. 13 3902
Zenith's London Deposition Ex. No. 27 3909
Plaintiff's London Deposition Ex. No. 17 3918
Plaintiff's London Deposition Ex. No. 18 3925
Plaintiff's London Deposition Ex. No. 19 3933
Plaintiff's London Deposition Ex. No. 20 3940
Plaintiff's London Deposition Ex. No. 26 3952
Plaintiff's London Deposition Ex. No. 27 3962
Plaintiff's London Deposition Ex. No. 33 3968
Plaintiff's London Deposition Ex. No. 34 3969
Plaintiff's London Deposition Ex. No. 37 3970
Plaintiff's London Deposition Ex. No. 38 3971
Plaintiff's London Deposition Ex. No. 40 3972
Plaintiff's London Deposition Ex. No. 41 3975
Plaintiff's London Deposition Ex. No. 42 3976
Plaintiff's London Deposition Ex. No. 43 3979
Plaintiff's London Deposition Ex. No. 44 3980
Plaintiff's London Deposition Ex. No. 46 3981
Plaintiff's London Deposition Ex. No. 47B 3983
Plaintiff's London Deposition Ex. No. 47E 3984
Plaintiff's London Deposition Ex. No. 47F 3985
Plaintiff's London Deposition Ex. No. 47G 3986
Plaintiff's London Deposition Ex. No. 47K 3987
Plaintiff's London Deposition Ex. No. 47M 3989
Plaintiff's London Deposition Ex. No. 47P 3990
Plaintiff's London Deposition Ex. No. 47V 3992
Plaintiff's London Deposition Ex. No. 47X 3993
Plaintiff's London Deposition Ex. No. 47AA 3995
Plaintiff's London Deposition Ex. No. 48 3996
Plaintiff's London Deposition Ex. No. 51 4000
Plaintiff's London Deposition Ex. No. 52 4007

Plaintiff's London Deposition Ex. No. 54 4021
Plaintiff's London Deposition Ex. No. 55 4021
Plaintiff's London Deposition Ex. No. 56 4022
Plaintiff's London Deposition Ex. No. 57 4023
Plaintiff's London Deposition Ex. No. 58 4023
Plaintiff's London Deposition Ex. No. 59 4025
Plaintiff's London Deposition Ex. No. 60 4031
Plaintiff's London Deposition Ex. No. 61 4098
Plaintiff's London Deposition Ex. No. 62 4108
Plaintiff's London Deposition Ex. No. 63 4116
Plaintiff's London Deposition Ex. No. 64 4116
Plaintiff's London Deposition Ex. No. 66 4117
Statement Required by Rule 12(d) of the Rules of the United States Court of Appeals, for the Seventh Circuit 4130

1799 IN THE UNITED STATES DISTRICT COURT

* * (Caption—59-C-1847) * *

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR WITHDRAWAL OF FINDINGS AND CONCLUSIONS AS TO MISUSE OF PATENTS

* * *

1815 OFFER OF PROOF OF OTHER LICENSES

To supplement the proof already in the record concerning other licenses outstanding, Hazeltine offers to prove the following license agreements by offering copies of the actual agreements and modifying letters in evidence:

(1) MAGNAVOX

Entered into as of October 1, 1959. The modifying letters are already in record as PX 52-55. Covers only one patent (patent in suit) for monochrome use at a royalty of 50% of that stated in the form for the group.

(2) SYLVANIA

Entered into as of January 1, 1959. Covers only single patent for monochrome use at royalty of 50% of that stated in the form for the group, and all patents for color use. Overall maximum annual royalty of $200,000.00 during 3-year renewal period; $150,000.00 annual maximum during initial 5-year term.

(3) WARWICK (Sears)

Entered into as of October 1, 1957. Originally package license but modified by letter of February 2, 1960 to
1816 cover only two monochrome patents at royalty of 80% of royalty stated in the form for the group; and further modified by letter of July 5, 1960 to cover only one monochrome patent at 50% of royalty stated in form. Also covers all patents for color use. By letter of November 19, 1964, license extended to December 31, 1966 and $200,000.00

annual maximum made applicable to the combined royalties on both the single monochrome patent and the group for color use.

(4) WESTINGHOUSE

Entered into as of July 1, 1958. Originally covered all patents, but modified by letter of October 9, 1959 to cover only single monochrome patent (No. 2,416,424) at royalty of 50% of rate stated in the form for the group; modified by letter of April 11, 1961 to delete patent No. 2,416,424 and to insert patent in suit.

(5) WELLS-GARDNER (Montgomery Ward)

Entered into as of July 1, 1957. Originally covered all patents for both monochrome and color, but as to monochrome it was modified by letter of June 22, 1961 to cover only single patent at a royalty of 50% of the rate stated in the form for the group.

(6) PACKARD-BELL

1817 Entered into as of July 1, 1957. Originally covered all patents for both monochrome and color, but as to monochrome it was modified by letter of July 7, 1960 to include only one patent use at a royalty of 50% of that stated in the form for the group.

(7) CURTIS MATHES

Entered into as of January 1, 1960. Originally limited to single monochrome patent at royalty of 50% of that stated in form for the group. By modifying letter of March 27, 1961 expanded to include all patents for use in color television sets.

(8) SETCHELL CARLSON

Entered into as of July 1, 1957, (now terminated). Covers only one single patent for monochrome use (the patent in suit) at royalty of 50% of that stated in the form for the group, and all patents for color use. Color license now in force (as of May 1, 1964) includes only six color patents at a royalty of $2.25 per chassis.

(9) GIANNINI CONTROL CORP.

Entered into as of July 1, 1961. Covered only single monochrome patent with royalty of 50% of rate stated in the form for the group.

(10) ADMIRAL

Entered into as of November 1, 1963. Limited to color use only and includes nine patents and one application at a royalty rate of 1.15% with a minimum of $100,000.00 and a maximum of $275,000.00 annually except that "until June 30, 1966 an annual maximum of $200,000.00 is applied."

IN THE UNITED STATES DISTRICT COURT

* * (Caption—59-C-1847) * *

417 OFFER OF PROOF ON MARKET SHARE AND DAMAGES

Hazeltine Research, Inc., by its attorneys, states that had it been permitted to do so, it would have proved, and hereby offers to prove, the following facts:

I. The economic and other conditions prevailing in the United Kingdom and Australia from 1959 through 1963 would have precluded any appreciable market penetration or profitable commercial operation in either country by an American manufacturer attempting to enter such markets and compete with locally manufactured sets by importing complete television and radio sets from the United States, particularly at the retail prices which would necessarily be charged in England and Australia for sets selling ex-
418 factory Chicago at the prices on which Zenith damages were computed. Zenith could not have gained anywhere near the percentage share of the United Kingdom or Australia markets claimed by the Zenith witnesses or assumed by the Court's award of damages. Instead, it is highly unlikely that Zenith could have achieved any measurable share of either market. Consequently, Zenith is entitled to no damages for lost profits in either the United Kingdom or Australia.

Hazeltine Research, Inc., if permitted to do so, would prove, by expert testimony, by testimony from businessmen and executives fully qualified by their experience in the United Kingdom and Australian markets to testify about factors existing in those markets, and by relevant documentary evidence, the following facts.

United Kingdom

A. The average retail prices which would have to have

been charged for average Zenith radio and television sets made in the United States and imported into the United Kingdom would necessarily have been much higher than the average retail prices prevailing in the United Kingdom during the period 1959 through 1963 and the price disparity by itself would have prevented Zenith from
419 gaining any identifiable share of the United Kingdom radio or television market. In fact, as pointed out below and in detail in the Ewing Affidavit, the average retail price of Zenith television sets would have been over 150% *more than* average retail prices of English made sets, and Mills, Zenith's own economic witness, admitted that even a 50% difference would prevent penetration. Mills deposition, pp. 55 and 62.

Further, during this period there was intensive price competition in the television market resulting from the market saturation which occurred in 1959. Production and sales volume declined sharply after 1959 and the decline continued to 1963. The television industry suffered drastically from excessive productive capacity, supply far outstripped demand, and average *retail* prices (excluding taxes) declined sharply to levels near or below Zenith's average ex-factory cost in Chicago.

Based on the ex-factory Chicago prices set forth in the Zenith damage exhibit, the retail price for the average Zenith television set if sold in England would have exceeded the average retail prices prevailing in the United Kingdom by 150% or more. The high price of the Zenith set would result from Zenith's high ex-factory prices, and the addition of shipping costs and import duties, the imposition of high purchase tax in the United Kingdom and other costs connected with the exporting from the United States to the United Kingdom. As a result, Zenith, would have been priced out of the market and would have
420 been able to make only an occasional luxury type sale.

B. Average disposable income is substantially less in the United Kingdom than in the United States. For this additional reason, it is highly unlikely that sales in appreciable quantities could have been made by Zenith at the price levels at which it would have been required to sell.

C. The largest single method by which television sets are acquired by United Kingdom consumers is the rental of such sets, an outlet which as a practical matter would have been foreclosed to Zenith. In the United States, television rental is almost non-existent, but in the United Kingdom, by 1959 more consumers acquired television by the rental method than by any other way, and the rental market continued to grow throughout the relevant period. Companies engaged in the television rental business would not have purchased their inventories from Zenith, because of its extremely high landed prices in the United Kingdom, lack of reputation in the United Kingdom, doubts about repair and service performance and other reasons stemming from the nature of the television rental market in that country. Part of the rental market was completely closed to Zenith because of the integrated operations of some manufacturer-rental companies. In addition, the remaining
421 rental companies which did not manufacture their own
sets would not have purchased imported television sets that would operate only after expensive and difficult technical modifications, when substantially less expensive sets requiring no modification and adequate supplies of spare parts were readily available from established and reliable domestic manufacturers, in sizes and styles known to be preferred by the British consumer.

D. Television sets manufactured for the American market would not function properly in the United Kingdom because of the difference in technical requirements governing television transmission and reception, thereby affecting set construction, and because of the different line voltages in the respective countries. Conversion of standard American sets to United Kingdom requirements would have been both expensive and for the most part impractical. Numerous technical changes are required, particularly for reception of the 405-line television most widely used in the United Kingdom. Without such conversion there would be no market in the United Kingdom for such sets.

Radio sets, while not requiring as many changes as television, would need to be adapted for the higher line voltages used in the United Kingdom and some would require modification to receive long wave transmission.

422 E. Zenith's penetration of the United Kingdom market would have been further handicapped by its lack of brand name acceptance in that market. Substantial advertising expenditures would have been required to establish consumer acceptance of the Zenith brand name, and any profits obtainable during the period of market entry would be reduced accordingly.

F. Additional large investments in repair and service depots and spare part inventories would be required from any foreign manufacturer seeking to enter the United Kingdom market. Without making such arrangements, or investing the necessary assets, it is unlikely that the newcomer could have successfully marketed on a commercial scale.

G. A purchase tax is imposed in the United Kingdom on all television sets and radios sold in that country. The tax is imposed upon the wholesale price (i.e., the price to the retailer) which, in the case of an imported set, would include the cost of transportation, duty, and other importing costs. The rates applicable during the indicated periods and the statutory authorities are set out below:

423

Period	*Rate*	*Statutory Authority*
16 April 1958 to 7 April 1959	60%	Finance Act, 1958, § 1 and First Schedule, proviso to par. 1(1) and Second Schedule, Group 18.
8 April 1959 to 25 July 1961	50%	Finance Act 1959, § 15(1)
26 July 1961 to 9 April 1962	55%	Finance Act, 1961 § 9(1) and (3). Surcharge on Revenue Duties Order (S.I. 1961 No. 1388)
10 April 1962 to 31 December 1962	45%	Finance Act, 1962 § 1(1) and § 6(1)(a)
1 January 1963 to. 31 December 1963 and beyond	25%	Purchase Tax (No. 7) Order 1962 (5.I, 1962 No. 2841) and Purchase Tax Act, 1963

H. A duty of 20% was applicable to radio and television sets imported from the United States during the period covered by this case. The duty applied to the landed cost, which includes all transportation cost at the port of entry, all commissions, broker's fees and other costs incidental to the sale and delivery of the goods to the place of importation. In addition, where the goods are imported by a sole concessionaire or associated company and the importer makes expenditures for purposes of creating a market
424 for the goods, such as advertising, sales promotion and the maintenance of a sales staff, the Customs and Excise branch of the English government frequently imposes an up-lift which increases the value of the goods for duty purposes. This was done in the case of Zenith radios imported by Zenith's English distributor. In addition, the

value of the goods for duty purposes would include the cost of any service or processing performed upon the goods prior to their being imported even though the cost of such service or processing was separately paid by the importer.

I. Various other economic factors present in the United Kingdom market combined with the foregoing factors establish that there is no correlation between the experience of a company in the United States market and its expected performance in the United Kingdom. In fact, the economic factors which would apply to an attempt by Zenith to enter the United Kingdom market with completed television sets exported from the United States would have rendered such an attempt unsuccessful. No measurable market share would have been achieved, and it is highly unlikely that any profitable commercial operations could have occurred.

425

Australia

A. The Australian market for television in the relevant period similarly was "saturated," in that supply far exceeded demand. Excess manufacturing capacity led to extensive and severe price competition, forcing retail prices to levels that were unprofitable to manufacturers and retailers alike. Numerous manufacturers and retailers were driven out of business during this period due to depressed market conditions. Other manufacturers operated unprofitably during this period. Under such circumstances it would have been impossible for any importer of full-size completed television sets profitably to penetrate the Australian market during this 1959-1963 period.

B. The Australian sales tax was a further deterrent to the importation of radio and television sets. While the rate applicable to radio and television sets during the relevant period was the same (25%) for both imported and locally made radio and television receivers, the tax imposed a heavier burden on imported goods because of the assessment

formula required by the sales tax acts. The assessment formula had the effect of increasing the value of the imported goods for purposes of applying the tax rate. The sales tax, which must be paid at the time of importation, would have been levied on a value determined according to the following formula: (1) If the importation was by
426 a registered distributor who sold to retailers, the value would be his price to the retailer which would necessarily include the duty, transportation, and a profit to him; (2) If the importation was by a retailer or an unregistered distributor, the value would be 120% of the sum of the following: the value for duty (current domestic value or the selling price in the country of origin, whichever is greater, plus cost of packing, inland freight and F.O.B. charges, excluding cost of picture tube, ocean freight and insurance) plus all duties including primage.

C. Television sets manufactured for the American market would not function properly in Australia because of the difference in technical requirements governing television transmission and reception, thereby affecting set construction, and because of the different line voltages in the respective countries. Conversion of standard American sets so that they would operate properly in Australia would involve prohibitive expense if performed on the limited volume of approximately 5,000 to 10,000 sets per year. Sets not so converted would face an unsurmountable handicap in competing with Australian-made television sets.

427 D. The Zenith brand name is not widely known in Australia, and heavy advertising expenditures would be necessary before consumer acceptance could have been obtained by Zenith. Such expenditures, combined with the import duties, taxes, conversion costs and other costs of exporting, would further limit Zenith's ability to import into Australia.

E. Because of the great distances between the large metropolitan areas of Australia any importer attempting to sell in the entire market area must have a branch or distributor outlet in each state of the Commonwealth. This cost would have to be borne by the manufacturer or else reflected in a higher retail price.

F. These same distance factors, plus the lack of brand acceptance, would have required the building of substantial spare parts, inventories and the establishment of service centers, all at considerable expense, in order to overcome consumer resistance to purchasing television sets that might require maintenance and repair during their useable life. Established Australian manufacturers must provide these services, and any manufacturer or importer seek-
428 ing to penetrate the Australian market could not do less.

G. Various other economic factors present in the Australian market, combined with the foregoing factors, establish that there is no correlation between the experience of a company in the United States market and its expected performance in Australia. In fact, the economic factors that would apply to an attempt by Zenith to enter the Australian market with full-size completed television sets and radios exported from the United States would have rendered such an attempt unsuccessful. No measurable market share would have been achieved, and it is highly unlikely that any profitable commercial operations could have occurred.

II. It is and has been plaintiff's position that the so-called British patent pool of radio and television receiver patents did not prevent Zenith from importing its products into the United Kingdom during the four-year period prior to the filing of the counter-claim herein. By the affidavit of E. P. Dale-Harris plaintiff offers further evidence that
429 the pool in the United Kingdom did not during the four-year period in issue have a policy of excluding imports. In addition, plaintiff offers to prove that the so-

called British patent pool did not even exist after June 30, 1964 and that in spite of that fact, Zenith has either not attempted to penetrate the English television market or if it has attempted to do so, has not been able to obtain any measurable share of that market. Evidence of what has occurred in the period of 17 months since the expiration of the British patent pool, as to which period there can be no claim of exclusion even under Zenith's theory, provides compelling evidence that either Zenith was not interested in the United Kingdom television market or unable because of economic factors to penetrate that market.

III. By reason of the high landed cost of radio sets in the United Kingdom and by reason of the high advertising, promotional and distributional costs which would be incurred, Zenith Radio Corporation had no intention of selling radios in the United Kingdom except on a limited commercial basis, to those few consumers who would pay extremely high prices for Zenith sets considered to be
430 an unusual and differentiated product. That Zenith
recognized that its high prices gave it only a limited market is shown by its early correspondence with its United Kingdom distributor, where it cautioned him against going "hog-wild on advertising" and against being too "ambitious" on his agency's program, "particularly in the face of a limited market, which the report indicates can be achieved at its very best, because of the unfavorable price factor" (Plaintiff's London deposition exhibit 60, pages 505-06). Other illustrative examples of such correspondence are the letters at pages 484 and 491 of Plaintiff's London deposition exhibit 60, all of which were identified at the deposition of Adam R. Ramsay and are a part of this offer of proof.

IV. Zenith had no intention or desire to sell the type of television sets which were commercially marketable in the

United Kingdom during the alleged damage period as shown by the following facts:

A. A standard United States television set is different technically from those in use in the United Kingdom during the period from 1959 to 1963 and even today. Among other things, there is a substantial difference in the number
431 of scanning lines in the picture transmission in the two countries. The United States system employs 525 lines. The British system during the four-year period involved here employed 405 lines. A large part of the rest of the world, including much of the continent of Europe, used a 625-line system. The United Kingdom recently adopted a 625-line system for one of its three channels, but that channel (BBC-2) did not commence regular broadcasting until 1964. There are a number of other important technical differences which would make a standard United States television set, without substantial modification, unuseable in the United Kingdom, but the scanning line difference is used here for convenient illustration.

B. From the time United Mercantile Company (Adam Ramsay, owner) was appointed by Zenith Radio Corporation as its distributor, and thereafter from about January 1, 1960 when it was appointed by Zenith Sales Corporation as its distributor, there was never, in fact, any interest on Zenith's part in selling television sets which would receive the 405-line transmission used in the United Kingdom.

C. From the beginning of such distributorship, it was the plan of Zenith Radio Corporation, and thereafter
432 of Zenith Sales Corporation, to sell television sets in the United Kingdom only when and if the British authorities would adopt the 625-line system, known as the "C.C.I.R. system," used on the continent and in most of the world.

D. At no time did Zenith Radio Corporation, or Zenith Sales Corporation, ever send to the United Kingdom a set which was adopted to the 405-line system, nor were any conversion instructions or kits ever sent for the conversion of the United States 525-line set to the 405-line set.

E. In 1959 and even earlier, there was speculation in the trade in the United Kingdom, that an expected new television channel of the BBC would employ 625-line transmission instead of the 405-line transmission then used by the BBC and the commercial channel in operation. In 1960, the government of the United Kingdom set up a committee which was known as the Pilkington Committee. Among other things, this Committee studied television broadcasting in the United Kingdom. It was widely felt and reported in the press that the Pilkington Committee would recommend the adoption of the 625-line transmission 433 for the new BBC channel and possibly the conversion of the existing 405-line transmission to 625-line transmission. The report of the Pilkington Committee which was made in July, 1962 did, in fact, recommend the use of a 625-line transmission system for the new channel, but the question of conversion of the existing 405-line channel was left open. While the report of the Pilkington Committee was made public in 1962, full scale operation of the second channel (BBC-2) did not commence until 1964.

F. Adam Ramsay, owner and Managing Director of United Mercantile Company, the English distributor of Zenith products, repeated on numerous occasions announcements to the press and to dealers and prospective dealers that Zenith television sets receiving 625-line transmissions only would be on the market in the United Kingdom when and if regular broadcast on a 625-line basis were begun. Illustrative newspaper and trade journal articles reporting such announcements were marked at the deposition of Adam Ramsay as Plaintiff's London deposition exhibits

37, 38, 54, 55, 56, 57 and 58, copies of which are filed with the original executed copy of said deposition in the 434 files of this Court. Also marked at the Ramsay deposition as Plaintiff's London deposition exhibits 47 G and 47 M were copies of actual price lists put out by United Mercantile containing statements to the effect that Zenith television sets would not be available until the 625-line transmission began.

G. Beginning in 1961 and continuing in 1962, there was correspondence between United Mercantile Company and Zenith Sales Corporation dealing with the conversion and other technical matters relating to the possibility of United Mercantile introducing Zenith television sets in the United Kingdom when the 625-line transmission came into operation. In addition, in 1962, Zenith Sales Corporation sent over to United Mercantile Company a number of television sets which had been adapted or were intended to be adapted to receive 625-line transmission for purposes of display and future sale in London. None of this correspondence related to conversion of a United States set to receive 405-line transmission and Ramsay never received a Zenith set which would receive 405-line transmission and did not convert any sets to receive 405-line transmission during the damage period.

H. Even after the commercial broadcast of 625-line transmission began, there was no market for a televi- 435 sion set receiving only this transmission, and to the present time the only television sets which have any market in England are those which will receive the 405-line transmission or both the 625-line transmission and 405-line transmission because the 405-line transmission is still used by the BBC-1 and ITV channels, the two principal television channels in England. The third channel, BBC-2, which broadcasts the 625-line transmission, is on the air only for limited periods during the day and in less than all of England.

I. In fact, the only television set which Zenith Radio Corporation was ever prepared to supply, and the only one which Zenith Sales Corporation was ready to sell and which United Mercantile Company was ready to market was the 625-line set which has never had a market in England, and none of said companies has ever been prepared to or interested in selling a set which will receive only 405-line transmission, or a set which will receive both the 405 and 625-line transmission.

J. While conversion from the 525 (American) system to the new and less used 625-line British system is technically possible although economically impractical under United Kingdom marketing conditions, conversion
436 from the American system to the old and primarily used 405-line system is not practical either technically or economically. The reason Zenith never sent conversion instructions or conversion kits to convert a 525-line United States-made set to the 405 English system and the reason that Zenith's English distributor has converted only one such set for his personal use (and that being long after the damage period in this case) are apparent from the facts concerning the various changes which would be required to convert a 525-line United States-made television for use in the United Kingdom to receive the 405-line transmission, as outlined in plaintiff's previous offer of proof filed with its motion to re-open the proof.

K. Adam Ramsay, the owner and manager of United Mercantile Company, had no previous experience in the radio or television business. The company had no sales force other than Mr. Ramsay himself, one salesman who worked at the company's showroom at which retail sales were made, and two salesmen who worked as retail salesmen at Harrod's department store in London. No salesmen

traveled or called on dealers. There were no sales offices or warehouses in other areas of England. In short, United Mercantile Company was a small, virtually one-man operation designed to make only limited sales of very expensive merchandise either at its own small showroom or through specialty outlets such as Harrod's. That the distributor it selected had no experience in and was not equipped for the mass distribution of television sets is further evidence that Zenith had no interest in selling the 405-line
437 English set when it entered that market in 1959 and that it was waiting to see whether a change would be made to 625 lines before it attempted to penetrate the television market.

V. Plaintiff's position has been and is that it is improper to project domestic market share into a foreign country to estimate the market share which could be achieved in that foreign country and plaintiff's position has been and is that both the Zenith original claim of damages as contained in its Exhibit 218 and the Court's award of damages are improper. However, the Court's error in this regard is compounded by its use of Zenith's United States market share during the period from June 1, 1959 through June 1, 1963 because that market share was based on a fully developed and mature market in which Zenith had been an active competitor since late 1948 and even earlier in the radio business. The Court recognized and found that the damages had to be calculated on the basis of initially entering the markets in England and Australia after the beginning of the alleged damage period and could not be calculated on the basis of Zenith's having an established market in those countries at the start of the damage period.

While we contend that it was error to project in any way the domestic market share and that the damages, if any,

should have been determined from an analysis of the economic and other factors present in the actual foreign markets involved, if any domestic market share could properly have been considered in the calculation of damages it should have been the share of the market obtained by Zenith in
438 its *first* four years in the television business in the United States. Plaintiff, therefore, offers to prove the percentages of the television market which Zenith obtained after first entering the United States television market which are as follows:

U. S. Factory Sales*

	Industry	Zenith	Percent Zenith** to Industry
1949	$ 574,209,000	$28,903,423	5.034%
1950	1,397,469,000	67,067,012	4.799
1951	944,029,000	48,122,142	5.098
1952	1,063,634,000	66,687,366	6.270

These figures should then have been adjusted by applying Zenith's contention that it could do 25% as well in the United Kingdom and 10% as well in Australia as it had done in the United States and by the finding of the Court that Zenith could expect no profits in the first year of its operations in those countries, only 50% of its expected profits in the second year, 75% in the third and 100% in the fourth.

---

* Source: Zenith's Answer to Plaintiff's Interrogatory No. 13, p. 1. *Radio Corporation of America* v. *The Rauland Corporation and Zenith Radio Corporation*, Civil Action No. 48 C 1818 (N.D. Illinois).

** It should be noted that the percentages indicated are of sales expressed in dollars. The percentages and other figures in Defendant's exhibit 218 are on the basis of units sold and not dollar sales. On the assumption that Zenith sets are sold at higher than average prices (as asserted by its president) the actual Zenith market share in terms of *units* sold in the indicated years was necessarily lower than the percentages shown.

While plaintiff does not take the position that either the estimated market share or profit determined in this manner 439 could have been obtained by Zenith or should have been the basis of the calculation of damages, it does take the position that if the method and formula used by the Court was proper, that method and formula should have been applied to Zenith's first four years of experience in the television market in the United States and not to a period 10 years later when it had a fully established market share.

VI. In connection with the issue of whether Zenith Sales Corporation is an indispensable party to this action, plaintiff offers to prove, in addition to the matters set forth in the affidavit in support of its Motion to Dismiss on this issue, the following facts:

A. Zenith Sales Corporation from and after January 1, 1960 was the purchaser and reseller of Zenith brand products which were exported from the United States to the United Kingdom. Starting on January 1, 1960, Zenith Radio Corporation, the defendant and counter-claimant in this case, was merely the manufacturer of Zenith brand goods being exported to the United Kingdom by Zenith Sales Corporation.

440 B. Effective January 1, 1960, the contract for the distribution of Zenith brand products in the United Kingdom was between Zenith Sales Corporation as seller and United Mercantile Company as distributor. A copy of the contract effective January 1, 1960 is attached hereto and made a part of this offer of proof.

C. Under date of January 7, 1960, Samuel Kaplan, Executive Vice President and Treasurer of Zenith Radio Corporation, stated on the form 8-K for the month of December, 1959, filed with the Securities & Exchange Commission by and on behalf of Zenith Radio Corporation that:

"A new, wholly-owned subsidiary of Registrant, Zenith Sales Corporation, was incorporated December 14, 1959, to perform the marketing functions of Registrant for Zenith television receivers, radio receivers, phonographs and Stereophonic hi-fidelity instruments in the United States and abroad. Hearing aids, military, industrial, and non-consumer electronic products will continue to be marketed through Registrant.

"Zenith Sales Corporation will be responsible for sales distribution, advertising, sales promotion, and market research. Parts and accessories and service departments will also become operating divisions of the new sales company.

"This corporation will begin to function January 1, 1960."

441 VII. In support of the foregoing offers of proof, the following are submitted:

United Kingdom

A. The affidavits of the following persons, copies of which are filed with and made a part of these offers of proof:

1. John Sinclair Ewing
2. B. T. Reilly
3. Thomas Ludlow
4. John Carter
5. James Thomson Masterton
6. Charles A. White
7. S. E. Allchurch
8. W. J. C. Chapple
9. E. P. Dale-Harris
10. Alan Alfred Packer

B. The indicated pages of the following depositions, the original executed copies of which are in the Court file of this case:

1. ADAM R. RAMSAY, the following:

	From	Through
	line 24 of page 28	line 2 of page 29
	" 13 " " 32	" 6 " " 33
	" 15 " " 37	" 25 " " 37
	" 13 " " 50	" 3 " " 55
	" 17 " " 57	" 20 " " 58
	" 12 " " 65	" 27 " " 65
	" 17 " " 66	" 10 " " 67
	" 15 " " 68	" 20 " " 71
442	" 18 " " 72	" 23 " " 75
	" 6 " " 106	" 2 " " 107
	" 1 " " 110	" 6 " " 122
	" 16 " " 127	" 19 " " 136
	" 11 " " 138	" 16 " " 138
	" 1 " " 155	" 23 " " 155
	" 1 " " 164	" 12 " " 166
	" 11 " " 170	" 7 " " 171
	" 24 " " 176	" 9 " " 177
	" 10 " " 183	" 16 " " 184
	" 18 " " 185	" 27 " " 187
	" 14 " " 188	" 10 " " 191
	" 2 " " 192	" 24 " " 194
	" 3 " " 204	" 26 " " 206
	" 24 " " 208	" 26 " " 208
	" 23 " " 212	" 24 " " 213
	" 2 " " 214	" 9 " " 216
	" 9 " " 218	" 13 " " 219
	" 19 " " 233	" 27 " " 236
	" 7 " " 242	" 13 " " 243
	" 5 " " 246	" 10 " " 247
	" 1 " " 252	" 26 " " 253
	" 21 " " 301	" 22 " " 301
	" 25 " " 301	" 10 " " 302

443 2. WILLIAM GUNDRY MILLS, in addition to those parts already read at a previous hearing, the following:

From		Through	
line 19 of page	15	line [illegible] of page	18
" 15 " "	22	" 1 " "	23
" 16 " "	53	" 8 " "	66
" 11 " "	71	" 15 " "	82
" 9 " "	84	" 8 " "	97
" 11 " "	124	" 26 " "	124
" 7 " "	138	" 15 " "	151
" 22 " "	158	" 26 " "	183
" 2 " "	198	" 5 " "	198

• • •

444 C. The Following deposition exhibits:

1. Plaintiff's London deposition exhibits Nos. 17, 18, 19, 20, 26 and 27, identified at the deposition of William Gundry Mills and filed with the original copy of said deposition in the files of this Court.

2. Plaintiff's London deposition exhibits Nos. 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, and 66, identified at the deposition of Adam R. Ramsay and filed with the original copy of said deposition contained in the files of this Court.

3. Zenith's London deposition exhibits Nos. 6, 9, 10, 12, and 13 identified at the deposition of William Gundry Mills and filed with the original copy of said deposition contained in the files of this Court.

4. Zenith's London deposition exhibit No. 27, identified at the deposition of Adam R. Ramsay and filed with the original copy of said deposition in the files of this Court.

• • •

445

Australia

A. The affidavits of the following persons, copies of which are filed with and made a part of these offers of proof:

1. John Sinclair Ewing
2. Sir Arthur Warner
3. James Inglis
4. Alfred Garraway
5. Arthur Walter Barrs
6. S. W. Goodwin
7. John Thorpe
8. Bede Solomons
9. Norman Levy
10. Gordon Wallace

Respectfully submitted,

HAZELTINE RESEARCH, INC.

By Victor P. Kayser
One of its attorneys

IN THE UNITED STATES DISTRICT COURT

* * (Caption—59-C-1847) * *

AFFIDAVIT OF JOHN SINCLAIR EWING (UNITED KINGDOM)

State of California, }
County of San Mateo. } ss:

John Sinclair Ewing, being first duly sworn on oath deposes and says that:

1. I am making this affidavit in connection with the case of *Hazeltine Research, Inc.* v. *Zenith Radio Corporation*, No. 59 C 1847, pending in the United States District Court for the Northern District of Illinois, and if I were called as a witness in that case I would testify to the facts and expert opinion set forth in this affidavit.

2. I am currently Senior Marketing Economist with Stanford Research Institute, Menlo Park, California.
458 This affidavit and any testimony given by me in this case, is given personally and not on behalf of the Stanford Research Institute nor is it in any way intended to reflect the views of Stanford Research Institute.

3. I was born in Canada in 1916. I was graduated with distinction from Bishops University, Lennoxville, Quebec in 1936, having achieved first class honors in history and English and the Chancellor's prize and the Lieutenant-Governor's Medal for History. I received a Master in Business Administration degree with Distinction from Harvard University in 1947 and a Doctor of Commercial Science degree from Harvard University in 1953.

4. From 1951 to 1953 I was a research associate at the Harvard Business School. From 1953 to 1954 I was Professor of Marketing, IPSOA, Torino, Italy. During 1954 and 1955, I was on the directing staff at the Administrative Staff College, Henley-on-Thames, England. From 1955 to

1956 I was Associate Professor of Marketing at the American Institute of Foreign Trade in Phoenix, Arizona. From 1957 to 1959, I was visiting Associate Professor of Marketing at the Graduate School of Business, Stanford University and also visiting Associate Professor of Marketing, San Jose State College, San Jose, California; Profes-
459 sor of Marketing, Finnish Institute of Management, Helsinki, Finland; and Professor of Marketing, Stanford International Program in Small Industry Management. In 1960 to 1961, I was visiting Associate Professor of International Trade and Marketing at the Stanford Business School and also Professor of Marketing at the Stanford International Program in Small Industry Management and Director and Professor of Marketing at the Stanford Management Seminar, Colombo, Ceylon. In 1961, I became Associate Professor of International Trade and Marketing at the Stanford Business School and continued as Director Professor of Marketing at the Stanford Management Seminar, Colombo, Ceylon and was Professor of Business Policy, Stanford/Teheran Executive Development Program, Teheran, Iran. In 1963 and 1964, I was Director and Professor of Marketing at the Stanford/Australian Institute of Management Executive Development Program, Sydney, Australia and Professor of Business policy, American University of Beirut Executive Development Program, Beirut, Lebanon in 1964. In 1954, 1959, 1961 and 1963, I was a visiting lecturer at the Centre d'Etudes Industrielles, Geneva, Switzerland.

5. In addition to teaching, I have worked in industry and as a consultant. From 1947 to 1950, I was a research associate with the Business History Foundation of
460 New York, New York. The primary objective of this Foundation was research into the history of the Standard Oil Company of New Jersey and its affiliated companies. As a research associate, my responsibility involved re-

search, direction of research and the authorship of a history of Imperial Oil Limited, Toronto, Canada. In 1956 and 1957, I was Director of the International Management Division of Harbridge House, Inc., an international research and education consulting organization. In 1959 and 1960, I was a visiting consultant with W. D. Scott & Co. Pty., Ltd. of Sidney, Australia. My work there involved consulting in the general management and marketing field with Australian and New Zealand companies and the development of and presentation of marketing management training programs for Australians and New Zealanders.

6. In addition to the above mentioned full time activities, I have done, and am doing, consulting work in various fields, including work with two advertising agencies, one in America and one in Australia, an extended period of research with Standard Oil Company of California and with a number of companies in Australia seeking to broaden their international markets. During the times I was in
Australia in connection with the Stanford Australian
461 Institute of Management Executive Development Pro-
gram, I organized and conducted in-company marketing training programs for Imperial Chemical Industries (ANZ) Ltd.

7. My work in England with the Administrative Staff College in 1954 and 1955 involved continuing association with senior and middle rank executives of British corporations and government departments for the purpose of gathering relevant materials to use in advanced management training programs. My particular area of interest was that of marketing and distribution of consumer goods in the British economy and I did research in this field. Since 1955, I have made additional visits to the United Kingdom in almost each year for the purpose of keeping current in British marketing trends.

8. I have collaborated with others in the writing of two

books, INTERNATIONAL BUSINESS MANAGEMENT, with Frank Meissner (Wadsworth Publishing Company, 1964), and BROADLOOMS AND BUSINESSMEN, a management history of Bigelow-Sanford Carpet Company, with N. P. Norton (Harvard Press, 1959).

9. I also contributed a chapter entitled "Wholesaling in Australia" in the book COMPARATIVE MARKETING edited by Robert Bartels (Richard D. Irwin, 1963). In addition, I have had published over a dozen articles in business
462 and scholarly journals such as the Harvard Business
Review, The Journal of Marketing, The Stanford Business School Bulletin and Boston University's Business Review. Many of these articles deal with international marketing and foreign trade.

10. I am currently a member of the American Marketing Association, the Society for International Development, The Association for International Education in Business and the American Association of University Professors. I am an Editorial Advisor to The Journal of Marketing and Secretary of the Association for Education in International Business.

11. I was asked for my judgment on the following questions:

a. What factors should be taken into account in estimating the share of a particular foreign market that a United States radio and television manufacturer could reasonably expect to achieve by exporting United States made products into that foreign market?

b. Considering those factors and any other factors which may be relevant to the particular situation involved, what share, if any, could Zenith Radio Corporation have reasonably been expected to achieve with its United States made radio and television sets in the United Kingdom
463 during the period of May 22, 1959 through May 22, 1963?

12. I have reviewed some of the testimony and exhibits contained in the record of this case provided to me by counsel for Hazeltine Research, Inc. including the testimony of Messrs. Wright and Kaplan (including the new hearing on November 22, 1965) and the depositions of Messrs. Mills, Ramsay and Ribalta, the reports of the Economist Intelligence Unit (Zenith's Deposition Exhibits 9 through 13; Plaintiff's Deposition Exhibits 18 through 20, 26 and 27), the report prepared by the Economist Intelligence Unit for Zenith in 1959 (Zenith's Deposition Exhibit 6), the Annual Report of the British Radio Equipment Manufacturer's Association (BREMA) for the years 1958, 1959, 1960, 1961, 1962 and 1963, Defendant's Exhibit 218 and certain of the statistics contained in Defendant's Exhibit 216; and I have drawn on my own personal knowledge and experience.

13. For purposes of my analysis, I have assumed the following:

(a) Zenith manufactured the sets in question in the United States and exported them as finished products, except possibly for modifications necessary to make them technically usable in England.

464 (b). The prices for the Zenith products F.O.B. Chicago on an average product mix are as follows:

	Television	Radio
1959 (2d half)	148.73	35.24
1960	145.68	28.77
1961	144.16	26.59
1962	136.80	27.12
1963 (1st half)	128.38	27.59

(c). Zenith's products were of high quality.

14. Before listing and discussing the factors which are relevant and should be considered in attempting to determine expected market share which could be obtained in a

foreign market, it should be pointed out that there is no necessary relationship between the share of the market that a company has obtained in the United States and the share of the market that it could reasonably be expected to obtain in a foreign country. For example, I understand that Zenith, in this case, claims that it could have secured a share of the market in England which was 25 per cent of its share of the market in the United States. Its position is to the effect that if it obtained 20 per cent of the United States market, it should be able to obtain 5 per cent of the United Kingdom market. As a result, it claimed it could have 465 obtained a share of from 4 per cent to 6 per cent of the United Kingdom market. I find this assertion wrong for a number of reasons. First of all, apart from some factors peculiar to the United Kingdom, which I shall discuss later, prediction of market share with this kind of accuracy is impossible. It implies an automatic correlation between United States and foreign market share which does not exist.

15. There are a number of variables which directly or indirectly affect a company's market share in any given country and they have no necessary connection with its market share in the United States. Among them are the following:

A. The Country
  - (1) The Political, Economic and Governmental Environment
    - (a) Import-Export Controls
    - (b) Government Control of Business
    - (c) Labor Intensity and Cost
    - (d) Industrial Relations
    - (e) The Legal Environment and Restrictions
    - (f) Taxes
    - (g) Methods of Financing; Credit Terms
    - (h) Methods of Doing Business in General

466 (2) The Competition
- (a) Size of Competitors and Their Financial Resources
- (b) Sophistication and/or Incompetence of Competitors
- (c) Number of Competitors
- (d) Size and Value of the Total Market
- (e) Degree of Market Saturation

(3) The Consumer
- (a) Habits and Tastes
- (b) Social Customs
- (c) Disposable Income

B. The Company

(1) Management and Personnel Qualifications
- (a) Adaptability of U.S. Personnel
- (b) Availability of Competent People Abroad
- (c) Language and Communication Difficulties
- (d) Initiative, Resourcefulness, and Aggressiveness of Management
- (e) Management's propensity for risk

(2) General Factors
- (a) Degree of Adjustment Necessary to Meet the Tastes of Consumers in Each of the Countries Entered.
- (b) Sales Force Development; Distribution Networks Available
- 467 (c) Advertising Weight and Character; Promotional Programs
- (d) Pricing; Credit Terms
- (e) Suitability of the U.S. Product Line in the Foreign Market; Product Mix
- (f) Profitability in the Foreign Market
- (g) Long Term Versus Short Term Profit Goals
- (h) Amount of Investment Necessary

- (i) Company Philosophy Regarding International Commitments
- (j) Diversification Emphasis
- (k) Company's Method of Expansion (Internal Growth Versus Acquisition)
- (l) Degree of Completeness of Foreign Production Facilities
- (m) Amount of Time in the Country
- (n) Amount of Company International Experience
- (o) Cost and Sources of Supplies and Raw Materials

16. Research on this question among American companies having international operations has revealed that there is no correlation between their American market share and their foreign market share. In a few instances,
United States market share and market share in one or
468 two countries are almost the same but these limited
instances are not correlations but statistical accidents.
Indeed, there are some striking examples of cases where the market shares of American companies are less in the United States than in some other countries, which is quite the opposite of the relationship claimed by Zenith. The Hoover Company, for instance, in 1962 had 6.5% of the vacuum cleaner market in this country; in the United Kingdom its market share was 56 per cent. American Motors in 1964 had 7 per cent of the American automatic refrigeration market and 7 per cent of that in the United Kingdom, but 25 per cent of the Australian market. A well-known American pharmaceutical manufacturer, had a market share for anti-histamines in 1964 of 27.3 per cent in the United States and 42.4 per cent in Australia. The Campbell Soup Company, which by far has the largest share of the American wet soup market (approximately

90%), beginning in 1959, attempted to penetrate the English wet soup market and has suffered substantial losses. On the other hand, the H. J. Heinz Company, which has a substantially smaller share of the American wet soup market (5%) and which has been in the English and
469 Australian markets for many years, has been very successful in those countries.

17. Accordingly, I would say that the kind of extension from the American market share to an expected English market share made by Zenith is nothing more than a guess, and under the circumstances here, not an accurate or reliable guess. Indeed, no one could state with that kind of purported accuracy what Zenith's market share in the United Kingdom would have been during the period in question.

18. While, however, no one could say with accuracy what Zenith's market share would have been, one can state with accuracy what its share would not have been, and that is that its share would not have been any thing near 5 per cent of the television market either as a constant throughout the period or as an average over the entire period or even at the end of the period. Indeed, based on my experience, education and knowledge, it is my judgment and opinion that Zenith, entering the market for the first time in June of 1959 with prices as indicated above could not have achieved any thing other than a nominal share of the English television market resulting from an occasional
470 sale of very high-priced merchandise. The factors which, both alone and in combination with each other, lead inescapably to this conclusion are set out below.

19. One important variable which bears directly upon the problem being considered here is the difference in disposable incomes in the United Kingdom and the United States. The market for a television set or radio set obviously lies with the consumers and the consumers in the

United Kingdom differ from consumers in the United States in a number of ways. One of these differences which is measurable is income. The per capita income in the United Kingdom is significantly lower than it is in this country and the disposable income after taxes is also significantly lower in the United Kingdom. The chart comparing the Per Capita Personal Income and Per Capita Disposable Income in the United States and the United Kingdom is attached hereto as Exhibit A. In addition, the British consumer not only has less money than his American counterpart, but he has to pay more for many of the things he buys, particularly consumer durable goods. The difference may sometimes be a reflection of higher production cost, but
is most often the result of a purchase tax which has
471 been as high as 60% and is now 25% of the wholesale
price of those products to which it applies.

20. In addition to these measurable differences, there is the important difference in the taste of the British consumer as a group. The British consumers drink tea where we drink coffee; they like warm beer while we like it cold and so on. They are more conservative and less apt to change their habits, although some of the conservativeness has grown less marked in recent years. Thus, the requirements for cabinet design of those who purchase television sets and to the lesser extent of those who rent television sets—many more people rent than buy—are different from those of Americans. Their concept of style may be different and products which sell well in the United States will not necessarily sell well in the United Kingdom, not because they do not function well, but because their appearance does not appeal to the British consumer. A good example of this is the fact that the British prefer wooden television cabinets and almost all of the sets sold in England are wooden, with the exception that a few are plastic. On the other hand, a large percentage of television sets sold in the United

472 States have metal cabinets, and this is true with the Zenith sets, particularly the less expensive ones. Part of the British consumer's preference may well be a fear that metal cabinets are not safe, particularly with British voltage of 220-250, but part of it is also a matter of appearance and any United States manufacturer attempting to market metal cabinets in the United Kingdom would encounter customer resistance on this score.

21. Another important factor which would adversely affect Zenith is the lack of familiarity of its name among various consumers. Prior to 1959 it did not market in England and although some of its advertising undoubtedly was carried into the United Kingdom in American magazines, those magazines have very limited circulation in the United Kingdom and that limited circulation is, in turn, largely to upper income consumers in the social-economic groups which have been the last in the United Kingdom to become the buyers of television sets. A new brand name such as Zenith would necessarily be at a disadvantage coming into the United Kingdom market because of the natural consumer reluctance to trust an unknown for after-sales
473 service. Any reputation for quality which Zenith might have in the United States is unknown in the United Kingdom, and a reputation for quality in the United Kingdom could be achieved only by a very heavy advertising effort and after several years' sales in the United Kingdom giving the consumer experience with the Zenith product. Leaving aside for the moment the impact of television rental which is so important in the United Kingdom, the British consumer who is interested in purchasing a television set is concerned with whether the set works well, and if it breaks down, how to obtain service quickly and efficiently. With a long-standing British manufacturer, the British consumer knows what he can expect both in the way of quality and in after-sales service. However, with a new brand entering

the market and particularly a brand which is being manufactured in a foreign country, the British consumer would have a natural feeling of uncertainty as to the availability of spare parts and the availability of adequate after-sales service. The apprehension of the British consumer could possibly be overcome in time, but certainly not in two, three or even four years. Indeed, it could be accomplished only over an extended period of time and with a substantial advertising and promotional expenditure.

474 22. Another factor which Zenith could only overcome with considerable sums of advertising expenditure, and probably then only over an extended period of time, is the preference which the British people tend to have for British-made products for reasons having to do with the conviction that "British-made" equates with high quality. While some people, such as the Spaniards, have historically preferred imported goods, the British people have historically had a tendency to prefer British-made products.

23. The amount expended for additional advertising and promotional activities in an attempt to offset these disadvantages would presumably have had to be reflected in the price per set, raising the prices thus even higher and adding to the unlikelihood that the sets could be sold.

24. Probably the most important factor and one which alone would have precluded Zenith from obtaining any significant share of the market, is price. As stated above, the average price of an average mix of products F.O.B.
475 Chicago for Zenith television sets is as follows:

	Television
1959 (2d half)	148.73
1960	145.68
1961	144.16
1962	136.80
1963 (1st half)	128.38

25. Two prices are important: the price to the retailer and the price the retailer charges the consumer. To arrive at the price to the retailer (i.e., the wholesale price), a number of things must be added to the ex-factory price; they include the cost of inland freight in the United States, ocean freight, inland freight in the United Kingdom, insurance, import duties, importation charges for documentation usually done by brokers, bonded warehousing, conversion costs where applicable, and profit of the distributor. To arrive at the retail price under the system used in the United Kingdom, there would have to be added a mark-up equivalent to 30 or 33⅓% of the retail price and a purchase tax, which in mid-year 1959 was 50% of the wholesale price.

26. A common practice in the import-export
476 business is to price the products the importer sells by the
use of a multiplier applied to the ex-factory price. The importer makes an analysis of the various costs involved and arrives at a multiplier which when applied to the ex-factory price will return his various direct costs and give him a mark-up sufficient to cover his overhead, selling expenses and a profit. A single multiplier can be used for a group of products or a separate multiplier can be worked out for each different product. However, common practice is to fix a multiplier for a group of products to which the various expenses apply at the same rates. The multiplier approach has the advantage of simplifying pricing and makes it unnecessary for the importer to go through detailed calculations for each product each time there is a factory price change. It can be useful to determine the wholesale price or the retail price, where the importer either fixes that price or suggests it.

27. The Ramsay deposition and exhibits show that Zenith's British distributor arrived at the ultimate retail price by applying a multiplier to the F.O.B. Chicago Factory price. He used a range of multipliers which went as

high as over 4 and the lowest multiplier mentioned by Zenith or the distributor was 3.2. A multiplier of 3.2 in 477 these circumstances, is probably somewhat lower and more conservative than that which would be expected to be used or which was actually used by the Zenith distributor on Zenith products. It is not uncommon for an importer to use a multiple of four, five or even six when arriving at the retail price of a product imported from the United States. Thus, the 3.2 multiplier is a minimum and can be safely used to calculate the price at which, under the most favorable circumstances to Zenith, its products would have been sold at retail in England beginning in 1959.

28. The multiplier works as follows: Assuming that the factory price is $100.00 and the multiplier is 3.2, the retail price is $320.00. Taking 1960 as an example, the first full year that it is assumed Zenith would be in the television market, the price of the average Zenith television set applying the 3.2 multiplier would break down as follows:

Retail Price with Purchase Tax	466.18 (3.2 times $145.68)
Purchase Tax	166.54
Retail List Price (Without Purchase Tax)	349.63
Price to Dealer (Without Purchase Tax)	233.09
Factory Price	145.68

478 29. The average retail price of a television set in the United Kingdom during 1960 was $138.41, excluding purchase tax (See Table attached hereto as Exhibit B). Adding the purchase tax (50% of the wholesale price), the price of the average United Kingdom made set to the ultimate consumer in England [illegible] 1960 was about $184.55. Thus the price to the consumer [illegible] average Zenith set (using the most conservative pr[illegible] multiplier) would have been over 2½ times or over $280.00 more than the

average United Kingdom made television sets. It should be remembered that this comparison is of average sets, i.e., average Zenith and average United Kingdom sets, and not a comparison of the bottom-of-the-line of United Kingdom sets with the top-of-the-line of Zenith sets.

30. A chart attached hereto as Exhibit C shows the actual average prices for the television sets made in the United Kingdom for each of the years in question (except 1963) as contrasted with the average Zenith prices based on the conservative pricing multiple and on a more realistic pricing multiple. Another chart, attached hereto as Exhibit D, shows the disparity between the average wholesale
479 prices in the United Kingdom in 1959 through 1962
and the average wholesale prices of the Zenith products under those multipliers.

31. While higher quality may command a price premium, it would certainly not command a price equivalent to over double the average price of United Kingdom television sets. Under the circumstances indicated here, it is inconceivable that Zenith could have reached a rate of sales of 60,000 sets annually, and it seems unlikely that it could have sold any thing other than a nominal number of such sets in the United Kingdom.

32. In addition to the great disparity in average prices, the statistics concerning the percentage of sets sold in the higher price brackets are also relevant here. The Table contained in page 163 of the Report of the Economist Intelligence Unit prepared especially for Zenith (Zenith Deposition Exhibit No. 6) shows that only 2% of the sets sold in England in 1958 were £75 ($210.00) or more (excluding purchase tax). The market, therefore, for a set which would retail at $349.63 (excluding purchase tax) would
480 obviously be very limited if it existed at all. Moreover, the trend in the percentage of sets selling at over $210.00 (2% in 1958) was downward. While it went up in

1955 from 5% to 7%, it steadily declined thereafter, falling from 6% in 1956, to 3% in 1957, to 2% in 1958. No figures are available from which to determine this percentage for the years after 1958, but all factors point to a continuation of this downward trend at least until 1963. Price generally was falling and price became more and more important to the British television purchaser. In 1961, the Economist Intelligence Unit reported in its semiannual television report that the public was making price the primary consideration in buying a television set. (Plaintiff's Deposition Exhibit 18).

33. Since the average price of Zenith's television sets would have to be over double the average price for United Kingdom-made television sets and since there was only a very limited market for premium priced sets and Zenith's average prices would have been higher than the sets sold even in that limited market, the price factor alone would preclude any real commercial penetration of the television market by Zenith.

481 34. Another extremely important factor is the substantial down-turn in the sales of television sets in the United Kingdom in 1960. The production and turnover of television sets in the United Kingdom for the years 1959 through 1963 are set forth in the chart marked Exhibit E and attached to this affidavit. As can be seen from this chart, over 2.7 million television sets were sold in 1959 which was the peak year in television sales in the United Kingdom. In 1960, however, total sales fell off to 1.8 million and in 1961 they fell even further to 1.5 million.

35. The market had obviously reached a saturation point in 1959 and a number of other factors such as uncertainty as to transmission line changes contributed to a drastic drop in sales which had a serious impact on the marketing of television sets. Manufacturers' stocks were high, prices fell and many more companies and retailers turned to

rental. Summing up the year 1960, BREMA reported in its 1960 Annual Report presented on April, 1961 that:

> "It had become evident to industry early in 1960 that the boom in television receiver sales, induced in the Autumn of 1958, by the removal of all hire purchase and rental controls and subsequently stimulated by further Government measures, had ended and, indeed, 482 that indications of a downward trend had been signalled during the last few months of 1959. The impact of the renewed hire purchase and rental controls on the radio and television industry was direct and severe. After April sales of television receivers turned sharply downward and the rate of growth of sales of radio receivers declined.
>
> "Forward production schedules for television receivers already modified by individual manufacturers were cut back further in anticipation of lower levels of demand. Demand was, however, reduced more rapidly and to a greater extent than had been anticipated or could be compensated for by curtailment of production which cannot be cut-back suddenly in a modern mass production industry without very serious disruption. In consequence, total stocks of television receivers held by manufacturers and in the Trade rose to about 1,200,000 units by the end of August, before declining to about 1,000,000 units at the end of the year.
>
> • • • •
>
> "The degree of household penetration for television receivers, together with several other special technical and market factors which affected both television and radio receiver development and sales, made the impact of the controls on these products considerably more severe than for other household durables, the market for which had also suffered. The dual effect of a high rate of purchase tax coupled with the hire purchase controls was emphasized and it was once again shown that these measures to restrict sales on the home market could not lead to increased exports of our products, but were likely to have the opposite effect." (p. 6)

36. In addition, there was a serious and significant reorganization of the television industry in the form of the consolidation of manufacturers. In spite of this, productive capacity was still approximately 3 million sets per 483 annum while demand was neither expected to nor did exceed 2 million sets per annum in the next four years. See the Economist Intelligence Unit, Consumer Durables Television Report, p. 14 (7th issue, July 1961) (Plaintiff's deposition exhibit 18).

37. Old established and well-known companies were finding it difficult to sell their sets even with reduced prices. Profits on the manufacture of television either dropped or became losses. In short, the television market having shrunk by over one-third was in 1960, in no position for the favorable entry of a new brand. Any new brand name coming into the market at this time would have found it difficult to obtain substantial sales. And when it is assumed that the Zenith products would have had to come into the market at the prices contained in Defendant's Exhibit 218, the general conditions of the market were such that Zenith could not have reasonably expected to penetrate the United Kingdom television market.

38. Finally, the largest single method by which television sets are acquired by United Kingdom consumers 484 —rental—is practically non-existent in the United States. This fact alone illustrates the impropriety of attempting to estimate expected market share in England on the basis of United States market experience. The rental of television sets had, by 1959, become the way in which people acquired television more than any other way available and rental continued to grow and its share of the total turnover of television sets in the United Kingdom continued to grow over the entire period in question here.

39. It is reliably estimated that as much as 70% of all the television sets disposed of in the United Kingdom in

1963 were on a rental basis. A survey conducted by the Economist Intelligence Unit and reported in its Durable Consumer Goods—Television Sets, Report No. 9, in July, 1962, showed that at that time 29% of the television sets then in use were rented and that 42% of the television sets obtained in the two-year period commencing April, 1960 were rented (Table 6) (Plaintiff's Deposition Exhibit 20).

40. The appeal of rental to the English consumer is quite logical. The lack of a substantial disposable income makes it difficult for a number of people to purchase 485 television sets outright. The owner of a television set takes the risk of obsolescence and during the period from 1959 through 1963 there was a serious concern among consumers about obsolescence. The expected change to 625 line transmission and the imminence of color telecasting tended to encourage rental since by renting, the consumer could easily have the newest model available and could upgrade without worrying about the problems of obsolescence or the requirement of a substantial investment for a new set.

41. It is unlikely that Zenith with its high-priced products could have penetrated any of the mass rental business. In the first place, most of the major rental companies either make their own television sets or are connected with manufacturers either by contract or stock ownership. For example, the Economist Intelligence Unit in its Durable Consumer Goods—Television Sets, Report No. 9 published in July, 1962 reported that three of the five main groups marketing television sets through retailers in the United Kingdom had set up or acquired holdings in rental or 486 relay companies in order to assure themselves of a share in the growing rental business, and the largest rental company manufactured its own sets and had a chain of retail rental shops. (Page 18) (Plaintiff's Deposition Exhibit 20).

42. Fancy frills or advanced exterior designs have had little appeal in the rental market. The rental market has been made up of the plain inexpensive sets which have low initial costs and are easy to repair. Again, it was reported by the Economist Intelligence Unit in 1962 that the industry's response to the public's increased inclination to rent had caused the industry to cut the trimmings from sets for the rental market. (Economist Intelligence Unit Durable Consumer Goods—Television Sets, Report No. 9, July, 1962, page 19) (Plaintiff's Deposition Exhibit 20).

43. In addition, there would be a natural reluctance on the part of rental companies to deal with a new manufacturer coming into the market, particularly a foreign manufacturer whose factories were thousands of miles away.

Rental companies require spare parts for repairs and
487 they require that such spares be available long after the
particular model has been discontinued because the rental company must keep each set in operation for several years in order to make a profit. The newness and the remoteness of Zenith would, thus, be a deterrent to its obtaining entry into the rental market.

44. However, price would probably have been the most important barrier to Zenith in attempting to penetrate the rental market. As reported by the Economist Intelligence Unit in 1961, competition in the rental business was intense and rental rates were falling. (Economist Intelligence Unit Durable Consumer Goods—Television Sets, Report No. 7, July, 1961, page 16) (Plaintiff's Deposition Exhibit 18). Rental companies were seeking and have continued to seek sets at the lowest possible initial cost, and even with quantity discounts Zenith's prices could not have been competitive because of the combination of high factory prices and the necessary expenses of duty and shipping charges.

45. As a matter of simple marketing economics, a British

rental company would not be able to obtain a substantially higher weekly rental for a set simply because that set 488 was higher in quality than the average rented set. That is why the great bulk of sets which are rented in the United Kingdom are the cheaper, bottom-of-the-line sets. Higher priced and higher quality sets are available in the United Kingdom but they are not the sets which are rented. The renting consumer sees no practical advantage in having a higher quality set since service is guaranteed by the rental company. Thus if a renter can obtain a guaranteed television reception for a rental of $1.20 per week, he is not going to pay $2.40 simply to get a higher quality set.

46. It is unlikely, therefore, that Zenith would have been able to achieve any of the mass rental business enjoyed by the major rental companies, and this fact alone would have removed the largest single segment of the television market from Zenith's grasp.

47. In summary as to television, on the basis of my education, experience and knowledge, I conclude that Zenith could not have obtained either at once or over the four-year period or at the end of that period the share in the United Kingdom market claimed for its television sets; 489 nor could it have obtained a share of that market sufficient to justify the amended findings of the Court with respect to damages. I come to this conclusion because of the impossibility of demonstrating any automatic correlation between American market share and potential market share in other countries, because of the importance of the economic, sociological and other variables between the United States and the United Kingdom, and because of specific factors in the United Kingdom which would have been adverse to Zenith's attempted penetration of the United Kingdom television market with United States-made sets.

48. Generally, much of what was said with respect to television also applies with respect to radio sets. Price

would have been and apparently has been the most serious deterrent to Zenith's attempted penetration of the United Kingdom radio market. Zenith could expect to sell some specialty items such as its Trans-oceanic radio or clock radios before they were available generally in the United Kingdom, or fancy radio phonograph combinations in the few high-classed department stores primarily in London. But it could never expect to penetrate the mass radio market with products at the prices stated in Defendant's Exhibit 218.

490 49. The single most significant factor influencing the radio market in the United Kingdom and for that matter in many other countries, including the United States, was the introduction of the cheap transister sets coming primarily from Japan and in the case of the United Kingdom, from or through Hong Kong. Zenith, with its average F.O.B. Chicago price of from $27.00 to $35.00, could never have expected to compete with those products. While the influx of the cheap transister sets has tended to increase the total turnover of radio sets, it has also tended to pull down the price of domestic sets.

50. From the point of view of marketing economics in this particular case, I find little or no significant merit in the contention that having television sets to offer would have increased Zenith's share of the radio market in the United Kingdom. While some advantage might accrue to a company's radio business from television sales, it by no means automatically follows that having television to sell would increase radio sales, particularly here, where it
491 is unlikely that Zenith could have had any substantial television business in the United Kingdom because of the high prices at which its products would have had to sell. In addition, having television would not have overcome the most important deterrent to the mass sale of radios by Zenith in the United Kingdom which was price. Moreover,

there are a number of companies in the United Kingdom which have obtained a substantial market share in radios and radio gramophones which do not make or sell television sets, and the Japanese which have made such a significant penetration of the market have done so without offering television. Finally, in Spain, where Zenith television sets are available, Zenith's radio business was unsuccessful and was abandoned.

497

/s/ **John Sinclair Ewing**
John Sinclair Ewing

Signed and sworn to before me
this 8th day of December, 1965.
/s/ **Maria A. Red Elk**
Notary Public.
Maria A. Red Elk
My Commission Expires November 23, 1968.

EXHIBIT "A" TO THE EWING AFFIDAVIT.

Year	Per Capita Personal Income United Kingdom*	Per Capita Personal Income United States**	Per Capita Disposable Income After Taxes United Kingdom*	Per Capita Disposable Income After Taxes United States**
1959	$1,000.15	$2,168.00	$ 916.32	$1,904.00
1960	$1,129.10	$2,221.00	$ 973.62	$1,936.00
1961	$1,206.39	$2,273.00	$1,030.33	$1,985.00
1962	$1,256.40	$2,370.00	$1,064.60	$2,060.00
1963	$1,315.81	$2,450.00	$1,119.05	$2,125.00

* The United Kingdom figures were obtained by dividing the relevant total income figures contained in Table 3 "personal income, expenditure and savings," p. 3 of "Central Statistical Office, Monthly Digest of Statistics, No. 233 May 1965" published by Her Majesty's Stationery Office, London, by the total population shown in Table 11 "Defacto or home population" at p. 12 of the same publication. The pounds were converted to American dollars by rounding the amount in pounds to the nearest hundredth and multiplying it by $2.80 (which was the average rate of exchange for the period).

** The United States figures were obtained from "Statistical Abstract of the United States 1965, National Guide to Sources 86th Edition" published by The United States Department of Commerce, Bureau of Census, p. 327, Table 449 "Per Capita Income and Product for Selected Items in Current & Constant (1954) Dollars: 1950-1964."

EXHIBIT B TO THE EWING AFFIDAVIT.

AVERAGE UNITED KINGDOM RETAIL TELEVISION PRICES.
(Excluding Purchase Tax)

Tube Size	1959 (2.801)*	1960 (2.810)*	1961 (2.813)*	1962 (2.804)*
14"	$116.95 (£ 41 15s 9d)			
Up to and including 17"		$136.29 (£ 48 10s)	$130.03 (£ 46 5s 6d)	$130.67 (£ 46 10s)
17"	$139.09 (£ 49 13s 6d)			
19"	None	$143.45 (£ 51 1s)	$139.38 (£ 49 12s)	$141.05 (£ 50 7s 6d)
21"	$174.72 (£ 62 8s)			
23"	None	$185.32 (£ 65 19s)	$176.47 (£ 62 16s)	$178.92 (£ 63 18s)
Other Tube Sizes		$167.34 (£ 59 11s)	$158.91 (£ 56 11s)	$153.93 (£ 54 19s 6d)
Weighted Averages (weighted by %)	$139.58 ($116.95 @ 3%) (139.09 @ 91%) (174.72 @ 6%)	$138.41 ($136.29 @ 87%) (143.45 @ 4%) (185.32 @ 4%) (167.34 @ 4%)	$133.70 ($130.03 @ 31%) (139.38 @ 57%) (176.47 @ 5%) (158.91 @ 7%)	$144.76 ($130.67 @ 2%) (141.05 @ 87%) (178.92 @ 10%) (153.93 @ 1%)

NOTE: The 1959 prices are for table models only; the prices for the other years include all models. Statistics in this form are not available for 1963.

Source: Tables VIII and IX on page 18 of the BREMA Annual Report 1962, and Tables VI and VIII at pages 19 and 20 of BREMA Annual Report 1959.

* Based on November Exchange rates (average).

EXHIBIT C TO THE EWING AFFIDAVIT.

COMPARISON OF UNITED KINGDOM TELEVISION RETAIL PRICES AND INDICATED ZENITH PRICES.

(Including Purchase Tax)

Year	United Kingdom Average Price	Zenith Price with 3.2 Multiplier	Zenith Price with 3.7 Multiplier
1959	$198.11*	$475.96	$550.30
1960	194.35	466.18	539.02
1961	178.37	461.31	533.39
1962	198.91	437.76	506.16

NOTES: The United Kingdom prices were taken from the BREMA Annual Reports (see Exhibit B to the Ewing Affidavit) and adding the purchase tax. The Zenith prices are based on the prices shown on Defendant's Exhibit 218.

For convenience, a purchase tax of 50% was used throughout, although the purchase tax was 55% during part of 1961 and 1962 and 45% during part of 1962.

* For 1959 only the United Kingdom price is for table model sets.

EXHIBIT D TO THE EWING AFFIDAVIT

COMPARISON OF UNITED KINGDOM TELEVISION WHOLESALE PRICES AND INDICATED ZENITH PRICES

(Excluding Purchase Tax)

Year	United Kingdom Average Prices		Zenith Price with 3.2 Multiplier	Zenith Price with 3.7 Multiplier
1959	(a)	94.86	237.97	275.15
	(b)	94.84		
	(c)	98.05*		
	(d)	97.71*		
1960	(a)	92.80	233.09	269.51
	(b)	92.79		
	(c)	92.27		
	(d)	96.89		
1961	(a)	90.73	230.66	26[illegible].70
	(b)	89.65		
	(c)	89.13		
	(d)	93.59		
1962	(a)	96.24	218.88	253.08
	(b)	96.28		
	(c)	96.51		
	(d)	101.28		

NOTES: The wholesale prices for the United Kingdom were determined as follows:

(a) The total value of the Home Sales ex-factory shown in the Monthly Digest of Statistics, No. 214, October, 1963 (Defendant's Exhibit 216) was divided by the total number of home sales shown in the same source.

(b) The total value of home disposals ex-factory shown in the BREMA Annual Reports for 1960 and 1963 was divided by the total number of home disposals shown in the same sources.

(c) The average retail price taken from BREMA Annual Reports (shown on Exhibit B to the Ewing Affidavit) were reduced by 33⅓%, the discount given to retailers by some manufacturers.

(d) The average retail prices taken from BREMA Annual Reports (shown on Exhibit B to the Ewing Affidavit) were reduced by 30%, the discount given to retailers by the remainder of the manufacturers.

* For 1959 only the (c) and (d) prices are for table models only.

EXHIBIT E TO THE EWING AFFIDAVIT.

TELEVISION PRODUCTION AND SALES IN THE UNITED KINGDOM IN UNITS.

Year	Production	Home Sales	Export Sales
1959	2,868,200	2,778,600	24,000
1960	2,140,800	1,816,800	28,400
1961	1,256,400	1,506,400	44,400
1962	1,462,800	1,377,600	111,600
1963 (1st 6 months)	764,900	649,900	23,200

Source: Monthly Digest of Statistics, No. 214, October 1963, Table 78, p. 66 (Defendant's Exhibit 216).

In the United States District Court

• • (Caption—59-C-1847) • •

503 **AFFIDAVIT OF B. T. REILLY**

B. T. Reilly, of Marsham Manor, Marsham Lane, Gerrards Cross, Buckinghamshire, England, being duly sworn, deposes and says that were he to be called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division in the case of *Hazeltine Research Inc.* v. *Zenith Radio Corporation*, he would testify as follows:

1. He is Sales Director of Radio & Allied Holdings Limited, a United Kingdom company whose office and place of business is located at Langley Park, Slough, Buck, England.

2. He was born in Wolverhampton, England, in 1924, attended a Roman Catholic public school and served in the Army during World War II, being released from the service in 1945. In 1951, after having held several different positions including two years with a tile company, he 504 joined Proctor and Gamble Company Limited an English company whose principal office is located in Newcastle-on-Tyne, England. In 1954 he was appointed District Sales Manager for Proctor and Gamble and he

served in that capacity until September 1960, when he left to become associated with Radio & Allied Industries Limited (herein called "Radio & Allied"). He has been engaged in promoting and supervising the sales distribution of radio and television equipment since that date. He is currently serving as a member of the Executive Council of The British Radio Equipment Manufacturers Association (otherwise referred to as "BREMA"), a trade association acting for and on behalf of the radio and television manufacturers in the United Kingdom.

3. Radio & Allied is engaged in the production and sale of radio and television receivers. In April, 1961 Radio & Allied was acquired by The General Electric Company Limited, a publicly held corporation with offices at 1 Stanhope Gate, London, England. Radio & Allied and its related corporations currently manufacture and distribute television receivers, transistor radios and radiograms, in the United Kingdom under the brand names of GEC, Sobel, McMichael and Master Radio.

4. Television and radio have been operating in England for many years. Radio has been operating in England since before the 1930's and has continued ever since. In 505 1936, the British Broadcasting Corporation began broadcasting certain types of television service to the population of the United Kingdom although at that time there were few television sets that were capable of receiving the projected picture. On May 12, 1937, the English people witnessed the first television broadcast outside the studios when the coronation procession of King George VI was shown. Television service was closed down in 1939 prior to the outbreak of World War II, but in 1946 television broadcasting was resumed. Television projection was handled solely by the British Broadcasting Corporation (otherwise referred to as the BBC) which was an instrumentality of the United Kingdom government. The

control by the government over the BBC was administered through the Postmaster General who was responsible for television and radio in the United Kingdom. The BBC continued to serve in this capacity as the sole media for television broadcasting until 1954 when the Independent Television Authority (otherwise referred to as ITV) was created. This was the first introduction of television in the United Kingdom with commercial advertisements since the BBC programs contained no advertisements. The ITV began licensing broadcasting stations throughout the United Kingdom. In 1959, both ITV and the BBC had broadcasting facilities either directly or under license in the major urban areas of the United Kingdom.

506 5. Television projection is based on a transmission of a series of still pictures or "frames" which replace each other in rapid sequence on the television screen in such a way to create an impression to the human eye of a continuously moving picture. Each frame appears on the screen by means of a thin beam of electrical particles which transverses the screen in horizontal lines until the whole picture is formed. The standards of reception as adopted in the United Kingdom in 1936 included the 405 line standard in that there were 405 of these horizontal lines in each frame. No universal line standards have been adopted throughout the world and this adoption of the 405 line standard in the United Kingdom differentiated from certain European standards and the United States standards. Consequently, television receivers made in the United Kingdom and those made in other foreign countries were not automatically interchangeable. Because of the different line standard in other countries and especially in certain countries of Europe, it was decided in 1960 by the United Kingdom government to establish a committee to review the problem of line standards and other technical developments in television in the United Kingdom. The

Pilkington Committee was appointed by the Postmaster
General to review this question and make proposals for
submission to Parliament on this subject. The proposals
made by the Pilkington Committee in 1962 included a
507 recommendation that the 625 line standard adopted in
many countries of Europe be adopted in the United
Kingdom. Consequently, a new television station was established
in London under the authority of the BBC with a
625 line standard which televised programs through BBC
Channel 2. Currently and since 1962, the London metropolitan
area has been capable of receiving three television
channels referred to as BBC 1, BBC 2 and the ITV channel.
Recently BBC 2 has been extended to the midlands and
South Wales. In the immediate future it is expected to be
available in the North of England, and by the end of 1965
it is expected that 50% of the population will be able to
receive BBC 2, providing they have sets equipped to receive
it.

6. Television production in the United Kingdom
reached its height in 1959 when approximately 2,863,000
television receivers were produced, and disposals amounted
to 2,776,000 sets. Sales in that year were at an all time
high in the history of television. This was encouraged by
the absence of credit restrictions or hire purchase controls
which had been eliminated in October of 1958. Manufacturers'
inventories were also at an all time high. However,
market saturation began to develop and by the end of 1959,
sales began to decline. Manufacturers became concerned
that their market was turning into largely a replacement
market, a condition which developed largely due to this
508 relatively complete market saturation. In April, 1960,
credit restrictions were imposed requiring a 20% deposit
for the purchase of a television set on a time basis
and an advance deposit of three months rent was required
in the case of rented television receivers. People

had also held back in purchasing television sets in this period because of the uncertainties as to the adoption of line standards which might result from the Pilkington Committee findings and also because of the uncertainties as to the development of color television in the United Kingdom. The resulting downturn in the market was such that the United Kingdom has never again achieved the production and sales volume that was present in 1959. The total home disposals dropped 35% in 1960 from their 1959 level. In 1961 the drop continued by another 11%. In 1962 the number of television receiver disposals hit its lowest level of the previous four years when it reached 1,378,000 sets. This resulted in a total home disposals in 1962 of less than one-half of those disposed of in 1959. One result of this decline was the severe economic impact which it had upon television manufacturers. The effects of this were as follows:

(a) severe price competition developed and price reduction followed.

(b) many manufacturers and retailers went into the rental market in an effort to unload excess inventories.

(c) it became extremely difficult for a new brand to obtain any portion of the television market.

509 (d) it would have been extremely difficult for a new brand of radio or television receivers to make arrangements with retailers and wholesalers for distribution.

For example, Magnovox, the American company, in late 1960 set up an English company to distribute its products in England. Starting with radios and radiograms but informing the trade that they would later bring in television, they attempted to penetrate the English market with a sales forces of from 10 to 12 experienced sales representatives.

Their efforts were unsuccessful, they soon stopped offering radios and radiograms, and never to my knowledge marketed any television. Profits of the English radio and television manufacturers during this period (1960-1963) declined and many had losses. For example, the published reports of Murphy Radio Limited, Ultra Radio and Television Limited and E. K. Cole Limited show losses as follows:

Year Ending	31 Mar. 1960	31 Mar. 1961	31 Mar. 1962.
Ultra Radio and Television Limited ...	£19,703	£167,682	£385,684
Murphy Radio Limited		£152,201	
E. K. Cole Limited		£273,156	£746,000 (gross trading loss £22,960 (net) loss after subvention receipts).

and Radio and Allied's profits dropped in the following manner:

	Trading profit before tax
12 months ended 30th April 1959	£1,222,139
12 months ended 30th April 1960	£1,297,460
11 months ended 31st March 1961	£ 734,627
12 months ended 31st March 1962	£ 735,675

510 Several mergers and acquisitions followed, such as Thorn Electrical Industries Limited, acquired Ultra Electric Ltd.; The General Electric Company acquired Radio & Allied Industries Limited; Pye of Cambridge Limited acquired E. K. Cole Ltd.; Bush Radio Ltd. purchased Murphy Radio Ltd. As a result, the number of major manufacturers in 1957 which totalled 40 was reduced by 1962 to 18.

7. A manufacturer of television and radio sets during the period 1959 through 1963 marketed his sets through three distribution channels:

(a) Sales to rental companies;
(b) Sales to wholesalers; and
(c) Sales to retailers.

There was, in addition, the sale to relay companies and the manufacture by relay companies themselves, but this involved only television reception by means of piped or wired receivers. This distribution was largely in the London area and was proportionately very small.

8. In the distribution by a manufacturer to a rental company during the period 1959 through 1963 the price of such sales varied from 10 to 15% lower than the price at which a manufacturer sold to a retailer. This was in large measure due to volume purchases made by a rental company. During 1960 through 1963 the average manu-
511 facturer's ex-Works price to a rental company for television sets varied from £28 to £34 (exclusive of U. K. purchase tax) and he was informed that certain manufacturers were selling sets to dispose of excess stock as low as £20. Additional discounts are given by a manufacturer to a rental company for settlement and prompt payment, and during the period 1959-1963 a 3¾% settlement discount was given if the rental company paid within seven days of receipt of the invoice and 2½% if payment was made within thirty days of such receipt. Frequently, manufacturers find it necessary to give large rental companies long term credit extending as long as 18 to 24 months.

9. An arrangement between a manufacturer and a rental company was and is by necessity a close relationship. The rental companies work closely with the manufacturers in making technical and style changes which they feel are necessary. A rental company will order on very short notice and expect delivery within forty eight to seventy two hours notice of large quantities of television receivers. Some order regularly on a weekly basis. Con-

sequently, a manufacturer must have production lines, capacity, inventory and appropriately situated warehouses in such a position as to meet these large demands on short notice. In addition, the supply of spare parts must be handled on the same level and with the same efficiency as the complete receivers.

512 10. The rental companies commanded a large share of the television market during the period 1959 through 1963. This growth was due to many reasons, such as:

(a) the larger down payment required in the case of purchased sets;

(b) free servicing and spare parts supplied by the rental companies to the renting consumer;

(c) no delay in servicing rented sets;

(d) protection against obsolescence and technical changes in television receivers through the rental of sets.

During the period 1959 through 1963 the percentage of rental business as a proportion of the number of sets manufactured was as follows:

Period	Average Percentage of Sets Committed to the Rental Business in the U. K. as a Proportion of Sets Manufactured
May, 1959-December, 1959	40%
January, 1960-December, 1960	50%
January, 1961-December, 1961	50%
January, 1962-December, 1962	70%
January, 1963-May, 1963	70%

11. A manufacturer could only sell to a rental company in the United Kingdom during 1959 through 1963 when his price was competitive. Attempts to sell quality sets at a premium price to a rental company would have been difficult if not impossible since a rental company has little

or no demand for premium sets. In negotiations conducted by Radio & Allied with rental companies during 1960
513 through 1963, price was always the primary consideration. During the period 1959 through 1963 the popular tube size television receivers, namely 17 inch to 19 inch, were sold by Radio and Allied to large rental companies purchasing substantial quantities at prices ranging from a little below £30 to £36 per set and sets of 21 inch to 23 inch screens from £34 to £44. The price difference was accounted for by the higher priced sets being dual line sets and the lower priced sets being able only to receive 405 line transmissions.

12. Many television and radio manufacturers distributed a portion of their production through United Kingdom wholesalers during the period 1959 through 1963. Manufacturers distributing radio and television receivers through unrelated wholesalers during 1959-1963 usually marketed such sets at an intercompany price approximately 15% below the price between such manufacturers and retailers who purchased directly. The distribution through a wholesaler eliminated the need of a manufacturer for a sales force in the area in which the wholesaler operated. Under this arrangement, the manufacturers who sold through wholesalers at this 15% discount were those who had an established name that was publicly accepted in the United Kingdom radio and television market. The manufacturers had established and maintained warehouses and appropriate amounts of inventory at various propitious locations throughout the United Kingdom for delivery
514 to the wholesaler, the wholesaler was familiar with the servicing requirements for this type of equipment and handled equipment which was in all senses adaptable to the standards of reception and design acceptable in the United Kingdom.

13. Many manufacturers of radio and television receiv-

ers, such as Radio & Allied, distributed in 1959 through 1963 directly to retailers. Approximately 90% of television receivers sold and approximately 60% of radios sold were distributed directly to retailers from the manufacturers during this period. For this purpose, a large staff of salesmen was maintained. Dealing directly with retailers means that the manufacturer must bear some of the expense which the wholesaler might otherwise bear. For example, in 1960 GEC with about 5% of the television market, had a sales force of approximately 36 people costing annually about £100,000. Shipping charges in the United Kingdom are paid by the manufacturer since the sales price to dealers is not an ex-factory price but a delivered price. Another expense incurred by U.K. manufacturers was the cost of financing retailers. During 1959-1963 manufacturers found it necessary to finance many of the retailers to whom their products were sold. The amount of interest rate varied depending on the size and credit standing of the retailer, the purchase price for the products and the Bank rate for interest.

515 14. Television sets sold through retailers during 1959 through 1961 at a price of approximately 30% discount from list price (exclusive of United Kingdom purchase tax) and beginning in 1961 Radio and Allied offered its sets at a discount of 33⅓% during the entire period of 1959-1963. Cash discounts and discounts for payment in 30 days were given to retailers during 1959-1963 at the rate of 3¾% and 2½% respectively. Additional discounts were given for volume purchases by retailers.

15. The manufacturer was required to make various technical changes in its equipment during the period 1959 through 1963 in order to insure that its television receivers would not be obsolete over their expected life of eight to ten years. After the appointment of the Pilkington Committee which began investigating the need and desirability

of reviewing the technical standards for television reception in the United Kingdom, television manufacturers kept themselves well informed of any technical changes which might be suggested by that Committee. Although the Pilkington report was not finalized until 1962 and its proposals suggested to Parliament by the Postmaster General in that year, manufacturers could foresee in 1961 the possible adoption of the 625 line standards for television reception in the United Kingdom. In August and Sep-
516 tember of 1961 manufacturers began producing a dual standard set capable of receiving the 405 line and the 625 line. Consequently, considerable additional costs were required of a manufacturer in order to have his equipment acceptable by the purchasing public for the several years thereafter when it was expected that television reception would include both line standards.

Affiant states that he has read the foregoing and that he knows the contents; and that the same are true of his own knowledge.

/s/ B. T. Reilly
B. T. Reilly

Subscribed and sworn by the above-named Deponent Brian Thomas Reilly at Slough in the County of Bucks England this Sixth day of October One thousand nine hundred and sixty-five,

Before me,
/s/ Wilfrid M. Phillips
Wilfrid M. Phillips
Notary Public in and for the
City of London and elsewhere in England.

[Seal]

IN THE UNITED STATES DISTRICT COURT

* * (Caption—59-C-1847) * *

518 AFFIDAVIT OF THOMAS LUDLOW

Thomas Ludlow, of Traps Lane, New Malden, Surrey, England, being duly sworn, deposes and says that were he to be called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of Hazeltine Research, Inc. v. Zenith Radio Corporation, he would testify as follows:

1. He is the Managing Director of Vista Home Rentals Limited, whose principal office and place of business is located at Station House, Morden, Surrey, England.

2. After serving in His Majesty's Armed Forces, he attended in 1944 a one-year course at Southampton University on Radio Technology. Upon completion of that course he was employed as a technical assistant by Marconi Wireless & Telegraph Company, an English company engaged in the manufacture of telecommunication 519 equipment. In 1948, he became a sales representative for a retail sales and rental company, Domestic Electrical Rentals Limited (herein called D.E.R.), an English company engaged at that time in the retail selling and renting of television sets in the United Kingdom. Starting in 1948 as the sales representative of D.E.R.'s single retail store, he subsequently served in a number of capacities for D.E.R., becoming Assistant General Manager in 1951, General Manager in 1953 and Managing Director in 1956. During that period D.E.R. rose from a small operation having one shop to one of the largest rental companies in England and Australia having over 400 outlets when he resigned in December, 1963, to form a new rental company named Vista Home Rentals Limited. He has spent approximately 17 years in the television rental business in the

United Kingdom and has been engaged in and/or super-
vised all phases of this business. He has also been active
in the Electronic Rentals Association, Limited, a trade
association representing all television rental companies in
the United Kingdom and was Deputy Chairman of that
organization from 1961 to 1963. In 1960, he was asked to
give oral and written evidence on behalf of the Electronic
Rentals Association Limited to The Committee on Broad-
casting, 1960 (sometimes referred to as the Pilkington
Committee) which had been appointed by the Post-
520 master General in 1960 to study television and radio
broadcasting in the United Kingdom. The Electronic
Rentals Association Limited therein advocated in December, 1960 the introduction of a 625 line standard for television receptions in the United Kingdom to supplement the existing 405 line standard.

3. The rental (as opposed to sale) of wireless receivers for home use started in 1932 when radios were made available on a rental basis by Radio Rentals Limited, now the largest television rental company in the world. Radio Rentals Limited also started renting television sets on a small commercial scale prior to World War II and continued this operation after the War when television broadcasting was resumed in June of 1946. The television market generally developed slowly until 1953 when the Coronation of Queen Elizabeth was televised in June of that year. After that, television sales and rentals increased substantially. For television receivers, the rental market has increased in greater proportion than the sale market. This was due to a number of factors:

(a) In the case of an outright sale, the cathode ray tubes (otherwise called picture tubes) carried a short guarantee of six (6) months and their cost of replacement varied between £20 and £25 or approximately 25% to 33⅓% of the retail price of

521 the set in 1953-1954, and the replacement tube could not be purchased on hire purchase. This placed a considerable risk on the purchaser which, in the case of rented television receivers, was assumed by the rental company since parts were guaranteed during the entire rental period.

(b) Service on a purchased set was often difficult to obtain and expensive and often caused delays of several days to several weeks before the set was placed in working order. Consumer groups such as WHICH and newspapers produced and published surveys which showed great variation in the quality of television repair service and the charges for it. Rental companies could and did tell prospective customers that they need not worry about these service problems because the rental company guaranteed a working set and would repair or replace the set immediately without charge if it went out of service. Offering immediate service was also a significant factor in increasing the

522 rental share of the market. Television became a very important part of the British household, and it was considered a very serious matter to have to be without a set for any length of time while it was being repaired. If the rental set could not be repaired immediately in the home, the rental company replaced it immediately with a comparable set in working order at no charge to the renting consumer and the defective receiver was taken back to the rental company's repair shop for repair.

(c) An additional factor contributing to the growth of the rental market was the down payment required in the case of purchased sets. Under the legal requirements for the hire purchase transactions (sometimes referred to as conditional sales contracts) a purchaser in 1953 and part of 1954 was required to make a down-payment of one-third of the total purchase price of the set (which included the purchase tax). At that time no down-payment was required in the case of rented receivers.

523 (d) While renting had once been thought of as used only by poor who could not afford to purchase a set, considerable advertising and a change in methods pioneered by affiant at D.E.R. transformed the image of renting and created the impression that it was both economical from the service point of view and prestigious to rent a television set. Originally rental companies in curtained, secluded shops with plain unmarked vans because they believed that their customers would not want their friends and neighbours to know that they were renting instead of purchasing a television set. Affiant while with D.E.R. got the idea that rental should not be something only for those who could not afford to buy but should be presented to the public as a highly desirable and economical way of obtaining television reception. Consequently, he changed their methods to use open show rooms, bright colored vans and promoted rental as the sound way to acquire a television set even if the consumer could afford to buy one.

524 (e) As technological advancements were made, renting became more popular because the customer could acquire a later model by merely paying additional rental charges without an additional capital outlay. Television sets have changed considerably since after the end of World War II when a nine-

inch set was most popular, gradually increasing in size of screen over the years from 9 to 12 inches, 12 to 14, 14 to 17, and 21 inch sets and to the presently popular 19 inch and 23 inch sets. This change, plus reduction in size of cabinets, newer styled cabinets, better quality picture tubes, better control adjustments and sound and picture reception advancements, created an obsolescence in purchased sets that renters could easily by-pass.

(f) Up until 1954, England had only one program and the sets did not require tuners. In 1954, when the Independent Television Authority began to broadcast, all of the sets then in existence would not
525 receive the ITV and could be made to receive it only by an expensive and unreliable conversion. This also contributed to the growth of rental because the renter did not have to fear that he was putting a substantial amount of money in a set that might be obsolete.

(g) Another factor which enabled the rental companies to compete effectively against retail sellers was the favorable tax treatment which they were afforded. Because the rental company owned the sets which were out on rental, they were treated as plant for investment allowance purposes. Sales companies, on the other hand, could not treat the sets which they were selling on hire purchase as a part of their plant for investment allowance purposes. The result was that the rental companies received a credit against their income taxes amounting to almost 30% of the cost of the sets which the sales companies could not qualify for. As a result, the rental companies were able to reduce rental rates to even more effectively compete against sales companies.

526 Although the hire purchase restrictions were removed in July of 1954, various other reasons continued to propel the advancing rental market. When hire purchase controls were re-imposed on the consuming public in February 1955 at 15% and increased in July 1955 to one-third, the rental market continued to grow at even greater strides. Hire purchase controls were increased to 50% in February 1956. At the same time, rental restrictions were imposed which required a deposit of nine month's rental before a television set could be rented, but rental customers were encouraged by D.E.R. (and later by most rental companies) to treat this not as an advance payment of the first nine months but as a deposit returnable upon termination of the rental contract or applied to another rented set. As a result, this control restriction even contributed to advance the share of the market held by the rental companies, since by not crediting rental charges against the deposit, the customer always had a deposit equal to or approximately equal to the amount required to obtain a new set. A purchaser, on the other hand, was forced to come up with a new down-payment on each new television receiver. This amounted to forced saving by the rental customers and for this reason appealed to many of them. The rental busi-
527 ness continued to flourish during this period of 1956 to 1958 and in 1958 an estimated 40% of the total production of television sets in the United Kingdom was out on a rental basis or committed to the rental business as stand-by replacements. The rental controls were reduced in September of 1958 from a nine months rental down-payment to four months. Subsequently, in October of 1958, the controls on rentals, as well as the controls on hire purchase transactions were completely abolished. Nevertheless, the rental business continued to grow and took a larger and larger share of the total television market. As a result of the continuously significant increases in the rental market

by late 1958 and 1959 manufacturing companies and individual retailers who had previously fought the rental competition were beginning to rent themselves. Manufacturing companies began to sell a large percentage of their output to rental companies and retailers carried both a rental line and a line for outright sale.

4. In late 1959 and 1960 the market for television sets declined due largely to market saturation. The production and sale of receivers in 1960 through 1963 never again regained the high levels achieved in 1959. As a result, manufacturers and retailers developed excess inventories. In an effort to unload this excess, many retailers and manufacturers began to rent where theretofore they had only
528 sold receivers. They continued to do so through 1963
and thereafter.

5. Rental as opposed to outright purchase was also encouraged by the serious discussion which began in 1960 of the possible introduction of line standard changes for television reception. The consumer who purchased outright took the risk that he might be stuck with a set that would would not receive the new transmission.

6. The total percentage of sets rented during the period from May, 1959 through May, 1963 was as follows:

Period	Average Percentage of Sets Committed to the Rental Business in the United Kingdom as a Proportion of Sets Manufactured
May, 1959 — December, 1959	40%
January, 1960 — December, 1960	50%
January, 1961 — December, 1961	50%
January, 1962 — December, 1962	70%
January, 1963 — May, 1963	70%

7. Before a rental company would purchase television sets from a manufacturer either currently or during the

period from 1959 to 1963, the rental company must have been assured that the manufacturer would have been engaged in the business of manufacturing and distributing television sets in the United Kingdom for many years since a rental set was expected to last from seven to nine years. The rental company must have been assured that the manufacturer will be manufacturing and distributing sets 529 and spare parts to serve its current and discontinued models throughout this period. The nature of the rental business also requires that any substantial rental company work closely with manufacturers for design and technical changes. Manufacturers are expected to maintain inventories throughout the United Kingdom to supply the need of the rental companies within 48 to 72 hours notice. Because of these needs, many rental companies started their own manufacturing facilities or entered into long-term arrangements with established companies during the period 1959 through 1963. D.E.R. was owned by Thorn Electrical Industries, Limited, a substantial manufacturer. Radio Rentals, the largest rental company, manufactured its own sets. Rent-a-set had special arrangement with G.E.C. Rediffusion and Derwent manufactured their own sets. British Relay Wireless was partially owned by Pye, and Robinson Rental had an agreement with Thorn.

8. Price is a matter of utmost importance to the rental companies. Most rental customers choose a set on the basis of picture tube size and monthly rental. If a reasonably good English made 19 inch set is available at 9s.6d. per week with guaranteed service, hardly anyone would pay substantially more than that for a set simply because it was better styled and required less service. Indeed, the rental market in 1959-1963 established a weekly rental level of eight shillings and sixpence (8s.6d.) to ten shillings and sixpence (10s.6d.) with an occasional premium 530 model at 11s.6d. or 12s.0d. Those luxury models which

were and are rented at 12 shillings per week represent less than 10 per cent of the rental market, and it would have been impossible to obtain any measurable share of the rental market with a set that required a higher rental even if it were better in quality and appearance. Luxury models of various makes including imports have been available for rental from high quality specialty and departmental stores, but they have never obtained any measurable share of the market.

9. To be profitable, rental companies in 1959 through 1963 considered it necessary to recover the cost of the set (including purchase tax) during the first two years that the set was rented. During 1959 through 1963, large rental companies paid an average price of from about £44 to £47 including purchase tax. (In 1960 the purchase tax was 50% of the wholesale price; thus, the price received by the manufacturer on the £44 set was only £29. 8s.0d.).

10. A further factor which would make higher priced sets undesirable for rental is that it would be difficult to get a sufficient rental on them as used sets. Rental companies normally lose 12½% of their customers every year. This means that each year a rental company has a very large number of used sets to find renters for. It would be very difficult on secondhand rental to get the premium
531 rental necessary to cover the cost of high priced sets,
since most renting consumers who could afford the higher rental would prefer a new set to a secondhand one. Also, expensive elaborate cabinets have been found to be unsatisfactory for rental because they are difficult to repair and expensive to replace. Metal cabinets also would be unsatisfactory because they are considered unsafe in England. Because of the higher voltage used in England and the varied wiring found in British homes, it is generally felt that metal cabinets would be a safety hazard. Rental companies particularly, since they own the sets and would

be responsible for injury, would be reluctant to use metal cabinets.

11. Because of the need to develop a close relationship with a local manufacturer, a rental company would not likely have made an arrangement with a foreign manufacturer during the period 1959 through 1963 when such manufacturer was entering the television market for the first time in mid 1959. Similarly, they would not have been prepared to purchase television sets manufactured in the United States to American specifications and later adapted in the United Kingdom to comply with British standards during the period of 1959 through 1963, and they would not have been prepared to purchase television sets from a foreign manufacturer during 1959-1963 until such manfacturer had developed sufficient warehouses and inventory of 532 complete sets and spare parts in the United Kingdom to give prompt and efficient service within 48 to 72 hours notice anywhere in the United Kingdom.

12. The substantial growth of rentals in the television industry has not only forced sales prices down but has also changed the whole concept of television reception in the United Kingdom. Instead of regarding a television set as a piece of furniture, the English consumer views it as a means of obtaining the television service much the same as he views the telephone. There is no longer the great public interest in new designs and cabinet styles, and manufacturers have abandoned the idea of constantly changing cabinets and design to promote sales. For years, the British radio and television industry put on an annual Radio Show to display their new models which was attended by hundreds of thousands of people. But interest waned because the British consumer is no longer interested in whether this year's models will have sliding doors or walnut cabinets, etc., and the annual Radio Show has been abandoned.

Affiant states that he has read the foregoing: that he knows the contents thereof; and that the same is true of his own knowledge.

/s/ Thomas Ludlow
Thomas Ludlow

534 Subscribed and sworn by the above-named Thomas Ludlow at the City of London, England this Fifth day of October One thousand nine hundred and sixty-five,

Before me,

/s/ Wilfrid M. Phillips
Wilfrid M. Phillips
Notary Public,
London, England

[Seal]

IN THE UNITED STATES DISTRICT COURT

* * (Caption—59-C-1847) * *

537 AFFIDAVIT OF JOHN H. CARTER

John H. Carter, of 53 Manor Road, Keynsham, Bristol, England, being first duly sworn, deposes and says that were he to be called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of *Hazeltine Research, Inc.* v. *Zenith Radio Corporation*, he would testify as follows:

1. He is a Director of John James (Bristol) Limited with offices at 12-14 Broad Mead, Bristol, England. John James (Bristol) Limited is a subsidiary of the John James Group of Companies Limited.

2. He has been with Mr. John James and his companies in the radio and television retailing business for 17 years and has held a number of different positions including store manager and area manager.

3. The John James Group of Companies Limited (here-

in called John James) has a chain of over 230 retail
538 stores which specialize in the retail sale of electrical
appliances such as radio, television, radiograms and gramophones, as well as such white goods as stoves and refrigerators.

4. He is and has been for 10 years charged with the responsibility of supervising and managing the retail stores of John James in South Wales and the west of England. In this area, there are 102 stores under his management and supervision. He has supervision over purchasing, store management and all other phases of the retail trade conducted by this group of 102 retail outlets.

5. The primary consideration of a retailer, such as John James, is making arrangements with a manufacturer of radio and television receivers is price. This is also true where a retailer makes arrangements for distribution of receivers with a wholesaler, but the practice of John James and other multliple store companies is to purchase directly from the manufacturer. In his negotiations with a manufacturer or wholesaler the retailer always keeps in mind the retail price at which the receivers are to be marketed as well as the price to him. Considerations of price became most important at the end of 1959. After a boom period in 1958 and 1959, the sales of television receivers starting in late 1959 and 1960 substantially declined. This resulted in price reductions in order to dispose of existing stocks and a great deal of change in the industry. From that time
on, the combination of the reduction in the total
539 turnover of sets and the increasing percentage of
rentals as opposed to outright sales made price the most important factor in marketing television sets.

6. In the television industry the price to the retailer is stated as a discount from the retail list price (excluding purchase tax). A group of stores such as John James usually receive 30% off the retail selling price (less pur-

chase tax) plus an additional 10% off the wholesale price for quantity purchases and 2½% for payment within 30 days.

7. During the period of 1959 through 1963, and today, it would not have been possible for John James to obtain even a small fraction of 1% of its television with sets costing it £62 or more (excluding purchase tax). Such a set including the purchase tax of 50% would have to sell in the neighborhood of £135.

8. During the period 1959 through 1963, a retailer in the United Kingdom would not have made arrangements with a foreign manufacturer unless his television receivers were convertible and completely adaptable to standards of television reception in the United Kingdom. Beginning in 1961, a retailer would have required that the foreign manufacturer produce television receivers designed to receive both the 405 and the 625 line standards of television reception. Although the 625 line standard was not put
540 into effect until later, retailers as a result of public pressure were forced to market sets which could be adaptable to both line standards because it was expected that the 625 line standard would be adopted.

9. Brand names, while they have been relatively unimportant in the rental of Television, have been significant in the sale of television and radio sets in the United Kingdom. In the case of television sets, public acceptance has been based largely upon the strength and reputation of the manufacturer in the production and sale of radio sets. Zenith is a name which would be recognized by members of the radio and television industry, but in 1959 it was not known by the consuming public. In order for a new company without a reputation publicly to gain public acceptance for the marketing of its radio and television sets, substantial advertising would have to be required. Advertising expenditures would be largely directed to distribution

and acceptance by the public once the set or sets are in the hands of retailers. Advertising would not help the foreign manufacturer to make arrangements with United Kingdom retailers since this would be largely based on quality and price, with price as the primary consideration. The above considerations were true during the period of 1959 through 1963 just as they are true today.

10. The John James Company, Limited through its 541 retail outlets, has developed over a period of years, a market for the rental of television sets. This market has been particularly appealing to many consumers because of the free service and free parts made available under the rental contract arrangement. The rental fee is figured on the basis of 2 - ½ pennies per week for each pound of the wholesale price including the purchase tax. Thus, a set that cost the retailer £45 (including purchase tax) would have a weekly rental of 112 pence or 9 shillings and 4 pence. Because the renting consumer is more interested in price than in quality, television sets with superior craftmanship and design would have little or no appeal on the rental market. Indeed, a set which would have to rent for 20 shillings per week would have no practical market at all. Because rental price is so important, a retailer such as John James would not be willing to pay an amount in excess of the average purchase price for the sets normally available for rental in the United Kingdom.

Affiant states that he has read the foregoing and that he knows the contents; and that the same are true of his own knowledge.

/s/ John H. Carter
John H. Carter

Sworn by the before named John H. Carter at Bristol, England this 6th day of October 1965.

Before me
/s/ J. R. C. Manners
Notary Public.

[Seal]

IN THE UNITED STATES DISTRICT COURT

• • (Caption—59-C-1847) • •

542 AFFIDAVIT OF JAMES THOMSON MASTERTON

James Thomson Masterton of Slade House, 17 Pembroke Road, Moor Park, Northwood, Hertfordshire, England, being first duly sworn, deposes and says that were he to be called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of *Hazeltine Research Inc.* vs. *Zenith Radio Corporation,* he would testify as follows:-

1. He is Deputy Chairman and Managing Director of Brown Brothers Ltd., whose registered office is located at Brown's Buildings, Great Eastern Street, London, E.C.2., England.

2. He was born in November 1903 at Manchester, England and was educated at Taunton School, Taunton, England. He is acting and has acted as Managing Director in the supervision of Brown's wholesale distribution business since 1952. Prior to his becoming Managing Director, 543 he served with Brown in various capacities from 1921 becoming a General Manager in 1937.

3. Brown Brothers Ltd., and its subsidiaries (hereinafter collectively referred to as "Brown") specialize in the wholesale distribution of goods in the United Kingdom and overseas and have done so for many years including the years 1959 through 1963. In 1963 and 1964, Brown handled the wholesale distribution of goods valued at £22,900,000 and £24,850,000 respectively. Brown specializes (and has specialized for many years including the years 1959 through 1963) in the wholesale distribution of radios, television sets, other electrical goods, automobile accessories and components, and bicycles and components. In addition to the wholesale distribution of radios and television sets, Brown distributes (and has distributed for

many years including the years 1959 through 1963) radio valves, television tubes and all items required for the repair and maintenance of television receivers. Brown maintains (and has maintained for many years including the years 1959 through 1963) more than 46 different locations throughout the United Kingdom, which are used in its wholesale distribution business in order to cover the sale and distribution of products throughout the United Kingdom. These consist of warehouses and distribution centers necessary for immediate and effective distribution of
544 its goods. In the distribution of its radio and television receivers and components Brown utilizes more than 34 in number of these locations for effective and complete marketing of these goods.

4. Brown purchases television and radio receivers and components from manufacturers in the United Kingdom. Brown also purchases radios of foreign manufacture in Japan, Italy and Germany. It has not purchased television sets from foreign manufacturers because none were offered that would work under the British transmission system. Brown's wholesale business in radio and television is (and has been for many years including the years 1959 through 1963) amongst the largest of such businesses in the United Kingdom.

5. Currently and during the years 1959 through 1963, Brown performed the following functions as a wholesaler of radio and television receivers in the United Kingdom:

(a) maintained large inventories of receivers and parts for distribution to retailers;
(b) maintained a sales force for such products throughout the United Kingdom and organised arrangements for servicing;
(c) engaged in limited advertising;
(d) delivery of receivers and parts to retailers;
(e) invoicing and collecting from retailers;
(f) handling orders, delivery and payment with manufacturers.

6. In order for a line of radio or television receivers to be handled by Brown currently or during 545 the period from 1959 to 1963, the manufacturer would have to have an established brand name if its prices were competitive, or without such an established brand name its prices would have to be substantially below those of its competitors.

7. It is and was during the period of 1959 through 1963 very important that a close relationship be developed between the wholesaler and manufacturer of television and radio receivers because of the necessity for short delivery times, the handling of servicing problems, advertising coordination and availability of parts for current and discontinued models.

8. Price has always been an important factor in England in the marketing of radio and television receivers. Brown would not consider taking on a line of such products unless the sale price from the manufacturer to Brown was sufficiently low so that Brown and the retailers through whom Brown arranged the distribution could make a reasonable profit after expenses. The relationship of the ultimate retail price of the receivers and the price at which Brown purchases them from the manufacturers have always been of the utmost importance in any such arrangement. During 1960 and carrying at least through 1963, with the decline in the sales of television receivers due to market conditions, price became an even greater factor. In the fact of the downward trend of prices during this period, introducing a new line of higher priced sets—even though of 546 higher quality—would have been very difficult.

9. Brown's participation as a wholesaler for a radio and television manufacturer normally results, and has resulted in the past including the years 1959 through 1963 in a minimum gross mark-up to Brown of 15 per cent of the ultimate retail price of such sets (less the applicable United

Kingdom purchase tax). This is a minimum gross mark-up and a higher rate would be required if the manufacturer does not have an established name or reputation among consumers in the radio and television field in the United Kingdom. In fact, on radio receivers considerably higher rates have been required from time to time in the past. This minimum gross mark-up of 15 per cent would, in the normal course of business, only be acceptable if the manufacturer were willing to assume on its own behalf the following additional costs:—

(a) All initial and continuing advertising costs;

(b) the costs of ensuring availability of finished radio and television sets and spare parts thereof in the United Kingdom;

(c) major servicing made available at the expense of the manufacturer;

(d) in the case particularly of an overseas manufacturer, all costs of conversion and adaptation of the sets for suitability to the United Kingdom market, including standards of reception and design, and the supply of spare parts or a free issue to the wholesaler in lieu, would have had to be borne by the manufacturer.

10. Having regard to the factors enumerated above, 547 an overseas manufacturer would face currently and during 1959-1963 the following particular difficulties in selling radio and television receivers through the United Kingdom wholesale trade which difficulties would either not exist or would be much less in the case of a United Kingdom manufacturer:

(i) a wholesaler would be extremely cautious in the quantities he accepted from an overseas manufacturer whose name was new to the United Kingdom market until after an initial sales campaign had been partially fulfilled and a reasonable assessment of the demand from the retail trade had become possible. This sales campaign would involve substantial initial advertising costs and/or other costly sales promotion efforts which would be substantially in excess of those incurred by a known manufacturer introducing a new model;

(ii) the wholesale distributor would have to insist upon the manufacturer maintaining adequate stocks of sets and parts or such distributor would have to maintain additional inventory of stocks and parts himself and require an increased mark-up in consequence;

(iii) the manufacturer would have to set up and maintain a sufficient servicing organization which in the case of a United Kingdom manufacturer would be part of his manufacturing and servicing operation.

11. Brown would not have contracted during the period of 1959 through 1963 with a foreign manufacturer whose radio and television sets were adapted to the United Kingdom standard of reception, unless the foregoing conditions had been fulfilled and unless an increased mark-up had
548 been obtainable in addition.

12. Brown is thoroughly familiar with list prices and the discounts required now and during 1959-1963 by retailers with whom Brown made arrangements for distribution. In England the price to the retailer is stated in terms of a discount from the established retail price. The gross profit margin that a retailer required for the sale of radio and television receivers is and for many years (including the years 1959 through 1963) has been 33⅓ per cent of the retail list price (less the applicable United Kingdom purchase tax) with regard to radio receivers and 30 per cent of the retail list price (less the applicable United Kingdom purchase tax) with regard to television sets. In addition, chains of stores and other large quantity purchasers fre-

quently demand and receive higher discounts. These retail mark-ups or discounts are and were during 1959 through 1963 in addition to the wholesale profit margin obtained by Brown.

Affiant states that he has read the foregoing; that he knows the contents thereof; and that the same is true of his own knowledge.

/s/ JAMES THOMSON MASTERTON
James Thomson Masterton

• • •

IN THE UNITED STATES DISTRICT COURT

• • (Caption—59-C-1847) • •

551 AFFIDAVIT OF CHARLES ARTHUR WHITE

CHARLES ARTHUR WHITE, of 140 Portland Crescent, Stanmore, Middlesex, England, being duly sworn, deposes and says that were he to be called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of *Hazeltine Research, Inc.* v. *Zenith Radio Coporation*, he would testify as follows:—

1. He is a Director of Magnet Shipping Services Limited, a subsidiary of General Electric Company, Limited (GEC) with offices at 1 Stanhope Gate, London, England.

2. He started with GEC in 1921, and has held a number of positions with that company and its subsidiary companies. From 1948 until the present, he has been engaged in the supervision and administration of import and export procedures dealing with the import and export of goods into the United Kingdom for GEC and since 1963 for Magnet Shipping Services Limited.

552 3. Using available information, he has had prepared, under his supervision, an estimate of the costs of importing 100 cartons of 17 inch television receivers into the United Kingdom from the United States from a port of export in Chicago to a warehouse in the United Kingdom during the period 1959-1963, which is as follows:—

100 Television Receivers

	Dollars	*Sterling*
Freight (Chicago to London) 450′ at $57.87 cubic ton	$651.04	£233. 7s. 0d.
Canal Tolls 7,000 lbs. at 90¢ per 2,000 lbs.....	3.15	1. 2. 7d.
Bill of Lading	1.39	10s. 0d.
Agency (shipping)	27.90	10. 0s. 0d.
Insurance $17,220 at 1.5%.....	258.30	92. 11s. 8d.
Landing and Delivery 26/-d. per ton weight +97%	22.32	8. 0s. 1d.
Port Rates 6/-d. per ton +10%	2.86	1. 0s. 8d.
Opening for Customs..	3.49	1. 5s. 0d.
Rent 1 week at 2/6d. per ton weight +95%	2.10	15s. 3d.
Import Entry	3.49	1. 5s. 0d.
Agency (import)	2.09	15s. 0d.
London Clause Charge	.76	5s. 6d.
Cartage—Docks to Warehouse 24/6d. per ton	13.67	4.18s. 0d.
	$992.56	355 15s. 9d.

The above figures are based on a carton size of 18″ x 18″ x 24″ for a television receiver and each television receiver was assumed to have a value of $150.00.

Affiant states that he has read the foregoing; that he knows the contents thereof; and that the same is true of his knowledge.

/s/ Chas. A. White
Charles Arthur White

Subscribed and sworn by the above-named Deponent Charles Arthur White at 1 Stanhope Gate in the County of London England this Seventh day of October One thousand nine hundred and sixty-five,

Before me,

/s/ Maurice Phillips
Maurice Phillips
Notary Public,
London, England.

[Seal]

In the United States District Court

* * (Caption—59-C-1847) * *

556 AFFIDAVIT OF S. E. ALLCHURCH, O.B.E.

S. E. Allchurch, of Brockham Warren, Boxhill Road, Tadworth, Surrey, England, being first duly sworn, deposes and says that were he to be called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of *Hazeltine Research, Inc.* v. *Zenith Radio Corporation,* he would testify as follows:—

1. He is Director of The British Radio Equipment Manufacturers' Association (herein called "BREMA")

whose office and place of business is located at 49 Russell Square, London, W.C.1., England.

2. From 1931 to 1940 he was Director of a Radio Television and Electrical Retail Business. From 1940 to 1946 he was a temporary civil servant in the Ministry of Aircraft Production dealing with co-ordination of re-
557 search, development, production and use of radar and radio apparatus in aircraft. He became assistant director in the department. Then from mid-1946 to date he has been chief executive officer of BREMA firstly as Secretary and from 1961 in the newly created post of Director of the Association.

3. BREMA is a trade association whose members are British radio and television manufacturers. BREMA renders services on behalf of its members in collecting statistical data on radio and television manufacturing, sales, importing and exporting through the submission of member company statistical returns and from government agencies. BREMA is engaged in the supervision, planning and co-ordinating of technical developments in radio and television equipment used in the United Kingdom, the participation in television and radio exhibitions and shows, the publishing of annual and monthly reports of the work of BREMA and its various committees, the representation of its members before government agencies and other groups in various capacities, and generally assisting the British manufacturers of radio and television in their promotion of the British radio and television industry. Prior to 1963, the membership of BREMA consisted of radio and television manufacturers representing approximately 85%
558 of United Kingdom production of such items and during 1963 and thereafter, BREMA's membership represented 95% of such production and 100% of television production.

4. In his capacity as Director he has supervised the

operations of BREMA, including the collection of statistical data and the collection of the statistical data contained in the returns submitted by members of BREMA and from government agencies. He has supervised the drafting and compilation of the BREMA Annual Reports and monthly reports sent to members, and has administered the work of the many committees of BREMA which concern themselves with such things as the general economic position of the television and radio industry in the United Kingdom, the technical phases of the development of radio and television in the United Kingdom, and representation of BREMA before government agencies, and other bodies, as well as supervising and administering other phases of the work of BREMA as described in the BREMA Annual Reports.

5. Attached to this Affidavit are Annual Reports of BREMA entitled "BREMA Annual Report" which were presented to the Annual General Meeting of BREMA members for each of the calendar years 1957, 1958, 1959, 1960, 1961, 1962 and 1963. These reports are true and authentic Xerox copies of original published reports prepared by BREMA under his supervision and direction in the or-
559 dinary course of the business of BREMA. It was the
ordinary course of business of BREMA to prepare such reports on behalf of and for presentation to its members. They have a reputation for being reliable and accurate.

6. One of the purposes of these Annual Reports was to describe the trading conditions and level and trends of production and sales of radio and television receivers in the United Kingdom during the course of a year. The Reports are used by the Association, its individual members and others, in making plans and policies and in studying or analysing the British radio and television markets.

Affiant states that he has read the foregoing; that he knows the contents thereof; and that the same is true of his own knowledge.

/s/ S. E. Allchurch, O.B.E.
S. E. Allchurch, O.B.E.

Subscribed and sworn by the above-named Deponent Sydney Ernest Allchurch at 49 Russell Square in the County of London England this Sixth day of October One thousand nine hundred and sixty-five.

Before me,

/s/ Maurice Phillips
Maurice Phillips
Notary Public,
London, England

[Seal]

610

The Fourteenth Annual Report of the British Radio Equipment Manufacturers' Association

Presented by the Executive Council to the
Annual General Meeting, 23rd April, 1959

Gentlemen,

The Executive Council has pleasure in presenting to members of the Association its Annual Report for 1958.

Introduction

General

The recent long struggle to combat inflation culminated in some success during the past year and the opportunity now appears to exist for the Government to take reasonable measures further to stimulate the economy without reviving inflation. Cautious optimism is justified but dangers persist —the rising trend in wages costs, the decline in investment demand and weaknesses in exports. To encourage investment by fiscal measures is not enough, there must be reasonable certainty in the minds of business men that having taken the decision to undertake new investment there will be a market for the goods when finally produced as a result of it. There is a genuine risk that the delayed effect of any stimulus given may not be felt until the possibility can be seen of the next bout of inflation. This sequence of events has brought with it in the past the too familiar pattern of attempts to rectify the overall malaise of the economy by piecemeal measures directed against production in the durable consumer goods industries. It has been our bitter experience invariably to be one of those industries selected to suffer for the national economic illness through the steps taken to suppress the symptoms of the general inflation.

Within the sector of the economy with which this industry is concerned, three major issues have dominated the work of the Council during the year under review. On commercial matters it has been to bring home to the Government the effects of the stringent controls on hire purchase trading, rentals, and the high level of Purchase Tax. In the realm of technical policy the main pre-occupation has been ~~with~~ an exhaustive study of the future television standards most suitable for the United Kingdom and the many and varied associated problems which any change from existing standards would bring with it. Within the sphere of the industry's own domestic arrangements the long-planned reconstitution and reorganisation of the Radio Industry Council has been successfully and amicably negotiated.

Trading Conditions

The level of industry sales and the pattern of distribution during 1958 were, even for this industry, the subject of exceptional legislative and other measures which led during the first nine months of the year to uncertainty which brought with it difficult trading conditions and a low level of business but, during the last three months, an almost overwhelming bunching of sales and a corresponding at-

tempt to increase production to meet it. The 1958 April Budget lowered the rate of Purchase Tax from 60% to 30% on most durable consumer household goods other than our own products. This, in addition to the earlier anticipation of changes in the Budget, led to subsequent widespread expectations of Purchase Tax reductions on radio and television goods later in the year. The general easing of overall credit controls enabled the Banks in September to offer credit facilities and personal loans which, to some extent, appeared to enable the public to sidestep the stringent deposit regulations aimed at restricting consumer ex-
611 penditure. This action by the Banks was shortly followed by a downward adjustment in deposit requirements for hire purchase trading and rentals. The revised rates of deposit widened the previous differential advantage of rentals as against other credit transactions and caused boom conditions in rentals, whilst leaving other forms of trading relatively unaffected. A few weeks later, on 29th October, the regulations were abolished. An immediate impetus was given to trade during the peak seasonal period for the industry. This series of measures created an awareness that pre-Budget trading might more than normally decline and remain at a low level until the 1959 Budget removed the immediate uncertainty of the future rate of Purchase Tax.

The above account outlines the conditions under which the industry had to operate and because of which, from time to time, representations were made to the Government. The necessity was emphasized on these occasions for establishing and maintaining stable conditions in which our section of the radio industry could market its products and plan its production. Meetings took place with Ministry of Supply officials and later with the Minister himself, at which it was made clear that we were not concerned with special pleading, but with ensuring that the various Departments concerned, particularly the Treasury and Board of Trade, were made fully aware of the short and long term effects of very high Purchase Tax rates and stringent complementary regulations controlling credit trading. The Departments concerned welcomed and appreciated the information with which they were provided which gave them a realistic insight into the complexity of the problems which industrialists had to face and the internal problems within industry caused by Government intervention with trading. It was clear that neither our sponsoring Ministry, nor the Board of Trade, had appreciated, for example, the effect of the long continued high level of Purchase Tax on the development and sale of VHF sound receivers or its effect on the slow and disappointing acceptance of the 21″ and larger screens for television receivers on the home market, nor our disadvantage in competing overseas where 21″ tube sets predominate, whilst they represent no more than 7% of current sales in the United Kingdom. As a result of these meetings, the Minister made representations to the Treasury in support of our contentions and although a meeting with the Treasury did not take place, there was reason to believe that attention was being paid to the written evidence submitted. At a meeting with the Board of Trade under the auspices of the R.T.R.A., the opportunity was again taken, in supporting their case, to contend that rental trading was being given undue emphasis, vis-a-vis other forms of transactions, under the earlier Regulations and as modified in September. On this occasion, as in our own representations and correspondence with the Ministry of Supply, we explained that, as an Association, we did not favour one form of distribution more than another but that we felt very strongly that the public should be left to choose for themselves the method of acquiring goods under free market conditions; our objections rested on the legislative measures which imposed differential terms of trading whereby one form of acquisition was made more attractive to the public than another. Disappointment was felt that the Regulations as modified at this time not only perpetuated this anomaly but, indeed, widened the differential between the initial deposits required for rental and hire purchase transactions. Support was also given by the Association to the B.V.A.'s case to the Treasury for the removal of Purchase Tax on replacement tubes.

The year's trading expressed in terms of turnover does not reflect the anxieties and uncertainties which dominated the first few months. The importance of timing in introducing legislative changes could not be better illustrated than by the induced boom superimposed on the seasonal peak in sales during the last three months which has continued into the early part of 1959. Home disposals at ex-Works values of £86.8m. were 3% higher than in 1957 and 26% higher than in 1956 but nevertheless had no more than recovered to the 1955 level of £86.6m. A similar pattern was shown for total turnover which in 1958 was 24% and 3% greater than during 1956 and 1957 respectively and virtually unchanged on 1955.

Technical Policy.

Last year mention was made of the joint research project jointly undertaken by the industry, the Broadcasting Authorities and Government Departments, into propagation conditions in Bands IV and V. These tests were a necessary preliminary to the further study of the possible future development of television in the United Kingdom which has been the principal pre-occupation of the Council in the sphere of technical policy this year. The Council, during this investigation, had to assess very carefully the suitability of the present U.K. standard for continued
612 use over a long period and the commercial as well as

the technical problems associated with any decision to adopt a higher definition system—which carries with it the necessity for utilising frequencies in the UHF Bands IV and V. The eventual introduction of a colour television service has had to be kept in mind.

Amongst the many aspects of this subject exhaustively examined have been the relative lack of potential for further development of the British 405-line system and its suitability for extension into the UHF Bands; the problem of ensuring a continuing market for receivers during the transitional period if a change to higher definition is decided upon; the provision of television receivers for any new standard which would be comparatively simple to manufacture and for the public to operate; and a plan which would make possible the number of programmes which may be required with nation-wide coverage.

These issues together with many other technical and allied commercial problems, amongst which are the trading and cultural implications of the possibility of sharing common standards with other European countries, require the exercise of great care in their solution.

This industry is probably more dependent than any other on the policy and decisions by the Government and their interpretation by authorities outside the industry itself. Nevertheless, we are fortunate in having established a strong and valued tradition of close co-operation with the Administration. Our appraisals of technical policy at each stage of the development in the broadcast services and their practical implementation have been taken fully into consideration by the Authorities when coming to a decision. This tradition, so carefully nurtured over the years, has probably never been of greater importance than at this juncture in our affairs.

• • •

TABLE I.

INDUSTRY PRODUCTION, TOTAL HOME DISPOSALS AND EXPORT SALES, 1956/7/8.

Nos. 000's

Product	Production 1956	1957	1958	% Change '58 on '56 %	% Change '58 on '57 %	Total Home Disposals 1956	1957	1958	% Change '58 on '56 %	% Change '58 on '57 %
Radio Receivers (incl. Car Radios)	1,446	1,600	1,510	+ 4	— 6	1,081	1,357	1,265	+ 17	— 7
Radiograms	236	243	264	+ 12	+ 9	230	266	218	— 5	— 18
Television Receivers	1,457	1,867	1,985	+ 36	+ 6	1,449	1,816	2,020	+ 39	+ 11

Product	Export Sales* 1956	1957	1958	% Change '58 on '56 %	% Change '58 on '57 %
Radio Receivers (incl. Car Radios)	324	289	234	— 28	— 19
Radiograms	9.2	11.3	17.0	+ 85	+ 50
Television Receivers	11.2	17.9	24.5	+ 119	+ 37

* Export Sales are ex-factory, not ex-U. K. port.
Source: Ministry of Supply and estimates based on BREMA Members' Returns.

TABLE II.

VALUE OF INDUSTRY TURNOVER, 1956/7/8.

£000's

Product	Total Home Disposals (ex-works prices) 1956	1957	1958	% Change '58 on '56 %	% Change '58 on '57 %	Export Sales* (f.o.b. prices) 1956	1957	1958	% Change '58 on '56 %	% Change '58 on '57 %
Radio Receivers (incl. Car Radios)	9,204	11,336	10,881	+ 18	— 4	2,891	2,445	2,124	— 27	— 13
Radiograms	5,889	6,839	5,518	— 6	— 19	271	332	399	+ 47	+ 20
Television Receivers	53,844	65,775	70,428	+ 31	+ 7	462	651	914	+ 98	+ 40
Total Turnover	68,937	83,950	86,827	+ 26	+ 3	3,624	3,428	3,437	— 5	+ †

Source: Ministry of Supply and estimates based on BREMA Members' Returns.
* Export sales are ex-factory, not ex-U. K. port.
† = less than 1%.

• • •

621 Price Levels

The Board of Trade have issued a new series of wholesale prices indices with 1954—100 in lieu of the previous base, 30th June, 1949=100. The decision to change the base period involved the re-calculation of the individual indices for each of the representative models submitted by the panel of members forming the sample on which our section of the index is formed. The index measures the movement in prices after adjustment has been made for any changes in quality, i.e., it should indicate not merely average prices over a period but "value for money".

The index (Table IV) and average prices (Tables V, VI) show that real and money prices for our products continue to be reduced over the years. The index for domestic appliances as a whole and for each product other than electric fires, however, reveals a steady rise.

622 The "annual averages" in the Index quoted below, differ from the Quarterly Index figures (published regularly in the Board of Trade Journal) due to the method of calculating these averages. For example, the "annual average" for radiograms for 1958 shows a small rise in the index; however, the radiogram index has not risen during the year. It stood at 93.8 at 31st December, 1957, and 93.2 at 31st December, 1958.

• • •

TABLE IV.

BOARD OF TRADE WHOLESALE PRICE INDEX ANNUAL AVERAGES.

1954=100.

Product	1955	1956	1957	1958
Radio Receivers	99.7	97.2	96.0	98.2
Television Receivers	99.1	95.5	90.8	89.6
Radiograms	98.7	96.6	93.1	98.5
Gramophone Records	101.6	104.5	107.9	110.7
Domestic Electrical Appliances	101.2	101.4	102.4	104.1
Electric Vacuum Cleaners	100.0	103.0	106.1	108.4
Electric Cookers	105.6	108.3	111.8	114.4
Electric Fires	104.9	106.6	105.1	108.5
Electric Refrigerators	99.5	94.8	96.1	97.1
Electric Washing Machines	100.0	100.0	98.5	100.6

Source: Board of Trade.

• • •

TABLE VI.

AVERAGE LIST PRICES OF TABLE TELEVISION RECEIVERS* (EXCLUDING PURCHASE TAX) BY TUBE SIZES.

Year	12"	14"	17"	21"
	£ s. d.	£ s. d	£ s. d.	£ s. d.
1954	40 4 2	47 7 10	57 11 10	—
1955	†40 10 6	†50 2 3	†59 9 6	—
1956	37 18 4	47 18 8	55 13 0	66 17 2
1957	‡38 5 10	44 4 5	52 15 2	66 11 3
1958	35 15 6	42 9 6	51 8 0	65 18 6

Source: Estimated from BREMA Members' Returns.

* Television Receivers with radio or radiogram incorporated are not included.

† Rise due to the incorporation of additional facilities for Band III reception.

‡ Introduction of transportable models with VHF facilities.

• • •

625 Imports

1958 showed a marked decrease in the import of all radio receivers, radiograms and chassis. Imports from Germany were 21% less than in 1956 and 38% less than in 1957, while total retained imports from all countries showed a 43% decrease on 1956, and 30% decrease on 1957.

In the last three months of the year, just over 2,600 radio receivers were imported from Japan at an average price of approximately £5 10s. 0d. c.i.f. U.K. Port. These imports were made within the quota of £20,000 for transistor radio receivers granted under the 1958/9 Anglo-Japanese Trade Agreement.

TABLE XI.

U. K. IMPORTS OF DOMESTIC RADIO EQUIPMENT FROM GERMANY AND ALL OTHER COUNTRIES, 1956/1957/1958.

Numbers

Product	Imports ex-Germany 1956	Imports ex-Germany 1957	Imports ex-Germany 1958	Total Retained Imports 1956	Total Retained Imports 1957	Total Retained Imports 1958
Radio Receivers:						
Mains	7,274	17,443	5,159	17,498	16,430	7,066
Battery	10,307	10,674	7,434	11,945	12,953	8,782
Other	615			4,014		
Total Radio Receivers	18,196	28,117	12,593	33,457	29,383	15,848
Radio Chassis	3,729	1,306	5,781	3,366	1,322	5,791
Radiograms	1,293	409	260	1,307	371	299
Radiogram Chassis	302	101	2	303	91	5
Total all radio	23,520	29,933	18,636	38,433	31,167	21,943
Television Receivers	9	8	23	7,498	6,251	209

Source: H. M. Customs and Excise.

• • •

640 Metal Cabinets

During 1958 it appeared likely that the practice, increasingly common in the U.S.A., of employing metal cabinets with television receivers would become popular in this country, and consideration was given to special safety precautions which would be necessary; the problem was more difficult than in the U.S.A. since the mains supply voltage is approximately double.

Suggestions were made that particular attention should be paid to leakage currents to the cabinet and to the possibility of bridging the gap between the cabinet and chassis by loose metal objects such as screws, screening cans, etc. Spindles which protrude through the cabinet also need special care, and knobs on these spindles should not be detachable from the outside of the cabinet.

It was considered that provisions for earthing the cabinet were essential; this is not a departure from the general principle that an earth should not be relied upon for safety, since this still applies with metal cabinets, but is an additional safeguard and is coupled with the recommendations that metal cabinet receivers should only be used when an efficient earth connection is available, and that they should be clearly marked to this effect.

Indications are that, in view of these and other difficulties, most manufacturers have abandoned the idea of metal cabinets for television receivers.

• • •

661

The Fifteenth Annual Report
of the
British Radio Equipment Manufacturers' Association

Presented by the Executive Council to the
Annual General Meeting, 29th April, 1960

Gentlemen,

The Executive Council has pleasure in presenting to members of the Association its Annual Report for 1959.

Introduction

General

The work of the Council necessarily ranges over a wide field of activities but, as in the past there have been several salient matters to which the main weight of effort has had to be devoted. On the purely commercial side there has been the responsibility of members in relation to purchase tax as complicated by sale or return trading; the consideration of a sales campaign to offset the anticipated decline in public purchases of television receivers, and the threat of competition on our home market from Japanese sources, either by direct exports to the United Kingdom or indirectly after manufacture within third countries, including Eire, Hong Kong and elsewhere in the Commonwealth. In the sphere of commercial/technical policy the continued pre-occupation has been the study of the direction which developments in television broadcasting for the U.K. should take, with special reference to the impending report from the Television Advisory Committee and the probability of the Government appointing a Commission to examine all aspects of future broadcasting, including associated technical and commercial problems. Within the more intimate realm of the Association's own affairs, though with possible consequences reaching far beyond purely domestic issues, has been the work involved in arriving at, and arising from, the decision to defend the BREMA foreign component content regulation before the Restrictive Practices Court.

Trading Conditions

The buoyancy of the economy as a whole, an expansionist Budget and the absence of credit controls, resulted in virtually boom conditions for household durable goods. Undoubtedly the removal by the Government of restrictions on hire purchase and rental trading in the Autumn of 1958 had the greatest single influence on sales, whilst the reduction of purchase tax applicable to our products from 60% to 50% in the 1959 Budget acted as a comparatively small additional stimulus.

Disposals of television receivers by manufacturers for the home market exceeded 2,750,000, representing an increase of 36% on the previous year and disposals of radio receivers were over 1,500,000, an increase of 19%. For both these products, manufacturers' disposals were the highest ever achieved in the history of the industry. Partially due to increase in popularity of gramophones with electrical amplification, manufacturers' disposals of radiograms, however, declined to 189,000, some 13% below those for 1958. Turnover on the home market at ex-Works values rose by

29% over the previous year to approximately £112 million in 1959. The f.o.b. value of exports was reduced from the 1958 level by 3% to £3.4 million. Total turnover for the home and export markets rose from £91.6 million in 1958 to £115.5 million, an increase of 27.5%.

The high degree of television receiver saturation by households (approaching 70%) and the increasing proportion of replacement demand compared with sets
662 purchased for the first time, has led the Council to an examination of the future demand for our products and, in particular, for television receivers. In consequence, a second Memorandum is being prepared on similar lines to that circulated early in 1959, which contained estimates of probable public expenditure over a period of years on radio and television receivers and radiograms, certain audio equipment and selected electrical household durable consumer goods. The original estimates, in common with all similar forecasts for the economy as a whole and for particular industries, did not fully anticipate the general expansion in trade which took place in 1959. Nevertheless, the conclusions arrived at as to the trend over the next few years for television sales are likely to be fulfilled, although the estimates may be subject to upward adjustment. The Council, therefore, decided to undertake a comprehensive investigation into the means of stimulating the replacement demand for television receivers and currently under consideration is the possibility of sales promotional activities and publicity by the Association and members. In this context it should be mentioned that the VHF radio demonstrations organised in conjunction with the BBC in various centres throughout the year, have received increasing support from exhibitors and local traders and have continued to prove most successful.

Comprehensive information is available within the Association on production and distribution, but there is a dearth of reliable information on the proportion of total trading which can be accounted for by rental and relay transactions. During the latter part of 1959 and early this year, a number of announcements have been made by various manufacturing and other interests on plans for increasing television relay activities, the results of which will emerge during the ensuing years. There was little evidence in 1959 of a significant increase in the rate of growth in the number of subscribers to the television relay services.

In furtherance of its policy to liberalise trade, the Government, in addition to having taken a leading part in the formation of a limited European Free Trade Association with its long-term implications, has freed the imports of all types of domestic equipments, related components and transistors from the United States. This latter action, so far as receiving equipment is concerned, has not yet had an appreciable impact. An increase in imports was to be expected under the market conditions prevailing in 1959. The number of radio receivers, radiogram and chassis imported more than doubled, rising from 22,000 in 1958 to 58,500 in 1959. The majority of complete radio receivers brought into the United Kingdom was for battery operation and included 5,000 transistor radios received from Japan under Quota arrangements; Germany was by far the largest supplier and accounted for over 29,000 complete sets, but the volume of German chassis entering the U.K. fell from approaching 6,000 in 1958 to only 4 in 1959. On the other hand, virtually all radiogram imports were of German origin. The majority of television receivers imported came from Eire. It is impossible to predict the trends in future imports with any certainty but the position will have to be watched closely, particularly if there is any alleviation in the restrictions imposed on imports from Japan and other low-cost countries.

In anticipation of a Government enquiry into the operation and effects of individual resale price maintenance, a special Committee was appointed thoroughly to investigate the principles and practices involved. The Committee has also been asked to comment on any special factors which the abolition of resale price maintenance would entail for the manufacture and distribution of electrically-operated and technically complex goods such as ours, which require after-sales service.

Price Levels

The constant possibility of a return to inflationary conditions caused the Government, in the Autumn of 1959, to make an appeal for a price restraint. The nature of this appeal brought a published response from the Federation of British Industries, which emphasised the responsibility which rested on all sections of the industry and commerce, including the nationalised industries and the trade unions, for the maintenance of price stability.

The contribution by the radio and television set making industry to price stability and, even more important, price reductions, has been exemplary. During the 15 years since the end of the War there has been a constant reduction in the average prices of radio and television receivers and radiograms. In addition the price of these items, as expressed by the Board of Trade Wholesale Price Index which takes into account changes in quality, has also been reduced consistently. This achievement is especially noteworthy in view of the many restrictive measures imposed since the War which have caused such wide fluctuations
663 in our trade, and the increasingly complex equipments which have had to be manufactured to meet the technical changes which have taken place in sound and vision broadcasting. Compared with the base period (1954—100) for the Board of Trade Index, radio receivers now stand at 92.4, radiograms at 92.7 and television receivers at 88.4.

It is evident that such increases in productivity as have taken place have been reflected in manufacturer's prices. Whether there now remains, in comparison with other industries, sufficient opportunity for further rises in productivity to permit continuing reductions in price, will rest on factors entering into those costs of production which are largely outside the control of industry and the levels of future trade.

Television Policy

In 1955 the Council appointed the Council/Technical Policy Committee in recognition of the necessity for close co-ordination between its commercial and technical advisors in arriving at major policy decisions, and, further, to ensure that the Association's representatives on joint-industry and outside bodies were fully briefed when policy decisions were being made or implemented. The wisdom in taking this step has become increasingly evident since 1955; during the year under review and currently, it has been of paramount importance, for example, in formulating industry policy on future standards for television broadcasting.

The Postmaster-General posed two principal questions for the Television Advisory Committee to answer, the first being the suitability during the next 25 years of the present standards employed for television broadcasting in this country, and the second, whether there was good reason for the United Kingdom not to adopt a 625 lines system utilising Bands IV and V if this was recommended by the C.C.I.R. as the standard for Europe. The T.A.C. requested industry's views on these matters to assist them in making their reply.

Before any final decision is taken in regard to a change of television standards employed in the United Kingdom, it is essential to know the number of programmes to be provided and the degree of population coverage required for those programmes. We have, therefore, continued to press the Authorities for answers to these fundamental questions, the importance of which lies in the fact that we are not simply considering the merits of a change of system to improve the line definition standards but the implications and complexities arising from such a change, both commercial and technical.

Plans already exist for accommodating three National programmes within the confines of the existing VHF Bands I and III using the present 405 lines system, so that if the decision were that no more than three programmes are required, a change of line standards would have to be judged on the grounds of the superior quality of the picture received. To introduce a 625 lines system with the present allocation of frequencies for television, would involve the use of the UHF Bands IV and V, and a prolonged period during which the same programmes would have to be transmitted on each of the two systems. The superiority of 625 lines compared with 405 lines definition, under controlled conditions, has been demonstrated. However, bearing in mind the technical hazards of UHF transmissions, it is not clear that under the variable reception conditions to be expected, the public would regard the improvement of picture definition sufficient to justify the necessarily higher price of the new equipment.

If four programmes are required, with the existing arrangement of broadcasting bands, at least one of these would need to be in UHF Bands IV and V, and it has been generally agreed that it would be undesirable to perpetuate the 405 lines system into these bands. But a broadcast service using a combination of VHF and UHF transmissions and two different line standards would, in the light of present knowledge, introduce severe complexities for the industry, the broadcasting authorities and the public—a situation which would be highly undesirable on a permanent basis. A more acceptable arrangement might be to duplicate the two now existing television programmes and add two new programmes on 625 lines in the UHF bands, which would allow the provision of less complicated receivers, but the uncertainties of UHF reception would remain.

A careful and prolonged study of the many problems involved has proceeded throughout the year. This has included investigation into the effect on design and production of receivers under the several methods suggested for introducing new standards and additional programmes requiring the use of the UHF bands. American experience of UHF broadcasting and our own transmission tests carried out in 1957/58, indicated the nature of the increasingly
664 erratic reception conditions as higher frequencies are employed. This led to reconsideration of the possibility of obtaining for television broadcasting in the United Kingdom, additional frequencies in the VHF band as an extension of Band III. Strong representations were made in parallel to the Television Advisory Committee and the Government Departments concerned for urgent reconsideration to be given to this proposal in view of the Administrative Radio Conference of the International Telecommunication Union then taking place in Geneva. The Conference in fact confirmed the existing limits of Bands I and III for television, but some extensions above Band III have been allowed, on a shared basis with other services, to those countries who applied. The United Kingdom, owing to other commitments, did not take advantage of this concession. Nevertheless, on the hypothesis that the number of programmes required will be four, it remains industry policy to press for these to be radiated in the VHF bands, in the belief that the necessary additional frequencies could be freed within a reasonable period. On the assumptions made the interests of the public and industry alike would

be best served by the implementation of this proposal. Industry is not opposed to a 625 lines system as such, but has reason to be apprehensive about the use of the UHF Bands. If it proves impossible to provide sufficient frequencies in the VHF Bands for the additional number of programmes required, Industry would support a move to UHF Bands IV and V, where there is space for four programmes, using a 625 lines system with 8 Mc/s channels.

It is the final responsibility of industry to provide the necessary equipment, but it is equally our responsibility to ensure that the fund of expert technical and commercial knowledge and experience within industry is made available to the Government when long-term policy decisions of this kind are under consideration.

A Memorandum was submitted to the Television Advisory Committee during June, 1959, as a result of which representatives met the Committee to give oral evidence. Since that time there has been continuous activity relating to these problems, which has proved the value of our internal machinery for co-ordinating commercial and technical policy and for briefing the representatives of industry serving on the various Government Committees.

It seems likely that a Government Commission will be set up to deal comprehensively with the future of broadcasting in the United Kingdom. In this event, industry will take the opportunity to submit evidence with an emphasis on the commercial implications of any changes which may be contemplated.

• • •

672 Trading Results

It had been anticipated that trade in our products during 1959 would be at lower levels than the records achieved in 1958, partly as a result of the boom conditions in the last quarter of that year. In the event, all estimates of disposals for our goods, other durables and many other items, were greatly exceeded, resulting in new record figures for television and radio. The abolition of all restrictions on hire purchase, credit trading and rentals in the Autumn of 1958, together with the reduction in purchase tax from 60% to 50% in the spring 1959 Budget, resulted in a continuing high level in trade throughout the year. Manufacturers' home disposals of television receivers exceeded 2¾ million units, an increase of 36% on 1958 and of radio receivers over 1½ million units, or 19% more than in the previous year. By contrast, radiogram disposals declined to 189,000 units which were 13% below those for 1958.

The total 1959 turnover, at ex-works values, of manufacturers' home disposals was more than £112 million, 29% higher than 1958; although the total f.o.b. values of export sales were 3% less than the previous year, the combined 1959 total turnover was £115½ million, an increase of some £25 million, or 27.5% on 1958.

It should be noted that in both Tables I and II, the figures shown for radio receivers (including car radio) differ from those quoted in the 1958 Report, as a result of a series of amendments subsequently issued by the Ministry of Aviation.

673

TABLE I.

INDUSTRY PRODUCTION, TOTAL HOME DISPOSALS AND EXPORT SALES, 1957/8/9.

Nos. 000's

Product	Production					Total Home Disposals				
	1957	1958	1959	% Change '59 on '57	% Change '59 on '58	1957	1958	1959	% Change '59 on '57	% Change '59 on '58
				%	%				%	%
Radio Receivers (incl. Car Radio)	1,600	1,544	1,658	+ 4	+ 7	1,357	1,304	1,555	+ 15	+ 19
Radiograms	243	264	176	− 28	− 33	266	218	189	− 29	− 13
Television Receivers	1,887	1,985	2,888	+ 52	+ 46	1,816	2,020	2,754	+ 52	+ 36

Product	1957	1958	1959	Export Sales* % Change '59 on '57	Export Sales* % Change '59 on '58
				%	%
Radio Receivers (incl. Car Radio)	239	237	244	—16	+ 3
Radiograms	11.3	17.0	17.1	+ 51	+0.6
Television Receivers	17.9	24.5	23.8	+ 33	— 3

* Export Sales are ex-factory, not ex-U. K. port.
Source: Ministry of Aviation and estimates based on BREMA Members' Returns.

TABLE II,
VALUE OF INDUSTRY TURNOVER, 1957/8/9.

£000's

Product	Total Home Disposals (ex-works prices) 1957	1958	1959	% Change '59 on '57	% Change '59 on '58	Export Sales* (f.o.b. prices) 1957	1958	1959	% Change '59 on '57	% Change '59 on '58
				%	%				%	%
Radio Receivers (incl. Car Radio)	11,336	11,241	13,388	+ 18	+ 19	2,445	2,128	2,203	— 10	+ 3.5
Radiograms	6,839	5,518	5,436	— 21	—1.5	332	399	358	+ 8	— 10
Television Receivers	65,775	70,428	93,367	+ 42	+ 33	651	914	789	+ 21	— 14
Total Turnover	83,950	87,187	112,191	+ 34	+ 29	3,428	3,441	3,350	— 2	— 3

Source: Ministry of Aviation and estimates based on BREMA Members' Returns.
* Export sales are despatches ex-factory, not ex-U. K. port.

• • •

674 Price Levels

The following Tables IV, V, and VI reflect the continued downward trend in real and money terms, of our products. The Wholesale Price Index "annual averages" for all three categories, provisional at time of going to press, are lower than last year; these "annual averages" differ slightly from the actual Quarterly Index figures. The index for domestic electrical appliances, as a comparison, shows little change, although individual items (fires, refrigerators, and washing machines) all show a slight increase for the year.

• • •

675

TABLE VI.
AVERAGE LIST PRICES OF TABLE TELEVISION RECEIVERS* (EXCLUDING PURCHASE TAX) BY TUBE SIZES 1955/1959.

Year	12"			14"			17"			21"		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
1955	40	10	8	50	2	3	59	9	6		—	
1956	37	18	4	47	18	8	55	13	0	66	17	2
1957	38	5	10	44	4	5	52	15	2	66	11	3
1958	35	15	6	42	9	6	51	8	0	65	18	6
1959		—		41	15	9	49	13	6	62	8	0

Source: BREMA Members' Statistical Returns.
*Television Receivers with radio or radiogram incorporated are not included.

• • •

676

TABLE VIII.
TELEVISION RECEIVER DISPOSALS BY MANUFACTURERS: PERCENTAGE DISTRIBUTION (BY NUMBERS) BY TUBE SIZES.

Tube Size	1953	1954	1955	1956	1957	1958	1959
	%	%	%	%	%	%	%
9" and 10"	2	*	—	3	1	*	*
12"	32	15	6				
14"	34	50	48	36	20	12	3
15" and 16"	14	5	*	*	*	—	—
17"	17	30	44	54	72	83	91
21"	—	*	2	7	8	5	6
Other	1	*	*	*	*	*	*

Source: Estimates based on BREMA Members' Returns.
* =Less than 1%.

• • •

677 Imports

The decrease that took place during 1958 in the imports of radio receivers from Germany was not maintained during 1959. Indeed, the total number of radio receivers and radiograms imported from Germany in 1959 exceeded the 1957 figure and was some 71% greater than in 1958. The majority of these radio receiver imports were in the "Other than Mains" category and would include battery/valve and transistor radios. The detailed analyses of imports for 1959 by countries, based on Customs and Excise figures, will be circulated to Members within a few weeks.

Total retained imports (from all countries) of radio receivers and chassis, and radiograms were 88% higher than in 1957 and 167% higher than 1958. Some 5,000 "Other" radio receivers were imported from Japan during the calendar year 1959 at an average price of approximately £5 7s. 6d., c.i.f. U.K. port. (Whilst this might seem to suggest that the Japanese import quota of £20,000 had been exceeded, it must be borne in mind that the quota covers the 12 months ending 31st March, 1960.) After Germany and Japan, the other main countries of origin for "Other" radio sets were: U.S.A. (2,642), Netherlands (2,177) and Italy (1,064), with about 1,000 sets each from Austria and Yugoslavia. These figures may differ a little from the final annual totals after amendments have been made. Of the 7,091 radio chassis imported this year, only four came from Germany, compared with 5,781 in 1958. Some 5,000 of these chassis imports came from the Netherlands, and nearly 2,000 from Eire. The majority of the television receiver imports were from Eire.

TABLE X.
U. K. IMPORTS OF DOMESTIC RADIO EQUIPMENT FROM GERMANY AND ALL OTHER COUNTRIES, 1957/1958/1959.

Numbers

Product	Imports ex-Germany 1957	Imports ex-Germany 1958	Imports ex-Germany 1959	Total Retained Imports 1957	Total Retained Imports 1958	Total Retained Imports 1959
Radio Receivers:						
Mains	17,443	5,159	3,542	16,430	7,066	9,376
Other	10,674	7,434	26,095	12,953	8,782	39,749
Total Radio Receivers	28,117	12,593	29,637	29,383	15,848	49,125
Radio Chassis	1,306	5,781	4	1,322	5,791	7,091
Radiograms	409	260	2,251	371	299	2,290
Radiogram Chassis	101	2	—	91	5	—
Total all radio	29,933	18,636	31,892	31,167	21,943	58,506
Television Receivers	8	23	11	6,251	209	4,090

Source: H. M. Customs and Excise.

• • •

678 Estimated Public Expenditure

A detailed Memorandum was prepared on estimated public expenditure on radio and television receivers, radiograms, record players and selected household durable goods during the period 1955/1961. This was circulated to Members during April, 1959.

The Memorandum was received with great interest, so much so that it has been decided to prepared a second Memorandum on similar lines; revisions of these estimates and projections over subsequent periods will probably be undertaken annually. These reports are partially dependent on the availability of official national income and expenditure and other estimates and, therefore, the second report is not expected to be completed until May, 1960. The removal of restrictions on all forms of credit trading, assisted by the reduction in purchase tax on domestic radio and television equipment from 60% to 50%, resulted in a level of trading throughout 1959 which was as unexpected for our products as for household durables generally, and the economy as a whole. However, an upward revision of traders' television receiver transactions for each of the years 1959, 1960 and 1961 will, it is believed, still show a downward trend for 1960 and 1961 with an increasing proportion of replacement purchases. In so far as this increase in sales during these three years reflects a bringing forward of purchases rather than a growth in the total market, the fall-away after 1961 can be expected to be steeper than it otherwise would have been.

It was concluded in the report that there would be a decline during the period reviewed in public expenditure on radio and television products, due largely to the high degree of household saturation achieved rather than to competition by the inclusion in household budgets of increased expenditure on other durable consumer goods. The Council decided that the television receiver replacement market would have to be closely studied and encouraged if the anticipated downward trend in television receiver sales was to be retarded.

• • •

687 Future Television Standards for the United Kingdom

As reported in the introduction to this Report, it is the Association's view that, if it is decided that four separate television programmes with near-national coverage are to be provided in the U.K., then the method which would cause the least upheaval would be to radiate them all in Band I and an extended Band III, employing 405 lines standards. This would entail a number of technical problems, notably the planning of the channels in a given area to avoid interference from local oscillators at their fundamental frequency, but the greater complications of a change of system would not arise. Nevertheless, it is recognized that it may not prove possible to achieve this aim, and preliminary consideration has been given to the problems which would arise if a service should be inaugurated in the UHF Bands.

The U.K. Administration has agreed internationally to adopt channels 8 Mc/s wide in the UHF Bands if transmissions are commenced, but all other details of the system are still undecided, although it seems most likely that it would be some form of 625 lines system.

• • •

709 The Sixteenth Annual Report
of the
British Radio Equipment Manufacturers' Association
Presented by the Executive Council to the
Annual General Meeting, 28th April, 1961

Gentlemen,

The Executive Council has pleasure in presenting to members of the Association its Annual Report for 1960.

Introduction

General

As in former years, the Council has addressed its thoughts to a very wide range of topics and, as has come to be expected, there have been several matters which have had far-reaching implications for members and these have, of course, received special care and attention. Conditions of trading during the past year proved particularly difficult in marked contrast to the previous year when the industry reached the highest level of production and sales ever achieved. Following upon a slackening of demand for new television receivers from the peak reached in 1959, drastic readjustment of production programmes took place to reduce planned output below the maximum of which the industry was capable, despite which stocks rose to an unhealthy level. The Association's policy of compiling regular statistics of production, disposals and stocks has been most valuable during this period in enabling the Council to form an appreciation of the situation and to give advice to members from time to time. Much thought and attention has also been given to the threat to our home market by imports, and, in particular, to the allotment of an increased quota for the import of transistor and other radio receivers from Japan, which were the subject of several meetings with our sponsoring Ministry. One of the major subjects occupying the attention of the Council and its specialist Committees during the year has again been the problem of the future of television broadcasting in this country pending Government decisions on the pattern which this highly important public service is to take and whether or not a change in line standards should now be planned, together with the associated question of the introduction of colour television. The report of the Television Advisory Committee and the setting up of the Pilkington Committee on Broadcasting by the Government were conspicuous among the events which marked the year under review as one of the most active in the history of the Association.

The changing pattern of the industry, with the further grouping of manufacturing interests which occurs from time to time, seems to emphasise the need for the fullest co-operation amongst all concerned. It is by providing a forum for the free expression of many differing views that the proper fulfilment of the Association's role in arriving at decisions of fundamental importance can best be achieved.

Trading Conditions

The economy of the country as a whole appeared, up till the end of April, 1960, to be continuing the high rate of growth accomplished in 1959. The re-introduction in April of hire purchase and rental controls, which had been foreshadowed in the Budget statement a few weeks earlier, resulted from fears that too great a strain was being placed on national resources. Output, as reflected in the index of industrial production, remained at about the April level throughout the rest of the year; exports lost ground, and showed a downward trend later in the year whilst imports stayed at a high level. The balance of payments, as a result, showed an increasing deficit during the second half of the year.

710 Within the framework of the economy as a whole the experience of individual industries differed greatly. Trading results and the reactions of the Government to representations made by our industry must be reviewed within this wider framework. It had become evident to industry early in 1960 that the boom in television receiver sales, induced in the Autumn of 1958, by the removal of all hire purchase and rental controls and subsequently stimulated by further Government measures, had ended and, indeed, that indications of a downward trend had been signalled during the last few months of 1959. The impact of the renewed hire purchase and rental controls on the radio and television industry was direct and severe. After April sales of television receivers turned sharply downward and the rate of growth of sales of radio receivers declined.

Forward production schedules for television receivers already modified by individual manufacturers were cut back further in anticipation of lower levels of demand. Demand was, however, reduced more rapidly and to a greater extent than had been anticipated or could be compensated for by curtailment of production which cannot be cut-back suddenly in a modern mass production industry without very serious disruption. In consequence, total stocks of television receivers held by manufacturers and in the Trade rose to about 1,200,000 units by the end of August, before declining to about 1,000,000 units at the end of the year.

The increasing critical situation with which the industry was faced led to several meetings with representatives of the Ministry of Aviation and the submission through the Ministry of a Memorandum to the Board of Trade substantiating recommendations that the initial hire purchase deposit requirement should be reduced from 20% to 10% and the period of repayment extended from 2 to 3 years. The President of the Board of Trade and the Economic Secretary to the Treasury later met representatives from industry who took the opportunity to amplify the arguments and evidence in support of the recommendations made in the Memorandum and to raise other matters currently of special concern or likely to affect the future development of the industry. The degree of household penetration for television receivers, together with several other special technical and market factors which affected both television and radio receiver development and sales, made the impact of the controls on these products considerably more severe than for other household durables, the market for which had also suffered. The dual effect of a high rate of purchase tax coupled with the hire purchase controls was emphasized and it was once again shown that these measures to restrict sales on the home market could not lead to increased exports of our products, but were likely to have the opposite effect.

Towards the end of the year there was some evidence that the Government were themselves becoming aware that measures taken violently to stimulate or restrict home sales of a small sector of the whole economy—household durables and motor vehicles—neither operated as rapidly nor as successfully as a general palliative for the nation's economic ill as they had previously believed. The alternatives of a pay-roll or turnover tax are, it is understood, being re-considered, minor changes in which would operate over a much wider field and therefore produce better results than major changes in purchase tax rates or hire purchase controls. It is significant that the Board of Trade Retail Sales Index, despite heavy falls in the sales of household durables, continued to rise throughout most of the year, indicating a diversion of public buying to those products not immediately affected by the controls.

The Council took active steps to ensure that Members were kept fully informed of the increasing critical situation arising from the accumulation of television receiver stocks and called attention to the necessity for the future production plans of individual firms to be related to the probable total market during the remainder of 1960 and during the forthcoming year, i.e. for both current and new models.

The underlying strength in the home market for radio receivers due to delayed replacement demand and greater availability of battery-operated portable models was reflected in the 1959 record sales being exceeded during 1960; the proportion of battery-operated portable transistor sets rose to some 60% compared with just over 30% of the total during the previous year. Because of the much lower unit value of radio compared with television receivers their sales were much less affected by the 20% hire purchase deposit requirement and, in addition, a higher proportion is purchased for cash, whilst rentals are negligible. The number of radio receivers imported continued to rise, the increase in imports from 22,000 in 1958 to 58,000 in 1959 and 85,000 in 1960 was almost wholly accounted for by portable transistor models.

The rising trend in radio set imports from a widening number of countries was kept under close examination during the year. Members are aware of the Council's
711 activities prior to and following the signing of the Anglo-Japanese Trade Treaty 1960/1961, within which the Quota for imports from Japan of complete receivers was raised from £20,000 for 1959/1960 to £400,000. Close contact is being maintained with the Government Departments concerned to safeguard our interests during the current negotiations relating to Treaty arrangements for 1961/62.

The significance and implications on the export and home markets for our products of the establishment of the EEC in January, 1959, and the inauguration of EFTA in June, 1960, are currently under study by the Council who have in mind the possible need to authorize a survey related to our products to be undertaken by a specialist organisation. The emphasis on future U.K. exports, particularly for television receivers, may well lie to an increasing extent with the markets of Western Europe rather than with the Commonwealth and countries elsewhere which have taken the major share of our exports in the past.

The trading results for 1960, expressed in turnover at ex-works values, illustrates the reasons for the anxiety of industry during the year. Manufacturers' home disposals of television receivers in 1960 were some £30 million lower than in 1959, having fallen 36% from £94 million to just over £60 million; radio receiver home disposals rose by 22% from £13.4 million in 1959 to £16.4 million in 1960 and for radiograms disposals rose by 3 per cent from £5.4 million last year to £5.6 million in 1960. Total home disposals, however, for all three products fell by 27% from nearly £113 million to just over £82 million at ex-works values. Exports sales at f.o.b. prices for radio and television receivers rose by 12% and 68% respectively whilst those for radiograms fell by 16%; the total value of exports rose by 22% from £3.4 million to £4.1 million. The grand total of manufacturers' turnover on the home and export markets thus fell by 26% from £116.2 million in 1959 to £86.3 million in 1960.

Television Policy

Up to mid-1960 probably the only serious consideration, outside immediate industry circles, which had been given to the future development of television in the United Kingdom, had been confined to technical aspects of the problem. The Government Television Advisory Committee, which had been asked to advise on fundamental technical problems, of television development, issued their Report in May, 1960, and within the limits of this technical investigation recommended that in circumstances where television policy required the extension of broadcasting into theUHF Bands IV and V, 625 line standards should be used and, eventually, the changeover from existing standards in Bands I and III. On a purely technical basis the Association agreed with this view, at the same time emphasising strongly that full account must be taken of the important commercial and economic aspects before any decision was taken in respect to a change in line standards.

In their Report the Television Advisory Committee did recognize that these factors being mostly outside their Terms of Reference would need to be considered before any decision was taken, a point already affirmed by the Postmaster-General in answer to a Parliamentary question.

In July, 1960, the Postmaster-General announced in Parliament the setting up of a Committee of Inquiry into the future of sound and television broadcasting, under the

Chairmanship of Sir Harry Pilkington. The Committee's Terms of Reference were widely drawn to permit a comprehensive investigation into the many and varied aspects of future broadcasting policy, including consideration of changes in line standards and the introduction of colour television. The Association was invited to make written submission to the Committee, a similar invitation being extended to the Radio Industry Council. The BREMA Council decided that after initial discussion by its specialist Committee of the policy and technical issues involved, the matter should be dealt with by the Industry Television Reception Policy Committee on which BREMA is strongly represented and the submissions made through the RIC.

A complete reappraisal of the conditions likely to attend a change in line standards was undertaken. The economic and commercial implications had already been the subject of a long series of discussions within the industry but the difficulties of reaching conclusions on this highly complicated problem were aggravated by the absence of Government policy as to the number and type of television programmes required for the future. Up to this time there had been a near balance of opinion within industry on the question of whether, in all the circumstances, it was desirable that a change in line standards as proposed should be mad at this time. There had been much public academic discu sion on the desirability of changing our line standards, but it seemed that nowhere had the interest of the public
712 been fully considered. Every aspect of the many problems involved was scrupulously examined and re-examined with the weight of emphasis given to the impact which the proposed change would have on the viewing public, together with the associated effect on the industry, and the conclusions finally reached followed logically from the arguments presented. In the light of all the detailed investigations made and after weighing the advantages of

standardising on the number of lines and some other, but not necessarily all, the characteristics of the Western European CCIR standards, against the disadvantages of disrupting for a long period the whole television service and public confidence for a relatively small discernible improvement, we were convinced that it would be in the best interests of the public that television broadcasting in the United Kingdom should continue on the present 405 line standards, whatever decision was eventually made regarding the number of programmes required.

It was believed that the main interest of the public lay in the provision of additional and truly alternative programmes and the introduction of colour television. The retention of 405 line standards would enable the earliest and easiest increase in the number of television programmes at a cost to the public which would be less than would be possible if a change to 625 line standards were made requiring necessarily complex receivers. The degree of improvement in the quality of picture received resulting from a change to 625 line standards in association with UHF transmissions, even under ideal conditions, was regarded as so small as not likely to commend itself to the public and the prolonged period of upheaval and uncertainty involved would not be justified.

The Association would welcome the introduction of a colour television service in this country as and when an acceptable system becomes available and is fully in agreement with the TAC recommendation that colour should only be introduced using line standards to be ultimately adopted for monochrome transmission and therefore any decision with regard to the introduction of colour must follow a decision on line standards. With the continuing demand for the higher grade of technical personnel in electronic engineering generally and the limited amount of capacity and manpower available to be deployed on research and development of broadcasting, it is felt desirable that these resources should be mainly concentrated on the problems associated with the introduction and development of colour television rather than on designs of complicated equipment for a change in line standards providing marginal improvement.

Much has been made of the increased export potential to be gained from adopting 625 line standards in this country but it has to be recognised that the home and export markets would always have different receiver requirements even after the re-engineering of Bands I and III to 625 lines. It is the considered opinion of many with long experience of exporting that any advantage to be gained from the production of certain common parts and circuitry in receivers would be offset by the preoccupation of industry endeavouring to meet the complicated requirements on the home market. The difficulties and hazards of exporting television receivers to highly industrial countries abroad would remain and can best be met by a stable and prosperous home market even where different line standards are involved.

The Memorandum was duly submitted to the Pilkington Committee early in January. As was expected its controversial nature attracted considerable attention and a Press Conference was held on the 16th January with the object of encouraging informed comment and avoiding any possible misunderstandings. The Memorandum, *inter alia,* set out clearly the reasoning which led to the recommendation that the 405 line standard should be maintained. The industry has the responsibility and the means of providing equipment for whatever conditions obtain as a result of Government decisions but it would be failing in its duty if it were not to point out clearly the consequences it foresees of following particular courses of action. All would wish to see improvement in television picture definition, the only question being whether the end justified the means and in our judgment a move to 625 line standards in itself does not. It may well be that before a complete changeover could take place technical knowledge will have pointed the way to a much bigger improvement which may justify the complication and disruption that any such change entails.

• • •

717 Trading Results

The re-introduction of hire purchase and rental controls during April, 1960, accentuated the already established downward trend in television receiver home disposals and lowered the rate of growth in the market for radio receivers; the effect on radiogram disposals is more difficult to establish. Exports of radio and television receivers rose (but those for radiograms declined steeply) for reasons unconnected with the Government measures to restrict the home market, although television receiver exports might have been marginally higher in their absence.

During 1960 total retained imports of radio receivers continued to rise reaching over 83,000 units in 1960 compared with some 49,000 in 1959 and just over 16,000 in 1958. The imports of radiograms and television receivers were not significant during the year.

Manufacturers' stocks of all three products rose significantly during the year.

During 1960 total home disposals for all three products fell by 27% from nearly £113 million to just over £82 million at ex-works values. Export sales at f.o.b. values for radio and television receivers rose by 12% and 68% respectively whilst those for radiograms fell by 16%; the total value of exports rose by 22% from £3.4 million to £4.1 million. The grand total of manufacturers' turnover on the home and export markets thus fell by 26% from £116.2 million in 1959 to £86.3 million in 1960.

TABLE I.

INDUSTRY PRODUCTION, TOTAL HOME DISPOSALS AND EXPORT SALES, 1958/59/60.

Nos. 000's

	Production					Total Home Disposals				
				% Change					% Change	
Product	1958	1959	1960	'60 on '58	'60 on '59	1958	1959	1960	'60 on '58	'60 on '59
				%	%				%	%
Radio Receivers (incl. Car Radio)	1,544	1,658	2,260	+ 46	+ 36	1,304	1,555	1,846	+ 42	+ 19
Radiograms	264	176	244	— 8	+ 39	218	189	199	— 9	+ 5
Television Receivers	1,998	2,863	2,141	+ 7	— 25	2,032	2,776	1,817	— 11	— 35

	Export Sales*					Total: Home Disposals and Export Sales*				
				% Change					% Change	
Product	1958	1959	1960	'60 on '58	'60 on '59	1958	1959	1960	'60 on '58	'60 on '59
				%	%				%	%
Radio Receivers (incl. Car Radio)	237	244	269	+ 14	+ 10	1,541	1,799	2,115	+ 37	+ 18
Radiograms	17.0	17.1	8.4	— 51	— 51	235	206	207	— 12	+ †
Television Receivers	24.5	23.8	38.9	+ 59	+ 63	2,057	2,800	1,856	— 10	— 34

Source: Ministry of Aviation and estimates based on BREMA Members' Returns.
* Export Sales are despatches ex-factory, not ex-U. K. port.
† Less than 1%.

TABLE II.

VALUE OF INDUSTRY TURNOVER, 1958/59/60.

Value = £ 000's

	Total Home Disposals (ex-works prices)					Export Sales* (f.o.b. prices)				
				% Change					% Change	
Product	1958	1959	1960	'60 on '58	'60 on '59	1958	1959	1960	'60 on '58	'60 on '59
				%	%				%	%
Radio Receivers (incl. Car Radio)	11,241	13,388	16,384	+ 46	+ 22	2,128	2,203	2,470	+ 16	+ 12
Radiograms	5,518	5,436	5,587	+ 1	+ 3	399	358	300	— 25	— 16
Television Receivers	70,812	94,034	60,220	— 15	— 36	914	789	1,323	+ 45	+ 68
Total Turnover	87,571	112,858	82,191	— 6	— 27	3,441	3,350	4,093	+ 19	+ 22

Source: Ministry of Aviation and estimates based on BREMA Members' Returns.
* Export sales are despatches ex-factory not ex-U. K. port.

719

(TABLE II continued)

Product	1958	1959	1960	% Change '60 on '58	% Change '60 on '59
				%	%
Radio Receivers (incl. Car Radio)	13,369	15,591	18,854	+ 41	+ 21
Radiograms	5,917	5,794	5,887	— †	+ 2
Television Receivers	71,726	94,823	61,543	— 14	— 35
Total Turnover	91,012	116,208	86,284	— 5	— 26

Total Turnover: Home and Export*

* Export Sales are despatches ex-factory not ex-U. K. port.

† Less than 1%.

Source: Ministry of Aviation and estimates based on BREMA Members' Returns.

TABLE III.

U. K. RETAINED IMPORTS: DOMESTIC RADIO AND TELEVISION EQUIPMENT 1957/58/59/60.

Numbers

Product	1957	1958	1959	1960
	Total Retained Imports			
Radio Receivers:				
Mains	16,430	7,066	9,376	11,523
Other (incl. Car)	12,953	8,782	39,749	71,805
Total Radio Receivers	29,383	15,848	49,125	83,328
Radio Chassis	1,322	5,791	7,091	974
Radiograms	371	299	2,290	1,077
Radiogram Chassis	91	5	—	—
Television Receivers	6,251	209	4,690	495
Total: All Domestic Radio and Television	37,418	22,152	63,196	85,874

Source: H. M. Customs and Excise.

• • •

720 Manufacturers' Stocks

Estimated stocks shown in Table V are those held by manufacturers only, and exclude sets held by dealers on consignment or S.O.R. account; they are compiled from special stock returns rendered to the Association by Members, and to the Ministry of Aviation by the great majority of non-members.

Television receiver stocks rose steeply during the first half of the year from 212,000 on 1st January to some 670,000 at the end of June and declined thereafter to

480,000 by the end of the year as production was adjusted to the fall in anticipated disposals. Stocks of 17″ receivers rose from 169,000 at the beginning of the year to 383,000 on 31st December, 1960, some 170,000 more than the opening stock of all types of receivers; stocks of 21″ receivers more than doubled during the year to 91,000 whilst stocks of all "other" tube size receivers amounted to 6,000—almost entirely made up of 19″ and 23″ models. Thus, of total stocks, 17″ models represented 80%, 21″ models 19% and the remainder 1%.

Radio receiver stocks rose from 235,000 on 1st January to 375,000 by the end of 1960—much the same level as at the end of 1958. Transistor models accounted for 145,000 (39%) of total radio receiver stocks, receivers incorporating FM or AM/FM facilities at 80,000 represented 21% of the total stock of which only 4,000 or 1% were transistor models.

• • •

721 Television Saturation

The total number of households has probably increased from the 15,028,000 estimated in the 1951 Census of population to over 16,000,000 even allowing for houses demolished or uninhabitable. The regional analyses of households and licences, however, have been maintained on the 1951 basis as continuing to indicate satisfactorily the comparative growth of television licenses in these regions, for the purposes for which this information is used. Amendments will be made when the 1961 Census of Population results are made available. However, for forecasting future retail transactions, replacement demand and other similar purposes estimates have been made of changes in total households and allowances made for "pirates".

Each region showed a slower rate of growth in "saturation" during 1960 than in 1959; total saturation increased during these two years by 6.4% and 8.1% respectively. As the total number of households with television increases so the value of the regional comparison will decline further. Nevertheless, the actual increase in television licences provides essential information on the ratio of replacement buying to total purchases by the public. Television licenses rose by some 962,000 during the year to 11,076,000 at 31st December, 1960, and this compares with an increase of about 1.2 million during 1959.

• • •

722 Analysis of Imports

The rising trend of radio receiver imports, to which reference has already been made, and the high proportion of battery-operated receivers (86%) from a widening number of countries justifies the introduction, for the first time in these Reports, of an analysis by types and country of origin.

It can safely be assumed that the great majority of "Other" radio receivers imported are battery-operated transistor models; only a comparatively small number of car radios were imported. Imports from Germany during 1960 remain virtually unchanged compared with 1959 (3,542 mains receivers and 26,095 "other" receivers). During the first nine months of the Treaty year (31st March to 1st April) the Japanese had taken up only a small proportion of their Quota entitlement for 1960/1961.

Imports from the U.S.A. have declined slightly from 2,675 sets in 1959 to 2,129 this year and those from Italy from 4,862 to 4,705. The principal countries from which imports have risen significantly are: Austria, 10,547 (1,028); Netherlands, 10,989 (2,267); France, 3,694 (222); and Hong Kong, 3,250 (391).

723

TABLE VII.

ANALYSIS OF IMPORTS BY MAIN COUNTRY OF ORIGIN: RADIO RECEIVERS, 1960.

Numbers

	Radio Receivers			
Country of Origin	Mains	Other (incl. Car)	Total	% to Total
West Germany	3,690	26,158	29,848	35.4
Japan	——	13,545	13,545	16.1
Netherlands	——	10,989	10,989	13.0
Austria	365	10,182	10,547	12.4
Italy	2,782	1,923	4,705	5.6
France	——	3,694	3,694	4.4
Hong Kong	551	2,699	3,250	3.9
Eire	2,725	169	2,894	3.4
U. S. A.	——	2,129	2,129	2.5
East Germany	450	500	950	1.1
Switzerland	——	287	287	0.3
Czechoslovakia	500	——	500	0.6
Others	564	529	1,093	1.3
Total	11,627	72,804	84,431	100.0

Source: H. M. Customs and Excise.

Price Levels

The following Tables VIII, IX and X, reflect the position in the industry of changes in price levels. The Board of Trade Wholesale Price Index "annual averages" continue to show the downward trend that has been the pattern over the last few years for domestic radio and television equipments. The comparable Index for domestic electric appliances is, at the end of 1960, for the first time below that for previous years; only one of the individual items—fires—is higher.

As information by types of receivers obtained from Members has been altered in the last two years, comparisons on the old basis are not possible; therefore, a revised Table showing average prices (which exclude purchase tax) for radio receivers and radiograms has been introduced (see Table IX). For the most part, average prices for radio receivers tended to be lower in 1960 than in 1959; the exception was for battery-operated valve radios (although the ratio of battery sets to total disposals dropped from 13%

in 1959 to 3.5% in 1960, there was a slightly higher proportion in the £10–£12 10s. price group).

Except for twin-channel console models for AM reception only, the average prices of all console radiograms were reduced during the year; average prices of table radiograms rose.

The average prices of all television receivers, analysed by tube sizes, were lower. Disposals of 19″ and 23″ models were made towards the end of the year, and average prices for these, too, have been included for purposes of future comparison.

• • •

724.

TABLE VIII.

BOARD OF TRADE WHOLESALE PRICE INDEX ANNUAL AVERAGES 1957/58/59/60.

Base: 1954=100.

Product	1957	1958	1959	1960
Radio Receivers	95.0	93.3	92.4	92.2
Radiograms	93.1	93.6	92.7	92.5
Television Receivers	90.8	89.6	88.4	88.1
Gramophone Records	107.9	110.7	110.7	110.9
Domestic Electrical Appliances	102.4	104.1	104.2	103.1
Vacuum Cleaners	106.1	108.4	105.2	104.5
Cookers	111.8	114.4	114.0	111.6
Fires	105.1	103.5	104.5	105.6
Refrigerators	96.1	97.1	97.9	95.3
Washing Machines	98.5	100.6	102.9	102.9

Source: Board of Trade.

TABLE IX.

AVERAGE LIST PRICES (EXCLUDING PURCHASE TAX) 1959/60 RADIO RECEIVERS AND RADIOGRAMS.

	Average List Price (excl. Purchase Tax)											
	AM only						FM and AM/FM					
Product	1959			1960			1959			1960		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
Radio Receivers—												
Valve—Mains	10	2	6	10	3	0	15	18	0	15	10	0
Mains/Battery	12	17	6	12	0	6		—			—	
Battery	9	1	6	9	10	6	21	17	6	24	19	6
Transistor only	15	12	6	14	4	6		—		21	7	0
Radiograms—												
Single Channel—Table	21	13	0	22	11	6	28	14	6	26	3	0
Console	41	11	6	32	11	6	44	3	6	39	5	0
Twin Channel —Console	51	10	6	64	11	0	62	1	0	57	3	0

Average Prices have been taken to nearest 6d.
Source: Estimates based on BREMA Members' Returns.

TABLE X.

AVERAGE LIST PRICES (EXCLUDING PURCHASE TAX), 1957/58/59/60 TELEVISION TABLE RECEIVERS BY TUBE SIZES.

Year	14"			17"			19"			21"			23"		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
1957	44	4	6	52	15	0		—		66	11	6		—	
1958	42	9	6	51	8	0		—		65	18	6		—	
1959	41	16	0	49	13	6		—		62	8	0		—	
1960	41	4	6	48	8	0	51	1	0	57	19	0	63	3	6

Average Prices have been taken to nearest 6d.
Source: Estimates based on BREMA Members' Returns.

The Seventeenth Annual Report of the British Radio Equipment Manufacturers' Association

Presented by the Executive Council to the Annual General Meeting, 26th July, 1962

Gentlemen,

The Executive Council has pleasure in presenting to members of the Association its Annual Report.

Introduction

General

The period covered by this Report has proved to be one of the most difficult in the history of the industry and at the same time one of the most strenuous in the annals of the Association.

On the national front the industry has felt the effects of the Government's efforts to contain the inflationary pressures which began once again to loom ominously in 1961 and resulted in the imposition of the Pay Pause, the raising of the Bank Rate, the 10% surcharge in Purchase Tax rates and also the taking of the power to impose a special tax on labour, which, in the event, was not invoked.

The psychological effect rather than the severity of these measures on the home market for television, already largely dependent on replacement buying and beset by doubts and uncertainties pending the outcome of the Pilkington Report, was sufficient to cause a very serious setback to the industry, from which it will take some time to recover. The fact that sales of radio receivers in the form of transistor portable and personal sets continued to expand, welcome as this was, could not from the point of view of the industry as a whole go very far towards making good the deficiency on television. Moreover, the relatively flourishing market for these small radio receivers was being increasingly threatened by the rapidly growing importations, mainly from low-cost countries.

In international affairs the question of Britain joining the European Economic Community gathered importance as we moved towards a decision—which it was understood was likely to be reached in the latter part of 1962. Provided reasonable terms can be arranged which would safeguard the essential interests of the Commonwealth and our own agricultural industry, there is a strong expectation that Britain's application to become a member of the EEC will be accepted, thereby making her a partner in the Common Market arrangements. Britain's entry into the EEC will bring drastic changes, both political and economic, the exact nature of which cannot be predicted at this stage. The implications for our own industry are very great indeed, presenting not only a serious challenge but also offering us great opportunities if we can become fully competitive.

Against this somewhat sombre background your Council has been actively engaged in giving attention to a wide range of topics, including several salient matters to which the weight of effort has had to be devoted. Altogether, this year has produced problems of outstanding significance for the future of the industry as a whole and for the Association in particular.

757 Trading Conditions

The Council have continued to take active steps to ensure that Members were kept fully informed of the stock position of both television and radio receivers and called the attention of Members to the necessity for careful forward planning by individual firms and the relationship between these plans and the estimates of the total market during the current and subsequent years. On a declining market for television receivers manufacturers' stock decreased from 480,000 at the beginning of 1961 to 181,000 by the end of the year, a fall of nearly 300,000 (62%). On a strongly rising market for radio receivers, stocks increased by 58,000 (14%) during 1961 to a total of 460,000, the increase being accounted for entirely by transistor radios, whilst stocks of valve radios both AM and those incorporating FM facilities fell sharply.

The trend observed during 1960 for rapidly increasing imports of radio sets from an ever widening number of countries continued into 1961 and again into the current year. As in the case of home productions, transistor radios predominated accounting for some 90% of total imports. There has, however, been a very considerable change in the proportion taken by individual countries of total imports as, for example, in 1960 Germany was the largest, taking 35.4% (30,000) but has declined to third position, accounting for only 9% in 1961, although the total number of sets has fallen to only 25,000, followed closely by The Netherlands and France. By far the greatest volume of imports during 1961 came from Hong Kong, 105,000 (37.3%) amounting to more than the total imports from all sources during 1960. The rising trend in radio imports has been brought to the notice of the Government with special reference to the proposed Anglo-Japanese Long Term Trade Treaty and the bi-lateral annual quotas, in order to safeguard our interests both in direct imports from Japan and indirect imports through third countries including Hong Kong which incorporate a high proportion of Japanese components. As a result of the greater quota granted, imports from Japan have increased from rather more than 13,000 in 1960 to over 58,000 in 1961, making them the second largest in total and the largest source of non-transistored radio receivers.

As in previous years representations were made to the Ministry of Aviation, and through them to the Treasury and the Board of Trade, during 1961 and prior to the 1962 Budget, recommending substantial reductions in the level of purchase tax and in the initial deposit and re-payment period for hire purchase transactions. During 1961, however, although the period of re-payment for hire purchase transactions was lengthened from 24 to 36 months the initial deposit requirement remained the same and in the "Little Budget" of July, a 10% surcharge was added, raising the purchase tax rate applicable to our products from 50% to 55%. The Chancellor of the Exchequer subsequently reduced the rate on domestic radio and television equipment to 45% during his April, 1962, Budget.

Reviewing the trading results for 1961, the year opened with the industry facing a critical situation due to an anticipated fall in the television receiver market for a number of reasons specific to this product, including the uncertainty created in the public mind by the then current enquiry of the Pilkington Committee and the sheer weight of over a million receivers in stock. In consequence, due in part to further measures by the Government to restrict consumer expenditure in general, manufacturers were forced to offer exceptional and uneconomic terms to the Trade and thence to the public in an attempt to offset the fall in unit sales.

Nevertheless, to reduce stocks to more manageable proportions, production of television receivers had to be drastically reduced to the unprofitable level of 1.25 million sets during the year compared with 2.2 million in 1960 and 2.9 million in 1959. The sharp reduction in television turnover dominated the trading results for 1961 and outweighed the considerable increase in radio receiver disposals. Measured at ex-works values and f.o.b. prices, manufacturers total turnover for 1961 was £77.6 million, a fall of £9.1 million in 1960 and £38.6 million less than in 1959. Home disposals of television receivers, £48.9 million in 1961, were £11.3 million less than in 1960 or a fall of 19%; radio receiver home disposals £20.1 million in 1961 by contrast increased 20% on the 1960 figure of £16.8 million and for radiograms disposals fell marginally to £4.8 million in 1961 from £5.7 million. Total home disposals for all these products having fallen from £112.9 million in 1959 to £82.7 million in 1960 decreased by a further £8.9 million (11%) to £73.8 million during 1961. Export sales for television receivers increased by 15%, whilst those for radio receivers and radiograms fell by 18% and 14% respectively; the total value of exports at f.o.b. prices for 1961 was £3.8 million compared with £4.1 million in 1960 and £3.4 million in 1959.

758 Television Policy

Outstanding among the many absorbing problems of recent years has been that concerned with the future development of broadcasting in the United Kingdom and, in particular, the question of the change of television standards. The existence of the Pilkington Committee on Broadcasting, set up in 1960 with Terms of Reference which included consideration of the commercial aspects of a change in line standards, cast its deep shadow over the major part of the industry during a critical period of close on two years. Speculation on the outcome of the Committee's deliberations ran high and frequent Press comment, which could be expected on a subject of such universal interest, only served to accentuate the difficulties and uncertainties in the minds of consumers.

The industry, however, applied itself to the problem of the design, production and marketing of television receivers capable of being adjusted to meet any foreseeable changes in future television broadcasting techniques and additional programme services which might come about during the life of the set. In the absence of decisions on line standards, the method of changeover if a new standard were adopted, and the number of programmes to be catered for, each individual manufacturer had to approach the problem on the basis of his own assessment of the position, a situation which could only be resolved once the Government's decision had been taken on the recommendations of the Pilkington Committee.

The Report of the Pilkington Committee was published on 27th June, 1962, and the Government White Paper which was issued on the 4th July, stated ". . . it is most desirable to reach early conclusions on some questions, including the vital technical ones, in order to lessen or remove the present uncertainty and doubt which is having a depressive effect on the broadcasting medium and the industries which serve it."

The most important Government decision from the industry point of view was that new programmes would be introduced in the UHF Bands, using 625 line standards. This, at least, will enable the industry to proceed with its main task of providing receiving equipment of the right quality and at the right price to meet the declared policies. But it is essential to the industry that the additional services authorised by the Government should commence at the earliest possible date and cover the whole of the country with the least possible delay.

Among the items on which no firm Government decision has been taken are (i) the method of changeover from the old to the new line standard (either by duplication in the UHF Band of existing programmes or by switchover in the VHF Bands at some future specified date), and (ii) the system of colour television to be adopted—although it is proposed to authorize the BBC to introduce colour as part of their second programme which will be broadcast in the UHF Bands on the new line standard. The relative merits of the two competing colour systems—NTSC and SECAM—are at present under international technical investigation by the CCIR, and it would obviously be unwise for Britain to commence a colour service without some assurance that the system used would be the standard adopted by the rest of Europe.

* * *

763 Trading Results

In July, 1961, the Chancellor increased the Purchase Tax rate on our products by a 10% surcharge, raising the rate chargeable to 55%. Although it is difficult to assess the effect that this increase might have had on the adverse conditions already existing for the sale of television receivers, disposals by manufacturers during 1961 on the home market amounted to only 1½ million sets, 300,000 or 17% less than in the preceding year. The high level of stocks held by manufacturers (480,000) and by traders (523,000) amounting in total to over a million receivers, necessitated a cut in production in 1961 to 1¼ million, 41% less than in 1960. Both production and home disposals of radio receivers continued to rise steeply during 1961 due to the increasing demand for transistor radios. For exports, however, the position was reversed; exports of radio receivers decreased by 65,000 during the year, but television receivers showed a satisfactory increase of 6,000 or 16% from 38,500 to 44,600 in 1961.

In spite of the increase in radio receiver disposals, total home turnover for 1961 was £73.84 million, a decrease of nearly £9m. on 1960 and £39m. less than in 1959. The f.o.b. values of total exports was 7%, or nearly £300,000 less than in 1960, the increase in television receiver exports not quite offsetting the decrease in those for radio receivers and radiograms. The combined turnover of home and export sales of all products fell by 11% on 1960, from £86.8m. to £77.6m.

The retained imports of radio receivers increased by nearly 191,000 in 1961, totalling 274,300 for the year, the c.i.f. value rising to £1,357,000, an increase of £764,000.

NOTE: In Tables I and II the figures relating to the production and home disposals of both radio receivers and radiograms for the years 1960 and 1961, are BREMA estimates. The 1960 figures have been revised since the publication of the last Annual Report.

TABLE I.

INDUSTRY PRODUCTION, TOTAL HOME DISPOSALS AND EXPORT SALES, 1959/60/61.

Nos = 000's

	Production					Total Home Disposals				
				% Change					% Change	
Product	1959	1960	1961	'61 on '59	'61 on '60	1959	1960	1961	'61 on '59	'61 on '60
				%	%				%	%
Radio Receivers (incl. Car Radio)	1,658	2,324	2,831	+ 71	+ 22	1,555	1,901	2,576	+ 66	+ 36
Radiograms	176	254	170	− 4	− 33	189	207	189	nil	− 9
Television Receivers	2,863	2,141	1,256	− 56	− 41	2,776	1,817	1,509	− 46	− 17

	Export Sales*					Total: Home Disposals and Export Sales*				
				% Change					% Change	
Product	1959	1960	1961	'61 on '59	'61 on '60	1959	1960	1961	'61 on '59	61 on '60
				%	%				%	%
Radio Receivers (incl. Car Radio)	244	270	205	− 16	− 24	1,799	2,171	2,781	+ 55	+ 28
Radiograms	17.1	8.5	7.9	− 54	− 7	206	216	197	− 4	− 9
Television Receivers	23.8	38.5	44.6	+ 87	+ 16	2,800	1,856	1,554	− 45	− 16

* Export Sales are despatches ex-factory, not ex-U. K. port.
Source: Ministry of Aviation and BREMA estimates.

TABLE II.

VALUE OF INDUSTRY TURNOVER, 1959/60/61.

Value = £ 000's

Product	Home Disposals (ex-works value)					Export Sales* (f.o.b. value)				
				% Change					% Change	
	1959	1960	1961	'61 on '59	'61 on '60	1959	1960	1961	'61 on '59	'61 on '60
				%	%				%	%
Radio Receivers (incl. Car Radio)	13,388	16,797	20,149	+ 51	+ 20	2,203	2,472	2,038	− 8	− 18
Radiograms	5,436	5,696	4,838	− 11	− 15	358	304	262	− 27	− 14
Television Receivers	94,034	60,220	48,853	− 48	− 19	789	1,315	1,507	+ 91	+ 15
Total Turnover	112,858	82,713	73,840	− 35	− 11	3,350	4,091	3,807	+ 14	− 7

765

Product	Total Turnover: Home and Export*				
				% Change	
	1959	1960	1961	'61 on '59	'61 on '60
				%	%
Radio Receivers (incl. Car Radio)	15,591	19,269	22,187	+ 42	+ 15
Radiograms	5,794	6,000	5,100	− 12	− 15
Television Receivers	94,823	61,535	50,360	− 47	− 18
Total Turnover	116,208	86,804	77,647	− 33	− 11

* Export sales are despatches ex-factory, not ex-U. K. port.
Source: Ministry of Aviation and BREMA estimates.

TABLE III.

U. K. RETAINED IMPORTS: DOMESTIC RADIO AND TELEVISION EQUIPMENT, 1958/59/60/61.

Numbers

Product	Total Retained Imports			
	1958	1959	1960	1961
Radio Receivers:				
Transistored	8,782	39,749	71,805	245,915
Other	7,066	9,376	11,523	28,404
Total Radio Receivers	15,848	49,125	83,328	274,319
Radio Chassis	5,796	7,091	974	2,314
Radiograms	299	2,290	1,077	2,560
Television Receivers	209	4,690	495	775
Total: All Domestic Radio and Television	22,152	63,196	85,874	279,968

Note · For the purpose of comparison, it has been assumed that non-mains sets imported during 1958/59/60 were mainly transistored sets.
Source: H. M. Customs and Excise.

* * *

766 Manufacturers' Stocks

Table V shows stocks held by manufacturers only, and excludes stocks held by dealers on consignment or S.O.R. account. They can be taken as "actual" stocks rather than "estimates", as they have been compiled from special end-year returns made by Members to the Association and by virtually all non-Members to the Ministry of Aviation who have once again readily co-operated in this enquiry.

A careful investigation with the firms concerned, as in previous years, between the stock figures revealed by the special industry annual stock-take and the "derived stocks" for the end of the year has enabled accurate final stocks to be obtained and adjustments, as necessary, to be made to the annual statistics of production, home and export disposals.

In Table V below comparisons of 1961 stocks are made with those for 1959 and 1960; it will be seen that total radio receiver stocks increased by 58,000 (14%) during 1961 to 460,000; valve type receiver stocks, however, were halved, falling to 121,000 whilst those for transistor receivers doubled, rising by 186,000 to 339,000. Radiogram stocks fell from 61,000 at the end of 1960 to 36,000 at the end of 1961, a decrease of 41%. Television receiver stocks decreased by 62% or 300,000; the principal reduction was in the class "up to and including 17″ tube size" which fell from 385,000 in 1960 to 21,000. Television stocks of 19″ and 23″ receivers—125,000 and 30,000 respectively are shown for the first time in 1961; direct comparison with earlier periods is not possible but combined stocks of 19″ and 23″ receivers amounted to not more than 5,000 at the end of 1960. It will be of interest that television receivers with 19″ tubes accounted for 69% of the total stocks held at the end of 1961.

• • •

767 Television Saturation

The television saturation of households, shown in Table VI, continues to be based on the number of households calculated from the 1951 Census of Population; this has been done in order to maintain the approximate regional trend of growth previously established.

The actual combined radio and television license increase in 1961 was 581,500, compared with 961,585 the previous year. The percentage of overall saturation, measured on the above basis has, therefore, only increased from 73.7% at 31st December, 1960, to 77.6% a year later. Eight of the fifteen regions listed show a household saturation of over 80%, five over 70%; the Greater London area shows a saturation of 68.2%; Northern Ireland shows the lowest saturation at 42.9%. These regional saturation figures have further declined in significance but still provide some guide as to the distribution of replacement buying.

The Preliminary Report on the 1961 Census of Population gives estimates of the number of private households in England and Wales as 14.7 million (it states, however, that these figures are especially vulnerable to re-scrutiny); to this must be added an estimate for Scotland, Northern Ireland, the Isle of Man and Channel Isles. The revised estimate on the total number of households is, therefore, about 16.6 million as against the 15.028 million estimated ten years ago. Television saturation of households, based on this new estimate, is reduced to approximately 70% overall instead of the 77.6% quoted as the aggregate of the regional totals on the 1951 Census results. However, when forecasting future retail transactions, replacement demand and for use in similar exercises, estimates are used incorporating changes in total households and allowances made for pirates.

• • •

769 Price Levels

As information obtained from Members on types of radio receiver models was on a different basis to that for previous years, it has been necessary to amalgamate the types so as to give a comparison between valve only radios and those with transistors, for both AM and FM or AM/FM. It will be seen from Table VIII that, with the exception of valve radios with either FM or AM/FM reception facilities, the average list price for 1961 is considerably lower than for 1960.

Radiogram average list prices, on the same basis as last year, also showed a downward trend, with the exceptions of single channel console models with AM only reception, and twin channel console models with FM or AM/FM reception.

The average list price of television receivers (Table IX) for all tube sizes showed a reduction on the 1960 averages, thus maintaining the lower price trend previously established.

• • •

770

TABLE IX.

AVERAGE LIST PRICES (EXCLUDING PURCHASE TAX), 1958/1959/1960/1961 TELEVISION TABLE RECEIVERS*, BY TUBE SIZES.

Tube Size	1958			1959			1960			1961		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
17"	51	8	0	49	13	6	48	8	0	46	1	6
19"	—			—			51	1	0	49	8	0
21"	65	18	6	62	8	0	57	19	0	55	18	6
23"	—			—			63	3	6	61	6	6
Others	42	9	6	41	16	0	41	4	6	42	18	6

Note: Average Prices have been taken to the nearest 6d.

* Television Receivers with Radio or Radiogram incorporated are not included.

Source: Estimates based on BREMA Members' Returns.

• • •

781 One aspect of the change to any new line standards is the method to be adopted of introducing them and any new programmes which may be inaugurated. It was

originally believed that, in addition to any new UHF programmes, it would also be necessary to duplicate the existing 405 line programmes in Bands IV and V. However, the ITA has suggested that this duplication is not necessary and that, if proper preparations were made beforehand, the whole of the BBC and ITA services in Bands I and III could be changed from 405 line to the new standard overnight. The technical aspects of this plan have been examined both by BREMA and the Technical Sub-Committee of the TAC: advantages and disadvantages are seen in both methods of changeover, and no final decision has, as yet, been taken.

• • •

801

The Eighteenth Annual Report of the British Radio Equipment Manufacturers' Association

Presented to members in Annual General Meeting,
20th May, 1963

Introduction

General

The Association's activities cover a wide field but, as in past years, there have been several matters of paramount importance which have required a special concentration of effort. Internally, the newly-constituted President's Committee and Council took office and subsequently the Committee structure serving these two governing bodies was reorganised. Due to reduced turnover and profitability in the industry, stringent economy in running the Association was considered essential; on a re-appraisal of the Association's work a severe pruning of expenditure has been effected and the utmost economy introduced consistent with maintaining the minimal services considered absolutely essential. Externally, by far the most important event was the publication of the Pilkington Report and the accompanying White Papers and the steps taken to implement the Government's decisions. A further reflection of the continued reduction in the industry's turnover and the special situation relating to the manufacture and marketing of television receivers was the decision not to hold a National Radio Show during 1963. However, as an alternative to the holding of a national exhibition, the organisation of a sales promotion campaign for television and radio receivers was put in hand which will be geared particularly to developments in broadcasting in the UHF Bands.

Representations continued to be made and evidence given to the Government concerning the negotiations for a Commercial Treaty with Japan; every effort was made to safeguard the British transistor radio industry against imports from Japan, whether direct or indirect via third countries, at prices with which neither the U.K. and other Western European countries nor the United States could possibly compete.

Together with other Associations in the electronics field evidence was given to the National Economic Development Council, in which industry complied with the request to make detailed prognostications covering the next five years.

• • •

802 Trading Conditions

The economy of the country as a whole suffered during 1962 from the restrictive policies introduced in 1961 to deal with the then serious balance of payments situation and the threat of inflation due to rising wages. Not until towards the end of the year were positive steps taken to encourage expansion of the economy; the consumer electronic industry was affected not only by the general malaise but was additionally burdened by problems specific to it.

Uncertainty as to the future of television broadcasting which caused the further steep decline in the market for television receivers during 1961 brought virtual stagnation at these lower levels in the first half of 1962. Removal of the basic uncertainties early in the second half of the year could of their nature have little short-term effect on improving the market which remained depressed for the remainder of the year.

The nominal reduction of purchase tax from 55 per cent to 45 per cent in April 1962 had no tangible effect on sales; the subsequent reduction during June of the hire purchase deposit from 20 per cent to 10 per cent which could be expected to have little or no effect on sales of radio receivers, had no more than a marginal effect in increasing sales of television receivers due to the hiatus in trade resulting from the causes mentioned above.

The market for British radios continued at a high level but slightly lower than 1961 and was adversely affected by the extremely low prices of receivers imported from Hong Kong and from Japan; the value of retained imports of transistor radios during 1962 rose by 74 per cent during the year and amounted at c.i.f. values to nearly £2,000,000.

Combined turnover on the home and export markets for radios, radiograms and television receivers during 1962 (£77.3m) remained virtually unchanged on 1961 (£77.6m) but some £9.5m less than in 1960. Compared with 1961 the value of radio receiver disposals fell by 5 percent to £19.1m on the home market and 37 per cent to £1.3m on the export market; for television receivers home disposals were 3 per cent less at £47.4m whilst exports more than doubled to £3.5m.

Future Broadcasting Policy

A new chapter in the history of British broadcasting was begun in 1962 with the release of the long awaited report

of the Pilkington Committee and two subsequent White Papers which gave an indication of the Government's intentions in regard to future broadcasting policy. After years of waiting which spelt stagnation and near disaster for the industry, the 'green light' was given for the go-ahead on the introduction of 625-line television standards in the UHF Bands, with one additional programme for the BBC. The industry has consistently advocated the provision of the maximum number of television programmes, restricted only by the number of channels available. The Government's decision to allow only one programme in the
803 UHF Bands at this stage was therefore a matter of
regret, since the UHF Bands are capable of accommodating four national programmes or one further new programme in addition to the duplication of the existing 405-line programmes if this method is adopted for the change-over of line standards.

After suffering severely from a lack of decision on the question of future technical standards, it was natural that the industry and the public should be eager for the earliest possible introduction of the new programme. The immediate concern is the initial delay in bringing into operation the first two main 625-line transmitters (London and Birmingham) and we will continue to urge the earliest possible commencement of the new services.

• • •

805

Economic and Statistical

General

The earliest economic indications during 1962 gave hope for an increase in production and in exports; for industrialists, however, 1962 was in general to prove a year of frustration. The earlier promise of better things was not fulfilled and discussion centered not on whether economic expansion was desirable but on whether it was happening.

Here there was a divergence between the comparative optimism of the Government and the continued pessimism of business men. The 1962 Budget had been framed to safeguard the economy against the risk of excess demand at home directing resources away from exports. The Government's view had to be changed in face of the mounting evidence during the latter part of the year, by when it became clear that demand had in fact fallen to a point where serious under-utilisation of industry's resources was taking place. The realisation of this led to a welcome move towards dismantling the structure of restraints which had been imposed during 1961.

• • •

806 STATISTICS

Section A: Trading Performance (Tables I to V)
Production, Home Disposals and Exports.

The conditions under which the consumer electronic industry operated during 1962 have already been outlined earlier in this Report; the following alleviations in the restraints imposed on the sale of BREMA products took place—purchase tax was reduced during April from 55 per cent to 45 per cent (as from 1st January, 1963 to 25 per cent) and the deposit requirement for hire purchase trade reduced from 20 per cent to 10 per cent in June.

Summaries of industry trading performance for 1962, compared with the two preceding years, are shown in Tables I and II. Both production and home disposals of radio receivers at 2.8m and 2.6m units were only a little below the 1961 level, being 2 per cent and 1 per cent less respectively. Export sales, 149,000, however, showed a marked decline, being 27 per cent less than 1961 and 45 per cent less than 1960. Production of television receivers, 1.46m units, increased by 16 per cent on the 1961 level; home disposals, 1.4m on the other hand, decreased by 9 per cent but export sales of 112,000 units showed a satisfactory increase of 151 per cent, i.e. exports were some two and a half times greater than in 1961.

The total home turnover (ex-Works prices) for all three BREMA products during 1962 was £72.2m., some £1.6m. less than 1961 and £10.5m. less than 1960. To offset this, however, total export sales during 1962, £5.06m. f.o.b., was £1.2m. more than 1961. The combined home and export turnover for 1962 was, therefore, only £366,000 less than the 1961 total, but £9.5m. less than 1960.

Manufacturers' Stocks

The figures for 1960/61/62 quoted in Table III are stocks of U.K. produced sets held by manufacturers, and exclude stocks held by dealers on consignment or S.O.R. account. They have been compiled from special returns made by Members and, through the co-operation of the Ministry of Aviation, by manufacturers outside the Association. They are, therefore, as near 'actual' as is possible.

The total number of radio receivers of all kinds held in stock by manufacturers at the end of 1962 was 528,000, a net increase of 68,000 on the 1961 figure; within this 'net' figure stocks of transistor radios actually increased by 158,000 whilst stocks of valve sets decreased by 90,000. The proportion of transistor radios to the total stocks was 94 per cent of which nearly two-thirds were of the portable type.

Radiogram stocks fell by 10,000 during 1962 to a total of 26,000; the main decline lay in the field of FM and AM/FM receivers with twin channel amplification.

Television receiver stocks showed the least movement, being only 29,000 less than the previous year-end stocks and the majority of this fall lay in receivers other than those with 19″ and 23″ tubes.

It is stressed that all stock figures are for new sets held by manufacturers; this has special significance for television as considerable stocks of used receivers may be held by, for example, manufacturers with rental and relay interests.

Retained Imports

As the value of retained imports has increased considerably during 1962 and in total now take an important share of the home market, additional information to that shown in previous years has been given in Table IV; comparisons are also shown with imports during 1960/61.

Imports of radio receivers have increased steadily during the last three years, most markedly for transistored radios (for detailed analysis by country of origin see Table VI). The c.i.f. value of transistored radios reached
807 nearly two million pounds in 1962, an increase of 74
per cent on the 1961 total of £1.15m. In actual numbers, the increase was even higher, the 1962 total of 529,300 being an increase of 115 per cent on the 1961 figure, 245,900.

Retained imports of radiograms rose from £81,000 in 1961 by £95,000 to £176,000 in 1962. This was due largely to imports from West Germany, which increased by £91,000, and from Japan which rose by £14,000; these increases were in turn offset by a fall in imports from the U.S.A. of approximately £7,000.

Retail Transactions

Estimates of total retail transactions (which include rental and relay transactions), with quarterly and annual comparisons for the years 1960/1962, are shown in Table V.

Transactions of radio receivers continued to rise, reaching a total of 2,861,000 in 1962, an increase of 12 per cent on the 1961 figure of 2,552,000, and 68 per cent more than in 1960 (1,701,000).

Radiogram transactions in 1962, 214,000, were slightly higher than the 1960 and 1961 levels. There are reasons for believing that actual radiogram transactions may have been even higher during recent years than the figure estimated; it is thought that information on manufacturers' supplies to the trade (on which the estimates of retail transactions are largely based) may be incomplete.

Television receiver transactions, on the other hand, decreased from 1,747,000 in 1961 to 1,482,000 in 1962 (15 per cent); whilst the fall from 1,924,000 in 1960 was even greater (23 per cent).

Section B: Detailed Analysis of Selected Information (Tables VI to XI)

Radio Receiver Imports—Analysis by Country of Origin

Table VI analyses imports of transistored and 'other' radio receivers from the principal countries of origin; it should be noted that the totals differ from those for 'retained' imports contained in Table IV, the latter having been adjusted by the total number of sets re-exported. This adjustment cannot be made country by country as the original source of re-exported equipments is not known.

The 1962 imports of radios by numbers have been listed in descending order of magnitude by countries and are compared with those for 1961 from the same sources. Comparative c.i.f. values, together with average prices ruling for 1961 and 1962 are also shown for transistored radios, providing a comprehensive picture of the import situation. Imports of transistored radios from Hong Kong during the year (363,625) were more than three times the 1961 total; it is specially noteworthy that there was a decrease in the average price of these radios from £3 12s. 2d. in 1961 to £2 12s. 4d. in 1962. With the exception of receivers from Italy, the average prices of which fell from £4 6s. 5d. to £3 12s. 4d., the average price of transistored radios from all other countries listed, increased in 1962.

The number of 'other' radio receivers imported increased from 29,487 in 1961 to 33,171 in 1962; 44 per cent of these 1962 imports came from the 'Iron Curtain' countries, mainly Hungary and Poland.

The combined value of imported transistored and 'other' radio receivers totalled £2,308,000 in 1962, an increase of nearly £900,000 over 1961.

Comparative List Prices (excluding Purchase Tax) 1960/61/62

Table VII gives average prices of radio receivers and radiograms by types. In the case of radiograms, it is possible only to show for 1962 one average price for all single channel models, as no information was separately collected during 1962 on table and console models.

The average prices of valve type radio receivers have increased in 1962 both for AM and VHF/FM models, the latter from £16 0s. 6d. to £17 6s. 0d. The average price
808 of transistored radios with AM only reception, by far
the greatest proportion of total receivers, decreased from £12 5s. 0d. in 1961 to £11 9s. 6d. in 1962, whilst the average price of transistored radios incorporating VHF/FM rose from £18 17s. 0d. in 1961 to £20 12s. 0d. in 1962.

Table VIII, showing comparative average prices for 1960/61/62 of television receivers analysed by tube sizes, is on a different basis from the otherwise apparently similar tables given in previous Annual Reports (the original series was for table models only, the current series is for both table and console models, separate information on which is no longer obtained). The changing proportions of console to table models as between one year and another could cause changes in average prices which might obscure more significant price movements. Subject to this reservation, it can be seen that there is virtually no change in the average price of 17″ and smaller tube size models; a small rise in those with 19″ and 23″ screens, and a slight reduction in the residual item, models with 'other tube sizes'.

Television Receivers: Percentage Distribution by Tube Sizes

Table IX shows television receiver percentage distribution by tube sizes, for production, home disposals and year-end stocks. Comparisons for the years 1960, 1961 and 1962 show that the proportion of both production and home disposals represented by the group 'up to and including 17″' has fallen away from over 80 per cent in 1960 to less than 5 per cent in 1962. In the same way the group 'other tube sizes' (consisting mainly of 21″ models) has fallen from some 15 per cent in 1960 to 1 per cent of the total in 1962. Production of 19″ models has risen from 78 per cent in 1961 to 83 per cent of the total in 1962, whilst the proportion of home disposals has risen more steeply from 57 per cent to 87 per cent over the same period. Production of 23″ models rose from 8 per cent in 1961 to 12 per cent of the total in 1962, and home disposals doubled from 5 per cent to 10 per cent.

• • •

810

TABLE I.

INDUSTRY PRODUCTION, TOTAL HOME DISPOSALS AND EXPORT SALES, 1960/61/62

Nos.—000's

Product	*Production*					*Total Home Disposals*				
	1960	1961	1962	% Change '62 on '60	'62 on '61	1960	1961	1962	% Change '62 on '60	'62 on '61
Radio Receivers *including Car Radio*	2,324	2,831	2,774	+19	— 2	1,901	2,576	2,555	+34	—1
Radiograms	254	170	203	—20	+19	207	189	202	— 2	+7
Television Receivers	2,141	1,256	1,463	—32	+16	1,817	1,509	1,378	—24	—9

Product	*Export-Sales**					*Total Home Disposals and Export Sales**				
	1960	1961	1962	% Change '62 on '60	'62 on '61	1960	1961	1962	% Change '62 on '60	'62 on '61
Radio Receivers *including Car Radio*	270	205	149	—45	—27	2,171	2,781	2,704	+25	—3
Radiograms	8.5	7.9	7.9	— 7	nil	216	197	210	— 3	+7
Television Receivers	38.5	44.6	112	+191	+151	1,856	1,554	1,490	—20	—4

*Export Sales are ex-factory not ex-U.K. port

TABLE II

VALUE OF INDUSTRY TURNOVER, 1960/61/62

Value=£000's

Product	Home Disposals (ex-Works value)					Export Sales * (f.o.b. value)				
	1960	1961	1962	% Change '62 on '60	'62 on '61	1960	1961	1962	% Change '62 on '60	'62 on '61
Radio Receivers *including Car Radio*	16,797	20,149	19,125	+14	— 5	2,472	2,038	1,295	— 48	— 37
Radiograms	5,696	4,838	5,663	— 1	+17	304	262	262	— 14	nil
Television Receivers	60,220	48,853	47,438	—21	— 3	1,315	1,507	3,498	+166	+132
Total Turnover	82,713	73,840	72,226	—13	— 2	4,091	3,807	5,055	+ 24	+ 33

Product	Total Turnover: Home and Export				
	1960	1961	1962	% Change '62 on '60	'62 on '61
Radio Receivers *including Car Radio*	19,269	22,187	20,420	+ 6	— 8
Radiograms	6,000	5,100	5,925	— 1	+16
Television Receivers	61,535	50,360	50,936	—17	+ 1
Total Turnover	86,804	77,647	77,281	—11	— 0.5

*Export Sales are ex-factory not ex-U.K. port
Source: BREMA Estimates and Ministry of Aviation

811

TABLE III

ESTIMATED TOTALS OF MANUFACTURERS' STOCKS: 1960/61/62
(Excluding Stocks on S.O.R. a/c held by Dealers)

Number=000's

Product	1960	1961	1962	% Change '62 on '60	'62 on '61
Radio Receivers *including Car Radio*					
AM only:					
Valve	173	75	20	— 88	— 73
Transistor	149	328	452	+203	+ 38
FM and AM/FM:					
Valve	76	46	11	— 86	— 76
Transistor	4	11	45	‡	+309
Total Radio Receivers	402	460	528	+ 31	+ 15
Radiograms					
A.M. only:					
Single Channel	13	7	9	— 23	+ 29
Twin Channel		3	1		— 67
FM and AM/FM:					
Single Channel	7	4	9	+ 29	+125
Twin Channel	41	22	7	— 83	— 68
Total Radiograms	61	36	26	— 57	— 28
Television Receivers*					
Up to and including 17"	385	21	†	—	—
19" only	—	125	126	—	+ 1
23" only	—	30	22	—	— 23
Others	95	5	†	—	—
Total Television Receivers	480	181	152	— 68	— 16

Notes: * Television Receivers include those incorporating radio or radiogram, Chassis 75% or more assembled and Terminal Units

† The stocks of these items, although identifiable of themselves, are included in the total.

‡ Percentage not shown as it would be unrealistic.

Source: BREMA Members' Returns and Ministry of Aviation

TABLE IV

U.K. RETAINED IMPORTS: DOMESTIC RADIO AND TELEVISION EQUIPMENT 1960/61/62

Number—000's
Value—£000's (c.i.f.)

Product	Total Retained Imports					
	Number			Value		
	1960	1961	1962	1960	1961	1962
Radio Receivers:						
Transistored	71.8	245.9	529.3	472	1,145	1,993
Other	11.5	28.4	32.6	121	211	293
Total Radio Receivers	83.3	274.3	561.9	593	1,356	2,286
Radio Chassis	1.0	2.3	2.6	3	13	38
Radiograms	1.1	2.6	6.3	46	81	176
Television Receivers	0.5	0.8	0.3	21	28	19
Total: All Domestic Radio and Television	/	/	/	663	1,478	2,519

Note: For the purpose of comparision it has been assumed that non-mains sets imported during 1960 were mainly transistored radios.

Source: H. M. Customs and Excise

TABLE V

TOTAL RETAIL TRANSACTIONS* 1960/61/62

Number—000's

Product	*Radio Receivers (excluding Car)*					*Radiograms*				
	1960	1961	1962	*% Change* '62 on '60	'62 on '61	1960	1961	1962	*% Change* '62 on '60	'62 on '61
1st Quarter	325	403	519	+60	+29	50	45	48	— *4*	+ 7
2nd Quarter	374	623	668	+79	+ 7	27	28	21	—*22*	—*25*
3rd Quarter	490	800	819	+67	+ 2	45	42	38	—*16*	—*10*
4th Quarter	512	726	855	+67	+18	85	88	107	+*26*	+*22*
Annual Total	1,701	2,552	2,861	+68	+12	207	203	214	+ *3*	+ *5*

Product	*Television Receivers*				
	1960	1961	1962	*% Change* '62 on '60	'62 on '61
1st Quarter	618	446	360	—*42*	—*19*
2nd Quarter	338	383	272	—*20*	—*29*
3rd Quarter	368	392	317	—*14*	—*19*
4th Quarter	606	526	533	—*12*	+ *1*
Annual Total	1,924	1,747	1,482	—*23*	—*15*

*Retail Sales and Rental and Relay Transactions

Source: BREMA Retail Survey

814

Table VIII

AVERAGE LIST PRICE (EXCLUDING PURCHASE TAX) 1960/61/62 TELEVISION RECEIVERS (SOUND AND VISION ONLY)* BY TUBE SIZES

Tube Size	1960			1961			1962		
	£	s.	d.	£	s.	d.	£	s.	d.
Up to and incl. 17″	48	10	0	46	5	6	46	10	0
19″	51	1	0	49	12	0	50	7	6
23″	65	19	0	62	16	0	63	18	0
Other Tube Sizes	59	11	0	56	11	0	54	19	6

Note: Average Prices have been taken to the nearest 6d.

* Television Receivers with radio or radiogram incorporated are not included

Source: Estimates based on BREMA Members' returns

Table IX

TELEVISION RECEIVERS: MANUFACTURERS' PRODUCTION, HOME DISPOSALS AND STOCKS PERCENTAGE DISTRIBUTION (BY NUMBERS) BY TUBE SIZE, 1960/61/62

Tube Size	1960			1961			1962		
	Production	*Home Disposals*	*Year End Stocks*	*Production*	*Home Disposals*	*Year End Stocks*	*Production*	*Home Disposals*	*Year End Stocks*
Up to and incl. 17″	85	87	80	11	31	12	4	2	*
19″	Included with 'Other'			78	57	69	83	87	83
23″	Included with 'Other'			8	5	17	12	10	15
Other Tube Sizes	15	13	20	3	7	2	1	1	*

* These two groups would be separately identifiable; together they represent 2 per cent of the total television stocks

Source: Estimates based on BREMA Members' returns.

816 Commercial

Sales Promotion

Although publication of the Report of the Committee on Broadcasting—the Pilkington Committee—and the subsequent acceptance by the Government of its main technical recommendations resolved, for the industry and the general public alike, uncertainties as to the future television standards to be used in the United Kingdom, it did nothing to relieve the generally depressed condition of trade. The inevitable delay in introducing the new 625 line UHF television standards presented manufacturers with the bleak prospect of a further period of caution on the part of consumers and, in consequence, a major pre-occupation has been to ensure a proper awareness in the right places of the industry's problems and to instil a sense of urgency in those concerned with providing the new transmissions. At the same time, a long and detailed examination was made of the extent to which action could be taken on an industry basis to relieve the unsatisfactory position into which television sales had fallen and to stimulate sales of all products on the BREMA schedule. Every sales promotion must have a specific story to tell around which overall business can be encouraged and in this respect it was evident that the main platform had necessarily to be a television replacement theme based on the new 625 line service and the additional BBC programme.

The problem of determining how best to serve the industry's interests proved a most difficult one to solve. A natural desire to press home to the buying public that sets were now capable of meeting all the demands of the new standards so that there was no longer reason to delay purchase or replacement, had necessarily to be tempered with the possibility that too much emphasis on a service which was, in any event, still in the future would adversely affect the replacement business which would otherwise have been done. Several schemes and suggestions for stimulating sales were prepared and considered for a campaign on a National basis, but taking all the factors into account it was decided the greatest impact was to be gained from specialised local campaigns in each of the transmitter areas shortly before the start of the new programme, effort being concentrated on obtaining an increase in the replacement rate. In consequence, detailed planning began early in 1963 for a sales promotion campaign in the Greater London area to precede the introduction of 625 line broadcasting from Crystal Palace.

With the new transmissions scheduled to start in April 1964—a time of year when television sales have normally tailed off—and the industry's main 'selling' season being

September to December, the timing of the campaign presented its own problem. As, however, it could be expected that the introduction of the 625 line service itself and the new programme would attract a reasonable amount of publicity over the weeks leading up to the start of the service, and since it is generally accepted that the best time to inject a boost into the market is when the public are already buying, it seemed that sometime during the last quarter of 1963 would be an appropriate time to present an industry sales effort. A further factor in fixing a specific period was the availability of suitable transmissions and programme material on which to demonstrate the new service—an essential requirement to the promotion—and in this respect physical problems surrounding the ability of the BBC to install the transmitting equipment and provide test transmissions adequate for demonstration
817 purposes dictated that the earliest likely period for a sustained sales campaign would be the second half of November. Planning has proceeded with this timing in mind, although firm arrangements depend on progress made by the BBC.

* * *

831 Method of Introducing New Standards

No decision has yet been taken on the method to be adopted on the introduction of the new standards for the present BBC and ITA programmes, but of the three methods proposed it appears highly probable that duplication will be employed, the programmes being originated on 625 line standards for UHF transmissions and converted to 405 line standards for radiation from VHF transmitters. Of prime concern to the receiver industry is the timing of duplicated programmes; it appears probable that their introduction would not be practicable until at least some two years after the start of the BBC's new

625 line programme, which by that time should be serving some two-thirds of the population.

If these assumptions are correct, television receivers required in the next few years will be either fully dual-standard 405/625 line VHF/UHF, or sets capable of conversion to this condition. As duplication spreads through the country, so the need for this type of receiver will fall and the main requirement will increasingly be for single-standard 625 line UHF sets.

• • •

857

Table I

INDUSTRY PRODUCTION, HOME DISPOSALS AND EXPORT SALES 1961/62/63

Numbers=000's

Product	*Production* 1961	1962	1963	*% Change* *'63 on '61*	*'63 on '62*	*Total Home Disposals* 1961	1962	1963	*% Change* *'63 on '61*	*'63 on '62*
Radio Receivers *including Car Radio*	2,831	2,774	2,503	*—12*	*—10*	2,576	2,555	2,616	*+ 2*	*+ 2*
Radiograms	170	203	280	*+65*	*+38*	189	202	274	*+45*	*+36*
Television Receivers	1,256	1,463	1,663	*+32*	*+14*	1,509	1,378	1,678	*+11*	*+22*

Product	*Export Sales** 1961	1962	1963	*% Change* *'63 on '61*	*'63 on '62*	*Total Home Disposals and Export Sales** 1961	1962	1963	*% Change* *'63 on '61*	*'63 on '62*
Radio Receivers *including Car Radio*	205	149	155	*—24*	*+ 4*	2,781	2,704	2,771	— †	*+ 2*
Radiograms	7.9	7.9	7.8	*— 1*	*— 1*	197	210	282	*+43*	*+34*
Television Receivers	44.6	112	53	*+19*	*—53*	1,554	1,490	1,731	*+11*	*+16*

*Export Sales are ex-factory not ex-UK port

†Less than 1%

Source: BREMA Estimates and Ministry of Aviation

Table II

VALUE OF INDUSTRY TURNOVER 1961/62/63

Value=£000's

Product	*Home Disposals (ex-Works value)* 1961	1962	1963	*% Change* *'63 on '61*	*'63 on '62*	*Export Sales* (fob value)* 1961	1962	1963	*% Change* *'63 on '61*	*'63 on '62*
Radio Receivers *including Car Radio*	20,149	19,125	20,857	*+ 1*	*+ 6*	2,038	1,295	1,266	—38	— 2
Radiograms	4,838	5,663	7,580	*+57*	*+34*	262	263	279	*+ 6*	*+ 6*
Television Receivers	48,853	47,438	62,776	*+28*	*+32*	1,507	3,498	2,019	*+34*	*—42*
Total Turnover	73,840	72,226	90,713	*+23*	*+26*	3,807	5,055	3,564	*— 6*	*—29*

Product	*Total Turnover: Home and Export* 1961	1962	1963	*% Change '63 on '61*	*'63 on '62*
Radio Receivers					
including Car Radio	22,187	20,420	21,623	— *3*	+ *6*
Radiograms	5,100	5,925	7,859	+*54*	+*33*
Television Receivers	50,360	50,936	64,795	+*29*	+*27*
Total Turnover	77,647	77,281	94,277	+*21*	+*22*

*Export Sales are ex-factory not ex-UK port
Source: BREMA Estimates and Ministry of Aviation

858

Table III

ESTIMATED TOTALS OF MANUFACTURERS' STOCKS: 1961/62/63 (EXCLUDING STOCKS ON SOR a/c HELD BY DEALERS)

Numbers=000's

Product	1961	1962	1963	*%Change '63 on '61*	*'63 on '62*
Radio Receivers *including Car Radio*					
AM only:					
Valve	75	20	16	— *79*	— *20*
Transistor	328	452	247	— *25*	— *45*
FM and AM/FM:					
Valve	46	11	1	— *98*	— *91*
Transistor	11	45	6	— *46*	— *87*
Total Radio Receivers	460	528	270	— *41*	— *49*
Radiograms					
AM only:					
Single Channel	7	9	10	+ *43*	+ *11*
Twin Channel	3	1	1	— *67*	*Nil*
FM and AM/FM:					
Single Channel	4	9	9	+*125*	*Nil*
Twin Channel	22	7	7	— *68*	*Nil*
Total Radiograms	36	26	27	— *25*	+ *4*
Television Receivers					
19" Tube Size	125	126	58	— *54*	— *54*
23" Tube Size	30	23	16	— *47*	— *30*
Other Tube Sizes	26	3	6	— *77*	+*100*
Total Television Receivers	181	152	80	— *56*	— *47*

Note: Television Receivers include those incorporating radio or radiogram, Chassis 75% or more assembled and Terminal Units
Source: BREMA Members' Returns and Ministry of Aviation

Table IV

UK RETAINED IMPORTS: DOMESTIC RADIO AND TELEVISION EQUIPMENT 1961/62/63

Numbers=000's
Value=£000's (*cif*)

Product	*Total Retained Imports* *Numbers* 1961	1962	1963	*Value* 1961	1962	1963
Radio Receivers:						
Transistored	245.9	529.3	1,506.7	1,145	1,993	3,974
Other	28.4	32.6	113.4	211	293	394
Total Radio Receivers	274.3	561.9	1,620.1	1,356	2,286	4,368
Radio Chassis	2.3	2.6	—	13	38	—
Radiograms	2.6	6.3	19.8	81	176	727
Television Receivers	0.8	0.3	0.4	28	19	31
Total: All Domestic Radio and Television	/	/	/	1,478	2,519	5,126

Note: In 1963, Radio Chassis was included with complete product
Source: HM Customs and Excise

859

Table V

TOTAL RETAIL TRANSACTIONS* 1961/62/63

Numbers=000's

Product	*Radio Receivers (excluding Car)* 1961	1962	1963	*% Change* *'63 on '61*	*'63 on '62*	*Radiograms* 1961	1962	1963	*% Change* *'63 on '61*	*'63 on '62*
1st Quarter	403	519	677	*+68*	*+30*	45	48	58	*+29*	*+21*
2nd Quarter	623	668	809	*+30*	*+21*	28	21	35	*+25*	+67
3rd Quarter	800	819	1,034	*+29*	*+26*	42	38	52	*+24*	*+37*
4th Quarter	726	855	1,115	*+54*	*+30*	88	107	112	*+27*	*+ 5*
Annual Total	2,552	2,861	3,635	*+42*	*+27*	203	214	257	*+27*	*+20*

Product	*Television Receivers* 1961	1962	1963	*% Change* *'63 on '61*	*'63 on '62*
1st Quarter	446	360	435	*— 2*	*+21*
2nd Quarter	383	272	279	*—27*	*+ 3*
3rd Quarter	392	317	351	*—10*	*+11*
4th Quarter	526	533	518	*— 2*	*— 3*
Annual Total	1,747	1,482	1,583	*— 9*	*+ 7*

*Retail Sales and Rental and Relay Transactions
Source: BREMA Retail Survey

* * *

861

Table VIII

TELEVISION RECEIVERS: HOME DISPOSALS 1963

Product	*% Distribution by Price Groups at List Prices (excluding Purchase Tax)* *Up to £50*	*£50 up to £60*	*Over £60*	*Total*	*Average List Price (excluding Purchase Tax)* £ s. d.
Convertible to Switchable	12%	17%	3%	32%	52 12 6
Dual Standard with UHF Tuner	*%	6%	14%	20%	63 10 0
Dual Standard less UHF Tuner	6%	28%	14%	48%	56 13 0
	18%	51%	31%	100%	

*Less than 1%
Source: Estimates based on BREMA Members' returns

In the United States District Court

* * (Caption—59-C-1847) * *

897

AFFIDAVIT OF W. J. C. CHAPPLE

W. J. C. Chapple, residing at Malcolm Cottage, 60, Old Church Lane, Stanmore, Middlesex, England, being first duly sworn on oath deposes and says that were he called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of Hazeltine Research, Inc., vs. Zenith Radio Corporation, he would testify as follows:

1. He is employed by The General Electric Company Limited, One Stanhope Gate, London, W.1., England, as a chartered patent agent. He has been employed by The General Electric Company Limited since April 1929 as a member of the patent department and became adviser on patents and agreements on 1st December 1964.

898 2. He served for a number of years as one of the representatives of his company on the management committee of the British broadcast receiver patent pool which licensed patents of its members in the fields of radio and television broadcast receivers in the United Kingdom.

3. The said British broadcast receiver patent pool ceased to exist on June 30, 1964. The pool agreement and all licenses expired by their terms on that date and there has been no extension or renewal of the pool agreement or pool license for any period after June 30, 1964.

Affiant states that he has read the foregoing and that he knows the contents and that the same are true of his own knowledge.

/s/ W. J. C. Chapple
W. J. C. Chapple

Subscribed and sworn to before me
this Eighth day of December 1965.
/s/ A. Walmsley
A. Walmsley
Notary Public

900 IN THE UNITED STATES DISTRICT COURT

* * (Caption—59-C-1847) * *

AFFIDAVIT OF E. P. DALE-HARRIS

E. P. Dale-Harris, being first duly sworn on oath deposes and says that were he called to testify as a witness in the

United States District Court for the Northern District of Illinois, Eastern Division, in the case of Hazeltine Research Inc. v. Zenith Radio Corporation, he would state as follows:

1. He was for many years employed by Electric & Musical Industries Limited, Blyth Road, Hayes, Middlesex, London, England. He joined the company in May 1929 and retired at the end of June 1965. He was first employed as legal assistant in the patent department and latterly as manager of that department.

2. He served for a number of years as one of the repre-
sentatives of his company on the management com-
901 mittee of the British broadcast receiver patent pool
which licensed patents of its members in the fields of
radio and television broadcast receivers.

3. He is satisfied that on or about November 20, 1957, letters were sent by the manager of the British broadcast receiver patent licensing pool to all licensees offering, subject to certain modifications, an extension to June 30, 1960 of the then existing licenses due to expire December 31, 1957. One of the modifications expressly set forth in said letter was the delation of Clause 4(a) of the then existing licenses which provided;

"4. The Licensee agrees with the Grantors as follows:—

> (a) Not without the previous written consent of the Grantors to sell within the said territory any Television Receiver which has not been manufactured in the territory for which this Licence is granted. No Television Receiver shall be deemed to have been so manufactured within the meaning of this Licence which incorporates imported components to an extent per Television Receiver greater in value than ten per cent of the retail list price thereof. The Licensee will if so requested furnish information as to the value of any such imported and incorporated components."

A sample of the form letter which was sent to all licensees is attached hereto as Exhibit "A" to this affidavit. Subsequently he is satisfied that confirming letters were sent to those licensees who accepted the offer of an extension.

902 The confirming letters repeated the fact that the extension was effective with the amendment, inter alia, that Clause 4(a) was deleted. A sample of the form acceptance letter is attached hereto as Exhibit "B" to this affidavit. Similar letters were sent to licensees for both sound and television receivers.

4. The said British broadcast receiver patent licensing pool ceased to exist on June 30, 1964. The pool agreement and all licenses expired by their terms on that date and at the time of his retirement at the end of June 1965 there had been no extension or renewal of the pool agreement or pool license for any period after June 30, 1964.

Affiant states that he has read the foregoing and that he knows the contents and that the same are true of his own knowledge.

/s/ E. P. DALE-HARRIS
E. P. Dale-Harris

Subscribed and sworn to before me
this Eighth day of December, 1965.
/s/ A. WALMSLEY
A. Walmsley
Notary Public
[SEAL]

904 Exhibit "A" to Affidavit of E. P. Dale-Harris

Armstrong Wireless & Television Co. Ltd.,
25, Oxford Street,
London, W.1.

P/T 51377
20th November, 1957.

Dear Sirs,

Licences A7-T and A7-S

As you are aware your above agreements expire on December 31st next. The Grantors feel, on account of present circumstances, and having in mind especially the maintenance as far as possible of the comprehensive nature of the licences, that it is more in keeping with interests generally, to offer a short term extension of the said agreements rather than to formulate new longer term licences.

In order that there need be no break in licensing continuity and so that normal budgetting may occur it has been decided to offer such extensions. I am consequently authorized by the Grantors named in the licences to offer you extensions of your A7-T and A7-S Licences under the patents of the Grantors to June 30th 1960 subject to the modifications set out below.

From time to time in the past the Grantors have added patents of certain five other companies to your A7 Licences without extra charge. If and when some or all of them become available for the extended period they will accordingly be included in accordance with Clause 2(a) and (d) of the A7 Licences. In this connection I am authorised by E.M.I. Ltd. to state that they remain in a position, and are prepared, to offer to A7 Licensees fresh sub-licences (Licence X2) for the period of the extension under certain RCA patents in the form of Licence X1.

In view of the changed circumstances and conditions since the formulation of the A7-T and A7-S Licences it has been decided to make the following modifications in extensions of the licences:

(1) In the A7-T License there would be a reduced and single royalty rate of 1½% of nett turnover payable upon all apparatus (other than exported) covered by the Licence. The so-called "maximum" will remain at £25,000 but the figure of 0.02% in respect of subsequent turnover will be amended to 0.08%.

(2) In extension to both A7-T and A7-S Licences Clause 4(a) would be deleted.

Will you please advise me as soon as possible whether you wish to accept this offer of an extension of your existing licences to June 30th 1960 as indicated above. If so, I will send a formal letter for your signature.

Yours faithfully,

905 LICENCE A7-S (2nd Edition)

4. The Licensee agrees with the Grantors as follows:

(a) Not without the previous written consent of the Grantors to sell within the said territory any Broadcast Sound Receiver which has not been manufactured in the territory for which this License is granted. No Broadcast Sound Receiver shall be deemed to have been so manufactured within the meaning of this Licence which incorporates imported components to an extent per Broadcast Sound Receiver greater in value than ten per cent of the retail list price thereof. The Licensee will if so requested furnish information as to the value of any such imported and incorporated components.

LICENCE A7-T (2nd Edition)

4. The Licensee agrees with the Grantors as follows:

(a) Not without the previous written consent of the Grantors to sell within the said territory any Television Receiver which has not been manufactured in the territory for which this Licence is granted. No Television Receiver shall be deemed to have been so manufactured within the meaning of this Licence which incorporates imported components to an extent per Television Receiver greater in value than ten per cent of the retail list price thereof. The Licensee will if so requested furnish information as to the value of any such imported and incorporated components.

'This is the sample letter marked "Exhibit A" mentioned and referred to in the affidavit of E. P. Dale-Harris sworn before me this eighth day of December, 1955.

/s/ A. Walmsley
Notary Public

906 Exhibit "B" to Affidavit of E. P. Dale-Harris

Armstrong Wireless & Television Co. Ltd., P/T 51700
25, Oxford Street,
London, W.1.

Dear Sirs, 13th January, 1958.

The Grantors now have pleasure in confirming that your

Licences A7-T and A7-S dated 11th May, 1953 are hereby extended until June 30th, 1960. All the terms and conditions of the said Licences shall remain in full force and effect, so far as applicable, until the said June 30th, 1960, subject, however, to the following amendments which shall take effect as from January 1st, 1958.

1. **Lines 2 to 10 inclusive of sub-clause (e) of Clause 4 of your Licence A7-T shall be deemed to be deleted and replaced by "Royalties upon the Licensee's nett turnover as hereinafter defined at the rate of 1½% (one and a half per centum)"**
2. **The words "0.02% (nought point nought two per centum)" wherever appearing in the said Licence A7-T shall be deleted and replaced by the words "0.08% (nought point nought eight per centum)".**
3. **Sub-clauses (a) of Clauses 4 of the said Licences A7-T and A7-S shall be deemed to be deleted.**

Yours faithfully,

For and on behalf of
The British Thomson-Houston Co. Ltd.,
Cinema-Television Ltd.,
Electric & Musical Industries Ltd.,
The General Electric Co. Ltd.,
Marconi's Wireless Telegraph Co. Ltd.,
Murphy Radio Ltd.,
Philips Electrical Industries Ltd.,
Pye Ltd.,
Standard Telephones and Cables Ltd.

We agree and accept the above
For and on behalf of
Armstrong Wireless & Television Co. Ltd.

This is the sample letter marked "Exhibit B" mentioned and referred to in the Affidavit of E. P. Dale-Harris sworn before me this eighth day of December, 1965.

/s/ A. Walmsley
Notary Public

907 IN THE UNITED STATES DISTRICT COURT

* * (Caption—59-C-1847) * *

AFFIDAVIT OF ALAN ALFRED PACKER

Alan Alfred Packer, residing at 55 Manor Way, Beckenham, Kent, England, being first duly sworn, on oath deposes and says that were he called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of Hazeltine Research, Inc., v. Zenith Radio Corporation, he would testify as follows:

1. He was employed by Rank Cintel until 2nd October, 1965 and is now employed by Rank Xerox Limited, which is a division of the Rank Organisation. He is the same Alan Alfred Packer who gave testimony by deposition in this action before the United States Consul at the American Embassy in London on September 17, 1965. At the time he was called to testify at said deposition, he was asked to testify concerning the importation of certain products
908 by Rank Cintel in the period prior to 1959.

2. On cross-examination by counsel for defendant, Zenith Radio Corporation, he was asked questions concerning his company and whether it was a member of the English Electric patent pool and he responded that his company was a member of such pool.

3. Affiant states that the only contacts he has had with the British broadcast receiver patent pool were concerned with the periodic distributions made by the pool, the last of which was received soon after the pool dissolved on 30th June, 1964. The Rank Cintel division of which he was chief accountant and chief administrator did not engage in the manufacture, sale or distribution of domestic radio or television receivers. Affiant's testimony at the deposition was on the basis of his recollection from prior duties with Rank Cintel and he was not testifying at said deposition on the

basis of any knowledge of any current relationship between Rank Cintel or any other division or part of the Rank companies and the British radio patent pool.

4. Affiant has re-read his deposition testimony and makes this affidavit to eliminate any possible confusion or misunderstanding that his testimony is to be interpretated as a statement based on his own personal knowledge that the British broadcast receiver patent pool was in exist-
909 ence at the time of his testimony. Since giving said deposition testimony, affiant has determined that the pool agreement to which his company was a party expired on 30th June, 1964 and no extension or renewal of said pool agreement has been entered into.

Affiant states that he has read the foregoing; that he knows the contents thereof; and that the same is true of his own knowledge.

/s/ Alan Alfred Packer
Alan Alfred Packer

SUBSCRIBED AND SWORN TO
BEFORE ME this Seventh day
of December, 1965.
/s/ A. Walmsley
Notary Public.
[Seal]

911 In the United States District Court

* * (Caption—59-C-1847) * *

AFFIDAVIT OF JOHN SINCLAIR EWING (AUSTRALIA)

State of New York, } ss.
County of Queens, }

John Sinclair Ewing, being first duly sworn on oath deposes and says that:

1. I am making this affidavit in connection with the case of Hazeltine Research, Inc. v. Zenith Radio Corporation, No. 59 C 1847, pending in the United States District Court for the Northern District of Illinois, and if I were called as a witness in that case I would testify to the facts and expert opinion set forth in this affidavit.

2. I am the same John Sinclair Ewing who filed a previous affidavit in this cause. I have been asked for my judgment on the following questions:

912 (a) What factors should be taken into account in estimating the share of the Australian market that a United States radio and television manufacturer could expect to achieve by exporting United States made products into that market?

(b) Considering those factors and any other factors which may be relevant, what share, if any, could Zenith Radio Corporation have reasonably been expected to achieve with its United States made radio and television sets in Australia during the period of May 22, 1959 through May 22, 1963?

3. In addition to the testimony and exhibits referred to in my previous affidavit, I have reviewed the following materials relating to the Australian market: "The Growing Australia Market Industry Study No. 1—The Household Electrical Appliance Market in the Next 10 Years", published by The Australian Women's Weekly, Sydney, Australia; Secondary Industries, Part II—Materials Used and Articles Produced in Factories, 1960-1961 and 1961-1962, published by the Commonwealth Bureau of Census and Statistics, Canberra, Australia. In addition I have drawn on my own personal knowledge and experience gained in my study of the Australian market both here in the United States and in Australia.

4. As in my previous affidavit I have assumed the fol-

following, for purposes of analysis:

913 (a) Zenith manufactured the sets in question in the United States and exported them as finished products, except possibly for modifications necessary to make them technically usable in Australia.

(b) The prices for the Zenith products f.o.b. Chicago on an average product mix are as follows:

	Television	Radio
1959 (2d half)	148.73	35.24
1960	145.68	28.77
1961	144.16	26.59
1962	136.80	27.12
1963 (1st half)	128.38	27.59

(c) Zenith's products were of high quality.

5. It is equally relevant in this affidavit to first point out, just as I did in my previous affidavit, that there is no necessary relationship between the share of the market a company has obtained in the United States and the share it could reasonably be expected to obtain in a foreign country. Thus, the same general reasons as I have previously stated would preclude such an automatic correlation, as would also factors peculiar to the Australian market. Consequently, I would state that any kind of extension from the American market share to an expected Australian market share by Zenith is nothing more than a guess, and under the circumstances here, neither accurate nor reliable.

914 6. The Zenith name is not a familiar one in the Australian market. There is a small radio and television company in Australia called Zenith Radio Company Pty. Ltd. which is unrelated to the American Zenith company, but the name is not widely known outside of New South Wales. Although some Zenith advertising might have a carry-over effect into Australia as a result of the circulation of American magazines in that country, the effect would be minimal, and certainly not of the scale necessary

to support the full scale marketing of a product such as radio or television. Certainly other American companies with well-established names such as General Electric, which have tried to enter Australia have encountered considerable difficulty in establishing consumer acceptance despite such advertising carry-over. The same handicaps with respect to after-sales service as exist in the United Kingdom would be true in Australia; and would tend to limit any sales Zenith might hope to make. In fact, Australia's distance from the United States, almost 10,000 miles from Chicago, exerts a strong psychological effect upon the Australian consumer, who considers delay in obtaining service repairs as an important element in his selection of electrical appliances.

915 7. While approximate figures dealing with advertising expenses in Australia are not readily available, it is true in Australia as in the United Kingdom that Zenith, as a newcomer, would have to spend proportionately more than a company already in the market and respected by the public, and these expenditures would have to be reflected either in the price per set, raising the ultimate retail price even higher than it would otherwise be, or otherwise financed out of expected profits.

8. Price is an important factor affecting any market share Zenith could have achieved in Australia, and one which would have prevented Zenith from obtaining any substantial or measurable share of the Australia television market.

9. The retail price of an imported television set in Australia would be derived as follows:

(a) To the ex-factory price must be added at least the following:

(1) export packing costs;
(2) cost of inland freight in the United States;
(3) ocean freight;

(4) inland freight in Australia;
(5) insurance, brokerage and forwarding fees, wharfage and bank charges;
916 (6) conversion costs;
(7) distributor's profits (if any is used)
(8) import duties (£A25 per set plus 45% ad valorem during most of the period involved);
(9) Australian sales tax (25%) (if the set is imported directly by a retailer so that there would be no wholesaler's profit, then the 25% sales tax is figured on 120% of the following: price ex-works plus export packing costs, inland freight, insurance, brokerage and forwarding fees plus import duties).

(b) To the foregoing total a percentage for retailer's margin should be added before reaching the price to the consumer. In appliance retailing in Australia the traditional mark-up has ranged from 20% to 30% or higher.

10. Without specific figures I cannot determine any precise figure for the hypothetical Zenith set exported to Australia. However, the multiplier technique discussed in my previous affidavit would be applicable here as well. Of course, the import duties in Australia are much higher than in the United Kingdom, so that a multiplier usable for United Kingdom imports might be too low when applied 917 to Australian imports. But even using the 3.2 multiplier, which was the lowest considered by Zenith's English distributor, the Zenith set would have to be sold in Australia at more than £A180 ($128.38 x 3.2—410.82 at $2.25/£A). This price, based on the lowest Zenith ex-factory price prevailing at any time during the four-year period for which such prices were disclosed, should be compared to prices prevailing in Australia for Australian-made television sets. In the period 1959-1962 the average price ex-works in Australia declined from £A108 to approximately

2A91.[1]

11. Price competition in Australia has manifested itself most prominently at the retail level. Television sets were advertised and sold at prices substantially below the manufacturer's suggested list prices, and retailers' profits were narrowed sharply, even to the extent that several chain retail organizations, including Reid Murray and Inglis Electrix, went out of business during this period as a result of severe competition. With competition of this nature it would have been necessary for a retailer to be able to narrow the
mark-up he got on a set in order to sell it, and if he
918 was unable to narrow this mark-up so as to bring his
price in line with competition, he would not be able to sell. Of course, with the high landed cost on an imported television set a dealer could not profitably lower the price of the set to the same levels at which sets of domestic Australian manufacture were being marketed.

12. The effect of market saturation is more pronounced in the Australian market. First, of course, the market for television sets became saturated after the initial surge during the beginning years of television in Australia. In addition, because of the relatively high cost of television, and the heavy maintenance costs of television receivers as compared to other appliances, the development of a second set market has been retarded. Further, the Australian manufacturers were able to draw on overseas experience in their initial production period and turn out a superior product from the outset, the effect of which was to give a longer life expectancy and further postpone the development of any sizeable replacement market.

13. The effect of this is seen in the actual experience of the Australian television market in the period in question.

---

[1] Secondary Industries, Part II—Materials Used and Articles Produced in Factories, 1960-1961 No. 55, Commonwealth Bureau of Census and Statistics, Canberra, Australia; *Id.*, 1961-1962, No. 56.

Production of television sets in Australia for the period 1958-1963 was as follows:

919 1958—273,748
1959—305,136
1960—428,799
1961—311,729
1962—282,337
1963—281,423[2]

14. The leveling off in 1960 and the sharp decline thereafter was the result of the market saturation I have described. Of course, a company seeking to penetrate an existing market already suffering from over-capacity will encounter more than the ordinary competitive pressures. This would have been particularly true in Australia during this period where many television manufacturers were driven out of business as a result of intense price competition brought on by declining sales and excess industry capacity at a time of heavy market saturation.

15. Other less tangible factors, such as Australian tastes, preferences for styling of television sets compatible to furniture stylings, desires for wooden cabinets, credit restrictions, such as the 1960 credit squeeze that intensified price competition in Australia, heavy inland shipping expenses and servicing costs because of the wide disper-
920 sion of the Australian population outside the six capital cities, and Canberra, all contribute to the increased and

---

[2] These figures representing fiscal years from July 1 through June 30 respectively, are not identical to the figures used by Zenith in its damage computations in DX-218, but are sufficiently similar so that it is of no importance that there are any variations. Zenith's figures, taken from another statistical report prepared by the Commonwealth Statistician, showed the following:

1958-1959	305,100
1959-1960	428,800
1960-1961	311,800
1961-1962	287,700
1962-1963	281,400

unusual difficulties that would be encountered by an American manufacturer attempting to ship finished television sets into the Australian market.

16. These reasons would apply with equal force to the importation of radios into Australia, but in some respects with even more force. Importation of low priced Japanese transistor radios presents the most important obstacle to penetration of the Australian radio market. The high Australian import duty on radios—a flat £A5 per set plus 45% of value during most of the period involved—also increases the effect of price competition on a costly imported set.

17. While I recognize that the Zenith Trans-oceanic set would have some special appeal based on its promotion as a differentiated product with unique characteristics, the sales volume it would attain in a foreign market such as Australia would not be great, and such a set would certainly not capture even 1% of the Australian market. The price at which such a set is offered for sale—over £A200—would
put it in the distinct luxury class of goods, and even
921 there it would have to compete with comparable sets
made in Australia and Japan and sold at lower prices
by established companies.

/s/ John Sinclair Ewing
John Sinclair Ewing

SUBSCRIBED AND SWORN TO
BEFORE ME this 13th day
of October, 1965.
/s/ Olga J. Stuart
Notary Public
Notary Public, State of New York
No. 30-3884130
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1967.
[Seal]

922 IN THE UNITED STATES DISTRICT COURT

* * (Caption—59-C-1847) * *

AFFIDAVIT OF SIR ARTHUR WARNER

Commonwealth of Australia,
State of Victoria, } ss.

I, Sir Arthur George Warner, of 2 Dudley Street, Brighton, Victoria, Australia, being duly sworn, on oath depose and say that were I to be called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division, in the above entitled case, I would testify as follows:—

1. For many years prior to 31 July 1965, I was Chairman and Managing Director of Electronic Industries Limited and Radio Corporation Proprietary Limited. Since 31 July 1965, I have been Executive Chairman of Elec-
923 tronic Industries Limited. In my capacity as the chief executive officer of these companies and their antecedents, I have been engaged in the manufacture, importation and sale of radio sets or wireless receivers and parts thereof since the middle 1920's. I have been engaged in the manufacture and sale of television sets since the beginning of the TV industry in Australia.

2. I was born in London on 31st July, 1899. I was educated at Monarch Grammar School, Chingford, and studied at the University of London. I was a Flight Lieutenant in the Royal Navy in World War I. In World War II I was employed by the Commonwealth Government (at no salary) as Controller of Finance for the Ministry of Munitions and also as Finance Director, Board of Area Management, Department of Munitions. I served in the Government of Victoria as Minister for Housing from 1947 to 1950, as Minister for Electrical Undertakings from 1949—1950 and as Minister for Transport from 1955-1962.

3. In my capacity as Managing Director of Radio Corporation Proprietary Limited and Electronic Industries Limited up to the 31st July 1965, I was intimately familiar with both the radio and television industries in Australia.

4. Australia has had radio since 1920 with public broadcasting starting in about 1923. There has been only experimental FM radio broadcast in Australia.

924 5. Television public broadcasting started in 1956 with the Olympic Games at Melbourne. The first TV stations were in Melbourne and Sydney. By 1960, there were 16 stations—3 in Sydney, 3 in Melbourne, 3 in Brisbane, 3 in Adelaide, 2 in Perth and 2 in Hobart. From 1962 to 1964, an additional 26 stations were opened, 2 in Canberra and the others outside of the capital cities.

6. Production of television sets in Australia rose from slightly over 100,000 sets in 1956-57 to a high of almost 450,000 sets in 1959-60. Since 1959-60, production has declined. Production did not exceed 300,000 sets in either 1961-62 or 1962-63 or 1963-64.

7. In the first years of television manufacture, 1956 and 1957, the capacity of local manufacturers of TV sets was insufficient to cope with the demand. During 1956 and 1957 many importers and manufacturers had an allocation for importation of goods of a non-essential nature based on the value of their imports during 1950-1951, the so-called base year, and this quota allocation included all countries other than U.S. dollar areas; consequently, in the financial year 1956-57 imports of TV receivers into Australia from the United Kingdom totalled about 5,000 and in the financial year 1957-58 were about 4,500. Only traditional importers who were able to establish a base year quota were entitled to import a quantity not exceeding 250 TV sets per
925 licensing period of four months duration or 750 per annum as per consolidated licensing instruction No.

108, page 80. However, in the years 1956 and 1957, the small number of imported TV receivers did not solve the shortage. Imports from U.S.A. of TV sets were nil from July 1956 to June 1960.

8. Although television broadcasting coverage was expanded in 1960 into new areas, this did not compensate for falling demand in the two major market areas, Sydney and Melbourne. Due to falling demand a number of television manufacturers operated at a loss during 1960. This included my own companies' television manufacturing operations. A number of manufacturers went out of the television manufacturing business in the 1960-61 production year and by 1963 the number of departures included Admiral of Australia, AEI-Ekco (Australian Electrical Industries Pty. Ltd.), Bush Simpson Ltd., Pope Products Ltd. (Motorola), Standard Telephones & Cables Pty. Ltd. and Stromberg-Carlson (Aust.) Pty. Ltd.

9. Starting in 1960 the prices of television sets ex works and also out of retail stores began to decline sharply. This decline continued through the end of 1964.

10. In my opinion, by 1959-60 it was much too late to get profitably established in the television business in Australia due to the marked over-capacity of the existing, established Australian television manufacturers.

• • •

927 13. Since May 1960, owing to the high rate of duty, commercial importation of TV receivers from U.S.A. and other countries has not been profitable except for a very small quantity of small-sized Japanese models. In 1963, small-sized Japanese type TV receivers were assembled from Japanese imported parts in Australia and sold to the trade—such assembly ceased at the end of 1964.

14. It would not be possible profitably to import American TV receivers into Australia due to this high duty plus

freight, and the differences between the Australian and the American technical standards.

15. In Australia, television and radio sets are distributed directly from manufacturer to retailer. An importer, in order to reach retailers across the expanse of the Australian continent, would need to establish warehouses or other distribution facilities in each state in which he desired to sell.

16. It is also necessary to have adequate stocks of spare parts and service depots readily available in each of the six states in Australia. Due to the size of the country and the fact that its population is spread out over large areas with great distances between population centers, a substantial number of warehouses or other facilities would be necessary. If spare parts are not available, retailers will refuse to handle the particular radio or TV set.

928 17. It is desirable and advantageous for a manufacturer or importer to maintain service facilities in each state to repair his own TV sets. Electronic Industries Limited has 23 servicing depots throughout Australia with component parts and mechanics available for servicing its radio and TV sets.

18. In Australia, a television receiver is expected to be part of the household furniture. The Australian sets usually feature attractive wooden cabinets. Imported sets with metal or plastic or unattractive wooden cabinets meet with consumer resistance except for the small portables intended as a second set which have had a limited acceptance in Australia.

19. * * * Since the 1958-59 year, Japan has dominated the imported radio market. Low cost Japanese sets account for a substantial portion of all transistorized portable radios imported into Australia. In the 1962-63 year, for example, Australian total portable production, both tube and tran-

sistor sets, was about 200,000 and imports of Japanese transistor sets was over 50,000 (excluding Japanese sets brought in by returning travellers, estimated at over 200,000 per annum).

929 20. In my opinion, no one could import American-made radio sets and compete price-wise with the Japanese transistor sets for the mass market.

21. The market for an expensive multi-band radio such as Zenith's Transoceanic is extremely limited. That set sells in Australia for more than £A 200 retail as compared to Japanese standard receiver at £20. My company makes a multi-band portable radio called the "Worldrange" providing amateur, shortwave and maritime bands as well as the standard broadcast band. It is in competition with other expensive multi-band radios and sells for approximately £A 83. Although this is a much lower price than the over £A 200 asked for the Zenith Transoceanic, still, even at this lower price level, our sales of the "Worldrange" approximate 240 sets per year.

22. In my opinion, based upon my years of experience in the radio and television business in Australia, no American corporation including Zenith could sell imported American TV sets or radios in commercial quantities except for odd sets such as the Zenith Transoceanic which would appeal to an extremely limited market.

930 I have read the foregoing and know its contents; the facts stated herein are true of my own knowledge.

/s/ Arthur G. Warner
Arthur G. Warner

Subscribed and sworn to
before me this 24th day
of September, 1965.

/s/ R. G. Emanuel
R. G. Emanuel
Justice of Peace.

937 IN THE UNITED STATES DISTRICT COURT

* * (Caption—59-C-1847) * *

AFFIDAVIT OF JAMES INGLIS

Commonwealth of Australia }
State of Victoria } ss.

I, James Edward Inglis of 1 Killeen Avenue, East Brighton, Victoria, Australia, being duly sworn, on oath depose and say that were I to be called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division, in the above entitled case, I would testify as follows:

1. I am the Chief Procurement Officer of Electronic Industries Ltd. My office is located in Astor House, 161 Sturt Street, South Melbourne, Victoria. As Chief Procurement
Officer, I am responsible for the importation of goods
938 and merchandise for Electronic Industries Ltd. Over an
18-year period my duties at Electronic Industries Ltd. have kept me in close contact with the importation of goods for the electronic, telephonic, electrical, radio and television industries. In consequence of the nature of my employment, I am completely familiar with the various costs incurred in the importation of goods for the radio and television industries including packing charges, inland freight, forwarding fees, ocean freight, insurance, bank charges, wharfage, stevedoring, local cartage, and sales tax.

2. I am a registered Customs Agent and have been for approximately 15 years. As a registered Customs Agent I am licensed to clear goods through the Australian department of Customs and Excise. I am qualified to act as a forwarding agent for any importer. In consequence of the nature of my employment, I am completely familiar with the Customs Laws, Regulations and provisions of the Commonwealth of Australia in force and effect during the last 15 years.

• • •

5. No significant imports of radio sets and television receivers has resulted since 23 February 1960 due to the high protective duties imposed on such imports by the Australian Government.

939 6. The rates of duty applicable to TV receivers or components imported from the United States from 1958 until 20 May 1960 were as follows:

Item	*Rate of Duty*
Cabinet	42.5%
Power Pack	25 shillings or 45% (whichever is higher)
Loudspeaker	10 shillings or 45% (whichever is higher)
Picture Tube	£A 11 plus 10%
Other Tubes	4/6d each or 45% (whichever is higher)
Balance of Set	24/10-1/2d per tube socket or 52½% (whichever is higher)

7. In addition, the "Balance of Set" was subject to "primage" duty of 5%. Primage is an additional duty to the duties of Customs imposed by the Commonwealth of Australia on certain specified goods.

8. The rates of duty applicable to TV receivers imported from the United States between 20 May 1960 and 31 December 1964 vide copy of Tariff proposals No. 6 dated 20/5/1960, No. 20 dated 21/10/1960 and No. 19 dated 12/8/1964 were as follows:

940

Item		*Rate of Duty*	
Picture Tube	Vide tariff Proposal No. 6	20 May 1960 to 20 October 1960	£A 11 plus 10%
	Vide tariff Proposal No. 20	21st October 1960 to 11 August 1964	£A 6 plus 12½%
	Vide tariff Proposal No. 19	12 August 1964 to Date	12½%
Balance of Set		£A 25 plus 45%	

9. The rates of duty applicable to radio sets or components imported from the United States from 1958 until 20 May 1960 were as follows:

Tube Type Radio Receivers

Item	*Rate of Duty*
Cabinet (Tube Type)	42½%
Power Pack (tube-type radios only)	25 shillings or 45% (whichever is higher)
Tubes (tube-type radios only)	4/6d each or 45% (whichever is higher)
Loudspeaker (Tube Type)	10 shillings or 45% (whichever is higher)
Balance of Set (tube-type radios only)	24/10½ per tube socket or 52½% (whichever is higher)

941 *Transistor Type Radio Receiver*

Item	*Rate of Duty*
Cabinet	42½%
Loudspeaker	10/- each or 45% (whichever is higher)
Balance of Set	45%

10. The "Balance of Set", whether tube-type or transistor, was also subject to 5% primage duty.

11. The rates of duty applicable to radio sets imported from the United States between 20 May, 1960 and 31 December, 1964 vide copy of Tariff Proposal No. 6 annexed hereto were as follows:

£A 5 each plus 45%

12. I have estimated the costs of importing 100 cartons of 21″ and 23″ television receivers into Australia from the United States during the period 1959-1963 as follows (assuming 21″ and 23″ TV sets are similar in packing size and are packed in multiple packs containing 6 TV receivers per case size 61″ x 31″ x 46″ cubic capacity 50.4 cubic feet or 8.4 cubic feet per set), and a value of $128.38 (£A57.6.3) ex works Chicago for both the 23″ and the 21″ set):

942

	Unit Cost	
	Dollars	*Pounds*
Value of cases 75 cents per cubic foot	$ 6.30	£ 2.16. 3
Labor for packing 25 cents per cubic foot	$ 2.10	£ -.18. 9
Inland freight approx.. $4.20 per 100 lb estimated weight per set 75 lb	$ 3.15	£ 1. 8. 2
Forwarder's fee and handling approx. $20.00 per shipment	$ 0.20	£ -. 1.10
Ocean freight	$12.50	£ 5.11. 8
Insurance (rate 0.787% based on c. & f. value +10%)	$ 1.22	£ -.10.11
Bank charges	$ 0.62	£ -. 5. 6
Wharfage and stevedoring (rate 17/3½ per 40 cubic feet)	$ 0.41	£ -. 3. 8
Local cartage (rate 20/- per 40 cubic feet)	$ 0.48	£ -. 4. 3
Agent's charges (approx. £10 per shipment)	$ 0.22	£ -. 2. -

13. The Australian sales tax when paid at time of importation and collected by the Department of Customs and Excise is levied on the value for duty, which is the current domestic value or the selling price in the country of origin whichever is the greater, plus cost of packing, inland freight and F.O.B. charges excluding cost of picture tube, ocean freight, and insurance, converted to Australian currency. Therefore the formula for arriving at a taxable amount is: value for duty plus all duties including primage plus 20% at the sales tax rate applicable. The sales tax rate applicable to television receivers is 25%.

14. The cost to an Australian retailer of the hypothetical 21″ or 23″ TV receiver at the assumed price of $128.38 ex works in Chicago and then imported from the United 943 States after 20 May 1960, without allowing for any profit whatsoever to the importer would be as follows (using the shipping costs for 100 lot shipments in paragraph 12 hereof and using the conversion rate of US $2.24 per Australian £. ,The conversion rate fluctuated between 2.23 and 2.24 during the period 1959-1963 the rate of 2.24 was used here resulting in the lowest landed cost in Australian pounds):

Price ex works	$128.38	(£A57. 6. 3	
Cases and packing	$ 8.40	(£A 3.15. 0	
Inland freight	$ 3.15	(£A 1. 8. 2	£A 62. 9. 5
Forwarder's fee			£A -. 1.10
Ocean freight			£A 5.11. 8
Insurance			£A -.10.11
Bank Charges			£A -. 5. 6
Wharfage and stevedoring			£A -. 3. 8
Local cartage			£A -. 4. 3
Agent's charges			£A -. 2. -
Carried Forward			£A 69. 9. 3

This computation is carried forward to page 8 in 3 columns to reflect the changes on Picture Tube duty rates listed in paragraph 8 of this affidavit.

944

	(1) 20/5/60 to 20/10/60	(2) 21/10/60 to 11/8/64	(3) 12/8/64 To Date
Brought forward	£ 69. 9. 3	£ 69. 9. 3	£ 69. 9. 3
Duty as per Value for Duty Statement attached hereto based on an ex works price of $128.38 and a picture tube value of $22.40 which is a high figure	59. 7. 0	54.12. 0	48.12. 0
Sales tax (25% of value for duty+duty+20%)	29.19. 0	29.19. 0	29.19. 0
Total	£158.15. 3	£154. 0. 3	£148. 0. 3

This total represents the lowest possible price into any retail store in Australia.

I have read the foregoing and know its contents; the facts stated herein are true of my own knowledge.

/s/ James Edward Inglis
James Edward Inglis

Subscribed and sworn to
before me this 24th day
of September, 1965,
/s/ R. G. Emanuel
Justice of Peace.

945

VALUE FOR DUTY STATEMENT FROM 20/5/60 TO 20/10/60

	T.V. Receiver		*T.V. Picture Tube*	*Outside Packages*
Tariff Item	181E2		181J1A	408
Price Ex Works	$128.38		$22.40	$6.30
Less Picture Tube	22.40			
	$105.98			
Plus Labour in				
Packing into O/Pkgs	2.10			
Inland Freight	3.15			
	$111.23			
Converted @ 2.24				
	£49-13-2		£10-0-0	£2-16-3
Duty	£25-0-0 ea.		£11-0-0 ea.*	
And 45%	22-7-0	And 10%	1-0-0	

SALES TAX

V.F.D.	£49-13-2
Plus O/Packages	2-16-3
Plus duty	47- 7-0
	£99-16-5
Plus 20%	19-19-4
	£119-15-9
@ 25%	£29-19-0

Picture Tube is exempt from Sales Tax.

946 As from 11/8/64 to the present date the duty on picture tubes has been 12½% with a consequent duty of £1-5-0.

The remainder of the value for duty statement is still unchanged.

---

* As from 21/10/60 to 11/8/64 duty on picture tube was £6-0-0 each plus 12½%. Thus duty on picture tubes became £6-0-0 plus £1-5-0. The remainder of the value for duty statement was unchanged.

947

CUSTOMS TARIFF PROPOSALS No. 6
THE SCHEDULE. IMPORT DUTIES.

Operative 20/5/60

Tariff Items	British Preferential Tariff	Intermediate Tariff.	General Tariff.
* * * * *			
180. By omitting sub-item (E)			
* * * * *			
181. * * * By omitting paragraphs (2) and (3) of sub-item (A). By inserting new sub-items as follows:—			
"(E) Radio telegraphic and radio telephonic transmission and reception apparatus; radio broadcasting and television transmission and reception apparatus (including those incorporating gramophones) and television cameras; radio navigational aid apparatus radar apparatus and radio remote control apparatus—			
(1) Radio broadcast receivers, with or without sound recorders and reproducers, including furniture incorporating such goods, assembled and complete, including partly assembled or incomplete goods which the Minister directs shall be deemed to be assembled and complete each and ad val.	£5 27½%	£5 45%	£5 45%
948			
(2) Television receivers designed for the reception of signals without line connection, with or without radio broadcast receivers and sound recorders and reproducers, including furniture incorporating such goods, but not including cathode ray tubes (picture tubes), assembled and complete, including partly assembled or incomplete goods which the Minister directs shall be deemed to be assembled and complete - each and ad val.	£25 27½%	£25 45%	£25 45%
* * * * *			

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
181—cont'd.			
"(G) Components of types suitable for use, or generally similar to those used, in radio and television transmitters or receivers or audio amplifiers, viz.:—			
(1) Valve sockets - - each	2d.	3½d.	3½d.
or ad val.	27½%	45%	45%
whichever rate returns the higher duty.			
(2) Power packs - - - each	15s.	25s.	25s.
or ad val.	27½%	45%	45%
whichever rate returns the higher duty.			
(3) Resistors, fixed or variable, fixed resistors combined in the one external covering with fixed capacitors or inductors - - - - each	¾d.	1d.	1d.
or ad val.	27½%	45%	45%
whichever rate returns the higher duty.			

• • • • •

949

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
"(J) Thermionic, cold cathode and photo cathode valves and tubes (including vapour or gas filled valves and tubes, cathode ray tubes, television camera tubes and mercury arc rectifying valves and tubes, but not including valves covered by sub-item (I)); photo cells; transistors, thermistors and other semi-conductor devices; mounted piezo-electric crystals—			
(1) Cathode ray (picture) tubes as used in television receivers, whether imported separately or otherwise each	£11	£11	£11
and ad val.	..	10%	10%

950

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
(2) Thermionic valves and tubes including rectifying valves, as used in transmission or reception apparatus for radio broadcasting, television, radio telegraphy or radio telephony each	2s. 6d.	3s. 9d.	3s. 9d.
or ad val.	27½%	45%	45%
whichever rate returns the higher duty.			
And an additional duty of - each	2s. 9d.	2s. 9d.	2s. 9d.
(3) Transistors, thermistors and other semi-conductor devices - each	2s. 6d.	3s. 9d.	3s. 9d.
or ad val.	27½%	45%	45%
whichever rate returns the higher duty.			

• • • • •

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
"(K) Parts for goods covered by sub-item (J)(2), (J)(3), (J)(5) or (J)(6), but not including glass envelopes; parts n.e.i., for goods covered by sub-item (E)(1) or (E)(2) - ad val.	27½%	45%	45%

• • • • •

952 1964.

The Parliament of the Commonwealth.

HOUSE OF REPRESENTATIVES.

Customs Tariff Proposals No. 19.

Motion moved by the Minister representing the Minister for Customs and Excise, the Honorable L. H. E. Bury, on the 11th August, 1964.

1. That the Schedule to the *Customs Tariff* 1933–1964, as proposed to be amended by Customs Tariff Proposals, be further amended to set out in the Schedule to these Proposals and that on and after the twelfth day of August, One thousand nine hundred and sixty-four, Duties of Customs be collected accordingly.

2. That in these Proposals, "Customs Tariff Proposals" mean the Customs Tariff Proposals introduced into the House of Representatives on the following dates:—

8th April, 1964;
16th April, 1964;
23rd April, 1964;
13th May, 1964; and
20th May, 1964.

THE SCHEDULE. IMPORT DUTIES.

* * *

953

DIVISION VI.—METALS AND MACHINERY.

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
181. By omitting sub-paragraph (a) of paragraph (2) of sub-item (E) and inserting in its stead the following sub-paragraph:— "(a) Television receivers designed for the reception of signals without line connexion, with or without radio broadcast receivers and sound recorders and reproducers, including furniture incorporating such goods, assembled and complete, including partly assembled or incomplete goods which the Minister directs shall be deemed to be assembled and complete—			
on the picture tube - - ad val.	Free	12½ per cent.	12½ per cent.
on the remainder - - each	£25	£25	£25
and ad val.	27½ per cent.	45 per cent.	45 per cent."
By omitting sub-paragraph (a) of paragraph (1) of sub-item (J) and inserting in its stead the following sub-paragraph:—			
"(a) Picture tubes as used in television receivers - - - - - ad val	Free	12½ per cent.	12½ per cent."

By Authority: A. J. ARTHUR, Commonwealth Government Printer, Canberra

* * * * *

---

954 1960.

The Parliament of the Commonwealth.

HOUSE OF REPRESENTATIVES.
Customs Tariff Proposals No. 20.

Motion moved by the Minister representing the Minister for Customs and Excise, the Honorable F. M. Osborne, in the Committee of Ways and Means on the 20th October, 1960.

1. That the Schedule to the *Customs Tariff* 1933–1960,

as proposed to be amended by Customs Tariff Proposals, be further amended as set out in the Schedule to these Proposals, and that on and after the twenty-first day of October, One thousand nine hundred and sixty, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, Duties of Customs be collected accordingly.

2. That in these Proposals, "Customs Tariff Proposals" mean the Customs Tariff Proposals introduced into the House of Representatives on the following dates, namely:—

19th May, 1960;
16th August, 1960; and
8th September, 1960.

THE SCHEDULE. IMPORT DUTIES.

956

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
DIVISION VI.—METALS AND MACHINERY—*continued*.			
* * * * *			
181. By omitting paragraph (2) of sub-item (E) and inserting in its stead the following paragraph:—			
"(2) Television receivers designed for the reception of signals without line connexion, with or without radio broadcast receivers and sound recorders and reproducers including furniture incorporating such goods, assembled and complete, including partly assembled or incomplete goods which the Minister directs shall be deemed to be assembled and complete. On the receiver less picture tube - - - - each	£25	£25	£25
and ad val.	27½ per cent.	45 per cent.	45 per cent.
And on the picture tube - - - each	£6	£6	£6
and ad val.	..	12½ per cent.	12½ per cent."
By inserting in sub-item (G) a new paragraph as follows:—			
"(4) Chokes and choke coils, not covered by item 181 (F)(2) - - - - - ad val.	27½ per cent.	45 per cent.	45 per cent."
By omitting paragraph (1) of sub-item (J) and inserting in its stead the following paragraph:—			
"(1) Cathode ray tubes—			
(*a*) Picture tubes as used in television receivers - - - - each	£6	£6	£6
and ad val.	..	12½ per cent.	12½ per cent.
(*b*) Other - - - ad val.	Free	7½ per cent.	7½ per cent."

* * * * *

IN THE UNITED STATES DISTRICT COURT

* * (Caption—59-C-1847) * *

AFFIDAVIT OF ALFRED GARRAWAY

Commonwealth of Australia } ss.
State of Victoria }

I, Alfred Garraway, being duly sworn, on oath depose and say that, were I to be called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division, in the above entitled case, I would testify as follows:

1. I am Chief Television Engineer of Radio Corporation Pty. Ltd. whose registered office is located at, 7th Floor, "Astor House," 161-173 Sturt Street, South Melbourne, Victoria, Australia.

2. I am fully conversant with the changes necessary to convert American TV sets to Australian standards today and during the period 1959 through 1963.

959 3. The standards for Australian television receivers are set out in an official booklet of the Australian Broadcasting Control Board entitled "Television Channels, Standards for Limits of Radiation from Receivers" published June, 1956, and re-issued August, 1961. This booklet is attached to this affidavit and incorporated herein for all purposes.

4. The frequencies of American television channels differ materially from that of the Australian television channels. Using the 1961 specifications of television broadcasting in the United States, the American channels were as follows:

American Channel No.	*Vision Carrier Mc/s*	*Sound Carrier Mc/s*
2	55.25	59.75
3	61.25	65.75
4	67.25	71.75
5	77.25	81.75
6	83.25	87.75
7	175.25	179.75
8	181.25	185.75
9	187.25	191.75
10	193.25	197.75
11	199.25	203.75
12	205.25	209.75
13	211.25	215.75

Using the 1961 specifications of the Australian Broadcasting Control Board, the Australian channels were as follows:

Australian Channel No.	*Vision Carrier Mc/s*	*Sound Carrier Mc/s*
0	46.25	51.75
1	57.25	62.75
2	64.25	69.75
3	86.25	91.75
4	95.25	100.75
5	102.25	107.75
5A	138.25	143.75
6	175.25	180.75
7	182.25	187.75
8	189.25	194.75
9	196.25	201.75
10	209.25	214.75
11	216.25	221.75

960

5. American television sets manufactured in the period 1959 to 1963 were using two different sets of intermediate frequency. Some had the then relatively new standard of 45.75 Mc/s for the Vision frequency and 41.25 Mc/s for the

Sound frequency. Others had the older standard frequencies of 25.75 Mc/s for the Vision frequency and 21.25 Mc/s for the Sound frequency.

The Australian standards for the intermediate frequencies are 36 Mc/s for the Vision frequency and 30.5 Mc/s for the Sound frequency.

6. In addition to the different channel and intermediate frequencies the carrier spacing between the Vision and Sound carriers is 1 Mc/s greater with the Australian standards than with the American standards.

7. These differences will necessitate the following changes to the American tuner to enable reception of Australian channels: (1) 13 new aerial coils; (2) 13 new radio frequency coils, each comprising two windings, on the same former; (3) 13 new oscillator coils; and (4) one new intermediate frequency coupling coil. When new coils have been fitted the tuner must be adjusted and tested.

8. The intercarrier spacing, i.e. the difference between the Vision and Sound carriers, is 5.5 Mc/s in Australia and 4.5 Mc/s in United States. The difference requires
961 modifications to the video I. F. amplifier and to the Sound I. F. amplifier.

9. All tuning coils in the Vision I.F. amplifier would have had to be replaced to increase the bandwidth by approximately 1 Mc/s per second. Based upon American circuits of the period 1959-1963, at least 6 coils in the I.F. amplifier and three coils plus one resistor in the video detector section would have had to be replaced. After replacement, the coils must be aligned and the vision I.F. amplifier tested.

10. The sound I.F. amplifier must also be modified not only because of the intercarrier spacing but because the maximum frequency deviation is 25 Kc. per second under American standards and 50 Kc. per second under Australian standards. These differences require changing at

least two intermediate frequency transformers and one FM detector transformer. After these transformers are fitted, the sound I.F. amplifier must be aligned and tested.

11. Again because of the difference in the intercarrier spacing in Australia the intercarrier interference is at 5.5 Mc/s instead of 4.5 Mc/s. This difference requires changing the 4.5 Mc/s interference trap for one tuned to 5.5 Mc/s. Because of the 1 Mc/s greater Video bandwidth required, it will be necessary to change at least the video plate load resistor and plate load coil.

12. The power supply in America is 115 volts, 60 cycles per second. The power supply in Australia is 230 volts, 50 cycles per second. To operate an American set in Australia either the power transformer must be changed or an extra 230 to 115 volt transformer must be fitted to the set.

962 13. Sets utilizing intermediate frequencies other than those suggested in the Australian standards were subject to the risk of interference coupling directly into the intermediate frequency amplifier. In addition the use of a non standard intermediate frequency could have resulted in increased interference to other television receivers and other services.

Due to the risk of such interference occuring with some Australian assembled television receivers using American I.F. strips, the Australian Broadcasting Control Board issued statements to the Australian newspapers on the danger of interference occuring in T.V. sets not using the Australian standard frequencies. To be completely certain of trouble-free reception any American T.V. sets using intermediate frequencies other than specified for Australia, should have a 36 Mc/s I.F. strip fitted.

14. These modifications are extensive and would require a production line operation. If we assume that the Amer-

ican television sets are received in a partly wired condition, i.e. all those components that are peculiar to Australian requirements are left out, and if we further assume that all the new components that must be added are supplied by the American company then in my opinion a work force of at least 23 operators would be necessary to turn out modified sets, capable of meeting all Australian requirements, in commercial quantities up to 100 sets per day. If it were desired to convert substantially smaller numbers of sets per day, then the costs of the conversion operation would become prohibitive.

963 15. When a T.V. set manufactured to American standards is purchased in the United States and brought into Australia, assuming the set is fitted with a step-down transformer to receive the Australian 230 volt, 50 cycle per second power supply, a picture can be obtained on some channels but not the channel indicated in the tuner dial. The picture lacks detail and has poorer definition than the picture which can be received on an Australian receiver. The set will not receive sound.

I have read the foregoing and know its contents; the facts stated herein are true of my own knowledge.

/s/ A. GARRAWAY

Subscribed and sworn to
before me this 24th day
of September, 1965.
/s/ R. G. EMANUEL
Justice of Peace.

966 Commonwealth of Australia.

Australian Broadcasting Control Board.

TELEVISION CHANNELS, STANDARD INTERMEDIATE FREQUENCIES AND STANDARDS FOR LIMITS OF RADIATION FROM RECEIVERS

Statement Prepared for the Information of Manufacturers of Television Receivers.

June, 1956

Amended and Re-Issued August, 1961

967

* * *

Introductory

This statement has been prepared for the information of manufacturers of television receivers and deals with—

(a) Television Channels in Australia;
(b) Standard Intermediate Frequencies for Television Receivers;
(c) Limits of beat oscillator radiation from television receivers;
(d) Limits of sweep circuit radiation and voltage fed back through the power mains from television receivers.

It replaces a similar statement distributed by the Board in June, 1956. The recommendations contained in this statement have been arrived at after consultation and agreement with representatives of receiver manufacturers, arranged through the Associated Chamber of Manufactures, and with the Postmaster-General's Department. It may be necessary in the light of experience to review the recommended limits for (c) and (d).

Channels

Thirteen channels in the very high frequency (VHF) band have been allocated for television stations in the Commonwealth. The channels are as follows:—

Channel	0	45- 52	Mc/s.
"	1	56- 63	"
"	2	63- 70	"
"	3	85- 92	"
"	4	94-101	"

Channel	5	101-108	Mc/s.
"	5A	137-144	"
"	6	174-181	"
"	7	181-188	"
"	8	188-195	"
"	9	195-202	"
"	10	208-215	"
"	11	215-222	"

The Board, with the concurrence of representatives of manufacturers, suggests that receivers should be designed to tune to all the VHF channels specified above.

STANDARD INTERMEDIATE FREQUENCIES

It is essential that standard intermediate frequencies for vision and sound should be employed for all receivers used in the Commonwealth, in order that the Board may be able to make frequency allocations for television stations in specific locations in such a manner as to avoid mutual interference between television and other services arising from image responses, intermediate frequency difference responses and beat oscillator radiation. If a multiplicity of intermediate frequencies is used for receivers, it will be impracticable to ensure maximum protection from interference.

The following alternative intermediate frequencies should therefore be employed in all television receivers used in Australia:—

Sound carrier	30.5 Mc/s	or	31.375 Mc/s
Vision carrier	36 Mc/s		36.875 Mc/s

These frequencies should be adhered to within ± 0.25 Mc/s and the oscillator frequency should be above the channel frequency.

The Postmaster-General's Department has agreed to arrange frequency assignments in the band encompassing the above intermediate frequencies to ensure protection of television services from interference by other services.

LIMITS OF BEAT OSCILLATOR RADIATION FROM TELEVISION RECEIVERS

Because of the effects of radiation from television receivers, it is necessary that beat oscillator radiation be kept within reasonable limits. This matter is of particular importance in connexion with the protection of navigational services such as those conducted by the Department of Civil Aviation.

Radiation from television receivers due to beat oscillators should therefore be kept as low as good practice will permit and in any case should not exceed the following levels for the channels indicated:—

Channels	0–5 ..	50 microvolts per metre at 100 feet.
”	5A ..	100 ” ” ” ” ”
”	6–11 ..	150 ” ” ” ” ”

969

LIMITS OF SWEEP CIRCUIT RADIATION AND VOLTAGE FED BACK THROUGH THE POWER MAINS FROM TELEVISION RECEIVERS.

Because of the effects of television receiver sweep circuits on reception of sound broadcasting it is necessary that sweep circuit radiation and sweep circuit voltage fed back through the power mains be kept as low as good practice will permit.

In any case radiation at the back of receivers and voltages fed back through the power mains, from the sweep circuits of television receivers, should not exceed the following levels in the frequency band 525 kc/s to 1605 kc/s:—

RADIATION

Magnetic field—measured 5 feet from the back of the receiver—700 *microvolts per metre.*

Electric field—measured 5 feet from the back of the receiver—200 *microvolts per metre.*

Voltage Fed Back Through the Power Mains

Average of measurements from each side of power mains to earth—70 *microvolts*

Methods of Measurement of Spurious Radiation from Television Receivers

General

These methods of measurement are based on methods decided in the course of standardization overseas.

Radiation from Heterodyne Oscillators

The receiver under test, if a table model, shall be mounted 4 feet above ground. It shall be adjacent to a 30 foot vertical mast capable of being rotated in azimuth. The mast shall carry a horizontal dipole 88 inches in length and ½ inch in diameter. The dipole shall be connected with centre feed to the receiver input by a transmission line of type and characteristic impedance for which the receiver is designed, the transmission line being suitably secured to the mast to ensure mechanical and electrical stability.

The receiver and mast shall be located on relatively level ground free from any obstruction to a distance of at least 100 feet from the receiver and field strength meter and away from reflecting objects. It will be necessary to rotate the receiver with the mast. The receiver shall be fed with power through mains buried to a depth of a foot, and for a length of at least 100 feet from the receiver.

The transmission line shall proceed horizontally away from the receiver aerial terminals and then vertically upward for a height of 7 feet above ground and finally again horizontally to a position vertically disposed under the centre of the dipole. After the first bend it shall not approach closer than 6 inches to the cabinet at any point.

The radiated field shall be measured by a suitable field strength meter located at a distance of 100 feet from the aerial of the receiver under test. The field strength meter shall be equipped with an aerial capable of being adjusted for horizontal or vertical polarization. Provision shall be made for varying the height of this aerial above ground between 7 and 20 feet.

The receiver under test shall be tested with the transmission line from the dipole connected directly to its aerial terminals. A second set of measurements shall be made either with these connexions reversed, or in the case of coaxial lines with the receiver rotated 180° with respect to the receiver chassis.

If the receiver is supplied with a built in aerial, measurements shall also be made with this aerial connected to the aerial terminals.

The receiver under test shall be checked over the frequency range to which it is intended to be tuned. The number of test frequencies shall be adequate to ensure measurement of maximum radiation within the range.

With the field strength meter tuned to the frequency of the spurious radiation being measured, and with its aerial aligned horizontally and broadside to the receiver 971 under test and 20 feet above ground, the receiver under test and its dipole aerial shall be rotated together in a horizontal plane, until maximum signal at the field strength meter is obtained. The aerial of the field strength meter is now varied in elevation from 20 feet to 7 feet, holding it broadside to the receiver under test, and the maximum reading of field strength so obtained is recorded as the radiation field strength of the receiver under test. These tests shall now be repeated with the test receiver aerial reversed as indicated above.

The above tests shall be repeated with the field strength meter aerial aligned for vertical polarization.

If reversing the aerial of the field strength meter produces an appreciable difference, the results so obtained should be averaged.

Radiation from Sweep Circuits

The receiver should be tested in an open location. The power mains shall be buried to a depth of a foot and for a distance of at least 20 feet from the receiver, but may be buried for the same distance as in the case of the oscillator radiation tests.

A field strength receiver capable of operating over the range 525-1605 kc/s, and using a loop pickup shall be available. The receiver to be tested shall be set up 5 feet from the field strength receiver.

In addition, a field strength receiver operating over the same frequency range, and using a vertical aerial of length approximately 4 feet shall be available. It shall be set up as in the case of the receiver employing a loop.

The centre of the loop of the field strength meter and the centre of the television receiver shall be at the same level.

The television receiver shall be provided with an aerial of the same height as for the oscillator radiation tests.

A television signal input to the receiver to synchronize the sweep circuit of the receiver shall be provided.

The power supply to the receiver under test shall be fed through a mains filter employing two series chokes of impedance at least 300 ohms at the frequency concerned with 0.5 microfarad condensers to earth on the mains side of the chokes and a 0.1 microfarad condenser and 50 ohms resistance in series to earth from each choke on the receiver side. The filter shall be shielded and located under the receiver being tested and near the ground. The mains supply shall leave the filter on the side of the receiver under test remote from the field strength set.

The tests shall be made with the field strength set loop vertical, and shall be repeated with the loop of the field strength set horizontal.

They shall also be repeated using a field strength receiver with a vertical aerial.

In order to measure the interference voltage in the power line, a receiver shall be employed calibrated with a signal generator and operating between 525 kc/s and 1605 kc/s. Its input impedance in this band shall be high compared with 50 ohms. The voltage shall be measured across each 50 ohms resistance in the mains filter, and the average of the two readings recorded.

972 References

1. Standards on Radio Receivers. Open field method of measurement of spurious radiation from frequency modulation and television broadcast receivers in 1951. Proc. Inst. Rad. Engrs., July 1951.
2. International Electrotechnical Commission, November 1954: Technical Committee No. 12 Radio Communication: Sub-Committee 12-1: Measurements. Document 12-1 Secretariat (13). Questionnaire on Time Base Radiation (only for T.V.).
3. International Electrotechnical Commission, June 1955. Technical Committee 12 Radio Communication. Sub-Committee 12-1 Measurements. Document 12-1-10 British Proposals for Methods of Measurement of Radiation from Radio Receivers and Susceptibility of Receivers to Interferences.
4. Spurious Radiation from T.V. Receivers, K. A. Chittick (R.C.A. Home Instrument Division, Camden, N.J.). Transactions of the I.R.E. Broadcast and T.V. Receiver Group, April, 1954.
5. Regulations against radio disturbance U.I.T. Journal, September 1955.
6. International Electrotechnical Commission, July 1954. Technical Committee No. 12 Radio Communication. Sub-Committee 12-1 Measurements. Document 12-1-3 Danish views regarding measurements of time base radiation.

973 IN THE UNITED STATES DISTRICT COURT

* * (Caption—59-C-1847) * *

AFFIDAVIT OF ARTHUR WALTER BARRS

Commonwealth of Australia }
State of New South Wales } ss.

I, Arthur Walter Barrs, being duly sworn, on oath depose and say that were I to be called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division, in the above entitled cause, I would testify as follows:

1. I am Chairman of Directors and Managing Director of A. W. Barrs Pty. Ltd., 99 Crown Street, Sydney, State of New South Wales and Chairman of Directors and Managing Director of A. W. Barrs (Qld.) Pty. Ltd., 618-620 Wickham Street, Fortitude Valley, Brisbane, State of Queensland. These Companies, which I represent, are in the imported car radio business and are the franchised dealers for 974 German Blaupunkt car radios in New South Wales and Queensland. I am well acquainted with the costs of importing radios into Australia.

2. I have had negotiations with American radio manufacturers about importing American car radios into Australia. In every case, the American price, ex works in the United States, has been too high.

3. The Japanese are a very small factor in the car radio market in Australia. One of the first Japanese car radios on the market in Australia was the Sony. The Sony radios were brought into Australia without spare parts. As a result of the inability to repair the first Japanese car radios it is now very difficult to sell them against the local Australian made radios.

4. I would not handle any imported radio if stocks of

spare parts were unavailable. When it comes to selling radios, it is essential that the radios can be repaired. The radios cannot be repaired without spare parts.

5. In my experience, the retail price of a car radio set imported into Australia will be 3.6 times the total of the price ex works plus shipping cost plus import duty. Mark-ups at each level of distribution in Australia are high because (1) freight and distribution costs are high due to the long distances in Australia between relatively small 975 markets, and (2) the high cost of servicing or repairing the radios.

I have read the foregoing and know its contents; the facts herein are true of my own knowledge.

/s/ A. W. Barrs
Arthur Walter Barrs.

Subscribed and sworn to before me this 29th day of September, 1965.

J. C. Allen, J. P.

977 IN THE UNITED STATES DISTRICT COURT

• • (Caption—59-C-1847) • •

AFFIDAVIT OF S. W. GOODWIN

Commonwealth of Australia }
State of New South Wales } ss.

I, S. W. Goodwin, being duly sworn, on oath depose and say that were I to be called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division, in the above entitled cause, I would testify as follows:

1. I am the Managing Director of Goodwin's Ltd. Goodwins Ltd. through its subsidiary companies, operates retail appliance sales outlets in New South Wales. In volume of

sales I am one of the largest retailers of electric appliances in New South Wales. As a result of my experience in managing the operations of Goodwin's Ltd. and its subsidiaries, I am fully conversant with the business of buying and selling radio and television sets in New South Wales.

2. In my experience, it is very difficult to sell foreign-made goods to Australians. The "Buy Australian" campaign is union supported and very effective. There is a resistance almost amounting to a blacklist against all imported merchandise except Japanese products. The
978 "Buy Australian" campaign is not directed against Japanese products because Japan is such an importent customer for Australian exports and Australia's balance of trade with Japan has been favourable.

3. In my opinion, it is harder to sell imported television receivers to Australians than it is to sell other imported merchandise. Repairmen have difficulty servicing imported television receivers and make disparaging remarks about imported TV sets to householders when on a service call. Furthermore, retailers and consumers alike are forced to rely upon the importer and distributor for spare parts for the imported TV receivers. Repairmen do not carry spare parts for imported TV sets.

4. It may also be necessary for the importer to train repairmen to service the imported TV sets. It would be prohitively expensive, with Australia's spread-out population, for an importer or a foreign manufacturer to attempt to maintain his own repair organisation throughout Australia.

5. At various times in the past I have made every effort to import television receivers on a commercial basis. I personally went to Japan and contacted a number of Japanese manufacturers including Sony and Mitsubishi. The lowest price obtainable, ex works in Japan, for a 21" TV set was £A29. Even this price was not low enough after the pay-

ment of duty and other importing costs and the 25% Australian sales tax to compete price-wise in Australia.

6. I investigated the ex works prices for the German "Saba" television sets and was offered the distributor-ship for Saba in New South Wales. Because of the high price and resulting negligible volume, I was not interested in distributing Saba sets.

7. By 1960, the television industry in Australia had achieved the plant capacity to produce more television sets than it was possible to sell. In addition the television market had become saturated with television receivers in about 85% of the homes reached by television broadcasts. My total orders of new television sets from manufacturers fell off drastically.

8. In August 1960, the Australian government an-
979 nounced certain credit restrictions. This so-called "credit squeeze" became effective in 1961. The credit squeeze drastically curtailed the ability of retailers to operate on credit and cut down instalment buying by consumers. Naturally, this adversely affected the sale of non-essential consumer goods including radio sets and television receivers.

9. By 1960, when new areas received television stations for the first time, retailers offered used television sets to consumers in the new areas in competition with the sales of new sets. Aggressive merchandising of used TV sets further adversely affected the market for new sets.

10. During 1960 and 1961 the market for television was so depressed that a large number of manufacturers withdrew from the television business or went out of business altogether. Some of these companies were Standard Telephones & Cables (withdrew), AEI-Ekco (withdrew), Bush Simpson (out of business), Admiral of Australia (out of business) and Pope Motorola (out of business).

11. In my opinion, due to the industry over-capacity and the market saturation, by 1960 it was too late for a new

manufacturer to start in the business of manufacturing television receivers. It certainly was too late for any importer to get any significant volume of business in competition with the Australian manufacturers.

12. Another adverse factor which any importer must face is the lack of television wholesalers. All the large wholesalers like Block & Gerber went bankrupt or got out of the business by 1960. As a result a manufacturer or an importer must have a branch or distribution outlet in every state in Australia. Distribution in Australia is direct to the retailer or direct to the consumer.

980 I have read the foregoing and know its contents; the facts stated therein are true of my own knowledge.

/s/ S. W. Goodwin
S. W. Goodwin

Subscribed and sworn to
before me this 28th day of September, 1965.
J. C. Allen, J. P.

IN THE UNITED STATES DISTRICT COURT

* * (Caption—59-C-1847) * *

982 AFFIDAVIT OF JOHN THORPE

Commonwealth of Australia }
State of New South Wales } ss.

I, John Thorpe, being duly sworn, on oath depose and say that were I to be called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division, in the above entitled cause, I would testify as follows:

1. I am Australian Manager of Consolidated Appliances, a large volume retail outlet for electric appliances. I sell refrigerators, washing machines, clothes dryers, television sets and combination TV/stereophonic radio-phonographs.

I also rent television receivers to customers.

983 2. In the operation of my retail business I buy television receivers and combination TV/stereophonic radio-phonographs. I am quite familiar with the market for television receivers and combination TV/stereophonic radio-phonographs in New South Wales.

3. I sell or rent out an average of 50 new television sets a week. I also do a substantial business in used television sets. My business breaks down roughly into 50% used merchandise, 25% new television sets sold or rented and 25% new combination TV/stereophonic radio-phonographs.

4. Since I am responsible for repairs in rental sets and such repairs are performed by my own employees, I am unwilling to rent out a foreign-made television set.

5. I buy private brand 23" television sets direct from the manufacturers for £A 75. I pay £A 119 for the combination stereophonic radio-phonographs. It is not possible for a retailer to sell television receivers if he has to pay the manufacturer or importer much over £A 80. In the period 1960-1963, this maximum price to the retailer was £A 90. In my opinion, full-size imported television receivers cannot be sold in Australia because of import duty. I certainly could not sell and would not be interested in attempting to sell any imported set if the cost to me was around £A 150. I have made inquiries about importing television receivers from Japan. I contacted Sony, National and Hitachi. I have not imported any sets from Japan.

984 6. I imported some small, 2-transistor sets from Japan in 1961. These sets cost only 10 shillings ex works in Japan. In order to make my profit after paying shipping costs and import duty, I sold the sets for £A 30, an increase of 60 times over the ex works cost.

7. In addition to price problems created by high import duties, repairs and availability of spare parts present a

big problem on all imported television and radio equipment.

I have read the foregoing and know its contents; the facts stated herein are true of my own knowledge.

/s/ JOHN THORPE
John Thorpe

Subscribed and sworn to
before me this 28th day
of September, 1965.
/s/ J. C. ALLEN
Justice of the Peace.

986 IN THE UNITED STATES DISTRICT COURT

• • (Caption—59-C-1847) • •

AFFIDAVIT OF BEDE SOLOMONS

Commonwealth of Australia }
State of New South Wales } ss.

I, Bede Solomons, being duly sworn, on oath depose and say that were I to be called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division, in the above entitled cause, I would testify as follows:

1. I am the chief executive officer of Eric Anderson (Consolidated) Ltd. I am operating a chain of about 40 retail stores in Australia.

2. I have been in the radio business since 1934 and Eric Anderson's has handled television since 1956 when television was introduced into Australia. I am completely familiar with both the television market and the radio market in Australia.

3. Due to the Australian protective tariff barrier, there had never been a big percentage of imports of radios into Australia until the Japanese got established. In the last eight years there have been substantial imports of Japanese

pocket transistor radios into Australia. The Japanese got established in the Australian market because, when the first Japanese transistor sets came into Australia, none of the Australian manufacturers were making such pocket-sized transistor sets.

4. In a similar manner, it would have been possible for an importer to get established in the television business
987 in the very early days of television in Australia. The primary reason for this was that the demand for television sets exceeded the capability of the manufacturers to produce sets. This condition lasted through 1958. Another factor was that, since television was new, the brand names were not established with the public although most of the manufacturers had brand acceptance in the radio field.

5. In my opinion, Admiral was a successful newcomer to the television field because Admiral got established right at the beginning of television and had something no competitor had to offer, namely, the 21" screen. By 1958 or 1959, when Pope Motorola tried to enter the television market, it was too late. By August 1959, it would have been too late for an importer of standard size TV receivers to get established in the Australian market.

6. A temporary exception to this has been the importation of small portable television sets from Japan. The following portable Japanese sets are now being imported into Australia and marketed in significant numbers: the 12" screen "Princess" selling at 149 guineas; and the 6" and 8" screen "Sharp." Sony (another Japanese brand) has not been able to carve out a significant market share although Sony sets have been sold in Australia for a number of years. There are no locally manufactured portable television sets competing in the 6" and 8" screen size range. The General Electric 11" screen portable television sets, assembled in Australia partly from imported components, competes with

the Japanese portables. Although GE has had some success with their 11" screen they have had little success in selling standard size sets. In my opinion, as important as General Electric may be in the United States and possibly elsewhere in the world, the "GE" brand or name at present does not have any significant impact on Australian buyers.

7. Generally speaking, foreign brand names have difficulty competing against Australian brands. The Australian consumer has brand loyalty to the Australian radio and television manufacturers. In addition to brand loyalty,
988 the Australian public believes in and generally supports the "Buy Australian" campaign. All in all, local brands are much easier to sell than foreign brands.

8. At the present time, Eric Anderson's is not handling or selling any imported television sets. The main reason for this is that, when the import duties and shipping costs have been paid, the price is too high.

9. Also, I do not like to handle imported television sets because of the repair and service problems. Spare parts for imported television sets are an important problem to me and to other retailers. I would want to know that adequate quantities of spare parts were available in Australia.

10. The imported television sets have no features and no performance qualities that are not offered by the Australian manufacturers.

I have read the foregoing and know its contents; the facts stated herein are true of my own knowledge.

/s/ BEDE SOLOMONS
Bede Solomons

Subscribed and sworn to
before me this 1st day of October, 1965.

J. C. ALLEN, J.P.

IN THE UNITED STATES DISTRICT COURT

• • (Caption—59-C-1847) • •

990 AFFIDAVIT OF NORMAN LEVY

Commonwealth of Australia }
State of Victoria } ss.

I, Norman Levy, being duly sworn, on oath depose and say that were I to be called as a witness to testify in the United States District Court for the Northern District of Illinois, Eastern Division, in the above entitled cause, I would testify as follows:

1. I am Managing Director of Sun Electric (Consolidated) Ltd. and Sun Electric Co. Pty. Ltd. with offices located at 562 Little Bourke St., Melbourne, Victoria. The operating company, Sun Electric Co. Pty. Ltd. (hereinafter referred to as "Sun") does substantial importing as well as manufacturing and distributing electrical equipment in every state in Australia, primarily to retail outlets.

2. In my capacity as Managing Director, I am responsible for and completely familiar with the importation of goods for Sun. I spend a lot of my time in countries other than Australia searching for products which Sun could import and sell at a profit.

991 3. The duty levied on the imported radio sets effectively prevents the importation of radio sets from the United States. I would not even consider importing radio sets from the United States.

4. Sun imports Japanese radio sets in substantial numbers. The bulk of these are the lower-priced Japanese sets. The mass market is for the cheap 6 and 8 transistor sets. The principal set imported by Sun is the "Toshiba" manufactured by Tokyo Shibaura Engineering Works,

5. The market in Australia for shortwave radio sets with two or three broadcast bands is not large. Sun imports

a limited number of Japanese radios to satisfy this demand.

6. I would not consider importing any radio set or other electric appliance without spare parts. Sun has thousands of pounds tied up in spare parts inventory. This is absolutely essential. Each Sun branch carries an inventory of spare parts.

7. Sun also undertakes to service every radio set sold by Sun. This is particularly advantageous in the sale of imported radio sets.

992 I have read the foregoing and know its contents; the facts stated herein are true of my own knowledge.

/s/ Norman Levy
Norman Levy

Subscribed and sworn to
before me this 22nd day
of September, 1965.

/s/ R. G. Emanuel
Justice of Peace.

In the United States District Court

• • (Caption—59-C-1847) • •

993 AFFIDAVIT OF
WILLIAM GORDON WALLACE

Commonwealth of Australia } ss.
State of Victoria }

I, William Gordon Wallace, being duly sworn, on oath depose and say that were I to be called as a witness to testify in the United States District Court for the Northern

District of Illinois, Eastern Division, in the above entitled cause, I would testify as follows:

1. I am in charge of buying television receivers and radio sets for Brashs Pty. Ltd., and am also ultimately responsible for the sales of radio sets and television receivers in the Brashs Pty. Ltd. stores. Brashs Pty. Ltd. operates a chain of nine retail stores in the State of Victoria, two of which are located in the city of Melbourne. In total volume of television and radio sales, Brashs Pty. Ltd. has between one-tenth and one-fifth of the volume of 994 television and radio sales enjoyed by Myer's of Melbourne.

2. As a result of my job I am completely familiar with the television and radio markets in the State of Victoria and with the feasibility of importing television receivers and radio sets into Australia.

3. The Australian public is extremely brand conscious and prefers Australian brands. I myself prefer Australian-manufactured television receivers.

4. Brashs Pty. Ltd. does not handle or sell imported TV sets from the United States or from Germany. Full size imported TV sets even from Japan become too expensive to sell in Australia when the import duty is added to the price of the set. Regardless of cost, I would not import American-made TV sets for Brashs Pty. Ltd. because, in my opinion, the quality of American TV Receivers I have inspected is not up to Australian standards. Australian-made TV sets are mechanically superior to the American sets. In addition American cabinetry is generally not acceptable to Australian consumers.

5. I did not import the 12" screen "Princess" set manufactured by Nippon Columbia for the sole reason that after paying the import duty, Brashs Pty. Ltd. would need an

out-of-store price of £A.156/9 for each set in order to realize a reasonable profit. The price of £A.156/9 is too high to realize any volume of sales on a 12″ set. Several 6″, 8″ and 9″ Japanese Receivers were marketed by us in 1963/64, but these receivers are now priced too highly to achieve a reasonable sales volume.

6. I could not sell a 23″ American-made television
995 receiver if I had to set its retail out-of-store price at
around £A.200. A most expensive fully automatic Australian-manufacturd 23″ console TV set with remote control handled by Brashs Pty. Ltd. sells, out-of-store, at £A.140.

7. Brashs Pty. Ltd. does not handle any American-made radio sets including the Zenith Transoceanic. We sell some expensive Japanese transistor radio sets with two or three shortwave bands. For example, the Japanese "National" sells at slight under £A.60.

8. Approximately 50% of all transistor radios sold by Brashs Pty. Ltd. are of Japanese manufacture. The records of Brashs Pty. Ltd. show the breakdown between Japanese and Australian transistor sets in five months of 1963 and at that time slightly over 50% of the sets were Japanese.

9. Duty and other charges are a serious handicap in marketing even the inexpensive Japanese transistor radio sets. For example, a Japanese set with an ex works price of 29 shillings sterling will cost £A.10 by the time it is landed in Australia and the import duty etc. paid.

10. Brashs Pty. Ltd. buy Japanese radios locally from importers who carry a stock of spare parts. The availability of spare parts is very important. In my experience most retailers prefer to buy from an Australian importer rather than try to import direct themselves.

• • •

997 I have read the foregoing and know its contents; the facts stated herein are true of my own knowledge.

/s/ W. G. WALLACE
William Gordon Wallace

Subscribed and sworn to
before me this 28th day of September, 1965.

/s/ R. EMANUEL, J. P.
Justice of Peace.

IN THE HIGH COURT OF JUSTICE, ENGLAND
QUEEN'S BENCH DIVISION
MASTER LAWRENCE, MASTER IN CHAMBERS

IN THE MATTER OF the Foreign Tribunals Evidence ACT, 1856 (19 and 20 Vict. C. 113)

AND IN THE MATTER OF a Civil Proceeding now pending before the United States District Court, Northern District of Illinois, Eastern Division intituled as follows:—

BETWEEN:

HAZELTINE RESEARCH, INC.
Plaintiff-Counterdefendent

and

ZENITH RADIO CORPORATION
Defendant-Counterclaimant

Upon reading the Affidavit of George Warren Staple filed on the 3rd day of September, 1965 and the Letters Rogatory exhibited thereto that proceedings are pending in the United States District Court in the Northern District of Illinois, Eastern Division in the United States of America and that such Court is desirous of obtaining the testimony of Adam Ratusuiak Ramsey, otherwise known as Adam Ratuszniak Ramsey.

* * *

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HAZELTINE RESEARCH, INC.,
Plaintiff
VS.
ZENITH RADIO CORPORATION,
Defendant

Deposition of witness, produced, sworn and examined at the American Embassy, Grosvenor Square, London, England, before Ray E. White, Jr., Consul of the United States of America, commencing on the 15th day of September in the year One Thousand Nine hundred and Sixty-five, under and by virtue of a Notice dated the 6th day of September, 1965, issued by the attorneys for the plaintiff and original letters rogatory issued on August 26, 1965, out of the United States District Court for the Northern District of Illinois, Eastern Division, in the captioned suit and in pursuance to the Order of Master Lawrence, Master in Chambers, Queens Bench Division in the High Court of Justice of England.

* * *

28 DIRECT EXAMINATION by MR. KAYSER

Q. Mr. Ramsay, have you given your full name as it appears on the order?

A. There is a mistake in my name on the order.

29 Q. Would you spell it?

A. A-d-a-m R-a-t-u-s-h-n-i-a-k R-a-m-s-a-y.

* * *

32 Q. Do you have any copies of conversion instructions or manuals for converting Zenith television sets for use in the United Kingdom?

A. We have our own notes from our Service Department which we are doing for our own purposes.

Q. You have no conversion instructions or manuals which you received from Zenith?

A. Not their conversion to the British system, no.

Q. You have some instructions for conversion to other systems?

A. The European system.

Q. You mean a 625 line screen?

A. That is correct, yes.

Q. In other words, you do not have instructions to convert to the 625 line system of the third band in the United Kingdom?

A. No, because we do not sell televisions at the time being in England.

33 Q. Have you any instructions for the conversion of the U.S. sets to the 405 line screen?

A. No, we do not.

Q. What is the reason for that?

A. Because we do not sell television sets in England, so there is no reason.

* * *

37 Q. In the course of your business was it your practice to release information to the Trade Press concerning the products that you had for sale?

A. Yes, we did.

Q. Do you have copies of any of those releases?

A. No, we did not keep all the copies; we do not keep a scrapbook here.

Q. Did you keep some of them?

A. No, we sent them to Chicago.

Q. You mean to Zenith?

A. To Zenith, yes.

* * *

50 MR. KAYSER: When did you first give thought to the importation of radio and television sets into the United Kingdom?

MR. McCONNELL: I object to that. That assumes that he had given some thought to it.

A. Beginning of June 1959.

MR. KAYSER: You mean the thought of importing radio and televison sets did not enter your mind until June 1959?

A. No, because it was done on the suggestion of an outsider.

Q. Who was that outsider?

A. One of the Zenith distributors in the Middle East.

Q. Who was that?

A. A man called Mr. Syislotzky, who visited me in June 1959 and suggested that we take up the distribution of Zenith in England if Zenith would be willing to grant it.

Q. When and where was that suggestion made?

A. In London, beginning of June, 1959.

51 Q. Where?

A. In my office, I think.

Q. What was the occasion of his visit to your office?

A. I knew the man for numerous years, and every time he visited London, he was visiting me.

Q. What country was he from?

A. Israel.

Q. What city?

A. Tel Aviv.

Q. He was the Zenith distributor there?

A. Yes.

Q. In early June he suggested you got a Zenith distributorship for the United Kingdom?

A. That is correct.

Q. Then what did you do?

A. I knew Zenith by its name and by its reputation, and I said: "Yes, if you can secure the distribution for me, I would be willing to do it".

Q. What was the name of this man's company in Israel?

A. The name, Svislotzky Brothers, I think. There were two brothers.

Q. After you said you would be willing to take on the Zenith distributorship, what happened next in that regard?

A. He telephoned Zenith from my office and suggested that I go over to Chicago, where he would meet me and introduce me to the Zenith people.

Q. Did you go?

A. Yes, I did.

52 Q. When?

A. It must have been about 8th or 10th or 6th, or something like that.

Q. Of June?

A. Of June, yes, after I spoke with him.

Q. Could you fix that date more exactly; from your passport, for example?

A. No. The passports are not being stamped, and, anyway, I would not have a passport relating back to 1959. Since then I must have had a few passports.

Q. You think it was June 6th, 8th or 10th, 1959?

A. It was in early June 1959.

Q. You went to the United States?

A. I went to the United States, yes.

Q. Where did you go?

A. I went to Chicago.

Q. Whom did you see?

A. I booked into a hotel. I was waiting for Mr. Svislotzky, who was somewhere else in the United States, and he took me to the Zenith offices.

Q. Where was that?

A. In Dickens Avenue.

Q. Who did you meet there?

A. The head of the International Division, Mr. Miguel.

Q. His first name?

A. John.

Q. What happened when you met Mr. Miguel?

A. We discussed for a few hours, and the next day he told me that he is prepared to grant us a distribution.

53 That was the first time I met him.

Q. What did you discuss at this first meeting of three or four hours?

A. The way I imagined distributing, and just general commercial questions.

Q. What did you tell him as to how you imagined distributing?

A. I gave him my ideas of distribution.

Q. What did you tell him?

A. It is difficult to recall every detail of it.

Q. Do your best.

A. In broad outline, that we should be importing the goods; we shall promote them; we shall appoint dealers; we shall do the servicing and look generally after business.

Q. Was this to be radio and television?

A. As far as televisions were concerned, I understood that we cannot distribute televisions.

Q. Why not?

A. At that time it was not told to me exactly why, but they said they have certain reasons for which they cannot send televisions to England.

Q. You said you also discussed certain commercial problems.

A. Yes.

Q. What were they?

A. Normal question of calculation, servicing, spare parts, publicity, advertising—all the normal commercial aspects.

Q. On the next day you were told you had the distributorship?

A. Yes, on the next day Mr. Miguel told me that he is willing to do it.

54 Q. Was this the first time that you had ever met anyone from Zenith Radio Corporation?

A. That was the first time in my life, except about fifteen years ago I ordered a spare part for my own radio from Zenith. That was the only contact I ever had with them.

Q. You never had any correspondence with them at all?

A. None whatever.

Q. None whatsoever?

A. No.

Q. Nor United Mercantile Company?

A. No. The first letter ever written was after my return to London, where I just thanked them for the confidence shown and for the reception, and so on. I had never met anybody before.

Q. Did Zenith have any information as to the financial position of your company at that time, do you know?

MR. McCONNELL: I object to what Zenith had. How in the world can this witness testify as to what Zenith had?

A. I do not know.

MR. KAYSER: They met you one day and gave you the distributorship for the whole United Kingdom the next?

A. On the basis of a man who was a distributor I believe for about 25 years. I do not think I would have got it if I just walked in and asked for it.

MR. McCONNELL: And I object to Counsel's characterisation of the distributorship contract. I do not know what it provides, and we have not got it here.

55 MR. KAYSER: You were given the sole distributorship for the United Kingdom, were you not?

A. That is correct.

• • •

57 Q. At the time you went to Chicago and got this distributorship, had you ever had any dealings in the import or sale of radio sets or television sets?

A. No, never.

Q. At that time did Zenith have another distributor in the United Kingdom?

A. I do not think so.

Q. You never heard of any?

A. No.

Q. What experience had you had with the distribution of consumer items?

A. In which respect?

58 Q. In distribution in the United Kingdom.

A. I think any man who has certain business experience is able, according to his own intelligence and mind, to organise the distribution of any commodity.

Q. Had you had any experience in the distribution of consumer items in June, 1959?

A. How do you restrict the consumer items? We were importers of glass items or textiles. They were consumer items.

Q. To whom did you sell the items that you imported?

A. To dealers, to wholesalers.

Q. You sold them to wholesalers; and anyone else?

A. Not to the public, no.

Q. Did you sell them to retailers?

A. Yes, to retailers, which is like dealers.

Q. Did you sell to retailers throughout the United Kingdom?

A. Yes, the whole country covering.

Q. What i[illegible]

A. As I sa[illegible]ware and textiles.

Q. Had you ever sold any goods to electrical appliance dealers?

A. No.

65 Q. You became so well acquainted with these people on the trip?

A. No. I went again about three or four months later.

Q. How often did you go to the United States between June 1959 and May 1963?

A. About 12 or 14 times.

Q. For what purpose?

A. Discussing various matters.

Q. Did anyone from Zenith ever come to England for that purpose?

A. We had a short visit of Mr. Miguel, but I do not know if it was purposely to discuss with me. He was just passing, I think, from the wedding of his daughter, through London.

Q. When was that?

A. That was in January this year.

Q. And you had no visitors from Zenith between June 1959 and May 1963?

A. Not on official business, no.

66 MR. KAYSER: What financial information, if any, did you give Zenith in your June 1959 visit?

A. There was very little to give. Arrangements were made that all our purchases are made against letters of credit or payment in advance, and I have done so placing the first order. I paid it in advance.

Q. They made no enquiry on your financial standing?

A. I do not know.

Q. What was the incorporation of United Mercantile at that time?

A. It was a capital of £10,000, paid up, I believe, or paid up the first 6 or something and then another amount, and then it was increased.

67 Q. To how much?

A. To £30,000.

Q. When was it increased?

A. About two years later, or maybe 15 months, 18 months later. I do not remember exactly. There is a record of it. It should be in the Companies Registrar's files.

Q. I understand that no-one from Zenith came over to check your facilities before they gave you the distributorship?—I mean physical facilities.

A. No.

• • •

68 MR. KAYSER: Where were the United Mercantile offices when you first started business?

A. The original address was Park Ledge in Knightsbridge.

Q. Did you continue in those quarters after you became the Zenith distributor?

A. Yes, I did.

Q. What was the size of those facilities, how many rooms, and what were they equipped to do?

A. We had three rooms on the ground floor. Then we took three rooms on the first floor. Then we took three rooms on the third floor; and then we moved to our present premises.

Q. Which are where?

A. At 13-14, Queen Street, Mayfair, W.1.

69 Q. When did you move to your present quarters?

A. We moved to our present quarters at the end of 1960 or 1961. I would have to check on the date. It was about November 1960 or 1961.

Q. When did you first import a Zenith radio?

A. The first consignment came to England (I believe it was) the beginning of September; August or September 1959.

Q. Did you import any television sets at that time?

A. No.

Q. When did you first import a television set?

A. We imported a few television sets in 1963 and they were intended for re-export.

Q. Were those American sets?

A. American standard sets.

Q. 525?

A. Yes.

Q. To where did you intend to export those?

A. They were purchased by members of the Argentinian Embassy and Argentinian Mission in London for shipment to Argentina.

Q. You had a reception for the Press, I believe, did you not, when you got the distributorship?

A. Yes, that is correct.

Q. When was that?

A. I think it must have been about August 1959, because we did show them some goods. It was August or September,

Q. What was the purpose of that reception?

A. To let know the Press that Zenith Radio Cor-
70. poration starts distribution in the United Kingdom.

Q. Were representatives of the Trade Press there?

A. Mainly Trade Press, and National Press.

Q. Did you have any dealers there?

A. Not at that reception. That was purely a Press reception.

MR. KAYSER: Mr. McConnell, we have here a number of bound volumes of trade publications. We also have reproduced copies of the pages as to which I will ask the witness, and I assume that pursuant to our previous stipulation we can have the reporter mark the reproduced copies. At least, I am proceeding on the basis of that understanding and stipulation.

MR. McCONNELL: I don't know what you are producing and I don't know what you have got. So, if you want a statement from me on the record, you had better show it to me.

MR. KAYSER: I show the witness a bound volume, headed "Electrical Trading, August-September 1959", and call his attention to page 62 of the issue of August 22, 1959, specifically calling his attention to the article headed "Zenith radios and stereo appeal to quality trade".

THE WITNESS: That is correct. That was the time, I think, of the Press reception in late August.

MR. McCONNELL: Could I see the document now? (Bound volume handed to Mr. McConnell). Now what do you want to do, Counsel?

MR. KAYSER:: I would like to ask the witness if the information given there concerning the Press conference is correct.

MR. McCONNELL: I object to that sort of a question. It is leading, suggestive, and you are asking him what 71 somebody else's statements mean; and I guess it is cross-examining your own witness. It sounds like it to me.

THE WITNESS: What was the question? I am sorry.

MR. KAYSER: I asked you to examine that article and asked whether or not the statements made there are correct.

A. Well, it is an editorial by "Electrical and Radio Trading". In substance it is correct. I could not even say to-day whether the prices quoted by them are correct. Our name is correct. Our address is correct.

Q. Did you hand out a Press release?

A. We did have a Press release, yes.

Q. Will you see if you can find it, and, if so, produce it?

A. If I have it, but I do not know.

MR. KAYSER: I will ask the reporter to mark as Plaintiff's London Deposition Exhibit No. 33 for identification a copy of page 62 of the trade publication to which we have just been referring.

(Photostat of page 62 of "Electrical Trading, August-September 1959" marked "Plaintiff's London Deposition Exhibit No. 33 for id.").

• • •

72 MR. KAYSER: Do I understand, Mr. Ramsay, that you say that this article is in substance a correct report?

A. Yes.

MR. McCONNELL: He has also said he did not know whether the prices were right or not.

MR. KAYSER: Are you familiar with *this* publication, the "Wireless and Electric Trading"?

A. Yes.

Q. What is it?

A. One of the trade papers concerned with the elec-
73 trical and radio business in this country.

Q. It is pointed out to me that the publication that we have there is the "Electrical and Radio Trading". Are you also familiar with that publication?

A. Yes. That is the one we are talking about.

Q. What is the nature of that publication as you know it?

A. It is a trade paper.

Q. How often is it published?

A. I believe it is a weekly. I am not sure.

MR. McCONNELL: I want to object to this line of cross-examination, on the ground that it has no single thing in the world to do with import restrictions, which is the guise under which you call this witness.

MR. KAYSER: Do you know the class of people, or the class of business people, to whom this publication is distributed?

A. No doubt it is designed for radio and electrical dealers.

Q. Retail dealers?

A. I would say so. At least, the title gives this guidance.

Q. You have, I believe, from time to time given information on Zenith products to this publication, have you not?

A. Yes.

Q. For what purpose do you give that information?

A. To print it in the publication.

Q. So that dealers may know what is available?

A. That is correct.

Q. In these releases to "Electrical and Radio Trading" it has been your practice to give information concerning the Zenith radio set?

74 MR. McCONNELL: I object to his practice. How does that prove anything in this law suit? Whatever he did, he did, but I think we are entitled to the evidence.

MR. KAYSER: I think we are entitled to know what he did.

Q. Would you answer the question?

A. Yes, we do.

Q. Did that also include information as to the suggested retailer's price?

A. In England there is no suggested retail price. There is retail price.

Q. Are you also familiar with a publication known as the "Wireless and Electrical Trader"?

A. Yes.

MR. McCONNELL: I am sure Judge Austin is going to be agreeably surprised to see all these books on the issue of embargo.

MR. KAYSER: I call to your attention page 118 of the August 22, 1959, issue of "Wireless and Electrical Trader," particularly the article headed "Zenith go for the quality market."

A. Yes.

MR. McCONNELL: Would you mind letting me see it before you examine the witness on it?

MR. KAYSER: Surely. (Bound volume handed to Mr. McConnell)..

75 MR. McCONNELL: I am objecting to this. He has produced a book here and asked questions about it and then he takes excerpts out of it. If you are going to use those books, I want them marked and everything in it. I am not going to have some excerpted thing out of a book. A further reason for that is that it appears right in the book that the prices of the competitors' products are there in advertisements.

MR. KAYSER: I will ask you, Mr. Ramsay, whether the information stated in that article is correct.

MR. McCONNELL: I object to his characterising the article in any such wholesale method as that. It is leading. It is suggestive. It is cross-examining his witness.

THE WITNESS: Yes, it is in substance correct.

MR. KAYSER: Do you see anything in there which appears to you to be incorrect?

A. No.

MR. KAYSER: I will ask the Reporter to mark as Plaintiff's London Depositions Exhibit No. 34 for identification a copy of said page 118 of the August 22, 1959 issue of "Wireless and Electrical Trader."

(Copy of page 118 of August 22, 1959 issue of "Wireless and Electrical Trader" marked "Plaintiff's London Depositions Ex. No. 34 for id.")

* * *

106 Q. Do you have with you the distributorship agreements between you and Zenith Radio Corporation?

A. Well, I have some of them, because the only one which is important is the last one, they are yearly agreements. Now I would like to mention, Mr. Commissioner, that yesterday I had not got this, but when I looked into it, the Summons asking me to appear and testify says I had to produce, in substance, all the documents relating to correspondence between myself and Zenith Radio Corporation. In fact this correspondence ceased on the 1st January, 1960. Since 1960 a Company called Zenith Sales Corporation became the counter-party which we were dealing with and our agreements after the 1st January, 1960, are with Zenith Sales Corporation. Now with Zenith Radio Corporation we had some correspondence relating primarily to hearing aids, pay T.V. and some private matters. Now Zenith Sales Corporation is, as far as I know, a complete legal entity with a separate Board, separate Directors, separate management, separate offices.

Q. Your contracts beginning in 1960 were with Zenith Sales Corporation, which you distinguish from Zenith Radio Corporation, the Defendant and Counterclaimant in this case?

MR. McCONNELL: He is not ordered to produce anything from Zenith Sales Corporation.

107 A. Well, I do distinguish. They may be father and son, but they are two different beings.

* * *

110 MR. KAYSER: Do you know whether or not you had the written agreement with Zenith until January, 1960?

A. I believe I did, as far as I can recall; but it is six years with all sorts of things happening in between.

Q. Did you make a search to see whether or not you had it?

A. In fact I can make an additional search yes, definitely. I would like to find it.

Q. Were you given any explanation as to why your new agreement was to be with Zenith Sales Corporation?

A. I think there was a circular letter—I believe so; and from the 1st January all business has been taken over by Zenith Sales Corporation.

Q. Do you have that circular letter?

A. No.

Q. Have you looked for it?

A. Yes, it is not in this correspondence or the general correspondence.

Q. What were the terms of your agreement with Zenith Sales Corporation?

A. Well ——

MR. McCONNELL: I object to his agreement with Zenith Sales Corporation. There is no issue between Zenith Sales Corporation that I know of.

MR. KAYSER: You mean between Zenith Sales Corporation and Hazeltine Research?

MR. McCONNELL: Hazeltine Research?

MR. KAYSER: You said there was no issue between Zenith Sales Corporation. I wondered between Zenith Sales Corporation and whom?

111 MR. McCONNELL: There is no issue here. We have a law suit for Zenith Radio Corporation, which you know full well, and there is nothing in the order that compels this witness to produce anything from Zenith Sales Corporation, and I object to his producing anything from there or having it brought in on this Deposition.

MR. KAYSER: What was the date of your agreement with Zenith Sales Corporation?

MR. McCONNELL: I object to any questions on that as not within the issues of this case.

MR. KAYSER: I would like to make a statement for the record, and that is that we have an Order from Master Lawrence for the oral examination of this witness.

MR. McCONNELL: On the issues in this case.

MR. KAYSER: That is right.

MR. McCONNELL: Yes, and there is no issue in this case relating to Zenith Sales Corporation. They are not a party to the case and there is no issue between them, and I object to this witness testifying on any issue on that question, and he is not ordered to do it either.

MR. KAYSER: What is the date of your first agreement with Zenith Sales Corporation?

MR. McCONNELL: I object to that.

THE WITNESS: Should I answer this question because, Mr. Commissioner, I am getting very confused because of argument between Counsel, and I really do not know what my duties are.

MR. McCONNELL: He has his own Counsel here, he can confer with him.

112 (The witness conferred with Mr. Sturge and Mr. Levinson)

A. I understand, from instructions from my Counsel, that I am not compelled to answer any question relating to Zenith Sales Corporation.

MR. KAYSER: Have you been a distributor for Zenith

Radio Corporation at any time after January 1, 1960?

A. For one division of Zenith Radio Corporation.

Q. Which division is that?

A. The hearing-aid division.

Q. You have not been a distributor for Zenith Radio Corporation since January 1, 1960, either as to radio sets or television sets?

A. No.

Q. To your knowledge has Zenith Radio Corporation had a distributor in the United Kingdom since January 1, 1960, for radio sets or television sets?

A. Not as far as I know.

Q. Did your contract with Zenith Sales Corporation give you the exclusive right to sell the products of Zenith Radio Corporation?

A. That is the same question as before, which I understand I do not have to answer.

Q. Did you have any right to sell in the United Kingdom, beginning with January 1, 1960, as distributor, any of the radio products or television products of Zenith Radio Corporation?

MR. McCONNELL: I object to that as calling for a legal conclusion as to who the title in these properties is and who he was dealing with. The best evidence of his 113 relationship is in the written contracts and you have not ordered them in here. They are not under subpoena and the witness has refused—properly in my view—to produce them, and I object to examining him on the contents of a document not in evidence which I assume, if you are entitled to it, you could get an Order for. Why don't you go to Judge Austin and ask him and see how far you get now with this? You slipped through the Order when I was over here in England and let's see if you can get it with my opposition.

MR. KAYSER: I do not think your son would like that characterisation.

MR. McCONNELL: I don't care; you slipped it by him, apparently.

MR. STABLE: I would like to say that the procedure pertaining to the Order of Master Lawrence cannot properly be described as "slipped by". It was obtained in accordance with the Rules of the Supreme Court in this country and they were strictly complied with.

MR. McCONNELL: Counsel, you are a very sensitive gentleman. I was not talking about you at all.

MR. STABLE: The process in England is an English process, and in accordance with that process I acted for Hazeltine.

MR. McCONNELL: Don't put on the shoe unless it fits. I have not made any comment about you or your conduct in this country, I am talking about what happened in Chicago.

MR. STABLE: No, you were talking about slipping this by in England.

MR. McCONNELL: I know what I am talking about. Don't tell me what I am talking about.

114 MR. STABLE: What was said that we slipped it by ———

MR. McCONNELL: No, I did not say any such thing.

MR. KAYSER: I think, Mr. Stable, obviously what he was talking about was me and the Chicago Court, and I guess we can both stand that.

Q. Were you told, Mr. Ramsay, whether there was any relationship between Zenith Radio Corporation and Zenith Sales Corporation?

MR. McCONNELL: I object to that. If there is a relationship and what it is can be proven in Chicago by proper legal evidence.

MR. KAYSER: It is a proper circumstance involved here, and will you, please, answer?

A. I was not told. I was faced with fact, and that is all.

Q. Do you know who manufactures the radio sets you have been selling in the United Kingdom?

A. Well, I think it is Zenith Radio Corporation and some outside factories, who are different.

Q. What products were you authorised to distribute under your 1959 agreement with Zenith Radio Corporation?

A. Radios and phonographs, and combinations of radios and phonographs, record players.

Q. That is all?

A. That is all.

Q. Radio phonographs in England, I believe ———

A. Are radiograms.

Q. A phonograph is called a gramophone?

A. A phonograph is called a radiogram.

Q. What is a combination radio and phonograph?

A. Well, that is a radio-gram. If it is without radio 115 it is described in England as a record player.

Q. It is not called a gramophone?

A. No.

Q. I understand, then, Mr. Ramsay, that you take the position that Zenith Sales Corporation is a different Company than Zenith Radio Corporation?

A. I believe it is.

Q. And that your distributorship in the United Kingdom, beginning January 1, was with Zenith Sales Corporation?

A. That is correct.

Q. But so far as you know the products which you distributed are the products of Zenith Radio Corporation?

A. Not only.

Q. Not only?

A. Well, I believe there are some outside factories which are manufacturing for Zenith too.

Q. For Zenith Radio Corporation?

A. I believe so, I am not sure.

Q. I think you said that from time to time you gave releases to the Trade Press and you also had interviews with reporters or representatives of the Trade Press. Did you also have interviews with people from the non-trade Press, namely newspapers?

A. Yes, I believe so.

Q. Did you ever have an interview with anyone from the "Evening Standard"?

A. Possibly, yes.

Q. That is a London newspaper?

116 Yes, it is.

Q. With general circulation here in London?

A. Yes.

Q. Do you recall an interview with a representative of the "Evening Standard" in about October, 1962?

A. No, because there were so many different discussions with various people that one cannot identify one particular conversation.

Q. Do you recall telling a representative of the London "Evening Standard" in about October, 1962 ——

MR. McCONNELL: I want to object to this question before you answer it.

MR. KAYSER: I would like to finish it.

MR. McCONNELL: Go right ahead.

MR. KAYSER: Do you recall having an interview with a representative of the "Evening Standard" in about October, 1962, when you stated that you had founded Mercantile approximately three years ago specially to import Zenith products?

A. No, I do not think I could have said such a thing because that would not be the fact.

117 MR. KAYSER: I will ask the Reporter to mark as Plaintiff's London Depositions Exhibit No. 37 for identification, a reproduction of a page of the "Evening Standard" for October 25, 1962.

(Page from "Evening Standard" of October, 25, 1962, marked "Plaintiff's London Depositions Ex. No. 37 for id.)

MR. McCONNELL: I did not get a chance to make my objection before the witness answered, so I will make it now. First, it is hearsay. In 1962 the witness was not working for Zenith Radio Corporation in any capacity. He had no contract with them, and the conversation took place outside the presence of any representative of Zenith Radio Corporation, if it existed, and therefore is hearsay. Secondly, it is a leading and suggestive question to your own witness and bad in form. Thirdly, I do not know what that document is, but it certainly is not a page of any paper that has been identified in this proceeding.

MR. KAYSER: I will show the witness Plaintiff's London Depositions Exhibit No. 37 for identification and——

MR. STURGE: I would like to see this.

MR. McCONNELL: I would like to see it, too, before you examine the witness on it.

MR. STURGE: There are rules about this sort of thing.

MR. McCONNELL: He does not pay any attention to rules. (*Document handed to counsel*) I object to you cross-examining your own witness on that document.

MR. KAYSER: I suggest that the record makes it abundantly clear as to the place where this witness sits.

THE WITNESS: What do you want me to do with this?

MR. KAYSER: I would like you to read that article
headed "Zenith Success" and I ask you if it refreshes
118 your recollection as to what you told the representative
of the "Evening Standard".

MR. McCONNELL: I object to counsel's testimony that the witness told him anything. He has just told you he did not tell him that. I move to strike out your gratuitous remarks.

THE WITNESS: It is a beautiful story. That is all I can identify it as.

MR. KAYSER: Can you tell me what portion of it you believe not to be true, if any?

MR. McCONNELL: I object to his characterising what is or is not true in somebody else's article. He did not write the article. He has no responsibility for it. You are cross-examining him on somebody else's statements and making the witness go down and categorically say this and that. I object to it. It is not proper cross-examination.

THE WITNESS: There are a few parts which I do not agree with.

MR. KAYSER: Which are they?

A. That the demand was quite fantastic. The demand was good, but "fantastic" is a newspaper expression for maybe something good. I cannot remember about the dock strike, whether there was one. The part about United Mercantile is not correct, definitely. The part about T.V. is not correct.

Q. And the reference to the size of Zenith?

A. It is difficult to say, because one would have to make numerous calculations to find out whether it is correct or not.

Q. Is it true that selling of Zenith products here had been hard going because of the high purchase tax?

A. No, but that was a general subject of all the press in England for many years.

119 Q. It is a fact that Zenith products were more expensive than those of the radio products and those of the other sets which were being sold in the United Kingdom?

MR. McCONNELL: I object to this as an improper way of examining your own witness. It is cross-examination and it is calling on this witness to conclude a whole branch of this law suit. What the prices are among the competitors and all of that is not before the witness. He is being examined on somebody else's statements which he has no responsibility for. I object.

MR. KAYSER: That question had to do with his knowledge, I believe, of the English market, where he has experience.

MR. McCONNELL: You are cross-examining now. This is your witness. You have no right to cross-examine this witness.

MR. KAYSER: We have a question pending.

A. Yes, but I am afraid I forget what it was.

(The Reporter read the question: "Is it a fact that Zenith products were more expensive than those of the radio products and those of the other sets which were being sold in the United Kingdom?")

MR. McCONNELL: If he knows.

THE WITNESS: Yes, they are, and that is quite justified, because of their quality, design, and so on.

MR. KAYSER: Are there any other statements in that article that you would consider to be untrue?

A. Not untrue. I do not know. Here it says, "Zenith is known as the 'gee-whiz' firm on Wall Street: £350 invested in its shares in 1935 would be worth £700,00 today!" That would require some calculations.

MR. McCONNELL: I think this is a most unfair way to examine a witness, your own witness particularly, 120 asking him whether a newspaper article is true and about all sorts of statements in it, and we do not even know if it is a newspaper. You have not even identified that yet. I move to strike it all out.

MR. KAYSER: Do you recall having had a meeting with a representative of the "Evening Standard" at any time?

A. As I said, we were meeting several people and therefore it is difficult to say about one particular meeting with one particular person. I do not think it says the name. I do not know if the name was mentioned.

Q. Do you recall meeting anyone from the "Evening Standard"?

A. When we had press conferences there were, say, fifty people there, so one was meeting them without even knowing which newspaper they were from, what they were or who they were.

Q. Do you recall meeting a Mr. William Davis of the "Evening Standard"?

A. I do not think I ever met him.

Q. What portion of the shares of United Mercantile did you own when it was organised?

A. All except one.

Q. That was 17,999 out of 18,000?

A. That is correct.

Q. Who owned the other share?

A. Mrs. G. M. Salmon.

Q. Who is she?

A. She is my secretary.

Q. Is the share ownership still the same?

A. Yes.

Q. You are the managing director of United Mercantile Co.?

A. I am.

121 Q. You are the gentleman who makes the decisions and sets the policies?

A. Yes, when I am in the office.

Q. In June 1959, when you got the Zenith distributorship, there were two television programmes or bands in the United Kingdom, were there not?

A. Yes.

Q. What were they?

A. The B.B.C. and the Independent Television Authority transmitters.

Q. That is what is known as—

A. The I.T.V.

Q. What was the picture line transmission at that time?

A. 405 lines.

Q. 405 lines per picture?

A. It is 405 lines per second, I believe. It is rather technical.

Q. What was the number of lines used in the United States?

A. 525.

Q. Does any country other than the United Kingdom have the 405 line transmission?

A. Yes.

Q. Which?

A. I believe some of the colonies and overseas territories. I believe Hong Kong has 405. I think some of the African countries have, and countries in the Mediterranean. I do not know exactly which ones.

Q. Do any countries on the continent have 405 lines?

A. No, I do not think so.

Q. Does Canada?

A. I think that Canada has the American system.

122 Q. Would a U.S. television set designed to receive 525 line programme receive the United Kingdom 405 line programme?

A. It would require a modification.

Q. Would it receive the programme as produced for the American market?

A. No.

* * *

127 MR. KAYSER: Referring to page 329 of "Radio Retailing", which you have been testifying about, I would like the Reporter to mark as Plaintiff's London Depositions Exhibit No. 38 a copy of page 329 of that publication bearing the article "Zenith Comes to U.K.", which Zenith

counsel can of course compare to see whether it is an exact copy.

MR. McCONNELL: Let me ask you a question, Mr. Kayser. Did you make a photostat yourself or under your supervision or control?

MR. KAYSER: It was made under the supervision of Clifford Turner & Co., solicitors.

MR. McCONNELL: All right. Mark it. Let us get on with it.

(Copy of page 329 of "Radio Retailing" marked "Plaintiff's London Depositions Ex. No. 38 for id.")

128 MR. McCONNELL: These documents that you are using—leave them around, will you, because when I get to them in my examination I am going to mark some of them.

MR. KAYSER: Mr. Ramsay, I show you a photostat of the letter produced by Zenith in this litigation as a part of Zenith's bulk Exhibit No. 112, which is a copy of a letter dated September 14, 1961, from Mr. Semonoff of the International Division addressed to you, Mr. A. R. Ramsay, and ask you if you received the original of that letter?

MR. McCONNELL: Before you start examining on it, let me see it.

(Document handed to counsel and then passed to the witness)

THE WITNESS: That is correct, yes.

MR. KAYSER: You received that letter shortly after the date it bears?

A. Yes.

Q. Would you produce the original of it, please?

A. That is, again, Zenith Sales Corporation.

Q. I asked you: could you produce the original of it?

MR. McCONNELL: You have already got that produced from Zenith. You do not have to produce it again.

THE WITNESS (*after consulting his legal advisers*): I understand from my counsel that I do not have to, under the order. There is no order to produce it.

MR. KAYSER: Did that letter have to do with products of Zenith Radio Corporation?

MR. McCONNELL: I object to that. The letter speaks for itself.

129 MR. KAYSER: Would you answer the question, please?

A. Yes, it does.

Q. Do I understand that you refuse to produce the original?

A. Yes, in accordance with the order.

Q. Is this your interpretation, or is this the advice of your counsel?

MR. STURGE: He is not a—

THE WITNESS: Well, my counsel is myself.

MR. McCONNELL: Counsel wants to look at the document. Can we see it for a moment?

MR. KAYSER: Surely.

(Document handed to counsel)

MR. McCONNELL: I think this falls within the terms of the order. I think the witness should produce it, if he has got it. I have not any objection to his producing the original of it, if he has got it. Counsel already has a copy from our files which shows its authenticity.

MR. KAYSER: Do you admit its authenticity?

MR. McCONNELL: Why, sure? Anything you got out of my files, of course I admit its authenticity.

MR. KAYSER: In other words, you will not raise the question that we do not have the original?

MR. McCONNELL: No, sir.

MR. KAYSER: I ask the Reporter to mark that.

MR. McCONNELL: I will note for the record, however, that that was available to you from the time the case was tried. Either you did not use it or you saw it had no materiality.

130 MR. KAYSER: The fact of the matter is, as I understand it, Mr. McConnell, that this was one of the bulk exhibits that you offered at the trial.

MR. McCONNELL: No, you are wrong. You were not at the trial and you just get the thing all mixed up because you were not there.

(Copy of letter dated September 14, 1961, marked "Plaintiff's London Depositions Ex. No. 39 for id.")

131 MR. KAYSER: Who was Mr. W. Semonoff?

A. One of the employees in the International Division of Zenith Sales Corporation.

Q. The first sentence says: "The information in this letter and also the enclosed material will tend to deal with your possibly introducing Zenith television in the United Kingdom, in the very near future". Do you have the material enclosed with that letter?

A. Yes.

Q. Would you produce it, please?

MR. McCONNELL: I do not think he has to produce it. It is from the International Division of Zenith Sales Corporation. He is not under any order to produce it. I said I would give you that letter. You produce that in Chicago.

MR. KAYSER: I believe I have a question to the witness; not to Mr. McConnell.

MR. McCONNELL: I did not answer any question. I made an objection.

THE WITNESS: Yesterday great emphasis was put on technicalities and the proper conduct, and, therefore, I do not want to start breaking my own objection to produce any correspondence with Zenith Sales Corporation.

MR. KAYSER: Will you produce the material that was enclosed?

A. There is no order for me to do so.

Q. Did that material have to do with products of Zenith Radio Corporation?

A. Yes.

Q. Can you tell me what it said about the products of Zenith Sales Corporation?

132 A. How to convert a set to the C.C.I.R. standard, which is the European standard.

Q. Could you give me the exact words of the instructions?

A. Oh, no.

Q. Then could you produce the document as the best evidence?

MR. McCONNELL: He is not under any order, as I understand it, to produce something with the Zenith Sales Corporation. You did not get any such order in Chicago, and you certainly have not got one here.

MR. KAYSER: I understand you refuse to produce those instructions?

A. Yes. We are coming back to the first question.

Q. I would like to call to your attention, Mr. Ramsay, that in this order it refers to "conversion instructions or manuals for converting Zenith television sets for use in the United Kingdom".

A. That is correct, yes.

Q. This had to do with Zenith television sets?

A. You are not asking for conversion manuals. You asked me for details attached to this letter, which are different things.

Q. Conversion manuals or instructions.

A. Yes, I have conversion manuals.

Q. I am asking for the conversion instructions, which I understand you indicated was the material enclosed with this letter.

A. No, I do not think so, because conversion instructions are printed sheets by Zenith Radio Corporation, available to any distributor in the world.

Q. Are you refusing on the ground that these are not printed instructions?

133 A. No. You asked me to produce the enclosures to this letter, which were from Zenith Sales Corporation, and therefore I refused to do so.

Q. And I called to your attention that the order referred to—

A. I have not finished; I am sorry.

Q. All right.

A. But if you ask me for conversion manual of Zenith Radio Corporation, I will produce it.

Q. All right. I will ask you for the conversion manual of Zenith Radio Corporation.

A. Here they are. (Produced).

Q. When did you receive those?

A. From time to time, because the conversion varies from chassis to chassis and model to model.

Q. You have produced two books with black covers, headed "Zenith Service Manuals", one of which also has the letters on the back C.C.I.R"; is that correct?

A. That is correct.

Q. What do these service manuals relate to generally?

MR. McCONNELL: I object to that. They speak for themselves.

MR. KAYSER: Do they have to do with the conversion to the 625 line screen?

A. Not only 625, to the C.C.I.R. 625, in various different markets.

Q. Do they have anything to do with the conversion to 405 lines?

A. No.

Q. Then I believe you stated yesterday that you have no service manuals for conversion to the 405 line screen?

A. Not from Zenith, no.

134 Q. Do you have any that you prepared yourself?

A. For my internal purpose, yes.

Q. Could you produce those, please?

MR. McCONNELL: I object to that. The conversion manuals from Zenith are the only things material here.

MR. KAYSER: No. The order says conversion manuals having to do with Zenith sets.

MR. McCONNELL: It does? His own conversion manual?

MR. KAYSER: It is "conversion instructions or manuals for converting Zenith television sets for use in the United Kingdom". It does not say "received from either Zenith Radio Corporation", or even "Zenith Sales Corporation".

THE WITNESS: I hope I will get it back, because that is the only copy I have. (Produced).

MR. McCONNELL: You will get it back all right.

MR. KAYSER: You have handed me what appears to be a reproduced copy, consisting of five sheets, the first sheet being headed "Television Model K.3345 Chassis 16K23QS". Who prepared this document?

A. One of my engineers.

MR. KAYSER: Would you mark the document I have just referred to as Plaintiff's London Deposition Exhibit No. 40 for identification?

(Conversion instructions marked "Plaintiff's London Deposition Exhibit No. 40 for identification")

Q. Who was your employee who prepared these instructions?

A. I have three young engineers in our service department and it was a joint effort. I told them: "Look, I 135 want a television for my own use", so they did that, because at no time do we anticipate to have to convert any Zenith sets. When the time comes and we can import them, we shall be getting complete built proper Chicago sets and conversion will not come into it.

Q. Who were the three employees that you have just referred to?

A. The names you want?

Q. Yes.

A. Mr. Clovolou, Mr. Walker and a Mr. Leon.

Q. Are they still with you?

A. Yes, they are.

Q. When was the conversion that you refer to made?

A. A few months ago.

Q. Just a few months ago?

A. Yes.

Q. In 1965?

A. I believe so, yes, or 1964.

Q. Can you identify the time more closely than that?

MR. McCONNELL: I object to what happened after 1965. We have a damage period here which ends in May 1963.

MR. KAYSER: This was either 1964 or 1965; is that correct?

A. It was definitely.

Q. This is the only set you have—

A. For my own use, yes.

Q. The only set that United Mercantile has converted?

A. That is correct.

Q. Has Zenith ever sent you any kits to convert the U.S. set to 405 lines?

A. No, they have not.

136 Q. Has Zenith ever sent over to you a set converted to the 405 line transmission?

A. No.

Q. You had this set converted for use in your home, the one that is referred to in these instructions?

A. That is correct, yes.

Q. Did this set also receive 625 lines?

A. It does.

Q. These instructions describe the changes to be made both—

A. Yes, convertible.

Q. In other words, with these instructions, you would have a dual set which would take 405 and 625 lines?

A. That is correct.

Q. By "these instructions" I am referring to Plaintiff's London Deposition Exhibit 40 for identification. Your testimony is that a skilled workman using those instructions could take a U.S. set and produce a set which would receive both 405 and 625 lines?

A. That is correct, yes.

* * *

138 Q. Am I correct that the information which you say you had concerning the so-called Patent Pool came from people in Zenith Radio Corporation?

A. That is correct, yes.

Q. Anyone else?

A. I did not know about it.

* * *

155 MR. KAYSER: I am sorry; marked for identification, as Plaintiff's London Deposition Exhibit 38, page 329 from "Radio Retailing", and in there you are quoted as having said: "We shall keep a very close watch on the U.K. market, so that, as the situation warrants it, we can bring in more Zenith products. At the present moment we are waiting to see what the Government's decision will be regarding the third T.V. channel before we commit ourselves on importing T.V. receivers".

MR. McCONNELL: I object to reading that in evidence. You have not identified it as the statement of this witness. You have not identified it out of any conversation. You have got a hearsay statement which you are reading into the record. I move to strike it out.

MR. KAYSER: I will ask the witness if it is not the fact that the Government was in August 1959 considering a third channel for United Kingdom television.

MR. McCONNELL: I object to that. This man was not with the Government. He did not have anything to do with broadcasting. There is no showing that he did. He has no information on it.

A. There were rumours about it.

MR. KAYSER: Did these rumours have to do with the possibility of introducing a 625-line station?

A. I believe so, yes.

• • •

164 Q. Mr. Ramsay, you have handed me, first, one page headed "Sales Information Bulletin" and dated July 1959?

A. Yes.

MR. KAYSER: I would like this to be marked for identification as Plaintiff's London Depositions Exhibit No. 44.

(Sales Information Bulletin dated July 1959 marked "Plaintiff's London Depositions Ex. No. 44 for id.")

Q. You have handed me another price list consisting of three pages and dated July 1959. It has at the top "Ref. 5/7/59", which document I will ask the Reporter to mark as Plaintiff's London Depositions Exhibit No. 45 for identification.

(Three-page document with "Ref. 5/7/59" on it marked "Plaintiff's London Depositions Ex. No. 45 for id.")

Finally, you have handed me a third price list consisting of one page, which is marked "Sales Information Bulletin. Confidential. November 1960".

(Document marked "Plaintiff's London Depositions Ex. No. 46 for id.")

Do you have any more price lists covering the period from July, 1959 to May 22, 1963?

A. Yes, I have.

Q. Could you produce those, please?

MR. McCONNELL: Is there anything in this order about price lists? There is no order on Mr. Ramsay to produce price lists. I thought we were talking about correspondence. There is certainly nothing here about price lists.

MR. KAYSER: I think this certainly is within the scope of the subject matter.

MR. McCONNELL: Where is it in the order?

165 MR. KAYSER: It is within the scope of the subject matter of the oral examination, which has to do with the distribution of Zenith Radio Corporation products.

MR. McCONNELL: I object to Mr. Ramsay producing price lists here under any such order as this.

MR. KAYSER: Mr. Cook calls my attention to the fact that the order does call for "records showing the cost of such products", namely, Zenith radio sets and television sets, "shipping and importing charges, and the selling price for such products".

MR. McCONNELL: That is a sale, is it not.

MR. KAYSER: Selling price.

Q. Do you have any more price lists for Zenith Radio Corporation products?

A. Yes, I do.

Q. Would you produce them, please?

A. Here they are. Excuse me, Mr. Commissioner. When will I get back all these papers?

THE COMMISSIONER: I understand that copies will be made for the purpose of attaching them to the depositions and that the originals will then be returned.

THE WITNESS: Because we have to refer to them in our daily work.

MR. KAYSER: I observe that the beginning date of this group you have just handed me is April 1960 and the final date is January 1963; is that correct?

A. That is correct.

MR. KAYSER: Possibly, if Mr. McConnell is agreeable, we can treat these documents as one exhibit and give each page a letter.

MR. McCONNELL: Fine.

166 MR. KAYSER: Then I ask that the price lists which Mr. Ramsay has just handed me be marked for identification as Plaintiff's London Depositions Ex. No. 47 and that each page be separately lettered.

MR. McCONNELL: Will you state for the record how many pages you have got? We had a little trouble with counting the other day.

MR. KAYSER: According to my count there are 27, including some smaller sheets and some sheets on which information is written in longhand.

(Twenty-eight price lists marked "Plaintiff's London Depositions Ex. No. 47 for id.", with the pages lettered "A" to "Z" and "AA" and "BB".)

* * *

170 MR. KAYSER: It will be five copies, then.

Q. You have previously produced today, Mr. Ramsay, two black covered volumes headed "Zenith Service Manuals" and I have checked them, and according to what I have seen the earliest date appears to be January 12, 1960 and the latest date appears to be May 14, 1965.

A. That is possible, yes.

Q. As I understand it, these Service Manuals and the contents were received from Zenith Radio Corporation?

A. They were received from Zenith Sales Corporation.

Q. But they had to do with the conversion of television sets of Zenith Radio Corporation?

A. Of Zenith televisions, yes.

Q. To the 625 line scan, I think they call it?

A. That is right, yes.

Q. Is the C.C.I.R. that is referred to the 625 line scan?

A. It is the designation of the Consultative Committee which decides on the systems, of which I think all European
171 countries are members. From time to time they meet and they decide this.

Q. I understand that is 625 lines, the C.C.I.R. standard?

A. Yes, that is the C.C.I.R. standard.

Q. But there are some differences between the C.C.I.R. reception and the U.K. 625?

A. Very, very slight.

• • •

17 Q. Do you have any personal knowledge of the steps which would be necessary to convert a 525 line U.S. set to a 405 line set which would meet the British standards?

A. I personally?

Q. Yes.

177 A. No. I am not a technician.

(The witness continued searching through his files)

MR. McCONNELL: You do not have to fool with that now, Mr. Ramsay. We can do that when we get through.

MR. KAYSER: According to the material which Zenith has put in evidence in this case, it exported 21 television sets to the United Kingdom in the year 1961. Do you know whether those sets were delivered to you?

A. I presume so, yes.

• • •

183 MR. KAYSER: I hand the witness, but I understand Mr. McConnell will wish to see it first, a bound volume containing the May 19, 1962, issue of Electrical and Radio Trader, calling attention particularly to page 14, which is headed "Zenith Ready". In the meantime, I will

ask the reporter to mark a copy of that page as Plaintiff's London Deposition Exhibit No. 55 for identification.

(Copy of page 14 of May 19, 1962, issue of Electrical and Radio Trader marked "Plaintiff's London Deposition Exhibit No. 55 for identification")

MR. McCONNELL: Yes. (Volume passed to witness).

A. Yes.

MR. KAYSER: Will you note that reports or says: "A. R. Ramsay, Managing Director of United Mercantile Company, sole distributors in the U.K., told E.R.T. this week that colour sets as well as black and white will be imported immediately the market opens"?

A. Yes.

Q. And in the first paragraph it says: "Zenith, the leading American TV manufacturer, is all set to supply 625
184 line sets to Britain as soon as the outcome of the Pilkington Report is known".

A. Yes.

MR. McCONNELL: Wait a minute. I object to this procedure of reading into a record something which is not in evidence, and could not possibly get in evidence on any showing you have made, and trying in that way to include it in the record. I further object to cross-examining the witness on a document which he did not write, and there is no showing he has any connection with it. As I said before, a paper will not refuse ink. Anybody can write anything, and usually do in newspapers, and I think this is an entirely improper method of examination, and I object to it.

MR. KAYSER: Mr. Ramsay, did you give the information stated in that article to a representative of Electrical and Radio Trader?

A. I cannot recall. Quite possible.

• • •

185 MR. KAYSER: I show the witness the July 7, or particularly page 11 of the July 7, 1962, issue of Wireless and Electrical Trader, calling attention to the article: "Zenith 625 line TV sets are on the way".

MR. McCONNELL: Do you want to read that into the record, too?

(Volume handed to Mr. McConnell).

MR. KAYSER: I will ask the reporter to mark a copy of said page 11 as Plaintiff's London Deposition Exhibit No. 56 for identification.

(Copy of page 11 of July 7, 1962, issue of Electrical and Radio Trader marked "Plaintiff's London Deposition Exhibit No. 56 for identification")

186 MR. McCONNELL: O.K.

MR. KAYSER: I will ask Mr. Ramsay to read the article.

MR. McCONNELL: Read it to yourself; not into the record.

MR. KAYSER: And ask him to say whether or not he furnished the information therein contained to a representative of Wireless and Electrical Trader.

A. Sorry; what is the question?

Q. I asked whether or not you furnished the information contained in that article.

A. Possibly, yes.

Q. And made the statements contained therein?

A. Possibly, yes.

Q. Do you recall whether or not you did?

A. No, I cannot recall 1962 July statements in 1965.

Q. Is it still your testimony that you never gave any press releases on the subject of 625 line television?

A. As far as I recall; no, because there would not be any purpose. It would be a waste of time.

Q. I notice a reference in the first paragraph to: "An initial consignment of Zenith 625 line television receivers is on its way to this country from America".

MR. McCONNELL: I object to reading in hearsay statements out of a newspaper.

MR. KAYSER: I will ask the witness whether or not—

MR. McCONNELL: I move to strike it all out.

MR. KAYSER: —whether or not the initial consignment referred to therein was ever received.

A. Possibly, because you mentioned yourself that
187 you have evidence of 21 sets being shipped, so there
may have been some C.C.I.R. sets 625; I do not know.

Q. That 21 sets was in 1961, according to Zenith's evidence.

A. Yes; we may have received some in 1962. I still have some 625 sets.

Q. You do not recall whether or not you received any in 1962?

A. No. Possibly I did, yes.

MR. McCONNELL: I move to strike out what he possibly might have gotten. If he knows, all right. If he does not know, he should say so.

MR. KAYSER: I call to the witness's attention page 107 of the July 21, 1962, issue of Wireless and Electrical Trader, particularly the article headed "Zenith Development for Record Playing", and then the last paragraph of that article, which makes reference to Zenith 625 line receivers.

While Mr. McConnell is looking at that, I would like the reporter to mark a copy of that page as Plaintiff's London Deposition Exhibit No. 57 for identification.

(Copy of page 107 of July 21, 1962, issue of Electrical and Radio Trader marked "Plaintiff's London Deposition Exhibit No. 57 for identification")

MR. McCONNELL: O.K.

A. Yes.

MR. KAYSER: Did you give a representative or reporter of Wireless and Electrical Trader the information shown in the article headed "Zenith Development for Record Playing"?

A. Possibly I did, yes.

• • •

188 Q. Did you have on display at your Queen Street showrooms at the end of July 1962 a range of Zenith 625 line television receivers?

A. Yes, I did.

Q. Were those television receivers which would receive the 625 line transmission proposed by the Pilkington Report?

A. Yes, that is correct.

Q. I show to the witness page 201 of the August 4, 1962, issue of Wireless and Electrical Trader, calling attention to the article headed "Zenith record development shown in London this week"; calling particular attention to the subheading and the material under "Zenith 625 line TV here". I assume Mr. McConnell will want to see it.

I ask the reporter to mark a copy of that page as Plaintiff's London Deposition Exhibit No. 58 for identification.

MR. McCONNELL: That is a very sound assumption you made there.

(Copy of page 201 of the August 4, 1962, issue of Wireless and Electrical Trader marked "Plaintiff's London Deposition Exhibit No. 58 for identification").

MR. McCONNELL: O.K.

A. Yes.

189 MR. KAYSER: Will you take a look at that?

A. Yes, I did.

Q. Will you state whether or not you did in fact have a demonstration at your showrooms previous to August 4, 1962, as referred to in the second paragraph of that article?

A. Could you repeat the question?

Q. What I first asked concerns the second paragraph, whether you in fact had the demonstration at your showrooms referred to there.

A. Yes.

Q. And did you in fact have seven models from the Zenith 1963 T.V. range in the showroom?

A. Yes.

Q. Are those sets equipped to receive 625-line transmission?

A. Yes.

Q. Were they equipped to receive 405-line transmission?

A. No.

Q. Did you put out a press release at that time concerning the possibility of selling 625-line screen television in Britain?

A. I do not know if we made a Press release.

MR. KAYSER: I would like to show the witness the back of page E of Plaintiff's London Deposition Exhibit No. 47 for identification, the front of which page appears to contain some price information, and the back of which looks like some mimeographed material; in other words, it looks as though the back of the sheet was used for price information.

MR. McCONNELL: Let me look at it before you examine the witness on it.

190 MR. KAYSER: Surely. (Exhibit handed to Mr. McConnell and then the witness).

A. Yes.

Q. Is the printing on the back of that a part of a Press release?

A. I do not know.

Q. At the time of this Press conference, or whatever it is you had in August 1962, were you advertising Zenith phonograph with micro-touch tone arm?

A. Probably, yes.

Q. You say you do not know whether or not—

A. It is difficult to identify a scrap of paper without any heading, any signature, any details. Anyway, it should not be in your papers, because I should have given you only price lists, and that is not a price list.

Q. On the front there are prices.

A. Therefore, the front is usable.

Q. I show you page G from the same Exhibit, and on the front this time, where it is headed "Price List of Zenith Stereophonic Equipment", there was a statement.

A. Yes.

Q. It says: "We regret for the time being our combined television-radiogram units cannot be used in the U.K. until a system of television transmission is changed to 625 lines".

A. Yes.

Q. Was that information put out to your customers?

A. Well, I could not tell them the truth.

Q. You told them what was in this last paragraph?

191 A. That is right. You have to find an excuse. You give a beautiful leaflet with wonderful combinations and everybody wants them. So, what can you tell them?

Q. I show you page M out of the same Exhibit.

A. The same thing.

Q. You have not seen it yet.

A. That was one of my standard excuses not to sell television.

Q. You mean your standard excuse was that you were waiting for 625-line screens?

A. As far as the public was concerned, yes.

* * *

192 Q. I show you another letter dated August 1st, 1962, from you to Mr. John A. Miguel, Jr., Vice President, Zenith Sales Corporation. This again, as all these previous letters, was out of Zenith book Exhibit 112.

MR. McCONNELL: All of which have been before the Court and they have been under his scrutiny and, after reading them all, he has found every issue against you in the law suit.

MR. KAYSER: As a matter of fact, Mr. McConnell, I believe these were put in evidence and no reference was made to them.

MR. McCONNELL: That is a thing you threw on the floor in your hearing in Chicago and made such an ass out of yourself.

A. Yes.

MR. KAYSER: Did you send the original of that letter?

A. Yes.

MR. McCONNELL: Will you let me read it before you go ahead with your examination?

MR. KAYSER: By reason of your remarks, I assumed you had nothing better to do.

A. Yes.

Q. Have you read it?

A. Yes.

Q. I take it this reports on the Press conference mentioned in the August 4 article in the "Electrical Trader"?

A. It may do, yes.

Q. Do you know of any other Press meeting that you had at that time?

193 A. I think this letter relates to both, Press and dealers, as mentioned in the letter..

Q. Now, you said in your last paragraph on page 1: "This 625 business is a very great thing in England and I think we have a fair chance and as far as colour is concerned we have a very good chance".

A. Yes.

Q. Were you saying this to Mr. Miguel because you did not want him to know about the problems of this pool?

A. No. At that time, when the introduction of 625 was anticipated in England, it was a very big thing. Every British manufacturer was getting ready. We expected sales of millions of sets in the country; and if at that time we were able to start selling here, it would have been a big thing. What happened at a later date you may find from records and from the Press, but the 625-line introduction in England was a topic all over the Press. It was a very great thing.

Q. I gather that in August 1962 you also thought that the 625-line transmission would be a big thing?

A. I thought so, yes.

Q. Turning to the second page, you say: "Going back to the subject of T.V. sets, it is quite clear now that if we want to do a real business of it we must have a reasonably priced 19-inch".

A. Yes.

Q. "As you know, we took a sample of the K2108 and I would like to have your opinion whether it would be advisable to have a lower model to get the price down without
194 making the conversion too difficult". Why did you think that you needed a lower priced 19-inch T.V.?

A. Because I am probably too ambitious. When we come with televisions into this market, I would not satisfy myself with just a few per cent of the market. I would try to get more.

Q. You said you needed a reasonably priced 19-inch. Did you have any prices at that time for a 19-inch set?

A. Just indications of prices, yes.

Q. From Zenith Sales Corporation?

A. Yes, from Zenith Sales Corporation.

Q. What were the indicated prices which they suggested?

A. I do not remember what they were. They were changing every six months, because different lines were. There was a question of quantities involved. We were getting special quantity prices if we were purchasing.

Q. Do you have any records which show what the price was that was suggested that you should either pay or charge?

MR. McCONNELL: He did not even have a distributorship for T.V. What are we talking about? We have already got that in evidence.

MR. KAYSER: Do you have any records which show what prices you would be charged for 625-line television?

A. The only prices I had were for the few samples they sent to me, on which I was basing my calculations, but I did not have the proper quantity prices.

* * *

204 Q. Do you know of any manufacturer who is selling sets in the United Kingdom with 625 line only reception?

A. I do not know.

Q. Do you know whether the B.B.C.2, the third band programme, is broadcast all over England?

A. I believe the coverage is in certain parts of England and expanding until it will cover the whole of Britain.

(A short recess was taken.)

Mr. KAYSER: Mr. Ramsay, according to the evidence which Zenith Radio put in in this case there were exported to the United Kingdom during 1962 28 television sets and during 1963 to May 31 15 television sets.

A. Yes.

Q. Did you buy those sets?

A. Yes, I did.

Q. What happened to them?

A. In one second I will tell you. What was the number in 1962?

Q. Twenty-eight in 1962.

A. (Consults records) Twenty-eight—yes, that is correct. I am sorry—29, I thought. There may be an overlapping period. Some are dated January. There may be an overlap between the shipment from Chicago and the arrival in London. I have the records of what happened to them.

Q. Were those sets built to receive 625 line transmission when you received them, as delivered to you?

A. Some did. Some did not.

205 Q. How many were equipped when you received them to receive 625 line transmission?

A. I think four..

Mr. McCONNELL: I object to this. They obviously were not sold in the United Kingdom.

Mr. KAYSER: The witness has not testified to what happened to them.

Mr. McCONNELL: He has told you already that he never sold one in the United Kingdom.

THE WITNESS: In fact, there were more in 1962-63. As I said, there is an overlapping period. For instance, there are January deliveries. If you have serial numbers, I can identify each serial number.

Mr. KAYSER: All I know is that Zenith Radio Corporation has said that there were 28 in 1962.

A. Shipped by them in 1962, because I can see that some arrived in January 1963.

Q. How many arrived in 1962?

A. Thirty-five.

Q. How many of those sets were when they were delivered to you equipped to receive the British 625 line transmission?

A. Eleven.

Mr. McCONNELL: There were not any until 1964, according to the document you just produced.

Mr. KAYSER: If you and I want to discuss this thing, Mr. McConnell, there were test patterns, as I think is pretty clear on the record—the results of reports and recommendations.

Mr. McCONNELL: We are just wasting time with stuff which had nothing to do with the market.

206 Mr. KAYSER: What about the remaining 24 sets? What number of lines per screen were they equipped to receive?

A. Twenty-three were the American system. One was the European system.

Q. What happened to the 23 sets equipped with the 525 line transmission?

A. They went mainly to Argentina. Some went to Qatar in the Persian Gulf.

Q. Were these sets sold to you by Zenith Sales Corporation?

A. Yes, they were.

Q. What happened to the one European set?

A. The European set was sold.

Q. What happened to the eleven sets equipped to receive 625 lines?

A. I have them in stock now.

Q. Were they sold to you by Zenith Sales Corporation?

A. Yes.

Q. Were those black and white sets, or were any of them designed for colour reception?

A. Black and white.

Q. Was there more than one model?

A. Yes, there was more than one model?

Q. How many models?

(The witness consults records)

Q. You have before you there some file cards; is that correct?

A. Yes. There were seven models.

• • •

208 MR. KAYSER: Are any of those sets equipped to receive 405 line transmission?

A. No.

• • •

212 Q. Mr. Ramsay, how many employees did United Mercantile have when it started business in 1959?

A. Two.

Q. Who were they?

A. My Secretary and a driver.

Q. And yourself as Managing Director?

A. That is correct, yes.

213 Q. And by August, 1959, how many employees did you have?

A. About six or eight, I believe.

Q. How many sales personnel did you have by the end of 1959?

A. The end of 1959 we had, I think, about three—two or three.

Q. And Mr. Spink was one of them?

A. Yes.

Q. Who were the other two?

A. There was a man called Martin.

Q. Were they salesmen?

A. Yes.

Q. How many sales personnel did you have at the end of 1960?

A. About three, or something like that.

Q. How many at the end of 1961?

A. About the same.

Q. 1962?

A. Same.

Q. May 22, 1963?

A. About the same.

Q. You had three salesmen?

A. Two or three. It was varying; sometimes we had to change them, they were not right or something.

Q. What was your procedure and method for selling radios? Did these men go out soliciting business?

A. No, not now they don't, no.

* * *

214 Q. I asked you how you distributed radios during the period from 1959 to May 22, 1963.

A. Occasional advertising. We have a department in Harrods selling Zenith's.

Q. What did those two or three salesmen do that you have referred to?

A. Two were in Harrods selling, one in the showroom demonstrating.

Q. You have no salesmen that travel through the country?

A. No, we do not.

Q. How do you acquaint dealers with the availability of Zenith radios?

A. In 1959 we told them that Zenith is here. There is not a single dealer in England who does not know what Zenith is.

Q. What have you done since that time to acquaint dealers?

A. Occasional advertising in trade Press.

Q. Any other way?

A. One or two meetings in the showroom.

Q. In what publications in the Trade Press do you advertise?

A. There are three or four, some which you yesterday mentioned, I think Electrical Wireless Trading, or Electrical Radio Trading or something like that.

Q. Radio Retailing?

A. I think so.

Q. Can you name any others that you advertise in?

A. There are about, as I said, four or five.

Q. Who is in charge of placing that advertising?

A. I do now.

215 Q. Have you since 1959?

A. No. For a few months we had a firm of advertising agents.

Q. And you have placed the advertising since that time?

A. That is correct, yes; but some of it is placed from Chicago, but not in the Trade Press, in the general Press.

Q. What is the circulation of these trade publications?

A. I do not know exactly.

Q. You have described now all the means you have used to acquaint retail dealers with the Zenith products?

A. Yes.

Q. During the period from June, 1959, to May 22, 1963, has United Mercantile had any office or place of business other than its original location and the present location on Queen Street?

A. Yes, we did take additional premises for storage. Was it in 1963?—yes, I think it was in 1963.

Q. These were storage premises?

A. That is right.

Q. They were not offices?

A. No.

Q. Or for display?

A. No.

Q. You have displayed sets only at your offices?

A. At our showroom, next to the offices.

Q. What is the maximum number of employees you have had during the period from June, 1959, to May 22, 1963?

A. I think about fifteen.

Q. And they have all been at your offices except for 216 the two salesmen at Harrods?

A. Offices and Service Department, yes.

Q. How many men do you have in your Service Department?

A. Three

Q. The rest of them being office personnel?

A. Office and showroom—Sorry, I made a mistake. There was one in 1963 or 1964 but that was mainly for hearing aids; I do not know whether that interests you. In Harrogate that was.

• • •

218 Q. Have you found any particular type of Zenith radio which has been more popular than others?

A. Yes.

Q. What type is that?

A. It is the most expensive radio in their range.

Q. Is there a designation for it?

A. Well, it is known under the name of the Trans-Oceanic. The actual numbers differ as modifications come in.

Q. Has the price of that varied materially over the period from August, 1959, to May, 1963?

A. Not materially. There were fluctuations of a few pounds due to changes in purchase tax rates.

Q. That sells in the neighborhood of £170 including tax?

A. Today £165. 7s. 2d including tax.

Q. That is to the retail buyer, to the person who buys it to take it home to use it?

A. That is right.

Q. What proportion of your sales during the period from June, 1959, to May 22, 1963, have been in the Trans-Oceanic?

A. Quite a big proportion.

219 Q. As much as a half?

A. No, I would not say that.

Q. A third?

A. At that time I cannot say. Whatever I would say may be wrong.

Q. But that is the biggest seller?

A. Well, it always appears to be the biggest seller because it is the most expensive unit.

Q. Is it the set of which you sell more numerically than any other set?

A. More what?

Q. You sell more Trans-Oceanics than you do any other set?

A. Yes, we do—in radio sets.

• • •

233 Q. Do you have any data on shipping and importing charges?

A. No. There is nothing to it, because there is a duty, a flat duty, ad valorem.

Q. How much is that duty?

A. 20 per cent it was at this time, and then there are shipping charges of 36 dollars per ocean ton, which equals 40 cubic feet. So it is quite simple.

Q. You also have some other charges—bonded warehouse?

A. Insurance and so on, which, taken in bulk, is about
2 per cent—clearance, insurance. You cannot individ-
234 ually calculate it ~~to a~~ penny each item.

Q. Your purchases were f.o.b. Chicago?

A. Our purchases are f.o.b. Chicago, yes.

Q. And you paid all cost thereafter?

A. That is correct, yes.

Q. I believe you indicated before that you would produce the invoices for radio sets for the period June 1959 to May 22, 1963.

A. Do you want all of them? They repeat themselves most of the time, and it is a lot of files.

Are they here?

A. Yes.

Q. We would like to see them, if we may.

A. I would have to extract them. That is why I made my objection.

Q. Could somebody else do that? Rather than do it now, could it not be done after we are through to-day, whenever we finish to-day? It has been suggested either by your Solicitor or the other side of the table that this could be done by our people looking at these documents in the presence of representatives from the other side.

A. If it is agreeable to the two parties, I have no objections.

Q. And then you won't have to do it at all.

A. Good.

Q. Shall we go on till recess and then decide the exact mechanics for this? I assume you pay the duty on the imports. Is that right?

A. Yes; we pay duty on goods which remain in the United Kingdom, naturally.

Q. And if the goods are placed in a warehouse, you 235 pay the warehousing charges?

A. Yes, that is correct.

Q. Just for the purpose of reference in the next few questions, I will hand you two sheets. One is a Sales Information Bulletin which you produced yesterday. It is Plaintiff's London Deposition Exhibit 44 for identification; and also 45.

(Exhibits handed to the witness).

A. Yes.

Q. I notice that the first mention of these at the right there is a column "Retail Price", and then the second column "Suggested Retail Price".

A. That was my mistake. When I came back from the States and I gave this to be printed, they based themselves on the same system like the United States. They put in "Suggested Retail Price". Then I realised that that does not apply to England so I abandoned this "Suggested".

Q. Is the retail price something that the retailer was obligated to charge?

A. In England, yes.

Q. This was true during the 1962/63 period?

A. Still now, yes.

Q. The item next to the left is "P/Tax". Is that the Purchase Tax?

A. Yes, Purchase Tax.

Q. Then the next to the left column is a column "List Price".

A. Yes.

Q. That is the retail price before addition of the Purchase Tax?

A. That is correct, yes. It is not on this list. It is 236 on the one you have. We changed a little. It is the first seven days of creation. So you do all kinds of things.

Q. The heading "Dealer's Price"; is that the price that the dealer would pay to United Mercantile?

A. To us, yes, that is right.

Q. The normal practice is, is it not, to give the dealer a standard discount off of the retail price?

A. And that is why we introduced this type of price list, because you will see that the dealer's price is a price after discount of the list price.

Q. What is the usual discount which retailers get?

A. 33⅓ off.

Q. The dealer's price is 33⅓ per cent normally off list price?

A. Before Purchase Tax, yes.

Q. Were there any cases where the discount to the retailer was greater than the 33⅓ per cent?

A. No, I cannot recall cases like that. That is a standard discount in the trade.

Q. Did you sometimes give a smaller discount?

A. Not smaller, no.

Q. What gross margin of profit did you realise over your costs?

A. It is an embarrassing thing, because Zenith probably will kill me. It varies between 40 and 50 per cent.

Q. In other words, you marked up the set 40 to 50 per cent over its landed cost?

A. Over landed cost, yes. In some cases a few per cent less, and in some cases a few per cent more.

• • •

242 Q. I hand you the original of a letter from Mr. Miguel addressed to you dated July 27, 1959, and it has as a reference "AR/mg No. 3062—Art Work". Will you take a look at the last paragraph of that letter?

A. Yes, I have seen that paragraph.

MR. KAYSER: I will wait until Mr. McConnell has finished reading it.

MR. McCONNELL: All right.

MR. KAYSER: What is the "market report" referred to in the last paragraph of that letter?

A. Agency programme.

Q. You say, "Your agency's program, from a quick look, appears very ambitious, particularly in the face of a limited market, which the report indicates can be achieved at its very best, because of the unfavourable price factor."

A. Yes.

MR. McCONNELL: All right. I move to strike it all out.

THE WITNESS: That speaks about something which passed between the advertising agency and Zenith, so I cannot comment on it or know about it, or I cannot remember.

MR. KAYSER: Was that the report made by the Economist Intelligence Unit, do you know?

A. No. I never heard of it.

243 Q. You believe this is a report made by an advertising agency?

A. Yes, it was by an advertising agency.

MR. McCONNELL: Made to Zenith?

A. Yes, made to Zenith. In fact, this letter all deals with art work, advertising, and so on. It is entitled "Art Work".

MR. KAYSER: What is "the unfavourable price factor" referred to at the end of that letter?

MR. McCONNELL: I object to your cross-examining this man on Mr. Miguel's letter. I do not know how this witness would know what was in Mr. Miguel's mind.

THE WITNESS: I do not know.

MR. KAYSER: You do not know what he was referring to?

A. No.

* * *

246 Q. Mr. Ramsay, I hand you a carbon copy of a letter which you apparently wrote on 1st September, 1959, to Mr. Miguel which has some financial data in it and on the second page you say that in order to arrive at a reasonable profit you should work on a multiplier of 3.75, and so on. What does that mean? What is that multiplier?

A. It is a mathematical figure at which you arrive when you take your costs. You add your shipping charges and landing charges, you convert dollars into pounds, and you come to the final multiplier. It is to make the calculation easy. It is so that every item does not have to be calculated on its own.

Q. You multiply something by 3.75; is that it?

A. That is right. If something costs 100 dollars in a factory and the duty is 20 dollars, it will be 120 dollars. So you will multiply by 1.2.

Q. In other words, you would multiply by 3.75 your cost f.o.b. Chicago, plus duty?

A. No. I think 3.75 is the arriving price — the retail price, the multiplier, including the tax and everything.

Q. In other words, the retailer's price if you have a multiplier of 3.75 would be 3.75 times the f.o.b. Chicago cost, plus duty?

A. That is right.

MR. McCONNELL: Plus duty?

A. No, not plus duty. It is the complete retail price, the final retail price.

247 MR. KAYSER: The 3.75 would be applied to the total of the f.o.b. Chicago price, plus duty?

MR. McCONNELL: He did not testify to that.

THE WITNESS: We are getting confused. The f.o.b. price, if multiplied by the multiplier, will arrive at the final retail price including everything—duty, tax, retailer's profit, everything else.

MR. KAYSER: If your f.o.b. price was 100 dollars, the retailer's price after applying the multiplier would be 375 dollars?

A. That is correct.

• • •

252 MR. KAYSER: Mr. Ramsay, I handed you some documents before the recess and I would like to identify them on the record by date.

THE WITNESS: One second, because I want to comment on them. There is a difference between them. I think you will ask me a question on which it will be relevant to point this out.

Q. Let us first identify them on the record. From the "Wireless and Electrical Trader", November 4, 1961, page 375; April 14, 1962, page 76; January 26, 1963, page 159; November 3, 1962, page 305; November 17, 1962, page 422; April 30, 1960, page 382; September 3, 1960, pages 724 and 725; November 12, 1960, page 527; May 6, 1961, page 362; October 15, 1960, page 207; August 22, 1959, page 148; August 13, 1960, page 379; March 4, 1961, page 535; and April 29, 1961, page 271. Then, from "Electrical and Radio Trading", the pages I showed you were from the issue of April 29, 1961, page 51; May 13, 1961, page 31; February 11, 1961, page 36; October 22, 1960, page 91; November 19, 1960, page 48A; September 10, 1960, pages 59 and 61; May 7, 1960, page 46; and, finally, April 21, 1962, page 35. I gave you those before the recess and asked you to examine them and give the answers to certain questions: first, whether you furnished the information shown on those pages concerning the Zenith radio products.

A. It appears that we did, yes.

Q. I take it that the information shown is correct.

A. Yes.

Q. Did you have for sale the radio sets shown on those pages?

A. Yes.

253 Q. You gave the information to those publications for the purpose of advising dealers of the availability of those sets.

A. That is correct, yes.

Q. Incidentally, so that the record will be clear for the future, is it true that the English pound during this four-year period has been around 2 dollars and 80 cents?

A. Yes.

Q. How many shillings are there to the pound?

A. Twenty shillings in the pound.

Q. How many pence in a shilling?

A. Twelve pence in a shilling.

Q. The small letter d indicates pence, does it?

A. One penny.

Q. A guinea is how many shillings?

A. Twenty-one shillings.

Q. Mr. Ramsay, I show you a copy of page 24 from "Electrical and Radio Trading", September 23, 1961, which is not a page showing a set, and call your attention to an article entitled, "British T.V., radio sets too cheap, says Zenith man".

A. Yes.

Q. Did you give the interview indicated there?

A. Quite possibly, yes.

Q. Why did you feel that the prices and profit margins on radio and television in the United Kingdom were too low?

A. It is sufficient to look at balance sheets of all the manufacturing companies in England.

* * *

301 Q. Did they ever send over a set designed to receive the 405 line transmission?

* * *

Q. Did they ever send over such a set?

A. No.

Q. Did they ever send over a set that would transmit both the 405 line and the 625 line transmission?

302 A. No.

Q. They never send over such a set?

A. No.

Q. But they did send over a number of sets which would receive the 625 line transmission of U.K. standard?

A. Well, U.K. and European standard; the C.C.I.R. standard.

Q. They sent sets which would take the British standard?

A. The C.C.I.R. system.

Q. That is usable in Britain?

A. Could be usable.

* * *

DEPOSITION OF WILLIAM GUNDRY MILLS

Depositions of witnesses, produced, sworn and examined at the American Embassy, Grosvenor Square, London, England, commencing on the 23rd day of June in the year one thousand nine hundred and sixty-five, under and by virtue of an Order of the United States District Court for the Northern District of Illinois, Eastern Division, and pursuant to a Notice issued on behalf of Zenith Radio Corporation.

* * *

London, England,
June 23, 1965.
10.45 a.m.

THE COMMISSIONER: Since it is under Notice, I think we had better have the reporters sworn in again.

(The reporters were then sworn)

WILLIAM GUNDRY MILLS,
being duly and publicly sworn,
and examined on the part of the
Defendant-Counterclaimant, doth
depose and say as follows:

• • •

DIRECT EXAMINATION BY MR. McCONNELL

15 Q. Subsequent to the date of that report, you did make, if I understood your testimony, surveys of durable consumer goods?

A. Yes. They have been made for seven or eight years.

Q. Tell us what the method was used in making those surveys.

A. The object of these is a very different one. It has not ~~got~~ a specific object, which, of course, every ad hoc report normally has. The intention was to do three things fundamentally: First of all, to establish the ownership pattern; secondly, to establish the intentions to purchase over the forthcoming six months; and, thirdly, to relate those 16 two sets of information to the economic conditions of the country at the time and our forecast of any likely change that might take place in them. In addition, there was certain supplementary information dealing with questions of raw material availability, price trends, labour availability, and so on. It was intended to be as complete a picture as possible of the situation at one moment of time, forecast six months in advance, for the radio and television manufacturer, and, of course, for other manufacturers of consumer durables.

Q. In connection with that survey, did you use personal interviews with consumers?

A. In this "Consumer Durable" survey we worked in conjunction with the British Market Research Bureau, who conducted on our behalf a random sample of 3,000 twice yearly.

Q. Were those samples set up in some scientific way to be representative?

A. They were considered by British Market Research Bureau and by our own statistical people to be excellent random samples, to give a very fair picture of the situation at the time the interview took place.

Q. Did you check the results of those interviews against the actual results in subsequent periods to determine whether you were correct or whether you were way out, what we say in left field somewhere?

A. On the whole, way out.

Q. You were way out?

A. On the whole, yes.

Q. What was the result? Was it accurate or not?

17 A. We think that the situation, as at the moment of time the interviews were taken, gave an accurate picture of ownership. There is no question about the ownership figures being accurate. They were very accurate indeed. But what did not turn out to be accurate was the forecast of purchases over the forthcoming six months. We found that it was impossible to allow for the effects of continually changing Government regulations on people's intentions to purchase. We would make an estimate, making certain assumptions about the economic situation of the country, and availability of spending power, and so on, and then in the middle of the period for which we were forecasting the hire purchase regulations would be changed or there would be a credit squeeze. At least, that is what we think.

Q. The chief Government regulation was the hire purchase, was it not?

A. Yes, hire purchase.

Q. What was the effect of hire purchase?

A. If you got a higher deposit and a lower period of time over which to pay, you normally had an almost immediate effect in reducing demand, particularly the more costly products.

Q. That was intended to decrease the purchase of consumer goods in the home market, was it?

A. That was the intention.

Q. You found, I take it, from what you told us here, that when they intended to squeeze the home market, they squeezed it?

A. It certainly appeared to be quite successful on a number of occasions.

Q. What period of time did these surveys cover which you made?

18 A. They were produced every six months.

Q. Generally from what period to what period? Was it at a date?

A. The object was to have the things produced in February/March and July/August, at the turning of the month, based on interviews and writing up in the preceding three months.

• • •

22 MR. McCONNELL: I ask the Court reporter to mark these documents 9 thru 13, both inclusive.

(Documents marked Zenith Deposition Exhibits Nos. 9 thru 13 for identification respectively)

Q. I show you documents which are marked for identification Zenith Deposition 9 to 13 and ask you whether you can identify these documents as being prepared by your company during or about the time of the dates that they bear.

A. Yes, I can.

Q. And were they?

A. They were.

Q. I take it they were prepared in the way you testified to here a while back when you were talking about durable goods, consumer goods?

23 A. That is correct.

• • •

CROSS-EXAMINATION BY MR. KAYSER

• • •

53 MR. KAYSER: I dare say Counsel can fix it up later. In this hypothetical question* with which your

---

[By Mr. McConnell]

Q. On the basis of your background and experience and education with your company, and your general knowledge of the industry in the United Kingdom, and assuming for the purposes of my question that the Zenith Radio Corporation sold at least 10 per cent of the entire United States television market during the period of May 31st, 1959, to
24 July 1st, 1963, and was first in television sales in that market during that period, and assuming that because of the superior quality controls and master craftsmanship and general all-round excellence of its sets that the Zenith Radio Corporation was able to sell its sets during that period in the American market at approximately 10 per cent above the average market price, and assuming that the competition in the United States both as to quality, the reputation of the companies involved and the price, is comparable to that in the United Kingdom, and assuming further that the Zenith Radio Corporation was able to obtain a license from the British Patent Pool to sell imported sets at the same royalty rates charged local manufacturers as licensees of the Pool, and assuming that therefore the British Patent Pool did nothing to impede the sale or the promotion of sale of the Zenith Radio Corporation in the United Kingdom, and assuming that the earliest date that an importer in the United Kingdom could legally order Zenith radio sets or television sets to be imported into the

direct examination was concluded this morning, at what prices were you assuming the Zenith sets would be sold in Great Britain?

MR. McCONNELL: I do not think there was any assumption in that hypothetical question about prices. I object to the question.

A. Competitive prices.

MR. KAYSER: You mean competitive prices?

A. Yes.

Q. What would your answer have been if the Zenith price had been 10 per cent higher than competitive prices?

A. Competition does not depend entirely on price.

Q. I say what would your answer have been if
54 Zenith's price had been 10 per cent higher than competitive prices?

A. I do not think my answer would have been any different.

Q. They would have sold the same number of sets even if prices were 10 per cent higher?

A. That is not relevant to that kind of marketing operation at all, not 10 per cent.

United Kingdom after June 8th, 1959, and assuming that after June 8th, 1959, there was no restriction by import regulation on the import of Zenith television sets in the United Kingdom, and assuming that the Zenith radio and television sets were manufactured with the same number of lines in the tubes and were in all respects able to receive both the British Broadcasting and the I.T.V. programmes in the United Kingdom, and assuming further that the Zenith Radio Corporation was able to set up a system of distribution in the United Kingdom comparable to that
25 of the Pye organisation in this country, have you an opinion as to the overall average of television sales that the Zenith Radio Corporation would have obtained under the conditions set forth in my hypothetical question in the four year period from May 31st, 1959, to July 1st, 1963, expressed in terms of a percentage of the entire United Kingdom television market?

Q. Why is not price relevant?

A. Because television sets are sold normally on hire purchase terms, and a difference in price of 10 per cent makes no material difference to the hire purchase terms.

Q. What if the price had been 20 per cent higher?

A. It might have had some effect.

Q. How much?

A. Very little.

Q. How much? You have been giving percentages this morning. I would like to know how much difference a 20 per cent increase would have made in the percentage.

MR. McCONNELL: 20 per cent of what?

MR. KAYSER: He has testified that, when he gave his answer to your hypothetical question, he was assuming that the Zenith price in Britain would have been competitive to competitors' prices.

A. I did not say that. I said "competitive".

Q. Competitive to what, then?

A. Competitive in a general sense; the value provided would have been competitive; that is, the quality of the reproduction of the set, its service, and so on, would have been comparable in relation to its cost to other sets whose
55 cost might have been different. It is not my experience that price differentials of that nature affect the success or failure of the marketing of a particular thing.

Q. It does not affect the proportion of the market that the manufacturer can obtain?

A. Not materially.

Q. Does it to any extent?

A. To such a small extent that I could not put a figure on it.

Q. If Zenith's price were 10 per cent higher than the competitive prices, how much would that have affected the Zenith's market share?

A. 10 per cent would not be material.

Q. You mean not at all?

A. Not at all.

Q. It would not have affected the volume in any way?

A. No.

Q. What about 20 per cent higher?

A. 20 per cent might have had a small effect, but I would say very small.

Q. How much?

A. I could not tell you; too small to estimate.

Q. What if Zenith's price in your assumption had been 30 per cent higher than competitive prices?

A. If you want to get to 50 per cent, that would, of course, make a difference.

Q. What about 30 per cent?

A. 30 per cent would begin to make a difference.

Q. How much?

56 A. The amount of difference it would make would depend on a number of other things. When you are marketing a consumer durable, you cannot judge on price only. The success or failure of a sales operation does not depend entirely on price. A set which was sold for 30 per cent more than the nearest comparable set without any other advantages would, of course, not obtain a large proportion of the market; but that is not the assumption on which we are talking. If the set is competitive in the full sense of the term, and the vast majority of the sales are either on hire or on hire purchase, the effect will not be seriously material. There are all sorts of other elements which have got to be brought into it before you can answer a question of that kind accurately.

Q. Take the assumption you took this morning, when you so glibly gave a figure, and just change the price to 30 per cent above the competitors' price and answer the question.

MR. McCONNELL: I object to the question. The characterising of the witness's testimony as "glib" or otherwise is not a question. I object to it.

MR. KAYSER: All right. I will rephrase the question.

MR. McCONNELL: You do not have to insult the witness, or try to insult him. You just ask him a question. You will get co-operation from him.

MR. KAYSER: You answered a question this morning based on certain assumptions which Mr. McConnell put to you.

A. Yes.

Q. You have told me that you assumed a competitive price in talking about some sort of an average of 4 to
57 6 and maybe something about 8 per cent of the market.
I am saying take exactly that same question and assume that Zenith's price would have been 30 per cent higher than that of a competitive manufacturer and tell me what percentage of the market you estimate Zenith would have gotten during this four-year period that Mr. McConnell referred to.

A. If the set were—

Q. The same conditions, mind you, except for this difference in price.

A. We are talking now about what—a 17 inch or 21 inch set?

Q. Why didn't you ask those questions of Mr. McConnell when you answered his question this morning?

MR. McCONNELL: I object to that kind of a question. That is not cross-examination.

MR. KAYSER: Just take whatever conditions you thought Mr. McConnell had in mind when he asked you.

A. Mr. McConnell clearly defined the assumptions on which I was to give my answer. With all due respect, Mr. Kayser, I do not think you have.

Q. Do you recall what those assumptions were?

A. Most certainly.

Q. Then having recollected them, just assume the Zenith price was 30 per cent higher. What share of the market would Zenith have gotten during those four years, in your opinion?

A. Much the same, I would say.

MR. McCONNELL: 30 per cent higher than what?

MR. KAYSER: 30 per cent higher than the price of competitive manufacturers.

58 A. This is a question which is almost impossible to answer. You notice I am quite genuinely unwilling to answer this question, because I am on oath in this Court, and opinions which I give are ones which are prepared to the best of my knowledge and ability. I feel if you take a figure flat out, you can say the 21 inch is increased by 30 per cent, or 12 inch or 14 inch or 17 inch. What do you mean? I cannot answer your question. If you will define it to me clearly, I will attempt to answer it, but I really do not think you have so far.

Q. Do you recall the assumptions which Mr. McConnell put to you when you testified this morning?

A. Repeat them to me, Mr. Kayser.

Q. I am asking you: Do you recall them?

A. To the best of my knowledge, yes.

Q. All right. Then just add the feature that the price of the Zenith set charged by Zenith would be 30 per cent higher.

A. Higher than what?

Q. Than charged by competitive manufacturers.

A. 30 per cent higher, like for like, throughout the whole range of products. Is that what you mean?

Q. Yes.

A. That would necessarily have some effect on the total market. It must do.

Q. How much?

A. Assuming that the quality was as good as I have always understood it to be, I would have said the penetration might take—I think I would rather put it this way, in time rather than percentage. We were talking pre-
59 viously over a period of four years, were we not?

Q. That is right.

A. Let us say to obtain an equivalent penetration would take six years.

Q. But what would the penetration be during the four-year period?

A. I said before over the four-year period the likely penetration, in my opinion, which I may say is a very cautious one indeed—if I had not been on oath, I would have put a higher figure, if I had been asked for plain advice—would be between 4 and 6 per cent on the average over the four years. If you are 30 per cent higher, your 4 to 6 per cent would take six years to obtain.

Q. I asked what would be the penetration in the four-year period you testified to this morning.

A. You work out the average, Mr. Kayser.

Q. No; you work out the average.

A. I do not work out averages, I am afraid.

Q. You testified this morning, under Mr. McConnell's assumption, that the penetration during the four years would be an average of 4 to 6 per cent. I am asking you, in the same four-year period, what would the penetration be if the conditions were the same, except the price was 30 per cent higher.

A. I say it would probably take six years.

Q. I have asked what the penetration would be in four years; not how long it would take to get the same penetration. What would be the penetration in the four years?

A. I have given you my answer.

Q. You have not given me an answer.

A. I have given you my answer.

60 Q. You have said it would take six years, and I have asked you what penetration you would get in four years given a 30 per cent higher price charged by Zenith than charged by competitive manufacturers.

A. I say it would take six years to get the equivalent penetration.

Q. I have asked you what penetration.

A. You won't get the answer however much you ask.

Q. Why not?

A. Because this is what I consider to be the correct answer.

Q. I am asking the questions, and I am entitled on cross-examination to get an answer to the question that I ask.

A. You may be entitled, but you won't get the answer.

Q. You refuse?

A. I have given you the figures, on which any person can work them out. You merely multiply the figures by 4 over 6 and get the answer.

THE COMMISSIONER: Mr. Mills, you have not answered his question. I must call your attention to the fact I think, on the whole, you have been treated with courtesy, and I would like to ask you to return courtesy. Obviously there is a question that was put to you. You have not answered it. May I ask you to answer it on the basis of the four-year period?

MR. McCONNELL: I object to the question. It contains assumptions which are way outside the hypothetical question that was asked him. There was nothing about having a 30 per cent higher price in the British market. You have not given the proper comparisons. I do not think it is a question anybody can answer, and I think the witness
61 is perfectly within his rights to refuse to answer a question which is unintelligible.

THE COMMISSIONER: I think the witness should analyse the question as asked him and make his answer as supposedly an expert or one who developed those figures.

A. I am not an expert. I have never pretended to be an expert on television equipment; just on market research.

Q. It does seem to me that is a valid question to put to someone who has been engaged on market research. It is the extent of penetration of the market, as I understand it.

Mr. Reporter, would you read the question again for the witness to reconsider and give his answer as best he knows how?

> (The Reporter read: "Then having recollected them, just assume the Zenith price was 30 per cent higher. What share of the market would Zenith have gotten during those four years, in your opinion?")

Q. Your opinion is asked.

A. Yes. I said, and I repeat it, that the penetration would have taken longer—that is all—because we are dealing with different things. You are bringing in all sorts of extraneous circumstances. I am not quite sure it is fully appreciated. We are dealing with, are we not, imports into the United Kingdom? According to the figures, the cost of living in the United States and the cost of production have not altered very considerably, particularly in the period concerned. However, in the United Kingdom the figures have altered considerably. So we are bringing in all sorts of imponderables. That makes it so difficult to answer
62 Mr. Kayser's question. However, I would have said over the period of six years to which I am referring the price differential would have been lost. That is why I say it would take six years rather than four with a 30 per cent difference. If you wish the figure to be worked out, I believe the figures are 2⅔ to 4 instead of 4 to 6; but I have no doubt you can work that out as well as I can do.

MR. KAYSER: In other words, you are saying the other conditions as assumptions, as Mr. McConnell has assumed them, if the price charged by Zenith were 30 per cent higher than the price charged by competitive manufacturers, during this four-year period from May 1959 to May 1963 the market penetration would have been from 2⅔ to 4 per cent; is that right?

A. I would say so.

Q. Let us assume this price difference is 50 per cent. What would the market penetration have been?

A. When you get to 50 per cent, the answer is different.

Q. All right; what is it?

A. I would say there would be considerable difficulty in making any serious penetration into the market. I would like, if I may, to put something on the record for myself. I would like to say that the assumption that 50 per cent would prevent penetration is based on the fact that the 50 per cent differential remains constant throughout the period. That is all.

Q. You talked about a constant 50 per cent. Are you assuming for some reason that Zenith's price would be declining in those four years?

A. Relative prices never remain constant.

63 Q. I know, but are you assuming Zenith's price would be declining?

A. No, I do not think so. I have not made that assumption because I have no reason to know one way or the other, but I would say over the period concerned the prices in the United Kingdom were tending to rise.

Q. I believe you said with a 50 per cent differential, Zenith would have had considerable difficulty in making any market penetration at all during the four-year period?

A. Here you are beginning to talk about figures rather than percentages. If you start doing that, you start talking about compound interest. If you are talking about a set which is retailed at £60, if you have a 10 or 20 per cent difference in the price of a comparable set which has got other advantages—one must assume that—then the effect on the deposit and the repayments is not material; but when you get to a difference of between £60 and £90, it does become material, in the sense that it is immediately noticeable to the purchaser.

Q. You are speaking about a £60 to £90 price to the purchaser?

A. That is right.

Q. You mean the householder?

A. I took it as an example.

Q. You mean the price to the householder?

A. Yes. I took it as a simple example, because you can relate it easily one to the other.

Q. Are you saying during this four-year period, if the price to the householder got in the £60 to £90 range, that would be noticeable?

A. No, I did not say that at all. If the realtionship
64 between two comparable sets at any one time is as between £60 and £90 then there is going to be a difference. I made no implications at all about any necessary changes that may have taken place over the period. That would need considerable research and documentation.

Q. When did the subject of your answering a hypothetical question from Mr. McConnell first come up? When did he first indicate to you that he was going to ask you a hypothetical question?

MR. McCONNELL: That assumes I did indicate it to him. I do not think you have a right to enquire into my conferences or talks with this witness. I object to it.

MR. KAYSER: I think I have every right to determine what kind of—

MR. McCONNELL: Thank you for telling me what the law is. I do not accept your interpretations of the law, as you must know by now.

THE COMMISSIONER: Do you want to pursue that?

MR. KAYSER: Yes, I want to pursue that. It is a perfectly proper question.

THE COMMISSIONER: Do you want to rephrase it?

MR. KAYSER: Yes, all right, I will.

Q. Did you know, in advance of your testimony this morning, that Mr. McConnell would ask you a hypothetical question as concerns Zenith's theoretical market penetration in the United Kingdom?

A. May I consult with my lawyer, please?

Q. Yes, consult with counsel.

(Witness and Mr. Benjamin conferred)

A. The answer, I would say in its broad terms, yes.

Q. When?

MR. McCONNELL: Same objection.

A. Thursday evening. Is that right? I think so; last Thursday.

MR. KAYSER: Was the question written out?

A. No.

Q. Did you know what the assumptions were that he would put to you?

A. No.

Q. In other words, you answered that question this morning hearing for the first time the conditions that he put to you as to the hypothetical question?

A. I personally always made it quite clear that any question of market penetration must assume a complete freedom of access in every sense of the term. It was only those two assumptions which I myself mentioned.

Q. Which were those?

A. One which comprises, I imagine, two parts: complete freedom of access to the market. That is no import licence restrictions of any kind, and, of course, no patent restrictions of any kind.

Q. What about tariff barriers?

A. The tariff remains constant. A person who is prepared to compete in the market is assumed to know what the tariff is. Anybody can discover that. It has not altered.

Q. By the way, what is the tariff on radio and television sets? I want to change that: during the 1959 to 1963 period?

A. I cannot answer you that question with a certainty of being correct, but I suspect it to have been 20 per cent.

Q. On both radio and television?

A. I suspect. There might have been a difference between the two, but that is not far off in the range of figures.

66 Q. Did you take the tariff into account in making your estimate?

A. The tariff, yes.

Q. Do you have any idea what Zenith's costs were during the 1959 to 1963 period?

A. None at all.

Q. You have no idea of the costs which they showed in the previous record in this case?

A. None at all.

* * *

71 MR. KAYSER: May I have Zenith's Deposition Exhibits 9 thru 13, please? (Exhibits handed to Counsel).

Q. These Exhibits, as I understand it, are reports put out by The Economist Intelligence Unit, entitled "Durable Consumer Goods, Television Sets", and bear the number and dates respectively of "1" July 1958, "2" January 1959, "3" July 1959, "4" January 1960, and "5" July 1960. I believe you said something this morning about these books being prepared in the regular course of business.

A. Yes.

Q. What do you mean by that? What do you mean by "being prepared in the regular course of business"?

A. They are available on subscription to anybody who is willing to pay a subscription.

Q. Who in fact buys these books, what type of person?

A. Companies like English Electric, E.M.I. any of the big manufacturers.

72 Q. Manufacturers of television sets?

A. Yes; or did at that time.

Q. Have you stopped publishing this work?

A. Yes.

Q. When did you stop publishing it?

A. This year.

Q. Your last issue was—

A. February of this year.

Q. 1965?

A. Yes.

Q. Was this bought by anyone other than television manufacturers?

A. Not these ones. There were others, of course.

Q. I am referring to ones dealing with television sets.

A. No, I do not think so.

Q. Were they purchased by distributors?

A. No.

Q. So far as you know, what was the purpose of the manufacturer buying this?

A. To assist the acceptance of their models.

Q. And also to get assistance in determining the trend of the market?

A. That is right; the immediate acceptance, to what extent the ownership indicated they had got a good acceptance, comments on various incidents of design, colour and things of this kind; not colour pictures. It is an indication of what had been purchased recently, which sets had been purchased recently, whose sets, and an indication of

73 what was the intention to purchase, what proportion of the respondents intended to make purchases in the next six months and, if so, what did they do, what kind of sets did they intend to purchase.

Q. You also included information, did you not, concerning problems of the industry, such as (for example) problems of the 625-line scanning?

A. Yes. That would be treated in the general economic appreciation, probably.

Q. Is it the purpose of this work, which came out every six months, to aid the manufacturer in determining what factors might influence the trend of his sales?

A. Yes, amongst other things.

Q. Also, the extent to which imports might affect his sales?

A. This would be certainly relevant but much more relevant to some of the other consumer durables than these. It would be relevant on all consumer durables. That is, should there be an alteration in policy, or a sudden change in trend in the volume of the imports, we would draw the attention of our subscribers to that fact; and if there was any possibility of a change taking place in the immediate future, a change of policy, we would certainly draw their attention to that fact.

Q. Was this work also available to importers?

A. Certainly; anybody.

Q. Do you know any importers or would-be importers that ever purchased it?

A. Not speaking off-hand.

Q. You do not know whether Zenith ever purchased any of these?

74 A. I do not think they ever did.

Q. You have said that this work was published—and I am referring to Zenith's Deposition Exhibits 9 thru 13—in the regular course of business, and I do not believe you told me what you meant by that.

A. Our organisation is always having ideas about new publications which we can produce and sell at a profit, we hope. This is one of them, one of our less successful ones.

Q. In other words, this is a type of report which you customarily and in the regular course of business gather and publish in a number of industries; is that right?

A. Yes. This one covers all the main consumer durables.

Q. But this particular one, this Exhibit, had to do with television sets?

A. That is right. Normally you find that the first part of each issue closely resembles that in the others.

Q. Do you have any regular routine for gathering and preparing the information which is in this booklet?

A. Yes, we had.

Q. What was that routine while it was being published?

A. We started off by circularising potential subscribers in this country and outside, but largely in this country, because we felt it was largely something of interest to somebody who was established here, whether he was an established manufacturer or distributor in this country. So we circularised those people, and I think the subscription was £750 a year for up-to-date ones, on which, if you took a large number of them, which some companies would, as you might imagine, there were certain discounts available. The procedure was that British Market Research Bureau interviewed a random sample of 3,000 people twice yearly—not the same ones, of course—and that was produced to us, after analysis—that is, after computation—for comment,—

Q. Have you found their work to be reliable?

A. Yes, certainly.

Q. I interrupted you.

A. —and simultaneously we would be doing the introductory part of the report; that is, the part which is not affected by the returns of the interviews, dealing with the economic situation, the labour situation, the raw material situation, and so on. Then those two would be married and, at the final stage, reproduced and despatched to the subscribers. Then there is a certain system worked out by which earlier copies can be bought at steadily increasing discounts.

Q. You said that this British Market Research Bureau interviewed a group of 3,000 people.

A. A random sample.

Q. There is information in here, is there not, also, as concerns manufacturers and the B.B.C. and governmental regulations and so forth?

A. Yes.

Q. Where did that come from?

A. That would come from us.

Q. You gathered that?

A. Yes; all that from us.

76 Q. And naturally you believed the same to be reliable?

A. We do our best.

Q. How wide a circulation did this work have while it was being published?

A. Maximum 7 to 8.

Q. Do you understand that the people that paid this £750 per year for these two reports acted, in part at least, in reliance on the material in it?

A. In some instances, yes.

Q. I believe you said that this work was prepared under your supervision.

A. That is a general term. I have four Research Divisions under my supervision, of which this is a quarter of one, or an eighth of one, I would say; but I take responsibility for it.

Q. I noticed that in some of those reports there is a reference to BREMA. What does that stand for?

A. BEMA I could well understand.

Q. What does BEMA mean?

A. British Electrical Manufacturers Association.

Q. In any event, the British Electrical Manufacturers Association you believe is BEMA rather than BREMA?

A. I think so. We do have misprints, too, sometimes.

Q. I call your attention to page 39 of Zenith Exhibit 10, which is a January 1959 report. There is a reference there to BREMA. Can you identify that company or whatever that set of initials stands for?

77 A. It is something to do with the British Retail Electrical. That is all it is. It consolidates sales returns from electrical retailers who are members of the Association, I think. It sounds like it from the context.

Q. In referring to Zenith Deposition Exhibit No. 9, which is the July 1958 report, I notice on page 1 a statement: "Since the end of the 1939-45 war, the U.K. economy has enjoyed twelve years of virtually unbroken expansion. Such setbacks as occurred were mainly due to the inadequacy of the foreign exchange reserves, which were insufficient to prevent balance of payment crises from recurring almost every other year. Government action to deal with these crises invariably took the form of damping down home demand for both consumer and investment goods and encouraging export, and this action tended to slow down the rate of expansion of the economy". Am I correct in understanding, then, that there was a balance of payment problem up until this July 1958 date?

A. Yes.

Q. I believe you said this morning that you were aware that there were import restrictions imposed accordingly on imports from dollar countries.

A. They were widely imposed, including dollar countries.

Q. Did the Intelligence Unit ever make a study of these import restrictions for any client?

A. Yes.

Q. Did the Unit ever make such a study for Zenith Radio Corporation?

A. No, not specifically.

78 Q. What do you mean by "not specifically"?

A. It would have been mentioned, I have no doubt, in this report.

Q. You are referring to this April 1959 report?

A. Yes.

Q. You know of nowhere else where any such specific study was made for Zenith?

A. No.

Q. Now, on page 61 of this same July 1958 report you state, as to imports: "Imports of television sets into the U.K. in recent years have been of little importance. This was probably due in part to the different line system in use in the U.K. and to the technical advantages enjoyed by British manufacturers". What was the difference in the line system used in the U.K. as against the line system used elsewhere?

A. We had a 405, I think, and still have. Most other countries had 625.

Q. Do you know what the line system is in the United States?

A. I think it is 625, but I do not know.

Q. Do you know what the technical advantages were enjoyed by British manufacturers referred to here?

A. This country was the pioneer in television, I think. That was the implication.

Q. You mean the United Kingdom?

A. Yes. If it had not been for the war, we should have had it first.

Q. And so the British manufacturers did have technical advantages, the Unit felt, as against others?

A. We felt so. We may have been wrong, but we felt so at that time.

79 Q. You felt they also had technical advantages as against the American manufacturers; is that right?

A. That is there by implication, though I think one should realise that it was generally thought that the more dangerous manufacturers at the time that was prepared were likely to be in Europe.

Q. The more dangerous manufacturers. What do you mean by that?

A. This report was looking at it from the point of view of a manufacturer in this country who had to anticipate, or he ought to have anticipated, what was going to happen in the future. We thought that he was sufficiently protected, as far as technical ability was concerned, from the Europeans at that time. Have I made myself clear?

Q. I believe so. I believe that all, or almost all, of these reports that have been marked as Zenith's Deposition Exhibits made reference to imports. Was it your practice, when you were publishing this work, to report all relevant information as to imports and factors affecting imports which came to your attention?

A. No. This was a comparatively unimportant part of those reports.

Q. What information concerning imports did you try to ascertain?

A. Anything that immediately would be likely to have a major effect.

Q. Any aspects which might have a major effect on imports?

A. Yes. You must appreciate that these reports had a very simple object, and this was to deal with the current situation as far as ownership and attitude to existing sets was concerned.

Q. In your January 1959 report, Zenith's Deposi-
80 tion Exhibit 10, on page 38, you again commented on
imports as follows: "Imports of television sets into the
U.K. are of very little significance. This is in part due to
the different line system in use in the U.K., but also reflects

a strongly entrenched position of the home industry". I gather from this that you felt that the fact that the U.K. had the 405-line system made it impractical for foreign manufacturers to import; is that right?

A. Would you repeat that for me?

Q. I said: I gather from this paragraph which I have just read that you felt that the fact that the U.K. had the 405-line scanning system made it impractical for foreign manufacturers to import.

A. Well, I think it means what it says, that this is in part due to the different line system in use in the U.K. It also reflects the strongly entrenched position of the home industry.

Q. What did you mean by "the strongly entrenched home industry"? What bearing did that have?

A. It is difficult for me to interpret the mind of a person at that distance, but the implication which I would take would be that they had such control over the manufacturing facilities—manufacturing facilities in the fullest sense of the term—and the distribution system that it would have been difficult for somebody to come in from scratch. That seems the implication.

Q. Now, as concerns the difference in the line system between U.K. and other countries, to what extent did you believe, or did the Intelligence Unit believe, that this would affect their ability to import?

81 MR. McCONNELL: I object to that question. That assumes that Zenith, for instance, could not have produced a 405-line system, which is not the fact.

MR. KAYSER: Will you answer the question?

A. Yes. The assumption, which may or may not have been correct, is that quite obviously there was no market for 625 line sets—that is fairly obvious—but it would have been not worth while for a manufacturer who had not got a very major prospect of total sales in this country to change his production facilities to enable him to produce both 625, or whatever it may have been, and 405 sets. This is the assumption, that it would have required a major capital investment, and to have made that capital investment the manufacturer concerned would have had to have had some reasonable assurance of a good potential market.

Q. You talked about having a major prospect in the British market.

A. I think he would have to have a potential of something between 50,000 and 100,000 sets, on the average.

MR. McCONNELL: Is that per year?

A. Per year, yes, on the average. I might be quite wrong in that, but I would think so.

MR. KAYSER: There were a number of well-known foreign brands, were there not, at this time?

A. In this country? Not in volume, I think, no volume. I do not think so. If there were, they were local manufacturers.

Q. There were a number of brands well known in their own country who could have afforded this kind of investment, were there not?

82 A. At that time? Few who had not got a manufacturing subsidiary in this country, if any, if you are referring to Europe.

Q. I am referring to Europe and the United States.

A. You are getting on to questions of marginal cost of producing a television set, which is difficult.

Q. You talked about a major investment which would have to be made.

A. This was the assumption we made. You were asking about this particular point in our report.

Q. Yes.

A. My interpretation of that remark in that report was that the implication was that the protection which this country received, apart from this, was the fact that we thought that to introduce manufacturing facilities to provide sets solely for a 405-line market would have entailed a considerable capital investment. This is my interpretation of that remark.

• • •

84 Q. I gather you reported the release of controls on the import of radio and television from the dollar area because you thought this was an event of significance?

A. Yes.

Q. What significance did you think it had?

A. It was just a warning of possible competition.

Q. You said on page 42 of the same July 1959 report: "Imports of television sets are still not sufficiently important to be shown separately in the trade figures and represent only a negligible addition to the total supply of sets to the U.K.."

A. Yes.

Q. In other words, the imports were not sufficient to list separately?

A. Quite so.

MR. KAYSER: I would like the reporter to mark as Plaintiff's Deposition Exhibits 17, 18, 19 and 20 *these* four additional copies of the Intelligence Unit reports, which I will then ask the witness to identify.

(Intelligence Unit Reports Nos. 6, 7, 8 and 9 marked "Plaintiff's Deposition Exhibit No. 17", "18", "19" and "20", for identification).

85 MR. KAYSER: I hand the witness Plaintiff's Deposition Exhibit 17, which is marked "No. 6, January 1961, Durable Consumer Goods, Television Sets"; Plaintiff's Deposition Exhibit 18, "No. 7, July 1961", entitled "Durable Consumer Goods, Television Sets"; Plaintiff's Deposition Exhibit 19, "No. 8, January 1962", similarly entitled; and Plaintiff's Deposition Exhibit 20, "No. 9, July 1962", similarly entitled.

Q. Are these later copies of the report on consumer durable goods, specifically television sets, which you previously testified to?

A. Yes. They are further-issues.

Q. And these documents, Plaintiff's Deposition Exhibits Nos. 17, 18, 19 and 20, were all prepared in the regular course of business in the manner previously described and under your supervision?

A. Yes.

Q. And have all of the attributes which you have ascribed to the previous volumes?

A. Yes.

Q. On page 19 of Plaintiff's Deposition Exhibit 17, which is the January 1961 report, some year and a half after the embargo had been lifted on June 8, 1959—

MR. McCONNELL: Wait a minute.

MR. KAYSER: Strike it out.

MR. McCONNELL: I move to strike it out. You are not a witness in the case yet. You might get there.

MR. KAYSER: On page 19 of the January 1961 re-
86 port you say, on imports, and I read: "Deliveries from overseas are small, and no official import statistics are published; but, should the 625-line system be adopted, the importation of sets would become more practical, and in the early months imported sets might be available at lower prices than those of home-produced sets". In other words, at this point, the importation of sets was still not practical because of the 405-line system?

MR. McCONNELL: He did not say that. Why do you want to torture his words?

MR. KAYSER: I am asking him if that is the fact.

MR. McCONNELL: I object to it. It is not proper cross-examination, and putting an assumption in the question which the witness has to agree to in order to answer your question. It is an improper question. He does not have to answer a question like that if he does not want to, if he has to assume something which is not true,

MR. KAYSER: If he feels my statement is incorrect, he can say so.

A. I do not think there is anything more to be said than what is actually in the report.

Q. You consider the report to be an accurate statement, however?

A. Yes, it is an accurate statement. It makes a statement that deliveries are small and that the introduction of the 625 system might have some effect. It says no more.

Q. Why did you believe that if the 625-line system were adopted, in the early months sets might be available at lower prices than those of home-produced sets?

MR. McCONNELL: This is not his statement. He did not write that statement.

87 MR. KAYSER: He has stated this was under his supervision.

MR. McCONNELL: You are asking what was in his mind when it was written. I object to the question.

MR. KAYSER: He says he stands at the back of it as responsible.

MR. McCONNELL: Sure; but you are asking what was in the person's mind who wrote it. How does he know? I object to the question.

MR. KAYSER: (To the witness): Then, what is the basis of the statement that in the early months imported sets might be available at lower prices than those of home-produced sets?

MR. McCONNELL: If he knows.

A. I think that possibly we did know, and the reason for it was that because of various forms of protection available to the British industry, the prices in this country were on the whole inclined to be higher than they were in other countries, including the United States.

MR. KAYSER: And how would the 625-line screen change that?

A. If a 625-line set is available, for example, at £50 in the United States or France or Italy or Japan, or wherever it may be, and the comparable 405-line set here costs £60, then if 625-line sets were introduced here, obviously the importation at a lower price is more than possible. That is what that means. It means something quite different to what you think it means, if I may say so.

Q. What are these various kinds of protection that you referred to in your answer?

A. In fact, the 405-line system is in itself a protection.
Certainly, whilst it is said here that there was a free-
88 dom—"freeing" is the word—of importations from
external sources, this was (if I may use the term with all due respect) a politician's remark. "Freeing" should be read in quotes. It is a relative term. The freeing of imports means they make it slightly more easy to obtain imports. It does not mean, if in any of those areas somebody made an application to import a large number of television sets from (shall we say) Japan or Western Germany or France, this would have necessarily been permitted. It does not mean that at all.

Q. What are these external forces that I thought you referred to in your answer?

A. Internal. This market has certain inherent protections, as every market has, one of which was this 405 lines, without question. There were certain other things, largely dealing with the difficulty of obtaining a sufficient quantity of foreign exchange. This did not always mean that it was impossible for foreign manufacturers to export to this country in quantities which were viable, but it did not imply that there was complete freedom.

Q. Were there still currency restrictions in January 1961 which affected the import of television sets?

A. Yes. Try now and see what happens.

Q. What would happen?

A. You would find it very expensive to buy your currency; but these are comparatively unimportant points, really.

MR. McCONNELL: I do not think the witness understood your question. You were trying to ask him what
89 he meant by the high price that was fixed in the English market. That is what he was talking about.

MR. KAYSER: Mr. McConnell, I would suggest that you might let me conduct my examination.

MR. McCONNELL: I would like to have an answer to the question you asked. That is all I am saying. He did not get it.

MR. KAYSER: Thank you, Mr. McConnell; but please may I conduct my examination?

MR. McCONNELL: Go right ahead. It is certainly a marvellous exhibition. You ought to be proud of it.

MR. KAYSER: Maybe you can clear up one point here, Mr. Mills, and that is this: I believe you said in a number of these reports that there are no official import statistics published on television, apparently because the imports are so small, but yet I believe in one of these Exhibits that you produced this morning you have shown some statistics. Will the answer to that come possibly in the documentation that we are awaiting?

A. If it is available, that is. The answer is that in most cases every import which has got a Customs classification number is itemised, but the small quantities from any individual country are not normally published in this book. But they are available in the records of Customs and Excise, and therefore can normally be obtained on request, subject to the proviso that they must have a classification. If there is no classification, no individual figures are available.

Q. I refer you now to page 20 of the July 1961 publication, which is Plaintiff's Deposition Exhibit 18 for identification. Reading again under the heading "Imports", it says: "Statistics showing the volume of import deliveries are not available, but it can be assumed that these remain negligible, as Britain is the only major country using sets designed for the reception of pictures on the 405-line standard. The British market is not, therefore, open to foreign manufacturers unless they are prepared to design standard models to meet the British line standard". In other words, in July 1961 the problem of the 405-line standard was still posing a major problem to foreign manufacturers?

MR. McCONNELL: I object to that. How does he know whether it was a foreign problem or a problem of importers to Zenith Company?

A. May I look at that?

MR. KAYSER: Surely. Is that quotation which I read a correct statement of what you reported to the industry in that book?

A. Absolutely correct. We merely make a statement of fact—two statements of fact; firstly, that this is the only major country using a 405-line standard and, secondly, that in order to get into this market, foreign manufacturers must build sets with a 405-line standard; and that is all we say. We say nothing more than that at all, and there is no implication.

Q. Let us go to July 1962. I refer to page 22. In that booklet, which is Plaintiff's Deposition Exhibit 20 for identification, you say: "There are virtually no imports of television sets at present, though, as seen above, the change-over to 625-line transmissions will make them feasible. Because of the many differences that remain between British and Overseas makes of television sets, however, 91 imports are likely to grow only very slowly, if at all, in the coming months". By July 1962 had there been a changeover to the 625-line standard? Let me call your attention to pages 18 to 20, which deals with something called the Pilkington Report.

(Plaintiff's Exhibit 20 handed to the witness).

(The reporter read the question).

A. No.

92 Q. Was such a change then in prospect?

A. Yes.

Q. Could you explain the reason it was in prospect?

A. Because of the recommendations of the Pilkington Committee that there should be a second television network which initially should be on the 625 line U.H.F.

Q. This is the Pilkington Report referred to at page 18 and following of this July 1962 report?

A. Yes.

Q. That was a report and also a recommendation?

A. That is right.

Q. Do you know: Has that recommendation been carried out?

A. Yes.

Q. And what station or channel has the 625 line—

A. B.B.C.2.

Q. When did that start broadcasting?

A. April/May 1964, I think.

Q. You say "Because of the many differences that remain between British and overseas makes of television sets, however, imports are likely to grow only very slowly, if at all, in the coming months". What are the many differences which remain which you refer to there?

A. I am afraid this is a technical question which I am not in a position to answer.

Q. You mean even when the 625 line standard comes in, which I believe you said was the European standard . . .?

A. Yes, all except France.

93 Q. There would still be many differences that remained between the British and the foreign set?

A. That is what it says, but I cannot give you a direct answer. I cannot tell you what the differences are.

Q. Except that there were some?

A. That is what it says.

Q. You have no reason to doubt the correctness of this report?

A. No.

Q. Do you know when television manufacturers in England started putting out sets with the 625 line screen?

A. 1964.

Q. In 1964?

A. Yes. Maybe a little earlier, but I doubt it.

Q. But at the same time the sets are also adapted for the 405 line screen, are they not?

A. This is normal.

Q. So at present the British manufacturer puts out the set which is adapted for both the 405 line and the 625 line screen?

A. Correct.

Q. Does this create any sort of a manufacturing problem; do you know that?

A. I have no knowledge of that.

Q. Now going back to page 19 of this July 1962 report, referring to it specifically for the first time, you say: "However, it is often asserted that the decision to switch to 625 lines will greatly encourage both imports and exports of television sets as the same sets will become suitable 94 both for the British and foreign markets. However, in the first place there will be no market for 625 line only sets in the immediate future". You were referring to a market in Great Britain, were you not, or the United Kingdom?

A. Yes.

Q. Because the consumer would not buy a set that would not get the present stations?

A. That is right.

Q. Then you say: "Secondly, British sets have always been less elaborately designed both internally and externally than most foreign sets, partially because of the high purchase tax in this country. The present trend towards plain rented sets may confirm the British in this taste for cheapness and simplicity". Am I correct to understand from this that the trend on the British market was to buy a set on the basis of price because of the high purchase tax?

A. Yes, I think that is on the whole true, at that time anyway.

Q. This was in July 1962.

A. I think so.

Q. What is the meaning of this reference to "trend towards plain rented sets"? What is the fact as concerns the rented set?

A. It just means it has been a trend, which has continued, for people to rent their sets rather than buy them. That is simple rent rather than hire purchase rent.

Q. They were looking for a set with a low rental?

A. Not necessarily.

95 Q. They were looking for a plain set?

A. No. The "plain" refers to the rental, not to the set. I am sorry.

Q. I do not quite understand that. You say "The present trend towards plain rented sets may confirm the British in this taste for cheapness and simplicity".

A. It may.

Q. Does not the reference to "cheapness and simplicity"—

A. No, I do not think so. Personally, my interpretation is that the "plain" refers to the method of renting.

Q. Do you know by this time, July 1962, what portion of television sets of the British sales were being rented rather than purchased?

A. Not off hand, but it was increasing rapidly.

Q. You also say on page 19: "The Zenith Radio Corporation has announced its intention to enter the market with 625 line only sets to be distributed by United Mercantile Company, but by stating that 'we do not intend to compete on price but only on quality and service' they concede that their sets are too expensive for the majority". Do you recall the means whereby you got this announcement? Was it a Press release or newspaper story or what?

A. The announcement I would imagine, I am sure, was a Press release or something of that kind. I should think so. That was about their first entering the market. It must have come from a Press release, I am sure.

Q. Do you know whether Zenith has entered the
96 market with 625 line only sets?

A. No.

Q. You do not know whether they did or not?

A. No.

Q. If they did, do you know whether there would be any market for a set in Britain having only 625 lines?

A. No, there would not be.

Q. There would be no market for such a set?

A. No. This is a question which is: If B.B.C.2 had been very successful there might have been a market, which nobody certainly knew at that time whether it was going to be successful or not. They certainly know now.

Q. But we know as a matter of fact that if they had entered the market with a 625 line only set they could not have marketed it; is that right?

A. They would have found considerable difficulty.

Q. Do you know whether Zenith has entered the market with any television set?

A. No.

Q. You still have the 405 line system to-day, is that not right, on your B.B.C.1 and on your I.T.V.?

A. Yes.

Q. The B.B.C.1 is your educational station and I.T.V. is more of an entertainment station; is that right?

A. You can put it that way if you like. I do not know how the B.B.C. would accept it.

Q. B.B.C.2 has not been a tremendous success?

97 A. It has not. It has not gained the viewship expected.

Q. Why not?

A. I would not like to say. It has not had success, whatever the reason might be.

Q. It has not had acceptability for some reason you prefer not to say?

A. There are hundreds of possible reasons. I do not think it is relevant.

• • •

124 Q. Do you know how many television manufacturers there were in the United Kingdom in the late 50's?

A. I could not give you an exact answer.

Q. I call your attention to page 41 of Zenith's Deposition Exhibit No. 9, which is the July 1958 Television Report, the first paragraph. I ask you if that is a correct statement.

(Exhibit handed to the witness).

MR. McCONNELL: Could I see that a minute before he answers?

(Exhibit handed to Mr. McConnell).

A. I have no reason at all to believe it is not true.

MR. KAYSER: That states, does it not, that there are 40 main producers of radios, radiograms, record players and television sets? It says: "There are a number of smaller scale assemblers whose total output accounts for no more than 5 per cent of the total production of these goods".

A. Yes.

• • •

138 Q. Referring to Zenith Deposition Exhibit 6, the report for Zenith, what is the purpose of a report such as this?

MR. McCONNELL: I object to that. He doesn't know what is in the mind of Zenith management, and I do not know how he can testify to it.

MR. KAYSER: For what purpose did you understand you were preparing the report?

MR. McCONNELL: I object to his understanding. The only people who can give you that information are the Zenith officials.

MR. KAYSER: Would you answer the question?

A. I can only answer it from the point of view of the purpose which we attempted to fulfil. We were asked to provide information on the production, market situation, imports and exports situation in as full detail as circumstances permitted, and this we did to the best of our ability.

Q. Did you attempt to include all information which you felt would be relevant in the event Zenith should wish to manufacture in the United Kingdom radio and television sets?

MR. McCONNELL: That assumes that we wanted to manufacture or somebody told him that. I have heard no evidence of that kind. We did not attempt to manufacture and never have and never wanted to, as you know full well. 139

A. We were never told the purpose of obtaining the report. We seldom are. We were merely given a list of instructions or we worked one out jointly which showed what information was required, and we did our best to obtain that information.

MR. KAYSER: You say you were given a list of instructions which you worked out jointly. With Zenith?

A. I am assuming this must have taken place. As you know, the file of correspondence is no longer available.

Q. But this would be your normal course?

A. That is so.

Q. To be given a list of instructions before you engaged in a survey?

MR. McCONNELL: I object to speculation about what might or might not have occurred between Zenith and this organisation. You are only speculating. The witness has no knowledge about it whatever.

MR. KAYSER: Is that your normal procedure before you begin a report?

MR. McCONNELL: I object to his normal procedure.

MR. KAYSER: Can you answer the question, please?

A. It is our normal procedure.

Q. And can you state whether or not you attempted to include all information which would be relevant if Zenith were to wish to import radio and television into the United Kingdom?

MR. McCONNELL: I object. This is a hypothetical question.

A. Mr. Counsel, this was not that kind of report.

140 MR. KAYSER: What kind of a report was it?

A. It was a report which is what we call a straightforward report. That is, we were not informed of the motivation of the client in any way. We merely discussed some information which they required, and it was on that basis that we prepared this report. We do in fact prepare other reports which are based on very different terms of reference, but this was not one of them.

Q. But the subject-matters that are in this report are the subject-matters that you were asked to cover?

A. Most certainly.

MR. McCONNELL: Now I move to strike that unless we can have some conversation at which this witness was present. Apparently he never talked personally to anybody.

A. No.

MR. KAYSER: But you at that time had supervision over the preparation of this type of report?

A. Yes.

Q. You are familiar with the procedures that were followed at that time?

MR. McCONNELL: I object to what was done with reference to this report unless this witness has personal knowledge as concerned any talks or directions from Zenith Radio Corporation. Anything that occurred outside his presence is hearsay.

MR. KAYSER: He can certainly state what the usual course of business was.

MR. McCONNELL: I object to the usual course of
141 business. If you are going to try to bind us by something you had better get into some conversations.

MR. KAYSER: I believe there is a question pending.

A. Could I have it repeated? I am sorry.

THE COMMISSIONER: Would you repeat the question to the witness?

(The reporter read the question).

MR. McCONNELL: I object to that. We cannot be bound by the unilateral procedures of this concern, even though we retained them. We are not bound by their customs.

MR. KAYSER: Would you answer the question, please?

A. Yes.

MR. KAYSER: Just read the question again. (The reporter re-read the question).

Q. And did those procedures involve covering in the report made for a client the subject-matters that he or it asked you to cover?

MR. McCONNELL: I object to that. That is an attempt to show in a back-handed way an instruction which the witness has already testified he knows nothing about.

MR. KAYSER: Can you answer the question?

A. Yes.

Q. Yes, you did follow whatever instructions the client gave you as to subject-matter?

MR. McCONNELL: I object to that. He doesn't know whether any instructions were given. Now this is a very improper method of examination, as you well know, and in due course it will be brought to the attention of the Court. I have put up with this sort of thing long enough.

142 MR. KAYSER: Could you answer the question?

A. Up till this last question you were asking me general questions about whether I was aware of the procedure followed by my company.

Q. Yes.

A. And whether I was responsible for the work carried out at that time. Now I think your question is more specific.

Q. I asked you whether or not the procedure of your company was that when you prepared a report you covered the subject-matter which the client asked you to cover.

MR. McCONNELL: I object to that course of procedure. That was not the first question you asked him. That was whether or not he followed it in this case, which is an indirect way of attempting to show something by hearsay which he has no knowledge about. I still object to the question, but it is not the same question you asked the first time.

MR. KAYSER: Could you answer the question, please?

A. Speaking in general, the majority of our work is done on closed end instructions, but by no means all.

Q. What do you mean by "closed end instructions"?

A. I mean the terms of reference are established before the work commences. That is what we call closed end. On the other hand, quite a large proportion is what we call open end instructions. That is, the general requirements are established, but as with most kinds of research it is in fact unlikely that you know what you can provide or what is

of value or not of value until you have gone some way
143 in doing the research. It is very often left open-ended, particularly in countries where statistics are not available in large quantities.

Q. In April 1959 could a U.S. manufacturer have sold television sets in the United Kingdom without having some wholesalers or distributors as a means of getting them into the market? I am speaking, I should say, after June 8, 1959, when the restrictions were released.

A. For a quantity sale he would need distribution and service facilities. It would be impossible to sell them otherwise.

Q. What other means could he use?

A. There are a lot of very expensive and very high class materials which are sold by certain departmental stores in this country which have a more or less exclusive right to them. The American dish-washers are an example of that method of approach.

Q. They are sold solely through department stores?

A. To the best of my knowledge, yes.

Q. That provides a limited market, does it not?

A. Limited to a point.

Q. If a television manufacturer made contact with wholesalers or distributors, would that involve any expense on his part?

A. Quite considerable.

Q. So he would have very substantial start-up costs at the initial stage?

MR. McCONNELL: I object to characterizing it as "very substantial". The distributing costs I assume would be the same for everybody in the industry, whatever they did in the way of distribution, and I object to the characterization as "substantial". What is substantial is not defined.

144 MR. KAYSER: I will rephrase the question.

Q. Would the manufacturer who came into the market have initial costs in this area which would not be present to a manufacturer who had been in the market for a number of years?

A. Yes.

Q. What would the nature of those costs be?

A. They could be very small or very large, depending on what policy decision the manufacturer made as to the kind of distribution or organisation he wanted to start with. If you wanted to come to an arrangement with two or three large retailing groups or wholesalers who do 10 per cent of the market or so, that would not be very expensive. If you wanted to establish a fully-fledged distribution and service organisation throughout the country, it would be expensive.

Q. I believe you stated in your report to Zenith at page 162 under "Price trends"; "Prices have on the whole been falling. Amalgamation and rationalization of production together with technical changes and increasing competition have kept prices down. Prices are, however, increased by the addition of purchase tax, at present 60 per cent of the wholesale price". Did that drop in prices continue during the succeeding years 1959, 1960, 1961, 1962 and 1963?

A. I cannot answer that question without looking back on the figures.

Q. At page 163 of the report you state: "A large proportion of tape recorder, mains radio and television set cabinets in use are of wood, particularly in the case of
145 the more expensive sets. Plastic cabinets are used for cheaper sets increasingly, for more expensive ones and particularly for battery sets". It was true, I gather, that for the more expensive set wood was the product normally used in making the cabinet?

A. At that time. If it says so, I am sure it was so.

Q. I notice also on page 163 a statement that the figures for 1958 are for the first half of the year and show the influence of the slight recession then in progress and the trend towards the cheaper portable models. Did that trend towards cheaper portable models continue?

A. I cannot answer a question of that kind. You would have to do a detailed examination of what happened in all subsequent years to give you an exact answer to that.

Q. In other words, you do not know?

A. Quite so.

Q. On page 164 of the report you say: "Broadly speaking the two factors which affect sales most are price and visual aspect considerations, neither of which can be particularised". What do you mean by "visual aspect considerations"?

A. I will read the context, if I may.

Q. Surely.

A. (After perusing the document): I would say that the intention is to state that when a person goes into a shop he is influenced by two factors, firstly price, but not necessarily more important; secondly, the appearance of the set.

Q. Do you have any knowledge as to what the appearance is which the English public generally prefers?

A. No.

146 Q. I notice that in this April 1959 report no conclusion or recommendations appear, although in your six months or semi-annual reports you normally do have some comments?

A. Yes, correct.

Q. Did you subsequently to this or with this report make any recommendations to Zenith?

A. Not to the best of my recollection. It would not be normal with a closed end report.

147 Q. And this is a closed end report?

A. It certainly is.

Q. Last Wednesday I asked you a question about this Plaintiff's Deposition Exhibit No. 19, which was the January 1962 television sets report. I asked you a question about the statement on page 15 that Zenith had announced their intention of entering the U.K. Market if the 625 line system was adopted. I believe you testified: "The announcement, I would imagine—I am sure—was a press release, or something of that kind. I should think so. This was about their first entering the market. It must have come from a press release, I am sure".

A. Yes, or published information.

MR. McCONNELL: What are you asking him, that he did testify that? Is that what you want to know?

MR. KAYSER: Yes. I am, first, refreshing his recollection, because I believe there was a similar announcement in an earlier report.

MR. McCONNELL: Are you going to testify now about what there was? If you are, you had better get sworn and get on the witness stand, and I will cross-examine you.

MR. KAYSER: I am going to have to go off to another subject until I can find my notes on the earlier report. I will come back to that after lunch.

THE COMMISSIONER: It is now 12.18.

MR. McCONNELL: Have you any idea how long this cross-examination is going to take? The reason I am asking is I have a witness who is coming here at 2 o'clock, and I do not want him sitting around here all afternoon if you are going to be all afternoon with your cross-examination.

148 MR. KAYSER: I would estimate another hour to an hour and a half.

MR. McCONNELL: All right.

MR. KAYSER: Are you familiar with a company known as the United Mercantile Company?

A. Yes.

Q. Who are they?

A. They are merchant bankers and providers of hire purchase finance. I think I am correct. That is what I think of them as, anyway.

Q. Actually, to be fair with you, I am referring to a company which I understand to be a Zenith distributor here in London. You do not know who Zenith's distributor is?

MR. McCONNELL: I move to strike that statement. It is about as irrelevant as everything else you have got in the record.

MR. KAYSER: Well?

A. I answered your question, to the best of my knowledge.

Q. Yes, you did, I agree. I want to refer you to the January 1959 report, Zenith Deposition Exhibit No. 10, page 39. You say there: "There is a definite trend towards cheaper television sets. The average retail list price (including purchase tax) of home disposals by manufacturers of television receivers has fallen steadily since 1955. In December 1955 the average price of a 14 inch model was £71. 0. 0. and a 21 inch model £149. 10. 0. In December 1956 the figures were £67. 15. 0. and £107. 15. 0, in December 1957 £61. 10. 0. and £103. 10. 0. and in June 1958 £60. 0. 0. and £98. 10. 0. respectively. This trend is likely to be reinforced by competition within the industry as
149 well as technical improvements". I hand you the exhibit. Can you state what the technical improvements were that were supposed to drive the price down?

MR. McCONNELL: If he knows.

MR. KAYSER: If he knows.

A. There were two developments going on, and have been going on ever since that time. First of all, the introduction of certain replacements, or so I understand, for the cathode ray tube, the introduction of diodes and triodes, and things of that kind, which not only gave a reduction of the initial cost, of the components going into the set, but also reduced the size of the set. Secondly, there was a trend towards printed circuits—I think that had already commenced—which was also a considerable saving, particularly in labour. These are the trends which, to the best of my non-technical knowledge, were the ones referred to there.

Q. Referring to Zenith Deposition Exhibit No. 11, which is the July 1959 issue, on page 42 you state, under the heading "Trends in Production, Exports, Imports and Supply", then under "Production": "As was expected, the removal of hire purchase controls last autumn made for a record year and production, at 1,985,000 sets, only just failed to reach the two million mark for the first time. Production in the last quarter of 1958 at 682,100 sets was the highest in any quarter since 1956". Then lower down on the page you say: "Home sales in the last quarter of 1958 were a record at 937,000 sets and were half as much again as those in the corresponding quarters of 1956 and 1957. Sales continued at a high level in the first quarter of 1959, and
150 though seasonally down on the previous quarter's figures were 62.4 per cent higher than a year earlier. In April the advance on 1958 was even more spectacular, and sales at 176,000 sets were 141.6 per cent greater than in the previous year". Then you comment on the removal of the restrictions on hire purchase transactions. What is a hire purchase transaction?

A. A hire purchase transaction is where you pay a deposit, which in law varies according to the Government regulation which is in force at the time but which normally sets a minimum—

Q. A minimum down payment?

A. Yes—and the purchase is then completed by a series of monthly payments, incorporating both principal and interest.

Q. Is there a control also over the term of the monthly payments under hire purchase?

A. Yes, the period can be controlled.

Q. Is it fair to say that 1959 was a banner year for television production and sales in England?

MR. McCONNELL: I object to that. That does not mean anything, "banner year". It does not define anything. The figures are the best evidence of what it was.

MR. KAYSER: Is it fair to say that the sales were very high in comparison to previous periods?

A. If that is what it says in the report, I am sure it is true.

MR. McCONNELL: All he is doing is saying the report is correct. I object to it. The report speaks for itself.

A. I am sure this report is correct.

MR. KAYSER: You say, however, on page 43: "The
number of television sets in use has, however, risen
151 very sharply in recent years and the domestic market
is approaching the point of saturation. Unless, therefore, some new factor, such as the introduction of colour television, stimulates a quicker replacement of existing sets, sales may well tend to fall back in the longer run". Is it a fact that in the years after 1959 the sales of television sets declined in comparison with 1959?

A. Without referring to figures, I cannot be sure, but I would have said that the rate of growth was slower.

Q. Would you say that the total sales, in comparison with 1959, declined?

MR. McCONNELL: I object to that. The best evidence of that would be Government statistics as to sales; not what the witness speculates upon it.

MR. KAYSER: Do you know?

A. I do not know definitely.

* * *

158 Q. At page 95 on Wednesday, as I said this morning when I could not find the papers, I asked you about the reference in the July 1962 report to the effect that "The

Zenith Radio Corporation has announced its intention to enter the market with 625 line only sets to be distributed by United Mercantile Company, but by stating that 'We do not intend to compete on price but only on quality and
159 service' they concede that their sets are too expensive
for the majority". You stated that you believed that you had gotten the information from a press release of some kind.

MR. McCONNELL: What page was that?

MR. KAYSER: That was on page 95, and I think it runs over to 96.

Q. In the January 1962 report, which is six months earlier, and is Plaintiff's Deposition Exhibit No. 19 for identification, you referred to Zenith as follows, first on page 14—

MR. McCONNELL: Now, I object to the characterisation "you". If you mean his company, all right. He did not write this report.

MR. KAYSER: All right.

Q. The Economist Intelligence Unit Limited referred to Zenith as follows on page 14, and I quote: "At least one foreign firm will enter the British market if the 625 line system is adopted. Zenith, the U.S. manufacturers, have announced their intention of adding television sets to the range of radio equipment which is already marketed for them in the U.K. by the United Mercantile Company". Over on the next page, page 15, it says, and I quote: "Pye, the leading advocate of the 625 line system, claim that they would be able to export far more television sets as the adoption of 625 lines would bring the U.K. into line with most European countries and the U.S.A. This would also open up the U.K. market to foreign competition—indeed, as was mentioned above, Zenith, the U.S. firm, have already announced their intention of entering the U.K. market if

the 625 line system is adopted. Despite the opposition of the major part of the industry, it is widely believed at the moment that the 625 line system will be recommended
160 by the Pilkington Committee". Do you know, had Zenith made a prior announcement relative to its intent to enter the U.K. market if the 625 line system came in?

MR. McCONNELL: I object to that, unless he was present when some announcement was made.

MR. KAYSER: Do you know the basis for the statement in the January 1962 report that Zenith would enter the British market if the 625 line system was adopted?

MR. McCONNELL: I object to what he says about the source as hearsay.

A. It can only have been from either a press release or a published announcement of some kind.

MR. KAYSER: Do you know what the condition of the television industry—and I am speaking of the production and sales of sets—was in the middle of 1960 here in the United Kingdom?

A. No, I do not know, not exactly.

MR. McCONNELL: I do not know how anybody can answer that question, "condition of the industry". Nobody knows what you are talking about. It is an unintelligible question.

MR. KAYSER: I call your attention to Zenith Deposition Exhibit No. 13 for identification, which was the July 1960 report on television sets. You state at page 17—

MR. McCONNELL: I object to the use of the word "you". This man did not write the report.

MR. KAYSER: I believe he stated that it was written under his supervision and that he was responsible for it.

MR. McCONNELL: Did he say he wrote it?

MR. KAYSER: You state on page 17—

161 MR. McCONNELL: I object.

MR. KAYSER: All right.

Q. The Intelligence Unit states on page 17: "By far the greater proportion of television receivers are distributed from the manufacturers direct to retail outlets. This tendency to by-pass the wholesaler has become widespread in the trade, especially among the larger manufacturers who can afford to control a distribution system of their own". Do you know the reason for the tendency to by-pass the wholesaler and sell directly to retail outlets?

MR. McCONNELL: I object to that. He is not writing this report. I object to cross-examining on somebody else's theory about it.

MR. KAYSER: I am asking him if he knows.

MR. McCONNELL: Same objection.

A. The manufacturers of consumer durables as a whole have tended to move into direct relationship with the retailer. This is universal. As they aim to make a profit, presumably it is to their advantage.

MR. KAYSER: Do you mean there is a cost saving involved to the manufacturer?

A. Presumably.

Q. The Unit states at page 18: "Renting, in view of the advantage it has over hire purchase in terms of credit restrictions, has become a very profitable means of outlet for both retailers and manufacturers. It is believed that 50 per cent of one manufacturer's sets are installed in homes on a rental basis. This particular firm clearly believes that
the increasing competition likely in the 1960's will place
162 manufacturers who have direct links with rental groups
in an advantageous position. The percentage of rentals
of total sales is not known exactly, but it is estimated to be more than 35 per cent. The high cost of service and maintenance makes rental relatively attractive to the con-

sumer, especially as there is a possibility that in 1964 present sets will become outmoded". Can you state whether or not, subsequent to July 1960, the use of rental as a means of distribution of sets increased?

A. Yes.

Q. I call your attention to another statement in the Intelligence Unit report for July 1960 at page 18, which reads: "At present the majority of manufacturers conform to a standard rate of discount of 30 per cent to their retailers. They also allow concession rates of not more than 5 per cent to large buyers—multiple stores and retailers controlling between 10 and 20 shops—as well as additional discounts for early settlement. These normally amount to 3¾ per cent for payment within seven days and 2½% per cent for payment within a month. Some allowance is also made for off season ordering; retailers are given a period of ninety days in which to pay as against one month in the peak period. One firm, Sobell, McMichael, recently raised its discount to 33⅓ per cent, bringing television sets into line with radios. Other manufacturers appear to resent this move, which also alters the wholesale price, and attribute it to Radio and Allied's desire to do more business through the independent dealers". Is it a fact that dur-
163 ing this period the amount of discount given to retailers was increasing?

MR. McCONNELL: I object to that. It does not say any such thing.

MR. KAYSER: I am asking him if it was a fact.

A. It would appear from what you have read, Mr. Kayser, that this was an exception.

Q. On page 21 of the same report, under the heading "Supply", the report says in part: "No published figures are available to cover sales and rentals to the eventual customer, but well informed trade sources estimate that a total of 2.5 million sets were actually sold or rented to customers in 1959. It thus appears that even in that boom year there was a considerable over-supply. Manufacturers' stocks were swollen by some 50,000 sets; those of distributors by about 250,000 sets. The imbalance of supply and sales worsened in the first quarter of 1960 when production exceeded manufacturers' deliveries by as much as 227,800 sets". Then later on :"The industry is clearly going through a difficult phase at present, and the process of cutting back supply to bring it into line with demand will have to continue. Moreover, with the greater publicity being given to the probable adoption of the 625 line system, consumers will have an added incentive to delay replacing their sets, which will tend further to depress demand. Despite this, the industry is confident that sales will settle down at about the 2 million a year mark, and looks forward to a revival of sales in the autumn following the National Radio Show". Do you know whether, as a matter of fact, the 2 million sets per year level was achieved?

A. It will be probably in a subsequent report, 1961
164 or 1962. This was, I think, a very accurate appreciation
of the situation when this report was written.

Q. In other words, you do not know at this point what level the market achieved?

A. I have not got all these figures in my mind, I am afraid.

Q. These reports we have been talking about were prepared in the regular course of business for the Intelligence Unit; is that correct?

A. That is correct.

Q. And are believed by you to have been accurate?

A. They were accurate. They were a good judgment of the situation as it was seen at the time they were written. What you have just been reading out was a question of forecasting; not a statement of fact.

Q. As concerns the statements of fact that are in there, you believe those to have been carefully compiled?

A. Without question.

Q. I want to turn to the July 1961 report, which is Plaintiff's Deposition Exhibit No. 18 for identification, and refer to a paragraph starting at the bottom of page iii and running to the top of iv, where the report says: "Although production is still running well below capacity, conditions have improved slightly in the television industry in the last six months. The clearance of accumulated stocks of 17 inch sets is now well in progress, chiefly as a result of widespread price-cutting on these sets. Retail price maintenance on 17 inch sets has virtually collapsed as manufacturers, with two exceptions, have reduced their trade prices,
165 leaving retail prices unchanged, and dealers have had to resort to various types of concealed price-cutting in order to clear their stocks". Do you know the reason for the price-cutting referred to in the paragraph I have just read?

A. It is normal retail practice when you have an accumulation of stock.

Q. You mean over-supply?

A. Not necessarily over-supply. That is a different question, if I may say so. You say, what is the reason for price cutting? The answer to that is that any retailer or group of retailers who have got an accumulation of stocks normally cut prices in order to make room, largely for next year's production, the same as in any sale period.

166 Q. Now, continuing the next paragraph on page iv, the report says: "The problems of a saturated market and surplus capacity have led to further rationalisation in the industry, with amalgamations of set manufacturers and also of suppliers of equipment. Production was severely cut back in the early months of 1961, when output for January-March was the lowest total recorded for any equip-

ment since April-June, 1953". Was there then in July 1961 a saturated market as concerns television sets?

A. The reports says so.

Q. What do you mean by "saturated market"?

A. The relationship between new sales and replacement sales is equal or negative.

Q. Could you explain that a bit further?

A. Do you really want me to?

Q. Yes, please.

A. In assessing the market for any consumer durable, there are two things which are essential to do. First of all, you establish what the total existing stock in the consumers' hands is. Secondly, you relate that stock to the known number of family units, which are considered, in relation to the average income of this country or any country, capable of purchasing a television set on the terms of purchase existing at that moment of time. That is two things. You then work out the average scrappage rate for each type of set or other consumer durable which you have under consideration.

Q. Average scrappage?

167 A. That is the rate at which they are disposed of, how many years people will keep them. That gives you a mathematical formula from which you can work out—given certain assumptions, mathematical assumptions—the rate at which sets will be replaced. It will also give you, as a residual figure, the amount of new sets—that is, non-replacement sets—which can be sold in that year. That is the explanation.

Q. Now, in your conclusions on that same page iv—

MR. McCONNELL: I object to the characterisation.

MR. KAYSER: Understand, Mr. Mills, I am referring to the Economist Intelligence Unit Report. In the conclusions on page iv it says: "A feeling of pessimism about the economic situation seems likely to lead to a postponement of buying, and the outlook for the television industry during the next six months does not look very bright. Manufacturers of rental sets should benefit from the tendency toward renting rather than buying sets, which is expected to strengthen a speculation about colour television and the change on line standard likely to make people reluctant to purchase a set which may shortly become obsolete. Productive capacity still exceeds estimated demand by nearly 1,000,000 sets a year, and the next six months is likely to see the disposal or diversion of part of this capacity to other uses". Then the Intelligence Unit found, as the result of these factors that you have referred to, and referred to in this report, that the productive capacity exceeded the estimated demand by 1,000,000 sets per year as of July 1961.

168 MR. McCONNELL: I object to that. What they found is in the report, I assume. I do not think the witness can add anything to it.

A. The report states that to be so, and I have told you before how the reports are prepared. But we are dealing with forecasts here, not a statement of fact.

MR. KAYSER: Then, in line with that point, I call your attention to page 14 out of the same report, under the heading "The structure of the industry", where it is stated: "The production of television sets is still running well below capacity. The trade sources believe that the worst of the recession has now passed". In other words, the Intelligence Unit at that time believed that the television industry was in a recession?

A. It was believed it was running at below capacity.

Q. And in a recession?

A. No. A recession implies a continuing decline, which is exactly the opposite of what is stated here.

Q. You are pointing out that it states here that it is believed the recession is passing?

A. Yes.

Q. Now, you testified, I believe—and correct me if this is not a correct statement—that the matters to be considered in evaluating a potential market were (1) the total sets out among consumers, namely, the total sets in use; (2) the number of households which can afford to buy a television set; and (3) the average scrappage rate of T.V. sets.

MR. McCONNELL: He did not testify to any such 169 thing, or anything remotely resembling that. It does not even remotely resemble it.

A. You asked me to define what we meant by "saturation", and that is what I did.

MR. KAYSER: And these are the factors to be considered in that?

A. In defining what is meant by "saturation", certainly; but that is nothing to do with defining a potential market, or only one aspect of it.

MR. McCONNELL: I think that is a very clear indication of the fairness of this cross-examination; the unfairness, rather.

MR. KAYSER: Do you know what the total number of television sets were in use in England in June 1959?

A. Not off-hand.

Q. Do you know, in June 1959, what the number of households were in the United Kingdom which could afford to buy a television set?

A. About 10,000,000.

Q. 10,000,000 householders that could afford to buy a set?

A. Yes, could.

Q. These were the number of households who did not have a television set?

A. No.

MR. McCONNELL: That was not the question asked. Why don't you be fair with the witness? You ask him whether or not there were these number of families who could afford, and then you twist it around into something entirely different and try to make him agree to the assumption in your question. I object to this form of cross-examination.

MR. KAYSER: What did you mean, Mr. Mills, by
170 the reference to households who could afford to buy a television set?

A. That is those who had sufficient income to be able to buy a television set.

Q. Without regard to whether or not they had one there?

A. Quite so.

Q. Do you know what the average period of scrappage for T.V. sets was in June 1959?

A. No.

MR. McCONNELL: If there was such a thing.

THE WITNESS: It is a very difficult thing.

MR. KAYSER: Now, on page 15 of this same report, the report states: "The stock situation which was worrying the industry at the end of the year has been eased by the higher sales resulting from open and concealed price reductions. Stocks are at present estimated at around three-quarters of a million sets, which are distributed between dealers who are believed to hold some 400,000 sets and manufacturers with some 350,000. In addition to price cutting, the stock position has been eased by the increased volume of rentals. The imposition of credit restrictions, with a 20 per cent deposit, automatically reduced sales and tended to deflect potential customers towards renting sets, for which a smaller deposit, comprising three months rent, is required. An additional factor influencing the choice between purchasing and renting a set is the fear in the minds of the public that television sets purchased now may become obsolete before their normal life-span of five or six years
171 has elapsed. These fears have been aroused by the re-

cent publicity given by the evidence placed before the Pilkington Committee on the future of television and by the general controversy in the industry over line standards, a third channel and colour transmissions". Do you know the extent to which television sets were being rented in July 1961 other than sold to the consumer?

A. Much the same figure as the previous estimate, I would say; possibly slightly higher.

Q. I see they talk here about a normal life-span of five or six years. Is that the same thing as the scrappage which you have referred to?

A. Yes, very unsophisticated, if I may say so, a very unsophisticated statement about scrappage.

Q. I refer to page 17 of this same report, under the heading "Distribution". It says: "The distribution system has been relatively unchanged during the last six months, although resale price maintenance has suffered considerably. Most retailers are now offering 17-inch sets at cut prices, either openly or in concealed forms which still pay lip service to resale price maintenance"; and later on it says: "Retailers have been unable to sell sets at the original prices and have resorted to attracting customers by offering various forms of discounts. The most common form of concealed price cutting is the offer of an inflated trade-in allowance on secondhand sets, and some cases have been reported of dealers providing a used set if the customer does not already own one". Is this condition of the market a reflection of an over-supply?

172 A. I think we must take the quotation as it stands, Mr. Counsel, if I may. What it indicates is what it states; an accumulation of stocks largely at the retail level.

Q. Over on page 16, the report states: "It is reported from trade sources that the new 19-inch set is not selling in volume, as the public is at present making price the primary consideration when purchasing a television set, and is therefore buying the cheaper 17-inch sets". Did the industry at this time come out with a 19-inch screen as a larger size?

A. They must have done.

Q. Now, I refer to Plaintiff's Deposition Exhibit 19 for identification, which is the January 1962 report of the Economist Intelligence Unit Limited. On iv, under the main heading on iii, "Summary and Conclusions", the report states: "The general economic outlook for the first six months of 1961 is not promising. This, plus the uncertainty surrounding the future of television broadcasting, will act as a depressent on the market during the first half-year. Direct sales (including H.P. sales) will be hardest hit. Rental share of the market should continue to increase". I ask you: Is that possibly a typo? Should not that be "the first six months of 1962"?

A. I am sure it should. In fact, I was going to draw your attention to it.

Q. Then we go on with the report: "A general upturn in the economy is expected during the second half of the
year, and by then the Pilkington Committee's recom-
173 mendations will be known and possibly also the Govern-
ment's decisions on the report. This should give added impetus to the upturn, though it should be emphasised that there seems to be little prospect of the industry working at its present capacity by the year end". Did the report come out during 1962, the Pilkington Report?

A. I think so. I am not quite sure. It must have been very close to that. It may have been early 1963. I am doubtful because Government Reports are always inclined to be later than one expects, but it was certainly round that time.

Q. Did the issue of the report give any impetus to the market?

A. Not with immediate effect.

Q. On page 16 of this same report it states in part: "Recently too there has been a rapid growth in rental television services, often on a small scale, where individual retailers have begun their own rental services, in order to earn some return on the capital tied up in unsaleable stocks. Of all T.V. sets in use in 1956, only about 2 per cent were rented. By 1959, the figure was 6 per cent, and by the beginning of 1961 it had risen to nearly 14 per cent. During 1961, trade sources estimate that as many as two thirds of all new sets obtained were rented; and, if this is the case, it means that over 20 per cent of the television sets are now held on rental". Do you know whether the increase in rental continued beyond January 1962?

A. Yes, it did.

Q. Do you know the extent to which it went?

A. No.

174 Q. I call your attention to page 20 of the January 1962 report, which is headed "Production and Supply of Television Sets", and ask you as to the source of the statistics shown there.

A. This is almost certainly figures from one of the Associations in the electrical industry. I am rather surprised the source is not given. Alternatively, it might be a combination of figures obtained from manufacturers or Trade Associations with a cross-check on retail sales; either one or the other.

Q. But the information is believed to be reliable?

A. Very; in total.

Q. I refer to Plaintiff's Deposition Exhibit 20 for identification, which is the July 1962 report, headed "Television Sets, by The Economist Intelligence Unit". On page 17, under the heading "The Structure of the Industry", reference is made to the five main groups of marketing television sets through retailers, and says: "These companies produce nearly all the sets sold or hired out by retail shops, and in

addition manufacture many of the sets supplied by rental and relay companies. Three of them have either set up, or acquired holdings in, such companies in order to assure themselves of a share in this growing outlet. The largest companies in each of these fields, however, Rediffusion in relay and Radio Rentals in rental, manufacture their own sets. Radio Rentals also sell their sets under the Baird trade mark and have a chain of retail shops, and most of the other relay and rental companies have sets made to their own specifications, to which they attach their own trade
175 marks, rather than those of the manufacturers. An exception is Multi-Signals, the third largest relay company, whose system only requires a small installation in an ordinary set". What is the explanation for the rental companies having the sets made to their own specifications?

MR. McCONNELL: I object to him testifying as to what some manufacturers' reason was for doing something.

MR. KAYSER: If he knows by reason of the research.

MR. McCONNELL: How would he know, except by hearsay? I object to it.

MR. KAYSER: Can you answer that?

A. It is for the same reason as chains of departmental stores and supermarkets have goods manufactured under contract, own name. It can be advantageous; it cannot be advantageous, depending on the circumstances.

Q. I read from page 20 of the same report, where it says: "The preference for renting rather than outright purchase has continued in recent months, as a result of the uncertainty about line definition and colour television. No reliable figures are available, but it is estimated as a result of discussions with the Retail Trade Association and recent Press comment that the present market for television sets, relay sets being excluded, is divided as follows: 25 per cent sold by retailers, 30 per cent hired out by retailers, and 45 per cent hired out by rental companies".

MR. McCONNELL: What page is that?

MR. KAYSER: 20. "In the continuing uncertainty, the proportion of the market held by rental sector can be expected to remain high". Do you know what portion of
176 the television sets were rented during the period after
July 1962 to May 1963?

A. Certainly not less.

Q. Possibly more?

A. Possibly more; certainly not less.

Q. Also, on the same page 20, it says: "Retail discounts have been rising recently. 33⅓ per cent is now standard, instead of 30 per cent, and some manufacturers, such as Radio and Allied Industries, Dynatron, R.G.T. and Kolster-Brands, offer more". As the retail discount increases, does that mean that the manufacturer gets less for the set?

A. Yes.

Q. The increase in the retail discount increases the margin which the retailer receives; is that right?

A. You must be careful in your definitions here, or what you mean by the word "discount". We in the E.I.U. prefer to use the word "mark-up", because it has less ambiguity about it. A discount, in the term which I think you mean, Mr. Counsel, is the difference between the ex-factory price and the price as sold at the retail level. That is really a mark-up. The other discount to which you have been referring earlier and which I think one must clarify a little is the discount on the retail price which the retailer himself gives when he is over-stocked.

Q. That is the discount which he gives to his customer?

A. That is right. But they are very different things. The second has no effect on the manufacturer's receipts
at all. That is the discount given by the retailer. Any
177 increase in the mark-up may or may not have an effect
on the manufacturer's receipts. I am sorry to go on so long, but you asked a very difficult question. Supposing,

for example, yout ex-factory price is £40 and your recommended retail price is £70, shall we say. The mark-up is £30 on £40. This has never actually occurred, and please don't think I am quoting any real example. One method of doing this is to say "I still want you to pay me £40, but you may sell my set for £72½". So there is no universal strictly accurate answer which I can give you. I can only say all these variations exist. As far as the retailer is concerned, as long as he can sell the set, he does not mind. It enables him to give a bigger apparent discount to the customer and yet obtain the same mark-up himself. It does not affect necessarily the price received by the manufacturer. Have I made myself clear?

Q. I believe so. Am I right, then, in understanding that the retail discount refers to the discount which the retailer gets off of the manufacturer's suggested resale price?

A. This is universal. Supposing you went round to a series of shops in London now, and the recommended prices might vary by all sorts of figures, they would be recommended prices which are published, but not enforceable by law, or not necessarily so. The retailer could say to you: "Right. Have you got an old set? I will give you £15 for it", knowing very well it was in fact only worth £12. Therefore, he has given you a discount of £3 on the set, whatever the value of the set may be. But if the man-
178 ufacturer in the meantime has permitted him to increase his recommended price, as far as the manufacturer and the retailer are concerned, neither has lost anything. But this is normal business practice, I am afraid.

Q. But the retailer's discount is based on the recommended resale price?

A. You are right. He cannot give a discount on a non-existent price.

MR. KAYSER: I would like to have the reporter mark for identification as Plaintiff's Deposition Exhibit 26 this volume headed "Durable Consumer Goods, No. 9, July 1962, Radios, Radiograms and Record Players", shown as having been prepared by the Economist Intelligence Unit Limited in association with the British Market Research Bureau Limited; and to mark as Plaintiff's Deposition Exhibit 27 this volume dated December 1964, "Retail Business Survey, Radios", shown as having been prepared by the Economist Intelligence Unit Limited.

MR. McCONNELL: Mr. Commissioner, it is perfectly apparent that we are not going to get through by 4 o'clock with this witness. So I think, if I may have a short recess, I will go and tell him he can go home and come back in the morning.

MR. KAYSER: I will finish by 4.

MR. McCONNELL: Well, I have Redirect.

(*A short recess was taken*)

("Durable Consumer Goods, No. 9, July 1962", marked "Plaintiff's Deposition Exhibit No. 26 for identification").

("Retail Business Survey, Radios" marked Plaintiff's Deposition Exhibit No. 27 for identification").

179 MR. KAYSER: I hand the witness Plaintiff's Deposition Exhibit No. 26, which is the July 1962 issue on radios, radiograms and record players, and ask him if he can identify that volume.

A. Yes; it is a standard six-monthly report.

Q. Put out by the Economist Intelligence Unit?

A. Yes, in the normal course of business.

Q. The material is compiled similarly to the method you described in connection with your six-months television reports

A. Exactly the same.

Q. When did you start publishing the report on radios, radiograms and record players?

A. Almost certainly exactly simultaneously.

Q. With the television reports?

A. Yes.

Q. And are the radio reports still being published?

A. No.

Q. When were those discontinued?

A. At the same time as the television ones, I am sure.

Q. What was the distribution or circulation of the radio reports?

A. Very similar.

Q. To manufacturers?

A. To manufacturers, yes.

Q. In the United Kingdom?

A. Yes, almost entirely.

Q. Were some reports sent outside the United Kingdom?

A. Not to my recollection.

180 Q. I refer to page iv of this report, which is under the heading "Summary and Conclusions" which appears at the top of page iii. It says: "The production of radio equipment has continued at a higher level than it was a year earlier. Imports have risen very rapidly, overtaking exports which are still falling. The boom in sales is confined to radios. Deliveries of radiograms have now resumed their decline". Do you recall the source of the imports which were rising, as it says here, very rapidly in July 1962?

A. No, I do not.

Q. On page 20 of the same report, under the heading "Imports", it says: "The rise in imports accelerated in the second half of 1961, reaching a total of 128,700 units in the final quarter. The aggregate for the year at 301,000 units was for the first time greater than exports and came to almost 10 per cent of home production. In the first quarter of 1962, when imports are usually at their lowest, they totalled 74,200 units, or almost twice as many as in the same quarter of 1961". Do you happen to know: Were sets being imported at that time from Japan?

A. Probably; but by reference to the annual statement for the appropriate year you would easily check on that. (Document handed to the witness). This is an extract.

Q. You are referring to what page?

A. Page 22. This gives the production and supply of various radiograms. The imports and exports would have been an extract from the Board of Trade Journal, one 181 of these blue publications, Annual Statement of Account, supplemented by the kind of approach to Her Majesty's Customs and Excise which I described earlier. This is the only accurate source of imports and exports.

Q. Does that sheet you have referred to show a country?

A. No.

Q. I show you Plaintiff's Deposition Exhibit 27 for identification and ask you if you can state what this is. (Exhibit handed to the witness).

A. This is a supplement which is produced quarterly on a selected subject.

Q. A supplement to what?

A. To our monthly publication "Retail Business".

Q. You have a monthly publication with that title?

A. Yes.

Q. Does that cover radio sales or production?

A. From time to time.

Q. And television also?

A. From time to time. It is much more a soft goods, grocery, publication really.

Q. But this work Plaintiff's Deposition Exhibit 27 was prepared in the regular course of business?

A. Yes.

Q. And from sources considered to be reliable?

A. Yes.

Q. What is its distribution?

A. About 600.

182 Q. What types of businesses or persons purchase this?

A. Advertising agencies, retail organisations, manufacturers of retail goods.

Q. I notice on a number of pages—as, for example, page 1, 2, 4 and 5—there is, in relation to statistics, a reference to BREMA as the source. Can you recall to-day as to exactly the name of that organisation?

A. British Radio and Electronic Manufacturers Association, or something very close to it.

Q. That is a Trade Association?

A. It is.

Q. Do you know what the functions of that Trade Association are?

MR. McCONNELL: I object to this witness testifying about the functions of some trade organisation.

MR. KAYSER: I will amend that—as concerns the collection of statistics.

A. They obtain returns from their members.

Q. And you obtain in turn this information from BREMA?

A. Yes.

Q. And rely on it in the preparation of your reports?

A. We do; not in total. There are other sources quoted. May I make a correction?

Q. Surely. Go ahead.

A. It is just a lapse of memory; the British Radio Equipment Manufacturers Association.

Q. That is the full name of BREMA?

A. Yes.

183 Q. Referring to this Plaintiff's Deposition Exhibit 27, on page 4 it states: "In the past eight years, sales by U.K. manufacturers have more than doubled in quantity. Exports have halved, while imports have risen 8½ times since 1960. This is shown in Table 5. In 1963, imports were

18 per cent of U.K. manufacturers' sales by value and 57 per cent by number, showing that the main strength is in the inexpensive end of the market—transistors, personal and portable radios".

MR. McCONNELL: I have not objected heretofore to the documents which have been marked here, reading them in, because some of them I have produced myself, but this document is an entirely different thing, and I am objecting to reading into the record the contents of a document which is not in evidence and obviously never can get qualified to get into evidence. We have no way of cross-examining the person who got together these figures. We do not know anything about their source. We do not know anything about the qualifications of this document, and the man is reading it right into the record. I object to this practice.

MR. KAYSER: I notice here, at Table 5, which was referred to in the quote which I just read, that there is a reference to BREMA and to the Ministry of Aviation and to H.M. Customs and Excise as the source. In other words, as you said, in addition to BREMA, you also got information from the Ministry of Aviation and Customs and Excise?

A. Yes.

• • •

198 Q. You spoke about two different line systems in cross-examination, the 405 and 625 lines. Isn't it a fact that all British manufacturers make a set with both line systems?

A. All major manufacturers.

• • •

REPORT ON THE PRODUCTION AND MARKETING OF RADIO AND TELEVISION RECEIVERS, PHONOGRAPHS AND TAPE-RECORDERS IN THE UNITED KINGDOM

THE ECONOMIST INTELLIGENCE UNIT

April, 1959

Job No. J 5143

MASTER COPY — NOT TO BE REMOVED

Report Dispatched On: 6/4/59

Client: Zenith Radio Corporation

Short Address: Chicago 39, Ill., U. S. A.

Author: T. McKitterick/LW. A2

The Economist Intelligence Unit Limited,
22, Ryder Street, London, S.W.1.

• • •

b) *Price trends*

Prices have, on the whole, been falling. Amalgamation and rationalisation of production, together with technical changes and increasing competition have kept prices down. Prices are, however, increased by the addition of purchase tax—at present 60 per cent on the wholesale price.

The following table shows changes in the wholesale prices (that is excluding purchase tax) of radios and television sets in an index form, together with the indexes of retail prices, domestic electrical appliances and all consumer spending (1949=100).

	Wholesale Prices				
	Radios	*Television Sets*	*Domestic Electrical Appliances*	*All retail prices*	*Consumer spending*
1950	n.a.	n.a.	100	103	103
1951	103	97	109	113	112
1952	103	94	116	123	118
1953	100	88	113	126	121
1954	99	85	111	129	123
1955	98	84	112	134	128
1956	89	78	112	141	134
1957	89	76	114	146	137

A very important factor in retail prices is the incidence of purchase tax (at present 60 per cent) and the possibility of the rate being either raised or lowered which, when an increase is expected, leads to a rush of purchases, and an expected fall to a considerable reduction in sales. Changes in the rates are announced periodically — usually in the Budget in April each year — by the Government, and it is not possible to predict them. In the present economic climate, however, any increase in purchase tax seems very unlikely, and it is thought that the rates will—if any change is made—be reduced.

The two tables below show the purchase tax rates since 1947 and the average retail price list of television receivers since 1955. It will be noted that in spite of the tax increase in 1955, prices still fell for 14", 17" and 21" receivers which account for nearly all sales between them.

Purchase Tax Rates
(percentages of wholesale price)

Date	*Radio & TV receivers*	*Radiograms*
April 1947	33⅓%	33⅓%
November 1947	50%	50%
April 1948	66⅔%	66⅔%
June 1948	33⅓%	"
April 1951	66⅔%	"
April 1953	50%	50%
October 1955	60%	60%

Average Retail Price List of Television Receivers
(incl. Purchase Tax)

Tube size	*1954*	*1955*	*1956*	*1957*	*1958*
	£ s d	£ s d	£ s d	£ s d	£ s d
12"	54. 0. 0.	52.10. 0.	54.10. 0.	53.10. 0.	49. 5. 0.
14"	68. 5. 0.	71. 0. 0.	67.15. 0.	61.10. 0.	60. 0. 0.
17"	86.15. 0.	89.15. 0.	80.10. 0.	75.15. 0.	73. 0. 0.
21"	—	149.10. 0.	107.15. [illegible]	103.10. 0.	98.10. 0.

The distribution of sales by price groups since 1954 is set out below. The figures for 1958 are for the first half of the year and show the influence of the slight recession then in progress and a trend towards the cheaper portable models.

Percentage Distribution of Sales (Retailers).

Price (excl. tax)	1954 %	1955 %	1956 %	1957 %	1958 %
Radio Receivers					
Up to £12.10.0	32	34	52	53	53
From £12.10.0 to £17.0.0	56	45	32	31	40
From £17.0.0 to £32.0.0.	11	12	11	12	5
From £22.0.0.	1	9	5	4	2
Radiograms					
Up to £40	44	37	36	27	35
Over £40 to £75	55	58	62	71	63
Over £75	1	5	2	2	2
Television Sets					
Up to £50	35	18	27	20	26
Over £50 to £75	60	75	67	77	72
Over £75	5	7	6	3	2

c) *Cabinet design and other features*

A large proportion of tape recorder, mains radio and television set cabinets in use are of wood, particularly in the case of the more expensive sets. Plastic cabinets are used for cheaper sets, increasingly for more expensive ones, and particularly for battery sets. Broadly speaking, "first sets" may be said to have wooden cabinets and secondary ones, usually smaller—and often battery operated—to have plastic or fibre cabinets.

The almost uniformly high quality of technical competence as between one company and another tends to lead to a situation where sales turn more and more on outward appearance with the result that the use of plastic cabinets is on the increase; they are cheaper than wood and the considerable variations in styling and colours possible with plastics are considered to have excellent sales appeal, especially in connection with the acquisition of a "second set".

It is not expected, however, that wood will be entirely superseded by plastics, if only because wood makes for better sound reproduction and has that "luxury" look and touch which plastics lack.

Regarding the popularity of particular features in certain models, it cannot be said that they are a great factor prior to a prospective buyer entering a shop. The public is, on the whole, and with the exception of enthusiasts, extremely ignorant of developments in the radio and television fields and only once in the sales room does the public take an interest in particular features—e.g. transistors in battery sets and VHF reception. Broadly speaking, the two factors which affect sales most are price and visual aspect considerations, neither of which can be particularised.

• • •

As will be seen in the above tables, ownership of radio goods is in the order radios, television sets, radiograms/record players and tape recorders, and saturation or near saturation has been reached in radios and television sets.

• • •

(iii) *Line definitions*

The present television line definition in the UK is 405. It is probable that this definition will continue to be used for some years to come on the present wavelengths. A recommendation favouring the adoption of a higher definition—625—is expected to be made by the Television Advisory Committee, and it is probable that this definition will be used in the UHF bands (Bands IV and V) when broadcasting starts in these bands, probably in the 1960's. (Colour television will, in all likelihood, also use these bands.)

• • •

DURABLE CONSUMER GOODS

1
JULY 1958

TELEVISION SETS

Prepared by
The Economist Intelligence Unit Limited
In Association with
The British Market Research Bureau Limited

DURABLE CONSUMER GOODS

A SERVICE OF ECONOMIC FORECASTING AND MARKET RESEARCH

GENERAL INTRODUCTION

This service aims to combine economic forecasting with consumer market research and with a study of trends having an influence on the supply of durable consumer goods to the United Kingdom market.

Reports are issued every six months and are divided into three parts.

The first part deals with the general economic determinants of the demand for durable consumer goods. An analysis of trends in the more general determinants such as the Gross Domestic Product is followed by an examination of a number of more particular economic determinants and finally, of consumers' expenditure on durable consumer goods. The results of this analysis are allied with the results of that part of the consumer survey concerned with consumers' income expectations and views on the timing of purchases of durable consumer goods in general. The results of the first part of the service provide a general economic forecast of the principal economic determinants of demand over the next five years, and an assessment of the outlook for sales of all durable consumer goods over the next six months. These forecasts are designed to assist manufacturers with their longer term planning by enabling them to assess the economic climate some years ahead, and to describe the immediate economic prospects which will influence supply trends and the application in practice of the intentions expressed by those interviewed in the consumer survey.

In Part II, a study is made of the supply side of the durable consumer goods industry and this part deals specifically with each item included in this service. We believe that much economic and market research concentrates too exclusively on demand trends and neglects the supply side of the equation. We have aimed to relate supply trends to the general demand trends shown in Part I, to analyse cost trends and compare them with price trends, and to bring out divergencies between design trends and what consumers' are thinking of buying.

The results of the consumer survey are set out in Part III. A full description of the design and composition of the sample forming the basis of this survey is given in Appendix A to this report. The results of the survey are very fully analysed in two sections: the first dealing with ownership and the second with intentions to purchase. In the introduction to Part III it is emphasised that the full significance and usefulness of consumers' intentions to purchase may be expected to emerge after a number of these regular surveys have been carried out.

In our conclusions the results of the three parts of the service are drawn together. The extent of ownership and consumers' intentions to purchase each item are considered in relation to the results of the economic demand and supply analyses, and an informed and reasoned forecast is made of the likely size of the market over the remainder of 1958.

• • •

PART II

THE ECONOMICS OF SUPPLY OF TELEVISION SETS

INTRODUCTION

In this part of the service a study is made of trends in the production and the supply of television sets to the U.K. market, and of certain factors which affect this supply.

The structure of the domestic radio equipment industry is given first and this is followed by a short discussion of trends in design and development. Trends in the several items of cost are then examined in five sub-sections and summarised in a sixth. To give an accurate visual impression of proportional changes in prices a logarithmic scale has been used in the charts in the section on costs. Finally, both long term trends and short term fluctuations in production, exports, imports and supply to the U.K. home market are discussed and examined in the light of the general economic studies previously made in Part I.

1. *The Structure of the Industry*

There are some 40 main producers of radios, radiograms, record-players and television sets and, in addition, a number of smaller scale assemblers whose total output accounts for no more than about 5 per cent of the total production of these goods. In radios and radiograms it seems unlikely that any firm has much more than 10 per cent of the U.K. market, and in television the leading five or six firms account for approximately 50 per cent of the market.

The labour force engaged in the manufacture of domestic radio and T.V. equipment is probably around 100,000. Accurate estimates are impossible owing to the overlap of the domestic radio and T.V. equipment industry with so many other interests.

The number of firms in the industry has been diminishing in recent years—though not necessarily the number of trade names—as firms have felt the need to consolidate or amalgamate their interests in order to increase the volume of output and so lower unit production costs, and to meet increasing demands on their technical resources and research facilities.

There is not a great deal of vertical integration within the industry. Some firms do manufacture component parts for their own use and even distribute them to others. Most of the firms, however, are dependent to some extent upon specialist producers of components.

The degree of vertical integration considerably affects the breakdown of production costs. Component manufacturers have a large labour element in their costs of production but, at the other end of the line, the labour cost element for assemblers may be much lower.

Distribution channels vary, though in total, about 80 per cent of the output of radio and television sets are sent direct to dealers and only 20 per cent are distributed through wholesalers.

2. *Trends in Design*

• • •

Opinion in the industry appears to be divided as to whether a 625 line picture system should be substituted in this country instead of the current 450 line system—perhaps on the introduction of a colour service—to conform with the majority of foreign services. It is felt that if production for the home market were geared to this system, the export trade might benefit considerably.

• • •

4. *Trends in Production, Exports, Imports and Supply*

(a) *1946-1957*

(i) *Production*

U.K. production of television sets has advanced very rapidly since the war, as may be seen from Table G. 1956 is the only year in which any setback in production was experienced, but production rose again in 1957 and was slightly in advance, in terms of numbers, of production of radios and radiograms.

The growth in the production of television sets since the end of the war was quite phenomenal, with the annual output rising from 29,000 sets in 1947 to nearly 1.9 million sets in 1957. As would be expected, the rate of advance was greatest in the earlier years and has tended to tail off recently, but there was quite a sharp increase in 1955 when production was 43 per cent higher than in the previous year. During 1955, however, production ran ahead of sales, and both manufacturers' and retailers' stocks were at very high levels by the end of the year. As a result, production fell back in 1956, and this was aggravated by the effects of the credit squeeze on home sales during the year. Nevertheless, although the production of television sets, at 1.5 million in 1956, was 18 per cent below that of 1955, it was still the second best year to date. Output rose again in 1957, however, and at 1.9 million sets was nearly 30 per cent higher than the previous peak in 1955.

• • •

(iii) *Imports*

Imports of television sets into the U.K. in recent years have been of little importance. This was probably due in part to the different line system in use in the U.K., and to the technical advantages enjoyed by British manufacturers.

• • •

DURABLE CONSUMER GOODS

2
JANUARY 1959

TELEVISION SETS

PREPARED BY
THE ECONOMIST INTELLIGENCE UNIT LIMITED
IN ASSOCIATION WITH
THE BRITISH MARKET RESEARCH BUREAU LIMITED

• • •

PART II

THE ECONOMICS OF SUPPLY OF TELEVISION SETS

• • •

1. *The Structure of the Industry*

The production of television sets seems to be becoming increasingly concentrated in a few large companies. Intense competition, with contracting profit margins, has given a real advantage to manufacturers with large-scale production methods, who, for example, use devices such as printed circuits which are only really economic when there is a long production run. This has led to a reduction in the number of firms, but not necessarily the number of trade names, in the television industry over the last few years. English Electric, for example, stopped making television sets at the end of 1956—and the process is expected to continue.

At the present time, probably half the total output of television sets in the U.K. is controlled by six companies—Bush, Ekco, Thorn Electrical Industries, Murphy, Philips and Pye.

Thorn now controls the "His Master's Voice" and Marconiphone trade marks through its 51 per cent holding of the issued share capital of the British Radio Corporation. This private company was set up in June 1957, to manufacture for the domestic market the radios, radiograms and television receivers formerly produced by Electric and Musical Industries and Thorn separately. Thorn appoints four directors while E.M.I., which holds the other 49 per cent of the ordinary share capital, appoints three directors.

• • •

4. *Trends in Production, Exports, Imports and Supply*

• • •

(iii) *Imports*

Imports of television sets into the U.K. are of very little significance. This is in part due to the different line system in use in the U.K., but also reflects the strongly entrenched position of the home industry.

• • •

(iv) *Supply*

• • •

There is a definite trend towards cheaper television sets. The average retail list price (including purchase tax) of home disposals by manufacturers of television receivers has fallen steadily since 1955. In December 1955 the average price of a 14″ model was £71.0.0 and of a 21″ model £149.10.0. In December 1956 the figures were £67.15.0 and £107.15.0; in December 1957 £61.10.0 and £103.10.0 and in June 1958 £60 and £98.10.0 respectively. This trend is likely to be reinforced by competition within the industry as well as technical improvements.

• • •

DURABLE CONSUMER GOODS

4

JANUARY 1960

TELEVISION SETS

E. I. U.

PREPARED BY
THE ECONOMIST INTELLIGENCE UNIT LIMITED
IN ASSOCIATION WITH
THE BRITISH MARKET RESEARCH BUREAU LIMITED

• • •

PART II

THE ECONOMICS OF SUPPLY OF TELEVISION SETS

• • •

1. *Structure of the Industry*

During the last six months many small assemblers and distributors have continued to enter the industry, but no major changes have taken place among the main manufacturing groups.

• • •

Increasing attention is being paid by manufacturers to distribution, and the share of the total radio and T.V. trade which passes through the hands of wholesalers is now 15 per cent and is tending to fall lower. Large manufacturers are developing their own distribution facilities, and can therefore afford to save the extra discount to the wholesaler. The number of dealers who are appointed agents to a manufacturer is rising, which appears to be due to the fact that manufacturers are becoming more concerned with the quality of repair services and replacement salesmanship.

A major development in the field of distribution was the Firth Cleveland group's acquisition of Broadmead, a private company controlling 300 shops. This makes Firth Cleveland the largest radio retailing organisation in the country, controlling some 500 shops and stores.

• • •

It seems likely that wired T.V. systems will develop further, not only because of the advantages they offer to subscribers, but also because owners of rental services should soon become aware of the dangers of their position if, as seems very probable, the new Broadcasting Acts in 1962/3 make a 625 line channel possible. The wired system, it is claimed, could carry either colour T.V. or 625 line transmissions with little or no adaptation.

• • •

There have been various indications of future trends. Philco have introduced a transistor battery portable T.V. —"The Safari"— in the U.S.; it has an 80 square inch picture and can be used out of doors. The Americans predict that live T.V. will be broadcast across the Atlantic in two years' time. Further regrets have been expressed that the government has taken no action over the introduction of the 625 line picture. Pye has pointed out that it will not be possible to build up exports until there is a home market for these sets. There have been more examples of the installation of closed circuit T.V. for business purposes.

• • •

4. *Trends in Production, Exports, Imports and Supply*

(i) *Production*

The boom in production and sales which began with the removal of hire purchase restrictions in the autumn of 1958 has swelled in 1959. Although the production figure for the last quarter of 1958 was not reached again in any of the first three quarters of 1959, the three totals for these periods passed the corresponding totals for 1958 by respectively 20, 57 and 60 per cent. From the very high third quarter figure it seems most probable that this level of production was maintained in the fourth quarter. Production in October reached a peak of 328,700 units which was 39.3 per cent higher than a year earlier.

The million mark had never before been passed by June, and a record total of 2.5 million is estimated for the year 1959 as a whole. This would be 20 per cent higher than the 1958 record. This compares with the B.R.E.M.A.'s figures of net deliveries by manufacturers to the home trade between January and November which were in fact 41 per cent higher than their estimates for the corresponding period of 1958.

* * *

(iii) *Imports*

Imports of television sets are still too small to be shown separately in the trade figures. They represent a negligible proportion of total supply to the U.K. market. Some components are imported, and cabinets in the more modern designs have been coming recently from Scandinavia.

(iv) *Supply*

Sales of television sets have been very high and rising throughout the year, although an unexpected fall appears to have taken place in the last quarter. The B.R.E.M.A.'s figures of manufacturers' deliveries show that after reaching a peak level of 389,400 in October they fell by 55,400 in November to 334,000, which was 11,000 less than in November 1958. Stocks rose by about 132,000 during the second quarter, but fell again by 76,000 during the third and by nearly 63,000 in October. Production and sales have never been so consistently high, and the turnover of the industry is expected to be a record £159 million, an 18 per cent increase on 1958. Nevertheless manufacturers, fearing that the market is approaching saturation point, have been urging each other to aim at quality rather than quantity in their production policies, and have been paying greater attention to the standards of their dealers with this in mind. According to some manufacturers all sets should now be made to last at least two years without needing attention. It is certain that even if the market is not saturated, competition is going to become much stiffer, and that replacement buying will be of the greatest importance. At the moment replacement buying indicates a total seven or eight year life per set.

Early replacement is being encouraged by a number of part-exchange arrangements offered to the public, or refurbishing services between manufacturers and rental firms. Some dealers are in fact offering new sets in part exchange when they can only destroy the old one. Pressure on the public to change to modern designs, and particularly to the 21″ set, is increasing.

Prices have continued to fall slightly. Over half of total television sales are made on H.P. at the moment. Pye and Invicta have introduced four-year H.P. agreements, which include full maintenance. In view of the possibility of the introduction of the 625 line system, dealers are expected to turn sooner or later to the four-year H.P. agreements or to join wired T.V. systems rather than to increase the amount of their rental services. The number of subscribers to wired T.V. had grown rapidly recently; the relay system is cheap and gives good reception in normally bad areas.

• • •

DURABLE CONSUMER GOODS

5
JULY 1960

TELEVISION SETS

PREPARED BY
THE ECONOMIST INTELLIGENCE UNIT LIMITED
IN ASSOCIATION WITH
THE BRITISH MARKET RESEARCH BUREAU LIMITED

DURABLE CONSUMER GOODS

A Service of Economic Forecasting and Market Research

• • •

SUMMARY AND CONCLUSIONS

• • •

PART II

Even during 1959, when total sales and rentals of new television sets reached an estimated 2.5 million, both production and supply were considerably in excess of total demand. The position worsened during the early months of 1960 despite cutbacks in production, and total stocks of unsold sets are now estimated at about 1 million—approximately half with the manufacturers and half with the retailers. Although all sectors of the industry look to a seasonal recovery in sales in the remainder of 1960 the large number of unsold sets in the pipeline will prevent the recovery from having an equal effect on output. Production is, therefore, likely to remain considerably below capacity (estimated at nearly 3 million sets a year) during the coming months.

PART III

The ownership of television sets is seen to have risen sharply since October 1959, and now some 74 per cent of households own or rent sets. Replacement demand now accounts for 49 per cent of new sales of television sets and the practice of renting sets is of considerable importance. The survey did not indicate any marked reduction in the proportion of persons intending to purchase television sets compared with six months earlier, though the result would perhaps have been less favourable if the entire fieldwork had been completed after the imposition of the hire purchase restrictions. In spite of this reservation, the results clearly give reason for expecting at least a seasonal revival in sales in the coming months, and the practice of renting sets is not likely to be seriously affected by the new restrictions.

Conclusions

The ownership of television or rediffusion sets has now reached very high proportions, and some decline in sales from the record level of 1959 was clearly inevitable—trade estimates put sales (including rentals) at about the 2 million mark this year. The situation was made worse, however, by over production, which led to a build-up in stocks of massive proportions. Although a seasonal recovery in sales is expected—and may be intensified by price cutting—this will not, therefore, be reflected to an equal extent in manufacturers' deliveries, which are likely to run well below the 1959 levels during the remainder of 1960. Even so, the industry will probably start 1961 with uncomfortably high stocks so that deliveries are likely to remain somewhat depressed during the first half of 1961.

• • •

PART II

THE ECONOMICS OF SUPPLY OF TELEVISION SETS

• • •

1. *The Structure of the Industry*

There have been few changes of importance in the structure of the domestic television industry in the last six months. There are still under 20 manufacturers of significance, and five of these continue to account for over half the total output of sets. These five are the British Radio Corporation (the Thorn E.M.I. joint subsidiary which manufactures under the Ferguson, Champion, Philco, Marconiphone, and H.M.V. trade marks), E. K. Cole Ltd (which owns the Ferranti television trade mark), Bush Radio Ltd. (part of the Rank Organisation), Philips Electrical Ltd. (which owns the Cossor television trade-mark), and Pye Ltd. (which owns Pam Ltd.). Radio and Allied Industries (Sobell and McMichael) have been growing in importance; and Murphy Radio, Ultra Electric (Holdings), and Kolster-Brandes (a subsidiary of Standard Telephones and Cables Ltd.) are other firms with significant shares of the U.K. market. Plessey Ltd. is also an important manufacturer—at one time it was reputed to be the largest in Europe—but its output is all contracted to other firms and it does not market any sets under its own name.

There has been no indication of expansionary plans from set manufacturers—not surprisingly in view of the general outlook regarding the supply and demand position. However, G.E.C.'s programme of mechanisation has resulted in a marked increase in productive capacity, and a large saving in factory space. Also, Thorn recently acquired the "Brimar" valve and tube division of Standard Telephone and Cables, and will make some, if not all, of its cathode ray tubes in future. Among tube makers Mullards, at their Simonstone factory near Burnley, have reached a production rate of 1.5 million tubes per annum.

The importance which set manufacturers place on rentals as an outlet for their models was given emphasis in April when Ultra Electric (Holdings) Ltd. acquired all the share capital of Radio and Television Renters (Holdings) Ltd., in which it previously had a minority interest.

* * *

3. *Distribution*

By far the greater proportion of television receivers are distributed from the manufacturers direct to retail outlets. This tendency to by-pass the wholesaler has become widespread in the trade, especially among the larger manufacturers who can afford to control a distribution system of their own. Manufacturers interviewed differed in their views on door-to-door selling which has become so important in some branches of the durable consumer goods industry. One company, at present distributing solely through retailers, admitted to being in favour of applying these methods in a concentrated market area. Others, however, maintained that a television set was too complicated a piece of electronic equipment to be adapted to door-to-door selling. The majority of manufacturers do not maintain regional depots, but supply their dealers straight from the factory.

The main retail outlets for manufacturers are the independent shops and multiple stores. Only a very small percentage of sets passes through the major departmental stores. There are five large groups of multiple stores, with about 1,000 to 1,200 shops as against over 12,000 independent shops selling television sets. Most manufacturers divide their supplies in the ratio of 75 per cent to 25 per cent in order to keep a balance within the trade. Mail order business is negligible.

In some areas a high-powered door-to-door campaign is already being carried out and it is possible that this is the beginning of a campaign designed to cover the whole country. These sets are obtained from local wholesalers at an extra 7½ per cent discount, against an order of fifty or more sets, and are offered to the public at reasonable terms. Most manufacturers consider that lack of servicing arrangements will jeopardise public support for the schemes.

Renting, in view of the advantage it has over hire purchase in times of credit restrictions, has become a very profitable means of outlet for both retailers and manufacturers. It is believed that 50 per cent of one manufacturer's sets are installed in homes on a rental basis. This particular firm clearly believes that the increasing competition likely in the 1960's will place manufacturers who have direct links with rental groups in an advantageous position. The percentage of rentals of total sales is not known exactly but it is estimated to be more than 35 per cent. The high cost of service and maintenance makes rental relatively attractive to the consumer especially as there is a possibility that in 1964 present sets will become outmoded.

Although retailers have entered the rental field they have not the facilities for storage or the capital to compete with the big rental firms. In March, 1960, however, D. Everard's Ltd. rental subsidiary offered to supply dealers with 17-inch sets which they could rent to customers at 9/9 a week, thus enabling them to compete with local rental companies. Furthermore it is understood that some manufacturers are offering to support retailers' rental schemes.

Most manufacturers anticipate the coming of discount trading, if not the actual abolition of resale price maintenance, very soon; in fact there is evidence of barely disguised price cutting by both manufacturers and retailers already. The rapid growth of discount houses in the United States has, in many cases, ruined the small retailer though it has not harmed the manufacturer.

At present the majority of manufacturers conform to a standard rate of discount of 30 per cent to their retailers. They also allow concession rates of not more than 5 per cent to large buyers—multiple stores and retailers controlling between ten and twenty shops—as well as additional discounts for early settlement. These normally amount to 3¾ per cent for payment within seven days and 2½ per cent for payment within a month. Some allowance is also made for off season ordering; retailers are given a period of ninety days in which to pay as against one month in the peak period. One firm, Sobell, McMichael, recently raised its discount rate to 33⅓ per cent, bringing television sets into line with radios. Other manufacturers appear to resent this move, which also alters the wholesale price, and attribute it to Radio and Allied's desire to do more business through the independent dealers.

* * *

5. *Trends in Production, Exports, Imports and Supply*

* * *

iii) *Imports*

Imported sets do not form a significant part of total supply to the U.K. market, and are not shown separately in trade statistics.

iv) *Supply*

Production of television sets reached a record 2,838 thousand in 1959, an increase of 43 per cent over 1958, the previous best year. 24 thousand sets were exported, leaving 2,814 thousand for the home market. Deliveries from manufacturers amounted to 2,752 thousand. No published figures are available to cover sales and rentals to the eventual customer, but well informed trade sources estimate that a total of 2.5 million sets were actually sold or rented to customers in 1959. It thus appears that even in that boom year there was considerable over-supply. Manufacturers' stocks were swollen by some 50,000 sets; those of distributors by about 250,000 sets.

The imbalance of supply and sales worsened in the first quarter of 1960, when production exceeded manufacturers' deliveries by as much as 227,800 sets. In April production was cut sharply to 185.9 thousand (against 223,600 in March and 213,800 a year earlier), but dealers, whose stock levels are estimated to be in the region of over 500,000, cut their intake to the lowest monthly level for a long while—120,900. Manufacturers' stocks thus increased further, and they are now thought to be in the region of 450,000. Provisional figures of manufacturers' home deliveries in May show that the decline continued. At 90,000 sets they were 45 per cent lower than in May 1959, and only three quarters of the previous month's total.

The industry is clearly going through a difficult phase at present, and the process of cutting back supply to bring it into line with demand will have to continue. Moreover, with the greater publicity being given to the probable adoption of the 625 line system, consumers will have an added incentive to delay replacing their sets which will tend further to depress demand. Despite this, the industry is confident that sales will settle down at about the 2 million a year mark, and looks forward to a revival of sales in the autumn following the National Radio Show. By that time the initial impact of the hire purchase restrictions should have been overcome, and the minimum down payment requirement of 20 per cent should not prevent the usual seasonal advance in sales from taking place.

• • •

ZENITH DISTRIBUTOR AGREEMENT
(Export Trade)

THIS AGREEMENT made and entered into this 2nd day of January, A.D. 1960 in the City of Chicago, County of Cook, State of Illinois, U.S.A., by and between ZENITH SALES CORPORATION, a corporation organized and existing under the laws of the State of Illinois, U.S.A. (hereinafter called the "Seller"); and United Mercantile Company Ltd., a corporation existing under the laws of .... (a sole proprietorship owned by ....) (a co-partnership consisting of .... having its principal office and place of business at Park Lodge, Park Close, in the City of London, S. W. 1 and country of England (hereinafter called "Distributor").

WITNESSETH:

Whereas Seller is engaged in the business of selling for resale the hereinafter defined merchandise manufactured and/or sold by Zenith Radio Corporation, a Delaware corporation, (hereinafter referred to as "Manufacturer"); and

Whereas Distributor desires to purchase and resell at wholesale said merchandise in the territory hereinafter mentioned, and represents that it is so organized and financially situated effectively to do so, now therefore in reliance upon such representation and in consideration of the mutual promises of the parties hereto, it is agreed as follows:

1. Definitions:

(a) "Territory" referred to herein shall mean:

United Kingdom of Great Britain
and Northern Ireland

(b) "Merchandise" referred to herein shall mean Zenith radio receivers, phonographs and high-fidelity instruments, including combinations of all the foregoing.

2. Seller agrees subject to the terms and conditions hereof to sell to Distributor such Distributor's requirements of said Zenith merchandise.

3. Prices, Terms and Discounts: Seller agrees to sell and Distributor agrees to purchase said merchandise f.o.b. Seller's office, Chicago, Illinois, or at any other original point of shipment within the United States, at Seller's prevailing export prices and discounts or its established net export prices. Terms: Cash in advance of shipment or through confirmed irrevocable Letter of Credit acceptable to Seller, payable in United States dollars.

   Distributor agrees to furnish Seller with such financial statements as may from time to time be requested by Seller. Any withholding of shipments by Seller because of the condition of Distributor's account or the financial responsibility of Distributor shall not be construed as a cancellation or breach of this agreement by Seller and the judgment of the Seller to withhold for either of such reasons shall be final and binding upon Distributor.

4. Orders—Deliveries: It is specifically understood and agreed that all orders for merchandise from Distributor are subject to acceptance by Seller and are not binding upon Seller until so accepted. Orders forwarded by Distributor to Seller are not subject to cancellation by Distributor unless Seller fails to execute such orders within a reasonable period after the receipt and acceptance thereof. Seller assumes no liability and shall not be liable to Distributor for any failure to fill or delay in filling orders for merchandise received from Distributor and accepted by Seller because of strikes, lock-outs or other labor troubles, fires, floods, accidents, unavoid-

able interruptions in the operation of Manufacturer's factory, delays in the delivery of raw materials or parts by the suppliers thereof, or any cause beyond the control of or occurring without the fault of Seller or Manufacturer, or because of Seller's or Manufacturer's total volume of orders at any time or from time to time making deliveries in full of such orders impossible or impracticable in the ordinary course of business.

5. Packing: Seller agrees to utilize standard export packing where required and such cost of standard export packing as determined by Seller shall be borne by Distributor.

6. Insurance: Seller will, unless otherwise instructed, insure all shipments for the account of Distributor under its usual policy, unless Distributor specifies other insurance coverage satisfactory to Seller, and unless because of the method and manner of packing requested by Distributor any shipment or shipments are not insurable at the usual rates.

7. Warranty: Each item of Zenith merchandise manufactured and/or sold carries a suitable Manufacturer's warranty printed in the English language against defective workmanship and material. Manufacturer includes this printed warranty with each unit of Zenith merchandise shipped.

Distributor has no authority to obligate and shall not attempt to obligate Manufacturer or Seller by issuing any warranties or guarantees on Zenith merchandise other than the warranty regularly issued by Manufacturer. Distributor agrees to deliver with each unit of merchandise the warranty regularly furnished by Manufacturer and such other printed matter and materials as Manufacturer or Seller shall furnish and request.

It is understood and agreed that Manufacturer or Seller shall not be liable to Distributor for any alleged loss or damage of any kind because of patent or trademark or alleged patent or trademark infringements arising in connection with the sale and/or distribution of merchandise by Distributor.

8. Trade-marks and Trade Names: It is expressly understood that no right is hereby granted to Distributor to use the corporate name of Manufacturer or Seller or any part thereof, or any of Manufacturer's or Seller's trademarks or trade names, registered or unregistered, and Distributor agrees that he will not use said corporate name or trademarks or trade names unless and to the extent that he is specifically authorized by Manufacturer or Seller so to do. It is understood, however, that in advertising Zenith merchandise, Distributor shall have the right, during the term hereof, to indicate that he is an authorized distributor of Zenith merchandise.

Distributor agrees not to do anything whatsoever which might impair Manufacturer's or Seller's right, title or interest in or to the aforesaid corporate names, trademarks, and trade names and not to attempt to acquire any right, title, or interest therein or thereto; and Distributor further agrees at any time upon the demand of Manufacturer or Seller to disclaim and assign and transfer to Manufacturer any and all right, title, and interest therein and thereto which Distributor now has or might have, or might hereafter obtain or acquire. Upon the expiration of the term of this agreement or its termination as hereinafter provided, Distributor agrees to immediately cease and desist from any and all use of the aforesaid corporate names, trademarks, and trade names and to immediately discontinue any and all representations, direct or implied, that he is an authorized Distributor of Zenith merchandise.

9. Duration—Termination—Repurchase: (a) This agreement shall continue and remain in force from date hereof until December 31, 1960, unless sooner terminated in any manner as hereinafter set forth.

If either party hereto shall fail to perform any of the obligations imposed upon it under the terms of this agreement irrespective of the nature of the obligation or kind of breach, the other party shall have the right of immediately terminating this agreement by giving notice of its election so to do by telegram, cablegram or radiogram, addressed to the other party at its address appearing at the end of this agreement. For the purposes of this paragraph, the telegraph, cable, or radio company, with whom such telegram, cablegram or radiogram is deposited shall be deemed to be the agent of the party to whom such telegram, cablegram or radiogram is addressed, and such termination shall be effective immediately upon deposit.

Any waiver by either party of the right to terminate this agreement because of any such failure of the other party shall extend only to the particular failure or breach so waived, and shall not operate as a waiver of any future failure or breach.

It is further provided that either party hereto shall have the right, independent of any violation of the provisions hereof, to terminate this agreement upon giving the other party thirty (30) days notice of its election and desire so to do; any such notice shall be given by telegram, cablegram, radiogram, or registered letter transmitted via air-mail service addressed to the other party at its address appearing at the end of this agreement. Such termination shall become effective thirty (30) days after the date of the depositing of such telegram, cablegram, radiogram, or registered letter with any telegraph, cable, radio, or air-line company having means of communication between the places of business of the parties hereto indicated at the end of this agreement.

(b) At the expiration of the term of this agreement or upon its earlier termination by either party as hereinbefore provided, or upon its termination by agreement of the parties, Seller shall have the right if it so elects to repurchase from Distributor any or all unsold or undelivered stock of Zenith merchandise in Distributor's possession. Such right of repurchase shall continue for a period of 30 days after the expiration of the term hereof or after receipt of notice of the earlier termination of this agreement pursuant to the second subparagraph of Paragraph 9 (a) of this agreement, or after the receipt of notice of the earlier termination of this agreement pursuant to the fourth sub-paragraph of Paragraph 9 (a) of this agreement, (irrespective of the effective date of the earlier termination under either the second or the fourth sub-paragraph) or from the date of termination in the event of its termination by agreement of the parties, and during such 30-day period Seller may from time to time repurchase said parts of said merchandise as it so elects without affecting its right of repurchasing hereunder any part or the whole of the remainder of said merchandise. Distributor agrees not to sell or attempt to sell such stock in whole or in part to any person other than Seller during such option period. In the event of any such repurchase or repurchases, Seller will pay to Distributor the Seller's current net wholesale Distributor's price on each item of such merchandise at the time of such repurchase by Seller or the original cost to Distributor of such item of merchandise, whichever is lower, all C.I.F. Port of Entry, duty paid; all moneys due to Seller from Distributor shall be deducted by Seller from the repurchase price of the merchandise so repurchased in whole or from time to time. There shall also be deducted from such repurchase price the cost to Seller of repairing, renewing, or reconditioning such repurchased merchandise.

(c) Upon the expiration of the term of this agreement or its earlier termination in accordance with the provisions of sub-paragraphs two or four of paragraph 9 (a), or upon its termination by agreement of the parties, all orders for merchandise which have not been shipped by Seller prior to such expiration or sending of notice of termination (irrespective of the effective date of termination) or the effective date of termination by agreement of the parties, shall be cancelled and revoked, and under such circumstances neither party shall be liable to the other for the non-delivery or non-acceptance of such unshipped orders. The right of termination of this agreement under the fourth sub-paragraph of paragraph 9 (a) is absolute. Upon the expiration of the term of this agreement or upon its termination, neither party shall be liable to the other to any extent whatsoever for any damages, expenditures, loss of profits or prospective profits of any kind or nature sustained or arising out of or alleged to have been sustained or to have arisen out of such termination. The expiration or termination of this agreement shall not, however, relieve or release either party from making payments which may be owing to either party under the terms of this agreement.

10. Execution and Interpretation: (a) This agreement shall not be binding upon Seller until it has been executed on behalf of Zenith Sales Corporation, at Chicago, Illinois, U.S.A. by one of its executive officers.

    (b) This agreement is to be deemed to have been entered into in the City of Chicago, Illinois, U.S.A., and its interpretation, construction, and the remedies for its enforcement or breach are to be applied pursuant to and in accordance with the laws of the State of Illinois, U.S.A.

11. The right of Distributor herein contained shall not be renewed nor shall any of the terms of this agreement be deemed to be waived by Seller or amended unless such renewal, waiver or amendment be in writing and signed by one of the executive officers of Zenith Sales Corporation and further, in the case of waiver or amendment unless such waiver or amendment recites specifically that it is a waiver of or amendment to the terms of this agreement, and Distributor hereby acknowledges notice that no executive officer of Zenith Sales Corporation is authorized so to do except in the manner aforesaid.

12. This agreement sets forth the entire agreement and understanding between the parties and merges all prior discussions between them and neither of the parties shall be bound by any warranties, expressed or implied,

or by any conditions, definitions, or representations with respect to the subject matter of this agreement, other than as expressly provided herein.

13. Assignment: The rights of the Distributor hereunder are personal to the Distributor and are not assignable or transferable to any other person or persons without the consent in writing of the Seller first being obtained.

14. All pronouns wherever and whenever used herein referring to Distributor, though in the singular number and masculine gender, shall be construed as if expressed in the proper number and gender.

ZENITH SALES CORPORATION
Chicago 39, Illinois, U.S.A.

By L. C. TRUESDELL

DISTRIBUTOR
UNITED MERCANTILE COMPANY LTD.

By A. R. RAMSAY
A. R. Ramsay, Director

ADDRESS Park Lodge, Park Close
London, S. W. 1, England

DURABLE CONSUMER GOODS

6
JANUARY 1961

TELEVISION SETS

PREPARED BY
THE ECONOMIST INTELLIGENCE UNIT LIMITED
IN ASSOCIATION WITH
THE BRITISH MARKET RESEARCH BUREAU LIMITED

• • •

DURABLE CONSUMER GOODS

A SERVICE OF ECONOMIC FORECASTING AND MARKET RESEARCH

• • •

SUMMARY AND CONCLUSIONS

• • •

PART II

Conditions in the television industry deteriorated during the second half of 1960. The industry began the period with high stocks as a result of over-optimistic expansion in manufacturing capacity and production, during the 1959 boom in sales. The situation was further aggravated by the re-imposition of credit restrictions in April 1960. Sales continued to run below supply throughout most of the year, leading to an even greater accumulation of stocks which are now estimated at about 1 million sets. The immediate problem of stock clearance is complicated by the introduction of sets with 19″ screens which, it is feared, will increase the public's reluctance to buy the 17″ sets now forming 90 per cent of manufacturers' stocks.

Manufacturers' sales during the first nine months of 1960 were 30 per cent below the total for the corresponding period in 1959. Although demand fell so sharply, production was cut-back by only 10 per cent—hence the increase in manufacturers' stocks. Productive capacity is currently estimated at 3 million sets per year while demand is expected to run in the region of 2 million sets per year during the next few years. Once current stocks have been absorbed the output required to cover demand in 1961 and to replenish normal stocks is between 1 million and 1.5 million sets—roughly 50 per cent or less, of existing capacity. Most manufacturers are already working below capacity and short-time working is expected to increase in the immediate future.

PART III

The analysis of the consumers survey showed that only 24 per cent of households are now without a television or rediffusion/relay set. Over the last two years 60 per cent of sales have been made to households buying their first television. This market for initial sets is now largely satisfied and future demand is expected to be predominantly for replacement purposes, running at a lower level than the previous demand for initial sets.

Investigations into buying intentions compared with the two previous surveys, show a lower percentage of households expecting to purchase sets during the next twelve months. This suggests that demand will run at a reduced level during 1961, an impression supported by the estimated timing of purchases which gives an indication of the intensity of demand. A much smaller proportion of potential purchasers than a year earlier are expecting to buy during the next three months and a larger proportion are uncertain as to when they will buy.

CONCLUSIONS

Confronted with an almost saturated market, sales of television sets are expected to run at a lower level of 2 million sets or less in 1961. Publicity given to the Pilkington Committee's investigation into the possible change-over to a 625-line transmission system and the adoption of colour television may also depress sales by encouraging potential purchasers to delay buying until decisions have been made on these issues.

The increase in the replacement period and consequent reduction in the amount of hire purchase instalments may give some slight encouragement to sales. Nevertheless, only a reduction in the hire-purchase deposit or a cut in the 50 per cent purchase tax is likely to have sufficient impact to clear the large accumulation of stocks and to restore the industry to near full-time working within the next six months.

* * *

PART II

THE ECONOMICS OF SUPPLY OF TELEVISION SETS

* * *

1. *The Structure of the Industry*

At present the television industry is experiencing a difficult period following over-production in 1959 and the re-imposition of credit restrictions in April, 1960, which served to further curtail demand in a market already approaching saturation. The normal seasonal increase in sales after the Radio Show culminating in a pre-Christmas peak failed to reach even the most modest expectations. Most manufacturers are now in an unhappy position with plants working below capacity and capital tied up in large stocks, the disposal of which is a major problem.

Some of the larger television and radio firms have increased the diversification of their interests in recent months thus decreasing their dependence upon television sales. Electric and Musical Industries whose television interests lie in its 49 per cent holding in the British Radio Corporation—

the remaining 51 per cent is owned by Thorn Electrical Industries—acquired Morphy-Richards, the domestic appliance manufacturers. Philips Electrical Ltd. also expanded into the domestic appliance field through its purchase of Ada (Halifax) Ltd. Electric and Musical Industries then moved further into the electronics field by acquiring the Ardente Group, known chiefly as producers of hearing aids.

The proposed merger between English Electric Ltd. and the General Electric Co. Ltd. failed to materialise but that between Pye and Ekco has met with greater success. This continues the trend towards greater concentration in the television industry, and this movement may gather strength in the present market conditions under which the larger units of production are thought to have the best chance of survival.

Short-time working and cut-backs in production are expected to continue for at least the first six months of 1961 and probably longer. During this period firms which are heavily dependent upon sales of television sets may be particularly vulnerable to take over bids. While production and demand continue to experience their present difficulties it is doubtful whether any of the British manufacturers will want to acquire additional capacity. Any take over bids, therefore, may well come from overseas—particularly from the United States where only five of the ten major manufacturers are currently active in Europe.

The first sign of American interest in the British market, which can be used as a base for trading with the Seven and possibly with the Six, came with the establishment of Magnavox Electronics Ltd. by the American firm of Magnavox. Magnavox Electronics Ltd. is expected to commence production of television sets at the Barking factory of Collaro Ltd., also controlled by Magnavox, early in this year.

• • •

2. *Trends in Design*

• • •

Views within the industry on the advisability of changing the line definition system differ among manufacturers. Several makers feel that the marginal improvement in picture definition resulting from the changeover is insufficient to justify the confusion to broadcasters, manufacturers, dealers and the public which would follow. A changeover to 625 lines would also involve retooling, higher transmission costs, and, initially at least, the more complex 625 line sets would be dearer than the current receivers. An additional worry is the possibility of the adoption of 625 lines opening the market to competition from foreign firms, especially West German, which are already experienced in producing these sets. On the other hand, it should improve the export prospects of the more efficient British firms.

• • •

3. *Distribution*

Large stocks are one of the major problems of the industry but these are chiefly concentrated with the manufacturers rather than with the dealers. Retailers, after over-ordering at the 1959 Radio Show, have at last managed to clear most of their stocks, but realising the low rate of demand and suspecting that the new 19″ sets would make 17″ stocks unsaleable they have kept their buying low in order to minimize their stocks. Faced with the fall in demand and losses on unsound hire purchase sales many of the 15,000 retailers are experiencing hard times. They owe money to manufacturers who have extended their credit terms to retailers. This, together with the dependence of retailers on sale-or-return trading, has tended to increase further the financial burden on manufacturers.

The discount rate of 30 per cent given by all manufacturers, except Radio and Allied Industries Ltd., with 33⅓ per cent, remains unchanged. Increased competition among manufacturers to dispose of excessive stocks of 17″ sets is not expected to affect the retailers' discount rate. Although manufacturers strongly dislike any deviation from resale price maintenance, widespread price decontrol may take place to clear stocks of obsolete sets. In such cases manufacturers lower their trade prices to retailers, leaving the retailers' discount margin at the same rate but putting the selling price at the discretion of the dealer. Dealers can then either offer the set at a "bargain price" or can attempt to sell it at the original list price and make a much higher personal profit.

Other means of encouraging sales which have been adopted by retailers include the offering of inflated part exchange allowances on old sets although they are comparatively valueless. Free gifts to purchasers of sets are another method by which retailers encourage sales.

At present a 20 per cent deposit is required on hire-purchase sales with repayment over a period not exceeding three years. An attempt to help people save enough money for the deposit was made by Pye Ltd. in its 'Home loan scheme', but this was abandoned only four weeks after its adoption. Under the scheme sets were to be loaned to prospective purchasers for three months without payment of a deposit, during which period the customer paid weekly instalments into an account until at the end of the period he had accumulated sufficient money for the deposit on the set. The account was then to be transferred to the dealer with the customer paying normal hire-purchase instalments on the set.

As the deposit required on a rented set is only three months rent this has led to an increase in the number of rentals at the expense of hire-purchase sales. Weekly rents are highly competitive with older sets being offered at lower rents and with rents decreasing during the contract period in order to discourage the returning of sets in order to hire the latest model.

• • •

5. *Trends in Production, Exports, Imports and Supply*

• • •

iii) *Imports*

Deliveries from overseas are small and no official import statistics are published, but should the 625 line system be adopted the importation of sets would become more practical and in the early months imported sets might be available at lower prices than those of home produced sets.

• • •

Production and Supply of Television Sets
('000 units)

	Production	Export Sales	Supply= Production minus Exports	Home Sales[1]	Supply minus Home Sales
1950	541	—	541	509	+ 32
1951	711	—	711	691	+ 20
1952	812	—	812	784	+ 28
1953	1,147	6	1,141	1,145	— 4
1954	1,237	8	1,229	1,250	— 21
1955	1,771	7	1,764	1,686	— 78
1956	1,457	10	1,447	1,433	+ 14
1957	1,867	18	1,849	1,800	+ 49
1958	1,985	25	1,960	2,032	— 72
1959	2,838	24	2,814	2,776	+ 38
1958 Qtr I	458.6	9.4	449.2	319	+130.2
Qtr II	419.4	3.3	416.1	259	+157.1
Qtr III	424.8	4.4	420.4	513	— 92.6
Qtr IV	682.1	7.5	674.6	941	—266.4
1959 Qtr I	551.5	4.3	546.2	520	+ 26.2
Qtr II	659.6	6.7	652.9	526	+126.9
Qtr III	680.3	4.0	676.5	757.6	— 81.1
Qtr IV	946.3	8.7	937.6	972.8	— 35.2
1960 Qtr I	655.3	7.1	648.2	423.8	+224.4
Qtr II	552.1	4.3	547.8	314.3	+233.8
Qtr III	496.9	10.3	486.6	526.4	— 39.4

[1] Deliveries from manufacturers.

DURABLE CONSUMER GOODS

7
JULY 1961

TELEVISION SETS

Prepared by
The Economist Intelligence Unit Limited
In Association with
The British Market Research Bureau Limited

DURABLE CONSUMER GOODS
A SERVICE OF ECONOMIC FORECASTING AND MARKET RESEARCH

• • •

SUMMARY AND CONCLUSIONS

• • •

PART II

Although production is still running well below capacity, conditions have improved slightly in the television industry in the last six months. The clearance of accumulated stocks of 17″ sets is now well in progress, chiefly as a result of widespread price cutting on these sets. Resale price maintenance on 17″ sets has virtually collapsed as manufacturers, with two exceptions, have reduced their trade prices leaving retail prices unchanged, and dealers have had to resort to various kinds of concealed price cutting in order to clear their stocks.

The problems of a saturated market and surplus capacity have led to further rationalisation in the industry with amalgamations of set manufacturers and also of suppliers of equipment. Production was severely cut-back in the early months of 1961 when output for January-March was the lowest total recorded for any quarter since April-June 1953.

PART III

The analysis of the interviews with consumers shows that 78 per cent of households now possess at least one television set. Rented sets now account for 27 per cent of all sets owned, excluding relay sets and, of sets obtained during the last two years, 40 per cent were rented. Investigations into the intentions of people intending to obtain a television set shows a shift away from those intending to buy sets towards an increasing number who intend to rent sets.

Although the number of households expecting to obtain sets has remained constant compared with the last survey, only 19 per cent of potential purchasers expected to buy within the next six months compared with 42 per cent last December that expected to buy during the following six months' period.

CONCLUSIONS

A feeling of pessimism about the economic situation seems likely to lead to a postponement of buying and the outlook for the television industry during the next six months does not look very bright. Manufacturers of rental sets should benefit from the tendency towards renting rather than buying sets, which is expected to strengthen as speculation about colour television and a change of line standard are likely to make people reluctant to purchase a set which may shortly become obsolete. Productive capacity still exceeds estimated demand by nearly a million sets a year, and the next six months is likely to see the disposal or diversion of part of this capacity to other uses.

• • •

PART II

THE ECONOMICS OF SUPPLY OF TELEVISION SETS

• • •

1. *The Structure of the Industry*

The production of television sets is still running well below capacity but trade sources believe that the worst of the recession has now passed. Although the credit restrictions have not been relaxed since January, sales improved as a result of widespread price reductions on 17″ sets. Prices of the 17″ models were reduced in an attempt to clear stocks, estimated at nearly a million sets last December. The stock problem was further complicated by the release of 19″ sets which automatically superseded the 17″ models. As a result of price reductions stocks of 17″ sets have fallen considerably and the industry hopes that sales of 19″ models will commence in volume in the autumn when the new selling season starts.

The most pronounced trend in the structure of the industry during the last six months was towards larger and more economic units of production. The process of reorganisation in the industry is expected to be followed by a reduction in manufacturing capacity, to be brought about by the closing down of surplus units or their diversion to the manufacture of other products. Productive capacity, despite recent mergers in the industry, is still estimated at approximately 3 million sets per annum, while demand is not expected to exceed 2 million sets per annum in the foreseeable future.

Prominent among the mergers of television producers was the take-over of Ultra Radio and Television and Pilot Radio and Television, both subsidiaries of Ultra Electric (Holdings), by Thorn Electrical Industries. The purchase of the entire share capitals of Ultra and Pilot for £2.4

million in cash followed soon after the sale by Ultra of a 40 per cent interest in its electronics subsidiary to Electronics International Capital an American investment company. It is understood that Ultra suffered from accumulated stocks and a swollen overdraft as a result of the recession in the television industry, and was forced to raise cash in order to restore the liquidity of the group. The acquisition of Ultra and Pilot reinforces Thorn's position as the largest group in the industry, it now has the trade names of Ferguson, Philco, H.M.V., Marconi, Champion, Ultra and Pilot, all of which retain their separate identities for marketing purposes.

Another merger of major interest to the industry was the alliance between the General Electric Company and Radio and Allied Industries which united the G.E.C. and Sobell and McMichael trade names. The acquisition of Radio and Allied's share capital by G.E.C. is to be followed by a reorganisation of the company's interests in the television and radio field. It is also expected that Radio and Allied will enter the domestic appliance industry.

* * *

The stock position which was worrying the industry at the end of the year has been eased by the higher sales resulting from open and concealed price reductions. Stocks are at present estimated at around three-quarter million sets which are distributed between dealers, who are believed to hold some 400,000 sets, and manufacturers with some 350,000. In addition to price cutting the stock position has been eased by the increased volume of rentals. The imposition of credit restrictions with a 20 per cent deposit automatically reduced sales and tended to deflect potential customers towards renting sets for which a smaller deposit, comprising three months' rent, is required. An additional factor influencing the choice between purchasing and renting a set is the fear in the minds of the public that television sets purchased now may have become obselete before their normal lifespan of five or six years has elapsed. These fears have been aroused by the recent publicity given to the evidence placed before the Pilkington Committee on the future of television and by the general controversy in the industry over line standards, a third channel and colour transmissions.

The rental section of the industry is divided into two groups; the major companies specialising in rentals and the ordinary radio and television dealers who often started to rent sets in an attempt to clear excess stocks.

The most important rental companies are Radio Rentals, Domestic Electric Rentals (D.E.R.), Rentaset—which is the rental network of Relay Exchanges, Robinson Rentals and British Relay Wireless. Some companies supply specially designed, simplified sets for renting in order to keep costs down and one company, Radio Rentals has it own manufacturing subsidiary producing under the Baird trademark. Until recently Baird sets were rented or sold only through the Radio Rentals shops but Baird sets are now beginning to appear for sale through normal dealer outlets.

Most radio and television dealers have entered the rental market, but some dealers have not investigated the economics of the rental business and have experienced financial difficulties and even bankruptcy. Dealers were encouraged to enter the rental business by the need to get some return on the large stocks of sets which had accumulated in their shops and were immobilising their capital. In some cases dealers managed to recover the cost of the set and even make a profit, but others were less fortunate. Dealers prefer to sell rather than rent sets as rental tends to operate on lower profit margins after service and installation costs have been met, also it incurs a very rapid rate of capital depreciation.

Competition in the rental business has been intense with rental rates falling. A new company, Rank Visda, a subsidiary of the Rank Organisation, has recently entered the market offering sets at even lower rates than those previously prevailing in the market.

2. *Trends in Design*

It is reported from trade sources that the new 19″ set is not yet selling in volume as the public is at present making price the primary consideration when purchasing a television set and is, therefore, buying the cheaper 17″ sets. Dealers report that the difference between the older 17″ models and the 19″ sets with square screens is not fully appreciated by the public and to many people it does not justify an extra 5 guineas on average in price. Another factor promoting sales of 17″ sets before their 19″ successors is the desire of dealers, backed by manufacturers, to clear the stocks of last year's models before selling the newer ones.

* * *

3. *Distribution*

The distribution system has been relatively unchanged during the last six months although resale price maintenance has suffered considerably. Most retailers are now offering 17″ sets at cut prices, either openly or in concealed form which still pay lip service to resale price maintenance. Two manufacturers, G.E.C. and Decca, have reduced their prices to conform with the market value but other manufacturers have left their retail prices unchanged while attempting to clear their stocks by offering reduced trade prices to the dealer. Retailers have been unable to sell sets at their original prices and have resorted to attracting customers by offering various forms of discounts. The most common form of concealed price cutting is the offer of an inflated trade-in allowance on second-hand sets and some cases have been reported of dealers providing a used set if the customer does not already own one.

One important chain of retailers estimated that 80 per cent of the group's sales of television sets in June were made at reduced prices. The same retailer stated that sales of the new season's models, which usually account for 60 to 70 per cent of total sales in June, reached only 10 per cent of total sales during the month.

* * *

Discount rates remained unchanged with the exception of Regentone which has raised its discount to 33⅓ per cent, in line with Radio and Allied, but above the 30 per cent offered by the rest of the industry.

* * *

5. *Trends in Production, Exports, Imports and Supply*

(i) *Production*

In 1960 production of television sets fell by 25 per cent from 2,838,000 sets manufactured in 1959 to 2,141,000 sets. The imposition of credit restrictions and the consequent fall in demand led to cutbacks in production in the latter half of the year. Production in the last quarter of 1960 was 54 per cent below the total for the corresponding quarter in the previous year.

There was no recovery in the first quarter of 1961 when production, at 272,400 units, was the lowest total for any quarter since April-June 1953. It was nearly 60 per cent down on the comparable level a year earlier.

* * *

(iii) *Imports*

Statistics showing the volume of import deliveries are not available but it can be assumed that these remain negligible as Britain is the only major country using sets designed for the reception of pictures on the 405 line standard. The British market is not, therefore, open to foreign manufacturers unless they are prepared to design special models to meet the British line standard.

* * *

Production and Supply of Television Sets
('000 units)
Yearly Totals

	Production	Export Sales	Supply= Production minus Exports	Home Sales[1]	Supply minus Home Sales
1953	1,147	6	1,141	1,145	— 4
1954	1,237	8	1,229	1,250	— 21
1955	1,771	7	1,764	1,686	— 78
1956	1,457	10	1,447	1,433	+ 14
1957	1,867	18	1,849	1,800	+ 49
1958	1,985	25	1,960	2,032	— 72
1959	2,838	24	2,814	2,776	+ 38
1960	2,141	39	2,102	1,817	+ 285

Quarterly Totals

		Production	Export Sales	Supply= Production minus Exports	Home Sales[1]	Supply minus Home Sales
1959	Qtr I	551.5	4.3	546.2	520	+ 26.2
	Qtr II	659.6	6.7	652.9	526	+126.9
	Qtr III	680.3	4.0	676.5	757.6	— 81.1
	Qtr IV	953.4	8.7	937.6	972.8	— 35.2
1960	Qtr I	656.4	7.1	648.2	423.0	+225.2
	Qtr II	553.1	4.3	547.8	311.2	+236.6
	Qtr III	495.3	10.3	486.6	523.9	— 37.3
	Qtr IV	436.0	16.9	419.1	559.1	—140.0
1961	Qtr I	272.4	10.1	262.3	343.0	— 80.7

---

[1] Deliveries from manufacturers.

DURABLE CONSUMER GOODS

8

JANUARY 1962

TELEVISION SETS

PREPARED BY
THE ECONOMIST INTELLIGENCE UNIT LIMITED
IN ASSOCIATION WITH
THE BRITISH MARKET RESEARCH BUREAU LIMITED

DURABLE CONSUMER GOODS

A SERVICE OF ECONOMIC FORECASTING AND MARKET RESEARCH

• • •

SUMMARY AND CONCLUSIONS

• • •

PART II

Production continued to fall, but this was as much in order to reduce stocks as in response to a fall in demand. By the end of the 3rd quarter of 1961 stocks were down to a reasonable level for the first time for 18 months.

The excess supply and slack trading conditions resulted in considerable changes in the structure of the industry in the first half of the year. Big changes are also taking place in distribution: though less dramatically. The proportion of sets rented has been rising very rapidly and sets linked to a wired transmission system are gaining in popularity.

The general pattern of the industry's development in the next few years depends very much on the report of the Pilkington Committee and its recommendations on three major topics—the line standard to be used for transmissions, colour television and Pay TV—are eagerly awaited by the industry.

PART III

Ownership of television sets now seems to have reached a plateau. On the other hand the proportion of sets rented has risen considerably: of sets obtained in the two years prior to the present survey 45 per cent were rented compared with 40 per cent and 37 per cent respectively in April and May, 1961 and October-November 1960.

The proportion of informants intending to buy or rent a television set in the next 12 months has declined over the last year: this is due to a very sharp fall in intentions to buy not being completely outweighed by a large increase in intention to rent. It is worth noting too that 59 per cent of those intending to rent expect to do so in the next six months while only a third of those intending to buy expected to purchase in the same period.

CONCLUSIONS

The general economic outlook for the first six months of 1961 is not promising: this, plus the uncertainty surrounding the future of television broadcasting will act as a depressant on the market during the first half year. Direct sales (including H.P. sales) will be hardest hit: rental's share of the market should continue to increase.

A general upturn in the economy is expected during the second half of the year and by then the Pilkington Committee's recommendat[illegible]s will be known and possibly also the Government's decisions on the Report. This should give added impetus to the upturn, though it should be emphasized that there seems little prospect of the industry working at its present capacity by the year end.

• • •

PART II

THE ECONOMICS OF SUPPLY OF TELEVISION SETS

• • •

1. *The Structure of the Industry*

An air of uncertainty surrounds the television industry at present; its future development depends very much on the recommendations which the Pilkington Committee makes when it finally presents its report. The wave of amalgamations and takeovers which marked the first six months of last year has passed while stocks continue to fall to more manageable levels, and there were few important developments during the second half of 1961.

The only notable change in the structure of manufacturing firms has been in the British Radio Corporation—the joint E.M.I. and Thorn subsidiary. In future all equipments bearing the H.M.V. and Marconiphone trade marks will be sold exclusively by B.R.C. At least one foreign firm will enter the British market if the 625 line system is adopted. Zenith, the U.S. manufacturers, have announced their intention of adding television sets to the range of radio equipment which is already marketed for them in the U.K. by the United Mercantile Company.

• • • •

2. *Trends in Design*

Future technical developments are very much in the hands of the Pilkington Committee, but most manufacturers are trying to cover the main possibilities in the design of their current models. There are three main topics on which the industry is waiting for Pilkington to give a decision—the 405/625 controversy, Pay T.V. and colour.

The 405/625 line decision has probably aroused most controversy, with the majority of manufacturers favouring the 405 line standard while Pye advocates the use of 625 lines. Both the B.B.C. and the I.T.A. have published their recommendations on how the present system of transmissions could be changed to the 625 line standard without too much dislocation. 21 out of the 24 television set makers at the last Radio Show were anticipating a 625 line system by exhibiting sets which can be converted, at varying costs, to

625 line reception.

A technical problem which arises out of the controversy is that transmissions on the u.h.f wavebands—necessary if both 405 and 625 line transmissions are to be screened—will be very difficult. (I,T.A's projected scheme for the changeover is designed to use the as yet more efficient v.h.f. bands for 625 line transmissions). It is also the case that the 625 line transmission requires a wider channel and, therefore, within a given band fewer channels will be possible. The potential number of channels however appears far greater than the number likely to be required in the foreseeable future, although some non-technical writers have recently disputed this and favour the retention of the 405 line system on the grounds that it will permit the viewer a wider choice of programmes.

Pye, the leading advocate of the 625 line system, claim that they would be able to export far more television sets, as the adoption of 625 lines would bring the U.K. into line with most European countries and the U.S.A. This would also open the U.K. market to foreign competition—indeed, as was mentioned above, Zenith, the U.S. firm, have already announced their intention of entering the U.K. market if the 625 line system is adopted. Despite the opposition of the major part of the industry, it is widely believed at the moment that the 625 line system will be recommended by the Pilkington Committee.

• • •

3. *Distribution*

The present trends in the distribution of television sets could lead to a major readjustment in the structure of television distribution. In the past, outright purchases of television sets by the general public provided the main outlet for the industry's production. With the decline in the industry's fortunes, however, there are signs of a clear change in consumers' habits.

A television set can be either rented or purchased, and its reception can be either by wire or aerial. Until recently purchases of aerial television sets have predominated, but in the recent past there has been considerable growth in the other methods—rented aerial, rented wired and purchased wired. Relay subscribers now number about half a million, or about 5 per cent of total television licences, although growth in the early 1950's was very slow. Since the arrival of ITV in 1955, however, the growth has been rapid at about 70 per cent per annum.

Recently, too, there has been a rapid growth in rental television services—often on a small scale where individual retailers have begun their own rental services in order to earn some return on their capital tied up in unsaleable stocks. Of all TV sets in use in 1956 only about 2 per cent were rented. By 1959 the figure was 6 per cent and by the beginning of 1961 it had risen to nearly 14 per cent. During 1961 trade sources estimate that as many as two-thirds of all new sets obtained were rented, and if this is the case it means that over 20 per cent of television sets are now held on rental.

Thus retailers selling aerial television are faced with the problem not only of supplying a market which has declined in recent years but with increased competition from other forms of supply to that market. In addition, they face the threat of the abolition of Resale Price Maintenance at some time in the not too distant future and the current increase in the number of discount stores which are already ignoring R.P.M.

All in all, retailers are not having a very profitable time, as can be seen from the growing number of bankruptcies in 1961. There have been definite developments by way of response. In the first place several larger retailers have gone into the rental business on their own account, or alternatively set up their own wired services. Others have agreed to act as agents for the big relay firms—earlier this year dealers in Nottingham and Leicester signed an agreement to sell Rediffusion's terminal units and were given facilities to connect sets of any make to the IF system.

On the other hand measures were also taken to fight, as well as to combine with the new rivals. In this category the Radio and Television Retailers' Association produced a scheme for dealers to join in group buying, group servicing and pooled transport. The first pilot scheme started in December in South London. Considerable publicity too, has been given to two matters on which the retail trade would like the government to take action. The first is the preservation of retail price maintenance and pressure has also been put on manufacturers to ensure that they do not allow price cutting on their maintained goods. The second is that the tax law which allows rented sets to be depreciated on the same basis as plant and machinery by the firms owning them, should be altered. This law certainly does give an advantage to rental firms; thougn if the broadcasting system were altered to 625 lines it would cause a considerable capital cost to the renters.

The retail trade is therefore passing through a difficult time and the uncertainty surrounding the technical future of television is increasing their difficulties. As long as customers are uncertain whether their sets will become obsolete in a few years time they will be more prone to rent sets, while if Pay TV does come it may be only on piped television services. Thus the future pattern of distribution is very much tied up with the report of the Pilkington Committee and the way in which the retail trade meets the challenge which is facing it.

• • •

5. *Trends in Production, Exports, Imports and Supply*

(i) *Production*

Production of television sets fell sharply during the first three quarters of 1961 to a level less than 50 per cent of that in the same period of 1960. This was not so much a result of the fall in demand as a belated response to the huge stock build-up which had taken place in the first half of 1960 Having in the first quarter of 1961, reached its lowest level since the second quarter of 1953, production fell further in the second quarter to 260,500 sets but rose again in the third quarter to 281,900 sets.

• • •

(iii) *Imports*

Imports, in the absence of any published figures, are assumed to be negligible.

• • •

Production and Supply of Television Sets
('000 units)
Yearly Totals

	Production	Export Sales	Supply= Production minus Exports	Home Sales[1]	Supply minus Home Sales
1953	1,147	6	1,141	1,145	— 4
1954	1,237	8	1,229	1,250	— 21
1955	1,771	7	1,764	1,686	— 78
1956	1,457	10	1,447	1,433	+ 14
1957	1,867	18	1,849	1,800	+ 49
1958	1,985	25	1,960	2,032	— 72
1959	2,845	24	2,814	2,776	+ 38
1960	2,141	39	2,102	1,817	+ 285
		Quarterly Totals			
1959 Qtr I	551.5	4.3	546.2	520	+ 26.2
Qtr II	659.6	6.7	652.9	526	+126.9
Qtr III	680.3	4.0	676.5	757.6	— 81.1
Qtr IV	953.4	8.7	937.6	972.8	— 35.2
1960 Qtr I	656.4	7.1	648.2	423.0	+225.2
Qtr II	553.1	4.3	547.8	311.2	+236.6
Qtr III	495.3	10.3	486.6	523.9	— 37.3
Qtr IV	436.0	16.9	419.1	559.1	—140.0
1961 Qtr I	272.4	10.1	262.3	343.0	— 80.7
Qtr II	260.5	4.9	255.6	314.7	— 59.1
Qtr III	281.9	10.2	271.7	393.1	—121.4

[1] Deliveries from manufacturers.

DURABLE CONSUMER GOODS

9

JULY 1962

TELEVISION SETS

PREPARED BY
THE ECONOMIST INTELLIGENCE UNIT LIMITED
IN ASSOCIATION WITH
THE BRITISH MARKET RESEARCH BUREAU LIMITED

DURABLE CONSUMER GOODS

A SERVICE OF ECONOMIC FORECASTING AND MARKET RESEARCH

• • •

SUMMARY AND CONCLUSIONS

• • •

PART II

The most important development in the structure of the television manufacturing industry in the first half of 1962 was the acquisition of Murphy Radio by the Rank Organisation, which is probably now the group with the biggest share of the market. The other leading groups are British Electronic Industries, the Thorn Group, Philips, and G.E.C. Another subscription television system, Marconi's Payvision, has appeared on the market.

In anticipation of the Pilkington recommendation on line definition most of this year's models are either convertible or already switchable, and in response to the trend from purchase to rental designs have become plainer. Nearly all models have screens of 19 or 23 inches rather than 17 or 21 inches.

Retailers continued to be hard-pressed by the slackness of the market and the dominant preference for renting rather than buying. Their discounts have risen slightly, but this has been counteracted in many cases, since dealers often feel obliged to offer generous rental or hire purchase terms.

Production has improved slightly, but this is due to the end of destocking by manufacturers; home deliveries have continued to fall.

PART III

The proportion of households with television sets still seems to be rising; in the present survey the percentage was 81 compared with 79 six months earlier and 78 a year ago. The proportion rented was 29 per cent against 28 and 27 six months and a year ago respectively. Of sets obtained in the two years up to the time of the present survey 42 per cent were rented; the equivalent figure in the survey six months earlier was 45 per cent and that a year earlier 40 per cent.

The proportion of households intending to buy a set in the next twelve months has declined further and is now less than those intending to rent one. In this survey the proportion was 2.6 per cent against 2.9 per cent six months and 3.4 per cent a year earlier, while the proportion intending to rent was 2.7 per cent against 2.8 per cent in the previous two surveys. Of those intending to buy or rent sets a higher proportion expected to do so within six months than at the time of the survey a year ago.

CONCLUSIONS

The prospect for television manufacturers has at last improved. The outlook is that the level of activity in the economy will rise in the next few months, and consumption expenditure in particular is likely to increase. The publication of the Pilkington report and the subsequent White

Paper on broadcasting, which occurred after the intentions of housewives were polled for this survey, has cleared up the immediate uncertainty, and so given a boost to the market. In any case many of the people, who have postponed the acquisition of new sets during the past eighteen months, would not have been willing to do so for much longer. As retailers' stocks are now very low, an increase in demand from the public should quickly be reflected in manufacturers' home deliveries. For these reasons it is forecast that deliveries will be considerably higher in the second half of 1962 than in the same period of 1961, bringing the total for the whole of 1962 to about 1,500,000 units, which is the level achieved in 1961. Deliveries are expected to decline seasonally in the first two quarters of 1963 but to remain well above the level reached in the same quarters of 1962.

• • •

PART II

THE ECONOMICS OF SUPPLY OF TELEVISION SETS

• • •

1. *The Structure of the Industry*

There has been another big merger in the television manufacturing industry in the past six months, as a result of the acquisition of Murphy Radio by the Rank Organisation. Murphy made a net loss of £92,000 in 1960, followed by one of £216,000 in 1961. It was first reported that the Thorn group had entered into negotiations with the Murphy Board with a view to making a bid, and other companies said to be interested were Philips and the American company Magnavox, of which Collaro is now a wholly-owned subsidiary. When the Rank Organisation offered one of its shares and 3/—cash for every two Murphy shares, no rival bid was made, and on the advice of the Board 93 per cent of the shareholders accepted. The Rank Organisation has announced that its two brands, Bush and Murphy, will continue to be marketed separately by their own sales forces, so that the merger will make no difference from the retailer's point of view. The Rank Organisation is currently bidding for the 19 per cent of shares in the Bush Company which are still held outside the Group as a further stage in its policy of rationalising and tidying up the capital structure of the Company.

There are now five main groups marketing television sets through retailers. The Rank Organisation, with Bush and Murphy, probably now has the biggest share of the market. The others are British Electronic Industries (B.E.I.) with the Pye, Pam, Ekco, Ferranti, Invicta and Dynatron brands; the Thorn group with Ferguson, Marconi, H.M.V. Philco, Ultra, Pilot and the now discontinued Thorn and Champion models; Philips with the Philips, Cossor and Stella trademarks; G.E.C. also with its own label and, through its ownership of Radio and Allied Industries, Sobell and McMichael. A sixth company, Lloyds Packaging Warehouses which markets the Regentone and R.G.D. sets manufactured by the Plessey Company, also has a significant share of the market.

These companies produce nearly all the sets sold or hired out by retail shops, and in addition manufacture many of the sets supplied by rental and relay companies. Three of them have either set up, or acquired holdings in, such companies in order to assure themselves of a share in this growing outlet. The largest companies in each of these fields, however, Rediffusion in relay and Radio Rentals in rental—manufacture their own sets; Radio Rentals also sell their sets under the Baird trademark and have a chain of retail shops. Most of the other relay and rental companies have sets made to their own specifications to which they attach their own trademarks, rather than those of the manufacturers; an exception is Multisignals, the third largest relay company, whose system only requires a small installation in an ordinary set. Thorn owns both Domestic Electric Rentals (D. E. R.), the second largest rental company, and Radio and Television Renters, and also has a stake in Multisignals. The Rank Organisation controls several relay companies, of which the biggest is Regency, and by its acquisition of Murphy has obtained a holding in British Relay Wireless and Television, the other giant of the relay field, which also does substantial rental business. B. E. I. has a share in Multisignals and in British Relay. The Rank Organisation, the only company to have directly entered the retail field in a big way, is expanding its chain of Top Rank Home and Leisure Service shops, formerly called Rank-Visda. The other three groups have not, at any rate openly, acquired outlets in these ways, although they may have long standing trading connections such as that between Radio and Allied Industries and Relay Exchanges who own Rentaset.

Yet another subscription television system has appeared in the last six months. The Marconi Wireless Telegraph Company introduced Payvision, which differs from the other systems in that it does not require coinboxes and that the programmes would be transmitted by wire only. There are, therefore, at least five companies now actively advocating the introduction of subscription television, most of them willing to provide both the programmes and the metering systems. They are Payvision, British Home Entertainment, British Telemeter Home Viewing, Tolvision and Choiceview, a company jointly owned by the Rank Organisation and Rediffusion. Two other American companies, the Zenith Radio Corporation and Teleglobe Pay-TV System Incorporated, have developed metering systems which they would be willing to instal in this country. The Pilkington Committee recommended against the introduction of subscription television but the Government, while promising to take careful note of the Committee's arguments, in execrable English "recognises that there are cogent considerations in a contrary sense" although it does not specify what these considerations are. The companies therefore must wait and see whether the Government's natural instinct to allow commercial enterprises to provide the public with services, whenever they are willing to do so, will prevail over the arguments put forward in the Pilkington Report.

2. *Trends in Design*

The publication of the Pilkington Report and the subsequent White Paper on broadcasting has done something to clear up the uncertainty concerning the future of television, but the main decisions already made by the Government had been widely anticipated by the industry while other decisions which will affect the future design of television sets have yet to be taken. The Government authorised the B. B. C. to introduce a second programme on 625 lines in U. H. F., which it is hoped will start in London in mid-1964, and has intimated that it intends to give a fourth channel to I. T. V. within the near future. The new B. B. C. programme will contain some colour programmes, but it has not yet been decided whether the N.T.S.C. or the S.E.C.A.M. system should be adopted. The Government has also stated that the present services will continue to be receivable on existing sets for a number of years, but that in due course they will be changed over to 625 lines.

It has postponed the decision on the timing and method of changeover until practical experience of U.H.F. transmission has been gained. There are three possible means by which the changeover might be accomplished. First, at some fairly remote date, perhaps in seven years time, the present transmissions on 405 lines could cease and be replaced overnight by 625 line transmissions on the same

V.H.F. bands. The disadvantage of this method would be that all new sets would have to be dual standard for the next seven years. Secondly, there could be a period of dual transmission, the two existing programmes being put out simultaneously on 405 lines in V.H.F. and 625 lines in U.H.F., at the end of which the former transmissions would cease and the V.H.F. bands become available for other programmes. The disadvantage of this scheme is that the V.H.F. bands, which are very suitable for television, would not be utilised by any of the four channels planned for the next few years; they could of course be used for the fifth and sixth channels, which the Government envisages as completing the ultimate pattern. The third scheme would get over this difficulty at the cost of introducing a further complication. There would be a period of dual transmission as in the second scheme, at the end of which the two programmes would only be transmitted on 625 lines but in V.H.F. as in the first scheme.

For the time being, therefore, a market will remain for the two types of set which already account for nearly all current production. These are the convertible set, which will be able to receive the planned 625 line U.H.F. transmissions after the installation of a conversion unit (price about £15) and a U.H.F. tuner (price about £5), and the dual standard or switchable set, which only requires the U.H.F. tuner. If the first method of changeover is adopted all sets sold will be of one of these two kinds for some years. If, on the other hand, either of the other methods is adopted, there will be a market for the presumably cheaper single standard 625 line sets in those areas in which the transmission of the two existing programmes on 625 lines is already in operation or imminent. The B.B.C. hopes to be able to transmit programmes on 625 lines in U.H.F. to about two-thirds of the population of Britain by early 1966.

• • •

The response of the industry to the public's inclination to rent rather than buy sets in the prevailing uncertainty has been to cut the trimmings from its sets and recommend them to traders as designed for the rental market. Ekco for example backed the release of its T. 402 model with a packaged rental promotion scheme; dealers were provided with showcards and other literature all advertising it for rental and making no mention of the retail price. As the method and timing of the changeover of present programmes from 405 to 625 lines, the timing of the introduction of any new programmes, and the speed of the advent of colour television all remain uncertain, the preference for renting as a hedge against early obsolescence will continue and so the market for plain sets is likely to remain large.

It is often asserted that the decision to switch to 625 lines will greatly encourage both imports and exports of television sets, as the same sets will become suitable both for the British and foreign markets. However, in the first place there will be no market for 625 line only sets in the immediate future. Secondly, British sets have always been less elaborately designed both internally and externally than most foreign sets, partly because of the high purchase tax in this country. The present trend towards plain rented sets may confirm the British in this taste for cheapness and simplicity. The Zenith Radio Corporation has announced its intention to enter the market with 625 line only sets, to be distributed by United Mercantile Company, but by stating that "we do not intend to compete on price but only on quality and service" they concede that their sets are too expensive for the majority.

• • •

3. *Distribution*

The preference for renting rather than outright purchase has continued in recent months, as a result of the uncertainty about line definition and colour television. No reliable figures are available, but it is estimated as a result of discussions with a retail trade association and recent press comment that the present market for television sets, relay sets being excluded, is divided as follows: 25 per cent sold by retailers, 30 per cent hired out by retailers and 45 per cent hired out by rental companies. In the continuing uncertainty the proportion of the market held by rental sector can be expected to remain high. The retailers were complaining loudly earlier this year that legal regulations gave rental agreements an advantage over hire purchase. Someone renting a set has to make a deposit of three months' rent which works out at about 10 per cent of the retail price, while the minimum hire purchase deposit was 20 per cent until the Government reduced it to 10 per cent at the beginning of June. This reduction can be expected to cause some swing back from rental to hire purchase. Another complaint of the retailers is that rental companies' sets rank as plant and machinery and so are eligible for depreciation allowances, while sets hired out on rental agreements by retailers are not.

Very few television sets pass through the hands of wholesalers. Most manufacturers deal directly with the retailers who are normally appointed agents for several manufacturers. It is estimated that there are about 14,000 retail outlets altogether. Some of the small manufacturers such as Alba and Decca use wholesalers, and among the major companies the Philips group distribute some and Regentone (but not R.G.D.) all their sets in this way. Retail discounts have been rising recently; 33⅓ per cent is now standard instead of 30 per cent, and some manufacturers such as Radio and Allied Industries, Dynatron, R.G.D. and Kolster-Brands offer more. The Radio and Television Retailers' Association has been trying to increase discounts for its members by arranging bulk buying agreements. Its first success came in February, when R.G.D. agreed to grant an extra 10 per cent discount for immediate cash settlement of purchases exceeding £100 in value. No other television manufacturers have followed this lead.

The depression in sales of television sets has brought heavy pressure on the system of resale price maintenance. In the case of rental agreements there is no price for the manufacturer to enforce, and, in the case of credit sales, by exacting artificially low interest charges a retailer can in effect undercut the listed prices. For example John James, who has a chain of 125 shops, is now offering interest free H.P. contracts with a repayment period of 12 months in his 20 shops in Bristol. This is equivalent to cutting the price by about 7 per cent, if it is assumed that an economic interest charge would be 8 per cent. The government's decision on resale price maintenance is imminent. Outright abolition is unlikely, but it may be laid down that the manufacturer may only specify a price range within which his product must be sold.

• • •

5. *Trends in Production, Exports and Supply*

i) *Production*

The production of television sets recovered slightly in the fourth quarter of 1961 to 442,000 units, to bring the total for the year to 1,256,000. This was 40 per cent less than in 1960, and the lowest total for eight years. The figure of 330,500 units for the first quarter of 1962 was also an improvement on any of the first three quarters of 1961, but this is entirely explained by the end of the long period of stock reduction by manufacturers and did not represent an improvement in the market.

• • •

iii) *Imports*

There are virtually no imports of television sets at present, though, as was seen above, the changeover to 625 line transmissions will make them feasible. Because of the many differences that remain between British and overseas makes of television sets, however, imports are likely to grow only very slowly, if at all, in the coming months.

* * *

Production and Supply of Television Sets
('000 units)

	Production	Export Sales	Supply= Production minus export sales	Manufacturers' Home Deliveries	Change in Manufacturers' Stocks[a]
1955	1,771	7	1,764	1,686	+ 78
1956	1,457	10	1,447	1,433	+ 14
1957	1,867	18	1,849	1,800	+ 49
1958	1,998	25	1,973	2,032	— 59
1959	2,863	24	2,839	2,776	+ 63
1960	2,141	39	2,102	1,817	+ 285
1961	1,256	45	1,211	1,509	— 298
1960 Qtr I	656.4	7.1	649.3	423.0	+226.3
Qtr II	553.1	4.3	548.8	311.2	+237.6
Qtr III	495.3	10.3	485.0	523.9	— 38.9
Qtr IV	436.0	16.9	419.1	559.1	—140.0
1961 Qtr I	272.4	10.1	262.3	343.0	— 81.7
Qtr II	260.5	4.9	255.6	314.7	— 59.1
Qtr III	281.4	10.2	271.2	393.3	—122.1
Qtr IV	442.0	19.4	422.6	457.7	— 35.1
1962 Qtr I	330.5	21.6	308.9	295.1	+ 13.8

[a] Production minus sales minus manufacturers' home deliveries.

* * *

TABLE 6

TELEVISION SETS OBTAINED NEW, SECONDHAND OR RENTED

	ALL TELEVISION SETS	Television sets obtained since		Television sets obtained between 1 April '59 and Apr./May '61
		1 April 1960	1 April 1961	
Number of Television (weighted) sets	4403 100%	1253 100%	655 100%	1491 100%
Sets obtained:—				
New	61%	44%	46%	48%
Secondhand/ reconditioned	10%	15%	20%	12%
Rented	29%	42%	34%	40%

NOTE: 4 actual (10 weighted) were on loan.

* * *

DURABLE CONSUMER GOODS

9
JULY 1962

RADIOS, RADIOGRAMS & RECORD PLAYERS

PREPARED BY
THE ECONOMIST INTELLIGENCE UNIT LIMITED
IN ASSOCIATION WITH
THE BRITISH MARKET RESEARCH BUREAU LIMITED

• • •

DURABLE CONSUMER GOODS

A SERVICE OF ECONOMIC FORECASTING AND MARKET RESEARCH

General Introduction

This service combines economic forecasting with consumer market research and industrial economic analysis in order to estimate the likely future course of the supply and sale of the main durable consumer goods marketed in the United Kingdom.

The reports are issued every six months and are divided into three parts. At the front of each report the results of the three sections are summarised, and a forecast made of the likely size of the market in the coming months. The forecast is based on the results of the questions on consumers' intentions to purchase each item, considered in the light of the extent of current ownership and the economic conditions likely to prevail in the period under review.

Part I deals with the general economic determinants of demand for durable consumer goods. The longer term outlook for the economy as a whole is studied first, and is related to the likely future trends in purchases of durable consumer goods. This is followed by an examination of a number of specific economic determinants likely to affect the demand for durable consumer goods in the short and medium term. A more detailed study is then made of the economic situation as a whole with special reference to consumer incomes and spending and the demand for durable consumer goods. This analysis is followed by the results of the consumer survey concerned with consumers' income expectations and their view on the timing of purchase of durable consumer goods in general. The results of the first part of the service thus provide a general economic forecast of the principal determinants of demand in the longer term, and an assessment of the outlook for sales of all durable consumer goods over the next six months. These forecasts are designed to assist manufacturers with their planning both by enabling them to assess the economic climate some years ahead, and by describing the immediate economic prospects which are likely to influence supply trends.

In Part II a study is made of the supply side of the durable consumer goods industry and this part deals specifically with each item included in this service. It is felt that much economic and market research concentrates too exclusively on demand trends and neglects the supply side of the equation. A study has, therefore, been made of the structure of each industry and of trends in costs and supply in relation to the general economic trends shown in Part I. Sections are also included on new developments and design trends for comparison with consumers' views on this subject, and on changes in distribution practice.

The results of the consumer survey, which was carried out between 24th April and 19th May 1962, are set out in Part III. A full description of the design and composition of the sample forming the basis of this survey, with a copy of the questionnaire, is given in Appendix A to this report. The results of the survey are very fully analysed in two sections: the first deals with ownership and the second with intentions to purchase.

SUMMARY AND CONCLUSIONS

• • •

PART II

Notable events in the radio manufacturing industry during the past six months were the acquisition of Murphy Radio by the Rank Organisation, and the conversion of Perdio Electronics into a public company. Most of this year's new radio models are transistor portables, including many of the larger ones intended for use in the home.

Production of radio equipment has continued at a higher level than it was a year earlier. Imports have risen very rapidly, overtaking exports which are still falling. The boom in sales is confined to radios; deliveries of radiograms have now resumed their decline.

PART III

The level of ownership of radio receiving equipment has risen by one point since the last survey to 89 per cent of households, and that of record players has also risen by one point to 20 per cent. Three brands of radio with, until recently, an insignificant share of the market account for 12 per cent of current purchases.

Of radio sets purchased in the past two years 75 per cent were transistorised, 76 per cent were battery only sets and 84 per cent were portable; all these percentages have risen since the previous survey was carried out. By contrast, VHF sets have declined by one point to 21 per cent of recent purchases. There has been a sharp increase since the last survey in the percentage of record-players bought in the last two years which include 16 r.p.m turntable speeds (from 76 to 83 per cent), and which have stereophonic sound (from 24 to 30 per cent).

The proportion of respondents intending to buy all three types of equipment in the next twelve months was lower than in any of the last three surveys. The proportions for each type of equipment separately were as follows (with the figures a year earlier in brackets); radios 4.3 (5.4) per cent, radiograms 1.1 (1.3) per cent and record players 2.5 (1.8) per cent.

CONCLUSIONS

The market for radios now appears at least to have flattened out and may even be falling slightly after its very fast expansion. Evidence that it will be less buoyant in the next twelve months is provided by the survey of intentions in Part III of this report. As retail stocks are high and imported models now have a larger share of the market, manufacturers' home deliveries of radios are expected to be somewhat lower in the next twelve months.

• • •

PRODUCTION AND SUPPLY OF RADIOS AND RADIOGRAMS

('000 units)

	Radios and Radiograms				*Manufactures' Home Deliveries*			*Change in Manufacturers' Stocks(a)*
	Production	*Imports*	*Export Sales*	*Supply*	*Radios*	*Radiograms*	*Total*	
1955	2,142	54	347	1,849	1,176	372	1,548	+247
1956	1,682	39	330	1,391	1,080	228	1,308	+ 44
1957	1,848	33	300	1,581	1,356	264	1,620	− 72
1958	1,812	23	252	1,583	1,308	216	1,524	+ 36
1959	1,837	57	264	1,630	1,560	192	1,752	−179
1960	2,503	85	279	2,309	1,847	199	2,045	+179
1961	3,075	301	213	3,163	2,631	198	2,829	+ 33
1960 Qtr I	584	14.0	79	519.0	369	46	415	+ 90
Qtr II	648	17.6	71	594.6	460	36	496	+ 81
Qtr III	605	23.6	60	568.6	525	47	572	− 27
Qtr IV	666	30.1	69	627.1	493	70	563	+ 34
1961 Qtr I	588	38.5	76	550.5	443	45	488	+ [illegible]4
Qtr II	802	46.2	61	787.2	760	35	795	− 54
Qtr III	829	87.2	37	879.2	782	47	829	− 37
Qtr IV	856	128.7	39	945.7	646	71	717	+100
1962 Qtr I	667	74.2	47	694.2	542	32	574	+ 46

(a) Production minus export sales minus manufacturers' home deliveries

Source: Ministry of Aviation

PART II

THE ECONOMICS OF SUPPLY OF RADIOS RADIOGRAMS AND RECORD-PLAYERS

Introduction

In this part of the service a study is made of trends in the production and supply of radios, radiograms and record-players to the U.K. market, and of certain factors which affect this supply. Information has also been given, where possible, on tape recorders.

A section on the structure of the domestic radio equipment industry is given first and this is followed by a discussion of possible trends in design and development. A third section deals with changes in the current pattern of distribution of radios and record-playing equipment in the U.K., and trends in production costs are considered briefly in section four. Finally, the changes that have taken place in the production, exports, imports and supply of radio equipment to the U.K. home market are discussed and examined in the light of the general economic studies made in Part I.

1. *The Structure of the Industry*

The most important change in the structure of the radio and audio-equipment manufacturing industry in the past six months was the acquisition by the Rank Organisation of Murphy Radio and this company's subsequent merger with Bush Radio, which was already a Rank subsidiary. The five main groups which dominate the television market in the U.K.—Rank, British Electronics Industries, Thorn, Philips and G.E.C.—also dominate, but to a lesser extent, the radio and audio equipment field. Lloyds Packaging Warehouses, as with television sets, also has a significant share of the market and in addition to its well-known R.G.D. and Regentone brands has recently become the licensee for Emerson products in the United Kingdom through its wholly owned subsidiary Cockburn and Gunn. To date only one Emerson transistor portable radio has been put on the market, but other products are to follow.

The boom in imports of radios which continued in the first half of 1962 has greatly increased the share of the market held by companies importing and distributing models at the expense of that held by British manufacturers. Examples are Tellux selling the Japanese Sony range, Highgate Optical Manufacturing Company and Denham and Morley, selling both continental and Japanese models.

Perdio Electronics, which is still expanding rapidly and claims a turnover in the first quarter of 1962 21 per cent higher than in the same period last year, has now become a public company. Its success has been based entirely on transistor portable radios, mostly of the small and inexpensive kind; of its ten models eight have a retail price, including tax, of less than £16. Decca, a company with a growing stake in the radio market, has recently undergone a reorganisation; the manufacture and marketing of television sets, radios, record-players and records has been transferred to a new wholly owned subsidiary called Decca Record.

• • •

3. *Distribution*

The great majority of radios, radiograms, record-players and tape recorders are sold by radio and electrical shops. These shops have been under severe pressure recently, since the decline in their television business, caused by the low level of demand and the increase in the share of the market going to rental companies, has not been compensated at all adequately by the boom in radio sales. The retailers have taken three kinds of action to protect themselves. First, they have diversified, by stocking a wider range of electrical goods, in order to reduce their dependence on television. Secondly, they have tried to increase their discount margins by means of bulk-buying. The Radio and Television Retailers' Association made an agreement with R.G.D. in January, for an extra discount of 10 per cent for immediate cash settlement of purchases exceeding £100 in value, but no other large manufacturers have followed this lead. In some areas a number of local retailers have banded together to form bulk-buying cooperatives; for example a group of 15 London retailers with 23 shops have formed a company called the Association of Television and Electrical Retailers (London) Limited for this purpose. This sort of activity is still of very minor importance.

The third action retailers have taken is to attempt to preserve the institution of resale price maintenance. This has not often been necessary in the case of radios or audio-equipment, as these items are not yet sold in significant quantities by discount shops, and in the buoyant state of the market there has been no incentive for other dealers to cut prices.

The normal discount on radio and audio equipment appears to be 36 per cent, a little higher than that on televisions. Some producers are reported to offer higher discounts up to a maximum of 45 per cent on radios according to a trade association. The big manufacturers distribute their goods direct to the dealers whom they have secured as their agents. The smaller producers usually distribute through wholesalers and, as between them they have a considerable share of the market, a greater proportion of radios passes through the hands of wholesalers than in the case of television sets.

The Rank Organisation is the only manufacturer to have a significant number of retail outlets of its own. It is developing its Top Rank Home and Leisure Service retail chain, which was formerly called Rank-Visda, and has recently added to it by purchasing Puratone, a television rental firm with branches in London and the Home Counties.

Another channel of distribution through which radios are sold in significant quantities is the mail order houses. R.G.D. has just entered into this type of trading, and a spokesman for the company has expressed himself to be amazed at the amount of business which can be done in this way.

• • •

5. *Trends in Production, Exports, Imports and Supply*

• • •

(iii) *Imports*

The rise in imports accelerated in the second half of 1961, reaching a total of 128,700 units in the final quarter. The aggregate for the year at 301,000 units was, for the first time, greater than exports and came to almost 10 per cent of home production. In the first quarter of 1962, when imports are usually at their lowest, they totalled 74,200 units or almost twice as many as in the same quarter of 1961.

• • •

Production and Supply of Radios and Radiograms
('000 units)

	Radios and Radiograms				Manufactures' Home Deliveries			Change in Manufacturers' Stocks (a)
	Production	Imports	Export Sales	Supply	Radios	Radiograms	Total	
1955	2,142	54	347	1,849	1,176	372	1,548	+247
1956	1,682	39	330	1,391	1,080	228	1,308	+ 44
1957	1,848	33	300	1,581	1,356	264	1,620	− 72
1958	1,812	23	252	1,583	1,308	216	1,524	+ 36
1959	1,837	57	264	1,630	1,560	192	1,752	−179
1960	2,503	85	279	2,309	1,847	199	2,045	+179
1961	3,075	301	213	3,163	2,631	198	2,829	+ 33
1960 Qtr I	584	14.0	79	519.0	369	46	415	+ 90
Qtr II	648	17.6	71	594.6	460	36	496	+ 81
Qtr III	605	23.6	60	568.6	525	47	572	− 27
Qtr IV	666	30.1	69	627.1	493	70	563	+ 34
1961 Qtr I	588	38.5	76	550.5	443	45	488	+ 24
Qtr II	802	46.2	61	787.2	760	35	795	− 54
Qtr III	829	87.2	37	879.2	782	47	829	− 37
Qtr IV	856	128.7	39	945.7	646	71	717	+100
1962 Qtr I	667	74.2	47	694.2	542	32	574	+ 46

(a) Production minus export sales minus manufacturers' home deliveries.
Source: Ministry of Aviation.

RETAIL BUSINESS SURVEY

December, 1964

RADIOS

THE ECONOMIST INTELLIGENCE UNIT

RADIOS

Introduction

This Survey was conducted in two parts. A consumer research survey was conducted by Stats (MR) Ltd, on behalf of the EIU, amongst a national random sample of 1,200 households. Allied to this was a general review of the industry carried out through extensive trade interviewing and desk research. The detailed results of the consumer research are given in an appendix, but the main conclusions have been incorporated with the general industry review, together with the specific analyses of consumer buying habits and attitudes.

Definition

The products covered in this Survey include all types of radios, including radiograms and radio sets incorporated with television sets. The main types are:

—consoles, or floor standing mains sets
—table mains sets, which are too large to be considered portable
—portable models, battery powered
—miniature personal models, small enough to be put in the pocket
—car radios
—radiograms

Cutting across these basic divisions are further divisions between sets which receive VHF signals and those which do not; and between valve and transistor sets. VHF is gaining in popularity because of the clarity of reception, and many battery portable sets are built to receive VHF. While transistor sets were originally battery portable and personal radios, because of their compactness and low power consumption they are now becoming more powerful and sophisticated. The largest of them could almost be considered as a new class, since they have nearly the range and power of reception of a table model, combined with some of the ease of transport characteristic of a portable.

Market size

Table I. Apparent consumption of radios—UK

—	Number ('000's)	Index (1958—100)	Value (£'000's)	Index 1958—100
1956	1,348	87	15,470	91
1957	1,653	107	18,551	109
1958	1,541	100	16,992	100
1959	1,803	117	19,235	113
1960	2,132	138	22,572	133
1961	3,106	202	26,877	158
1962	3,327	216	27,110	160
1963	4,530	294	33,032	194
1964 (Jan-June)	1,870			

Source: BREMA, Ministry of Aviation, and HM Customs and Excise.

Price trends

The average price per set (at manufacturers ex works, and importers' cif prices) has fallen by 37 per cent, from £11.10.0. per set in 1956 to £7.6.0. in 1963. This is due largely to an increase in the number of cheaper, lower performance models sold, rather than a reduction in price relative to quality. The large number of low powered cheap transistor sets now on the market has attracted many consumers to a lower price category. Some idea of the average price of transistor radios can be gained from the average price of imported ones at £2.3.0. each, which compares with the average £7.6.0. for all radios in 1963.

• • •

Home sales, imports and exports

In the past eight years home sales by UK manufacturers have more than doubled in quantity, exports have halved, while imports have risen 8½ times since 1960. This is shown in table 5. In 1963 imports were 18 per cent of UK manufacturers' sales by value, and 57 per cent by number, showing that their main strength is the inexpensive end of the market: transistor personal and portable radios. On the other hand exports (average 1963 price £9.10.0) are in a much higher price bracket than imports (average price £3.2.0.)

Transistor radios are the major category of imports, although imports of radiograms have been increasing rapidly since 1962, (table 6 transistor radios, table 7 radiograms). An important weakness of exports is in transistor radios which are not only at a low level compared with home sales and imports, but also are increasing very slowly. Exports are weak at the expensive end of the scale as well. This is illustrated by the performance of radiograms: imports exceeded exports by a wide margin in 1963, and the position is even more serious in the first half of 1964 with imports of these products the outstanding growth sector of the trade. This conclusion does not necessarily apply to all sectors, but its implications are serious. Many manufacturers believe that although it is impossible to compete with foreign companies in the range of very small transistor radios, they are relatively secure in the more expensive ranges; the performance of radiograms must cast some doubt on this optimism.

Table 5. Home sales, imports of all radios 1956-1963
(number in '000's of units; value in £'000)

	UK manufacturers' home sales		Imports	
	Number	Value	Number	Value
1956	1,309	15,071	39	399
1957	1,622	18,175	31	376
1958	1,522	16,759	19	233
1959	1,745	18,832	59	403
1960	2,047	21,921	85	601
1961	2,829	25,509	277	1,368
1962	2,757	24,786	570	2,324
1963	2,890	27,937	1,640	5,095
1964 (Jan-June)	1,097		773	
percent change Jan-June '64 on '63	—15		+53.1	

Sources: BREMA; Ministry of Aviation; HM Customs & Excise.

Table 6. Transistor radios
('000's)

	UK manufacturers' home sales[a]	Imports[b]	UK manufacturers' exports[a]
1959	490	n.a.	7
1960	1,135	n.a.	50
1961	2,162	246	94
1962	2,247	529	83
1963	2,340	1,507	95
1964 (Jan-June)	894	733	25

[a] excluding transistor car radios
[b] including transistor car radios

Source: BREMA estimates; HM Customs and Excise.

• • •

Distribution

Radios are distributed either direct to the retailer from the manufacturer, or via a wholesaler. The standard retail margin is 33⅓ per cent of the final retail price, less purchase tax. This applies to both direct and indirect distribution, and in the case of the latter the additional wholesale margin is 15 per cent of the retail price less tax. Apart from these margins, which are standard throughout the trade, there are additional discounts for early settlement and for large deliveries. The current level of purchase tax is 25 per cent of the "wholesale value": this is an excise value normally equal to the wholesale price, but imputed to the merchandise by HM Customs and Excise where no wholesaler is in fact involved.

The larger groups use both methods of distribution. They incorporate several originally independent manufacturers. The products of a particular group in the same price bracket but sold under different brands usually differ only marginally—for example in surface design of the cabinet. Thus in the STC group Kolster-Brandes radios go direct to retailers, while Regentone radios are sold to wholesalers. Since these are all products of the same group—the names of formerly independent companies like Kolster-Brandes, or Regentone may conveniently be termed brand names.

This dual system of distribution enables the manufacturer to maintain control of the distributive channels through the appointed dealers, to whom he gives exclusivity in a certain area. At the same time it achieves wide coverage of all outlets by supplying wholesalers. The advantages of the appointed dealer system are that the manufacturer can limit the number of competitive products stocked by the retailer, and influence the in-store merchandising of his products—especially important in the case of window display space. Further, the manufacturer ensures adequate servicing of his products by demanding a minimum level of service facilities from stockists.

The necessity for wide coverage of the retail market is shown by the large number of non-specialist shops which stock radios. In 1961 only 61 per cent of radio and television stockists were specialists—the others included furniture shops, grocers, confectioners, general stores and department stores (Census of Distribution 1961, Part 1). Altogether 19,366 shops were recorded as selling radios and televisions in 1961. The multiplicity of radio stockists is confirmed by our consumer research (table E—source of supply of radio sets). Specialist radio and electrical shops supplied 61 per cent of all radios in use, and 9 per cent of sets were gifts, a proportion of which presumably came from these shops. The next most important source is department stores, which supplied 7 per cent of radios in use, and other less important sources of supply included furniture shops, co-operatives, trade connections, and mail order.

At present an estimated 70-80 per cent of radios are supplied direct; the remainder pass through wholesalers. Several industry sources predict that this ratio will change fundamentally within a few years. It is believed that manufacturers will supply direct to an ever increasing number of outlets in order to meet competition from imports. If this happens it will break down the system of exclusive appointed dealers and at the same time take business from the wholesalers who will be bypassed.

An end to resale price maintenance would reinforce this trend and probably increase the current level of price cutting. Some industry spokesmen believe that RPM will be abolished despite the manufacturers' application for exemption. It is emphasised, however, that increased competition in radio distribution is already noticeable and an end to RPM will not initiate a new process. The increase in the number of radio stockists has been apparent for some years, and price competition already exists. Imported models are not subject to price maintenance agreements, and are therefore particularly suited to discount store operations, while flexibility of trade-in allowances provides some price competition on UK manufactured models.

It is reasonable to forecast a number of developments: a greater variety of outlets stocking radio sets, pressure on margins; the elimination of some marginal stockists even with the continuation of RPM. But if it is abolished there is likely to be a greater number of discount houses selling radios, and consequently more pressure on margins.

• • •

PLAINTIFF'S LONDON DEPOSITION EXHIBIT

No. 33

• • •

ZENITH RADIOS AND STEREO APPEAL TO QUALITY TRADE

[Picture omitted]

Introducing the US Zenith range to Britain at a trade press review last week were (left) A. R. Ramsay, managing director, and (right) D. C. Spink, sales manager, of the United Mercantile Co., main distributors for Zenith in the UK.

Radios and stereo equipment made in the USA by the Zenith Radio Corporation are now being offered to British dealers—the first big agency arrangement to be completed since the lifting of import restrictions.

Prices are above the level of home-produced lines. Miniature transistor portables, for instance, are listed at £32 upwards. Stereo record players and stereo radiograms range from £95 (a portable) to over £500.

Zenith concentrates on highclass equipment and the marketing policy is to appeal to quality trade through selected specialist dealers. Distribution is direct to the retailer. Applications for inclusion on the dealers' list are invited.

Sole distributors in the UK are the United Mercantile

Company with offices and showrooms at Park Lodge, Park Close, Knightsbridge, London SW1 (Knightsbridge 2135).

Managing director of the British agency is A. R. Ramsay. Don C. Spink, formerly of Pilot and English Electric, has been appointed sales manager.

Servicing is to be handled, under contract, through central agents.

A full service of dealer display ads is available.

First introductions are two miniature transistor portables retailing at £32 and £37 10s., two transistor clock radios at £44 9s. 8d. and £93 18s. 11d., an AC/DC battery portable at £91 6s. 9d., an AC clock radio at £31 12s. 11d. and a comprehensive 9-transistor Trans-Oceanic portable with many novel features at £175 9s. 6d.

• • •

PLAINTIFF'S LONDON DEPOSITION EXHIBIT
No. 34

WIRELESS AND ELECTRICAL TRADER
—22 August 1959

ZENITH GO FOR THE QUALITY MARKET
Selective Appointment of Dealers

As foreshadowed last week, the Zenith Radio Corporation of America are entering the British market by introducing here a wide range of transistor sets, including pocket radios, portables and battery-operated clock receivers. At present only radio models are being marketed, but large stereophonic high fidelity reproducers will be available on firm order at short notice.

Marketing in the United Kingdom is in the hands of the main distributors, United Mercantile Co. Ltd., Park Lodge, Park Close, S.W.1 (phone Knightsbridge 2135 and Kensington 6925). The managing director, A. R. Ramsay, has returned recently from the United States where final decisions on planning and marketing were made. D. C. Spink has been appointed sales manager and will be handling all aspects of distribution and sales in this country.

Selected dealer appointments are now being made. In due course a national advertising campaign will commence with full pages in the better-type magazines.

The models are of a high standard of workmanship and are intended for the more selective buyers. Pocket radios are from £32, clock radios from £31 12s. 11d. up to £92 18s. 11d., and a unique transistor portable communication receiver lists at £175 9s. 6d. For details see "New Products".

D. C. Spink said that comprehensive servicing arrangements were being made, and dealerships were being carefully selected. "We are going after the quality market which is something that too many dealers have forgotten about in recent years", he commented.

• • •

Mallory Batteries Ltd., Rainham Road South, Dagenham ('phone: Dominion 2111) are making available here the Mallory mercury cell RM502 for use with the Zenith transistorized models.

• • •

PLAINTIFF'S LONDON DEPOSITION EXHIBIT
No. 37

2—EVENING STANDARD,
Thursday, October 25, 1962

• • •

By William Davis, *City Editor*
43, Moorgate, E.C.2 London Wall 7311

• • •

ZENITH SUCCESS

A "gee-whiz" success for Zenith, the American radio and television firm which introduced a new gramophone microtouch tone arm last August.

Demand, says the distributing firm, United Mercantile, has been "quite fantastic" and difficulties caused by the dock strike on the Atlantic Coast have now been overcome.

Mr. Adam Ramsay, who founded United Mercantile three years ago specially to import Zenith products, tells me that when the new TV systems are introduced he will be bringing in Zenith 625-line TV sets and colour TV sets.

Mr. Ramsay said today: "Zenith is probably larger than the entire British radio and television industry. Selling its products here has been hard going, because of the high purchase tax.

"Zenith products are expensive, because it has always aimed at the quality market. At present, I have no intention of making United Mercantile a public company—we have enough capital for current needs."

Zenith is known as the "gee-whiz" firm on Wall Street: £350 invested in its shares in 1935 would be worth £700,000 today!

PLAINTIFF'S LONDON DEPOSITION EXHIBIT
No. 38
RADIO RETAILING
Vol. XIV No. 6
September 1959

• • •

ZENITH COMES TO U.K.
High Grade Transistor Sets Are First Imports

At a trade press reception held at the headquarters of United Mercantile Co. Ltd., in London, it was announced that stocks of the 1960 radio receivers made by the Zenith Radio Corporation of Chicago will in future be freely available for sale in the United Kingdom.

Distribution is in the hands of United Mercantile and D. C. Spink, well known in the trade, has been appointed Sales Manager.

Zenith products in the U.S.A. are well recognised as of a high standard of quality and design, and distribution in this country is being planned accordingly. Mr. Spink is busy at present selecting specialist dealers to carry his products. Special attention is being paid to the problems of servicing and adequate stocks of spares will be brought into the country.

The initial range includes a number of transistor receivers, including pocket, portable and clock types.

A full range of dealers aids and point of sale displays are available.

"In due course we shall extend our range for the U.K.," said Mr. Spink. *"Very soon we shall have our high fidelity stereophonic equipment on offer."*

Mr. A. R. Ramsay, Managing Director of United Mercantile, who has recently been for some time in the U.S.A. studying marketing problems, told our representative, "We shall keep a very close watch on the U.K. market, so that as the situation warrants it we can bring in more Zenith products. At the moment we are waiting to see what the Government's decision will be regarding the third TV channel before we commit ourselves on importing T.V receivers."

[Picture omitted]

D. C. Spink, Sales Manager and A. R. Ramsey, Managing Director at the recent introduction of Zenith Radio.

The advent of Zenith in this country underlines the prosperity of the industry and may be considered as a sign that the days of austerity are definitely gone.

Enquiries amongst British representatives of prominent American radio manufacturers showed no others planning to take similar advantage of recent relaxations of Treasury currency restrictions.

PLAINTIFF'S LONDON DEPOSITION EXHIBIT
No. 40

TELEVISION MODEL K.3345 CHASSIS 16K23QS

Object:

To render 45 M/c 625 line T.V. suitable experimentally for reception of Channel 1 (45M/c) and Channel 9 (194 M/c) 405 line transmissions. Facilities including single operation of system switch for I.F. response, horizontal and vertical outputs, sound and various H.T. alterations.

Work Completed:

A. Alteration of 45 M/c I.F. to 38 M/c (Intercarrier sound 4.5 M/c to 6.0 M/c already completed). All I.F.'s were replaced with suitable 38 M/c coils with associated trap coils for British 625 line system. In order to present an I.F. response approximately correct for 405 line system the following I.F. coils were added.

(i) One 38.15 M/c coil series tuned from pin 2 of V4 to ground. (This ultimately was switched at the grid end to remove sound from vision I.F. 405).

(ii) One 3.5 M/c coil parallel tuned in series with the video detector output signal to the video amplifier. (This is also switched in and out of circuit as required to remove Vision/Sound beat pattern on screen).

B. Detector: The output and ground lead from the video detector coil unit were removed and connected to a DPDT switch in order to alternatively accept positive or negative inputs. Some loss of frequency response is apparent but it produced an acceptable picture.

The addition of partial AC coupling from video detector to video amplifier was found to be desirable due to the relationship of the sync. pulses to the black level on 405 lines (low amplitude). See attached schematic of switching.

C. Sound: The 38.15 M/c sound channel was tapped off the tuner output and fed to a separate I.F. channel. The permanent connection of the take-off point had no noticeable effect on the picture, 405 or 625. See attached schematic.

The output from this sound I.F. channel was amplified in a single triode amplifier and fed through change-over switching to existing sound output stage.

D. Horizontal output: It was found that 4400 MMF with a 750 mmf variable across the horizontal oscillator coil (L.13) was correct for operation at 10.125 kc/s. No other modification was found to be necessary. The efficiency of this stage was apparently quite high at lower frequencies (slight reduction of boost voltage was observed).

E. Vertical output: The frequency being identical to the 625 system (British) the only modification required was a parallel vertical size control switched in in place of the existing control and adjusted accordingly. (Loss of vertical size due to reduced boost voltage). Vertical linearity changed but was acceptable.

F. B+ Alterations: The only switching necessary was to supply the sound I.F. with voltage on 405 lines.

General Observations:

The resulting 405 display was acceptable but not 100%. Visable defects are a poor H.F. response (2 M/c+) in the vision channel due possibly to the method of switching the detector polarity: a sync. fault manifests itself when a black object leaves the screen on the right-hand side, whereby the picture is shifted to the left over an area according to the size of the displayed object.

Probable cause: Incorrect time constants in the sync. clipper or horizontal control circuits. (This defect is not apparent and can be cured somewhat by the feeding back of a signal from the anode of the horizontal oscillator to the sync. clipper anode through a resistor value 100K)

The general level of contrast is lower than that of 625 the cause being excessively wide I.F. response for 3 M/c of video where gain is wasted beyond this.

Considering the amount of modification necessary to produce an acceptable picture this system has possibilities. The performance of the receiver remains to be seen in a variety of fields. Enclosed is a schematic of the resulting I.F. response superimposed upon the original 625 response.

N.B. It was found impossible to use the 'Space Command' unit with the 405 lines system as the 4th harmonic of the line oscillator triggered the various control channels.

Physical Switching Arrangement:

Two banks of multi-way switches were employed, mechanically connected with a system of levers. Both were located under the chassis—one (a) under the bases of the I.F. valves and the other (b) beneath the Horizontal oscillator and control circuitory.

A) This switch changed the detector polarity and the insertion and removal of the sound I.F. trap.

B) The Horizontal and Vertical circuits, sound changeover and B+ switching was accommodated in this switch bank.

The switches are of the two-way sliding type employed for their many switch positions. In this experimental form, numerous contacts were not used. See accompanying photograph.

[Drawings Attached]

PLAINTIFF'S LONDON DEPOSITION EXHIBIT No. 41

AR/mg PROGRESS REPORT No. 1 3rd July 1959

1. *Marketing*—Preparations are being very actively pursued regarding marketing. After long conversations with people in the trade, it has been decided to limit the distribution to only very high-class stores, Hi-Fi dealers, and high quality radio dealers.

2. *Personnel*—Within the next few days, we are appointing, on a probationary period of three months, a Sales Manager, Mr. D. C. Spink.

   Mr. Spink was, for many years, Assistant Sales Manager with General Electric, and lately, Sales Manager of Pilot Radios until Pilot Radios were taken over by Ultra Electric. The probationary period with Mr. Spink is based on a target to be achieved within the next three months. The figures of the target to be agreed will be communicated to you later.

3. *Publicity*—We have appointed* Messrs. Gerrard Limited

---

* Not yet; still pending.

to be our Publicity Agents, and they are preparing now a scheme to cover the next six months. An exact report in this respect will be sent to you very shortly. The difficulty which we are experiencing is the question of art work, as, unfortunately, the type of advertisement used in the United States is not suitable for the high class product in the United Kingdom. We wonder whether your Art Department has not got any art work in its possession which could be useful to us.

Price Lists and all kinds of stationery are being printed now, and will be sent to you shortly. Also letters advising dealers that Zenith Radios are again available in the United Kingdom are being prepared, and as soon as catalogues are received from you, will be sent out initially to approximately 750 leading dealers and stores in the United Kingdom.

4. Private Enquiries, which we have received through your offices are being dealt with.
5. *General Display*—Arrangements are being made to have in all leading Hotels in London show cases displaying Zenith Radios.

4th August. 1959

PLAINTIFF'S LONDON DEPOSITION EXHIBIT
No. 42
PROGRESS REPORT—NO. 2.

1) *Marketing:*

As from the 28th July, the date the goods were received, we started to make our first deliveries to Dealers.

Up to now, eight Dealers have been appointed and appointments are progressing.

Enclosed is a list of Dealers in various districts in London.

2) *Sales Promotion:*

On the 13th instant there will be a Press Conference with a Cocktail Party for Trade and National Press representatives.

A complete range carried in London of Zenith goods will be displayed and the Press will be issued with Press Information Sheets as well as photographs of every available model.

From the 25th August to the 5th September, which is the time of the National Radio Show, we shall be having a permanent and very attractive display of Zenith goods on one floor of our building and buyers from all over the Country will be shown around and entertained.

3) *Publicity in August 1959:*

Only publicity in trade papers will appear, as follows:

15th August. "WIRELESS TRADER"— double page, featuring—250, 850 and 1000D.
"RADIO & ELECTRICAL TRADING"—full page, featuring 250, 850 and 1000D.

22nd August. "WIRELESS TRADER"—double page, featuring—1000D and B600.
"RADIO & ELECTRICAL TRADING"—full page, featuring 1000D and B600.

29th August. (Radio Show numbers)
"WIRELESS TRADER"—single page
"RADIO & ELECTRICAL TRADING"— single page, featuring: "Come to Knightsbridge to see the Zenith range".

Plans are made now for advertising in September and these advertisements will be devoted to three classes of media:

a) Trade
b) General (magazines and newspapers)
c) Specialised (Yachting and Flying)

We are now planning the release of the 500E introduction as well as the 760 for September, but the final decision will be taken as soon as we know when the first supplies will be available.

4) *Private Enquiries:*

All private enquiries are being attended to immediately.

5) *General Display:*

This week Zenith radio sets will be displayed in Harrods, which is the leading British Store if not the leading store in the World, and in Selfridges; from the 17th August in Keith Prowse in Bond Street and Coventry Street.

We shall endeavour to make photographs of the windows for your perusal.

Encl.

4th August, 1959

LIST OF APPOINTED DEALERS

Messrs. Silver's Electric,
70. Commercial Street,
LONDON. E.1.
Messrs. Regent Radio, Ltd.
16. York Street,
ST. HELIER,
Jersey. C.I.
Messrs. Mayfair Electric Ltd.
2. Shepherd Street,
Shepherd Market,
LONDON. W.1
Messrs. Piccadilly Radio,
169. Piccadilly,
LONDON. W.1
Messrs. Troughton & Young (Lighting) Ltd.
143. Knightsbridge,
LONDON. S.W.1.
Messrs. Selfridges. Ltd.,
Oxford Street,
LONDON. W.1.
Messrs. Express Radio & Television,
127. Clapham Park Road,
LONDON. S.W.4.
Messrs. Harrods Ltd.,
Knightsbridge,
LONDON. S.W.1.

ZENITH RADIO CORPORATION
International Division
6001 Dickens Avenue
Chicago 39, Ill., U.S.A.

Invoice No. X 29761A
Invoice Date 6/26/59

Marks: U.M.C. London #1/Up

SOLD To United Mercantile Co. Ltd.
Park Lodge
Park Close
London S.W. 1, England

Shipped To Wm. H. Muller Shipping Corp.
25 Broadway
New York N.Y.

Terms: Net Cash F.O.B.
Factory Chicago
CIA $15000.00
rec'd

Our Order No.	Your Order No.	Date Shipped	Via
EO 26134	6/17-Verbal	6/26/59	Lifschultz Collect

Quantity	Model	Description	Net Per Unit	Total
35	R250L	Radios 6 Transistors	25.57	849.95
30	R250W	“ “ “	25.57	767.10
35	R250Y	“ “ “	25.57	894.95
15	R275B	“ 7 “	29.97	449.55
10	R275J	“ “ “	29.97	299.70
25	R¡¡5Y	“ “ “	29.97	749.25
55	R850C	“ “ “	35.54	1954.70
41	R850L	“ “ “	35.54	1457.14
54	R850W	“ “ “	35.54	1919.16
100	R675L	“ 6 “	29.97	2997.00
10	B600	“ 5 Tube	71.57	715.70
10	S15715	Ballast Adaptor	1.50	15.00
10	Z-230X	Batteries	4.34	43.40
2	R1000D	Radios 9 Transistors	140.25	280.50
2	DPS80C	Portable Stereo Phono 5 Tube Sets	74.07	148.14
2	VM-9327	50 Cycle Idler Wheel	.50	1.00
1	R950	Clock Radio 7 Transistors	75.00	75.00
10	C5190	Clock Radios 4 Tubes	22.77	227.70
10	C519L	Clock Radios 4 Tubes	22.77	227.70
5	C519W	Clock Radios 4 Tubes	22.77	113.85
25	[Illeg.]	50 Cycle Clock Rotors	.65	16.25
1	95-1317	S.D. Transformer	2.00	2.00
2	95-1287	S.D. Transformer	4.50	9.00

Shipped with EP 43931 (R36412) $14,258.74
Excise Tax Exempt (C)

Promote Zenith Quality

ZENITH—THE WORLD'S FINEST RADIO & STEREOPHONIC EQUIPMENT

The Quality Goes In Before the Name Goes On

Ref.: R/7/59/Spec.
July, 1959

Sales Information Bulletin

Dealers' Price List of Zenith Radios
Available for Delivery Against Special Orders

Model	Cabinet	Dealers' Price	P/Tax	Retail Price
Fully Transistorised Portables:				
RYL 710L	Leather	21. 15. 9	10. 9. 9	43. 3. 5
RYL 750C	Charcoal-Grey	28. 11. –	13. 14. 10	56. 11. 4
RYL 750L	Leather	28. 11. –	13. 14. 10	56. 11. 4
RYL 760L	Leather	35. –. –	16. 16. 11	69. 6. 11

The above prices do not include batteries

Delivery: approximately 4 weeks from the date of firm order.

Model RYL 500D is completely sold out and will not be available in future. New model RYL 500E will be available as from September 1959. A sales Information Bulletin will be sent shortly to all dealers giving details and prices.

Settlement Terms: 3¾% — 7 days
2½% — 30 days

Models and Prices Are Subject to Change or Withdrawal Without Notice.

All enquiries to Main Distributors for the U.K.:—

United Mercantile Co. Ltd., Park Lodge, Park Close, London, S.W.1;
Telephone: KNightsbridge 2135.

Direct Export

[Handwritten note:]

1000 D	£114.—
600 B	£ 60.—
600 L	£ 68.—

Promote Zenith Quality

ZENITH—THE WORLD'S FINEST RADIO & STEREOPHONIC EQUIPMENT

The Quality Goes In Before the Name Goes On

CONFIDENTIAL
November, 1960.

Sales Information Bulletin

Dealers' Price List of Zenith Radios

Model	Colour	Dealers' Price	List Price	P/Tax	Retail Price
TRANSISTOR PORTABLES:					
RYL50Y	Black	£ 10. 6. 8.	£ 15.10. 0.	£ 4.19. 6.	£ 20. 9. 6.
RYL50C	Charcoal/White				
RYL50W	White				
RYL50V	Red/White				
RYL50L	Beige/White				
RYL100C	Charcoal	13.15. 7.	20.13. 5.	6.12. 7.	27. 6. 0.
RYL100L	Beige				
RYL100P	Yellow				
RYL100W	White				
RYL250L	Tan	13.15. 7.	20.13. 5.	6.12. 7.	27. 6. 0.
RYL250W	White				
RYL250Y	Black				
RYL275B	Two Tone Blue	16.19. 3.	25. 8.10.	8. 3. 2.	33.12. 0.
RYL275J	Two Tone Brown				
RYL275Y	Ebony/Grey				
RYL500YE	Black	22. 9. –.	33.13. 6.	10.16. 2.	44. 9. 8.
RYL500WE	Brick Red/White				
RYL500RE	Maroon				
RYL675	Brown Leatherette	18.18. 8.	28. 8. –.	9. 2. 3.	37.10. 3.
RYL710	,, ,,	21.15. 9.	32.13. 8.	10. 9. 9.	43. 3. 5.
RYL755	Brown Leather	28.11. 0.	42.16. 6.	13.14.10.	56.11. 4.
RYL780	Black Leather	35. 0. 0.	52.10. 0.	16.16.11.	69. 6.11.
RYL1000D	Chrome Black	88.11. 4.	132.17. 0.	42.12. 6.	175. 9. 6.
TRANSISTOR CLOCK RADIOS:					
RYL850C	Charcoal/White	22. 9. 0.	33.13. 6.	10.16. 2.	44. 9. 8.
RYL850W	White				
RYL850L	Light Brown/White				
RYL950	Gold	47. 2.11.	70.14. 4.	23. 4. 7.	93.18. 1.

All enquiries to Main Distributors for the U.K.:—

United Mercantile Co. Ltd., Park Lodge, Park Close, London, S.W.1;
Telephone: KNightsbridge 2135.

Further Offers of Proof Made After Findings.

Model	Colour	Dealers' Price	List Price	P/Tax	Retail Price
TRANSISTOR AM/FM PORTABLES:					
RYL2000	Black/Chrome	£ 58. 0. 0.	£ 87. 0. 0.	£27.18. 3.	£114.18. 3.
AC/DC—BATTERY PORTABLES:					
B600	Black	46. 2. –.	69. 3. 0.	22. 3. 9.	91. 6. 9.
B600L	Brown Leather	52. 2. 0.	78. 3. 0.	25. 1. 6.	103. 4. 6.
AC CLOCK RADIOS:					
C519L	Beige	15.19. 5.	23.19. 2.	7.13. 9.	31.12.11.
C519P	Yellow				
C519W	White				
AC/DC RADIOS:					
F512W	White/Blue	10. 1. 4.	15. 2. 0.	4.17. 0.	19.19. 0.
F512L	Beige/Dark Brown				
F512C	Charcoal/White				
F615L	Beige	12.14. 4.	19. 1. 6.	6. 2. 6.	25. 4. 0.
F615B	Blue				
F615C	Charcoal				
AM/FM TABLE MODELS:					
C724P	Champagne Gold	24. 4. 6.	36. 6. 9.	11.13. 3.	48. 0. 0.
C724L	Brown				
C724G	Light Grey				
C725L	Brown	28. 5. 3.	42. 7.11.	13.12. 1.	56. 0. 0.
C725C	Charcoal				
C730	Walnut	32. 6. 0.	48. 9. 0.	15.11. 0.	64. 0. 0.
C730R	Mahogany				
C730E	Light Oak				
C835	Walnut	38. 7. 2.	57.10. 9.	18. 9. 3.	76. 0. 0.
C835R	Mahogany				
C835E	Light Oak				
C835H	Cherry				
C845	Dark Walnut	41. 7. 8.	62. 1. 7.	19.18. 5.	82. 0. 0.
C845Y	Ebony				
C845M	Maple				
C845L	Light Walnut				

The above Prices do not include Batteries

**Models and Prices are subject to change
or withdrawal without notice**

Settlement Terms:

3¾%— 7 days
2½%—30 days

Promote Zenith Quality

ZENITH—THE WORLD'S FINEST RADIO TELEVISION & STEREOPHONIC EQUIPMENT

The Quality Goes In Before the Name Goes On

CONFIDENTIAL
January, 1963.

Sales Information Bulletin

Dealers' Price List of Zenith Radios

Model	Colour	Dealers' Price	List Price	P/Tax	Retail Price
TRANSISTOR PORTABLES:					
RYL50CK RYL50WK RYL50VK	Charcoal/White White Red/White	£ 9. 4. –.	£ 13.16. –.	£ 2. 4. 3.	£ 16. –. 3.
RYL55C	Charcoal	12.10. –.	18.15. –.	3. –. 2.	21.15. 2.
RYL125C RYL125P RYL125L	Charcoal Primrose Beige	12. 3. 9.	18. 5. 7.	2.18. 8.	21. 4. 3.
RYL500WH de Luxe RYL500YH de Luxe RYL500GH de Luxe	White Black Two Tone Grey	22. 9. –.	33.13. 6.	5. 8. 1.	39. 1. 7.
RYL650L RYL650Y	Tan Black	13. –. –.	19.10. –.	3. 2. 7.	22.12. 7.
RYL675LG	Dark Brown	16.19. 3.	25. 8.10.	4. 1. 8.	29.10. 6.
RYL710LG	Dark Brown	21.15. 9.	32.13. 8.	5. 4.10.	37.18. 6.
RYL755LK	Brown Leather	24. 5. –.	36. 7. 6.	5.16. 9.	42. 4. 3.
RYL780YG	Black Leather	29.10. –.	44. 5. –.	7. 2. –.	51. 7. –.
RYL790YG	Black Leather	35. –. –.	52.10. –.	8. 8. 5.	60.18. 5.
RYL1000D	Black/Chrome	88.11. 4.	132.17. –.	21. 6. 3.	154. 3. 3.
RYL1000D (export only)	,, ,,	75. –. –.	100. –. –.	–.	–
RYL3000	Black/Chrome	88.11. 4.	132.17. –.	21. 6. 3.	154. 3. 3.
RYL3000 (export only)	,, ,,	75. –. –.	100. –. –.	–.	–
TRANSISTOR AM/FM PORTABLES:					
RYL880L RYL880Y	Brown Black	31. –. –.	46.10. –.	7. 9. 2.	53.19. 2.
RYL2000	Black/Chrome	58. –. –.	87. –. –.	13.19. 2.	100.19. 2.

All enquiries to Sole Main Distributors for the U.K.:—

United Mercantile Co. Ltd., 13/14 Queen Street, Mayfair, London, W.1., GRO 4901/3.

Model	Colour	Dealers' Price	List Price	P/Tax	Retail Price
AC/DC—BATTERY PORTABLE:					
B600	Black	£ 46. 2. –.	£ 69. 3. –.	£11. 1.10.	£ 80. 4.10.
AC RADIOS:					
F512C	Charcoal/White	10. 1. 4.	15. 2. –.	2. 5. 6.	17. 7. 6.
AM/FM CLOCK RADIO:					
J727W	Ivory	24. 5. –.	36. 7. 6.	5.16. 9.	42. 4. 3.
AM/FM TABLE MODELS:					
C724P C724L C724G	Champagne Gold Brown Light Grey	24. 4. 6.	36. 6. 9.	5.16. 7.	42. 3. 4.
C730 C730B C730E	Walnut Mahogany Light Oak	32. 6. –.	48. 9. –.	7.15. 5.	56. 4. 5.
C835 C835B C835E C835H	Walnut Mahogany Light Oak Cherry	38. 7. 2.	57.10. 9.	9. 4. 7.	66.15. 4.
C845 C845Y C845M C845L	Dark Walnut Ebony Maple Light Walnut	41. 7. 8.	62. 1. 7.	9.19. 2.	72. –. 9.

The above Prices do not include Batteries

Models and Prices are subject to change or withdrawal without notice

Settlement Terms: 3¾%— 7 days
2½%—30 days

PLAINTIFF'S LONDON DEPOSITION EXHIBIT
No. 47E

NEW PRICES

We beg to advise you that as from the 15th October, 1962 the following new prices will apply:

		Dealers	P/Tax
Royal	400		
Royal	500E		
MP	505	139.11. 3.	60. 9. –.
MH	2685	240. –. –.	103.19. –.
MH	2670	215. –. –.	93. 2. 5.
MH	2635	175. –. –.	75.15.11.
SP	2505	130. –. –.	56. 6. 2.

Subject to 3¾% each
Discount (7 days)

Our Micro-Touch tone arm and cartridge not only cannot scratch a record, but it gives as much as 100 per cent more stereo separation and up to 100 per cent more compliance than so far provided in any commercial record player.

It brings a new adventure in sound reproduction, and I have no doubt that within a few years this further Zenith "First" will be accepted by the public at large as something quite usual. The present arms and cartridges that can cause scratches will be obsolete and laughed at.

Now for a brief word about TV: as you know, it is anticipated that shortly the British TV System will be switching to CCIR 625 line system and [Co]ntinued . . .

PLAINTIFF'S LONDON DEPOSITION EXHIBIT
No. 47F

LIST OF ZENITH RADIOS AVAILABLE IN U.K. OCTOBER 1962

Model	Retail Price inc. P/Tax	Model	Retail Price inc. P/Tax
Royal 50	£ 17.15. 8.	Royal 1000D	£171. 4. 3.
,, 55	24. 3. 3.	,, 1000D (Export only)	100. –. –.
,, 125	23.11. 2.	,, 2000	112. 2. 5.
,, 400	32.15. 9.	,, 950	91. 2. 9.
,, 500E	36.14. 7.	,, 3000	171. 4. 3.
,, 500H de Luxe	43. 8. –.	,, 3000 (Export only)	100. –. –.
* ,, 650	25. 2. 7.	B 600	89. 2. 4.
* ,, 675LG	32.15. 9.	F 512	19. 9. 2.
* ,, 710LG	42. 2. 5.	J 727	46.17. 7.
* ,, 755LG	46.17. 7.	C 724	46.16. 7.
,, 780LG	57. –. 6.	C 730	62. 8.10.
,, 790	67.13. 2.	C 835	74. 3. 1.
,, 880	59.18. 7.	C 845	80. –. 1.

Models marked * can have additionally a pre-set position for Long Wave reception of Light Programme for use in areas where reception on Medium Wave is difficult.

PRICE LIST OF ZENITH STEREOPHONIC EQUIPMENT

Record Players		Retail Price inc. P/Tax
Model	KPS 80	£106. 6. 5.
”	*ST 1950	193. 6. 3.
”	*SK 2501	193. 6. 3.
”	*SK 2502	222. 6. 2.
”	*SK 2506	241.12.10.
”	*ST 1970	260.19. 5.

RADIOGRAMS WITH AM/STEREO FM RADIO

Model	MP 505	(Exclusive to Harrods Ltd.)	
”	MK 2608		338. 5.11.
”	MK 2635		386.12. 6.
”	MK 2670		483. 5. 8.
”	MK 2675		541. 5. 6.
”	MK 2685	Cherry	541. 5. 6.
”	MK 2685	Antique White & Gold	560.12. 2.

Models marked* can be fitted optionally with AM/FM radio at additional cost of £52.13.11. inc. P/Tax and/or Sound Reverberation at a cost of £33.12. –.

We regret that for the time being our combined Television/Radiogram units cannot be used in the U.K. until the system of television transmission is changed to 625 lines.

Promote Zenith Quality

ZENITH—THE WORLD'S FINEST RADIO & STEREOPHONIC EQUIPMENT

The Quality Goes In Before the Name Goes On

CONFIDENTIAL
November, 1962

Sales Information Bulletin

Dealers' Price List of Zenith Radios

Model	Colour	Dealers' Price	List Price	P/Tax	Retail Price
TRANSISTOR PORTABLES:					
RYL50CK	Charcoal/White	£ 9. 4. –.	£ 13.16. –.	£ 3.19. 8.	£ 17.15. 8.
RYL50WK	White				
RYL50VK	Red/White				
RYL50LK	Beige/White				
RYL55C	Charcoal	12.10. –.	18.15. –.	5. 8. 3.	24. 3. 3.
RYL125C	Charcoal	12. 3. 9.	18. 5. 7.	5. 5. 7.	23.11. 2.
RYL125P	Primrose				
RYL125L	Beige				
RYL400Y	Black	14. –. –.		6. 1. 3.	Free
RYL400W	White				
RYL400F	Two Tone Green				
RYL400J	Two Tone Brown				
RYL500WE	White/Coral	16. –. –.		6.18. 7.	Free
RYL500RE	Maroon/Gold				
RYL500YE	Black/Gold				
RYL500WH de Luxe	White	22. 9. –.	33.13. 6.	9.14. 6.	43. 8. –.
RYL500YH de Luxe	Black				
RYL500 GH de Luxe	Two Tone Grey				
RYL650L	Tan	13. –. –.	19.10. –.	5.12. 7.	25. 2. 7.
RYL650Y	Black				
RYL675LG	Dark Brown	16.19. 3.	25. 8.10.	7. 6.11.	32.15. 9.
RYL710LG	Dark Brown	21.15. 9	32.13. 8.	9. 8. 9.	42. 2. 5.
RYL755LK	Brown Leather	24. 5. –.	36. 7. 6.	10.10. 1.	46.17. 7.
RYL780YG	Black Leather	29.10. –.	44. 5. –.	12.15. 6.	57. –. 6.
RYL790YG	Black Leather	35. –. –.	52.10. –.	15. 3. 2.	67.13. 2.
RYL1000D	Chrome/Black	88.11. 4.	132.17. –.	38. 7. 3.	171. 4. 3.
RYL1000D (export only)	,, ,,	75. –. –.	100. –. –.	–	–
RYL3000	Chrome/Black	88.11. 4.	132.17. –.	38. 7. 3.	171. 4. 3.
RYL3000 (export only)	,, ,,	75. –. –.	100. –. –.	–	–

All enquiries to Main Distributors for the U.K.:—

United Mercantile Co. Ltd., Park Lodge, Park Close, London, S.W.1;
Telephone: KNightsbridge 2135.

Model	Colour	Dealers' Price	List Price	P/Tax	Retail Price
TRANSISTOR CLOCK RADIO:					
RYL950	Gold	£ 47. 2.11.	£ 70.14. 4.	£20. 8. 5.	£ 91. 2. 9.
TRANSISTOR AM/FM PORTABLES:					
RYL880L	Brown	31. –. –.	46.10. –.	13. 8. 7.	59.18. 7.
RYL880Y	Black				
RYL2000	Black/Chrome	58. –. –.	87. –. –.	25. 2. 5.	112. 2. 5.
AC/DC—BATTERY PORTABLE:					
B600	Black	46. 2. –.	69. 3. –.	19.19. 4.	89. 2. 4.
AC RADIOS:					
F512L	Beige/Dark Brown	10. 1. 4.	15. 2. –.	4. 7. 2.	19. 9. 2.
F512C	Charcoal/White				
AM/FM CLOCK RADIOS:					
J727W	Ivory	24. 5. –.	36. 7. 6.	10.10. 1.	46.17. 7.
J727F	Tarragon Green				
J727C	Briar Brown				
AM/FM TABLE MODELS:					
C724P	Champagne Gold	24. 4. 6.	36. 6. 9.	10. 9.10.	46.16. 7.
C724L	Brown				
C724G	Light Grey				
C730	Walnut	32. 6. –.	48. 9. –.	13.19.10.	62. 8.10.
C730R	Mahogany				
C730E	Light Oak				
C835	Walnut	38. 7. 2.	57.10. 9.	16.12. 4.	74. 3. 1.
C835R	Mahogany				
C835E	Light Oak				
C835H	Cherry				
C845	Dark Walnut	41. 7. 8.	62. 1. 7.	17.18. 6.	80. –. 1.
C845Y	Ebony				
C845M	Maple				
C845L	Light Walnut				

The above Prices do not include Batteries

Models and Prices are subject to change or withdrawal without notice

Settlement Terms: 3¾%— 7 days
2½%—30 days

PRICE LIST OF ZENITH STEREOPHONIC EQUIPMENT

RECORD PLAYERS.		£	s.	d.	
Model	HPS 50	77	2	4	inc. P/Tax
"	HPS 80	97	8	2	"
"	*SFH 2502T	202	18	9	"
"	*SFH 2503T	233	7	7	"
"	*SFH 2504T	243	10	6	"
"	*SFH 2505T	294	5	2	"
"	*SFH 2515T	355	2	10	"

RADIOGRAMS WITH AM/STEREO FM RADIO

		£	s.	d.	
Model	MH 2635	405	17	6	"
"	MH 2615	426	3	4	"
"	MH 2670	487	1	0	"
"	MH 2675	519	10	5	"
"	MH 2685	539	16	3	"

Models marked * can be fitted optionally with AM/FM radio at additional cost of £55 6s. 3d. inc. P/Tax and/or Sound Reverberation at a cost of £33 12s. 0d. inc. P/Tax.

We regret that for the time being our combined Television/Radiogram units cannot be used in the U.K. until the system of television transmission is changed to 625 lines which is now under consideration.

Promote Zenith Quality

ZENITH—THE WORLD'S FINEST RADIO & STEREOPHONIC EQUIPMENT

The Quality Goes In Before the Name Goes On

Sales Information Bulletin

CONFIDENTIAL
2nd October 1961

Dealers' Price List of Zenith Radios

Model	Colour	Dealers' Price	List Price	P/Tax	Retail Price
TRANSISTOR PORTABLES:					
RYL50Y	Black	£ 10. 6. 8.	£ 15.10. –.	£ 5. 9. 6.	£ 20.19. 6.
RYL50C	Charcoal/White				
RYL50W	White				
RYL50V	Red/White				
RYL50L	Beige/White				
RYL55C	Charcoal	14. 6. 5.	21. 9. 4.	7.11. 5.	29. –. 9.
RYL150W	White	12. 3. 9.	18. 5. 7.	6. 9. 2.	24.14. 9.
RYL150F	Green				
RYL150L	Beige				
RYL400Y	Black	16.19. 3.	25. 8.10.	8.19. 6.	34. 8. 4.
RYL400W	White				
RYL400F	Two tone Green				
RYL400J	Two tone Brown				
RYL500WE	White/Coral	19. –. –.	28.10. –.	10. 1. 2.	38.11. 2.
RYL500RE	Maroon/Gold				
RYL500YE	Black/Gold				
RYL500WH de Luxe	White	22. 9. –.	33.13. 6.	11.17. 9.	45.11. 3.
RYL500YH de Luxe	Black				
RYL500GH de Luxe	Two tone Grey				
RYL675LG	Dark Brown	16.19. 3.	25. 8.10.	8.19. 6.	34. 8. 4.
RYL710LG	Dark Brown	21.15. 9.	32.13. 8.	11.10. 9.	44. 4. 5.
RYL755LG	Brown Leather	24. 5. –.	36. 7. 6.	12.16. 9.	49. 4. 3.
RYL780LG	Black Leather	29.10. –.	44. 5. –.	15.12. 4.	59.17. 4.
RYL1000D	Chrome Black	88.11. 4.	132.17. –.	46.17. 9.	179.14. 9.
RYL1000D (export only)	Chrome Black	75. –. –.	100. –. –.	–	–

All enquiries to Main Distributors for the U.K.:—

United Mercantile Co. Ltd., Park Lodge, Park Close, London, S.W.1;
Telephone: KNightsbridge 2135.

Further Offers of Proof Made After Findings.

Model	Colour	Dealers' Price	List Price	P/Tax	Retail Price
TRANSISTOR CLOCK RADIOS:					
RYL850C	Charcoal/White	£ 17. –. –.	£	£ 9. –. –.	£
RYL850W	White				
RYL850L	Light Brown/White				
RYL950	Gold	47. 2.11.	70.14. 4.	25.11. 1.	96. 5. 4.
TRANSISTOR AM/FM PORTABLE:					
RYL2000	Black/Chrome	58. –. –.	87. –. –.	30.14. 1.	117.14. 1.
AC/DC—BATTERY PORTABLE:					
B600	Black	46. 2. –.	69. 3. –.	24. 8. 1.	93.11. 1.
AC CLOCK RADIOS:					
C519L	Beige	15.19. 5.	23.19. 2.	8. 9. 1.	32. 8. 3.
C519P	Yellow				
C519W	White				
AC RADIOS:					
F512L	Beige/Dark Brown	10. 1. 4.	15. 2. –.	5. 6. 8.	20. 8. 8.
F512C	Charcoal/White				
AM/FM TABLE MODELS:					
C724P	Champagne Gold	24. 4. 6.	36. 6. 9.	12.16. 7.	49. 3. 4.
C724L	Brown				
C724G	Light Grey				
C725L	Brown	28. 5. 3.	42. 7.11.	14.19. 3.	57. 7. 2.
C725C	Charcoal				
C730	Walnut	32. 6. –.	48. 9. –.	17. 2. 1.	65.11. 1.
C730R	Mahogany				
C730E	Light Oak				
C835	Walnut	38. 7. 2.	57.10. 9.	20. 6. 2.	77.16.11.
C835R	Mahogany				
C835E	Light Oak				
C835H	Cherry				
C845	Dark Walnut	41. 7. 8.	62. 1. 7.	21.18. 3.	83.19.10.
C845Y	Ebony				
C845M	Maple				
C845L	Light Walnut				

The above Prices do not include Batteries

Models and Prices are subject to change or withdrawal without notice

Settlement Terms: 3¾%—7 days
2½%—30 days

Promote Zenith Quality

ZENITH—THE WORLD'S FINEST RADIO & STEREOPHONIC EQUIPMENT

The Quality Goes In Before the Name Goes On

Sales Information Bulletin

27th July, 1961

Dealers' Price List of Zenith Radios

Model		Dealers' Price	List Price	P/Tax	P/Tax Surcharge	New Retail Price
Royal	50	£10. 6. 8.	£ 15.10. –.	£ 4.19. 6.	£–.10. –.	£ 20.19. 6.
”	55	14. 6. 5.	21. 9. 4.	6.17. 8.	–.13. 9.	29. 0. 9.
”	150	13.15. 7.	20.13. 5.	6.12. 7.	–.13. 3.	27.19. 3.
”	250	13.15. 7.	20.13. 5.	6.12. 7.	–.13. 3.	27.19. 3.
”	275	16.19. 3.	25. 8.10.	8. 3. 2.	–.16. 4.	34. 8. 4.
”	500E	22. 9. –.	33.13. 6.	10.16. 2.	1. 1. 7.	45.11. 3.
”	675	16.19. 3.	25. 8.10.	8. 3. 2.	–.16. 4.	34. 8. 4.
”	710	21.15. 9.	32.13. 8.	10. 9. 9.	1. 1. –.	44. 4. 5.
”	755	28.11. –.	42.16. 6.	13.14.10.	1. 7. 6.	57.18.10.
”	780	35. –. –.	52.10. –.	16.16.11.	1.13. 8.	71. –. 7.
”	850	22. 9. –.	33.13. 6.	10.16. 2.	1. 1. 7.	45.11. 3.
”	950	47. 2.11.	70.14. 4.	23. 4. 7.	2. 6. 5.	96. 5. 4.
”	1000D	88.11. 4.	132.17. –.	42.12. 6.	4. 5. 3.	179.14. 9.
”	2000	58. –. –.	87. –. –.	27.18. 3.	2.15.10.	117.14. 1.
B	600	46. 2. –.	69. 3. –.	22. 3. 9.	2. 4. 4.	93.11. 1.
C	519	15.19. 5.	23.19. 2.	7.13. 9.	–.15. 4.	32. 8. 3.
F	512	10. 1. 4.	15. 2. –.	4.17. –.	–. 9. 8.	20. 8. 8.
F	615	12.14. 4.	19. 1. 6.	6. 2. 6.	–.12. 3.	25.16. 3.
C	724	24. 4. 6.	36. 6. 9.	11.13. 3.	1. 3. 4.	49. 3. 4.
C	725	28. 5. 3.	42. 7.11.	13.12. 1.	1. 7. 2.	57. 7. 2.
C	730	32. 6. –.	48. 9. –.	15.11. –.	1.11. 1.	65.11. 1.
C	835	38. 7. 2.	57.10. 9.	18. 9. 3.	1.16.11.	77.16.11.
C	845	41. 7. 8.	62. 1. 7.	19.18. 5.	1.19.10.	83.19.10.

The above Prices do not include Batteries

Models and Prices are subject to change or withdrawal without notice

Settlement Terms: 3¾%— 7 days
2½%—30 days

All enquiries to Main Distributors for the U.K.:—

United Mercantile Co. Ltd., Park Lodge, Park Close, London, S.W.1;
Telephone: KNightsbridge 2125.

Promote Zenith Quality

ZENITH—THE WORLD'S FINEST RADIO & STEREOPHONIC EQUIPMENT

The Quality Goes In Before the Name Goes On

Sales Information Bulletin

CONFIDENTIAL
March, 1961

Dealers' Price List of Zenith Radios

Model	Colour	Dealers' Price	List Price	P/Tax	Retail Price
TRANSISTOR PORTABLES:					
RYL50Y	Black	£ 10. 6. 8.	£ 15.10. 0.	£ 4.19. 6.	£ 20. 9. 6.
RYL50C	Charcoal/White				
RYL50W	White				
RYL50V	Red/White				
RYL50L	Beige/White				
RYL55C	Charcoal	14. 6. 5.	21. 9. 4.	6.17. 8.	28. 7. –.
RYL100C	Charcoal	13.15. 7.	20.13. 5.	6.12. 7.	27. 6. –.
RYL100L	Beige				
RYL100P	Yellow				
RYL100W	White				
RYL250L	Tan	13.15. 7.	20.13. 5.	6.12. 7.	27. 6. –.
RYL250W	White				
RYL250Y	Black				
RYL275B	Two Tone Blue	16.19. 3.	25. 8.10.	8. 3. 2.	33.12. –.
RYL275J	Two Tone Brown				
RYL275Y	Ebony/Grey				
RYL500YE	Black	22. 9. –.	33.13. 6.	10.16. 2.	44. 9. 8.
RYL500WE	Brick Red/White				
RYL500RE	Maroon				
RYL675	Brown Leatherette	16.19. 3.	25. 8.10.	8. 3. 2.	33.12. –.
RYL710	Brown Leatherette	21.15. 9.	32.13. 8.	10. 9. 9.	43. 3. 5.
RYL755	Brown Leather	28.11. –.	42.16. 6.	13.14.10.	56.11. 4.
RYL780	Black Leather	35. –. –.	52.10. –.	16.16.11.	69. 6.11.
RYL1000D	Chrome Black	88.11. 4.	132.17. –.	42.12. 6.	175. 9. 6.
TRANSISTOR CLOCK RADIOS:					
RYL850C	Charcoal/White	22. 9. –.	33.13. 6.	10.16. 2.	44. 9. 8.
RYL850W	White				
RYL850L	Lt. Brown/White				
RYL950	Gold	47. 2.11.	70.14. 4.	23. 4. 7.	93.18.11.

All enquiries to Main Distributors for the U.K.:—

United Mercantile Co. Ltd., Park Lodge, Park Close, London, S.W.1;
Telephone: KNightsbridge 2135.

Further Offers of Proof Made After Findings.

Model	Colour	Dealers' Price	List Price	P/Tax	Retail Price
TRANSISTOR AM/FM PORTABLES:					
RYL2000	Black/Chrome	£ 58. –. –.	£ 87. –. –.	£ 27.18. 3.	£ 114.18. 3.
AC/DC—BATTERY PORTABLES:					
B600	Black	46. 2. –.	69. 3. –.	22. 3. 9.	91. 6. 9.
B600L	Brown Leather	52. 2. –.	78. 3. –.	25. 1. 6.	103. 4. 6.
AC CLOCK RADIOS:					
C519L	Beige	15.19. 5.	23.19. 2.	7.13. 9.	31.12.11.
C519P	Yellow				
C519W	White				
AC/DC RADIOS:					
F512W	White/Blue	10. 1. 4.	15. 2. –.	4.17. –.	19.19. –.
F512L	Beige/Dark Brown				
F512C	Charcoal/White				
F615L	Beige	12.14. 4.	19. 1. 6.	6. 2. 6.	25. 4. –.
F615B	Blue				
F615C	Charcoal				
AM/FM TABLE MODELS:					
C724P	Champagne Gold	24. 4. 6.	36. 6. 9.	11.13. 3.	48. –. –.
C724L	Brown				
C724G	Light Grey				
C725L	Brown	28. 5. 3.	42. 7.11.	13.12. 1.	56. –. –.
C725C	Charcoal				
C730	Walnut	32. 6. –.	48. 9. –.	15.11. –.	64. –. –.
C730R	Mahogany				
C730E	Light Oak				
C835	Walnut	38. 7. 2.	57.10. 9.	18. 9. 3.	76. –. –.
C835R	Mahogany				
C835E	Light Oak				
C835H	Cherry				
C845	Dark Walnut	41. 7. 8.	62. 1. 7.	19.18. 5.	82. –. –.
C845Y	Ebony				
C845M	Maple				
C845L	Light Walnut				

The above Prices do not include Batteries

Models and Prices are subject to change or withdrawal without notice

Settlement Terms: 3¾%— 7 days
2½%—30 days

Promote Zenith Quality

ZENITH—THE WORLD'S FINEST RADIO & STEREOPHONIC EQUIPMENT

The Quality Goes In Before the Name Goes On

Sales Information Bulletin

CONFIDENTIAL
November, 1960

Dealers' Price List of Zenith Stereophonic Equipment

Model	Cabinet	Dealers' Price	List Price	P/Tax	Retail Price
PORTABLE STEREO RECORD CHANGERS:					
DPS50L	Brown-White	£ 30. 5. 7.	£ 45. 8. 5.	£ 14.11. 7.	£ 60. 0. 0.
DPS80C	Charcoal-White	38. 7. 2.	57.10. 9.	18. 9. 3.	76. 0. 0.
CONSOLE STEREO RECORD CHANGERS:					
SFD2501E SFD2501H	Light Oak Cherry	70. 0. 0.	105. 0. 0.	33.13.10.	138.13.10.
SFD2505RT	Mahogany	108. 7. 0.	162.10. 6.	52. 2.10.	214.13. 4.
SFD2505ET SFD2505YT	Light Oak Ebony	111. 6. 0.	166.19. 0.	53.11. 3.	220.10. 3.
CONSOLE STEREO RECORD CHANGERS WITH AM/FM RADIO:					
SFD2530R	Mahogany	144.13. 0.	216.19. 6.	69.12. 3.	286.11. 9.
SFD2535R SFD2535M	Mahogany Maple	153.10. 0.	230. 5. 0.	73.17. 6.	304. 2. 6.
SFD2565R SFD2565M	Mahogany Maple	202. 7. 0.	303.10. 6.	97. 7. 8.	400.18. 2.
SFD2570W	Walnut	226. 4. 0.	339. 6. 0.	108.17. 3.	448. 3. 3.
SFD2575L	Tuscany Walnut	241.13. 0.	362. 9. 6.	116. 5.11.	478.15. 5.
SFD2580R SFD2580H	Mahogany Cherry	257. 0. 0.	385.10. 0.	123.18. 8.	509. 3. 8.
AM/FM TUNER FOR MODEL SFD2505					
	ET10	27. 5. 2.	40.17. 9.	13. 2. 3.	54. 0. 0.

Models and Prices are subject to change or withdrawal without notice

Settlement Terms: 3¾%— 7 days
2½%—30 days

All enquiries to Main Distributors for the U.K.:—

United Mercantile Co. Ltd., Park Lodge, Park Close, London, S.W.1;
Telephone: KNightsbridge 2135.

ZENITH RADIO. CORPORATION
6001 W. Dickens Avenue
Chicago 39, Illinois

January 12, 1960

CCIR CONVERSION

All "E" Model Chassis in Service Manual TV—24.
Chassis: 16E20, 16E25, 16E21, 16E27, 18E20.

To convert these models from U.S.A. standards to CCIR Standards; three basic changes must be made.

1. Sound discriminator must be changed from 4.5 to 5.5 Mc. and maximum deviation from 25 to 50 Kc.
2. I.F. acceptance channel must be broadened by 1 Mc.
3. R.F. channels must be shifted from USA to CCIR frequencies.

I. Circuit modifications for I.F. and sound.

a. Remove 35 turns from quadrature coil L-9 in 16E20, L-11 in 16E25, L-12 in 16E21, L-13 in 16E27, L-12 in 18E20.

b. Change capacitor across secondary of intercarrier coil, from 470 uuf to 330 uuf and add a 15,000 ohm, 1/2W. resistor across this capacitor. (This coil is L-8 in 16E20, L-10 in 16E25, L-11 in 16E21, L-12 in 16E27, L-11 in 18E20.)

c. Remove 7 turns from primary and 12 turns from secondary of sound take-off coil. (L-11 in 16E20, L-7 in 16E25, L-7 in 16E21, L-8 in 16E27, L-7 in 18E20.)

d. Change 6BN6 plate resistor from 680 ohms to 1800 ohms.

1. Add a 22,000 ohm, 1/2W. resistor from grid of the first I.F. tube (Pin 1) to I.F. A.G.C. point "E".
2. Change 22,000 ohm, 1/2W. resistor across the primary of T-2, to 12,000 ohms (33,000 to 22,000 on 16E20 and 16E25).
3. Change 8200 ohms, 1/2W. resistor across the secondary of T-3, of 16E25 only, to 5600 ohms. Change 5,600 ohms, 1/2W. resistor across the secondary of T-3, of 16E20 only, to 6,800 ohms.

II. Alignment of video and sound.

- A. The alignment procedure appears on pages 7 and 8 of TV-24 with the following exceptions.
  - 1. Substitute 40.25 Mc. for 41.25 Mc.; 41.75 Mc. for 42.75 Mc.; 38.75 Mc. for 39.75 Mc.; and 5.5 Mc. for 4.5 Mc.; wherever they occur.

III. Alignment of Tuners.

- A. Alignment of Target (turret) tuner
  Follow procedure for target tuner on pages 9 and 10 of Service Manual TV-24 with modifications noted below.
  - 1. Replace channel strips with those tuned for CCIR channels. Orders must specify picture and sound carrier frequencies and not channel numbers.
- B. Conversion of Bulls-Eye tuner to CCIR standards.
  - 1. Remove tuner from bracket and remove cover.
  - 2. Follow procedures for bulls-eye turret tuner alignment on page 10 of Service Manual TV-24 with modifications noted below.
    - a. Align each channel strip by spreading or squeezing coils to the CCIR channel frequency using the U.S.A. channel strip closest to CCIR channel.
- C. Alignment of Bandswitch tuner.
  Follow procedure on page 9 of Service Manual TV-24 with modifications noted below.
  - 1. Remove tuner from the mounting bracket frame and take-off cover.
  - 2. R.F. plate coil (Mixer) adjustment.
    - a. Start with channel selector on channel 13. Adjust RF plate inductance, as indicated in paragraph 4, page 9 of TV-24 so that the 210.25 Mc, video and 215.75 Mc. sound markers fall symmetrically on the response curve.
      Picture carrier should be about 4 Db, maximum below peak of bandpass with cover off tuner. (Where 217.25 Mc.

video carrier is used, set channel 13 to that frequency).

b. Switch to channel 12 and adjust RF coil loop in that section nearer to, or further from switch rotor for proper response using proper CCIR frequencies for the channel.

c. Repeat above for all channels. Observe that channels 12 through 7 use single inductance loops, while channels 6 through 2 use coils. These inductances are in series making it compulsory to align the high frequency channels first.

3. Antenna coil adjustment.

a. Channels 13 through 7 used stamped inductances which cannot be adjusted. Band acceptance is broad and no adjustment is required.

b. Adjust antenna coils on channels 6 through 2, starting with channel 6 and working to the lower frequencies.

4. Oscillator.

a. Use procedure of paragraph 6, page 9; TV-24. Be sure to adjust high frequency channels first. In some cases, it may be necessary to remove completely the adjusting screw on one of the unused channels.

IV. Below is a list of the 12 VHF channels used in the United States with their picture and sound carrier frequencies in Mc. The suggested channels for conversion to CCIR frequencies are also indicated. Channel numbers in different countries may correspond to different frequencies.

U.S. Channel	U.S.A.		CCIR	
	Video	Sound	Video	Sound
2	55.25	59.75	55.25	60.75
3	61.25	65.75	62.25	67.75
4	67.25	71.75	—	—
5	77.25	81.75	—	—
6	83.25	87.75	82.25	87.75
7	175.25	179.75	175.25	180.75
9	187.25	191.75	189.25	194.75
10	193.25	197.75	196.25	201.75
11	199.25	203.75	201.25	206.75
12	205.25	209.75	—	—
13	211.25	215.75	210.25	215.75

Replacement strips for target tuners should be specified by frequency. Channel strips can be shifted in either target or bulls-eye tuners to correspond with knob numbering. No such shift can be done on the bandswitch tuner.

V. Test Equipment.

a. Radio Frequency Sweep Generator covering the desired frequencies with an output of approximately 0.1 volt or more.
b. Oscilloscope having a minimum sensitivity of 1 volt/inch.
c. Oscillator tuning wrench, as indicated on page 4 of TV-24.
d. 50 to 300 ohm matching transformer, cable, and dummy lead shown in Figure 4 of TV-24.
e. Variable frequency generator to mark the frequencies of the picture and sound carrier.

PARTS LIST FOR C.C.I.R. CONVERSION "E" MODEL CHASSIS

		16E20	16E25		16E21 & 18E20		16E27
Part	Part No.	B.S.	B.S.	Target	B.S.	Target	Bulls' Eye
Condensers							
330 uuf.	22-2667	1	1	1	1	1	1
Resistors							
1,800, 1/2W.	63-1796	1	1	1	1	1	1
15,000, 1/2W.	63-2372	1	1	1	1	1	1
12,000, 1/2W.	63-1831	–	–	–	1	1	1
22,000, 1/2W.	63-2848	2	2	2	1	1	1
5,600, 1/2W.	63-4472	–	1	1	–	–	–
6,800, 1/2W.	63-2842	1	–	–	–	–	–

Sets with target tuners require channel strips specified as to video and sound carrier frequencies in addition to model and chassis number, I.F. frequency, and target tuner part number.

A. Gorbunoff

AG
1-12-60

PLAINTIFF'S LONDON DEPOSITION EXHIBIT No. 51

ZENITH RADIO CORPORATION

CCIR Conversion

38.9 Mc IF using Special coils
Chassis 16H22, 16H23
Service Manual TV-27

To convert these models from USA to CCIR standards, three basic changes must be made:

1) Sound discriminator must be changed from 4.5 mc. to 5.5 mc. and maximum deviation from 25 Kc to 50 Kc.
2) IF acceptance channel must be broadened by 1 mc. and lowered by 6.85 mc.
3) RF channels must be shifted from USA to CCIR frequencies.

11. Circuit Modification for IF, Video and Sound Discriminator.
    a) Change 6BN6 plate resistor from 680 ohms to 1800 ohms, 1/2W. (63-1796).
    b) Change capacitor (C-30) across secondary of intercarrier coil (L-11) from 470uuf to 330uuf, and add a 15,000 ohm, 1/2W. resistor (63-2372) across this capacitor.
    c) Replace the sound take-off, quadrature, 1st, 2nd, 3rd, and 4th IF coils and trap coils (L-7, L-12, L-1, T-2, T-3, L-3, L-2) with coils wound for the new frequencies.
    d) Change the adjacent channel picture trap dual condenser (C-5) to two separate 15uuf condensers and add a 4.5uuf condenser across the adjacent channel (40.4 mc.) sound trap coil. Change the 10,000 ohm resistor between point "E" and the junction of L-1 and C-5 to 10,000 ohms ± 10% (63-2844) and wire it between point "E" and grid #1 (Pin #2) of the 1st IF tube.
    e) Change the associated sound trap condenser (C-4) from 6.0uuf to 4.0uuf.
    f) Change the adjacent channel sound trap condenser (C-10) from 1.2uuf to 1.5uuf and (C-9) from 8.5uuf to 10.0uuf.
    g) Change the condenser (C-17) across the secondary of the 4th IF (T-4) from 5.5 uuf to 7.0 uuf.
    h) Change the following resistors:
        1) 1st IF plate resistor (R-2) from 10,000 ohms to 6,800 ohms, 1/2W.
        2) Remove the 12,000 ohm, 1/2W. resistor located between the cold side of the secondary of T-3 and chassis. Add a 12,000 ohm, 1/2W. resistor (63-2845) from Pin #2 of the 3rd IF tube to chassis.
    i) Replace video peaking coils L-4 with S-53617, L-8 with S-53618 and L-9 with S-53619.
    j) Change C-24 from 27uuf to 47uuf.
    k) Omit condenser C-26, 10uuf.
    l) Change R-6 from 7500 ohms, 5 W. to 4700 ohms, 5 W.

2. Alignment of Video and Sound IF:
   a) The alignment procedure appears on Pages 7 and 8 of TV-27 with the following exceptions:
      1) Substitute 31.9 mc. for 39.75 mc.; 33.4 mc. for 41.25 mc.; 34.9 mc. for 42.75 mc.; 40.4 mc. for 47.25 mc.; and 5.5 mc. for 4.5 mc.; 38.15 mc. for 45.0 mc.; 38.9 mc. for 45.75 mc.

3. Tuners:

Conversion of Target; Super Target and Gold Video Guard Tuners to CCIR Standards (38.9 mc. IF)

Following is a list of the 12VHF channels used in the United States with their picture, sound carrier and oscillator frequencies in (M.C.) megacycles. The suggested channels for conversion to CCIR frequencies are also indicated. Channel numbers and channel frequencies will vary in different countries.

	U.S. FREQUENCIES			CCIR FREQUENCIES (TYPICAL)		
U.S. Channel	Video	Sound	Osc.	Video	Sound	Osc.
—	—	—	—	48,25	53.75	87.15
2	55.25	59.75	101	55.25	60.75	94.15
3	61.25	65.75	107	62.25	67.75	101.15
4	67.25	71.75	113	—	—	—
5	77.25	81.75	123	—	—	—
6	83.25	87.75	129	82.25	87.75	121.15
7	175,25	179.75	221	175.25	180.75	214.15
8	181.25	185.75	227	182.25	187.75	221.15
9	187.25	191.75	233	189.25	194.75	228.15
10	193.25	197.75	239	—	—	—
11	199.25	203.75	245	196.25	201.75	235.15
12	205.25	209.75	251	201.25	206.75	240.15
13	211.25	215.75	257	210.25	215.75	249.15
—	—	—	—	217.25	222.75	256.15

1) Changes on the tuner chassis:
   a) On Target and Super Target Tuners: remove the IF filter on the antenna assembly (C-3, C-4, L-1, L-2 and L-3) and connect a wire from the antenna transformer to the feedthru—(C-2).

a-1) On the Gold Video Guard Tuner: remove the IF filter on the antenna assembly (C-1, C-2, C-3, L-1, L-2, L-3, L-7 and L-8) and connect a wire from the antenna transformer to the feedthru—(C-6).

b) Change the converter plate coil as recommended below:

Tuner		Old Coil	New Coil
Target & Super Target	(L-5)	S-47370	S-51153 paralleled by a 47K 1/2W. resistor
* Gold Video Guard	(L-5)	S-50720	S-52983
**Bandswitch	(L-1)	S-54114	S-52983

*Early production of this tuner used a converter plate coil which had a white coil form; later production uses a coil with a blue form.

The white coil can be directly replaced with S-52983 coil. When the blue converter coil is used, replace with S-52983 and rewire the 100K 1/2W. resistor (R-6) according to page 22 of TV-27 Service Manual, dated 6/5/61.

**In order to replace the present coil in the Bandswitch tuner with the new coil, two mechanical changes must be made:

1) Cut off the end segment of the locating key on the coil, and
2) Enlarge the locating hole in the tuner chassis so that the coil will fit.

The wiring of this coil is the same as the one removed.

c) To lower the oscillator frequencies, add a 1.5 mmfd. N-150 capacitor to: (1) Target Tuner: from plate to grid of 6CG8, (2) Super Target Tuner: from plate to chassis of 6CG8, (3) Gold Video Guard Tuner: from plate to grid of 6EA8.

NOTE: Capacitor leads should be as short as possible.

2) Changes on the tuner strips:
   a) Adjust strips to desired frequencies using above chart as a guide.
   b) Coils may be tuned for proper frequency and bandpass by knifing or squeezing.
   c) The cement on the coil forms may be softened with acetone.
   d) For CCIR frequency 48.25 to 53.75 M.C., new coils (with approximately three turns more than U.S. Channel 2) are necessary. This may be made from unused strips (U.S. Channel 4 or 5).
   e) Channel 10 strip can be converted to 217.25-222.75 M.C. by omitting one turn off each coil.
   f) Channel strips may be shifted in turret for any desired switching sequence.

Conversion of Bandswitch Tuner to CCIR Standards (38.9 MC. IF.)

	U.S. FREQUENCIES			CCIR FREQUENCIES (TYPICAL)		
U.S. Channel	Video	Sound	Osc.	Video	Sound	Osc.
2	55.25	59.75	101	48.25	53.75	87.15
3	61.25	65.75	107	55.25	60.75	94.15
4	67.25	71.75	113	62.25	67.75	101.15
5	77.25	81.75	123	—	—	—
6	83.25	87.75	129	82.25	87.75	121.15
7	175.25	179.75	221	175.25	180.75	214.15
8	181.25	185.75	227	182.25	187.75	221.15
9	187.25	191.75	233	189.25	194.75	228.15
10	193.25	197.75	239	196.25	201.75	235.15
11	199.25	203.75	245	201.25	206.75	240.15
12	205.25	209.75	251	210.25	215.75	249.15
13	211.25	215.75	257	217.25	222.75	256.15

a) Remove or jumper IF trap assembly; connecting antenna input terminals (Top two) directly to antenna transformer terminals (Bottom two) of the antenna filter assembly.

b) It is imperative to align the high frequency channel first and follow with each lower channel in sequence.

This procedure is necessary due to the fact that the inductances are in series.

c) R.F. Bandpass Alignment:

1) With tuner indexed in U.S. channel 13 position, align to the highest CCIR frequency (215.25-222.75 mc.) by knifing the channel 13 coils adjacent to the antenna and R. F. plate wafers.

2) Adjust the hairpin coils on the R.F. plate wafers of the next six channels nearer to, or further from switch rotor for proper response using proper CCIR frequencies for each channel. Start with the highest and proceed to the lowest.

3) The antenna circuits of channels 12 through 7 use stamped inductances which cannot be adjusted. Band acceptance is broad and no adjustment is required.

4) Index to U.S. channel 6 and adjust coil to obtain the corresponding CCIR frequencies.

5) Add new coils (approximately 14 turns of the same diameter wire) in place of the present U.S. channel 5 coils on both antenna and R.F. plate wafer. and adjust for proper bandpass. This is done to facilitate alignment of the final three channels.

6) Refer to step 2 and adjust the final three channels.

d) Oscillator Alignment: Starting in U.S. channel 13 position, adjust the oscillator frequencies for the CCIR frequencies as used in R.F. alignment, removing the brass cores from U.S. channels 6, 5, 3 and 2. Also the brass cores can be removed from one or more of the channels from 7 to 12 in order to facilitate alignment.

4. Test Equipment:

a) Radio Frequency Sweep Generator covering the desired frequencies with an output of approximately 0.1 volt or more.

b) Oscilloscope having a minimum sensitivity of 1 volt/inch.

c) Oscillator tuning wrench, as indicated on Page 3 of TV-27.

d) 50 to 300 ohm matching transformer, cable and dummy lead shown in Figure 4 of TV-27.

e) Variable frequency generator to mark the frequencies of the picture and sound carrier.

NOTE: When special CCIR channel strips are ordered for Target Tuners, the following information must be supplied:

1. Video and sound carrier frequencies.
2. Target Tuner part number.
3. Model and Chassis number.
4. I.F. frequency used.

ERRATA NOTE: In TV-27 Service Manual, dated 6/5/61, the parts lists on pages 49 and 51 are interchanged.

Parts List

1—1.5uuf N-150		22-2430
2—15uuf		22-2642
1—4.5uuf		22-2383
1—4.0uuf		22-2549
1—1.5uuf		22-1764
1—10uuf		22-2378
1—7.0uuf		22-2978
1—47uuf		22-2467
1—1800 ohm, 1/2W.		63-1796
1—15,000 ohm, 1/2W.		63-2372
1—10,000 ohm, 1/2W.		63-2844
1—6800 ohm, 1/2 W.		63-2381
1—12,000 ohm, 1/2W.		63-2845
1—4700 ohm, 5W.		63-4820
1—47,000 ohm, 1/2W.		63-2872 (For Target & Super Target Tuners)
1—Sound take-off coil	(L- 7)	S-51049
1—Quadrature coil	(L-12)	S-51050
1—1st IF & trap coil	(L- 1)	S-53637
1—2nd IF & trap coil	(T- 2)	S-53638
1—3rd IF coil	(T- 3)	S-53639
1—4th IF coil	(L- 3)	S-53640

1—Adjacent channel trap coil	(L- 2)	S-53641
1—Detector Shunt Peaking Coil	(L- 4)	S-53617
1—Shunt Peaking coil	(L- 8)	S-53618
1—Series Peaking coil	(L- 9)	S-53619
1—Converter Plate coil	(L- 5)	S-51153 (For Target & Super Target Tuners)
1—Converter Plate coil	(L- 5)	S-52983 (For Gold Video Guard Tuner)
1—Converter Plate coil	(L- 1)	S-52983 (For Bandswitch Tuner)

Richard Henn

Mfn.

E. Zahlmann
Export Eng.

PLAINTIFF'S LONDON DEPOSITION EXHIBIT
No. 52

ZENITH RADIO CORPORATION
6001 W. Dickens Avenue
Chicago 39, Illinois

CCIR Conversion
"J" Model Chassis in Service Manual TV-28
Chassis: 16J22 and 16J23

To convert these models from U.S.A. standards to CCIR standards, five basic changes must be made:

I. Sound discriminator must be changed from 4.5 to 5.5 Mc and maximum deviation from 25 to 50 Kc.
II. IF acceptance channel must be broadened by 1 Mc.
III. RF channels must be shifted from U.S.A. to CCIR frequencies.
IV. Bandwidth of video amplifier must be increased.
V. Vertical sync injection and hold range must be changed.

I. Circuit Modifications for Video IF, Sound IF & Video Amplifier:

A. Remove 35 turns from quadrature coil (L-12).

B. Change the capacitor across the secondary of the intercarrier coil (L-11) from 470 uuf. to 330 uuf. and add a 15K ohm, 1/2W. resistor across this capacitor.

C. Remove 7 turns from the primary and 12 turns from the secondary of the sound take-off coil (L-7).

D.. Change the 6BN6 plate resistor from 680 ohms to 1800 ohms.

E. Add a 8200 ohm, 1/2W. resistor from the grid of the first IF tube (Pin 2) to IF A.G.C. point "E".

F. Change the 10K ohm, 1/2W. resistor across the primary of T-2 to 5600 ohm, 1/2W.

G. Add a 8200 ohm, 1/2W. resistor across the secondary of T-3, from Pin 2 of the 3rd IF tube to the junction of the 12K ohm and 270K ohm resistors.

H. Change the detector shunt peaking coil (L-4) to S-45000.

I. Change the video series peaking coil (L-9) to S-18752.

J. Change the video shunt peaking coil (L-8) to S-53618.

K. Change the video plate load resistor from 7500 ohm, 5 W. to 4700 ohm, 5 W.

L. Change the video cathode by-pass capacitor from .033 ufd. to .0033 ufd.

M. Change C44 at Pin 4 of the 6EM7 from .0068 to .0082 mfd. and change the 330K ohm resistor located at the same point to 270K ohm.

II. Alignment of Video and Sound:

The alignment procedure appears on pages 7 & 8 of TV-28 with the following exceptions:

X Substitute wherever they occur: 40.25 Mc. for 41.25 Mc.
41.75 Mc. for 42.75 Mc.
38.75 Mc. for 39.75 Mc.
5.5 Mc. for 4.5 Mc.

III. Alignment of Tuners:

A. Alignment of turret tuners (Target, Super Target & Gold Video Guard). Follow procedure for these tuners on

Pages 10 and 11 of Service Manual TV-28 with modifications noted below:

1. With the tuner cover off, the individual channel strips can be removed to facilitate necessary adjustments.

2. Adjust strips to desired frequencies using the accompanying chart as a guide.

3. Coils may be tuned for proper frequency and bandpass by knifing or squeezing.

4. The cement on the coil forms may be softened with acetone.

5. Channel strips may be shifted in the turret for any desired switching sequence.

B. Alignment of Bandswitch Tuner; follow procedure on page 10 of Service Manual TV-28 with modifications noted below:

1. In the case of the bandswitch tuner there are no removable tuner strips; therefore, all adjustments must be made inside the tuner.

2. It is imperative to align the high frequency channel first and follow with each lower channel in sequence. This procedure is necessary due to the fact that the inductances are in series.

3. RF plate coil (Mixer) adjustment.

a) Start with channel selector on channel 13. Adjust RF plate inductance so that the 210.25 Mc. video and the 215.75 Mc. sound markers fall symmetrically on the response curve.

Picture carrier should be about 4 Db. maximum below peak of bandpass (with cover off tuner). Where 217.25 Mc. video carrier is used, set channel 13 to that frequency.

b) Switch to channel 12 and adjust RF coil loop in that section nearer to, or further from the switch rotor for proper response using proper CCIR frequencies for the channel.

c) Repeat above for all channels. Observe that channels 12 through 7 use single inductance loops, while channels 6 through 2 use coils.

4. Antenna coil adjustment.

a) Channels 12 through 7 use stamped inductances which cannot be adjusted. Band acceptance is broad and no adjustment is required.

b) Adjust antenna coils on channels 6 through 2 starting with channel 6 and working to the lower frequencies.

5. Oscillator.

a) Use procedure of paragraph 6, page 10 of TV-28. Be sure to adjust the high frequency channels first. In some cases, it may be necessary to remove completely the adjusting screw on one of the unused channels.

IV. Below is a list of the 12VHF channels used in the U.S.A. with their picture, sound carrier and oscillator frequencies in Mc. The suggested channels for conversion to CCIR frequencies are also indicated. Channel members in different countries may correspond to different frequencies.

	U.S.A.			CCIR (Typical)		
U.S. Channel	Video	Sound	Osc.	Video	Sound	Osc.
2	55.25	59.75	101	55.25	60.75	101
3	61.25	65.75	107	62.25	67.75	108
4	67.25	71.75	113	—	—	—
5	77.25	81.75	123	—	—	—
6	83.25	87.75	129	82.25	87.75	128
7	175.25	179.75	221	175.25	180.75	221
8	181.25	185.75	227	182.25	187.75	228
9	187.25	191.75	233	189.25	194.75	235
10	193.25	197.75	239	196.25	201.75	242
11	199.25	203.75	245	201.25	206.75	247
12	205.25	209.75	251	—	—	—
13	211.25	215.75	257	210.25	215.75	256

Replacement strips for tuners should be specified by frequency. Channel strips can be shifted in either Target or Gold Video Guard tuners to correspond with knob numbering. No such shift can be done on the Bandswitch tuner.

V. Test Equipment:

A. Radio frequency sweep generator covering the desired frequencies with an output of approximately 0.1 volt or more.

B. Oscilloscope having a minimum sensitivity of 1 volt/inch.

C. Oscillator tuning wrench, as indicated on page 3 of TV-28.

D. 50 to 300 ohm matching transformer, cable and dummy lead shown in figure 4 of TV-28.

E. Variable frequency generator to mark the frequencies of the picture and sound carriers.

Parts List for CCIR Conversion "J" Model Chassis

Quantity	Part Number	Description		
1	22-2667	330 uuf.		
1	22-2670	.0033 ufd.		
1	22-2431	.0082 ufd.		
1	63-1796	1800	ohm,	1/2W.
1	63-1887	270K	ohm,	1/2W.
1	63-2372	15K	ohm,	1/2W.
2	63-2843	8200	ohm,	1/2W.
1	63-4472	5600	ohm,	1/2W.
1	63-4820	4700	ohm,	5W.
1	S-18752	Video series peaking coil (100 uh)		
1	S-45000	Detector shunt peaking coil (85 uh)		
1	S-53618	Video shunt peaking coil (191 uh)		

When special CCIR channel strips are required for target tuners, the following information must be supplied:

1. Video and sound carrier frequencies.
2. Target tuner part number.
3. Model and chassis numbers.
4. IF frequency used.

/s/ Adam W. Przybyszewski
A. Przybyszewski

/s/ W. Uelsmann
W. Uelsmann

/s/ A.G.
A. Gorbunoff

E. Zahlmann
E. Zahlmann

mfn.

February, 1962

ZENITH RADIO CORPORATION

6001 W. Dickens Avenue
Chicago 39, Illinois

CCIR Conversion
"J" Model Chassis in Service Manual TV-28
Chassis: 16J27

To convert this model from U.S.A. standards to CCIR standards, five basic changes must be made:

1. Sound discriminator must be changed from 4.5 to 5.5 Mc. and maximum deviation from 25 to 50 Kc.

2. IF acceptance channel must be broadened by 1 Mc.

3. RF channels must be shifted from U.S.A. to CCIR frequencies.

4. Bandwidth of video amplifier must be increased.

5. Vertical sync injection and hold range must be changed.

I. Circuit Modifications for Video IF, Sound IF and video Amplifier:

A. Remove 35 turns from the quadrature coil (L-11).

B. Change the capacitor across the secondary of the intercarrier coil (L-10) from 330 uuf to 220 uuf, and add a 15K ohm, ½ W. resistor across this capacitor.

C. Remove 7 turns from the primary and 12 turns from the secondary of the sound take-off coil (L-7).

D. Change the 6BN6 plate resistor from 680 ohms to 1800 ohms.

E. Add a 22K ohm, ½ W. resistor from the grid of the first IF tube (Pin 1) to IF A.G.C. point "E".

F. Change the 33K ohm, ½ W. resistor (R-2) across the primary of T-2 to 22K ohm ½ W.

G. Change the 6800 ohm, ½ W. resistor (R-3) across the secondary of T-3 to 5600 ohm, ½ W.

H. Change the detector shunt peaking coil (L-4) to S-16011.

*I. Change the video series peaking coil (L-9) to S-52749.

J. Change the video shunt peaking coil (L-8) to S-52793.

K. Change the video plate load resistor from 7500 ohm, 5 W. to 4700 ohm, 5 W.

L. Change C-44 at Pin 4 of the 6EM7 from .0068 ufd. to .0082 ufd. and change the 330 K ohm resistor located at the same point to 390K ohm.

M. Replace the 82K ohm and the 68K ohm resistors located in the plate circuit of the 6HS8 at Pin 8 by 100K ohm and 47K ohm respectively.

II. Alignment of Video & Sound:

The alignment procedure appears on pages 7 & 8 of TV-28 with the following exceptions:

Substitute wherever they occur:

40.25 Mc.	for	41.25 Mc.
41.75 Mc.	for	42.75 Mc.
38.75 Mc.	for	39.75 Mc.
5.5 Mc.	for	4.5 Mc.

III. Alignment of Tuners:

A. Alignment of turret tuners (Target, Super Target & Gold Video Guard). Follow procedure for these tuners on pages 10 and 11 of Service Manual TV-28 with modifications noted below:

1. With the tuner cover off, the individual channel strips can be removed to facilitate necessary adjustments.
2. Adjust strips to desired frequencies using the accompanying chart as a guide.

---

* Relocate the video series peaking coil so that it is connected between the center arm of the contrast control and the coupling capacitor which was originally connected to the arm. Add a single lug terminal strip to support junction of coil and capacitor.

Add a piece of wire between the two points where the coil was originally connected.

3. Coils may be tuned for proper frequency and bandpass by knifing or squeezing.

4. The cement on the coil forms may be softened with acetone.

5. Channel strips may be shifted in the turret for any desired sequence.

B. Alignment of Bandswitch Tuner; follow procedure on page 10 of Service manual TV-28 with modifications noted below:

1. In the case of the bandswitch tuner there are no removable tuner strips; therefore, all adjustments must be made inside the tuner.

2. It is imperative to align the high frequency channel first and follow with each lower channel in sequence. This procedure is necessary due to the fact that the inductances are in series.

3. RF plate coil (mixer) adjustment.

a) Start with channel selector on channel 13. Adjust RF plate inductance so that the 210.25 Mc. video and the 215.75 Mc. sound markers fall symmetrically on the response curve.

Picture carrier should be about 4 Db. maximum below peak of bandpass (with cover off tuner). Where 217.25 Mc. video carrier is used, set channel 13 to that frequency.

b) Switch to channel 12 and adjust RF coil loop in that section nearer to, or further from the switch rotor for proper response using proper CCIR frequencies for the channel.

c) Repeat above for all channels. Observe that channels 12 through 7 use single inductance loops, while channels 6 through 2 use coils.

4. Antenna coil adjustment.

a) Channels 12 through 7 use stamped inductances which cannot be adjusted. Band acceptance is broad and no adjustment is required.

b) Adjust antenna coils on channels 6 through 2 starting with channel 6 and working to the lower frequencies.

5. Oscillator.

a) Use procedure of paragraph 6, page 10 of

TV-28. Be sure to adjust the high frequency channels first. In some cases, it may be necessary to remove completely the adjusting screw on one of the unused channels.

IF. Below is a list of the 12 VHF channels used in the U.S.A. with their picture, sound carrier and oscillator frequencies in Mc. The suggested channels for conversion to CCIR frequencies are also indicated. Channel numbers in different countries may correspond to different frequencies.

U.S.A.				CCIR (Typical)		
U.S. Channel	Video	Sound	Osc.	Video	Sound	Osc.
2	55.25	59.75	101	55.25	60.75	101
3	61.25	65.75	107	62.25	67.75	108
4	67.25	71.75	113	. . . .	. . . . .	. . .
5	77.25	81.75	123	. . . .	. . . .	. . .
6	83.25	87.75	129	82.25	87.75	128
7	175.25	179.75	221	175.25	180.75	221
8	181.25	185.75	227	182.25	187.75	228
9	187.25	191.75	233	189.25	194.75	235
10	193.25	197.75	239	196.25	201.75	242
11	199.25	203.75	245	201.25	206.75	247
12	205.25	209.75	251	. . . . .	. . . . .	. . .
13	211.25	215.75	257	210.25	215.75	256

Replacement strips for tuners should be specified by frequency. Channel strips can be shifted in either Target or Gold Video Guard tuners to correspond with knob numbering. No such shift can be done on the Bandswitch tuner.

V. Test Equipment.

A. Radio frequency sweep generator covering the desired frequencies with an output of approximately 0.1 volt or more.

B. Oscilloscope having a minimum sensitivity of 1 volt/inch.

C. Oscillator tuning wrench, as indicated on page 3 of TV-28.

D. 50 to 300 ohm matching transformer, cable and dummy lead shown in figure 4 of TV-28.

E. Variable frequency generator to mark the frequencies of the picture and sound carriers.

Parts List for CCIR Conversion "J" Model Chassis

Quantity	Part Number	Description
1	22-2926	220 uuf.
1	22-2431	.0082 ufd.
1	63-1796	1800 ohm, 1/2W. ±20%
1	63-1855	47K ohm, 1/2W. ±10%
1	63-1869	100K ohm, 1/2W. ±10%
1	63-1894	390K ohm, 1/2W. ±10%
1	63-2372	15K ohm, 1/2W. ±10%
2	63-2848	22K ohm, 1/2W. ±10%
1	63-4472	5600 ohm, 1/2W. ±10%
1	63-4820	4700 ohm, 5W. ±10%
1	S-16011	Detector shunt peaking coil (250uh)
1	S-52793	Video shunt peaking coil (100 uh)
1	S-52794	Video series peaking coil (73 uh)
1	83-2132	Single lug terminal strip

When special CCIR channel strips are ordered for target tuners, the following information must be supplied:

1. Video and sound carrier frequencies.
2. Target tuner part number.
3. Model and chassis numbers.
4. IF frequency used.

/s/ Adam W. Przybyszewski
A. Przybyszewski

/s/ A.G.
A. Gorbunoff

/s/ W. Uelsmann
W. Uelsmann

E. Zahlmann
E. Zahlmann

ZENITH RADIO CORPORATION
6001 W. Dickens Avenue
Chicago 39, Illinois

October 30, 1961

CCIR CONVERSION

"H" Model Chassis in Service Manual TV-27
Chassis: 16H20, 16H27

To convert these models from U.S.A. Standards to CCIR Standards three basic changes must be made:

1. Sound discriminator must be changed from 4.5 to 5.5 Mc. and maximum deviation from 25 to 50 Kc.
2. I.F. acceptance channel must be broadened by 1 Mc.
3. R.F. channels must be shifted from USA to CCIR frequencies.

I. Circuit Modifications for IF and Sound:

- a. Remove 35 turns from the quadrature coil L-9 in the 16H20 and L-11 in the 16H27.
- b. Change the capacitor across the secondary of the intercarrier coil (L-8 in the 16H20, L-10 in the 16H27) from 330uuf to 220uuf and add a 15,000 ohm, ½W. resistor across this capacitor.
- c. Remove 7 turns from the primary and 12 turns from the secondary of the sound take-off coil. (L-11 in 16H20, L-7 in the 16H27).
- d. Change the 6BN6 plate resistor from 680 ohms to 1800 ohms.
- e. 1. Add a 22,000 ohm, ½W resistor from the grid of the first I.F. tube (Pin 1) to I.F. A.G.C. point "E".
  2. In the 16H20 and 16H27, change the 33,000 ½W. resistor (R2) across the primary of T-2 to 22,000 ohms, ½W.
  3. Change the 6,800 ohm, ½W. resistor (R3) across the secondary of T-3 of the 16H20 and 16H27 to 5,600 ohms.

II. Alignment of Video and Sound:

a. The alignment procedure appears on pages 7 and 8 of TV-27 with the following exceptions,

1. Substitute 40.25 Mc. for 41.25 Mc.; 41.75 Mc. for 42.75 Mc.; 38.75 Mc. for 39.75 Mc.; and 5.5 Mc. for 4.5 Mc.; wherever they occur.

III. Alignment of Tuners:

a. Alignment of turret tuners (Target, Super Target & Gold Video Guard). Follow procedure for Target & Gold Video Guard tuners on pages 9 and 10 of Service Manual TV-27 with modifications noted below:

1. With the tuner cover off, the individual channel strips can be removed to facilitate necessary adjustments.
2. Adjust strips to desired frequencies using the accompanying chart as a guide.
3. Coils may be tuned for proper frequency and bandpass by knifing or squeezing.
4. The cement on the coil forms may be softened with acetone.
5. Channel strips may be shifted in turret for any desired switching sequence.

b. Alignment of Bandswitch Tuner; follow procedure on page 9 of Service Manual TV-27 with modifications noted below:

1. In the case of the bandswitch tuner there are no removable tuner strips; therefore, all adjustments must be made inside the tuner.
2. It is imperative to align the high frequency channel first and follow with each lower channel in sequence. This procedure is necessary due to the fact that the inductances are in series.
3. R.F. plate coil (Mixer) adjustment.

A. Start with channel selector on channel 13. Adjust RF plate inductance so that the 210.2

Mc. video and 215.75 Mc. sound markers fall symmetrically on the response curve.
Picture carrier should be about 4 Db. maximum below peak of bandpass with cover off tuner. (Where 217.25 Mc. video carrier is used, set channel 13 to that frequency).

B. Switch to channel 12 and adjust RF coil loop in that section nearer to, or further from switch rotor for proper response using proper CCIR frequencies for the channel.

C. Repeat above for all channels. Observe that channels 12 through 7 use single inductance loops, while channels 6 through 2 use coils.

4. Antenna Coil Adjustment.

A. Channels 12 through 7 use stamped inductances which cannot be adjusted. Band acceptance is broad and no adjustment is required.

B. Adjust antenna coils on channels 6 through 2 starting with channel 6 and working to the lower frequencies.

5. Oscillator.

A. Use procedure of paragraph 6, page 9; TV-27. Be sure to adjust high frequency channels first. In some cases, it may be necessary to remove completely the adjusting screw on one of the unused channels.

IV. Below is a list of the 12 VHF channels used in the USA with their picture, sound carrier and oscillator frequencies in Mc. The suggested channels for conversion to CCIR frequencies are also indicated. Channel numbers in different countries may correspond to different frequencies.

U.S. Channel	U.S.A. Video	U.S.A. Sound	U.S.A. Osc.	CCIR (Typical) Video	CCIR (Typical) Sound	CCIR (Typical) Osc.
2	55.25	59.75	101	55.25	60.75	101
3	61.25	65.75	107	62.25	67.75	108
4	67.25	71.75	113	—	—	—
5	77.25	81.75	123	—	—	—
6	83.25	87.75	129	82.25	87.75	128
7	175.25	179.75	221	175.25	180.75	221
8	181.25	185.75	227	182.25	187.75	228
9	187.25	191.75	233	189.25	194.75	235
10	193.25	197.75	239	196.25	201.[illegible]	242
11	199.25	203.75	245	201.25	206.75	247
12	205.25	209.75	251	—	—	—
13	211.25	215.75	257	210.25	215.75	256

Replacement strips for tuners should be specified by frequency. Channel strips can be shifted in either targer or Gold Video Guard tuners to correspond with knob numbering. No such shift can be done on the bandswitch tuner.

V. Test Equipment.

a. Radio Frequency Sweep Generator covering the desired frequencies with an output of approximately 0.1 volt or more.

b. Oscilloscope having a minimum sensitivity of 1 volt/inch.

c. Oscillator tuning wrench, as indicated on page 3 of TV-27.

d. 50 to 300 ohm matching transformer, cable and dummy lead shown in figure 4 of TV-27.

e. Variable frequency generator to mark the frequencies of the picture and sound carrier.

Parts List for CCIR Conversion "H" Model Chassis

PART	PART #	16H20 16H27
Condensers		
220 uuf	22-2926	1
Resistors		
1,800, 1/2W.	63-1796	1
15,000, 1/2W.	63-2372	1
22,000, 1/2W.	63-2848	2
5,600, 1/2W.	63-4472	1

When special CCIR channel strips are ordered for Target tuners, the following information must be supplied.

1. Video and sound carrier frequencies.
2. Target tuner part number.
3. Model and chassis number.
4. IF frequency used.

/s/ E. Zahlmann /s/ R. C. Wilson
A. Gorbunoff A. Przybyszewski
mfn

PLAINTIFF'S LONDON DEPOSITION EXHIBIT
No. 54

ERT ELECTRICAL and RADIO TRADING
Vol. 52 No. 665—December 2, 1961

• • •

ZENITH TV HERE IF 625 COMES IN

American Zenith TV sets will be marketed in this country if the Government decides to change to 625 lines.

Zenith already sells radiograms, transistor radios and hearing aids in the U.K. The company has built up a network of dealers through United Mercantile, the sole UK distributor.

The same dealers, it is planned, would handle TV sets.

PLAINTIFF'S LONDON DEPOSITION EXHIBIT
No. 55

ELECTRICAL AND RADIO TRADING, May 19, 1962
ERT An Odhams Group Publication

• • •

ZENITH READY

Zenith, the leading American TV manufacturer, is all set to supply 625-line TV sets to Britain as soon as the outcome of the Pilkington report is known.

A. R. Ramsay, managing director of United Mercantile

Company, sole distributors in the UK, told ERT this week that colour sets as well as black and white will be imported immediately the market opens.

It has been announced in New York that Zenith is to make its own TV colour tubes.

It is expected that 275,000 colour sets will be sold in America this year bringing the total in use to about 900,000—but that figure is still below two per cent saturation.

PLAINTIFF'S LONDON DEPOSITION EXHIBIT No. 56

7 July 1962 WIRELESS AND ELECTRICAL TRADER

* * *

ZENITH 625-LINE TV SETS ARE ON THE WAY

An initial consignment of Zenith 625-line television receivers is on its way to this country from America stated Adam R. Ramsay, managing director of United Mercantile Co. Ltd., the sole U.K. distributors, to the *Trader* on Monday. They would be on display at their Mayfair showrooms within the next week or so and he was confident that there would be a good demand for them.

"We do not intend to compete on price but only on quality and service," he continued. "Zenith sets will be available throughout the country at shops and stores which already sell Zenith radio receivers and radiograms."

A 21 in. colour television receiver would sell from about £350-£400 he thought. The big factor for sales would be the provision of colour programmes. That, together with more reliable and cheaper models introduced in America, had produced a big demand over there. On the American market, the Zenith Radio Corporation of Chicago sell 42 monochrome and 15 colour models.

PLAINTIFF'S LONDON DEPOSITION EXHIBIT
No. 57

21 July 1962 WIRELESS AND ELECTRICAL TRADER

* * *

ZENITH DEVELOPMENT FOR RECORD PLAYING

Improved Stereo And Record Wear

A new and revolutionary development in record playing is promised at the end of this month by the United Mercantile Co. Ltd., Sovereign House, 13-14 Queen Street, Mayfair, London, W.1. The development is a new type of tone arm and cartridge jointly developed by the Zenith Radio Corporation of Chicago and CBS Laboratories. United Mercantile are the sole distributors for Zenith products in this country.

The new tone arm and cartridge is stated to give greater stereo separation, provide built-in protection against audible scratching and to give up to 2,000 plays without record wear.

A selection from the wide range of Zenith 625-line television receivers—which are to be marketed in Britain as reported in the *Trader* July 7 issue—will be on display at the United Mercantile showrooms in Queen Street at the end of this month.

PLAINTIFF'S LONDON DEPOSITION EXHIBIT
No. 58

4 August 1962 WIRELESS AND ELECTRICAL TRADER

ZENITH RECORD DEVELOPMENT SHOWN IN LONDON THIS WEEK

Wired Pay TV Obsolete: Zenith Director

Revolutionary development in automatic record changers

which has stereo separation between channels twice that previously provided in commercial record players is claimed by the Zenith Radio Corporation. First news of this development was given in the Trader July 21 issue and more details are given on New Products page 213.

Speaking at a demonstration in the London showrooms of the United Mercantile Co. Ltd., sole U.K. distributors for Zenith, last Tuesday, Adam R. Ramsay, managing director, displayed the new type of tone arm with a free-floating cartridge which can be dropped or scraped across records without causing damage. He then went on to talk of Zenith's plans to enter the British market with black and white and colour TV's.

Zenith 625-line TV Here

There were seven models from the Zenith 1963 TV range in the showroom, part of a range of 42 monochrome sets. He was confident that there would be a substantial demand for Zenith sets and colour receivers would be arriving soon. He also mentioned that Zenith stereo F.M. transmission (Multiplex) went on the air in America on June 1, 1961. There were now more than 200 F.M. stations in the U.S. and the B.B.C. are conducting tests as mentioned in the *Trader* July 21 issue.

Mr. Ramsay went on to talk about Pay TV and said that an over-the-wires system was given up in 1954 as obsolete. They have developed Phonovision, an over-the-air system of Pay TV. He was delighted to see that the Government White Paper recommends Pay TV but only hoped that the system adopted will not be an over-the-wires system, abandoned by Zenith eight years ago. "After all, we are living in an age in which we are trying to do away with wires and cables, and the best example of that is the Telstar experiments," he said.

Plaintiff's Rondar Depositions Exhibit 59 for id Ⓐ

MODEL. K 3345	H	S/NO. 5536790	ARR'D. S/S. American Producer	DATE. 21.7.62

DELIVERED TO:- Showroom	ON	FROM
	BY	ON BEHALF OF

MODIFICATIONS: Converted to UK/CCIR Ch. 34, 44	ON	BY Zenith
	ON	BY

DATE	BY	SERVICE

Ⓑ

MODEL. HK 3388	H	S/NO. 5510244	ARR'D. S/S. American Producer	DATE. 21.7.62

DELIVERED TO:- Showroom	ON	FROM
	BY	ON BEHALF OF

MODIFICATIONS: Converted to UK/CCIR Ch 34.44	ON	BY Zenith
	ON	BY

DATE	BY	SERVICE

Ⓒ

MODEL. TK 3382	H.	S/NO. 5743178	ARR'D. S/S Am. Farmer	DATE. 23.10.52

DELIVERED TO:- Bristol

ON

FROM

BY

ON BEHALF OF

MODIFICATIONS: UHF 625	ON	BY Zenith
	ON	BY

DATE	BY	SERVICE

Ⓓ

MODEL. K 3385	H	S/NO. 5847918	ARR'D. S/S. Am. Farmer	DATE. 23.10.52.

DELIVERED TO:- Phillips

ON

FROM

BY

ON BEHALF OF

MODIFICATIONS: UHF 625	ON	BY Zenith
	ON	BY

DATE	BY	SERVICE

Ⓔ

MODEL. K 3311	R	S/NO. 5801437	ARR'D. S/S. Am. Farmer	DATE. 20.12.62
DELIVERED TO:- Phillips		ON	FROM	
		BY	ON BEHALF OF	
MODIFICATIONS: UHF 625			ON	BY Zenith
			ON	BY

DATE	BY	SERVICE

Ⓕ

MODEL. K 2208 U	L	S/NO. 5705028	ARR'D. S/S. American Producer	DATE. 2.7.62
DELIVERED TO:- Showroom		ON	FROM	
		BY	ON BEHALF OF	
MODIFICATIONS: Converted to UK/CCIR by Zenith			ON	BY
			ON	BY

DATE	BY	SERVICE

(27)

MODEL. K 2108	L	S/NO. 578$\overset{4}{9}$631	ARR'D.S/S. Am. Farmer	DATE. 30.10.62

DELIVERED TO:- [illegible]

ON

FROM

BY

ON BEHALF OF

MODIFICATIONS:	ON	BY
UHF 625		[illegible]

DATE	BY	SERVICE

(H)

MODEL. K 2228	R	S/NO. 5673496	ARR'D.S/S. American Producer	DATE. 21.7.62

DELIVERED TO:- BBC

ON

FROM

BY

ON BEHALF OF

MODIFICATIONS:	ON	BY
Converted to UK/CCIR Ch.34, 44		Zenith

DATE	BY	SERVICE

Ⓘ

MODEL. K2228	H	**S/NO.** 5829562	**ARR'D.S/S** Am. Farmer	**DATE.** 20.10.62

DELIVERED TO:- Mullers

ON

FROM

BY

ON BEHALF OF

MODIFICATIONS: UHF 628 **ON** **BY** Zenith

ON **BY**

DATE	BY	SERVICE

Ⓙ

MODEL. K 23.26	L	**S/NO.** 5703828	**ARR'D.S/S.** Am. Farmer	**DATE.** 20.10.62

DELIVERED TO:- [illegible]

ON

FROM

BY

ON BEHALF OF

MODIFICATIONS: UHF 628 **ON** **BY** Zenith

ON **BY**

DATE	BY	SERVICE

MODEL. K 2717 U | H | S/NO. 527979 | ARR'D. S/S. [illegible] | DATE. 2/12

DELIVERED TO:- BBC

ON

FROM

BY

ON BEHALF OF

MODIFICATIONS: Converted to UK/CCIR by Zenith

ON

BY

ON

BY

DATE	BY	SERVICE

ZENITH RADIO CORPORATION
6001 W. Dickens Avenue
Chicago 39, Illinois
Cable Address—"Zenithrad" All Codes
International Division

June 25, 1959

Mr. A. R. Ramsay
United Mercantile Co., Ltd.
Park Lodge, Park Close
London, S.W. 1, England

Dear Mr. Ramsay:

We are pleased to provide you with thermofax copies of inquiries received from London as well as copies of our answers.

We sincerely hope that these will be of some benefit to you for possible dealer arrangements. We realize its a little early in the game as yet for this type of referral, however, we know that you will follow up in your own good time, and at your discretion.

In order to try to place you in more direct contact with prospective purchasers, we will, within the next few weeks, prepare a letter to those individuals having inquired within the past six or eight months, advising them of your accepting the ZENITH distribution for England. As indicated in the attached, we will advise that merchandise is enroute to London, that they may not expect to pick up the telephone and have one of the units in their possession the following day.

Just as a note of advice—the insurance figures and recommended spare parts list are being worked on. These will be mailed within the immediate future.

Kindest regards.

Yours very truly,

/s/ H. L. Grimm
H. L. Grimm
International Division

HLG:ca
AIRMAIL
enc.

Zenith Radio Corporation
6001 Dickens Avenue
Chicago 39, Illinois

3053
3rd July, 1959

AM/FM RADIOS

Please kindly advise us whether there is sufficient room in the cabinets of your AM/FM Radio range, to fit inside the cabinets a step-down transformer 220/110 volts.

R.

Zenith Radio Corporation
6001 Dickens Avenue
Chicago 39.

ARR/3070
7th July, 1959

SPEC SHEETS R760—Navigator.

It appears that the above model can be of greater interest to the public than originally expected—mainly due to the fact that it has long wave band.

In the circumstances we shall be obliged if you let us have:

100 SPEC SHEETS R760.

Thanking you,

Yours faithfully,

Ref: AR/mg No. 3062
7th July, 1959

The Zenith Radio Corporation,
6001 Dickens Avenue,
CHICAGO 39, Illinois,
U. S. A.

Dear Sirs,

Reference: Art Work

We refer to the exchange of cables regarding colour photographs, and we regret to hear that none are available.

We are now making our advertising programme, and one of the biggest difficulties is the question of layout and art work, and in view of the fact that our advertising cannot be conducted on a national scale, in many cases the cost of art work exceeds the actual cost of the advertisement.

In the circumstances, we shall be most obliged if you will see how you can help us in this respect.

We believe that your publicity is handled by Inter Ocean Advertising Corporation, which is a subsidiary of yours, and it may be that they will be able to provide us with existing art work which could be utilized here.

This matter is rather urgent as we are booking space.

Please also note that we need layouts preferably in colour as, Zenith Radios being in the high bracket of prices, they command corresponding treatment.

Thanking you for any assistance you may be able to give us,

Yours faithfully,

for United Mercantile Company, Ltd.
A. R. Ramsay
Director

Mr. John A. Miguel, Jr.
Vice President—Export,
Zenith Radio Corporation,
6001 Dickens Avenue.
Chicago 39. Ill.

Ref:ARR/GS/3091
16th July. 1959

Dear Mr. Miguel, re: Publicity

You will recall our conversation in Chicago when I pointed out to you how terribly important for future success will be the initial publicity campaign and, therefore, we have given carefuly consideration to this matter and finally arrived at the scheme which I am enclosing herewith.

I am also enclosing the covering letter from our Publicity Agents from which you will see that the media chosen is what we call here the "glossy" magazines, as Zenith being in the highest price range cannot be publicised in every day press unless purely for prestige reasons.

The scheme covers general publicity concentrated in two selling periods which are Autumn and Spring, and you will see that it amounts to approximately £14,000, taking into consideration the Publicity Agents' commission. This is not a complete scheme as it does not incorporate any additional advertising in local newspapers or co-operative advertising with dealers.

For your guidance, every magazine in which it is anticipated to advertise is very widely circularised and penetrates not only to the British market—all of them are being sold in practically every Country in Europe, particularly France, Switzerland, Germany, Holland, Denmark and so on, therefore any expenditure which will be made here should bring in results also from other markets.

You will recall that you mentioned to me that you will be very sympathetic regarding the initial contribution of Zenith and I have no doubt you will do so.

As you are aware, prices being very high our margin of profit is very restricted and apart from the expenses mentioned in the enclosed scheme we have gone into very heavy expenditure in organising the distribution and, therefore, we think it would be only fair that your contribution is very substantial and I would like you to take into consideration that the total expenditure of publicity and public promotion will run into something in the region of £18,000. ($50,000). Naturally, taking into consideration your total expenditure on publicity this is a very small amount indeed.

Although there is a printing strike now in England, we must very quickly book space and, therefore, your quick decision in this matter will be greatly appreciated.

With kindest regards,

Yours sincerely,

for UNITED MERCANTILE COMPANY LTD.,

Encls. Director

ZENITH RADIO CORPORATION
—— 6001 Dickens Avenue ——
Chicago 39, Illinois

July 27, 1959

John A. Miguel, Jr.
Vice President in charge of export

Mr. A. R. Ramsay
United Mercantile Co., Ltd.
Park Lodge, Park Close
London, S. W. 1, England

Dear Mr. Ramsay:

Reference: AR/mg No. 3062—Art Work

This is with reference to your letter of July 27, regarding the art work problem also the matter of color photographs and layouts. [Illegible] nothing to do with our advertising program. They are merely concerned with the operation of our Display Salon at 666 Fifth Avenue in New York City. On domestic national advertising, we work with—Foote, Cone & Belding—and for export, we have the firm of — J. G. Sullivan in South Bend, Indiana—. In the preparation of sales promotion display and other materials, we work with a number of firms who specialize in these services located in the Chicago area. Of course, all the master planning emanates from us and we have setups in the company that implement the entire program.

On the matter of local advertising—that is, by the distributors and the dealers—much depends on the distributor and the local competitive situation. A number of these distributors have their own agencies with whom they work independent of the ones the company works with. The local advertising comes under the co-op program and to the extent we can, we also help the local distributors in the preparation of ad mats, etc., catalogs of which I believe you took along with you when you were here. It does not necessarily mean though that the local distributors do not develop special ads of their own to meet local markets and situations. In fact, the majority of the local type of advertising follows more the local pace than those suggested and prepared by the factory and our own advertising agencies.

We regret that we cannot make available to you the original color photographs, which in fact are transparencies, as you see these sets photographed in color on our spec sheets. The same situation holds on the color layouts. Of course, there may be occasions where these materials can be made available to you where the sets featured have been discontinued.

This matter of art work is of course quite a factor, particularly where the volume potentially is slow and the local production costs are quite high. I had a long talk with Mr. Jack Sullivan of our export advertising agency who was here the other day, and I believe he might be able to help you. He is going to communicate with you directly, giving you copies of ads that we have prepared and released recently, and some of that art work could be made available to you. Of course, these are all for export advertising that has not been available domestically. I do not know if this type ad is the one you are seeking, but I think that for your purpose, it should serve you just as well. Another problem on our export advertising is that we have concentrated, as you will see, on a few bread-and-butter models, which may or may not be suitable for your program. At any rate, you will have the chance to see what Mr. Sullivan has available and he will be very glad to take care of your needs.

I believe, at this time, we should not go hog-wild on advertising, and on this subject, I will be writing you again in answer to a couple of letters you have written me on the subject, which I have been kicking around for several days, since I got back from vacation. Your agency's program, from my quick look, appears very ambitious, particularly in the face of a limited market, which the report indicates can be achieved at its very best, because of the unfavorable price factor.

Kindest personal regards.

Sincerely,

J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Airmail

Ref: ARR/GS/3125
27th July, 1959

Mr. John A. Miguel, Jr.
Vice President-Export,
Zenith Radio Corporation,
6001 Dickens Avenue.
CHICAGO 39, Illinois.

Dear Mr. Miguel,

Thank you for your letter of the 24th instant with the enclosed new agreement which I have duly signed today and sent as requested by you.

I understand that the new agreement is to remain in force during the transitionary period until the matter of the trade mark is settled.

Although you have mentioned in your cable "Paragraph 18", I would dare to observe that it was not applicable in this case as there was no breach of agreement by either party, but as our interests are parallel as far as U.K. market is concerned, we are only too willing to co-operate with you or your legal advisers.

I am taking also the opportunity to mention that although you are carrying the financial weight of the action in progress, it is I who really sticks my neck out.

We have very little doubt that the action will be successful whether in Court or by amicable settlement, but should by some bad luck the action turn against us it will be me to bear the whole weight.

You have seen from the preliminary reports how energetically we have gone into the matter of distribution and up to now expenses are very substantial, but as mentioned on previous occasions and from your own experience you realize that unless our endeavors are backed up by proper publicity scheme the results may be disappointing and, therefore, I ask you once more to give sympathetic consideration to the plans we have submitted to you on the 16th July.

After initial probes in the market and additional information, we estimate that our first year turnover with you should run into approximately $300,000, but whether this figure will be attained or exceeded will depend to a great extent on the co-operation which we shall receive from you and in which I have no doubt whatsoever.

With Kindest personal regards,

Yours sincerely,

for United Mercantile Company, Ltd.

Director

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

July 27, 1959

John A. Miguel, Jr.
Vice President
In Charge of Export

Mr. A. R. Ramsay
United Mercantile Co., Ltd.
Park Lodge, Park Close
London, S.W. 1, England

Dear Mr. Ramsay:

Reference: ARR/GS/3092

We have for acknowledgment your letter of July 16 with regard to the coming National Radio Show to be held in

London.

We note that participation in the Radio Show is restricted to British manufacturers, but that you are intending to display ZENITH merchandise in a suite of a leading London hotel during the period of the Show. We believe it is a very good idea, provided you do not go overboard in displaying all kinds of ZENITH products that would not be marketable in Britain for price and other considerations.

Offhand, you should have a nice display of the entire all-transistor line, and we will make sure that you will have some samples to show of the new ROYAL "500E." In other words, your all-transistor display should consist of the "250," "275," "500E," "675," "710," "755" (this is new to replace the ROYAL "750."), "760L," "1000D," "850," and "950." There should be no problem in the availability of these sets, but on the new models, we have good reason to believe we will be able to get off a few to you for this showing.

It will, of course, be nice to have an attractive display of stereophonic instruments and be able to demonstrate them to your prospective clients. I do not think it is necessary to display the entire line, but certainly you should be able to pick the more or less basic models that you feel would be entirely adequate for the purpose.

I suggest you look over our line and let us know, as soon as you possibly can, what models you will need over and above what you already have available for showing in your hotel setup, in connection with the National Radio Show. Give us the first and second choices, so we will have some flexibility over here, in the event the availability on a few of those models and finishes you choose is very critical. You should also tell us the latest possible shipment from New York, so we shall be guided accordingly.

Now as to disposition of these samples at the end of the Show, I do not quite understand your remark on this. I believe we can handle models over and above the basic group that you are marketing, as follows. We would send those instruments to you on the same basis as we are doing now, billing them to you, but payment to us may be withheld until after the Show. If you decide to keep them, you then pay us for those specific sets. In the case of other instruments that you may not be particularly interested in, but which may appeal to a few individuals who have seen and heard them, I suggest they be sold outright to those individuals at your exact landed cost, and the proceeds of such individual sales can then be remitted to us, to liquidate our billings for those sets. Certainly, I would hate to ship too many samples of stereophonic jobs to begin with, particularly involving types that you do not feel could be sold after the Show to private individuals who would be willing to buy them at your landed cost. I would not wish to have any of these sets returned to the factory, because that will really involve us in a lot of unnecessary expense and inconvenience.

Apropos to this situation, you can also tell us what kind of display material you want from us for this purpose, and we will see that it is forwarded to you together with other Show items. In the case of that display material you can, of course, keep it after the show with our compliments.

Kindest personal regards and best wishes.

Sincerely,

/s/ J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Airmail

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

July 28, 1959

John A. Miguel, Jr.
Vice President
in charge of export

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S. W. 1, England

Dear Mr. Ramsay:

We have given a lot of thought to your letter of July 16, which outlined your proposed advertising program for the Fall and Spring seasons, involving a total expenditure of approximately 14,000 pounds sterling. It has been further noted that the proposal is advertising on a national scale only and does not include such local advertising as will be handled by dealers, either wholly for their own account or on a co-op plan with you.

It is our feeling that under the conditions confronting ZENITH's entry into the British market, the advertising program you propose is somewhat ambitious. Under a more favorable marketing climate, it would be a swell program to support sales, and it could be that some similar program would be in the offing after we have had more experience in the market and a few of these basic problems we are confronted with today are ironed out.

As I mentioned to you over the telephone the other day, it seems to us that a more practical and realistic approach, to help you in the distribution and marketing of ZENITH radios, would be for us to help you in the matter of prices, rather than on advertising. Any assistance that we could give you on prices would, at this time, provide more all around benefit than any assistance we could give you towards the advertising scheme proposed. Actually, from the standpoint of cost to ZENITH, we would be contributing more, we think, by reducing profits on the sale of the basic models you are marketing than any contribution we can possibly make towards your advertising program over a period of the campaign. Thus, it is along the line of possible special prices to you that we have concentrated in having our management group approve an assistance program, to support your efforts in the successful introduction and marketing of ZENITH radios. This matter of special pricing will be dealt with in a separate letter we are writing you on the subject.

In closing, we would like to say that we are impressed with the planning, thinking, interest, and effort that you have given, in order to achieve the highest possible measure of success in the distribution and marketing of ZENITH radios in U.K. The advertising study and scheme that you have submitted to us is but one example. In expressing our opinion about your advertising program, please believe me, no criticism is meant or implied. Under normal conditions, your scheme would be ideal, but I think you will agree with us that, under present conditions, we are wiser and better off to have explored the other more practical and realistic avenue of help—and that is, in the matter of special pricing.

Kindest personal regards and best wishes.

Sincerely,

/s/ J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Airmail

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

John A. Miguel, Jr.
Vice President
in Charge of Export

July 28, 1959

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S. W. 1, England

Dear Mr. Ramsay:

Special Prices

It is a pleasure to announce to you that our management has approved a program that we have worked out on a special price offering to you based on quantity purchases. We have included in this special quantity price program those models, which you have already ordered in good quantities and those that are likely to be ordered later on. However, should you find that some other model or models have possibilities later on of being purchased in good quantities, please advise us and we will do all possible in working out price concessions on those additional sets.

Here is the new pricing schedule:

Model	Regular Price	Special Qty. Price	Minimum Quantity	Co-Op Adv. Accrual
ROYAL "250"	$ 26.92	$ 24.42	200	$ .34
ROYAL "275"	31.55	27.34	200	.38
ROYAL "500E"	43.42	32.23	500	.45
ROYAL "675"	31.55	27.62	200	.39
ROYAL "760L"	58.92	51.05	100	.75
ROYAL "1000D"	147.63	119.80	50	1.68
B600	75.34	68.48	50	.97
C519	23.97	21.78	50	.34
DPS80C	77.97	70.88	50	1.11

The foregoing prices are net, f.o.b. factory Chicago, in domestic packing, including provision for the private agreement. They are effective immediately in the quantities indicated, but it is understood that they are *not retroactive* to shipments already effected. Following our regular policy, both model offerings and prices are subject to withdrawal or change without prior notice.

In the case of the ROYAL "250," "275," "500E," "675," "760L," and "1000D," prices quoted exclude batteries. On the B600, price quoted excludes both the battery pack and the 220 volts ballast adaptor. The price quoted on the C519 does not include the 220 volts stepdown transformer and the 50-cycle clock rotor. Likewise on the DPS80C, price quoted excludes the 50-cycle idler wheel and the 220/110 volts stepdown transformer.

You will note in the last column under the heading "Co-Op Adv. Accrual" a specific sum for each model. In other words, with the offering of the special quantity prices, that portion of our regular export cooperative program, in the case of the generation of accrual funds, is not applicable. Under the co-op plan, as I advised you, there is provision for a 2½% to generate accrual funds. Under the special pricing program, this has been superseded by the specific sums per set, as indicated on the first page of this letter. I do not recall if I sent you a copy of the export co-op plan book, so I am sending you a copy attached hereto, for your information and guidance. Of course, shipments that already went out, billed to you at the regular prices, carried the regular 2½% accrual. If you have any questions about the operation of the co-op plan, please do not hesitate to ask us.

You will also note that we excluded from the list the all-transistor clock-radio ROYAL "850," of which you have given us an order for 1,000 units at the very special price of $37.41. As this is a one-shot proposition, because I do not anticipate we will have any further availability beyond the

850 still pending against your order, we did not feel it necessary to include this model in the special price program.

The minimum quantities we have indicated, I believe, are reasonable. There may be instances where we may not be able to ship the entire minimum quantity you have ordered, owing to short supply. Of course, in those instances, you will still be billed at the special quantity price.

The special quantity prices now provide you with an excellent opportunity to market and merchandise our radios in a manner not possible before. Thus, we are looking forward to your favorable response and to the receipt of substantial orders for this merchandise.

Kindest personal regards and best wishes.

Sincerely,

J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Enclosure
Airmail

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

John A. Miguel, Jr.
Vice President
in Charge of Export

July 29, 1959

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S. W. 1, England

Dear Mr. Ramsay:

This is with reference to our telephone conversation the morning of Monday, July 27, and to your letter, reference 3117, dated July 24.

We are pleased to note that you have started opening your first accounts and that acceptance of the ZENITH sets, with respect to quality and design, has been very good. As to the price question, the reaction was not unexpected, but I am confident that with the recently approved special pricing structure, the price matter will be alleviated significantly. It is too bad the comparison always has to be made with British products, but, in time, perhaps a more compatible comparison will be established based on the general run of imports.

I was glad to note, from our conversation, that the goods have been finally cleared and that you have started to make deliveries to newly appointed dealers; also that you will have a press conference the 14th of August.

Now that we are approaching the height of the radio selling season this year, it is very important that your orders be in our hands as soon as possible. No doubt, after you receive our other letter on the special price deal, you will cover your requirements immediately for shipments in August, September, and if possible, October as well. You see, it so happens that from August to November, we will also be in our busiest selling season and, although production facilities have been upped to the maximum we can, production will not be sufficient to meet the demand of all, and we will have to resort to allocations against firm orders on hand. This is especially true on those high volume, well accepted models—as the "500E," "250," "1000," etc.

You inquired, in the course of our conversation and your letter under acknowledgment, about price concession on quantities. This has been answered in another letter, so I am sure you will be very happy with the special offerings that we are in a position to make to you at this time. I have also indicated to you, in one of my recent letters, about the availability status on the ROYAL "500E." A sample, as I told you, was already airshipped and should be in your hands about the time you receive this letter, if not before.

Regarding the ROYAL "760L," this is indeed a high performing quality 2-band all-transistor receiver, covering the standard broadcast medium band, as well as the full longwave spectrum, which covers European longwave, as well as weather/navigation frequencies. True, this is not a low price set, but, for what it offers, it is very definitely the best that is available in the field today—of US or foreign manufacture! In one of your recent orders you ordered two samples of this model, and they are going forward by Parcel Post immediately. However, even before you receive the samples, you should consider placing your initial stock order for this model, ordering at least the minimum quantity to qualify for the special price, which incidentally is a very attractive one.

We realize the sales handicap of not having the European longwave band in the transistor pocket set—like the ROYAL "500E." I am doubtful that we will ever have a good performing pocket-size set, embodying all those characteristics, but I thought you should know that our people in France and in Switzerland somehow have succeeded in incorporating the longwave feature in the ROYAL "500." However, it is a local job, without our official sanction, but, to the best of my knowledge, it has served the purpose. If you care to have some details about this, I might be able to get them for you for further consideration. It was quite a pleasant surprise to note that there is rising interest in our present AM/FM radios. We are getting for you information on the installation of a 220/110 volts transformer inside the set, and as soon as we have the information from our Engineering Department, it will be passed along quickly.

We are checking on the availability of the models you have ordered for the Radio Show, and in another day or two, I will advise you definitely how this matter stands.

Models ROYAL "500E" and ROYAL "760L" should definitely be included in your range to cover the U.K. market. The "500E" is a prestige pocket set—the best of its kind in the world today—and with the kind of publicity and reputation that this model has established over the years, many a Britisher, who can afford to buy an all-transistor pocket radio, will be asking for this model. The individual inquiries we have received indicate strong interest, and with its availability in Britain, it could give you quite a surprising nice volume. The ROYAL "760L" is a performing fool and one I am sure will find no counterpart in the local market, so you will not have much competition to worry about, except the fact that it is not priced for the mass market. Incidentally, I would like to have the "760L" tried out in the Southern England and Midland districts and see if this model will not provide satisfactory reception in the daytime, where other regular radios fail.

Kindest personal regards and best wishes.

Sincerely,

J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Airmail

Mr. John A. Miguel, Jr.
Vice President-Export
Zenith Radio Corporation,
6001 Dickens Avenue.
CHICAGO 39.

Ref: ARR/GS/3152
4th August. 1959

Dear Mr. Miguel,

This is to acknowledge with thanks your letter of the

27th July, three letters of the 28th July and letter of the 29th July.

1) Your letter of 27th July—Ref. AR/mg No. 3062—Art Work:

We took notice of all your remarks and since we have received a letter from Mr. Jack Sullivan who sent us specimens of various export advertising and suggested that we let him know which art work can be of interest to us.

We wrote to him today as per enclosed copy.

Some of your export adverts are definitely very good for the British market while for some of the newspapers and trade papers we must make up our own, but you will notice that whatever we do in this Country is in line with your own style and policy in this respect.

2) Prices:

Your letter of the 28th July with new prices has been greatly appreciated and we confirmed that in our cable to you. Also, the quantities mentioned by you are very reasonable indeed and we do not see any difficulty whatsoever in achieving these quantities, but we would like you to let us know whether you expect that every shipment consists of a total minimum quantity of any particular model or you would agree that say a minimum quantity is taken up over a reasonable period of time.

The only item which we may not take up in minimum quantities is the DPS80C, b[illegible] we shall be able to judge a little better after a few weeks.

We only regret that you cannot make these reductions retrospective. If your Committee of Management would decide to apply it to the past shipments we would certainly bless them.

Although the minimum quantities are very reasonable it is very difficult for us at this very moment to decide particularly on the colour assortment as you realize that British taste is different from American and that was the

reason in our cable of the 31st we indicated only some colours.

As you are aware, the Radio Show is starting on the 25th instant and that will give us an excellent opportunity to have reaction of buyers from different parts of the Country as far as colours and types are concerned. Nevertheless, within the next week or so we shall send you a shipping schedule covering at least 2/3 months.

3) Publicity:

We do fully appreciate your attitude in this matter and we have no doubt that you were to a great extent guiding yourself by the Market Report sent to you previously. We do agree that the Market Report is no doubt of a very pessimistic side but, as indicated to you in previous letters and telephone conversation, it seems to us that the Zenith radio will not be as exclusive as the Rolls Royce and that many more people will buy it from what we anticipated.

Your recent reduction of prices gives us the possibility to execute at least a certain proportion of our advertising programme which is so necessary to promote this new article in U.K.

I would like you to assure your Committee of Management that any price reductions which were made in our favour will ultimately bring benefit to the sales of Zenith in Britain and we do hope that a very large regular market will be created.

4) We are enclosing our further Progress Report No. 2. from which you will see how things are progressing and if there are any remarks or criticisms which you would like to make, please do not hesitate—it will be accepted in the spirit of friendship and co-operation.

Yours sincerely,

Encls.

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

John A. Miguel, Jr.
Vice President
In Charge of Export

August 6, 1959

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S. W. 1, England

Dear Mr. Ramsay:

This refers to your recent inquiry about the conversion of our AM/FM radios for 220 volts, 50 cycles operation. I regret the delay in passing on this information to you, but our Engineering Department had to examine, and even had a stepdown transformer built in our lab, to determine whether or not such a suitable stepdown transformer can be located inside the set.

Our AM/FM radio models—C724, 725, 730, 835, and 845—will require a 40-watt stepdown transformer of a size that can be installed inside the set. Please note, however, that this 40-watt stepdown transformer is not currently available, but in the event there is strong interest in marketing our AM/FM sets in England, we will seriously explore the possibility of manufacturing such a transformer here. Of course, the alternative—which we believe would be more economical—would be for having such a transformer procured locally and, in this connection, we will provide you with the basic electrical and mechanical specifications, as developed by our engineers for specific use in the above listed AM/FM sets.

You will note that we did not include in the above list of AM/FM sets the B728, which is an AM/FM clock-radio; in fact, this would also apply to new models of electrical and mechanical specifications of the B728. It has been determined that there is not enough room to mount the transformer inside the set. While it can be used from 220 volts, the stepdown unit will have to be placed outside the set, which, to say the least, would be unsatisfactory to the consumer.

If you need further information regarding our AM/FM line, please let us know.

With all good wishes.

Very truly yours,

/s/ J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Airmail

Kensington 6025
Ref:ARR/GS/3185
10th August. 1959

Mr. John A. Miguel, Jr.
Vice President—Export,
Zenith Radio Corporation,
6001. Dickens Avenue.
Chicago.39.Ill.

Dear Mr. Miguel,

re: AM/FM Radios

Thank you for your letter of August 6th and we have noted all your remarks regarding conversion of AM/FM range to 220 volts, 50 cycles operation.

It is very difficult for us to judge in advance what public reaction and demand will be until we can show the models and demonstrate performance.

In the circumstances, we shall be obliged if you can arrange for two sets of each C724, 725, 730, 835 and 845 in assorted colours (except green which is a very unpopular radio colour in U.K. to be sent to us at your earliest convenience, but all these sets must be fitted with the stepdown transformers.

It may well be that it would be more economical to have transformers procured locally but in view of the quality of the set and accordingly its price, we are very unwilling to have sets messed about here and we prefer to have them properly completed and tested by the Factory.

As far as the clock radio is concerned, we do not think that there will be sufficient interest to justify any work regarding conversion.

With all good wishes.

Yours sincerely,

R.

P.S. We shall be also most obliged if you will kindly advise us whether it would be possible to get a special price on minimum quantities of AM/FM radios and this information is of great importance because it will assist us in fixing retail prices in U.K.—which will certainly influence the volume of sale.

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

John A. Miguel, Jr.
Vice President
In Charge of Export

August 20, 1959

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S.W. 1, England

Dear Mr. Ramsay:

We have your letter of August 10 with further reference to the AM/FM radios for 220 volts, 50 cycles.

We have started processing to convert and ship to you samples of the 724, 725, 730, 835, and 845 for 220 volts, 50 cycle operation. This conversion will be done in our Engineering Lab and the 220/110 volt transformer samples will be built specifically for this purpose, all of which, I am sure you realize, will entail extraordinary expenditure on our part.

After you have received the samples and determined their marketability, you will no doubt want to place larger orders for stock, to support a marketing program on AM/FM that could be of some consequence. So there will be no misunderstanding, I would like to tell you this now. Such stock orders can be handled by us only if we do not have to install the 220/110 volt transformer on the chassis inside the set, and furthermore, that you will see fit to order a quantity of 220/110 volt stepdown transformers that we could stock here for your own account, to cover specifically your own requirements for AM/FM sets. I do not believe that our factory will entertain an order for less than 100 units of this stepdown transformer. It also means you will have to find ways and means of installing the stepdown transformers inside the sets in your service shop.

I am sorry, but at this time, there is no basis to quote you a special price on minimum quantities of these AM/FM sets. Let's tackle this question after you receive the samples and know more about their marketing possibilities in your country. Also, rather than have us establish minimum quantities, you suggest the quantities for each model that you are prepared to undertake.

With all good wishes.

Very truly yours,

/s/ J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Airmail

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

John A. Miguel, Jr.
Vice-President
In Charge of Export

August 21, 1959

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S.W. 1, England

Dear Mr. Ramsay:

Thank you for your letter of August 4, reference 3152.

We are pleased to note that some of our export advertising, along the specimens sent you by Jack Sullivan, will be suitable for the British market. Recently I approved new ROYAL "500E" ads in English, proofs of which Mr. Sullivan will be sending you shortly. I hope you like them.

On the special price matter, you are indeed getting extraordinary help—unprecedented in our export history! I am happy you agree that the minimum quantities we have set, to qualify for these special prices, are reasonable and within the economic possibilities of your market. I do not wish to appear persistent and demanding about this matter of minimum quantities, but, unless that condition is met, this special pricing structure for you may be recalled. Thus, please give instructions to all concerned who write up your orders to make sure that you live up to the minimum quantity prices, if you expect us to bill the merchandise to you at the special prices. Of course, it is always best and most preferable that your order not only cover the minimum quantities specified for each model, but also that financial arrangements are such as to permit single shipment, availability at the factory permitting, of the entire order. On the other hand, we would give consideration to cases where the minimum quantities are ordered, but shipments are spread out over a reasonable period of time, not exceeding 60 days. Let us be conscientious and realistic about this matter, because if it is abused or led to deteriorate through an oversight, this special pricing arrangement will be thrown out. There was a very definite purpose, in our management going along with this idea, and it is two fold—to help promote and sell more ZENITH sets and to make it possible for you to price our merchandise more realistically. Once you have an idea of the trade acceptance to the various models, it is important that you send us orders to take care of your requirements, permitting us to make scheduled shipments as far in advance as possible. You already know the trouble we are in today on the ROYAL "1000D" and to a smaller extent on the ROYAL "500E." As we will be working on an allocation shipment to fill all distributors' orders, you can appreciate how vitally important it is that we have in our hands your orders for this merchandise, even those for shipment in the next 2 or 3 months.

We have no quarrel about a publicity program that is realistic and compatible with sales possibilities in your market. I am glad to see, in this connection, that our special prices have given you the means to put into operation a portion of your advertising program, to create a permanent market for ZENITH products in Britain.

Your Progress Report Number 2 is heartening and provides some interesting highlights of your activities and planning. In a market such as yours, I am sure you are taking every precaution to see that you advertise, publicize, and otherwise promote only those models that are already in your stock or are definitely enroute. Our availability situation has worsened considerably since your visit at the factory and models that in June were considered in good availability today are in critical short supply—like the "1000D" for instance. On the new ROYAL "500E," be sure you have supplies from us before you go ahead in spending a lot of money advertising, publicizing, and introducing this model. Also, even when you have supplies, you must make sure that you have a sufficient quantity to go around to all your dealers; otherwise, you will have a very serious problem with a few dealers. I observe from your dealer list that all are in London, with the exception of Messrs. Regent Radio in Jersey of the Channel Islands. I do not mean to be critical, but I am just curious, because I recall when you were here you mentioned that in all probability, you will start your marketing scheme in the Midlands. I hope that in the next Progress Report Number 3, your list of appointed dealers will cover many more names in London and possibly other cities.

Kindest personal regards.

Sincerely,

/s/ J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Airmail

Kensington 6925
Ref: ARR/GS/3303
24th August, 1959

Mr. John A. Miguel, Jr., Vice President,
Zenith Radio Corporation,
6001 Dickens Ave.,
Chicago 39, Ill. U.S.A.

Dear Mr. Miguel,

Thank you for your letter of the 20th August and I am glad that you are writing in a frank and straightforward manner and I understand the spirit in which your letter is written and, certainly it is much better that in future we continue to be straightforward and get off our chests whatever we feel.

There is very little doubt that your complaint is justified to a very great extent but I would like to mention that since I came back from Chicago certain developments here regarding the trade mark business have upset my plans to a great extent and no doubt yours also.

Although I have no doubt that the litigation going on at present will be successful, nevertheless it has upset my plans very considerably as far as the financial side is concerned. We have to go carefully forward and in the present circumstances as long as litigation is outstanding there is no question whatsoever of having any financial facilities available to us in England.

I have written to Mr. Peirels on the 21st August regarding the 1,000. 800's and have sent additional firm order to cover the balance outstanding. I have mentioned that very shortly we shall make adequate financial arrangements so that there is always a balance outstanding in our favour with you, particularly as very often it may happen that extra shipments may be required.

For reasons mentioned in my other letters it is very difficult for us at the present time to give exact shipment date and assortment of colours, but we shall be able to do so in approximately three weeks, after the Radio Show.

For your guidance, we have for example needed badly some of the pink 850's which we specifically mentioned in our cable order which is being shipped now, but I regret to notice however that instead of sending us the ones we wanted so badly your People have sent us different colours.

I am sure that you do realise that this organising stage of the Zenith business in England is a very difficult one as for the first time in years American quality goods have come to this Country and it is very easy to make mistakes and, therefore, if there is any delay in some of our actions it is dictated purely on careful attention of the market requirements and will result only in final benefit to Zenith.

Yours sincerely,

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

John A. Miguel, Jr.
Vice President
In Charge of Export

August 27, 1959

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S.W. 1, England

Dear Mr. Ramsay:

We received a clipping of an article—which appeared in the Sheffield Telegraph of August 14, written by Alan Morris—about ZENITH's entry in the British radio market. No doubt, this is one of the stories that developed, resulting from the press conference you recently held.

Mention in made that the American ZENITH sets will be priced from 32 pounds to 175 pounds, ranging from a pocket size receiver to the deluxe all-transistor TRANSOCEANIC. Could you tell us if these reported retail prices have been based on the special quantity prices; also to what specific models they apply. I have been using the multiplier of 3.35, to arrive at approximate retail prices in England and I am wondering if there is another factor not previously considered in arriving at approximate retail selling prices of the imported ZENITH sets?

I would appreciate the benefit of your advice on this pricing matter.

Kindest personal regards and best wishes.

Sincerely,

/s/ J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Airmail

Kensington 6925

1st September, 1959
Ref: ARR/GS/3409

Mr. John A. Miguel, Jr.
Vice President,
Zenith Radio Corporation,
6001 Dickens Ave.,
Chicago 39, Ill. U.S.A.

Dear Mr. Miguel,

Thank you for your letter of the 27th August.

As far as the prices of the Zenith sets in U.K. are concerned, I am enclosing our printed price lists which will give you all the details, but as far as the mark up is concerned I would like to explain the following:

1) Originally, we intended to have a mark up of 3.35 which was based on 20% duty and in anticipation of a substantial contribution from you as far as publicity in U.K. is concerned.

2) Since, we had to readjust our calculations in view of the following happenings:

a) The duty which we shall have to pay will be higher than 20% as, according to British regulations duty is payable on price list goods of the manufacturers and not actual prices charged. Apart from that when distribution is done like ours—that means that all the charge of sales promotion and publicity is borne by ourselves, the Customs are charging an uplift usually of 25% which equals additional 5% duty.

The reason being that the Customs consider that if the sales promotion was done by the factory itself, the factory would have to charge higher prices.

We are now discussing with the Customs and trying to get the most favourable terms.

b) Whenever we sell to shops which are in a group of shops (chains) we must grant additional discount up to 10% which is the usual custom in the trade.

c) It has proved necessary in some of the sets to adjust the IF which is different in the American sets (455 kc in your sets, 470 kc. in British sets, which makes additional cost from approximately two to three dollars per set. Without this adjustment we get a very bad whistling noise.

Kensington 6925

—2—

Mr. John A. Miguel, Jr. 1st September, 1959

2) In order that we arrive at a reasonable profit which would allow us to carry publicity etc. we should work on a multiplier of 3.75 but as our price lists were made before final price fixing was done by you the multiplier varies on various sets from 3.29 to 3.82, which gives us a fair average.

3) As far as stereophonic equipment is concerned, as it is already very expensive and we are anxious to promote sales as much as possible, we kept down to a multiplier of approximately 3.2.

In fact, this multiplier is much lower as we did not anticipate that the shipping charges would be so high on this merchandise and the transformers for the big instruments cost as much as $11.

Below, I am giving you all the multipliers relating to particular sets as it certainly may be of interest to you:

250	3.66
275	3.78
500	3.82
675	3.75
760	3.78
850	3.29
1000D (air)	3.76
1000D (ship)	4.11
B600	3.72

With kindest personal regards and best wishes.

Yours sincerely,

R.

ZENITH RADIO CORPORATION,
6001 Dickens Ave.,
Chicago 39, Ill.,
U.S.A.

ARR/MH/3459

Re: DPL 6, DPS 30 and DPS 50L 8th September, 1959

With reference to your recent press release regarding the above models please kindly advise us whether there is any possibility of having Step Down transformers inside the cabinets.

This is an essential condition if we would have to market these models in the United Kingdom as the public does not want to have transformers outside the units.

for UNITED MERCANTILE COMPANY LTD.,

R.
Director

Kensington 6925
Ref: ARR/GS/3525
15th September, 1959

Mr. John A. Miguel, Jr. Vice-President,
Zenith Radio Corporation,
International Division,
6001 Dickens Ave.,
Chicago 39. Illinois.

Dear Mr. Miguel,

I refer to the recent shipment of stereo equipment which you were good enough to send us for the Show and I would like to make a few remarks regarding the quality of instruments sent to us, but I presume that any faults which we have discovered may be due to the fact that the models sent to us were not brand new stock pieces but taken out from one of your showrooms.

The faults which we have found are as follows—

MODEL SFD2575	One channel and the stereo was not working and had to be adjusted by our Engineer. Re cabinet work, the doors leave an uneven gap when closed and metal fittings on the doors are fixed at different levels.
MODEL SFD2530	Spindle for 45 rpm missing.
MODEL SFD288	Door not closing and very roughly finished—needs adjustment.

As these instruments are very highly priced our customers expect the most perfect execution and as I mentioned at the beginning of my letter I presume that any instruments which are ordered regularly will be perfect.

With kindest regards,

Yours very truly,

R.

ZENITH RADIO CORPORATION
6001 Dickens Ave.
Chicago 39, U.S.A.
International Division

September 16, 1959

United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S.W. 1, England

Gentlemen: RE: DPL 6, DPS 30 and DPS 50L

Kindly refer to yours of September 8, your reference ARR/MH/3459, regarding possible installation of step-down transformers inside the cabinets of the DP units as outlined above.

The DP6 and DPS30 are not operable on other than 115 volts, 60 cycle, AC.

By copy of this correspondence, we are requesting our Engineering Department to ascertain whether or not the DPS50L cabinet will accommodate the step-down transformer, and we will advise immediately upon said information being supplied to ourselves.

Yours very truly,

/s/ H. L. Grimm
H. L. Grimm
International Division

HLG/cl
AIR-MAIL
cc Alex Gorbunoff

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois
Cable Address "Zenithrad" All Codes
International Division

September 17, 1959

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S.W. 1, England

Dear Mr. Ramsay:

We would like to take a moment, to discuss in part, our operation in relationship to the Credit Department.

All orders processed through the International Division are referred to said Credit Department for approval prior to scheduling for release.

In short, our Shipping Department will take no action whatsoever unless the "stamp of approval" is affixed.

We are cognizant of the problems with which you have been faced from every standpoint heightened by the present litigation.

We, in a sales capacity, are concerned primarily with sales. Personally it creates an ulcerous internal condition to view, from ones standpoint, the sales angle and to be confronted, on the other hand with the financial angle.

We do not feel that any of us are in a position to disagree that we need someone to ride herd on the all important final aim—collections and profit.

Your present debit status is somewhere in the neighborhood of $2,800.00—a portion which is accounted for by the Fair items which Mr. Miguel agreed to ship on an open account basis—anticipating your payment within the time specified. An additional part of this indebtedness is due to the 5% uncollected from the bank, on your letter of credit shipment, which our Mr. R. M. Carstens is covering under separate correspondence.

As indicated above, we are extremely sympathetic, but at this point, more or less caught in between. We trust you will understand, in view of the above, why it is impossible for us to release shipments from the factory prior to the proper financial coverage.

Certainly you have more than clarified your position in your correspondence to Mr. Miguel, and we do not feel that it should be necessary for you to repeat the information which you have already supplied in answer to this correspondence. We took this opportunity to clarify our position in hopes of a little better understanding on the part of all concerned.

Kindest regards.

Yours very truly,

/s/ H. L. Grimm
H. L. Grimm
International Division

HLG/cl
AIR-MAIL
cc Permanent file

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

John A. Miguel, Jr.
Vice President
in Charge of Export

September 18, 1959

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S. W. 1, England

Dear Mr. Ramsay:

Thank you very much for your letter of September 1, reference 3409, on the matter of local pricing.

We appreciate that the 3.35 multiplier was purely an estimate and that you had to face the realities after you have had some experience in determining actual cost of the merchandise, obtaining better feel of the market, and to take into consideration other factors, which were not apparent when we discussed this matter during your visit here.

The information you have given us on cost and other marketing factors is illuminating and much appreciated. There are, however, a couple of questions we would like to ask.

We are very much surprised about the duty situation. We want to know more about the British customs' regulations that the 20% duty is payable on the price list, rather than on the actual invoice price. What do they mean by price list, and please give us a concrete example. We also do not understand the uplift of 25% of the duty, because of the sales promotion and publicity underwritten by you? Write us about this and we will analyze the situation and give you a letter that you could use in obtaining relief, from what

I consider arbitrary ruling on the part of your customs people.

We also want to know why it should cost $2 to $3 per set, to adjust the IF to British standards? Incidentally, we are asking our Engineering Department to give us a report on this IF matter.

On the list of multipliers you are using individually for every model you are marketing, we are wondering why you are not using the lowest multiplier on the price leader transistor model ROYAL "250," as we note that you are using this on the cordless clock-radio ROYAL "850." Also, are to assume that you have two sets of prices on the ROYAL "1000D"— cheaper when ordered by air shipment than by regular ocean liner? If such is the case, all the "1000D's" should be ordered via air shipment.

Kindest personal regards and best wishes.

Sincerely,

/s/ J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Airmail

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

John A. Miguel, Jr.
Vice President
In Charge of Export

September 18, 1959

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S. W. 1, England

Dear Mr. Ramsay:

Although late, we want to acknowledge and thank you for your two letters dated August 24, references 3299 and 3303, concerning several matters.

First, in connection with minimum quantities we have stipulated you have to order to qualify for the special prices, we certainly want to be as fair and realistic as possible, serving at the same time our mutual interests. After reviewing our recent shipments to you and taking another good, realistic look at the entire situation there, we are willing to reduce the minimum quantity requirements to qualify for the special prices, as follows:

ROYAL “250”	from 200 to 100 units.
ROYAL “275”	from 200 to 100 units.
ROYAL “500E”	from 500 to 200 units.
ROYAL “675”	from 200 to 100 units.
ROYAL “760L”	from 100 to 25 units.
ROYAL “1000D”	from 50 to 20 units.
B600	from 50 to 20 units.
C519	from 50 to 20 units.
DPS80C	from 50 to 20 units.

Under this new, lower minimum quantity lineup, it is believed that your ordering will be facilitated and brought in line with realistic shipping releases, avoiding unnecessary back ordering and bookkeeping. Also, we want to avoid a lot of unnecessary correspondence back and forth about bringing your orders and the minimum quantity requirements into balance and following you up on shipments of back orders, etc.

There is no doubt that the matter of color plays a very important part in your marketing activity, and thus, it is very important that you choose those colors and finishes that sell well in the market. What is true in your territory may or may not be true in other places, and for that reason, we usually have quite an extensive variety of finishes and colors, multiplying production, stocking and merchandising problems several fold. From facts based on statistics and sometimes hunches, we order on the factory quantities of each color or finish. By and large, our batting average has been good, but there are instances where we have released either too many or too few of a given color or finish. You, of course, have the right to order our models in the exact quantities of colors and finishes of each model you desire, with instructions not to alter those specified quantities, unless you have authorized us to do so. Of course, you must realize that in those cases, there will be attendant delays in allocations, resulting in corresponding delays on shipments from the factory and meeting steamers in New York. If you give us some leeway in your ordering, it would be helpful, but it is not absolutely necessary, provided you realize what you are up against without giving us that measure of flexibility.

I am very happy to note that you have taken and accepted our letter of August 20 in the spirit it was written. We must be candid and sincere with one another, sometimes even when it hurts. I believe that development of our commercial relationship on that candid basis will be immensely helpful to both of us.

Now, regarding the ROYAL "850," you released and we shipped a total of 250 units, against the negotiated order for 1,000 units at the very special price offered on this job. The reason we prodded you on the $5,000 deposit to secure the order, was because it was on that basis that the order was negotiated and mutually accepted. Actually, the need for the $5,000 deposit was, more than anything else, to secure the merchandise for you, so we would not peddle those units elsewhere. We realize that other factors came into the picture, causing you not to send the $5,000 securing deposit. It is all right with us, but of course you must realize that we are no longer under obligation to you to have available the entire 750 units, if and when you give us further shipping releases on the ROYAL "850." We have also been in an unbalanced situation on this job with respect to colors, in that the pink version ROYAL "850V" is not available. Our present availability is concentrated on the ROYAL "850W"—white—and the ROYAL "850C"—gray—in a ratio of approximately 2 to 1 in favor of the white. Since this model has been discontinued, there will definitely be no other colors to become available beyond what we now have.

We definitely share your view that entry into the British market is not an easy one and serious marketing mistakes cannot be afforded. We have a full understanding of the situation, under which you have to operate, and—as you already know—we have not established minimum allocations or quotas you should take, except in those cases where minimum order quantities are specified to qualify for special quantity pricing. Even in the latter case, we have seen fit to reduce those minimum quantities, so your marketing program will not be burdened with heavier stocks than you would normally require to support your program. All we ask is that the orders you place be programmed on the basis that they are firm orders, shippable within a reasonable period of time and so scheduled to provide you with a normal but satisfactory turnover. We want to avoid situations caused by over optimistic estimates or buying.

With all good wishes.

Very truly yours,

/s/ J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Airmail

Kensington 6925
Ref: ARR/GS/3567
22nd September, 1959

Mr. John A. Miguel, Jr., Vice-President,
Zenith Radio Corporation,
International Division,
6001 Dickens Ave.,
Chicago 39, Illinois.

Dear Mr. Miguel,

Thank you for your two letters of the 18th instant.

1) Minimum Quantities:

I was pleased to see that you have reduced the minimum quantities for various items and although I do not anticipate that the original minimum quantities could not be taken up, I agree that the reduced quantities will be more convenient from the shipping point of view.

As far as colours are concerned naturally there is a preference in every market, as for example no green radios are saleable in U.K. but, nevertheless, we can always influence the buyers to some extent as far as colours are concerned and, therefore, it would be helpful if your people will indicate to us which colours they prefer us to take.

2) Royal 850:

I read with interest your remarks regarding our order for the above and I must admit that I did not realise at the time the order was placed that you have abandoned the manufacture of this item. In fact, I believe that for an item which is discontinued your reduction in price was relatively small in relation to items which are regularly produced.

Up to now, including the shipment which is coming forward now on the last Letter of Credit, we have taken up 400 pieces, and shortly I hope to be able to take some more, but as far as deposit is concerned I must mention that I spoke to Mr. Swislotzky about it who mentioned to me that he had a talk with the factory and that a smaller deposit would be sufficient and in fact at that time we remitted $2,000 which later has been used by various small shipments.

3) Shipment Schedules:

As you have noticed from the orders placed recently, we are placing the orders well in advance to cover the next 2-3 months and very shortly we shall be able to do it even better, for example we have discovered that the model which will sell least is the Royal 250 as there are plenty of six transistor sets of similar if not equal quality but much cheaper, while Royal 675 proved to be quite a good seller. The only pleasant mistake which I made in my original estimates concerns the 1000D which, although very expensive has no competition as far as quality and specification is concerned and we have sold all of them which you sent to us and that is the reason we have requested shipment by air.

4) Multiplier:

We have explained this matter to you in letter of September 1st but to make it more clear to you as far as Customs are concerned we are enclosing photocopy of the relative paragraph from the Customs and Excise Act.

I fully agree that it is an arbitrary ruling but it seems that the Customs have only one thing in mind and that is to get as much money as possible.

Regarding the IF adjustments, as mentioned to you previously this is necessary only for certain districts and we had correspondence with your Engineering Department on this subject.

I would like also to mention that any adjustments or amendments to your sets which have to be made locally prove very expensive, for example fitting of a new rotor and transformer to the C519 costs us actually 4 dollars and when calculating for future prices of AM/FM sets we have to take this into consideration.

I feel very unhappy about our Engineers having to do these jobs as we prefer to deliver the sets to the customers untouched by anybody, but it appears that fitting of transformers by your people is too difficult from the production point of view.

As far as prices of Royal 1000D is concerned, we have only one price as on the price list and we anticipate having to take most of the supply by air and it may prove also beneficial to do the same with the Royal 500E. Although air increases the cost it makes things much easier for us as we do not have the financial outlay for many weeks.

5) AM/FM Radios:

I had an exchange of cables with your people regarding the above and from the reply we understand that all the sets have been allocated already until end of the year and, therefore, you cannot consider any reduction. I do not know if it means that we cannot get any delivery, but should it be possible to save a few for us we are enclosing our order No. 24/59 as in view of the British mentality it appears that they have less objection to paying say £50 for a large size set than £40 for a small, although the performance of both may be equal.

6) General:

Although the sales are not spectacular, as I mentioned in my Progress Report I may be a little too impatient.

We are appointing new dealers and nearly every day we get repeat orders which is very gratifying. Naturally, if we were in the range of only 20% or 30% above British prices we would have swept the market in a most spectacular way.

I would like you also to bear in mind that the mentality of the British dealer is so different from the American; in fact they are selling today in spite of themselves and it is quite a job to convince anyone to take up new lines and when they are convinced to do so they start with no more than an average of 3 to 4 sets.

Nevertheless, I have grounds in believing that within a year the British market will prove very interesting to both you and us.

Thanking you for all the co-operation you are giving us all the time.

With kindest regards,

Your sincerely,

Encls.

Kensington 6925
Ref: ARR/GS/3616
28th September, 1959

Mr. John A. Miguel, Jr., Vice-President,
International Division,
Zenith Radio Corporation,
6001 Dickens Ave.,
Chicago 39, Illinois.

Dear Mr. Miguel,

As you have noticed, we have placed up to now a few orders for the stereophonic instruments but the greatest obstacle in getting bigger business is, unfortunately, the price which after adding duties, transport and purchase tax reaches figures above anything available in U.K.

The model which we think could sell best is the SFD2530 and we wonder whether you would contemplate any reduction of price subject to a minimum quantity being taken up by us. Your comments will be appreciated.

I am taking this opportunity of sending you a page from the "Radio Retailing" on which you will find a good write-up on the introduction of Zenith to U.K.

With kindest regards,

Yours sincerely,

Encl.

R

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

John A. Miguel, Jr.
Vice President
In Charge of Export

October 13, 1959

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S.W. 1, England

Dear Mr. Ramsay:

I read with a great deal of interest your letter of September 14 and your Progress Report Number 3.

Frankly, I think that you have been doing extremely well to get started in your distribution effort. With the price factor as it is, you have to be extremely selective in your dealer appointments, confining your sales to only those who cater to a class of customers where price and price alone is not the determining factor. Of course, what is also encouraging to us is your report that every dealer you have appointed, who had the chance to buy and sell and the opportunity to turn over the goods, has placed repeat orders.

We received all the sales promotion and publicity materials you sent us, and we all find them well prepared in good, high taste and very compatible with the marketing program you have developed.

Although dealers have their peculiarities from one country to another, I have found that most of them as human beings and businessmen are amenable to possibilities of making more and more money. But, as you have found out, a lot of personal effort and contact is necessary. Also, repetition, patience, and continuity of effort will be required.

I believe you have done quite well in this connection, as, otherwise, your distribution timetable would have been seriously retarded.

I received the batch of trade magazines you sent us containing publicity stories and advertising on ZENITH, which you have placed locally. I note that they are excellent trade media of a class, I believe, even superior to what we have in this country. We like the publicity stories and the character of the ZENITH ads you have placed. I thoroughly agree with you that at this stage, and considering the money problem, it is well for you to have concentrated your advertising on trade rather than on consumer media.

Kindest personal regards and best wishes.

Sincerely,

/s/ J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Airmail

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

John A. Miguel, Jr.
Vice President
In Charge of Export

October 13, 1959

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S.W. 1, England

Dear Mr. Ramsay:

Thanks for your letter of September 22, discussing a number of matters brought up in our letters of September 18. I think that for the most part, generally speaking, we are pretty well squared away on those subjects, but I will take up here a few of the points where I believe there is some question, or where you have inquired about specific information.

The color question is difficult to tackle, until after some experience. Now that you have that experience, I know you will be specific and insistent on the colors you want and we, too, will be more conscious of this factor; and if we cannot supply the color versions you want, we will consult with you and advise you what there is available.

I regret the misunderstanding on the ROYAL "850" in respect to the deposit question, etc. The $2,000 you sent was actually not treated as a deposit, because it was used up to cover small sundry shipments.

We have found quite interesting, if not pleasantly surprising, the types of sets you have been ordering recently. Some of those changes we anticipated would take place, particularly on the ROYAL "500" and the ROYAL "1000D." With your diversification into AM/FM and stereo jobs, I think that you will have a nice variety to offer the high-class English market.

I am somewhat surprised that you consider quite costly making the conversion locally on a number of sets where 220-volt transformers, etc. have to be installed. However, the situation here is not that we cannot do it; rather, it would be a costly proposition to set up special lines just to handle conversion of a few sets for your goodselves. The additional cost on such special setups will be quite high; in fact there will be no room to do it here, because all our present facilities are being utilized to the maximum, on account of the very excellent business we are enjoying in the US domestic market on all our product lines across-the-board.

In regard to the AM/FM radios, we did not mean that just because we are completely allocated through the end of the year that we cannot get a few sets for you. However, those few sets in effect mean diversions from domestic allocations of sets that have already been sold. In that light, our management feels that there is no reason to reduce price and take a lesser profit, when no additional volume is involved, at least for the balance of this year.

In conclusion I want to say that we are heartened by your progress in marketing our ZENITH sets in Britain. We hope that it has been good business for you as anticipated and with the volume steadily going up, we can both look forward to a more satisfactory arrangement for both of us.

Kindest personal regards and best wishes.

Sincerely,

/s/ J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Airmail

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

John A. Miguel, Jr.
Vice President
In Charge of Export

October 16, 1959

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S.W. 1, England

Dear Mr. Ramsay:

We have for acknowledgment your letter of September 28, reference 3616, with regard to the stereophonic business.

We are pleased to see that little by little you are getting into this activity, although we realize that these instruments have to be sold at fairly high prices, on account of the known cost factors and the application of the usual multiplier. This price question on such small quantities, we anticipate you could develop even at its best, would be relatively small, so that we could not use those quantities as an inducement or a lever to obtain special pricing, such as we succeeded in obtaining for you on the all-transistor sets. Besides, there is still the problem of the additional costs to convert those instruments into operation for 220 volts, 50 cycles. Our production of those consoles is pretty well controlled by the total allocations worked out for all the domestic USA distributors and for our export requirements. We would not be interested in making any special pricing deals on these stereophonic jobs, until such time as we see the possibility of some worthwhile "plus" volume.

As I commented before in one of my previous letters, you people certainly have come out with very nice publicity stories about the advent of ZENITH in the UK.

Kindest personal regards and best wishes.

Sincerely,

/s/ J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Airmail

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

John A. Miguel, Jr.
Vice President
In Charge of Export

October 16, 1959

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S.W. 1, England

Dear Mr. Ramsay:

The attached literature will give you an idea of a Merchandiser Gift Package that has been developed for the American home market to promote specifically the sales of the ROYAL "250" and ROYAL "275," although it can also be used to improve on the high pace of our ROYAL "500" sales.

I would appreciate your studying the possibility of using this Gift Package as a stimulant to sell our transistor pocket radios—the ROYAL "250," "275," and "500E." If there is interest and you are not going to be castigated by the high duty and purchase tax, we can work out a special deal for you on these Gift Packages with or without the carrying case, earphone, and batteries. Of course, this Package will be ideal for the Christmas promotion.

If you want a sample to look at before deciding, please let me know and I will dispatch one by air immediately.

Kindest personal regards and best wishes.

Sincerely,

/s/ J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Enclosure
Airmail

Kensington 6925
Ref:ARR/GS/3739
19th October, 1959

Mr. John A. Miguel, Jr., Vice-President,
Zenith Radio Corporation,
International Division,
6001 Dickens Ave.,
Chicago 39, Illinois.

Dear Mr. Miguel,

This is to acknowledge your two letters of the 13th and three letters of the 16th and in the first place I would like to thank you for the appreciation expressed by you regarding our work here.

It is most encouraging to find that you do understand the difficulties and problems which we are gradually overcoming.

In fact, we have now reached the stage that Zenith is in England to stay and the opening today of the Fortnum & Mason—Zenith Radio Department puts Zenith on the highest level and we hope that it will give us an opening to all the other leading Stores in U.K. and that is why this matter was so important to us.

Below I am replying to various points raised by you as well as writing about a few matters on which I would be obliged to have your comments.

1) Sales:

It is shaping out that the best sellers will be the 500 and 1000D as there is really nothing comparable on the market and, therefore, we are being forced to introduce into our permanent range the 755 and, at the same time, the 710.

A few days ago we confirmed a small order for 16—750's which were still remaining in your stock but we would like to place regular orders for the 755 and 710 subject that the price of these sets can be in proportion to prices which we are paying for other models.

I should be most obliged if you would kindly let me know as soon as possible what price you can quote us for these sets and I presume that the minimum quantity will be the same as for example for 760—i.e. 25 units, and we are enclosing our official order for these models presuming in advance that the price will be reduced accordingly.

If on the other hand you are not in a position to effect a substantial reduction, we are afraid we shall not be able to carry these models as the price in proportion to others will be much too high.

2) AM/FM Radios and Stereos:

There is no doubt that we can achieve a very nice turnover in these items but here again the price factor is of utmost importance particularly in view of the fact that our original calculations were made on the basis of the 3.2 multiplier which later proved much too low and as a result our profit on stereos, taking into consideration the cost of transport, transformers etc. is reduced to a level which is really not very economical.

A few days ago we sent you additional order for stereos and you can see that the quantities are going up and here again I would like to impress on you the necessity of bringing down the prices and I hope that you will be able to do so subject to minimum quantities and this reduction you will be in a position to apply to instruments on order.

We would like also to start stocking the DPS 50 for which there can be quite a good market. Here again please advise us about the price and minimum quantities.

As far as AM/FM Radios are concerned I understand the supply position but if again in this instance you can do something for us we are enclosing a further order, doubling the quantity ordered previously.

3) Gift Package:

Your letter of the 16th came just in time as we intended today to send you a cable asking you to send us a sample of the old gift carton ref. R8046.

We are very interested indeed in this item and we shall be obliged if you will kindly let us have the lowest price for it subject to quantities being taken up, the carton to include the carrying case and earphone.

As far as batteries are concerned, we would be very pleased to have Zenith batteries but we are afraid that the price will be too high; for your guidance we are now buying new Mercury batteries from Mallory in England and we are paying 2/2d each. To arrive at the same price in view of the duty which would be chargeable on Zenith batteries, you would have to charge us 23 cents.

With kindest regards,

Yours sincerely,

R

Encls.

Kensington 6925
Ref:ARR/GS/3759
20th October, 1959

Mr. John A. Miguel, Jr., Vice-President,
Zenith Radio Corporation,
6001 Dickens Ave.,
Chicago 39, Illinois.

Dear Mr. Miguel,

Please find enclosed the following:

1) A few copies of leaflet which we have printed in U.K. Please advise us whether you want any of these to be used whenever you get direct enquiries from U.K.
2) The advert which appeared in October issue of "Ango-American News"
3) Proofs of dealers' adverts which we do in local papers on a 50/50 basis.

Your comments will be appreciated.

Yours sincerely,

R.

Encls.

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

John A. Miguel, Jr..
Vice President
In Charge of Export

October 21, 1959

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S.W. 1, England

Dear Mr. Ramsay:

Following our telephone conversation of October 20, I recommended to, and got approval from, our management to quote you special quantity prices on our three latest transistor sets as follows:

Model Number	Regular Price	Special Quantity Price	Minimum Quantity	Co-Op Advertising Accrual
ROYAL "710L"	$36.60	$32.10	50	$ .46
ROYAL "755L"	47.97	42.03	50	.60
ROYAL "780L" (same as "760L")	58.92	51.05	25	.75

I sincerely hope that in light of the new special quantity pricing, you will have greater possibilities for marketing these new sets in the United Kingdom.

Kindest personal regards and best wishes.

Sincerely,

/s/ J. A. MIGUEL, JR.

J. A. Miguel, Jr./ag
Airmail

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

John A. Miguel, Jr.
Vice President
In Charge of Export

October 27, 1959

Mr. A. R. Ramsay
United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S.W. 1, England

Dear Mr. Ramsay:

In reply to your letter of October 23, I am sorry to advise that there are no plans to introduce a 2 or 3-band all-transistor portable, or pocket radio, of a type that could compete with similar Japanese sets that appear to be having a field day on this class of merchandise all over the world.

I, too, know that there are several good Japanese sets in this category that are selling very well. They are priced very low, impossible to compete with. I have a couple of these sets at home, but I have been using them primarily for reception of the standard broadcast (medium) band, as performance on short waves is quite deficient.

Kindest personal regards.

Sincerely,

/s/ J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Airmail

ZENITH RADIO CORPORATION
6001 Dickens Avenue
Chicago 39, Illinois

John A. Miguel, Jr.
Vice President
In Charge of Export

October 28, 1959

Mr. A. R. Ramsay
United Mercantile Company: Ltd.
Park Lodge, Park Close
London, S. W. 1, England

Dear Mr. Ramsay:

We have your letter of October 19, reference 3739, dealing with various subject matters.

From all indications from you, it looks like your entry into Fortnum & Mason has been highly successful and could well be the forerunner of your entry into other department stores in the United Kingdom. With such a high class store handling our line, even the smaller independent radio dealers will be spurned to handle and market our products with greater interest.

With regard to special quantity prices on the ROYAL "710" and ROYAL "755," as well as the ROYAL "780," we already quoted these prices in our letter of October 21. The minimum quantities are higher than you anticipated, but I believe there will be no problem in meeting the requirements with further orders beyond the initial one for 25 each of the "710" and "755." I have approved billing that order at the special quantity prices on the presumption that additional orders will be placed in the near future to make up the difference.

On the AM/FM radios and stereophonic instruments, the supply situation has been very critical, and frankly, this is not the propitious time to ask our management for price reduction, even with the incentive of larger orders. I note your comment regarding the possibility of the DPS50. Before freezing on a program involving this model, I suggest you have a sample brought in by air to examine its performance possibilities at the regular price and the kind of competition you will be faced with. I want to remind you that this model is a low cost stereo model, and as such, its performance may not measure up to what you consider is acceptable performance.

I am glad to note that you are very much interested in the gift package described in our letter of October 16. This is an item specifically intended to generate higher sales volume on the ROYAL "250" and "275," by both the manufacturer and the distributor contributing to the cost of the package. In other words, the intention was for the dealer to acquire this package without charge, based of course on his accepting the allocation or minimum quantities specified by the distributor. Frankly, I do not know how such a promotion can work out in the United Kingdom with the increased costs resulting from duties, transportation, and the purchase tax. I am wondering what you have in mind in the usage of this promotional item and will welcome your advice on the matter.

This gift package comes complete with the Textron case, batteries, and earphones. Including the gift box, if ordered separately, the distributor's net cost, f.o.b. factory, would be in the neighborhood of $4. As currently available, all these gift boxes have already been packed with all items, except the set itself. The set of 4 Z-8 ZENITH batteries has a distributor's cost of 36 cents only. If you can find excellent use of this material to promote your sales of the ROYAL "250" and "275," we might be able to work out a deal with you, whereby we could sell you the gift box complete with all 3 items—that is, the batteries, Textron case, and earphones—for only $1.85 f.o.b. factory.

The gift package sample was airmailed to you on Monday, October 19, upon receipt of which and further consideration of this matter, please determine if it has possibilities to boost your sales volume. If so, please let us know the quantity of packages you will be interested in, to see if we can support your requirements, because the latest information we have from our domestic people is that they are way oversold already on these gift packages.

Kindest personal regards and best wishes.

Sincerely,

/s/ J. A. Miguel, Jr.

J. A. Miguel, Jr./m
Airmail

Kensington 6925
Ref:ARR/GS/3819
29th October. 1959

Mr. John A. Miguel, Jr., Vice-President,
Zenith Radio Corporation,
International Division,
6001 Dickens Ave.,
Chicago 39, Illinois.

Dear Mr. Miguel,

I am enclosing copy of letter which we have written today to Mr. Collaro who was complaining bitterly about a service charge which we made for repair of an old 500 and as he threatened to discuss this matter with your people in Chicago we feel that you should be aware of the facts.

1) We charged £ 3.13.3d. for fitting a new loudspeaker, re-aligning the set and complete overhaul ($10.50).

2) The delay in executing this job was exactly the time of transit of the part required, clearance from Customs and repair time.

This matter is naturally not very important but we feel very embittered that while we are striving very hard to give excellent service to everybody and in fact these servicing jobs on old sets are not economical propositions to us, we occasionally get someone who feels that everybody should crawl in front of him.

With kindest regards,

Yours sincerely,

Encl.

R

Kensington 6925
Ref: ARR/GS/3877
10th November, 1959

Zenith Radio Corporation,
International Division,
6001 Dickens Ave.,
Chicago 39, Illinois.
Attention: Mr. R. M. Carstens

Dear Mr. Carstens,

Thank you for your letter of the 6th instant and we are very pleased to hear that there is some possibility of incorporating the long wave in some of the models.

To show the importance and urgency of this matter I cabled you yesterday and there is no exaggeration whatsoever in saying that if your models had a long wave it would at least double the sales as this is the greatest objection. In fact, even such powerful models like the 500 cannot be used in certain districts.

I do realise how extremely busy your Engineering Department must be at this time but we shall appreciate it if you will kindly urge them to do something for us.

Thanking you in advance.

Yours very truly,

for United Mercantile Company, Ltd.
R.
Director

Kensington 6925
Ref: ARR/GS/3932
17th November, 1959

Zenith Radio Corporation,
International Division,
6001 Dickens Ave.,
Chicago 39, Illinois.
Attention: Mr. H. L. Grimm

Dear Mr. Grimm,

We sent you a cable yesterday requesting you to in future crate all the stereophonic instruments which are being sent to us as, unfortunately, the last consignment which came on the "Queen Elizabeth" has been damaged.

Up to now we have found a 2530R badly smashed and a 2535 damaged, and the damage appears to be on the corners of the cabinet which are not sufficiently protected.

This is very disturbing as we have been waiting for these instruments rather badly.

We are now unpacking the rest of the consignment as well as that from the "Rutenfjell" and we shall see what has happened to the rest.

We hope that you will be agreeable to do the crating free of charge to us taking particularly into consideration the fact that our mark up on the stereophonic instruments is completely uneconomical and we do not enjoy any special price for them.

I hope this letter reaches you in time for the next consignment to be crated.

Yours very truly,

for United Mercantile Company, Ltd.

R.

Director

Kensington 6925
Ref: ARR/GS/3935
17th November, 1959

Mr. John A. Miguel, Jr., Vice-President,
Zenith Radio Corporation,
International Division,
6001 Dickens Ave.,
Chicago 39, Illinois.

Dear Mr. Miguel,

Thank you for your letters of the 10th and 12th instant.

1) As far as Mr. Collaro is concerned it is exactly what you wrote to us that we have told him and this is the policy which we are maintaining that while supplies of spares for current models are now available from stock, spares for obsolete models have to be drawn from the States, and there is very little doubt that no other radio distributor is giving the same service which we are trying to give our customers.

As we wrote to you previously on the subject of Mr. Collaro, this is a particular case of a very pompous man who complained in fact not so much at the delay but at the price charged.

We still get quite a number of people who feel that they should be exempt from payment of duty, taxes, postages, etc.

2) Sales: Your letter of the 12th has crossed with our letter in which we advised you that the 850 has already been

featured on the T.V. twice and is being featured again on the programmes of the 20th and 27th.

Yesterday, we had a chat with Granada T.V. Network and there is a very good possibility that they will take Zenith sets as prizes for their "Concentration" programme.

Therefore, you can see that we had exactly the same ideas regarding promotion of the models which are not so famous or easily saleable as 500 or 1000D.

As far as the mention of long wave in our leaflet is concerned, we did not underline this point too strongly bearing in mind that every British or Continental set even of the cheapest quality has long wave and, therefore, there is nothing special about it.

Yesterday, we received the air consignment with the 10—780's which are extremely nice, but we would like to mention that your packaging will have to be reconsidered as up to now I have found two slightly damaged——one had a grill bent and one the leather squashed on the side.

With kindest regards,

Yours sincerely,
R.

Kensington 6925
Ref:ARR/GS/3942
19th November, 1959

Mr. John A. Miguel, Jr., Vice-President,
Zenith Radio Corporation,
International Division,
6001 Dickens Ave.,
Chicago 39, Illinois.

Dear Mr. Miguel,

With regret we have to report that in the last few weeks we have been experiencing more and more trouble on account of quality of some of the sets which are being sent to us.

The complaints are of two kinds, technical and outside appearance and the latter complaint is much more common.

In the last 3/4 weeks we have had a few dozen sets returned and while at first I wondered whether the customers had damaged these sets I took special care to unpack some myself. Just to quote you a few examples:

1. One SFD2575. I went with our man to install it and I am enclosing the inspection tickets. I found that there were bad finger marks on the dial, the tuning knob was out of centre and as far as cabinet work was concerned it was very poor indeed. Here again the little handle on the door was out of level—just the same thing which we have already reported to you previously.

2. One SFD257Y. Installed yesterday. The 45 rpm spindle was missing and since we have discovered that they were missing also on two other instruments. We already reported in the past that one was missing on a 2530 and all these instruments have not been opened by Customs and, therefore, they must have left the factory without the spindles.

3. We are enclosing copy letter which we have received from a very important customer and since this letter has been written, three sets had to come back. These sets were opened by our Mr. Spink and found to be in a very bad condition indeed, dirty, scratched, etc.

4. In the consignment of the 10—780's which we received by air and which were extremely urgent, we found the following:

Two have the bottom gilt strip missing.

One had a badly dented and squashed grill.

One is not in working condition.

Only yesterday a set was returned to us from Fortnum & Mason, a 500 on which the knob was missing.

I do realise that there must be terrific pressure of work in the factory but I would like you to bear in mind that Zenith in England is considered the same way as Rolls Royce and people are paying such high prices that they expect most perfect merchandise.

Looking forward to your comments.

With kindest regards,

Yours sincerely,

Encls.

RAMSAY LONDON
WUCABLES 1 LDN
RAMSAY LONDON

WU/Z.14. CHICAGO ILL 14 18 1010AMC (VIA WU CABLES)

LT RAMSACO
LONDON
PLEASE OPEN CREDIT DLRS3200.00 NINE STEREO UNITS YOUR CABLE 11/16
ZENITHRAD.

(CREDIT DLRS3200.00)
SENT 1/54AM JL
RAMSAY LONDON

Kensington 6925
Ref:ARR/GS/3997
1st December, 1959

Zenith Radio Corporation,
International Division,
6001 Dickens Ave.,
Chicago 39, Illinois.
For attention Mrs. Barbara Knulys

Dear Mrs. Knulys,

With reference to your letter of the 20th November, we are enclosing request for credit under the Co-operative Advertising Scheme.

Enclosed please find all the necessary proofs and we hope that you will find them in order.

The amount credited please put to the credit of our account with you.

Yours sincerely,

for United Mercantile Company, Ltd.
Director

Encls.

1/59 1. 12. 59

August 1959				
15, 22, 29	Electrical & Radio Trading	)	£ 400.10.11	200. 5. 5.
15, 22, 29	Wireless & Electrical Trader	)		
	Wireless & Electrical Trader	Art)	64.11. 2	32. 5. 7.
August 15.	Electrical & Radio Trading	Work)		
August 22.	Electrical & Radio Trading		43. 2.11	21.11. 5.
August 29.	Electrical & Radio Trading	)	47. 5. 6	23.12. 9.
	The Dealer	)		
Sept.—Oct.	Electrical & Radio Trading	)		
	Music Trades Review	)	181.19. 1	90.19. 6.
	Pianomaker	)		
	Wireless & Electrical Trader	)		
	Anglo-American News	)		
	Art Work re above		138. 3. 9	69. 1.11.
			18. 6. 7	9. 3. 4.
	Wireless & Elec. Trader Year Book		18.19. 5	9. 9. 9.
November	Dealers' Adverts Art Work	)	109.16. 6	54.18. 3.
			£1022.15.10	511. 7.11.

All proofs attached

ZENITH RADIO CORPORATION
6001 Dickens Ave.
Chicago 39, U. S. A.
International Division

December 14, 1959

Cable Address
"Zenithrad"
All Codes

United Mercantile Company, Ltd.
Park Lodge, Park Close
London, S.W. 1, England
Attention: Mr. A. R. Ramsay

Gentlemen:

Many thanks for yours of December 8, reference ARR/GS/4039.

We understand your action now regarding the unit for Lord Melchett.

It certainly is a feather in your cap relative to the British nobility buying ZENITH for, from a business standpoint, it certainly is good advertising for you even though not from a copy standpoint, much less to mention the prestige which seems so all important in this commercial world of ours today. In any event, certainly you are to be complimented.

With the initial period between our respective concerns, fairly under way things have undoubtedly settled down to the normal routine of business now, and I would like to make some personal comments.

With all that you are faced with in your market, relative to price, competition and alike, I certainly think that you have accomplished a very good initial showing. Your approach to the marketing and servicing of ZENITH's products has certainly been very gratifying indeed. I had the opportunity to check over some of your advertising, your dealer set-up and your all important service set-up and it is a pleasure to see a good business approach such as you have formulated.

I wish to take this opportunity to extend my sincerest wishes for the coming holiday season and further that 1960, will be a very prosperous year accented by good health and happiness.

Kindest regards.

Yours very truly,

/s/ H. L. Grimm
H. L. Grimm
International Division

HLG:sn
Airmail

PLAINTIFF'S LONDON DEPOSITION EXHIBIT No. 61

WIRELESS AND ELECTRICAL TRADER
22 August 1959

NEW PRODUCTS

THE TRADER'S regular feature bringing first news of the latest radio and electrical lines

Zenith Transistor Models for British Market

United Mercantile Co. Ltd., Park Lodge, Park Close, London, S.W.1 (Knightsbridge 2135).

The 1960 Zenith range of models now being distributed here (see News pages) includes transistor pocket, portable and clock receivers. They are quality models for discriminating buyers, at relatively high prices. Zenith stereo high fidelity reproducers will also be available to order. Models in stock now are:

Royal 250. Six transistor pocket radio. 540-1,600kc/s. Two-tone moulded cabinet. 3-1/2in. by 5-7/8in. by 1-1/2in. Price £32 inc. tax.

Royal 275B. Seven transistor pocket radio. Other details as Royal 250. Price £37 10s 3d inc. tax.

Royal 675. Six transistor portable radio. 540-1,600kc/s. 4in. speaker. Leatherette case with handle. 4-5/16in by 8-7/16in by 2-15/16in. Price £37 10s 3d inc. tax.

Model C519. Clock radio for A.C. mains. "Snooze alarm" timer. 540-1,600kc/s. Telechron clock with luminous hands. Plastics cabinet in choice of colours. 13-9/16in by 5-3/4in by 6-1/2in. Price £31 12s 11d inc. tax.

Royal 850. All-transistor portable clock radio. 540-1,600kc/s. Battery-operated clock. Plastics case in choice of colours. 9-15/16in by 4-5/8in by 2-5/8in. Price £44 9s 8d inc. tax.

Royal 950. All-transistor portable clock radio. Appearance as high class mantel clock in swivel stand. Price £93 18s 11d inc. tax.

Model B600. Trans-Oceanic A.C./D.C. or battery 7 band transportable at £91 6s 9d and the Royal 1000D all-transistor 9 band portable at £175 9s 6d, inc. tax, are also available.

• • •

WIRELESS AND ELECTRICAL TRADER

30 April 1960

• • •

Zenith All-Transistor A.M./F.M. Portable Radio Set Introduced

United Mercantile Co. Ltd., Park Lodge, Park Close, London, S.W.1 (Knightsbridge 2135).

First American-made A.M./F.M. transistorized portable radio receiver now available in this country from the main distributors, United Mercantile, is the Zenith Trans-Symphony, Royal 2000. Using a complement of 10 transistors, plus A.F.C. transistor and three germanium diodes, the receiver has a total of 11 tuned circuits on F.M. and eight on A.M.

Zenith Trans-Symphony Royal 2000 has a power source of eight D cells for about 300 hours' use at normal volume.

Circuit features include A.F.C., a combined A.M./F.M. I.F. strip, A.G.C., and an R.F. stage optimized for both A.M. and F.M. Speakers: 7in by 5in and Alnico 5. Power output: 1/2W. There are three built-in antennas, one for A.M. and two for F.M., the latter including a telescopic dipole. The set measures 10-1/16in by 11-5/8in by 4-7/8in and weighs 11-3/4lb including batteries. Price £114 18s 3d, tax paid.

• • •

WIRELESS AND ELECTRICAL TRADER

3 September 1960

• • •

Zenith RYL100 Transistor Pocket Radio Receiver

United Mercantile Co. Ltd., Park Lodge, Park Close, London, S.W.1 (Knightsbridge 2135).

Latest release by the Zenith Radio Corporation is Zenette Model RYL100. This set has been introduced to meet the demand for a smaller version of the company's personal radio, Although smaller in overall dimensions nothing has been sacrificed in styling, performance or quality of reproduction, it is stated.

The new receiver is available in four alternative finishes: white, yellow, beige, or charcoal, and will sell at 26gn (List price £20 13s 5d, purchase tax £6 12s 7d).

At the same time the company announced that Models RYL250 and RYL275 have been reduced in price as follows: RYL250, £20 13s 5d list, plus purchase tax of £6 12s 7d; and RYL275, £25 8s 10d list, plus purchase tax of £8 3s 2d.

• • •

3 September 1960

WIRELESS AND ELECTRICAL TRADER

Available in four different colours from United Mercantile Co. Ltd., the Zenette Model RYL100 transistor radio sells for 26gn.

• • •

15 October 1960

WIRELESS AND ELECTRICAL TRADER

NEW PRODUCTS

THE TRADER'S regular feature bringing first news of the latest radio and electrical lines

Zenith A.C./D.C. Table Radio

United Mercantile Co. Ltd., Park Lodge, Park Close, London, S.W.1 (Knightsbridge 2135).

First supplies of two new A.C./D.C. radio receivers—Model F615, Zephyr, and Model F512, Executive—will be distributed later this month by United Mercantile Co. Ltd.

Cabinet of the Zenith Model F512, Executive, table radio is fully-finished at the back and can be placed anywhere. Their waveband coverage is 540-1,600c/s with pre-set position for reception of B.B.C. light programme on long wave.

Model F615, Zephyr. A table radio receiver with picture-frame front using five valves and a power rectifier. The 7in by 5in speaker is tilted to direct sound upwards to the listener. Features include the new Zenith Filter-tenna internal aerial which improves signal-to-noise ratio; tuned frequency stage; special bass boost circuit; variable tone control and precision vernier tuning. The Polystyrene cabinet is available in charcoal with ivory grille and Roman gold trim; cadet blue with blue mist grille and silver trim; or tan with beige grille and Roman gold trim. Size: 10-7/8in by 6-7/16in by 8-7/8in high. Price £19 1s 6d, plus £6 2s 6d tax.

Zenith Model F615, Zephyr, has a picture frame cabinet and sells at 24gn.

Model F512, Executive. A superhet table radio receiver with four valves and a power rectifier. Speaker: 4in with Alnico 5 magnet. Features include automatic volume control; built-in aerial and large easy-grip tuning control. The polystyrene cabinet has a circular brush perforated aluminum grille and a fully finished back giving it an attractive appearance from any angle. Colours: two-tone willow green with green grille; beige and dark brown with gold grille; Cordovan brown and antique white with gold grille; and starch white and Cerulean blue with silver grille. Size: 10-1/2in by 3-1/4in by 6-5/8in high. Price £15 2s, plus £4 17s tax.

• • •

12 November 1960

WIRELESS AND ELECTRICAL TRADER

NEW PRODUCTS

THE TRADER'S regular feature bringing first news of the latest radio and electrical lines

• • •

Zenith Shirt-Pocket Radio

United Mercantile Co. Ltd., Park Lodge, Park Close, S.W.1 (Knightsbridge 2135).

Smaller than a postcard and only 1-1/4in deep, the Zenith Royal 50 is an all-transistor shirt-pocket radio receiver introduced from America by United Mercantile Co. Ltd. The new set is built to play at normal volume for about 75 hours on two standard penlight batteries.

Zenith Royal 50 uses an air dielectric tuning condenser for [illegible]curate tuning with on-station stability. Circuit features include Zenith Wavemagnet antenna which produces a high sensitivity to signals and automatic volume control which compensates for variations in signal strengths while tuning from station to station or when moving the set. A private listening attachment and custom-designed carrying case are optional at slight extra cost. The slim-style cabinet is available in solid white or black; or in two-tones, charcoal, beige or Chinese red with white. Price £15 10s, plus £4 19s 6d tax.

• • •

WIRELESS AND ELECTRICAL TRADER
6 May 1961

• • •

Zenith Converta Transistor Set

United Mercantile Co. Ltd., Sovereign House, Queen Street, Mayfair, London, W.1.

An auxiliary speaker cabinet which converts a pocket transistor radio receiver, less than 5in long, into a table radio has been added to the American Zenith range distributed by United Mercantile.

Converta, as the unit is named, comprises the Zenith Royal 50C pocket-size transistor radio (selling separately at 19-1/2gn) which plugs into the cabinet containing a larger speaker and provides sufficient volume for full-room listening. The cabinet, which is charcoal-coloured, matches the grey and white personal set. Price of the Royal 50C and the speaker cabinet is £28 7s, tax paid.

Zenith Navigator Radio

The United Mercantile Co. are also marketing in this country the Zenith Navigator portable transistorized radio, which, as well as receiving normal stations, can be used for standby navigation purposes by private pilots and yachtsmen as it covers weather stations and L.F. directional beacons. Wavebands: 550-1,600Kc/s and 150-400Kc/s. Eight transistors are used giving 500mW of undistorted output. Operating on small torch batteries which give it over 300 hours working life, the Navigator weighs only 5lb. The Nav-Nor control in the Nav position eliminates the automatic volume control to provide sharper null even on powerful broadcasts and on marine beacons. This control also allows for build and fade orientation and cone identification. Price £69 6s 11d, tax paid.

• • •

4 November 1961

WIRELESS AND ELECTRICAL TRADER

NEW PRODUCTS

THE TRADER'S regular feature bringing first
news of the latest radio and electrical lines

Six Zenith Transistorized Radios

United Mercantile Co. Ltd., 13-14 Queen Street, London, W.1 (Grosvenor 4901).

Well in time for the Christmas trade, six new models have been added to the range of Zenith transistorized radio receivers now obtainable in this country from United Mercantile, the sole distributors. The company have recently entered the U.K. hearing aid market.

Zenith Royal 500H De Luxe pocket radio has eight transistors. Speaker: 5in by 3in. The nylon case is available in ebony, white or two-tone grey with a gold front. Price £33 13s 6d, plus £11 17s 9d tax.

United Mercantile's Royal 710LG radio is powered with batteries providing up to 350 hours of operation.

Zenith Royal 400 is a seven-transistor pocket radio with a 5in by 3in speaker. Maximum output: 200mW. Case available in ebony, white, two-tone dark and willow green. Price £25 8s 10d plus £8 19s 6d tax.

Zenith Royal 675LG, portable transistor radio receiver with a Permawear cabinet and a 4in speaker. It uses four torch batteries and is priced £25 8s 10d, plus £8 19s 6d tax.

Zenith Royal 710 LG has seven transistors and gives 500mW audio output. It is powered by torch batteries and has a 4in speaker. Price £32 13s 8d, plus £11 10s 9d tax.

Zenith Royal 755LG is an improvement on the previous Royal 755. Output has been doubled to 500mW and has a pre-set Long Wave position for the Light Programme. Price £36 7s 6d, plus £12 16s 9d tax.

• • •

Zenith Royal 400 pocket radio. [Picture Omitted.]

Zenith Royal 780LG, Navigator, has been improved and the output doubled to 500mW. Price £44, 5s, plus £15 12s 4d tax.

• • •

WIRELESS AND ELECTRICAL TRADER

14 April 1962

• • •

Zenith Range Increased

United Mercantile Co. Ltd., Sovereign House, 13-14 Queen Street, Mayfair, London, W.1 (Grosvenor 4901).

Three more Zenith radios, the Royal 125, Royal 650 and Model J727, are now available over here from United Mercantile. Both the Royal radios cover the medium waveband (540-1,600kc/s) and incorporate six transistors plus two germanium diodes.

Below are three of the latest additions to the Zenith range of radio receivers marketed here by United Mercantile. Left, Model J727 A.M./F.M. mains set; centre, Royal 125 personal radio; and right, Royal 650 portable set.

Royal 125 personal radio receiver is powered by two pen torch batteries. It incorporates 6 to 1 vernier tuning and has an output of 135mW maximum or 80mW undistorted. Available in three colour schemes, charcoal, yellow and white, and beige and brown, the Royal 125 measures 2-11/16 by 1-9/32in by 4-3/8in high and weighs 9-1/3oz with batteries. Price, complete with personal earphone, £18 5s 7d, plus £6 9s 2d purchase tax.

Royal 650 portable radio receiver is powered by four pen torch batteries. Speaker: 3-1/2in. Output: 350mW maximum, 200mW undistorted. It is fitted with a carrying handle and finished in tan, ebony and ivory. Dimensions: 7-1/4 in by 2--13/16in by 4-13/16in high. Weight: 1-3/4lb including batteries. Price, complete with personal earphone attachment, £19 10s, plus £6 17s 8d purchase tax.

Model J727 A.M./F.M. mains radio receiver incorporates a Telechron electric clock. Wavebands: 88-108 Mc/s, 540-1,600kc/s. Valves: seven. Speaker: 6in by 4in. The clock incorporates a sleep switch control that automatically turns the radio off up to one hour after the control is set and an alarm that rings 10 minutes after the radio has automatically switched on in the morning. It is finished in three colour schemes of briar brown, ivory white and tarragon green. Dimensions: 13-5/8in by 6-13/16in by 7-3/4in high. Price £36 7s 6d, plus £12 16s 9d purchase tax.

* * *

3 November 1962

WIRELESS AND ELECTRICAL TRADER

NEW PRODUCTS

THE TRADER'S regular feature bringing first news of the latest radio and electrical lines

* * *

Zenith Vocalaire Portable

United Mercantile Co. Ltd., Sovereign House, 13-14 Queen Street, London, W.1 (Grosvenor 4901).

The Vocalaire Royal 880, a compact a.m./f.m. transistor portable manufactured by Zenith of America, is now available in this country from the sole distributors, United Mercantile. It is encased in a cabinet which is weather resistant and finished in tan or ebony.

Vocalaire Royal 880 a.m./f.m. radio receiver is powered by six UII batteries. Transistors: nine, plus three germanium diodes. Speaker: 4in. Output: 400mW (maximum), 250mW (undistorted). Aerial: telescopic for f.m. A socket is provided for a personal earphone. Dimensions: 9-3/4in by 4-9/16in by 6-9/16in high. Weight. 6lb (with batteries). Price £46 10s, plus £13 8s 7d tax.

Zenith Vocalaire Royal 880 portable. [Picture Omitted.]

* * *

WIRELESS AND ELECTRICAL TRADER

17 November 1962

NEW PRODUCTS

THE TRADER'S regular feature bringing first news of the latest radio and electrical lines

• • •

Zenith Stereo FM Tuners

United Mercantile Co. Ltd., Sovereign House, 13-14 Queen Street, Mayfair, London, W.1 (Grosvenor 4901).

Now available from United Mercantile are two Zenith a.m./f.m. stereo radio tuners, Models MHT14 and MHT15. Both models are supplied as a component in drop-in tuner form. Although the tuners are designed for the American market, the present B.B.C. trials are virtually the same system as that employed in the U.S.A. (the B.B.C. tests are continuing until December, for details see page 406). Dealers purchasing one of these tuners can gain experience of stereo Multiplex radio. Wavebands: 550-1,600 Kc/s and 88-108Mc/s. Both models, of which the only difference is found in the circuitry, are priced at £52 10s, plus £15 3s 2d tax.

• • •

26 January 1963

WIRELESS AND ELECTRICAL TRADER

• • •

Zenith Multi-band Portable

United Mercantile Co. Ltd., 13-14 Queen Street, London, W.1 (Grosvenor 4901).

The Royal 3000, multi-band a.m./f.m. transistor portable manufactured by the Zenith Radio Corporation of Chicago, is now available in Britain from United Mercantile. The Royal 3000 is the latest of the compact luxury portables in the Trans-Oceanic range, first introduced by Zenith more than 20 years ago.

Static-free f.m. coverage with "no-drift" tuning has been added to the long, medium and short wave bands, offering the listener a choice of radio stations across the world.

The six international short wave bands have band spread tuning on 2-4Mc/s, 4-9Mc/s, 31, 25, 19 and 16m.

Zenith Trans-Oceanic Royal 3000 a.m./f.m. portable radio receiver is powered by nine torch batteries. Transistors: 12, plus three germanium diodes and an a.f.c. diode. Speaker: 6in by 4in. Output: 500mW. There are 21 tuned circuits, 11 on f.m. and 10 on long, medium and short wavebands. A telescopic aerial is folded into the carrying handle and the radio can be used as an a.m./f.m. tuner when linked to the amplifier speaker system of hi-fi or stereo equipment. Other features include a time zone dial; world time map; log charts listing the world's major shortwave stations, together with their frequencies and hours of best reception; a dial light for night time tuning; and a calibrated scale for logging and relocating stations. Finished in satin chrome with a durable black covering the cabinet measures 12-1/2in by 5-3/8in by 10-1/4in high. Weight: 13-1/2lb, with batteries. Price £132 17s, plus £38 7s 3d tax.

• • •

PLAINTIFF'S LONDON DEPOSITION EXHIBIT
No. 62

ELECTRICAL AND RADIO TRADING,

May 7, 1960

• • •

Zenith AM/FM Transistor Portable

Circuit features in the Royal 2000 high-performance AM/FM transistor portable include AFC, a combined AM/FM IF strip, efficient AGC, and an RF stage optimised for both AM and FM. The set is made in the USA by Zenith and marketed in this country by United Mercantile Company.

Luxury Zenith Royal 2000 AM/FM transistor portable receiver. [Picture Omitted.]

Undistorted output of 1/2W is delivered through a 7 x 5in speaker. There are three built-in aerials—one for AM, two for FM—plus provision for connecting an external FM aerial. An impressive specification also lists vernier tuning, gram input tuner, output and earphone jack; there is tone control.

A claimed response of 30-10,000c/s is attainable on FM in the "flat" position. On AM, the response is reduced about an octave for better signal-to-noise ratio.

Receiver weighs 11-3/4lb with batteries which are eight 'D' cells for about 300 hours' use at normal volume. Chassis is mounted in an inverse position, attached to the top as well as the front of the cabinet. Trim cabinet is covered in black weather-resistant Permawear, accented by brushed aluminum and chrome-plated trim.

Retail price is £114 18s 3d inclusive and distribution through appointed dealers.

United Mercantile Co. Ltd., Park Lodge, Park Close, London SW1.

• • •

ELECTRICAL AND RADIO TRADING,

September 10, 1960

NEW PRODUCTS

• • •

Zenith Zenette Royal 100 transistor radio for M waves with plug-in transistors. [Picture omitted.]

Zenith Zenette Pocket Radio

Plug-in transistors are used in a camera-styled pocket radio—the Zenette Royal 100, extending the range of Zenith receivers from America. They are easily removed for checking and avoiding possible damage when tracing or soldering adjacent circuits.

Reception of M waves is on the firm's Wavemagnet antenna and tuning is by an air-dielectric condenser for accurate setting and stability. Push-pull Class B output of 180mW maximum is into a 2-3/4in Zenith Alnico 5 speaker claimed to give the finest tone quality from a set of its size.

Provision is also made for private listening.

Up to 100 hours' playing time is provided by three penlite batteries or 300 hours on mercury batteries. Battery compartment is leak resisting.

Case is of pebble grain finish in charcoal, British tan, green, yellow or white, and there is a pull-out stand at the back.

Price 26gns including £6 12s 7d PT.

At the same time the firm has reduced two prices: RYL250 is down from £32 to 26gns including £6 12s 7d PT; RYL275 from £37 10s 3d to 32gns, including £8 3s 2d PT.

United Mercantile Co. Ltd., Park Lodge, Park Close, London SW1.

• • •

ELECTRICAL AND RADIO TRADING,

October 22, 1960

NEW PRODUCTS

• • •

Particular colour versions of two Zenith AC/DC receivers shortly to be available. Left, the Executive beige and dark brown model F512L with gold colour grille. Right, the Zephyr charcoal F615C with ivory grille and Roman gold colour trim. [Picture omitted.]

Zenith AC/DC Table Receivers

Two more Zenith radio receivers will be ready for distribution towards the end of the month—the Executive and the Zephyr—both AC/DC table models.

The Executive, model F512, is in a modern style polystyrene cabinet, 10-1/2 x 6-5/8 x 3-1/4 in, with a distinctive circular-brushed perforated aluminum grille and metallised legs.

Model F512F is two-tone willow green with green grille; F512C, Cordovan brown and antique white with gold colour grille; F512L beige and dark brown with gold colour grille, and F512W, starch white and Cerulean blue with silver colour grille.

This is a four-valve set plus rectifier employing Zenith Royalty Crest valves. Built-in Wavemagnet antenna and circuit receives M waves, fully tuned, with a pre-set position for Light on L. Output is into a Zenith 4in speaker with an Alnico 5 magnet. Price 19gns, including £4 17s PT.

Features of the Zephyr, model F615, are the aerial, called a Zenith Filter-tenna, and the shape of the receiver.

The aerial is described as a ferrite plate loop encased in specially developed electrostatic shield helping to filter out annoying static caused by household appliances, fluorescent lights, motors and so on. It is said to improve signal-to-noise ratio.

Shape includes a sloping front panel behind which is fitted a 7 x 5in Zenith speaker with Alnico 5 magnet. Overall size of the polystyrene cabinet is 10-7/8 x 8-7/8 x about 6-1/2in and finishes available are: F615C, charcoal with ivory grille and Roman gold trim; F615B, cadet blue with blue mist grille and silver trim; F615L, fan with beige grille, Roman gold trim.

This receiver, for M waves only, has five valves plus a rectifier. First valve is a tuned RF stage. Output has bass boost.

Price is 24gns including £6 2s 6d PT.

United Mercantile Co. Ltd., Park Lodge, Park Close, London SW1.

ELECTRICAL AND RADIO TRADING,
November 19, 1960

NEW PRODUCTS

• • •

Shirt-Pocket Radio by Zenith

From America comes another all-transistor pocket radio receiver, the Royal 50, but so small that it is called a shirt-pocket radio.

It is said t[illegible]e smaller than a postcard and only 1-1/4 in. deep, yet it uses a Zenith Wavemagnet in-built aerial and an air-dielectric tuning condenser for station stability.

Royal 50 is claimed to play at normal volume for about 75 hours on two standard penlite batteries. With longer life mercury batteries it operates up to 180 hours.

The unbreakable case is available in white, black, charcoal grey and antique white, beige and antique white, or Chinese red and antique white. Price 19-1/2gns. including £4 19s. 6d. PT, but without the batteries.

Zenith shirt-pocket transisto radio available from stock [Picture omitted.]

United Mercantile Co. Ltd., Park Lodge, Park Close, London, SW1.

• • •

ELECTRICAL AND RADIO TRADING,
February 11, 1961

NEW PRODUCTS

• • •

Zenith Luxury Radiograms

High-quality stereo/mono radiograms are now included in the range of American Zenith instruments available in this country.

Craftsman-made cabinets in veneers and solid woods, precision engineering on the mechanical side, high quality components and advanced circuitry are all backed by a London Service Department headed by a Zenith-trained engineer.

The Liszt, stereo/mono AM/FM Zenith radiogram with a total of 40W push-pull output into four speakers and continuously variable reverberation control. [Picture omitted.]

The example here illustrated, the Liszt stereo/mono AM/FM model SFF2585H retailing at 531gns. including £135 8s. 9d. PT, has a continuously variable reverberation control.

Cabinet, in cherry veneers and solid wood with French provincial styling, measures 52in. long, 32in. high, and 18-3/8in. deep.

Built-in AM and a line cord FM aerial receive L, M and VHF/FM, the FM circuits being of the supersensitive type with automatic frequency control.

On the gramophone side a Cobra-Matic four-speed changer plays 14 seven-inch, 12 ten-inch, or 10 twelve-inch records, dealing with mixed 10 and 12in. of the same speed, on a turntable of the heavy-duty type with smooth and constant speed and automatic shut-off after the last record.

A lightweight Cobra tone arm, locking in position when not in use, carries a dual-needle barium titanate cartridge.

Push-pull dual-channel amplifier and pre-amplifier is specified as having a total maxinium 40W output with flat response from 20 to 20,000c/s.

Acoustic chambers, one at each end of the cabinet, each contain a 12in. speaker and a hi-fi horn type treble tweeter the pair covering 40 to 15,000c/s.

There are four tone controls: separate bass and treble and a presence control covering 4,000 to 8,000 cycles to bring a vocalist to the front and, in addition, the continuously variable reverberation control to add echo and concert chamber effects to the required degree.

Other models in this luxury range are also available.

United Mercantile Co. Ltd., 13-14 Queen Street, London W1.

• • •

ELECTRICAL AND RADIO TRADING,
April 29, 1961

• • •

Zenith 'Convertible' Transistor Radio

An auxiliary speaker cabinet is now available for the American Zenith Royal 50C pocket transistor radio. Plugging into the cabinet provides sufficient clarity and volume for room listening; the 5in. long radio with its own speaker is easily detached when necessary.

American Zenith transistor radio fitted into the auxiliary larger speaker cabinet for extra volume. [Picture omitted.]

Charcoal colour cabinet matches the grey and white pocket set. Price of the Convertible is 27gns. inclusive; the Royal 50C is obtainable separately at 19-1/2gns. inclusive.

The Zenith Radio Corporation, Sovereign House, Queen Street, London W1.

• • •

ELECTRICAL AND RADIO TRADING,
May 13, 1961

NEW PRODUCTS

• • •

Transistor Radio and Navigator

Zenith is now marketing a Navigator portable transistor set, designed for private pilots and yachtsmen, to cover the broadcasting band as well as weather stations and LF directional beacons.

Circuit embodies eight transistors; tuning is over 550 to 1,600k/cs and 150 to 400k/cs; output is about 500mW undistorted, operating from torch batteries providing about 300 hours working.

Zenith portable transistor set for broadcast, weather station and LF beacon reception. [Picture Omitted.]

The set is fitted with an accurate and easily read azimuth scale for taking cross-bearings and has precision vernier tuning on the main control.

There is also a NAV-NOR control which, in the normal position, NOR, brings in AVC for standard broadcast and weather stations, but cuts it out on the NAV position to provide a sharper null even on powerful broadcast stations, low frequency aviation stations, beacons and marine beacons, allowing also for build and fade orientation and cone identification.

Price, including PT, is £69 6s. 11d.

United Mercantile Co. Ltd., Sovereign House, Queen Street, Mayfair, London, W.1.

• • •

ELECTRICAL AND RADIO TRADING,
April 21, 1962

• • •

Three Zenith Releases Include Clock Radio

Zenith AM-FM mains powered clock radio with AFC, AGC, bass boost and 6 x 4in. speaker. Line cord doubles as aerial for FM. [Picture omitted.]

One of three American Zenith radio sets introduced by United Mercantile, sole United Kingdom distributor, is the J727, an AC-DC AM-FM clock model with AFC on FM.

Price of £46 17s. 7d. includes tax. Clock operates the radio as directed, and a buzzer alarm rings ten minutes after the set comes on.

Circuit refinements include AGC, bass boost, 6 x 4in. speaker, vernier tuning, built-in AM (MW) aerial, line cord FM aerial.

Other two receivers are six-transistor types, one, the Royal 125, a pocket model.

It tunes over MW, operates from two penlite cells.

Price £23 11s. inclusive.

Royal 650 at £25 2s. 7d. inclusive covers the M band and has a preset Light programme position on LW.

Power derives from four penlite cells in separate section of the chassis.

United Mercantile Co. Ltd., Sovereign House, 13-14 Queen Street, London W1. Grosvenor 4901 (Ref. 268).

• • •

PLAINTIFF'S LONDON DEPOSITION EXHIBIT
No. 63

ELECTRICAL AND RADIO TRADING,
September 23, 1961

ERT An Odhams Press Publication

• • •

BRITISH TV, RADIO SETS TOO CHEAP SAYS ZENITH MAN

Prices of British TV and radio sets are too low, thinks the director of the British distributor for Zenith, which markets a transistor radio for £179. Adam Ramsey, director of United Mercantile, said last week that the difficulties of the British TV and radio industry were mainly of its own making.

"Prices and profit margins are too low," he declared. "As a result, not enough money is available for research, design and new developments. This prevents firms from bringing out a sufficient flow of really new models to create increased consumption.

"Some British manufacturers have brought price levels down to such a degree that today it is almost a case of profitless selling."

• • •

PLAINTIFF'S LONDON DEPOSITION EXHIBIT
No. 64

WIRELESS AND ELECTRICAL TRADER
29 April 1961

• • •

The Zenith Radio Corporation have recently opened this new showroom at Sovereign House, Queen Street, Mayfair, W.1. The company is now marketing, in this country, a wide range of radios and stereophonic sound reproducers, from pocket-sized transistors costing under £20, to modern hi-fi stereo models at over £500. [Picture Omitted.]

Invoice

ZENITH SALES CORPORATION
International Division
6001 Dickens Avenue
Chicago 39, Ill. U.S.A.

Invoice No. X 7771A
Invoice Date 6/26/62

Marks:

SOLD TO United Mercantile Co., Ltd.

• • •

Quantity	Model	Description	Net Per Unit	Total
		• • •		
1	K2108L	Television		$ 109.43
1	K2717W	"		126.13
		17 tube set		
1	K2228R	Television		150.14
1	K3345W	"		192.41
1	K3385H	"		237.31
		17 tube & 6 transistor sets		
1	MK3388H	Television combo 34 tube & 6 transistor set		451.13

• • •

Invoice

ZENITH SALES CORPORATION
International Division
6001 Dickens Avenue
Chicago 39, Ill. U.S.A.

Invoice No. X 8165 A
Invoice Date 8/24/62

SOLD TO United Mercantile Co., Ltd.
13-14 Queen St., Mayfair
London W. 1, England

• • •

Our Order No.	Your Order No.	Date Shipped	Via	Terms:
E0-8600, 8780	Phone 7-26 235/62-233/62 9975	8/22/62	Inland Shipping Co., PPd.	L/C

Quantity	Model	Description	Net Per Unit	Total
		• • •		
1		Color TV Chassis "Fixture" (Repair Stand)		$ 25.00
1	K3385H	Television		243.76

• • •

Invoice
ZENITH SALES CORPORATION
International Division
6001 Dickens Avenue
Chicago 39, Ill. U.S.A.

Invoice No. X 8630
Invoice Date 10/17/62

SOLD TO United Mercantile Co., Ltd.
13-14 Queen St., Mayfair
London W. 1, England

* * *

Our Order No.	Your Order No.	Date Shipped	Via	Terms:
9291 E0 9358	10439 Phone 10-15	10/17/62	C.S. Greene Coll.,	SD 180 DAYS

uantity	Model	Description	Net Per Unit	Total
1	K3311W	Television (220V) 17 Tube set & 6 transistors	176.52	176.52
	SW39W	TV Base	7.95	7.95

* * *

Invoice
ZENITH SALES CORPORATION
International Division
6001 Dickens Avenue
Chicago 39, Ill. U.S.A.

Invoice No. X 9053
Invoice Date 12/3/62

SOLD TO United Mercantile Co., Ltd.
13-14 Queen St., Mayfair
London W. 1, England

* * *

Our Order No.	Your Order No.	Date Shipped	Via	Terms:
E0 9811	Dec.	11/29/62	Lifschultz Coll.	L/C

Quantity	Model	Description	Net Per Unit	Total
2	K3311R	Television (220V) 17 Tube & 6 Transistor sets	176.52	353.0

* * *

Invoice
ZENITH SALES CORPORATION
International Division
6001 Dickens Avenue NAtional 2-9000
Chicago 39, Ill. U.S.A.

Invoice No. X 8885
Invoice Date 11/14/62

SOLD TO United Mercantile Co., Ltd.
13-14 Queen St., Mayfair
London W. 1, England

• • •

Our Order No.	Your Order No.	Date Shipped	Via	Terms: Net Cash F.O.B. Factory Chicago
E0 9475	Nov.	11/14/62	ABC Collect	L/C

Quantity	Model	Description	Net Per Unit	Total
1	K2717W	Television (220V) 16 Tube Set		129.14

• • •

Invoice
ZENITH SALES CORPORATION
International Division
6001 Dickens Avenue
Chicago 39, Ill. U.S.A.

Invoice No. X 9863
Invoice Date 12/17/62

SOLD TO United Mercantile Co., Ltd.
13-14 Queen St., Mayfair
London W. 1, England

• • •

Our Order No.	Your Order No.	Date Shipped	Via	Terms:
EP-11959, 11754	Dec.	12/14/62	Lifschultz Collect	
E0-9863	Cable 11/17/62			L/C

Quantity	Model	Description	Net Per Unit	Total
1	K2228L	Television (220V) 17 Tube & 6 Transistor Set		150.14

• • • •

Invoice
ZENITH SALES CORPORATION
International Division
6001 Dickens Avenue
Chicago 39, Ill. U.S.A.

Invoice No. X 6857
Invoice Date 3/2/62

SOLD TO: United Mercantile Co., Ltd.
13-14 Queen St., Mayfair
London W. 1, England

• • •

Our Order No.	Your Order No.	Date Shipped	Via	Terms:
E0 7512	Cable 2-27	3/2/62	Inland PPD	CIA

Quantity	Model	Description		Net Per Unit	Total
1	J2214L	Television 22 Tube Set	J	142.80	142.80

• • •

Invoice
ZENITH SALES CORPORATION
International Division
6001 Dickens Avenue
Chicago 39, Ill. U.S.A.

Invoice No. X 6549
Invoice Date 1/30/62

SOLD TO United Mercantile Co., Ltd.
13-14 Queen St., Mayfair
London W. 1, England

• • •

Our Order No.	Your Order No.	Date Shipped	Via	Terms:
E0 7048	195/61 PX 8088	1/30/62	Inland Coll.,	L/C

Quantity	Model	Description	Net Per Unit	Total

• • •

Quantity	Model	Description	Net Per Unit	Total
1	J3368R	Television 16 Tube 8 Transistor Set	236.70	236.70

• • •

2

Invoice

ZENITH SALES CORPORATION

International Division

6001 Dickens Avenue

Chicago 39, Ill. U.S.A.

SOLD TO United Mercantile Co., Ltd.
13-14 Queen St., Mayfair
London W. 1, England

Invoice No. X 6097
Invoice Date 12/12/61

• • •

Our Order No.	Your Order No.	Date Shipped	Via	Terms: Net Cash F.O.B. Factory Chicago
E0 6544	Phone 11/24	12/12/61	Inland Coll.,	L/C

Quantity	Model	Description	Net Per Unit	Total
2	MH2787W	Television Combo 33 Tube Set	362.73	725.46
2	MH2786W	Television Combo 29 Tube Set	323.87	647.74
2	H3375H	Television	292.73	585.46
2	H3368M	"	261.00	522.00
2	H3353W	" 24 Tube Sets	218.16	436.32
4	MJ2789M	Television 33 Tube Set	388.64	1,554.56
				$4,471.54

• • •

Invoice

ZENITH SALES CORPORATION

International Division

6001 Dickens Avenue NAtional 2-9000

Chicago 39, Ill. U.S.A.

SOLD TO United Mercantile Co., Ltd.
13-14 Queen St., Mayfair
London W. 1, England

Invoice No. X 5873
Invoice Date 11/21/61

• • •

Our Order No.	Your Order No.	Date Shipped	Via	Terms: Net Cash F.O.B. Factory Chicago
E0 6060, 6287	186/61 174/61,	11/21/61	Lifschultz Coll.,	L/C

Quantity	Model	Description	Net Per Unit	Total
• • •				
1	H2231L	Television 27 Tube Set	154.82	154.82
1	95-1890	Transf.	10.27	10.27
1	95-1762	"		7.15
1	136-49	Slo Blow Fuse		.13

• • •

Invoice
ZENITH SALES CORPORATION
International Division
6001 Dickens Avenue
Chicago 39, Ill. U.S.A.

Invoice No. X 5365
Invoice Date 9/29/61

SOLD TO United Mercantile Co., Ltd.
13-14 Queen St., Mayfair
London W. 1, England

• • •

Our Order No.	Your Order No.	Date Shipped	Via	Terms: Net Cash F.O.B. Factory Chicago
E0 5877	944 (9/22)	9/29/61	ABC Coll.,	L/C

Quantity	Model	Description	Net Per Unit	Total
1	H2211C	Television	133.07	133.07
		20 Tube Set		
1	95-1761	PT Transf.	10.08	10.08
1	95-1762	Trans. (SP. Comm)	7.15	7.15
		Capitan De Fragato Contador		
		Manuel O. Vaccari		
		Packing Chge.	4.00	4.00
2	H2717R	Television	130.79	261.58
		22 Tube Set		
2	95-1890	PT Transf.	10.27	20.54
		Sr. Dino Masau (One set)		
		Sr. Juan B. Viganale (One set)		
		Packing Chge.	4.00	8.00
1	H2717W	Television	130.79	130.79
		22 Tube Set		
1	95-1890	PT Transf.	10.27	10.27
		Comodoro Wal er Leowel Cora		
		Jansen		
		Packing Chge.	4.00	4.00
1	H2717E	Television	134.11	134.11
		22 Tube Set		
1	95-1890	PT Transf.		10.27
		Subeficial Mayor Andres Ochat		
		Packing Chge.		4.00
				737.86

• • •

Invoice
ZENITH SALES CORPORATION
International Division
6001 Dickens Avenue
Chicago 39, Ill. U.S.A.

Invoice No. X 4467
Invoice Date 5/25/61

SOLD TO United Mercantile Co., Ltd.
13-14 Queen St., Mayfair
London W. 1, England

• • •

Our Order No.	Your Order No.	Date Shipped	Via	Terms: Net Cash F.O.B. Factory Chicago
HO 4864	5/18	5/25/61	Lifschultz Coll.,	CIA

Quantity	Model	Description	Net Per Unit	Total
1	G3341B	Television		202.97
1	95-1760	SD Transf.		10.27
		Packing Chge.		4.00
				217.24

• • •

Invoice

ZENITH SALES CORPORATION

International Division

6001 Dickens Avenue

Chicago 39, Ill. U.S.A.

SOLD TO United Mercantile Co., Ltd.
Park Lodge, Park Close
London S.W. 1, England

Invoice No. X 1673
Invoice Date 4/19/6

• • •

Our Order No.	Your Order No.	Date Shipped	Via	Terms: Net Cash F.O.B. Factory Chicago
1294 E0 1297, 27180	• • •	4/19/60 3/3/60	Lifschultz Collect	L/C CDC #110

Quantity	Model	Description	Net Per Unit	Total
90	R500YE	Radios	30.62	2,755.80
30	R500WE	"	30.62	918.60
30	R500RE	"	30.62	918.60
		8 Transistor Sets		
42	R1000D	Portable Radios (9 Transistor) Sets	113.81	4,780.02
		• • •		
4	DR105H	Radial Spkrs.	25.99	103.96
2	DR105L	"	25.99	51.98
6	DR102L	"	15.58	93.48
[illegible]	SFD2505RT	Stereo	142.91	285.82
2	SFD2505ET	Stereo	145.12	290.24
2	SFD2505YT	"	149.59	299.18
		4 Tube Sets		
6	ET10	Tuners (Six Tube Unit)	36.41	218.46
6	4F143	150 Watt Step Down Transf.	7.43	44.58
	SFD2501H	Stereo	119.70	119.70
	SFD2501E	"	119.70	239.40
		3 Tube Sets		
3	4F143	150 Watt Step Down Transf.	7.43	22.29
1	SFD2560E	Stereo		228.69
2	SFD2565R	"	238.46	476.92
2	SFD2565M	"	238.46	476.92
3	SFD2575L	"	285.61	856.83
2	SFD2580R	"	306.20	612.40
		15 Tube Sets		
2	SFD2515RT	Stereo	164.01	328.02
		8 Tube Set		
12	4F144	(SD250) Transf.	7.88	94.56
21	VM9327	Idler Wheels	.50	10.50

Invoice
ZENITH SALES CORPORATION
International Division
6001 Dickens Avenue
Chicago 39, Ill. U.S.A.

Invoice No. X 1673
Invoice Date 4/19/60

SOLD TO United Mercantile Co., Ltd.

Our Order No.	Your Order No.	Date Shipped	Via	Terms: Net Cash F.O.B. Factory Chicago
			SS. Queen Elizabeth	

Page #2

Quantity	Model	Description	Net Per Unit	Total
1	E2015L	Television	145.27	145.27
1	95-1761	Power Transf.	10.08	10.08
1	95-1762	"		7.15

Invoice
ZENITH RADIO CORPORATION
International Division
6001 Dickens Avenue
Chicago 39, Ill. U.S.A.

SOLD TO United Mercantile Co., Ltd.
Park Lodge, Park Close
London S.W. 1, England

Invoice No. X 30773A
Invoice Date 11/12/59

• • •

Our Order No.	Your Order No.	Date Shipped	Via	Terms: Net Cash F.O.B. Factory Chicago
27374, 27182, 27372, 27373	see below	11/12/59	Lifschultz Collect	L/C

Quantity	Model	Description	Net Per Unit	Total
20	R780Y	Radios	48.50	970.00
		[Hand written note:] Radio &-Accessories & 8 Transistors Set		
15	B600	Radios	65.09	976.35
		6 Tubes Sets		
18	S15715	Ballast Adaptors	1.50	27.00
8	B600L	Radios	74.36	223.08
		6 Tube Sets		
18	Z985X	Batteries	4.34	78.12
50	R675L	Radios	26.24	1,312.00
		6 Transistors Sets		
8	C519C	Radios	20.69	165.52
		Packing Chge.	.30	2.40
3	C519L	"	20.69	62.07
		" "	.30	.90
8	C519W	"	20.69	165.52
		" "	.30	2.40
		4 Tubes Sets		
13	44 x 2	50 Cycle Clock Rotors	.65	9.75
19	95-1317	Step Down Transformers	2.00	38.00
20	R710L	Radios	30.49	609.80
		7 Transistors Sets		
20	R755L	Radios	39.93	798.60
		8 Transistors Sets		
20	R1000D	Radios	113.81	2,276.20
		9 Transistors Sets		
4	C724L	AM/FM Radio	35.97	143.88
		Packing Chge.	.25	1.00
4	C724G	"	35.97	143.88
		" "	.25	1.00
4	C725L	"	41.97	167.88
		" "	.25	1.00

• • •

Invoice

ZENITH RADIO CORPORATION
6001 Dickens Avenue BErkshire 7-7500
Chicago 39, Illinois

R 29944A

SOLD TO United Mercantile Co., Ltd.
Park Lodge, Park Close
London S.W. 1, England

SHIPPED TO
Same

Shipped Via	Date Shipped	Your Order No.	Our Order No.	Invoice Date
Insured Parcel Post	7/31/59	Ltr 7-3 #3051	E0 26339	7/31/59

Quantity	Part No. or Model	Description	Price	Amount
		8 Transistor Sets		
2	R750L	Radios Ser. 721728, 710707	$45.57	$ 91.14
2	R760L	" 6858716, 6858645	55.97	111.94
		7 Transistor Sets		
1	R950	Radio Ser. 683596		75.00

• • •

Invoice
ZENITH RADIO CORPORATION
International Division
6001 Dickens Avenue
Chicago 39, Ill. U.S.A.

Invoice No. X 30054
Invoice Date 8/18/59

SOLD TO United Mercantile Co., Ltd.
Park Lodge, Pk, Close
London S.W. 1, England

• • •

Our Order No.	Your Order No.	Date Shipped	Via	Terms: Net Cash F.O.B. Factory Chicago
E0 26441	Cable 8-1	8/18/59	Lifschultz Collect	L/C

Quantity	Model	Description	Net Per Unit	Total
50	R250L	Radio		
		6 Transistor Sets	23.20	1,160.00
40	R850C	Radio		
		7 Transistor Sets	35.55	1,422.00
30	R850L	7 Transistor Sets	35.55	1,066.50
		Packing Chge.	.45	31.50
30	R850W	Radio		
		7 Transistor Sets	35.55	1,066.50
		Packing Chge.	.45	13.50
30	R275B	Radio		
		7 Transistor Sets	[illegible]5.97	779.10
30	R275J	Radio		
		7 Transistor Sets	25.97	779.10
30	R275Y	Radio		
		7 Transistor Sets	25.97	779.10
20	R760L	Radio		
		8 Transistor Sets	48.50	970.00
4	R950	Radio		
		7 Transistor Sets	75.00	300.00
		Packing Chge.	.50	2.00
				$8,369.30

• • •

Invoice

ZENITH RADIO CORPORATION
6001 Dickens Avenue BErkshire 7-7500
Chicago 39, Illinois

R 30166A

SOLD TO United Mercantile Co., Ltd.
Park Lodge, Park Close
London SW. 1, England

• • •

Shipped Via	Date Shipped	Your Order No.	Our Order No.	Invoice Date
PP. Ins #5659276	9/2/59	Ltr 7/3 #3051	E0 26463	9/3/59

Quantity	Part No. or Model	Description	Price	Amount
2	R710L	Radios (Ser. #775682-751728) 7 Transistor Sets	34.47	68.94
		Postage & Insurance		3.48
				$ 72.42

• • •

2083

In the United States District Court,
For the Northern District of Illinois,
Eastern Division.

Hazeltine Research, Inc.,
Plaintiff,
vs.
Zenith Radio Corporation,
Defendant,
and
Zenith Radio Corporation,
Counterclaimant,
vs.
Hazeltine Research, Inc., and
Hazeltine Corporation,
Counterdefendants.

Filed May 13, 1965
A........ o'clock ....
Elbert A. Wagner,
Jr. Clerk.
No. 59 C 1847.

STATEMENT REQUIRED BY RULE 12(d) OF THE RULES OF THE UNITED STATES COURT OF APPEALS, FOR THE SEVENTH CIRCUIT.

The name of the appellee is: Zenith Radio Corporation.

The names and addresses of counsel for the appellee:

Thomas C. McConnell;
Philip J. Curtis, 134 S. LaSalle Street, Chicago, Illinois;
Francis W. Crotty, 1900 N. Austin Avenue, Chicago, Illinois;
Dugald S. McDougald, 135 S. LaSalle Street, Chicago, Illinois.

/s/ Thomas C. McConnell,
Attorney for Appellee.

INDEX.

Motion Under Rule 15(f) to Vacate Judgment on Jurisdictional Grounds 4131
Affidavit of Bertrand J. Tiffany 4135
Hazeltine Corporation's Brief in Support of Rule 15(f) Motion 4138
Zenith's Answer 4164
Affidavit of Thomas C. McConnell 4168
Zenith's Brief in Opposition to Hazeltine's Rule 15(f) Motion 4174
Hazeltine's Reply Brief 4194
Argument on Motion Before District Court 4211
Order of District Court Taking Rule 15(f) Motion With the Case 4225
Court of Appeals Consolidation Order of March 1, 1966 4226
Court of Appeals Order Correcting Record on Appeal.4228
Motion of Hazeltine Corporation to Vacate Judgment of December 13, 1965 4229
Order of December 13, 1966 re Motion to Vacate 4232
Court of Appeals Order of December 20, 1966 4233
Stipulation of December 9, 1966 Correcting the Record.4234
Order of February 27, 1967 re Oral Argument 4235
Court of Appeals Order of December 13, 1967 4236
Court of Appeals Opinion Dated December 19, 1967...4238
Zenith's Motion for Extension of Time to File Petition for Rehearing 4264

Order of December 27, 1967 Granting Extension 4265

Petition for Rehearing 4265

Order of Court of Appeals Denying Petition for Rehearing 4279

Stipulation Dated March 6, 1965 re Record on Petition for Certiorari 4279

Additional District Court Docket Entries Deemed Relevant by Respondents 4284

In the United States Court of Appeals,

For The Seventh Circuit.

Hazeltine Corporation, *Appellant,* *vs.* Zenith Radio Corporation, *Appellee.*	No. 15247.

MOTION UNDER RULE 15(f) TO VACATE JUDGMENT ON JURISDICTIONAL GROUNDS.

Hazeltine Corporation, by its attorneys, moves this Court for an order, pursuant to this Court's Rule 15(f), vacating the judgment entered against it by the Honorable Richard B. Austin, in an action entitled *Hazeltine Research Inc.* v. *Zenith Radio Corporation,* Civ. No. 59 C 1847. Said judgment was entered without jurisdiction over Hazeltine Corporation in violation of its rights under the Due Process clause of the Fifth Amendment to the Constitution of the United States. As grounds for its motion, movant states:

1. Hazeltine Corporation is a Delaware corporation, incorporated in 1924, with executive offices in Little Neck, Long Island, New York, and manufacturing facilities in New York and Massachusetts. It has no offices, plants, or other facilities in the Northern District of Illinois, and is not amenable to suit in said district under the antitrust laws of the United States.

2. Hazeltine Research, Inc., the plaintiff and counter-defendant in the above mentioned case, is a wholly-owned subsidiary of Hazeltine Corporation. It was organized under the laws of Illinois and capitalized by Hazeltine Corporation on March 28, 1946, and since that time has operated as an autonomous corporation with a business wholly

separate and apart from that of Hazeltine Corporation. Its principal offices are in Chicago and it is engaged in the business of research, development, ownership and licensing under United States patents, principally in the fields of radio and television.

3. The action in which judgment was entered against Hazeltine Corporation was an action for patent infringement brought by Hazeltine Research, Inc., against Zenith Radio Corporation, in which Zenith, over three years after the date of the complaint, counterclaimed against the plaintiff, Hazeltine Research, Inc., alleging misuse of patents and violations of the antitrust laws. Hazeltine Corporation was not a party to that action, did not make a general appearance, did not receive service of process, and did not participate in the trial, although some of its officers were called as witnesses. In fact, it did not participate in any way in that proceeding except to file a special appearance opposing entry of judgment against it when, long after the trial had concluded and after Zenith's findings of fact and conclusions of law were adopted by the Court, it learned for the first time that Zenith contended that the judgment should be entered against it as well as against Hazeltine Research, Inc.

4. As shown in the brief accompanying this motion, there is no basis in law or fact for the entry of any judgment assessing liability against Hazeltine Corporation in a proceeding in which it was not a party, did not participate and was not represented; and the entry of such a judgment violates fundamental legal principles and deprives Hazeltine Corporation of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

5. Hazeltine Corporation has elected to raise this substantial jurisdictional question by motion so that it can be disposed of prior to briefing, argument, and consideration

of the merits of the decision below which will necessarily involve a great number of complex factual and legal issues. The record below consists of 37 volumes of transcript numbering over 3500 pages, over 280 exhibits, and over 2,000 pages of pleadings alone. It is respectfully suggested that it would materially advance the convenience of both the Court and the parties to have this fundamental jurisdictional question resolved prior to the briefing, argument and consideration of the merits of the decision below.

6. In addition, the existence of the judgment below against Hazeltine Corporation has caused, and can be expected to continue to cause, irreparable injury to Hazeltine Corporation and its many public shareholders. The price of the common stock of the corporation traded on the New York Stock Exchange has fallen from $14⅞ on January 26, 1965, the date of the publication of Zenith's contention that Hazeltine Corporation would be subject to the judgment, to $7 on July 15, 1965. The supersedeas bond agreement entered into in connection with this appeal, has not only tied up a substantial part of the corporation's liquid assets, but prohibits Hazeltine Corporation from paying dividends to its shareholders. The existence of a judgment in an amount exceeding $19,000,000 against a corporation whose consolidated book net worth is only about $21,000,000, obviously has serious adverse effects on that corporation's business and financial relationships. For example, since entry of the judgment below the Chase Manhattan Bank of New York City has withdrawn its open line of credit to Hazeltine Corporation and the corporation's Dun & Bradstreet rating has been withdrawn.

7. If, as we earnestly believe, the judgment below against Hazeltine Corporation was entered without jurisdiction over that corporation, it is respectfully submitted that the injustice done and the resulting injury should be corrected as soon as possible, and the interests of justice

would be best served by not delaying consideration of this jurisdictional issue for the time it will necessarily take to print the record and to prepare the briefs on the merits of the many complex issues involved in the decision below. It is, therefore, respectfully requested that the Court give preliminary and separate consideration to the substantial jurisdictional question raised herein.

For the reasons set forth herein, in the accompanying affidavit of Bertrand J. Tiffany, and in the supporting brief, Hazeltine Corporation respectfully requests that this Court vacate the judgment entered against it for lack of jurisdiction over Hazeltine Corporation by the trial court.

Respectfully submitted,

John T. Chadwell
Victor P. Kayser
135 South La Salle Street
Chicago, Illinois 60603
Attorneys for Hazeltine Corporation

Of Counsel:
Chadwell, Keck, Kayser, Ruggles & McLaren
135 South La Salle Street
Chicago, Illinois 60603
Telephone: RAndolph 6-2545

In the United States Court of Appeals.

* * (Caption—15247) * *

AFFIDAVIT OF BERTRAND J. TIFFANY.

State of New York, }
County of Queens., } ss:

Bertrand J. Tiffany, being duly sworn, deposes and says that:

(1) He is a Vice President and the Treasurer of Hazeltine Corporation, and is licensed as a Certified Public Accountant by the State of New York.

(2) Hazeltine Corporation was incorporated in the State of Delaware in 1924. Executive offices of the corporation are maintained at Little Neck, Iong Island, New York, and manufacturing facilities are located in New York and Massachusetts. It does not do business in the State of Illinois and has no office, plant or other facility in Illinois. Hazeltine Corporation has approximately 7,000 shareholders and 2,000 employees. Its consolidated book net worth, including subsidiaries, was $21,068,763 at December 31, 1964.

(3) Hazeltine Corporation is engaged almost exclusively in the development, manufacture and sale of advanced electronic systems and equipment for military and related purposes of the United States Government, and to some extent in support of defense programs of military agencies of Allied governments. The military equipment which it develops and manufactures for the United States and its Allies is highly sophisticated equipment designed to fulfill extremely critical defense needs and must meet the most

exacting requirements. Hazeltine Corporation does not manufacture radio or television sets or any consumer products.

(4) Hazeltine Research, Inc. was organized on March 28, 1946 as an Illinois corporation. It is a wholly-owned subsidiary of Hazeltine Corporation. Some research for Hazeltine Research, Inc. is performed by Hazeltine Corporation on a contract basis, under which Hazeltine Research, Inc. compensates Hazeltine Corporation. Hazeltine Research, Inc. does not manufacture radio or television sets or any product for consumer use.

(5) On Tuesday, January 26, 1965, before the Dow Jones so-called broad tape publication of the news of the District Court's findings in Hazeltine Research, Inc. v. Zenith Radio Corporation, Civil Action No. 59-C-1847, the common stock of Hazeltine Corporation traded on the New York Stock Exchange at a high price of $14⅞, and at the close of trading on June 15, 1965 the stock traded at $7 per share.

(6) On May 3, 1965, Hazeltine Corporation learned in discussion with the Chase Manhattan Bank of New York City, with which it has regularly maintained financial relations, that by reason of said District Court findings, that Bank could no longer offer to make Hazeltine Corporation unsecured loans at the prime rate, which it had for a number of years theretofore stood ready to do in amounts of at least several million dollars. On January 28, 1965, Hazeltine Corporation was advised by Dun & Bradstreet that its AAA rating was withdrawn as of that date, and thereafter it has been designated "Investigating" or unrated by that recognized national credit rating service.

(7) This affidavit is given in support of the motion of Hazeltine Corporation under Rule 15(f) of this Court; and

to the best of affiant's knowledge, information and belief, the facts set forth in the numbered paragraphs of said motion are true and correct.

/s/ Bertrand J. Tiffany
Bertrand J. Tiffany

Subscribed and sworn to before me this 20th day of July, 1965.

/s/ Olga J. Stuart
Notary Public

Notary Public, State of New York
No. 30-3884130
Qualified in Nassau County
Certificate filed in New York County
Commission expires March 30, 1967.

IN THE UNITED STATES COURT OF APPEALS.

* * (Caption—15247) * *

BRIEF IN SUPPORT OF RULE 15(f) MOTION TO VACATE JUDGMENT ON JURISDICTIONAL GROUNDS.

STATEMENT OF FACTS.

On April 5, 1965, the court below entered a judgment awarding more than $19,000,000, one of the largest antitrust awards in history, against Hazeltine Corporation in an action to which Hazeltine Corporation *was not a party.* Hazeltine Corporation, a Delaware corporation with executive offices in Little Neck, Long Island, New York, has no offices, plants or other facilities in the Northern District of Illinois, and under the venue provisions of Section 22 of Title 15 of the United States Code, is not subject to suit in the Northern District of Illinois under the antitrust laws of the United States (Tiffany Aff. ¶ 2).[1] It is engaged primarily in the business of research, development and manufacture of advanced electronic equipment for military, air traffic control and navigation, and related purposes for the United States and allied governments. It does not manufacture any consumer products (Tiffany Aff. ¶ 3).

Hazeltine Corporation's wholly-owned subsidiary, Hazeltine Research, Inc.,[2] the plaintiff and counter-defendant in the action in which the judgment here appealed was entered, is, on the other hand, an Illinois corporation with its principal offices in Chicago (App. 36). Organized and capitalized by Hazeltine Corporation on March 28, 1946, HRI has since that time operated as an autonomous corporation with a business wholly separate and apart from Hazeltine Corporation (Tiffany Aff. ¶ 4). HRI is engaged in the business of research, development, ownership, and licensing of United States patents, principally in the fields of radio and television. It does not manufacture any equipment of any kind for consumer use, but does render technical assistance and services to its radio and television licensees (Tiffany Aff. ¶ 4).

---

[1] References to "Tiffany Aff. ¶ . . ." are to particular paragraphs in the affidavit of Bertrand J. Tiffany filed with this motion. References to "App. . ." are to pages in the attached appendix in which we have collected for convenient reference the parts of the record below which are referred to in this brief.

[2] For convenience Hazeltine Research, Inc., will be referred to as HRI.

Hazeltine Corporation performs some research for HRI, for which it is reimbursed under contract (Tiffany Aff.¶ 4). Hazeltine Corporation also owns, sells and licenses foreign patents for radio and television (App. 36-37), but it does not manufacture any radio or television equipment for domestic or foreign sale.

One might assume from the names that HRI is merely the research wing of Hazeltine Corporation. However, as the facts detailed above indicate, that is not the case. The research in the product areas within the scope of Hazeltine Corporation's manufacturing activities is conducted by Hazeltine Corporation at its own laboratories in New York and Massachusetts and not by HRI. Each corporation is a separate entity with a separate business.

A. The Action in Which the Judgment Was Entered and the Parties to It.

The court below entered the judgment appealed from on a counterclaim filed in *Hazeltine Research, Inc.* v. *Zenith Radio Corporation,* Civil Action No. 59 C 1847. The action was originally brought on November 19, 1959, by HRI for infringement of one of its United States television patents. The Sherman Act counterclaim (App. 11-16) was filed with leave of court on May 22, 1963, more than three years after the suit was filed. The counterclaim charged HRI with conspiring with Hazeltine Corporation and other persons relative to foreign patents owned by Hazeltine Corporation and by others. Neither before nor after the filing of the counterclaim did Hazeltine Corporation participate in this litigation in any way. HRI and Zenith were the only parties for whom appearances were entered. There was never any attempt to serve Hazeltine Corporation with process, nor any motion to make it a party.

Although the counterclaim alleged that Hazeltine Corporation was the owner of foreign patents involved in the foreign conspiracy there alleged, Hazeltine Corporation's separate identity, apart and distinct from HRI, is recognized throughout the counterclaim; indeed, Hazeltine Corporation is specifically alleged to be a co-conspirator (Counterclaim, ¶¶ 3-5; see App. 12-13). The counterclaim names HRI as the sole counter-defendant and the prayer for relief asks specifically for a "judgment against counter-defendant". Elsewhere in the counterclaim where Zenith meant to describe acts of Hazeltine Corporation, Hazeltine Corporation is specifically named. The phrase, "counter-defendant and its parent, Hazeltine Corporation," frequently appears. As the counterclaim was not and could not have been directed against Hazeltine Corporation, Hazeltine Corporation did not answer it or in any way defend against it.

B. The Stipulation Upon Which the Trial Court Entered Judgment Against Hazeltine Corporation.

The trial court's decision to render judgment against Hazeltine Corporation is based on a stipulation entered into between Zenith and HRI on May 15, 1963, during the pretrial discovery phase of the litigation, "in order", as its preamble recites, "to simplify and expedite trial" and "for purposes of this action only" (App. 6-9). The several paragraphs of the stipulation all relate to procedural matters. The pertinent paragraph, together with the preamble setting forth the stipulation's purpose, is as follows (emphasis added):

> "*The parties to this Action, by their attorneys,* in fulfillment of certain understandings reached orally in the course of the pre-trial conference held herein on April 3, 1963, *in order to simplify and expedite trial* hereby stipulate and agree, *for purposes of this Action only,* as follows:
>
> * * *
>
> * * * * *
>
> "4. *Plaintiff agrees* that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company" (App. 6-7).

The remaining paragraphs of the stipulation may be summarized as follows:

Paragraphs 1 through 3: These three paragraphs constitute an agreement that neither party to the stipulation would bring any action to determine the validity of any of plaintiff's patents, other than the patent involved in this suit, until after final disposition of this action, and that the defendant would treat the statute of limitations as having been tolled in any patent infringement suit later brought.

Paragraph 5: The authenticity of specified documentary evidence was agreed to for purposes of admissibility in evidence at the trial.

Paragraphs 6 and 7: The parties agreed that copies of documentary exhibits and uncertified copies of patents and printed publications could be received in evidence at the trial.

Paragraph 8: "Plaintiff is and has been since its date of issue the owner of Letters Patent No. 2,547,648, granted to A. V. Loughren on April 3, 1951, involved in this Action."

Paragraph 9: "Solely for the purposes of establishing venue in this Action," Zenith admitted certain facts establishing venue in the Northern District of Illinois.

Paragraph 10: Agreement as to taxing cost of transcript.

Paragraph 11: It was provided that the stipulation could be offered in evidence "by either party" (App. 8-9).

The stipulation was signed by counsel for Zenith and by "L. B. Dodds, Counsel for Plaintiff", *i.e.,* HRI. The stipulation shows on its face these facts: (1) Hazeltine Corporation was not a party to the stipulation, (2) the stipulation did not purport to bind Hazeltine Corporation, and (3) that the stipulation's purposes were purely procedural and limited to issues in a case in which Hazeltine Corporation was not a party. Although Mr. Dodds, who was plaintiff's trial counsel, was also a vice president of Hazeltine Corporation, he did not purport to execute the stipulation on behalf of Hazeltine Corporation and the record shows that he had relinquished all administrative responsiiblities in Hazeltine Corporation's organization in 1960, several years before the stipulation was signed (App. 35-36, 38-39).

C. Circumstances Surrounding the Execution of the Stipulation Between HRI and Zenith.

The intent of counsel for both HRI and Zenith with respect to this paragraph of the stipulation is also clear from the circumstances surrounding the entry of the stipulation.

The answer to the original complaint raised (in its paragraph 13; App. 4-5(a misuse defense allegedly based on an antitrust violation involving foreign patents. The trial judge upheld a subpoena served upon HRI which sought certain documents relating to Hazeltine Corporation's foreign patents. No immediate attempt was made to enforce this subpoena.

A pretrial conference was held on April 3, 1963, at which, among other things, the matter of compliance with the subpoena was raised. At that time, counsel for HRI, endeavoring to cooperate to facilitate pretrial discovery, indicated to the court that in order to simplify and expedite the trial *plaintiff* (HRI) would not rely on the fact that it is a corporate entity separate and distinct from Hazeltine Corporation (App. 27-28).

The disputed paragraph of the stipulation was in fact *drafted by counsel for Zenith,* and sent to counsel for HRI by letter of April 26, 1963, as a part of a longer suggested form of stipulation. Counsel for HRI made certain changes and additions to the stipulation, but did not change the paragraph in issue (App. 28, 31-33).

On March 26, 1963, Zenith had served but did not file with the court or clerk a motion for leave to file its antitrust counterclaim against HRI which alleged a conspiracy between HRI and other parties including Hazeltine Corporation relating to foreign patents (App. 23-24). This counterclaim did not name Hazeltine Corporation as a party and did not ask for relief against it. Since the stipulation did not exist on March 26th, it is clear that in the drafting and serving of the proposed counterclaim Zenith did not intend to make Hazeltine Corporation a party or to seek recovery from it.

The stipulation was executed by counsel for HRI on May 7, 1963. Counsel for Zenith executed the stipulation on May 15, 1963. Thereafter, on May 22, 1963, Zenith filed its antitrust counterclaim against HRI, not Hazeltine Corporation (App. 10, 28-29). Indeed, as pointed out above, the counterclaim not only failed to name Hazeltine Corporation as a party but treated it throughout as a non-party.

At no time in the pretrial proceedings that followed the filing of the counterclaim, in the trial itself, or in the post-trial papers submitted before the proposed judgment, did counsel for Zenith indicate any intention to construe this stipulation as making Hazeltine Corporation a party. Nor did counsel for HRI do or say anything that would indicate an understanding or intention that the stipulation made Hazeltine Corporation a party. And, as has already been pointed out, no attempt was ever made to name Hazeltine Corporation as a party to the action.

D. The Judgment.

On January 25, 1965, the trial judge adopted *verbatim and without opinion* the findings of fact and conclusions of law that had been proposed to him by Zenith on all issues including the issues of antitrust law violations and damages (App. 21). The findings also indicated the amount of the damage award that would be part of the judgment he proposed to enter—$16,238,872, trebled (Finding 36; App. 19-20). The findings did not, however, suggest that the judgment would run against Hazeltine Corporation, although reference was made to the stipulation.[3]

Responsible officials of Hazeltine Corporation first learned that the judgment to be entered might run against Hazeltine Corporation as well as its subsidiary when on the day following the entry of the findings they were informed that Zenith's counsel had told Dow Jones & Company, Inc., that the judgment was expected to bind Hazeltine Corporation (App. 29-30).

Zenith's proposed form of judgment filed March 19, 1965, was the first paper filed in the District Court suggesting that the judgment should run against Hazeltine Corporation as well as HRI (App. 22). Thereafter the date for entering the judgment was postponed and pursuant to motions filed by HRI some of the damage findings were withdrawn and a further hearing was ordered on certain issues (App. 25). These issues are still pending in the district court. At the trial judge's request on April 1, 1965, Zenith served a new form of proposed final judgment, changed in respect to the amount of damages, but still drafted as running against Hazeltine Corporation. Following oral argument on the form of the judgment, on April 5, 1965, when counsel appeared specially on behalf of Hazeltine Corporation to protest the entry of judgment against it, the trial judge entered the judgment just as it was proposed by Zenith (App. 1-3).

---

[3] The finding distorts the actual terms of the stipulation, saying:

> "The parties stipulated that for the purposes of this litigation Hazeltine Research, Inc. and its parent, Hazeltine Corporation, would be considered as one entity operating as a patent holding and licensing company, engaged in the exploitation of patent rights in the electronics industry in the United States and in foreign countries" (App. 19).

E. The Petitions for Mandamus and Supersedeas Bond.

On the day the judgment was entered, Hazeltine Corporation filed a petition for mandamus asking this Court to issue a writ of mandamus or prohibition on the basis that the district court was without power to enter judgment against Hazeltine Corporation. The petition was denied on April 7, 1965.

Thereafter Hazeltine Corporation sought a stay of the judgment pending appeal, again by special appearance below. The trust agreement approved by the trial court provides that Hazeltine Corporation will not be held on the supersedeas bond if the judgment as to it is reversed, vacated or otherwise nullified.

SUMMARY OF ARGUMENT.

I. The trial court had no jurisdiction to enter judgment against Hazeltine Corporation, which was not a party to the case, and could not have been sued in the Northern District of Illinois. The entry of judgment against one who is not a party to a suit is a violation of fundamental legal principles and deprives Hazeltine Corporation of its property without due process of law. Moreover, it is well settled that even if Hazeltine Corporation had conducted, controlled, and directed the defense of the case to such an extent that the judgment would be *res judicata* against Hazeltine Corporation *as to the issues involved*—which it did not—the District Court had no power to enter *judgment* against it in this case.

II. There is nothing in the pre-trial procedural stipulation entered into by HRI and Zenith which makes Hazeltine Corporation a party to this suit or subject to the jurisdiction of the trial court. Hazeltine Corporation was not a ~~party to~~ the stipulation, and the clear and explicit language of the stipulation refutes any contention that the stipulation was intended to make Hazeltine Corporation a party to the suit. Nothing that the parties did at the time of the execution of the stipulation or later would support a contention that the stipulation was intended either to bind Hazeltine Corporation or to make it a party to the suit. The counterclaim which was filed after the stipulation, and the briefs, arguments, and conduct of trial, all are consistent only with the fact that Hazeltine Corporation was not a party. Under such circumstances, the court lacked jurisdiction to enter a judgment against Hazeltine Corporation.

CONTESTED ISSUES.

The contested issues in connection with this motion are:

(1) Can a trial court enter judgment against a corporation which is not named as a party, has never been served with process, did not enter a general appearance, and is not amenable to suit in its district, simply because that corporation's subsidiary is a party to the suit?

(2) Can a stipulation, which was procedural in nature, entered into by the parties to the suit, be the basis for entering a judgment *in personam* against Hazeltine Corporation, which was not a party either to the suit or the stipulation?

PROPOSITIONS OF LAW RELIED UPON.

I. The Trial Court Had No Power to Enter the Judgment Against Hazeltine Corporation, a Non-Party.

1. An exercise of jurisdiction over a person not before the court is a nullity.

Hanson v. *Denckla,* 357 U. S. 235, 249-50 (1958).
Estin v. *Estin,* 334 U. S. 541, 548-49 (1948).
D'Arcy v. *Ketchum,* 52 U. S. (11 How.) 165, 174 (1850).
Hollingsworth v. *Barbour,* 29 U. S. (4 Peters) 466 (1830).

2. Such an exercise of jurisdiction resulting in a judgment in personam over a person who has not been made a party by service of process is not that due process of law required by the Fifth Amendment.

Hansberry v. *Lee,* 311 U. S. 32, 40-41 (1940).
Pennoyer v. *Neff,* 95 U. S. 714 (1878).
Vanderbilt v. *Vanderbilt,* 354 U. S. 416, 418-19 (1957).
Riley v. *New York Trust Co.,* 315 U. S. 343, 353-54 (1942).

3. A judgment is not authorized even against one who conducts, controls and directs the defense to such an extent that a judgment would be res judicata against him.

> *Schnell* v. *Peter Eckrich & Sons, Inc.* 365 U. S. 260 (1961).
>
> *Merriam Co.* v. *Saalfield,* 241 U. S. 22 (1916).
>
> *Schnell* v. *Peter Eckrich & Sons, Inc.,* 279 F. 2d 594 (7th Cir. 1960), aff'd, 365 U. S. 260 (1961).
>
> *Freeman-Sweet Co.* v. *Luminous Unit Co.,* 264 Fed. 107 (7th Cir. 1919).

II. The Stipulation Between Zenith and HRI did not make Hazeltine Corporation a Party to this Action or give the Trial Court Jurisdiction to enter Judgment Against Hazeltine Corporation.

1. Persons not parties to a stipulation are not bound by the stipulation.

> *Kneeland* v. *Luce,* 141 U. S. 437, 440-41 (1891).
>
> *Thibodo* v. *United States,* 134 F. Supp. 88, 98 (S. D. Cal. 1955).
>
> *Strand* v. *Garden Valley Tel. Co.,* 51 F. Supp. 898, 905 (D. Minn. 1943).
>
> 83 C. J. S. Stipulations § 14.
>
> 50 Am. Jur. Stipulations § 10.

2. Any doubts or ambiguities in a written document are resolved against the drafting party.

> *Alcoa S. S. Co.* v. *United States,* 338 U. S. 421, 424-25 (1949).
>
> *Caterpillar Tractor Co.* v. *Collins Mach. Co.,* 286 F. 2d 446, 450 (9th Cir. 1960).

3. A subsidiary is not the agent of its parent merely by virtue of being a wholly-owned subsidiary.

> *Press Co.* v. *NLRB,* 118 F. 2d 937, 946-47 (D. C. Cir. 1941), *cert. denied,* 313 U. S. 595 (1941).
>
> *RCA* v. *Rauland Corp.,* 16 F. R. D. 160, 163 (N. D. Ill. 1954).

4. A parent corporation is not subject to suit in a jurisdiction merely because its subsidiary can be sued there.

> *Cannon Mfg. Co.* v. *Cudahy Pkg. Co.,* 267 U. S. 333, 336 (1925).
>
> *Fisher Baking Co.* v. *Continental Baking Corp.,* 238 F. Supp. 322, 328 (D. Utah 1965).

ARGUMENT.

I. The Trial Court Had No Power to Enter Judgment Against Hazeltine Corporation, a Non-Party.

Prior to entry of the judgment, there was never any attempt in this proceeding to designate Hazeltine Corporation as a party nor to serve it with process.[4] By its entry of judgment against Hazeltine Corporation as well as against Hazeltine Research, Inc., the trial court has attempted to bind a non-party to a judgment *in personam.* Such a holding is a denial of procedural due process. *Riley* v. *New York Trust Co.,* 315 U. S. 343, 353-54 (1942). A court may not exercise an *in personam* jurisdiction over a person not before the court. *Estin* v. *Estin,* 334 U. S. 541, 548-49 (1948).

Long before the Supreme Court decided the "landmark case'"[5] of *Pennoyer* v. *Neff,* 95 U. S. 714 (1878), it was recognized that "an exercise of jurisdiction over persons or property outside the forum State was . . . an absolute nullity . . . [and] any judgment purporting to bind the person of a defendant over whom the court had not acquired *in personam* jurisdiction was void . . . ." *Hanson* v. *Denckla,* 357 U. S. 235, 249-50 (1958). The early common law principle that no court had the power to render a judgment or decree against one not served with process to appear and defend, *Hollingsworth* v. *Barbour,* 29 U. S. (4 Peters) 466 (1830); *D'Arcy* v. *Ketchum,* 52 U. S. (11 How.) 165, 174 (1850); was held in *Pennoyer* v. *Neff,* 95 U. S. 714, 733 (1878), to be embraced in the constitutional guaranty of "due process of law." By 1957, the Supreme Court could say:

---

[4] Subsequent to entry of the judgment, Zenith *for the first time* designated Hazeltine Corporation as a party in the caption of the case in the statement which it filed in the District Court, pursuant to Rule 12(d) of this Court (App. 34).

> "It has *long* been *the constitutional rule* that a court cannot adjudicate a personal claim or obligation *unless* it has *jurisdiction over the person* of the defendant." *Vanderbilt* v. *Vanderbilt,* 354 U. S. 416, 418 (1957) (Emphasis added).

The rule's development from common law principle to requirement of due process was summarized by the Supreme Court in *Hansberry* v. *Lee,* 311 U. S. 32 at 40-41 (1940):

> "It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process. . . . A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution and statute of the United States . . . prescribe . . . ; and judicial action enforcing it against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments require."

---

[5] Mr. Justice Black, dissenting in *Hanson* v. *Denckla,* 357 U.S. 235 at 260 (1958).

Since Hazeltine Corporation was never a party to the action in which this judgment was entered, the judgment against it is void.

This requirement is recognized in the wording of Rule 19 of the Federal Rules of Civil Procedure. After detailing the methods by which persons can be made parties, the rule provides expressly, "the judgment rendered therein does not affect the rights or liabilities of absent persons." Fed. R. Civ. P. 19 (b).

Moreover, even assuming contrary to fact that Hazeltine Corporation had participated in the defense of the case to such an extent that the judgment would have been *res judicata* as to it, the district court had no power to enter a judgment against it. *Merriam Co.* v. *Saalfield,* 241 U. S. 22 (1916); *Schnell* v. *Peter Eckrich & Sons, Inc.,* 279 F. 2d 594 (7th Cir. 1960), *aff'd,* 365 U. S. 260 (1961).

In the leading case of *Merriam Co.* v. *Saalfield,* 241 U. S. 22 (1916), the Supreme Court established the principle that a court has no power to enter a judgment *in personam* against a non-party who has not been properly served with process even though it is unquestioned that the non-party "conducted, controlled, and directed the defense of the suit" (241 U. S. at 24). The Court made it clear that this rule had been universally applied by the judiciary:

> "No case to which we are referred, nor any other that we have found, goes to the extent of sustaining . . . a decree *in personam* against a party upon the ground that he had participated in the defense . . . so as to become bound upon the doctrine of *res judicata*" (241 U. S. at 31).

Almost half a century later this same question was presented to this Court in *Schnell* v. *Peter Eckrich & Sons, Inc.,* 279 F. 2d 594 (7th Cir. 1960), *aff'd,* 365 U. S. 260 (1961):

> "The sole contested issue is whether as a matter

> of law Allbright-Nell, *a named defendant*, by its open assumption and control of the defense of Eckrich submitted to the jurisdiction of the District Court" (279 F. 2d 594; emphasis added).

Relying upon its early holding in *Freeman-Sweet Co.* v. *Luminous Unit Co.*, 264 Fed. 107 (7th Cir. 1919), this Court held a non-party could not, over its objection, be made a party defendant in a jurisdiction of which it was not an inhabitant, solely upon the basis that it controlled the defense. Reaffirming its holding in the *Merriam* case that participation in the defense does not amount to a general appearance, the Supreme Court affirmed this Court's decision in *Schnell,* 365 U. S. 260, 263 (1961). The Court laid down the following principle:

> "The conduct which will amount to a waiver of venue is that of the defendant alone and nothing a plaintiff might do can change the legal consequences which attach to that conduct" (365 U. S. at 264).

Clearly under Section 12 of the Clayton Act (15 U. S. C. A. § 22)[6] Hazeltine Corporation is not subject to suit under the antitrust laws in the Northern District of Illinois since it is neither an inhabitant nor is it found therein nor does it transact business there. Moreover, as Hazeltine Corporation did not participate in the proceedings below except to appear specially to contest jurisdiction, there has been no act which could constitute waiver.

In both the *Merriam* case and the *Schnell* case, the plaintiff had a stronger claim to judgment than Zenith has because in each case the plaintiff attempted to join the appellant *as a party*. Here Zenith never sought to name Hazeltine Corporation as a party until after the findings of fact had been adopted by the trial court; and there is no suggestion in the findings that Hazeltine Corporation was to be treated as a party. As has been pointed out, Zenith's proposed form of *judgment* is the first formal paper filed in this litigation which treats Hazeltine Corporation as a party.

---

[6] Section 12 provides in pertinent part:

> "Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business. . ."

Sinec there is no evidence that Hazeltine Corporation participated in any way in the trial of this case[7] and no attempt was made to bring it in as a party, the trial court had no power to enter a judgment against it. Indeed, the express holdings of this Court and of the Supreme Court prevent such a judgment.

Moreover, there is nothing in the record to indicate that Hazeltine Corporation controlled the defense to the counter-claim. Under these circumstances, a judgment against its subsidiary would not have bound Hazeltine Corporation under recognized principles of *res judicata*.

If Zenith wishes to make a claim against Hazeltine Corporation, and to assert *res judicata* as a part of that claim, it may attempt to do so by bringing a separate action against Hazeltine Corporation in a court having jurisdiction over it. In such proceeding any claim of *res judicata* could be litigated, together with the other issues involved in such claim. See, *e.g., Bros, Inc.* v. *W. E. Grace Mfg. Co.,* 261 F. 2d 428 (5th Cir. 1958). But there is no basis upon which Zenith may pursue Hazeltine Corporation in the cause now before this Court. *Merriam Co.* v. *Saalfield,* 241 U. S. 22 (1916); *Schnell* v. *Peter Eckrich & Sons, Inc.,* 279 F. 2d 594 (7th Cir. 1960), *aff'd,* 365 U. S. 260 (1961).

In summary, the legal principles violated by the judgment below are so fundamental that to permit it to stand would deprive Hazeltine Corporation of its property, indeed, its very corporate life, without due process of law. The most basic procedural principles foreclose the possibility of such a result.

---

[7] Some officers of Hazeltine Corporation appeared as witnesses in the trial of the case but this does not make it a party. *Thaxton* v. *Vaughan,* 321 F.2d 474, 479 (4th Cir. 1963).

II. The Stipulation Between Zenith and HRI Did Not Make Hazeltine Corporation a Party to This Action or Give the Trial Court Jurisdiction to Enter Judgment Against Hazeltine Corporation.

The only rationalization for the entry of this judgment against Hazeltine Corporation that has ever been suggested by counsel for Zenith, who proposed it, or by the trial judge, who adopted counsel's proposal verbatim without any independent explanation, is the pretrial stipulation (App. 19, 40-41). As we shall show, however, the stipulation did not make Hazeltine Corporation a party to the suit or give the trial court jurisdiction to enter judgment against Hazeltine Corporation.

A. Hazeltine Corporation Is Not a Party to the Stipulation and by Its Clear Terms the Stipulation Was Not Intended to Bind Hazeltine Corporation to Anything.

Although stipulations are not true contracts, it is settled that the general principles of construction applicable to contracts are also applicable to stipulations. 83 C. J. S. *Stipulations* § 11, at 26. Accordingly, "the primary rule in the construction of stipulations is that the court must, if possible, ascertain and give effect to the intent of the parties." *Id.* at 26-27.

As would be true in construing a contract, the intent of the parties is ascertained, first, from the plain meaning of the language used in the instrument. And the plain meaning of the language here is that the parties to the stipulation did not expect or intend that it bind Hazeltine Corporation in any way.

Moreover, Hazeltine Corporation could not be bound by the stipulation even if the parties to the stipulation so intended, because it is not a party to the stipulation. Contracts do not bind those who are not parties to them: "The general rule is well settled . . . that parties cannot by stipulation affect any rights but their own, and that persons not parties to the stipulation are not bound thereby." 83 C. J. S. *Stipulations* § 14, at 35. Accord, 50 Am. Jur. *Stipulations* § 10; *Kneeland* v. *Luce,* 141 U. S. 437, 440-41 (1891); *Thibodo* v. *United States,* 134 F. Supp. 88, 98 (S. D. Cal. 1955); *Strand* v. *Garden Valley Tel. Co.,* 51 F. Supp. 898, 905 (D. Min. 1943).

The stipulation shows on its face that Hazeltine Corporation is not a party to it and that it was not intended to bind Hazeltine Corporation in any way. It begins with this unequivocal statement, "the parties to this Action, by their attorneys . . . hereby stipulate and agree. . . ." The disputed paragraph of the stipulation, paragraph 4, states that "*Plaintiff* agrees . . ." to what is set forth in the paragraph, and in that paragraph a clear distinction is made between "Plaintiff and its parent Hazeltine Corporation. . . ." The stipulation was executed by counsel for Zenith and by "L. B. Dodds" who is specifically identified as "Counsel for Plaintiff" (App. 6-7, 9).

If at the time this stipulation was entered into counsel for Zenith had had any idea that Hazeltine Corporation was a party to it, surely in the light of the governing law counsel would have objected to the language which was used, language which clearly limited the effect of the stipulation to the parties then named in the litigation as parties and carefully delineated Mr. Dodds' authority as that of counsel for plaintiff. Not only did counsel for Zenith not object to this language, but all of the language quoted, which limits the stipulation clearly to the parties to the litigation, was in fact drafted by them. It is impossible that counsel for Zenith could have been misled, or persuaded to sign something different from the oral agreement which the writing was supposed to record, by language that they *themselves* supplied. *Indeed,* under the fundamental principles of contract law applicable here, any doubts and ambiguities must be resolved against the party who drafted it, that is, against Zenith. See *Alcoa S. S. Co.* v. *United States,* 338 U. S. 421, 424-25 (1949); *Caterpillar Tractor Co.* v. *Collins Mach. Co.,* 286 F. 2d 446, 450 (9th Cir. 1960); 17 Am. Jur. 2d, *Contracts* § 276.

Nor can it be said that Hazeltine Corporation became a party to the stipulation by reason of any alleged agency of HRI or of HRI's attorney, Mr. Dodds. That the assumption of an agency relationship between Hazeltine Corporation and HRI may have played a part in the trial court's original decision is indicated in one of the remarks of the trial judge in the course of the argument on Zenith's proposed judgment when he asked specifically whether it was the position of Hazeltine Corporation that the child could not bind the parent (App. 42-43). It *is* Hazeltine Corporation's firm position that the child could not and did not bind the parent by this stipulation.

First, it is settled that a subsidiary cannot bind its parent simply by virtue of being a subsidiary. Fundamental corporation law is directly contrary. A wholly-owned subsidiary is not necessarily the agent of its parent. *Press Co.* v. *NLRB,* 118 F. 2d 937, 946-47 (D. C. Cir. 1941), *cert. denied,* 313 U. S. 595 (1941). See also, *RCA* v. *Rauland Corp.,* 16 F. R. D. 160, 163 (N. D. Ill. 1954), where Zenith successfully interposed its separateness from *its* wholly-owned subsidiary and the court said:

> ". . . mere ownership by Zenith of Rauland's stock does not serve to destroy the separate corporate existence of Rauland and of its right to a day in Court."

If an agency relationship exists, it must have been created in the same way that such relationships are created between other otherwise independent persons (Restatement of the Law of Agency § 14M) and there is nothing in the record here which shows any such relationship was created.

The real question here is exactly the question the Supreme Court long ago posed in *Cannon Mfg. Co.* v. *Cudahy Pkg. Co.*, 267 U. S. 333, 336 (1925): "whether the corporate separation carefully maintained [for other legal purposes] must be ignored in determining the existence of jurisdiction." The Supreme Court's answer was that:

> "Congress has not provided that a corporation of one State shall be amenable to suit in the federal court for another State in which the plaintiff resides, whenever it employs a subsidiary corporation as the instrumentality for doing business therein." (*Ibid.*)

As recently as 1965, Judge Christensen pointed out that although the *Cudahy* case is 45 years old, its controlling effect remains. *Fisher Baking Co.* v. *Continental Baking Corp.*, 238 F. Supp. 322, 328 (D. Utah 1965).

Similarly, there could be no merit in a contention that Hazeltine Corporation became a party to the stipulation by reason of the fact that Mr. Dodds, who acted as HRI's attorney and signed the stipulation expressly as attorney for HRI, was also a vice-president of Hazeltine Corporation. Purely aside from the fact that Mr. Dodds had no administrative responsibilities with Hazeltine Corporation (App. 35-36, 38-39), it is obvious that his signing as attorney for HRI could not bind Hazeltine Corporation. The signing of an agreement by Mr. Dodds expressly as attorney for Hazeltine Research, Inc., does not make Hazeltine Corporation bound to or by the agreement merely because Mr. Dodds also happened to be an officer of Hazeltine Corporation. Counsel for Zenith did not cite to the trial court any authority for such a novel proposition, nor are we familiar with any.

If counsel for Zenith believed at the time this stipulation was executed that Mr. Dodds was acting not only for the subsidiary but also for Hazeltine Corporation, and, moreover, as its agent, certainly counsel would have insisted that the stipulation recite that authority. At the very least, Zenith's counsel would surely have made strenuous objection to a recital in the stipulation itself which specifically limited Mr. Dodds to his authority as "counsel for plaintiff". But, again, Zenith not only made no objection to the stipulation's clear identification of Mr. Dodds as "counsel for plaintiff" but in fact had proposed language having the same meaning and effect. Obviously, therefore, the plain meaning of the language used reflects the actual understanding of both parties at the time the stipulation was executed, *i.e.*, that Mr. Dodds did not sign for Hazeltine Corporation and did not represent that he was signing for Hazeltine Corporation.

B. Neither the Circumstances Surrounding the Execution of the Stipulation Nor the Events Which Followed Indicate That Either Party Assumed or Intended That the Stipulation Made Hazeltine Corporation a Party to the Suit.

The circumstances which let to the execution of the stipulation are wholly inconsistent with any contention that Hazeltine Corporation was made a party to the suit by it. The purpose of the stipulation is clearly stated: "to simplify and expedite trial . . ." (App. 6). The particular paragraph of the stipulation in dispute here is twice qualified as procedural and limited—in the preamble as being made "for purposes of this Action only . . ." and in the paragraph itself as "for purposes of this litigation . . ." (App. 6-7).

The procedural advantages to Zenith of the stipulation interpreted as written are obvious. It eliminated for Zenith the necessity of proving its allegation that Hazeltine Corporation and HRI were co-conspirators and that HRI, the party to the suit, was in some way liable for acts at least in part performed by its parent, Hazeltine Corporation.

There were also procedural advantages to HRI. To defend the charge that HRI conspired with Hazeltine Corporation would have been most costly and time consuming. Counsel for HRI concluded that the counterclaim was so lacking in merit that it would save his client both trouble and expense and shorten the trial considerably if he agreed that *his client,* HRI, for the purpose of this case, assumed liability for the acts of its parent, Hazeltine Corporation. But he did not and could not agree to the reverse, *i.e.,* that Hazeltine Corporation would be liable for the acts of HRI or on any judgment rendered against HRI.

Thus it is clear that the stipulation, interpreted consistently with the plain meaning of its language, did have a procedural advantage for the actual parties to the suit at the time it was agreed upon by them.

On the other hand, Hazeltine Corporation had nothing to gain by this stipulation. It could not be sued in the Northern District of Illinois under the antitrust laws and it could gain nothing by agreeing to submit itself to the jurisdiction of that Court. Under such circumstances a finding that Hazeltine Corporation voluntarily submitted itself to jurisdiction and made itself a party to the suit by agreement, would require clear and unequivocal language in an agreement *actually entered into by Hazeltine Corporation.* But no such language is present here; indeed, it is clearly to the contrary.

The events following the execution of the stipulation similarly indicate that the parties assumed that Hazeltine

Corporation was *not* a party. A week after the stipulation was executed, Zenith, with leave of court, filed a counterclaim that clearly and repeatedly recognized Hazeltine Corporation as an entity separate from the counterdefendant HRI and as a non-party.

The counterclaim (App. 11-16) was captioned:

Hazeltine Research, Inc., *Plaintiff-Counterdefendant,* *vs.* Zenith Radio Corporation, *Defendant-Counterclaimant.*	Civil Action No. 59 C 1847.

The caption did not name Hazeltine Corporation either as a counterdefendant or as a third party defendant. In that portion of the counterclaim entitled "The Parties", paragraph 3 alleged:

> "3. *Counterdefendant, Hazeltine Research, Inc., the party plaintiff in this suit,* is an Illinois corporation owned and operated as a wholly-owned subsidiary of Hazeltine Corporation, a New York corporation, engaged in the manufacture and sale of electronic equipment and devices. Counterdefendant's *sole business is research in the radio and TV fields and the licensing of a patent pool in the United States pertaining to radio and television receivers and other electronic products,* said pool being the United States counterpart of a number of inter-related territorial patent pools formed and operated in various market areas of the world, pursuant to a combination and conspiracy *between counterclaimant, its parent, Hazeltine Corporation,* and sundry other persons and corporations, domestic and foreign, as more particularly described and set forth hereinafter" (Emphasis added).

Paragraph 4 of the counterclaim alleged:

> "4. Counterclaimant realleges Paragraphs 12 and 13 of its Answer herein and further asserts that *coun-*

> *terdefendant and its parent, Hazeltine Corporation,* in furtherance of the conspiracy alleged herein has entered into illegal agreements and arrangements with large foreign companies. . . . Counterdefendant *and its parent, Hazeltine Corporation,* have thereby agreed with their foreign co-conspirators not to grant licenses under their patents and inventions that would permit exports from the United States into England, Canada, Australia. . . . The domestic patent rights of the foreign co-conspirators are, by agreement between *Hazeltine Research, Inc., Hazeltine Corporation* and said co-conspirators, funneled into the Hazeltine domestic pool by assignment to counterdefendant, Hazeltine Research, Inc.'' (Emphasis added.)

On the basis of this alleged activity, in which the separateness of the two corporations both at law and in this litigation are clearly preserved, the prayer for relief asked for money damages only against *Hazeltine Research, Inc.* The Zenith prayer for relief sought (emphasis added):

> ``1. A judgment *against counterdefendant* for treble the amount of damages sustained by defendant *as the* proximate *result of* said acts of *counterdefendant and its co-conspirators* and for costs and attorney's fees.
>
> ``2. An injunction *enjoining counterdefendant and anyone in privity with it* from bringing or prosecuting this or any other actions at law or suit in equity charging infringement of any patents against counterclaimant, its agents, vendees, distributors or others in privity with counterclaimant and enjoining counterdefendant from continuing its said unlawful combination and conspiracy.
>
> ``3. Such other and further relief as the Court may deem just.''

Nowhere in this counterclaim is there the slightest suggestion that recovery is sought against Hazeltine Corporation.

Tantamount to a clear admission that counsel for Zenith did not regard Hazeltine Corporation as a party after execution of the stipulation is the fact that Zenith included Hazeltine Corporation as a party in the caption of the case *for the first time* in its Statement required by Rule 12 (d) of this Court filed in the District Court on or about May 18, 1965 (App. 34). From the date of the execution of the stipulation on May 15, 1963, until after January 25, 1965, the date the trial court adopted Zenith's proposed findings of fact, neither Zenith's counsel nor the court below referred to or denominated Hazeltine Corporation as a party.

On the contrary, Zenith's pre-trial and post-trial briefs on the antitrust issues, both filed after the stipulation, implicitly recognize the distinction between the plaintiff, HRI, a party, and Hazeltine Corporation, a non-party. Zenith's counsel there explained that "*Plaintiff is* a patent holding and licensing company *wholly owned by* a large New York Electronics company called *Hazeltine Corporation*". Pre-Trial and Post-Trial Briefs on Misuse and Antitrust Issues (App. 17, 18; emphasis added).

The only appearance of Hazeltine Corporation was the special appearance to question the jurisdiction of the trial court to enter judgment against Hazeltine Corporation (App. 26). It was filed as soon as Hazeltine Corporation had been put on notice that it stood in danger of such a judgment and the trial court recognized that it had a right to file such appearance contesting jurisdiction (App. 44-45). On such a record, we believe there is no basis to hold that the stipulation made Hazeltine Corporation a party.

CONCLUSION.

For the reasons stated, Hazeltine Corporation respectfully requests that the judgment below be vacated as to it on the ground that the trial court did not have jurisdiction to enter a judgment against Hazeltine Corporation.

Respectfully submitted,

John T. Chadwell
Victor P. Kayser
135 South La Salle Street
Chicago, Illinois 60603
Attorneys for Hazeltine Corporation

Of Counsel:
Chadwell, Keck, Kayser, Ruggles & McLaren
135 South La Salle Street
Chicago, Illinois 60603
Telephone: RAndolph 6-2545

In the United States Court of Appeals.

* * (Caption—15247) * *

ANSWER OF ZENITH RADIO CORPORATION TO HAZELTINE CORPORATION'S MOTION TO VACATE JUDGMENT.

Zenith Radio Corporation, by its attorneys, by way of answer to the motion of Hazeltine Corporation to vacate the judgment as to it, on the ground that the court below did not have jurisdiction of its person, says:

1. The Hazeltine Corporation motion, filed by a different set of attorneys from those who tried the case in the court below, attempts to reverse a $19,042,173 judgment by what amounts to a motion of course. Such procedure is contrary to this court's Rule 16(b) which contemplates that all parts of the record necessary "fairly to present the issues on appeal" shall be included in the printed appendix and which further provides "If appellant . . . raises a question of the sufficiency of the evidence to support a finding, ruling, order, verdict or judgment, he shall include in the appendix all evidence pertinent thereto." The procedure is also contrary to FRCP Rule 52(a) which provides that "findings of fact shall not be set aside unless clearly erroneous."

2. The motion purports to be filed under provision of this court's Rule 15(f). No authority is cited by Hazeltine Corporation for reviewing under this rule a finding of a lower court on its ruling that it had jurisdiction over the person of a party; nor can we find any. It is submitted that the apparent purpose of the Rule is to provide a summary procedure for attacking the jurisdiction of *this* court where, for example, the notice of appeal is not timely filed or where the judgment or order appealed from is not

a final order. The jurisdictional question presented by Hazeltine Corporation, however, is whether the *trial* court had jurisdiction of its person. The trial court decided this question against Hazeltine Corporation after it was raised by motion, briefed and argued. Only then did the trial court enter judgment against Hazeltine Corporation. This judgment has been appealed by Hazeltine Corporation and there is no question of this court's jurisdiction to hear this appeal.

3. In any event, in the circumstances of this case, it is apparent that the question of whether the trial court had personal jurisdiction of Hazeltine Corporation cannot properly be determined on less than the entire record, after hearing on the merits. To summarily vacate the judgments below would deprive Zenith Radio Corporation of its rights on appeal.

4. The trial court entered a finding that for the purposes of this litigation Hazeltine Corporation and Hazeltine Research, Inc., its wholly-owned subsidiary, would be considered one and the same. This finding (No. 3) reads as follows:

> "Counterdefendant, Hazeltine Research, Inc., the party plaintiff in this suit, is an Illinois corporation owned and operated as a wholly owned subsidiary of Hazeltine Corporation, a New York corporation, engaged in the manufacture and sale of electronic equipment and devices. The parties stipulated that for the purposes of this litigation Hazeltine Research, Inc. and its parent, Hazeltine Corporation, would be considered as one entity operating as a patent holding and licensing company engaged in the exploitation of patent rights in the electronics industry in the United States and in foreign countries. The gross income of the Hazeltine enterprises approximates $47,000,000 a year."

No exception or objection was taken to the entry of this finding by Hazeltine Corporation or Hazeltine Research, Inc.; nor did either company assert in its post-trial brief, as claimed here, that the stipulation was merely procedural.

5. Not only did the trial court enter the above finding but it denied Hazeltine Corporation's post-trial motion opposing entry of judgment against it on the grounds that the court lacked *in personam* jurisdiction. The Hazeltine Corporation appeal and present motion necessarily raises the question of the sufficiency of the evidence to support this ruling, and, therefore, the motion should be denied for failure to present the record as an appendix as required by the rules of this court.

6. Contrary to the assertions in the Hazeltine Corporation motion and brief, Hazeltine Corporation was a party to the litigation by (1) voluntarily submitting itself to the jurisdiction of the court by stipulating that it was to be considered as one entity with Hazeltine Research, Inc.; (2) invoking the jurisdiction of the court by seeking affirmative relief and the entry of findings in its favor (see Exhibit A attached to the Thomas C. McConnell Affidavit); (3) controlling the conduct of the litigation as the real party in interest; and (4) engaging in actions constituting a general appearance. Only after losing the case did Hazeltine Corporation employ its present counsel and seek to repudiate its agreement and consent to the court's jurisdiction of its person and the actions of its trial counsel constituting a general appearance. The appendix filed by Hazeltine Corporation with its motion and brief, except for the stipulation, contains none of the relevant portions of the record showing Hazeltine Corporation's agreement and consent by conduct to be bound by the judgment entered in the court below. Although the Hazeltine Corporation brief states that its construction of the stipulation is supported by the record (pages 7 and 10 of

the Hazeltine brief) and further that the record consists of "37 volumes of transcript numbering over 3,500 pages and over 280 exhibits" only five pages of the trial transcript are reproduced in its appendix.

7. No sufficient reason is given by Hazeltine Corporation for departing in this case from the usual and orderly procedure in hearing appeals. The size of the judgment entered against it is the direct result of Hazeltine Corporation's flagrant violation of the antitrust laws. That this judgment has depressed the price of Hazeltine Corporation's stock is obviously immaterial and clearly does not constitute grounds for dealing summarily with Zenith's rights on this appeal.

For the reasons set forth herein and the supporting brief and affidavit of Thomas C. McConnell, it is respectfully submitted that the motion of Hazeltine Corporation should be denied.

Respectfully submitted,

Thomas C. McConnell,
Philip J. Curtis,
Francis J. McConnell,
134 South La Salle Street,
Chicago, Illinois 60603,

Francis W. Crotty,
6001 West Dickens Avenue,
Chicago, Illinois,
Attorneys for Zenith Radio Corporation.

Of Counsel,
Dougald S. McDougall,
135 South La Salle Street,
Chicago, Illinois.

IN THE UNITED STATES COURT OF APPEALS.

* * * (Caption—15247) * * *

AFFIDAVIT OF THOMAS C. McCONNELL.

State of Illinois,
County of Cook. } ss.

Thomas C. McConnell, being first duly sworn, on oath deposes and says:

1. Affiant was chief trial counsel for the Appellee, Zenith Radio Corporation, in the Court below and personally conducted the trial of the Zenith counterclaim and antitrust claim. The counterclaim alleged that Zenith had suffered large damages from the violation of the antitrust laws by Appellant, Hazeltine Corporation (15 U. S. C. §§ 1, 2 (the Sherman Act)). The violation of the federal antitrust laws alleged was the exclusion of Zenith from foreign markets, including Canada, by operation of patent pools of which Hazeltine Corporation was a member, which pools prevented the export of radio and television receivers by refusing to license under the pool patents any proposed licensee who did not manufacture in the excluded territory. After hearing, the Trial Judge entered findings of fact and conclusions of law in favor of Zenith and subsequently entered a joint and several judgment against Hazeltine Corporation and its wholly owned subsidiary, Hazeltine Research, Inc., in the trebled amount of $19,042,173. Both Hazeltine Corporation and Hazeltine Research, Inc. have appealed from this judgment (Nos. 15246 and 15247).

2. The motion filed by Hazeltine Corporation under this court's Rule 15(f) presents imported questions of fact and law and appellant has not filed any appendix showing

the evidence supporting the trial court's rulings as required by Rule 16(b) of this Court's rules.

3. This is not a case where a trial court has entered a judgment against a third party having no connection with the litigation, as is suggested in the motion and brief filed by Hazeltine Corporation. The record shows that Hazeltine Corporation was in the case by consent and agreement from the start, and that there was a pretrial stipulation entered into by the parties with the trial court's approval, which pretrial stipulation was as follows:

> "The parties to this action by their attorneys in fulfillment of certain understandings reached orally in the course of the pretrial conference held herein on April 3, 1963, in order to simplify and expedite trial hereby stipulate and agree, for purposes of this action only, as follows:
>
> * * * * *
>
> 4. Plaintiff agrees that for purposes of this litigation plaintiff and its parent, Hazeltine Corporation, will be considered to be one and the same company."

This stipulation came into being because this affiant questioned Dodds as to whether or not his clients would take the position that Hazeltine Corporation was not bound by a judgment in the anti-trust counterclaim proceedings and Dodds said that neither the parent or the subsidiary would make any distinction between Hazeltine Research Inc., and Hazeltine Corporation; that the case could go forward as though the companies were one and the same. As stated in the stipulation it was the evidence of "understandings reached orally in the course of the pre-trial conference."

The stipulation was signed by counsel for Zenith and by L. B. Dodds, counsel for the plaintiff, and Dodds testified that he was a vice president of Hazeltine Corporation and had represented it as an attorney for many years. Subsequently Hazeltine Corporation participated in the case in the same manner as if it had been named a formal party and served with process, and at the conclusion of the case asked for the entry of many specific findings of fact and conclusions of law in its favor. A copy of the requested findings and conclusions is attached hereto as Exhibit A. It was only after the court had refused to enter such findings and did enter findings submitted by the Appellee, in other words, after Hazeltine Corporation had lost the case, that it hired new counsel and sought to repudiate and disavow its stipulation and consent and actions throughout the trial which showed that it had appeared generally and had become bound by the trial court's judgment.

The trial court was fully aware of Hazeltine Corporation's jurisdictional contention at the time the judgment was entered herein. The same contentions made in the present motion were made before Judge Austin in post-trial motions. Hazeltine Corporation filed a motion and supporting brief in the court below and argued orally that judgment could not be entered against it. That motion was denied and judgment was entered.

Subsequently Hazeltine Corporation filed a petition for writ of mandamus in this court, asserting that the trial judge was without jurisdiction to enter judgment and raising the same contentions, and setting forth the same alleged facts as are in the instant motion. That petition was denied by this court on April 7, 1965.

4. In a supporting brief decisions are set forth showing that it is well settled law that a litigant asking for affirmative relief before a court waives any question of jurisdiction or venue over its person by the court from which it has asked relief. But apart from the legal questions the motion filed by Hazeltine Corporation presents the fundamental factual question of whether movant appeared generally in the case and invoked the jurisdiction of the trial court in

its own behalf. This factual question can only be determined on the basis of the entire record. Hazeltine Corporation acknowledges this by contending in its brief that Hazeltine's construction of the stipulation is confirmed by the conduct of the parties in the trial of the lawsuit after the stipulation was entered into. At page 7 of its brief, Hazeltine Corporation says:

> "At no time in the pretrial proceedings that followed the filing of the counterclaim, in the trial itself, or in the post-trial papers submitted before the proposed judgment did counsel for Zenith indicate any intention to construe this stipulation as making Hazeltine Corporation a party."

It is obviously impossible to determine the truth or falsity of that statement without an examination of the record upon which this appeal is based. At page 10 of its brief Hazeltine Corporation says:

> "Nothing that the parties did at the time of the execution of the stipulation or later would support a contention that the stipulation was intended either to bind Hazeltine Corporation or to make it a party to the suit."

It certainly was argued extensively in the court below by counsel for Zenith on the basis of the record that the stipulation was intended by Hazeltine Corporation *itself* to make it a party to the suit and to entitle it to any benefit it could obtain by findings entered in its behalf. Further, both of the statements quoted above are controverted by pages of the record, not included in the appendix attached to the Hazeltine Corporation brief. There are many examples of this, but it will suffice at this time to point out that L. B. Dodds, Hazeltine's chief trial counsel, testified at page 1294 of the record as follows:

> Q. "Just so that we will understand each other, throughout this examination, except where it becomes

important, in referring to Hazeltine, we understand that it includes the Hazeltine companies generally."

A. "That is correct. There is a stipulation on the record that solely for the purposes of this action the plaintiff: Hazeltine Research and the parent Hazeltine Corporation can be considered as a single entity."

The trial record is replete with statements, testimony, and acts that show Dodd's authority to enter into the stipulation on behalf of Hazeltine Corporation and Hazeltine's consent and agreement to be bound by any judgments entered, all of which are obviously relevant, pertinent, and material to the determination of this motion.

5. The Hazeltine Corporation brief (p. 26) states that Hazeltine Corporation had nothing to gain by agreeing to be bound by the judgment in the case and, therefore, to put this construction on the stipulation is ridiculous. On the contrary, Hazeltine Corporation sought affirmative findings in its favor that the activities of the different foreign patent pools and Hazeltine Corporation's participation in these pools were legal, and did not violate the American antitrust laws. Hazeltine Corporation's annual revenue from foreign patent pools is very substantial. It therefore sought by the trial court's findings immunity to engage in illegal pools to the extent of hundreds of thousands of dollars every year. The nature of Hazeltine Corporation's involvement and its real interest in the litigation can only be appreciated after this court has had the benefit of the full record and a hearing on the merits in this and in the companion appeal by Hazeltine Research, Inc.

6. The hearing of any jurisdictional issue raised in Appellant's motion at this time will neither expedite the appeals nor avoid a hearing on the merits unless Zenith is to be deprived of its right to sustain the judgment by the record on appeal. The trial court admittedly had jurisdiction to enter judgment against Hazeltine Research, Inc.

and, regardless of the disposition of Hazeltine Corporation's motion, the companion appeal would still be pending on the merits. Further, the trial court had the right to determine on the record whether or not it had jurisdiction over the person of Hazeltine Corporation, and that determination can only be vacated if not supported by any substantial evidence.

7. Zenith Radio Corporation, the Appellee, would lose all rights of an Appellee in this case if this judgment was vacated on a piecemeal and inadequate record without the benefit of oral argument, and would thus be deprived of its judgment without a hearing and without the brief and appendix required by the rules of this court. The instant record shows that Hazeltine Corporation has been a member in a vicious international conspiracy which has continuously violated the federal antitrust laws and has caused great if not irreparable damage to Zenith's foreign business in electronics. The trial court has so held. With many millions of dollars at stake it is apparent that there can be no merit in Appellant's suggestion that Appellee's rights should be disregarded and the judgment vacated in a summary manner in disregard of a record showing the statements in movant's motion and brief to be false insofar as they allege that Hazeltine Corporation did not consent to and did not do acts constituting a general appearance in the instant case.

Further affiant sayeth not.

/Thomas C. McConnell.

Subscribed and sworn to before me, a Notary Public in and for the State and County aforesaid on this 3rd day of August, 1965.

Francis J. Mardon,
Notary Public.

(Seal)

IN THE UNITED STATES COURT OF APPEALS.
(Caption—15247)

BRIEF OF APPELLEE ZENITH RADIO CORPORATION IN OPPOSITION TO HAZELTINE CORPORATION RULE 15(f) MOTION.

STATEMENT OF FACTS.

It is claimed in Appellant's brief (p. 3) that "Neither before nor after the filing of the counterclaim did Hazeltine Corporation participate in this litigation in any way." It is Appellee's position that since the above statement, as shown by the record is manifestly false, the whole contention of Hazeltine Corporation in its motion collapses because, as is shown in the following brief, Hazeltine Corporation asked for relief in the trial court and expressly stipulated itself into the case as a party, thereby submitting itself to the jurisdiction of the court below and thereupon becoming a party to the suit by its own voluntary acts.

As is shown by the Appendix to Appellant's brief (A42-43) L. B. Dodds, counsel for the plaintiff, signed a stipulation in the cause below on May 15, 1963, which stated:

> "The parties to this action, by their attorneys, in fulfillment of certain understandings reached orally in the course of the pretrial conference held herein on April 3, 1963, in order to simplify and expedite trial hereby stipulate and agree, for purposes of this action only, as follows:
>
> * * * * *
>
> 4. Plaintiff agrees that for the purpose of this litigation plaintiff and its parent, Hazeltine Corporation, will be considered to be one and the same company."

After this stipulation was filed in the record Zenith filed, with leave of the trial court, its counterclaim for treble damages in this case. No attempt was ever made by Hazeltine Corporation to repudiate this stipulation until after findings of fact had been entered in the instant case by the trial court, Judge Richard B. Austin, on January 25, 1965, or almost two years after the stipulation had been filed and after the trial had proceeded to a decision in favor of Zenith. Even then no evidence was adduced by Appellant that either Dodds or Hazeltine Research, Inc. was not authorized by appellant to make the stipulation. As to his authority, the trial court record shows the following:

Dodds testified, at page 1294 of the transcript:

> "That is correct. There is a stipulation on the record that solely for the purposes of this action, the plaintiff Hazeltine Research and the parent Hazeltine Corporation can be considered as a single entity."

At the time this testimony was given the Zenith counterclaim was being tried under the allegations whereby Zenith sought a treble damage recovery for damages caused its business by Hazeltine Corporation and its wholly owned subsidiary in the licensing of foreign patents under restrictive provisions formulated by foreign patent pools and which excluded Zenith from doing an electronic export business in Canada, England, and Australia.

In an affidavit dated May 10, 1963 and filed in the trial court Dodds described his connection with the Hazeltine Corporation as follows:

> "He had been retained by or employed by plaintiff's parent company, Hazeltine Corporation, continuously since 1934 and has been a vice president of Hazeltine Corporation continuously since 1939 (except for a period during 1944-1945 when he had no connection with Hazeltine Corporation or any of its affiliates). He also was an officer of plaintiff, Hazeltine Research, Inc., from its organization in 1946 until June 7, 1961.

Since 1946, he has been continuously familiar with the patents and the patent licenses of both plaintiff and its parent, Hazeltine Corporation."

The above affidavit was annexed to a Hazeltine memorandum in which, under the caption "Statement of the Case", Hazeltine counsel Dodds stated:

> "For the purposes of discussion, plaintiff finds it unnecessary to rely on the fact that it is a corporate legal entity separate and distinct from its parent, Hazeltine Corporation, and is willing that the two companies be considered as a single entity insofar as their respective foreign and domestic licensing operations are concerned."

In another affidavit dated September 12, 1963 and filed in this cause, Dodds said:

> "He is now and has been for more than twenty years trial counsel for plaintiff and its predecessor in business and parent company, Hazeltine Corporation, and has the responsibility for conducting the trial of the instant action."

During the time this testimony was taken and the above affidavits were filed Mr. Ruestow, also counsel of record in this case, stated that he was "general patent counsel for the Hazeltine Corporation, the parent corporation." A Mr. Westermann was called to the stand by Dodds, and he stated (Transcript pp. 898-899):

> "I am Vice President and General Counsel of Hazeltine Corporation * * *"

Both of said men were present during the course of the trial and were thoroughly aware of the stipulation that the two companies were to be considered as one entity, and never said one single word in repudiation of such stipulation.

At the conclusion of the evidence in the case, L. B. Dodds, as counsel for the two companies which he had stipulated should be considered as a "single entity", asked for findings of fact and conclusions of law to be entered in favor of Hazeltine Corporation. We have attached the proposed findings submitted by Dodds as an exhibit to the McConnell affidavit.

Hazeltine Corporation is receiving substantial income each year* from the licensing of its patents in foreign pools and had been engaged in pooling arrangements with competitors of Zenith all over the world, and through this means had excluded Zenith from foreign markets. By its submitted findings and conclusions Appellant attempted to gain immunity from its antitrust violation by a judgment in its favor on the antitrust issues in the instant case.

Dodds, therefore, asked the trial court at the conclusion of the case to enter findings in favor of Hazeltine Corporation on practically every issue in the case. Such findings were 29, 30, 31, 32, 42, 47, 49(a), (b) and (c), 50, 51, 53, 55, 56, 57, 58, 60, 63, 64, 65, 66, 67, 68, 71, 82, 83 and 87 and, also, conclusions of law 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 15, 16 and 17. An example of these findings which clearly were for the benefit of Hazeltine Corporation is proposed Finding No. 82:

> "Neither Hazeltine nor Hazeltine Corporation has participated in any general plan or conspiracy the purpose and effect of which has been to restrain the export of radio and television receivers from the United States."

Finding No. 87 asked the trial court to hold:

> "There is no evidence linking Hazeltine or Hazeltine Corporation with members of the alleged international conspiracy."

In the conclusions of law submitted by Dodds he asked the court to hold, under Conclusion No. 9:

> "The bilateral agreement between Hazeltine Cor-

---

* Dodds said his purpose in joining pools "was to get more bucks for Hazeltine." (Tr. 429.)

> poration and CRPL currently in force is a lawful agreement the primary purpose and effect of which is to enable Hazeltine Corporation to obtain a fair royalty return under its Canadian patents."

Proposed Conclusion No. 10 provides:

> "The bilateral agreement between Hazeltine Corporation and CRPL currently in force does not constitute a contract, arrangement, plan, or conspiracy in restraint of trade between the United States and Canada."

Many of the statements contained on pp. 6, 7, 8, and 9 of Appellants brief find no support in the record below, and do not constitute statements of fact but merely argument on the part of counsel.

After the judgment was entered against Hazeltine Corporation that company filed a petition for mandamus on the ground that the District Court was without power to enter judgment against Hazeltine Corporation. In other words, the same contention was then made as is made in the instant motion namely, that the trial court did not have jurisdiction over the person of the Appellant. That petition was denied by this court on April 7, 1965. Hazeltine Corporation has made no other or different showing in the instant motion than was made on the petition for mandamus.

SUMMARY OF ARGUMENT.

The trial court had jurisdiction to enter judgment against Hazeltine Corporation because that company stipulated by its solely owned subsidiary and its own counsel and vice president that in this litigation Hazeltine Research, Inc. and its parent, Hazeltine Corporation, would be considered as one entity and Hazeltine Corporation pursuant to such stipulation sought affirmative relief in the court below and invoked the court's jurisdiction in its behalf, and the ruling made by the court below that it had personal jurisdiction over Hazeltine Corporation cannot be set aside on this record since there is substantial evidence to support it.

CONTESTED ISSUES.

1. Can a corporation after stipulating itself into a case by pretrial stipulation and asking for benefits from submitted findings of fact and conclusions of law repudiate its acts and the acts of its former counsel, hire new lawyers, and then claim after it has lost the case that the court had no jurisdiction over its person?

2. Can the rulings of a trial court that it has jurisdiction over the person of a plaintiff be summarily set aside where the appellant has made no showing that such ruling is not supported by evidence or has not shown that the ruling is clearly erroneous.

PROPOSITIONS OF LAW RELIED ON.

In Personam jurisdiction can be acquired by consent, agreement or waiver or by acts constituting a general appearance.

De Dood v. *Pullman Company,* 57 F. 2d 171 (C. A. 2, 1932);

Neirbo Company v. *Bethlehem Shipbuilding Corp.,* 308 U. S. 165, 84 L. Ed. 167 (1939).

2. The trial court had jurisdiction over the person of the Appellant because that corporation stipulated that it was the same legal entity as the plaintiff.

Petrowski v. *Hawkeye-Security Insurance Company,* 350 U. S. 495, 100 L. Ed. 639 (1956).

3. By asking for benefits and affirmative relief Appellant invoked the jurisdiction of the trial court and thereby consented to the jurisdiction of the district court of its person.

Merchants Heat & Light Company v. *Clow,* 204 U. S. 286, 51 L. Ed. 488 (1907);

North Branch Products, Inc. v. *Fisher,* 284 F. 2d 611, 615 (C. A. D. C., 1960);

Louisville & N. R. Co. v. *Schmidt,* 177 U. S. 230, 44 L. Ed. 747, 750 (1900);

Ocean Accident & Guaranty Corp. v. *Felgemaker,* 143 F. 2d 950, 952 (C. A. 6, 1944).

4. The trial court had jurisdiction over Hazeltine Corporation because that corporation assumed and participated in the defense of the counterclaim filed herein by Zenith.

Louisville & N. R. Co. v. *Schmidt,* 177 U. S. 230, 44 L. Ed. 747, 750 (1900);

Ocean Accident & Guaranty Corp. v. *Felgemaker*, 143 F. 2d 950, 952 (C. A. 6, 1944);

Greyhound Corp. v. *Leadman*, 112 F. Supp. 237, 239 (D. C. Ky., 1953);

Redman v. *Stedman Mfg. Co.*, 181 F. Supp. 5, 12 (D. C. N. C., 1960);

Mirabito v. *San Francisco Drug Co.*, 47 P. 2d 530 (Cal. App. 1935);

Thompson v. *L. C. Roney & Co.*, 246 P. 2d 1017 (Cal. App. 1952).

5. A parent corporation under Sect. 12 of the Clayton Act is subject to suit in a jurisdiction where its subsidiary can be sued if the subsidiary is, as here, stipulated to be the *alter ego* of the parent.

U. S. v. *Scophony Corporation*, 333 U. S. 795, 800, 92 L. Ed. 1091, 1093 (1948);

U. S. Watchmakers of Switzerland, 133 F. Supp. 40, 45 (D. C. N. Y., 1955);

Intermountain Ford Tractor S. Co. v. *Massey-Ferguson, Ltd.*, 210 F. Supp. 930 (D. C. Utah, 1962);

In re Grand Jury Subpoena Addressed to E. M. I., 1957 C. C. H. Trade Cases Par. 68, 773.

ARGUMENT.

I.

The Trial Court Had Power to Enter a Judgment Against Hazeltine Corporation Because That Corporation Submitted Itself to the Jurisdiction of the Court.

It is well settled that although litigants cannot confer subject matter jurisdiction on a court, they can determine the locality where the lawsuit is brought. If a court has jurisdiction of the subject matter under the Federal Anti-Trust laws, as it does here, it may acquire jurisdiction of the person of the defendant by his consent, either express or implied. Similarly, venue over the person of a litigant is a matter of personal convenience and can be viewed or lost by formal submission or through conduct.

Thus, in *Neirbo Company* v. *Bethlehem Shipbuilding Corp.*, 308 U. S. 165, 167, 84 L. Ed. 167, 170 (1939), the Supreme Court said:

> "The jurisdiction of the federal courts—their power to adjudicate—is a grant of authority to them by Congress and thus beyond the scope of litigants to confer. But the locality of a lawsuit—the place where judicial authority may be exercised—though defined by legislation relates to the convenience of litigants and as such is subject to their disposition. This basic difference between the court's power and the litigant's convenience is historic in the federal courts. . . .
>
> "Being a privilege, it may be lost. It may be lost by failure to assert it seasonably, by formal submission in a cause, or by submission through conduct."

And in *De Dood* v. *Pullman Company,* 57 F. 2d 171 (C. A. 2, 1932), the court held:

> "If a court has jurisdiction over the subject matter of a controversy, it may acquire jurisdiction over the person of a defendant by his consent as well as by its

> own lawful process. Such consent may be given in various ways . . . and may be subject to conditions; for example, a person beyond the territorial boundaries of a court may agree to submit himself to its jurisdiction provided notice of suit or a summons shall be there served upon him."

No one disputes that the trial court had subject matter jurisdiction, *i.e.*, power to adjudicate the antitrust issues raised by the counterclaimant; in fact, Hazeltine Corporation sought to have these issues adjudicated in its favor. Therefore, the only question is whether Hazeltine Corporation by consent, waiver, or conduct constituting a general appearance, submitted itself to the jurisdiction of the court.

In his opening statement Mr. McConnell, who tried the case for Zenith in the court below, said, at pp. 9-10 of the transcript:

> "As I say, the instant cross-claim alleges a conspiracy between the Hazeltine Corporation, and we have a stipulation in the record that the Hazeltine Corporation and its subsidiary companies are to be considered as one company in this proceeding. So we do not have to bother whether it is Hazeltine Research Corporation or the Hazeltine Corporation as it is in our arrangement with counsel, Mr. Dodds, that they are all to be considered as one company."

Far from taking exception to this statement, Mr. Dodds testified, at Tr. 1294:

> "That is correct. There is a stipulation on the record that solely for the purposes of this action, the plaintiff Hazeltine Research and the parent Hazeltine Corporation can be considered as a single entity."

That the stipulation was not merely procedural but substantive and intended to give Hazeltine Corporation the benefit of any judgment entered in the case is shown by the fact that Dodds sought findings of fact and conclusions of law which would have given Hazeltine Corporation immunity to violate the antitrust laws in Canada, England and Australia, and would have been *res judicata* as to Zenith's claim for damages under the antitrust laws against appellant. See *Louisville & N. R. Co. v. Schmidt,* 177 U. S. 230, 44 L. Ed. 747.

In seeking findings in its favor Hazeltine Corporation asked for affirmative relief and invoked the jurisdiction of the trial court, the same as if it had filed a counterclaim in the action. The authorities uniformly hold that where a defendant who is not lawfully served with process or subject to process, or as to whom venue is improper, files a counterclaim in the action, he thereby submits himself to the jurisdiction of the court.

In *Merchants Heat & Light Company* v. *James B. Clow & Sons,* 204 U. S. 286, 51 L. Ed. 488 the Supreme Court held (p. 489):

> "We assume that the defendant lost no rights by pleading to the merits, as required, after saving its rights. . . . But by setting up its counterclaim the defendant became a plaintiff in its turn, invoked the jurisdiction of the court in the same action, and, by invoking, submitted to it. . . . This single fact shows that the defendant, if he elects to sue upon his claim in the action against him, assumes the position of an actor and must take the consequences."

In *North Branch Products, Inc.* v. *Fisher,* 284 F. 2d 611, 615 (C. A. D. C., 1960), the Court of Appeals for the District of Columbia held that the trial court acquired jurisdiction of the defendant's person, notwithstanding his objection thereto, and even assuming that the counterclaim was a compulsory claim under FRCP Rule 13(a). The court held that a person who has voluntarily submitted his person to the jurisdiction of the court by seeking affirmative relief cannot avoid the consequences by later retracting. The court said (at p. 615):

"But the court had already obtained personal jurisdiction over defendant by his previously filed answer and counterclaim. By the latter he sought affirmative relief and thus invoked the court's jurisdiction. Appellee urges to the contrary that the counterclaim was compulsory under Rule 13(a), Fed. Rules Civ. Proc. 28 U.S.C., that is, had to be asserted when filed or be lost, since it arose out of the transaction or occurrence that was the subject matter of the complaint, and did not require the presence of a third party. It is said to follow that the answer and contemporaneously filed counterclaim did not operate to bring appellee within the District Court's jurisdiction. The District Court thought that the counterclaim was permissive. Whether or not is immaterial, for even if compulsory appellee was not compelled to pursue it unless served properly and could have filed a motion to quash the service attempted in reliance upon section 293. Rule 12(b) allows a challenge to jurisdiction of the person to be made by motion prior to the filing of an answer or counterclaim. Thus, were the counterclaim compulsory it need not have been asserted immediately but could await, without being lost, the disposition of a motion to dismiss for lack of jurisdiction over the person. See *Beaunit Mills, Inc.* v. *Industrias Reunidas F. Matarazzo, S.A.*, D.C.S.D.N.Y. 1959, 23 F.R.D. 654. If the motion were granted appellee would have been under no compulsion to file a counterclaim. Were the motion denied the objection to service could have been reasserted on appeal and if then sustained the interim filing of the counterclaim would not have waived the objection

"Appellee, having submitted voluntarily to jurisdiction over the person by the pleadings he filed, could not thereafter avoid the consequence by retracting."

In a separate but related line of cases it has been held that where a non-party assumes the defense of the case for the nominal party and thus, in effect, becomes the real party and seeks benefits, judgment may be entered against the non-party.

Thus, in *Louisville & N. R. Co.* v. *Schmidt,* 177 U. S. 230, 44 L. Ed. 747, 750 (1900) the Supreme Court held:

> "The claim of the plaintiff in error (the Louisville & Nashville) is that the decree rendered against it did not constitute due process of law, first, because it had no notice of the suit, it not having been summoned as a party defendant; and, second, that as it was not made a nominal party defendant and served with process as such, it had no adequate opportunity to make defense. . . . But the answer to these contentions is that the necessary effect of the opinion and decree of the court of last resort of Kentucky is to hold, first, as a matter of fact, that, although not a technical defendant, the Louisville & Nashville became voluntarily, in the name of the Cincinnati & Lexington, the real, although not the nominal, defendant in the cause, and during the long years of this protracted litigation was in legal effect an actor in the courts of Kentucky seeking, by every possible means, to defeat the claim of the plaintiff. . . . Clearly, also, the inevitable result of the conclusion of the court of appeals of Kentucky is that it was the duty of the Louisville & Nashville, having come in voluntarily in the cause to defend its interest, under the name of the technical defendant, if it had defenses which were personal to itself, to have made such an appearance on its own behalf as to enable it to make them, and that the statutes of Kentucky not only authorized this course, but obliged the Louisville & Nashville to have followed it."

To the same effect is *Ocean Accident & Guaranty Corp.* v. *Felgemaker,* 143 F. 2d 950, 952 (C. A. 6, 1944), where the court said:

> "It has often been held that a person not technically a party to a judgment may be so directly connected with it by his interest in the result of the litigation and by his active participation in the suit as to be bound by the judgment. Inter Insurance contends that it is not a party to the case; but the term 'parties' frequently connotes more than merely parties to the rec-

> ord of an action. Thus the doctrine of res judicata has been applied to persons who were not designated parties to the action, but had control of the prosecution or defense and exercise it in support of their own interest.
>
> "As a development of the same doctrine, it is also frequently held that a judgment may be rendered directly against one who although not a formal party in the case, has assumed or participated in the defense."

See also *Greyhound Corp.* v. *Leadman*, 112 F. Supp. 237, 239 (D. C. Ky., 1953); *Redman* v. *Stedman Manufacturing Company*, 181 F. Supp. 5, 12 (D. C. N. C., 1960); *Mirabito* v. *San Francisco Dairy Co.*, 47 P. 2d 530 (Cal. App., 1935); *Thompson* v. *L. C. Roney & Co.*, 246 P. 2d 1017 (Cal. App., 1952).

II.

There Is No Merit to the Hazeltine Corporation Contention That It Was Not Subject to Suit in the Northern District of Illinois, Eastern Division as Actually Hazeltine Corporation Was Found Within the District and Could Have Been Served With Process in New York.

The Hazeltine brief is premised on the erroneous proposition that being a foreign corporation it could not have been sued in the Northern District for Illinois, Eastern Division. However, in a civil antitrust case the plaintiff may file suit in the judicial district where the defendant corporation is "an inhabitant", or "found", or "transacts business", and service of process in such cases may be made anywhere in the United States. Section 12 of the Clayton Act (15 U. S. C. A. § 22) provides:

> "Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or trans-

> acts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found."

The record in this case shows that Hazeltine Corporation was both "found" and "transacting business" in the Northern District of Illinois by virtue of the identity of the Hazeltine Corporation with its wholly owned subsidiary, Hazeltine Research, Inc. Clearly venue was proper as to Hazeltine Research, Inc. It is an Illinois corporation with its principal offices in Chicago. Not only were the two Hazeltine companies stipulated to be one and the same, but Dodds, in a pretrial motion told the court:

> "Plaintiff finds it unnecessary to rely on the fact that it is a corporate legal entity separate and distinct from its parent, Hazeltine Corporation, and is willing that the two companies be considered as a single entity insofar as their respective foreign and domestic licensing operations are concerned."

Further, in a proposed finding (No. 8) submitted by Dodds, it was stated:

> "It is stipulated that for the purposes of this action Hazeltine and HC may be considered a single legal entity. * * *."

Thus, whether "a wholly owned subsidiary is not necessarily the agent of its parent", as argued by Hazeltine Corporation, is a rhetorical question on this record since in the instant case parent and subsidiary were stipulated to be the same and to be a single legal entity for the purposes of this litigation. The case was allowed to proceed on this basis without any objection from the parent until after the case was lost.

Apart from the stipulation Hazeltine Corporation's control over and exploitation of its subsidiary, Hazeltine Research, Inc. destroys any claim of corporate separateness and the acts of the subsidiary are in contemplation of law the acts of the parent.

In the case of *In Re Grand Jury Subpoena Addressed to E. M. I. Ltd., Middlesex, England c/o E. M. I. (U. S.) Ltd.*, 1957 CCH Trade Cases, ¶ 68,773, the New York District Court held that E. M. I., the English company, was found in New York through its wholly owned subsidiary. The Court said:

> "Here as in the Scophony case E. M. I. relies upon the cases which hold that a manufacturing parent cannot be said to be present upon the basis of business done by a distributing subsidiary."

The Court held that a motion to quash the subpoena should be denied and that the English company was found in New York through its wholly owned subsidiary.

In the case of *United States* v. *Watchmakers of Switzerland*, 133 F. Supp. 40, 45 (D. C. N. Y., 1955) the court held that the defendant was present through a subsidiary and found in New York, stating with reference to the corporate separation sought to be interposed:

> ". . . [W]here the substance of corporate independence is not preserved and the subsdiary acts as an agent of the parent, this corporate separation has been found without significance * * * [I]t is a mere adjunct of its parents and its activities will be regarded as theirs."

The court then said (p. 47):

> "It is unrealistic to speak in terms of corporate separation when both have agreed that acts by one corporation visit penalties upon the other and that one as a member and in its dealings through FH sets the conditions for the actions of the other. To that extent the two affiliates do not deal with each other as independents and it is a sufficient dissolution of the corporate barrier to make the acts of one the acts of the other in determining 'presence'."

In the case of *United States* v. *Scophony Corporation,* 333 U. S. 795, 92 L. Ed. 1091, 1106 (1948) the Supreme Court held that a British company was "found" in the State of New York by virtue of the activities of its subsidiary company, American Scophony. The latter company was engaged in the exploitation in the western hemisphere of the patent rights of its foreign parent. The court said:

> "We think that Scophony not only was 'transacting business' of a substantial character in the New York district at the times of service, so as to establish venue there, but also on the sum of the facts regarding its activities was 'found' there within the meaning of the service of process clause of § 12."

In the instant case, as in *Scophony,* the two Hazeltine companies—parent and subsidiary—were acting for each other in the promotion of their respective patents. See Finding of Fact No. III, entered by the court below, stating:

> "* * * the parties stipulated that for the purposes of this litigation Hazeltine Research, Inc. and its parent, Hazeltine Corporation, would be considered as one entity, operating as a patent holding and licensing company engaged in the exploitation of patent rights in the electronics industry in the United States and in foreign countries."

III.

The Findings and Rulings of the Trial Court That It Had Jurisdiction Over the Person of Appellant Cannot Be Vacated and Set Aside Unless Appellant Shows That They Are Clearly Erroneous.

Rule 52(a) of the Federal Rules of Civil Procedure provides that "findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.

Rule 16(b) of this court provides:

> "If appellant or petitioner raises a question of the sufficiency of the evidence to support a finding, ruling, order, verdict or judgment, he shall include in the appendix all evidence pertaining thereto."

The trial court found (App. 19):

> "The parties stipulated that for the purpose of this litigation Hazeltine Research, Inc., and its parent, Hazeltine Corporation, would be considered as one entity operating as a patent holding and licensing company, engaged in the exploitation of patent rights in the electronics industry in the United States and in foreign countries."

Certainly on the basis of this finding the court below was correct in holding it had personal jurisdiction over Appellant, and it so held by entering the judgment dated April 5, 1965 against Appellant (App. 1, 2 and 3).

It is stated at page 23 of the Appellant's brief that the circumstances which led to the execution of the stipulation are wholly inconsistent with any contention that Hazeltine Corporation was made a party to the suit by it. The circumstances leading to the execution of the stipulation occurred in pre-trial conferences in Judge Austin's chambers and are not known to present counsel for Hazeltine Corporation because such counsel were not present at the trial of this cause. Certainly the trial court was in a much better position to determine the effect, meaning and intent of a stipulation arising out of the pre-trial conferences than is a reviewing court. Rule 52(a) covers this situation.

Actually, as shown by the McConnell affidavit, Mr. McConnell raised the very question of whether or not Dodds was later going to take the position that Hazeltine Corporation would not be bound by any judgment entered in the antitrust suit, and in answer to that query and in a pretrial conference before the trial judge Dodds took the position that his clients would make no distinction between Hazeltine Research, Inc., and Hazeltine Corporation; that the case could go forward as though the companies were one and the same.

Judge Austin was presiding at the time of such pretrial hearing, and knew of his own knowledge that these statements were made. Certainly he could give no credence to the argument now being urged on this court by counsel, who were not present in the pretrial proceedings, that the clear stipulations that were made did not mean what they said.

The law applicable to findings of the kind involved here is set forth in the following cases:

Zeddies v. *Com. Int. Rev.*, 264 F. 2d 120, 126 (C. A. 7, 1959).

Wisconsin Mem. Park Co. v. *Com. of Int. Rev.*, 255 F. 2d 751, 754 (C. A. 7, 1958).

Shapiro v. *Rubens*, 166 F. 2d 659, 661 (C. A. 7, 1948).

Conclusion.

For the reason stated above Zenith Radio Corporation requests that the motion of Hazeltine Corporation filed pursuant to Rule 15(f) be denied.

Respectfully submitted,

Thomas C. McConnell,
Philip J. Curtis,
Francis J. McConnell,
134 South La Salle Street,
Chicago, Illinois 60603,

Francis W. Crotty,
6001 West Dickens Avenue,
Chicago, Illinois,
Attorneys for Zenith Radio Corporation.

Of Counsel:
Dugald S. McDougall,
135 South La Salle Street,
Chicago, Illinois.

In the United States Court of Appeals.

* * (Caption—15247) * *

REPLY BRIEF IN SUPPORT OF RULE 15(f) MOTION TO VACATE JUDGMENT ON JURISDICTIONAL GROUNDS.

Introduction.

We appreciate that the grant of leave to file a reply brief on motions is unusual, and have requested such leave only because the answer, affidavit and brief filed by Zenith present new matter which we believe should be dealt with. First, through the affidavit of T. C. McConnell, Zenith has attempted the unusual procedure of seeking to support the judgment against Hazeltine Corporation by reference to an alleged conversation not in the record, and which was never previously asserted. The additional affidavit of L. B. Dodds, trial counsel for Hazeltine Research, Inc. (HRI), denying that such conversation took place, is attached to this brief and this new contention is dealt with herein. Secondly, Zenith has misrepresented the record in respects which we believe should be pointed out. Thirdly, Zenith has advanced some incorrect propositions of law which we believe should be answered. We have not, however, dealt with every incorrect assertion of fact or law advanced by Zenith but have confined ourselves to those which we believe are most significant.

In its brief, answer and affidavit Zenith argues that Hazeltine Corporation, although admittedly not named as a party or served with process, became a party to the action below by (1) "voluntarily submitting itself" to the jurisdiction of the court by stipulation; (2) invoking the jurisdiction of the trial court by "seeking affirmative relief and the entry of findings in its favor"; (3) controlling the conduct of the litigation; and (4) engaging in "actions" constituting a general appearance. See Answer of Zenith to Motion To Vacate, paragraph 6, p. 3-4. As we shall discuss below, these contentions are totally lacking in support in the record of this case and, in several instances, are patently erroneous as a matter of law, even if they were supported factually by the record.

Zenith has also made some procedural arguments in an obvious effort to attempt to persuade this Court to postpone decision on this important question. We shall discuss these procedural points briefly below, but we turn first to Zenith's various substantive contentions.

I. Zenith's Contention That Hazeltine Corporation Entered Into the Stipulation Is Contrary to the Clear Language of the Stipulation and Unsupported By the Record.

Zenith's first contention that Hazeltine Corporation voluntarily submitted itself to the jurisdiction of the court by stipulation actually assumes the point in issue. It assumes that *Hazeltine Corporation* entered into the stipulation, but the record facts belie such a contention and Zenith has been able to cite absolutely no place in the record of this case which would support its contention that Hazeltine Corporation was a party to the stipulation.

A brief review of the Zenith arguments will illustrate the complete absence of any record support for Zenith's contention. First, Zenith relies upon the fact that Mr. Dodds, counsel for HRI who executed the stipulation, was a vice-president of Hazeltine Corporation and had represented it in other cases. But the mere fact that Mr. Dodds was a vice-president of Hazeltine Corporation and had represented Hazeltine Corporation in legal matters does not mean that a stipulation he signed on behalf of HRI and expressly as its attorney, either bound Hazeltine Corporation or made Hazeltine Corporation a party to the stipulation.

Next, Zenith contends that the stipulation bound Hazeltine Corporation because officers of Hazeltine Corporation who testified at the trial did not repudiate the stipulation. But this contention ignores the facts that the stipulation did not purport to bind Hazeltine Corporation and that Hazeltine Corporation was not a party to it. Thus, there was nothing for the company's officers to repudiate. Of considerable significance is the fact that although some of the officers of Hazeltine Corporation did testify at the trial, Zenith's counsel has been unable to point to any testimony by those officers which would indicate that they considered Hazeltine Corporation either a party to the stipulation *or* a party to the suit.

Moreover, *no one* has *repudiated* the stipulation. HRI, the party in the suit and the party to the stipulation, has not repudiated the stipulation but has stood by it. The position of Hazeltine Corporation is that it was never a party to the stipulation and the stipulation by its clear intent and language did not and could not make Hazeltine Corporation a party to the litigation. The attack here is not upon the stipulation itself but upon the trial court's apparent conclusion that the stipulation of HRI somehow bound Hazeltine Corporation and made it a party to the suit.

Finally, in apparent recognition that the record is devoid of any evidence that Hazeltine Corporation was a party to the stipulation, Zenith resorts to bringing into the case by affidavit an alleged conversation purportedly leading to the stipulation. In his affidavit filed in opposition to this motion, Mr. McConnell, counsel for Zenith, asserts *for the first time* that the stipulation arose out of a question which he asked Mr. Dodds. The paragraph at the top of page three of Mr. McConnell's affidavit and the argument at page 21 of Zenith's brief attempt to give the impression, without specifically saying so, that at a pretrial conference in Judge Austin's chambers, Mr. McConnell asked Mr. Dodds whether Hazeltine Corporation would take the position that it was not bound by a judgment on the antitrust counterclaim (which was not then filed) and that Mr. Dodds in response to that question specifically said that Hazeltine Corporation would not take that position.

While that is clearly the impression created, a close reading of the indicated paragraph of the affidavit and the argument reveals carefully chosen language which avoids stating precisely when and where this alleged conversation took place. Both the record in the case and the Dodds' affidavit filed herewith (Supp. App. A-46)* show that there was no such conversation.

Dodds unequivocally denies that any such conversation ever took place (Dodds' Aff. ¶ 4, Supp. App. A-48), and his denial is fully supported by the other facts in the record. Indeed, the stipulation itself and the record as it stands are wholly inconsistent with the purported existenec of any such alleged conversation.

Not only is there no record of this alleged conversation, but Mr. McConnell at no time during the record proceedings below ever asserted the existence of such a conversation. It was not mentioned in his oral argument or otherwise to the trial court below on the question of whether Hazeltine Corporation should be made a party to the judgment. Moreover, during the argument below on this issue, the trial court at no time suggested in any way that it was relying upon any such alleged conversation or that any such alleged conversation ever took place. In spite of the fact that the trial judge asked counsel for Hazeltine Corporation several questions during the course of the argument and in spite of the fact that Mr. McConnell argued extensively on this point, there was never any mention of any such alleged conversation. In fact, the court indicated by his comments that he had in mind that the issue was whether "a child" can "bind its parent" (Supp. App. A-51).

---

* References to "Supp. App. . . . ." are to pages in the Supplemental Appendix attached hereto, which pages continue in sequence with the pages of the Appendix filed in our original brief.

Further, during the oral argument, Mr. Kayser appearing specially for Hazeltine Corporation, contended that "neither party . . . had any *thought* or *intention* that this stipulation would bring the parent into the case" (Supp. App. A-51), and he expressly pointed out that the *first time* Hazeltine Corporation learned that Zenith contended it would be bound by the judgment was after the findings and conclusions had been entered (Supp. App. A-50). Mr. McConnell in his answering argument referred to a "pretrial conference . . . to determine . . . whether the proper parties were here . . . and there was a stipulation made out under the supervision of the Court. . . ." (Supp. App. A-56), but at no time did he make any reference to the conversation newly alleged in his last Tuesday's affidavit. If ever there was a time when Mr. McConnell would have "reminded" the court of the alleged conversation between Mr. Dodds and himself, had it taken place, that was the time. Yet, *no mention was made of it.**

For the convenience of this Court, we have attached hereto in a Supplemental Appendix the transcript of the argument on April 2, 1965 before the trial court on the question of whether Hazeltine Corporation should be made a party to the judgment.

Finally, the clear and explicit language of the stipulation *drawn by experienced attorneys for Zenith* does not reflect any such understanding or conversation. In fact, it is wholly inconsistent with the idea that the stipulation was an act of Hazeltine Corporation or a submission by it to the jurisdiction of the court.

---

* "Silence then becomes evidence of the most convincing character." Interstate Circuit, Inc. v. United States, 306 U. S. 208, 226 (1939).

Petrowski v. Hawkeye-Security Insurance Co., 350 U. S. 495 (1956), cited on page nine of Zenith's brief for the proposition the trial court could have jurisdiction over appellant by a stipulation, actually shows the procedure by which such jurisdiction *could* be obtained by stipulation. In that case, the defendant was named as a party and although he originally attacked the jurisdiction, he later entered into a stipulation which said:

> "That each of the parties to this stipulation voluntarily submits to the jurisdiction of the above entitled Court without service of process herein, the same as if personal service had been obtained by each against the other." 350 U. S. at 496.

This language, which is the obvious type of language one would use if it were intended that the stipulation constitute a voluntary submission to jurisdiction, contrasts sharply with the language of the stipulation in this case.

If the experienced trial counsel representing Zenith below who drafted the stipulation intended or believed that the stipulation was to constitute a voluntary submission to jurisdiction by Hazeltine Corporation, they would certainly have chosen language which would say so, and they would certainly have seen to it that the stipulation on its face showed clearly that it was intended as a submission to jurisdiction, that it was entered into by Hazeltine Corporation, and that the counsel signing it was described as being "Counsel for Hazeltine Corporation." Instead, they chose language which not only failed to show those facts, but clearly and explicitly shows that the stipulation was an agreement only *of HRI* and that Hazeltine Corporation was not a party to the stipulation.

II. Hazeltine Corporation Did Not Ask for Any Affirmative Relief at the Trial Below.

Zenith's second contention is that Hazeltine Corporation submitted to jurisdiction by "seeking affirmative relief and the entry of findings in its favor." (Zenith brief, p. 13; Zenith's Answer, p. 4.) This contention is apparently based on the fact that the attorney for HRI asked the trial court to enter findings and conclusions which would have found and concluded that certain conduct by Hazeltine Corporation was legal. Zenith claims that this is the same as filing a counterclaim by Hazeltine Corporation. But the proposed findings (which are actually not a part of the record in this case) do *not* ask for affirmative relief for Hazeltine Corporation.

HRI, the plaintiff and party represented by Mr. Dodds in the suit, was charged with being a co-conspirator with Hazeltine Corporation and had agreed that *it* could be considered the same as Hazeltine Corporation. Thus, it was perfectly natural for *it* to ask for findings and conclusions that certain conduct by Hazeltine Corporation was legal. But the fact that these findings and conclusions were proposed by HRI's attorney does not mean that *Hazeltine Corporation* was asking the court to enter them, even if they could be said to ask for affirmative relief, which they do not.

Obviously, the fact that a party asked for findings and conclusions approving of conduct of a particular non-party with which it is charged to be a co-conspirator cannot by that fact alone make the non-party subject to the jurisdiction of the court and transform him into a party to the action. The cases cited at page 13 of Zenith's brief (*Merchants Heat & Light Co.* v. *J. B. Clow & Sons,* 204 U. S. 286 (1907) and *North Branch Products, Inc.* v. *Fisher,* 284 F. 2d 611, 615 (D. C. Cir. 1960)) do not support any such proposition. They both involve the filing of a counterclaim expressly in the name of the party who is found to have submitted to the jurisdiction, and Hazeltine Corporation has filed no counterclaim, cross-claim or other claim in this suit.

III. Zenith's Contention That Hazeltine Corporation Became a Party by Controlling the Defense Is Absolutely Unsupported by the Record and Incorrect as a Matter of Law.

Zenith's third argument is that Hazeltine Corporation became a party to the case by "controlling the conduct of the litigation." (Zenith Answer, page 4; see also Zenith Brief pp. 10, 15-16.) There is no evidence to support this bald assertion and no finding on the subject. Indeed, the question of who was "controlling" the defense is not mentioned in the findings.

Moreover, even if it were factually true, Zenith's contention is patently erroneous as a matter of law. The two cases upon which Zenith relies most heavily for this proposition are *Louisville & N. R. R.* v. *Schmidt,* 177 U. S. 230 (1900) and *Ocean Accident & Guarantee Corp.* v. *Felgemaker,* 143 F. 2d 950 (6th Cir. 1944). Both of these cases are quoted from extensively by Zenith at pages 15 and 16 of its brief.

The *Ocean Accident* case was considered by this Court in its recent case of *Schnell* v. *Peter Eckrich & Sons, Inc.,* 279 F. 2d 594 (7th Cir. 1960), *aff'd,* 365 U. S. 260 (1961), cited and discussed in our brief at pages 12 and 15-18, and this Court expressly declined to follow it. 279 F. 2d at 596. Indeed, in *Schnell* this Court concluded that the open assumption and control of the defense by a non-party was *not* sufficient to give the trial court jurisdiction to enter judgment against the non-party. That decision, which was affirmed by the United States Supreme Court (365 U. S. 260) is, therefore, directly contrary to the proposition asserted here by Zenith.

This Court's rejection of *Ocean Accident* was joined by the Tenth Circuit which pointed out in *Alder* v. *Garcia*, 324 F. 2d 483, 486 (10th Cir. 1963) that the *Ocean Accident* case "has not been generally followed", citing *Schnell.*

The second case upon which Zenith places primary reliance is *Louisville & N. R. R.* v. *Schmidt,* a 1900 Supreme Court case. Actually, that case involved a separate proceeding under a rule to show cause as to which the company to be held had been made a party to the rule, was served, did answer, and did assert a setoff—all facts which make it clearly distinguishable from the instant case. Moreover, if the *Louisville* case is to be considered authority for the proposition that the assumption and control of the defense gives the trial court jurisdiction to enter judgment over a non-party, it is inconsistent with and in substance overruled by *Merriam Co.* v. *Saalfield,* 241 U. S. 22 (1916), and *Schnell* v. *Peter Eckrich & Sons, Inc.,* 365 U. S. 260 (1961), both later Supreme Court cases, holding that a judgment cannot be entered against a non-party even though that non-party controls and conducts the defense.

The other cases cited by Zenith on this point—district court cases from Kentucky and North Carolina and two lower California appellate court cases—all either do not support Zenith's contention or are inconsistent with the clear holding of this Court and the Supreme Court of the United States.*

---

* Greyhound Corp. v. Leadman, 112 F. Supp. 237 (E. D. Ky. 1953), Mirabito v. San Francisco Dairy Co., 47 P. 2d 530 (Cal. App. 1935) and Thomson v. L. C. Roney & Co., 246 P. 2d 1017 (Cal. App. 1952) all involve "alter ego" or "shell" corporate entities; Redman v. Stedman Mfg. Co., 181 F. Supp. 5 (M. D. N. C. 1960), is a case in which a manufacturer assumed the defense of an infringement suit against its dealer, was designated as the real party in interest, *appeared, and requested that it be bound by the judgment.*

IV. Zenith's Contention That Hazeltine Corporation Did Acts Constituting a General Appearance Is Equally Without Foundation.

Zenith asserts that Hazeltine Corporation engaged in some unstated "actions constituting a general appearance" (Ans. p. 4). For this bald proposition it refers neither to the record of this case nor to any legal authority. That this catch-all contention is a sham emphasizes the fact that Zenith has been unable to call the Court's attention to any specific act *by Hazeltine Corporation* in the record of this case below which even remotely resembles conduct constituting a general appearance.

V. The Various Procedural Arguments Made by Zenith Are Wholly Lacking in Merit and Provide No Barrier to the Relief Sought by This Motion.

In a transparent attempt to becloud this clearly-defined jurisdictional question and to pursuade the Court to defer consideration of this motion, Zenith has asserted a variety of procedural objections. It has variously contended that (a) the Appendix filed with Hazeltine Corporation's opening brief is inadequate; (b) the trial court's conclusion that it had jurisdiction to enter judgment against Hazeltine Corporation is a matter under Federal Rule 52(a) which can be reversed only if "clearly erroneous;" and (c) Rule 15(f) of this Court does not authorize a motion attacking the jurisdiction of the trial court. However, as we shall briefly show, none of these contentions has any merit and none prevents this Court from vacating the judgment against Hazeltine Corporation on this motion.

A. The Appendix.

Zenith has repeatedly argued that the Appendix filed with appellant's brief is inadequate and that there is somewhere in this record other evidence which somehow supports the contention of Zenith that Hazeltine Corporation voluntarily submitted itself to the jurisdiction of the trial court and made itself a party to the suit (Zenith's Answer, ¶ 1, 3, 5 and 6; McConnell Affidavit ¶ 4).[*] Even if Rule 16 is applicable to the proceedings on a motion under Rule 15 (f), the obvious solution for Zenith, if the Appendix failed to set forth some evidence supporting its contention, would be to set forth those parts of the record in its own Appendix. But Zenith has failed to call attention to any part of the record which in any way tends to show that Hazeltine Corporation was a party to the stipulation or that Hazeltine Corporation submitted proposed findings or asked for affirmative relief or that Hazeltine Corporation conducted the defense or that Hazeltine Corporation did anything which would constitute either a general appearance or a submission to jurisdiction. The limited references to the record which ~~are made~~ by Zenith have been discussed above, and none of them evidences any action by Hazeltine Corporation constituting submission to jurisdiction.

B. Rule 52(a) of the Federal Rules of Civil Procedure.

Zenith is similarly in error in its contention that Rule 52(a) is applicable to this motion. By this motion, Hazeltine Corporation does not seek to set aside any finding. It does not contest the finding that there was a stipulation *between the parties,* i.e., HRI and Zenith. It does, however, contend that the legal conclusion that the trial court had jurisdiction to enter judgment against Hazeltine Corporation is not supported by that finding. The trial court is in no "better position" than this Court to determine the correctness of that legal conclusion, since that legal conclusion can be set aside without disturbing the findings of fact of the trial court. *Plomb Tool Co.* v. *Sanger*, 193 F.2d 260, 264 (9th Cir. 1951); *Chandler* v. *United States*, 226 F.2d 403, 405 (7th Cir. 1955).

---

[*] Mention is also made in paragraph 7 of the McConnell affidavit of the absence of oral argument. If that reference is intended as a request for oral argument and if the Court feels it would be helpful, we have no objection to oral argument on this motion.

Actually, there is no finding of fact as to any of the purported bases asserted here by Zenith as supporting its contention that Hazeltine Corporation became a party to the suit. There is no finding as to the alleged conversation between Mr. McConnell and Mr. Dodds. There is no finding that Hazeltine Corporation was a party to the stipulation. There is no finding that Mr. Dodds was an agent of Hazeltine Corporation or had authority to speak for it or bind it. There is no finding that Hazeltine Corporation paid for or controlled the defense. There is no finding that HRI was a shell corporation* or was controlled or exploited by Hazeltine Corporation. In short, there is no finding of any fact which supports Zenith's contention here that Hazeltine Corporation became a party to the action below.

C. Rule 15(f) of this Court

Finally, Zenith asserts that Rule 15(f) of the rules of this Court is limited to motions raising questions as to the jurisdiction *of this Court*, and does not provide a procedure for attacking the jurisdiction of the trial court. But the language of the rule does not support Zenith's contention. It states:

"Whenever it appears that there is a substantial juris-

---

* While Zenith has cited and relied upon cases involving mere corporate shells (See *e.g.*, Greyhound Corp. v. Leadman, 112 F. Supp. 237 (E.D. Ky. 1953); Mirabito v. San Francisco Dairy Co., 47 P. 2d 530 (Cal. App. 1935); Thomson v. L. C. Roney & Co., 246 P. 2d 1017 (Cal. App. 1952)), it has never actually contended that HRI is a mere shell, as inded it could not. While HRI is a small corporation of modest resources compared to Zenith, it is nevertheless an adequately capitalized and operating company. It put up not only its very valuable United States Patents, but also $2,6000,000.00 of its own government securities as a part of the supersedeas bond agreement in this case.

> dictional question *in a cause pending on appeal,* such question may be raised by either party by motion, to determine the issue as to jurisdiction in advance of hearing on the merits. . . ." (Emphasis added).

Thus, the rule does not say that the question must involve the jurisdiction of this Court, but merely says there must be "a substantial jurisdictional question in a cause pending on appeal."

The obvious purpose of Rule 15(f) is to permit a prompt and separate determination of a substantial jurisdictional question (which is certainly present here) prior to a hearing and consideration on the merits. Invocation of this rule is especially appropriate here where, as we have pointed out, the existence of this judgment causes grave injury to Hazeltine Corporation, its business and its many public shareholders. It is respectfully submitted that if we are right that the trial court lacked jurisdiction to enter the judgment against Hazeltine Corporation, the cloud which that judgment creates over the company and its future should be removed promptly, particularly when, contrary to Zenith's contentions, the relevant facts and applicable legal principles are clear.

Respectfully submitted,

John T. Chadwell
Victor P. Kayser
135 South La Salle Street
Chicago, Illinois 60603
Attorneys for Hazeltine Corporation

Of Counsel:
Chadwell, Keck, Kayser, Ruggles & McLaren
135 South La Salle Street
Chicago, Illinois 60603
RAndolph 6-2545

SUPPLEMENTAL APPENDIX.

In the United States Court of Appeals.

For The Seventh Circuit.

* * (Caption—15247) * *

AFFIDAVIT OF L. B. DODDS.

State of New York }
County of Queens } ss.

L. B. Dodds, being first duly sworn, deposes and says that:

1. He has been counsel for Hazeltine Research, Inc., the plaintiff in the action entitled *Hazeltine Research, Inc.* v. *Zenith Radio Corporation,* Civil Action No. 59 C 1847 before the United States District Court Northern District of Illinois, Eastern Division.

2. He has seen a copy of the Motion, Brief in Support and Appendix, filed by Hazeltine Corporation in cause No. 15247 in the United States Court of Appeals for the Seventh Circuit, and also the Answer, Affidavit of Thomas C. McConnell and Brief of Appellee, Zenith Radio Corporation, filed in opposition to Hazeltine Corporation's Motion to Vacate the Judgment as to it, including the following statements made by T. C. McConnell in his affidavit and in the supporting brief, concerning the April 3, 1963 pretrial conference and May 7, 1963 stipulation:

> "This stipulation came into being because this affiant questioned Dodds as to whether or not his clients would take the position that Hazeltine Corporation was not bound by a judgment in the antitrust counterclaim proceedings and Dodds said that neither the parent or the subsidiary would make any distinction between Hazeltine Research, Inc. and Hazeltine Corporation;

> that the case could go forward as though the companies were one and the same. As stated in the stipulation it was the evidence of 'understandings reached orally in the course of the pretrial conference.'" (McConnell affidavit, paragraph 3.)
>
> * * *
>
> "Actually, as shown by the McConnell affidavit, Mr. McConnell raised the very question of whether or not Dodds was later going to take the position that Hazeltine Corporation would not be bound by any judgment entered in the antitrust suit, and in answer to that query and in a pretrial conference before the trial judge Dodds took the position that his clients would make no distinction between Hazeltine Research, Inc., and Hazeltine Corporation; that the case could go forward as though the companies were one and the same." (Zenith Brief, page 21.)

3. He has previously made an affidavit concerning the April 3, 1963 pretrial conference and the May 7, 1963 pretrial stipulation, to-wit: an affidavit dated March 29, 1965 which has been reproduced as a part of the Appendix filed by Hazeltine Corporation (Appendix A-27 to 30), but in view of the McConnell affidavit and statements has executed this additional affidavit in denial thereof.

4. He denies that at the pretrial conference on April 3, 1963, or at any other time, that T. C. McConnell asked him whether or not Hazeltine Corporation would take the position that it would not be bound by a judgment in antitrust counterclaim proceedings, denies that he ever said that Hazeltine Corporation would not take such a position, and denies that he ever stated that Hazeltine Corporation would be so bound; and he states that he neither had nor purported to have any authority to submit Hazeltine Corporation to the jurisdiction of the court in that litigation. He further states that the question as to whether Hazeltine Corporation would be bound by any such judgment never

came up until after the findings and conclusions had been entered by the district court.

5. The true fact is that, as outlined in his March 29, 1965 affidavit (A-28), his statement at the pretrial conference that Hazeltine Research, Inc. would not rely on the fact that it is a corporate entity separate and distinct from its parent, was made in connection with the question of production of documents, and that the question of Hazeltine Corporation, the parent, becoming liable on a judgment was never raised. Paragraph 4 was included in the stipulation of May 7, 1963, pursuant to the above agreement by him as counsel for Hazeltine Research, Inc., and said stipulation was signed by him specifically as "Counsel for Plaintiff", Hazeltine Research, Inc., and for no one else.

6. He further states that not only did T. C. McConnell not ask whether Hazeltine Corporation would take the position that it "was not bound by a judgment in the antitrust counterclaim proceedings" but further points out that at the time of the pretrial conference there were no "antitrust counterclaim proceedings" pending. At that time, Zenith counsel had served upon counsel for Hazeltine Research, Inc. a proposed antitrust counterclaim but the counterclaim was not filed until about May 22, 1963. Further, the proposed counterclaim named only Hazeltine Research, Inc. as a defendant and asked a judgment only against Hazeltine Research, Inc. and he first learned that an attempt would be made to impose liability on Hazeltine Corporation as well, the day following entry of the findings and conclusions, when he was informed that Zenith counsel had so stated to the Dow-Jones Company.

He denies that he signed the May 7, 1963 stipulation on behalf of or as counsel for Hazeltine Corporation, and points out said stipulation specifically designated him solely as counsel for Hazeltine Research, Inc.; and denies that in the conduct of the case, he acted as counsel for, or on behalf of Hazeltine Corporation, or purported to do so, or in any way intended to subject it to the jurisdiction of the district court in the litigation, and states that he at no time ever had any authority so to do.

Affiant states that he has read the foregoing; that he knows the contents thereof; and that the same is true of his knowledge.

/s/ L. B. Dodds

Subscribed and Sworn to before me
this 5th day of August, 1965.
/s/ Helen O'Connor
Notary Public

Notary Public in and for the
County of Queens, New York.

Helen O'Connor
Notary Public, State of New York
No. 41-8188075
Qualified in Queens County
Certificate Filed Nassau County
Commission Expires March 30, 1966

IN THE UNITED STATES DISTRICT COURT.

389 [Caption Omitted]

Mr. Kayser: Well, now, your Honor, on the matter of the objection of the parent Hazeltine Corporation to being held on the proposed judgment, I have filed—our firm has filed a special appearance for the purpose of raising that point only, and I have filed with his Honor and given copies to Mr. McConnell of the memorandum which we have filed on that point.

Now, as I understand it, Mr. McConnell's statement, his proposed judgment which would bind the parent, is based solely and entirely on a stipulation made in this case.

Now I want to say first that the first time that it was made known that Mr. McConnell regarded Hazeltine Corporation as being in fact a party to this litigation occurred when a Dow Jones release was shown to the Hazeltine Corporation people a day or two days after your Honor entered the findings and conclusions. It was then indicated that Zenith or its counsel would ask that the judgment run against the parent as well.

390 Now, first, as concerns the subject matter of the stipulation, that is pretty much first and last and the whole thing. This stipulation, and a copy of it is attached to the memorandum, was entered into under date of May 7, 1963, at a time when, as now, the parties to the case were Hazeltine Research, Inc., plaintiff, and Zenith Radio Corporation, defendant. Those two were then, as they are now, the parties.

Now, this stipulation was stated to have been entered into pursuant to pretrial conference and in order to simplify and expedite the trial.

Paragraph 4 reads that plaintiff, which is Hazeltine Research, Inc., agrees that for purposes of this litigation plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company. And who signed that stipulation? It was signed by Mr. L. D. Dodds, Counsel of Plaintiff, not counsel for plaintiff and Hazeltine Corporation, and it was signed by Mr. McDougall as well.

The Court: The basis of your argument, I assume, is that a child cannot bind its parent?

391 Mr. Kayser: That is part of it, but it goes beyond that, your Honor.

We are prepared to show that neither party here, until Mr. McConnell thought of it, had any thought or intention that this stipulation would bring the parent into the case.

Now, your Honor, this stipulation was drafted by counsel for Zenith, not counsel for Hazeltine. It was drafted by Mr. McDougall, and the paragraph 4 in here is the exact language which he submitted.

392 The Court: Mr. Dodds did not have a gun to his head when he signed it, did he?

Mr. Kayser: No, he did not, your Honor.

All right. Then the question is, what does the record show as to the meaning and intent of this stipulation?

Well, it shows first, your Honor, that the counterclaim which is here involved had been originally served—or, rather, notice to Hazeltine Research, Inc. back in March of 1963, or, roughly, a month or two before this stipulation was entered into.

Now, I will review the counterclaim from this point of view a ~~moment later, but I will say in advance that no one~~ reading that counterclaim would possibly suppose for a minute that Hazeltine Corporation was being named a counter-defendant. I will explain the very careful distinction which was made between the parent and the subsidiary in the counterclaim.

The Court: Well, of course, Hazeltine Corporation wasn't a party to the lawsuit.

Mr. Kayser: Yes, your Honor, you anticipated my next point, and that is when this counterclaim was

393 filed. It bears a date stamp of May 22, 1963. Actually, there is an indication that it may have been filed later, but there is a July date on it also. But, in any event, certainly it was filed after the stipulation.

Again, not only is the parent not named a party, but there are very clear distinctions between the parent and the subsidiary all the way through, as there were when it was originally submitted to Hazeltine Research back in March.

Now, what does this counterclaim say—and mind you, your Honor, this is post-stipulation—it names, still, Hazeltine Research, Inc. as plaintiff and counter-defendant.

Now, your Honor, we have heard at rather great length and with some repetition about the fact that Mr. McConnell has had forty years and forty very successful years at the bar.

Could anyone really believe for a minute that if he had any thought of bringing the parent into this lawsuit that he would not have named them and that he would be relying on this stipulation which was intended to simplify and expedite the trial? Would any lawyer who has been practicing for two years expect to hold somebody

394 liable on a judgment when he didn't even name them? He relied on some pretrial stipulation.

The Court: You mean that pretrial stipulations are worthless?

Mr. Kayser: No, they are not worthless, your Honor, but if Mr. McConnell ever had any thought of bringing Hazeltine Corporation into this case he would have done the obvious thing, he would have named them or he would at least have done the thing which he did in this afterthought in his findings of fact, talk about the two being treated as one. He didn't do that at all, your Honor. What did he do? In paragraph 3 he specifically refers to counter-defendant Hazeltine Research, Inc. and says that it is a wholly-owned subsidiary of Hazeltine Corporation.

And in paragraph 4 he distinguishes again. And then, your Honor, when he comes down to the prayer for judgment for damages—this is on page 9 of my memorandum, and I earnestly request this court to consider that very carefully because it is very revealing. What did he pray for? First, he prayed for a judgment against counter-
395 defendant, a judgment against counter-defendant for treble the amount of damages sustained by defendant, that is Zenith, as the proximate result of said acts of counter-defendant and its co-conspirators and for costs and attorneys fees.

Now, everywhere through this complaint he has indicated clearly that he considers Hazeltine Corporation a parent to be a co-conspirator. But he does not ask for any judgment for damages against the co-conspirator, he wants judgment against the counter-defendant because of the acts of counter-defendant and its co-conspirators, including Hazeltine Corporation.

And then, further, your Honor, when you go to paragraph 2, the injunctive paragraph, he talks there, more broadly, about enjoining counter-defendant and anyone in privity with it from doing the acts there alleged.

Now, there he is specifically broadening it and, of course, as your Honor knows far better than I, under injunctive provisions there are circumstances where others who have notice, act in concert and so forth, may be served with a copy of the injunction and held liable to abide by it,
396 and so he says enjoining counter-defendant and anyone in privity. But when you get to the damage paragraph above he names solely Hazeltine Research, Inc.

Now, your Honor, this thing goes beyond this. I pointed out at page 10 that in Zenith's pretrial brief and post-trial brief they again recognize the distinction, because in both briefs Mr. McConnell, Zenith says, plaintiff, plaintiff is a patent-holding and licensing company wholly owned by a large New York electronics company called Hazeltine Corporation. If ever there was an acknowledgment, a distinction between the subsidiary on the one hand and the parent on the other, your Honor, there it is.

397 But, again, Hazeltine made its position clear in its memorandum in which it said that plaintiff Hazeltine is an independent legal entity which must stand on its own feet and be responsible for operations. It is not subsidized by its parent HC, or Hazeltine Corporation.

Now, I say, your Honor, the record here is entirely clear. Now your Honor, I suppose, and properly, certainly, will ask, "Well, then, what does that stipulation mean? What is the reasonable construction of it?"

Your Honor, all that stipulation can possibly be held to mean, and I submit it is clear on this record, that all that it did mean is that as concerns the parties to this litigation, the parties to this litigation, namely, Hazeltine Research, that it would agree and stipulate that the acts of its parent would be considered as its acts. This stipulation had to do with the conduct of this litigation between these parties. It had nothing whatsoever to do as concerns any litigation with any corporation which was not a party. This was

398 an agreement with Hazeltine Research made as to how it could be regarded.

Now, your Honor, there are no appearances on file by Hazeltine Corporation. Counsel for Hazeltine Research never purported to act for Hazeltine Corporation. It signed the stipulation as counsel for Hazeltine Research, Inc., and the act or the action of Zenith now, at this late date, to try to reconstrue and rewrite the stipulation to this effect, well, frankly, it is another Park and Tillford situation where, again, at the last minute they try to bring in

Schenley and the court wouldn't do it, wouldn't permit it. But in this case he waits until the findings and conclusions are entered and then he comes up with this construction.

Now, your Honor, we have cited in our memorandum; we have cited the Supreme Court Case of Hansberry vs. Lee, and I want to read a part of the quote: It says:

"It is a principle of general application in—"

The Court: Was there a stipulation in that case?

399 Mr. Kayser: Sir?

The Court: Was there a stipulation in this case?

Mr. Kayser: Not to my knowledge.

The Court: All right.

Mr. Kayser: (Reading)

> "It is a principle of general application in Anglo American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process."

Now, your Honor, we submit that this is, in addition to all of the considerations, this is a question of due process as well. There is nothing in this record that could possibly justify it.

The Court: I'm glad to find out that due process applies to something besides criminal cases. That is the only time it has been raised lately.

Mr. Kayser: Well, your Honor, there is nothing in the stipulation or in this record, we submit, which would justify bringing in or justify any judgment against

400 the parent corporation.

The Court: Thank you.

Mr. McConnell?

401 Mr. McConnell: May it please the Court, we had a pretrial conference before this case started to determine what the issues were and whether the proper parties

were here, whether the case was ready to go forward, and there was a stipulation made out under the supervision of this Court, as is done in pretrial conferences. It wasn't drafted by one person, it was drafted by counsel in the case and approved by this Court. Paragraph 4 of that stipulation provides:

> "Plaintiff agrees that for purposes of this litigation plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company."

The man who signed that stipulation was on officer of the Hazeltine Corporation. Everything involved in this case in the way of patents and pools is the Hazeltine Corporation.

Mr. Dodds in this case made an affidavit dated May 10, 1963, in which he identified himself as follows:

> 402 "He has been retained by or employed by plaintiff's parent company, the Hazeltine Corporation, continuously since 1934 and has been a vice-president of said Hazeltine Corporation continuously since 1939 except for a period during 1944-1945 when he had no connection with Hazeltine Corporation or any of its affiliates. He also was an officer of plaintiff Hazeltine Research from its organization in 1946 until June 7, 1961, and since 1946 he has been continuously familiar with the patents and the patent licenses of both the plaintiff and its parent, the Hazeltine Corporation."

He filed another statement in his memorandum under the caption "Statement of the Case."

He stated:

> "For the purposes of discussion plaintiff finds it unnecessary to rely on the fact that it is a corporate legal entity separate and distinct from its parent Hazeltine
> 403 Corporation and is willing that the two companies be considered as a single entity insofar as their respective foreign and domestic licensing operations are concerned."

In another affidavit that he filed in this Court he identifies himself:

> "He is now and has been for more than twenty years trial counsel for plaintiff and its predecessor in business and parent company Hazeltine Corporation and has the responsibility for conducting the trial of the instant action."

Mr. Ruestow, who was also counsel of record in this case, testified at page 329 and 330 of the transcript:

> "I am general patent counsel of the Hazeltine Corporation, the parent corporation. I am an executive vice-president of the plaintiff Hazeltine Research."

He was a counsel of record in the case when this stipulation was filed.

404 Westerman said that he was vice-president and general counsel of the Hazeltine Corporation.

At page 1291 of the record Dodds testified as follows:

> "Q. What is your relationship to the Hazeltine Corporation?
>
> "A. I am on a retainer as a consultant and I am vice-president of the parent corporation without any official assignments.
>
> "Q. What proportion of your time do you spend on Hazeltine affairs?
>
> "A. Between thirty and forty per cent.
>
> "Q. Do you represent any other clients?
>
> "A. Yes, I do.
>
> "Q. When you say thirty to forty per cent you are speaking of your working time?
>
> "A. I am speaking of working time, yes."

405 Now, there isn't any question in the world that he was an agent for the Hazeltine Corporation, and if there was any question about it he dispelled it with his presentation here of findings of fact. Starting at page 9

with the foreign licensing practices of HC, which is Hazeltine Corporation, he asks for findings, all the way through, in his favor, Hazeltine Corporation. 29, the Hazeltine Corporation, CRPL agreement contains no restriction on the right of CRPL to license radio or television receivers, and so forth.

Hazeltine Corporation is not and at no time was a member of CRPL nor has it participated in the activities of that concern.

He wanted this Court to make findings of fact in his favor and asked that the Court exercise its jurisdiction to make those findings in favor of the Hazeltine Corporation. Oh, they are all the way through here, 14, 15, 16, 17, in Australia, in England—Hazeltine Corporation was the only one that was there.

And then we get down to the conclusions, and he asks 406 that the conclusions be written so as to give him benefits from this litigation, and a legal conclusion that its conduct was perfectly lawful. Finding 8, he wants a finding that the use of their patents, Hazeltine Corporation patents, does not constitute a contract, plan, arrangement or a conspiracy in restraint of trade even though the operations of the foreign concern in such country be lawful there it would be illegal if performed in the United States. The bilateral agreement between Hazeltine Corporation and CRPL currently in force is a lawful agreement.

He wants your Honor to enter that. He came in here asking your Honor to enter judicial determinations in his favor, in the Hazeltine Corporation favor, and he had a right to do it. We had all stipulated that they were in the case, that they were both parties with the same legal entity for the purposes of this lawsuit. And the damages, and all the rest of it, all the way through. If your Honor is familiar with those findings, and I am sure he is, it shows a complete attempt to engage and to ask for and to receive a judgment in favor of the Hazeltine Corporation.

407 Now, there is a case here that went up in the Eastern District of Illinois, United States District Court, decided on July 12, 1955, University of Illinois Foundation, Plaintiff, against Block Drug Company, Amident, Inc., F. W. Woolworth Company and Chester J. Henschel, Defendants.

Mr. Kayser: What was that citation again?

Mr. McConnell: I haven't given it to you yet.

Mr. Kayser: All right, then, I will wait.

Mr. McConnell: 133 Fed. Supp. 580. It was affirmed in the Court of Appeals and certiorari was denied in the United States Supreme Court.

The plaintiff, University of Illinois Foundation, filed a suit against F. W. Woolworth Company, Amident, Inc. and Chester J. Henschel, alleging that the defendants have infringed upon their two patents. Personal service was obtained only upon F. W. Woolworth Company. The suit was dismissed as to the defendant Henschel.

"Now, bear in mind" that the Block Drug Company was not named as a party defendant in that case. The parties entered into a stipulation:

> "That the defense of this action is controlled or directed by Block Drug Company and Amident, Inc., by 408 whom defendants' attorneys have been retained and from whom defendants' attorneys receive instructions relative to the defense of this suit. All expenses are being paid by Amident, Block Drug Company, although defendant F. W. Woolworth Company is kept advised of the progress of the litigation and is agreeable to being represented by counsel here appearing on its behalf. Block Drug Company being Woolworth's supplier—"

The court went on and entered judgment against the Block Drug Company. It never formally appeared except through this stipulation.

The Court: And that was a stipulation merely that the Block Drug Company's lawyers represented Woolworth.

Mr. McConnell: Right, that is right, that was all.

The court held it had jurisdiction over them and entered a judgment against them. It was appealed and it was affirmed. We have a much stronger case than that here.

Here is a party that stipulated not only with us but 409 with this court that these parties were the same.

Now, we have a simple proposition before us here. Can parties come into this court and make stipulations with the court and then go off and say, "Oh, no, that is something else. We weren't authorized to do anything like that." Can they come in here and ask your Honor to act in their behalf and then say that they are not here?

I think a court—I don't say this in any way, any possible critical, derogatory way, but I am just speaking in a general way of a court that would stultify itself to permit litigants to come in and take those positions in its court and then change the position to the detriment of the court and the trial and the litigation and the parties and take a different position and repudiate its solemn agreements with the court and with counsel. And I most respectfully suggest that is exactly what this Hazeltine Corporation now is attempting to do. Be here as long as they thought it was to its advantage and could get an advantage and a finding and an adjudication through its stipulation, but when it turns out the other way, repudiate the stipulation and walk away 410 from this whole thing and say, "No, we have no part of this thing. We have no liability here. You never had any power over us at all."

I say it is absolutely an outrageous proposition for a litigant to take after what has gone on in this trial. And it is part and parcel of just what we have been hearing here for the last three days.

I am perfectly willing to submit anything that your Honor wants that can help your Honor in anything it has to do with the determination of this case, but there comes a time—

The Court: I think I said that first three days ago.

Mr. McConnell: —when this thing should end, and I submit the time has come. There is nothing to this position. The cases that he cites are cases of venue where parties didn't submit themselves. This man came in here through—this litigant came in here through their vice president knowing exactly what was involved in the case and asking for relief of this court through his proposed findings and stipulated solemnly here in this court and then attempts to repudiate it and walk away from it.

411 As I have said, I suggest it is an outrageous thing.

As I say, I am willing to submit anything that your Honor wants, but I think by Monday we ought to have a judgment entered in this case.

The Court: I think I have indicated to you that you are going to have a disposition of this by Monday, and it is because of my desire to extend the courtesy to Mr. Kayser and his office on their work product on which I am sure they labored into the wee hours of the night that I am not proceeding today.

412 Mr. Kayser: Your Honor, I have a very few brief remarks in reply to Mr. McConnell. He asks the question can parties come into this Court and ask relief and then repudiate the fact that they came into this Court. But there, your Honor, is the key, can parties come into this Court? And we submit that it is clear in the entire record here that Hazeltine Corporation never did come into this Court. They never purported to. They never atempted to. And the only thing that was agreed, and this has direct ref-

erence to Mr. McConnell's comments about these findings, the only thing that was agreed was that Hazeltine Research, Inc., the party—

The Court: How do you get around the Woolworth case where—

Mr. Kayser: Your Honor, that was another point I was coming to, and that is this; Mr. McConnell knows fully well that there is this doctrine in patent litigation in which when the defense is tendered and accepted that the party undertaking that defense will be bound at least as concerns the question of validity infringement of claims, and I 413 would like—we shall get these forces together again —I am perfectly familiar with that rule, and will give your Honor a littel memo on it. I don't think it has any relevancy here.

The Court: I don't think a memo is necessary.

Mr. Kayser: Well, I know, but he cited a rule your Honor that I think has no—

The Court: I mean, is this a rule of law, a practice a statute?

Mr. Kayser: There are many cases. This is one of the problems that any patent owner faces when a supplier of his is sued, should he come in and defend or not, because if he does not he may have an adverse adjudication because the case wasn't handled as it should be.

The Court: I understand the moral obligation of a patent owner to defend one of his dealers who—

Mr. Kayser: That is right.

The Court: —has been the object of somebody's wrath. I understand that.

Mr. Kayser: I beleive that rule has absolutely no 414 applicability here whatsoever.

All I can say further on this, your Honor, is to ask you honestly to read and consider our memorandum which I think states our position.

The Court: I intend to.

Mr. Kayser: Now, as concerns Hazeltine Research, Inc., we have raised some questions concerning the injunctive paragraph because we believe there are some uncertainties involved there and we are suggesting certain amendments to those paragraphs to clarify them and there isn't really a thing I can say on those proposed amendments that is not in the memorandum. I think we have covered it as thoroughly—

The Court: I am sure, having read other memoranda of yours in recent days, that you make yourself and your points sufficiently clear in your memorandum without any aid or oral arguments.

Mr. Kayser: What we are really saying is while we, as your Honor well knows, do not agree that any injunction should be entered, we have pointed out that if it is to be there are certain clarifications which we feel should
415 be made in the paragraph as submitted by Zenith.

The Court: And that applies to both the misuse paragraph and the pool paragraph.

Mr. Kayser: Yes.

The Court: All right.

Well, I want to see what you have to say about it and I will see you at 10:15 Monday morning.

(Whereupon, the above-entitled cause was adjourned until 10:15 o'clock a.m. Monday, April 5, 1965.)

UNITED STATES COURT OF APPEALS.

Monday, August 16, 1965.

Before Hon. Latham Castle, Circuit Judge.

* * (Caption—15247) * *

On consideration of the motion of appellant for leave to file instanter its reply brief with supplemental appendix.

IT IS HEREBY ORDERED that leave be granted to file instanter the reply brief of appellant in support of Rule 15(f) motion to vacate judgment on jurisdictional grounds with supplemental appendix, presently lodged in the office of the Clerk of this Court.

IT IS FURTHER ORDERED that the motion of appellant under Rule 15(f) to vacate judgment on jurisdictional grounds be taken with the case.

UNITED STATES COURT OF APPEALS.

For the Seventh Circuit.

Chicago 10, Illinois

March 1, 1966

Before Hon. Latham Castle, Circuit Judge.

Hazeltine Research, Inc., *Plaintiff-Appellant,* *vs.* Zenith Radio Corporation, *Defendant-Appellee,*	No. 15563
Hazeltine Corporation, *Appellant,* *vs.* Zenith Radio Corporation, *Appellee.*	No. 15564

This matter coming on for consideration on the motion of Hazeltine Research, Inc., appellant:

1. For entry of an order consolidating the instant appeal, Appeal No. 15563 docketed in this Court on February 17, 1966, with Appeal No. 15246 (Hazeltine Research, Inc. v. Zenith Radio Corporation) docketed in this Court on July 15, 1965.

2. For entry of an order providing that one Appendix be printed for the four appeals in this case, to wit, Appeal Nos. 15246, 15247 (Hazeltine Corporation v. Zenith Radio Corporation), 15563 and 15564 (Hazeltine Corporation v. Zenith Radio Corporation), with the portion of the Appendix covering the records in the latter two appeals, Appeal No. 15563 and Appeal No.

15564 to follow consecutively the portion of the Appendix covering the records in the former two appeals, Appeal No. 15246 and Appeal No. 15247.

3. For entry of an order providing that Appellant file its briefs covering the antitrust issues of Appeal No. 15246 and Appeal No. 15563, and the patent issues of Appeal No. 15246, thirty (30) days after completion of the printing of such Appendix;

and upon the motion of Hazeltine Corporation, appellant:

1. For entry of an order consolidating the instant appeal, Appeal No. 15564, docketed in this Court on February 17, 1966, with Appeal No. 15247 (*Hazeltine Corporation* v. *Zenith Radio Corporation*) docketed in this Court on July 15, 1965.

2. For entry of an order providing that one Appendix be printed for the four appeals in this case, to wit, Appeal Nos. 15246 (*Hazeltine Research, Inc.* v. *Zenith Radio Corporation*), and 15564, with the portion of the Appendix covering the records in the latter two appeals, Appeal No. 15563 and Appeal No. 15564 to follow consecutively the portion of the Appendix covering the records in the former two appeals, Appeal Nos. 15246 and 15247.

3. For entry of an order providing that Appellant file its brief in Appeal Nos. 15247 and 15564, thirty (30) days after the completion of the printing of such Appendix;

the response of Zenith Radio Corporation, Appellee, to said motions; and the reply of Hazeltine Research, Inc., and Hazeltine Corporation thereto;

It Is Ordered that each of said motions be and is hereby allowed without prejudice to the presentation of any issue on appeal.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Thursday, July 7, 1966

Before Hon. Elmer J. Schnackenberg, Circuit Judge.

Hazeltine Research, Inc.,
Hazeltine Corporation,
Plaintiffs and Counter-Defendants-Appellants,
No. 15246, 15247 *vs.*
Zenith Radio Corporation,
Defendant and Counter-Claimant-Appellee.

Appeals from the United States District Court for the ~~Northern~~ District of Illinois, Eastern Division.

On consideration of the motion of counsel for appellants, Hazeltine Research, Inc. and Hazeltine Corporation, and stipulation of counsel for the parties,

It Is Ordered that the record herein be corrected by the addition of the following described documents, which were omitted from the record on appeal:

A. Foreign Information Service Bulletin No. 2,105, dated March 28, 1960;

B. Copy of letter dated April 21, 1960, from Walter R. Peirels, Assistant Sales Manager, International Division, to Edmund E. Jarvis, Trade Commissioner, Australian Trade Commission; and

C. Letter dated July 18, 1960, from E. E. Jarvis, Trade Commissioner, Australian Government Trade Commissioner, to Walter R. Peirels, Assistant Sales Manager, International Division, Zenith Sales Corporation; all of which were a part of Zenith's bulk exhibit 215 (DX 215) at the trial of this case.

[Filed December 6, 1966]

In the United States Court of Appeals
For the Seventh Circuit.
* * (Caption—Nos. 15247 and 15564) * *

MOTION TO VACATE DECEMBER 13, 1965, JUDGMENT ON JURISDICTIONAL GROUNDS AND TO INCORPORATE HEREIN PRIOR RULE 15 (f) MOTION TO VACATE APRIL 5, 1965, JUDGMENT, AND BRIEFS, AFFIDAVIT AND APPENDICES FILED IN SUPPORT THEREOF.

To: The Honorable Judges of the United States Court of Appeals for the Seventh Circuit:

Appellant, Hazeltine Corporation, by its attorneys, pursuant to Rule 15(f) of this Court's rules, moves this Court to vacate the second judgment entered against it on December 13, 1965, in an action entitled *Hazeltine Research, Inc. v. Zenith Radio Corporation,* Civ. No. 59 C 1847, for lack of jurisdiction over appellant. In support of this motion appellant Hazeltine Corporation relies upon the Motion under Rule 15(f) to vacate the first judgment entered against it on April 5, 1965, in the same cause, and on the grounds therein stated, which Motion was heretofore filed with this Court on July 23, 1965, and also relies upon the accompanying affidavit with the Supporting Brief and Appendix and its Reply Brief and Supplemental Appendix filed August 16, 1965, and requests that this Court permit the Motion of July 23, 1965, together with said affidavit, Supporting Brief, Reply Brief and Appendices to be considered as though filed in Appeal No. 15564 on appeal from the judgment of December 13, 1965. As grounds for its motion, movant states:

1. On April 5, 1965, the court below in an action en-

titled *Hazeltine Research, Inc.* v. *Zenith Radio Corporation*, Civ. No. 59 C 1847, entered a judgment against Hazeltine Corporation. On the same day, April 5, 1965, Hazeltine Corporation filed a petition for mandamus asking this Court to issue a writ of mandamus or prohibition on the basis that the district court was without power to enter the judgment against it; this petition was denied on April 7, 1965. Hazeltine Corporation then appeared specially and gave notice that it was appealing to this Court.

2. On July 23, 1965, Hazeltine Corporation filed its motion under Rule 15(f) to vacate the judgment against it below on jurisdictional grounds, together with supporting affidavit, brief and appendix. On August 16, 1965, pursuant to leave, a reply brief and appendix was filed in support of the motion.

3. Pursuant to order of this Court, on August 11, 1965, Hazeltine Corporation's main brief on the merits will be due on December 14, 1966, 30 days after the filing of the printed appendix herein.

4. On August 16, 1965, this Court ruled that the Rule 15(f) Motion would "be taken with the case."

5. On December 13, 1965, the court below entered a second judgment against Hazeltine Corporation in the same action, *Hazeltine Research, Inc.* v. *Zenith Radio Corporation*, Civ. No. 59 C 1847. On December 29, 1965, Hazeltine Corporation appeared specially and gave notice that it was appealing to this Court from said judgment.

6. On March 1, 1966, this Court entered an order consolidating the appeal from the second judgment, Appeal No. 15564 docketed on February 17, 1966, with the appeal from the first judgment, Appeal No. 15247 docketed on July 15, 1965, "without prejudice to the presentation of any issue on appeal."

7. Inasmuch as the same factual situation with respect

to the district court's lack of jurisdiction over Hazeltine Corporation exists in respect of the judgment of December 13, 1965, as exists in respect of the judgment of April 5, 1965, the same grounds for objecting to the jurisdiction of the district court to enter the first judgment apply to the power of that court to enter the second judgment. However, since this Court has ruled that the jurisdictional question as to the power of the district court to enter the first judgment will be decided at the hearing on the merits, Hazeltine Corporation is not asking that the like question as to the power of the court below to enter the second judgment be determined in advance of the hearing on the merits.

8. Rather than repeat the motion under Rule 15(f) to vacate the judgment below and the supporting matters set forth in the affidavit and the briefs and appendices filed on July 23, 1965, and on August 16, 1965, appellant Hazeltine Corporation seeks to have said motion, affidavit, briefs and appendices incorporated into Appeal No. 15564 as though filed again but subsequent to the judgment of December 13, 1965.

9. In the event that appellant Hazeltine Corporation's motion under Rule 15(f) to vacate the judgments entered against it on April 5 and December 13, 1965, is not granted, Hazeltine Corporation joins in the brief on the merits which will be filed herein by its subsidiary Hazeltine Research, Inc., the plaintiff in the action below.

Wherefore, appellant Hazeltine Corporation respectfully prays that this Court enter an order providing that its prior Rule 15(f) motion, supporting affidavit and briefs and appendices be incorporated in Appeal No. 15564 as though filed herein in specific reference to said December 13, 1965, judgment.

UNITED STATES DISTRICT COURT OF APPEALS.

* * (Captions—15246-7, 15563-4) * *

ORDER.

The court having directed the parties hereto to agree on the form of an order in connection with the motion of Hazeltine Corporation to vacate the December 13, 1965 judgment as to it and for other relief, and the answer thereto filed by Zenith Radio Corporation; and the parties, pursuant to the court's direction, having agreed to the form of the following order.

It Is Ordered:

1. Hazeltine Corporation's motion to incorporate as part of its motion to vacate the December 13, 1965 judgment, briefs, affidavit, and appendices heretofore filed with its motion to vacate the April 5, 1965 judgment, is granted;

2. Hazeltine Corporation's motions under Rule 15(f) to vacate the April 5, 1965 and December 13, 1965 judgments are taken with the case, and Hazeltine Corporation's brief heretofore filed with its Rule 15(f) motion to vacate the April 5, 1965 judgment will constitute its initial brief on appeal in support of the jurisdictional grounds raised by the aforesaid Rule 15(f) motions:

3. At the same time Zenith Radio Corporation files its answer brief on the merits in appeal Nos. 15246, 15247, 15563, and 15564, it may file either as a separate brief or as a part of its brief on the merits its answer brief to Hazeltine Corporation's jurisdictional motions under Rule 15(f).

4. At the same time reply brief on the merits shall be due, Hazeltine Corporation may file a reply brief in support of its jurisdictional motions under Rule 15(f).

Approved, this 13th day of December, 1966—

Hastings. C. J.

Agreed to as to form:

Victor P. Kayser,
Attorney for Hazeltine Corporation, Appellant.
Francis J. McConnell,
Attorney for Zenith Radio Corporation, Appellee.

UNITED STATES COURT OF APPEALS.

* * (Captions—15246-7, 15563-4) * *

Tuesday, December 20, 1966

Before Hon. Win G. Knoch, Circuit Judge.

On consideration of the motion of counsel for defendant-appellee Zenith Radio Corporation to correct omissions in the record on appeal, and the stipulation of counsel for the parties with said motion,

It Is Hereby Ordered that the said motion be granted and than leave be granted to file instanter the true and correct copies of omitted items described as exhibits A & B and attached to said motion and stipulation, and that the same be made part of the record on these appeals.

IN THE UNITED STATES COURT OF APPEALS.

* * (Captions—15246-7, 15563-4) * *

STIPULATION TO CORRECT OMISSIONS IN RECORD ON APPEALS.

The parties to the above numbered appeals, by their respective attorneys, hereby stipulate that the following omitted items be made part of the record on said appeals:

a) Plaintiff's proposed findings of fact and conclusions of law with respect to the defense of misuse and defendant's counterclaim under the antitrust laws, filed by plaintiff with the Court below on or about June 8, 1964, a true and correct copy of the same being attached to this motion as Exhibit A.

b) Page 951 of the transcript of proceedings before the Court below in this cause on February 20, 1964, being part of the cross-examination of David Westermann, a true and correct copy of the same being attached to this motion as Exhibit B.

Dated this 9th day of December, 1966.

Victor P. Kayser,
One of the attorneys for Appellant,
Hazeltine Corporation,

Victor P. Kayser,
One of the attorneys for Appellant,
Hazeltine Research, Inc.,

Francis J. McConnell,
One of the attorneys for Appellee,
Zenith Radio Corporation.

UNITED STATES COURT OF APPEALS.

For the Seventh Circuit,

Chicago, Illinois 60604.

Monday, February 27, 1967

Before

Hon. John S. Hastings, Chief Judge

* * (Captions—15246-7, 15563-4) * *

This matter comes before the Court on the motion of counsel for appellants for a special setting of the time for oral argument, for additional time for oral argument and for permission to have argument by additional counsel, with affidavit in support; answer of appellee to said motion; and reply of appellants to answer of appellee.

On consideration whereof, It Is Hereby Ordered that

a. A total of two and one-quarter hours for the oral argument on each side in the four appeals is hereby granted;

b. Leave is hereby granted to counsel on each side to divide the time allowed for oral argument as they may elect to do;

c. The date for the oral argument of these appeals will be fixed at the convenience of the Court as the Calendar for the April 1967 Session of this Court is set.

UNITED STATES COURT OF APPEALS.

For the Seventh Circuit,

Chicago, Illinois 60604.

* * December 13, 1967 * *

Before

Hon. Latham Castle, Circuit Judge
Hon. Roger J. Kiley, Circuit Judge
Hon. Walter J. Cummings, Circuit Judge

Nos. 15246, 15563 Hazeltine Research, Inc. v. Zenith Radio Corporation, and Nos. 15247, 15564 Hazeltine Corporation v. Zenith Radio Corporation.	Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

ORDER.

The court has fully considered the briefs and appendices filed in these appeals and has heard thorough oral arguments on the issues. Having reached its conclusion, the court now announces its decision and enters judgment in accordance with and for the reasons given in its opinion now being prepared for printing and to be filed forthwith.

We enter the following judgment:

(1) The judgments of the district court against Hazeltine Corporation are vacated for want of jurisdiction over its person.

(2) The judgment of the district court holding Hazeltine Research, Inc.'s patent in suit invalid is affirmed.

(3) The part of the judgment of the district court for Zenith Radio Corporation, and against Hazeltine Research, Inc., with respect to its domestic patents, for treble damages in the amount of $150,000 is affirmed.

(4) The part of the judgment, with respect to foreign patents, for the difference between $34,961,631 and $150,000, or $34,811,631 is reversed.

(5) The injunction is modified by striking from the decree the restraint against Hazeltine Research, Inc. in so far as it is based on Hazeltine Research, Inc.'s alleged antitrust conspiratorial violations with respect to foreign patent pools. We further modify the injunction to some extent with respect to the patent misuse by Hazeltine Research, Inc. in the United States.

(6) And the cause is remanded to the district court for the sole purpose of entering judgment in favor of Zenith against Hazeltine Research, Inc. in the amount of $150,000 and of entering a modified injunction in accordance with our opinion.

It is further ordered by the court that Hazeltine Corporation recover from Zenith Radio Corporation, Hazeltine Corporation's costs in Appeals Nos. 15247 and 15564.

It is further ordered by the court that the costs in Appeals Nos. 15246 and 15563 be divided equally between Hazeltine Research, Inc. and Zenith Radio Corporation.

IN THE UNITED STATES COURT OF APPEALS.

For the Seventh Circuit

Nos. 15246, 15247, 15563, 15564

SEPTEMBER TERM AND SESSION, 1967

HAZELTINE RESEARCH, INC.,
Plaintiff and Counter-Defendant,
Appellant,
15246, 15563
vs.
ZENITH RADIO CORPORATION,
Defendant and Counter-Claimant,
Appellee.

HAZELTINE CORPORATION,
Plaintiff and Counter-Defendant,
Appellant,
15247, 15564
vs.
ZENITH RADIO CORPORATION,
Defendant and Counter-Claimant,
Appellee.

Appeals from the
United States District Court for the
of Illinois, Eastern
Division.

December 19, 1967

Before CASTLE, KILEY and CUMMINGS, *Circuit Judges.*

KILEY, *Circuit Judge.* This infringement suit was begun by Hazeltine Research, Inc. (HRI) in November, 1959, against Zenith Radio Corporation for patent infringement. In May, 1963, Zenith counterclaimed, seeking treble damages for HRI's violation of the antitrust laws in the use of its patents. The district court entered judgments[1] against HRI and Hazeltine Corporation, its parent, on the issues of validity, infringement, patent misuse and antitrust violations, and awarded treble damages of $34,961,631 to Zenith on its counterclaim. HRI has appealed from the judgments against it. Hazeltine Corporation has made a motion to vacate the judgments against it and has filed provisional appeals from the judgments.

We vacate the judgments against Hazeltine Corporation. We affirm the district court judgment holding the patent in suit invalid. We affirm the judgment of the district court for Zenith, and against HRI, with respect to its domestic patents for treble the amount of $50,000, or $150,000. We reverse the judgments for treble damages based upon HRI's alleged participation in foreign patent pools in violation of the antitrust laws. We modify in some respects the injunction issued by the district court. And we remand for the sole purpose of entry of a judgment against HRI and for Zenith in the amount of $150,000 and entry of a modified injunction in accordance with this opinion.

---

[1] On April 5, 1965, the district court entered judgment against HRI and Hazeltine Corporation on the issues of infringement, validity, patent misuse and on the issues raised by Zenith's counterclaim relating to patent misuse and the Canadian patent pool. The damages as trebled amounted to $150,000 for patent misuse and $18,892,173 for the alleged antitrust violations arising from participation in the Canadian patent pool. On December 13, 1965, the district court entered judgment against HRI and Hazeltine Corporation in the amount of $15,919,458 as treble damages for alleged injuries to Zenith because of allegedly unlawful conduct of English and Australian patent pools.

Hazeltine Corporation's Motions

Under Rule 15(f)[2] of this court Hazeltine Corporation has made motions to vacate the judgments against it, upon Zenith's counterclaim, as void for want of jurisdiction over its person. We ordered that the motions be taken with the case on the full record.

Hazeltine Corporation is sole owner of HRI. The Corporation is engaged primarily in the business of research, development and manufacture of electronic equipment for military and commercial use. HRI is engaged primarily in research, development, ownership and licensing of United States patents relating mainly to radio and TV. The Corporation was not named as a party in the counterclaim, was not served with process, did not participate in the trial and filed a "special appearance" contesting entry of judgment after the district court adopted findings of fact and conclusions of law naming the Corporation as a party for the first time.

The district court found that "the parties stipulated that for the purposes of this litigation Hazeltine Research, Inc. and its parent, Hazeltine Corporation would be considered as one entity operating as a patent holding and licensing company, engaged in the exploitation of patent rights in the electronics industry in the United States and in foreign countries." The court made no other findings relating to "piercing the corporate veil," and our reading of the colloquys between counsel and the court leads us to the conclusion that the stipulation was the principal if not the only basis for binding the Corporation in the judgments.

Hazeltine Corporation contends that the trial court had no jurisdiction to enter judgment against it because it was not served and was not a party; that in its counterclaim Zenith recognized the separate identities of HRI and Hazeltine Corporation and sought judgment against counter-defendant HRI alone; that Hazeltine Corporation did not defend against the charge; that the stipulation, drawn by Zenith and signed by Zenith and HRI, did not justify binding the Corporation in the judgments sought; that before and during the trial Zenith indicated no construction of the stipulation as making the Corporation a party and did not move to amend the pleadings by naming the Corporation; that the findings of January 25, 1965, indicate no intention that the judgments would run against the Corporation; that it learned Zenith would seek to enforce judgment against it the day following entry of findings; and that the first suggestion in the district court of being bound came only in the proposed form of judgment submitted by Zenith on March 19, 1965.

---

[2] Rule 15(f) of this court provides that a substantial jurisdictional question may be raised by motion for determination before the hearing on the merits. The questions raised in the motions are identical.

Zenith relies upon (a) the stipulation, (b) Hazeltine's disregard of the "corporate fiction" during discovery beginning in June, 1960, by responding to subpoenas duces tecum against the Corporation without question, by submitting to deposition of the Corporation at its offices in New York with production of files of domestic and foreign patents and by the obedience of the Corporation to court orders, and (c) the dual office of plaintiff's attorney Dodds as officer of both HRI and the Corporation, certain correspondence during 1963 and "control" of the litigation by the Corporation. It relies too upon a finding of fact proposed by plaintiff:

> 8. It is stipulated that, for the purposes of this Action, Hazeltine [HRI] and H. C. may be considered a single legal entity to avoid the issue of whether or not it is appropriate to "pierce the corporate veil," but it is proper to consider the separate and unrelated activities of the two companies separately.

It further depends upon proposed findings of fact and conclusions of law favoring the Corporation. On the basis of all this, Zenith contends that Corporation is the alter ego of HRI and that the finding "piercing the corporate veil" was not ~~clearly~~ erroneous.

The general principle controlling this case was well stated by the Supreme Court in *Hansberry* v. *Lee,* 311 U. S. 32, 40-41 (1940):

> It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process. . . . A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution and statute of the United States . . . prescribe . . .; and judicial action enforcing it against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments require.

Since Hazeltine Corporation was neither named nor served, the sole basis for liability on the judgment is the theory that HRI is its alter ego. We cannot say that the Corporation was "adequately represented" here on the alter ego issue. 311 U. S. at 42-43. The resolution of the alter ego issue can be made only after an adversary determination of the facts involved. This court cannot make an initial determination of these facts, and the district court did not do so.

The issue became apparent in the district court only after the district court had filed its findings and conclusions. And at no time during the trial did the Corporation have an opportunity to show that it was not the alter ego. The Corporation's appearance to argue the issue after the trial was not sufficient opportunity to be heard under the due process clause.

Zenith's contention that HRI adequately represented the Corporation's interests on the alter ego issue begs the question. On this issue, only the Corporation itself could have protected its own interests.

We think *Merriam* v. *Saalfield,* 241 U. S. 22 (1916), refutes Zenith's contention that control of the litigation by Hazeltine Corporation made it amenable to joinder after findings of fact and conclusions of law were adopted without service of process. In *Merriam* it was clear that Ogilvie had controlled the defense for Saalfield, the defendant named in the original suit. Here the facts are only that Dodds, attorney for plaintiff HRI, was an officer and a counsel for the Corporation. There is no showing that he was authorized to act for the Corporation. We find no basis for joining the Corporation because of its claimed participation in the trial.

The stipulation relied upon by Zenith and the district court was signed only by the "parties" to the counterclaim, and the Corporation was not a party. And there is no showing that the Corporation authorized HRI's representative to sign on its behalf.

We see no reason why the Corporation's disclosures of its files and obedience to subpoenas in connection with HRI's infringement suit should bind the Corporation as a party to a subsequent antitrust counterclaim in which it is not joined as a party.

No case cited by Zenith is applicable to the facts here. The cases cited assume there was such control of HRI as to render the latter the Corporation's agent (and in our view there is no showing of that fact on the record); and that HRI and the Corporation are the same identity, an alter ego relationship unwarranted on this record. Zenith had the burden of establishing clearly that Dodds had authority to represent the Coropration in entering the stipulation prepared by Zenith or that the Corporation was in fact the alter ego of HRI. We hold Zenith did not meet that burden.

The judgments against the Corporation are void and must be vacated.

The Patent Issues.

The HRI patent in suit, 2,547,648, (648), and Zenith's pertinent claims in issue have the purpose of automatically pertinent claims in issue have the purpose of automatically adjusting the variations in strength of signals transmitted from TV stations to receivers so as to maintain a uniform picture in the receiver. The district court denied recovery of damages for Zenith's alleged infringement on the ground that the claims in suit were invalid, that Zenith's device did not infringe and that HRI's misuse of its patent precluded it from recovery. The claims were found invalid on the alternative grounds that they defined no patentable invention over prior art and that the invention disclosed was in public use more than one year prior to October 8, 1949, when HRI "amended" its original application so as to include the claims before us.

The important question before us is whether the district court properly decided that the 1949 "amendment" was not entitled to the 1946 filing date of HRI's original application. If the district court properly decided this question, its decision of invalidity is right. We hold that the record viewed as a whole substantially supports the district court's finding that HRI was not entitled to the earlier filing date and that the claims in suit were invalid. We express no opinion upon the other issues bearing upon the infringment claim.

The record discloses that the original application was filed January 25, 1946, that RCA published a bulletin March 15, 1949, disclosing different means of achieving the purpose of the claims in HRI's original patent, and that

HRI's 1949 "amendment" discloses essentially the same means. The district court found that HRI's 1949 application sought a continuation of the original application, but that there was no basis in the original claims which justifies relating the 1949 claims to the original. These findings are challenged by HRI. The court further found that the RCA bulletin in 1949 motivated HRI's "continuation application."

In disposing of HRI's challenge of the district court's finding that there was no basis in HRI's 1946 application for allowing the 1949 claims the benefit of the 1946 filing date, we think it is necessary to briefly outline the basic principles of TV transmission and reception in order to understand the nature and function of the part of the TV receiver subject of the claims in suit.

In the transmission of a TV program to a receiving set, the camera image is rapidly scanned, as in a person's reading, by an electron beam sweeping from side to side, with each sweep progressively lower until the entire image is scanned. The intensity of the beam varies with the brightness of the point of the image being scanned. The varying electric current thus created is used to generate radio waves with corresponding intensity variations. The transmitted radio waves are received in the TV set, transformed into electric current with corresponding intensity variations, amplified, and used to vary the intensity of an electron beam scanning the TV screen, thus reproducing the image.

The beam in the TV set must scan the screen in exact synchronization with the beam in the camera. To accomplish this, synchronization pulses are included in the transmitted radio wave, representing the end of each line and the end of the field or complete picture. In the receiver, these pulses are used to govern the timing of the scanning operation.

"Sync" pulses are also used in another manner in the receiver. The intensity level of the pulses is higher ("blacker," since high intensity represents black and low intensity represent white in the signal) than the intensity level of the rest of the radio wave, and its intensity at the time of transmission is a known factor which is constant in all transmissions. The strength of a particular station's over-all signal can therefore be determined by the intensity level of the "sync" pulse. The picture tube of a TV set must receive a signal with a reasonably uniform range of intensity to perform properly. Thus, the signals of weaker or distant stations or those affected by atmospheric conditions must automatically receive more amplification than stronger signals.

The basic principle of the patent in suit, 648, involves using the intensity level of the "sync" pulses in a particular signal to generate a control voltage which in turn controls the degree of amplification needed to produce reasonable uniformity in reproducing the picture transmitted. For example, the signal of a strong nearby station will include high intensity "sync" pulses, and, through the device in suit known as an AGC circuit, these pulses will be used to generate a control voltage which in turn will automatically reduce the amount of amplification.

In the fall of 1945 when HRI began work toward perfection of its device, the basic method for adjusting the strength of signals reaching a TV receiver by the use of the "sync" pulse to produce a control voltage in an integrating load circuit was well known. This feature is used in the patent in suit and the accused device, and in other AGC devices.

In 1945, however, the AGC circuit in use was fed with current supplied from the video detector part of the receiver. This process did not produce the desired sensitivity of adjustment and although by adding a DC amplifier the desired sensitivity would be gained by increasing the voltage fed into the AGC circuit, this would require an additional stage of amplification in the receiver which was not commercially desirable. HRI's work in 1945 was aimed at achieving the desired sensitivity of the AGC circuit by obtaining the signal voltage used in the AGC circuit from the video amplifier rather than the video detector. This would increase the voltage fed through the AGC circuit and increase the circuit's sensitivity without the necessity of an additional amplification stage. The idea was not new, but a major difficulty prevented its being applied in practice: The AGC controlled voltage had to be negative with respect to the ground, but the DC voltage level at the point in the receiver following the video amplifier was positive with respect to the ground.

HRI'S original 1946 application disclosed a means of overcoming the above problem and deriving the signal voltage from the video amplifier, for use in the AGC circuit. The video amplifier was connected in a series circuit with a diode rectifier, a source of alternating current of approximately equal voltage to that at the video amplifier and an integrating load circuit. The aim was to offset the positive polarity of the voltage at the video amplifier so that the AGC circuit would produce control voltage having the required polarity.

HRI's "continuation application" was filed October 8, 1949, and added the claims now in suit which are considerably broader than the original claims, and we think the record justifies the court's inference that the additional claims were motivated by the RCA bulletin of March 15, 1949, which disclosed a different means of deriving voltage from the video amplifier for the AGC circuit. HRI's additional claims were designed to cover the RCA disclosure. The Patent Office issued HRI's patent in suit, 648, containing the 1949 claims, on April 3, 1951.

In the 1949 RCA means and the HRI claims in suit, unlike the means disclosed in HRI's 1946 application, the video amplifier is connected to a grid controlled vacuum tube.

This tube has three types of electrode components, a cathode, an anode, and one or more grids. The grid is placed between the cathode and anode to control the flow of electricity between them. Electricity normally flows from cathode to anode when the anode has a positive voltage with respect to the cathode. If the grid is made negative with respect to the cathode it acts as a gate to control the current flowing between cathode and anode. As the grid is made more negative with respect to the cathode, the flow of electricity between cathode and anode is reduced and if the grid is made sufficiently negative the flow will be cut off.

The grid in the RCA grid control tube is connected to the video amplifier and a source of alternating current is connected with the anode, to which the alternating current supplies positive pulses. When the grid is positively charged by the video amplifier and the anode is positively charged by the alternating current, electrons will flow from the cathode to the anode and be thus fed into the AGC circuit where the required control voltage will be produced to adjust the strength of transmitted signals picked up by the receiver.

The district court had ample support for finding substantial differences between HRI's original disclosures in 1946 and the claims sought by the 1949 application. The devices clearly operate differently. Unlike the RCA device, HRI's original device provided for a series circuit connection between the video amplifier, a diode, a source of alternating current and an integrating load circuit. In HRI's original claims the alternating current, unlike RCA's, must be set at a specific level to offset positive voltage at the video amplifier. HRI's original claims utilize a diode. RCA's uses a grid control tube. HRI's original claims require offsetting positive voltage at the video amplifier, but RCA's device uses that positive voltage to control the flow of current to the integrating load circuit. The HRI device originally claimed meets the same need as RCA's, but by entirely different means. It is significant that the HRI device originally disclosed has never been incorporated in any TV receiver sold in the United States, while RCA's device, or similar devices, have become standard features in most TV receivers.

Having found no error in the court's finding that the claims in suit constituted new matter, the conclusion of invalidity follows. The continuation, under 35 U. S. C. Sec. 120, may not be used to permit HRI to claim new material not disclosed in the original application and not invented by it so as to cut off intervening rights. The disclosures made by RCA in March, 1949, were either the property of RCA or of the public and could not be appropriated by HRI. *C & N W Railway Co.* v. *Sayles,* 97 U. S. 554 (1878); *Schriber-Schroth* v. *Cleveland Trust Co.,* 305 U. S. 47 (1939).

We need not pass on the issue of infringement.

The Misuse Issues.

Although we affirm the district court's judgment of invalidity, we must nevertheless decide the issue of patent misuse, since Zenith's counterclaim sought to recover, and had judgment for, damages as a result of HRI's alleged patent misuse.

The district court found that Zenith's five year "standard package license" (including over 500 patents) from HRI was about to expire in 1959; that Zenith rejected HRI's offer of renewal on the ground that it needed no license; that HRI then asserted infringement by Zenith of four monochrome (black and white) TV patents and offered a license under a formula providing for any one patent at a royalty rate of 50% of the package rate, for any two at 80%, and for any "three or more" at 100%, with rates based upon Zenith's total production, whether the patents were used or not; that Zenith refused the offer, and this suit followed; and that under the circumstances, this offer was "an attempt by economic coercion to force the taking of the package."

The court found that after suit was filed HRI informed Zenith it was infringing nine color patents and again offered the package license; that Zenith again refused to accept; that in April, 1962, HRI offered to license (1) use of the nine color patents at an annual royalty rate of $435,000 or (2) use of all color patents issued and applied for at an annual rate of $500,000 or (3) the package of all monochrome and color patents at an annual rate of $150,000; and that Zenith refused.

The court further found that in March, 1963, before trial, HRI made a final offer "obviously" intended to force the package license upon the unwilling Zenith; that under this offer the options were (1) payment of $275,000 per year in royalties for use of nine color patents, (2) payment of $300,000 per year for use of all extant color patents, (3) payment of $310,000 for all extant and future color patents, or (4) payment of $200,000 for the package of all patents, color and monochrome, extant and future, at an annual maximum of $200,000; and that the only alternative to accepting one of these options was costly infringement litigation. The court found that the only practical answer to the dilemma was acceptance of the standard package under the compulsion of economic coercion.

The district court concluded that the demands upon Zenith were unlawful economic coercion which, coupled with this suit and threats of other suits, constituted an illegal attempt to force acceptance of the standard package and a misuse of patents to unlawfully extend HRI's patent monopoly, and awarded damages based on Zenith's expenses in defending this suit and in investigating other patents asserted.

We think there is substantial evidence in the record to support the findings with regard to the misuse inherent in HRI's 1962 licensing offer. Zenith's witness Crotty testified to the offers, substantially as found, from HRI representatives. HRI's president testified that Crotty could have read HRI's proposal the way Crotty had read it and admitted the offer of a package at a substantially lower rate than the "total" of the fewer than all rates. And HRI's attorney agreed with the district court that if the figures were right and if a licensee could get the package for considerably less than for nine patents an inference could be drawn that "somebody" was trying to sell a package rather than individual patents. HRI's claim of innocent mistake in drafting the offers is refuted by inter-office memos including one where patent counsel had informed his superior that the offers risked a charge of patent misuse and were apt to be viewed as "just what we intended—a transparent attempt to force them into package."

The substance of HRI's contention is that a licensor can offer to license any number of patents less than all in the package for the same total royalty, so long as that royalty is reasonable for any one of the patents and so long as he does not refuse to license individual patents. It relies upon the Supreme Court's decision in *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U. S. 827 (1950), and this court's decision in *Hazeltine Research, Inc.* v. *Avco Mfg. Corp.*, 227 F. 2d 137 (7th Cir. 1955), *cert. denied*, 350 U. S. 987 (1956). The holding in *Automatic Radio* was that it is not *per se* misuse of a patent to measure the royalties by a percentage of the licensee's sales when the licensee is engaged in a related enterprise. The Court refused to consider the package licensing claim there, however, because there was nothing in the record to support it. 339 U. S. at 827. And in *Avco* we held that the record did not compel a finding of coercion. Neither of those cases is in point here.

In *American Securit Co.* v. *Shatterproof Glass Corp.*, 268 F. 2d 769 (3d Cir.), *cert. denied,* 361 U. S. 902 (1959), refusal to license individual patents was held to be misuse *per se.* We see little difference between outright refusal to license less than a package and the economic coercion of HRI found, with reason, by the district court here. See Report of the Attorney General's National Committee to Study the Antitrust Laws 239-240 (1955); Diggins, The Patent-Antitrust Problem, 53 MICH. L. REV. 1093, 1105 (1955).

The district court concluded erroneously that HRI's 50% for one-80% for two-100% for three or more patents formula offered Zenith in 1959 was unlawful economic coercion. This court has not considered the formula *per se* unlawful. *Apex Electrical Mfg. Co.* v. *Altorfer Bros.,* 238 F. 2d 867 (7th Cir. 1956). Actually the formula allowed licensees to save money by taking licenses of less than three patents. Eight TV manufacturers took licenses for only one patent under the formula, the one here in suit. There were only three HRI patents in general use in 1959 and therefore the formula appears reasonable in light of commercial realities. Zenith under the offer was free to take a license only for what it needed. Although discussion of a license between Zenith and HRI originally involved four patents, the discussion narrowed to the patent in suit, Zenith's rejection of the offer, and HRI's infringement suit.

We think our conclusion affirming the trial court's determination of misuse in conjunction with the 1962 offer is strengthened by the Supreme Court's decision in *United States* v. *Loews, Inc.,* 371 U. S. 38, 54-56 (1962), where it approved the district court's injunction against economic coercion similar to that here in a case involving refusal to "book" less than a package of films for television use.

There is no merit in HRI's contention that the misuse of its patents, including the one in suit, furnishes no basis for an award of treble damages. The requisite anti-competitive effect is presumed where the tying product is patented. *International Salt Co.* v. *United States,* 332 U. S. 392 (1947). See *United States* v. *Loew's, Inc.,* 371 U. S. 38, 45 (1962). Zenith's expenses in defending the infringement suit brought pursuant to HRI's antitrust violations are a proper subject of threefold recovery. *Dairy Foods, Inc.* v. *Dairy Maid Prod. Cooperative,* 297 F. 2d 805, 809 (7th Cir. 1961).

The district court's determination of Zenith's $50,000 basic damages for HRI's patent misuse represented, according to the findings, expenses incurred in Zenith's preparation for the 1963 trial of HRI's infringement suit and in investigating HRI patents asserted against Zenith. The $50,000 figure is not here, and as far as we are informed by HRI, was not challenged at trial. In view of HRI's unlawful conduct commencing in 1962, and the size of the record of trial of the infringement issues, we cannot say the basic damages are so unreasonable that we must set aside the allowance. We affirm the treble damage judgment of $150,000.

The Antitrust Issues.

Zenith's treble damage counterclaim was filed May 22, 1963, alleging violation by HRI of the Sherman Act, 15 U. S. C. Secs, 1 and 2, by its alleged participation in conspiracies that unlawfully prevented Zenith from exporting its United States manufactured products into Australia, Canada and England. Zenith was granted injunctive relief and treble damages on the counterclaim in the amounts of $745,380 as to the Australian market,

$18,892,173 as to the Canadian market, and $15,174,078 as to the English market. The judgment followed for $34,811.631.[3]

HRI challenges Zenith's judgment on several grounds. However, we think the crucial question is whether the district court's finding that Zenith was in fact damaged by the pools in the three countries during the four year damage period[4] preceding the filing of the counterclaim is clearly erroneous. Fed. R. Civ. P. (52a). We agree with HRI that Zenith failed to sustain the burden of proving the essential *fact* of damage in the relevant period. We need pass on no other contention, therefore, in reversing the judgment on the counterclaim.

Zenith had the burden at the trial of showing an "injury to [its] business," 15 U. S. C. Sec. 15, by proving the unlawful conspiracies and the *fact* of damage as a proximate result of the alleged unlawful conspiratorial activities. *Story Parchment* v. *Patterson,* 282 U. S. 555; *Bigelow* v. *RKO Radio Pictures, Inc.,* 327 U. S. 251; *Continental Ore* v. *Union Carbide,* 370 U. S. 690.

The district court concluded that the alleged conspiracies had as their express purpose prevention of importation of TV apparatus made in the United States, that HRI by participating in the conspiracies had violated the Sherman Act and that Zenith had established that it had been injured in its business as a result of the unlawful activities of the pools. The court's ultimate finding of fact was that "the foreign commerce of Zenith has been drastically curtailed by the patent pools" in the three countries. The court stated that damages had been shown by experienced Zenith officials thoroughly familiar with the business problems and sales potentials in the three markets.

---

[3] The figures for England and Australia were reduced on December 13, 1965, upon further hearing after proofs were reopened.

[4] Four years prior to the May 22, 1963, filing date of Zenith's counterclaim. 15 U. S. C. Sec. 15b.

The ultimate finding rests upon subsidiary findings that for "many years" before 1957 Zenith tried to establish distributorships in Canada but in "every instance" the Canadian distributor was warned to stop handling Zenith products or face expensive litigation; that Zenith sought import licenses but in "every instance" such licenses were refused them; that after the 1957 settlement Zenith began late in 1958 to export to Canada its radio and TV products through Zenith Radio Corporation of Canada; but that the pool demanded that Zenith discontinue the practice and accept a standard package license and manufacture in Canada any products sold there; and that soon after the demand the instant Hazeltine infringement suit was brought.

The Zenith officials whose testimony was relied on by the court were Zenith's president, its vice-president in charge of patents, and its manager of internal auditing and chief financial officer.

A good part of the president's testimony concerned activities of the pools before the settlement of *RCA* v. *The Rauland Corporation,* No. 48 C 1818 (N. D. Ill.) in 1957. In that suit Zenith filed a treble damage counterclaim seeking damages for refusals to license similar to those alleged here, in settlement of which it obtained unrestricted cross-licenses from RCA, General Electric, and Western Electric Company, and in turn gave general releases to those three companies. The president also testified generally that after this settlement Zenith hoped to be able to compete freely in Canada with its competitors, but that unlawful pool activity continued into the damage period. His testimony was that because of the similarity between the Canadian and United States markets, he was convinced that Zenith, but for the "clouds and difficulties" caused by the pool's refusal of a license permitting Zenith to export to Canada, would have achieved the same percentage, 20% of the Canadian market as it enjoyed in the United States market, and would have also captured 5% of the English market and 2% of the Australian market.

Zenith's vice-president gave his opinion corroborating the statement that in a market free of license restrictions Zenith would have the percentage shares that the president testified to.

Zenith's third witness took the percentages testified to by the president and vice-president and, through the use of a chart, calculated "lost sales and lost profits" based on past profit and cost data.

No specific findings were made with regard to how the alleged conspiracy prevented sales by Zenith in Australia. We see no necessity of discussing at great length Zenith's failure to prove the *fact* of damage with respect to the Australian market, since there is no testimony that could reasonably support a finding of *fact* of damage there. Until April, 1960, Australian government regulations prevented Zenith's selling radio and TV sets in that country. Zenith's case rests on the testimony of its officers that conversations between Zenith employees and Australian businessmen who were not members of the patent pool led it to believe that it could not obtain a license to import radio and TV receivers into Australia after 1960. There is no evidence that Zenith ever attempted to obtain a license from the Australian pool, nor is there any proof of use by the Australian patent pool of restrictive license forms to prevent import. Indeed, during the post-1960 period a large number of low priced Japanese radio and TV sets were sold in Australia. Actually, high import duties and shipping costs posed a formidable barrier to Zenith sales. There is no evidence to warrant the inference that Zenith intended to or was prepared to enter the Australian market. *Triangle* v. *National Elec. Prod. Co.*, 152 F. 2d 398; *Volasco Prod. Co.* v. *Fry Roofing Co.*, 309 F. 2d 383, 395.

We also conclude that Zenith failed to prove the *fact* of damage with respect to the English market. A World War II embargo prevented Zenith from importing its products into England until June, 1959. At that date all basic radio patents had expired, and Zenith had no difficulty in doing radio business in England. The difficulty Zenith had in the English market with its TV products cannot reasonably be attributed to the activity of an unlawful conspiracy in that country. Significant barriers other than patent difficulties operated to prevent sales of Zenith TV receivers in England. Zenith sets manufactured in the United States operated on 525-line and 625-line scanning signals. The English standard was a 405-line signal until changed to 625-line after the damage period. Zenith sets sold in England would be in competition with substantially lower priced British sets. There was no testimony that the British pool, during the damage period, had threatened or filed suit on any patents.

We think it is unreasonable to infer that Zenith intended to and was prepared to enter the English television market during the damage period. The only reasonable inference is that it was waiting for a change in English standards to a 625-line system. Zenith was not aided, in showing loss of probable profits, by the testimony that its man in England could adjust Zenith sets to the English standard "with a screwdriver in the back of the shop in a few minutes."

We hold that the finding of the district court that Zenith had been injured in its business by the activities of the alleged unlawful conspiracies in Australia and England is clearly erroneous.

Zenith's president's testimony with respect to the

Canadian market can be considered as some slight evidence of the *fact* of damage, being more specific than with respect to the other markets. He testified that in 1958 he complained to the Canadian pool about its advertisement in a Canadian trade journal addressed to television and radio dealers in Canada. He charged that the advertisement was false, and was damaging to Zenith's business, because it contained threats of infringement suits which were calculated to discourage distributors from handling Zenith products. This advertisement, he testified, was typical of threats made during the damage period. During his testimony, a letter, written during the damage period by a Zenith distributor in Canada with respect to threats made by the pool to a Motorola dealer, was read into the record.

Despite this testimony, the fact remains that during the damage ~~period~~ Zenith sold more than 65,000 radios and nearly 60,000 TV sets in Canada. It did not seek a pool license after 1953, claiming throughout the period that it had unrestricted cross-licenses as a result of the 1957 settlement which rendered pool licenses unnecessary. Zenith's president could not recall any specific threat of litigation over radios alone. Zenith's subsidiary in Canada has not been sued or threatened with suit for importing radios into Canada since 1957. There was testimony that Zenith had made no separate effort to import radios into Canada despite the fact that all basic radio patents had expired before the end of the damage period. There was no showing that the 1958 advertisement had any adverse effect on Zenith's sales.

No Canadian distributor was called as a witness by Zenith. The letter in 1962 from the Zenith dealer referring to the Motorola threat could imply that no Zenith distributor had been threatened. Although several of Zenith's United States competitors were doing business in Canada, Zenith made no showing of comparable experience of those competitors in the United States and Canada. Zenith was advised by the pool that it was infringing pool patents in 1959, but continued to export to Canada without any interruption. In 1960 it spent 11% of its Canadian TV sales and almost 13% of its radio sales on advertising. By 1961 it had achieved 5% of the television market, and the decrease in the share thereafter was not shown to have been caused by the pool.

We hold that even though there is some testimony of damage suffered by Zenith in the damage period as a result of pool activities in Canada, we have a firm conviction that the district court made a mistake in inferring from the entire testimony that the essential element of *fact* of damage had been established by Zenith. *Milwaukee Towne Corp.* v. *Loews, Inc.*, 190 F. 2d 561, 566.

Zenith argues that HRI's instant infringement suit is in furtherance of the alleged Canadian conspiracy. There is nothing in the record to show that this suit had any effect to damage Zenith's Canadian business. The record shows that this claim was not taken seriously by the district court.

Zenith relies on this court's decision in *Dairy Foods Inc.* v. *Dairy Maid Prod.*, 297 F. 2d 805, to support its argument that the filing of the instant HRI infringement suit placed it in a dilemma since if the suit was successful it would be forced to take licenses under HRI's domestic patents, thereby losing a defense to any pool claim of infringement of patent counterparts in Canada, and that accordingly it had to curtail its operations there pending the outcome of the infringement suit. The court in *Dairy Foods* was speaking of the dilemma raised by the plaintiff's allegations which it had the burden of proving. In this case Zenith failed to prove what it alleged. As we have stated, the evidence reveals no curtailment of Canadian operations but instead indicates extensive sales in Canada as well as heavy expenditures for advertising there. Even if we assumed the continuation of an unlawful conspiracy after the 1957 settlement, into the damage period, the assumption is of no help to Zenith, under *Highland Supply Corp.* v. *Reynolds Metals Co.*, 327 F. 2d 725, 732, absent proof of the *fact* of damage. Nor does the statement in *Albert Pick-Barth Co.* v. *Mitchell Woodbury Corp.*, 57 F. 2d 96, 99, that the *fact* of damage need not be direct suppression of trade aid Zenith. The general language of Justice Holmes in *United States* v. *Kissel*, 218 U. S. 601, 607-08, about a continuing criminal conspiracy, does not help Zenith since even if the continuous existence of the unlawful conspiracy was, as Zenith claims, a continuous overt act, the *fact* of damage must still be shown. The facts in this case do not resemble those in *Continental Ore* v. *Union Carbide*, 370 U. S. 690, where there was clear evidence of defendant's refusal to deal with the Continental Company, as a result of which it had to drop out of the vanadium business.

We do not agree with Zenith that a Hazeltine attorney admitted at the trial that the existence of the conspiracy was a continuous overt act causing damage to Zenith. The admission was that "if the conspiracy continued" after 1957 there "might have been damage." Neither do we take as an admission to prove the *fact* of damage general statements of a Hazeltine attorney and letters long before the damage period to the effect that in "foreign countries" threats of adversely held patents are "as much of a risk to your business as are tariff restrictions, freight rates, insurance, and the many other impedimenta to the flow of trade."

In addition to oral testimony Zenith relies upon the 1957 settlement of Zenith's counterclaim in *RCA* v. *The Rauland Corp.*, No. 48 C 1818 (N. D. Ill.), to prove the fact of damage. However, under a well settled rule, *e.g.*, *Domark* v. *Bates Motor Co., Inc.*, 93 F. 2d 522, 526, the settlement of Zenith's suit against RCA, General Electric and Western Electric constitutes no admission of the fact of damage against Hazeltine. Even if it is true that there were damages prior to the 1957 settlement this does not prove the fact of damage between 1957 and 1963. The 1957 settlement has relevance only so far as the release of future damages given by Zenith in that settlement precludes recovery for damages resulting solely from illegal activities of the Canadian pool prior to September 27, 1957, the date of the settlement.

Zenith relies too upon a "stipulation" of Hazeltine's attorney as to the *fact* of damage to Zenith's business. The attorney stated during testimony of a Zenith official, "I am perfectly willing to stipulate that Zenith has had problems in exporting their radio and television receivers to Canada." We do not read that statement as a concession of the *fact* of damage. In context, the attorney's statement either referred to the period preceding 1957 and not to the pertinent damage period, or to other obstacles to export by Zenith such as tariffs, shipping costs, low priced competition, and technical problems.

For the reasons given, the judgment for Zenith for $34,811,631 upon the treble damage counterclaim is reversed.

The Injunction

In addition to granting treble damages to Zenith, the district court ordered injunctive relief against HRI's conduct vis-a-vis Zenith in the use of HRI's domestic patents and against its participation in unlawful antitrust conspiratorial conduct.

It follows from our conclusion with respect to the foreign patent pools that injunctive relief against "threatened loss or damage" directed at those pools, alleged by Zenith to be unlawful conspiracies, cannot be justified under 15 U. S. C. Sec. 26. Paragraph C of the injunction granted must be stricken.

We agree with HRI that the district court erred in holding the method of computing royalties to be patent misuse. *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U. S. 827 (1950). Therefore there is no basis for that part of the court's injunction relating to payment of royalties on unpatented products, and we order that it be modified by deleting from paragraph A the words: "or upon the paying of royalties on the manufacture, use or sale of apparatus not covered by such patent."

We also agree with HRI that paragraph B of the injunction does not comply with the requirement of Fed. R. Civ. P. 65 that it describe the acts restrained in reasonable detail. We order that it be modified so as to (1) give Zenith the benefit only of the same royalty rates as those presently in effect with other licensees, (2) permit licensing of individual patents at rates the sum of which is greater than the package rate so long as the rates for individual patents are not so disproportionate to the package rate as to amount to economic coercion to force the taking of the package, and (3) not to require that comparable royalty rates be given to Zenith for longer periods than they are available to others.

Conclusion

For the reasons given, the judgment against Hazeltine Corporation is vacated; the district court judgment holding the patent in suit invalid is affirmed; the award in favor of Zenith for treble $50,000, is affirmed; the awards for treble damages based on HRI's alleged participation in the foreign patent pool are reversed; and the cause is remanded to the district court for the sole purpose of entering judgment in favor of Zenith and against Hazeltine Research, Inc., in the amount of $150,000, striking paragraph C of the injunction, and modifying paragraphs A and B of the injunction in a manner consistent with the view expressed herein.

REVERSED AND REMANDED WITH DIRECTIONS.

A true Copy:
Teste:

Kenneth J. Carrick,
Clerk of the United States Court of Appeals for the Seventh Circuit.

(SEAL)

IN THE UNITED STATES COURT OF APPEALS.

* * (Captions—15246-7, 15563-4) * *

MOTION OF ZENITH RADIO CORPORATION FOR EXTENSION OF TIME TO FILE REHEARING PETITION TO AND INCLUDING JANUARY 3, 1968.

Zenith Radio Corporation, Counter-claimant and Appellee moves this Court for an order extending the time to file a petition for rehearing to and including January 3, 1968, and for cause says:

1. On December 13, 1967 this Court filed its judgment in the above numbered appeals. The Court's opinion, however, was not filed until December 19, 1967.

2. Under Rule 25 of this Court's Rules the time for filing a petition for rehearing is fifteen (15) days from entry of judgment, or December 28, 1967.

3. Because of the delay in filing the opinion and the intervening holidays, Zenith Radio Corporation has not had sufficient time in which to determine whether to file a petition for rehearing with this Court.

Wherefore, Zenith Radio Corporation moves for the entry of an order as prayed.

Respectfully submitted,

Francis J. McConnell,
One of the attorneys for Counter-claimant and Appellee, Zenith Radio Corporation.

Of Counsel:
McConnell, Freeman, Curtis & McConnell,
134 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

UNITED STATES COURT OF APPEALS.

* * (Captions—15246-7, 15563-4) * *

Wednesday, December 27, 1967.

Before Hon. Roger J. Kiley, Circuit Judge.

On consideration of the motion and affidavit of counsel for defendant and counter-claimant-appellee, Zenith Radio Corporation,

It Is Ordered that the time for filing a petition for rehearing on behalf of Zenith Radio Corporation be extended to and including January 3, 1968.

IN THE UNITED STATES OF APPEALS.

* * (Captions—15246-7, 15563-4) * *

PETITION FOR REHEARING OR RECONSIDERATION BY THE COURT OF APPEALS EN BANC.

Zenith Radio Corporation files this petition for rehearing and because this Court's opinion has done and will do the Zenith Company tremendous injury in its effect upon its foreign business, it asks that the case may be reheard by the entire Court *en banc*, and says:

1. *This Court's holding that as a matter of law Zenith has suffered no injury from illegal patent pools is not only unsupported by the record but gives the illegal pools run by Zenith's competitors carte blanche to ruin Zenith's foreign commerce.*

In the face of the testimony of Wright and Kaplan, Zenith's president and treasurer, whose qualifications as expert witnesses were never contested (A. 1379, 1446), that in the absence of the CRPL pool Zenith would have acquired the same percentage of the Canadian business as it enjoyed in the United States (approximately 20%), this court has held that there is no evidence in the record of the fact of damage. The testimony of Wright and Kaplan was not denied. The trial court gave it credence. It was relevant on the issue, and in the context of this record, standing without denial, was conclusive on the issue. See *Grepke* v. *General Electric Company* (7th Cir., 1960), 280 F. 2d 508, 513; *A. C. Becken Co.* v. *Gemex Corporation* (7th Cir., 1959), 272 F. 2d 1, 5; *William H. Rankin Co.* v. *Associated Bill Posters of U. S., etc.* (2nd Cir., 1930), 42 F. 2d 152, 155-6.

In *Bordonaro Bros. Theatres* v. *Paramount Pictures* (2nd Cir., 1949), 176 F. 2d 594, 597, the Court said, "The testimony of plaintiff's expert witness, Samuelson, 'while purely an estimate and introduced as such, was proof of a kind as definite and certain as the subject matter admitted.' "

It now appears that the Wright and Kaplan testimony is corroborated by actual results in a most significant and conclusive way. An injunction against the pool's activities in Canada was entered in the court below (A. 248-9). The application of this injunction was never stayed and has been in force and effect since the entry of the final judgment in the court below (See order granting stay entered April 19, 1965). Zenith is prepared to prove that its Canadian business while afforded the protection of this injunction increased to a point representing approximately 18% of the Canadian color TV market. In 1967, under the protection of the injunction, Zenith's Canadian sales of color television sets (on which Hazeltine claims to hold the dominating patents) amounted to $12,260,000 representing an increase of over 66% as against an industry increase of approximately 21%.

The fact that Zenith sold large numbers of sets in the face of the pool's threat to bring suits on the pool patents (A. 1332, 3263) in no way negatives the fact of damage occasioned by such threats; by the inducing of a nationwide boycott by circularizing the trade in the "Trade Builder"; by calling attention to the pool's monopoly of patents in Canada; that Zenith sets were unlicensed and that users or dealers in unlicensed sets would be prosecuted (Def. Exs. 135-8, A. 3113, 3121). The only measure of damage available to Zenith was the difference between what it actually could sell in the restricted market and what it would have sold absent the pool. That the trial court was legally entitled to draw the inference from these proofs that Zenith had been injured in Canada is conclusively established by the decision of the Supreme Court in the case of *Bigelow* v. *R. K. O. Rado Pictures*, 327 U. S. 251, where the Supreme Court held that the fact of damage was self evident from the conspiracy which was designed and intended to prefer defendants' theatres.

In the *Bigelow* case, the Jackson Park theatre here in Chicago had large receipts from the showing of pictures, but this did not negative the fact of damage. It merely gave, as here, a credit to the defendants on the amount of the damage. That Zenith obtained 5% of the market in the face of Brian McConnell's threat to assert the pool patents has no more significance than the fact that the Jackson Park theatre made money despite being relegated to an inferior playing position by the movie conspiracy. With the aid of the injunction entered by the District Court Zenith has now built its share of the Canadian market to 18% only to find that this injunctive relief is to be removed by the order of this Court. Under this Court's decision all of this business becomes vulnerable to infringement suit on Hazeltine's Canadian monochrome and color patents and subjects Zenith and its dealers to the forfeiture and penalty provisions of the Canadian patent laws. It is ironic that on May 23, 1967, while this case was pending before this Court, Zenith was awarded a Presidential E Certificate "For an outstanding contribution to the Export Expansion Program of the United States."

In the English and Australian markets this Court takes the anomalous position that because Zenith did not defy the pools by attempting to sell sets, it never intended to enter those markets, in spite of the uncontradicted testimony of Zenith's officers that it did so intend and the fact that Zenith had a distributor established in England (A. 1385-6) and attempted to secure distributors in Australia (A. 1398, 3767-3832-B). Parenthetically, in an effort to discredit Wright's testimony, this Court refers to rejects post trial offers of proof to show that Zenith wasn't prepared to enter the English market for technical and cost reasons. The undisputed record eidence, not even mentioned in the Court's opinion, was to the contrary (A. 1452-3, 1465-6). Obviously an offer of proof is not evidence in the record, yet this Court treats such offers as established evidence even though Zenith was afforded no opportunity to produce counter evidence.

In its opinion this Court ignores completely the Canadian Royal Commission report published in December 1959 during the pendency of this litigation (Pl. Ex. 50A; 2161, 2162) and introduced into evidence by Hazeltine itself without qualification and also ignores the settlement papers introduced by Hazeltine without any qualification. The latter evidence is dismissed with the curt remark that the admissions of Hazeltine's co-conspirators, General Electric, R. C. A., and Western Electric, are not relevant evidence and not binding on Hazeltine. The statement is made in the face of the fact that the evidence was admitted and introduced by Hazeltine for all purposes in the case and under every applicable rule of evidence was binding on Hazeltine.

The fact that the members of the pool admitted they had caused Zenith damages of $10,000,000 in Canada up until October of 1957 is cavalierly dismissed as having no relevance in the instant case. In that settlement the Western Electric Company, RCA and GE paid Zenith, respectively, $2,200,000, $3,000,000 and $4,800,000. The defendants in that case were represented by leading counsel; yet this Court now holds that the pool, as a matter of law, could cause no damage to Zenith by exactly the same activity as was shown by the record in the previous case.

Zenith's total business in Canada in 1967 was approximately $20,000,000. It is that business which this Court's opinion will destroy. The illegality of the patent pools has been established repeatedly. *United States* v. *National Lead* (S. D. N. Y., 1945), 63 F. Supp. 513, 523, 527, affirmed (1947) 332 U. S. 319; *United States* v. *General Electric Co.* (N. J., 1949), 82 F. Supp. 753, 847; *United States* v. *General Electric Co.* (S. D. N. Y. 1948), 80 F. Supp. 989, 1014-5; *Timken Roller Bearing Co.* v. *United States* (1951), 341 U. S. 593, 598; *United States* v. *Imperial Chemical Industries* (S. D. N. Y., 1952), 105 F. Supp. 215, 220-3; 100 F. Supp. 504. Despite this and despite the fact that Hazeltine's co-conspirators RCA, GE, Westinghouse and Philips have been ordered out of this very Canadian patent pool (Z. A. 571, 576, 581), this Court grants Hazeltine permission to stay in the pools and to permit its patents to be used to destroy Zenith's business.

The decision of this Court that a trial court cannot as a matter of law find the fact of damage on this record beggars belief, and has created an injustice unparalled in the annals of our courts. In effect it destroys Zenith's foreign business by legally approving the activities of Zenith's competitors in preventing it access to patents which it needs to do business in foreign markets. This is done under the aegis of this Court's opinion. This decision has such far reaching import and creates such wide exemption from the federal antitrust laws that it should be reviewed and reheard by the entire Court.

2. *Having reversed the District Court's finding on fact of damage, the Court proceeds to hold without any further discussion that, therefore, Zenith is not entitled to injunctive relief with respect to the foreign patent pools.* The opinion states:

> "It follows from our conclusion with respect to the foreign patent pools that injunctive relief against 'threatened loss or damage' directed at those pools alleged by Zenith to be unlawful conspiracies cannot be justified under 15 U. S. C. Sec. 26. Paragraph C* of the injunction granted must be stricken."

The Court's holding on this issue erroneously assumes both that Zenith had to show infringement suits by the pool during the damage period to prove injury to its business and that absent such proof Zenith is not entitled to protection by injunction from the pools. No authority is cited for this conclusion. Although the proof of injury to Zenith's export business was conclusive, Zenith would be entitled to injunctive relief even if it had shown no damage. Section 26 requires only proof of an anti-trust violation and a *threat* of future damage or injury.

Thus, in *Bedford Cut Stone* v. *Journeymen's S. C. Assoc.,* 274 U. S. 37, 54-5 (1926), a private action for injunctive relief under Section 26, the Supreme Court held:

> "The record does not disclose whether petitioners at the time of bringing suit had suffered actual injury;

---

* Paragraph C enjoins Hazeltine Corporation and HRI from "entering into, adhering to, enforcing, or claiming any rights under any contract, agreement, understanding, plan or program with any other person, company, patent pool, organization, association, corporation or entity which directly or indirectly restricts or prevents defendant counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, from exporting any electronic apparatus from the United States into any foreign market."

> *but this is not material.* An intention to restrain interstate commerce being shown, it is enough to justify equitable interposition by injunction if there be a dangerous probability that such injury will happen; and this clearly appears. The anti-trust Act 'directs itself against that dangerous probability as well as against the completed result'." (Emphasis added.)

Similarly, in *Vicksburg Water Works Co.* v. *Vicksburg,* 185 U. S. 65, 82, cited in the *Bedford* case, the Supreme Court held that the complainant did not have to show actual injury to be entitled to equitable relief. The Court said:

> "*It is further contended that the bill does not disclose any actual proceeding on the part of the city to displace complainant's rights under the contract, that mere apprehension that the basis of enjoining such action, and that therefore the circuit court did right in dismissing the bill. We cannot accede to this contention.* It is one often made in cases where bills in equity are filed to prevent anticipated and threatened action. But it is one of the most valuable features of equity jurisdiction, to anticipate and prevent a threatened injury, where the damages would be insufficient or irreparable. The exercise of such jurisdiction is for the benefit of both parties; in disclosing to the defendant that he is proceeding without warrant of law, and in protecting the complainant from injuries which, if inflicted, would be wholly destructive of his rights." (Emphasis added.)

In *Alden-Rochelle, Inc.* v. *American Soc. of C. A. & P.,* 80 F. Supp. 888, 898-9 (1948) Judge Leibell of the Southern District of New York held that Ascap had violated the anti-trust laws but that plaintiff had failed to prove that it had been injured thereby. Nonetheless, the Court granted the plaintiff's prayer for injunctive relief notwithstanding the fact that Ascap's 1947 demands for monopolistic rates had been abandoned. The Court said:

> "The August 1947 demands were abandoned by

> Ascap. Plaintiffs have been offered the same type of contract (a long term contract) that other exhibitors accepted in February 1948. Does this remove the need for injunctive relief? I have concluded that it does not. Plaintiffs are entitled to have this court exercise its equitable powers to prevent a recurrence of what happened in August 1947 and to have their rights adjudicated and protected by a decree of the court, because the unlawful arrangements between Ascap and its members, and between the members and the motion picture producers, is a continuing one and is a clear violation of the anti-trust laws."

And, in *United States* v. *Oregon State Medical Society,* 343 U. S. 326, 344, the Supreme Court said

> "All it takes to make out the cause of action for relief by injunction is *a real threat of future violation or a contemporary violation of a nature likely to continue or recur.*" (Emphasis added.)

In the instant case the District Court found that the foreign patent pools constituted illegal conspiracies in violation of the anti-trust laws. This finding was supported by overwhelming evidence and was not contested here by Hazeltine. Hazeltine is a member of the pools and the pools have exclusive licensing rights with respect to Hazeltine's foreign patents. The pool portfolios of patents include virtually all the important patents in the television field including Hazeltine's color patents. The only license the pools will grant is for local manufacture and not to import. At the same time, Hazeltine refuses to grant a license under its patents to export to foreign markets where Hazeltine is a member of the pools. The only question is whether this situation constitutes a threat to Zenith's foreign business. The District Judge so found and the evidence to support that finding was conclusive.

Thus, the Report of the Canadian Royal Commission, published during the pendency of this litigation of which this Court's opinion makes no mention, categorically states (Pl. Ex. 50A; A. 2161, 2162):

> "*The portfolio in respect of which CRPL had the right to grant licenses consisted of 5,000 patents; and in the absence of a license from CRPL it is doubtful if anyone could sell in Canada a radio or television receiver.*
>
> "*CRPL indicated that it does not grant a license to any importer of radio or television receivers, except in the limited situation where the type or kind of radio or television receiver sought to be imported is not manufactured by any radio or television receiver manufacturer in Canada. It is particularly in respect of the policy of CRPL in precluding importers from bringing into Canada radio and television receivers that the complaint was made to this Commission.*
>
> "*It is stated to be the policy of CRPL to enforce its patent rights against any person who sells in Canada an imported radio or television receiver which infringes any one or more of the patents in its portfolio* . . .". (Emphasis added.)

In May, 1959 Brian McConnell, the head of CRPL, told Zenith's Vice President Crotty that Zenith was infringing pool patents, "one of which was a patent of Hazeltine origin. He told me that we would have to take a license and that the license could not be for importation, it would have to be for local manufacture." (A. 1332.) This conversation was not denied and was confirmed by McConnell's June 5 letter enclosing the pool standard license forbidding importation and notifying Zenith that reinvestigation of an imported Zenith receiver leaves "no doubt in our minds that the invention covered by the patent is used in this receiver. The tests show this quite conclusively." (Def. Ex. 154, A. 3263.)

Wright testified without contradiction that, in view of the pool policy and the threat of infringement litigation, Zenith could not develop the Canadian market in the manner it would have free of the illegal pool restrictions, and that but for the pool threat Zenith would have obtained the same share of the Canadian market it did in the United States (*i.e.*, 20% instead of 5%) (A. 1412, 1374-5, 1395). This Court's opinion concedes, as it must, that Wright's testimony "with respect to the Canadian market can be considered some slight testimony of damage suffered by Zenith in the damage period as the result of pool activities in Canada."

Such evidence, as found by the District Court, clearly established "threatened loss or damage" to Zenith's foreign business. This having been established, Zenith was entitled to injunctive relief.

The effect of the Court's holding on the injunction issue is to leave Zenith's foreign business in the Canadian market (and other markets) exposed to ruinous infringement litigation and at the mercy of the pools' enforcement policy. Zenith cannot get protection by taking a license under Hazeltine's domestic patents because Hazeltine has contracted with the pools not to grant a license to export and it cannot g[illegible] a license to import from the pools.

Moreover, the Court's opinion reaches the incongruous result of permitting Hazeltine to continue to be a member of foreign patent pools which admittedly violate the American anti-trust laws and to enjoy the fruits of those pools, thus in effect putting the Court's imprimatur on such illegal activity.

3. *Compounding the injustice done Zenith by its "fact of damage" and injunction ruling, the Court in its opinion sets up as the new law of this Circuit an unprecedented constitutional doctrine employing the "corporate fiction" not for the promotion of justice, but expressly to shield Hazeltine Corporation from all liability for its illegal conduct.* In doing so, the Court neither acknowledges nor

applies the controlling alter ego principles set forth by Judge Minton on behalf of this Court in *Bigelow v. RKO Pictures*, 170 F. 2d 783, 785-6, principles repeatedly enunciated by the Supreme Court. *United States* v. *Reading* (1919), 253 U. S. 41, 62-63; *Chicago M. & St. P. R. Co.* v. *Minneapolis Civic C. Assoc.* (1918), 247 U. S. 490, 501; *Louisville & N. R. Co.* v. *Schmidt* (1900), 177 U. S. 230, 237.

The Court informs an able and experienced trial judge that short of having a board resolution from HC in evidence, he had no right to believe or rely upon the solemn judicial admissions of Mr. Dodds that the plaintiff was the alter ego of, and one and the same as, Hazeltine Corporation—admissions made without qualification of any kind at the April 3, 1963 pre-trial conference, in the written stipulation that followed (A. 43, 235-6, 237-9) and in his sworn testimony at the trial. (A. 1696.) The opinion is silent as to Dodds' affidavit of May 10, 1963, in which he states (A. 41):

> "He had been retained by or employed by Plaintiff's parent Company Hazeltine Corporation, continuously since 1934 and has been a Vice President of Hazeltine Corporation continuously since 1939. (except for a period during 1944-45 when he had no connection with Hazeltine Corporation or any of its affiliates). He also was an officer of plaintiff, Hazeltine Research, Inc., from its organzation in 1946 until June 7, 1961. Since 1946, he has been continuously familiar with the patents and the patent licenses of both Plaintiff and its parent, Hazeltine Corporation."

Nor does the opinion mention Dodds' affidavit of September 12, 1963, in which he states (Z. A. 124):

> "He is now and has been for more than twenty years, trial counsel for Plaintiff and its predecessor in business and parent company, Hazeltine Corporation, and has the responsibility for conducting the trial of the instant Action."

At the trial Dodds testified (A. 1696):

> "That is correct. There is a stipulation on the record that solely for the purposes of this action plaintiff Hazeltine Research and the parent Hazeltine Corporation can be considered as a single entity."

No one from the parent, Dodds included, denied Dodds' authority to make the stipulation during the trial. Ruestow, who was "General Patent Counsel of the Hazeltine Corporation, the parent corporation" (A. 1199-1200) and Westermann, who was "Vice President and General Counsel of Hazeltine Corporation" (A. 1493) and both of whom were present during the trial and thoroughly familiar with the stipulation, never said one single word in repudiation of the stipulation.

Despite Mr. Dodds' complete familiarity with the corporate nature and operation of the Hazeltine enterprise, this Court declares that the fictitious corporate veil supposedly separating HC and HRI must be pierced from both sides on constitutional grounds, despite the fact that the record evidence establishes these companies to be one entity.

> "Direct proof of this affirmative subserviency of the subsidiary officers is conclusive of the case against the parent corporation, insofar as the Instrumentality Rule is concerned. But such direct proof is not often forthcoming." Powell, *Parent and Subsidiary Corporations,* p. 18.

The Court's reference to *Hansberry* v. *Lee,* begs the question because even this Court concedes that if the evidence establishes (with or independently of the stipulation) that HRI is the alter ego of HC because of HC's domination and control of HRI, then HC was present as a matter of law just the same as if it had been named a formal party. *U. S.* v. *Reading Co.* (1919), 253 U. S. 41, 62-3.

This Court simply refuses to consider the evidence on this issue, stating that the District Court did not consider it and that "This Court cannot make an initial determination of these facts." This Court, however, is bound to affirm the judgments of the District Court on any proper ground supported by the record. If the Court believes that Judge Austin relied only or primarily on the stipulation and is itself unwilling to consider the proof of alter ego in the record, it should remand the case on this issue if not satisfied that HC has had its day in court. Instead, the Court reverses outright, thereby denying *Zenith* an opportunity to be heard on this issue.

It is urgently submitted that in its opinion on the subject of the corporate fiction this Court has mistakenly applied *Hansberry* v. *Lee* with a result that does violence to time-honored principles relating to the corporate entity privilege.

> "To permit the notion of legal entity to stand in the way of a decision which justice and public policy requires, to allow a metaphysical theory and *concept* to . . . permit restraint of trade and monopoly itself to be achieved under the guise of refined and abstruse theoretical reasoning, or lack of reasoning—is abhorrent to the genius and spirit of both the common law and chancery. To the credit of our courts, it must be conceded that when tried in the balance they have not been found wanting, in this important regard." Wormser, *The Disregard of the Corporate Fiction and Allied Corporation Problems*, p. 72.

In the interest of justice any decision of this Court which so far departs from these basic principles should have the careful consideration of all of its members.

Conclusion.

By an unbelievable miscarriage of justice, this Court, by its opinion, aids and abets a conspiracy of the largest electronic companies in the world to destroy the foreign business of a Chicago company employing over twenty-five thousand persons. If ever a case deserved a hearing before this entire Court, this is the one.

We submit that such a rehearing and reargument should be permitted to prevent such an unconscionable result.

Respectfully submitted,

Thomas C. McConnell,
Philip J. Curtis,
Francis J. McConnell,
John Borst, Jr.,
Attorneys for Zenith Radio Corporation, Appellee.

Of Counsel:
McConnell, Freeman, Curtis
& McConnell,
134 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

UNITED STATES COURT OF APPEALS.

Tuesday, January 23, 1968.

Before
Hon. John S. Hastings, Chief Judge
Hon. Elmer J. Schnackenberg, Circuit Judge
Hon. Latham Castle, Circuit Judge
Hon. Roger J. Kiley, Circuit Judge
Hon. Luther M. Swygert, Circuit Judge
Hon. Thomas E. Fairchild, Circuit Judge
Hon. Walter J. Cummings, Circuit Judge

• • (Captions—15246-7, 15563-4) • •

It Is Ordered by the Court that the petition for rehearing or reconsideration by the court of appeals *en banc*, filed by Zenith Radio Corporation in the above causes, be, and the same is hereby, denied.

(Judge Fairchild voted for rehearing *en banc* "limited, however, to the issue of whether or not paragraph c should be stricken from the injunction.")

IN THE UNITED STATES COURT OF APPEALS.

• • (Captions—15246-7, 15563-4) • •

STIPULATION CONCERNING RECORD ON PETITION FOR CERTIORARI.

Counsel for Zenith Radio Corporation and counsel for Hazeltine Research, Inc. and for Hazeltine Corporation agree that the following items on the Docket of the United States Court of Appeals for the Seventh Circuit appearing in Dockets Nos. 15246, 15247, 15563 and 15564 may be excluded from the record certified to the Supreme Court of the United States:

1. Appearance of counsel, February 1, 1966.

2. Separate motions by Hazeltine Corporation and Hazeltine Research, Inc., February 18, 1966, to consolidate.

3. Response of Zenith, February 24, 1966, to Item No. 2.

4. Reply of Hazeltine Research, Inc. and Hazeltine Corporation to Item No. 3.

5. Motion, August 6, 1965, for leave to file reply brief.

6. Hazeltine Corporation's motion of August 6, 1965, for extension of time.

7. Hazeltine Research, Ins.'s motion of August 6, 1965, for extension of time.

8. Order in Docket No. 15246, August 11, 1965, extending time.

9. Order in Docket No. 15247, August 11, 1965, extending time.

10. Motion and stipulation of July 6, 1966, permitting correction of the record.

11. Motion of October 19, 1966, to clarify time.

12. Order of October 20, 1966, setting time.

13. Motion of November 16, 1966, for additional pages.

14. Order of November 17, 1966, granting Item No. 13.

15. Motion of December 8, 1966, for additional time.

16. Order of December 8, 1966, to prepare agreed order.

17. Order of December 9, 1966, extending time.

18. Motion of Zenith, January 5, 1967, to extend time and for extra pages.

19. Order of January 9, 1967, granting Item No. 18.

20. Motion of Zenith, February 17, 1967, for additional time.

21. Appellants' motion for extra oral argument, February 17, 1967.

22. Order of February 20, 1967, extending Zenith's time.

23. Zenith's answer, February 21, 1967, to motion on oral argument.

24. Zenith's motion, February 21, 1967, for extra pages.

25. Appellants' motion and reply re oral argument, February 23, 1967.

26. Order of February 23, 1967, allowing extra pages.

27. Appellants' motion of March 14, 1967, for extra pages and additional time.

28. Order of March 16, 1967, granting Item No. 27.

29. Appellants' motion of April 6, 1967, for additional time and additional pages.

30. Order of April 6, 1967, granting Item No. 29.

31. Order of April 17, 1967, setting oral argument for May 18, 1967.

32. Zenith's motion of December 26, 1967, for stay of mandate.

33. Order of December 27, 1967, staying mandate.

34. Appellants' motion of January 9, 1968, to extend time.

35. Order of January 11, 1968, extending time.

36. Zenith's motion, January 26, 1968, for stay of mandate.

37. Order of January 26, 1968, staying mandate.

It is further agreed that except for the above-described deleted items, the entire record shall be certified to the Supreme Court, including, but not by way of limitation, the following:

1. District Court Clerk's certificate of material included in the District Court record.

2. Hazeltine Corporation's Rule 15(f) motion, supporting brief and affidavit of Tiffany, July 23, 1965.

3. Zenith's answer, brief and affidavit of T. McConnell, August 3, 1965.

4. Hazeltine Corporation's reply brief and affidavit of Dodds, filed August 6, 1965.

5. Order of August 16, 1965, taking Rule 15(f) motion with the case.

6. Consolidation order of March 1, 1966.

7. Order of July 7, 1966, correcting the record on appeal.

8. Appellants' ten-volume appendix, filed October 3, 1966, and November 14, 1966.

9. Order of December 13, 1966 re motion to vacate.

10. Order of December 20, 1966, together with stipulation of December 9, 1966, correcting the record.

11. Brief of Hazeltine Research, Inc. on antitrust issues, December 21, 1966.

12. Hazeltine Research, Inc.'s brief on patent, December 21, 1966.

13. Zenith's two-volume appendix, filed February 27, 1967.

14. Order of February 27, 1967, re oral argument.

15. Zenith's brief on antitrust and misuse, March 8, 1967.

16. Zenith's answer on complete record to Rule 15(f), March 8, 1967.

17. Hazeltine Research, Inc.'s reply brief, April 18, 1967.

18. Hazeltine Research, Inc.'s misuse brief, April 18, 1967.

19. Hazeltine Corporation's Rule 15(f) reply brief, April 18, 1967.

20. Zenith's motion, May 26, 1967, for leave to file additional authority.

21. Appellants' answer of May 29, 1967, to Item No. 20.

22. Zenith's reply of May 31, 1967.

23. Order of June 6, 1967.

24. Zenith's motion of October 16, 1967, for leave to file additional authority.

25. Appellants' answer, October 17, 1967, to Item No. 24.

26. Order of October 19, 1967.

27. Judgment of December 13, 1967.

28. Opinion of December 19, 1967.

29. Motion, December 27, 1967, for extension of time to file petition for rehearing.

30. Order of December 27, 1967, granting Item No. 29.

31. Zenith's petition for rehearing *en banc*.

32. Answer of Hazeltine Corporation to petition for rehearing, January 16, 1968.

33. Answer of Hazeltine Research, Inc. to petition for rehearing, January 16, 1968.

34. Order of January 23, 1968, denying rehearing and rehearing *en banc*.

35. The entire record of the District Court as transmitted to the Court of Appeals, including the supplemental record filed December 20, 1966.

36. Docket entries in Nos. 15246, 15247, 15563 and 15564.

37. This stipulation.

Dated this 6th day of March, 1968.

JOHN T. CHADWELL,
Attorney for Hazeltine Corporation,
135 South La Salle Street,
Chicago, Illinois 60603

JOHN T. CHADWELL,
JOHN W. THOMAS,
Attorneys for Hazeltine Research, Inc.,
135 South La Salle Street,
Chicago, Illinois 60603

THOMAS C. MCCONNELL,
FRANCIS J. MCCONNELL,
JOHN BORST, JR.,
Attorneys for Zenith Radio Corporation,
134 South La Salle Street,
Chicago, Illinois 60603.

ADDITIONAL DISTRICT COURT DOCKET ENTRIES DEEMED RELEVANT BY RESPONDENTS.

1/ 3/62	Filed subpoena duces tecum returned served
5/ 9/63	Filed motion (by plaintiff) to strike par. 13 of defendant's answer
5/15/63	Filed pretrial stipulation (to Judge Austin)
2/11/64	Filed Zenith's pretrial brief on the antitrust issues raised in the answer and counterclaim
2/18/64	Further evidence heard for defendant and counterclaimant and trial adjourned to 2/19/64 (Austin)
2/19/64	Further evidence heard for defendant counterclaimant. Trial adjourned to 2/20/64 (Austin)
2/20/64	Further evidence heard for counter-plaintiff. Counter-plaintiff rests. Motion of counter-defendant for judgment taken under advisement. Evidence heard for counter-defendant in part. Trial adjourned to 2/24/64 (Austin)
2/24/64	Further evidence heard for counter-defendant. Trial adjourned to 2/25/64 (Austin)
2/15/65	Filed motion of plaintiff to continue date for entry of judgment to 3/29/65 and to permit plaintiff to file prior to 3/29/65 such motions as it deems appropriate
4/ 2/65	Filed memorandum of plaintiff Hazeltine Research, Inc. concerning form of proposed final judgment and decree submitted by defendant Zenith Radio Corporation under date of April 1, 1965
5/13/65	Filed Hazeltine Research, Inc.'s offers of proof made to Judge Austin on May 31, 1965

5/18/65	Filed Zenith's statement under Rule 12(d) of the Rules of the Seventh Circuit Court of Appeals
10/18/65	Case on trial continued to 10/19/65
10/19/65	Case on trial continued to 10/20/65
11/29/65	Filed notice of motion of Zenith for entry of final judgment and amended findings of fact
12/29/65	Filed notice of Hazeltine Research, Inc. and Hazeltine Corporation and proposed second supersedeas appeal bond and draft order granting stay
12/29/65	Entered order granting stay of execution per proposed draft order and approving second supersedeas appeal bond
2/17/66	Filed and docketed record on appeal in appeals numbers 15563 and 15564
12/13/66	Entered agreed order re motion of Hazeltine Corporation to vacate December 13, 1965 judgment
12/19/67	Opinion filed

Office-Supreme Court, U.S.
FILED
MAR 26 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

THOMAS C. MCCONNELL,
PHILIP J. CURTIS,
FRANCIS J. MCCONNELL,
JOHN BORST, JR.,
Attorneys for Zenith Radio Corporation, Petitioner.

Of Counsel:
MCCONNELL, CURTIS, MAHON & BORST,
134 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

PAGE
Opinions Below 1
Jurisdiction 2
Questions Presented 2
Statutes Involved 5
Statement of the Case 5
  Proof of the Fact of Damage 6
  The Injunction 21
  The Dismissal of Hazeltine Corporation 24
Reasons for Granting the Writ 27
Conclusion 34
Appendix A—Statutes involved 35
Appendix B—District Court's Findings and Conclusions 37
  Opinion below 60
  Judgment below 86
Appendix C—Order denying rehearing 88

CITATIONS.

Cases.

American Arch Co. v. Canuck Supply Co., Ltd., 3 Dominion Law Reports 567 17

American Securit Co. v. Shatterproof Glass Corp., 154 F. Supp. 890 (D. C. Del. 1957), affirmed 268 F. 2d 769 (C. A. 3, 1959), cert. den. 361 U. S. 902 (1959) ... 33

Automatic Radio Mfg. v. Hazeltine Research, Inc., 339 U. S. 827 (1950) 33

Bedford Cut Stone Co. v. Journeymen's S. C. Association, 274 U. S. 37 (1927) 27

Bigelow v. RKO Radio Pictures, 327 U. S. 251 (1946) 10, 30, 32

Continental Ore Co. v. Union Carbide Corp., 370 U. S. 690 (1962) 31

Curtiss Aeroplane & M. Corp. v. United Aircraft E. Corp., 266 Fed. 71 (C. A. 3, 1920) 18

Interstate Circuit v. United States, 306 U. S. 208 (1939) 21

Nu Tec, Ltd. v. Hearst, 38 Ont. Weekly Notes 2 17

The Queen v. Castro, 5 R. S. Q. B. D. 490 17

Timken Roller Bearing Co. v. United States, 341 U. S. 693 (1951) 15

United States v. National Lead Co., 332 U. S. 319 (1947) 15

Vicksburg Water Works Co. v. Vicksburg, 185 U. S. 65 (1902) 27

Statutes.

28 U. S. C. § 1254(1) 2

Clayton Act:

Sec. 4 and 16 (15 U. S. C. §§ 15 & 26) 5, 27, 28, 35

Sherman Act:

Sec. 1 and 2 (15 U. S. C. §§ 1 & 2) 5, 35

Rule 52(a) of the Federal Rules of Civil Procedure ... 5, 36

Miscellaneous.

Hearings, June 1, 2 & 3, 1965, Patents, Trademarks and Copyrights Sub-committee, Committee on the Judiciary, United States Senate 29

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. ....

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioner, Zenith Radio Corporation, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled cause on December 13, 1967, which reversed without remand two judgments entered in favor of petitioner and against respondents in the respective amounts of $19,042,173 and $15,919,458, on the ground that, as a matter of law, the facts proved did not show any so-called fact of damage.

CITATIONS TO OPINIONS BELOW.

The District Court rendered no formal opinion but did enter Findings of Fact and Conclusions of Law on the antitrust issues which are reported in 239 F. Supp. 51, 69.

A copy thereof fully annotated to the record is printed in Appendix B, hereto, *infra,* page 37.

The opinion of the Court of Appeals is as yet unpublished but is likewise printed in Appendix B *infra,* page 60.

JURISDICTION.

The judgment of the Court of Appeals was entered on December 13, 1967 (Appendix B *infra,* page 86) but the opinion was not issued until December 19, 1967 (Appendix B *infra,* page 60). Petitioner filed a timely Petition for Rehearing or Reconsideration by the Court of Appeals *en banc* which was denied on January 23, 1968, with Judge Fairchild voting for rehearing *en banc* on the injunction issue (Appendix C *infra,* page 88). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254 (1).

QUESTIONS PRESENTED.

1. Whether a Court of Appeals is free to destroy the application of the antitrust laws in the protection of American foreign trade by reversing a finding of a District Court made on undisputed and conclusive evidence that "the foreign commerce of Zenith has been drastically curtailed by the patent Pools in England, Canada and Australia" on the ground that such pools, which admittedly refused to license pool patents for radio or television sets imported into Canada, England, and Australia, as a matter of law could cause no damage to Zenith Radio Corporation, the petitioner, as an exporter of radios and television sets.

2. Whether a Court of Appeals is free to hold, as a matter of law, that American companies such as Zenith, seeking to export electronic products to Canada, England, and Australia, cannot be injured in business or property within the meaning of Section 4 of the Clayton Act where

substantial and uncontested evidence in the record shows that Zenith's sales of electronic products were prevented or substantially curtailed in such foreign markets because the pools would not permit the licensing of foreign patents covering American products imported into Canada, England, and Australia and because of which practice Zenith could not protect its customers or distributors from the threat of patent infringement litigation in such foreign countries and the threat of confiscation of its products?

3. Whether a Court of Appeals is free to reverse a judgment granting injunctive relief on the ground that, as a matter of law, a patent pool, joined in by respondents and made up of competitors of Zenith, under which all of the competitors' patents are pooled and the competitors agree that such patents cannot be licensed in any manner that would permit the importation into Canada, England, and Australia of Zenith's electronic products, carries no threat of injury to Zenith's business within the meaning of Section 16 of the Clayton Act?

4. Whether a demand upon patent pools and their members for a patent license permitting importation of American-manufactured electronic products into foreign markets is a condition precedent to maintaining a treble damage action under the antitrust laws where, under the terms of the patent pool agreements, the pool members contractually pledge that no license permitting importation shall issue for electronic products manufactured in the United States which are covered by pool patents, and where the only license that can be granted under the pool agreements is a standard package license covering only local manufacture, use, and sale, and where the trial court has found on undisputed evidence that a pool license covering imported electronic products has never at any time been available?

5. Whether the uncontradicted testimony of Zenith's

officers, based on personal knowledge of business conditions and concerning the volume of business which Zenith would have done in Canada, England, and Australia absent the unlawful interference of the pools, constitutes substantial evidence within the meaning of Rule 52(a) of the Federal Rules of Civil Procedure in support of the District Court's damage findings?

6. Whether the Court of Appeals by failing to accept the inferences drawn by the trial court from the evidence and to view the evidence in the light most favorable to petitioner usurped the function of the trial court as the trier of the facts contrary to Rule 52(a) of the Federal Rules of Civil Procedure?

7. Whether the Court of Appeals wrongfully departed from the accepted and usual course of judicial review in relying upon respondents' rejected post-trial offers of proof, which petitioner had no opportunity to meet, in order to set aside the findings of the District Court?

8. Whether a patentee misuses its patent monopoly where under threat of patent infringement suits brought pursuant to a conspiracy with foreign competitors of the prospective licensee, it seeks to force the prospective licensee to accept a territorial license limited to the United States which prevents the sale of patented apparatus abroad and requires the licensee to concede the validity of the inventions contained in the counterparts of such patents held and administered in foreign patent pools?

9. Whether a patentee misuses and unlawfully extends its patent monopoly where, under threat of patent infringement suits, it requires a prospective licensee either to accept unwanted patents under a package license covering 500 patents or to pay royalties under a formula whereby any one patent in the package will be licensed at 50%, any two at 80%, and any three or more at 100% of the package rate irrespective of the quality of any particular patent?

10. Whether under *Automatic Radio Mfg. Co.* v. *Hazeltine Research Inc.,* 339 U. S. 827 (1950) a patentee may compel a prospective licensee under threat of patent infringement suits to accept a license requiring payment of royalties based on the licensee's entire production of unpatented as well as patented apparatus, thereby destroying the incentive of the licensee to invent around the licensed patents?

11. Whether the Court of Appeals has the right to dismiss the cause as against Hazeltine Corporation by holding null and void a formal written pre-trial stipulation by the respondent Hazeltine Research, Inc. that for the purpose of this litigation Hazeltine Research, Inc. and its parent, Hazeltine Corporation, would be considered as one entity to avoid the necessity of proving the two corporations were one and the same, which stipulation was relied upon by the District Court and all counsel throughout the trial?

STATUTES INVOLVED.

The statutory provisions and Rule involved are Sections 1 and 2 of the Sherman Act, 15 U. S. C. §§ 1 and 2; Sections 4 and 16 of the Clayton Act, 15 U. S. C. §§ 15 and 26; and Rule 52(a) of the Federal Rules of Civil Procedure.

The foregoing Statutes and Rule are printed in Appendix A *infra,* page 35.

STATEMENT OF THE CASE.

This suit was started by the Hazeltine Research, Inc. subsidiary of Hazeltine Corporation for alleged infringement of a patent adjudicated to be invalid by both the District Court and the Court of Appeals (R. 1).[1] It was stipulated that parent and subsidiary would be considered one and the same company for purposes of the litigation (R. 43). The petitioner, Zenith Radio Corporation, counterclaimed for treble damages and injunctive relief pursuant to Sections 4 and 16 of the Clayton Act (R. 48) and recovered two judgments against respondents, Hazeltine Research, Inc. and Hazeltine Corporation.

---

[1] "R." refers to pages in the printed appendix filed by Hazeltine and "Z. R." to pages in the additional printed appendix filed by Zenith in the Court below.

The first judgment entered on April 5, 1965 (R. 248) enjoined Hazeltine from adhering to any patent pool agreements which restricted Zenith from exporting electronic apparatus into any foreign market. It also awarded Zenith treble damages in the amount of $19,042,173 for loss of sales and profits in the Canadian market by reason of the activities of the CRPL Canadian patent pool.[2] The second judgment entered on December 13, 1965 (R. 4163) after further hearings in the cause awarded Zenith treble damages in the amount of $15,919,458 for loss of sales and profits in England and Australia by virtue of the activities of the patent pools in those countries in which pools Hazeltine had also joined and put its patents.

In entering the last judgment the trial court made the following comment (R. 4145-7):

> "There could be no question in my mind that Zenith suffered damages during the damage period by virtue of the pools, which I have found, and reiterate, existed at the time of the damage period."

The Court of Appeals reversed both judgments on the ground that there was no proof in the record that either the Canadian or English or Australian pools caused any damage to Zenith's radio and television business in those respective foreign markets.

---

[2] This amount included treble damages of $150,000 for expenses incurred by Zenith in defending against Hazeltine's patent infringement suit.

Proof of the Fact of Damage.

The proof of damage in the Canadian market occasioned by the Canadian patent pool was largely documentary and not denied by any witness. Zenith could not export its radio and television sets to Canada and sell them there without a license under the pool patents without exposing its products to confiscation and its distributors and dealers and customers to patent infringement suits (Def. Ex's 139, 140, 141-144; R. 3132, 3203, 3205, 3209, 3212-3214, 3215-3219).

A succinct description of the Canadian pool, its policies, and its effect on the business of companies such as Zenith, was written by a Canadian Royal Commission investigating the pool. The report, published December 31, 1959, describes the pool and its activities as it existed at a time within the instant damage period (R. 2143, 2160) as follows (Pl. Ex. 50A; R. 2161, 2162):

> "Canadian Radio Patents Limited (hereinafter called CRPL) was incorporated in 1926 for the purpose of acting as a patent licensing agency. At the time of the presentation of its brief to this Commission it acted as the central patent licensing agency in the administration of patent rights in the radio, television and general electronic fields in respect of patents owned by its then five shareholders: Canadian General Electric Company, Canadian Westinghouse Company, Northern Electric Company, Canadian Marconi Company, and Canadian Radio Manufacturing Company.
>
> "It also acted as licensing agent in Canada for RCA Victor Company *and Hazeltine Electronics Corporation.* * * *
>
> "The portfolio in respect of which CRPL had the right to grant licenses consisted of 5,000 patents, and *in the absence of a license from CRPL it is doubtful if anyone could sell in Canada a radio or television receiver.*
>
> "CRPL indicated that it does not grant a license

> to any importer of radio or television receivers, except in the limited situation where the type or kind of radio or television receiver sought to be imported is not manufactured by any radio or television receiver manufacturer in Canada. It is particularly in respect of the policy of CRPL in precluding importers from bringing into Canada radio and television receivers that the complaint was made to this Commission.
>
> "It was stated to be the policy of CRPL to enforce its patent rights against any person who sells in Canada an imported radio or television receiver which infringes any one or more of the patents in its portfolio . . . ." (Italics ours.)

This document was put in evidence without any qualification whatever by the respondents Hazeltine but is not even mentioned in the Court of Appeals' opinion.

A witness called and sponsored by Hazeltine was cross-examined on the document and testified (R. 1626) that the statement in the report that "in the absence of a license from CRPL it is doubtful if anyone could sell in Canada a radio or television receiver" was carefully considered ~~before~~ being written by the Royal Commission (R. 1626). The witness was counsel for CRPL and an advisor for the Commission (R. 1611-1612). The witness also admitted that the importation into Canada of radio and television sets would "certainly" constitute competition for the members of the pool (R. 1623, 1627) and that the refusal to license such importation would stop such competition (R. 1627). He also admitted that this policy of the pool stopped foreign competitors from the United States from selling electronic products in Canada and that this included Zenith (R. 1627). This testimony alone constitutes substantial evidence in support of the trial court's finding that:

> "The foreign commerce of Zenith has been drastically curtailed by the patent pools in England, Canada and Australia." (Finding XXXVI; R. 122)

Further, the testimony of Zenith's officers that Zenith was damaged during the damage period by the pools was not denied. Samuel Kaplan, Executive Vice President and Treasurer of Zenith, an expert in the radio and television business with over 40 years' experience with Zenith's products (R. 1445), testified that he was thoroughly familiar with business problems and sales potentials in the Canadian market (R. 1447) and that he had made a careful survey of the Canadian market in order to determine whether it was more advantageous to manufacture in Chicago and export to Canada (R. 1447). He had also attempted to determine how much business Zenith lost as a result of the Canadian conspiracy during four years preceding filing of the counterclaim, which was the period from June, 1959 through May, 1963. He testified that he took into account all relevant factors such as tariffs, shipping costs, distances, and the nature of the market (R. 1450, 1451) and the competitive potential of Zenith's products, which, he testified, were famous for quality and commanded a premium price wherever sold (R. 1462).

He testified that with respect to Canada, if the market had been free from the activities of the pool and if Zenith had therefore been free to develop the market (R. 1450), Zenith would have had the same share as it did of the United States market, or 20% instead of 5% (R. 1451).

Joseph Wright, the President of Zenith, gave evidence to the same effect (R. 1373-1379) and testified that free of the pool's restrictions, Zenith could and would have obtained the same share of the Canadian market as it did of the American market (R. 1379, 1380).

Neither witness was contradicted in any way and their testimony stands without denial on this record.

Petitioner's Exhibits 218 and 220 show that given the same share of the Canadian market as it enjoyed in the United States during the damage period, Zenith would have earned profits of $5,826,896 in television and $470,495 in radio over what it did make in the restricted Canadian market (R. 1439, 1440; Def. Ex. 218, 220; Z. R. 611, 655).

Since the Canadian market had been subject to the activities of the pool ever since CRPL was organized in 1926 (R. 2161), there never was any open market comparison available in Canada. The only measure of damages available was a comparison between Zenith's activities against comparable competition in the American market with its results just across the border in Canada, where the restrictions of the pool prevailed. This evidence was offered and received by the trial court under the principle enunciated by this Court in the *Bigelow* case (327 U. S. 251, 264-5).

The damage exhibits compared Zenith's operation and profits against the comparable competition in the two markets, which markets themselves were shown to be comparable except for the restrictions of the pool (R. 1450-1). Since the pool had destroyed any open market comparison in Canada, this was the best and only evidence of damage available.

In its Petition for Rehearing Zenith represented to the Court of Appeals that it was prepared to show that after the injunction was entered in the District Court, Zenith's television business increased to a point representing 18% of the Canadian color TV market, which was approximately the same share Zenith enjoyed in the American market. In 1967, under the protection of the injunction, Zenith's Canadian sales of color television sets, on which Hazeltine claims to hold the dominating patents, amounted to $12,260,000, being an increase for Zenith of 66% as against an industry increase of approximately 21%. This actual sales experience corroborates completely the testimony of Wright and Kaplan that, free of the restrictions of the pool (stopped by the District Court injunction), Zenith would do as well marketwise in Canada as it did in the United States.

In finding as a matter of law that no fact of damage was shown in Canada, the Court of Appeals cavalierly dismissed evidence of a settlement in an earlier suit involving the same Canadian patent pool. That evidence which was introduced by respondents themselves, showed that Western Electric, RCA, and General Electric, as members of the Canadian pool, had paid Zenith ten million dollars for damages which they had caused Zenith in Canada up to October, 1957 (Pl. Ex.'s 39-43, 48; R. 2079-2131). These co-conspirators of respondents were Zenith's competitors in Canada and had operated the Canadian patent pool since 1926 and were familiar with every facet of the pool's activities and its effect on a competitor's business. The RCA case damage settlement was on account of the same pool activity as was shown to have continued in the present case. The Court of Appeals holds as a matter of law that this evidence has no relevance in determining the impact of such a patent pool upon Zenith's market for television and radio sets in Canada even though respondents contended that the settlement released Hazeltine as a co-conspirator for damages which Zenith suffered after the settlement date (R. 224-6).

The court below has further reached the amazing conclusion that the fact of damage in an antitrust case cannot be proved by the admissions of the co-conspirators themselves made in the course of their conspiracy, where by the settlement of a lawsuit they were seeking to dispose of an attack on the pool and to preserve intact the very pool complained of here, and where the evidence was introduced by the respondents themselves without any qualification whatever.

In holding that the Canadian pool, as a matter of law, could have no impact on Zenith's business during the damage period, the Court of Appeals ignored all the evidence of what occurred after the ten million dollar settlement.

The record shows that Zenith mistakenly thought that by this settlement its troubles with the pool had ended and it started to export radio and television receivers to Canada through its Canadian hearing aid distributor, Zenith Radio Corporation of Canada (R. 1372, 1378). As soon as Zenith started distribution (Def. Ex. 152, R. 3259), Brian McConnell, Manager of the CRPL pool, called on Zenith's hearing aid subsidiary in Toronto, and on July 30, 1958 demanded that Lloyd Kiely, Zenith's General Manager, advise him whether or not Zenith intended to sell imported sets in Canada. Specifically, McConnell informed Kiely that even though patent licenses covering imports had been obtained from RCA, General Electric, and Western Electric as a result of the RCA-Zenith litigation, the pool had many other patents and no licenses permitting import would be granted by the pool (R. 3259-60). McConnell requested a circuit diagram of the Zenith receivers which were being imported, which he said would be turned over for examination by "CRPL principals", and in the event any infringement was found, a further meeting "to discuss the problem" would be arranged (Def. Ex. 151, 152, R. 3256-3260).

In September, 1958 it came to Zenith's attention that a warning notice (Def. Ex. 138, R. 3121-2) was again appearing in a trade publication that was sent to the entire Canadian electronics industry. It was a repetition of the warning notices which the pool had regularly circulated in the trade for over 30 years (Def. Ex. 130-137; R. 3103-3119). It provided (Def. Ex. 138, R. 3122):

> "Notice. To Importers, Vendors or Users of Radio and Television Receivers and Other Electronic Equipment:
>
> "Canadian Radio Patents Limited is a central patent licensing agency administering various important Canadian patents of invention relating to radio and television receivers and other electronic equipment."

It then recited a number of companies which were licensed by the pool, stating that Canadian Radio Patents Limited had licensed "the following Canadian companies for the manufacture and sale in Canada of radio and television receivers and other electronic equipment embodying inventions which it administers." The list of companies excluded Zenith. The notice then went on to say:

> "The above companies are working the patented inventions in Canada on a commercial scale and are prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms.
>
> "Canadian Radio Patents Limited desires to inform importers, vendors, purchasers or users of radio and television receivers and other electronic devices and equipment incorporating patented inventions owned or administered by Canadian Radio Patents Limited and not manufactured or sold under license from Canadian Radio Patents Limited that they will be held liable for patent infringement."

The Court of Appeals held that the regular circulation of such warning notices, even though they sought by threat to maintain a boycott of any importer's products nationwide throughout Canada, could not as a matter of law be used as proof of the fact of damage because, "There was no showing that the 1958 advertisement had any adverse effect on Zenith's sales". In other words, in the absence of specific damage proofs assignable to this warning notice, it could not constitute proof of the fact of damage. Obviously, the notice threatened infringement suits against Zenith's possible and prospective distributors, dealers, and customers if they handled or bought Zenith's unlicensed sets. The Court of Appeals thus holds that a threat to sue Zenith's customers as a matter of law cannot be a damage causing overt act pursuant to the conspiracy.

Joseph Wright, President of Zenith, wired to McConnell demanding that this attack on Zenith's products in Canada cease (Def. Ex. 138, R. 3121). Wright's wire had no effect. On September 16, 1958 McConnell wrote Wright, referring to his earlier discussion with Kiely in which he said no license would be granted by the pool except for manufacture in Canada which would require building a factory in Canada. McConnell again asserted that Zenith was "using inventions covered by patents which we administer and under which we are informed you are not licensed" (R. 3123).

On September 23, 1958 Wright again wrote McConnell in reply, stating (R. 3124):

> "You . . . must be well aware that the activities of Canadian Radio Patents Limited in stopping our Canadian business in past years was at the very heart of the substantial claim for damages which was settled at the same time the licenses were granted."

Wright's September 23 letter was not even answered (R. 1371).

Thereafter, in a conference with Zenith's Vice President, Frank Crotty, on May 12, 1959 (R. 3263) McConnell told Crotty that Zenith was infringing some of the pool patents, "*one of which was a patent of Hazeltine origin.* He told me that I would have to take a license; that the license could not be for importation, it would have to be for local manufacture" (R. 1332). This conversation was not denied. Following the May, 1959 meeting, McConnell wrote Crotty on June 5, 1959, enclosing the pool's standard license forbidding importation and giving notice of infringement of a CRPL patent (Def. Ex. 154, R. 3263). McConnell advised:

> "With regard to the patent and its use in Zenith television receiver No. B-2225, I have had this matter reinvestigated and there is no doubt in our minds that the invention covered by the patent is used in this receiver. The tests show this quite conclusively."

Following this the instant suit was filed in November, 1959 on a Hazeltine patent whose counterpart was included in the Canadian patent pool (R. 1192-1196, 1311, 1332). This was conceded in open court (R. 1051). The trial court found (R. 118, Finding XXV):

> "... Since 1943 Hazeltine has been an active participant in the activities of the Pool and has been receiving a substantial share of its profits. The Hazeltine patents go into the Pool pursuant to an exclusive license agreement between Hazeltine and Canadian Radio Patents Limited which grants to the Pool the right to include Hazeltine's Canadian patents, present and future, in its licensing and litigation activities. This arrangement has been extended to a date beyond the filing of the instant counterclaim."

This Finding was not in any way disturbed by the Court of Appeals' decision.

It was conceded at the trial by Hazeltine's counsel that this pool constituted a violation of the anti-trust laws. The following colloquy between the Court and counsel occurred (R. 1323):

> "The Court: Is it your position, Mr. Dodds, that a conspiracy to prevent the importation of American radio and television sets is not a violation of the Sherman Act?
>
> "Mr. Dodds: Oh, no, if there is a conspiracy, no, I would agree that would be a violation."

This concession was required by the decisions of this Court. *United States* v. *National Lead Co.*, 332 U. S. 319 (1947); *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593 (1951).

Nevertheless, the Court of Appeals holds as a matter of law that nothing happened during the damage period that could possibly injure Zenith's business even though it was conceded that the pool remained in operation during the entire damage period, and even though it was alleged and proved, and the trial court found, that the instant suit was brought in furtherance of the conspiracy. Thus, the counterclaim filed May 22, 1963, alleged (R. 51-2):

> "The filing of this suit and the threats to file other infringement suits against counterclaimant on any number of patents in the Hazeltine pool were acts employed to effectuate the conspiracy alleged herein and to compel by economic coercion the signing of counterdefendant's package license. In turn, either the signing of the license or a finding of validity and infringement in this suit will signal and lend overwhelming support to attacks on counterclaimant's export trade by the foreign pools under foreign patents covering the same inventions. * * *
>
> "... Because of the pendency of this suit and counter defendant's other charges of infringement described in paragraph 7 above, counterdefendant has been forced to delay expansion of its foreign trade in England, Canada, Australia and other countries where, in furtherance of the conspiracy alleged herein, counterdefendant's inventions and patents are employed to restrain and prevent importation and trade."

The trial court determined this issue along with all other antitrust issues in the case in favor of Zenith, as follows (R. 128):

> "The Court has reviewed the evidence, exhibits and briefs of the parties on both the patent and anti-trust phases of the above cause and finds for the defendant on the issues raised by the complaint and answer and the counterclaim."

That the trial court's ruling was correct is shown by the opening statement of Mr. Dodds, counsel for Hazeltine (R. 1052):

> "Mr. McConnell speaks repeatedly about these pools keeping out sets. These pools don't have any power to keep out anything. They are not a government body. All it means is that if you import goods into Great Britain or Canada or Australia, and if what you are importing are infringements of the patents they

administer, you may subject yourself to an infringement suit, the same as if they infringe a patent in this country. *And we can't prevent Zenith from selling sets without an adjudication, which we are in the process of trying to get now.*" (Italics ours.)

This was a clear admission that Hazeltine was trying to get an adjudication of an infringement of a patent held by the pool which could be used by the Canadian pool in a suit on the Canadian counterpart. The Canadian courts recognize the validity of Canadian patents where their American counterparts have been upheld in American courts. *American Arch Co.* v. *Canuck Supply Co., Ltd.*, 3 Dominion Law Reports 567; *Nu-Tec, Ltd.* v. *Hearst*, 38 Ontario Weekly Notes 2; *The Queen* v. *Castro*, 5 R. S. Q. B. D. 490, 517. In *Nu-Tec* the Court said (p. 3):

> "The effect of the judgment in the [United States] Federal Court is to establish the patentability of the device so far as the authority of a trial judge of that court can establish it, and that authority ought to be followed . . ."

It is therefore readily apparent that if Hazeltine had won the patent issue in the instant case or if it can sustain any of the nine color patents currently being asserted against Zenith (R. 1341, 51, 43), that result would furnish the Canadian pool with the means to kill Zenith's business in Canada by subjecting all of its products to forfeiture and its distributors and customers to damage suits, or in other words, would furnish the means to stop entirely Zenith's export trade with Canada (R. 1380).

Under the decisions of this Court referred to *infra* at pages 30-2, the trial court was free to draw the inference that Hazeltine, a member of the conspiracy, was acting pursuant to the conspiracy in bringing the instant suit and was therefore directly responsible for the resulting curtailment of Zenith's business, testified to by both Wright and Kaplan.

The inference was buttressed and corroborated by the terms of the standard license tendered Zenith by the respondents. It provided:

> "Section 3. Nothing herein contained, and no act or acts hereunder, shall be construed as, or result in, conveying any license to Licensee, expressly or by implication, estoppel or otherwise . . . (b) Under any patents of countries foreign to the United States." (Def. Ex. 2; R. 2206, 2207)

This provision was an essential part of the conspiracy because it specifically prevented the application of court decisions holding that the grant of a domestic license also grants a license by implication to the foreign counterpart patent (*Curtiss Aeroplane & M. Corp.* v. *United Aircraft E. Corp.*, 266 Fed. 71, 77-8 (C. A. 2, 1920)) which would bring respondents in violation of their agreements with their foreign conspirators not to license except through the pools.

This was conceded in a letter written by Dodds, where he stated:

> "In those countries where the Hazeltine patents are included in an industry-wide pool they are, of course, beyond our control and our licensees have to make their own arrangements with such pool." (Def. Ex. 115; R. 2876-7)

The instant suit was brought on one monochrome patent but Hazeltine asserted that Zenith was infringing at least four such patents (R. 1357). The alternative to a standard package license on monochrome patents which Hazeltine offered was a license under which any one patent in the package would be licensed at 50 per cent, any two at 80 per cent, and any three or more at 100 per cent of the package rate (R. 1358-9). This formula license like all others required payment of royalties on Zenith's entire production whether licensed patents were used or not (R. 1358-9).

Subsequent to the instant suit, Hazeltine, on October 18, 1961, also asserted nine color television patents against Zenith (R. 1341). The counterparts of these patents were also in the Canadian pool and were licensed in Canada only for Canadian manufacturers (R. 1051, 1066, 2887-90, 2914).

The dilemma the assertion of these television patents placed Zenith in was obvious. If it took a package license under Hazeltine's domestic patents, it thereby admitted the validity of all the foreign counterparts in the pool and lost any defense to an infringement suit on the patents regardless of whether the patents were valid or not. Further, since it could obtain no license in Canada unless it manufactured the sets in Canada, Zenith had of necessity to curtail its operations in Canada until the outcome of the instant suit could be determined (R. 1412).

The trial court on this evidence not only held the assertion of the patents to be pursuant to the conspiracy, but properly held that putting the patents in the pools under the circumstances in this case was a violation of the antitrust laws.

The Court of Appeals makes no effort to deal with the basic facts from which the trial court was permitted to draw inferences but disposes of the issues with the curt remark not supported by anything in the record and contradicted by what we have set forth above, that:

> "There is nothing in the record to show that this suit had any effect to damage Zenith's Canadian business. The record shows that this claim was not taken seriously by the district court."

The Court of Appeals, while conceding that a conspiracy existed in both England and Australia, disposes of both markets by saying that there was no evidence that Zenith was prepared to enter the English or Australian markets. This ignores the fact that Zenith had a distributor in England (R. 1385-6) and sold sets readily adaptable to

English specifications (R. 1452-3, 1465-7), and that Zenith tried but was unable to interest Australian distributors in handling unlicensed apparatus (R. 1398; Def. Ex. 215, R. 3767-3832B). It also ignores the fact that commercial importation into both the English and Australian markets was blocked by boycotting agreements covering the entire markets. In England each of the participating companies in the pool, including Hazeltine (R. 2494), contracted that during the term of these agreements:

> "Unless otherwise agreed no licenses are hereby agreed to be granted to import Radio Apparatus [defined to include television] into the United Kingdom or to deal in in the United Kingdom imported Radio Apparatus or Radio Apparatus containing imported component parts to an extent exceeding in value 10 per cent of the retail list price of such Radio Apparatus except in each case samples and experimental models for the use of the parties hereto." (Def. Ex. 58; R. 2501)

It was further provided that any licensee under the pool agreed "not without the previous written consent of the Grantors to sell within the said territory any Television Receiver which has not been manufactured in the territory for which this License is granted" (Def. Ex. 69; R. 2615).

The record shows that Hazeltine patents and rights, existent and future, have gone into the Australian pool for over 35 years (Def. Ex's. 188-195; R. 3625-3719). During all this time they have been licensed in such a way as to preclude and exclude any imports of radio or television sets into Australia (Def. Ex. 197; R. 3727), and the pool has never in its history granted a license to import American sets into Australia (Def. Ex's. 188-195; R. 3625-3719).

The Court of Appeals refers to the claim that the Zenith set was not adapted to receiving scanning signals of 405 lines and that Zenith was not prepared to enter the English market until after the English standard changed to 625 lines which was after the damage period. This contention came from Hazeltine's rejected offers of proof (R. 156-160) made after the case was decided in an effort to meet the contrary evidence in the trial record (R. 1452-3, 1466-7).

While concluding in the case of England and Australia that Zenith was not damaged because it did not manifest interest in these markets by shipping sets on a commercial scale, the Court of Appeals paradoxically holds, in the face of uncontradicted testimony of Wright and Kaplan to the contrary (R. 1373-80, 1447-51) and the trial court's findings of fact (Finding XXXVI; R. 122), that there was no diminution of Zenith's foreign trade in Canada because it sold several thousands of radio and television sets and "Zenith's subsidiary in Canada has not been sued or threatened with suit for importing radios into Canada since 1957."[3]

We have already pointed out that pool manager McConnell, within the damage period, notified Zenith of infringement and demanded that Zenith accept a license prohibiting importation, after which Zenith was sued in the instant case on the domestic counterpart of a patent in the Canadian pool.

No defense whatever by testimony or documents was ever offered to the damage proofs in the instant case and the case stands in the posture of a demurrer to the petitioner's evidence.

The Injunction.

Having reversed the District Court's findings on the "fact of damage," the Court of Appeals proceeds to hold without any further discussion that therefore Zenith is not entitled to injunctive relief from the foreign patent pools. The opinion states:

---

[3] The Court of Appeals chides Zenith for not having called a Canadian distributor as a witness, but under applicable decisions of this Court the burden of calling such witnesses was on the respondents. *Interstate Circuit* v. *United States,* 306 U. S. 208, 225-6 (1939). The record shows that the distributors in Canada were parties to the conspiracy (Def. Ex. 141, R. 3204-6) and the respondents did not dare call them as witnesses and subject them to cross-examination in the instant case.

> "It follows from our conclusion with respect to the foreign patent pools that injunctive relief against 'threatened loss or damage' directed at those pools, alleged by Zenith to be unlawful conspiracies, cannot be justified under 15 U. S. C. Sec. 26. Paragraph C of the injunction granted must be stricken."

The Court holding on this issue assumed that Zenith had to show infringement suits by the pool during the damage period even though the very existence of the pool was a threat to Zenith's business, and even though McConnell, the Manager of the Canadian pool, threatened such action during the damage period (Def. Ex. 154; R. 3263).

Although the District Court found on substantial evidence in the record that Zenith's foreign commerce had been "drastically curtailed," petitioner would have been entitled to injunctive relief even if no injury or damage had been shown. In the instant case the District Court's finding that the foreign patent pools constituted illegal conspiracies in violation of the antitrust laws was supported by overwhelming documentary evidence and admissions and was not contested by the respondents in the Court of Appeals. That Court has not disturbed the conspiracy findings. The gist of the Court of Appeals' decision is that, as a matter of law, a foreign patent pool formed for the express purpose of stopping the import of American products poses no threat to an American exporter such as Zenith, and therefore the Federal antitrust laws afford neither Zenith nor any other American exporter any protection.

In the instant case the respondents are members of the pools and the pools have exclusive licensing rights with respect to respondents' foreign patents. The pool portfolio of patents includes virtually all the important patents in the television field, including Hazeltine's color patents (R. 1248, 1066, 2890, 2500, 3711). As pointed out the only license the pools will grant is for local manufacture and no license to import has ever been granted, and the trial court so found. At the same time, Hazeltine refuses to grant a license under its patents to export to any country where Hazeltine is a member of a pool (Def. Ex. 115; R. 2876-7). The Court of Appeals' decision reverses the trial court's finding that these conspiracies constitute a threat to Zenith's business, thus granting Zenith's competitors complete immunity under the antitrust laws to damage Zenith's business.

The report of the Canadian Royal Commission, introduced as respondents' evidence and to which the Court of Appeals makes no reference, categorically states that there is a threat posed by the Canadian pool. The report said (Pl. Ex. 50 A; R. 2162):

> "The portfolio in respect of which CRPL had the right to grant licenses consisted of 5,000 patents, and in the absence of a license from CRPL it is doubtful if any one could sell in Canada a radio or television receiver * * *. It is particularly in respect of the policy of CRPL in precluding importers from bringing into Canada radio and television receivers that the complaint was made to this Commission."

A finding of no threat of injury in the face of such an admitted conspiracy completely eviscerates the sanctions of the Federal antitrust laws.

In May, 1959, Brian McConnell, the head of CRPL, told Zenith's Vice President Crotty, that Zenith was infringing pool patents, "one of which was a patent of Hazeltine origin. He told me that we would have to take a license; that the license could not be for importation, it would have to be for local manufacture" (R. 1332). This conversation was not denied and was confirmed by Mc-

Connell's June 5, 1959 letter enclosing the pool's standard license which forbade importation (Def. Ex. 154, R. 3263).

The effect of the Court's holding on the injunction issue is to leave Zenith's foreign business in the Canadian market exposed to ruinous infringement litigation and at the mercy of the pool's enforcement policy. Zenith cannot get protection by taking a license under Hazeltine's domestic patents because Hazeltine has contracted with the pools not to grant a license to export and Zenith cannot get a license to import from the pools. Moreover, the Court's opinion reaches the incongruous result of permitting Hazeltine to be a member of the foreign patent pools which violate the antitrust laws and to enjoy the fruits of those pools, thus putting the Court's imprimatur on such illegal activity.

The Dismissal of Hazeltine Corporation.

Compounding the injustice done Zenith by its fact of damage and injunction ruling, the Court of Appeals in its opinion sets up as new law for the Seventh Circuit an unprecedented constitutional doctrine employing the corporate fiction not for the promotion of justice but to shield Hazeltine Corporation from all liability for its illegal conduct. At a pre-trial conference on April 3, 1963, in the presence of the trial judge, all counsel agreed to a stipulation whereby Hazeltine Corporation and Hazeltine Research, Inc. would be regarded as one entity for the purpose of the litigation. The written stipulation dated May 7, 1963 provided:

> "The parties to this Action, by their attorneys, in fulfillment of certain understandings reached orally in the course of the pre-trial conference held herein on April 3, 1963, in order to simplify and expedite trial hereby stipulate and agree, for purposes of this Action, only as follows:
>
> * * * * *

> "4. Plaintiff agrees that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company." (R. 43)

The stipulation was signed by L. B. Dodds, chief trial counsel for Hazeltine who, in an affidavit filed on May 10, 1963, stated (R. 41):

> "He has been retained by or employed by Plaintiff's parent Company, Hazeltine Corporation, continuously since 1934 and has been a Vice President of said Hazeltine Corporation continuously since 1939 (except for a period during 1944-45 when he had no connection with Hazeltine Corporation or any of its affiliates). He also was an officer of Plaintiff, Hazeltine Research, Inc. from its organization in 1946 until June 7, 1961. Since 1946 he has been continuously familiar with the patents and the patent licenses of both Plaintiff and its parent Hazeltine Corporation."

At the trial of the antitrust counterclaim Dodds testified (R. 1696):

> "That is correct. There is a stipulation on the record that solely for the purposes of this action plaintiff Hazeltine Research and the parent Hazeltine Corporation can be considered as a single entity."

No one from the parent, Hazeltine Corporation, denied Dodds' authority to make the stipulation during the trial. Ruestow, who was General Patent Counsel for the Hazeltine Corporation (R. 1199), and Westermann, who was Vice President and General Counsel of Hazeltine Corporation (R. 1493), and both of whom were present during the trial and thoroughly familiar with the stipulation, never said one single word in repudiation thereof.

Consistent with the stipulation, the record and the understanding of the Court and counsel, following the trial Hazeltine submitted the following proposed finding of fact:

"Jurisdiction and Parties:

* * * * *

> "8. It is stipulated that, for the purposes of this Action, Hazeltine and H. C. may be considered a single legal entity to avoid the issue of whether or not it is appropriate to 'pierce the corporate veil', but it is proper to consider the separate and unrelated activities of the two companies separately." (Z. R. 467, 468).

On the basis of proposed finding No. 8 above, Hazeltine counsel further sought to have the trial court enter findings of fact and conclusions of law in favor of the Hazeltine Corporation on practically every issue in the case (Z. R. 467-492).

However, after the District Court entered its own contrary findings, Hazeltine Corporation hired new counsel who appeared on its behalf and for the first time contended that the entry of judgment would deny it due process of law, claiming Dodds "neither intended nor had authority to bind Hazeltine Corporation" (R. 229, 231). The District Court after a hearing on this contention found against the Hazeltine Corporation but the Court of Appeals in reversing without remand now holds that the "Corporation's appearance after the trial was not sufficient opportunity to be heard under the due process clause."

In the interest of justice, any decision of the Court of Appeals which so departs from the basic principles applicable to trial stipulations, should have the careful consideration of this Court.

REASONS FOR GRANTING THE WRIT.

I.

The Court of Appeals, in reversing the trial court's injunction prohibiting Hazeltine from participating in the activities of foreign patent pools, has given Section 16 of the Clayton Act an interpretation in conflict with Congressional intent and in conflict with the decisions of this Court, and has granted immunity to such pools to stop the export of American products to foreign markets. The effect of the Court of Appeals' decision is not only to leave Zenith's foreign trade exposed to attacks by its competitors who are members of foreign pools, but to stop the trade of any other American electronics company in the foreign markets here involved.

The decision in question is contrary to this Court's opinion in *Bedford Cut Stone Co.* v. *Journeymen's S. C. Association,* 274 U. S. 37, 54-5 (1927) where in a private action for injunctive relief under Section 16 of the Clayton Act, this Court held:

> "The record does not disclose whether petitioners at the time of bringing suit had suffered actual injury; but that is not material. An intent to restrain interstate commerce being shown, it is enough to justify equitable interposition by injunction if there be a dangerous probability that such injury will happen; and this clearly appears. The Anti-trust Act 'directs itself against that dangerous probability as well as against the completed result'."

See also *Vicksburg Water Works Co.* v. *Vicksburg,* 185 U. S. 65, 82 (1902).

Because it could find no proof of the fact of damage, even though the trial court had found it abundantly proven, the Court of Appeals said: "It follows from our conclusion with respect to the foreign patent pools that injunctive relief against 'threatened loss or damage' directed at those pools, alleged by Zenith to be unlawful conspiracies, cannot be justified under 15 U. S. C. Sec. 26. Paragraph C of the injunction granted must be stricken."

The Court of Appeals' decision recites:

> "The district court concluded that the alleged conspiracies had as their express purpose prevention of importation of TV apparatus made in the United States, that HRI, by participating in the conspiracies had violated the Sherman Act and that Zenith had established that it had been injured in its business as the result of the unlawful activities of the pools."

The Court of Appeals reversed the finding of injury but never reversed the finding of an unlawful conspiracy nor of Hazeltine's participation therein.

Hazeltine's counsel, Dodds, when cross-examined on this issue in January, 1962 stated the following with reference to the Canadian pool:

> "Q. You knew something was going on in the way of an attack by American companies against that pool, didn't you?
> "A. Yes.
> "Q. You had known that for a long time?
> "A. Yes.
> "Q. You still stayed in the pool?
> "A. Most definitely and we intend to continue to stay in the pool." (R. 1775.)

This decision involves the activities of the foreign subsidiaries of the largest electronics companies in the world. They include, among others, General Electric, Westinghouse, RCA, the Philips Company of Holland, British General Electric, Electrical and Musical Industries, Standard Telephone and Cables, Telefunken, Marconi Wireless, and the Hazeltine companies (R. 2448-9, 2493-4, 2879, 3549-3719). The case is a matter of widespread interest and knowledge all over the world.

The large public interest involved is shown by proceedings before the Patents, Trademarks and Copyrights Sub-Committee, Committee on the Judiciary, United States Senate Hearings, June 1, 2 and 3, 1965, where Senator Russell B. Long states (p. 331):

> "What is especially intolerable is that U. S. Government funds paid for 90 percent of the research which enabled this Company [Hazeltine] to accumulate its patents. In essence, then, public funds have been used to prevent Americans from exporting their goods. Indications are that this practice is widespread, and the effects on our balance of payments are undoubtedly very serious * * *. International patent pools can also undermine our national safety. They have been used in the past to transmit military information—even to our enemies."

The decision of the Court of Appeals, holding as a matter of law that pools designed to stop imports pose no threat to American electronics companies such as Zenith who are prepared to compete in foreign markets and cannot be prevented under the provisions of Section 16 of the Clayton Act, completely nullifies that Act.

This Court now has before it a decision which in effect encourages the Hazeltine companies to continue in the pools which admittedly violate the American antitrust laws and to enjoy the fruits of those pools, thus putting the sanction of the Court of Appeals for the Seventh Circuit on such illegal activity.

A question of the proper construction of Section 16 of the Clayton Act is involved, charged with tremendous public interest in that it involves the destruction of foreign markets in Canada, England, and Australia for all American electronics companies prepared to compete in those markets.

II.

The holding that the fact of damage is not shown on this record is in direct conflict with the opinions of this Court and in effect reverses this Court in so far as the application of its decisions on proof of damages in antitrust cases is concerned in the Seventh Circuit.

Many years ago the writer of this petition appeared before this Court in the case of *Bigelow* v. *RKO Radio Pictures,* 327 U. S. 251 (1946) in which this Court reversed the Court of Appeals for the Seventh Circuit for holding, as it does here, that as a matter of law no "fact of damage" was shown in a case decided by a jury in favor of the plaintiff.

The instant case in effect reverses the *Bigelow* decision in that the Seventh Circuit again undertakes to decide a question of fact in an antitrust suit *de novo* and without giving any consideration to the damage findings of the trial court.

In *Bigelow,* this Court ruled that where plaintiff proves a loss and violation by the defendant of the antitrust laws of such nature as to be likely to cause the type of loss as in fact occurred, the jury or the trier of fact must be permitted to draw from this evidence the inference that the necessary causal relation exists.

Here, the trier of the fact, who was an experienced trial judge, drew the inference that Zenith was damaged by the pool from the fact that in Canada Zenith had only 5% of the market, whereas in the United States it had 20% of the market, although the competition was the same and the two markets comparable. The District Judge was supported in this conclusion by the uncontradicted testimony of Wright and Kaplan. The Court of Appeals now holds that the trial court could not draw such an inference of injury as a matter of law.

In the instant case, all the wrongdoer has to do to gain immunity under the antitrust laws is to view this record to see how much leeway is given to him by the instant opinion. Here, the wrongful conduct is not only approved, it is almost regarded as a laudable endeavor.

The instant opinion is also in conflict with this Court's decision in the case of *Continental Ore Co. v. Union Carbide Corp.*, 370 U. S. 690 (1962). The court below holds that repeated and futile demands for unavailable pool licenses are a condition precedent to establish the fact of damage in the instant action. The opinion says that Zenith "did not seek a pool license after 1953." A license to import was expressly found by the trial court to be unavailable (Finding XXVI, R. 118). This Finding is not reversed by the Court of Appeals. In contrast, this Court said in *Continental* (p. 699):

> "Furthermore, we do not believe that respondents' liability under the antitrust laws can be measured by any rigid or mechanical formula requiring Continental both to demand materials from respondents and to exhaust all other sources of supply."

In the same case this Court said (p. 696):

> "The Court of Appeals was, of course, bound to view the evidence in the light most favorable to Continental and to give it the benefit of all inferences which the evidence fairly supports, even though contrary inferences might reasonably be drawn. From our examination of the rather extensive record, we have concluded that the Court of Appeals departed from this rule and erred in holding that there was insufficient evidence to support a finding that respondents' conduct in fact caused injury to Continental's business."

The court below did not even pay lip service to this principle. It treated the case as though it was hearing it *de novo.*

In a footnote in the *Continental* case, this Court again reaffirmed *Bigelow*, saying (p. 697):

> "Thus in *Bigelow* this Court stated: '[I]n the absence of more precise proof, the jury could conclude as a matter of just and reasonable inference from the proof of defendants' wrongful acts and their tendency to injure plaintiffs' business, and from the evidence of the decline in prices, profits and values, not shown to be attributable to other causes, that defendants' wrongful acts had caused damage to the plaintiffs. 327 U. S., at 264. 'The most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created'."

The Court of Appeals' decision has given *carte blanche* to illegal pools to wreck Zenith's foreign trade. In its petition for rehearing in the Court below, Zenith offered to prove that in 1967 this foreign trade in color television sets in Canada alone amounted to over twenty million dollars. This market was gained while petitioner was operating under the protection of the District Court's injunction. Not only is Zenith's trade to be threatened but also the trade of all other American companies similarly situated.

The Court of Appeals' decision completely destroys the application of all antitrust laws to foreign patent pools. It is hard to imagine a case where the interests of the public and the interests of American trade and commerce and the interest of the United States in correcting an adverse balance of trade more completely justify this Court in granting its Writ of Certiorari.

III.

While the Court of Appeals holds that Hazeltine's offers of individual color patents at royalty rates substantially in excess of the annual rate for the package of all patents, color and monochrome, "constituted an illegal attempt to force acceptance of the standard package and a misuse of patents", it reverses the District Court's finding of misuse with respect to a similar offer for monochrome patents. The District Court had found that Hazeltine's offer of one patent at 50% of the package rate, two patents at 80% of the package rate, and three or more patents at 100% of the package rate was "an attempt by economic coercion to force the taking of the package" (Finding XI, R. 112-3). The misuse inherent in this formula was admitted by Hazeltine's chief patent counsel in a confidential memorandum (Def. Ex. 24; R. 2335):

> ". . . if I offer the 50%, 80%, 100% deal they [petitioner] pick 10 patents and zingo we are right back in misuse."

Since the 50-80-100% formula obviously bears no relation "to the quality of each patent", the decision below directly conflicts with the holding in *American Securit Co.* v. *Shatterproof Glass Corp.,* 154 F. Supp. 890, 895 (Del., 1957), affirmed 268 F. 2d 769, 777 (C. A. 3, 1959), cert. den. 361 U. S. 902 (1959).

The Court of Appeals also misconstrues this Court's decision in *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.,* 339 U. S. 827 (1950). The Court below reads this decision as permitting a patentee to compel its licensees, under threat of infringement suits, to pay royalties on their entire production whether or not any patents are used. This is a requirement for a license under any patent of Hazeltine and, as the District Court found, is an attempt to collect royalties on unpatented products and to discourage licensees from inventing around the applicable patents during the five-year license term (Finding XII, R. 113). That this provision was not just a matter of convenience in computing royalties was shown by Hazeltine's own documents (Def. Ex. 38; R. 2391-2):

> ". . . Under the Hazeltine system of applying the royalty percentage to the selling price of the manufacturer's television sets regardless of what Hazeltine patents, *if any,* are used in the particular sets (in accordance with *Hazeltine* v. *Automatic Radio*) it would not make any practical difference in Hazeltine's income if he switched to the alternate . . . design [that doesn't use the licensed patents]."

Nothing in *Automatic Radio* approves exaction of such a royalty base from an unwilling licensee and the decision below represents an improper extension of the holding in that case.

CONCLUSION.

For the reasons given, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

Thomas C. McConnell,
Philip J. Curtis,
Francis J. McConnell,
John Borst, Jr.,
Attorneys for Zenith Radio Corporation, Petitioner.

Of Counsel:
McConnell, Curtis, Mahon & Borst,
134 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

APPENDIX A.

The statutory and rule provisions involved are:

Section 1 of the Sherman Act, 15 U. S. C. § 1, providing in pertinent part:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: . . ."

Section 2 of the Sherman Act, 15 U. S. C. § 2, providing in pertinent part:

> "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, . . .".

Section 4 of the Clayton Act, 15 U. S. C. § 15, providing:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

Section 16 of the Clayton Act, 15 U. S. C. § 26, providing in pertinent part:

> "Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, . . . when and un-

> der the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings . . .".

Rule 52(a) of the Federal Rules of Civil Procedure providing in pertinent part:

> ". . . Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses . . ."

APPENDIX B.

In the United States District Court
For the Northern District of Illinois,
Eastern Division.

Hazeltine Research, Inc., *Plaintiff*, vs. Zenith Radio Corporation, *Defendant.*	No. 59 C 1847.

FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH RESPECT TO THE ANTITRUST ISSUES RAISED IN THE ANSWER AND COUNTERCLAIM.

Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, the court hereby makes the following findings of fact and conclusions of law:

I. The antitrust issues raised in the answer to this patent infringement suit and in the counterclaim for damages and injunctive relief were separately tried following the trial of the patent issues. Defendant in its answer (R. 6-9) asserted the affirmative defense that plaintiff was misusing its patents, including the patent in suit, in violation of public policy and the Sherman Act (15 U. S. C. §§ 1 and 2) and that it, therefore, came into this court with unclean hands and is therefore barred from receiving any relief in this action. Defendant also filed a counterclaim (R. 48-52) for damages and injunctive relief pursuant to Rule 13(a) of the Federal Rules of Civil Procedure, Sections 1 and 2 of the Sherman Act (15 U. S. C. §§ 1, 2) and Sections 4 and 16 of the Clayton Act (15 U. S. C. §§ 15, 26).

II. Defendant-Counterclaimant, Zenith Radio Corporation, is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 6001 W. Dickens Avenue, Chicago, Illinois (R. 53), and is now and has been continuously for more than 43 years last past engaged in the development for sale and use and in the manufacture, sale and use of radio apparatus and receiving sets, and since the advent of television, television receiving sets throughout the United States and in foreign commerce, and during said period has built up a large volume of business in manufacturing and selling as the demand therefor has existed and will continue to exist, and in the shipment and sale of such apparatus in commerce between the various states of the United States and in foreign commerce, and said counterclaimant is now and has been engaged in said commerce during all of the period above stated and during all times material to this counterclaim (R. 1372-78).

III. Counterdefendant, Hazeltine Research, Inc., the party plaintiff in this suit, is an Illinois corporation owned and operated as a wholly owned subsidiary of Hazeltine Corporation, a New York corporation, engaged in the manufacture and sale of electronic equipment and devices (R. 53). The parties stipulated (R. 43, 1035, 1696) that for the purposes of this litigation Hazeltine Research, Inc. and its parent, Hazeltine Corporation, would be considered as one entity operating as a patent holding and licensing company, engaged in the exploitation of patent rights in the electronics industry in the United States and in foreign countries (Def. Ex. 32, R. 2373-74). The gross income of the Hazeltine enterprises approximates $47,000,000 per year (Def. Ex. 1, R. 2187).

IV. For many years plaintiff has accumulated a large number of patents, domestic and foreign, for use in its patent licensing business in the electronics industry (Def. Ex. 1, R. 2195). At the time of the filing of this suit Hazeltine had over five hundred patents and patent applications in its licensing portfolio (R. 1193).

V. Plaintiff's policy in licensing electronics manufacturers in the United States was to grant a so-called standard package license (Def. Ex. 2, R. 2203) which conferred on the licensees for a five-year period freedom from any charge of infringement under all present as well as future Hazeltine patents issuing during the term of the agreement (Def. Ex.'s 2, 3, R. 2205, 2239). Royalties were required to be paid on the licensee's entire production whether its products employed any or none of the Hazeltine patents (Def. Ex. 2, Art. III, R. 2207, Def. Ex. 38, R. 2391-2). The license was in effect a covenant not to sue the licensee or its customers should Hazeltine decide within the license period that the manufacture and sale of any particular apparatus infringed upon any of its patent rights (R. 1526, Def. Ex. 27, R. 2356).

VI. Hazeltine filed numerous patent infringement suits against manufacturers who refused to sign its license agreement (Def. Ex. 32, R. 2374-74b).

VII. Prior to the instant controversy, Zenith had the standard Hazeltine package license and in May of 1959, toward the close of the last five-year license period, Hazeltine requested that the license be renewed for another five-year period at the then package rate of $50,000 per year (R. 1356-57). Zenith refused, contending that it did not require a license under any of the patents in the package and Hazeltine countered by asserting that Zenith was infringing at least four of the Hazeltine patents in the manufacture and sale of monochrome television receivers

(R. 1357-58) (at that time Zenith was not manufacturing color receivers (R. 1358)). At the same time Hazeltine made an alternative proposal to Zenith, offering to grant a monochrome license in accordance with the following formula:

> Any one patent in the package would be licensed at 50% of the royalty rate for the entire package of over 500 patents and patent applications. Any two patents would be licensed at 80% of the package rate. Any three or more patents would be licensed at 100% of the package rate (R. 1358-59). Hazeltine reserved the right to sue for infringement of any patent not licensed. All licenses would otherwise be subject to all the terms and conditions of the standard package form of license (Def. Ex. F-10, Z. R. 962) and would require payment of royalties on all production during the five-year term of the license irrespective of whether any patent was employed or not (Def. Ex. 2, R. 2207, 1359). The license would not cover color television receivers (Def. Ex. F-10, Z. R. 962, R. 1359).

Zenith refused to sign either of the proposed agreements and on November 20, 1959 the instant suit was filed.

VIII. With the suit on file and at issue, Hazeltine continued its attempt to persuade Zenith to sign the package license. During the course of discovery proceedings Hazeltine informed Zenith that in addition to the patent in-suit, Zenith was infringing at least 9 designated Hazeltine patents and applications in the manufacture and sale of its color television receivers (R. 1202-03, 1341). The old form of standard package license under all the Hazeltine patents was again tendered to Zenith for signature and Zenith again refused to sign it (Def. Ex. 10, R. 2258, 1342).

IX. On April 11, 1962, Hazeltine submitted to Zenith a license proposal for color television which provided an annual royalty rate of $435,000 merely for the 9 patents asserted and an annual rate of $500,000 for a license under all of Hazeltine's patents and patent applications for color television (Def. Ex. 12, R. 2261, 1344-45). However, if the standard package license covering all of Hazeltine's patents, for monochrome as well as color, were signed, the maximum royalty rate would be $150,000, the same as the rate in the Hazeltine-RCA package license (later raised to $200,000) (R. 1345-47, 1209). Zenith refused these proposals on the grounds that they were obviously designed to force Zenith to take the package license which it did not want or need (R. 1348-49, Def. Ex. 13, R. 2280); that Zenith could not place itself at a competitive disadvantage by taking a license under only 9 patents at $435,000 a year rather than signing the package license containing all Hazeltine patents at the package rate of $150,000 per year (R. 1348).

X. Hazeltine continued its efforts to persuade Zenith to sign the standard package license before this case could be brought to trial (R. 1349-50). In March 1963, as the case approached the final pre-trial conference, Hazeltine made the following proposal to Zenith (Def. Ex. 15, R. 2283):

> It grouped together the nine patents and one application which were claimed by Hazeltine to be employed in the manufacture of Zenith color receivers (R. 2284). It placed a maximum royalty on this package of $275,000 per year but for color receivers only (¶ III (A), R. 2285, 1352). For the entire package containing all of Hazeltine's then existing patents for color television an annual maximum of $300,000 (¶ III(B), R. 2285, 1352) was set and for all present as well as future patents issued during the license period an annual maximum of $310,000 was demanded for color television alone (¶ III(C), R. 2285, 1352).

In this same license proposal, Hazeltine offered its entire package of present and future patents, unspecified, for both monochrome as well as color receivers for an annual maximum of $200,000 (¶ IV(A), R. 2286, 1353, 1513-14).

Under this proposal, a license could be taken, if desired, under only two of the ten patents asserted against Zenith's color receiver but it would bear an annual maximum royalty in excess of $200,000 and would license only color receiver production (R. 1523), whereas the entire package of over 500 patents and applications for both monochrome as well as color receivers would bear an annual maximum of $200,000 (¶ IV(A), R. 2286). This proposal was obviously designed to persuade Zenith to sign the standard package license agreement (Def. Ex's 27, 30, 34-B, R. 2353, 2367-68, 2383) which it was unwilling to do and presented to Zenith management the following alternatives:

1. Endure trials and possibly appeals on at least nine patents at a total estimated cost of over one million dollars, plus damages in the event any or all of the suits were lost (R. 1472-6).
2. Take a license under the package of ten patents and applications at a cost of $275,000 per year for color television (¶ III (A), R. 2285), or a license under the entire package of existing Hazeltine patents for color television at a cost of $300,000 per year (¶ III (B), R. 2285), or at a cost of $310,000 per year a license covering existing and future patents of Hazeltine for color television (¶ III (3), R. 2285) for a five-year period. In each case Zenith would be obliged to make the royalty payment whether any of the patents licensed was used or not in Zenith's color receiver (Def. Ex. 18, Art. III, R. 2295). This would still leave Zenith's entire monochrome production open to continuous attack by Hazeltine, and plaintiff's counsel had already claimed that Zenith's monochrome receiver infringed at least three patents in addition to the patent in suit (R. 1357).
3. Take a license for color television under two patents selected from the package of ten and pay over

$200,000 per year (R. 1523), but this would expose Zenith's color production to the assertion of any or all of the color patents not licensed and would subject its entire monochrome production to the assertion of any of the hundreds of patents in the Hazeltine package.

4. Take the standard package license under all patents and patent applications of Hazeltine, present and future, for both monochrome and color television at an annual maximum of $200,000, per year (¶ IV (A), R. 2286, 1353, 1522).

Over a five-year license period it would cost $500,000 to $550,000 more for a license under the small group of ten patents for color television alone than for the entire Hazeltine package covering over 500 patents and applications for monochrome as well as color television. In addition, the full package license would remove the risks of further protracted and expensive litigation or harassment (R. 1526), whereas the more expensive license under less than the entire package would leave Zenith and its customers exposed to renewed charges of infringement based on any or all of the remaining hundreds of existing Hazeltine patents as well as all patents issuing during the term of the license (Def. Ex. R. 2252). The only practical answer would be to accede to Hazeltine's demand and accept a full package license.

XI. Plaintiff's offer to license any one of its hundreds of patents for monochrome at 50% ~~of~~ the package rate, any two at 80% of that rate and any three or more at the full package rate was an attempt by economic coercion to force the taking of the package (R. 1557, Def. Ex. 24, R. 2335). This is clear from the fact that plaintiff had asserted that Zenith was infringing at least 4 patents in its monochrome receivers (R. 1357). Moreover, the reward demanded by plaintiff for a license under less than the full package of patents is in no way related to the quality of the patents since the price is determined solely by the number of patents chosen (R. 1358-59, 1558-59) and most of the patents in the package are characterized by Hazeltine itself as "insignificant". (Def. Ex. 22, R. 2318, 1524, 1563).

XII. In all of its proposals to Zenith, Hazeltine insisted as an alternative to litigation that Zenith for a period of five years pay royalties in large sums based on its entire production of receivers whether or not any Hazeltine patent was employed in any way in its products. Plaintiff thus insists that royalties be paid on admittedly unpatented apparatus. (Def. Ex. 2, Art. III, Ex. 18, Art. III, R. 2207, 2295, 1359).

XIII. As of the date the trial began Defendant had been injured in its business and property as the proximate result of the acts and demands of Hazeltine, referred to above, in the amount of $50,065 (R. 1472-76). Defendant has been forced to make expenditures of money and to use the time of its officers, employees, and counsel to defend against this patent infringement suit, and by virtue of Hazeltine's threats of suits on other patents, defendant has been forced to expend substantial amounts of money to investigate the scope and validity of the patents asserted (R. 1473). The injury to Zenith's business was occasioned by the necessity that defendant make a choice among alternatives each of which had an adverse economic effect on its business. It was forced either to cease manufacturing and selling its television receivers, pay tribute with consequent increase in its costs or incur the expenses incident to the defense of protracted patent litigation. Although defendant's choice determined the nature and amount of the resulting damages, it was the necessity of having to choose that occasioned the injury.

XIV. In its counterclaim (R. 48-52) Zenith also seeks damages and injunctive relief based on plaintiff's conspiratorial activities with foreign cartels or patent pools in England, Canada and Australia which have curtailed Zenith's export business.

The British Patent Pool.

XV. The dominant radio and electronics companies in Great Britain (Z. R. 208-12) set up the British Pool into which flow thousands of patents owned or controlled by the members and those affiliated with them in the plan. Among these companies are Electric & Musical Industries Ltd., General Electric Company, Ltd., Marconi's Wireless Telegraph Co. Ltd., Philips Electrical Ltd. (R. 2448-49), Pye Ltd. (R. 2514), Murphy Radio Ltd. (R. 2471), Rank Cintel Ltd. (R. 2491), Standard Telephone & Cables Ltd. (R. 2466), Gramophone Co. Ltd. (R. 2448) E. K. Cole Ltd. (R. 2476) and Cossor Ltd. (R. 2480). The Hazeltine inventions and patents have been funneled into the Pool pursuant to an agrgeement with General Electric Co. Ltd. (Def. Ex.'s 42-50, R. 2408-2436) and the share of the Pool's income allocated to these patents is split between General Electric Co. Ltd. and Hazeltine (R. 1127, 1242-43, 1252-53, Def. Ex's 42, 78B, R. 2408, 2685). Pursuant to this arrangement British inventions controlled by General Electric Co. Ltd. are licensed to Hazeltine for exclusive licensing use in its American territory (Def. Ex.'s 38-B, 42, R. 2398, 2409) and are included in its United States package licensing activities (R. 1561, 2399-2400). The Hazeltine-General Electric Co. Ltd. exclusive agreements were specifically devised to get the Hazeltine patents into the British Patent Pool in a manner which would provide for G. E. C. maximum bargaining power vis-a-vis the other Pool members on the division of the Pool income (Def. Ex.'s 42, 96, R. 2408, 2746).

XVI. Pursuant to these arrangements, General Electric Co. Ltd. on its own behalf and on behalf of Hazeltine entered into successive pooling arrangements (Def. Ex.'s 51-60, R. 2437-2519) with the other members of the British Pool wherein and whereby it was agreed that the Hazeltine patents along with the patents of all of the Pool members be licensed in the territory of Great Britain solely by the Pool (R. 2439, 2464, 2510) and on terms and conditions determined by the members of the Pool (R. 2440, 2458, 2505). Each of the participating parties in all of the interrelated agreements, including Hazeltine by virtue of the exclusivity of its joint arrangements with General Electric Co. Ltd., contractually pledged that during the period of the agreements no license would be issued that would permit the export of radio and television receivers from the United States into the British market (R. 2442, 2455, 2501) and that the only license employed by the Pool would be a standard package license limited to local manufacture (Def. Ex.'s 61 ¶ 2l, 62 ¶ 4b, 63 ¶ 4b, 65 ¶ 4a, 66 ¶ 4a, 67 ¶ 4a, 68 ¶ 4a, 69 ¶ 4a, 70 ¶ 2a, 71 ¶ 2a, R. 2523, 2535, 2553, 2568, 2580, 2591, 2603, 2615, 2625, 2635-36). Hazeltine has been participating in this plan and arrangement since 1938 (Def. Ex. 42, R. 2408), is currently participating in it (Def. Ex. 50, R. 2433, 1291, 2028) and intends (R. 1100) to continue its participation.

XVII. Hazeltine has had full knowledge of the various interrelated agreements under which the Pool operates and has operated (R. 1115, 1120, 1127, 1130-34, 1141, 1238, 1289-90) and the purpose and effect of the plan which is to protect the British manufacturers in the Pool against competition from television receivers made in the United States and other countries (Def. Ex's 91, 92, 94, R. 2729, 2734, 2742). Hazeltine contends that it has entered into these arrangements because in that manner it can obtain more income from its English patent properties than it could through its own individual effort (R. 1051, 1821).

XVIII. The Pool has always issued one form of license which, like the Hazeltine package license in the United States, covers all of the patents in the pool (Def. Ex's 38-B, 62, 63, 65, 66, 67, 68, 69, 70, 71, R. 2400, 2533, 2551, 2567, 2578, 2589, 2601, 2613, 2624, 2635) and requires payment of royalties on all of the licensees' production whether or not any of the patents are employed (Def. Ex's 62, 63, 65, 66, 67, 68, 69, 70, 71, R. 2536, 2554, 2568, 2580, 2591, 2603, 2615, 2627, 2637). The effect of this plan is to amass all of the patents for assertion against anyone not licensed, to prevent importers or foreign manufacturers from entering the market and to preclude the possibility of any attack by the licensees on the validity of any one patent (Def. Ex's 65, 66, 67, 68, 69, 70, 71, 91, R. 2571, 2584, 2595, 2607, 2619, 2630, 2640, 2729).

XIX. The policy of the Pool was early stated to be to cooperate in the division of territories provided by the plan and "not knowingly [to] assist any [American] company to sell in England under the protection" of the Pool patents apparatus manufactured in the United States and not licensed under the patents of the Pool's American participants (Def. Ex. 94, R. 2742, Def. Ex's 100, 111, R. 2755, 2799). RCA and General Electric, like Hazeltine, for many years participated in the British Pool (Def. Ex's 51, 72, 92, R. 2437, 2644, 2734). However, as the result of anti-trust litigation brought by Zenith and by the Government RCA and General Electric were forced to cease their participation in the plan (R. 1372-77, Def. Ex. 114, R. 2849, Pl. Ex. 45, Z. R. 570).

XX. Initially the strength of the Pool was drawn from patents on radio receivers and with the advent of television, the power of the Pool became greater than ever. Color television is the most recent innovation in the home entertainment field and Hazeltine has now become an even more important factor in the British combination because of its color television patents which Hazeltine contends has given it a "dominating position" in the color television field (Def. Ex's 32, 76-B, 81, R. 2373, 2673, 2704).

XXI. For years Zenith made every effort to export home receivers to distributors and dealers in the English market. On each occasion, however, the Pool threatened its distributors until they ceased buying Zenith products and no substantial trade outlets could be found which would risk handling the line since the Pool would not license the sale of imported merchandise (R. 1384-85, 1395-96, Def. Ex's 100-109, R. 2755-2787).

XXII. As a part of the settlement of antitrust litigation brought against RCA, General Electric and Western Electric, Zenith was in 1957 granted royalty-free world-wide rights under the inventions and patents of these companies (Def. Ex. 114, R. 2849-2875) and began to ship radios to the British market (R. 1385). The Pool could not assert any of these rights to prevent importation and since all basic radio patents have expired, Zenith has been able for the first time to export to and sell its radio receivers in the English market (R. 1386). This is not true of television apparatus however (R. 1386, 1396). The Pool is armed with thousands of patents from the Pool members including the British counterparts of patents asserted by Hazeltine against Zenith in the United States (R. 1066, 1195, Def. Ex's 1, 32, R. 2195, 2374). ~~Zenith has been constrained~~ from entering the British television market by the threat of the assertion against it of pooled patents, although Zenith has successfully engineered sets for the British market and has shipped same to its English distributor with the hope that the injunctive relief sought in this suit would be granted and business on a commercial scale could be conducted (R. 1386, 1453).

XXIII. ~~The manufacture~~ in the United States of receivers for sale to exporters here or directly to importers in England (or in Canada and Australia where corresponding patent pools are operating) would risk further charges by Hazeltine of infringement of the United States patents asserted against Zenith here and Hazeltine, by virtue of its exclusive arrangements (R. 2651, Def. Ex's 43, 46, 48, R. 2410, 2419, 2426) with the English companies, is contractually unable to grant a license to manufacture in the United States for export to and sale in England under the British counterparts of its domestic patents. Hazeltine's United States package license expressly states, in compliance with the restrictions involved in the pooling arrangements (Def. Ex. 51, R. 2439. Def. Ex. 52, R. 2451, 2455, 2464, Def. Ex. 58, R. 2494, 2501, 2510, Def. Ex. 118, R. 2891, Def. Ex. 180, R. 3551), that no license is granted under any patent rights of countries foreign to the United States (R. 1720, Def. Ex's 2, 18, R. 2207, 2295).

XXIV. Hazeltine has always told its licensees in the United States that as a matter of policy it would never collect a second royalty on sets exported to foreign countries "where Hazeltine had complete control over its patent situation" (Def. Ex. 115, R. 2876) but that with respect to England, Canada, Australia and New Zealand, where Hazeltine patents are included in an industry-wide pool, the American licensees would have to make their own arrangements with such Pools (Def. Ex. 116, R. 2878).

The Patent Pool in Canada.

XXV. The patent pool existing in Canada is called Canadian Radio Patents Limited. This organization was formed in 1926 by the General Electric Company of the United States through its subsidiary, Canadian General Electric Co. and by Westinghouse, through its subsidiary, Canadian Westinghouse (Pl. Ex. 50A, R. 2161, Def. Ex's 117, 125, R. 2879, 3076). The shareholders of Canadian Radio

Patents Limited are Canadian General Electric, Canadian Westinghouse, Standard Radio Mfg. Corp. Ltd., the Canadian subsidiary of Philips of Holland, Canadian Marconi and Northern Electric (an affiliate of AT&T and Western Electric). The Pool has been largely made up of Canadian manufacturers (most of which are subsidiaries of American companies (Z. R. 204-7)) who were and are competitors of Zenith with respect to sales sought to be made in Canada (R. 1379). The Pool for many years has had the exclusive right to sub-license not only the patents of the member companies but also the patents of Hazeltine (Def. Ex's 118, 119, R. 2887, 2914), RCA and a number of other foreign companies (Def. Ex's 125, 142, R. 3076, 3207, Pl. Ex. 50-A, R. 2161-62). Since 1943 Hazeltine has been an active participant in the activities of the Pool and has been receiving a substantial share of its profits (R. 1083, Def. Ex's 118, 118-A-B-C, 119, R. 2887-2914). The Hazeltine patents go into the Pool pursuant to an exclusive license agreement between Hazeltine and Canadian Radio Patents Limited (Def. Ex. 118, R. 2887) which grants to the Pool the right to include Hazeltine's Canadian patents, present and future, in its licensing and litigation activities. This arrangement has been extended to a date beyond the filing of the instant counterclaim (Def. Ex. 119, R. 2914).

XXVI. The organization, purposes, and functions of the Canadian Pool are, in principle, identical to those of the English Pool. Approximately 5000 patents are amassed for licensing (Pl. Ex. 50-A, R. 2162) and the only form of license available is strictly limited to manufacture in Canada (R. 1376, 1629, Def. Ex's 123, Art. II, sec. 1, 150, 162-D, R. 2967, 3255, 3297). It is also a package license under all patents in the Pool and all patents issuing during the term of the license (Def. Ex. 123, Art. II, sec. 2, R. 2967). The chief purpose of the Pool is to protect the manufacturing members and licensees from competition by

American or other foreign companies seeking to export their product into Canada (R. 1054, 1627, Def. Ex's 142, 164, R. 3209, 3312).

XXVII. The Pool's campaign against importation of radio and television receivers from the United States is highly organized and effective. Patent agents, investigators and agents of the conspiring companies as well as the Canadian manufacturers and distributors trade associations at the behest of the Pool have systematically policed the market in order to locate and stop the sale of imported receivers and have immediately attacked by infringement suit or threat thereof any dealer found to be selling imported receivers (Def. Ex's 129, 139-141, 143, 144, R. 3089, 3132-3204, 3210, 3215). Warning notices (Def. Ex's 131-138, R. 3107-3122) addressed to importers, vendors and users of radio and television receivers advise the trade and the public that only the products of certain named local manufacturers are licensed by the Pool under "basic patents" and that even "users" of unlicensed products are subject to suit on account of patent infringement. Many advertisements run by the Pool went much further. They contained disparaging statements about imported receivers to the effect that they were cheaply made, unsatisfactory in operation, caused fires and were dangerous to use because of "shock hazard" (Def. Ex. 130, R. 3103-06).

XXVIII. Mass attacks in the form of infringement suits were made on dealers found to be selling imported American made radio and television receivers. Suits or the threat of suits effectively prevented dealers from handling American made sets (Def. Ex's 143, 144, R. 3212-19).

XXIX. For many years Zenith attempted to set up distribution for its products in Canada (R. 1372-5) but in every instance where a Canadian distributor began to sell Zenith products he was warned by the Pool to stop and return the merchandise or face expensive infringement litigation (R. 1372, Def. Ex's 155-162, R. 3264-88). To ward off these attacks Zenith attempted to get a license from the Pool, but in every instance it was advised by the Pool manager that importation would not be permitted and, only local manufacture would be licensed (R. 1332, 1373, Def. Ex's 146-154, R. 3224-3263).

XXX. As a part of the settlement in the Zenith litigation against RCA, General Electric and Western Electric which involved the activities of the Canadian patent pool, Zenith obtained world-wide rights under the patents of the defendants (Def. Ex. 114, R. 2849, 1372-76) and having obtained these and other patent licenses permitting importation into Canada, Zenith began late in 1958 to export to and sell in Canada its radio and television products through its Canadian subsidiary, Zenith Radio Corporation of Canada (R. 1372, 1378). The manager of the Pool, Brian McConnell, investigated the matter (Def. Ex's 151, 152, R. 3256-60) and informed Zenith (R. 1314) that in order to continue this business in Canada, Zenith would be required to sign the Pool's standard package license (Def. Ex. 124C, R. 3053) which did not permit importation (R. 1332) and that Zenith would have to manufacture in Canada (R. 1332) any products it intended to sell there. The Pool manager further informed Zenith that it was infringing at least one of Hazeltine's Canadian patents (R. 1332, Def. Ex's 153, 154, R. 3261, 3263) and that Hazeltine's patents, as well as all of the other patents in the Pool, with the exception of those owned by Westinghouse and General Electric Company, could not be licensed for importation (R. 1333). With respect to the latter two companies, McConnell stated that they had instructed the Pool not to refuse to license their patents for importation (R. 1332). The notices to "importers, vendors or users of radio and television receivers" warning them not to purchase imported sets continued to be run by the Pool despite protests by Zenith

(R. 1492, Def. Ex. 138, R. 3121-24). Shortly after the aforesaid demand made on Zenith by the manager of the Canadian Pool, the instant suit was filed (R. 1338).

XXXI. Hazeltine before entering into its exclusive arrangement (Def. Ex. 118, R. 2887) was fully aware of the purpose and the policy of the Pool to prevent the export of American made receivers into Canada (R. 1310-11, Def. Ex. 172, R. 3377-8) and has worked very closely with Canadian Radio Patents Limited in its licensing activities (Def. Ex's 175-178, R. 3390-93) and its campaign against importation from the United States (Def. Ex's 174-178, R. 3381-3393).

XXXII. The proofs establish as a fact that in the circumstances of this case the Canadian Patent Act does not require the Pool to refuse to license importation, as contended by plaintiff. Nor does the Act penalize in any way a patentee who licenses for importation where, as in this case, there is being carried on extensive manufacturing in Canada under its patents (R. 1628-45, 1735-40, Def. Ex's 163-8, 173, R. 3308-26, 3379-81, Z. R. 605).

The Australian Pool.

XXXIII. The dominant electronics company in Australia and its controlled territory is and for many years has been Amalgamated Wireless (A'sia) Limited (referred to as AWA) (Z. R. 202). A number of the same companies involved in the English and Canadian cartel arrangements set up a patent pool in Australia (Def. Ex. 196, R. 3720) identical in principle and purpose to the British and Canadian Pools (Def. Ex. 213, R. 3757-63). The patents of all of the conspiring companies funnel into the Pool which is known as Australian Radio Technical Services and Patents Company Pty. Limited (commonly called ARTS). The patents flow into ARTS through AWA, Standard Telephone and Cables Pty. Ltd., N. V. Philips Gloeilampenfabrieken, Electric and Musical Industries Ltd. (owning Marconi's and other rights for Australia), Pye Ltd. and Neutrodyne Proprietary Limited (Def. Ex's 181-187, R. 3554-3623). Neutrodyne is a controlled subsidiary of Hazeltine; the latter company owns seventy percent of its stock (R. 1174).

XXXIV. Under an exclusive license agreement dated September 11, 1928 (Def. Ex. 180, R. 3549), but still in full force and effect (R. 1198), Neutrodyne is authorized to place all inventions and patents of Hazeltine into the Australian Pool and is required to see to it that all of the requirements, restrictions and provisions of the standard package license of Hazeltine are contained in any pooling license issued thereunder (R. 3551). Sub-licensing rights, existing and future, under all of Hazeltine's inventions have been granted the Australian Pool under this arrangement for 35 years (Def. Ex's 184-187, R. 3601-24) and have been the subject of the only form of license agreement issued by the Pool, a standard package license not referring to any particular patent or invention but to all of the rights of all the conspiring companies (Def. Ex's 189, 190, 191, 192, 193, 194, 195, R. 3642, 3654, 3659, 3672, 3685, 3699, 3711). A standard Pool license imposes the restrictions necessary to effectuate the division of territories involved in the overall arrangements. It requires the licensee to agree not to export or import (Def. Ex's 189, 191, 194, 195, R. 3644, 3660, 3701, 3713) or sell or offer for sale in Australia any radio or television receiving apparatus not manufactured in Australia. Hazeltine has been fully aware of the Pool's plan and policy not to license for importation and has cooperated with and approved the operation of the Pool with respect to all the Hazeltine Australian patents (Def. Ex's 197-203, 204-207, 208-212, R. 3726-42, 3743-47).

XXXV. The standard package form of Hazeltine license covering all patents (R. 2205, 2294) subject to licensing by the Pool and requiring royalty payment whether or not any such patent is used (R. 2207, 2295) in the licensed apparatus, is employed by each Pool referred to in these findings. (In England R. 2533-37, 2551-54, 2567-69, 2578-81, 2589-92, 2601-04, 2613-16, 2624-27, 2635-38; In Canada R. 2920-23, 2935-36, 2967-71, 2992-96, 3053-57; In Australia R. 3627-32, 3642-46, 3659-62, 3672-76, 3685-89, 3699-3703, 3711-15) and is also used by Hazeltine in the United States in order to prevent attacks by licensees (R. 2219, 2304) on any of the patents of the participating companies in any of the markets covered by these findings.

Damages Sustained by Zenith.

XXXVI. The foreign commerce of Zenith has been drastically curtailed by the patent Pools in England, Canada and Australia (R. 1379-83, 1387-88, 1450-52). The damages Zenith has sustained were estimated by experienced officials (R. 1379, 1450-51) of Zenith, thoroughly familiar with the business problems and sales potentials in the markets involved. They determined the approximate damages sustained by a thorough study of each of the markets involved (R. 1450) and all relevant factors including tariffs, shipping costs and manufacturing problems (R. 1451). Zenith's foreign commerce has been damaged by the Pools in the following amounts during the 4-year statutory damage period:*

---

* The damage figures with respect to England and Australia reflect the amendment of Finding of Fact XXXVI entered by the District Court on December 13, 1965 (R. 4161).

Canada		
Television	$5,826,896	
Radio	470,495	(Def. Ex. 220, R. 3905, 1439-40)
England		
Television	4,312,924	
Radio	745,102	(Def. Ex. 220, R. 3905, 1436-40)
Australia		
Television	223,508	
Radio	24,952	
Total	$11,603,877	(Def. Ex. 220, R. 3905, 1438-41, 4161)

Conclusions of Law.

1. The court has jurisdiction to determine the antitrust issues under the provisions of the Act of Congress approved July 2, 1890, entitled "An Act To Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act.

2. Plaintiff's demands on defendant coupled with the bringing of this suit and the threat to bring other suits on other patents constitute an illegal effort to coerce Defendant into signing the Hazeltine package license.

3. The policy of plaintiff, reflected in the demands made on defendant and action taken against it, was to grant no license unless under all of its hundreds of patents for a fixed royalty, is one of unlawful coercion contrary to public policy.

4. The reward sought by plaintiff from defendant for inventions to be licensed in no way related to the quality of the individual patents and under the package license each patent drew strength from the others, thus unlawfully extending the monopoly of each.

5. Plaintiff's offer to license its patents individually but at royalty rates far in excess of the package rate was

never an alternative to its controlling policy to grant defendant a license only under all of its patents. Rather, it was proposed by Hazeltine in the later stages of its negotiations in the instant case to cloak the harshness of the original demand by seemingly meeting the request of defendant in that regard. Although it may be said that the Hazeltine proposals on the surface were offers to treat of individual patents, the design was quite apparent—to force by unlawful coercion the acceptance of unwanted patents. This constituted an illegal extension of the patent monopolies. Whatever may be the asserted reason or attempted justification of Hazeltine, its efforts to compel defendant to accept a package of patents involved the use of one patent or group of patents as a lever to compel the acceptance of a license under others. Such a licensing scheme under applicable decisions of the Supreme Court is illegal and constitutes a misuse of the patents involved.

VI. There is a further feature of Plaintiff's licensing practices that in and of itself constitutes an illegal attempt to extend the patent monopolies. The license agreement, whether it be under a single patent or under Hazeltine's entire patent package, requires the payment of royalties in large sums for a period of five years on the entire production of the licensee whether or not any licensed patent is employed in any way in the licensee's products. Plaintiff's demands that royalties be paid on admittedly unpatented apparatus constitute misuse of its patent rights and plaintiff cannot justify such use of the monopolies of its patents by arguing the necessities and convenience to it of such a policy. While parties in an arms-length transaction are free to select any royalty base that may suit their mutual convenience, a patentee has no right to demand or force the payment of royalties on unpatented products.

VII. The defense of misuse asserted by defendant is a valid one.

THE PATENT POOLS.

VIII. Every act in furtherance of a general plan to restrain trade and commerce, foreign or domestic, in violation of the Sherman Act is illegal regardless of whether such act or acts when standing alone and absent conspiracy could be found to be legal.

IX. It is fundamental that an unlawful conspiracy may be and often is formed without simultaneous action or agreement on the part of conspirators. Acceptance of an invitation to participate in a plan, the necessary consequence of which, if carried out, is to restrain commerce, is sufficient to establish a conspiracy under the Sherman Act. Knowledge of a scheme that illegally restrains trade and participation in the plan with such knowledge is all that is required to establish a conspiracy under the anti-trust laws and prior agreements need not be shown to have been made between each and all of the conspirators in order to establish a violation of the Sherman Act.

X. The combinations represented by the patent pools in Canada, England and Australia had as their express purpose the prevention of importation into those markets of radio and television apparatus made in the United States and other countries. Hazeltine knowing of the restrictions against imports imposed by those Pools nevertheless chose to permit its patents to be used in furtherance of the scheme and thereby obtained a substantial share of the Pool's income. It thereby became a co-conspirator and legally liable for all the acts of the Pools and its members performed in furtherance of their patent licensing plan to divide markets and prevent competition from imported sets.

XI. Hazeltine's method of placing its patents in the foreign pools—the use of exclusive license agreements either directly with the Pool as in Canada or through a pool member, as in England, or through a subsidiary, as in Australia—is the traditional means employed in the formation of illegal cartels and it is no defense to say that the particular exclusive licenses to which Hazeltine was a party did not in and of themselves impose the illegal restriction. The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts but only by looking at it as a whole.

XII. Hazeltine's defense that it had no intent to restrain trade and that it participated in the Pools for business reason has no legal validity. If good business reasons and expressions of good intent would serve as a defense for restraining trade, the Sherman Act would be rendered impotent and would afford no aid to the free flow of commerce.

XIII. Hazeltine's claimed defense that conspiracies by American companies with companies abroad are governed solely by foreign law and are not violative of the Sherman Act has no legal validity. It is well established that a conspiracy to restrain the domestic or foreign commerce of the United States to which any American company is a party violates the Sherman Act irrespective of the fact that the conduct complained of occurs in whole or in part in foreign countries.

XIV. By virtue of its arrangements in connection with the Pools in Canada, England and Australia, Hazeltine has violated Section 1 of the Sherman Act.

XV. Counterclaimant has established that it has been injured in its business by virtue of the unlawful conspiracy and acts performed in furtherance thereof. As a co-conspirator Hazeltine is liable for those damages.

XVI. Counterclaimant is entitled to the injunctive relief sought in the counterclaim.

R. B. Austin,
Judge, U. S. District Court.

Dated: January 25, 1965.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

Nos. 15246, 15247, 15563, 15564.

September Term and Session, 1967.

HAZELTINE RESEARCH, INC.,
Plaintiff and Counter-Defendant,
Appellant,
15246, 15563 v.
ZENITH RADIO CORPORATION,
Defendant and Counter-Claimant,
Appellee.

HAZELTINE CORPORATION,
Plaintiff and Counter-Defendant,
Appellant,
15247, 15564 v.
ZENITH RADIO CORPORATION,
Defendant and Counter-Claimant,
Appellee.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

December 19, 1967.

Before CASTLE, KILEY and CUMMINGS, *Circuit Judges.*

KILEY, *Circuit Judge.* This infringement suit was begun by Hazeltine Research, Inc. (HRI) in November, 1959, against Zenith Radio Corporation for patent infringement. In May, 1963, Zenith counterclaimed, seeking treble damages for HRI's violation of the antitrust laws in the use of patents. The district court entered judgments[1] against HRI and Hazeltine Corporation, its parent, on the issues of validity, infringement, patent misuse and antitrust violations, and awarded treble damages of $34,961,631 to Zenith on its counterclaim. HRI has appealed from the judgments against it. Hazeltine Corporation has made a motion to vacate the judgments against it and has filed provisional appeals from the judgments.

We vacate the judgments against Hazeltine Corporation. We affirm the district court judgment holding the patent in suit invalid. We affirm the judgment of the district court for Zenith, and against HRI, with respect to its domestic patents for treble the amount of $50,000, or $150,000. We reverse the judgments for treble damages based upon HRI's alleged participation in foreign patent pools in violation of the antitrust laws. We modify in some respects the injunction issued by the district court. And we remand for the sole purpose of entry of a judgment against HRI and for Zenith in the amount of $150,000 and entry of a modified injunction in accordance with this opinion.

Hazeltine Corporation's Motions.

Under Rule 15(f)[2] of this court Hazeltine Corporation has made motions to vacate the judgments against it, upon

---

[1] On April 5, 1965, the district court entered judgment against HRI and Hazeltine Corporation on the issues of infringement, validity, patent misuse and on the issues raised by Zenith's counterclaim relating to patent misuse and the Canadian patent pool. The damages as trebled amount to $150,000 for patent misuse and $18,892,173 for the alleged antitrust violations arising from participation in the Canadian patent pool. On December 13, 1965, the district court entered judgment against HRI and Hazeltine Corporation in the amount of $15,919,458 as treble damages for alleged injuries to Zenith because of allegedly unlawful conduct of English and Australian patent pools.

[2] Rule 15(f) of this court provides that a substantial jurisdictional question may be raised by motion for determination before the hearing on the merits. The questions raised in the motions are identical.

Zenith's counterclaim, as void for want of jurisdiction over its person. We ordered that the motions be taken with the case on the full record.

Hazeltine Corporation is sole owner of HRI. The Corporation is engaged primarily in the business of research, development and manufacture of electronic equipment for military and commercial use. HRI is engaged primarily in research, development, ownership and licensing of United States patents relating mainly to radio and TV. The Corporation was not named as a party in the counterclaim, was not served with process, did not participate in the trial and filed a "special appearance" contesting entry of judgment after the district court adopted findings of fact and conclusions of law naming the Corporation as a party for the first time.

The district court found that "the parties stipulated that for the purposes of this litigation Hazeltine Research, Inc. and its parent, Hazeltine Corporation would be considered as one entity operating as a patent holding and licensing company, engaged in the exploitation of patent rights in the electronics industry in the United States and in foreign countries." The court made no other findings relating to "piercing the corporate veil," and our reading of the colloquys between counsel and the court leads us to the conclusion that the stipulation was the principal if not the only basis for binding the Corporation in the judgments.

Hazeltine Corporation contends that the trial court had no jurisdiction to enter judgment against it because it was not served and was not a party; that in its counterclaim Zenith recognized the separate identities of HRI and Hazeltine Corporation and sought judgment against counter-defendant HRI alone; that Hazeltine Corporation did not defend against the charge; that the stipulation, drawn by Zenith and signed by Zenith and HRI, did not justify binding the Corporation in the judgments sought; that before and during the trial Zenith indicated no construction of the stipulation as making the Corporation a party and did not move to amend the pleadings by naming the Corporation; that the findings of January 25, 1965, indicate no intention that the judgments would run against the Corporation; that it learned Zenith would seek to enforce judgment against it the day following entry of findings; and that the first suggestion in the district court of being bound came only in the proposed form of judgment submitted by Zenith on March 19, 1965.

Zenith relies upon (a) the stipulation, (b) Hazeltine's disregard of the "corporate fiction" during discovery beginning in June, 1960, by responding to subpoenas duces tecum against the Corporation without question, by submitting to deposition of the Corporation at its offices in New York with production of files of domestic and foreign patents and by the obedience of the Corporation to court orders, and (c) the dual office of plaintiff's attorney Dodds as officer of both HRI and the Corporation, certain correspondence during 1963 and "control" of the litigation by the Corporation. It relies too upon a finding of fact proposed by plaintiff:

> 8. It is stipulated that, for the purposes of this Action, Hazeltine [HRI] and H. C. may be considered a single legal entity to avoid the issue of whether or not it is appropriate to "pierce the corporate veil," but it is proper to consider the separate and unrelated activities of the two companies separately.

It further depends upon proposed findings of fact and conclusions of law favoring the Corporation. On the basis of all this, Zenith contends that Corporation is the alter ego of HRI and that the finding "piercing the corporate veil" was not clearly erroneous.

The general principle controlling this case was well stated by the Supreme Court in *Hansberry* v. *Lee*, 311 U. S. 32, 40-41 (1940):

> It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process. . . . A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution and statute of the United States . . . prescribe . . .; and judicial action enforcing it against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments require.

Since Hazeltine Corporation was neither named nor served, the sole basis for liability on the judgment is the theory that HRI is its alter ego. We cannot say that the Corporation was "adequately represented" here on the alter ego issue. 311 U. S. at 42-43. The resolution of the alter ego issue can be made only after an adversary determination of the facts involved. This court cannot make an initial determination of these facts, and the district court did not do so.

The issue became apparent in the district court only after the district court had filed its findings and conclusions. And at no time during the trial did the Corporation have an opportunity to show that it was not the alter ego. The Corporation's appearance to argue the issue after the trial was not sufficient opportunity to be heard under the due process clause.

Zenith's contention that HRI adequately represented the Corporation's interests on the alter ego issue begs the question. On this issue, only the Corporation itself could have protected its own interests.

We think *Merriam* v. *Saalfield*, 241 U. S. 22 (1916), refutes Zenith's contention that control of the litigation by Hazeltine Corporation made it amenable to joinder after findings of fact and conclusions of law were adopted without service of process. In *Merriam* it was clear that Ogilvie had controlled the defense for Saalfield, the defendant named in the original suit. Here the facts are only that Dodds, attorney for plaintiff HRI, was an officer and a counsel for the Corporation. There is no showing that he was authorized to act for the Corporation. We find no basis for joining the Corporation because of its claimed participation in the trial.

The stipulation relied upon by Zenith and the district court was signed only by the "parties" to the counterclaim, and the Corporation was not a party. And there is no showing that the Corporation authorized HRI's representative to sign on its behalf.

We see no reason why the Corporation's disclosures of its files and obedience to subpoenas in connection with HRI's infringement suit should bind the Corporation as a party to a subsequent antitrust counterclaim in which it is not joined as a party.

No case cited by Zenith is applicable to the facts here. The cases cited assume there was such control of HRI as to render the latter the Corporation's agent (and in our view there is no showing of that fact on the record); and that HRI and the Corporation are the same identity, an alter ego relationship unwarranted on this record. Zenith had the burden of establishing clearly that Dodds had authority to represent the Corporation in entering the stipulation prepared by Zenith or that the Corporation was in fact the alter ego of HRI. We hold Zenith did not meet the burden.

The judgments against the Corporation are void and must be vacated.

The Patent Issues.

The HRI patent in suit, 2,547,648, (648), and Zenith's accused device, are both circuits used in TV receivers. The pertinent claims in issue have the purpose of automatically adjusting the variations in strength of signals transmitted from TV stations to receivers so as to maintain a uniform picture in the receiver. The district court denied recovery of damages for Zenith's alleged infringement on the ground that the claims in suit were invalid, that Zenith's device did not infringe and that HRI's misuse of its patent precluded it from recovery. The claims were found invalid on the alternative grounds that they defined no patentable invention over prior art and that the invention disclosed was in public use more than one year prior to October 8, 1949, when HRI "amended" its original application so as to include the claims before us.

The important question before us is whether the district court properly decided that the 1949 "amendment" was not entitled to the 1946 filing date of HRI's original application. If the district court properly decided this question, its decision of invalidity is right. We hold that the record viewed as a whole substantially supports the district court's finding that HRI was not entitled to the earlier filing date and that the claims in suit were invalid. We express no opinion upon the other issues bearing upon the infringement claim.

The record discloses that the original application was filed January 25, 1946, that RCA published a bulletin March 15, 1949, disclosing different means of achieving the purpose of the claims in HRI's original patent, and that HRI's 1949 "amendment" discloses essentially the same means. The district court found that HRI's 1949 application sought a continuation of the original application, but that there was no basis in the original claims which justifies relating the 1949 claims to the original. These findings are challenged by HRI. The court further found that the RCA bulletin in 1949 motivated HRI's "continuation application."

In disposing of HRI's challenge of the district court's finding that there was no basis in HRI's 1946 application for allowing the 1949 claims the benefit of the 1946 filing date, we think it is necessary to briefly outline the basic principles of TV transmission and reception in order to understand the nature and function of the part of the TV receiver subject of the claims in suit.

In the transmission of a TV program to a receiving set, the camera image is rapidly scanned, as in a person's reading, by an electron beam sweeping from side to side, with each sweep progressively lower until the entire image is scanned. The intensity of the beam varies with the brightness of the point of the image being scanned. The varying electric current thus created is used to generate radio waves with corresponding intensity variations. The transmitted radio waves are received in the TV set, transformed into electric current with corresponding intensity variations, amplified, and used to vary the intensity of an electron beam scanning the TV screen, thus reproducing the image.

The beam in the TV set must scan the screen in exact synchronization with the beam in the camera. To accomplish this, synchronization pulses are included in the transmitted radio wave, representing the end of each line and the end of the field or complete picture. In the receiver, these pulses are used to govern the timing of the scanning operation.

"Sync" pulses are also used in another manner in the receiver. The intensity level of the pulses is higher ("blacker," since high intensity represents black and low intensity represents white in the signal) than the intensity level of the rest of the radio wave, and its intensity at the time of transmission is a known factor which is constant in all transmissions. The strength of a particular station's over-all signal can therefore be determined by the intensity level of the "sync" pulse. The picture tube of a TV set must receive a signal with a reasonably uniform range of intensity to perform properly. Thus, the signals of weaker or distant stations or those affected by atmospheric conditions must automatically receive more amplification than stronger signals.

The basic principle of the patent in suit, 648, involves using the intensity level of the "sync" pulses in a particular signal to generate a control voltage which in turn controls the degree of amplification needed to produce reasonable uniformity in reproducing the picture transmitted. For example, the signal of a strong nearby station will include high intensity "sync" pulses, and, through the device in suit known as an AGC circuit, these pulses will be used to generate a control voltage which in turn will automatically reduce the amount of amplification.

In the fall of 1945 when HRI began work toward perfection of its device, the basic method for adjusting the strength of signals reaching a TV receiver by the use of the "sync" pulse to produce a control voltage in an integrating load circuit was well known. This feature is used in the patent in suit and the accused device, and in other AGC devices.

In 1945, however, the AGC circuit in use was fed with current supplied from the video detector part of the receiver. This process did not produce the desired sensitivity of adjustment and although by adding a DC amplifier the desired sensitivity would be gained by increasing the voltage fed into the AGC circuit, this would require an additional stage of amplification in the receiver which was not commercially desirable. HRI's work in 1945 was aimed at achieving the desired sensitivity of the AGC circuit by obtaining the signal voltage used in the AGC circuit from the video amplifier rather than the video detector. This would increase the voltage fed through the AGC circuit and increase the circuit's sensitivity without the necessity of an additional amplification stage. The idea was not new, but a major difficulty prevented its being applied in practice: The AGC controlled voltage had to be negative with respect to the ground, but the DC voltage level at the point in the receiver following the video amplifier was positive with respect to the ground.

HRI's original 1946 application disclosed a means of overcoming the above problem and deriving the signal voltage from the video amplifier, for use in the AGC circuit. The video amplifier was connected in a series circuit with a diode rectifier, a source of alternating current of approximately equal voltage to that at the video amplifier and an integrating load circuit. The aim was to offset the positive polarity of the voltage at the video amplifier so that the AGC circuit would produce control voltage having the required polarity.

HRI's "continuation application" was filed October 8, 1949, and added the claims now in suit which are considerably broader than the original claims, and we think the record justifies the court's inference that the additional claims were motivated by the RCA bulletin of March 15, 1949, which disclosed a different means of deriving voltage from the video amplifier for the AGC circuit. HRI's additional claims were designed to cover the RCA disclosure. The Patent Office issued HRI's patent in suit, 648, containing the 1949 claims, on April 3, 1951.

In 1949 RCA means and the HRI claims in suit, unlike the means disclosed in HRI's 1946 application, the video amplifier is connected to a grid controlled vacuum tube. This tube has three types of electrode components; a cathode, an anode, and one or more grids. The grid is placed between the cathode and anode to control the flow of electricity between them. Electricity normally flows from cathode to anode when the anode has a positive voltage with respect to the cathode. If the grid is made negative with respect to the cathode it acts as a gate to control the current flowing between cathode and anode. As the grid is made more negative with respect to the cathode, the flow of electricity between cathode and anode is reduced and if the grid is made sufficiently negative the flow will be cut off.

The grid in the RCA grid control tube is connected to the video amplifier and a source of alternating current is connected with the anode, to which the alternating current supplies positive pulses. When the grid is positively charged by the video amplifier and the anode is positively charged by the alternating current, electrons will flow from the cathode to the anode and be thus fed into the AGC circuit where the required control voltage will be produced to adjust the strength of transmitted signals picked up by the receiver.

The district court had ample support for finding substantial differences between HRI's original disclosures in 1946 and the claims sought by the 1949 application. The devices clearly operate differently. Unlike the RCA device, HRI's original device provided for a series circuit connection between the video amplifier, a diode, a source of alternating current and an integrating load circuit. In HRI's original claims the alternating current, unlike RCA's, must be set at a specific level to offset positive voltage at the video amplifier. HRI's original claims utilize a diode. RCA's uses a grid control tube. HRI's original claims require offsetting positive voltage at the video amplifier, but RCA's device uses that positive voltage to control the flow of current to the integrating load circuit. The HRI device originally claimed meets the same need as RCA's, but by entirely different means. It is significant that the HRI device originally disclosed has never been incorporated in any TV receiver sold in the United States, while RCA's device, or similar devices have become standard features in most TV receivers.

Having found no error in the court's finding that the claims in suit constituted new matter, the conclusion of invalidity follows. The continuation, under 35 U. S. C. Sec. 120, may not be used to permit HRI to claim new material not disclosed in the original application and not invented by it so as to cut off intervening rights. The disclosures made by RCA in March, 1949, were either the property of RCA or of the public and could not be appropriated by HRI. *C & N W Railway Co.* v. *Sayles,* 97 U. S. 554 (1878); *Schriber-Schroth* v. *Cleveland Trust Co.,* 305 U. S. 47 (1939).

We need not pass on the issue of infringement.

The Misuse Issues.

Although we affirm the district court's judgment of invalidity, we must nevertheless decide the issue of patent misuse, since Zenith's counterclaim sought to recover, and had judgment for, damages as a result of HRI's alleged patent misuse.

The district court found that Zenith's five year "standard package license" (including over 500 patents) from HRI was about to expire in 1959; that Zenith rejected HRI's offer of renewal on the ground that it needed no license; that HRI then asserted infringement by Zenith of four monochrome (black and white) TV patents and offered a license under a formula providing for any one patent at a royalty rate of 50% of the package rate, for any two at 80%, and for any "three or more" at 100%, with rates based upon Zenith's total production, whether the patents were used or not; that Zenith refused the offer, and this suit followed; and that under the circumstances, this offer was "an attempt by economic coercion to force the taking of the package."

The court found that after suit was filed HRI informed Zenith it was infringing nine color patents and again offered the package license; that Zenith again refused to accept; that in April, 1962, HRI offered to license (1) use of the nine color patents at an annual royalty rate of $435,000 or (2) use of all color patents issued and applied for at an annual rate of $500,000 or (3) the package of all monochrome and color patents at an annual rate of $150,000; and that Zenith refused.

The court further found that in March, 1963, before trial, HRI made a final offer "obviously" intended to force the package license upon the unwilling Zenith; that under this offer the options were (1) payment of $275,000 per year in royalties for use of nine color patents, (2) payment of $300,000 per year for use of all extant color patents, (3) payment of $310,000 for all extant and future color patents, or (4) payment of $200,000 for the package of all patents, color and monochrome, extant and future, at an annual maximum of $200,000; and that the only alternative to accepting one of these options was costly infringement litigation. The court found that the only practical answer to the dilemma was acceptance of the standard package under the compulsion of economic coercion.

The district court concluded that the demands upon Zenith were unlawful economic coercion which, coupled with this suit and threats of other suits, constituted an illegal attempt to force acceptance of the standard package and a misuse of patents to unlawfully extend HRI's patent monopoly, and awarded damages based on Zenith's expenses in defending this suit and in investigating other patents asserted.

We think there is substantial evidence in the record to support the findings with regard to the misuse inherent in HRI's 1962 licensing offer. Zenith's witness Crotty testified to the offers, substantially as found, from HRI representatives. HRI's president testified that Crotty could have read HRI's proposal the way Crotty had read it and admitted the offer of a package at a substantially lower rate than the "total" of the fewer than all rates. And HRI's attorney agreed with the district court that if the figures were right and if a licensee could get the package for considerably less than for nine patents an inference could be drawn that "somebody" was trying to sell a package rather than individual patents. HRI's claim of innocent mistake in drafting the offers is refuted by inter-office memos including one where patent counsel had informed his superior that the offers risked a charge of patent misuse and were apt to be viewed as "just what we intended—a transparent attempt to force them into package."

The substance of HRI's contention is that a licensor can offer to license any number of patents less than all in the package for the same total royalty, so long as that royalty is reasonable for any one of the patents and so long as he does not refuse to license individual patents. It relies upon the Supreme Court's decision in *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U. S. 827 (1950), and this court's decision in *Hazeltine Research, Inc.* v. *Avco Mfg. Corp.*, 227 F. 2d 137 (7th Cir. 1955), *cert. denied*, 350 U. S. 987 (1956). The holding in *Automatic Radio* was that it is not *per se* misuse of a patent to measure the royalties by a percentage of the licensee's sales when the licensee is engaged in a related enterprise.

The Court refused to consider the package licensing claim there, however, because there was nothing in the record to support it. 339 U. S. at 827. And in *Avco* we held that the record did not compel a finding of coercion. Neither of those cases is in point here.

In *American Securit Co.* v. *Shatterproof Glass Corp.*, 268 F. 2d 769 (3d Cir.), *cert. denied*, 361 U. S. 902 (1959), refusal to license individual patents was held to be misuse *per se*. We see little difference between outright refusal to license less than a package and the economic coercion of HRI found, with reason, by the district court here. See Report of the Attorney General's National Committee to Study the Antitrust Laws 239-240 (1955); Diggins, The Patent-Antitrust Problem, 53 Mich. L. Rev. 1093, 1105 (1955).

The district court concluded erroneously that HRI's 50% for one-80% for two-100% for three or more patents formula offered Zenith in 1959 was unlawful economic coercion. This court has not considered the formula *per se* unlawful. *Apex Electrical Mfg. Co.* v. *Altorfer Bros.*, 238 F. 2d 867 (7th Cir. 1956). Actually the formula allowed licensees to save money by taking licenses of less than three patents. Eight TV manufacturers took licenses for only one patent under the formula, the one here in suit. There were only three HRI patents in general use in 1959 and therefore the formula appears reasonable in light of commercial realities. Zenith under the offer was free to take a license only for what it needed. Although discussion of a license between Zenith and HRI originally involved four patents, the discussion narrowed to the patent in suit, Zenith's rejection of the offer, and HRI's infringement suit.

We think our conclusion affirming the trial court's determination of misuse in conjunction with the 1962 offer is strengthened by the Supreme Court's decision in *United States* v. *Loews, Inc.*, 371 U. S. 38, 54-56 (1962), where it approved the district court's injunction against economic coercion similar to that here in a case involving refusal to "book" less than a package of films for television use.

There is no merit in HRI's contention that the misuse of its patents, including the one in suit, furnishes no basis for an award of treble damages. The requisite anti-competitive effect is presumed where the tying product is patented. *International Salt Co.* v. *United States*, 332 U. S. 392 (1947). See *United States* v. *Loews, Inc.*, 371 U. S. 38, 45 (1962). Zenith's expenses in defending the infringement suit brought pursuant to HRI's antitrust violations are a proper subject of threefold recovery. *Dairy Foods, Inc.* v. *Dairy Maid Prod. Cooperative*, 297 F. 2d 805, 809 (7th Cir. 1961).

The district court's determination of Zenith's $50,000 basic damages for HRI's patent misuse represented, according to the findings, expenses incurred in Zenith's preparation for the 1963 trial of HRI's infringement suit and in investigating HRI patents asserted against Zenith. The $50,000 figure is not here, and as far as we are informed by HRI, was not challenged at trial. In view of HRI's unlawful conduct commencing in 1962, and the size of the record of trial of the infringement issues, we cannot say the basic damages are so unreasonable that we must set aside the allowance. We affirm the treble damage judgment of $150,000.

THE ANTITRUST ISSUES.

Zenith's treble damage counterclaim was filed May 22, 1963, alleging violation by HRI of the Sherman Act, 15 U. S. C. Secs. 1 and 2, by its alleged participation in conspiracies that unlawfully prevented Zenith from exporting its United States manufactured products into Australia, Canada and England. Zenith was granted injunctive relief and treble damages on the counterclaim in the amounts of $745,380 as to the Australian market, $18,892,173[3] as to the Canadian market, and $15,174,078 as to the English market. The judgment followed for $34,811,631.[3]

HRI challenges Zenith's judgment on several grounds. However, we think the crucial question is whether the district court's finding that Zenith was in fact damaged by the pools in the three countries during the four year damage period[4] preceding the filing of the counterclaim is clearly erroneous. FED. R. CIV. P. (52a). We agree with HRI that Zenith failed to sustain the burden of proving the essential *fact* of damage in the relevant period. We need pass on no other contention, therefore, in reversing the judgment on the counterclaim.

Zenith had the burden at the trial of showing an "injury to [its] business," 15 U. S. C. Sec. 15, by proving the unlawful conspiracies and the *fact* of damage as a proximate result of the alleged unlawful conspiratorial activities. *Story Parchment* v. *Patterson,* 282 U. S. 555; *Bigelow* v. *RKO Radio Pictures, Inc.,* 327 U. S. 251; *Continental Ore* v. *Union Carbide,* 370 U. S. 690.

The district court concluded that the alleged conspiracies had as their express purpose prevention of importation of TV apparatus made in the United States, that HRI by participating in the conspiracies had violated the Sherman Act and that Zenith had established that it had been injured in its business as a result of the unlawful activities of the pools. The court's ultimate finding of fact was that "the foreign commerce of Zenith has been drastically curtailed by the patent pools" in the three countries. The court stated that damages had been shown by experienced Zenith officials thoroughly familiar with the business problems and sales potentials in the three markets.

---

[3] The figures for England and Australia were reduced on December 13, 1965, upon further hearing after proofs were reopened.

[4] Four years prior to the May 22, 1963, filing date of Zenith's counterclaim 15 U. S. C. Sec. 15b.

The ultimate finding rests upon subsidiary findings that for "many years" before 1957 Zenith tried to establish distibutorships in Canada but in "every instance" the Canadian distributor was warned to stop handling Zenith products or face expensive litigation; that Zenith sought import licenses but in "every instance" such licenses were refused them; that after the 1957 settlement Zenith began late in 1958 to export to Canada its radio and TV products through Zenith Radio Corporation of Canada; but that the pool demanded that Zenith discontinue the practice and accept a standard package license and manufacture in Canada any products sold there; and that soon after the demand the instant Hazeltine infringement suit was brought.

The Zenith officials whose testimony was relied on by the court were Zenith's president, its vice-president in charge of patents, and its manager of internal auditing and chief financial officer.

A good part of the president's testimony concerned activities of the pools before the settlement of *RCA* v. *The Rauland Corporation,* No. 48 C 1818 (N. D. Ill.), in 1957. In that suit Zenith filed a treble damage counterclaim seeking damages for refusals to license similar to those alleged here, in settlement of which it obtained unrestricted cross-licenses from RCA, General Electric, and Western Electric Company, and in turn gave general releases to those three companies. The president also testified generally that after this settlement Zenith hoped to be able to compete freely in Canada with its competitors, but that unlawful pool activity continued into the damage period. His testimony was that because of the similarity between the Canadian and United States markets, he was convinced that Zenith, but for the "clouds and difficulties" caused by the pool's refusal of a license permitting Zenith to export to Canada, would have achieved the same percentage, 20% of the Canadian market as it enjoyed in the United States market, and would have also captured 5% of the English market and 2% of the Australian market.

Zenith's vice-president gave his opinion corroborating the statement that in a market free of license restrictions Zenith would have the percentage shares that the president testified to.

Zenith's third witness took the percentages testified to by the president and vice-president and, through the use of a chart, calculated "lost sales and lost profits" based on past profit and cost data.

No specific findings were made with regard to how the alleged conspiracy prevented sales by Zenith in Australia. We see no necessity of discussing at great length Zenith's failure to prove the *fact* of damage with respect to the Australian market, since there is no testimony that could reasonably support a finding of *fact* of damage there. Until April, 1960, Australian government regulations prevented Zenith's selling radio and TV sets in that country. Zenith's case rests on the testimony of its officers that conversations between Zenith employees and Australian businessmen who were not members of the patent pool led it to believe that it could not obtain a license to import radio and TV receivers into Australia after 1960. There is no evidence that Zenith ever attempted to obtain a license from the Australian pool, nor is there any proof of use by the Australian patent pool of restrictive license forms to prevent import. Indeed, during the post-1960 period a large number of low priced Japanese radio and TV sets were sold in Australia. Actually, high import duties and shipping costs posed a formidable barrier to Zenith sales. There is no evidence to warrant the inference that Zenith intended to or was prepared to enter the Australian market. *Triangle* v. *National Elec. Prod. Co.*, 152 F. 2d 398; *Volasco Prod. Co.* v. *Fry Roofing Co.*, 309 F. 2d 383, 395.

We also conclude that Zenith failed to prove the *fact* of damage with respect to the English market. A World War II embargo prevented Zenith from importing its products into England until June, 1959. At that date all basic radio patents had expired, and Zenith had no difficulty in doing radio business in England. The difficulty Zenith had in the English market with its TV products cannot reasonably be attributed to the activity of an unlawful conspiracy in that country. Significant barriers other than patent difficulties operated to prevent sales of Zenith TV receivers in England. Zenith sets manufactured in the United States operated on 525-line and 625-line scanning signals. The English standard was a 405-line signal until changed to 625-line after the damage period. Zenith sets sold in England would be in competition with substantially lower priced British sets. There was no testimony that the British pool, during the damage period, had threatened or filed suit on any patents.

We think it is unreasonable to infer that Zenith intended to and was prepared to enter the English television market during the damage period. The only reasonable inference is that it was waiting for a change in English standards to a 625-line system. Zenith was not aided, in showing loss of probable profits, by the testimony that its man in England could adjust Zenith sets to the English standard "with a screwdriver in the back of the shop in a few minutes."

We hold that the finding of the district court that Zenith had been injured in its business by the activities of the alleged unlawful conspiracies in Australia and England is clearly erroneous.

Zenith's president's testimony with respect to the Canadian market can be considered as some slight evidence of the *fact* of damage, being more specific than with respect to the other markets. He testified that in 1958 he complained to the Canadian pool about its advertisement in a Canadian trade journal addressed to television and radio dealers in Canada. He charged that the advertisement was false, and was damaging to Zenith's business, because it contained threats of infringement suits which were calculated to discourage distributors from handling Zenith products. This advertisement, he testified, was typical of threats made during the damage period. During his testimony, a letter, written during the damage period by a Zenith distributor in Canada with respect to threats made by the pool to a Motorola dealer, was read into the record.

Despite this testimony, the fact remains that during the damage period Zenith sold more than 65,000 radios and nearly 60,000 TV sets in Canada. It did not seek a pool license after 1953, claiming throughout the period that it had unrestricted cross-licenses as a result of the 1957 settlement which rendered pool licenses unnecessary. Zenith's president could not recall any specific threat of litigation over radios alone. Zenith's subsidiary in Canada has not been sued or threatened with suit for importing radios into Canada since 1957. There was testimony that Zenith had made no separate effort to import radios into Canada despite the fact that all basic radio patents had expired before the end of the damage period. There was no showing that the 1958 advertisement had any adverse effect on Zenith's sales.

No Canadian distributor was called as a witness by Zenith. The letter in 1962 from the Zenith dealer referring to the Motorola threat could imply that no Zenith distributor had been threatened. Although several of Zenith's United States competitors were doing business in Canada, Zenith made no showing of comparable experience of those competitors in the United States and Canada. Zenith was advised by the pool that it was infringing pool patents in 1959, but continued to export to Canada without any interruption. In 1960 it spent 11% of its Canadian TV sales and almost 13% of its radio sales on advertising. By 1961 it had achieved 5% of the television market, and the decrease in the share thereafter was not shown to have been caused by the pool.

We hold that even though there is some testimony of damage suffered by Zenith in the damage period as a result of pool activities in Canada, we have a firm conviction that the district court made a mistake in inferring from the entire testimony that the essential element of *fact* of damage had been established by Zenith. *Milwaukee Towne Corp.* v. *Loews, Inc.,* 190 F. 2d 561, 566.

Zenith argues that HRI's instant infringement suit is in furtherance of the alleged Canadian conspiracy. There is nothing in the record to show that this suit had any effect to damage Zenith's Canadian business. The record shows that this claim was not taken seriously by the district court.

Zenith relies on this court's decision in *Dairy Foods Inc.* v. *Dairy Maid Prod.,* 297 F. 2d 805, to support its argument that the filing of the instant HRI infringement suit placed it in a dilemma since if the suit was successful it would be forced to take licenses under HRI's domestic patents, thereby losing a defense to any pool claim of infringement of patent counterparts in Canada, and that accordingly it had to curtail its operations there pending the outcome of the infringement suit. The court in *Dairy Foods* was speaking of the dilemma raised by the plaintiff's allegations which it had the burden of proving. In this case Zenith failed to prove what it alleged. As we have stated, the evidence reveals no curtailment of Canadian operations but instead indicates extensive sales in Canada as well as heavy expenditures for advertising there. Even if we assumed the continuation of an unlawful conspiracy after the 1957 settlement, into the damage period, the assumpion is of no help to Zenith, under *Highland Supply Corp.* v. *Reynolds Metals Co.*, 327 F. 2d 725, 732, absent proof of the *fact* of damage. Nor does the statement in *Albert Pick-Barth Co.* v. *Mitchell Woodbury Corp.*, 57 F. 2d 96, 99, that the *fact* of damage need not be direct suppression of trade aid Zenith. The general language of Justice Holmes in *United States* v. *Kissel*, 218 U. S. 601, 607-08, about a continuing criminal conspiracy does not help Zenith since even if the continuous existence of the unlawful conspiracy was, as Zenith claims, a continuous overt act, the *fact* of damage must still be shown. The facts in this case do not resemble those in *Continental Ore* v. *Union Carbide*, 370 U. S. 690, where there was clear evidence of defendant's refusal to deal with the Continental Company, as a result of which it had to drop out of the vanadium business.

We do not agree with Zenith that a Hazeltine attorney admitted at the trial that the existence of the conspiracy was a continuous overt act causing damage to Zenith. The admission was that "if the conspiracy continued" after 1957 there "might have been damage." Neither do we take as an admission to prove the *fact* of damage general statements of a Hazeltine attorney and letters long before the damage period to the effect that in "foreign countries" threats of adversly held patents are "as much of a risk to your business as are tariff restrictions, freight rates, insurance, and the many other impedimenta to the flow of trade."

In addition to oral testimony Zenith relies upon the 1957 settlement of Zenith's counterclaim in *RCA* v. *The*

Rauland Corp., No. 48 C 1818 (N. D. Ill.), to prove the fact of damage. However, under a well settled rule, *e.g.*, *Domark* v. *Bates Motor Co., Inc.*, 93 F. 2d 522, 526, the settlement of Zenith's suit against RCA, General Electric and Western Electrict constitutes no admission of the fact of damage against Hazeltine. Even if it is true that there were damages prior to the 1957 settlement this does not prove the fact of damage between 1957 and 1963. The 1957 settlement has relevance only so far as the release of future damages given by Zenith in that settlement precludes recovery for damages resulting solely from illegal activities of the Canadian pool prior to September 27, 1957, the date of the settlement.

Zenith relies too upon a "stipulation" of Hazeltine's attorney as to the *fact* of damage to Zenith's business. The attorney stated during testimony of a Zenith official, "I am perfectly willing to stipulate that Zenith has had problems in exporting their radio and television receivers to Canada." We do not read that statement as a concession of the *fact* of damage. In context, the attorney's statement either referred to the period preceding 1957 and not to the pertinent damage period, or to other obstacles to export by Zenith such as tariffs, shipping costs, low priced competition, and technical problems.

For the reasons given, the judgment for Zenith for $34,811,631 upon the treble damage counterclaim is reversed.

THE INJUNCTION.

In addition to granting treble damages to Zenith, the district court ordered injunctive relief against HRI's conduct vis-a-vis Zenith in the use of HRI's domestic patents and against its participation in unlawful antitrust conspiratorial conduct.

It follows from our conclusion with respect to the foreign patent pools that injunctive relief against "threatened loss or damage" directed at those pools, alleged by Zenith to be unlawful conspiracies, cannot be justified under 15 U. S. C. Sec. 26. Paragraph C of the injunction granted must be stricken.

We agree with HRI that the district court erred in holding the method of computing royalties to be patent misuse. *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U. S. 827 (1950). Therefore there is no basis for that part of the court's injunction relating to payment of royalties on unpatented products, and we order that it be modified by deleting from paragraph A the words: "or upon the paying of royalties on the manufacture, use or sale of apparatus not covered by such patent."

We also agree with HRI that paragraph B of the injunction does not comply with the requirement of Fed. R. Civ. P. 65 that it describe the acts restrained in reasonable detail. We order that it be modified so as to (1) give Zenith the benefit only of the same royalty rates as those presently in effect with other licensees, (2) permit licensing of individual patents at rates the sum of which is greater than the package rate so long as the rates for individual patents are not so disproportionate to the package rate as to amount to economic coercion to force the taking of the package, and (3) not to require that comparable ~~royalty rat~~es be given to Zenith for longer periods than they are available to others.

CONCLUSION.

For the reasons given, the judgment against Hazeltine Corporation is vacated; the district court judgment holding the patent in suit invalid is affirmed; the award in favor of Zenith for treble $50,000, is affirmed; the awards for treble damages based on HRI's alleged participation in the foreign patent pool are reversed; and the cause is remanded to the district court for the sole purpose of entering judgment in favor of Zenith and against Hazeltine Research, Inc., in the amount of $150,000, striking paragraph C of the injunction, and modifying paragraphs A and B of the injunction in a manner consistent with the view expressed herein.

REVERSED AND REMANDED WITH DIRECTIONS.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit,
Chicago, Illinois 60604.

December 13, 1967

Before
Hon. Latham Castle, Circuit Judge;
Hon. Roger J. Kiley, Circuit Judge;
Hon. Walter J. Cummings, Circuit Judge.

Nos. 15246, 15563 HAZELTINE RESEARCH, INC., *vs.* ZENITH RADIO CORPORATION, and Nos. 15247, 15564 HAZELTINE CORPORATION *vs.* ZENITH RADIO CORPORATION.	Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

ORDER.

The court has fully considered the briefs and appendices filed in these appeals and has heard thorough oral arguments on the issues. Having reached its conclusion, the court now announces its decision and enters judgment in accordance with and for the reasons given in its opinion now being prepared for printing and to be filed forthwith.

We enter the following judgment:

(1) The judgments of the district court against Hazeltine Corporation are vacated for want of jurisdiction over its person.

(2) The judgment of the district court holding Hazeltine Research, Inc.'s patent in suit invalid is affirmed.

(3) The part of the judgment of the district court for Zenith Radio Corporation, and against Hazeltine Research, Inc., with respect to its domestic patents, for treble damages in the amount of $150,000 is affirmed.

(4) The part of the judgment, with respect to foreign patents, for the difference between $34,961,631 and $150,000, or $34,811,631 is reversed.

(5) The injunction is modified by striking from the decree the restraint against Hazeltine Research, Inc. in so far as it is based on Hazeltine Research, Inc.'s alleged antitrust conspiratorial violations with respect to foreign patent pools. We further modify the injunction to some extent with respect to the patent misuse by Hazeltine Research, Inc. in the United States.

(6) And the cause is remanded to the district court for the sole purpose of entering judgment in favor of Zenith against Hazeltine Research, Inc. in the amount of $150,000 and of entering a modified injunction in accordance with our opinion.

It is further ordered by the court that Hazeltine Corporation recover from Zenith Radio Corporation, Hazeltine Corporation's costs in Appeals Nos. 15247 and 15564.

It is further ordered by the court that the costs in Appeals Nos. 15246 and 15563 be divided equally between Hazeltine Research, Inc. and Zenith Radio Corporation.

APPENDIX C.

United States Court of Appeals
For the Seventh Circuit,
Chicago, Illinois 60604.

Tuesday, January 23, 1968.

Before
Hon. John S. Hastings, Chief Judge.
Hon. Elmer J. Schnackenberg, Circuit Judge.
Hon. Latham Castle, Circuit Judge.
Hon. Roger J. Kiley, Circuit Judge.
Hon. Luther M. Swygert, Circuit Judge.
Hon. Thomas E. Fairchild, Circuit Judge.
Hon. Walter J. Cummings, Circuit Judge.

Hazeltine Research, Inc.,
Plaintiff and Counter Defendant-Appellant,
Nos. 15246, 15563
vs.
Zenith Radio Corporation,
Defendant and Counter Claimant-Appellee;

Hazeltine Corporation,
Appellant,
Nos. 15247, 15564
vs.
Zenith Radio Corporation,
Appellee.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

It Is Ordered by the Court that the petition for rehearing or reconsideration by the court of appeals *en banc,* filed by Zenith Radio Corporation in the above causes, be, and the same is hereby, denied.

(Judge Fairchild voted for rehearing *en banc* "limited, however, to the issue of whether or not paragraph c should be stricken from the injunction.")

SUPREME COURT. U. S.

MAY 9 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

BRIEF OF HAZELTINE CORPORATION IN OPPOSITION TO THE PETITION FOR CERTIORARI

JOHN T. CHADWELL
VICTOR P. KAYSER
JOHN W. THOMAS
C. LEE COOK, JR.
135 South La Salle Street
Chicago, Illinois

Attorneys for
Hazeltine Corporation,
Respondent.

Of Counsel:

CHADWELL, KECK, KAYSER,
RUGGLES & MCLAREN
135 South La Salle Street
Chicago, Illinois 60603
RAndolph 6-2545

TWENTIETH CENTURY PRESS, INC., CHICAGO 60606

INDEX

PAGE

Citations to Opinions Below 1

Question Presented 2

Statement of the Case 2

Argument 4

Since the Court of Appeals Correctly Applied Well-Settled Legal Principles, There Is No Reason for This Court to Review the Determination That the Judgments Against Hazeltine Corporation Must Be Vacated 4

Conclusion 7

TABLE OF CASES

Alcoa S.S. Co. v. *United States,* 338 U.S. 421 (1949) .. 5

D'Arcy v. *Ketchum,* 11 How. (52 U.S.) 165 (1850) .. 5

Estin v. *Estin,* 334 U.S. 541 (1948) 5

Hansberry v. *Lee,* 311 U.S. 32 (1940) 5

Hollingsworth v. *Barbour,* 4 Peters (29 U.S.) 466 (1830) 5

Pennoyer v. *Neff,* 95 U.S. 714 (1878) 5

Riley v. *New York Trust Co.,* 315 U.S. 343 (1942) 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 1266

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

BRIEF OF HAZELTINE CORPORATION IN OPPOSITION TO THE PETITION FOR CERTIORARI

In this brief, Hazeltine Corporation answers that part of the Petition for Writ of Certiorari of Zenith Radio Corporation (Zenith) which attacks the vacation of the two judgments as to Hazeltine Corporation.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals is reported in 388 F.2d 25. We shall refer to the pages of the Opinion as reproduced at pages 60-85 of the Petition for Certiorari, and shall cite it as "Op. Pet. . . . ."

QUESTION PRESENTED

The question presented as to Hazeltine Corporation is:

Whether the Court of Appeals erred in vacating the judgments against Hazeltine Corporation since this corporation was not named as a party, not served with process, did not participate in the trial, was not brought into the law suit in any manner, and appeared specially only after trial and entry of findings and after Zenith's submission of a proposed judgment naming it, and where jurisdiction was asserted solely on the basis of a stipulation to which this corporation was not a party and which on its face did not even purport to bind this corporation.

STATEMENT OF THE CASE

The history of the litigation has been set forth in the brief of Hazeltine Research, Inc. (HRI). This brief will state only such additional facts as are relevant to the question presented as to Hazeltine Corporation.

Hazeltine Corporation is a Delaware corporation with executive offices in Little Neck, New York, and no offices, plants, or other facilities in the Northern District of Illinois (R.1063).[1] It is engaged primarily in the business of research, development, and manufacture of electronic equipment for military, air traffic control, navigation, and related purposes for the United States Government and its allies (R.261, 269, 1065, 1509, 2188-94). Hazeltine Corporation does not manufacture or sell radios or television sets (R.1509, 2188-95).

---

[1] The following abbreviations are used in this brief:

Pet. — Zenith's Petition.
Op. Pet. — Decision of Court of Appeals reprinted in Zenith's Petition.
R. — Printed record filed by HRI with the Court of Appeals.
Z. — Printed record filed by Zenith with the Court of Appeals.

Throughout this brief, emphasis has been supplied unless the contrary is indicated.

Hazeltine Corporation was not a party to the original complaint which was filed by its wholly-owned corporate subsidiary, HRI, charging Zenith with patent infringement (R.1, 1065). Hazeltine Corporation was not named as a party in the counterclaim filed by Zenith against HRI (R.48). It was never served with process and did not enter an appearance or participate in the trial. Hazeltine Corporation first learned that Zenith would seek entry of judgment against it on January 26, 1965, the day following entry of the findings against HRI, when Zenith's counsel was quoted in a Dow-Jones news release to the effect that Zenith proposed to ask that the judgment run against Hazeltine Corporation (R.232).[2] After Zenith submitted a proposed form of judgment against Hazeltine Corporation as well as HRI, Hazeltine Corporation filed a special appearance opposing entry of judgment against it for want of jurisdiction (R.229, 2043).

The sole basis relied upon by the trial court to support the entry of judgment against Hazeltine Corporation was a procedural pretrial stipulation entered into by Zenith and HRI before the counterclaim was filed (R.2043, Z. 662-63, 666). That stipulation was between "the parties to this action," HRI and Zenith (R.43, 1, 4, 48). It provided that:

---

[2] No move was made by Zenith to bring Hazeltine Corporation into the case until Zenith ascertained that the trial judge had adopted the findings submitted by Zenith calling for a treble-damage judgment of $48,866,811 (R.128, 113, 122-23), approximately 15 times the net book value ($3,184,419) of HRI, the only counterdefendant (R.221).

> "4. *Plaintiff agrees* that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company" (R.43).

The stipulation was drafted by Zenith's counsel and was signed by an attorney for Zenith and by "counsel for plaintiff," HRI (R.1, 45, 236).

The Court of Appeals correctly held that the stipulation relied upon by Zenith and the District Court was entered into only by the "parties" to the counterclaim and that Hazeltine Corporation was *not* a party (Op. Pet. 65). Since there was no showing that Hazeltine Corporation authorized HRI's attorney to act on its behalf and since there was no showing that Hazeltine Corporation exercised such control of HRI to render it Hazeltine Corporation's agent, or that HRI and Hazeltine Corporation are the same entity, the Court of Appeals held that the judgments against Hazeltine Corporation were void and must be vacated (Op. Pet. 65).

ARGUMENT

SINCE THE COURT OF APPEALS CORRECTLY APPLIED WELL-SETTLED LEGAL PRINCIPLES, THERE IS NO REASON FOR THIS COURT TO REVIEW THE DETERMINATION THAT THE JUDGMENTS AGAINST HAZELTINE CORPORATION MUST BE VACATED.

Zenith's petition asserts that the Court of Appeals in its opinion "sets up as new law for the Seventh Circuit an unprecedented constitutional doctrine employing the corporate fiction not for the promotion of justice but to shield Hazeltine Corporation from all liability for its illegal conduct" (Pet. 24). On the contrary, the Court of Appeals established no new constitutional doctrine but instead relied upon general principles long ago announced by this Court in *Pennoyer* v. *Neff*, 95 U.S. 714, 733 (1878); *D'Arcy* v. *Ketchum*, 11 How. (52 U.S.) 165, 174 (1850); *Hollingsworth* v. *Barbour*, 4 Peters (29 U.S.) 466 (1830), that judgment cannot be entered against one not served with process and never before the court. Thus, the entry of judgment against Hazeltine Corporation, which was never served with process and never before the court, was a denial of procedural due process under the Fifth Amendment. *Hansberry* v. *Lee*, 311 U.S. 32, 40-41 (1940); *Riley* v. *New York Trust Co.*, 315 U.S. 343, 353-54 (1942); *Estin* v. *Estin*, 334 U.S. 541, 548-49 (1948).[3]

The principal basis for Zenith's contention in this Court is the stipulation entered into between Zenith and HRI (Pet. 24-25). The simple answer to Zenith's contention is the stipulation itself, for it shows on its face that Hazeltine Corporation was not a party to it (R.43-45). The stipulation did not even purport to bind Hazeltine Corporation or make it a party to the case. Indeed, Zenith admits in its Petition here that the pretrial stipulation was "by the respondent Hazeltine Research, Inc." (Pet. 5).

The paragraph of the stipulation in question was drawn by Zenith's counsel (R.231, 233-34). Thus, Zenith can hardly contend that it was ambiguous or that it should be construed to mean anything other than its plain language. *Alcoa S.S. Co.* v. *United States*, 338 U.S. 421, 424-25 (1949).

It certainly raises no new constitutional issue or principle to hold, as the Court of Appeals held here, that a judgment cannot be entered against a corporation solely on the basis of a stipulation to which that corporation was not a party and which on its face did not purport to bind that corporation.

---

[3] Zenith thinks so little of its contention concerning jurisdiction over Hazeltine Corporation that it has not even bothered to argue the point in its "Reasons for Granting the Writ" (Pet. 27-34).

Zenith attempts to attach some significance to the fact that the findings proposed by HRI at the conclusion of the first trial contained references to the stipulation and contained proposed findings which Zenith contends were "in favor of Hazeltine Corporation on practically every issue in the case" (Pet. 26). Since the effect of the stipulation was that HRI assumed responsibility for the acts of its parent, Hazeltine Corporation, and since under the counterclaim HRI was alleged to be a co-conspirator with Hazeltine Corporation, it was perfectly natural for HRI to seek findings that the patent pools and its parent's relation thereto did not constitute violations of the antitrust laws.

Zenith in its counterclaim clearly recognized the distinction between HRI, the party to the litigation, and HRI's parent, Hazeltine Corporation (R.48-53). The counterclaim expressly distinguished "Counterdefendant, Hazeltine Research, Inc., the party plaintiff in this suit" from "its parent, Hazeltine Corporation" (R.49), and in the prayer asked for a "judgment *against counterdefendant* for treble the amount of damages sustained" and did *not* ask for any judgment against Hazeltine Corporation (R.52).

The trial judge himself recognized that "Hazeltine Corporation wasn't a party to the lawsuit" (Z. 663).

Zenith never indicated, until after entry of the findings, that it construed the stipulation as making Hazeltine Corporation a party to the suit. On the contrary, in both its pretrial and post-trial briefs, Zenith specifically distinguished HRI, the party, from Hazeltine Corporation, the parent: "Plaintiff [HRI] . . . wholly owned by . . . Hazeltine Corporation" (Z. 140, 214); and recognized that counsel was representing only HRI by identifying "Mr. Dodds, *plaintiff's* attorney and a director and officer of [*not* attorney for] Hazeltine Corporation" (Z. 170, 254).

There was no showing that HRI was the *alter ego* of Hazeltine Corporation, and Mr. Dodds, the attorney for HRI, neither purported to stipulate, nor is shown to have had the authority to stipulate, on behalf of Hazeltine Corporation.

After thorough consideration of the record, and in light of the applicable rulings of this Court, the Court of Appeals held that the purported judgments against Hazeltine Corporation violated due process of law, were void and thus had to be vacated (Op. Pet. 61-65). There is no reason for this Court to review that record again.

CONCLUSION

For all the reasons set forth above, the Petition for Certiorari should be denied.

Dated: May 9, 1968.

Respectfully submitted,

John T. Chadwell
Victor P. Kayser
John W. Thomas
C. Lee Cook, Jr.

Attorneys for
Hazeltine Corporation,
Respondent.

Of Counsel:

Chadwell, Keck, Kayser,
Ruggles & McLaren
135 South La Salle Street
Chicago, Illinois 60603
RAndolph 6-2545

LIBRARY
SUPREME COURT. U. S.

F
MAY 9 1938
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

BRIEF OF HAZELTINE RESEARCH, INC., IN OPPOSITION TO PETITION FOR CERTIORARI

JOHN T. CHADWELL
VICTOR P. KAYSER
JOHN W. THOMAS
C. LEE COOK, JR.
135 South La Salle Street
Chicago, Illinois

M. HUDSON RATHBURN
20 North Wacker Drive
Chicago, Illinois

LAURENCE B. DODDS
160 Middle Neck Road
Great Neck, New York

Attorneys for
Hazeltine Research, Inc.,
Respondent

Of Counsel:

CHADWELL, KECK, KAYSER,
RUGGLES & MCLAREN
135 South La Salle Street
Chicago, Illinois 60603
RAndolph 6-2545

MASON, KOLEHMAINEN,
RATHBURN & WYSS
20 North Wacker Drive
Chicago, Illinois 60606
FInancial 6-1677

TWENTIETH CENTURY PRESS, INC., CHICAGO 60606

INDEX

PAGE

CITATIONS TO OPINIONS BELOW 1

QUESTIONS PRESENTED 1

STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 6

ARGUMENT 9

I. Since This Case Involves Only Issues of Fact and the Court of Appeals Followed the Standards of Rule 52(a), There Is No Reason to Grant Certiorari 9

II. The Court of Appeals' Determination that the District Court's Findings as to the Fact of Damage Were Clearly Erroneous Raises No Question of Law Requiring Decision by this Court 11

A. Australia 12

B. England 14

C. Canada 17

III. There Is No Support for Zenith's Contention that the Instant Patent Infringement Suit Was Brought in Furtherance of an Alleged Conspiracy 25

IV. There Is No Reason to Review the Court of Appeals' Determination that the Facts Did Not Warrant an Injunction 27

V. Zenith's Petition Provides No Reason to Review the Court of Appeals' Decision with Respect to Alleged Domestic Patent Misuse 29

CONCLUSION 32

CITATIONS

TABLE OF CASES

PAGE

ALCOA v. *Sperry Products, Inc.*, 285 F.2d 911 (6th Cir. 1960) 27

American Securit Co. v. *Shatterproof Glass Corp.*, 154 F. Supp. 890 (D. Del. 1957), *aff'd*, 268 F.2d 769 (3d Cir. 1959) 31

Automatic Radio Mfg. Co. v. *Hazeltine Research, Inc.*, 339 U.S. 827 (1950) 9, 31

Bedford Cut Stone Co. v. *Stone Cutters' Ass'n*, 274 U.S. 37 (1927) 28

Bigelow v. *RKO Radio Pictures, Inc.*, 327 U.S. 251 (1946) 8, 22, 23

Boesch v. *Graff*, 133 U.S. 697 (1890) 27

Bus Employees v. *Wisconsin Board*, 340 U.S. 416 (1951) 30

Cold Metal Process Co. v. *United Engineering & Foundry Co.*, 235 F.2d 224 (3d Cir. 1956) 27

Commissioner v. *Duberstein*, 363 U.S. 278 (1960) 9, 10

Continental Ore Co. v. *Union Carbide Corp.*, 370 U.S. 690 (1962) 8, 21, 24

Curtiss Aeroplane & Mtr. Corp. v. *United Aircraft Eng. Corp.*, 266 Fed. 71 (2d Cir. 1920) 27

Graver Mfg. Co. v. *Linde Co.*, 336 U.S. 271 (1949) 10, 26

Guzman v. *Pichirilo*, 369 U.S. 698 (1962) 9

Interstate Circuit v. *United States*, 306 U.S. 208 (1939) 18

Jaffke v. *Dunham*, 352 U.S. 280 (1957) 19

Labor Board v. *Pittsburgh S.S. Co.*, 340 U.S. 498 (1951) 10

Magnum Co. v. *Coty*, 262 U.S. 159 (1923) 10

McAllister v. *United States*, 348 U.S. 19 (1954) 9

PAGE

Nu-Tec, Ltd. v. *Hearst*, 39 Ont. Weekly Notes 110 (1930) 26

St. Pierre v. *United States*, 319 U.S. 41 (1943) 30

United States v. *duPont & Co.*, 353 U.S. 586 (1957) 17

United States v. *El Paso Natural Gas Co.*, 376 U.S. 651 (1964) 4

United States v. *Oregon Medical Society*, 343 U.S. 326 (1952) 29

United States v. *Singer Mfg. Co.*, 374 U.S. 174 (1963) .. 9, 11

United States v. *U.S. Gypsum Co.*, 333 U.S. 364 (1948) 9, 11, 25

STATUTES

Clayton Act, 38 Stat. 737; 15 U.S.C. § 26 .... 8, 27-28

RULES

FED. R. CIV. P. 52(a) 7, 9, 10

Labor Board v. [illegible]
(1951)

Magnum Co. v. Coty, 262 U.S. 159 (1923)

McAllister v. United States, 348 U.S. 19 (1954)

IN THE

Supreme Court of the United States

October Term, 1967.

No. 1266

ZENITH RADIO CORPORATION, a corporation,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., a corporation, and
HAZELTINE CORPORATION, a corporation,
Respondents.

BRIEF OF HAZELTINE RESEARCH, INC., IN OPPOSITION TO PETITION FOR CERTIORARI

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals is reported in 388 F.2d 25. We shall refer to the pages of the Opinion as reproduced at pages 60-85 of the Petition for Certiorari, and shall cite it as "Op. Pet. .....".

QUESTIONS PRESENTED

1. Although the Petition of Zenith Radio Corporation (Zenith) seeks to create the impression that it presents primarily legal issues, substantially without exception the points raised take issue with the factual conclusions of the Court of Appeals. Thus, the question presented relating to the treble-damage judgments and the injunction based

on the antitrust counterclaim is: Whether there is any reason why this Court should provide a second appellate *factual* review of the voluminous record thoroughly considered by the Court of Appeals.

If certiorari were granted, the questions would be:

(a) Whether, considering all the evidence, the Court of Appeals erred in holding, as a matter of fact, that the District Court's finding that Zenith was damaged during the relevant four-year period (June 1959-May 1963) by patent pools in Australia, England and Canada was clearly erroneous.

(b) Whether, considering all the evidence, the Court of Appeals erred in vacating the injunction relating to foreign patent pools on the ground that the record, as a matter of fact, did not show a present threat by any patent pool to Zenith's ability to export to Australia, England or Canada.

2. The patent misuse issues raised by the Petition are moot. If not moot, the misuse questions would be:

(a) Whether the Court of Appeals erred in holding that the 50-80-100% offer was not in fact coercive in the light of commercial realities.

(b) Whether the Court of Appeals erred in holding that the offer to license at a royalty measured by total production was not a misuse of patents.

STATEMENT OF THE CASE

This litigation started in November 1959 as a patent infringement suit by respondent Hazeltine Research, Inc. (HRI), against petitioner Zenith on one United States patent used in black and white television receivers (R.1-3).[1] Zenith answered the complaint in April 1960 alleging invalidity, noninfringement and patent misuse (R.4-9). Three years later, on May 22, 1963, Zenith filed an antitrust counterclaim against HRI alleging foreclosure of foreign markets for its radio and television sets by acts in furtherance of patent pools in Australia, England and Canada (R.48-53).

Some years before, in a patent suit brought by RCA, Zenith had filed a similar counterclaim against RCA, General Electric and Western Electric making essentially the same charges.[2] That case was settled without trial in September 1957. Zenith received licenses in Canada, England, Australia and the rest of the world, under all radio and television patents of RCA, General Electric and Western Electric (PX 48, R.2131-34) and a payment of $10 million. In return, Zenith gave general releases of all past damages and of all future damages which might result from acts occurring prior to the settlement (R.224-26).

Zenith maintains that its counterclaim in the instant case and its counterclaim in the *RCA* case were based on the

---

[1] The following abbreviations are used in this brief:

Pet.	—Zenith's Petition for Writ of Certiorari.
Op. Pet.	—Decision of Court of Appeals reprinted in Zenith's Petition.
R.	—Printed record filed by HRI with the Court of Appeals.
Z.	—Printed record filed by Zenith with the Court of Appeals.
PX	—HRI trial exhibit.
DX	—Zenith trial exhibit.

Throughout this brief, emphasis has been supplied unless the contrary is indicated.

[2] Case No. 48 C 1818, in the District Court for the Northern District of Illinois (PX 38-42, R.2075-128).

same conspiracy and that HRI was a co-conspirator (Pet. 11). Although denying participation in any conspiracy, HRI as an alleged joint tortfeasor has the benefit of the 1957 releases (R.1979), including release of future damage from past acts (R.224-26).

In the instant case, the trial judge, without opinion, "mechanically adopted" the findings and conclusions proposed by Zenith's[3] calling for damages on Zenith's antitrust counterclaim against HRI of over $48 million after trebling (R.107-29). The findings were based on Zenith's claim that its exports to England, Australia, and Canada had been interfered with by patent pools in those countries which refused to license imports and brought or threatened to bring patent infringement suits against people who imported without a license. Before the entry of judgment, HRI through additional counsel moved for withdrawal of the findings and conclusions and for dismissal of or for further hearings on the counterclaim, on the basis, *inter alia,* of the failure of proof, the effect of the 1957 releases, and the effect of governmental embargoes in England and Australia (R.129-41).

The trial judge denied the motion as to Canada and entered a judgment for $19,042,173 against HRI and its parent, Hazeltine Corporation, for alleged damage to Zenith's Canadian exports (R.248).[4] However, the District Court did allow the filing of affirmative defenses as to all three countries and ordered further hearings on the extent of damage as to England and Australia (R.2039-40).

---

[3] See *United States* v. *El Paso Natural Gas Co.,* 376 U.S. 651, 656 (1964).

[4] In addition, the judgment held the patent invalid, not infringed, and misused; and granted an injunction as to domestic patent misuse and prohibiting restriction of Zenith's exports (R.248-49).

After an additional hearing, the trial judge found that governmental embargoes had excluded Zenith from any entry into England from World War II until June 8, 1959, and into Australia from World War II until April 1960 (R.4414-16). Zenith did not appeal from these findings.

Zenith's president, Wright, and its executive vice-president, Kaplan, who had been the principal witnesses for Zenith at the original trial, were recalled by the trial judge to testify *a second time* on how they had determined the amount of Zenith's damage claims as to Australia and England, which the trial judge had accepted as correct. Although the trial judge characterized their testimony on recall as not "believable" (R.4145-46), he entered judgment as to England and Australia in the amount of $15,919,458 (R.4161, 4163), using a damage formula not based on anything in the record (R.4146-47).

On appeals from the two judgments aggregating $34,961,631 (more than the combined net worth of HRI and Hazeltine Corporation),[5] the Court of Appeals reversed the antitrust judgment solely on the issue of the fact of damage, and did not pass on any other issue,[6] saying:

---

[5] Although the Petition characterizes the "Hazeltine companies" as among the "largest electronics companies in the world" (Pet. 28), HRI, which is engaged solely in the business of research, development, ownership and licensing of U. S. patents in the radio and television field (R.1063), had a net income in 1964 of $219,777 and a net worth of $3,184,419 (R.221). In 1964 the net income of Hazeltine Corporation and all its subsidiaries including HRI was $1,132,092 and their net worth was $21,068,763 (R.221). On the other hand, Zenith which claims to be the largest U. S. manufacturer of television sets (PX 62, R.2177) and possibly the largest manufacturer of radios (R.1770) had net earnings after taxes in 1962 (the only year for which Zenith figures are of record) of $19,637,068 and a net worth of $108,523,737 (PX 62, R.2177, 2181-82).

> "We agree with HRI that Zenith failed to sustain the burden of proving the essential *fact* of damage in the relevant period.
>
> * * *
>
> "We hold that the finding of the district court that Zenith had been injured in its business by the activities of the alleged unlawful conspiracies in Australia and England is clearly erroneous.
>
> * * *
>
> "We hold that even though there is some testimony of damage suffered by Zenith in the damage period as a result of pool activities in Canada, we have a firm conviction that the district court made a mistake in inferring from the entire testimony that the essential element of *fact* of damage had been established by Zenith" (Op. Pet. 76, 79-80, 81; emphasis Court's).

The Court of Appeals also struck provision C relating to foreign patent pools from the injunction (Op. Pet. 83-84), affirmed the judgment holding the patent invalid, affirmed as to one misuse finding, affirmed the judgment for $150,000 for domestic patent misuse, and modified certain of the injunctive provisions relating to domestic patent licensing (Op. Pet. 71-75).[7]

SUMMARY OF ARGUMENT

I. *This is not a proper case for certiorari.* The Petition raises issues of fact, not matters of law. The Court of

---

[6] Thus, although Zenith suggests (Pet. 15, 28) that the Court of Appeals concurred in the finding of unlawful conspiracies, the fact is that the court did not find it necessary to pass on the question of whether HRI was a party to alleged unlawful conspiratorial activities (Op. Pet. 76).

[7] The vacating of the judgments as to Hazeltine Corporation (Op. Pet. 61-65), and Zenith's attack thereon (Question 11, Pet. 5), are dealt with in the separate brief of Hazeltine Corporation.

Appeals properly applied the standards of Rule 52(a) in reversing findings of fact by the trial judge. Certiorari was not intended to provide the losing party with a second appellate review of the facts.

II. *The Court of Appeals' determination as to the fact of damage is fully supported by the record.* The record shows that a government embargo prevented importation of Zenith's products into Australia until April 1960. There was no evidence of any pool interference since the early '30s with attempts by Zenith to export to Australia. Licenses permitting imports have been available from the Australian patent pool since 1951, and radio and television sets have been imported into Australia.

A similar embargo prevented Zenith from importing into England from 1939 to June 1959. Since that time, Zenith has exported radios to England without any interference by the English patent pool. Contemporaneous Zenith documents conclusively show that the reason Zenith did not enter the British television market was that its American-made television sets would not function under the then-existing British 405-line broadcasting system, and it was waiting during the entire relevant period for an expected change to a 625-line system before attempting to export to England. A 1962 report from Zenith's English distributor said: "Nobody knows yet when the regular [625-line] transmissions will start and until such time naturally we cannot start marketing."

Zenith's claim that it could not export radio and television sets to Canada in the absence of a pool license without exposing its products to confiscation and its distributors or dealers to patent infringement suits is refuted by the record which shows that, in the period involved in this case, Zenith has exported and sold its radio and television sets in Canada without a pool license, no Zenith products have been confiscated, and none of its distributors or dealers has been sued for patent infringement or even threatened. Following its 1957 settlement with RCA, General Electric, and Western Electric, Zenith entered the Canadian market, considering its sets fully licensed. It sold tens of thousands of radio and television sets in the four-year period involved in this case.

The Court of Appeals here relied upon no principle of law which is in conflict with either *Bigelow* v. *RKO Radio Pictures, Inc.*, 327 U.S. 251 (1946), or *Continental Ore Co.* v. *Union Carbide Corp.*, 370 U.S. 690 (1962), both of which were jury cases involving factual situations substantially different from the case at bar.

III. *The instant patent infringement suit was not brought in furtherance of any alleged conspiracy.* Zenith's counsel admitted at trial that HRI's charges of infringement involving U.S. patents "didn't have anything to do with the overall conspiracy." The trial court agreed there was no merit to Zenith's contention. The Court of Appeals was correct when it said, "There is nothing in the record to show that this suit had any effect to damage Zenith's Canadian business" (Op. Pet. 81).

IV. *The facts did not warrant an injunction.* There is no question here of the construction of Section 16 of the Clayton Act but rather a question of fact as to whether the record shows a "*threatened* loss or damage" to Zenith. Since all of the acts relied upon by Zenith are old and the record shows the absence of any current threat to Zenith in any of the countries involved, the Court of Appeals correctly held that there was no probability of loss or damage to Zenith.

V. *The domestic patent misuse issues raised by the Petition are moot.* The patent in suit has been held invalid, a finding of domestic misuse on other grounds was affirmed, Zenith has been awarded all of the damages it requested, and HRI has not sought review of these holdings. But even if not moot, there is no merit to Zenith's contention that there were other grounds for finding misuse. The 50-80-100% license offer was reasonable in light of commercial realities and the royalty basis proposed by HRI was proper under *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U.S. 827 (1950).

ARGUMENT

I. SINCE THIS CASE INVOLVES ONLY ISSUES OF FACT AND THE COURT OF APPEALS FOLLOWED THE STANDARDS OF RULE 52(a), THERE IS NO REASON TO GRANT CERTIORARI.

Rule 52(a) of the Federal Rules of Civil Procedure provides that findings of fact in actions tried without a jury may be set aside when "clearly erroneous." This Court has determined that:

> "A finding is 'clearly erroneous' when *although there is evidence to support it,* the reviewing court *on the entire evidence* is left with the *definite* and *firm conviction* that a *mistake* has been committed." *United States* v. *U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948).[8]

The Court of Appeals' review of the trial record in this case caused it to have such a conviction.

This is a Rule 52(a) case and nothing more. Although the questions presented and arguments made throughout the Petition are repeatedly phrased as involving "matter[s] of law," almost all of them are ultimately based on the contention that the Court of Appeals made a mistake

---

[8] This test has been uniformly followed, see *McAllister* v. *United States*, 348 U.S. 19, 20-21 (1954); *Commissioner* v. *Duberstein*, 363 U.S. 278, 291 (1960); *Guzman* v. *Pichirilo*, 369 U.S. 698, 701-03 (1962); *United States* v. *Singer Mfg. Co.*, 374 U.S. 174, 194 n.9 (1963).

as to the facts. For example, Zenith asserts that the Court of Appeals held "as a matter of law" that the patent pools "could cause no damage to Zenith . . . as an exporter of radios and television sets" (Question 1, Pet. 2) and that Zenith "cannot be injured . . . where substantial and uncontested evidence in the record shows that Zenith's sales of electronic products were prevented or substantially curtailed in such foreign markets" (Question 2, Pet. 2-3). But the Court of Appeals made no such holdings. It held only that as a matter of fact the pools *had not* caused damage to Zenith's exports and Zenith's sales of electronic products *were not* curtailed by the pools.

No matter how Zenith attempts to label its contentions or to characterize the holding below, the Court of Appeals' opinion shows that the basis for its determinations was solely factual and that the findings of fact adopted by the District Court were clearly erroneous under the standards of Rule 52(a) (Op. Pet. 76-81).

Thus, the issue raised by Zenith's Petition is whether this Court should provide a second appellate review of the facts. "[J]urisdiction was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing." *Magnum Co.* v. *Coty,* 262 U.S. 159, 163 (1923); see also *Graver Mfg. Co.* v. *Linde Co.,* 336 U.S. 271, 275 (1949); *Labor Board* v. *Pittsburgh S.S. Co.,* 340 U.S. 498, 502-03 (1951).

Furthermore, Zenith ignores the distinction between a jury determination[9] and findings of a trial judge, made clear by the Court in *United States* v. *U.S. Gypsum Co.*, 333 U.S. 364, 394-95 (1948). For example, by Question 6 (Pet. 4) and its argument (Pet. 30-32), Zenith suggests that the Court of Appeals was bound to view the evidence in the light most favorable to the petitioner and to accept *all inferences* drawn by the trial court, thus incorrectly treating the trial court's findings of fact as if they were a jury verdict. But a court of appeals can review and reject the inferences drawn by a trial court even when there is *some* evidence to support them, if they are clearly erroneous. See *United States* v. *Singer Mfg. Co.*, 374 U.S. 174, 194 n.9 (1963); *United States* v. *U.S. Gypsum Co.*, 333 U.S. 364, 394-95 (1948).

---

[9] See *Commissioner* v. *Duberstein,* 363 U.S. 278, 290-91 (1960): "Where a jury has tried the matter upon correct instructions, the only inquiry is whether it cannot be said that reasonable men could reach differing conclusions on the issue."

Here, the Court of Appeals gave this case and its six thousand page printed record thorough consideration. The briefs of the parties, excluding the patent validity and infringement issues, exceeded 400 pages. The court heard oral argument for one full court day and had the case under advisement for almost seven months. The opinion itself reveals thorough and detailed consideration of the record. There is no reason for a second appellate review by this Court.

II. THE COURT OF APPEALS' DETERMINATION THAT THE DISTRICT COURT'S FINDINGS AS TO THE FACT OF DAMAGE WERE CLEARLY ERRONEOUS RAISES NO QUESTION OF LAW REQUIRING DECISION BY THIS COURT.

Zenith claimed that patent pools in Australia, England, and Canada had interfered with Zenith's exports of radio and television sets to those countries by refusing to license Zenith products and suing or threatening distributors who sold Zenith products. Zenith claimed and the trial court adopted June 1, 1959, to May 31, 1963 (DX 220, R.3905;

Finding XXXVI, R.123) as the period in which Zenith was allegedly injured and for which it sought damages.[10] Zenith further limited the time period by an affidavit filed with the trial court in which Zenith's attorney expressly disclaimed injury from acts occurring prior to April 1960.[11] But the Petition points to no acts after April 1960 which Zenith claims injured it.

A. Australia

The conclusion of the Court of Appeals that Zenith had failed to prove the fact of damage with respect to Australia is fully supported by the record:

"Until April 1960, Australian government regulations prevented Zenith's selling radio and TV sets in that country" (Op. Pet. 78). From 1939 until April 1960, the Commonwealth of Australia imposed restrictions which prevented the importation of radio or TV sets from dollar countries, including the United States (R.4415, 4417).

"Zenith's case rests on the testimony of its officers that conversations between Zenith employees and Australian businessmen who were not members of the patent pool led it to believe that it could not obtain a license to import radio and TV receivers into Australia after 1960. There is no evidence that Zenith ever attempted to obtain a license from the Australian pool . . ." (Op. Pet. 78). Zenith's only evidence was hearsay testimony of its president, Wright, that Zenith had been thrown out of Australia "in either the late twenties or the early thirties" (R.1398), and his testimony that at some unspecified time he had talked to persons not connected with the pool who indicated they *thought* that a patent license permitting imports could not be obtained (R.1397). But Zenith was never sufficiently interested to inquire of the pool as to the availability of a license (R.1397-98; 1462-63).

---

[10] For convenience, this period was used instead of the period beginning May 22, 1959, the actual four-year period preceding the counterclaim.

[11] Zenith filed its answer on April 7, 1960 (R.4-9). On the 21st of March, 1963, in order to obtain leave to file a counterclaim at such late date, Zenith filed an affidavit by its vice-president and attorney of record, Francis W. Crotty, which stated that the matters "which are the proximate cause of the damages alleged and require the relief sought in said counterclaim, occurred *after* the filing of the answer herein" (R.47).

"[N]or is there any proof of use by the Australian patent pool of restrictive license forms to prevent import" (Op. Pet. 78). The record shows that since at least as early as 1951, the Australian patent pool has been offering patent licenses which would permit imports of radio and TV sets from foreign countries, and that the license form which Zenith relied on to show a restrictive policy was a license designed specifically for licensing of *local* Australian assemblers (DX 192, R.3669; 1726).

"Indeed, during the post-1960 period a large number of low priced Japanese radio and TV sets were sold in Australia" (Op. Pet. 78-79). Official Australian government records (in evidence) show that, for example, from 1960 to 1964 over 485,000 radios were imported into Australia from Japan and that in fiscal 1963-64 over 2700 television sets were imported from Japan (R.4353-65). The pool did not prevent these sales, and there is no showing that Zenith would have been treated any differently.

"Actually, high import duties and shipping costs posed a formidable barrier to Zenith sales". (Op. Pet. 79). For most of the period, import duties on television sets were a minimum of 45%, *plus* a flat charge of $55.50 per set (PX 70, R.4227; PX 71, R.4237-38).

"No specific findings were made with regard to how the alleged conspiracy prevented sales by Zenith in Australia" (Op. Pet. 78). There was simply no evidence and no trial court finding that the Australian pool did *anything* to interfere with any attempted exports by Zenith to Australia.

On the basis of these facts, the Court of Appeals found that "[t]here is *no evidence* to warrant the inference that Zenith intended to or was prepared to enter the Australian market" (Op. Pet. 79) and that "there is *no testimony that could* reasonably support a finding of fact of damage there" (Op. Pet. 78). These determinations certainly raise no questions of law, and Zenith's Petition points out no reason for this Court to review them.

B. England

The conclusion of the Court of Appeals that Zenith failed to prove the fact of damage with respect to England is fully supported by the record:

"A World War II embargo prevented Zenith from importing its products into England until June, 1959" (Op. Pet. 79). The record shows that the British government barred imports of radio and TV sets from dollar countries including the United States from 1939 until June 8, 1959 (R.4408-17).

"At that date all basic radio patents had expired, and Zenith had no difficulty in doing radio business in England" (Op. Pet. 79). Zenith's president so testified (R.1386, 1396), and the District Court so found (Finding XXII, R. 116). Adam Ramsay, who operated as United Mercantile Company in London, was appointed distributor for Zenith products in June 1959, and thereafter imported and sold Zenith radio sets in England with no interference from the English pool (R.1385-86).

"The difficulty Zenith had in the English market with its TV products cannot reasonably be attributed to the activity of an unlawful conspiracy in that country. . . . There was no testimony that the British pool, during the damage period, had threatened or filed suit on any patents" (Op. Pet. 79). There was no testimony of any threat or suit by the British patent pool against Zenith after 1937 (DX 104, R.2772; 1395-96).

"Zenith sets manufactured in the United States operated on 525-line and 625-line scanning signals. The English standard was a 405-line signal until changed to 625-line *after the damage period*. . . . We think it is unreasonable to infer that Zenith intended to and was prepared to enter the English television market during the damage period. The only reasonable inference is that it was *waiting for a change in English standards to a 625-line system*" (Op. Pet. 79). The record fully supports this conclusion:

First, at the original trial in April 1964, Zenith's president, Wright, and its executive vice-president, Kaplan, created the impression that Zenith had sent to Ramsay (the English distributor) for marketing in England television sets which had been engineered by Zenith to receive the English 405-line transmission or which were easily convertible by the distributor with a kit supplied by Zenith; and that in fact the distributor had attempted to market such sets (R.1386, 1463, 1467, 1680, 4096). This testimony was summarized by Zenith's counsel: "all the changes that were necessary . . . the distributor could make in a back room with a screwdriver" (R.1680). However, after the original trial, Ramsay, the English distributor, was deposed and his testimony revealed that the original testimony of Wright and Kaplan was grossly misleading (R.4660-62, 4690, offer of proof).

As a result, in November 1965, in cross-examination on recall, Wright was forced to admit that *no sets* built to receive the 405-line system had ever been sent to the English distributor (R.4120), that *he did not know* whether any sets had been altered by the distributor to receive the English transmission (R.4121), that he *did not know* whether the distributor had ever attempted to market any sets equipped to receive the 405-line transmission (R.4122), and that although his previous testimony concerning conversion kits plainly referred to television sets, the only conversion kits he knew of were for "add[ing] long wave to radio sets" (R.4125).[12]

Second, a contemporaneous series of letters and telegrams between Zenith and Ramsay showed beyond cavil that Zenith was delaying entry into the English market until *after* an expected change to the 625-line system (Bulk Exhibit DX 112, R.2801-35). As one example, in November 1962, near the *end* of the period for which Zenith seeks damages, Ramsay wrote to Zenith:

> "Nobody knows yet when the regular [625-line] transmissions will start and *until such time* naturally we cannot start marketing" (DX 112, R.2835).

Zenith's only answer is the assertion that proof that it was not prepared to enter the English market "came from Hazeltine's rejected offers of proof" (Pet. 20-21). On the contrary, this proof was not only in the record but it is in one of Zenith's own exhibits (DX 112, R.2801-35). Moreover, it is the type of evidence, *viz*, contemporaneous documents, which *destroys* any basis for a contrary conclusion. *United States* v. *duPont & Co.*, 353 U.S. 586, 602 (1957).

---

[12] In view of this shocking and unexplained change of testimony on the part of Zenith's chief executive officer, the Court of Appeals was quite charitable when it said:

> "Zenith was not *aided,* in showing loss of probable profits, by the testimony that its man in England could adjust Zenith sets to the English standard 'with a screwdriver in the back of the shop in a few minutes'" (Op. Pet. 79).

Under such circumstances, no issue of law is raised by the Court of Appeals' conclusion that "Zenith failed to prove the fact of damage with respect to the English market" or its holding that "the finding of the district court that Zenith had been injured in its business by the activities of the alleged unlawful conspiracies in Australia and England is clearly erroneous" (Op. Pet. 79-80).

C. Canada

The Petition contends that the proof of damage in the Canadian market occasioned by the Canadian pool was largely documentary and not denied, and asserts that Zenith could not export its sets to Canada without a pool license "without exposing its products to *confiscation* and its distributors and dealers and customers to patent infringement suits" (Pet. 7). As support, Zenith cites a number of exhibits, all of which are dated in the early 1950's *prior to* the 1957 settlement (Pet. 7). Moreover, the record shows that in the period involved in *this* case Zenith has exported and sold its radio and television sets in Canada *without* a pool license, no Zenith products have been confiscated, and none of its distributors or dealers or customers has been sued for patent infringement or even threatened (R.1393-94, 1400; DX 216, 3871-82).

As a part of the 1957 settlement of its litigation with RCA, General Electric, and Western Electric (see p. 3, *supra*), Zenith received a world-wide license from those companies under all their patents including their patents in the Canadian pool (Finding XXII, R.116). As a result, Zenith in late 1958 entered the Canadian market with radio and television sets (Finding XXX, R.120), claiming that as a result of these and other direct licenses its sets were "fully licensed to the extent that they employ *any* patents administered by". the Canadian pool (DX 138, R.3121, 3124).

During the four-year period involved here, Zenith actively promoted its products in Canada and sold tens of thousands of radio and television sets there (DX 220, R.3905). By 1961 it had over 6% of the radio market and 5% of the television market (DX 220, R.3905).[13] Despite all this activity, the pool did nothing. Wright, Zenith's president, admitted that he could not recall a dealer complaining of interference from the pool after 1958 (R.1393-94), and Zenith offered no dealer or distributor testimony.[14] Indeed, the only interference with Zenith's Canadian sales during the period relevant here was (according to Zenith's own 1962 Annual Report in evidence as PX 62, R.2175) an increase in the Canadian tariff on American goods and an unfavorable change in the currency exchange ratio (R.2178).[15]

---

[13] In these beginning years, Zenith's Canadian television market share was comparable to the share it obtained in its first years in television in the United States (R.4436, offer of proof taken from Zenith's answers to interrogatories in the *RCA* case).

[14] This failure to call distributor witnesses undercut Wright's vague generalities concerning "clouds" and "feeling of uncertainty" among distributors (R.1379, 1412). *Interstate Circuit* v. *United States*, 306 U.S. 208, 226 (1939). Zenith admits that the Court of Appeals chided it for not calling any distributor as a witness (Op. Pet. 80), but attempts to excuse its failure by contending that distributors were a part of the Canadian conspiracy (Pet. 21 n.3). Of course, the distributors to which the Court of Appeals had reference were Zenith's own distributors who would have been able to testify about interference from the pool had there been any.

Ignoring these undisputed facts, Zenith makes a scattershot attack on the Court of Appeals' decision, making a number of arguments, none of which has merit:

First, Zenith places great emphasis upon statements in a Canadian Royal Commission report that the Canadian pool's portfolio consisted of five thousand patents, and that in the absence of a license from the pool, it is "doubtful" whether anyone could sell a radio or television receiver in Canada (Pet. 7-8). Even if the *doubt* expressed in the report were justified as to one who had *no* license under *any* of the pool's patents, it has no probative value as to Zenith. For Zenith had direct licenses under the pool's most important patents,[16] which it considered made its products "fully licensed to the extent that they employ *any* patents administered by Canadian Radio Patents Limited" (DX 138, R.3121; see also R.3124), and *without a pool license* Zenith was, in fact, able to sell tens of thousands of radio and television sets in Canada (DX 220, R.3905).

---

[15] 15. In addition to the 1962 Report which was in evidence, Zenith's annual reports for 1957-1961 were before the trial court as a part of HRI's offer of proof made before entry of judgment (R.180-85). Following the announcement in the 1957 Report of the inauguration of an "aggressive program" to go into Canada (R.180), these reports show that during the very period in which it now claims to have been injured, Zenith was achieving outstanding success in Canada (R.180-85). For example, according to its 1961 Report, Zenith's Canadian operation "made gratifying progress during the year, selling more television receivers than in the two previous years combined. Consistent national advertising and the enthusiasm of distributors and dealers have created a growing demand for Zenith products in the Canadian market" (R.184-85). *Cf. Jaffke* v. *Dunham,* 352 U.S. 280, 281 (1957).

[16] 16. Zenith had a direct license under the patents of RCA, which at one time held over 79% of the pool's important patents (DX 166, R.3318). It also had a license from General Electric and Canadian General Electric, the pool's largest shareholder (R.1377); from Western Electric and under the Parker intercarrier sound patent (R.1337, 1402).

Second, Zenith refers to the 1958 pool advertisement relating to pool patents appearing in a Canadian trade publication and argues that the Court of Appeals held that the "regular circulation" of such notices "could not *as a matter of law* be used as proof of the fact of damage" and that "a threat to sue Zenith's customers *as a matter of law* cannot be a damage causing overt act pursuant to the conspiracy" (Pet. 13). The court made no such holding. What the Court of Appeals held was that there was no showing that the 1958 notice had any effect on Zenith's sales (Op. Pet. 80).[17] Although Wright testified the notice was typical of what had regularly appeared "prior to 1957" (R.1374), neither he nor anyone else ever testified that such a notice appeared again after Wright's protest to the pool in 1958 concerning its publication (R.1370-71, 1394).

Third, Zenith relies (Pet. 14) on conversations between a Canadian pool representative and Zenith's subsidiary, culminating in a conversation on May 12, 1959, between the president of the Canadian pool and two of Zenith's lawyers in Chicago (R.1332). But there was no showing that these conversations adversely affected Zenith's Canadian business. As the Court of Appeals pointed out (Op. Pet. 81), Zenith continued thereafter to export to Canada without interference, it spent large sums on advertising its products in Canada[18] and steadily increased its market share until the tariff increase.

---

[17] The notice was general and made *no* reference to Zenith (DX 138, R.3122).

An additional answer to the *Second* and *Third* contentions, discussed above, is that the last pool notice appeared in August 1958 and the final Canadian pool visit was on May 12, 1959. Both of these events were not only outside the period for which Zenith sought damages in the trial court (see note 10, p. 12, *supra*), but also prior to April 1960 (see note 11, p. 12, *supra*).

Fourth, Zenith asserts (Pet. 31) that the Court of Appeals held that "repeated and futile demands for unavailable pool licenses are a condition precedent to establish the fact of damage in the instant action" and contends that this supposed holding conflicts with *Continental Ore Co.* v. *Union Carbide Corp.,* 370 U.S. 690 (1962). The Court of Appeals made no such holding. It merely listed the fact that Zenith had not sought a pool license and that Zenith had taken the position that it was fully licensed as a result of the 1957 settlement, rendering a pool license unnecessary, as among many factors which, when taken together, showed that Zenith was not in fact injured in the four-year period for which it sought damages in this case (Op. Pet. 80-81).

---

[18] Zenith's president had asserted that Zenith had held back on its advertising and promotion in Canada, but the record shows, as noted by the Court of Appeals (Op. Pet. 81), that in 1960 Zenith spent 11% of its Canadian TV sales and almost 13% of its Canadian radio sales on advertising (DX 218, R.3884). And the testimony of Kaplan, Zenith's executive vice-president, indicated that Zenith did *not* hold back but spent 10-11% on advertising, higher than normal, "as a result of getting started into business in Canada" (R.4085).

Fifth, Zenith argues (Pet. 30) that the decision of the Court of Appeals "in effect reverses" *Bigelow* v. *RKO Radio Pictures, Inc.*, 327 U.S. 251 (1946). According to Zenith, *Bigelow* holds that the Court of Appeals lacks the power to reverse any finding based on an inference from the "guesstimates"[19] of Wright and Kaplan that in Canada Zenith could have achieved 20% of the market instead of the 5% it did achieve. This argument is erroneous for a number of reasons:

Zenith misstates the Court of Appeals' position when it says that the court held that the trial court *could not* draw an inference of injury from the facts here "as a matter of law." The Court of Appeals held only that *considering the entire record* it had a firm conviction that the trial court had made a mistake in inferring the fact of damage.

The testimony of Wright and Kaplan is not evidence of the fact of damage *in the period relevant to this case.* Neither Wright nor Kaplan claimed that Zenith's failure to have 20% of the Canadian market during the four-year period was due to acts occurring during the period. Instead, both testified only that Zenith would have built up to the 20% market share *by the beginning* of the damage period and could have profited from that market share during the damage period had it not been excluded from the Canadian market for a "great many years" *prior* thereto (R.4069, 4091, 4113). But whatever lack of market share and resulting loss of profits Zenith claims to have suffered after September 1957 as a result of failing to build up its Canadian market *prior* to that time was released and fully compensated for by the RCA settlement.[20]

---

[19] The term "guesstimate" was applied to this testimony by the trial judge (R.1444, 4146).

[20] As the Court of Appeals held, the effect of the settlement was to release and to preclude recovery by

Zenith (Pet. 30) ignores the fact that in *Bigelow* this Court said a jury may "conclude as a matter of just and reasonable inference" (327 U.S. at 264) that defendant's wrongful acts had caused proven damage to the plaintiff *if the damage is not shown to be attributable to other causes.* No such inference can justly or reasonably be drawn in this case because (1) Zenith's witnesses themselves *attributed its lack of a 20% market share to acts occurring prior to* the period for which damages were claimed, and (2) Zenith's 1962 Annual Report, in evidence, attributes the only injury to Zenith's business shown in the record to have been suffered during the four-year period to an increase in the Canadian tariff and a change in the currency exchange regulations (PX 62, R.2178).[21]

Zenith for future damages resulting from activities of the Canadian pool prior to September 27, 1957, the date of the settlement (Op. Pet. 82-83). Zenith does not dispute the principles applied by the Court of Appeals, but instead argues (Pet. 11) that the settlement is an admission of the fact of damage in the years *after* that settlement. But the Court of Appeals correctly held that (1) the settlement of Zenith's case against RCA, General Electric, and Western Electric constituted no admission as to the fact of damage (Op. Pet. 83); and (2) even if there was damage *prior* to the 1957 settlement, that fact and the settlement do not prove the fact of damage *after* 1957 (Op. Pet. 83).

[21] While Zenith's 1957 Annual Report referred to an alleged cartel which had "previously" excluded Zenith from participation in the Canadian market (R.180), the so-called cartel is never again mentioned in Zenith's annual reports even though its reports are filled with statements attributing difficulties experienced in various export markets, including Canada, to severe foreign competition, decline in industry sales, currency problems, tariffs and the like (offer of proof, R.180-85).

There is *no* testimony to support a conclusion that Zenith's failure to achieve any greater percentage of the market was due to any antitrust violation occurring during the four-year period claimed by Zenith and certainly not since April 1960 (see note 11, p. 12, *supra*). Indeed, starting with its market position at the beginning of the period involved here, there is no reason to believe on this record that Zenith could have done any better in the Canadian market than it actually did.[22]

Finally, Zenith overlooks the fact that the trial court decision in *Bigelow* was a jury verdict, whereas this case involves findings of fact by the trial judge without a jury (see pp. 10-11, *supra*).[23] Even assuming that the trial court was entitled to draw the inference for which Zenith contends (and we have shown that no such inference was proper), the Court of Appeals had the power to review the findings and inferences and to reverse the judgment when, as here, its review of the entire evidence left it with the definite and firm conviction that a mistake had been committed. *United States* v. *U.S. Gypsum Co.,* 333 U.S. 364, 394-95 (1948).

---

[22] Zenith's representation (made for the first time in its petition for rehearing) that it was prepared to prove its 1967 sales experience in the sale of *color* television sets in Canada is, of course, irrelevant to the issue of the *fact* of damage (Pet. 10). The product involved in this case was black and white television sets, not color. *If* Zenith has been able to build up to 18% of the color television market in Canada by 1967, that is not evidence that the patent pool did anything in the 1959-1963 period which injured Zenith's black and white television sales in that period. By 1967 Zenith had been in the television market in Canada for ten years, whereas by June 1959 it had been in the market only for a few months (Finding XXX, R.120).

[23] Similarly, *Continental Ore Co.* v. *Union Carbide Corp.,* 370 U.S. 690 (1962), was a jury case, in which the Court of Appeals had to decide whether the defendant was entitled to a directed verdict (370 U.S. at 696). Accordingly, the statement of this Court in *Continental* quoted by Zenith (Pet. 31) to the effect that the Court of Appeals was bound to view the evidence in the light most favorable to Continental and to give it the benefit of all inferences does *not* apply here.

III. THERE IS NO SUPPORT FOR ZENITH'S CONTENTION THAT THE INSTANT PATENT INFRINGEMENT SUIT WAS BROUGHT IN FURTHERANCE OF AN ALLEGED CONSPIRACY.

Zenith's contention (Pet. 16-17) is made in spite of the fact that at the trial, counsel for Zenith in response to a question by the trial judge *admitted* that evidence offered by Zenith concerning charges of infringement by HRI on domestic patents *"didn't have anything to do with the overall conspiracy"* (R.1350).

Moreover, Zenith did not propose and the trial court did not adopt *any finding* that the instant patent suit was brought in furtherance of any supposed conspiracy. Indeed, in a colloquy *after* the original findings had been entered and during argument on the motion to withdraw the findings, the trial judge expressly agreed when counsel for HRI said that Zenith's theory that the domestic infringement suit was detrimental to its foreign business "doesn't make much sense" (R.1872-73) and the judge questioned whether there was any "evidence or any charges in the pleadings in regard to a conspiracy in regard to the American patents" (R.1872).

Thus, the Court of Appeals was justified in saying that the "record shows that this claim was not taken seriously by the district court" (Op. Pet. 81).[24] Since no Zenith witness ever contended that the instant patent infringement suit affected Zenith's exports to Canada, the Court of Appeals was correct in holding "[t]here is nothing in the record to show that this suit had any effect to damage Zenith's Canadian business" (Op. Pet. 81).

Furthermore, the arguments made to support Zenith's claim that this patent suit was brought in furtherance of the supposed conspiracy (Pet. 4, 16-19) are totally without merit:

(1) A holding by a United States court of validity of a U.S. patent is not binding on a Canadian court in considering the Canadian counterpart patent. The *Nu-Tec* case cited by Zenith for the contrary proposition (Pet. 17) was *reversed* on appeal and the patent held invalid in Canada in spite of the fact that its United States counterpart had been held valid. *Nu-Tec, Ltd.* v. *Hearst,* 39 Ont. Weekly Notes 110 (1930).[25]

(2) The licenses offered to Zenith by HRI contained no requirement that Zenith concede the validity of foreign counterparts of the U.S. patents (DX 2, R.2203, 2219; DX 12, R.2261, 2276; DX 18, R.2292, 2304) and Zenith cites no authority that acceptance of a U.S. patent license would be considered by foreign courts

---

[24] Zenith's contention raises an issue of fact, determined adversely to Zenith by both the Court of Appeals and the trial court. This Court will not "undertake to review concurrent findings of fact by two courts below." *Graver Mfg. Co.* v. *Linde Co.,* 336 U.S. 271, 275 (1949), *adhered to on rehearing,* 339 U.S. 605 (1950).

[25] Zenith attempts to create the impression that the patent referred to in 1958-1959 pool negotiations with Zenith was the Canadian counterpart of the patent in suit (Pet. 14-15). However, Zenith's counsel, Crotty, *admitted* that the patent involved in the negotiations "was not the counterpart of the patent in suit" (R.1360-61).

as an acknowledgment of validity of the foreign counterparts.

(3) The granting of a domestic license does not grant an implied license to the foreign counterpart patents. The rights conferred under a patent license are coextensive with the rights granted under the patent itself, *Cold Metal Process Co.* v. *United Engineering & Foundry Co.*, 235 F.2d 224, 229 (3d Cir. 1956), and these rights have no effect in another country that has issued its own patent on the same invention. *Boesch* v. *Graff,* 133 U.S. 697, 703 (1890); *ALCOA* v. *Sperry Products, Inc.*, 285 F.2d 911, 925-26 (6th Cir. 1960), *cert. denied,* 368 U.S. 890 (1961).[26]

IV. THERE IS NO REASON TO REVIEW THE COURT OF APPEALS' DETERMINATION THAT THE FACTS DID NOT WARRANT AN INJUNCTION.

The Court of Appeals held that the facts did not justify the injunction entered by the trial judge relating to Zenith's exports of electronic apparatus and ordered that provision C of the injunction be stricken (Op. Pet. 83-84).

Contrary to Zenith's contention (Pet. 29), there is no question here of the proper construction of Section 16 of the Clayton Act. The statute is clear on its face that to be entitled to an injunction, plaintiff must show "threatened loss or damage by a violation of the antitrust laws" (15

---

[26] The only case cited by Zenith, *Curtiss Aeroplane & Mtr. Corp.* v. *United Aircraft Eng. Corp.,* 266 Fed. 71 (2d Cir. 1920), is *not* contrary to this rule and in fact supports it because the court there acknowledged that:

> "It is admitted that, if the [patented articles] which are alleged to infringe [U.S. patents] had been built in Canada . . . *under a Canadian patent,* and then brought into the United States, infringement would have been made out. But that is not this case" (266 Fed. at 79).

U.S.C. §26). The Court of Appeals held on the facts of record that "injunctive relief against 'threatened loss or damage' directed at those pools, alleged by Zenith to be unlawful conspiracies, cannot be justified under 15 U.S.C. Sec. 26" (Op. Pet. 84).

Petitioner's arguments that the Court of Appeals held: (1) that an injunction required proof of *"infringement suits* by the pool during the damage period" (Pet. 22); (2) that "proof of the fact of damage" was essential to injunctive relief (Pet. 27-28); (3) that threat of injury is no basis for injunctive relief (Pet. 22); and (4) that "as a matter of law" pools designed to stop imports cannot "be prevented under the provisions of Section 16" (Pet. 29), all find no basis whatever in the opinion of the Court of Appeals.[27]

The *Bedford Cut Stone* case relied upon by Zenith (Pet. 27), merely serves to emphasize the absence of any basis for an injunction here. In that case, this Court pointed out that there must be a "dangerous probability" that injury will occur unless enjoined (274 U.S. at 54). The facts summarized in Section II of the Argument showing the absence of the fact of damage also demonstrate that there was no such dangerous probability or threatened loss or damage as to Zenith in either Australia (pp. 12-14, *supra*), or England (pp. 14-17, *supra*), or Canada (pp. 17-19, *supra*).

---

[27] The supposed "large public interest" in this case is hardly demonstrated by the excised version of a statement made by Senator Long (Pet. 29) in June 1965, apparently on the basis of the trial court's adoption of Zenith's proposed findings, but before the decision of the Court of Appeals. Moreover, the use of asterisks in the quotation conceals the fact that when Senator Long was talking about the transmission of military information "to our enemies", he had embarked on a different subject and was not talking about either HRI or Hazeltine Corporation, but had reference to entirely unrelated companies.

In *United States v. Oregon Medical Society*, 343 U.S. 326, 333-34 (1952), the government sought injunctive relief based upon events occurring some seven years before the commencement of the suit. This Court characterized those events as "a great amount of archeology." On the record in this case, there is no evidence of any threatened loss to Zenith as to Australia since the early 1930's, as to England since before 1939, and as to Canada since the 1957 settlement.[28] While Zenith relied upon two Canadian post-1957 occurrences (the 1958 published notice and the 1959 visit by the pool manager), those occurrences, even if construed most favorably to Zenith, would at most be like the acts in the *Oregon Medical* case which this Court called "hints . . . reviving the expulsion threat . . . but nothing came of it," which did not warrant injunctive relief (343 U.S. at 334-35).

V. ZENITH'S PETITION PROVIDES NO REASON TO REVIEW THE COURT OF APPEALS' DECISION WITH RESPECT TO ALLEGED DOMESTIC PATENT MISUSE.

Zenith's attack on the patent misuse holdings of the Court of Appeals raises moot issues. The Court of Appeals, affirming the District Court, held the patent in suit invalid, and respondent has not sought review of that holding. It also affirmed the trial court holding that HRI had misused its patents in connection with its 1962 offer to Zenith[29] and affirmed an award of $150,000, representing three times the entire damages claimed by Zenith with respect to misuse; HRI has not sought review of these holdings. Thus, all Zenith can hope to get from this Court is a decision that there were *additional* reasons to support the result reached below on the domestic patent issues. The certiorari jurisdiction of this Court was not intended for the review of such moot questions. Indeed, in *St. Pierre* v. *United States,* 319 U.S. 41, 42 (1943), dismissing a writ of certiorari, the Court stated that a "federal court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it." See also *Bus Employees* v. *Wisconsin Board,* 340 U.S. 416, 418 (1951).

---

[28] The English pool expired (DX 60, R.2515), and is out of existence (offer of proof, R.4573, 4575); the Australian pool has not refused to license imports since 1951 (R.3669-72); there is no evidence that Hazeltine Corporation any longer licenses patents to the Canadian pool; and HRI has no Canadian patents (Z. 3).

But even if these issues were not moot, Zenith's contentions on patent misuse have no merit.

The so-called 50-80-100% offer made to Zenith in 1959 involved only HRI's black and white television patents. Since there were then only three of HRI's patents in general use in any black and white receiver (R:1558, 1697-99), HRI offered to license its patents for a royalty of 50% of the package rate for one patent, 80% for two, and 100% for three or more.[30] In addition, the licensee was given the option of paying an annual lump sum of $25,000 for a license under one patent, $40,000 for two, or $50,000 for three or more patents (R.1358-60).

---

[29] The 1962 offer had to do with color patents and involved a factual issue as to the circumstances under which a "ceiling" royalty was available (Op. Pet. 72-73).

[30] Zenith's Petition (Pet. 33) charges that HRI's patent counsel admitted in a "confidential memorandum" that the 50-80-100% offer for black and white television patents was a misuse. The memorandum is quoted out of context. The quote did not relate to the offer of the 50-80-100% formula for black and white television patents (where HRI had only three patents in general use) but instead sug-

Zenith was free to take a license under only the patent or patents it needed (Op. Pet. 74). The discussions between Zenith and HRI narrowed to the single patent eventually sued upon (R.1358-60). At least eight other TV manufacturers took *not* the package but only a license under one patent, the patent here in suit (R.265-66).[31]

Whether this offer was an attempt to force Zenith to accept a package license is a question of fact. The Court of Appeals relying upon the foregoing undisputed facts correctly held that the offer was not "economic coercion" to force Zenith to accept a package license, but was "reasonable in light of commercial realities" (Op. Pet. 74).

With respect to the method of measuring royalties, Zenith does not dispute that under *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U.S. 827 (1950), a licensor and licensee can agree to a royalty provision measuring royalties on total production, but contends that

---

gested that there would be misuse *if* that formula were applied to HRI's *ten color* patents. But the record shows that this formula was never offered in connection with color patents (R.1359, 1558, 1563, 2337).

[31] Zenith contends that the Court of Appeal's decision directly conflicts with *American Securit Co.* v. *Shatterproof Glass Corp.*, 154 F.Supp. 890 (D. Del. 1957), *aff'd*, 268 F.2d 769 (3d Cir. 1959), *cert. denied*, 361 U.S. 902 (1959) (Pet. 33). However, this case is obviously different from *American Securit*, where the license offer called for the same royalty for one patent as for a group of patents and was made available only as a last resort, after the licensor had "consistently refused to license individual patents" (154 F.Supp. at 894), facts not present here.

HRI attempted to force Zenith to accept such a provision (Pet. 33-34). But there is no evidence that Zenith ever expressed any objection to this royalty provision during the negotiations or proposed any other royalty provision, and Zenith never took the position that it would take a license if some other royalty basis were used. Indeed, there is no evidence that Zenith ever discussed this royalty provision with HRI.

The net effect of Zenith's argument is that under *Automatic Radio* it would be legal for Zenith to *agree* to such a royalty basis, but illegal for HRI to *propose* it. We respectfully submit that nothing in *Automatic Radio* requires such an absurd result, and that Zenith has asserted no question warranting consideration by this Court.

CONCLUSION

For all the above reasons, Zenith's Petition for Writ of Certiorari should be denied.

Dated: May 9, 1968.

Respectfully submitted,

John T. Chadwell
Victor P. Kayser
John W. Thomas
C. Lee Cook, Jr.
135 South La Salle Street
Chicago, Illinois

M. Hudson Rathburn
20 North Wacker Drive
Chicago, Illinois

Laurence B. Dodds
160 Middle Neck Road
Great Neck, New York

Attorneys for
Hazeltine Research, Inc.,
Respondent

Of Counsel:

Chadwell, Keck, Kayser,
Ruggles & McLaren
135 South La Salle Street
Chicago, Illinois 60603
RAndolph 6-2545

Mason, Kolehmainen,
Rathburn & Wyss
20 North Wacker Drive
Chicago, Illinois 60606
FInancial 6-1677

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAY 16 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

REPLY BRIEF OF PETITIONER, ZENITH RADIO CORPORATION.

THOMAS C. MCCONNELL,
PHILIP J. CURTIS,
FRANCIS J. MCCONNELL,
JOHN BORST, JR.,
Attorneys for Zenith Radio Corporation, Petitioner.

Of Counsel:
MCCONNELL, CURTIS, MAHON & BORST,
134 South La Salle Street,
Chicago, Illinois 60603,
RA. 6-9131.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

PAGE
I. The Real Question Presented 1-3
II. There Is No Defense to the Injunction Issue.... 3-6
III. The Fact of Damage Was Not Denied 6-9
IV. Answer to Other Issues 8
Conclusion 9

TABLE OF CASES.

Becken Co. v. Gemex Corp., 280 F. 2d 508 (C. A. 7, 1960) 9
Bigelow v. R K O Radio Pictures Inc., et al., 327 U. S. 251 (1946) 3
Continental Ore Co. v. Union Carbide Corp., 370 U. S. 690 (1962) 3
Gary Theatre Co. v. Columbia Pictures Corp., 120 F. 2d 891, 894 3
Graver v. Lind, 336 U. S. 271 (dist.) 4
Grepke v. General Electric Co., 280 F. 2d 508, 513 (C. A. 7 1960) 9
Magnum v. Coty, 262 U. S. 159 (dist.) 4
William H. Rankin Co. v. Associated Bill Posters, 42 F. 2d 152 (C. A. 2 1930) 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 1266.

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,
vs.
HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

REPLY BRIEF OF PETITIONER, ZENITH RADIO CORPORATION.

I.

THE REAL QUESTION PRESENTED.

The gist of the respondent's brief in opposition to the petition is that no question of law worthy of this Court's consideration is presented for decision here because the Court of Appeals for the Seventh Circuit has made its own determination of the facts in direct contradiction to those of the trial court. This contention ignores the fact that none of the facts shown by this record are in dispute, and that the Court of Appeals has held as a matter of law (a) that there can be no threat to petitioner's export business posed by well implemented patent pools in three foreign countries and (b) that as a matter of law no fact of damage can be shown by the existence of pools controlling the licensing of all important patents in color television which by a conspiracy of petitioner's competitors will not be licensed for the sale of imported television sets.

These rulings of the Court of Appeals raise a question of law which if not reversed by this Court will permit foreign patent pools complete immunity under the anti-trust laws to destroy the foreign trade of companies such as Zenith, and this at a time when adverse foreign trade balances threaten the integrity of the American dollar and the entire financial machinery for carrying on trade by American companies in foreign markets.

We reiterate that as stated in the petition, this Court now has before it for decision the question of whether or not the Court of Appeals decision, which encourages the activity of foreign pools, and Hazeltine's participation therein, can stand without putting judicial sanction on such illegal activity. To characterize such an issue as one merely raising a routine issue of fact, as respondent's brief attempts, discloses that the entire reply is merely an attempt to bury the controlling issues under a false claim that a large record contains evidence in support of respondents' contentions when as a matter of fact the only defense respondent ever asserted at the trial was abandoned in the Court of Appeals ([illegible] 1050-52, 1054, 1628-45, 1735-40, Def. Ex's 163-8, 173; R. 3308-26, 3379-81, Z. R. 605, Trial Court Finding XXXII). The so-called large record contains only evidence in support of the trial court's findings. See citations to the findings set forth in Appendix B to the Petition.

A Senate Subcommittee had no difficulty understanding the issue when Senator Russell B. Long stated "what is especially intolerable is that United States Government funds paid for 90% of the research which enabled this company (Hazeltine) to accumulate its patents. In essence, then, public funds have been used to prevent Americans from exporting their goods." (Committee on the Judiciary, United States Senate Hearings, Jan. 1, 2, and 3, 1965, page 331.)

The decision of the Court of Appeals for the Seventh Circuit will be interpreted throughout the whole world as meaning only one thing, and that is that the Federal Antitrust laws afford no remedy to a private company to redress the illegal activities of foreign patent pools, even though such pools prevent the export of American goods and even though they are joined in by American competitors.

II.

THERE IS NO DEFENSE TO THE INJUNCTION ISSUE.

The Court of Appeals decision did not change findings of fact entered by the District Court, and described in the Court of Appeals decision as follows:

> "The District Court concluded that the alleged conspiracies had as their express purpose prevention of importation of TV apparatus made in the United States, that HRI, by participating in the conspiracies had violated the Sherman Act * * *".

The witness, Dodds, counsel for Hazeltine and its former president, and one who had managed its patent license activities for many years (R. 41), testified that his company had participated in the pools for many years, and intended "to continue to stay in the pool" (R. 1775). The Court of Appeals holds that pools proven by documentary evidence designed to stop Zenith's export business could constitute no threat to Zenith's business under 15 U. S. C. Section 26. It is obvious that where admitted and uncontradicted facts are presented by the record, the Court of Appeals decision that such facts do not justify an injunction, constitutes a question of law under the antitrust laws. See *Bigelow* v. *RKO Pictures, Inc., et al.*, 327 U. S. 251 (1946), and *Continental Ore Co.* v. *Union Carbide Corp.*, 370 U. S. 690 (1962). As stated in *Gary Theatre Co.* v.

Columbia Pictures Corp., 120 F. 2d 891, 894: "whether a conspiracy exists is a question of ultimate fact but whether the facts bring defendants within the prohibition of the statute, is a question of law." Hazeltine's reliance on *Magnum* v. *Coty*, 262 U. S. 159, and *Graver* v. *Lind*, 336 U. S. 271, 275 is misplaced. Those cases involve "concurrent findings of fact by two courts below". This case involves a reversal of a District Court's findings which are based on admitted and uncontradicted testimony.

The only answer Hazeltine makes is that the record shows Zenith had patent protection by virtue of an earlier settlement with three members of the pool. Hazeltine neglects to point out that that settlement only granted licenses on radio patents and black and white TV sets that had been issued prior to 1957. Further it is not pointed out that the settlement did not in any manner affect color TV and carried no assignments of color patents (Pl. Ex. 4, R. 2131, 2133). Further Hazeltine claims that its color patents which are now in the Canadian pool, control the color television market (R. 2194-95, 2373).

The contention also ignores the undenied testimony that Brian McConnell threatened Zenith with the assertion of patents issued after the prior settlement (R. 1332), and not included therein and that immediately after such threat the instant suit was brought on a Hazeltine patent included in the pool (R. 2195, 1332). Hazeltine now says contrary to the record that the trial court did not find that the instant suit was started pursuant to the conspiracy, but the trial court found all the issues in favor of the petitioner (R. 128), and one of the specific issues in the case was whether the suit was brought pursuant to the conspiracy as expressly alleged in the counterclaim (R. 51-2).

That the pool constituted a threat to Zenith's business in Canada was shown by Hazeltine's own evidence (Pl. Ex. 50A, R. 2162). Thus, a Canadian Commission held:

"The portfolio in respect of which CRPL had the

> right to claim licenses consisted of 5,000 patents and in the absence of a license from CRPL it is doubtful if anyone could sell in Canada a radio or TV receiver."

Even though this was Hazeltine's own evidence, it is now claimed to be worthless because Zenith did in fact export radio and TV sets in the face of the threat inherent in the activity of the pool. However, Zenith attempted to reconstitute its Canadian television business relying on the mistaken belief that they had settled their difficulties with the Canadian pool (R. 1372-1378) and in reliance on protection they believed was afforded them by the Federal Antitrust laws. In the damage computation Hazeltine was given credit for all profit made on the Canadian business (R. 3905, 1436).

The Court of Appeals decision now withdraws any such protection which will result in the destruction of Zenith's color television business in Canada, which under the protection of the District Court's injunction grew to $20,000,000 annually. If the instant decision is permitted to stand, it must be apparent to this Court that Zenith's business is subject to patent suits on the patents held by the pool whose members constitute its entire competition in the electronics industry in Canada (Def. Ex. 117, R. 2879).

It is now claimed that the pools have expired, but the documents in evidence show the claim to be false (R. 2914), and the contrary was admitted by Dodds, Hazeltine's counsel, at the trial (R. 1099, 1100). The record shows that by agreement dated March 19, 1963 the Canadian pool and conspiracy was extended by formal agreement to December 31, 1963 (R. 2914). Similarly in England the pool agreement was extended to June 30, 1964, a date after the trial of this case (R. 2515). In Australia the documents show the continuance of the pool throughout the trial (R. 3708, 3712, 3743-3746). The proofs do not show what the situation is beyond those dates because the Court ordered a cut-off date on proofs as of May 22, 1963 (Z. R. 128).

III.

THE FACT OF DAMAGE WAS NOT DENIED.

While an effort is made by the respondents to make it appear that this Court must engage in a re-evaluation of contested facts, the record discloses that no evidence was offered or received in defense except the claim that the Canadian Patent Act justified the pool. The respondent lost this issue in the trial Court (Finding XXXII, R. 1628-45, 1735-40). The issue was abandoned in the Court of Appeals.

All of the District Court's findings were on documentary evidence, or on parole evidence not denied. For example, the testimony of Wright, Zenith's president, and Kaplan, Zenith's treasurer, that Zenith's business was injured by the pools was not denied by any testimony. No witnesses from the pool were called by Hazeltine to deny this testimony, although the members of the pool consisted of all of the leading electronics companies in the world (R. 2161), and had an intimate knowledge of whether or not such testimony was true.

The Court of Appeals holds as a matter of law in the face of undisputed documentary evidence that pools designed to protect foreign markets from competition can cause no injury whatever to a corporation equipped to compete in such foreign market. Hazeltine's own witness, Henderson, admitted "the fact of damage" to Zenith in Canada. He testified as follows (R. 1627):

> "Q. So this report then says that in the face of 5,000 patents it is doubtful if anyone could sell in Canada a radio or TV set, is that right?
>
> A. That is what it says.
>
> Q. And that would include the Zenith Radio Company wouldn't it?

> A. It would include anyone as at that time who sought to sell in Canada radio receiving sets, that is right."

The respondent says the Court of Appeals decision is supported in England, because Zenith did not demand a pool license. However, such a demand if granted would have put Zenith in the conspiracy because the licensees had to agree to boycott sets not manufactured in England, as a condition to getting a license. Thus, the pool license provided that the licensee agrees "not without the previous written consent of the grantors to sell within the said territory any TV receiver which has not been manufactured in the territory for which this license is granted." (Def. Ex. 69, R. 2615.)

The record shows by undisputed documentary evidence produced from Hazeltine's files that the pools in Australia had existed over thirty-five years, and were in existence at the time of the trial, and that Hazeltine participated therein during all this time (Def. Ex. 197, R. 3727). The written evidence not denied shows that pool licenses have always precluded the licensing of any imports of American sets (Def. Ex. 197, R. 3727). The pool never in its history has granted a license to sell American sets not manufactured in Australia (Def. Ex. 197, R. 3727). The pool never in its history has granted a license to import American sets into Australia (Def. Ex. 188-195, R. 3625-3719).

The attempt to use offers of proof as evidence in this case set out at pp. 23, 15 of respondent's brief, discloses the lack of evidence in denial of the fact of damage. As we have already stated the case stands in the posture of a demurrer to the evidence raising an issue of tremendous public importance, namely whether the Federal Antitrust laws afford any redress to an American manufacturer equipped to compete in foreign markets, but barred from so doing by illegal patent pools which by conspiracy refuse to license competitive manufacturers to export sets into such foreign countries.

IV.

ANSWER TO OTHER ISSUES.

The issues of patent misuse and the dismissal of the parent company Hazeltine Corporation are discussed in the Petition and need not be reargued here except insofar as it is now claimed that the patent misuse issue is moot because the patent was declared invalid. The Court of Appeals answered this contention when it said that the issue was not moot because it was made the basis for a treble damage judgment. Further, four other black and white patents were asserted (R. 1357) and nine color television patents (R. 1341, 1345, 2281) under the conditions asserted by the petitioner to constitute misuse, and further still the injunction entered by the trial court which protected Zenith from misuse of respondent's patents under the antitrust laws was modified by striking out such protection (Page 85 of the Petition).

The issue of whether or not the Court of Appeals was free to disregard the provisions of Rule 52(a) of the Federal Rules of Civil Procedure is claimed by respondent to be inapplicable because the findings of fact were made by a judge and not a jury. The trial court in the instant case is one of the most experienced trial judges on the Federal Bench, and he found on uncontradicted evidence all the issues in favor of petitioner. The respondent says the *Bigelow* case has no application because it was a jury case. Certainly a trial court has the right to draw inferences from the evidence just as does a jury. Particularly is that true where as here the evidence is not denied, or disputed, and where just as in *Bigelow* the only evidence available to Petitioner on the issue of damages was the comparison of two markets, one open and the other restrained by conspiracies, and the testimony of the petitioner's officers that Zenith had been damaged. *Cf. William H. Rankin Co.* v. *Associated Bill Posters* (C. A. 2, 1930), 42 F. 2d 152, 155-6; *Grepke* v. *General Electric Co.* (C. A. 7, 1960), 280 F. 2d 508, 513; *A. C. Becken Co.* v. *Gemex Corp.* (C. A. 7, 1959), 272 F. 2d 1, 5.

CONCLUSION.

For the reasons given here and in the Petition, we respectfully urge that the large public interest involved in the protection of American foreign trade by Federal Antitrust laws be recognized by the granting of this Court's Writ of Certiorari.

Respectfully submitted,

Thomas C. McConnell,
Philip J. Curtis,
Francis J. McConnell,
John Borst, Jr.,
Attorneys for Zenith Radio Corporation, Petitioner.

Of Counsel:
McConnell, Curtis, Mahon & Borst,
134 South La Salle Street,
Chicago, Illinois 60603,
RA 6-9131.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUL 25 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE PETITIONER ZENITH RADIO CORPORATION.

THOMAS C. MCCONNELL,
PHILIP J. CURTIS,
FRANCIS J. MCCONNELL,
JOHN BORST, JR.,
Attorneys for Zenith Radio Corporation, Petitioner.

Of Counsel:
MCCONNELL, CURTIS, MAHON & BORST,
134 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

INDEX.

PAGE

Opinions Below 1

Jurisdiction 2

Statutes Involved 2

Questions Presented 3

Statement:

- A. Proof of injury to petitioner's business in Canada 7
- B. Proof of injury to petitioner's business in England and Australia 26
  - 1. England 29
  - 2. Australia 35
- C. Proof of the misuse defense 37
- D. Hazeltine Corporation was properly included in the judgments entered in favor of petitioner 42

Summary of Argument 50

Argument:

- I. Petitioner as a person equipped to compete in the radio and television business in Canada, England, and Australia was injured in its business and property by the respective pools within the meaning of Section 4 of the Clayton Act 59
  - (a) All petitioner had to prove under the act was a violation of the act and injury to its business resulting therefrom 59
  - (b) The amount of Zenith's damages in Canada is proven by competent and conclusive evidence stipulated as accurate and admitted in evidence without objection 76
  - (c) Zenith's damages in England and Australia were proven by substantial evidence 84
  - (d) The proofs of cartel restrictions in Australia 88

II. A demand upon patent pools and their members for a patent license permitting importation which is unavailable is not a condition precedent to maintaining a treble damage action under the antitrust laws.......... 91

III. The Court of Appeals' decision reversing the injunction against the activities of illegal pools destroys the injunction sanctions of the antitrust laws 96

IV. The misuse of patents defense asserted by Zenith was conclusively proven on this record 102

V. The use of offers of proof by the Court of Appeals as a basis for overruling the trial court's findings of fact so far departs from accepted trial procedures as to call for this Court's supervision 113

VI. The dismissal of Hazeltine Corporation from the suit is not justified by this record....... 115

Conclusion 126

Appendix A:

Findings of fact and conclusions of law on the antitrust and misuse issues annotated to the record.. A-1

Appendix B:

U. S. dollar exports of television receivers and household type radios to the Dominion of Canada by calendar year, for the years 1959 to 1967....A-25

Zenith Radio Corporation dollar exports of radio and television receiving sets to the Dominion of Canada, by calendar year, for the years 1964 to 1967 ....A-26

Certified copies of U. S. Department of Commerce, Bureau of the Census, Form M4-A, Export Sales and Orders by Month, filed by Zenith Radio Corporation for years 1964, 1965, 1966 and 1967....A-27

CITATIONS.

Cases.

A. C. Becken Co. v. Gemex Corporation (7th Cir., 1959), 272 F. 2d 1 83

Allied Chemical Corporation v. Randall (7th Cir., 1963), 321 F. 2d 320 .... 123, 125

American Arch Co. v. Canuck Supply Co., Ltd., 3 Dominion Law Report 567 72

American Securit Co. v. Shatterproof Glass Corp. (Del., 1957), 154 F. Supp. 890, affirmed (3rd Cir., 1959) 268 F. 2d 769, cert. denied (1959), 361 U. S. 902, rehearing denied (1960), 361 U. S. 973 .... 110, 111

Automatic R. Mfg. Co. v. Hazeltine Research (1950), 339 U. S. 827 .... 5, 103, 112

B. B. Chemical Co. v. Ellis (1942), 314 U. S. 495 112

Bedford Cut Stone Co. v. Journeymen's S. C. Association (1927), 274 U. S. 37 99

Bigelow v. RKO Radio Pictures (7th Cir., 1945), 150 F. 2d 877, reversed on other grounds (1946), 327 U. S. 251 .... 76, 77

Bordonaro Bros. Theatres v. Paramount Pictures (2nd Cir., 1949), 176 F. 2d 594 85

Canadian Industries Ltd. & Canadian G. E. v. Sherwin-Williams (1945), 1946 Ex. C. R. 65, 5 C. P. R. 6 72

Chicago, M. & St. P. R. Co. v. Minneapolis C & C Asso. (1918), 247 U. S. 490 .... 123, 124

Chilean Nitrate Sales Corp. v. The Nortuna (S. D. N. Y., 1955), 128 F. Supp. 938 126

Congress Building Corp. v. Loew's Incorporated (7th Cir., 1957), 246 F. 2d 587 .... 60, 95, 96

Continental Ore Co. v. Union Carbide Corp. (1962), 370 U. S. 690 .... 61, 62, 70, 92, 115

Curtiss Aeroplane & M. Corp. v. United Aircraft E. Corp. (2nd Cir., 1920), 266 Fed. 71 .... 23, 73

Dairy Foods Incorporated v. Dairy Maid Products Coop. (7th Cir., 1961), 297 F. 2d 805 60

First National Bank of Colorado Springs v. McGuire (7th Cir., 1950), 184 F. 2d 620 62

Fisser v. International Bank (2nd Cir., 1960), 282 F. 2d 231 126

Grepke v. General Electric Company (7th Cir., 1960), 280 F. 2d 508 83

Hanover Shoe, Inc. v. United Shoe Mach. Corp (1968), ——— U. S. ——— 92, 93

Haverhill Gazette Company v. Union Leader Corporation (1st Cir., 1964), 333 F. 2d 798 61

Kobe, Inc. v. Dempsey Pump Co. (10th Cir., 1952), 198 F. 2d 416 .... 93, 95

Mercoid Corp. v. Mid-Continent Invest. Co. (1944), 320 U. S. 661 112

Milwaukee Towne Corp. v. Loew's Inc. (7th Cir. 1951), 190 F. 2d 561 .... 76, 85

Momand v. Universal Film Exchange (1st Cir., 1948), 172 F. 2d 37 61

Morton Salt Co. v. G. S. Suppiger Co. (1942), 314 U. S. 488 112

Motion Picture Patents Co. v. Universal Film Mfg. Co. (1917), 243 U. S. 502 112

Paramount Famous Lasky Corp. v. United States (1930), 282 U. S. 30 67

Perma Life Mufflers, Inc. v. International Parts Corp. (1968), ——— U. S. ——— 61

R. C. A. v. The Rauland Corporation & Zenith Radio Corp. (N. D. E. D. Ill.), U. S. Dist. Ct. No. 48 C 1818 8

Radovich v. National Football League (1957), 352 U. S. 445 60

Roseland v. Phister Manufacturing Co. (7th Cir., 1942), 125 F. 2d 417 60

Shamrock Oil and Gas Co. v. Ethridge (Colo., 1958), 159 F. Supp. 693 126

Sisco-Hamilton Co. v. Lennon (7th Cir., 1957), 240 F. 2d 68 .... 123, 124, 125

Small v. Schultz (7th Cir., 1950), 180 F. 2d 351 85

Stacher v. United States (9th Cir., 1958), 258 F. 2d 112 62

Story Parchment Co. v. Paterson Parchment Paper Co. (1931), 282 U. S. 555 76

Tampa Electric Co. v. Nashville Coal Co. (1961), 365 U. S. 320 .... 83, 84

Timken Roller Bearing Co. v. United States (1951), 341 U. S. 593 97

United States v. General Electric Co., Westinghouse Electric Corp., & N. V. Philips Gloeilampenfabrieken, 1962 Trade Cases ¶¶ 70, 546, 70,428 & 70,342 (S. D. N. Y., 1962) 8

United States v. General Electric Co. (S. D. N. Y., 1948), 80 F. Supp. 98[illegible] 97

United States v. General Electric Co. (N. J., 1949), 82 F. Supp. 753 97

United States v. Harvey Steel Co. (1905), 196 U. S. 310 103

United States v. Imperial Chemical Industries (S. D. N. Y. 1952), 105 F. Supp. 215; 100 F. Supp. 504 97

United States v. Loew's, Inc. (1962) 371 U. S. 38 110

United States v. National Lead (S. D. N. Y., 1945), 63 F. Supp. 513, affirmed (1947), 332 U. S. 319 ......97, 98

United States v. Paramount Pictures, Inc. (1948), 334 U. S. 131 111

United States v. R. C. A., 1932-1939 Trade Cases ¶ 55,015 (D. C. Del., 1932) 8

United States v. R. C. A., 1958 Trade Cases ¶ 69,164 (S. D. N. Y., 1958) 8

Vicksburg Waterworks Co. v. Vicksburg (1902), 185 U. S. 65 99

Weisser v. Mursam Shoe Corporation (2nd Cir., 1942), 127 F. 2d 344 126

William Goldman Theatres v. Loew's, Inc. (3rd Cir., 1945), 150 F. 2d 738 59

William H. Rankin Co. v. Associated Bill Posters of U. S., Etc. (2nd Cir., 1930), 42 F. 2d 152 82

Statutes.

28 U. S. C. § 1254 (1) 2

Clayton Act:

Sec. 4 and 16 (15 U. S. C. §§ 15 & 26) 2, 3

Sherman Act:

Sec. 1 and 2 (15 U. S. C. §§ 1 & 2) 2

Rule 52 (a) of the Federal Rules of Civil Procedure .. 3

Miscellaneous.

Hearings, June 1, 2 and 3, 1965, Patents, Trademarks and Copyrights Sub-committee, Committee on the Judiciary, United States Senate 101

Powell, Parent and Subsidiary Corporations (1931 Ed.) Ch. I, V 123, 125

U. S. Bureau of the Census, U. S. Exports—Commodity by Country, Report FT 410, Annual Edition for years 1959-1964, December Edition for years 1965-1967 ....A-25

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 49.

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE PETITIONER ZENITH RADIO CORPORATION.

CITATIONS TO OPINIONS BELOW.

The District Court rendered no formal opinion but entered findings of fact and conclusions of law on the antitrust and misuse issues (A. 2859, 2892-2912) which are reported at 239 F. Supp. 51, 69. A copy thereof fully annotated to the record is printed in Appendix A to this brief.

The opinion of the Court of Appeals (A. 4238-63) is reported at 388 F. 2d 25.

JURISDICTION.

The judgment of the Court of Appeals was entered on December 13, 1967 (A. 4236) but its opinion was not entered until December 19, 1967 (A. 4238). Petitioner filed a timely petition for rehearing which was denied on January 23, 1968 (A. 4264, 4265, 4279). The petition for writ of certiorari was filed on March 26, 1968, and was granted on May 27, 1968. The jurisdiction of this Court rests on 28 U. S. C. § 1254(1).

STATUTES INVOLVED.

The statutory and rule provisions involved are:

Section 1 of the Sherman Act, 15 U. S. C. Section 1, providing in pertinent part:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: . . . ."

Section 2 of the Sherman Act, 15 U. S. C. Section 2, providing in pertinent part:

> "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, ..."

Section 4 of the Clayton Act, 15 U. S. C. Section 15, providing:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found, or has an agent, without

respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.''.

Seciton 16 of the Clayton Act, 15 U. S. C. Section 26, providing in pertinent part:

> ''Any person, firm, corporation or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, . . . when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, ...''

Rule 52(a) of the Federal Rules of Civil Procedure, providing in pertinent part:

> ''. . . Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses . . . .''

QUESTIONS PRESENTED FOR REVIEW.

1. Whether the federal antitrust laws protect American foreign trade from injury by foreign patent pools joined in by respondents and other American companies where such pools in order to suppress the competition of American manufactured radio and television sets refuse to grant a license under pool patents to import into the pool markets?

2. Whether petitioner was injured in its business within the meaning of Section 4 of the Clayton Act where substantial and uncontested evidence shows that petitioner's exports of radio and television sets were prevented or substantially curtailed in Canada, England and Australia because the pools would not grant a license to import and threatened importers, vendors, purchasers, and users of unlicensed sets with patent infringement suit?

3. Whether patent pools controlled by petitioner's competitors and joined in by the respondents constitute a threat of injury to petitioner's export business within the meaning of Section 16 of the Clayton Act where the Pool members agree not to license imports and to sue and threaten with suit dealers and users of unlicensed sets?

4. Whether under Section 4 of the Clayton Act petitioner was required to make a formal demand upon the patent pools during the damage period for a license to import as a condition precedent to showing injury to its business where the evidence showed and the District Court found that the pools would not grant such a license and such a demand was futile?

5. Whether the uncontradicted testimony of Zenith's officers based on personal knowledge of business conditions and concerning the volume of business which Zenith would have done in Canada, England, and Australia absent the illegal patent pools constitutes substantial evidence within the meaning of Rule 52(a) of the Federal Rules of Civil Procedure in support of the District Court's damage findings?

6. Whether the Court of Appeals by failing to accept the reasonable inferences and conclusions of the trial court drawn from undenied testimony and documents, and its refusal to view the record evidence in the light most favorable to petitioner, usurped the function of the Trial Court as the trier of the facts contrary to Rule 52(a) of the Federal Rules of Civil Procedure?

7. Whether a reviewing court can utilize rejected post-trial offers of proof, which petitioner had no opportunity to meet, in weighing the probative value of undenied testimony and exhibits in the record, and as a basis for a holding that the trial court's damage findings were "clearly erroneous."

8. Whether a patentee misuses its patent monopoly where under threat of patent infringement suits brought pursuant to a conspiracy with foreign competitors of the prospective licensee, it seeks to force the prospective licensee to accept a territorial license limited to the United States which prevents the sale of patented apparatus abroad and requires the licensee to concede the validity of the inventions contained in the counterparts of such patents held and administered in foreign patent pools?

9. Whether a patentee misuses and unlawfully extends its patent monopoly where, under threat of patent infringement suits, it requires a prospective licensee either to accept unwanted patents under a package license covering 500 patents or to pay royalties under a formula whereby any one patent in the package will be licensed at 50%, any two at 80%, and any three or more at 100% of the package rate irrespective of the quality of any particular patent?

10. Whether under *Automatic R. Mfg. Co.* v. *Hazeltine Research*, 339 U. S. 827 (1950) a patentee may compel a prospective licensee under threat of patent infringement suits to accept a license requiring payment of royalties based on the licensee's entire production of unpatented as well as patented apparatus, thereby destroying the incentive of the licensee to invent around the licensed patents?

11. Whether the Court of Appeals has the right to dismiss the cause as against Hazeltine Corporation by holding null and void a formal written pre-trial stipulation by the respondent Hazeltine Research, Inc. that for the purpose of this litigation Hazeltine Research, Inc. and its parent, Hazeltine Corporation, would be considered as one entity to avoid the necessity of proving the two corporations were one and the same, which stipulation was relied upon by the District Court and all counsel throughout the trial?

STATEMENT OF THE CASE.

This suit was started by Hazeltine Research, Inc., a wholly owned subsidiary of Hazeltine Corporation, for alleged infringement of a patent adjudicated to be invalid by both the District Court and the Court of Appeals in this case (A. 11). It was stipulated by the parties that the parent and the subsidiary corporations would be considered one and the same company for the purposes of this litigation (A. 55). The petitioner, Zenith Radio Corporation, counterclaimed for treble damages and injunctive relief pursuant to Sections 4 and 16 of the Clayton Act (A. 64), and recovered two judgments against respondents Hazeltine Research, Inc. and Hazeltine Corporation.

The first judgment was entered on April 5, 1965 pursuant to Rule 54(b) of the Federal Rules of Civil Procedure (A. 3078), and awarded petitioner treble damages in the amount of $19,042,173 for loss of sales and profits in Canada by reason of the activity of the Canadian patent pool known as Canadian Radio Patents, Ltd.[1] It also enjoined respondents from adhering to any patent pool agreements which restricted Zenith from exporting electronic apparatus into any foreign market.

The second judgment was entered on December 13, 1965 (A. 3539) and awarded petitioner treble damages in the amount of $15,919,458 for loss of sales and profits in England and Australia by virtue of the activities of the patent pools in these countries in which respondents had joined and placed their radio and television patents.

---

[1] This amount included treble damages of $150,000 for expenses incurred in defending against Hazeltine's patent infringement suit.

In entering the last judgment the Trial Court made the following comment (A. 3524):

> "There could be no question in my mind that Zenith suffered damages during the damage period by virtue of the pools which I have found, and reiterate, existed at the time of the damage period."

The Court of Appeals reversed both judgments on the ground that there was no proof in the record that either the Canadian, or English, or Australian pools caused any damage or threatened any damage to Zenith's radio and television business in those respective foreign countries (A. 4238, 4254).

A. Proof of Injury to Petitioner's Business in Canada.

The proof of injury to petitioner's business in Canada occasioned by the Canadian patent pool was in large part documentary and not denied by any witness.

Petitioner could not export its radio and television sets to Canada and sell them there without a license under the pool patents without exposing its products to confiscation and its distributors and dealers and customers to patent infringement suits (Def. Ex. 139; A. 1883, 1890; Def. Ex. 140; A. 1959, 1961; Def. Ex. 141; A. 1962, 1963; Def. Ex. 142; A. 1964, 1968; Def. Ex. 143; A. 1968, 1970-72; Def. Ex. 144; A. 1973-77).[2] The pool refused to grant a license to import. The only available license under the pool patents was for local manufacture (Pl. Ex. 50A; A. 2811, 2829-30; Def. Ex. 150; A. 2013; A. 453-4; 392, 410).

The patent pool in Canada has been before the federal courts in various antitrust proceedings on many occasions and has been the subject of five consent decrees in government civil suits. See *United States* v. *General Electric Company, Westinghouse Electric Corporation and N. V. Philips-Gloeilampenfabrieken,* 1962 *Trade Cases* ¶¶ 70,546, 70,428, and 70,342 (S. D. N. Y., 1962); *United States* v. *Radio Corporation of America,* 1932-1939 Trade Cases ¶ 55,015 (D. C. Del., 1932); *United States* v. *Radio Corporation of America,* 1958 Trade Cases ¶ 69,164 (S. D. N. Y., 1958).

---

[2] Unless otherwise indicated the exhibits cited in this brief were received in evidence pursuant to a pre-trial stipulation of the parties with reference to documentary evidence (A. 55, 72).

The same conspiracy was the subject matter of a private treble damage action in the District Court in Chicago in the form of a counterclaim filed by petitioner in a patent infringement suit similar to this action. *RCA* v. *Rauland Corporation and Zenith Radio Corporation,* United States District Court for the Northern District of Illinois, Eastern Division, Civil Action No. 48 C 1818 (Pl. Ex. 39; A. 2701; Pl. Ex. 40; A. 2726). During the course of that proceeding seven judicial opinions against the conspirators were handed down. One of them came here by petition for certiorari, denied by this Court (18 F.R.D. 440; 1956 *Trade Cases* ¶¶ 68,306, 68,475, 68,490; 1957 *Trade Cases* ¶¶ 68,712, 68,744, aff'd. 217 F. 2d 218, cert. den. 348 U. S. 968).[3]

The pool, which was the subject of this suit and prior litigation, is called Canadian Radio Patents, Ltd. It was formed some forty years ago by General Electric Company through its subsidiary Canadian General Electric Company, and by Westinghouse through its subsidiary, Canadian Westinghouse. The shareholders of Canadian Radio Patents, Ltd. are Canadian General Electric, Canadian Westinghouse, Canadian Radio Manufacturing Corp. Ltd. (a Canadian subsidiary of Phillips of Holland), Canadian

---

[3] **Proof of the above Zenith and Government proceedings was put into evidence in this case by counsel for respondents (Pl. Ex. 36-48, A. 2667-2786).**

Marconi, and Northern Electric Company (an affiliate of American Telephone & Telegraph Company and Western Electric Company). (Pl. Ex. 50-A; A. 2811, 2829; Def. Ex. 117; A. 1637; Def. Ex. 142; A. 1964).

Respondents joined the Canadian conspiracy in 1943 by entering into a license agreement with the Pool which granted to Canadian Radio Patents Limited the exclusive right to license Hazeltine patents in Canada (Def. Ex. 118; A. 1645). Under this arrangement an exclusive license with the right to include all the Hazeltine patents present and future in its licensing and litigation activities was granted to the Pool in return for a substantial share of the Pool's income from all sources (Def. Ex. 118; A. 1645, 1649, 1650-1, 1657; Def. Ex. 127; A. 1839; Def. Ex. 128; A. 1841-43; Def. Ex. 142; A. 1964-5). The pooling agreement was extended beyond the date of the filing of Zenith's counterclaim in the instant suit (Def. Ex. 119; A. 1672).

The entry of Hazeltine into the Canadian cartel by placing its Canadian patents in the Pool was by agreement made in New York City twenty-five years ago by Jack Binns, Hazeltine's president and by L. B. Dodds, Hazeltine's attorney and vice president and by Messrs. Lanoue and Fotheringham of Northern Electric Company and J. C. Macfarlane of Canadian G. E. on behalf of the Pool (Def. Ex. 128, A. 1841).

The Pool is made up of Canadian subsidiaries of American manufacturers who have pooled their electronics patents and has been and is now run by the Canadian subsidiary of the General Electric Company (Pl. Ex. 50-A; A. 2811, 2829; A. 454-5). Hazeltine Corporation's foreign patents, being the counterparts of their United States patents in the radio and television field (A. 131, 145), are included not only in the Canadian patent pool (Def. Ex. 128; A. 1841) but in the English pool (Def. Ex. 50; A.

1190; Def. Ex. 81; A. 1461) and Australian pool as well (Def. Ex. 116; A. 1636; Def. Ex. 184; A. 2357).

It was admitted by correspondence that Hazeltine knew its patents were in a Pool which would not license the import of radio or television sets into Canada. In a letter to his European agent, Dodds, the Hazeltine vice president in charge of patents, who incidentally tried the present case in the trial court, explained the effect of the restrictive agreements as follows (Def. Ex. 115; A. 1634):

> "We have always told our licensees in the United States that, while we could guarantee them no protection on their exports to foreign countries, as a matter of policy we would not collect a second royalty on sets exported to foreign countries where Hazeltine had complete control of its patent situation. *In those countries where the Hazeltine patents are included in an industry-wide pool they are, of course, beyond our control and our licensees have to make their own arrangements with such pool.*" (Italics ours)

Prior to the trial of this case Zenith counsel took the deposition of L. B. Dodds which was read into evidence at the trial as follows (A. 178-9):

> "Q. When did you find it out, whether you recall the date or not, did you look into it to find out whether or not you might be liable for being in the pool?
>
> "A. I am not quite sure how to answer it. I have been aware, of course, for a great many years, of this attack upon American companies who directly or indirectly participated in Canadian Radio Patents Limited. I have tried to keep myself informed both of any litigation involving that subject matter, or any proceedings in this country or abroad, and when I acquired any particular bit of information I just do not recall. That's a long period of time.
>
> "Q. You knew something was going on in the way of an attack by American companies against that pool, didn't you?
>
> "A. Yes.

"Q. You had known that for a long time?
"A. Yes.
"Q. You still stayed in the Pool?
"A. Most definitely, and we intend to continue to stay in the pool."

Zenith could not export its sets from the United States to Canada under any license issued by the Pool (Pl. 50-A; A. 2811, 2829-30). It was advised many times by the Pool that in order to obtain a license it had to build a factory in Canada and manufacture there (A. 454; 392, 410; Def. Ex. 150; A. 2013). Imports were prohibited under the standard license form used by the Pool and the license protected only local manufacture (Def. Ex. 122, Article II, Section 1; 1691, 1693; Def. Ex. 123, Article II, Section 1; A. 1721, 1725). The record is replete with efforts on the part of Zenith to obtain a license from the Pool that would cover imports into Canada (A. 453-4; 392, 410). These attempts were in each instance futile (Def. Ex's. 146-154; A. 1982-2021).

A succinct description of the Canadian Pool, its policies, and its effect on the business of companies such as Zenith was written by a Canadian Royal Commission. The report, dated December 31, 1959, describes the Pool at a time within the instant damage period and was read into evidence by a Hazeltine witness by the name of Gordon Fripp Henderson (A. 667, 677-83), a Canadian lawyer called by Hazeltine as an expert on Canadian patent law. It reads as follows (Pl. Ex. 50A; A. 2811, 2829-30):

> "Canadian Radio Patents Limited (hereinafter called CRPL) was incorporated in 1926 for the purpose of acting as a patent licensing agency. At the time of the presentation of its brief to this Commission it acted as the central patent licensing agency in the administration of patent rights in the radio, television and general electronics fields in respect of patents owned by its then five shareholders:

Canadian General Electric Company, Canadian Westinghouse Company, Northern Electric Company, Canadian Marconi Company, and Canadian Radio Manufacturing Company.

It also acted as licensing agent in Canada for RCA Victor Company *and Hazeltine Electronics Corporation*. . .

• • • • •

"The portfolio in respect of which CRPL had the right to grant licenses consisted of 5,000 patents, and in the absence of a license from CRPL it is doubtful if anyone could sell in Canada a radio or television receiver.

"CRPL indicated that it does not grant a license to any importer of radio or television receivers, except in the limited situation where the type or kind of radio or television receiver sought to be imported *is not manufactured by any radio or television receiver manufacturer in Canada. It is particularly in respect of the policy of CRPL in precluding importers from bringing into Canada radio and television receivers that the complaint was made to this Commission.*

"It was stated to be the policy of CRPL to enforce its patent rights against any person who sells in Canada an imported radio or television receiver which infringes any one or more of the patents in its portfolio . . .". (Italics ours)

The Canadian Pool by means of patent agents and investigators as well as by Canadian manufacturers and distributors' trade associations constantly policed the Canadian market in order to stop the sale in Canada of imported sets (Def. Ex. 144; A. 1973-77; Def. Ex. 140; A. 1959-61; Def. Ex. 141; A. 1962-3; Def. Ex. 143; A. 1968-72). Warning notices were widely published in newspapers and trade publications throughout Canada (Def. Ex's. 130-138; A. 1861-1880). These notices stated, "Newspapers from Coast-to-Coast Carry the Tremendous Total of 4,343,084 advertising messages to help put a stop to importation of cheap, substandard, imported radios" (A. 1863).

The warning notice read as follows (Def. Ex. 134; A. 1869):

> "NOTICE.
>
> "To Importers, Vendors or Users of
> Radio and Television Receivers
>
> "We wish to bring to your attention that Canadian Radio Patents Limited is a central patent licensing agency administering various important Canadian patents of invention relating to radio and television receivers.
>
> "While under the provisions of Section 46 of the Canadian Patent Act, the owner of a patent and his legal representatives have the 'exclusive right, privilege and liberty of making, constructing, using and vending to others to be used' the patented invention, Canadian Radio Patents Limited, however, in accordance with the requirements of Sections 67 and 68 of the Patent Act, has licensed the following Canadian companies for the manufacture and sale in Canada of radio and television receivers embodying said inventions:—
>
> "Addison Industries Limited, Booth Industries, Canadian Admiral Corporation Limited, Canadian Aviation Electronics Limited (DuMont), Canadian General Electric Company Limited, Canadian Marconi Company, Canadian Radio Manufacturing Corporation Limited, Canadian Westinghouse Company Limited, Chisholm Industries Limited, Cossor (Canada) Limited, Crosley Radio and Television Division, Moffats Ltd., Crystal Radio of Canada Ltd., Dominion Electrohome Industries Limited, Electrical Products Manufacturing Company Limited, Emerald Radio of Canada Ltd., Hackbusch Electronics Limited, Hallicrafters (Canada) Limited, Lifco Radio & Record Players, Lynox Electronics Reg'd, McKinnon Industries Limited, Measurement Engineering Limited, Philco Corporation of Canada Limited, Philips Indus-

tries Limited, Pye Canada Limited, Racine Mfg. Co. Ltd., R. C. A. Victor Company Limited, Radio Communications Equipment & Engineering Ltd., Research Industries Limited, Rogers Majestic Radio Corporation Limited, Shelbern Industries (Canada) Ltd., Sparton of Canada Limited, Stark Electronic Instruments Limited, Stewart-Warner Corporation of Canada Limited, Sylvania Electric (Canada) Ltd.

"The above companies are working the patented inventions in Canada on a commercial scale and are prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms.

"*Canadian Radio Patents desires to inform importers, vendors, purchasers or users of radio or television receivers which infringe patent rights owned or administered by Canadian Radio Patents Limited and are not manufactured by any of the Canadian companies listed above, that they will be held liable to Canadian Radio Patents Limited on account of said infringement.* • • •

CANADIAN RADIO PATENTS LIMITED
200 St. Clair Avenue West, Toronto 7, Canada"

(Italics ours)

The extent and viciousness and effectiveness of the Pool in stopping trade and commerce by Zenith into Canada is shown by defendant's Exhibit 130, which was an advertising circular shown by documentary evidence to be run repeatedly and "periodically" (Def. Ex. 144; A. 1973-4) in many papers by Canadian Radio Patents Limited, and advising prospective customers of radio and television sets of the following (A. 1861-2):

"CANADIAN RADIO
PATENTS, LIMITED
Sponsors Nation-Wide
Advertising-Publicity Campaign . . .

"TO SELL 'Canadian-Made' RADIOS FOR YOU!

"WARNING!

"Be sure your radio is Canadian-Made . . . is Safe to Operate . . . Complies with the Canadian Electrical Code . . . is Licensed under Canadian Patents.

"Use of an imported radio may make you liable for damages for infringement of Canadian patents . . . may endanger your life and property through fire and shock hazards . . . may be illegal under Provincial Electrical requirements.

"Fire and Shock Hazard.

"Only Canadian-made radios safeguard you from fire and shock hazards.

"Because cheap imported radios do *not* embody ordinary safeguards required by law in Canada, they constitute very definite fire and shock hazards. Working parts are connected directly to the main power supply, thus, touching working parts may result in a bad shock, even death. Lack of safeguards, too, causes these radios to heat up, sometimes to start fires.

• • • • •

"Infringement of Canadian Patent Rights.

"*Only Canadian-made, Canadian-sold sets are licensed under the basic patents of Canadian Radio Patents, Limited.*

"Use of radios manufactured and purchased outside the Dominion of Canada may constitute an infringement of Canadian patent rights. Infringement of patent rights, naturally, makes the owner liable to legal action.

> "Unsatisfactory in Operation.
>
> "Only Canadian-made radios can be relied upon to operate efficiently in Canada. . .
>
> "No Trade-In Value.
>
> "Only Canadian-made radios have an equitable trade-in value.
>
> "Because Canadian dealers are not permitted by law to sell substandard radios, as are most of the imported models, Canadian radio dealers cannot afford to give trade-in allowances on imported models.
>
> "No Servicing . . . No effective Guarantee.
>
> "Only Canadian-made sets are sold in this store . . . which is always ready to carry out the manufacturer's guarantee . . ." (Italics ours)

Obviously the Canadian Pool was organized to stop the export of television and radio sets from the United States into Canada and stop the competition of American companies such as Zenith with the shareholders of the Pool whose American parent companies were also competitors of Zenith in the United States (A. 457). The record shows that these conspirators were successful in their illegal endeavor (See Def. Ex. 139; A. 1883, 1887; Def. Exs. 140-144; A. 1959-77).

Neither Hazeltine nor the Pool ever offered any proof that the activities of the Pool ever ceased. Actually it was admitted that they continued beyond the date of the trial when Mr. Kayser, one of counsel for respondents, told the Court (A. 3036):

> "Now, what Mr. McConnell is really trying to sell this court is the idea that if he can show that these pools continued after 1957 and, as he defines the pools, yes, yes, they did. There is no question about it, that these arrangements in relation to patents—that characterized necessarily as he characterizes them, but that

> these arrangements have continued and, so far as I know, are in existence today. There is no question about that."

As recently as May, 1962, a time well within the instant damage period, the evidence shows the Pool in full operation. At that time Motorola's Canadian distributor, Electrical Distributors, Ltd., was threatened by CRPL as follows (Def. Ex. 162D; A. 2054, 2056):

> ". . . should importation of Motorola products take place and should these be found to incorporate inventions covered by patents which we are empowered to license other than those of Canadian Westinghouse or CGE, we would be forced to place the matter in the hands of our solicitors . . ."[4]

The success of such a method in stopping competition was made a matter of record in a report to the board of directors of Canadian Radio Patents, Ltd., dated January 13, 1954 (Def. Ex. 144; A. 1973-77), in which the Pool manager said:

> "Attached is a summary of the actions that were taken by CRPL in the thirty-five cases of infringement that were reported during 1953.
>
> "Most of the infringement reports received in 1953 involved individual dealers that had imported U. S. television receivers and, following the approved procedure in such cases, we usually settled for a written guarantee to immediately discontinue the infringement and did not press for damages if only a few sets were involved.
>
> "In cases such as Electromaid where 72 TV receivers were involved and in the case of the 160 Arvin sets imported by S. G. Waters after previous warnings we settled for $10 per receiver damages.
>
> "After initial warning letters were ignored, we purchased and examined for infringement a total of

---

[4] This notice was turned over to a former Zenith distributor by the name of MacCuspie, who in turn sent it to Joseph Wright, Zenith's president, in Chicago (Def. Ex. 162D; A. 2053).

six TV receivers (from Faucher, North Star, Legare, Century, Amhearst and Appliances Unlimited).

"The threat of possible infringement action resulted in satisfactory settlements in the cases of North Star, Legare and Century (see notes on attached summary) but it was necessary to commence an action in the Exchequer Court of Canada before a settlement was made with Faucher. Mr. Gowling is now proceeding against Amhearst Television and the receiver recently purchased from Appliances Unlimited is being examined as a preliminary to commencing an action against this company.

"Although we have not received any new reports of infringement for the past two months and believe the situation is under control, *we are continuing to periodically run the warning Notice in the trade publications.*" (Italics ours)

With respect to the dealer, Faucher, referred to, the General Counsel of Canadian General Electric wrote (Def. Ex. 142; A. 1964, 1967-8):

> ". . . [T]he operations of C.R.P.L. are of very substantial benefit to the industry as a whole and to all the shareholders, *if for no other reason than the threat against dumping.*
>
> Recently a writ was issued against Faucher Electric of Montreal for selling imported Dumont sets. The Plaintiffs were C.G.E., C.R.P.L. *and Hazeltine.* An offer of settlement has been made and it is not expected that this case will go to court." (Italics ours)

The actions of the Pool in curbing imports from the United States into Canada were reported from time to time to Canadian radio and television distributors as follows (Def. Ex. 141; A. 1962-3):

> "Minutes of the regular monthly Meeting of the Quebec Radio-Television Distributors Association, Inc., held on Thursday, May 7th, 1953, at 12:30 P. M. in the Queen's Hotel, Montreal, Que.
>
> • • • • •

> "Importation
>
> "The Chairman reported on action taken by Canadian Radio Patents Ltd. to halt the importation of non-licensed radio and television sets and complimented Mr. Brownlee [former president of C. R. P. L.] for the excellent work which he was doing. It was decided that members should clear all infractions through the Secretary who would report immediately to Mr. Brownlee. The Secretary was requested to write C. R. P. L. requesting information governing importation regulations as well as details as to what was necessary to qualify for a manufacturing license."

No witness was called by Hazeltine to testify that such practices were ever stopped by the Pool.

The annual revenue of the Pool was approximately one million dollars (Def. Ex. 142; A. 1964-5).

Defendant's Exhibit 144 (A. 1973), which was produced from the CRPL files, notes the fate of a distributor of unlicensed sets as follows (A. 1977):

> "3. Faucher Electric—Disregarded warnings—purchased receiver as evidence—examined for infringement—Gowling started action in Exchequer Court of Canada on October 15, 1953—*Faucher consented to judgment prohibited from future importing* and paid $10.00 per receiver damages." (Italics ours)

It is interesting to note that the Gowling referred to is the law partner of Mr. Gordon Fripp Henderson, whom Mr. Dodds put on the stand in this case as an impartial expert on Canadian patent law. (A. 688-9; Def. Ex. 161; A. 2034).

For many years every time Zenith appointed a distributor to sell Zenith products the distributor was warned by the Pool to stop importing and to return the merchandise or face crippling litigation both against such distributor and his customers (A. 450), which litigation would be brought by the Pool upon hundreds of Pool patents (Def.

Ex.'s 155-162D; A. 2022-2065). The Pool held 5000 patents (Pl. Ex. 50A; A. 2811, 2830) and to defend litigation on them would obviously exhaust and ruin even a company as strong as Zenith, even if as here the patents were held invalid. The record shows that just defending against the patent in suit on the patent issue alone has cost Zenith $50,065.72 (A. 554).

In 1957 Zenith settled its antitrust suit against RCA, General Electric and Western Electric (*supra*, p. 8). Zenith received cash of 10 million plus licenses under the defendants' Canadian television patents, but for black and white only (Pl. Ex. 48; A. 2783-86).

Zenith mistakenly thought that by its settlement with the three leading members of the Pool its troubles with the Pool had ended and it started to export radio and television receivers to Canada, through its Canadian subsidiary, Zenith Radio Corporation of Canada (A. 450, 456). As soon as the Canadian subsidiary started to set up distribution, Mr. Brian McConnell, manager of the Pool, called on the Zenith Canadian subsidiary in Toronto, on July 30, 1958, and demanded that Mr. Lloyd Kiely, general manager, inform him of Zenith's plans in Canada. Specifically, McConnell informed Kiely that even though patent licenses covering imports had been obtained by Zenith from RCA, General Electric and Western Electric as a result of the RCA-Zenith litigation, the Pool had many other patents and no licenses permitting import would be granted by the Pool. McConnell requested a circuit diagram of the Zenith receivers which were being imported, which he said would be turned over for examination by "CRPL principals" and in the event any infringement was found a further meeting "to discuss the problem" would be arranged (Def. Ex's. 151-152; A. 2014-18).

In September of 1958 it came to Zenith's attention that a warning notice (Def. Ex. 138; A. 1880) to importers substantially the same as set out above (*supra* pp. 13-14) was again appearing in the *Trade Builder*, a Canadian trade publication, Mr. Joseph Wright, president of Zenith, wired to McConnell demanding that this attack on Zenith's products in Canada cease (Def. Ex. 138; A. 1879-80).

Wright's wire had no effect. On September 16, 1958, McConnell wrote Wright referring to his earlier discussion with Kiely in which he said no license to import would be granted by the Pool. McConnell again asserted that Zenith was "using inventions covered by patents which we administer and under which we are informed you are not licensed". (Def. Ex. 138; A. 1881.)

On September 23, 1958, Wright wrote McConnell in reply stating (Def. Ex. 138; A. 1882): "You . . . must be well aware that the activities of Canadian Radio Patents Limited in stopping our Canadian business in past years was at the very heart of the substantial claim for damages which was settled at the same time the licenses were granted."

Wright's September 23, 1958 letter was not even answered (A. 449).

Thereafter in a conference with Zenith's vice president Frank Crotty, on May 12, 1959 (Def. Ex. 154; A. 2021) McConnell told Crotty that Zenith was infringing some of the Pool patents "one of which was a patent of Hazeltine origin. He told me that I would have to take a license; that the license could not be for importation, it would have to be for local manufacture" (A. 410). This conversation was not denied.

Following the May, 1959 meeting McConnell wrote Crotty on June 5, 1959 enclosing the Pool's standard license forbidding importation and gave notice of infringement of a CRPL patent (Def. Ex. 154; A. 2021). McConnell advised:

> "With regard to the patent and its use in Zenith television receiver No. B-2225, I have had this matter reinvestigated and there is no doubt in our minds that the invention covered by the patent is used in this receiver. The tests show this quite conclusively."

Following the McConnell meeting and the Pool's notice of infringement the instant infringement suit was filed by Hazeltine in November, 1959 (A. 1, 11). The suit was brought on one Hazeltine monochrome patent, the counterpart of which was included in the Canadian Pool (A. 131; 272). At the same time Hazeltine asserted that Zenith was infringing at least four black and white patents (A. 435-6). Subsequently on October 18, 1961 Hazeltine also asserted nine color television patents against Zenith (A. 419; Def. Ex. 10; A. 1010). The counterparts of these patents were also in the Canadian Pool (A. 131, 145-6; Def. Ex. 118; A. 1645, 1648). The connection between the Pool's notice of infringement and the filing of the instant infringement suit by Hazeltine was explained by Hazeltine's attorney Dodds in his opening statement as follows (A. 131-2):

> "... These pools don't have any power to keep out anything. They are not a government body. All it means is that if you import goods into Great Britain or Canada or Australia, and if what you are importing are infringements of the patents they administer, you may subject yourself to an infringement suit, the same as if you infringed a patent in this country. *And we can't prevent Zenith from selling sets without an adjudication, which we are in the process of trying to get now."* (Italics ours)

Zenith necessarily had to curtail its operations in Canada pending the outcome of the infringement suit. If it lost the patent suit it would be placed in an impossible legal position in any subsequent infringement suit by the Pool in Canada. It could no longer contend, as Wright had in his letter to the Pool (Def. Ex. 138; A. 1882), that the patent was invalid or was not infringed, because of the estoppel effect given patent judgments by the Canadian Courts (See *infra,* p. 72). Moreover, the defense of misuse is not recognized by the Canadian Courts.

At the same time Hazeltine was prosecuting the instant infringement suit it was attempting to coerce Zenith into accepting its standard license, the terms of which expressly excluded an implied license under Hazeltine's foreign counterpart patents. The standard license provided in pertinent part:

> "Sec. 3. Nothing herein contained, and no act or acts hereunder, shall be construed as, or result in, conveying any license to Licensee, expressly or by implication, estoppel or otherwise: . . . (b) Under any patents of countries foreign to the United States; . . ." (Def. Ex. 2; A. 955, 958).

This provision expressly prevented the application of decisions holding that the grant of a domestic license also grants an implied license to the foreign counterpart patents. See *Curtis Aeroplane & M. Corp.* v. *United Aircraft E. Corp.,* 266 Fed. 71, 77-8 (C.A. 2, 1920). It was an essential part of the conspiracy because without it Hazeltine would be in violation of its agreements with its foreign conspirators not to license except through the Pools. This was conceded in a letter written by Dodds, where he stated:

> "In those countries where the Hazeltine patents are included in an industry-wide pool they are, of course, beyond our control and our licensees have to make their own arrangements with such pool." (Def. Ex. 115; A. 1634)

As in the case of a judgment of validity and infringement, if Zenith accepted the standard license it would be defenseless to an infringement suit by the Pool. It could give no acceptable reason to a Canadian court why it was willing to pay for the use of Hazeltine's patents in the

United States, but at the same time refuse to recognize the validity of the exact Canadian counterparts when sued for infringement in Canada.

Thus Zenith was placed in this dilemma. It could not get a license from the Pool to import, and the Hazeltine standard domestic license expressly precluded an implied license under its foreign patents. If Zenith lost the patent suit it would have no defense to a similar suit by the Pool. If it purchased peace by accepting the Hazeltine standard license it was equally defenseless to a suit by the Pool.

Under these circumstances Zenith had to curtail its operations in Canada. Zenith's President Joseph Wright testified *without denial* that the threats and restrictions of the Canadian Pool not only limited Zenith's ability to obtain first class distributors and dealers in Canada (A. 452-3), *but limited the amount of time and money that Zenith could properly devote to developing the Canadian market* (A. 490). Both Wright and Kaplan, Zenith's Treasurer, testified that the Canadian and American markets were comparable and that but for the threats and interference of the Pool, Zenith could have obtained the same share of the Canadian radio and television market (20%) as it enjoyed in the United States (A. 461, 528). *There was no denial to this testimony.*

Zenith's counterclaim was filed May 22, 1963 (A. 2, 62, 64). The damage period involved was from June 1959 through May 1963 (A. 517-19; Def. Ex. 220; A. 2661). The counterclaim alleged that the bringing of the instant infringement suit and the attempt to force Zenith into accepting Hazeltine's standard license were overt acts in furtherance of the foreign conspiracy and that as a result and because of the Pool's refusal to license imports Zenith had been forced to delay development of its foreign trade in the Pool markets (A. 64-9). The Trial Court found these issues in favor of Zenith when it found (A. 2857):

> "The court has reviewed the evidence, exhibits and briefs of the parties in both the patent and antitrust phases of the above cause and finds for the defendant on the issues raised by the complaint and answer and the counterclaim".

The Trial Court further found (A. 2903, Finding XXV):

> ". . . Since 1943 Hazeltine has been an active participant in the activities of the Pool and has been receiving a substantial share of its profits. The Hazeltine patents go into the Pool pursuant to an exclusive license agreement between Hazeltine and Canadian Radio Patents Limited which grants to the Pool the right to include Hazeltine's Canadian Patents, present and future, in its licensing and litigation activities. This arrangement has been extended to a date beyond the filing of the instant counterclaim."

This finding was not in any way disturbed by the Court of Appeals decision.

The only defense attempted in the Trial Court to the cartel proofs in Canada was the contention that the Pool's restriction on licensing imports was justified by provisions in the Canadian Patent law. See Dodds' opening statement (A. 131, 134). A great deal of expert testimony was adduced on this issue (A. 667-725; 807-25).

The Trial Court found (A. 2906); "XXXII. The proofs established as a fact that in the circumstances of this case the Canadian Patents Act does not require the Pool to refuse to license importation, as contended by plaintiff. Nor does the act penalize in any way a patentee who licenses for importation where, as in this case, there is being carried on extensive manufacturing in Canada under its patents."

Respondents abandoned this so-called defense in the Court of Appeals!

B. Proof of Injury to Petitioner's Business in England and Australia.

On April 5, 1965, after entering the first judgment under Rule 54(b) of the Federal Rules of Civil Procedure, the Trial Court reserved jurisdiction of the case for a further hearing on "the amount of damages asserted in the claims for damage accruing by virtue of cartel restrictions in Australia and England during the damage period alleged" (A. 3080).

On December 13, 1965, after further hearing, the Trial Court entered a joint and several judgment in favor of petitioner in the amount of $15,919,458 together with the costs of suit and a reasonable attorney's fee to be fixed by further order of the Court (A. 3539).

This judgment was entered on the amended finding of fact dated November 30, 1965, which recited the following (A. 3537):

> "The Finding of Fact XXXVI heretofore entered herein on February 25, 1965, with respect to the damages sustained by Zenith Radio Corporation during the damage period June 1, 1959 through May 31, 1963 is hereby modified and amended with respect to England and Australia only as follows:
>
> "The Court reconfirms its finding that the foreign commerce of Zenith was restrained and that Zenith was in fact damaged by the patent pools in England and Australia during the damage period but modifies and amends its finding as to the amount of damages in these markets as follows:

England	Television	$4,312,924	
	Radio	745,102	
			$5,058,026
Australia	Television	$ 223,508	
	Radio	24,952	
			$ 248,460
Total England and Australia			$5,306,486"

The computation of the above damages in accordance with of the trial court's opinion is shown in the record (A. 3534-5).

The further hearing upon which this finding was made was limited to the question of whether there existed governmental embargoes caused by import restrictions starting prior to the damage period which would have prevented Zenith from realizing the amount of lost profits shown on defendant's Exhibit 220 (A. 3037-8).

After hearing several days testimony on this issue, which hearing was held more than a year after the trial of the case, the Trial Court concluded that all governmental restrictions had been removed in England within one week of the start of the damage period and in Australia within ten months of the start of the damage period. The Court made the following ruling (A. 3524-6):

> "The Court: *There could be no question in my mind that Zenith suffered damages during the damage period by virtue of the pools which I have found, and reiterate, existed at the time of the damage period.* There was precedent for using the method that was used by the Court for ascertaining the damages as far as Canada was concerned. A further hearing has indicated that the situation in regard to the United Kingdom and Australia was different than it was in regard to Canada; that the pool was not the sole reason that sales could not be made prior to the damage period in the United Kingdom and Australia.
>
> * * * * *
>
> "I feel that in regard to both countries, it is unrealistic to believe that starting out from scratch they could have achieved the percentage of the market and the percentage of profits that Exhibit 220 indicates they might receive. *And as I have indicated, there is no question they lost money by virtue of the pools' excluding them.*
>
> "In regard to the United Kingdom, the Court is

not disposed to quarrel about the difference between June 1 and June 8. It appears to the Court that under the evidence, that a more realistic date in regard to Australia would be April 1, of 1960, and that for the period prior to April 1 of 1960, it would be unrealistic to indicate that Zenith suffered any economic loss by virtue of the pools.

* * * * *

"And for that reason, the Court rules—and I'm going to let you gentlemen figure out the mathematics of it—that in regard to the first calendar year after the damage period started, as I have indicated the dates, that there should be no lost profit in either the United Kingdom or Australia. That is the first calendar year.

"I believe that there is a growing increase in the market of a quality product such as Zenith, which would not have jumped as rapidly as Exhibit 220 indicates. So, in regard to the second calendar year, the Court finds that the damages would be 50 per cent of those indicated for the second period on Chart 220.

"In regard to the third calendar year, they would be 75% of the profits indicated by the amount indicated in the last column on 220.

"And in regard to the fourth calendar year, and I guess that only applies to the United Kingdom because of the differential of nine months involved, that the figures, the lost profits indicated in regard to the fourth calendar year, would be 100 per cent of the amount indicated on the lost profit or loss-of-sales item in the last column on Exhibit 220." (Italics ours)

On the basis of these remarks, the amended findings were drawn and filed (A. 3534-5, 3537) and the second judgment was entered (A. 3539). The Trial Court's findings in support of the second judgment were based on the following substantial and uncontradicted evidence.

1. England.

The largest and the most powerful radio and television companies in the world created the British Patent Pool and placed in it thousands of patents controlled by Pool members and those affiliated with them in the scheme. Among these companies the record shows Electrical and Musical Industries, Ltd., General Electric Company, Ltd., The Gramaphone Company, Ltd., Marconi's Wireless Telegraph Company Limited, Philips Electrical Industries Limited, RCA and British Thomson-Houston Co., Ltd. (Def. Ex. 52; A. 1205). Later other companies such as Murphy Radio Limited (Def. Ex. 54; A. 1228), E. K. Cole Limited (Def. Ex. 55; A. 1233), A. C. Cosser Limited (Def. Ex. 56; A. 1237) and Pye, Ltd. (Def. Ex. 57; A. 1243) were brought into the Pool.

The Hazeltine English patents were put into the Pool by contract with General Electric Company, Ltd. and the Pool income from these patents was split between General Electric and Hazeltine (Def. Ex's. 42-50; A. 1165-1193).

L. B. Dodds described the General Electric arrangement in a letter dated June 11, 1951 to Cornock of General Electric (Def. Ex. 73; A. 1409) as follows:

> "Under the terms of the Agreements between our companies identified as (a) and (b), your company is given the exclusive license under the Hazeltine patents in the specified field for the territory of 'Great Britain, Northern Ireland and Eire', together with the right to include such patents in the British Pool."

Cornock wrote Dodds under date of June 28, 1951 (Def. Ex. 74; A. 1411-12):

> "Under our main Agreement with the Pool, which is dated 31st August 1948 and of which I sent you a copy recently, we make the following representations and give the following undertakings: . . . (d) Clause 18 provides that no licenses shall, during the period of

> the Agreement, be granted by any Party *except in accordance with the decisions of the Management Committee of the Pool.*" (Italics ours)

The documents obtained from the Hazeltine files show on their face how the scheme was devised to get Hazeltine patents into the Pool in a way to give them the largest possible share of Pool income (Def. Ex's. 42-50; A. 1165-1193).

The following excerpts prove this beyond question:

> "G. E. C. shall have complete freedom to use the British Hazeltine Patents as a bargaining asset in order to secure entry into the Pool as a Licensor, or the use of the Patents for the purpose of licensing third parties" (Def. Ex. 42; A. 1165).
>
> "4. As consideration for the rights granted by the [Hazeltine] Corporation to G. E. C. hereunder, G. E. C. shall (subject to the provisions of Clause 5 hereof and subject to approval of the British Treasury being first obtained) pay to the [Hazeltine] Corporation forty per cent of all sums received by the G. E. C. from the A.7 Pool by way of royalties upon the combined Patents of the [Hazeltine] Corporation and G. E. C. in the said Pool" (Hazeltine-G. E. C. Agreement dated February 27, 1953, Def. Ex. 48; A. 1183, 1185).

Pursuant to these agreements, G. E. C. placed Hazeltine patents in the successive British Pools during the damage period. This was evidenced by documents produced from the Hazeltine files (Def. Ex's. 50-60; A. 1190-1276).

On the face of these agreements there is disclosed a typical cartel or competitor's combination controlling the British radio and television market and excluding the competition of any exporting American company such as Zenith. Each of the participating companies, including Hazeltine, contracted that during the term of these agreements (Def. Ex. 58; A. 1248, 1251, 1258):

> "Unless otherwise agreed *no licenses are hereby agreed to be granted to import Radio Apparatus* [defined to include television receivers] *into the United Kingdom or to deal in in the United Kingdom, Radio Apparatus or Radio Apparatus containing imported component parts* to an extent exceeding in value 10 per cent of the retail list price of such Radio Apparatus except in each case samples and experimental models for the use of the parties hereto." (Italics ours)

The last Pool agreement in evidence which by its terms ran until June 30, 1964 (Def. Ex. 60; A. 1272), provided "(vi) Clause 11(g) shall be read as if the following words, 'Provided however that no variations shall be made in the terms and conditions of the said Licenses A8-S and A8-T without the unanimous consent of the parties hereto except the British Thomson-Houston Co., Ltd. as at the 30th June 1960 . . .' were inserted . . ." (Letter dated September 13, 1960 from Marconi Wireless Telegraph Co., Ltd. to G. E. C.; Def. Ex. 60; A. 1272, 1275).

The A8 license agreements (Def. Ex's. 70-71; A. 1380-1401), like all the preceding pool licenses (Def. Ex. 61, Paragraph 2(1), A. 1277, 1280; Def. Ex's. 62-69; A. 1287-1379) *are expressly limited and restricted to the manufacture of electronic products in the British market and to the sale of apparatus so manufactured.*

The A-7 licenses and all preceding licenses specifically provided:

> "The Licensee agrees with the Grantors as follows: (a) Not without the previous written consent of the Grantors to sell within the said territory any Television Receiver which has not been manufactured in the territory for which this License is granted." (Def. Ex. 69; A. 1368, 1372).

All of the above documents were produced from Hazeltine Corporation files pursuant to an adverse party subpoena directed to plaintiff, Hazeltine Research Inc., thus confirming the fact that Hazeltine Corporation and Hazeltine Research were one and the same as later stipulated (A. 34, 55, 774).

Confronted with this documentary evidence, L. B. Dodds was forced to admit that he and his company were thoroughly familiar with the purpose of the Pool to get rid of foreign competition by blocking imports into England (A. 199-200, 209-10, 213-14, 220-1, 316-18, 379).

Dodds admitted the motive for Hazeltine's conduct in the following testimony (A. 331):

> "Q. Well, you had some point in being there and discussing the value of Hazeltine patents, didn't you?
>
> "A. Mr. McConnell, I stated previously that *my sole purpose there was to get more bucks for Hazeltine.*" (Italics ours)

Memoranda and correspondence with G. E. C. produced from Hazeltine's files conclusively establish the conspiracy allegations of the counterclaim with respect to the British Pool (Def. Ex's 73-86; A. 1409-73; Def. Ex's. 89-90; A. 1477-84; Def. Ex's. 96 and 97; A. 1504-10).

The purpose of the Pool to stop the competition of Zenith and other foreign companies is shown by a letter from RCA's foreign patent manager, Commander Mayer, who wrote RCA in New York as follows (Def. Ex. 91; A. 1484, 1487-8):

> "Schoenberg [the Pool manager] said that they could not agree to license foreign manufacturers to import into Great Britain, and he says this on the basis of his claim for exclusivity. In their view it would mean the immediate collapse of the whole licensing pool and of the revenue derived from it. They have always had to refuse to license imports from anywhere. British manufacturers are extremely jealous of importers, and although the Patent Act does not spe-

> cifically support this attitude, there is no doubt that the old idea of patents giving a monopoly continues today and confirms a basis of a general licensing policy in Britain of using patents to build up trade and keep out cutthroat competition from foreign countries where prices may be cheaper."

In a letter by this same Schoenberg to Sarnoff of RCA (Def. Ex. 94; A. 1499, 1500) it is stated, "Of course, it is sometimes very difficult indeed to check importation because so many importers manage to get past our patents by dealing in components, and it is not easy to draw the line so as to mark off where the component ends and the assembled instrument begins, but we are doing our best to rope in those who are trying to dodge us by resorting to components."

The British Pool was active at the time the case was tried (Def. Ex. 60; A. 1272). Initially, the strength of the Pool was drawn from patents on radio receivers, but with the advent of television the Pool's position improved. This improvement was due in large part to the inclusion of Hazeltine's color television patents (See draft letter of Hazeltine's president to Heather of G. E. C.; Def. Ex. 93; A. 1497, Def. Ex. 76B; A. 1421, 1434).

The record shows that throughout the years Zenith made many efforts to enter the English market (A. 462-4, 473-4). On each occasion, however, the Pool threatened its distributors so they ceased buying Zenith products. The following illustrates how the cartel operated in England.

In a letter introduced in evidence, without objection, R. A. Rothermel, Ltd., London writing to Zenith says (Def. Ex. 101A; A. 1517-8), "To be quite frank, we do not see any possibility of marketing your product in Gt. Britain under the present license and patent situation. To be sure, American sets are being sold here, but it is a boot-leg proposition, run by the East end Jews who can afford to take chances which people who operate in legitimate business cannot do. . . . I have no doubt but that today Zenith sets would be one of the largest selling lines in Gt. Britain. . . . We are always glad to hear from you and only wish there was some way to market your very attractive products in Gt. Britain."

In a letter to Zenith, admitted in evidence without objection, from J. Toubkin, a Zenith distributor, the working of the Pool is explained as follows (Def. Ex. 108; A. 1542, 1543):

> ". . . We have found it, however, advisable to restrict the sales to such dealers and wholesalers as could handle the line with discretion because, knowing the patent situation, we are fully aware that should the Patent Pool actually tackle the 'Zenith' receivers as such, then 'Zenith' will be finished in Great Britain forever and ever.
>
> "To explain that, I should like to point out that once the Pool goes after a particular make of American receiver and decides that no such sets should ever be imported, they have a fairly good method of doing so and they couple with that method also a fairly extensive campaign in the trade papers, advertising that particular make and stating that such and such dealers have had an injunction obtained against them for selling that particular make, and once such an advert appears in the paper, you can be sure that no dealer in Great Britain will ever handle the receiver again."

As we have pointed out in the discussion of the Canadian Pool, as a part of the RCA-Zenith settlement, Zenith was granted world-wide rights under the foreign patents of RCA, General Electric and Western Electric (Pl. Ex. 48; A. 2783-6), and as a result it attempted to sell radios in England (Def. Bulk Ex. 112; A. 1559-93). This could not be done with television sets (A. 463-4, 474). The Pool is armed with hundreds of television patents from Hazeltine and its foreign conspirators under which Zenith was not licensed and could not get a license to import (Def. Ex's. 52, 58; A. 1205, 1248). Such patents include the British counterparts of the patents asserted here by Hazeltine (A. 131, 145). Without television Zenith could not develop the English market for radio alone. Zenith therefore never could obtain proper distribution for its products in England. (A. 463-4, 474; See also Def. Ex. 113, A. 1594-1606).

2. Australia.

The dominant electronics company in Australia is, and for many years has been, Amalgamated Wireless Asia (A. 90, 91-2), referred to here as A. W. A. The cartel arrangements assigned Australia exclusively to A. W. A. and the patents and inventions of all the members were placed in the Australian patent pool known as Australian Radio Technical Services and Patents Company, Ltd., herein called ARTS. Half of this organization is owned by A. W. A. The inventions and patents of A. W. A., Standard Telephone and Cables, Ltd., Philips of Holland, Electrical and Musical Industries, Ltd., Marconi Wireless Telegraph Company, Radio Corporation of America, Pye, Ltd. and Neutrodyne Proprietary, Ltd. were all included in the Pool (Def. Ex's. 180-195; A. 2305-2476). Neutrodyne is a controlled subsidiary of Hazeltine (A. 90, 93, 253, 796). The basic agreements relating to the operations of the Pool are in evidence as Defendant's Exhibits 180-195 (A. 2305-2476). They show that the cartel is in all essential respects the same as the English and Canadian pools.

Under a contract dated September 11, 1928 (Def. Ex. 180; A. 2305), still in force and effect, Neutrodyne is authorized to place all inventions and patents of Hazeltine in the ARTS pool (A. 2307) and is required to see to it that all of the requirements, restrictions and provisions of the standard license are contained in any future license

(Def. Ex. 180, Paragraph 2, A. 2307). Hazeltine patents and rights, existent and future, have gone into the Australian pool under this arrangement for 35 years (Def. Ex's. 188-195; A. 2381-2476) and during all this time have been licensed in such a way as to preclude and exclude any imports of radio or television sets into Australia (Def. Ex. 197; A. 2482, 2483), and the Pool has never granted a license to import American sets into Australia (Def. Ex's. 188-195; A. 2381-2476). The record is replete with conclusive evidence of Hazeltine's knowledge of and participation in the cartel restrictions (Def. Ex's 197-212; A. 2482-2512) right up to the trial of the instant law suit (Def. Ex. 212; A. 2512).

The only answer Hazeltine ever made to proof of their participation in the Australian Pool was by post-trial motion a year after the case was tried and findings entered, at which time Hazeltine's new counsel exhibited an alleged form 7 license of the Pool as an offer of proof in an attempt to show that the license did not by its terms prohibit importation (A. 2970, 2971-85). However, analysis of the tendered license shows that it was limited to local manufacture (See pp. 89-90 *infra*).

In Australia, as in the case of England, Zenith was unable to obtain distribution of its products as a consequence of the Pool policy against imports. Wright, Zenith's president, testified that he talked "with many people in Australia with a view to distribution, and there was no question in their mind that we could not get such a license [a license to import], and there was no use talking about any sort of arrangement that contemplated that" (A. 476; See also Def. Ex. 215; A. 2523-2590).

C. Proof of the Patent Misuse Defense.

The Trial Court found that Hazeltine has misused its patents by (1) refusing to license except under package deals, (2) coercing prospective licensees into executing licenses which covered unpatented as well as patented products and (3) putting the foreign counterparts in patent pools and restricting its domestic licenses to the United States pursuant to the conspiracy. These rulings will be found in Findings IV, V, VI, VII, VIII, IX, X, XI, and XII (A. 2893-98; 2857).

For many years plaintiff had acquired hundreds of patents by wholesale patent applications and by foreign and domestic agreements (A. 271). Through the years its practice had been to offer these hundreds of patents in a package license (A. 135; Def. Ex. 3; A. 985, 991) entitled its Standard License Agreement (Def. Ex. 2; A. 955-83), which conferred on the licensee for a 5-year period freedom from any charge of infringement under all present as well as future Hazeltine patents. Royalties were demanded and paid on the licensee's entire production, whether or not any of its products employed Hazeltine patents, present or future (Def. Ex. 2; A. 955, 959; A. 271). The license was really a covenant not to sue the licensee or its customers on the licensed patents. At the time of the trial, Hazeltine held over 500 patents in the electronics field and 109 patent applications (Def. Ex. 1; A. 937, 946-7).

Hazeltine has been "involved in extensive litigation" (Def. Ex. 32; A. 1127, 1128-30). The public records show over 175 Hazeltine patent cases. The staggering cost entailed in continually analyzing its patent claims has obviously been a powerful weapon in forcing electronic companies to take the package license.

Zenith, for many years acting under the obvious duress of Hazeltine's threat of litigation, signed Hazeltine's standard package license (Def. Ex. 2; A. 955). In May, 1959,

L. B. Dodds, plaintiff's counsel in this case, again demanded that Zenith sign a package license for a 5-year period at the then package rate of $50,000 a year (A. 434-5). Dodds asserted that Zenith was infringing at least four Hazeltine patents in the manufacture and sale of black and white television receivers (A. 435-6). Dodds said that licenses would be granted for black and white television, excluding color television, in accordance with the following formula:

> Any one patent in the package would be licensed at 50% of the royalty rate for the entire package of over 500 patents and patent applications. Any two patents would be licensed at 80% of the package rate. Any three or more patents would be licensed at 100% of the package rate. Hazeltine reserved the right to sue for infringement of any patent not licensed. All licenses would be subject to the terms and conditions of the standard form and would require payment of royalties on all production during the 5-year term of the license irrespective of whether any patent was employed or not (A. 436-7).

Zenith informed Dodds that none of the four patents asserted was valid or infringed by any Zenith apparatus and Zenith would not sign the Hazeltine package license (A. 435-6).

Hazeltine then served written notice of infringement of two patents on Zenith on October 15, 1959 (Def. Ex. 9; A. 1008), and then started the instant suit on November 20, 1959 (A. 1).

In March of 1963, when this case was approaching trial, Mr. Ruestow, respondent's patent counsel, made a further demand on Zenith (A. 428; Def. Ex's. 15-18; A. 1035-71).

He grouped together nine patents which he claimed were infringed in the manufacture of Zenith color receivers and on which he placed a royalty of $275,000 per year as applied to color receivers only (A. 428-30). He then asked, as an alternative, that Zenith take a license on all color TV patents for an annual royalty of $300,000 (A. 430). For all present as well as future patents in the color field an annual license fee of $310,000 was demanded (A. 430). However, the package license for all patents present, future, black and white and color was still offered at an annual royalty of $200,000 (A. 431-2; 601-2).

Under Ruestow's offer a license under only two of the nine color TV patents could bear an annual royalty rate in excess of $200,000 (A. 602), and cover only color TV production, whereas the entire package could be had for $200,000 per year (A. 601-2).

This was an obvious ~~attempt to~~ compel Zenith to sign the package license *which would have admitted the validity and use of some 500 patents whose counterparts were ~~in the~~ Canadian, Australian and English pools* (A. ~~131,~~ 272).

Crotty, Zenith's Patent Counsel, understood Hazeltine's approach to be a threat of litigation unless Zenith succumbed to Hazeltine's license demands (A. 439); indeed, the threat was real and Hazeltine planned bringing additional infringement litigation against Zenith on color television patents if Zenith failed to accept the standard license agreement (Def. Ex. 36; A. 1141, 1144).

The alternatives faced by Zenith by reason of these proposals were: defend trials and appeals on at least nine patents at an estimated cost of approximately one million dollars; take a license under the color package of nine patents at $275,000 per year or a license under the entire color package at $300,000 per year or $310,000 for present and future color patents whether any of the patents would be used or not. This would leave black and white TV production open to attack and plaintiff's counsel had already claimed infringement of four black and white TV patents (A. 431-2; 435-6).

Another alternative was to take a license under less than all the package of nine patents in color, and pay over $200,000 per year (A. 602) which would expose Zenith's color production to attack by any color patents not licensed and would subject the entire black and white production to the assertion of any of the hundreds of patents in the Hazeltine package. A further alternative was to take the standard package license under all patents and patent applications of Hazeltine, present and future, for both black and white and color at an annual royalty of $200,000 per year (A. 431) and thereby admit the validity of all such patents and in effect the validity of all their foreign counterparts in the Canadian, English and Australian pools.

It thus appears that over a 5-year license period it would cost $500,000 to $550,000 more to take a license under the small color package than to take a license on all the Hazeltine patents. It is quite obvious that from a business point of view, the only practical alternative was to accede to Hazeltine's demand and sign the full package license.

However, because the foreign counterparts of the Hazeltine patents were in the foreign pools (A. 131, 272) and the Hazeltine package license was, by virtue of the conspiracy, expressly restricted to the United States (Def. Ex. 115; A. 1634; Def. Ex. 2; A. 955, 957, 958-9; Def. Ex. 18; A. 1044, 1046-7), Zenith really had no option but to refuse the package license and defend the present suit. Both the Trial Court and the Court of Appeals have held the patent in suit invalid (A. 2891; 4244, 4249).

While the Court of Appeals held that Hazeltine's offers of individual color patents at royalty rates substantially in excess of the annual rate for the package of all patents, color and monochrome, "constituted an illegal attempt to force acceptance of the standard package and a misuse of patents" (A. 4250), it reversed the District Court's finding of misuse with respect to the 50-80-100% offer for monochrome patents (A. 4252). The District Court had found that Hazeltine's offer of one patent at 50% of the package rate, two patents at 80% of the package rate, and three or more patents at 100% of the package rate was "an attempt by economic coercion to force the taking of the package" (Finding XI, A. 2898). The misuse inherent in this formula was admitted by Hazeltine's chief patent counsel in a confidential memorandum (Def. Ex. 24; A. 1089, 1091):

> ". . . if I offer the 50%, 80%, 100% deal they [petitioner] pick 10 patents and zingo we are right back in misuse."

The Court of Appeals also reversed the District Court's finding of misuse with respect to Hazeltine's attempt to collect royalties on Zenith's entire production whether or not any patents are used (A. 4262). The District Court had found (Finding XII; A. 2898):

> "In all of its proposals to Zenith, Hazeltine insisted as an alternative to litigation that Zenith for a period of five years pay royalties in large sums based on its entire productions of receivers whether or not any Hazeltine patent was employed in any way in its products. Plaintiff thus insisted that royalties be paid on admittedly unpatented apparatus."

There was substantial evidence to support the District Court's finding of misuse in this respect also. The provision in the standard license that royalties were to be based on the licensee's entire production was not just a matter of convenience in computing royalties, but was an attempt to collect royalties on unpatented products and to discourage licensees from inventing around the applicable patents during the five year license term. This was shown by Hazeltine's own documents (Def. Ex. 38; A. 1148-9):

> ". . . Under the Hazeltine system of applying the royalty percentage to the selling price of the manufac-

turer's television sets regardless of what Hazeltine patents, *if any,* are used in the particular sets (in accordance with Hazeltine v. Automatic Radio) it would not make any practical difference in Hazeltine's income if he switched to the alternate . . . design [that doesn't use the licensed patents]." (Italics ours)

D. Hazeltine Corporation, the Parent Company, Is Shown by the Record to Have Been Properly Included in the Treble Damage Judgments Entered in Favor of Petitioner.

As the findings of fact submitted by both Zenith and Hazeltine clearly recognized (A. 2857, 2859, 2893; 2913, 2914) Hazeltine Research, Inc., the nominal plaintiff, is so organized, controlled and its affairs so conducted that it is a mere agent, division and alter ego of the Hazeltine Corporation. At a pre-trial conference on April 3, 1963, in the presence of the Trial Judge, all counsel agreed to a formal written stipulation whereby the "corporate fiction" between Hazeltine and Hazeltine Research, Inc. would be disregarded for the purposes of the instant litigation. This was formally recorded in a written pretrial stipulation dated May 7, 1963, upon which the Court and all counsel relied throughout the trial. In pertinent part it provides (A. 55):

> "The parties to this Action, by their attorneys, in fulfillment of certain understandings reached orally in the course of the pre-trial conference held herein on April 3, 1963, in order to simplify and expedite trial hereby stipulate and agree, for purposes of this Action only, as follows:
>
> * * * * *
>
> "4. Plaintiff agrees that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company."

This stipulation was signed on behalf of Hazeltine by L. B. Dodds (A. 57).

Mr. Diggins, antitrust counsel for Hazeltine at the trial, openly referred to the foreign licensing activities of Hazeltine Corporation as the activities of "*we*," the party obviously in court defending:

> "The Court: I mean, why couldn't *you* have just retained them and issue licenses there as you do here?
>
> Mr. Diggins: Several reasons, your Honor. In the first place, the Pool is the big licensing agency up there [Canada]. Secondly, it would be quite an expensive operation to set up a policing agent, a licensing agency in Canada. If *we* did it in Canada, why not require *us* to do it in Great Britain, in Australia. And when you set up these policing agencies, it is just not worth while taking out the patents. Foreign patents are expensive anyhow. And if you have to police them and enforce them, your Honor, it is the old pipeline theory that sitting in New York or Chicago, and trying to enforce your patents against defendants in Canada, in Great Britain, in Australia, is a hopeless task." (A. 408-9) (Italics ours)

Mr. W. M. McFarland, the Chairman and Executive Vice President of Hazeltine Corporation wrote under date of March 4, 1963 to Mr. Philip LaFollette, a director and counsel for the company (Def. Ex. 1; A. 937, 953), informing him of how he proposed to deal with Zenith if it failed to settle this case and sign the plaintiff's domestic patent license agreement (Def. Ex. 36; A. 1141). He stated at page 4 (A. 1144) of this letter:

> "The conference with Zenith would be held as you suggested and if unsuccessful a new color suit would be filed against that company."[5]

---

[5] In a memorandum produced in New York from the files of Hazeltine Corporation and obviously written during the course of this litigation, it was also stated:

It is thus established from this letter that Hazeltine Corporation by its Chairman and Executive Vice President McFarland together with fellow officers Dodds and Westermann (Def. Ex. 1; A. 937, 953), and general patent counsel Ruestow (A. 278-9), was beyond peradventure running the domestic licensing operation and enforcement litigation of its wholly owned subsidiary Hazeltine Research, Inc. which held title to the domestic patents. The plaintiff in this case, Hazeltine Research, Inc., is obviously the *alter ego of Hazeltine Corporation,* as recognized and stipulated in the pre trial stipulation.

Other documentary evidence relating to Hazeltine's domestic patent practices also proves that Hazeltine Corporation's executives dominated and completely controlled the subsidiary's actitivities. For example see:

Defendant's Exhibit 3 (A. 985), a "personal and confidential" memorandum under date of December 14, 1961, from L. B. Dodds, counsel in this case and a Vice President of Hazeltine Corporation, reporting to Mr. W. H. Wilson, a Director of Hazeltine Corporation (Def. Ex. 1; A. 937, 953).

Defendant's Exhibit 7 (A. 1102), a letter under date of August 8, 1951, on the stationery of Hazeltine Corporation written by Larry [Mr. L. B. Dodds].

Defendant's Exhibits 10-11, 13-14 (A. 1010-1012; 1032-1034), letters from F. W. Crotty, Vice President in charge of patents at Zenith, all addressed to Hazeltine Corporation, attention E. A. Ruestow, showing that the licensing demands made on Zenith came from Hazeltine Corporation in New York.

Defendant's Exhibit 22 (A. 1072), a copy of a memorandum by Mr. D. Westermann, Vice President and

---

"II. *H. R. I.* v. *Zenith*—All legitimate steps before a final decree".

"III. Friendly meetings with Joe [Wright, President of Zenith] and Crotty [Vice President of Zenith in Charge of Patents] and if nothing materializes—commence forthwith suit on best color patent or patents." (Def. Ex. 35; A. 1141.)

general counsel of Hazeltine Corporation. The memorandum, dated February 8, 1963, is entitled "Tentative Rates, Etc., for Domestic Patent Licensing Program Worked Out in Meeting 2/7/63 by Messrs. Beam, Dodds, Ruestow, and Westermann, for Further Consideration." Mr. Beam is identified in the Annual Report of Hazeltine Corporation (Def. Ex. 1; A. 937, 953), as the President of Hazeltine Corporation. McFarland, Dodds, and Westermann were also all officers of the parent company and Ruestow was its general patent counsel.

Defendant's Exhibit 23A (A. 1080), "Company Confidential" memorandum under date of November 20, 1961, from E. A. Ruestow to W. H. Wilson, a Director of the parent company.

Defendant's Exhibit 26 (A. 1094), report by Ruestow to R. L. Beam and W. M. McFarland, the President and Executive Vice President respectively of the parent company, on the subject of the organization's *foreign and domestic patent operations.*

Defendant's Exhibit 29 (A. 1114), a memorandum under date of February 15, 1963, from E. A. Ruestow to R. L. Beam, President of the parent company on the subject of "license policy."

Defendant's Exhibit 31 (A. 1125), a report on the status of the Zenith litigation submitted by E. A. Ruestow to the Board of Directors' meeting of the parent company on April 17, 1963, advising that "Zenith is filing a counterclaim based on: (1) *our* alleged participation in an international conspiracy to block their foreign trade . . ." (Italics ours)

Defendant's Exhibit 34A (A. 1137), a proposal for new domestic royalty rates submitted under date of January 24, 1963, by L. B. Dodds, Vice President, to W. M. McFarland, Vice Chairman and Executive Vice President of the parent company.

Defendant's Exhibit 37 (A. 1145), a monthly report to Hazeltine Corporation Board of Directors' meeting of March 20, 1963, on the subject of Hazeltine's licensing activities.

Defendant's Exhibit 38B (A. 1155), a letter concerning domestic licenses dated December 12, 1952, by Mr. L. B. Dodds, as Vice President of Hazeltine Corporation, to Mr. K. H. Nalder, General Electric Company, Ltd., of London, England.

It is clearly apparent from this latter document that Hazeltine Corporation controlled and conducted Hazeltine licensing activities in the United States exclusively. At pages 2-3, Mr. Dodds stated (A. 1156-57):

> "U. S. A. License Agreement
>
> "We are entirely agreeable to the reassignment of the patents and patent applications which we acquire under this Agreement upon the termination of the Agreement subject, however, to one possible exception. As you may know, it is the practice of Hazeltine to grant a standard five-year license under all of its present and future [United States] patent rights. These five-year licenses do not run concurrently but are staggered so that should the Agreement between our companies be terminated for any reason, as of such date of termination we would have a number of licenses in existence in this country having periods of from one to five years to run. It might be quite embarrassing to cut off such licensees' rights in inventions derived from your company in the middle of their license period. Therefore, we should like to offer for your consideration the addition at the end of Clause 2 of this Agreement of the following:
>
> > '. . . excepting non-exclusive license rights which the corporation may have granted in conjunction with license rights under its own invention rights which may be outstanding upon the aforesaid termination.'
>
> "You understand that our License Agreements are very similar to the Pool License in that they are blanket licenses under all of our patent rights with no portion of the royalties specifically allocable to any

> patent or patents. Therefore, the patent rights which Hazeltine might acquire from your company under this Agreement would not represent a source of additional revenue to it."

Consistent with the stipulation, the record and the understanding of the Court and all counsel, following the trial Hazeltine submitted the following proposed finding of fact:

> "Jurisdiction and Parties
>
> * * * *
>
> "8. It is stipulated that, for the purposes of this Action, Hazeltine and H. C. may be considered a single legal entity to avoid the issue of whether or not it is appropriate to 'pierce the corporate veil', but it is proper to consider the separate and unrelated activities of the two companies separately." (A. 2913, 2914.)

Hazeltine counsel further, on the basis of the proposed finding No. 8 quoted above, sought to have the Trial Court enter findings of fact and conclusions of law in favor of the Hazeltine Corporation on practically every issue in the case. See for example proposed findings Nos. 29, 30, 31, 32, 42, 47, 49(a), (b) and (c), 50, 51, 53, 55, 56, 57, 58, 60, 63, 64, 65, 66, 67, 68, 71, 82, 83 and 87, and proposed conclusions of law Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 (A. 2922-38).

In proposed finding of fact No. 82, Hazeltine asked the Court to find that (A. 2933):

> "Neither Hazeltine nor H. C. [Hazeltine Corporation] has participated in any general plan or conspiracy the purpose and effect of which have been to restrain the export of radio and television receivers from the United States."

And in finding No. 87, the Court was asked by Hazeltine to hold (A. 2935):

> "There is no evidence linking Hazeltine or H. C. [Hazeltine Corporation] with members of the alleged 'international conspiracy'."

And, in Hazeltine's proposed conclusion of law No. 9, it asked the Court to rule that (A. 2937):

> "The bilateral agreement between H. C. [Hazeltine Corporation] and CRPL currently in force is a lawful agreement, the primary purpose and effect of which is to enable H. C. [Hazeltine Corporation] to obtain a fair royalty return under its Canadian patents."

And in proposed conclusion of law No. 10, the Court was urged to find that (A. 2937):

> "The bilateral agreement between H. C. [Hazeltine Corporation] and CRPL currently in force does not constitute a contract, arrangement, plan, or conspiracy in restraint of trade between the United States and Canada."

After the Court refused to enter Hazeltine's proposed findings, which would have given the parent company legal permission to continue its participation in the illegal patent pools, Hazeltine employed new counsel who attempted to persuade the trial court that the stipulation that former Hazeltine counsel had so accurately described in their proposed finding No. 8 did not mean what it said (A. 3008, 3009-12, 3019-30, 3042-47). The Trial Court rejected this contention and entered the judgment against Hazeltine Corporation, the parent company, as well as against its subsidiary (A. 3078).

Hazeltine's new counsel in a petition for mandamus contended that the Trial Court had no power to enter a judgment against Hazeltine Corporation. The petition was denied by the Court of Appeals on April 7, 1965 (A. 6). Thereafter, Hazeltine Corporation filed motions in the Court of Appeals to vacate the April 5 and December 13, 1965 judgments as to it, again based on the same asserted lack of jurisdiction of its person (A. 8). By orders of the Court of Appeals dated August 16, 1965 and December 13, 1966 these motions were taken with this case (A. 9) and on December 13, 1967 were sustained and Hazeltine Corporation was dismissed "for want of jurisdiction over its person" (A. 4236).

SUMMARY OF ARGUMENT

I.

CANADIAN CARTEL FINDINGS.

The undisputed evidence shows that the Canadian patent pool known as Canadian Radio Patents, Ltd. was organized in 1926 by the General Electric and Westinghouse companies through their Canadian subsidiaries, and has as its shareholders Canadian radio and television manufacturers, most of whom are subsidiaries of American companies and are Zenith's competitors both in Canada and in the United States. The Canadian pool was organized and operated by the conspiring companies for the express purpose of excluding the importation of American manufactured radio and television receivers into Canada.

The Pool's standard license is limited to local manufacture. The Pool at all times has refused to grant a license to import and over the years has sued and threatened with infringement suits sellers and users of unlicensed imported sets. No American manufacturer could sell imported sets without subjecting itself, its dealers and its customers to ruinous infringement litigation.

Respondents' patents were placed in the Canadian pool pursuant to an exclusive license agreement between Hazeltine and CRPL, which agreement grants the pool the right to use Hazeltine's present and future patents in its licensing and litigation activities. Hazeltine, before entering into its exclusive arrangement, was fully aware of the purpose of the pool to prevent importation of American receivers into Canada. Through Hazeltine and its co-conspirators

CRPL has amassed about five thousand patents applicable to television and radio receiving sets.

The only defense ever attempted by respondents in the trial court was the contention that under Canadian patent law a patentee risks loss of his Canadian patent if he licenses importations. This defense was proved false at the trial and was abandoned in the Court of Appeals.

Respondents, by knowingly participating in such an international cartel or patent pool arrangement having as its purpose the restraint of American foreign commerce, are co-conspirators in a combination and conspiracy in violation of Sections 1 and 2 of the Sherman Act.

(a) Fact of Damage Caused by Petitioners' Inability to Obtain an Import License.

Respondents' documents prove that petitioner had to have an import license from CRPL in order to compete effectively in the radio and television business in Canada, but that neither Zenith nor anyone else could obtain such a license under the pool patents because of the conspiracy between pool members and patent holders to block importation.

Zenith repeatedly sought an import license and brought an antitrust suit in Chicago seeking to force the pool to grant such a license. Zenith was then advised by letters and by the answers filed in that suit that importation would not be permitted and only local manufacture would be licensed. Zenith officials testified without denial that in the absence of an import license responsible management could not spend the time nor invest the money necessary to properly develop the Canadian market when petitioner could not protect itself or its distributors and customers from patent infringement suits and threats and confiscation of its products. For this reason petitioner was unable to develop the Canadian market.

Cogent proof of the fact of damage to Zenith's Canadian business was the evidence introduced by respondents that three of the pool members, namely, RCA, General Electric, and Western Electric had paid Zenith $10,000,000 in October, 1957, in settlement of previously incurred damages occasioned petitioner by the pool in Canada. As co-conspirators respondents were bound by this admission because it was made in the course of the conspiracy and as part of an effort to keep the pool alive, which pool had income of over $1,000,000 a year.

As late as June 5, 1959, CRPL's manager, in response to Zenith's request for a license to import, advised Zenith that it was infringing patents in the Canadian pool including a Hazeltine patent, and sent Zenith a standard form of license forbidding imports as the pool's answer to Zenith's request. Subsequent thereto and pursuant to the conspiracy the instant suit was filed on a Hazeltine patent, the Canadian counterpart of which was in the pool. In October, 1961, while this suit was awaiting trial, Hazeltine also asserted nine color television patents against Zenith which it claimed controlled color television, and the counterparts of which patents were also in the Canadian pool and were licensed in Canada only for Canadian manufacture. If Zenith took a United States license under Hazeltine's domestic patents and thereby admitted the validity of the patents, Zenith would then lose any defense to the assertion against it by the pool of the Canadian counterpart pool patents.

The Court of Appeals holds that a patent pool composed of Zenith's competitors, operated by a permanently staffed CRPL, and preventing licensing of the Hazeltine patents to cover export products does not constitute overt activity which can cause any damage at all to Zenith's business. This holding in effect sanctions the death of Zenith's foreign trade at the hands of an illegal cartel.

(b) Amount of Damage.

In an antitrust case an accepted measure of the amount of damage caused by an exclusionary conspiracy is a comparison of the profits enjoyed by the victim in a free market with those earned in the market curtailed by the conspiracy. Particularly is that so where it is the only measure of the amount of damage available to the petitioner. That measure of damage was employed in the present case and was supported by competent evidence admitted without objection by Hazeltine.

Zenith's officers testified without contradiction that but for the Pool restrictions on imports and threats Zenith could have enjoyed the same percentage of the Canadian market as it did in the United States (20%) since the two markets were in all essential respects comparable.

Zenith's books and records underlying its damage computation were proved to have been kept in the regular course of business and Hazeltine's counsel stipulated that they were accurate. These records were employed by Zenith's manager of internal auditing in the preparation of defendant's exhibits 218 and 220, used as proof of the damage calculations. He testified from the damage exhibits, his work-sheets, and on the basis of his computations and the market percentage described, that lost profits in Canada during the damage period for both radio and television aggregated $6,297,391.

The testimony of Zenith's officers plus the damage exhibits constitute substantial, and in the absence of denial conclusive evidence of the amount of damage under the decisions of this Court.

II.

THE ENGLISH AND AUSTRALIAN CARTEL FINDINGS.

The evidence showed that the British Patent Pool was created by the largest and most powerful television and radio companies in the world, including British General Electric, Marconi, RCA and Phillips. Hazeltine's English patents were placed at the disposal of the Pool pursuant to agreement between Hazeltine and British General Electric, and Pool income from these patents was split between the two companies.

Under the agreement Hazeltine gave British General Electric the exclusive licensing rights under Hazeltine's British patents in Great Britain, Northern Ireland, and Eire, together with the right to include the patents in the British Pool. Hazeltine undertook to grant no licenses under its British patents and pursuant to agreement no licenses would be granted except in accordance with the decisions of the Management Committee of the British Pool. Under the terms of the pooling agreement which ran through June, 1964, each of the participating companies, including Hazeltine, agreed that no licenses would be granted to import television and radio apparatus into the United Kingdom.

The dominant electronics company in Australia is Amalgamated Wireless Asia (AWA). Under the international cartel arrangements the Australian market was assigned exclusively to AWA and the patents of all members were placed in the Australian Patent Pool known as Australian Radio Technical Services and Patents Company, Ltd. (ARTS). Half of this organization is owned by AWA, and the patents of AWA, Standard Telephone & Cables, Philips, Electrical and Musical Industries, Marconi, RCA, and Neutrodyne were all included in the Pool. Neutrodyne is the controlled subsidiary of Hazeltine.

Under a contract dated September, 1928, and still in force, Neutrodyne is authorized to place all patents of Hazeltine in the ARTS Pool, and is required to see that all of the restrictions and provisions of the standard license are employed. Hazeltine patents, existent and future, have gone into the Australian Pool under this arrangement for thirty-five years, and during all this time have been licensed so as to preclude and exclude all importation of radio and television sets into Australia. The Pool has never granted a license to import American sets into Australia.

(a) The Fact of Damage in England and Australia.

The record shows that throughout the years Zenith made repeated efforts to enter the English market, but on each occasion the English Pool threatened its distributors so that they ceased buying Zenith products. Potential distributors reported that they could see no possibility of marketing Zenith's products in Great Britain under the licensing practices of the British Pool. Such importation as could be effected had to remain a limited and covert operation in order to avoid patent infringement litigation and confiscation of Zenith merchandise.

Similarly, in Australia no effective distribution could be obtained because of the Pool prohibition on imports and the hazards of patent infringement litigation and confiscation of goods. Zenith's president testified that he had conferred with many Australian businessmen with a view to setting up distribution, but such arrangements could not be effected and were futile because Zenith could not get a license for importation.

The only claim made by Hazeltine to support its contention that Zenith suffered no injury in these markets is that Zenith did not make useless demands for a license to import which the record shows could not be obtained. This claim is erroneous as a matter of law.

(b) The Amount of Damage in England and Australia.

The record evidence in Australia and England, as in Canada, with respect to the amount of damage stands uncontradicted and was admitted without objection. Zenith's executive vice president testified that free of Pool restrictions Zenith could have obtained during the damage period 5% of the English market and 2% of the Australian market. Because of the pre-damage period government restrictions, these percentage figures were substantially reduced by the Trial Court and an amended damage finding was entered fixing damages in England at $5,058,026 and in Australia at $248,460.

III.

THE PATENT MISUSE DEFENSE.

The trial court also found that Hazeltine had misused its patents by attempting to force Zenith to sign a standard package license agreement covering patents Zenith could not use and which license would have prevented Zenith from contesting the validity of Hazeltine's foreign counterpart patents placed in the patent pools.

In May, 1959 Hazeltine demanded that Zenith sign such a five-year standard package license and at the same time asserted that Zenith was infringing at least four Hazeltine patents in the manufacture of black and white television receivers.

Zenith informed Hazeltine that none of the four patents asserted were valid and that it would not sign a package license agreement covering unused patents and entailing royalty payments based on Zenith's entire production of patented and unpatented apparatus. Hazeltine replied that a non-package license would be granted for black and white television only under a formula whereby any one patent would be licensed at 50% of the royalty rate for the entire package, any two patents would be licensed at 80% of the package rate, and any three or more patents would be licensed at 100% of the package rate. When Zenith rejected this proposal, Hazeltine served notice of infringement of two patents and started the instant suit.

During the pendency of these proceedings, Hazeltine's executive vice president further informed Zenith that the latter was infringing at least nine Hazeltine color television patents. In April, 1962 Zenith was told that it could obtain a license under the nine color patents at an annual royalty rate of $435,000, or a package license covering all of Hazeltine's present patents, both for color and black and white, for $150,000 a year. In March, 1963 Hazeltine made a further demand on Zenith to accept a license under the nine color patents at an annual royalty of $275,000 or, under all color patents at an annual royalty of $300,000. However, a package license for all black and white and color patents, both present and future, was offered at an annual royalty of only $200,000. This was an obvious attempt to compel Zenith to sign a package license which would have admitted the validity and use of some 500 Hazeltine patents, the counterparts of which Hazeltine had placed at the disposal of the Canadian, English, and Australian Pools in order to block importation.

Hazeltine's internal memoranda established that Hazeltine's officers were fully aware of the misuse danger but chose to enforce the package rate structure and "run the risk of running afoul of the law".

IV.

INJUNCTIVE RELIEF.

The same record that established Zenith's claims for damages also of necessity established its right to injunctive relief because proof of actual damage from an illegal continuing conspiracy carries with it the threat of future damage which can only be prevented through the award of injunctive relief. Even if no actual damage had been shown, on this record the threat of injury to a company seeking to export its products into Canada, England and Australia is obvious and future damage to American companies can only be prevented by injunctive relief.

V.

THE DISMISSAL OF HAZELTINE CORPORATION.

The Trial Court had jurisdiction over Hazeltine Corporation by a pretrial stipulation, wherein it was stipulated that HRI and Hazeltine Corporation were "one and the same company" in order "to avoid the issue of whether or not it is appropriate to 'pierce the corporate veil'." There was no lack of due process as found by the Court below because Hazeltine Corporation voluntarily appeared before entry of judgment against it and had a full hearing on the construction of the stipulation, Dodds' authority to make it and whether in all the circumstances Hazeltine Corporation was a party.

ARGUMENT.

I.

PETITIONER AS A PERSON EQUIPPED TO COMPETE IN THE RADIO AND TELEVISION BUSINESS IN CANADA, ENGLAND, AND AUSTRALIA WAS INJURED IN ITS BUSINESS AND PROPERTY BY THE RESPECTIVE PATENT POOLS WITHIN THE MEANING OF SECTION 4 OF THE CLAYTON ACT.

(a) All Petitioner Had to Prove Under the Act Was a Violation of the Act and Injury to Its Business Resulting Therefrom.

In the case of *William Goldman Theatres* v. *Loew's, Inc.*, 150 F. 2d 738, 743 (C. A. 3, 1945) the Court said:

> "The purpose of the anti-trust laws—an intendment to secure equality of opportunity—is thwarted if group-power is utilized to eliminate a competitor who is equipped to compete."

As the largest producer of television sets and the second or third largest producer of radios in the United States (A. 456-7), Zenith Radio Corporation was shown to be equipped to compete in the three markets involved.

We have shown in the Statement of the Case that the proofs in this record make out a clear case of intentional injury to petitioner's electronic business in three foreign markets. While there is talk by the Court below of the so-called "fact of damage" and while there has been a great deal of confusion raised by some Court of Appeals decisions holding that the fact of damage must be proved to a legal certainty, Section 4 of the Clayton Act itself makes no such requirement. The words of the statute require only that the plaintiff "be injured in his business or property by reason of anything forbidden in the antitrust laws." Under the decision of this Court in *Bigelow*, discussed below, the so-called fact of damage can be proved just as any other fact in contested litigation by a preponderance of the evidence or by proofs from which a court can reasonably infer that an injury has taken place.

Earlier decisions of the Seventh Circuit Court of Appeals applied the proper rule of construction to Section 4 of the Clayton Act. In the case of *Roseland* v. *Phister Mfg. Co.*, 125 F. 2d 417, 419 (C. A. 7, 1942), the Court said:

> "The language of the statute is general and all inclusive. It includes any person who shall be injured in his business or property. * * *"

The Court further said (p. 420):

> "We may not by what seems to be a strained and unjustified limitation bar plaintiff from the statutory remedy. 'Congress evidently foresaw the wholesome effect of pecuniary responsibility for injuries resulting from such forbidden combinations and the courts should not devitalize the remedy by strained interpretations calculated to encourage disregard of the law.'"

See also, *Congress Building Corp.* v. *Loew's Incorporated*, 246 F. 2d 587, 594 (C. A. 7, 1957); *Dairy Foods, Incorporated* v. *Dairy Maid Products Coop.*, 297 F. 2d 805, 809 (C. A. 7, 1961).

This Court in the case of *Radovich* v. *National Football League*, 352 U. S. 445, 453-454 (1957), expressly pointed out to the lower Federal Court that:

> "Petitioner's claim need only be 'tested under the Sherman's Act's general prohibition on unreasonable restraints of trade' . . . and meet the requirement that petitioner has thereby suffered injury. Congress has, by legislative fiat, determined that such prohibitive activities are injurious to the public and has provided

> sanctions allowing private enforcement of the antitrust laws by an aggrieved party. These laws protect the victims of the forbidden practices as well as the public. . . . Furthermore, Congress itself has placed the private antitrust litigant in a most favorable position through the enactment of Section 5 of the Clayton Act. . . . In the face of such a policy this Court should not add requirements to burden the private litigant beyond what is specifically set forth by Congress in those laws."

To prove injury to its business petitioner was not required to negative every other possible cause of injury. Under a proper construction of the Act, it was enough if respondents materially contributed to petitioner's injury, or "substantially contributed, notwithstanding other factors contributed also", *Momand* v. *Universal Film Exchanges, Inc.*, 172 F. 2d 37, 43 (C. A. 1, 1948). Petitioner need not show that the illegality was a more substantial cause than any other. *Haverhill Gazette Company* v. *Union Leader Corporation*, 333 F. 2d 798, 805-806 (C. A. 1, 1964). See concurring opinion of Mr. Justice White in *Perma Life Mufflers, Inc.* v. *International Parts Corp.*, ——— U. S. ——— (June 10, 1968).

Moreover, in determining whether there was substantial evidence to support the Trial Court's finding that Zenith's foreign commerce had been "drastically curtailed" by the patent pools (A. 2908), the Court of Appeals was required to view the evidence in the light most favorable to petitioner, giving it the benefit of all inferences which the evidence fairly supported. The rule is succinctly stated by this Court in *Continental Ore Co.* v. *Union Carbide Corp.*, 370 U. S. 690, 696 (1962) as follows:

> "The Court of Appeals was, of course, bound to view the evidence in the light most favorable to Continental and to give it the benefit of all inferences which the evidence fairly supports, even though contrary infer-

> ences might reasonably be drawn. From our examination of the rather extensive record, we have concluded that the Court of Appeals departed from this rule and erred in holding that there was insufficient evidence to support a finding that respondents' conduct in fact caused injury to Continental's business."

The Court below, in *First Nat. Bank of Colorado Springs* v. *McGuire,* 184 F. 2d 620, 625 (C. A. 7, 1950), previously held:

> "The question of the weight of the evidence was for the trial judge, and we may not disturb his findings unless they cannot be sustained upon any rational view of all the evidence including all reasonable inferences of which the testimony is susceptible; that is, we are authorized to reverse the judgment only if in our view the findings of fact are clearly erroneous."

See also *Stacher* v. *United States,* 258 F. 2d 112, 116 (C. A. 9, 1958).

In holding that petitioner failed to prove "the essential *fact* of damage" (A. 4254) the Court of Appeals has completely departed from the principles of these decisions. The Court has added conditions and evidentiary burdens to Section 4 which simply do not appear. An example is the Court's holding that petitioner had to make an explicit demand for an import license during the damage period (A. 4256, 4258) notwithstanding the fact that the evidence conclusively established that such a license was unavailable. See pp. 91-6 *infra.* Moreover, the Court has tortured the record to draw inferences contrary to the District Court's findings which were supported by substantial evidence. In some instances, the Court below has drawn inferences directly in conflict with the undenied testimony of witnesses whose demeanor and credibility only the Trial Court was in position to judge.

Thus in its opinion the Court below refers to a letter from the pool threatening a Motorola distributor with an infringement suit for importing unlicensed sets, which threat occurred during the damage period, as the basis for an inference that because a Motorola distributor was threatened no Zenith distributor was threatened (A. 4258). This contrary inference is drawn in the face of direct undenied testimony that the pool did threaten Zenith with infringement suits within the damage period. Frank Crotty, a Zenith vice president, testified without denial that Brain McConnell, the pool manager, threatened suit on a Hazeltine patent administered by the pool. McConnell told Crotty in a conference on May 12, 1959, that Zenith was infringing pool patents, "one of which was a patent of Hazeltine origin. He told me that I would have to take a license; that the license could not be for importation, it would have to be for local manufacture" (A. 410-12). This conversation was not denied by McConnell or anyone else.

Following the May, 1959 meeting McConnell wrote Crotty on June 5, 1959 (the letter was received within the damage period) enclosing the pool's standard license which expressly refused to license imported sets and gave notice of infringement of a CRPL patent (Defendant's Ex. 154; A. 2021). Parenthetically, such a notice is a customary and accepted way of threatening an infringement suit and is the final step taken before instituting litigation. In the letter McConnell advised (A. 2021):

> "With regard to the patent and its use in Zenith television receiver No. B-2225, I have had this matter reinvestigated and there is no doubt in our minds that the invention covered by the patent is used in this receiver. The tests show this quite conclusively."

Following this the instant suit was filed in November, 1959, on a Hazeltine patent whose counterpart was included in the Canadian patent pool (A. 131, 272). This was conceded by respondents' counsel at the trial (A. 131). Further Hazeltine threatened Zenith with suit on nine color patents, the counterparts of which were also in the Canadian Pool (A. 419; Def. Ex. 10; A. 1010; A. 131, 145-6).

The Court below in its opinion also completely misapprehended the effect of the warning notice which came to Zenith's attention in September of 1958 (Def. Ex. 138; A. 1879, 1880). This warning notice, expressly addressed to all importers of radio and television sets in Canada, covered all of Zenith's potential customers. The notice appeared in the "Trade Builder", a Canadian trade publication with a wide circulation, and the Pool admitted it published such "warning" notices repeatedly. Defendant's Exhibit 144 (A. 1973, 1974) states with reference to the notice: "we are continuing to periodically run the warning Notice in the trade publications." This statement was made by CRPL. The Court below refers to this document as an "advertisement" (A. 4258). Actually, it was a threat to the television industry in Canada that they would be sued if they handled, sold, or used Zenith's unlicensed sets. The notice stated (Def. Ex. 138; A. 1880):

> "Canadian Radio Patents Limited desires to inform importers, vendors, purchasers or users of radio or television receivers and other electronic devices and equipment incorporating inventions owned or administered by Canadian Radio Patents Limited and not manufactured under license from Canadian Radio Patents Limited that they will be held liable for patent infringement."

The Court of Appeals holds as a matter of law that such a notice threatening every actual and potential customer of Zenith in Canada with an infringement suit could not possibly injure Zenith's Canadian business. In other words, the pool can with impunity issue such a notice continuously in trade papers without incurring any liability whatever under the federal antitrust laws, even though the notice obviously was intended to and sought to induce a boycott of Zenith products in Canada.

The holding of the Court below ignores the letter of Wright to McConnell of the pool stating that Zenith's business was injured by these threats and Wright's testimony that "a distributor for resale must make a rather substantial investment in an inventory of goods to handle. He has got to do a lot of work in hiring salesmen and in developing a territory, and we just found that it was impossible to get anyone who was willing to take that sort of risk with this threat of infringement hanging over them" (A. 453).

Wright testified about this specific document as follows (A. 458):

> "Q. Now will you tell the Court what effect, what residual effect has remained from the activity of this Pool even after the settlement that you made with the three defendants in the Zenith litigation?
>
> "A. Well, it is typified by this ad in the Trade Builder. Here is a threat by an apparently respectable organization which is composed of companies like Canadian General Electric and the Telephone Company in Canada and Westinghouse, Philips, the Marconi group, everyone that handles our produce from the user on up to the distributor is going to be sued. This has a serious effect on your ability to get the kind of distributors that you would need to do the kind of marketing job that we have been talking about, to be able to get them to make the kind of an investment and do the promotion and the advertising and to build a sales force that will do it."

Here is an experienced, competent executive whose testimony as to the causal connection between the Pool's "warning notice" and the injury to Zenith's Canadian business is not denied. In the face of this the Court of Appeals holds as a matter of law that there is no evidence in the record that this document published repeatedly in trade circles or any other activity of the Pool had any adverse effect on Zenith's sales.

The Court below also states that Zenith claimed to be fully licensed as a result of the 1957 Zenith-RCA settlement (A. 4258) from which it infers Zenith did not want or need a Pool license. This is a distortion of Wright's letter (Def. Ex. 138; A. 1882) and misstates the record. As part of the settlement Zenith obtained licenses under the foreign patents of RCA, G.E. and Western Electric only. These licenses were limited to existing patents and expressly excluded color (Pl. Ex. 48; A. 2783). The Court of Appeals draws this inference in the face of the District Court's contrary findings (Findings XXIX, XXX; A. 2905) and the undenied evidence that the Pool claimed it held patents, including Hazeltine patents, under which Zenith was not licensed and which Zenith was infringing (Def. Ex's 151-2; A. 2014-18). Also ignored is the undenied testimony that after 1957 Hazeltine was asserting nine color television patents which were in the Canadian pool (A. 419-20; Def. Ex. 10; A. 1010) and which Hazeltine claimed covered the entire television field as it related to color television (Def. Ex. 1; A. 946). A Canadian license on these patents because of the conspiracy could not be obtained unless Zenith built a factory, which would cost millions of dollars, and manufactured sets in Canada (Pl. Ex. 50-A; A. 2811, 2829-30; A. 454, 392, 410; Def. Ex. 150; A. 2013).

The Court of Appeals reaches the further astounding conclusion that because Zenith actually sold 60,000 TV sets through its wholly owned Canadian distributor and obtained five per cent of the market in Canada in television sales, it therefore as a matter of law could not show that it would have obtained a greater share absent the pool (A. 4258-9). The damage exhibit gave credit for the amount of profit

Zenith actually made in Canada during the damage period (Def. Ex. 220; A. 2661). The testimony of Wright and Kaplan that free of the pool in Canada Zenith could have sold the same share of the Canadian market as it did in the United States, namely, twenty per cent, was not denied by testimony or exhibits, nor in any manner impeached by cross-examination. The Court below not only failed to give this evidence the required weight but in effect rejects it entirely by holding the Trial Judge "made a mistake" in inferring from it that Zenith was damaged (A. 4258-9).

Further, the Court of Appeals' conclusion that any interference with petitioner's business short of total exclusion from the market does not constitute injury is wrong as a matter of law. Thus, this Court in *Paramount Famous Lasky Corp.* v. *United States,* 282 U. S. 30, 44 (1930), said:

> "In order to establish violation of the Sherman Act it is not necessary to show that the challenged arrangement suppresses all competition between the parties . . ."

The Court of Appeals brushes aside the evidence of the Pool's continued operation during the damage period with the remark that "even if the continuous existence of the unlawful conspiracy was, as Zenith claimed, a continuous overt act, the fact of damage must still be shown" (A. 4260). We respectfully submit that the continuous overt act of the existence of the pool during the damage period was part of the so-called fact of damage. The pool was well known to the trade. Its activities in suppressing the competition of importing companies was likewise well known to the trade. Its warning notices threatening infringements suits, also well known and well publicized in the trade (by its own admission it put out "4,343,084 advertising messages to help put a stop to importation" (Def. Ex. 130; A. 1863)), together with its other well known activities proved it a continuing threat to anyone who undertook to import Zenith sets into Canada. Actually, this was shown by respondents' own evidence. They introduced in evidence a report of a Canadian Royal Commission (Pl. Ex. 50-A; A. 2811) which they sponsored and whose recitals were binding upon them. This report stated (A. 2830):

* * * * *

> "*The portfolio in respect of which CRPL had the right to grant licenses consisted of 5,000 patents, and in the absence of a license from CRPL it is doubtful if anyone could sell in Canada a radio or television receiver.*
>
> "CRPL indicated that it does not grant a license to any importer of radio or television receivers, except in the limited situation where the type or kind of radio or television receiver sought to be imported *is not manufactured by any radio or television receiver manufacturer in Canada. It is particularly in respect of the policy of CRPL in precluding importers from bringing into Canada radio and television receivers that the complaint was made to this Commission.*
>
> "It was stated to be the policy of CRPL to enforce its patent rights against any person who sells in Canada an imported radio or television receiver which infringes any one or more of the patents in its portfolio . . ." (Italics ours)

Further, a lawyer by the name of Henderson whose law firm worked for the Pool and who was called and sponsored by respondents as their witness testified on cross-examination as follows (A. 701, 703-5):

> "Q. Now, you told us this morning that you knew what the policy, the licensing policy of CRPL was and that, as I understood you to state it, the policy was not to license imports where there was manufacturing in Canada.
>
> "A. That is correct.
>
> "Q. Now, imports that come in, in the electronics

field, would represent competition to the owners of this pool, would it not?

"A. Certainly.

"Q. No question about it, is there?

"A. I would have thought not.

* * * * *

"Q. (Reading)

'The portfolio in respect of which CRPL had the right to grant licenses consisted of 5,000 patents, and in the absence of a license from CRPL it is doubtful if anyone could sell in Canada a radio or television receiver.' . . .

By Mr. McConnell:

"Q. Was that considered? . . .

"A. Of course they considered it. They have written it. They considered that aspect of the matter and they referred to it in the report.

By Mr. McConnell:

"Q. And they had before them the benefit of whatever CRPL had submitted, is that right?

"A. Of course.

* * * * *

"Q. Well, do you consider that a company like Zenith Radio exporting its sets into Canada is competition for the members of this pool? . . .

"A. Well, I have already told you that I don't know the nature of their—the full scope of their activities. You have shown me their licensees. I am now assuming that they are manufacturing and selling sets and, certainly, if they are manufacturing and selling radio sets in Canada, your exportation into Canada is competition.

"Q. So this report then says that in the face of 5,000 patents it would— 'it is doubtful if anyone could sell in Canada a radio or television receiver.' Is that right?

"A. That is what it says.

"Q. And that would include the Zenith Radio Company, wouldn't it?

> "A. It would include anyone as at that time who sought to sell in Canada radio receiving sets, that is right."

In the face of this testimony the Court below says "The facts in this case do not resemble those in *Continental Ore v. Union Carbide,* 370 U. S. 690, where there was clear evidence of defendant's refusal to deal with the Continental Company, as a result of which it had to drop out of the vanadium business" (A. 4260).

Here, as we have shown, the refusal to deal is proven conclusively by testimony and exhibits put into the record by respondents themselves.

The Court's further statement that the patent pool, even though it might be considered as a continuous overt act during the damage period, could not as a matter of law cause any damage to the petitioner, is likewise disposed of by the above report, which expressly states (Pl. Ex. 50-A; A. 2830):

> "It is particularly in respect of the policy of CRPL in precluding importers from bringing into Canada radio and television receivers that the complaint was made to this Commission."

This report was referring to a time in 1959, within the damage period. The document concedes that the existence of this pool designed to preclude importers from bringing sets into Canada was obviously a constant threat to Zenith and to Zenith's customers. The entire record shows that this threat had been enforced against importers and there is no testimony in the record that the policy has ever been changed. Even as late as a year after the trial of the case, in a hearing on Hazeltine's motion to withdraw the antitrust findings, counsel for respondents admitted the fact (A. 3036).

Further, the Court of Appeals holds as a matter of law that nothing happened during the damage period that could possibly injure Zenith's business even though it was conceded that the pool remained in operation during the entire damage period and even though it was alleged and proved and the trial court found that the instant suit was brought in furtherance of the conspiracy. Thus, the counterclaim filed May 22, 1963, alleged (A. 67-8):

> "The filing of this suit and the threats to file other infringement suits against counterclaimant on any number of patents in the Hazeltine pool were acts employed to effectuate the conspiracy alleged herein and to compel by economic coercion the signing of counterdefendant's package license. In turn either the signing of the license or a finding of validity and infringement in this suit will signal and lend overwhelming support to attacks on counterclaimant's export trade by the foreign pools under foreign patents covering the same inventions."
>
> "... Because of the pendency of this suit and counterdefendant's other charges of infringement described in paragraph 7 above, counterdefendant has been forced to delay expansion of its foreign trade in England, Canada, Australia and other countries where, in furtherance of the conspiracy alleged herein, counterdefendant's inventions and patents are employed to restrain and prevent importation and trade."

The Trial Court determined this issue along with all other antitrust issues in the case in favor of Zenith, as follows (A. 2857):

> "The Court has reviewed the evidence, exhibits and briefs of the parties on both the patent and antitrust phases of the above cause and finds for the defendant on the issues raised by the complaint and answer and the counterclaim."

That the Trial Court's ruling was correct is shown by the opening statement of Mr. Dodds, counsel for Hazeltine (A. 131-2):

> "Mr. McConnell speaks repeatedly about these pools keeping out sets. These pools don't have any power to keep out anything. They are not a government body. All it means is that if you import goods into Great Britain or Canada or Australia, and if what you are importing are infringements of the patent they administer, you may subject yourself to an infringement suit, the same as if you infringe a patent in this country. *And we can't prevent Zenith from selling sets without an adjudication, which we are in the process of trying to get now.*" (Italics ours)

This was a clear admission that Hazeltine was trying to get an adjudication of an infringement of a patent held by the pool which could be used by the Canadian pool to stop Zenith's export trade. The Canadian courts recognize the validity of Canadian patents where their American counterparts have been upheld in American courts. *American Arch Co.* v. *Canuck Supply Co., Ltd.*, 3 Dominion Law Reports 567, 570-1 (1924); *Canadian Industries Ltd. & Canadian G. E.* v. *Sherwin-Williams Co. of Canada, Ltd.*, 1946 Ex. C. R. 65, 5 C. P. R. 6, 56 (1945). In *American Arch* the Court said (pp. 570-71):

> "The United States Patent which is identical in terms with the Canadian Patent, was declared valid in a case of the *American Arch Co.* v. *Universal Arch Co.* (1922), 290 Fed. Rep. 647, by Mack, Jr., in the District Court of United States, and his decision was affirmed by the Circuit Court of Appeals.
>
> * * * * *
>
> A strong presumption in favor of the validity of the patent is created . . . by the judgment herein above referred to."

Thus if Hazeltine had won the instant patent suit, or if it can sustain any of the nine color patents currently being asserted against Zenith, the Pool could use that judgment to establish the validity of the Canadian counterpart patent in an injunction or damage suit against Zenith in Canada. Certainly, the Trial Court was free to draw the inference that Hazeltine, a member of the conspiracy, was acting pursuant to the conspiracy in bringing the instant suit and was therefore directly responsible for the resulting curtailment of Zenith's business, testified to by both Wright and Kaplan.

The inference was buttressed and corroborated by Dodds' opening statement quoted above and by the terms of the standard license tendered Zenith by the respondents. It provided:

> "Section 3. Nothing herein contained, and no act or acts hereunder, shall be construed as, or result in, conveying any license to Licensee, expressly or by implication, estoppel or otherwise . . . (b) Under any patents of countries foreign to the United States; . . ." (Def. Ex. 2; A. 955, 958.)

This provision was an essential part of the conspiracy because it specifically prevented the application of court decisions holding that the grant of a domestic license also grants a license by implication to the foreign counterpart patent (*Curtiss Aeroplane & M. Corp.* v. *United Aircraft E. Corp.*, 266 Fed. 71, 77-80 (C. A. 2, 1920)) which would bring respondents in violation of their agreements with their foreign conspirators not to license except through the pools.

This was also conceded in a letter written by Dodds, where he stated:

> "In those countries where the Hazeltine patents are included in an industry-wide pool they are, of course, beyond our control and our licensees have to make their own arrangements with such pool." (Def. Ex. 115; A. 1634.)

The instant suit was brought on one monochrome patent but Hazeltine asserted that Zenith was infringing at least four such patents (A. 435-6).

Subsequent to the instant suit, Hazeltine, on October 18, 1961, also asserted nine color television patents against Zenith (A. 419; Def. Ex. 10; A. 1010). The counterparts of these patents were also in the Canadian pool and were licensed in Canada only for Canadian manufacturers (A. 131, 145-6; Def. Ex. 118; A. 1645, 1648). The Court of Appeals can find no demand for a license to import by Zenith after 1953 but the instant suit asks for an injunction against these very restrictions written into Hazeltine's Patents by their agreements with the Pools. The Hazeltine answer denies Zenith's right to such a license (A. 71).

The dilemma the assertion of these television patents placed Zenith in was serious. If it took a package license under Hazeltine's domestic patents, it thereby admitted the validity of all the foreign counterparts in the pool and lost any defense to an infringement suit on the patents regardless of whether the patents were valid or not (Def. Ex. 2; A. 955, 971). Further, since it could obtain no license in Canada unless it manufactured the sets in Canada, Zenith, as testified to by Wright, Zenith's president, had of necessity to curtail its operations in Canada until the outcome of the instant suit could be determined (A. 453). Every time Zenith sold a set it created another potential liability to the Pool.

The trial court on this evidence not only held the assertion of the patents to be pursuant to the conspiracy, but properly held that putting the patents in the pools under the circumstances in this case was a violation of the antitrust laws (A. 2911-12).

This record gives conclusive evidence that the continuation of the pool constitutes a continuing threat to petitioner's business which is subject to a monetary evaluation. Thus in a settlement of Zenith's earlier suit against three members of this pool the so-called fact of damage caused by the existence of the pool was shown by settlement papers introduced in evidence by respondents themselves. That evidence showed that Western Electric, RCA, and General Electric as members of the pool paid Zenith $10,000,000 for damages occasioned Zenith's business by the Pool in Canada up to October, 1957 (A. 466; Pl. Ex. 48; A. 2783, 2785-6). These co-conspirators of respondents were Zenith's competitors in Canada and had operated the Canadian patent pool since 1926, and were thoroughly familiar with every facet of the pool's activity and its effect on an importer's business. The *RCA* case damage settlement was on account of the same pool activity as was shown to have continued in the instant case. The Court of Appeals holds as a matter of law that this evidence is not relevant in determining the impact of such a patent pool upon Zenith's market for television and radio sets in Canada (A. 4261) even though respondents contended that they were co-conspirators and, therefore, entitled to use the settlement release against the damage claim accruing after the settlement (A. 2944-5).

The Court below has further reached the conclusion that the injury to petitioner's Canadian business cannot be proved by the admission of the co-conspirators themselves made in the course of their conspiracy (A. 4260-1) where by the settlement of the lawsuit they were seeking to get rid of a serious attack on the pool and to preserve intact the very pool complained of here, out of which they were receiving approximately $1,000,000 a year in license fees (Def. Ex. 142; A. 1964-5). This evidence was introduced by respondents themselves without any qualification whatever (Pl. Exs. 38-48; A. 2697-2786).

Any fair reading of the Court of Appeals' decision requires the conclusion that the only way petitioner could prove any damages from the respondents' admitted violation of the antitrust laws would be to search out each potential customer in each market and then estimate how much business would have been gained if such customers had not been intimidated by the pool. In a case such as this a lifetime would not be time enough to even find the evidence, let alone put the proof into the record. Its application here gives the pools complete immunity from treble damage suits and *carte blanche* to ruin Zenith's foreign commerce.

(b) The Amount of Zenith's Damages in Canada Is Proven by Competent and Conclusive Evidence Stipulated as Accurate and Admitted in Evidence Without Objection.

As the court below agreed in the *Milwaukee Towne Corp. v. Loew's, Inc.*, 190 F. 2d 561, 566 (C. A. 7, 1951), ". . . '[I]f the *fact* of damage is proved, the *amount* may be reasonably approximated if based upon competent evidence.' "

It has long been the law that in an antitrust case an accepted measure of damages arising from the curtailment of a market is a comparison of the results in a free market with the results in the curtailed market during a comparable time. See *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U. S. 555, 561-4 (1931).

And in *Bigelow v. RKO Radio Pictures, Inc.*, 150 F. 2d 877, 883 (C. A. 7, 1945), the Court of Appeals for the Seventh Circuit while reversing a jury verdict on the issue of damages, laid down the rule that the proper measure of damages was the difference between a theater's profits in an open market as compared to profits earned in a restricted market. The Court of Appeals there found that no open market existed which could be used for comparison and therefore erroneously reversed a jury verdict.

This Court, however, in turn reversed that decision and said (327 U. S. at p. 265):

> "'The constant tendency of the courts is to find some way in which damages can be awarded where a wrong has been done. Difficulty of ascertainment is no longer confused with right of recovery' for a proven invasion of the plaintiff's rights."

Certainly the monopoly of patents known as CRPL prevented Zenith from obtaining a patent license to import Zenith sets into Canada and was a proven invasion of Zenith's rights. It was admitted in a document produced from Hazeltine's files that lack of a patent license was as much of an impediment to trade as a tariff barrier (A. 169).

Joseph S. Wright, Zenith's president, testified without objection that Zenith was the number one producer of television sets in the United States in both units and dollars (A. 456) and that Zenith was among the top three producers of radios in the United States (A. 457). He said that the Canadian market was comparable to that in the United States in that Zenith's competitors in Canada were principally Canadian subsidiaries of the same competition Zenith had in the United States (A. 457). He said that prices were lower in the United States than in Canada and that styling and other features of the sets were more advanced in the American market (A. 457).

He then testified without objection or denial as follows (A. 457):

> "I am convinced that with the kind of quality product we make and the reputation we enjoy both here and in Canada, that taking away these clouds and difficulties that we have had with the Pool, these patent matters, that we could build up to a similar percentage of industry in Canada that we have in the United States."

Wright then said that if Zenith had not been subject to "this kind of pressure in the trade among dealers, among distributors and among customers, that we would certainly, over this period of time, have built up a business that would have been comparable in Canada to what we enjoy here in the United States" (A. 461).

> "Q. You mean that you would have an equal percentage of the business in Canada against that competition."
>
> "A. That's right, that is correct." (A. 461.)

Samuel Kaplan testified that he was the chief financial officer of Zenith and that he had been employed by the company since 1923 (A. 523). He was examined on the foundation proof of Zenith books and records used in the damage computation.

> "Q. Can you tell us whether or not those books are kept in the regular course of business, and whether or not they are accurately kept?
>
> "Mr. Dodds: Your Honor, I stipulate that they are kept in the regular course of business and are accurate. No question about it.
>
> "The Court: All right. That solves that." (A. 524.)

Dodds then objected to the testimony as duplicating Wright's testimony and said, "I am perfectly willing to stipulate that Zenith has had problems in exporting their radio and television receivers to Canada." (A. 524.)

Kaplan further testified that in the preparation of Defendant's Exhibit 220 (A. 2661), he gave the witness Stevenson the percentage used in making the damage calculation for Canada (A. 527-8). This figure was based on his opinion (A. 528):

> "that we could accomplish in Canada the same percentage of industry that we were able to accomplish in the United States.

> "Now, this took into consideration the similarities between the countries, the effect of our advertising which overlaps and spills back and forth between the countries, and the nature of our competition."

The witness also assumed that Zenith would be "free of the restrictions which we have had evidence of in this case" (A. 528).

The computation of the amount of Zenith's damages in Canada was prepared by Willis Stevenson, a certified public accountant, and a member of the American Institute of Accountants and the manager of internal auditing at Zenith (A. 495-6).

The witness testified as to the source of his figures, as to the different product lines of Zenith television, radio, hi-fi, stereo and color television during the four years preceding the filing of the counterclaim but he did not include color television (A. 501-2). He testified how he tabulated it by five periods starting June 1, 1959, and ending May 31, 1963, and the witness produced his work sheets showing his computations (A. 502; Def. Ex. 218; A. 2621). The figures in Canada were transcribed from government sources in Ottawa, Canada (A. 505), and the whole computation was put together as Defendant's Exhibit 220 (A. 2661).

In computing the lost sales in the Canadian market caused by the combination and conspiracy complained of, the witness said (A. 513-4):

> "In the Canadian market we have started with a base of the market, which I have previously described, for each of the five periods. We have applied the Zenith share of the domestic market [the United States] expressed as a percentage for each of these five periods to arrive at a Zenith share of the Canadian market, expressed in units.
>
> "The Court: Assuming their share would be what, the same as it is in America or what?

> "The Witness: The same as it is in the United States."

The witness then said (A. 514):

> "From that number of units I have deducted the number of units we actually sold in the Canadian market in each of those five periods to arrive at the lost sales in the market, expressed in units. To those units I have applied a Zenith average factory selling price to Canada of sets, within those five periods, actual experience of our selling price—to arrive at the lost sales in that market expressed in U. S. dollars at the factory selling price level. . . . To the figure of lost sales in the market, I have applied the percentages of profit applying to additional volume of business and arrived at the lost profit on the lost sales, also expressed in U. S. dollars."

The witness said he followed that same method for each of the five periods (A. 514) and tabulated the computations on Defendant's Exhibit 220 (A. 513).

The witness testifying from the schedule, his work sheets and on the basis of the formula described, said lost profit in Canada for the period June 1 to December 31, 1959, in television was $708,028.00 and in radio, $138,048.00 (A. 517); for the period 1960—television, $1,116,597.00 and for radio, $145,871.00 (A. 518); for the period 1961—television, $1,348,867.00 and radio, $68,241.00 (A. 518); for the period 1962—television, $1,883,774.00, and radio, $75,622.00; for January through May, 1963—television, $769,630.00 and radio, $43,213.00 (A. 518).

After this testimony, defendant's counsel asked for and received copies of the work papers and time for an opportunity to review them with his own accountant before cross-examining the witness. Both requests were granted (A. 519). Dodds also asked for and received copies of Defendant's Exhibits 218 and 220 (A. 519, 521) "as well as copies of these cost sheets of Mr. Stevenson" and had time from Friday noon until the following Monday afternoon to study them with his accountant (A. 521).

The witness Stevenson was recalled the following Monday afternoon as an adverse witness and cross-examined by Dodds, assisted by Hazeltine's accountant, on all the items contained in Defendant's Exhibits 218 and 220 (A. 726-69), following which the exhibits were admitted in evidence without objection (A. 769).

Hazeltine then called as a witness Myron R. Hartley, a graduate of De Paul and Chicago Universities who had worked as an accountant for five years for the accounting firm of Peat, Marwick, Mitchell & Co. and three years for Arthur Andersen (A. 770) who was asked (A. 770):

> "Q. Have you examined these groups of papers which I show you comprising Defendant's Exhibits 218 and 220?
>
> "A. Yes, sir."

This accountant did not deny the accuracy or method of computation used in these exhibits or their content. No contravening evidence was ever offered by other documents or by oral testimony and since there was no objection to their admission in evidence, the competency of the documents is established beyond question. The only question presented here is whether they constitute any evidence at all in support of the Trial Court's damage findings.

Here the trier of the facts, who was an experienced trial judge, concluded that in Canada Zenith was damaged by the pool. We have already pointed out that this finding was based upon direct and uncontradicted testimony of Wright and Kaplan that if the pool restrictions "had been removed Zenith could have obtained the same" 20% of the Canadian market as it obtained in the United States, basing such testimony on the fact that the competition was the same, that the advertising in the two markets overlapped, that many of the Canadian sets were picking up broadcasts from the United States, that the two countries used the same scanning signals, and generally were identical markets, the only difference being that in one the pool maintained restrictions against American products while in the United States no such restrictions were imposed.

That the testimony of Wright, Kaplan and Stevenson plus the exhibits 218 and 220 constitute substantial, and in the absence of denial, conclusive evidence in proof of the amount of damages is expressly held in *William H. Rankin Co.* v. *Associated Bill Posters of U. S., Etc.*, 42 F. 2d 152, 155 (C. A. 2, 1930) where the Court said:

> "The fact that this amount of the plaintiff's damages could not be expressed in exact figures did not make them speculative. There was no speculation as to the fact of actual damage. Its business had been seriously curtailed. The defendants had caused the damage, and cannot be permitted to escape liability because it is difficult for the plaintiff to express in terms of dollars the damage it has suffered."

The evidence, whose competency was sustained in the *Rankin* case, was described by the Court as follows (p. 155):

> "In its proof of damages, Rankin was permitted, under objection and exception, to show by the testimony of its treasurer and by a compilation he had made, based on the net profits of the business in 1911 and from his knowledge of business conditions when free of the defendants' unlawful interference, what he considered would have been the normal increase of this plaintiff's business from year to year. He was permitted to estimate on this basis its probable yearly earnings from July, 1913, to June 30, 1918, and to explain how his figures were arrived at. . . . The witness testified from his knowledge of the business history, made his calculations upon what appears to be a reasonable basis, and the defendants had ample opportunity by cross-examination or the offer of their own evidence on the subject to discredit him and show any fallacy

in his reasoning or testimony. *Whatever may be said of its weight, and that was entirely for the jury,* we have no difficulty with its admissibility." (Italics ours)

Even the Court below in other cases has followed the *Rankin* doctrine and quoted it with approval in the case of *Grepke* v. *General Electric Company,* 280 F. 2d 508, 513 (C. A. 7, 1960). There it said (p. 512): "On the record before us we would be limited to the question (if raised by defendant) of whether *there is a failure of any evidence* that plaintiff was damaged. Only if defendant raised that question and if we find in defendant's favor on that question, can we say that the district court erred as a matter of law in overruling defendant's motion for a directed verdict. . . ." (Italics ours.)

Again, that Court in the case of *A. C. Becken Co.* v. *Gemex Corporation,* 272 F. 2d 1, 5 (C. A. 7, 1959) said that the language which we have quoted above in the *Rankin* case must be applied in determining whether the proof of damages was speculative.

Moreover, the Wright and Kaplan testimony, that absent the pool restrictions Zenith would have enjoyed the same share of the Canadian market as it did of the United States market, has been corroborated by Zenith's actual experience while operating under the protection of the decree. (See Petition for Rehearing pp. 2-3; A. 4265, 4266). The record does not include figures as to Zenith's sales or market percentage in the post-decree period because the case was pending on appeal. However, United States Department of Commerce, Bureau of the Census, Export Statistics reflect a dramatic increase in dollar exports of television sets to Canada starting in 1966. These figures are reproduced in Appendix B to this brief and the court can take judicial notice of them. See *Tampa Electric Co.* v. *Nashville Coal Co.,* 365 U. S. 320, 332 (1961). They show that dollar exports of television and radio increased from

$7,237,176 in 1965 to $14,538,417 in 1967 (App. B, Schedule 1; A-25). Also reproduced in Appendix B to this brief are duly certified copies of the Export Sales Reports filed by Zenith with the Bureau of the Census (App. B; A-27-A-41). These show a corresponding increase in Zenith's exports to Canada in the post-decree period—from $5,988,000 in 1965 to $9,078,000 in 1966 and to $12,694,000 in 1967 (App. B; Schedule 2; A-26).

The Court of Appeals says that the District Court made a mistake in inferring from the entire record that the "essential *fact* of damage" had been established by Zenith (A. 4254). With all due respect to the Court below, the District Court needed no aids by inference. The testimony in support of the District Court's findings of both fact of damage and damage amount was direct and conclusive and not rebutted in any way. These were fact issues and as shown the Trial Court's findings were supported by substantial evidence. That the Court of Appeals would have reached a different conclusion does not make the damage findings "clearly erroneous" within the meaning of Rule 52 (a).

(c) Zenith's Damages in England and Australia Were Proven by Substantial Evidence.

Sam Kaplan, Zenith's executive vice president, testified that, free of the restrictions of the pools, Zenith could have obtained during the damage period 5% of the English radio and television market and 2% of the Australian market (A. 528-30). Because of government licensing restrictions which were not removed until June, 1959 in England and April, 1960 in Australia, the Trial Court reduced these figures and assessed damages in lower amounts (A. 3524-6). The amended computation is shown at A. 3534-5. Defendant's Exhibit 220 (A. 2661) shows the amount of these damages as originally computed. Respondent's trial counsel stipulated that the figures were accurate and made no objection to the admission in evidence of Defendant's Exhibits 218 and 220 (A. 524, 769). In *Milwaukee Towne Corp.* v. *Loew's, Inc.,* 190 F. 2d 561, 566 (C. A. 7, 1951), the Court of Appeals for the Seventh Circuit said:

> "Neither do we need to follow defendants in their detailed argument designed to show numerous fallacies and inaccuracies in the exhibit prepared and submitted by plaintiff's accountant, for the reason that under the rationale of the *Bigelow* case we are satisfied that it was within the province of the trier of the facts to rely upon the computation there disclosed, providing, of course, there was proof of the fact of damage."

In *Bordonaro Bros. Theatres* v. *Paramount Pictures,* 176 F. 2d 594, 597 (C. A. 2, 1949), the Court said:

> "Damages in such a situation necessarily cannot be assessed with mathematical precision; but the testimony of plaintiff's expert witness, Samuelson, 'while purely an estimate and introduced as such, was proof of a kind as definite and certain as the subject matter admitted.' . . . *Defendants must not be allowed to create their own immunity by the extent and duration of their conspiracy.*" (Italics ours)

In the case of *Small* v. *Schultz,* 180 F. 2d 351, 352 (C. A. 7, 1950), the Court of Appeals for the Seventh Circuit said:

> "It is understandable that defendant would not appreciate the limitations upon us as a reviewing court. She does not realize that the question of damages cannot be tried *de novo* in this court."

In spite of its own holding in *Small* v. *Schultz,* the Court below retried the damage issue in England and Australia *de novo,* not on basis of the original record but apparently relying largely on offers of proof made more than a year after the case was tried and after findings of fact adverse to respondents' contentions had been entered by the Trial Court.

The Court of Appeals, while conceding that a conspiracy existed in both England and Australia, disposes of both markets by saying that there was no evidence that Zenith was prepared to enter the English or Australian markets (A. 4256-7). This ignores the fact that during the entire damage period Zenith had a distributor in England (A. 463-4) and that Zenith sought distributors in Australia but was unable to obtain them because of the Pool (A. 476).

The Court below found that "Significant barriers other than patent difficulties operated to prevent sales of Zenith TV receivers in England" (A. 4257). The Court says, "Zenith sets manufactured in the United States operated on 525 line and 625 line scan signals. The English standard was a 405 line signal until changed to 625 line after the damage period. Zenith sets sold in England would be in competition with substantially lower priced British sets" (A. 4257). From this the Court of Appeals inferred that Zenith was not prepared to enter the English market, if at all, until the "change in English standards to a 625-line system" (A. 4257). This contention was made in the Court below by respondents substantially on the basis of post-trial offers of proof which petitioners had no opportunity to meet (See respondents' brief on the anti-trust issues in Court of Appeals, pp. 102-4, 158-62). Apart from this, however, it is apparent that the Court of Appeals was deciding the issue as if it were the trier of fact and free to draw inferences contrary to the Trial Court's findings which were supported by substantial evidence.

The Court further said: "Zenith was not aided in showing loss of probable profits, by the testimony that its man in England could adjust Zenith sets to the English standard 'with a screwdriver in the back of the shop in a few minutes' " (A. 4257). There is no such testimony in this record. Sam Kaplan, Zenith's Treasurer, did testify that there were no "profound problems" which would prevent Zenith from adapting its sets to the English standards, as illustrated by the fact that Zenith's distributor could make the changes himself. This testimony was as follows (A. 530-1):

> "Q. I take it you took into consideration, in making that estimate, the tariff, the nature of the competition, and all relevant factors which you would know you would need in this kind of a market, is that correct?
>
> "A. That's correct.
>
> "The Court: Would a different picture tube be necessary in England and Australia than you use here or in Canada?
>
> "The Witness: No. Well, in Australia I understand that the polarity of the picture tube has to be changed because they are in the other hemisphere. But it is a tube that we make here and can ship there. We do ship such type tubes to South America. In England and Canada, they would be identical.
>
> "By Mr. McConnell:
>
> "Q. . . . Well, let me ask you this, is there anything, to your knowledge, in Great Britain or England, which would prevent you from making television or radio tubes which could utilize the broadcast of the British Broadcasting Company?
>
> "A. Nothing at all, nothing at all.
>
> "Q. You could put that on a regular assembly line here, could you?
>
> "A. There are no profound problems that we either don't handle or are not capable of handling.
>
> "Q. Well, let me ask you this, haven't you actually made sets at Zenith that can be used in the British market?
>
> "A. Yes, we have.
>
> "Q. I mean televisibn and radio.
>
> "A. That is right."

On cross-examination, Kaplan further testified (A. 545):

> ". . . Q. Now, it is my information that if you are going to scan at 525 lines or 405 lines, you need a different kind of scanning system. It has different numbers in it.
>
> "A. Mr. Dodds, I would like to answer by saying that this difference is so profound that our distributor changes them in his back room.

"Q. On a laboratory or hand basis, not on the production of several thousands or hundreds of thousands of receivers.

"A. No, but I think this illustrates the extent of the difference."

There was no denial of this testimony, and there is no other evidence in this record on the issue.

Similarly in the case of Australia the Court of Appeals states: "Actually, high import duties and shipping costs posed a formidable barrier to Zenith sales" (A. 4256). Again this contention was made by respondents in the Court below entirely on the basis of post-trial offers of proof (See respondents' brief on antitrust issues in Court of Appeals, pp. 115-6, 152-5) and is contradicted by Kaplan's testimony which the Trial Court had a right to rely on that he had taken into account all relevant factors such as tariffs and shipping costs in making his market share estimate (A. 530).

(d) The Proofs of Cartel Restrictions in Australia.

The Court below also says there is no proof of use by "the Australian patent pool of restrictive license forms to prevent import" (A. 4256). Again on this issue the proofs that the licenses precluded importation were documentary, conclusive and not denied (Def. Ex.'s 188-195; A. 2381-2476).

The dominant electronics company in Australia is, and for many years has been, Amalgamated Wireless Asia (A. 90, 91-2), referred to here as A. W. A. The cartel arrangements assigned Australia exclusively to A. W. A. and the patents and inventions of all the members were placed in the Australian patent pool known as Australian Radio Technical Services and Patents Company, Ltd., herein called ARTS. Half of this organization is owned by A. W. A. The inventions and patents of A. W. A., Standard Telephone and Cables, Ltd., Philips of Holland, Electrical and Musical Industries, Ltd., Marconi Wireless Telegraph Company, Radio Corporation of America, Pye, Ltd. and Neutrodyne Proprietary, Ltd. were all included in the Pool (Def. Ex's. 180-195; A. 2305-2476). Neutrodyne is a controlled subsidiary of Hazeltine (A. 90, 93, 253, 796). The basic agreements relating to the operations of the Pool are in evidence as Defendant's Exhibits 180-195 (A. 2305-2476). They show that the cartel is in all essential respects the same as the English and Canadian pools. See *supra* pp. 35-36.

Both Dodds of Hazeltine and Warner, the manager of Neutrodyne, knew that their agreements were illegal under the American antitrust laws. In a letter of January 15, 1959, Warner wrote to Dodds: "No formal agreement between ourselves can be enforced in any Court of Law, so that after we have 'dotted the i's and crossed the t's' and argued about the clauses, they will still be unenforceable. In fact, we can only hang together with good will and good intentions . . ." (Def. Ex. 205; A. 2500, 2501).

The only answer Hazeltine ever made to proof of their participation in the Australian Pool was by post-trial motion a year after the case was tried, at which time Hazeltine's new counsel exhibited a form 7 license of the Pool as an offer of proof in an attempt to show that the license did not by its terms prohibit importation (A. 2970, 2971-85).

They argued that such license showed on its face that there was no restriction on imports at the time of the damage computation (A. 2970). The Court of Appeals in its opinion accepts this contention although an examination of the license itself disproves the contention. Thus, it first recites that "the Licensee claims to be a bona fide manufacturer of broadcast sound receivers and/or television receivers and/or radio gramophones and as such manufacturer has applied to the Grantor to grant and the Grantor has agreed to grant to the Licensee a license under the Letters Patent and upon the terms and conditions hereinafter mentioned." (A. 2971-2.) Parenthetically it is obvious that the only patents to be licensed were Australian patents and the only license an Australian patentee could grant for manufacture was to manufacture in Australia. This was made perfectly clear from further provisions of the license agreement. Condition 4(b) was "To attach or cause to be attached in a prominent position to all broadcast sound receivers, television receivers, and radio gramophones sold or hired or offered or exposed for sale or hire by the Licensee, . . . a plate marked by the Grantor with a Serial Number determined by the Grantor . . . and bearing the following words: . . . 'This instrument was manufactured under a License granted by Australian Radio Technical Services and Patents Company, Pty. Limited in respect of Letters Patent controlled by it for the reception in the Commonwealth of Australia . . .'." (A. 2977.) ARTS could not issue a license to manufacture in the United States because it had no U. S. patents. Its license to manufacture was to manufacture in Australia under Australian patents.

From this it is abundantly clear that unless the set was manufactured under the Pool's Australian patents, no plates would be forthcoming. There was a further provision that if the plate was removed from the set then, "the absence of such a plate so marked from any broadcast sound receiver or television receiver or radiogramophone shall be conclusive evidence that the same is not licensed hereunder" (A. 2978).

Even if this offer of proof form 7 license were in evidence we most respectfully submit that the holding of the Court of Appeals that an American exporter could be licensed with this license on sets manufactured in America is a patent and obvious error.

II.

A DEMAND UPON PATENT POOLS AND THEIR MEMBERS FOR A PATENT LICENSE PERMITTING IMPORTATION WHICH IS NOT AVAILABLE IS NOT A CONDITION PRECEDENT TO MAINTAINING A TREBLE DAMAGE ACTION UNDER THE ANTITRUST LAWS.

The Court of Appeals finds that the record shows no injury to petitioner's business occasioned by the respective patent pools because among other things (a) "there is no evidence that Zenith ever attempted to obtain a license from the Australian pool" (A. 4256), (b) that in Canada Zenith "did not seek a pool license after 1953" (A. 4258), and (c) "We think it is unreasonable to infer that Zenith intended to and was prepared to enter the English television market during the damage period" (A. 4257). These statements are made in the face of the uncontradicted testimony of Wright that he had interviewed numerous people in Australia preparatory to starting business there and was advised that a pool license to import into Australia was not available (A. 476), the uncontradicted testimony of Crotty that McConnell of CRPL told him in 1959 that the only available license was for local manufacture and that "the license could not be for importation" (A. 410), and the fact that Zenith had a distributor for television sets in England during the entire damage period (A. 463-4).

The Trial Court found with respect to Australia that (Finding XXXIV; A. 2907) "A standard pool license imposes the restrictions necessary to effectuate the division of territories involved in the overall arrangements. It requires the licensee to agree not to export or import or sell or offer for sale in Australia any radio or television receiving apparatus not manufactured in Australia." See Defendant's Exhibits 188-195; A. 2381-2476.

The Trial Court also found "the organization, purposes and intentions of the Canadian pool are in principle identical to those of the English pool. Approximately 5,000 patents are amassed for licensing and the only form of license available is strictly limited to manufacture in Canada." (Finding XXVI; A. 2903-4). See Def. Ex. 123, Article II, § 1; A: 1721, 1725; Def. Ex. 150; A. 2013; Def. Ex. 162D; A. 2053-65).

The Trial Court also found that in England all the electronic companies contracted "that the only license employed by the Pool would be a standard package license limited to local manufacture" (Finding XVI; A. 2900). See Def. Ex's. 61-71; A. 1277-1401.

In the face of these findings the Court of Appeals holds in effect that petitioner had to make a perfectly useless and futile demand of the respective pools for a license to import, which license was not available, in order to show injury under Section 4 of the Clayton Act. This decision conflicts with this Court's holdings in *Continental Ore Co.* v. *Union Carbide Corp.*, 370 U. S. 690 (1962) and *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, ... U. S. .... (June 17, 1968). In *Continental* this Court held that a futile demand was not a condition precedent to a treble damage action, saying (p. 702):

> "In spite of the refusal of respondents to deal with Continental in November, 1943 and in previous months and years . . . the court ruled that Continental must have requested oxide from respondents after the contract with Imperial was signed in January of 1944. We think the jury should be allowed to determine whether respondents' conduct materially contributed to the failure of the Imperial venture, to Continental's damage."

This Court further said on the demand point the following (p. 699):

> "Furthermore, we do not believe that respondents' liability under the antitrust laws can be measured by any rigid or mechanical formula requiring Continental both to demand materials from respondents and to exhaust all other sources of supply."

In disposing of a similar contention in *Hanover Shoe* this Court in a footnote held "We also agree with the courts below that in the circumstances of this case it was unnecessary for Hanover to prove an explicit demand during the damage period." .... U. S. ...., n. 5.

We submit that this Court's decisions in *Continental Ore* and *Hanover Shoe* dispose of the demand issue. However, it should be pointed out that the decision below also directly conflicts with the decision of the Tenth Circuit in *Kobe, Inc.* v. *Dempsey Pump Co.,* 198 F. 2d 416 (C. A. 10, 1952). There the Court held that even in the absence of a demand for a license, a refusal to license patents plus circularizing the trade with statements that plaintiff was not licensed, as was done in the instant case, was bound to cause injury to the plaintiff and established without more proof the fact of injury, the Court saying (p. 425):

> "[T]he unlawful acts of Kobe induced a continual boycott of the Dempsey product and prevented sales by Dempsey and Specialty and caused substantial damage."

In England each of the participating companies in the pool, including Hazeltine (A. 1251), contracted that during the term of these agreements:

> "Unless otherwise agreed no licenses are hereby agreed to be granted to import Radio Apparatus [defined to include television receivers] into the United Kingdom or to deal in in the United Kingdom imported Radio Apparatus or Radio Apparatus containing imported component parts to an extent exceeding in value 10 per cent of the retail list price of such Radio Apparatus except in each case samples and experimental models for the use of the parties hereto." (Def. Ex. 58; A. 1248, 1258.)

The record shows that Hazeltine patents and rights, existent and future, have gone into the Australian pool for thirty-five years (Def. Ex. 188-195; A. 2381-2476). During all this time they have been licensed in such a way as to preclude and exclude any imports of radio or television sets into Australia (Def. Ex. 197; A. 2482, 2483), and the pool has never in its history granted a license to import American sets into Australia (Def. Ex. 188-195; A. 2381-2476). The import statistics referred to by the Court of Appeals (A. 4256) actually corroborate this. Thus during the damage period only 53 American made TV sets were imported into Australia (A. 3399).

While the Court of Appeals says that the petitioner sought no license in Canada from the pool after 1953, the Trial Court found (Finding XXIX A. 2905) "To ward off these attacks Zenith attempted to get a license from the Pool, but in every instance it was advised by the Pool manager that importation would not be permitted and, only local manufacture would be licensed." The finding was supported by the record (A. 410, 451; Def. Ex. 146-154; A. 1982-2021). The record shows that McConnell, the pool immanager, told Zenith that no license was available for importation at a time within the instant damage period (A. 410; Def. Ex. 154; 2021).

Moreover, in stating that Zenith had not sought a license after 1953, the Court of Appeals ignored the fact that from 1953 to 1957 petitioner was suing three of the members of the pool for the refusal of the pool to license imports. That suit itself was a constant demand for a license to import, and was settled in October of 1957 by not only a payment of $10,000,000 but by the grant to Zenith of royalty free worldwide rights under the patents of the three defendant companies (Def. Ex. 114; A. 1607-33; Pl. Ex. 48; A. 2783, 2785). The settlement papers disclose that Zenith not only sought but obtained from three members of the pool a license to export to foreign markets. However, these licenses were limited to black and white patents which existed at the time and expressly excluded color patents (Def. Ex. 114; A. 1607-33). And the Canadian Pool was quick to point out that it held other import patents in television, including Hazeltine patents, under which Zenith was not licensed (Def. Ex. 151; A. 2014; Def. Ex. 152; A. 2017).

We have already pointed out that as late as June, 1959 the pool was threatening suit on pool patents if Zenith did not sign a standard license which did not permit importation and provided that Zenith would have to manufacture in Canada any products it intended to sell there. No pool witness or any other witness denied this testimony.

The legal effect of this factual situation is succinctly set forth in *Kobe,* 198 F. 2d at p. 424 of the opinion, as follows:

> "There is no merit in the contention that defendants cannot maintain their crossclaim because Kobe did not refuse to grant a license to Demsey upon reasonable terms. The truth was that such a license was never requested by defendants and was never refused. No attempt was made to prove that such a license would have been granted had the request been made. In all the years which Kobe manufactured pumps, no license was ever granted to anyone else and the licenses which were reserved in original contracts were eventually eliminated by Kobe."

The Court then said (p. 424):

> "Of course, the refusal to grant a license or a willingness to grant one if requested might be a circumstance in determining whether or not there was an unlawful monopoly. It would not be controlling and would not be a defense if an unlawful monopoly actually existed."

In the Seventh Circuit the same principle has been declared in the case of *Congress Building Corp.* v. *Loew's Incorporated,* 246 F. 2d 587 (C. A. 7, 1957), where the Court said (p. 595):

> ". . . The failure of the plaintiff to demand that defendants refrain from their illegal trade practices could not legalize such trade practices nor immunize defendants against liability to those injured . . . . The defendants had a duty to refrain from acts injurious to others and we know of no rule that states that a demand is necessary in an action to enforce a liability arising from a tortious act . . . . Neither Section 4 of the Clayton Act, nor the terms of any agreement or undertaking by plaintiff with any of the defendants, express or implied, nor the circumstances of this case require a demand as a condition precedent to the maintenance of this action."

Here respondents and the members of the pool were maintaining boycotts and inducing the boycotting of petitioner's products in foreign markets through the restrictions of the pools. To require proof of a demand as a condition precedent to bringing suit as the Court below in effect does is to interpolate into an Act of Congress something not found in the language of its legislative mandate.

III.

THE COURT OF APPEALS' DECISION REVERSING THE INJUNCTION AGAINST THE ACTIVITIES OF ILLEGAL POOLS DESTROYS THE INJUNCTION SANCTIONS OF THE ANTITRUST LAWS.

Having held that no damage was proven the Court of Appeals proceeds to reverse the decree enjoining Hazeltine's participation in the pools on the theory that if no actual damage is proven there can be no threat of damage in the future, even though the pools are shown to have been organized for the express purpose of suppressing petitioner's competition and thus injuring its business.

Hazeltine counsel admitted at the trial that the instant conspiracy if proven would violate the antitrust laws. The following colloquy between Court and counsel occurred (A. 401):

> "The Court: Is it your position, Mr. Dodds, that a conspiracy to prevent the importation of American radios and television sets is not a violation of the Sherman Act?
>
> "Mr. Dodds: Oh, no, if there is a conspiracy no, I would agree that would be a violation."

It has long been settled law that agreements to restrain commerce between the United States and foreign countries such as are shown by the instant proofs are flagrant violations of the Sherman Act. *United States* v. *National Lead Co.*, 63 F. Supp. 513, 523 (S. D. N. Y., 1945), aff'd. 332 U. S. 319 (1947); *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 598 (1951); *United States* v. *Imperial Chemical Industries* (1951), 100 F. Supp. 504 (S. D. N. Y., 1951), 105 F. Supp. 215, 220-3 (S. D. N. Y., 1952); *United States* v. *General Electric Co.*, 82 F. Supp. 753, 847 (N. J., 1949); *United States* v. *General Electric Co.*, 80 F. Supp. 989, 1014-5 (S. D. N. Y., 1948).

The evils of the type of cartel arrangement proven here were pointed out in the *National Lead* case as follows (63 F. Supp. 513, 523):

> "To have access to the patents of the combination, the stranger must not only have the consent of the member of the combination in whose 'territory' he would operate, but he must adhere to the principles of the [illegible]bination. The cornerstone of the system was the private regulation of international trade. The suppression of competition was the cement which held the superstructure in place.
>
> "Whether the form of association they created be called a cartel, an international cartel, a patent pool, or 'a technical and commercial cooperation', is of little significance. It is a combination and conspiracy in

> restraint of trade; and the restraint is unreasonable. As such it is outlawed by Section 1 of the Sherman Act. . . ."

The Court of Appeals did not disturb the conspiracy findings or the findings with respect to Hazeltine's participation in the foreign patent pools. These findings were not even contested by respondents in the Court of Appeals.

Hazeltine's counsel, Dodds, when cross-examined in January, 1962, stated the following with reference to the Canadian Pool and Hazeltine's continued participation therein (A. 178-9):

> "Q. You knew something was going on in the way of an attack by American companies against that pool, didn't you?
>
> A. Yes.
>
> Q. You had known that for a long time?
>
> A. Yes.
>
> Q. *You still stayed in the Pool?*
>
> A. *Most definitely and we intend to continue to stay in the Pool.*"

Hazeltine's new counsel admitted that the Pool in Canada was still operating as late as April, 1965 (A. 3036).

However, because it could find no proof of the fact of damage even though the Trial Court had found that Zenith's foreign commerce had been "drastically curtailed", the Court of Appeals held, as a matter of law, that Zenith was not entitled to injunctive relief. The Court said: "It follows from our conclusion with respect to the foreign patent Pools that injunctive relief against 'threatened loss or damage' directed at those pools, alleged by Zenith to be illegal conspiracies, cannot be justified under 15 U. S. C. Sec. 26. Paragraph C of the injunction granted must be stricken" (A. 4261-2). In so holding the Court of Appeals has given Section 16 of the Clayton Act an interpretation in conflict with Congressional intent and the decisions of this Court. Petitioner would have been entitled to injunctive relief even if no injury or damage had been shown. Thus in *Bedford Cut Stone Co. v. Journeymen's S. C. Association,* 274 U. S. 37, 54-5 (1927), a private action for injunctive relief under Section 16, this Court held:

> "The record does not disclose whether petitioners at the time of bringing suit had suffered actual injury; but that is not material. An intent to restrain interstate commerce being shown, it is enough to justify equitable interposition by injunction if there be a dangerous probability that such injury will happen; and this clearly appears. The Anti-trust Act 'directs itself against that dangerous probability as well as against the completed result'."

See also *Vicksburg Waterworks Co. v. Vicksburg,* 185 U. S. 65, 82 (1902).

Here the record conclusively shows that the very existence of the Pools was a continuing threat to Zenith's foreign business. The Pools were organized to stop the competition of American companies. The Pools' portfolio of patents include virtually all of the important patents in the television field, including Hazeltine's color patents. The Pools would not license imports and stated that dealers or users of unlicensed imported sets would be sued for infringement. At the same time Hazeltine refuses to grant a license to export, by implication or otherwise, under its domestic patents to any country where it is a member of a Pool.

That this situation constitutes a threat or a "dangerous probability" of injury is expressly stated in the Canadian Royal Commission Report. This report, introduced in evidence by respondents, states (Pl. Ex. 50A; A. 2811, 2830):

"The portfolio in respect of which CRPL had the right to grant licenses consisted of 5,000 patents, and in the absence of a license from CRPL it is doubtful if any one could sell in Canada a radio or television receiver.

". . . It is particularly in respect of the policy of CRPL in precluding importers from bringing into Canada radio and television receivers that the complaint was made to this Commission."

The Court of Appeals decision makes no mention of this report.

The decision below assumes that there could be no threat to Zenith's foreign business by presently operating patent Pools short of the Pools bringing infringement suits against Zenith during the damage period in each of the markets involved. The Court reaches this conclusion notwithstanding the facts that the Canadian Pool actually threatened Zenith with suit during the damage period (Def. Ex. 154; A. 2021) and Hazeltine was suing in this proceeding on a patent the counterpart of which was in the Canadian Pool (A. 131, 272).

This holding leaves Zenith's foreign business exposed to ruinous infringement litigation and at the mercy of the Pools' enforcement policy. Zenith's exports to Canada in 1967 under the protection of the District Court's injunction, not stayed pending appeal, amounted to $12,694,000. Total American television and radio exports were $14,538,417. See Appendix B to this brief pp. A-25, A-26. The Court of Appeals decision deprives Zenith of any protection for this business. The decision if allowed to stand will destroy not only Zenith's competition to the Pools, but the competition of all other electronic companies seeking to export to the markets involved, and this at a time when this country desperately needs to preserve its foreign trade in aid of a deficit position in its balance of payments with other countries.

This case involves the activities of the foreign subsidiaries of the largest electronics companies in the world. They include, among others, General Electric, Westinghouse, RCA, the Philips Company of Holland, British General Electric, Electrical and Musical Industries, Standard Telephone and Cables, Telefunken, Marconi Wireless and the Hazeltine companies.

The large public interest involved is shown by proceedings before the Patents, Trademarks and Copyrights Sub-Committee, Committee on the Judiciary, United States Senate Hearings, June 1, 2 and 3, 1965, where Senator Russell B. Long states (p. 331):

> "What is especially intolerable is that U. S. Government funds paid for 90 percent of the research which enabled this Company [Hazeltine] to accumulate its patents. In essence, then, public funds have been used to prevent Americans from exporting their goods. Indications are that this practice is widespread, and the effects on our balance of payments are undoubtedly very serious * * *. International patent pools can also undermine our national safety. They have been used in the past to transmit military information—even to our enemies."

The decision of the Court of Appeals, both in failing to find any evidence of injury or threatened injury on this record, and in requiring proof of actual injury as a condition to injunctive relief, completely nullifies the sanctions of Section 16 of the Clayton Act. A question of the proper construction of Section 16 is involved, charged with tremendous public interest in that it involves the destruction of foreign markets in Canada, England, and Australia for all American electronics companies prepared to compete in those markets.

IV.

THE MISUSE OF PATENTS DEFENSE ASSERTED BY ZENITH WAS CONCLUSIVELY PROVEN ON THIS RECORD.

The Trial Court found a misuse by Hazeltine of its patents (Findings IV, V, VI, VII, VIII, IX, X, XI and XII, A. 2893-98) by attempting to force Zenith to sign a standard package license. Specifically, the Trial Court found that both Hazeltine's 50-80-100% offer with respect to black and white patents in 1959 and its various proposals with respect to color patents in 1962 and 1963 were attempts "by economic coercion to force taking of the package" (A. 2898).

The Court further found (Finding XII, A. 2898):

> "In all of its proposals to Zenith, Hazeltine insisted as an alternative to litigation that Zenith for a period of five years pay royalties in large sums based on its entire production of receivers whether or not any Hazeltine patent was employed in any way in its products. Plaintiff thus insists that royalties be paid on admittedly unpatented apparatus."

While the Court of Appeals agreed that Hazeltine's offers of individual color patents at royalty rates substantially in excess of the annual rate for the package of all patents, color and monochrome, "constituted an illegal attempt to force acceptance of the standard package and a misuse of patents," (A. 4250) it reversed the District Court's finding of misuse with respect to a similar offer for monochrome patents, and modified paragraph B of the decree to permit licensing of individual patents "the sum of which is greater than the package rate" (A. 4252, 4262).

The Court of Appeals also reversed the Trial Court's finding of misuse based on the collection of royalties on unpatented products. In so doing the Court struck paragraph A of the decree (A. 4262) which enjoined respondents from: "A. Conditioning directly or indirectly the grant of a license to defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, under any domestic patent upon the taking of a license under any other patent or upon the paying of royalties on the manufacture, use or sale of apparatus not covered by such patent" (A. 3079). The Court's holding on the latter issue misconstrues this court's decision in *Automatic R. Mfg. Co. v. Hazeltine Research*, 339 U. S. 827 (1950). The Court below reads this decision as permitting a patentee to compel its licensees under threat of infringement suits to pay royalties on their entire production whether or not any patents are used. This is a requirement which appears in any patent license which was available from respondents and, as the District Court found, was an attempt to collect royalties on unpatented products.

Since licensees are estopped to challenge the validity of licensed patents (*United States* v. *Harvey Steel Co.*, 196 U. S. 310 (1905)), Hazeltine by its package licensing policy has been able to keep the validity of hundreds of its patents from scrutiny by the courts and thus preserve the coercive power of the package license.

In a company memorandum dated December 14, 1961, and introduced in evidence without objection, L. B. Dodds, plaintiff's counsel, said:

> "Hazeltine, since its organization in 1924 and until very recently, offered licenses to the industry only under its whole group of patents." (Def. Ex. 3; A. 985, 991)

That Hazeltine would not license its patents except under a package license is further shown by the following documents produced from its files:

"I did not give a negative answer to the question of granting a license under four patents. I distinctly remember saying I would have to consult you on that. I stated we like to stick to our standard if possible but that I would discuss this with you. I remember telling you of this on the phone but it does not appear in my memo of 2 August because I kept that brief partly not to put some things in writing and partly because we had a meeting set up for 8 August, a week later." (Interoffice memo, Shea to Dodds, June 2, 1952, Def. Ex. 4; A. 996-7)

An interoffice memorandum, Shea to Binns, dated March 4, 1949 (Def. Ex. 5; A. 998), states:

> "I recommend we study their circuits and if we can make a good enough case for litigation put it up to Dave Schultz that litigation will cost them so much for which they get no return, whereas the difference in cost between $55,000 and litigation gives them good services. From his reaction with Bill Grimditch I believe this is our only possible chance."

An interoffice memo, Dodds to Binns, December 30, 1949 (Def. Ex. 6; A. 1000-1), states:

> "Richardson assured me that he was still attempting to get the responsible management personnel together to consider the license from an over-all viewpoint, that is, patent protection, freedom of design, engineering assistance, *and freedom of litigation costs* but that he could, of course, make no promises." (Italics ours)

A letter from Dodds to Jack Binns, dated August 8, 1951 (Def. Ex. 7; A. 1002, 1003-4) states:

> "Redfield urged that they be permitted to take a 'sample' of our license for a shorter period than five years to try it out and see if they like it. I said the answer to that was absolutely no. Redfield then asked that we make a proposal to them based only on the patents on which we warned them of infringement, royalties to be based on the use of these patents. I

said that I would do so but that the rates of royalty for such a license would probably be such as to exceed the $50,000 on their volume of business and that the license would necessarily contain some provision to insure against litigation as to the use of the licensed patents. I also said that we disliked that sort of arrangement as being one in which the licensee might be licensed at any given time under one group of patents while we would find it necessary to sue them on other patents, and that such litigation would seriously impair the usefulness of the license. As the discussion progressed, this suggestion pretty well dropped out of the picture."

Zenith, for many years acting under the obvious duress of Hazeltine's threat of litigation, signed Hazeltine's standard package license (Def. Ex. 2; A. 955). In May, 1959, L. B. Dodds, respondents' counsel in this case, again demanded that Zenith sign a package license for a 5-year period at the then package rate of $50,000 a year (A. 434-5). Dodds asserted that Zenith was infringing at least four Hazeltine patents in the manufacture and sale of black and white television receivers (A. 435-6). Dodds said that licenses would be granted for black and white television, excluding color television, in accordance with the following formula:

> Any one patent in the package would be licensed at 50% of the royalty rate for the entire package of over 500 patents and patent applications. Any two patents would be licensed at 80% of the package rate. Any three or more patents would be licensed at 100% of the package rate. Hazeltine reserved the right to sue for infringement of any patent not licensed. All licenses would be subject to the terms and conditions of the standard form and would require payment of royalties on all production during the 5-year term of the license irrespective of whether any patent was employed or not (A. 436-7).

Zenith informed Dodds that none of the four patents asserted was valid or infringed by any Zenith apparatus and Zenith would not sign the Hazeltine package license (A. 435-6).

Hazeltine then served written notice of infringement of two patents on Zenith on October 15, 1959 (Def. Ex. 9, A. 1008), and started the instant suit on November 20, 1959 (A. 1).

During the course of discovery proceedings in this case plaintiff's executive vice president, Mr. Ruestow, informed Zenith's patent counsel, Frank Crotty, that Zenith was then infringing at least nine Hazeltine color television patents (A. 419-21) and demanded that Zenith sign the standard package license (Form 918, Def. Ex. 2; A. 955). Crotty confirmed this by letter to Ruestow under date of October 25, 1961 (Def. Ex. 10; A. 1010).

Crotty wrote Ruestow under date of November 21, 1961 (Def. Ex. 11; A. 1012), informing him that Zenith had "no need for a license under all of the patents of your portfolio," and asked for terms on the nine patents asserted by Ruestow.

In reply, on April 11, 1962, he received a draft license agreement (Def. Ex. 12; A. 1013) which provided an annual royalty rate of $435,000 for a license restricted to the nine color TV patents and an annual rate of $500,000 for a license under all of Hazeltine's color TV patents (A. 422-3). At the same time Ruestow informed Crotty that Zenith could have a package license covering all of Hazeltine's patents for both color and black and white for $150,000 a year (A. 423).

This was followed by the 1963 proposal to license nine color patents at an annual rate of $275,000, while at the same time offering the package license for all patents, present and future, black and white and color, at an annual royalty of $200,000 (A. 428-32). Thus over the 5 year license period it would have cost $375,000 more to take a license under the nine color patents than to take a license on all the Hazeltine patents.

Crotty understood Hazeltine's approach to be a threat of litigation unless Zenith succumbed to Hazeltine's license demands (A. 439); indeed, the threat was real and Hazeltine had planned bringing additional infringement litigation against Zenith on color television patents if Zenith failed to accept the standard license agreement (Def. Ex. 36, A. 1141, 1144). It is quite obvious that from a business point of view, the only practical alternative was to accede to Hazeltine's demand and sign the full package license.

However, because the foreign counterparts of the Hazeltine patents were in the foreign pools (A. 131, 272) and the Hazeltine package license was expressly restricted to the United States (Def. Ex. 2; A. 955, 958; Def. Ex. 115; A. 1634) by virtue of the conspiracy, Zenith really had no option but to refuse the package license and defend the present suit.

The Court below affirmed the Trial Court's finding of misuse with respect to Hazeltine's 1962 color proposal, but failed to perceive the misuse inherent in the 50-80-100% black and white proposal where Hazeltine was asserting Zenith was infringing at least four monochrome patents, or in the requirement that Zenith pay royalties on its entire production as a condition to any license. Nor did the Court appreciate the connection between Hazeltine's domestic licensing activities and its participation in foreign pools where the foreign counterpart patents were being used to stop imports. As a result the Court struck or modified the decree provisions designed to prevent this misuse of patents (A. 4261-2).

The Court of Appeals opinion makes no mention of the fact that Hazeltine patent counsel conceded the misuse inherent in the 50-80-100% formula. Thus Hazeltine's executive vice president and counsel in this case, Mr. Ruestow, in a memorandum (Def. Ex. 23A; A. 1080, 1083) said:

> "The Legal Problem (Patent 'Misuse').
>
> "This, simply stated, is that we may not get ourselves in a position where we are forcing a licensee to take a license under all our patents in order to get those he wants. He must be free to make his own selection of those he wants without being blackmailed to recognize others. If we do this, the courts will not enforce our patents until we purge ourselves of this 'misuse of patents'. That can be a very disastrous penalty if we can not purge ourselves quickly, and it conceivably could take us six years to do so.
>
> "This legal problem is by no means new but it has assumed a more threatening nature in view of a recent court decision [*American Securit Co.* v. *Shatterproof Glass Corp.*], wherein a company was held to have misused its patents by telling a licensee he could have all patents or only one but that the rate was the same either way. This decision implies that the rate for one must be proportionately smaller than the rate for all in order to be legal.
>
> "This is precisely the situation with HRI. Zenith wants a license under only a few important patents of their own choosing. We will have to offer them at less than our present royalty rate for all, or run the risk of running afoul of the law and incurring a severe penalty . . ."

He then wrote in a memorandum with reference to the 50-80-100% formula:

> "I open possibility of higher income and get misuse off our backs. I must act now. Zenith is forcing me. I must either give them low rates to avoid misuse or raise the package rate." (Ruestow's notes on L. B. Dodds' memo of 12/14/61, p. 1, Def. Ex. 24, A. 1089)

> "If I am forced to stick to present agreement Zenith will make me divide 1.35% up among maybe 80 patents, *or if I offer the 50%-80%-100% deal they pick ten patents and zingo we are right back in misuse.*" (Ruestow's notes on L. B. Dodds' memo of 12/14/61, Def. Ex. 24; A. 1089-91)

Again, in his own notes, Ruestow wrote (Def. Ex. 26; A. 1094, 1100):

> "It is my firm belief that the new policy I first suggested in my memo of November 20, 1961 to W. H. Wilson has been completely vindicated by the decision of the Supreme Court of the United States, November 5, 1962, in the case of *U. S.* v. *Loew's Incorporated.* I continue in the belief that it would be bad business to risk a challenge of our policies on the issue any longer. The alternative proposal now under discussion does not solve the dilemma any better than that approved last summer . . ."
>
> "So what have we gained for the risk of misuse charge. *The whole thing is still apt to be viewed for just what we intended—a transparent attempt to force them into package.*" (Handwritten notes, E. A. Ruestow, Def. Ex. 27; A. 1109) (Italics ours)

Ruestow was cross-examined on his various memoranda as follows (A. 634-5, 637):

> "By Mr. McConnell:
>
> "Q. (Reading) 'I opened the possibility of higher income and get misuse off our backs. I must act now. Zenith is forcing me. I must either give them low rates to avoid misuse or raise the package rates.' Now, as late as December of 1961 Zenith was forcing you, is that right?
>
> "A. That is what I wrote.
>
> "Q. Well, is that—were you just writing fiction there in this memo?
>
> "A. No, I wasn't writing fiction, no.
>
> "Q. All right. So that there was something going

on between you and Zenith as late as December of 1961; will you agree with me on that?

"A. Yes.

"Q. And you said: 'I must either give them low rates to avoid misuse or raise the package rates.' All right, did you do either of those two things?

"A. No."

• • • • •

"Q. And here is your comment on it: 'Still apt to be viewed for just what we intended, a transparent attempt to force them into the package.'

"Q. Now who is the 'we' you refer to?

"A. The [Hazeltine Corporation] group that was working on the problem of drafting a new policy."

In view of these admissions it is difficult to see how the Trial Court could have reached any other conclusion than it did, namely, that Hazeltine was attempting to force Zenith to accept the package license. Even the Court below concedes that if this were the purpose of the 50-80-100% proposal it would constitute a misuse under the holdings in *United States* v. *Loew's, Inc.*, 371 U. S. 38 (1962) and *American Securit Co.* v. *Shatterproof Glass Corp.*, 154 F. Supp. 890 (Del., 1957), aff'd 268 F. 2d 769 (C. A. 3, 1959), cert. den. 361 U. S. 902 (1960). In the latter case Judge Leahy held (p. 895):

> ". . . [T]he policy of plaintiff to grant no license unless it is under all its patents for a fixed royalty, is one of unlawful coercion contrary to public policy as announced by the courts. And, it cannot be said by plaintiff in answer that its practice of group or package licensing was designed merely to suit its business convenience. Convenience to the patent owner can never justify an unlawful use of the patent monopoly. In this field, a reward granted to an inventor is important only insofar as it serves to release to the public the product of his genius. That service ceases to be rendered when the reward no longer can be found to relate

> to the quality of each patent. In such event one patent cannot draw strength from the others and the monopoly of each thus be extended."

The Court of Appeals for the Third Circuit affirmed 263 F. 2d 769, 777, saying:

> "Each monopoly must stand on its own footing. Cf. *United States* v. *Paramount Pictures,* 1948, 334 U. S. 131, 158, 68 S. Ct. 915, 92 L. Ed. 1270. Mandatory package licensing is no more than the exercise of the power created by a particular patent monopoly to condition the licensing of that patent upon the acceptance of another patent but that is too much. The protection, or monopoly, which is given to the first patent stops where the monopoly of the second begins.
>
> "Whatever may be the asserted reason or justification of the patent owner, if he compels a licensee to accept a package of patents or none at all, he employs one patent as a lever to compel the acceptance of a license under another. Equity will not countenance such a result. We conclude that the court below committed no error in finding that the defense of misuse asserted by Shatterproof is a valid one."

Hazeltine's misuse and unlawful attempts to extend its patent monopolies are also clearly evidenced in its demands on Zenith that royalties be paid on Zenith's entire production whether or not any Hazeltine patents are used. The Schedule of License Terms recites "The base to which the stated percentages apply, and all other terms used herein, are as defined in Hazeltine Research, Inc.'s new standard license agreement now being prepared. The Licensor-Licensee relationship will be established only by the execution of that standard agreement" (Def. Ex. 15; A. 1035, 1036). The new Standard License Agreement (Def. Ex. 18; A. 1044, 1047) requires that Licensee "pay to Licensor upon each television receiver manufactured, sold or leased by Licensee royalties . . . ."

thereby carrying over the identical requirement (Def. Ex. 2; A. 955, 959) of the old form Standard License Agreement to pay royalties on a class of goods whether licensed patents are used or not. This same obligation was a condition of Hazeltine's 50-80-100% formula (Def. Ex. F-10; A. 2665) and is a flagrant patent misuse under the established principle of the tie-in cases. *Mercoid Corp. v. Mid-Continent Invest. Co.*, 320 U. S. 661, 666 (1944); *Morton Salt Co. v. G. S. Suppiger Co.*, 314 U. S. 488 (1942); *B. B. Chemical Co. v. Ellis*, 314 U. S. 495 (1942); *Motion Picture Patents Co. v. Universal Film Mfg. Co.*, 243 U. S. 502 (1917).

The provision was not just a matter of convenience in computing royalties but was an attempt to collect royalties on unpatented products and to discourage licensees from inventing around the applicable patents during the five-year term, as the Trial Court found (Finding XII; A. 2898). The illegal purpose was admitted by Hazeltine's own documents (Def. Ex. 38; A. 1148-9):

> ". . . Under the Hazeltine system of applying the royalty percentage to the selling price of the manufacturer's television sets regardless of what Hazeltine patents, *if any*, are used in the particular sets (in accordance with Hazeltine v. Automatic Radio) it would not make any practical difference in Hazeltine's income if he switched to the alternate . . . design [that doesn't use the licensed patents]." (Italics ours)

The Court of Appeals has misconstrued the holding of this Court in *Automatic R. Mfg. Co. v. Hazeltine Research*, 339 U. S. 827 (1950). In that case the Court held that parties in an arm's length transaction can legally agree to employ any convenient method of fixing royalty rates but the Court was careful to confine its holding to contracts negotiated at arm's length and freely entered into by both parties to the transaction.

Automatic Radio is no sanction for Hazeltine's *demand* that the license relationship will be established "only by the execution of that standard agreement" (Def. Ex. 15; A. 1035-6) requiring payment of royalties on all television receivers made by Zenith, especially since the Schedule of License Terms (Def. Ex. 15; A. 1035-6) permits the selection of one, two or a small number of patents by the licensee but no election with respect to the obligation to pay royalties whether a licensed patent is used or not.

From the above we respectfully submit that Hazeltine at all times knew that it was misusing its patents and with full knowledge of the risks involved, continued its illegal activity up to and long after the instant suit was started. It thus appears from undisputed testimony that there is no defense to the misuse issue and the Court of Appeals decision in so far as it holds respondents have not misused their patents by (a) putting patents into foreign patent pools and restricting its domestic licenses to the United States pursuant to the conspiracy, (b) coercing payment of royalties on unpatented apparatus and (c) using the 50-80-100% formula, should be reversed. For the same reasons the Court's directions to strike and modify the decree provisions on misuse should be reversed.

V.

THE USE OF OFFERS OF PROOF BY THE COURT OF APPEALS AS A BASIS FOR OVERRULING THE TRIAL COURT'S FINDINGS OF FACT SO FAR DEPARTS FROM ACCEPTED TRIAL PROCEDURES AS TO CALL FOR THIS COURT'S SUPERVISION.

In determining that the Trial Court's damage findings were erroneous, the Court of Appeals utilized offers of proof which were never in evidence in the case. These offers of proof arose as follows: On March 29, 1965, the respondents, appearing by new counsel a year after the trial had been concluded and after the Trial Court had entered its findings and conclusions of law against the respondents' contentions, filed a motion to withdraw the Court's findings and grant a new trial (A. 2939-54). In support of the motion respondents filed extensive offers of proof (A. 2956-95). Subsequently, respondents filed further offers of proof following the limited hearing on the issue of government embargoes in England and Australia. See Volume VIII of Appendix (A. 3547-4130).[6]

The motion to retry the case was denied by the Trial Court along with several other post-trial motions, and this order was not disturbed by the Court of Appeals. Nevertheless these offers of proof were continually referred to in respondents' Court of Appeals brief as proof that the Trial Court's findings were clearly erroneous (Hazeltine Brief on Antitrust Issues in Court of Appeals, pp. 58, 94-95, 98, 102-104, 110, 114, 116, 120, 121, 130, 147, 149, 150, 154, 155, 156, 158-160). Over our objection the Court of Appeals obviously considered the offers of proof as evidence in the case because the facts set forth in such offers and not in the record are referred to in the Court's opinion. A few examples will suffice. Thus, the Court says: "nor is there any proof of use by the Australian patent pool of restrictive license forms to prevent import" (A. 4256). This statement comes from respondents' offer to prove such fact (A. 2970-85), and is directly controverted by documentary evidence referred to at pages 88-90 of this brief.

The Court next says, "Actually, high import duties and shipping costs posed a formidable barrier to Zenith's sales" (A. 4256). Again, this statement comes from an offer of proof (See respondents' brief on Antitrust Issues in Court of Appeals, pp. 115-6, 152-5) and is contradicted by Kaplan's testimony (A. 530).

---

[6] The offers of proof were included in the Appendix pursuant to respondents' counter-designation.

The Court says, "Significant barriers other than patent difficulties operated to prevent sale of Zenith TV receivers in England. . . . Zenith's sets sold in England would be in competition with substantially lower priced British sets" (A. 4257). This contention was made by respondents in the Court below substantially on the basis of post trial offers of proof (See Ib. pp. 102-4, 158-62).

It is impossible to determine the extent to which the Court of Appeals relied on offers of proof and how its deliberations might have been affected by matters not in evidence. It is clear, however, that Rule 52(a) does not contemplate use of offers of proof to overturn a trial court's findings of fact as "clearly erroneous".

This Court in *Continental Ore,* 370 U. S. 690 (1962) said (p. 696) "The Court of Appeals was, of course, bound to view the evidence in the light most favorable to Continental and to give it the benefit of all inferences which the evidence fairly supports, even though contrary inferences might reasonably be drawn." Obviously, a reviewing court can not comply with this rule by weighing the respondents' offers of proof against the record evidence.

VI.

THE DISMISSAL FROM THE SUIT OF HAZELTINE CORPORATION IS NOT JUSTIFIED BY THIS RECORD.

At a pretrial conference on April 3, 1963, in the presence of the Trial Judge, all counsel agreed to a stipulation whereby Hazeltine Research, Inc. and Hazeltine Corporation would be regarded as one entity for the purposes of this litigation (A. 55).

The stipulation was signed by L. B. Dodds, chief trial counsel for Hazeltine who, in an affidavit filed on May 10, 1963, stated (A. 50):

> "He has been retained by or employed by Plaintiff's parent Company, Hazeltine Corporation, continuously since 1934 and has been a Vice President of said Hazeltine Corporation continuously since 1939 (except for a period during 1944-45 when he had no connection with Hazeltine Corporation or any of its affiliates). He also was an officer of Plaintiff Hazeltine Research, Inc. from its organization in 1946 until June 7, 1961. Since 1946 he has been continuously familiar with the patents and the patent licenses of both Plaintiff and its parent Hazeltine Corporation."

At the trial of the antitrust counterclaim Dodds testified (A. 774):

> "That is correct. There is a stipulation on the record that solely for the purposes of this action the plaintiff Hazeltine Research and the parent Hazeltine Corporation can be considered as a single entity."

No one from the parent, Hazeltine Corporation, denied Dodds' authority to make the stipulation during the trial or at any time subsequent thereto. Ruestow, who was General Patent Counsel for the Hazeltine Corporation (A. 278), and Westermann, who was Vice President and General Counsel of Hazeltine Corporation (A. 571), and both of whom were present during the trial and thoroughly familiar with the stipulation, never said one single word in repudiation thereof.

However, after the District Court entered its findings, Hazeltine Corporation hired new counsel who appeared on its behalf and for the first time contended that the entry of judgment would deny it due process of law. The only support offered for this contention was Dodds' *ex parte* affidavit that he "neither intended nor had any authority to bind Hazeltine Corporation" (A. 3008, 3009-12). No officer or director of Hazeltine Corporation denied knowledge of the stipulation or Dodds' authority to make it by testimony, affidavit or otherwise. Dodds was not even present in

Court when his affidavit was tendered so that he could be examined thereon by the Court and counsel for petitioner. The Trial Judge, however, had personal knowledge of the proceedings and representations at the April 3 pretrial conference which led to the stipulation. The District Court after a hearing on Hazeltine's contention that it was not a party (A. 3019-30; 3042-7) found against it and entered a joint and several judgment against both parent and subsidiary (A. 3078).

The Court of Appeals reversed the judgment against Hazeltine Corporation without remand on the ground that "the corporation's appearance to argue the issue after the trial was not sufficient opportunity to be heard under the due process clause" (A. 4242). What is overlooked is that Hazeltine Corporation appeared in the case by its own counsel before any judgment was entered and submitted the question of the Court's jurisdiction over it as a question of fact to be determined by the District Court on the record. No motion was made to open the case in order to put in evidence of any lack of authority of Dodds to sign the stipulation.

The question of whether Dodds had authority from the parent corporation to execute the trial stipulation was put at rest by the following affidavits:

In an affidavit dated May 31, 1961, Mr. Dodds stated (A. 32):

> "1. He is now and has been since the organization of Plaintiff in 1946 an officer of that Company and is now and has been since 1939 (except for an absence during part of 1944 and 1945) an officer of Plaintiff's parent Hazeltine Corporation."

In another affidavit dated May 10, 1963, Mr. Dodds stated (A. 50):

> "2. He has been retained by or employed by Plaintiff's parent Company, Hazeltine Corporation, continuously since 1934 and has been a Vice President of

> said Hazeltine Corporation continuously since 1939 (except for a period during 1944-45 when he had no connection with Hazeltine Corporation or any of its affiliates). He also was an officer of Plaintiff, Hazeltine Research, Inc., from its organization in 1946 until June 7, 1961. Since 1946 he has been continuously familiar with the patents and patent licenses of both Plaintiff and its parent Hazeltine Corporation."

This affidavit was annexed to a Hazeltine memorandum in support of a motion, filed May 15, 1963, to strike the antitrust defense raised in paragraph 13 of Zenith's Answer. In the memorandum, counsel for Hazeltine stated (A. 54):

> "For the purposes of discussion, Plaintiff finds it unnecessary to rely on the fact that it is a corporate legal entity separate and distinct from its parent Hazeltine Corporation, *and is willing that the two Companies be considered as a single entity insofar as their respective foreign and domestic licensing operations are concerned.*" (Italics ours)

In his opening statement at the trial, Mr. McConnell, counsel for Zenith, took particular pains at the outset to remind the Court that Hazeltine Corporation and its subsidiary, Hazeltine Research, Inc., were one and the same company in this litigation. As shown by the record (A. 114), Mr. McConnell stated:

> "As I say, the instant cross-claim alleges a conspiracy between the Hazeltine Corporation, and we have a stipulation in the record that the Hazeltine Corporation and its subsidiary companies are to be considered as one company in these proceedings. So we don't have to bother with whether it is the Hazeltine Research Corporation or the Hazeltine Corporation. There are three companies, I believe, and all of them are involved here under our arrangement with counsel, Mr. Dodds, that they are to be considered as one company."

Mr. Dodds, Hazeltine counsel, not only took no exception to this statement, but obviously relied on the stipulated fact himself throughout his entire opening statement. For example, he told the Court:

> "What *we* at Hazeltine have done have effectively sold its personal property to these pools. . . . The point is that what *we* are doing is selling these chattels, you might say, to these foreign pools which operate consistently with their laws." (A. 131) (Italics ours)
>
> * * * * *
>
> ". . . the Canadian law is to foster Canadian business, and they have many facets of Canadian law favoring Canadian business and to prevent aggrandisement of their market by their big neighbor to the south. We say that maybe we don't like it, but that is the law in Canada and there isn't anything that *we* can do to fix it." (A. 134) (Italics ours)

Again fully relying on the stipulated fact that parent and subsidiary were one company in the litigation, Mr. McConnell, Zenith's counsel, stated immediately after the opening statements (A. 141):

> "May it please the Court, I want to open this case by reading certain portions of a deposition which was taken by me, and the witness was Mr. Laurence B. Dodds. He was a vice president of the Hazeltine Company. Under the applicable rules, the Federal Rules, we can use his deposition, portions of it, read into the record their admissions.
>
> "The Court: Admissions against interest?
>
> "Mr. McConnell: Yes [THE COURT:] all right. Which corporation is he the vice president of? Both of them, or all three of them?
>
> "Mr. McConnell: Hazeltine Corporation.
>
> "Mr. Dodds: Hazeltine Corporation."

Pertinent portions of the deposition were then read into the trial record in accordance with Rule 26(d)(2) which provides in pertinent part:

> "(d) USE OF DEPOSITIONS. At the trial . . . any part or all of a deposition, so far as admissible under the

rules of evidence, may be used *against any party* who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

. . . .

"(2) The deposition *of a party* or of any one who at the time of taking the deposition was an officer, *director*, or managing agent of a . . . *private corporation*, . . . *which is a party* may be used by an adverse party for any purpose." (Italics ours)

Mr. Dodds was present in court and raised no objection; *Hazeltine, parent and subsidiary, as one entity under the stipulation, was a party and, without objection, the deposition of Dodds as an officer of the parent, Hazeltine Corporation, was properly read into the record as admissions against interest.* The Court and all counsel for Hazeltine, as well as Zenith, clearly recognized this. When Mr. Dodds took the stand later at the trial as the chief Hazeltine witness on all aspects of the antitrust phase of the litigation, he testified under oath as follows (A. 774):

By Mr. Diggins [Counsel for plaintiff]:

"Q. So that there was about a five or six-year period from '55 to '60, where you were responsible for licensing in both companies?

A. That is correct.

Q. Both United States and foreign?

A. That is right.

Q. Now, just so that we will understand each other, throughout this examination, except where it becomes important, in referring to Hazeltine we understand that it includes the Hazeltine companies generally.

A. That is correct. There is a stipulation on the record that solely for the purposes of this action the plaintiff Hazeltine Research and the parent Hazeltine Corporation can be considered as a single entity."

Consistent with the stipulation, the record and the understanding of the Court and all counsel, following the trial

Hazeltine submitted the following proposed finding of fact (A. 2913, 2914):

> "Jurisdiction and Parties
>
> * * * * *
>
> "8. It is stipulated that, for the purposes of this Action, Hazeltine and H. C. may be considered a single legal entity to avoid the issue of whether or not it is appropriate to 'pierce the corporate veil', but it is proper to consider the separate and unrelated activities of the two companies separately."

Hazeltine thus at the post-trial stage of the case again openly represented to the Court that the purpose of the stipulation was to "pierce the corporate veil," and that therefore there was no question about the fact that Hazeltine Research, Inc. was the *alter ego* of Hazeltine Corporation. Hazeltine counsel further, on the basis of the proposed finding No. 8 quoted above, sought to have the trial court enter findings of fact and conclusions of law in favor of the Hazeltine Corporation on practically every issue in the case. See for example proposed findings Nos. 29, 30, 31, 32, 42, 47, 49(a), (b) and (c), 50, 51, 53, 55, 56, 57, 58, 60, 63, 64, 65, 66, 67, 68, 71, 82, 83 and 87, and proposed conclusions of law Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 (A. 2922-38).

In proposed finding of fact No. 82, Hazeltine asked the Court to find that (A. 2933):

> "Neither Hazeltine nor H. C. [Hazeltine Corporation] has participated in any general plan or conspiracy the purpose and effect of which have been to restrain the export of radio and television receivers from the United States."

And in finding No. 87, the Court was asked by Hazeltine to hold (A. 2935):

> "There is no evidence linking Hazeltine or H. C. [Hazeltine Corporation] with members of the alleged 'international conspiracy'."

And, in Hazeltine's proposed conclusion of law No. 9, it asked the Court to rule that (A. 2937):

> "The bilateral agreement between H. C. [Hazeltine Corporation] and CRPL currently in force is a lawful agreement, the primary purpose and effect of which is to enable H. C. [Hazeltine Corporation] to obtain a fair royalty return under its Canadian patents."

And in proposed conclusion of law No. 10, the Court was urged to find that (A. 2937):

> "The bilateral agreement between H. C. [Hazeltine Corporation] and CRPL currently in force does not constitute a contract, arrangement, plan, or conspiracy in restraint of trade between the United States and Canada."

After the Court refused to adopt Hazeltine's proposed findings, and entered findings against Hazeltine's contentions, Hazeltine employed new counsel who attempted to persuade the Trial Court, and did persuade the Court of Appeals that the stipulation that former Hazeltine counsel had so accurately described in their proposed finding No. 8 did not mean what it said but rather had been entered into for some obscure procedural reason having to do with pre-trial discovery which took place over a year before the stipulation was signed (A. 3008, 3009-12, 3019-30, 3042-47).

Hazeltine's new counsel asserted this contention in a petition for mandamus contending that the Trial Court had no power to enter a judgment against Hazeltine Corporation. The petition was denied on April 7, 1965 (A. 6). Thereafter, Hazeltine Corporation filed identical motions under Rule 15(f) of the Seventh Circuit's Rules to vacate the April 5 and December 13, 1965 judgments as to it, again based on the same asserted lack of jurisdiction of its person (A. 8). By orders of the Court of Appeals dated August 16, 1965 and December 13, 1966 these motions were taken with the case and granted by the Court's Judgment dated December 13, 1967 (A. 4236).

In the District Court the Hazeltine appearance was labeled a "special appearance" (A. 3008) but the Federal Rules of Civil Procedure make no provision for a special appearance and whether or not the Court views the appearance as "special" or "general", there can be no question but what Hazeltine Corporation submitted the factual issue of whether it was bound as a party under the circumstances of this case for determination by the Trial Court. It filed a brief in support of its "special appearance" opposing entry of judgment against it (A. 3019-30) and orally argued its position (A. 3042-7). Since Hazeltine Corporation submitted the issue of jurisdiction of its person to the District Court and this issue was determined against it prior to entry of judgment there obviously was no constitutional question as erroneously found by the Court of Appeals (A. 4242). It obtained the very hearing it requested on the construction of the stipulation and Dodds' authority to execute it, but the District Court found against it on the entire record, including its personal knowledge of what transpired at the April 3 Pretrial Conference. Accordingly, the only issue in the court below was whether there was substantial evidence to support the Trial Court's determination that in the circumstances Hazeltine Corporation was a party.

The District Court could properly disregard the fiction of separate corporate entity where, as here, the record shows that Hazeltine Research, Inc. was merely the *alter ego* of its parent Hazeltine Corporation. Such determination presents no constitutional problem. *Chicago, M. & St. P. R. Co.* v. *Minneapolis C & C Asso.*, 247 U. S. 490, 500-501 (1918); *Sisco-Hamilton Co.* v. *Lennon*, 240 F. 2d 68, 69 (C. A. 7, 1957); *Allied Chemical Corporation* v. *Randall*, 321 F. 2d 320, 323 (C. A. 7, 1963); Powell, *Parent and Subsidiary Corporations* (1931), Chapters I, V.

In the *Chicago, M. & St. P. R. Co.* case, this Court described the limitation of the doctrine of corporate entity in a parent-subsidiary situation as follows (pp. 500-1):

> "Much emphasis is laid upon statements made in various decisions of this court that ownership, alone, of capital stock in one corporation by another, does not create an identity of corporate interest between the two companies, or render the stockholding company the owner of the property of the other, or create the relation of principal and agent or representative between the two. . . .
>
> "While the statements of the law thus relied upon are satisfactory in the connection in which they were used, they have been plainly and repeatedly held not applicable where stock ownership has been resorted to, not for the purpose of participating in the affairs of a corporation in the normal and usual manner, but for the purpose, as in this case, of controlling a subsidiary company so that it may be used as a mere agency or instrumentality of the owning company or companies. *United States v. Lehigh Valley R. Co.*, 220 U. S. 257, 273, 55 L. Ed. 458, 463, 31 Sup. Ct. Rep. 387, and *United States v. Delaware, L. & W. R. Co.*, 238 U. S. 516, 59 L. Ed. 1438, 35 Sup. Ct. Rep. 873. In such a case the courts will not permit themselves to be blinded or deceived by mere forms of law, but, regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require."

The Court below has frequently found occasion to "pierce the corporate veil" even in the absence of such conclusive proofs of *alter ego* as are involved in this case. For example, in *Sisco-Hamilton Co. v. Lennon*, 240 F. 2d 68, 69 (C. A. 7, 1957), the Court said:

> "The record demonstrates existence of four cognate corporations all geared to the activities of one another under the parent's control. Under this intimate relationship it would be unjust to fall back on sterile technicalities consisting only of identities of entities

> as the sole bar to recovery for negligence by one or more of the subsidiaries. *Chicago, M. & St. P. Ry. Co.* v. *Minneapolis Civic & Commerce Ass'n,* 1918, 247 U. S. 490, 38 S. Ct. 553, 62 L. Ed. 1229; *Davis* v. *Alexander,* 269 U. S. 114, 46 S. Ct. 34, 70 L. Ed. 186; *Garden City Co.* v. *Burden,* 10 Cir. 1951, 186 F. 2d 651. The appeal presents a striking illustration of subsidiaries actively implementing each other in rendering services to the plaintiff. This parent corporation cannot sit back on its charter and avoid tort responsibility for its delinquent child." . .

And in *Allied Chemical Corporation* v. *Randall,* 321 F. 2d 320, 323 (C. A. 7, 1963) the lower Court held:

> "The circumstances of this case require that the corporate entities of Gilbert's corporations be disregarded, for they did not exist apart from Gilbert's will. The corporations were treated as different parts of one operation. To recognize the corporate entities when in fact they were but the alter ego of Gilbert would promote injustice."

It was contended in the Court below that Hazeltine Corporation could not possibly be bound by the stipulation because it was signed by L. B. Dodds, plaintiff's counsel, not in his capacity as vice president of Hazeltine Corporation but only as counsel for the subsidiary (Hazeltine Rule 15(f) Brief pp. 19-20). This begs the question. The fact of the subserviency of the subsidiary can be established just as conclusively by the admissions of the dominated subsidiary:

> "Direct proof of this affirmative subserviency of the subsidiary officers is conclusive of the case against the parent corporation, insofar as the Instrumentality Rule is concerned. But such direct proof is not often forthcoming." Powell, *Parent and Subsidiary Corporations,* p. 18.

Further as Hazeltine in its own proposed finding No. 8 clearly stated, the stipulated fact that the two companies were to be treated as one in this case was made in order "to avoid the issue of whether or not it is appropriate to 'pierce the corporate veil,' . . ." (A. 2913-14). This was as much to Hazeltine Corporation's advantage as to Zenith's because Hazeltine expected to obtain a favorable determination with respect to its participation in foreign pools and asked for findings in its favor on all the antitrust issues. Certainly, under the circumstances of this case, parent and subsidiary as one entity was bound by the stipulation. *Fisser* v. *International Bank*, 282 F. 2d 231, 233-5 (C. A. 2, 1960); *Weisser* v. *Mursam Shoe Corporation*, 127 F. 2d 344 (C. A. 2, 1942); *Chilean Nitrate Sales Corp.* v. *The Nortuna*, 128 F. Supp. 938, 941 (S. D. N. Y., 1955); *Shamrock Oil and Gas Co.* v. *Ethridge*, 159 F. Supp. 693 (Colo., 1958).

We submit that Hazeltine Corporation, the parent company, was a party properly bound by the judgments and that its dismissal was error and should be reversed.

CONCLUSION.

For the reasons stated it is respectfully submitted that the judgment of the Court below, to the extent it vacated and reversed the judgments of the District Court, should be reversed.

Respectfully submitted,

Thomas C. McConnell,
Philip J. Curtis,
Francis J. McConnell,
John Borst, Jr.,
Attorneys for Zenith Radio Corporation, Petitioner.

Of Counsel:
McConnell, Curtis, Mahon & Borst,
134 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

APPENDIX A.

In the United States District Court
For the Northern District of Illinois,
Eastern Division.

Hazeltine Research, Inc., *Plaintiff*, *vs.* Zenith Radio Corporation, *Defendant.*	}	No. 59 C 1847.

FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH RESPECT TO THE ANTITRUST ISSUES RAISED IN THE ANSWER AND COUNTERCLAIM.

Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, the court hereby makes the following findings of fact and conclusions of law:

I. The antitrust issues raised in the answer to this patent infringement suit and in the counterclaim for damages and injunctive relief were separately tried following the trial of the patent issues. Defendant in its answer (Aa 16-19) asserted the affirmative defense that plaintiff was misusing its patents, including the patent in suit, in violation of public policy and the Sherman Act (15 U. S. C. §§ 1 and 2) and that it, therefore, came into this court with unclean hands and is therefore barred from receiving any relief in this action. Defendant also filed a counterclaim (A. 64) for damages and injunctive relief pursuant to Rule 13(a) of the Federal Rules of Civil Procedure, Sections 1 and 2 of the Sherman Act (15 U. S. C. §§ 1, 2) and Sections 4 and 16 of the Clayton Act (15 U. S. C. §§ 15, 26).

II. Defendant-Counterclaimant, Zenith Radio Corporation, is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 6001 W. Dickens Avenue, Chicago, Illinois (A. 70), and is now and has been continuously for more than 43 years last past engaged in the development for sale and use and in the manufacture, sale and use of radio apparatus and receiving sets, and since the advent of television, television receiving sets throughout the United States and in foreign commerce, and during said period has built up a large volume of business in manufacturing and selling as the demand therefor has existed and will continue to exist, and in the shipment and sale of such apparatus in commerce between the various states of the United States and in foreign commerce, and said counterclaimant is now and has been engaged in said commerce during all of the period above stated and during all times material to this counterclaim (A. 450-456).

III. Counterdefendant, Hazeltine Research, Inc., the party plaintiff in this suit, is an Illinois corporation owned and operated as a wholly owned subsidiary of Hazeltine Corporation, a New York corporation, engaged in the manufacture and sale of electronic equipment and devices (A. 70, 937-951). The parties stipulated (A. 55, 774) that for the purposes of this litigation Hazeltine Research, Inc. and its parent, Hazeltine Corporation, would be considered as one entity operating as a patent holding and licensing company, engaged in the exploitation of patent rights in the electronics industry in the United States and in foreign countries (Def. Ex. 32, A. 1127-1130). The gross income of the Hazeltine enterprises approximates $47,000,000 per year (Def. Ex. 1, A. 951).

IV. For many years plaintiff has accumulated a large number of patents, domestic and foreign, for use in its patent licensing business in the electronics industry (Def. Ex. 1, 32, A. 947, 1127-1130). At the time of the filing of this suit Hazeltine had over five hundred patents and patent applications in its licensing portfolio (A. 271).

V. Plaintiff's policy in licensing electronics manufacturers in the United States was to grant a so-called standard package license (Def. Ex. 2, A. 955) which conferred on the licensees for a five-year period fredom from any charge of infringement under all present as well as future Hazeltine patents issuing during the term of the agreement (Def. Ex.'s 2, 3, A. 955, 957, 991). Royalties were required to be paid on the licensee's entire production whether its products employed any or none of the Hazeltine patents (Def. Ex. 2, Art. III, A. 959, Def. Ex. 38, A. 1148-1149). The license was in effect a covenant not to sue the licensee or its customers should Hazeltine decide within the license period that the manufacture and sale of any particular apparatus infringed upon any of its patent rights (A. 605; Def. Ex. 27, A. 1110b).

VI. Hazeltine filed numerous patent infringement suits against manufacturers who refused to sign its license agreement (Def. Ex. 32, A. 1127-1130).

VII. Prior to the instant controversy, Zenith had the standard Hazeltine package license and in May of 1959, toward the close of the last five-year license period, Hazeltine requested that the license be renewed for another five-year period at the then package rate of $50,000 per year (A. 434). Zenith refused, contending that it did not require a license under any of the patents in the package and Hazeltine countered by asserting that Zenith was infringing at least four of the Hazeltine patents in the manufacture and sale of monochrome television receivers (A. 435, Def. Ex. 28, A. 1111-1112) (at that time Zenith was not manufacturing color receivers (A. 436). At the same time Hazeltine made an alternative proposal to Zenith, offering to grant a monochrome license in accordance with the following formula:

> Any one patent in the package would be licensed at 50% of the royalty rate for the entire package of over 500 patents and patent applications. Any two patents would be licensed at 80% of the package rate. Any three or more patents would be licensed at 100% of the package rate (A. 436-437). Hazeltine reserved the right to sue for infringement of any patent not licensed. All licenses would otherwise be subject to all the terms and conditions of the standard package form of license (Def. Ex. F-10, A. 2665) and would require payment of royalties on all production during the five-year term of the license irrespective of whether any patent was employed or not (Def. Ex. 2, A. 959, A. 437). The license would not cover color television receivers (Def. Ex. F-10, A. 2665, 437).

Zenith refused to sign either of the proposed agreements and on November 20, 1959 the instant suit was filed.

VIII. With the suit on file and at issue, Hazeltine continued its attempt to persuade Zenith to sign the package license. During the course of discovery proceedings Hazeltine informed Zenith that in addition to the patent in suit, Zenith was infringing at least 9 designated Hazeltine patents and applications in the manufacture and sale of its color television receivers (A. 281, 419-420). The old form of standard package license under all the Hazeltine patents was again tendered to Zenith for signature and Zenith again refused to sign it (Def. Ex. 10, A. 1010, 420).

IX. On April 11, 1962, Hazeltine submitted to Zenith a license proposal for color television which provided an annual royalty rate of $435,000 merely for the 9 patents asserted and an annual rate of $500,000 for a license under all of Hazeltine's patents and patent applications for color television (Def. Ex. 12, A. 1013, 422, 423). However, if the standard package license covering all of Hazeltine's patents, for monochrome as well as color, were signed, the maximum royalty rate would be $150,000, the same as the rate in the Hazeltine-RCA package license (later raised to $200,000) (A. 423-425, 287). Zenith refused these proposals on the grounds that they were obviously designed to force Zenith to take the package license which it did not want or need (A. 426-427, Def. Ex. 13, A. 1032); that Zenith could not place itself at a competitive disadvantage by taking a license under only 9 patents at $435,000 a year rather than signing the package license containing all Hazeltine patents at the package rate of $150,000 per year (A. 426).

X. Hazeltine continued its efforts to persuade Zenith to sign the standard package license before this case could be brought to trial (A. 427-428). In March 1963, as the case approached the final pre-trial conference, Hazeltine made the following proposal to Zenith (Def. Ex. 15, A. 1035):

> It grouped together the nine patents and one application which were claimed by Hazeltine to be employed in the manufacture of Zenith color receivers (A. 1036). It placed a maximum royalty on this package of $275,000 per year but for color receivers only (¶ III (A), A. 1037, 430). For the entire package containing all of Hazeltine's then existing patents for color television an annual maximum of $300,000 (¶ III(B), A. 1037, 430) was set and for all present as well as future patents issued during the license period an annual maximum of $310,000 was demanded for color television alone (¶ III(C), A. 1037, 430).
>
> In this same license proposal, Hazeltine offered its entire package of present and future patents, unspecified, for both monochrome as well as color receivers for an annual maximum of $200,000 (¶ IV(A), A. 1038, 431, 591-592).

Under this proposal, a license could be taken, if desired, under only two of the ten patents asserted against Zenith's color receiver but it would bear an annual maximum royalty in excess of $200,000 and would license only color receiver production (A. 602), whereas the entire package of over 500 patents and applications for both monochrome as well as color receivers would bear an annual maximum of $200,000 (¶ IV (A), A. 1038). This proposal was obviously designed to persuade Zenith to sign the standard package license agreement (Def. Ex's 27, 30, 34-B, A. 1109-1110b, 1121-1123, 1139) which it was unwilling to do and presented to Zenith management the following alternatives:

1. Endure trials and possibly appeals on at least nine patents at a total estimated cost of over one million dollars, plus damages in the event any or all of the suits were lost.
2. Take a license under the package of ten patents and applications at a cost of $275,000 per year for color television (¶ III (a), A. 1037), or a license under the entire package of existing Hazeltine patents for color television at a cost of $300,000 per year (¶ III (B), A. 1037), or at a cost of $310,000 per year a license covering existing and future patents of Hazeltine for color television (¶ III (C), A. 1037) for a five-year period. In each case Zenith would be obliged to make the royalty payment whether any of the patents licensed was used or not in Zenith's color receiver (Def. Ex. 18, Art. III, A. 1047). This would still leave Zenith's entire monochrome production open to continuous attack by Hazeltine, and plaintiff's counsel had already claimed that Zenith's monochrome receiver infringed at least three patents in addition to the patent in suit (Def. Ex. 28; A. 1112, 435).
3. Take a license for color television under two patents selected from the package of ten and pay over $200,000 per year (A. 602), but this would expose Zenith's color production to the assertion of any

or all of the color patents not licensed and would subject its entire monochrome production to the assertion of any of the hundreds of patents in the Hazeltine package.

4. Take the standard package license under all patents and patent applications of Hazeltine, present and future, for both monochrome and color television at an annual maximum of $200,000, per year (Def. Ex. 15, ¶ IV (A), A. 1038, 431, 601-2).

Over a five-year license period it would cost $500,000 to $550,000 more for a license under the small group of ten patents for color television alone than for the entire Hazeltine package covering over 500 patents and applications for monochrome as well as color television. In addition, the full package license would remove the risks of further protracted and expensive litigation or harassment (A. 605), whereas the more expensive license under less than the entire package would leave Zenith and its customers exposed to renewed charges of infringement based on any or all of the remaining hundreds of existing Hazeltine patents as well as all patents issuing during the term of the license (Def. Ex. 7, A. 1002-1004). The only practical answer would be to accede to Hazeltine's demand and accept a full package license.

XI. Plaintiff's offer to license any one of its hundreds of patents for monochrome at 50% of the package rate, any two at 80% of that rate and any three or more at the full package rate was an attempt by economic coercion to force the taking of the package (A. 635, Def. Ex. 24, A. 1091). This is clear from the fact that plaintiff had asserted that Zenith was infringing at least 4 patents in its monochrome receivers (A. 435, Def. Ex. 28, A. 1111-1112). Moreover, the reward demanded by plaintiff for a license under less than the full package of patents is in no way related to the quality of the patents since the price is determined solely by the number of patents chosen (Def. Ex. 27, A. 1110a, 436-437, 635-636) and most of the patents in the package are characterized by Hazeltine itself as "insignificant". (Def. Ex. 22, A. 1072, 602-603, 641).

XII. In all of its proposals to Zenith, Hazeltine insisted as an alternative to litigation that Zenith for a period of five years pay royalties in large sums based on its entire production of receivers whether or not any Hazeltine patent was employed in any way in its products. Plaintiff thus insists that royalties be paid on admittedly unpatented apparatus. (Def. Ex. 2, Art. III, Ex. 18, Art. III, A. 959, 1047, 437).

XIII. As of the date the trial began Defendant had been injured in its business and property as the proximate result of the acts and demands of Hazeltine, referred to above, in the amount of $50,065 (A. 550-554). Defendant has been forced to make expenditures of money and to use the time of its officers, employees, and counsel to defend against this patent infringement suit, and by virtue of Hazeltine's threats of suits on other patents, defendant has been forced to expend substantial amounts of money to investigate the scope and validity of the patents asserted (A. 551). The injury to Zenith's business was occasioned by the necessity that defendant make a choice among alternatives each of which had an adverse economic effect on its business. It was forced either to cease manufacturing and selling its television receivers, pay tribute with consequent increase in its costs or incur the expenses incident to the defense of protracted patent litigation. Although defendant's choice determined the nature and amount of the resulting damages, it was the necessity of having to choose that occasioned the injury.

XIV. In its counterclaim (A. 64-69) Zenith also seeks damages and injunctive relief based on plaintiff's conspiratorial activities with foreign cartels or patent pools in England, Canada and Australia which have curtailed Zenith's export business.

The British Patent Pool.

XV. The dominant radio and electronics companies in Great Britain (A. 90-91, 97-100) set up the British Pool into which flow thousands of patents owned or controlled by the members and those affiliated with them in the plan. Among these companies are Electric & Musical Industries Ltd., General Electric Company, Ltd., Marconi's Wireless Telegraph Co. Ltd., Philips Electrical Ltd. (A. 1194, 1205, 1248, 1271, 1272), Pye Ltd. (A. 1243), Murphy Radio Ltd. (A. 1228), Rank Cintel Ltd. (A. 1248), Standard Telephone & Cables Ltd. (A. 1223), Gramophone Co. Ltd. (A. 1205), E. K. Cole Ltd. (A. 1233) and Cossor Ltd. (A. 1237). The Hazeltine inventions and patents have been funneled into the Pool pursuant to an agreement with General Electric Co. Ltd. (Def. Ex.'s 42-50, A. 1165-1190) and the share of the Pool's income allocated to these patents is split between General Electric Co. Ltd. and Hazeltine (A. 207, 320-321, 331-332, Def. Ex.'s 42, 78B, A. 1165-1190, 1441). Pursuant to this arrangement British inventions controlled by General Electric Co. Ltd. are licensed to Hazeltine for exclusive licensing use in its American territory (Def. Ex.'s 38-B, 42, A. 1155-1157, 1165-6) and are included in its United States package licensing activities (A. 639, 1156-1157). The Hazeltine-General Electric Co. Ltd. exclusive agreements were specifically devised to get the Hazeltine patents into the British Patent Pool in a manner which would provide for G. E. C. maximum bargaining power vis-a-vis the other Pool members on the devision of the Pool income (Def. Ex.'s 42, 96, A. 1165, 1504-1505).

XVI. Pursuant to these arrangements, General Electric Co. Ltd. on its own behalf and on behalf of Hazeltine entered into successive pooling arrangements (Def. Ex.'s 51-60, A. 1194-1272) with the other members of the British Pool wherein and whereby it was agreed that the Hazeltine patents along with the patents of all of the Pool members be licensed in the territory of Great Britain solely by the Pool (A. 1196-1197, 1221, 1267) and on terms and conditions determined by the members of the Pool (A. 1197-1198, 1215-1216, 1262). Each of the participating parties in all of the interrelated agreements, including Hazeltine by virtue of the exclusivity of its joint arrangements with General Electric Co. Ltd., contractually pledged that during the period of the agreements no license would be issued that would permit the export of radio and television receivers from the United States into the British market (A. 1199, 1212, 1258) and that the only license employed by the Pool would be a standard package license limited to local manufacture (Def. Ex.'s 61 ¶ 21, 62 ¶ 4b, 63 ¶ 4b, 65 ¶ 4a, 66 ¶ 4a, 67 ¶ 4a, 68 ¶ 4a, 69 ¶ 4a, 70 ¶ 2a, 71 ¶ 2a, A. 1280, 1292, 1310, 1325, 1337, 1348, 1360, 1372, 1382, 1393-1394). Hazeltine has been participating in this plan and arrangement since 1938 (Def. Ex. 42, A. 1165), is currently participating in it (Def. Ex. 50, A. 1190, 369, 3036) and intends (A. 179) to continue its participation.

XVII. Hazeltine has had full knowledge of the various interrelated agreements under which the Pool operates and has operated (A. 194-200, 206, 209-213, 215-216, 316, 367-368) and the purpose and effect of the plan which is to protect the British manufacturers in the Pool against competition from television receivers made in the United States and other countries (Def. Ex.'s 91, 92, 94, A. 1487, 1492, 1500). Hazeltine contends that it has entered into these arrangements because in that manner it can obtain more income from its English patent properties than it could through its own individual effort (A. 130, 331, 900, 408-409).

XVIII. The Pool has always issued one form of license which, like the Hazeltine package license in the United States, covers all of the patents in the pool (Def. Ex's 38-B, 62, 63, 65, [illegible]6, 67, 68, 69, 70, 71, A. 1157, 1290, 1308, 1324, 1335, 1346, 1358, 1370, 1382, 1393-1394) requires payment of royalties on all of the licensees' production whether or not any of the patents are employed (Def. Ex's 61, 62, 63, 65, 66, 67, 68, 69, 70, 71, A. 1279, 1293-1294, 1311, 1325-1326, 1337-1338, 1348-1349, 1360-1361, 1372-1373, 1384, 1395-1396). The effect of this plan is to amass all of the patents for assertion against anyone not licensed, to prevent importers or foreign manufacturers from entering the market and to preclude the possibility of any attack by the licensees on the validity of any one patent (Def. Ex's 65, 66, 67, 68, 69, 70, 71, 91, A. 1328, 1341, 1352, 1364, 1376, 1387, 1398-1399, 1487-1488).

XIX. The policy of the Pool was early stated to be to cooperate in the division of territories provided by the plan and "not knowingly [to] assist any [American] company to sell in England under the protection" of the Pool patents apparatus manufactured in the United States and not licensed under the patents of the Pool's American participants (Def. Ex. 94, A. 1500, Def. Ex's 100, 111, A. 1513-1514, 1557). RCA and General Electric, like Hazeltine, for many years participated in the British Pool (Def. Ex's 51, 72, 92, A. 1194, 1402-3, 1490). However, as the result of anti-trust litigation brought by Zenith and by the Government RCA and General Electric were forced to cease their participation in the plan (A. 450-455, Def. Ex. 114, A. 1607, Pl. Ex. 45, A. 2767).

XX. Initially the strength of the Pool was drawn from patents on radio receivers and with the advent of television, the power of the Pool became greater than ever. Color television is the most recent innovation in the home entertainment field and Hazeltine has now become an even more important factor in the British combination because of its color television patents which Hazeltine contends has given it a "dominating position" in the color television field (Def. Ex's 1, 32, 76-B A. 946, 1127, 1431).

XXI. For years Zenith made every effort to export home receivers to distributors and dealers in the English market. On each occasion, however, the Pool threatened its distributors until they ceased buying Zenith products and no substantial trade outlets could be found which would risk handling the line since the Pool would not license the sale of imported merchandise (A. 462-464, 473-474, Def. Ex's 100-109, A. 1512-1545).

XXII. As a part of the settlement of antitrust litigation brought against RCA, General Electric and Western Electric, Zenith was in 1957 granted royalty-free world-wide rights under the inventions and patents of these companies (Def. Ex. 114, A. 1607-1633) and began to ship radios to the British market (A. 463-464). The Pool could not assert any of these rights to prevent importation and since all basic radio patents have expired, Zenith has been able for the first time to export to and sell its radio receivers in the English market (A. 463-464). This is not true of television apparatus however (R. A. 464, 474). The Pool is armed with thousands of patents from the Pool members including the British counterparts of patents asserted by Hazeltine against Zenith in the United States (A. 145-146, 273, Def. Ex's 1, 32, A. 947, 1127-1128). Zenith has been constrained from entering the British television market by the threat of the assertion against it of pooled patents, although Zenith has successfully engineered sets for the British market and has shipped same to its English distributor with the hope that the injunctive relief sought in this suit would be granted and business on a commercial scale could be conducted (A. 464-465, 530-531).

XXIII. The manufacture in the United States of receivers for sale to exporters here or directly to importers in England (or in Canada and Australia where corresponding patent pools are operating) would risk further charges by Hazeltine of infringement of the United States patents asserted against Zenith here and Hazeltine, by virtue of its exclusive arrangements (A. 1409, Def. Ex's 43, 46, 48, A. 1167, 1176, 1183) with the English companies, is contractually unable to grant a license to manufacture in the United States for export to and sale in England under the British counterparts of its domestic patents. Hazeltine's United States package license expressly states, in compliance with the restrictions involved in the pooling arrangements (Def. Ex. 51, A. 1196-1197. Def. Ex. 52, A. 1208, 1212, 1221, Def. Ex. 58, A. 1251, 1258, 1267, Def. Ex. 118, A. 1649, Def. Ex. 180, A. 2307), that no license is granted under any patent rights of countries foreign to the United States A. 798, Def. Ex's 2, 18, A. 958-959, 1047).

XXIV. Hazeltine has always told its licensees in the United States that as a matter of policy it would never collect a second royalty on sets exported to foreign countries "where Hazeltine had complete control over its patent situation" (Def. Ex. 115, A. 1634) but that with respect to England, Canada, Australia and New Zealand, where Hazeltine patents are included in an industry-wide pool, the American licensees would have to make their own arrangements with such Pools (Def. Ex. 116, A. 1636).

The Patent Pool in Canada.

XXV. The patent pool existing in Canada is called Canadian Radio Patents Limited. This organization was formed in 1926 by the General Electric Company of the United States through its subsidiary, Canadian General Electric Co. and by Westinghouse, through its subsidiary, Canadian Westinghouse (Pl. Ex. 50A, A. 2829-2831; Def. Ex's 117, 125, 142, A. 1637, 1834-1836, 1964). The shareholders of Canadian Radio Patents Limited are Canadian General Electric, Canadian Westinghouse, Standard Radio Mfg. Corp. Ltd., the Canadian subsidiary of Philips of Holland, Canadian Marconi and Northern Electric (an affiliate of AT&T and Western Electric). The Pool has been largely made up of Canadian manufacturers (most of which are subsidiaries of American companies A. 90-96)) who were and are competitors of Zenith with respect to sales sought to be made in Canada (A. 457). The Pool for many years has had the exclusive right to sub-license not only the patents of the member companies but also the patents of Hazeltine (Def. Ex's 118, 119, A. 1649, 1672), RCA and a number of other foreign companies (Def. Ex's 125, 142, A. 1834, 1964, Pl. Ex. 50-A, A. 2829). Since 1943 Hazeltine has been an active participant in the activities of the Pool and has been receiving a substantial share of its profits (A. 162-163, Def. Ex's 118, 118-A-B-C, 119, A. 1645-1672). The Hazeltine patents go into the Pool pursuant to an exclusive license agreement between Hazeltine and Canadian Radio Patents Limited (Def. Ex. 118, A. 1645) which grants to the Pool the right to include Hazeltine's Canadian patents, present and future, in its licensing and litigation activities. This arrangement has been extended to a date beyond the filng of the instant counterclaim (Def. Ex. 119, A. 1672).

XXVI. The organization, purposes, and functions of the Canadian Pool are, in principle, identical to those of the English Pool. Approximately 5000 patents are amassed for licensing (Pl. Ex. 50-A, A. 2830) and the only form of license available is strictly limited to manufacture in Canada (A. 454, 706, Def. Ex's 123, Art. II, sec. 1, 150, 162-D, A. 1725, 2013, 2055). It is also a package license under all patents in the Pool and all patents issuing during the term of the license (Def. Ex. 123, Art. II, sec. 2, A. 1725). The chief purpose of the Pool is to protect the manufacturing members and licensees from competition by American or other foreign companies seeking to export their product into Canada (A. 134, 704-705, Def. Ex's 142, 164, A. 1967, 2070-2071).

XXVII. The Pool's campaign against importation of radio and television receivers from the United States is highly organized and effective. Patent agents, investigators and agents of the conspiring companies as well as the Canadian manufacturers' and distributors trade associations at the behest of the Pool have systematically policed the market in order to locate and stop the sale of imported receivers and have immediately attacked by infringement suit or threat thereof any dealer found to be selling imported receivers (Def. Ex's 129, 139-144; A. 1847-1860, 1890-1958, 1961, 1963, 1967-1968, 1970, 1973-1977). Warning notices (Def. Ex's 131-138, A. 1865-1880) addressed to importers, vendors and users of radio and television receivers advise the trade and the public that only the products of certain named local manufacturers are licensed by the Pool under "basic patents" and that even "users" of unlicensed products are subject to suit on account of patent infringement. Many advertisements run by the Pool went much further. They contained disparaging statements about imported receivers to the effect that they were cheaply made, unsatisfactory in operation, caused fires and were dangerous to use because of "shock hazard" (Def. Ex. 130, A. 1861-1864).

XXVIII. Mass attacks in the form of infringement suits were made on dealers found to be selling imported American made radio and television receivers. Suits or the threat of suits effectively prevented dealers from handling American made sets (Def. Ex's 143, 144, A. 1968-1977).

XXIX. For many years Zenith attempted to set up distribution for its products in Canada (A. 451-453) but in every instance where a Canadian distributor began to sell Zenith products he was warned by the Pool to stop and return the merchandise or face expensive infringement litigation (A. 450, Def. Ex's 155-162, A. 2022-2065). To ward off these attacks Zenith attempted to get a license from the Pool, but in every instance it was advised by the Pool manager that importation would not be permitted and, only local manufacture would be licensed (A. 410-411, 451, Def. Ex's 146-154, A. 1982-2021).

XXX. As a part of the settlement in the Zenith litigation against RCA, General Electric and Western Electric which involved the activities of the Canadian patent pool, Zenith obtained world-wide rights under the patents of the defendants (Def. Ex. 114, A. 1607, 450-454) and having obtained these and other patent licenses permitting importation into Canada, Zenith began late in 1958 to export to and sell in Canada its radio and television products through its Canadian subsidiary, Zenith Radio Corporation of Canada (A. 450, 455-456). The manager of the Pool, Brian McConnell, investigated the matter (Def. Ex's 151, 152, A. 2014-2018) and informed Zenith (A. 411-412) that in order to continue this business in Canada, Zenith would be required to sign the Pool's standard package license (Def. Ex. 124C, A. 1807) which did not permit importation (A. 410) and that Zenith would have to manufacture in Canada (A. 410) any products it intended to sell there. The Pool manager further informed Zenith that it was infringing at least one of Hazeltine's Canadian patents (A. 410, Def. Ex's 153, 154, A. 2019-2021) and that Hazeltine's patents, as well as all of the other patents in the Pool, with the exception of those owned by Westinghouse and General Electric Company, could not be licensed for importation (A. 411-412). With respect to the latter two companies, McConnell stated that they had instructed the Pool not to refuse to license their patents for importation (A. 410). The notices to "importers, vendors or users of radio and television receivers" warning them not to purchase imported sets continued to be run by the Pool despite protests by Zenith (Def. Ex. 134, 135, 138, 143, 144, A. 1868, 1870, 1972, 1974, 570). Shortly after the aforesaid demand made on Zenith by the manager of the Canadian Pool, the instant suit was filed (A. 416).

XXXI. Hazeltine before entering into its exclusive arrangement (Def. Ex. 118, A. 1645) was fully aware of the purpose and the policy of the Pool to prevent the export of American made receivers into Canada (A. 389-390, Def. Ex. 172, A. 2133-2134) and has worked very closely with Canadian Radio Patents Limited in its licensing activities (Def. Ex's 175-178, A. 2146-2149) and its campaign against importation from the United States (Def. Ex's 174-178, A. 2143-2149).

XXXII. The proofs establish as a fact that in the circumstances of this case the Canadian Patent Act does not require the Pool to refuse to license importation, as contended by plaintiff. Nor does the Act penalize in any way a patentee who licenses for importation where, as in this case, there is being carried on extensive manufacturing in Canada under its patents (A. 705-722, 812-818, Def. Ex's 163-8, 173, A. 2066-2089, 2135-2137).

The Australian Pool.

XXXIII. The dominant electronics company in Australia and its controlled territory is and for many years has been Amalgamated Wireless (A'sia) Limited (referred to as AWA) (A. 90-93). A number of the same companies involved in the English and Canadian cartel arrangements set up a patent pool in Australia (Def. Ex. 196, A. 2476-

2482) identical in principle and purpose to the British and Canadian Pools (Def. Ex. 213, A. 2513-2519). The patents of all of the conspiring companies funnel into the Pool which is known as Australian Radio Technical Services and Patents Company Pty. Limited (commonly called ARTS). The patents flow into ARTS through AWA, Standard Telephone and Cables Pty. Ltd., N. V. Philips Gloeilampenfabrieken, Electric and Musical Industries Ltd. (owning Marconi's and other rights for Australia), Pye Ltd. and Neutrodyne Proprietary Limited (Def. Ex's 181-187, A. 2310-2380). Neutrodyne is a controlled subsidiary of Hazeltine; the latter company owns seventy percent of its stock (A. 253).

XXXIV. Under an exclusive license agreement dated September 11, 1928 (Def. Ex. 180, A. 2305), but still in full force and effect (A. 277), Neutrodyne is authorized to place all inventions and patents of Hazeltine into the Australian Pool and is required to see to it that all of the requirements, restrictions and provisions of the standard package license of Hazeline are contained in any pooling license issued thereunder (A. 2307). Sub-licensing rights, existing and future, under all of Hazeltine's inventions have been granted the Australian Pool under this arrangement for 35 years (Def. Ex's 181-87, A. 2310-2380) and have been the subject of the only form of license agreement issued by the Pool, a standard package license not referring to any particular patent or invention but to all of the rights of all the conspiring companies (Def. Ex's 188, 189, 190, 191, 192, 193, 194, 195, A. 2383, 2398, 2410, 2415, 2429, 2441, 2455, 2467). A standard Pool license imposes the restrictions necessary to effectuate the division of territories involved in the overall arrangements. It requires the licensee to agree not to export or import (Def. Ex's 188, 189, 191, 194, 195, A. 2386, 2400, 2416, 2457, 2469) or sell or offer for sale in Australia any radio or television receiving apparatus not manufactured in Australia. Hazeltine has been fully aware of the Pool's plan and policy not to license for importation and has cooperated with and approved the operation of the Pool with respect to all the Hazeltine Australian patents (Def. Ex's 197-203, 204-207, 208-212, A. 2482-2498, 2499-2503, 2504-2512).

XXXV. The standard package form of Hazeltine license covering all patents (A. 957, 1046) subject to licensing by the Pool and requiring royalty payment whether or not any such patent is used (A. 959, 1047) in the licensed apparatus, is employed by each Pool referred to in these findings. (In England A. 1290-1294, 1308-1311, 1324-1326, 1335-1338, 1346-1349, 1358-1361, 1370-1373, 1382-1384, 1393-1396; In Canada A. 1678-1681, 1693-1694, 1725-1729, 1750-1775, 1811-1816; In Australia A. 2383-2388, 2398-2402, 2415-2418, 2428-2432, 2441-2445, 2455-2459, 2467-2471) and is also used by Hazeltine in the United States in order to prevent attacks by licensees (A. 955, 1044) on any of the patents of the participating companies in any of the markets covered by these findings.

Damages Sustained by Zenith.

XXXVI. The foreign commerce of Zenith (England, Def. Ex's. 100-113, A. 1512-1594; Canada, A. 524, Def. Ex's. 156-162D, 179, A. 2025-2053, 2152-2304; Australia, Def. Ex. 215, A. 2523-2590) has been drastically curtailed by the patent Pools in England, Canada and Australia (A. 444-494, 524-531). The damages Zenith has sustained were estimated by experienced officials (A. 457, 528-9) of Zenith, thoroughly familiar with the business problems and sales potentials in the markets involved. They determined the approximate damages sustained by a thorough study of each of the markets involved (A. 528-9) and all relevant factors including tariffs, shipping costs and manufacturing problems (A. 529-30). Zenith's foreign commerce has been damaged by the Pools in the following amounts during the 4-year statutory damage period:*

Canada			
	Television	$5,826,896	
	Radio	470,495	(Def. Ex. 220; A. 2661; A. 517-8)
England			
	Television	4,312,924	
	Radio	745,102	(Def. Ex. 220; A. 2661; A. 518)
Australia			
	Television	223,508	
	Radio	24,952	
	Total	$11,603,877	(Def. Ex. 220; A. 2661; A. 519)

Conclusions of Law.

1. The court has jurisdiction to determine the antitrust issues under the provisions of the Act of Congress approved July 2, 1890, entitled "An Act To Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act.

2. Plaintiff's demands on defendant coupled with the bringing of this suit and the threat to bring other suits on other patents constitute an illegal effort to coerce Defendant into signing the Hazeltine package license.

3. The policy of plaintiff, reflected in the demands made on defendant and action taken against it, was to grant no license unless under all of its hundreds of patents for a fixed royalty, is one of unlawful coercion contrary to public policy.

---

* The damage figures with respect to England and Australia reflect the amendment of Finding of Fact XXXVI entered by the District Court on December 13, 1965 (A. 3537).

4. The reward sought by plaintiff from defendant for inventions to be licensed in no way related to the quality of the individual patents and under the package license each patent drew strength from the others, thus unlawfully extending the monopoly of each.

5. Plaintiff's offer to license its patents individually but at royalty rates far in excess of the package rate was never an alternative to its controlling policy to grant defendant a license only under all of its patents. Rather, it was proposed by Hazeltine in the later stages of its negotiations in the instant case to cloak the harshness of the original demand by seemingly meeting the request of defendant in that regard. Although it may be said that the Hazeltine proposals on the surface were offers to treat of individual patents, the design was quite apparent—to force by unlawful coercion the acceptance of unwanted patents. This constituted an illegal extension of the patent monopolies. Whatever may be the asserted reason or attempted justification of Hazeltine, its efforts to compel defendant to accept a package of patents involved the use of one patent or group of patents as a lever to compel the acceptance of a license under others. Such a licensing scheme under applicable decisions of the Supreme Court is illegal and constitutes a misuse of the patents involved.

VI. There is a further feature of Plaintiff's licensing practices that in and of itself constitutes an illegal attempt to extend the patent monopolies. The license argeement, whether it be under a single patent or under Hazeltine's entire patent package, requires the payment of royalties in large sums for a period of five years on the entire production of the licensee whether or not any licensed patent is employed in any way in the licensee's products. Plaintiff's demands that royalties be paid on admittedly unpatented apparatus constitute misuse of its patent rights and plaintiff cannot justify such use of the monopolies of its patents, by arguing the necessities and convenience to it of such a policy. While parties in an arms-length transaction are free to select any royalty base that may suit their mutual convenience, a patentee has no right to demand or force the payment of royalties on unpatented products.

VII. The defense of misuse asserted by defendant is a valid one.

The Patent Pools.

VIII. Every act in furtherance of a general plan to restrain trade and commerce, foreign or domestic, in violation of the Sherman Act, is illegal regardless of whether such act or acts when standing alone and absent conspiracy could be found to be legal.

IX. It is fundamental that an unlawful conspiracy may be and often is formed without simultaneous action or agreement on the part of conspirators. Acceptance of an invitation to participate in a plan, the necessary consequence of which, if carried out, is to restrain commerce, is sufficient to establish a conspiracy under the Sherman Act. Knowledge of a scheme that illegally restrains trade and participation in the plan with such knowledge is all that is required to establish a conspiracy under the antitrust laws and prior agreements need not be shown to have been made between each and all of the conspirators in order to establish a violation of the Sherman Act.

X. The combinations represented by the patent pools in Canada, England and Australia had as their express purpose the prevention of importation into those markets of radio and television apparatus made in the United States and other countries. Hazeltine knowing of the restrictions against imports imposed by those Pools nevertheless chose to permit its patents to be used in furtherance of the scheme and thereby obtained a substantial share of the Pool's income. It thereby became a co-conspirator and legally liable for all the acts of the Pools and its members performed in furtherance of their patent licensing plan to divide markets and prevent competition from imported sets.

XI. Hazeltine's method of placing its patents in the foreign pools—the use of exclusive license agreements either directly with the Pool as in Canada or through a pool member, as in England, or through a subsidiary, as in Australia—is the traditional means employed in the formation of illegal cartels and it is no defense to say that the particular exclusive licenses to which Hazeltine was a party did not in and of themselves impose the illegal restriction. The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts but only by looking at it as a whole.

XII. Hazeltine's defense that it had no intent to restrain trade and that it participated in the Pools for business reason has no legal validity. If good business reasons and expressions of good intent would serve as a defense for restraining trade, the Sherman Act would be rendered impotent and would afford no aid to the free flow of commerce.

XIII. Hazeltine's claimed defense that conspiracies by American companies with companies abroad are governed solely by foreign law and are not violative of the Sherman Act has no legal validity. It is well established that a conspiracy to restrain the domestic or foreign commerce of the United States to which any American company is a party violates the Sherman Act irrespective of the fact that the conduct complained of occurs in whole or in part in foreign countries.

XIV. By virtue of its arrangements in connection with the Pools in Canada, England and Australia, Hazeltine has violated Section 1 of the Sherman Act.

XV. Counterclaimant has established that it has been injured in its business by virtue of the unlawful conspiracy and acts performed in furtherance thereof. As a co-conspirator Hazeltine is liable for those damages.

XVI. Counterclaimant is entitled to the injunctive relief sought in the counterclaim.

R. B. Austin,
Judge, U. S. District Court.

Dated: January 25, 1965.

Schedule 1

APPENDIX B.

U. S. Dollar Exports of Television Receivers and Household Type Radios to the Dominion of Canada by Calendar Year for the Years 1959 to 1967.[1]

Year	Television Receivers[2]	Radios, Household Type[3]	Total by Year
1959	$ 1,708,709	$1,374,148	$ 3,082,857
1960	2,043,088	856,597	2,899,685
1961	2,736,159	1,364,404	4,100,563
1962	2,399,370	1,313,010	3,712,380
1963	2,945,250	1,097,696	4,042,946
1964	4,501,394	1,273,836	5,775,230
1965	6,010,203	1,226,973	7,237,176
1966	14,158,687	1,097,654	15,256,341
1967	13,404,941	1,133,476	14,538,417

---

[1] Source: U. S. Bureau of the Census, U. S. Exports—Commodity by Country, Report FT410, Annual Edition for years 1959-1964 and December Edition for years 1965-1967.

[2] For years 1959-1964 Commodity Classification No. 70815 established in January, 1958 Edition of Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States. For years 1965-1967 Commodity Classification No. 7241010 established in January, 1965 Edition of Schedule B which superseded the January, 1958 Edition.

[3] For years 1959-1964 Commodity Classification No. 70807 and for years 1965-1967 Commodity Classification No. 7242010 as per note 2 above.

SCHEDULE 2

Zenith Radio Corporation Dollar Exports of Radio and Television Receiving Sets to the Dominion of Canada, by Calendar Year, for the Years 1964-1967.[1]

Year	Dollar Amount
1964	$ 4,719,000
1965	5,998,000
1966	9,078,000
1967	12,694,000
1968 (six mos.)	6,489,000

---

[1] Source: Certified Copies of U. S. Department of Commerce, Bureau of the Census, Form M4-A, "Export Sales and Orders by Month, filed by Zenith Radio Corporation, for years 1964, 1965, 1966, and 1967, and for first six months of 1968, appearing infra, Appendix B, pp. A-27 to A-41.

UNITED STATES OF AMERICA
DIRECTOR OF THE BUREAU OF THE CENSUS
DEPARTMENT OF COMMERCE
WASHINGTON, D. C.

I hereby certify that the annexed U. S. Department of Commerce, Bureau of the Census Form M4-A, Export Sales and Orders by Month 1964, is a true copy of the original filed by the Zenith Radio Corporation as it appears in the records and files of this Bureau subject to the limitations that have been stamped on the form; that the entry 899763 X001 on the annexed Form M4-A under the title "Identification No." designates Zenith Radio Corporation as the reporting company; that the information on the form does not include data reported on separate forms in this survey by three subsidiary companies of the Zenith Radio Corporation; and that the entry 3651 under heading "Industry Code" denotes that the reporting unit has been classified in the industry "Radio and Television Receiving Sets, Except Communication Types" in accordance with the Standard Industrial Classification Manual (1957).

The Bureau of the Census seal, authorized by Title 13, United States Code, Section 3, is impressed on each page. Judicial notice of the seal is authorized by Title 13, United States Code, Section 3.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the Bureau of the Census, Department of Commerce, to be affixed this 11th day of July 1968.

A. Ross Eckler

Director of the Bureau of the Census
Department of Commerce

DUE DATE: 15 DAYS FOLLOWING REPORT PERIOD

Form Approved: Budget Bureau No. 41-R2142

FORM M4-A

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

EXPORT SALES AND ORDERS BY MONTH – 1964

TO: Bureau of the Census, Industry Division
Washington, D.C. 20233

SMR

CONFIDENTIAL – This inquiry is authorized by Act of Congress (13 U.S.C.). The report you submit to the Census Bureau is confidential and may be seen only by sworn Census employees. It may not be used for purposes of taxation, investigation, or regulation. Copies retained in your files are also immune from legal process.

(Please correct if name or address has changed)

ZENITH RADIO CORP
6001 W. DICKENS AVE
CHICAGO 39, ILL.
ATTN: J. KUHAJEK
8 99763 0000

MA
3651
8 99763 X001

THIS REPORT IS A COPY OF THE ORIGINAL REPORT WHICH HAD BEEN CONVERTED INTO A WORKING DOCUMENT FOR STATISTICAL PROCESSING. IT MAY THEREFORE CONTAIN, IN ADDITION TO THE IN- [illegible] BEING IDENTIFIED AS SUCH, SUPPLEMENTAL OR REVISED DATA PROVIDED THROUGH CORRESPONDENCE, TELEPHONE, OR PERSONAL INTERVIEW OR DATA PROVIDED BY THE CENSUS BUREAU ON THE BASIS OF INDUSTRY AVERAGES OR OTHER INFORMATION, AS WELL AS INTERNAL CODING AND PROCESSING NOTATIONS. IT IS FURNISHED TO THE COMPANY [illegible]

(PLEASE RETURN THIS COPY)

INSTRUCTIONS

GENERAL

Please complete and return one (1) copy of this report not later [illegible] month reported. This same form will be mailed back to you each month for entering the previous month's figures. For your own convenience in reporting for future months, you may wish to post each month's figures to your file copy. Please use the preaddressed return envelope in submitting your report each month.

REPORTING OF DATA

This report should include all sales and orders of products shipped for export by the company or division of the company designated in the address box. The definitions given below are provided as a guide for respondents. It is expected that a manufacturer will report according to his own definitions except where major differences might be expected. In such cases he would be expected to estimate rather than compile revised data from detailed records.

For purposes of this survey, it is most important that the sales figures cover the same items that are included in the orders figures. In addition to reporting sales and orders data on a comparable basis, the coverage of the figures should be consistent from month to month.

If it is not feasible to segregate nonmanufacturing receipts (licensing agreements, services, etc.) from your monthly export totals, please indicate in the Remarks section which nonmanufacturing activities are included and give their approximate percentage of the monthly total.

Report all data in thousands of dollars. Indicate the accounting period covered (i.e., month, 4-week period, 5-week period) by marking "X" in the proper box in the period covered column. If your records are on a basis of 13 four-week periods, report on consecutive lines, and enter data for the 13th period after the December period.

DEFINITIONS

Exports, as understood in this survey, include (a) shipments by you or your company from the United States directly to foreign countries of products which are not subjected to further manufacture, fabrication or assembly in this country before being shipped abroad, (b) sales to the U.S. Government of products which are to be shipped abroad to a foreign nation, and (c) sales for export of your product to or on order of export firms and other sales known to you to be for export. Include shipments to foreign subsidiaries or divisions of your company and its affiliates. Do not include sales to the United States Government of products shipped abroad for use by the U.S. Armed Forces.

Shipments to customers in Canada are classified as exports. Shipments to Alaska, Hawaii, and Puerto Rico are not classified as exports.

Exports do not include products shipped to domestic customers who will further manufacture, fabricate, or assemble them. Please note, however, that the breaking down of bulk shipments of your products into smaller lots or packages is not considered to be further manufacturing, processing or assembly.

Net Export Sales – Include total company billings for exports net after discounts and allowances. Include sales to foreign subsidiaries; do not include sales by foreign subsidiaries.

Net New Export Orders Received – Include (a) the sales value of export orders received during the reporting period for products and services to be delivered at some future date, (b) the sales value of orders for immediate delivery which have resulted in export sales during the reporting period, and (c) the net sales value of contract change documents which increase or decrease the export sales value of the orders to which they are related when the parties concerned are in substantial agreement as to the amount involved. Include as export orders only those orders that are supported by binding legal documents, such as signed contracts, letters of awards, or letters of intent. In the case of letters of intent the total sales value should be included if the parties concerned are in substantial agreement on this amount; otherwise, only the funds specifically authorized to be expended should be included. Include orders received from foreign subsidiaries. Deduct the sales value of partial or complete cancellations of existing export orders.

Unfilled Export Orders, End of Month – Include export orders that have not yet passed through the sales account. Generally, unfilled export orders at the end of a reporting period are equal to unfilled export orders at the beginning of the period plus new export orders received during the period less net export sales and cancellations.

Name of person to contact regarding this report J. Kuhajek	Address (Number and street, city, State, ZIP code) 6001 W. Dickens Ave.	Telephone No. 745-2106

CERTIFICATION – This report is substantially accurate and has been prepared in accordance with instructions.

Name of company Zenith Radio Corporation	Address (Number and street, city, State, ZIP code) 6001 W. Dickens Ave.,Chicago,Ill 60639

Signature of authorized official	Title Assistant Treasurer	Date 2-20-64

Please complete form on reverse side

USCOMM-DC [illegible]

CENSUS USE ONLY	Group	Survey number	Identification No.	Card type	Industry code
			89976 3XC01	2	3651

EXPORT SALES AND ORDERS, BY MONTH – 1964

(Report figures in thousands of dollars)
(Be sure to include shipments to Canada in your export totals)

Please read instructions on reverse side before entering the data

MONTH	PERIOD COVERED (Mark with an "X" the box which best describes each reporting period)	NET EXPORT SALES (BILLINGS OR SHIPMENTS) (1)	NET NEW EXPORT ORDERS RECEIVED (New orders less cancellations) (2)	UNFILLED EXPORT ORDERS END OF MONTH (3)	VERIFICATION TOTAL (Sum of Cols. (1) – (3)) (4)	REMARKS Describe reasons for large month-to-month changes in any of the items above; for example, acquired new line (give name and date) vacation, strike, new accounting method, etc.
1963 DECEMBER	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	181	703	586	1,470	THIS REPORT IS A COPY OF THE ORIGINAL REPORT WHICH HAS BEEN CONVERTED INTO A WORKING DOCUMENT FOR STATISTICAL PROCESSING. IT MAY THEREFORE CONTAIN, IN ADDITION TO THE INFORMATION ORIGINALLY SUPPLIED AND WITHOUT BEING IDENTIFIED AS SUCH, SUPPLEMENTAL OR REVISED DATA PROVIDED THROUGH CORRESPONDENCE, TELEPHONE, OR PERSONAL INTERVIEW; OR DATA PROVIDED BY THE CENSUS BUREAU ON THE BASIS OF INDUSTRY AVERAGES OR OTHER INFORMATION, AS WELL AS INTERNAL CODING AND PROCESSING NOTATIONS. IT IS FURNISHED TO THE COMPANY FILING THE REPORT AT THAT COMPANY'S REQUEST.
1964 JANUARY FEB 1964 1	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	434	300	452	1,186	
FEBRUARY MAR 1 2 1964	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	460	448	440	1,348	
MARCH 3	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	306	97	231	634	
APRIL 4 JUN 1 3 1964	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	197	49	83	329	
MAY 5	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	156	301	228	685	
JUNE 6 JUL 1 8 1964	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	112	242	358	712	
JULY AUG 1 4 1964	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	137	589	810	1,536	
AUGUST SEP 1 4 1964 8	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	558	748	1,000	2,306	
SEPTEMBER 9	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	643	1,000	1,357	3,000	
OCTOBER 2 6 1964	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	811	458	1,004	2,273	
NOVEMBER 11	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	437	501	1,068	2,006	
DECEMBER 12	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	468	220	820	1,508	
13th Reporting Period	4 WEEKS					
FOR CENSUS USE						

FORM MA-A (12-27-63)

USCOMM-DC

UNITED STATES OF AMERICA
DIRECTOR OF THE BUREAU OF THE CENSUS
DEPARTMENT OF COMMERCE
WASHINGTON, D. C.

I hereby certify that the annexed U. S. Department of Commerce, Bureau of the Census Form M4-A, Export Sales and Orders by Month 1965, is a true copy of the original filed by the Zenith Radio Corporation as it appears in the records and files of this Bureau subject to the limitations that have been stamped on the form; that the entry 899763 X001 on the annexed Form M4-A under the title "Identification No." designates Zenith Radio Corporation as the reporting company; that the information on the form does not include data reported on separate forms in this survey by three subsidiary companies of the Zenith Radio Corporation; and that the entry 3651 under heading "Industry Code" denotes that the reporting unit has been classified in the industry "Radio and Television Receiving Sets, Except Communication Types" in accordance with the Standard Industrial Classification Manual (1957).

The Bureau of the Census seal, authorized by Title 13, United States Code, Section 3, is impressed on each page. Judicial notice of the seal is authorized by Title 13, United States Code, Section 3.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Bureau of the Census, Department of Commerce, to be affixed this 11th day of July 1968.

A. Ross Eckler
Director of the Bureau of the Census
Department of Commerce

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

DUE DATE: 15 DAYS FOLLOWING REPORT PERIOD

Form Approved: Budget Bureau No. 41-R2142

FORM M4-A
(12-7-64)

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

EXPORT SALES AND ORDERS BY MONTH – 1965

CONFIDENTIAL – This inquiry is authorized by Act of Congress (13 U.S.C.). The report you submit to the Census Bureau is confidential and may be seen only by sworn Census employees. It may not be used for purposes of taxation, investigation, or regulation. Copies retained in your files are also immune from legal process.

(Please correct if name or address has changed)

ZENITH RADIO CORP
6001 W. DICKENS AVE
CHICAGO 39, ILL.

3 99763 0000

M4A
3651

3 99763 X001

TO: Bureau of the Census, Industry Division
Washington, D.C. 20233

THIS REPORT IS A COPY OF THE ORIGINAL REPORT WHICH HAD BEEN CONVERTED INTO A WORKING DOCUMENT FOR STATISTICAL PROCESSING. IT MAY THEREFORE CONTAIN, IN ADDITION TO THE INFORMATION ORIGINALLY SUPPLIED AND WITHOUT BEING IDENTIFIED AS SUCH, SUPPLEMENTAL OR CORRECTED DATA PROVIDED THROUGH CORRESPONDENCE, TELEPHONE, OR PERSONAL INTERVIEW, OR DATA PROVIDED BY THE CENSUS BUREAU ON THE BASIS OF INDUSTRY AVERAGES OR OTHER INFORMATION, AS WELL AS INTERNAL CODING AND PROCESSING NOTATIONS. IT IS FURNISHED TO THE COMPANY FILING THE REPORT AT THAT COMPANY'S REQUEST.

(PLEASE RETURN THIS COPY)

INSTRUCTIONS

GENERAL

Please complete and return one (1) copy of this report not later than the 15th of the month following the month reported. This same form will be mailed back to you each month for entering the previous month's figures. For your own convenience in reporting for future months, you may wish to post each month's figures to your file copy. Please use the preaddressed return envelope in submitting your report each month.

REPORTING OF DATA

This report should include all sales and orders of products shipped for export by the company or division of the company designated in the address box. The definitions given below are provided as a guide for respondents. It is expected that a manufacturer will report according to his own definitions except where major differences might be expected. In such cases he would be expected to estimate rather than compile revised data from detailed records.

For purposes of this survey, it is most important that the sales figures cover the same items that are included in the orders figures. In addition to reporting sales and orders data on a comparable basis, the coverage of the figures should be consistent from month to month.

If it is not feasible to segregate nonmanufacturing receipts (licensing agreements, services, etc.) from your monthly export totals, please indicate in the Remarks section which nonmanufacturing activities are included and give their approximate percentage of the monthly total.

Report all data in thousands of dollars. Indicate the accounting period covered (i.e., month, 4-week period, 5-week period) by marking "X" in the proper box in the period covered column. If your records are on a basis of 13 four-week periods, report on consecutive lines, and enter data for the 13th period after the December period.

DEFINITIONS

Exports, as understood in this survey, include (a) shipments by you or your company from the United States directly to foreign countries of products which are not subjected to further manufacture, fabrication or assembly in this country before being shipped abroad, (b) sales to the U.S. Government of products which are to be shipped abroad to a foreign nation, and (c) sales for export of your product to or on order of export firms and other sales known to you to be for export. Include shipments to foreign subsidiaries or divisions of your company and its affiliates. Do not include sales to the United States Government of products shipped abroad for use by the U.S. Armed Forces.

Shipments to customers in Canada are classified as exports. Shipments to Alaska, Hawaii, and Puerto Rico are not classified as exports.

Exports do not include products shipped to domestic customers who will further manufacture, fabricate, or assemble them. Please note, however, that the breaking down of bulk shipments of your products into smaller lots or packages is not considered to be further manufacturing, processing or assembly.

Net Export Sales. – Include total company billings for exports net after discounts and allowances. Include sales to foreign subsidiaries; do not include sales by foreign subsidiaries.

Net New Export Orders Received – Include (a) the sales value of export orders received during the reporting period for products and services to be delivered at some future date, (b) the sales value of orders for immediate delivery which have resulted in export sales during the reporting period, and (c) the net sales value of contract change documents which increase or decrease the export sales value of the orders to which they are related when the parties concerned are in substantial agreement as to the amount involved. Include as export orders only those orders that are supported by binding legal documents, such as signed contracts, letters of awards, or letters of intent. In the case of letters of intent the total sales value should be included if the parties concerned are in substantial agreement on this amount; otherwise, only the funds specifically authorized to be expended should be included. Include orders received from foreign subsidiaries. Deduct the sales value of partial or complete cancellations of existing export orders.

Unfilled Export Orders, End of Month – Include export orders that have not yet passed through the sales account. Generally, unfilled export orders at the end of a reporting period are equal to unfilled export orders at the beginning of the period plus new export orders received during the period less net export sales and cancellations.

Name of person to contact regarding this report Mr. J. Kubajek	Address *(Number and street, city, State, ZIP code)* 1900 North Austin Avenue	Telephone No. 745-2106

CERTIFICATION – This report is substantially accurate and has been prepared in accordance with instructions.

Name of company ZENITH RADIO CORPORATION	Address *(Number and street, city, State, ZIP code)* 1900 North Austin Avenue Chicago, Illinois - 60639	
Signature of authorized official	Title Assistant Treasurer	Date 2/15/65

Please complete form on reverse side

USCOMM-DC

CENSUS USE ONLY	Group	Survey number	Identification No.	Card type	Industry code
			899763 [illegible]	2	3651

EXPORT SALES AND ORDERS, BY MONTH – 1965

(Report figures in thousands of dollars)
(Be sure to include shipments to Canada in your export totals)

Please read instructions on reverse side before entering the data

MONTH	PERIOD COVERED (Mark with an "X" the box which best describes each reporting period)	NET EXPORT SALES (BILLINGS OR SHIPMENTS) (1)	NET NEW EXPORT ORDERS RECEIVED (New orders less cancellations) (2)	UNFILLED EXPORT ORDERS END OF MONTH (3)	VERIFICATION TOTAL (Sum of Cols. (1) through (3)) (4)	REMARKS Describe reasons for large month-to-month changes in any of the items shown; for example, acquired new line (give name and date) vacation, strike, new accounting method, etc.
1964 DECEMBER MAR 1965	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	468	220	820	1,508	THE REPORT IS A COPY OF THE ORIGINAL REPORT WHICH HAS BEEN CONVERTED INTO A WORKING DOCUMENT FOR STATISTICAL PROCESSING. IT MAY THEREFORE CONTAIN, IN ADDITION TO THE INFORMATION ORIGINALLY SUPPLIED, AND WITHOUT BEING IDENTIFIED AS SUCH, SUPPLEMENTAL OR REVISED DATA PROVIDED THROUGH CORRESPONDENCE, TELEPHONE, OR PERSONAL INTERVIEW, OR DATA PROVIDED BY THE CENSUS BUREAU ON THE BASIS OF INDUSTRY AVERAGES OR OTHER INFORMATION, AS WELL AS INTERNAL CODING AND PROCESSING NOTATIONS. IT IS FURNISHED TO THE COMPANY [illegible] THE REPORT AT THAT COMPANY'S REQUEST.
1965 JANUARY 1 [illegible] 1965	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	371	253	702	1,326	
FEBRUARY [illegible] 10 1965	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	456	333	579	1,368	
MARCH APR [illegible] 1965 3	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	436	466	609	1,511	
APRIL [illegible] 8 1965	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	292	(296)	21	17	
MAY 5	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	84	180	117	381	
JUNE [illegible] 1965	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	331	699	485	1,515	
JULY AUG [illegible] 1965 7	☐ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	375	915	1025	2,315	
AUGUST 8 SEP [illegible] 1965	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	732	1,084	1,377	3,193	
SEPTEMBER 9 [illegible] 1965	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	917	1,306	1,766	3,989	
OCTOBER 10 [illegible]	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	806	262	1,222	2,290	
NOVEMBER 11 [illegible]	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	598	26	650	1,274	
DECEMBER 12 [illegible] 1966	☒ 1 CAL. MONTH ☐ 4 WEEKS ☐ 5 WEEKS	600	1,014	1,064	2,678	
13th Reporting Period	4 WEEKS					
FOR CENSUS USE						

FORM [illegible]-A (12-7-64)

[illegible]

FEBRUARY

MARCH

APRIL

MAY

JUNE

AUGUST

SEPTEMBER

OCTOBER

[illegible]

UNITED STATES OF AMERICA
DIRECTOR OF THE BUREAU OF THE CENSUS
DEPARTMENT OF COMMERCE
WASHINGTON, D. C.

I hereby certify that the annexed U. S. Department of Commerce, Bureau of the Census Form M4-A, Export Sales and Orders by Month 1966, is a true copy of the original filed by the Zenith Radio Corporation as it appears in the records and files of this Bureau subject to the limitations that have been stamped on the form; that the entry 899763 X001 on the annexed Form M4-A under the title "Identification No." designates Zenith Radio Corporation as the reporting company; that the information on the form does not include data reported on separate forms in this survey by three subsidiary companies of the Zenith Radio Corporation; and that the entry 3651 under heading "Industry Code" denotes that the reporting unit has been classified in the industry "Radio and Television Receiving Sets, Except Communication Types" in accordance with the Standard Industrial Classification Manual (1957).

The Bureau of the Census seal, authorized by Title 13, United States Code, Section 3, is impressed on each page. Judicial notice of the seal is authorized by Title 13, United States Code, Section 3.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Bureau of the Census, Department of Commerce, to be affixed this 11th day of July 1968.

A. Ross Eckler

Director of the Bureau of the Census
Department of Commerce

DUE DATE: 15 DAYS FOLLOWING REPORT PERIOD

Form Approved: Budget Bureau No. 41-R2[illegible]

FORM M4-A
(11-23-65)

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

EXPORT SALES AND ORDERS BY MONTH – 1966

TO: Bureau of the Census, Industry Division
Washington, D.C. 20233

NOTICE – Your report to the Census Bureau is confidential by law (Title 13 U.S. Code). It may be seen only by sworn Census employees and may be used only for statistical purposes. The law also provides that copies retained in your files are immune from legal process.

(Please correct if name or address has changed)

ZENITH RADIO CORP
6001 W. DICKENS AVE
CHICAGO 39, ILL 60639

M4A
3651

6 99763 X001

3 99763 0000

THIS REPORT IS A COPY OF THE ORIGINAL [illegible] AND [illegible] CONVERTED INTO A WORKING DOCUMENT FOR STATISTICAL PROCESSING. IT MAY THEREFORE CONTAIN, IN ADDITION TO THE INFORMATION ORIGINALLY SUPPLIED AND WITHOUT BEING IDENTIFIED [illegible] CORRESPONDENCE, TELEPHONE, OR PERSONAL INTERVIEW, OR DATA PREPARED BY THE CENSUS BUREAU ON THE BASIS OF INDUSTRY AVERAGES OR OTHER INFORMATION, AS WELL AS INTERNAL CODING AND PROCESSING NOTATIONS. IT IS FURNISHED TO THE COMPANY UPON THE REQUEST OF THAT COMPANY'S [illegible]

INSTRUCTIONS

GENERAL

Please complete and return one (1) copy of this report not later than the [illegible] following the month reported. This same form will be mailed back to you each month for entering the previous month's figures. For your own convenience in reporting for future months, you may wish to post each month's figures to your file copy. Please use the preaddressed return envelope in submitting your report each month.

REPORTING OF DATA

This report should include all sales and orders of products shipped for export by the company or division of the company designated in the address box. The definitions given below are provided as a guide for respondents. It is expected that a manufacturer will report according to his own definitions except where major differences might be expected. In such cases he would be expected to estimate rather than compile revised data from detailed records.

For purposes of this survey, it is most important that the sales figures cover the same items that are included in the orders figures. In addition to reporting sales and orders data on a comparable basis, the coverage of the figures should be consistent from month to month.

If it is not feasible to segregate nonmanufacturing receipts (licensing agreements, services, etc.) from your monthly export totals, please indicate in the Remarks section which nonmanufacturing activities are included and give their approximate percentage of the monthly total.

Report all data in thousands of dollars. Indicate the accounting period covered (i.e., month, 4-week period, 5-week period) by marking "X" in the proper box. If your records are on a basis of 13 four-week periods, enter data for the 13th period in the column provided for this purpose.

DEFINITIONS

Exports, as understood in this survey, include (a) shipments by you or your company from the United States directly to foreign countries of products which are not subjected to further manufacture, fabrication or assembly in this country before being shipped abroad, (b) sales to the U.S. Government of products which are to be shipped abroad to a foreign nation, and (c) sales for export of your product to or on order of export firms and other sales known to you to be for export. Include shipments to foreign subsidiaries or divisions of your company and its affiliates. Do not include sales to the United States Government of products shipped abroad for use by the U.S. Armed Forces.

Shipments to customers in Canada are classified as exports. Shipments to Alaska, Hawaii, and Puerto Rico are not classified as exports.

Exports do not include products shipped to domestic customers who will further manufacture, fabricate, or assemble them. Please note, however, that the breaking down of bulk shipments of your products into smaller lots or packages is not considered to be further manufacturing, processing or assembly.

Net Export Sales – Include total company billings for exports net after discounts and allowances. Include sales to foreign subsidiaries; do not include sales by foreign subsidiaries.

Net New Export Orders Received – Include (a) the sales value of export orders received during the reporting period for products and services to be delivered at some future date, (b) the sales value of orders for immediate delivery which have resulted in export sales during the reporting period, and (c) the net sales value of contract change documents which increase or decrease the export sales value of the orders to which they are related when the parties concerned are in substantial agreement as to the amount involved. Include as export orders only those orders that are supported by binding legal documents, such as signed contracts, letters of awards, or letters of intent. In the case of letters of intent the total sales value should be included if the parties concerned are in substantial agreement on this amount; otherwise, only the funds specifically authorized to be expended should be included. Include orders received from foreign subsidiaries. Deduct the sales value of partial or complete cancellations of existing export orders.

Unfilled Export Orders, End of Month – Include export orders that have not yet passed through the sales account. Generally, unfilled export orders at the end of a reporting period are equal to unfilled export orders at the beginning of the period plus new export orders received during the period less net export sales and cancellations.

Name of person to contact regarding this report: Mr. J. Kuhajek
Address (Number and street, city, State, ZIP code): 1900 N. Austin Avenue
Telephone (Area code, number, extension): 312-745-2106

CERTIFICATION – This report is substantially accurate and has been prepared in accordance with instructions.

Name of company: Zenith Radio Corporation
Address (Number and street, city, State, ZIP code): 1900 N. Austin Avenue
Signature of authorized official:
Title: Assistant Treasurer
Date: 2-17-66

Please complete form on reverse side

Please read instructions on reverse side before entering the data

EXPORT SALES AND ORDERS, BY MONTH – 1966

(Report figures in thousands of dollars)
(Be sure to include shipments to Canada in your export totals)

CENSUS USE ONLY	Group	Survey	Identification No.	Sampling factor	Industry Code
	1	1900	899763X001		3657

NOTE: Mark with an "X" each line which best describes each reporting period.

Item	Survey item code	DEC. 1965	1 JANUARY	2 FEBRUARY	3 MARCH	4 APRIL	5 MAY	6 JUNE	7 JULY	8 AUGUST	9 SEPTEMBER	0 OCTOBER	X NOVEMBER	V DECEMBER	Thirteenth Reporting Period
C.T. 1		☐ 1 Cal. Mo.	☒ 1 Cal. Mo.	☒ 1 Cal. Mo.	☒ 1 Cal. Mo.	☒ 1 Cal. Mo.	☒ 1 Cal. Mo.	☒ 1 Cal. Mo.	☒ 1 Cal. Mo.	☒ 1 Cal. Mo.	☒ 1 Cal. Mo.	☒ 1 Cal. Mo.	☒ 1 Cal. Mo.	☒ 1 Cal. Mo.	
		☐ 4 Weeks	☐ 4 Weeks	☐ 4 Weeks	☐ 4 Weeks	☐ 4 Weeks	☐ 4 Weeks	☐ 4 Weeks	☐ 4 Weeks	☐ 4 Weeks	☐ 4 Weeks	☐ 4 Weeks	☐ 4 Weeks	☐ 4 Weeks	☑ 4 Weeks
		☐ 5 Weeks	☐ 5 Weeks	☐ 5 Weeks	☐ 5 Weeks	☐ 5 Weeks	☐ 5 Weeks	☐ 5 Weeks	☐ 5 Weeks	☐ 5 Weeks	☐ 5 Weeks	☐ 5 Weeks	☐ 5 Weeks	☐ 5 Weeks	
Net Export Sales	1000		396	621	686	622	438	663	466	1,063	1,389	610	1,244	880	
Net New Export Orders Received	2000		520	592	893	417	979	525	1,115	1,159	971	716	581	861	
Unfilled Export Orders, end of month	3000		1,188	1,159	766	561	1,102	964	1,613	1,709	1,291	1,397	734	715	
Verification Total (Sum of codes 1000, 2000, 3000)	6000		2,104	2,372	1,745	1,600	2,519	2,152	3,194	3,931	3,651	2,723	2,559	2,456	

Remarks:

FEB 23 MAR 28 1 5 1966 AUG 18 SEP 16 JUL 18 DEC

THIS REPORT IS A COPY OF THE ORIGINAL REPORT WHICH HAS BEEN CONVERTED INTO A WORKING DOCUMENT FOR STATISTICAL PROCESSING. IT MAY THEREFORE CONTAIN, IN ADDITION TO THE INFORMATION ORIGINALLY SUPPLIED AND WITHOUT BEING IDENTIFIED AS SUCH, SUPPLEMENTAL OR REVISED DATA PROVIDED THROUGH CORRESPONDENCE, TELEPHONE, OR PERSONAL INTERVIEW, OR DATA PROVIDED BY THE CENSUS BUREAU ON THE BASIS OF INDUSTRY AVERAGES OR OTHER INFORMATION, AS WELL AS INTERNAL CODING AND PROCESSING NOTATIONS. IT IS FURNISHED TO THE COMPANY FILING THE REPORT AT THAT COMPANY'S REQUEST.

UNITED STATES OF AMERICA
DIRECTOR OF THE BUREAU OF THE CENSUS
DEPARTMENT OF COMMERCE
WASHINGTON, D. C.

I hereby certify that the annexed U. S. Department of Commerce, Bureau of the Census Form M4-A, Export Sales and Orders by Month 1967, is a true copy of the original filed by the Zenith Radio Corporation as it appears in the records and files of this Bureau subject to the limitations that have been stamped on the form; that the entry 899763 7209 on the annexed Form M4-A under the title "Identification No." designates Zenith Radio Corporation as the reporting company; that the information on the form does not include data reported on separate forms in this survey by three subsidiary companies of the Zenith Radio Corporation; and that the entry 3651 under heading "Industry Code" denotes that the reporting unit has been classified in the industry "Radio and Television Receiving Sets, Except Communication Types" in accordance with the Standard Industrial Classification Manual (1957).

The Bureau of the Census seal, authorized by Title 13, United States Code, Section 3, is impressed on each page. Judicial notice of the seal is authorized by Title 13, United States Code, Section 3.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Bureau of the Census, Department of Commerce, to be affixed this 11th day of July 1968.

A. Ross Eckler

Director of the Bureau of the Census
Department of Commerce

DUE DATE: 15 DAYS FOLLOWING REPORT PERIOD

Form Approved: Budget Bureau No. 41-R2142

FORM M4-A
(11-22-66)

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

EXPORT SALES AND ORDERS BY MONTH – 1967

TO: Bureau of the Census, Industry Division
Washington, D.C. 20233

NOTICE – Your report to the Census Bureau is confidential by law (Title 13 U.S.Code). It may be seen only by sworn Census employees and may be used only for statistical purposes. The law also provides that copies retained in your files are immune from legal process.

(Please correct if name or address has changed)

899763 7209 7 10 M4A
10 3651 4000
ZENITH RADIO CORP
ATTN MR. J. KUHAJEK ASST TREAS
1900 NORTH AUSTIN AVENUE
CHICAGO ILL 60639

(PL[illegible]

THIS REPORT IS A COPY OF THE ORIGINAL REPORT WHICH HAS BEEN CONVERTED INTO A WORKING DOCUMENT FOR [illegible] CENSUS. IT MAY THEREFORE CONTAIN, IN ADDITION TO THE [illegible] [illegible] CORRESPONDENCE, TELEPHONE, OR PERSONAL INTERVIEW, OR DATA PROVIDED BY THE CENSUS BUREAU ON THE BASIS OF INDUSTRY AVERAGES OR OTHER INFORMATION, AS WELL AS [illegible] AND PROCESSING [illegible]. IT IS FURNISHED TO THE [illegible]

INSTRUCTIONS

GENERAL

Please complete and return one (1) copy of this report not later than [illegible] ported. This same form will be mailed back to you each month for entering the previous month's figures. For your own convenience in reporting for future months, you may wish to post each month's figures to your file copy. Please use the preaddressed return envelope in submitting your report each month.

REPORTING OF DATA

This report should include all sales and orders of products shipped for export by the company or division of the company designated in the address box. The definitions given below are provided as a guide for respondents. It is expected that a manufacturer will report according to his own definitions except where major differences might be expected. In such cases he would be expected to estimate rather than compile revised data from detailed records.

For purposes of this survey, it is most important that the sales figures cover the same items that are included in the orders figures. In addition to reporting sales and orders data on a comparable basis, the coverage of the figures should be consistent from month to month.

If it is not feasible to segregate nonmanufacturing receipts (licensing agreements, services, etc.) from your monthly export totals, please indicate in the Remarks section which nonmanufacturing activities are included and give their approximate percentage of the monthly total.

Report all data in thousands of dollars. Indicate the accounting period covered (i.e., month, 4-week period, 5-week period) by marking "X" in the proper box. If your records are on a basis of 13 four-week periods, enter data for the 13th period in the column provided for this purpose.

DEFINITIONS

Exports, as understood in this survey, include (a) shipments by you or your company from the United States directly to foreign countries of products which are not subjected to further manufacture, fabrication or assembly in this country before being shipped abroad, (b) sales to the U.S. Government of products which are to be shipped abroad to a foreign nation, and (c) sales for export of your product to or on order of export firms and other sales known to you to be for export. Include shipments to foreign subsidiaries or divisions of your company and its affiliates. Do not include sales to the United States Government of products shipped abroad for use by the U.S. Armed Forces.

Shipments to customers in Canada are classified as exports. Shipments to Alaska, Hawaii, and Puerto Rico are not classified as exports.

Exports do not include products shipped to domestic customers who will further manufacture, fabricate, or assemble them. Please note, however, that the breaking down of bulk shipments of your products into smaller lots or packages is not considered to be further manufacturing, processing or assembly.

Net Export Sales – Include total company billings for exports net after discounts and allowances. Include sales to foreign subsidiaries; do not include sales by foreign subsidiaries.

Net New Export Orders Received – Include (a) the sales value of export orders received during the reporting period for products and services to be delivered at some future date, (b) the sales value of orders for immediate delivery which have resulted in export sales during the reporting period, and (c) the net sales value of contract change documents which increase or decrease the export sales value of the orders to which they are related when the parties concerned are in substantial agreement as to the amount involved. Include as export orders only those orders that are supported by binding legal documents, such as signed contracts, letters of awards, or letters of intent. In the case of letters of intent the total sales value should be included if the parties concerned are in substantial agreement on this amount; otherwise, only the funds specifically authorized to be expended should be included. Include orders received from foreign subsidiaries. Deduct the sales value of partial or complete cancellations of existing export orders.

Unfilled Export Orders, End of Month – Include export orders that have not yet passed through the sales account. Generally, unfilled export orders at the end of a reporting period are equal to unfilled export orders at the beginning of the period plus new export orders received during the period less net export sales and cancellations.

Name of person to contact regarding this report Mr. J. Kuhajek.	Address (Number and street, city, State, ZIP code) 1900 North Austin Avenue Chicago, Illinois 60639	Telephone (Area code, number, extension) 312-745-2106

CERTIFICATION – This report is substantially accurate and has been prepared in accordance with instructions.

Name of company Zenith Radio Corporation		Address (Number and street, city, State, ZIP code) 1900 North Austin Avenue Chicago, Illinois 60639
Signature of authorized official	Title Assistant Treasurer	Date March 10, 1967

Please complete form on reverse side

USCOMM-DC

[illegible]

Please read instructions on reverse side before entering the data

EXPORT SALES AND ORDERS, BY MONTH – 1967

(Report figures in thousands of dollars)
(Be sure to include shipments to Canada in your export totals)

CENSUS USE ONLY	Group	Survey	Identification No.	Sampling factor	Industry Code
	1	1900	8947637209		3651

NOTE: Mark with an "X" in each box which best describes each reporting period.

Item	Survey item code	C.T. 1 Month → DEC. 1966	1 JANUARY	2 FEBRUARY	3 MARCH	4 APRIL	5 [illegible]	6 JUNE	7 JULY	8 AUGUST	9 SEPTEMBER	0 OCTOBER	X NOVEMBER	V DECEMBER	13th Reporting Period
		☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☐ 4 Weeks
Net Export Sales	1000	880	799	769	1,091	894	690	819	678	1,270	1,121	1,370	1,372	1,821	
Net New Export Orders Received	2000	861	1,675	834	649	555	426	1,139	1,313	724	1,470	1,840	1,112	2,589	
Unfilled Export Orders, end of month	3000	715	1,591	1,656	1,214	875	611	931	1,566	1,020	1,370	1,840	1,580	2,140	
Verification Total (Sum of codes 1000, 2000, 3000)	6000	2,456	4,065	3,259	2,954	2,324	1,727	2,889	3,557	3,014	3,961	5,050	4,064	6,950	
CENSUS USE ONLY →					APR 20	MAY 18	JUN 14	JUL 19	AUG 17	SEP 19	OCT 18	NOV 20	DEC 19	FEB 14	

Remarks

JANUARY	JULY
FEBRUARY	AUGUST
MARCH	SEPTEMBER
APRIL	OCTOBER
MAY	NOVEMBER
JUNE	DECEMBER

RECEIVED '67 JUN 8 AM 9 18 ... CORP.

THIS REPORT IS A COPY OF THE ORIGINAL REPORT WHICH HAD BEEN CONVERTED INTO A WORKING DOCUMENT FOR STATISTICAL PROCESSING. IT MAY THEREFORE CONTAIN, IN ADDITION TO THE INFORMATION ORIGINALLY SUPPLIED AND WITHOUT BEING IDENTIFIED AS SUCH, SUPPLEMENTAL OR REVISED DATA PROVIDED THROUGH CORRESPONDENCE, TELEPHONE, OR PERSONAL INTERVIEW, OR DATA PROVIDED BY THE CENSUS BUREAU ON THE BASIS OF INDUSTRY AVERAGES OR OTHER INFORMATION, AS WELL AS INTERNAL CODING AND PROCESSING NOTATIONS. IT IS FURNISHED TO THE COMPANY FILING THE REPORT AT THAT COMPANY'S REQUEST.

UNITED STATES OF AMERICA
DIRECTOR OF THE BUREAU OF THE CENSUS
DEPARTMENT OF COMMERCE
WASHINGTON, D. C.

I hereby certify that the annexed U. S. Department of Commerce, Bureau of the Census Form M4-A, Export Sales and Orders by Month 1968, is a true copy of the original filed by the Zenith Radio Corporation as it appears in the records and files of this Bureau subject to the limitations that have been stamped on the form; that the entry 899763 7209 on the annexed Form M4-A under the title "Identification No." designates Zenith Radio Corporation as the reporting company; that the information on the form does not include data reported on separate forms in this survey by three subsidiary companies of the Zenith Radio Corporation; and that the entry 3651 under heading "Industry Code" denotes that the reporting unit has been classified in the industry "Radio and Television Receiving Sets, Except Communication Types" in accordance with the Standard Industrial Classification Manual (1957).

The Bureau of the Census seal, authorized by Title 13, United States Code, Section 3, is impressed on each page. Judicial notice of the seal is authorized by Title 13, United States Code, Section 3.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Bureau of the Census, Department of Commerce, to be affixed this 11th day of July 1968.

A. Ross Eckler

Director of the Bureau of the Census
Department of Commerce

UNITED STATES OF AMERICA

[illegible]

[illegible]

[illegible]

[illegible]

DUE DATE: 15 DAYS FOLLOWING REPORT PERIOD *Form Approved: Budget Bureau No. 41-R2142*

FORM **M4-A**
(11-27-67)

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

EXPORT SALES AND ORDERS BY MONTH – 1968

1105 3/7/68

TO: Bureau of the Census, Industry Division
Washington, D.C. 20233

NOTICE – Your report to the Census Bureau is confidential by law (Title 13 U.S. Code). It may be seen only by sworn Census employees and may be used only for statistical purposes. The law also provides that copies retained in your files are immune from legal process.

(Please correct if name or address has changed)

599763 7209 7 10 , M4A
10 3651 4000
ZENITH RADIO CORP
ATT MR J KUHAJEK ASST TREAS
~~[illegible]~~ 1900 N AUSTIN AVE
CHICAGO ILL 60639

THIS REPORT IS A COPY OF THE ORIGINAL REPORT WHICH HAD BEEN CONVERTED INTO A WORKING DOCUMENT FOR STATISTICAL PROCESSING. IT MAY THEREFORE CONTAIN, IN ADDITION TO THE INFORMATION ORIGINALLY SUPPLIED AND WITHOUT BEING IDENTIFIED AS SUCH, SUPPLEMENTAL OR REVISED DATA PROVIDED THROUGH CORRESPONDENCE, TELEPHONE OR PERSONAL INTERVIEW, OR DATA PREPARED BY THE CENSUS BUREAU ON THE BASIS OF INDUSTRY AVERAGES OR OTHER INFORMATION, AS WELL AS INTERNAL CODING AND PROCESSING NOTATIONS. IT IS FURNISHED TO THE COMPANY FILING THE REPORT AT THAT COMPANY'S REQUEST.

(PLEASE RETURN THIS COPY)

INSTRUCTIONS

GENERAL

Please complete and return one (1) copy of this report not later than the 15th of the month following the month reported. This same form will be mailed back to you each month for entering the previous month's figures. For your own convenience in reporting for future months, you may wish to post each month's figures to your file copy. Please use the preaddressed return envelope in submitting your report each month.

REPORTING OF DATA

This report should include all sales and orders of products shipped for export by the company or division of the company designated in the address box. The definitions given below are provided as a guide for respondents. It is expected that a manufacturer will report according to his own definitions except where major differences might be expected. In such cases he would be expected to estimate rather than compile revised data from detailed records.

For purposes of this survey, it is most important that the sales figures cover the same items that are included in the orders figures. In addition to reporting sales and orders data on a comparable basis, the coverage of the figures should be consistent from month to month.

If it is not feasible to segregate nonmanufacturing receipts (licensing agreements, services, etc.) from your monthly export totals, please indicate in the Remarks section which nonmanufacturing activities are included and give their approximate percentage of the monthly total.

Report all data in thousands of dollars. Indicate the accounting period covered (i.e., month, 4-week period, 5-week period) by marking "X" in the proper box. If your records are on a basis of 13 four-week periods, enter data for the 13th period in the column provided for this purpose.

DEFINITIONS

Exports, as understood in this survey, include (a) shipments by you or your company from the United States directly to foreign countries of products which are not subjected to further manufacture, fabrication or assembly in this country before being shipped abroad, (b) sales to the U.S. Government of products which are to be shipped abroad to a foreign nation, and (c) sales for export of your product to or on order of export firms and other sales known to you to be for export. Include shipments to foreign subsidiaries or divisions of your company and its affiliates. Do not include sales to the United States Government of products shipped abroad for use by the U.S. Armed Forces.

Shipments to customers in Canada are classified as exports. Shipments to Alaska, Hawaii, and Puerto Rico are not classified as exports.

Exports do not include products shipped to domestic customers who will further manufacture, fabricate, or assemble them. Please note, however, that the breaking down of bulk shipments of your products into smaller lots or packages is not considered to be further manufacturing, processing or assembly.

Net Export Sales – Include total company billings for exports net after discounts and allowances. Include sales to foreign subsidiaries; do not include sales by foreign subsidiaries.

Net New Export Orders Received – Include (a) the sales value of export orders received during the reporting period for products and services to be delivered at some future date, (b) the sales value of orders for immediate delivery which have resulted in export sales during the reporting period, and (c) the net sales value of contract change documents which increase or decrease the export sales value of the orders to which they are related when the parties concerned are in substantial agreement as to the amount involved. Include as export orders only those orders that are supported by binding legal documents, such as signed contracts, letters of awards, or letters of intent. In the case of letters of intent the total sales value should be included if the parties concerned are in substantial agreement on this amount; otherwise, only the funds specifically authorized to be expended should be included. Include orders received from foreign subsidiaries. Deduct the sales value of partial or complete cancellations of existing export orders.

Unfilled Export Orders, End of Month – Include export orders that have not yet passed through the sales account. Generally, unfilled export orders at the end of a reporting period are equal to unfilled export orders at the beginning of the period plus new export orders received during the period less net export sales and cancellations.

Name of person to contact regarding this report
J. Kuhajek

Address (Number and street, city, State, ZIP code)
1900 N. Austin Avenue

Telephone (Area code, number, extension)
745-2106

CERTIFICATION – This report is substantially accurate and has been prepared in accordance with instructions.

Name of company
Zenith Radio Corporation

Address (Number and street, city, State, ZIP code)
1900 N. Austin Avenue, Chicago, Ill. 60639

Signature of authorized official

Title
Asst. Treasurer

Date
3/4/68

Please complete form on reverse side.

Please read instructions on reverse side before entering the data

EXPORT SALES AND ORDERS, BY MONTH – 1968 CANADA ONLY

(Report figures in thousands of dollars)
(Be sure to include shipments to Canada in your export totals)

CENSUS USE ONLY	Group	Survey	Identification No.	Sampling factor	Industry Code
	1	1900	8947631209		3651

NOTE: Mark with an "X" each box which best describes each reporting period.

Item	Survey item code	DEC. 1967	1 JANUARY	2 FEBRUARY	3 MARCH	4 APRIL	5 MAY	6 JUNE	7 JULY	8 AUGUST	9 SEPTEMBER	0 OCTOBER	X NOVEMBER	V DECEMBER	13th Reporting Period
C.T. 1 Month →		☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☒ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☐ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☐ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☐ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☐ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☐ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☐ 1 Cal. Mo. ☐ 4 Weeks ☐ 5 Weeks	☐ 4 Weeks
Net Export Sales	1000	1,821	1,296	1,148	1,269	1,377	793	806							
Net New Export Orders Received	2000	2,989	365	1,564	917	788	398	2,607							
Unfilled Export Orders, end of month	3000	2,140	1,209	1,685	1,273	684	489	2,290							
Verification Total (Sum of codes 1000, 2000, 3000)	6000	6,950	2,870	4,397	3,459	2,849	1,680	5,703							

CENSUS USE ONLY ——→ FEB 22 1968 / APR 21 MAY 21 JUL 18

Remarks

JANUARY	JULY
FEBRUARY	AUGUST
MARCH	SEPTEMBER
APRIL	OCTOBER
MAY	NOVEMBER
JUNE	DECEMBER

THIS REPORT IS A COPY OF THE ORIGINAL REPORT WHICH HAD BEEN CONVERTED INTO A WORKING DOCUMENT FOR STATISTICAL PROCESSING. IT MAY THEREFORE CONTAIN, IN ADDITION TO THE INFORMATION ORIGINALLY SUPPLIED AND WITHOUT BEING IDENTIFIED AS SUCH, SUPPLEMENTAL OR REVISED DATA PROVIDED THROUGH CORRESPONDENCE, TELEPHONE, OR PERSONAL INTERVIEW, OR DATA PROVIDED BY THE CENSUS BUREAU ON THE BASIS OF INDUSTRY AVERAGES OR OTHER INFORMATION, AS WELL AS INTERNAL CODING AND PROCESSING NOTATIONS. IT IS FURNISHED TO THE COMPANY FILING THE REPORT AT THAT COMPANY'S REQUEST.

THIS REPORT IS A COPY OF THE [illegible] REPORT WHICH HAD BEEN CONVERTED INTO A WORKING [illegible] STATISTICAL PROCESSING. IT MAY THEREFORE CONT[illegible] TO THE INFORMATION ORIGINALLY SUPPLI[illegible] BEING IDENTIFIED AS SUCH, SUPPLEMENTAL OR R[illegible] DED THROUGH CORRESPONDENCE, TELEPHONE, [illegible] V, OR DATA PROVIDED BY THE CENSUS [illegible] F INDUSTRY AVERAGES OR OTHER INFORM[illegible] ERNAL CODING AND PROCESSING NOTATION[illegible] THE COMPANY FILING THE REPORT AT THAT C[illegible]

LIBRARY
SUPREME COURT. U. S.

SEP 19 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT HAZELTINE CORPORATION

JOHN T. CHADWELL
VICTOR P. KAYSER
C. LEE COOK, JR.
JOSEPH V. GIFFIN
135 South La Salle Street
Chicago, Illinois 60603

Attorneys for Hazeltine Corporation, Respondent

Of Counsel:

CHADWELL, KECK, KAYSER, RUGGLES & MCLAREN
135 South La Salle Street
Chicago, Illinois 60603

TWENTIETH CENTURY PRESS, INC., CHICAGO 60606

INDEX

PAGE

CONSTITUTIONAL PROVISION INVOLVED 2

QUESTION PRESENTED 2

STATEMENT OF THE CASE 2

A. The Action in Which the Judgments Were Entered and the Parties to It 4

B. The Stipulation Upon Which the Trial Court Entered the Judgments Against Hazeltine Corporation 7

C. Circumstances Surrounding the Execution of the Stipulation Between Hazeltine Research and Zenith 9

D. The Judgments and the Special Appearance of Hazeltine Corporation 10

E. The Court of Appeals' Decision 13

SUMMARY OF ARGUMENT 14

ARGUMENT 15

I. The Court of Appeals Followed Settled Constitutional Principles in Holding That the Trial Court Had No Power to Enter Judgment Against Hazeltine Corporation, a Non-Party 15

II. The Stipulation Between Zenith and Hazeltine Research Did Not Make Hazeltine Corporation a Party to This Action or Give the Trial Court Jurisdiction to Enter a Judgment Against Hazeltine Corporation 18

A. Hazeltine Corporation Is Not a Party to the Stipulation and By Its Clear Terms the Stipulation Was Not Intended to Bind Hazeltine Corporation to Anything 19

PAGE

B. Neither the Circumstances Surrounding the Execution of the Stipulation Nor the Events Which Followed Indicate That Either Party Assumed or Intended That the Stipulation Made Hazeltine Corporation a Party to the Suit 24

III. Zenith's Alter Ego Argument Is Irrelevant and Erroneous 28

A. The Judgments Entered Against Hazeltine Corporation Were Not Based Upon the Alter Ego Doctrine 29

B. The Cases Cited By Zenith Are Inapposite. 31

IV. Zenith's Argument That Hazeltine Corporation Should Be Held Liable Because It Is Claimed to Have Controlled the Defense Has No Basis in Law or Fact 32

CONCLUSION 35

CITATIONS

CASES: PAGE

Alcoa S.S. Co. v. *United States*, 338 U.S. 421 (1949) .. 21

Allied Chem. Corp. v. *Randall*, 321 F.2d 320 (7th Cir. 1963) 32

Bjorgo v. *Weerden*, 342 F.2d 558 (7th Cir. 1965) 18

Bland v. *Britt*, 271 F.2d 193 (4th Cir. 1959) 24

Caterpillar Tractor Co. v. *Collins Mach. Co.*, 286 F.2d 446 (9th Cir. 1960) 21

Chicago M. & St. P. Ry. v. *Minn. Civic Ass'n*, 247 U.S. 490 (1918) 32

D'Arcy v. *Ketchum*, 52 U.S. (11 How.) 165 (1850) ... 16

Estin v. *Estin*, 334 U.S. 541 (1948) 17

Hansberry v. *Lee*, 311 U.S. 32 (1940) 12, 14, 16

Hanson v. *Denckla*, 357 U.S. 235 (1958) 16

Hollingsworth v. *Barbour*, 29 U.S. (4 Peters) 466 (1830) 16

Kneeland v. *Luce*, 141 U.S. 437 (1891) 20

Lewis v. *Continental Ins. Co.*, 239 F.Supp. 42 (E.D. S.C. 1965) 24

Merriam Co. v. *Saalfield*, 241 U.S. 22 (1916) 33

Orange Theatre Corp. v. *Rayherstz Amusement Corp.*, 139 F.2d 871 (3d Cir. 1944) 18

Pennoyer v. *Neff*, 95 U.S. 714 (1878) 16

Riley v. *New York Trust Co.*, 315 U.S. 343 (1942) ... 17

Schnell v. *Peter Eckrich & Sons, Inc.*, 365 U.S. 260 (1961) 33

Shamrock Oil & Gas Co. v. *Ethridge*, 159 F.Supp. 693 (D.Colo. 1958) 32

PAGE

Sisco-Hamilton Co. v. *Lennon,* 240 F.2d 68 (7th Cir. 1957) 32

Smith v. *Stone,* 202 F.Supp. 11 (E.D. Ky. 1962) 24

Strand v. *Garden Valley Tel. Co.,* 51 F.Supp. 898 (D.Minn. 1943) 20

Thaxton v. *Vaughan,* 321 F.2d 474 (4th Cir. 1963) .. 34

United States v. *Klein,* 230 F.Supp. 426 (W.D.Pa. 1964), *aff'd per curiam,* 356 F.2d 983 (3d Cir. 1966) 24, 27, 28

Vanderbilt v. *Vanderbilt,* 354 U.S. 416 (1957) 16

Other Authorities:

U.S. Const., Amend. V. 2

15 U.S.C. § 22 3

50 Am. Jur. *Stipulations* § 10 20

17 Am. Jur. 2d, *Contracts* § 276 21

83 C.J.S. *Stipulations* § 11 20

83 C.J.S. *Stipulations* § 14 20

Powell, Parent and Subsidiary Corporations, § 6 (1931) 30, 31

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT HAZELTINE CORPORATION

In this brief, Hazeltine Corporation answers that part of the brief of Petitioner, Zenith Radio Corporation ("Zenith"), which attacks the vacation of the two judgments as to Hazeltine Corporation (Z. Br. 5, 42-49, 58, 115-26).[1]

---

[1] **The following abbreviations are used in this brief:**

Z. Br.—Zenith's brief
A. —Citation to the printed Appendix
PX —Plaintiff's exhibit
DX —Defendant's exhibit

Throughout this brief, emphasis has been supplied by us unless the contrary is indicated.

CONSTITUTIONAL PROVISION INVOLVED

The Constitutional provision involved is the Fifth Amendment to the Constitution of the United States, which provides in pertinent part:

> "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ."

QUESTION PRESENTED

Zenith says that the question presented is whether the Court of Appeals could "dismiss the cause as against Hazeltine Corporation" by holding a pretrial stipulation "null and void" (question 11, Z. Br. 5). But this is not the issue because there was no *cause "against* Hazeltine Corporation" and the court did *not* hold the stipulation "null and void." Instead the issue here is:

> Whether the Court of Appeals erred in vacating the judgments against Hazeltine Corporation since this corporation was not named as a party, was not served with process, did not participate in the trial, was not brought into the lawsuit in any manner, and appeared specially to contest jurisdiction only after trial and entry of findings and after Zenith's submission of a proposed judgment against it, and where jurisdiction was asserted solely on the basis of a stipulation to which this corporation was not a party and which on its face did not even purport to bind this corporation.

STATEMENT OF THE CASE

The Court of Appeals below held void and vacated two judgments totaling over $34,000,000 entered against Hazeltine Corporation in an action in the District Court for the Northern District of Illinois in which Hazeltine Corporation was not a party or served with process (Judgment Order, A. 4236; Opinion, A. 4238-44). The history of the litigation has been set forth in the brief of Hazeltine Research, Inc. ("Hazeltine Research"). This brief will state only such additional facts as are relevant to the question presented as to Hazeltine Corporation.[2]

Hazeltine Corporation, a Delaware corporation with executive offices in Little Neck, Long Island, New York, has no offices, plants or other facilities in the Northern District of Illinois and does not do business in Illinois (A. 4135). Under the venue provisions of the antitrust laws it is not subject to suit in the Northern District of Illinois (15 U.S.C. § 22). It is engaged primarily in the business of research, development and manufacture of advanced electronic equipment for military, air traffic control and navigation, and related purposes for the United States and allied governments. It does not manufacture any consumer products (A. 4135-36).

Hazeltine Corporation's wholly-owned subsidiary, Hazeltine Research, the plaintiff and counterdefendant in the action in which the judgments referred to were entered, is, on the other hand, an Illinois corporation with its principal offices in Chicago (A. 142). Organized and capitalized by Hazeltine Corporation on March 28, 1946, Hazeltine Research has since that time operated as an autonomous corporation with a business wholly separate and apart from Hazeltine Corporation (A. 587-88, 4136). Hazeltine Research is engaged in the business of research, development, ownership, and licensing of United States patents, principally in the fields of radio and television (A. 142). It does not manufacture any equipment of any kind for consumer or government use, but does render technical assistance and services to its radio and television licensees (A. 105, 4136).

---

[2] In the event the Court of Appeals' decision vacating the judgments as to Hazeltine Corporation is reversed, Hazeltine Corporation hereby joins in the brief of Respondent, Hazeltine Research, but without waiver of its contention that the trial court lacked jurisdiction over it.

Hazeltine Corporation performs some research for Hazeltine Research, for which it is compensated under contract (A. 4136). Hazeltine Corporation also owns, sells and licenses foreign patents for radio and television, but it does not manufacture any radio or television equipment for domestic or foreign sale (A. 144-45, 4135-36).

Although one might assume from the names that Hazeltine Research is merely the research wing of Hazeltine Corporation, the facts detailed above indicate that is not the case. The research in the product areas within the scope of Hazeltine Corporation's manufacturing activities is conducted by Hazeltine Corporation at its own laboratories in New York and Massachusetts and not by Hazeltine Research (A. 587-88).

A. The Action in Which the Judgments Were Entered and the Parties to It

The judgments held void by the Court of Appeals had been entered on a counterclaim filed in *Hazeltine Research, Inc. v. Zenith Radio Corporation,* Civil Action No. 59 C 1847. That action was originally brought in the United States District Court for the Northern District of Illinois on November 19, 1959, by Hazeltine Research, the sole plaintiff, for infringement of one of its United States television patents (A. 11-13). A counterclaim (A. 64-69) against Hazeltine Research was filed by Zenith with leave of court on May 22, 1963, more than three years after the suit was filed (A. 62-63). The counterclaim charged Hazeltine Research with conspiring with Hazeltine Corporation and other persons relative to foreign patents owned by Hazeltine Corporation and by others. Neither before nor after the filing of the counterclaim did Hazeltine Corporation participate in this litigation in any way. Hazeltine Research and Zenith were the only parties for whom appearances were entered. There was never any attempt to serve Hazeltine Corporation with process, nor any motion to make it a party.

Although the counterclaim alleged that Hazeltine Corporation was the owner of foreign patents involved in the foreign conspiracy there alleged, Hazeltine Corporation's separate identity, apart and distinct from Hazeltine Research, is recognized throughout the counterclaim. The caption and opening statement of the counterclaim is as follows:

Hazeltine Research, Inc., Plaintiff-Counterdefendant vs. Zenith Radio Corporation, Defendant-Counterclaimant	Civil Action No. 59 C 1847

COUNTERCLAIM

> "Zenith Radio Corporation, defendant and counterclaimant, counterclaims *against Hazeltine Research, Inc., plaintiff and counterdefendant,* pursuant to Rule 13(a) of the Federal Rules of Civil Procedure and says:"

The caption did not name Hazeltine Corporation either as a counterdefendant or as a third party defendant. Paragraph 3 of the counterclaim alleged:

> "3. *Counterdefendant, Hazeltine Research, Inc., the party plaintiff in this suit,* is an Illinois corporation owned and operated as a wholly owned subsidiary of

> Hazeltine Corporation, a New York corporation, engaged in the manufacture and sale of electronic equipment and devices. Counterdefendant's *sole business is research in the radio and TV fields and the licensing of a patent pool in the United States pertaining to radio and television receivers and other electronic products,* said pool being the United States counterpart of a number of inter-related territorial patent pools formed and operated in various market areas of the world, pursuant to a combination and conspiracy *between counterclaimant* [sic "counterdefendant"], *its parent, Hazeltine Corporation,* and sundry other persons and corporations, domestic and foreign, as more particularly described and set forth hereinafter" (A. 65).

Paragraph 4 of the counterclaim similarly distinguished between "counterdefendant and its parent, Hazeltine Corporation," using that phrase twice. It also referred to an alleged agreement "between Hazeltine Research, Inc., Hazeltine Corporation and said co-conspirators . . ." (A. 65-66).

On the basis of the allegations, in which the separateness of the two corporations is clearly recognized, the prayer for relief asked for money damages *only* against *Hazeltine Research, Inc.* The Zenith prayer for relief sought:

> "1. A judgment *against counterdefendant* for treble the amount of damages sustained by defendant *as the* proximate *result* of said acts of *counterdefendant and its co-conspirators* and for costs and attorneys' fees.
>
> "2. An injunction *enjoining counterdefendant* and anyone in privity with it from bringing or prosecuting this or any other action at law or suit in equity charging infringement of any patents against counterclaimant, its agents, vendees, distributors or others in privity with counterclaimant and *enjoining counterdefendant* from continuing its said unlawful combination and conspiracy". (A. 68).

Nowhere in this counterclaim is there the slightest suggestion that recovery is sought against Hazeltine Corporation.

As the counterclaim was not and could not have been directed against Hazeltine Corporation, Hazeltine Corporation did not answer it or in any way defend against it.

B. The Stipulation Upon Which the Trial Court Entered the Judgments Against Hazeltine Corporation

The judgments voided by the Court of Appeals were entered against Hazeltine Corporation by the trial court solely on the basis of a stipulation (A. 55-57) between Zenith and Hazeltine Research dated May 7, 1963 (see p. 12, *infra*). This stipulation was not entered into by Hazeltine Corporation. It was entered into solely by Hazeltine Research and Zenith during the pretrial discovery phase of the litigation before the counterclaim had been filed, "in order," as its preamble recites, "to simplify and expedite trial" and "for purposes of this Action only" (A. 55). The pertinent paragraph, together with the preamble setting forth the stipulation's purpose, is as follows:

> "*The parties to this Action, by their attorneys,* in fulfillment of certain understandings reached orally in the course of the pre-trial conference held herein on April 3, 1963, *in order to simplify and expedite trial* hereby stipulate and agree, *for purposes of this* Action only, as follows:
>
> • • •
>
> "4. *Plaintiff agrees* that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company" (A. 55).

The remaining paragraphs of the stipulation dealt with such things as the authenticity of certain documentary evidence (para. 5), an agreement with respect to the use of copies of documents and patents (paras. 6 and 7), title to the patent in suit (para. 8), venue with respect to Zenith (para. 9), an agreement on the taxing of costs of the transcript (para. 10), and an agreement between the parties that neither would involve any other of plaintiff's patents in this or any other litigation until the instant litigation was concluded (paras. 1-3) (A. 55-57).

The stipulation was signed by counsel for Zenith and by "L. B. Dodds, Counsel for Plaintiff," *i.e.,* Hazeltine Research. The stipulation shows on its face these facts: (1) Hazeltine Corporation *was not a party* to the stipulation, (2) the stipulation *did not purport to bind Hazeltine Corporation,* and (3) the stipulation's purposes were procedural and limited to issues in a case *in which Hazeltine Corporation was not a party.* Although Mr. Dodds, who was Hazeltine Research's trial counsel, was also a vice-president of Hazeltine Corporation, he did not purport to execute the stipulation on behalf of Hazeltine Corporation and the record shows that he had relinquished all administrative responsibilities in Hazeltine Corporation's organization in 1960, several years before the stipulation was signed (A. 141-44, 772-73).[3]

---

[3] Throughout its statement of facts and argument, Zenith attempts to attach some significance to the fact that Dodds still held the title of a vice-president of Hazeltine Corporation. In fact, by referring only to their capacities with Hazeltine Corporation, Zenith attempts to create the impression Dodds, Ruestow and Westermann were somehow acting at the trial for Hazeltine Corporation. However, Zenith fails to point out that Dodds testified that he was a director of Hazeltine Research *and* its attorney (A. 142), that Westermann was then president and a director of Hazeltine Research (A. 571), and that Ruestow testified that he was executive vice-president and a director of Hazeltine Research (A. 278); he was also a counsel of record for Hazeltine Research in the litigation (A. 110).

C. Circumstances Surrounding the Execution of the Stipulation Between Hazeltine Research and Zenith

The intent of counsel for both Hazeltine Research and Zenith with respect to paragraph 4 of the stipulation is also clear from the circumstances surrounding the entry of the stipulation.

The answer to the complaint raised (in its paragraph 13; A. 18-19) an unclean hands defense allegedly based on an antitrust violation involving foreign patents. The trial judge upheld a subpoena served upon Hazeltine Research which sought certain documents relating to Hazeltine Corporation's foreign patents (A. 3009). No immediate attempt was made to enforce this subpoena.

A pretrial conference was held on April 3, 1963, at which among other things, the matter of compliance with the subpoena was raised. At that time, counsel for Hazeltine Research, endeavoring to cooperate to facilitate pretrial discovery, indicated to the court that in order to simplify and expedite the trial *plaintiff*, Hazeltine Research, would not rely on the fact that it is a corporate entity separate and distinct from Hazeltine Corporation (A. 3009-10).

The disputed paragraph of the stipulation was in fact drafted by counsel for Zenith, and sent to counsel for Hazeltine Research by letter of April 26, 1963, as a part of a longer suggested form of stipulation. Counsel for Hazeltine Research made certain changes and additions to the stipulation, but did not change the paragraph in issue (A. 3009, 3010-15).

On March 26, 1963, Zenith had served, but did not file, a motion for leave to file its antitrust counterclaim against Hazeltine Research (A. 2996-99). Attached to that motion was a draft of Zenith's counterclaim (A. 3001-06), Count I of which was identical to the counterclaim ultimately filed (A. 64-69). It did not name Hazeltine Corporation as a party and did not ask for relief against it (see pp. 5-7, *supra*). Since the stipulation did not exist on March 26, it is clear that in the drafting and serving of the proposed counterclaim Zenith *did not intend* to make Hazeltine Corporation a party or to seek recovery from it.

The stipulation was executed by counsel for Hazeltine Research on May 7, 1963. Counsel for Zenith executed the stipulation on May 15, 1963 (A. 3010). Thereafter, on May 22, 1963, Zenith filed its antitrust counterclaim against Hazeltine Research, not Hazeltine Corporation (A. 62). Indeed, as pointed out above, the counterclaim not only failed to name Hazeltine Corporation as a party but treated it throughout as a non-party.

At no time in the pretrial proceedings that followed the filing of the counterclaim, in the trial itself, or in the post-trial papers submitted before the proposed judgment, did counsel for Zenith indicate any intention to construe this stipulation as making Hazeltine Corporation a party. Nor did counsel for Hazeltine Research do or say anything that would indicate an understanding or intention that the stipulation made Hazeltine Corporation a party. And, as has already been pointed out, no attempt was ever made to name Hazeltine Corporation as a party to the action or to serve it with process.

D. The Judgments and the Special Appearance of Hazeltine Corporation

The trial judge adopted *verbatim and without opinion* the findings of fact and conclusions of law that had been proposed to him by Zenith on all issues including the issues of antitrust law violations and damages (A. 2857-58, 2892-2912). The findings did not suggest that the judgment would run against Hazeltine Corporation. Nor did they state, as Zenith says in its brief (Z. Br. 42), that "Hazeltine Research, Inc., the nominal plaintiff, is so organized, controlled and its affairs so conducted that it is a mere agent, division and alter ego of the Hazeltine Corporation." On the contrary, the finding was only that the *parties* (*i.e.*, Zenith and Hazeltine Research) had stipulated that Hazeltine Research and its parent could be considered as one entity:

> "The parties stipulated that for the purposes of this litigation Hazeltine Research, Inc. and its parent, Hazeltine Corporation, would be considered as one entity operating as a patent holding and licensing company, engaged in the exploitation of patent rights in the electronics industry in the United States and in foreign countries" (A. 2893).

The amount of damages set forth in the findings totalled $16,238,872 (Finding XXXVI, A. 2908), which after trebling would have been in excess of $48.7 million. This was over fifteen times the net book value ($3,184,419) of Hazeltine Research, the only counterdefendant (A. 3007). It was upon entry of these findings that Zenith first took the position that Hazeltine Corporation should be treated as a party. In fact, Hazeltine Corporation first learned that Zenith proposed to hold it liable when, on the day following the entry of the findings, it was informed of a report by the Dow-Jones Company that Zenith's counsel had stated that the judgment to be entered would run against Hazeltine Corporation as well as Hazeltine Research (A. 3011).

Zenith's proposed form of judgment filed March 19, 1965 (A. 4), was the first paper filed in the District Court suggesting that the judgment should run against Hazeltine Corporation as well as Hazeltine Research. On Friday, April 2, 1965, Hazeltine Corporation filed a special appearance pointing out that the entry of the judgment as proposed by Zenith against Hazeltine Corporation would deny it due process of law (A. 3008, 3019-30, 3042). However, the trial court on April 5, 1965, nevertheless entered a judgment against Hazeltine Corporation (as well as Hazeltine Research) in the amount of $19,042,173 (A. 3078-80).

In entering this judgment, the court made it clear that it was relying solely upon the stipulation. For when counsel indicated that Hazeltine Corporation desired to file a special appearance objecting to it being named as a party to the judgment, the trial court said:

> "Wasn't there a stipulation at the outset of this case that Hazeltine Research and Hazeltine Corporation were to be considered as one and the same?"[4]

The next day, at the hearing on the special appearance of Hazeltine Corporation, the trial court said: "You mean that pretrial stipulations are worthless?" (A. 3044).

When *Hansberry* v. *Lee,* 311 U.S. 32, 40-41 (1940), was cited to the trial court for the proposition that one cannot be bound by a judgment *in personam* in litigation to which he has not been designated as a party or been made a party by the service of process, the court asked: "Was there a stipulation in that case?" (A. 3047).

It is thus apparent from the questions asked by the trial court and set out above, that the entry of judgment against Hazeltine Corporation was based upon the stipulation and nothing else.

The trial judge entered the judgment against Hazeltine Corporation despite his acknowledgment that:

---

[4] This statement appeared at p. 2043 of the Printed Appendix in the Court of Appeals filed with the Clerk of this Court as a part of the record, but was inadvertently omitted from the Printed Appendix in this Court.

"Well, of course, Hazeltine Corporation wasn't a party to the lawsuit" (A. 3043).

There were further proceedings in the trial court after entry of the first judgment, but Hazeltine Corporation took no part in them. On December 9, 1965, it again appeared specially to oppose entry of the second judgment against it (A. 3536). But on December 13, 1965, the trial court entered judgment as proposed by Zenith and running against both Hazeltine Corporation and Hazeltine Research in the amount of $15,919,458 (A. 3539).

E. The Court of Appeals' Decision

After its appeal had been docketed, Hazeltine Corporation filed a motion under Rule 15(f) of the Rules of the Court of Appeals for the Seventh Circuit then in effect[5] to have the judgment of April 5, 1965, vacated for lack of jurisdiction of the trial court (A. 4131-37). After briefs were filed on behalf of Hazeltine Corporation and Zenith, the Court of Appeals ruled that the motion be decided at the same time as Hazeltine Research's appeal from this judgment (A. 4225). A similar motion was filed by Hazeltine Corporation in the appeal from the December 13, 1965 judgment (A. 4229-31), and the court ruled that this motion would also be "taken with the case" (A. 4232).

A total of five briefs were filed on this jurisdictional issue in the Court of Appeals and oral argument was heard by that court at the same time it heard arguments on Hazeltine Research's appeals from these same judgments. On December 13, 1967, the Court of Appeals entered its judgment that:

---

[5] Rule 15(f) of the Court of Appeals' rules then provided "that a substantial jurisdictional question may be raised by motion for determination before the hearing on the merits" (A. 4240 n. 2).

> "(1) The judgments of the district court against Hazeltine Corporation *are vacated for want of jurisdiction over its person*" (A. 4236).

In its opinion of December 19, 1967 (A. 4238, 4240-44), the court relied on the undisputed facts that Hazeltine Corporation was not named as a party to the lawsuit in which the judgments against it were entered and that it was never served with process. It held that the principle announced by this Court in *Hansberry* v. *Lee,* 311 U.S. 32, 40-41 (1940), was "controlling" (A. 4242) and that the entry of the judgments against Hazeltine Corporation was a denial of due process of law. Accordingly, it held that:

> "The judgments against . . . [Hazeltine] Corporation are void and must be vacated" (A. 4244).

SUMMARY OF ARGUMENT

Since Hazeltine Corporation was not a party to the complaint or named as a party in the counterclaim filed by Zenith against Hazeltine Research, and since it was never served with process, did not enter an appearance or participate in the trial, and was not brought into the suit in any manner, it was a violation of Hazeltine Corporation's constitutional right to due process of law under the Fifth Amendment to enter judgment against it.

Zenith's arguments that Hazeltine Research was the alter ego of Hazeltine Corporation and that Hazeltine Corporation controlled the litigation are irrelevant and erroneous. These issues were neither submitted to nor decided by the District Court. Moreover, even if Hazeltine Corporation had controlled the litigation, that fact would not have warranted making it a party to the judgments.

The sole basis relied upon by the trial court to support the entry of judgment against Hazeltine Corporation was a pretrial stipulation entered into between Zenith and Hazeltine Research, but not Hazeltine Corporation. The stipulation shows on its face that Hazeltine Corporation was not a party to it and that it did not even purport to bind Hazeltine Corporation or make it a party to the case. Neither the circumstances which led to the stipulation nor anything which occurred after its execution indicated that anyone considered that it made Hazeltine Corporation a party to the litigation. Indeed, the fact that Hazeltine Corporation was not a party was conceded by the trial judge, and recognized by Zenith both in its pleadings and in its briefs in the trial court. Zenith first proposed that Hazeltine Corporation be treated as a party after the trial court had entered findings which called for a treble damage judgment over fifteen times the book value of Hazeltine Research.

ARGUMENT

I. THE COURT OF APPEALS FOLLOWED SETTLED CONSTITUTIONAL PRINCIPLES IN HOLDING THAT THE TRIAL COURT HAD NO POWER TO ENTER JUDGMENT AGAINST HAZELTINE CORPORATION, A NON-PARTY.

Zenith's brief fails to answer or in any way deal with the undisputed facts and the controlling basic constitutional principles relied upon by the Court of Appeals. These judgments were entered despite the facts, not disputed by Zenith, that (1) Hazeltine Corporation "wasn't a party to the lawsuit" (A. 3043), (2) Zenith made no attempt to designate Hazeltine Corporation as a party either in its counterclaim or in any other pleading which it filed before the first judgment was entered and (3) no attempt was ever made to serve Hazeltine Corporation with process.

Relying on these undisputed facts, the Court of Appeals held that the judgments must be vacated under the principle announced in *Hansberry* v. *Lee,* 311 U.S. 32, 40-41 (1940), where this Court held:

> "It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process. . . . A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution . . . prescribe[s] . . . and judicial action enforcing it against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments require."

In *Hanson* v. *Denckla,* 357 U.S. 235, 249-50 (1958), this Court said that long before its landmark decision in *Pennoyer* v. *Neff,* 95 U.S. 714 (1878), it was recognized that "an exercise of jurisdiction over persons or property outside the forum State was thought to be an absolute nullity . . . [and] any judgment purporting to bind the person of a defendant over whom the court had not acquired *in personam* jurisdiction was void. . . ." The early common law principle that no court had the power to render a judgment or decree against one not served with process to appear and defend (*Hollingsworth* v. *Barbour,* 29 U.S. (4 Peters) 466 (1830); *D'Arcy* v. *Ketchum,* 52 U.S. (11 How.) 165, 174 (1850)) was held in *Pennoyer* v. *Neff,* 95 U.S. 714, 733 (1878), to be embraced in the constitutional guaranty of "due process of law." In 1957, this Court said:

> "It has *long* been *the constitutional rule* that a court cannot adjudicate a personal claim or obligation *unless* it has *jurisdiction over the person* of the defendant." *Vanderbilt* v. *Vanderbilt,* 354 U.S. 416, 418 (1957).

It is therefore clear that in vacating these judgments against Hazeltine Corporation, a non-party, the Court of Appeals was following settled constitutional principles established by this Court. The trial court's attempt to bind a non-party to a judgment *in personam* was a denial of procedural due process. *Riley* v. *New York Trust Co.*, 315 U.S. 343, 353 (1942). As this Court held in *Estin* v. *Estin*, 334 U.S. 541, 548-49 (1948), a court may not exercise *in personam* jurisdiction over a person not before the court.

Since Hazeltine Corporation was never a party to the action in which the judgments were entered, the judgments against it are void. The legal principles that were violated by the entry of these judgments are so fundamental that for the Court of Appeals to have permitted them to stand would have deprived Hazeltine Corporation of its property, if not its very corporate life,[6] without due process of law. The most basic procedural principles foreclose such a result.

Zenith dismisses this basis for the holding of the Court of Appeals with the assertion that there "obviously was no constitutional question as erroneously found by the Court of Appeals" (Z. Br. 123). It takes the erroneous position that Hazeltine Corporation, by appearing specially to oppose entry of judgment against it and expressly to safeguard its constitutional rights (A. 3019) thereby "submitted the factual issue of whether it was bound as a party under the circumstances of this case for determination by the Trial Court" (Z. Br. 123).

---

[6] The two judgments totaled $34,961,631 (A. 3078-80, 3539) and Hazeltine Corporation's net book value on December 31, 1964, was $21,068,763 (A. 3007).

The whole purpose of the special appearance by Hazeltine Corporation was to attack the jurisdiction of the trial court, not to submit the issue of its liability for determination by the trial court as a "factual issue." While the rules make it no longer *necessary* for one to file a special appearance to attack jurisdiction, *Orange Theatre Corp.* v. *Rayherstz Amusement Corp.*, 139 F.2d 871, 874 (3d Cir. 1944), *cert. denied,* 322 U.S. 740 (1944), the filing of a special appearance *serves to emphasize* the fact that the appearance *does not* constitute a submission to jurisdiction. *Bjorgo* v. *Weerden,* 342 F.2d 558, 560 (7th Cir. 1965).

Furthermore, as we shall show in the following sections of this brief, the trial court held no "hearing" on "factual" issues during Hazeltine Corporation's argument contesting the jurisdiction of the trial court. Instead, the trial court erroneously entered judgment against Hazeltine Corporation solely on the basis of the pretrial stipulation entered into between Hazeltine Research and Zenith, the only two parties to the litigation.

II. THE STIPULATION BETWEEN ZENITH AND HAZELTINE RESEARCH DID NOT MAKE HAZELTINE CORPORATION A PARTY TO THIS ACTION OR GIVE THE TRIAL COURT JURISDICTION TO ENTER A JUDGMENT AGAINST HAZELTINE CORPORATION.

The only rationalization for the trial court's entry of judgments against Hazeltine Corporation was the pretrial stipulation entered into by *Hazeltine Research* and Zenith (see p. 12, *supra*). The Court of Appeals held that "the stipulation was the principal if not the only basis for binding the Corporation in the judgments" (A. 4240) and that:

> "The stipulation relied upon by Zenith and the district court was signed only by the 'parties' to the counterclaim, *and the Corporation was not a party*. And there is no showing that the Corporation authorized HRI's [Hazeltine Research's] representative to sign on its behalf" (A. 4243).

As we shall show below, this holding is fully supported by the facts and nothing in Zenith's brief justifies a different result.

A. Hazeltine Corporation Is Not a Party to the Stipulation and By Its Clear Terms the Stipulation Was Not Intended to Bind Hazeltine Corporation to Anything.

The stipulation shows on its face that Hazeltine Corporation is not a party to it and that it did not even purport to bind Hazeltine Corporation in any way. It begins with this unequivocal statement, "The *parties to this Action*, by their attorneys . . . hereby stipulate and agree. . . ." (A. 55). As the trial judge noted, Hazeltine Corporation was *not* a party to this action (A. 3043). The disputed paragraph of the stipulation, paragraph 4, states that:

> "4. *Plaintiff agrees* that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company" (A. 55).

The agreement was that of "Plaintiff," which was Hazeltine Research and not Hazeltine Corporation. And a clear distinction is made between "Plaintiff," the party, and "its parent Hazeltine Corporation," the non-party. The stipulation was executed by counsel for Zenith and by "L. B. Dodds" who is specifically identified as "Counsel for *Plaintiff*" (A. 57).

As would be true in construing a contract, the plain meaning of the language used in the instrument should be given effect.[7] And the plain meaning of the language here shows that the stipulation did not intend or even purport to bind Hazeltine Corporation in any way.

Moreover, since Hazeltine Corporation was not a party to the stipulation, it could not be bound by it even if the stipulation had purported to do so. "The general rule is well settled . . . that parties cannot by stipulation affect any rights but their own, and that persons not parties to the stipulation are not bound thereby." 83 C.J.S. *Stipulations* § 14 at 35; *accord,* 50 Am. Jur. *Stipulations* § 10; *Kneeland* v. *Luce,* 141 U.S. 437, 440-41 (1891); *Strand* v. *Garden Valley Tel. Co.,* 51 F.Supp. 898, 905 (D. Minn. 1943).

Zenith asserts that counsel for Hazeltine Corporation argued that the stipulation did not mean what it said (Z. Br. 48, 122). On the contrary, our position is and has been that the stipulation means exactly what it says, *i.e., Hazeltine Research* agreed that for purposes of the case it could be considered one and the same with its parent.[8] It is Zenith which has attempted to rewrite the stipulation, for it contends in effect that the stipulation should be construed to read "*Hazeltine Corporation* hereby enters its appearance and consents to jurisdiction and agrees that it is the same as its subsidiary" and that the signature should be construed to read "L. B. Dodds, Counsel for Plaintiff Hazeltine Research *and Hazeltine Corporation.*"

---

[7] It is settled that the general principles of construction applicable to contracts are also applicable to stipulations. 83 C.J.S. *Stipulations* §11 at 26.

[8] Zenith similarly misrepresents the Court of Appeals' decision when it says that the Court of Appeals held that the stipulation was "null and void" (Z. Br. 5, question 11). No one has ever attempted to have the stipulation held null and void. Hazeltine Research, the party to the suit and to the stipulation, has never attempted to repudiate the stipulation. Its defense of the counterclaim at the trial and its prosecution of the appeals on the merits have been fully consistent with the stipulation as written.

The stipulation was drafted by Zenith's counsel (see p. 9, *supra*). Surely, if the stipulation *were* intended to do what Zenith now contends, Zenith's experienced counsel would have selected language which would have done so. But instead, Zenith's counsel chose language which clearly limited the effect of the stipulation to the parties then named in the litigation *as parties* and carefully delineated Mr. Dodds' authority as that of counsel for plaintiff. Accordingly, it is impossible that counsel for Zenith was misled or persuaded to sign something different from the oral agreement which the written stipulation was to record. Indeed, if there could be said to be any doubt or ambiguity, it must be resolved against Zenith, the party which drafted the stipulation. See *Alcoa S.S. Co.* v. *United States*, 338 U.S. 421, 424-25 (1949); *Caterpillar Tractor Co.* v. *Collins Mach. Co.*, 286 F.2d 446, 450 (9th Cir. 1960); 17 Am. Jur. 2d, *Contracts* § 276.

Zenith now argues (Z. Br. 117-18), that Dodds, because he was an officer and director of Hazeltine Corporation, "had authority from . . . [Hazeltine Corporation] to execute the trial stipulation." This, of course, begs the question because Dodds did *not* execute the stipulation *for* Hazeltine Corporation. Certainly it cannot seriously be contended that the signing of the stipulation by Dodds, expressly as counsel for Hazeltine Research, thereby binds Hazeltine Corporation merely because Dodds also happened to hold the title of vice-president of that corporation[9] and had on

---

[9] Dodds testified that he no longer had any administrative responsibilities for Hazeltine Corporation (A. 772-73), and in an affidavit filed in support of the special appearance of Hazeltine Corporation he pointed out that he had no authority to bind Hazeltine Corporation (A. 3010).

other occasions represented it in litigation. Significantly, Zenith does not cite any authority for such a novel proposition, and we are aware of none.

Zenith apparently takes the position that despite the fact that Dodds signed the stipulation on behalf of Hazeltine Research, it was incumbent upon Hazeltine Corporation to offer proof that he was not signing on behalf of the corporation and had no authority to do so (Z. Br. 116-17). Significantly, it cites no reason or authority for this proposition which is directly contrary to the holding of the Court of Appeals that:

> "*Zenith had the burden* of establishing clearly that Dodds had authority to represent the [Hazeltine] Corporation in entering the stipulation prepared by Zenith. . . . We hold Zenith did *not* meet that burden" (A. 4243-44).

Zenith also says that no one from Hazeltine Corporation ever denied Dodds' authority and asserts that Ruestow and Westermann said nothing even though they were officers of Hazeltine Corporation[10] and were at the trial (Z. Br. 116). But Zenith ignores the fact that there was no reason or occasion for them to say anything because the stipulation did not purport to bind Hazeltine Corporation, and nothing was done during the entire trial which would indicate that Hazeltine Corporation had become a party or would be bound by the judgment. In fact, as Zenith knows full well, Hazeltine Corporation first learned that Zenith intended to ask that the judgment run against it when it was informed of the comments of Zenith's counsel by a Dow Jones wire service announcement *after the findings were entered* (A. 3011; see p. 11, *supra*).

---

[10] We have previously pointed out that Ruestow was at the trial as counsel of record for Hazeltine Research, and Westermann was president of Hazeltine Research (see n. 3, p. 8, *supra*).

Finally, Zenith would have this Court believe that there was some *sub rosa* understanding reached at the pretrial conference (though not of record) between the plaintiff, the defendant, and the judge that Hazeltine Corporation had become a party to the lawsuit.[11] This assertion flies squarely in the face of the clear language of the stipulation, which says that it was to set forth the understandings reached at the pretrial conference and yet reflects no understanding that Hazeltine Corporation submitted to jurisdiction or became a party.

The draft of the proposed counterclaim furnished by Zenith to Hazeltine Research in March 1963, before the April 3, 1963 pretrial conference and the May 7, 1963 stipulation, was against only Hazeltine Research and asked for a damage award against only Hazeltine Research (see pp. 9-10, *supra*). If it were true that an understanding had been reached *after* March 1963, that Hazeltine Corporation would submit to jurisdiction and become a party, then certainly before Zenith filed its motion for leave to file a counterclaim on May 22, 1963 (A. 62), it would have *revised* the March draft of the counterclaim to *name* Hazeltine Corporation *as a party* and to ask for relief against it. Certainly Zenith's experienced trial counsel would have taken this rudimentary step. Instead, it filed the very same counterclaim which was executed on March 21, 1963 (A. 69), and which specifically distinguished between Hazeltine Research, the party, and Hazeltine Corporation, the non-party, and asked for damages only against Hazeltine Research (see pp. 5-7, *supra*). Failure to name Hazeltine

---

[11] For example, Zenith asserts that the trial court found against Hazeltine Corporation based on the court's "personal knowledge of what transpired at the April 3 Pretrial Conference" (Z. Br. 123). It also states that "all counsel" were present at that conference (Z. Br. 42) apparently trying to create the false impression that Hazeltine Corporation was represented.

Corporation as a party not only indicates a lack of intention to make it a party to the counterclaim but also renders any judgment against it void. As the court pointed out in *Smith* v. *Stone*, 202 F.Supp. 11, 12 (E.D. Ky. 1962):

> "Since . . . [the corporation] is not named in the caption of the complaint and has not been brought in by amendment, the court can consider no claim against it. . . ."

Accord, *United States* v. *Klein*, 230 F.Supp. 426, 440-41 (W.D. Pa. 1964), *aff'd per curiam*, 356 F.2d 983 (3d Cir. 1966): "There can be no judgment imposed upon non-record party defendants. . . ." See also, *Bland* v. *Britt*, 271 F.2d 193, 194 (4th Cir. 1959); *Lewis* v. *Continental Ins. Co.*, 239 F.Supp. 42, 44 (E.D.S.C. 1965).

It is obvious that the stipulation means just what it says: Hazeltine Research would stand accountable for Hazeltine Corporation. No one thought otherwise and the attempt to hold Hazeltine Corporation liable was an afterthought by Zenith when it found itself with a potential damage award of over fifteen times the net worth of Hazeltine Research (see p. 11, *supra*).

B. Neither the Circumstances Surrounding the Execution of the Stipulation Nor the Events Which Followed Indicate That Either Party Assumed or Intended That the Stipulation Made Hazeltine Corporation a Party to the Suit.

The circumstances which led to the execution of the stipulation are wholly inconsistent with any contention that Hazeltine Corporation was made a party to the suit by it. The purpose of the stipulation is clearly stated: "to simplify and expedite trial" (A. 55). The particular paragraph of the stipulation in dispute here is twice qualified and limited "for purposes of this Action only" (A. 55).

The procedural advantages to Zenith of the stipulation interpreted as written are obvious. It eliminated for Zenith the necessity of proving its allegation that Hazeltine Corporation and Hazeltine Research were co-conspirators and that Hazeltine Research, the party to the suit, was liable for acts at least in part allegedly performed by its parent, Hazeltine Corporation.

There were also procedural advantages to Hazeltine Research. Counsel for Hazeltine Research believed that the counterclaim was without merit and that it would save his client both trouble and expense and shorten the trial considerably if he agreed that his client, Hazeltine Research, for the purpose of this case, assumed liability for the acts of its parent, Hazeltine Corporation (A. 3009-11). But he did not and could not agree that Hazeltine Corporation would submit itself to jurisdiction or become liable on any judgment rendered against Hazeltine Research.

Thus, it is clear that the stipulation, interpreted consistently with the plain meaning of its language, did have a procedural advantage for the actual parties to the suit at the time it was agreed upon by them. On the other hand, Hazeltine Corporation had nothing to gain by this stipulation.[12] It could not be sued in the Northern District of Illinois under the antitrust laws (see p. 3, *supra*), and it could gain nothing by agreeing to submit itself to the jurisdiction of that court. Under such circumstances, a finding that Hazeltine Corporation voluntarily submitted itself to jurisdiction and made itself a party to the suit by agreement, would require clear and unequivocal language in an agreement actually entered into by Hazeltine Corporation. But no such language is present here; indeed, it is clearly to the contrary.

---

[12] Zenith asserts that the stipulation was to Hazeltine Corporation's advantage because it expected favorable findings with respect to the antitrust issues (Z. Br. 126). Apparently Zenith would have this Court believe that because Zenith had served notice that it intended to file a counterclaim against Hazeltine Research, Hazeltine Corporation wanted to jump into the case to refute those charges Zenith intended to make.

The events following the execution of the stipulation similarly indicate that the parties assumed that Hazeltine Corporation was not a party. A week *after* the stipulation was executed, Zenith, with leave of court, filed a counterclaim that clearly and repeatedly recognized Hazeltine Corporation as an entity separate from the counterdefendant Hazeltine Research and as a non-party (see pp. 5-7, 23, *supra*). Tantamount to a clear admission that counsel for Zenith did not regard Hazeltine Corporation as a party after execution of the stipulation is the fact that Zenith included Hazeltine Corporation as a party in the caption of the case *for the first time* when on May 13, 1965, it filed in the District Court its appellee's statement required by Rule 12(d) of the former rules of the Court of Appeals (A. 4130). From the date of the execution of the stipulation on May 15, 1963, until after January 25, 1965, the date the trial court adopted Zenith's proposed findings of fact, neither Zenith's counsel nor the court below referred to or denominated Hazeltine Corporation as a party.

Zenith claims that at the trial its counsel was "fully relying on the stipulated fact that parent and subsidiary were one company in the litigation" (Z. Br. 119).[13] This claim of reliance does not hold up when examined in light of the record. For Zenith and its counsel not only distinguished between Hazeltine Research, the party, and Hazeltine Corporation, the non-party, in its counterclaim, they also made that distinction in paper after paper filed in this case after the execution of the stipulation. For example, in its pretrial brief, Zenith stated:

---

[13] Zenith claims that this reliance is shown by its reading of the deposition of Dodds into the record as admissions against interest. The fact that Hazeltine Research did not object to this is completely consistent with the stipulation under which it agreed to stand liable for Hazeltine Corporation. Thus, the statements by an officer of Hazeltine Corporation could be used as admissions *against Hazeltine Research.*

> "*Plaintiff is* a patent holding and licensing company, *wholly owned by* a large New York electronics manufacturing company called *Hazeltine Corporation*" (A. 3069; see also post-trial brief, A. 3071-72).

Indeed, the very finding upon which Zenith relies (Z. Br. 42) recognizes that Hazeltine Research, not Hazeltine Corporation, is the counterdefendant in this case:

> "III. *Counterdefendant, Hazeltine Research, Inc.*, the party plaintiff in this suit, is an Illinois corporation owned and operated as a wholly owned subsidiary of Hazeltine Corporation, a New York corporation, engaged in the manufacture and sale of electronic equipment and devices. . ." (A. 2893).

Zenith drafted this finding, adopted by the trial court. It characterized Hazeltine Corporation only as the parent, *not* as an additional "counterdefendant."

Furthermore, Zenith repeatedly recognized that Dodds was acting as attorney for Hazeltine Research in this case and not as attorney for Hazeltine Corporation. For example, in its pretrial brief on the antitrust issues, Zenith referred to Dodds as: "Mr. Dodds, *plaintiff's attorney* and a director and officer of Hazeltine Corporation" (A. 3070). The identical description appears in Zenith's post-trial brief (A. 3072).

In *United States* v. *Klein*, 230 F.Supp. 426, 440-41 (W.D.Pa. 1964), *aff'd per curiam*, 356 F.2d 983 (3d Cir.

1966), the court refused to enter a judgment against a partnership and individual partners not named in the complaint, holding that it would be improper to do so since (as is the case here) the complaint showed no intention to place liability on the absent parties:

> "The plaintiff's argument, both orally and in its brief, is unusual and in any event rather late to attach liability when it has failed to take action in its pleadings and throughout the trial of the case *to show any intention* to hold the partnership and its individual members. Since [neither] the partnership nor its individual members are here on record as party defendants, there can be no judgment against the partnership or the individual members as such" (230 F.Supp. at 440).

There is nothing in the record, briefs or findings below to indicate that anyone considered Hazeltine Corporation a party to the lawsuit. Certainly any lawyer who intended to try to obtain a judgment of this magnitude against a company not named as a party and not served with process, would at some point during the proceedings, file some motion to attempt to correct that fatal defect in jurisdiction. Yet, it was not until *after* Zenith had obtained entry of its proposed findings calling for a judgment many times the net worth of Hazeltine Research, that it indicated it would claim a judgment against Hazeltine Corporation.

III. ZENITH'S ALTER EGO ARGUMENT IS IRRELEVANT AND ERRONEOUS.

In an attempt to lift itself by its own boot straps, Zenith argues that somehow, at some undisclosed time, the trial court determined that Hazeltine Research was the alter ego of Hazeltine Corporation. On the assumption that such a finding was made, Zenith devotes considerable space in its brief to an argument that there is evidence which would support such a finding (Z. Br. 42-47, 121-23). However, this argument is irrelevant and erroneous because the question of whether Hazeltine Research was the alter ego of Hazeltine Corporation was never submitted to the trial court, never decided by it, and is not the subject of any finding.

A. The Judgments Entered Against Hazeltine Corporation Were Not Based Upon the Alter Ego Doctrine.

The *only* trial court finding in any way relating to this issue is Finding III (A. 2893) which expressly states that it is based upon what *"the parties* stipulated" (see p. 11, *supra*). Zenith asserts (Z. Br. 42) that the findings of fact adopted by the trial court "clearly *recognized*" that "Hazeltine Research, Inc. the *nominal plaintiff*, is so organized, controlled and its affairs so conducted that it is a mere agent, division *and alter ego* of the Hazeltine Corporation." The *record* references claimed to support the statement contain not one word concerning alter ego or the facts required to bring that doctrine into play.[14] For example, the findings cited by Zenith make no mention of highly relevant factors such as the capitalization of the subsidiary, the separateness and independence of its operations, whether its business was in fact run by its own Board of

---

[14] Zenith refers to A. 2857, the letter of the trial judge adopting Zenith's findings; to A. 2859, which is Finding 1 that Hazeltine Research is a patent holding and licensing company with a place of business in Chicago, Illinois; to A. 2893, which is Finding III referred to above, and to A. 2913, 2914, which are findings proposed by Hazeltine Research but not adopted, and which similarly refer only to the stipulation and make no reference to "alter ego." Furthermore, since these proposed findings of Hazeltine Research were rejected by the trial court they contain no support for any contention that the *trial court found* that Hazeltine Research was the alter ego of Hazeltine Corporation.

Directors. See, *e.g.*, Powell, Parent and Subsidiary Corporations, § 6, p. 8 (1931).

There can be no doubt that the trial court's entry of judgment against Hazeltine Corporation was based solely upon the trial judge's erroneous interpretation of the effect of the stipulation, and *not* on any consideration of evidence or supposed finding of *alter ego*. That fact was made abundantly clear during the colloquy relating to Hazeltine Corporation's special appearance (see p. 12, *supra*). During the argument on the special appearance, the court never once referred to the *alter ego* doctrine or to any supposed evidence on that question. Instead, his remarks and inquiries to counsel related to the stipulation (see p. 12, *supra*).

Accordingly, after referring to Finding III (A. 2893) which was based on the stipulation, the Court of Appeals concluded:

> "The court made no other findings relating to 'piercing the corporate veil,' and our reading of the colloquys between counsel and the court leads us to the conclusion that the stipulation was the principal if not the only basis for binding the Corporation in the judgments" (A. 4240).

The plain fact is that the question of whether Hazeltine Research was in fact the alter ego of Hazeltine Corporation was never in issue or tried in the trial court or ruled on in the Court of Appeals. Hazeltine Corporation was never heard on the issue and neither court below made any determination of this alleged issue. As the Court of Appeals held:

> "The resolution of the alter ego issue can be made only after an adversary determination of the facts involved. This court cannot make an initial determination of these facts, and *the district court did not do so*" (A. 4242).

Thus Zenith's claim that its alter ego theory is supported by certain "documentary evidence" (Z. Br. 44) and by findings of fact proposed by Hazeltine Research but not adopted (Z. Br. 121) would have no legal significance even if true. In effect, Zenith is requesting that this Court make original findings of fact on an irrelevant issue not passed on by either court below. Moreover, the "documentary evidence" and Hazeltine Research's proposed findings would not warrant an original finding of "alter ego" by this Court. They are totally silent on such important facts as the adequacy of Hazeltine Research's capital and whether Hazeltine Research has business and assets acquired on its own. See Powell, Parent and Subsidiary Corporations, § 6 at 9 (1931).[15]

We submit that Zenith's "alter ego" theory has no basis and is designed to obscure the constitutional grounds on which the Court of Appeals vacated the judgments against Hazeltine Corporation.

B. The Cases Cited By Zenith Are Inapposite.

The authorities which Zenith relies upon to support its *alter ego* theory (Z. Br. 123-26) are totally inapposite. Not one of the cited cases involved the question of whether the corporate veil should be pierced to make a company a party to the lawsuit in which it was not named or served with process. Instead, they all involve the question of whether a company ***which was a party***, which had been named and had either filed the suit itself or had been served with process, should be held liable for the acts of some other company. That is not the case here.

---

[15] While Hazeltine Research is a small corporation of modest resources compared to Zenith, it is nevertheless adequately capitalized. It put up not only its valuable U.S. patents, but also $2,600,000 of its own government securities as a part of the supersedeas bond agreement in this case.

For example, in *Chicago M. & St. P. Ry. v. Minn. Civic Ass'n,* 247 U.S. 490 (1918), on which Zenith seems to place primary reliance, *both* the wholly owned corporation and its two stockholders were *named* parties to the litigation from the very beginning when a petition was filed *against all three of them* in a proceeding commenced before a state railway commission.

Similarly, in *Allied Chem. Corp. v. Randall,* 321 F.2d 320 (7th Cir. 1963) and *Sisco-Hamilton Co. v. Lennon,* 240 F.2d 68 (7th Cir. 1957), quoted from by Zenith (Z. Br. 124-25), as well as in the other cases cited by Zenith (Z. Br. 126), the party against whom the doctrine was applied was a named party and before the court. In addition, in *Shamrock Oil & Gas Co. v. Ethridge,* 159 F.Supp. 693 (D. Colo. 1958), cited by Zenith (Z. Br. 126), the corporation sought to be bound was not only named as a party and present in court to be heard on the issue, but the court, in applying the *alter ego* doctrine, was careful to point out:

> "It should be noted, however, that this is done only for the purpose of adjudging the rights and liabilities of *the parties in the case*" (159 F.Supp. at 697).

IV. ZENITH'S ARGUMENT THAT HAZELTINE CORPORATION SHOULD BE HELD LIABLE BECAUSE IT IS CLAIMED TO HAVE CONTROLLED THE DEFENSE HAS NO BASIS IN LAW OR FACT.

Zenith asserts that Hazeltine Corporation was "obviously in court defending" the counterclaim against Hazeltine Research (Z. Br. 43). This contention has no basis in the record and even if true would afford no basis for the entry of judgment against Hazeltine Corporation.

This Court long ago established the principle that a court has no power to enter a judgment *in personam* against a non-party who has not been properly served with process *even though* it is unquestioned that the non-party "conducted, controlled, and directed the defense of the suit." *Merriam Co. v. Saalfield,* 241 U.S. 22, 24 (1916). In the *Merriam* case, reaffirmed nearly half a century later in *Schnell v. Peter Eckrich & Sons, Inc.,* 365 U.S. 260, 263 (1961), this Court made it clear that this rule had been universally applied:

> "No case to which we are referred, nor any other that we have found, goes to the extent of sustaining . . . a decree *in personam* against a party upon the ground that he had participated in the defense . . . so as to become bound upon the doctrine of *res judicata*" (241 U.S. at 31).

Relying on the *Merriam* case, the court below held that:

> "We think *Merriam v. Saalfield,* 241 U.S. 22 (1916), refutes Zenith's contention that control of the litigation by Hazeltine Corporation made it amenable to joinder after findings of fact and conclusions of law were adopted without service of process. In *Merriam* it was clear that Ogilvie had controlled the defense for Saalfield, the defendant named in the original suit. Here the facts are only that Dodds, attorney for plaintiff HRI [Hazeltine Research], was an officer and a counsel for the Corporation. There is no showing that he was authorized to act for the Corporation. *We find no basis for joining the Corporation because of its claimed participation in the trial*" (A. 4243).

Zenith has cited no authority contrary to these settled principles and we are not aware of any.

Furthermore, there is no factual basis for Zenith's contention that Hazeltine Corporation was "in court defending" the counterclaim against Hazeltine Research.[16] This claimed issue was never tried and the trial court *made no finding* on it. Zenith places reliance on a statement made by Hazeltine Research's trial counsel during a colloquy with the trial court where he used the pronoun "we" in referring apparently to the activities of Hazeltine Corporation (*e.g.*, Z. Br. 43, 119). Leaving aside the obvious fact that such a statement wholly fails to prove Hazeltine Corporation was defending the counterclaim, the statement by Hazeltine Research's trial counsel was completely consistent with the stipulation under which Hazeltine Research agreed to stand liable for the alleged acts of Hazeltine Corporation.[17]

Zenith also seeks to attach some significance to the findings proposed by Hazeltine Research and rejected by the trial court (Z. Br. 47-48, 121-22), saying that these proposed findings were "in favor of the Hazeltine Corporation" (Z. Br. 121). However, since the effect of the stipulation was that Hazeltine Research assumed responsibility for the acts of its parent, Hazeltine Corporation, and since under the counterclaim Hazeltine Research was alleged to be a co-conspirator with Hazeltine Corporation, it was perfectly natural for Hazeltine Research to seek findings that the patent pools and its parent's relation thereto did not constitute violations of the antitrust laws. The fact that *Hazeltine Research* sought such findings certainly did not mean that Hazeltine Corporation was controlling the litigation or had submitted itself to jurisdiction and become a party.

---

[16] Zenith also appears to find some significance in the fact that Dodds, Westermann, and Ruestow, officers of Hazeltine Corporation, were present at the trial (Z. Br. 116). This fact, of course, does not make Hazeltine Corporation a party to the lawsuit. Thaxton v. Vaughan, 321 F.2d 474, 479 (4th Cir. 1963). Moreover, all three were present in capacities for Hazeltine Research (see n. 3, p. 8, *supra*).

[17] Similarly, the McFarland letter (DX 36, A. 1141-45) (Z. Br. 43-44) fails to prove that Hazeltine Corporation was defending the counterclaim. The letter itself makes no mention of the counterclaim but refers to the enforcement of Hazeltine Resarch's color patents. This letter and the other letters referred to by Zenith (Z. Br. 43-45) are apparently relied upon primarily to support Zenith's *alter ego* theory which is discussed in detail at pp. 28-32, *supra*.

CONCLUSION

For all the reasons set forth above, the action of the Court of Appeals vacating the judgments as to Hazeltine Corporation should be affirmed.

Respectfully submitted,

John T. Chadwell
Victor P. Kayser
C. Lee Cook, Jr.
Joseph V. Giffin
135 South La Salle Street
Chicago, Illinois 60603

Attorneys for Hazeltine Corporation, Respondent

Of Counsel:

Chadwell, Keck, Kayser, Ruggles & McLaren
135 South La Salle Street
Chicago, Illinois 60603

Dated: September 19, 1968

LIBRARY
SUPREME COURT. U. S.

Office-Supreme Court, U.S.
FILED
SEP 19 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968.

No. 49

ZENITH RADIO CORPORATION, a corporation,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., a corporation, and
HAZELTINE CORPORATION, a corporation,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT HAZELTINE RESEARCH, INC.

John T. Chadwell
Victor P. Kayser
C. Lee Cook, Jr.
Joseph V. Giffin
135 South La Salle Street
Chicago, Illinois

M. Hudson Rathburn
20 North Wacker Drive
Chicago, Illinois

Laurence B. Dodds
160 Middle Neck Road
Great Neck, New York

Attorneys for
Hazeltine Research, Inc.,
Respondent

Of Counsel:

Chadwell, Keck, Kayser,
Ruggles & McLaren
135 South La Salle Street
Chicago, Illinois 60603
RAndolph 6-2545

Mason, Kolehmainen,
Rathburn & Wyss
20 North Wacker Drive
Chicago, Illinois 60606
FInancial 6-1677

TWENTIETH CENTURY PRESS, INC., CHICAGO 60606

INDEX

PAGE

FOREWORD 1

QUESTIONS PRESENTED 3

STATEMENT OF THE CASE 4

I. History Of The Litigation 4
  The Parties on Appeal 4
  The Pleadings 6
  The Antitrust Trial and Findings 8
  The Motions to Set Aside Findings and the Offers of Proof ... 13
  Proceedings Following the Motions to Set Aside the Findings ... 14
  The Hearings and Ruling on the Governmental Embargoes ... 16
  The Recall Testimony of the Zenith Witnesses ... 18
  The Second Damage Award and Second Judgment ... 25
  The Appeal 28

II. The Facts As To England 29
  A. The Claim That the Pool Kept Zenith Out of England "For Years" Prior to June 1, 1959 ... 29
  B. The Claim That Zenith Tried to Market Television Sets During 1959-1963 ... 31
    1. The Differences in Broadcast Systems 32
    2. The Testimony at the Original Trial 33
    3. The Facts Disclosed on Recall 36

PAGE

C. The Real Reason Zenith Did Not Try to Market Television Sets in England 40

D. The Claim That Zenith Could Not Obtain a License to Import 44

E. The Claim That Zenith Suffered Injury As to Radio 46

III. The Facts As To Canada 47

A. The RCA-Zenith Settlement 47

B. The Evidence After the RCA-Zenith Settlement 49

C. The Zenith Annual Reports 1957-1962 55

D. The Domestic Patent Suit and Licensing Negotiations 60

E. The Amount of Damages — Zenith's Exhibit 220 61

IV. The Facts As To Australia 62

A. The Original Trial 63

B. The Later Hearings 66

V. The Patent Misuse Defense 67

SUMMARY OF ARGUMENT 68

ARGUMENT 77

I. Introduction 77

A. The Court of Appeals Was Correct in Holding That Zenith Had the Burden of Showing Damaging Impact or the "Fact of Damage" During the Relevant Period .. 79

B. The Court of Appeals Applied the Proper Legal Standard in Reversing the District Court 80

PAGE

II. The Court of Appeals Was Correct in Holding That Zenith Suffered No Injury as to England 85
- A. The Claim That for Years the Pool Kept Zenith Out of England Was Destroyed by Proof of the Embargo 86
- B. The Claim as to Television Was Based on Discredited Testimony 87
- C. The Trial Court Findings and Zenith's Own Evidence Affirmatively Establish The Absence of Any Damaging Impact on Zenith's Radio Exports to England 93
- D. The English Pool Agreement and License Forms Were Changed to Remove the Prohibition Against Imports 95

III. The Court of Appeals Was Correct in Holding That Considering All the Evidence Zenith Had Failed to Prove the Essential Fact of Damage as to Canada 98
- A. There Was No Refusal to License During The Relevant Period 99
- B. There Were No Suits or Threats of Suit Against Zenith Distributors or Dealers During the Relevant Period 102
- C. Zenith's Testimony Is Directly Contradicted by Zenith's Annual Reports 112
- D. The Testimony Relied Upon by Zenith Was Not Credible 118

IV. Zenith's Contention That the Instant Domestic Patent Suit and Domestic Licensing Negotiations Interfered With Its Canadian Exports Is Without Merit 124

V. The Court of Appeals Was Correct in Holding That Zenith Suffered No Injury As To Australia 133

PAGE

A. Patent Licenses Without Import Restrictions Were Available to Zenith from the Australian Pool Since 1951 134
B. Zenith's Other Attacks on the Conclusions of the Court of Appeals Are Similarly Unfounded 138
VI. The Court of Appeals Did Not Hold That a Demand by Zenith for a License Was Necessary 140
VII. The Court of Appeals Reached Its Decision Without Reliance Upon Offers of Proof 143
VIII. Zenith's Arguments as to the Amount of Damages are Erroneous and Raise an Issue Not Before This Court 144
A. England and Australia 145
B. Canada 147
IX. The Charge of Unlawful Conspiracy 149
A. England and Australia 150
B. Canada 152
X. The Court of Appeals' Vacation of the Injunction as to Foreign Commerce Was Clearly Correct 154
XI. Zenith's Argument on the "Patent Misuse Defense" Raises Moot Questions and Is Erroneous 159
A. The Offers in 1959 on Patents for Black and White Television Were Fair and Reasonable in Light of Commercial Realities 160
B. It is Not a Misuse of Patents to Propose Royalties on Total Production 163
C. Zenith's Other Charges of Coercion and Misuse Are Erroneous and Totally Irrelevant to Any Issue Before This Court 165
CONCLUSION 168

PAGE

APPENDICES

Appendix A:

Portions of Zenith Annual Reports for the Years 1957 through 1961 ....A- 1

Appendix B:

Hearings, Subcommittee on Patents, Trademarks and Copyrights of the Senate Committee on the Judiciary, held June 1-3, 1965 ....A-23

Appendix C:

Affidavit of David Westermann and attachments . . A-28

Appendix D:

Letter of N. A. MacCuspie to Zenith Radio Corporation, dated July 23, 1962 (DX 162D) A-34

Appendix E:

Certified pages of the Reports of the Debates of the Canadian House of Commons, First Session, 27th Parliament, 15 Elizabeth II, Volume VII, 1966 . . A-35

1967 Canadian Television Market and Zenith's Share Thereof A-40

CITATIONS

CASES: PAGE

ALCOA v. *Sperry Products, Inc.*, 285 F.2d 911 (6th Cir. 1960) 128

American Arch Co. v. *Canuck Supply Co.*, 3 Dominion Law Reports 567 (1924) 132

American Securit Co. v. *Shatterproof Glass Corp.*, 154 F.Supp. 890 (D. Del. 1957), *aff'd*, 268 F.2d 769 (3d Cir. 1959) 162

Automatic Radio Mfg. Co. v. *Hazeltine Research, Inc.*, 339 U.S. 827 (1950) 77, 163, 164, 165

CASES: PAGE

Baldwin v. *Loew's Inc.*, 312 F.2d 387 (7th Cir. 1963) .. 108

Berenyi v. *Immigration Director*, 385 U.S. 630 (1967) .. 127

Bjornson v. *Alaska S.S. Co.*, 193 F.2d 433 (9th Cir. 1951) 81

Boesch v. *Graff*, 133 U.S. 697 (1890) 128

Cold Metal Process Co. v. *United Eng. & Foundry Co.*, 235 F.2d 224 (3d Cir. 1956) 128

Commissioner v. *Duberstein*, 363 U.S. 278 (1960) 81, 84, 121

Continental Ore Co. v. *Union Carbide Corp.*, 370 U.S. 690 (1962) 84, 106, 123, 140, 142

Curtiss Aeroplane & Mtr. Corp. v. *United Aircraft Eng. Corp.*, 266 Fed. 71 (2d Cir. 1920) 128

Dantzler v. *Dictograph Prods., Inc.*, 309 F.2d 326 (4th Cir. 1962) 80

Domarek v. *Bates Motor Transport Lines, Inc.*, 93 F.2d 522 (7th Cir. 1937) 123

Dura Elec. Lamp Co. v. *Westinghouse Electric Corp.*, 249 F.2d 5 (3d Cir. 1957) 122

Emich Motors Corp. v. *General Motors Corp.*, 229 F.2d 714 (7th Cir. 1956) 101

Geigy Chemical Corp. v. *Allen*, 224 F.2d 110 (5th Cir. 1955) 121

Graver Mfg. Co. v. *Linde Co.*, 336 U.S. 271 (1949), *adhered to on rehearing*, 339 U.S. 605 (1950) 127

Hanover Shoe, Inc. v. *United Shoe Mach. Corp.*, 392 U.S. 481 (1968) 140, 142

Hawthorne v. *Eckerson Co.*, 77 F.2d 844 (2d Cir. 1935) 123

Hazeltine Research, Inc. v. *Admiral Corp.*, 183 F.2d 953 (7th Cir. 1950) 164

Hazeltine Research, Inc. v. *Avco Mfg. Corp.*, 227 F.2d 137 (7th Cir. 1955) 164

Holbrook v. *Institutional Ins. Co. of America*, 369 F.2d 236 (7th Cir. 1966) 82, 83

CASES: PAGE

Interstate Circuit, Inc. v. *United States*, 306 U.S. 208 (1939) 104

Jackson v. *United States*, 353 F.2d 862 (D.C. Cir. 1965) 82, 121

Jaffke v. *Dunham*, 352 U.S. 280 (1957) 117

Lewis v. *Dixie-Portland Flour Mills, Inc.*, 356 F.2d 54 (6th Cir. 1966) 123

McDonald v. *Kropp*, 373 F.2d 549 (6th Cir. 1967) 82

Marconi Wireless Telegraph Co. v. *United States*, 320 U.S. 1 (1943) 118

NLRB v. *Pittsburgh Steamship Co.*, 340 U.S. 498 (1951) 121

Nu Tec, Ltd. v. *Hearst*, 38 Ont. Weekly Notes 2 (1930), *reversed*, 39 Ont. Weekly Notes 110 (1930) 132

Oil Screw Noah's Ark v. *Bentley & Felton Corp.*, 322 F.2d 3 (5th Cir. 1963) 81

Orvis v. *Higgins*, 180 F.2d 537 (2d Cir. 1950) 121

Owens-Illinois Glass Co. v. *American Coastal Lines, Inc.*, 222 F.Supp. 923 (S.D.N.Y. 1963) 117

Phillips Petroleum Co. v. *McCormick*, 211 F.2d 361 (10th Cir. 1954) 97

Plastic Contact Lens Co. v. *Butterfield*, 366 F.2d 338 (9th Cir. 1966) 81, 164

Roos v. *Texas Co.*, 23 F.2d 171 (2d Cir. 1927) 97

Rutkin v. *Reinfeld*, 229 F.2d 248 (2nd Cir. 1956) 108

St. Pierre v. *United States*, 319 U.S. 41 (1943) 160

Sitchon v. *American Export Lines, Inc.*, 113 F.2d 830 (2d Cir. 1940) 122

Smith v. *Dravo Corp.*, 203 F.2d 369 (7th Cir. 1953) 118

Story Parchment Co. v. *Paterson Parchment Paper Co.*, 282 U.S. 555 (1931) 80

Suckow Borax Mines Consol. v. *Borax Consol.*, 185 F.2d 196 (9th Cir. 1950) 108

CASES: PAGE

Tenney v. *A.B. & W. Transit Co.*, 364 F.2d 493 (4th Cir. 1966) 81

Twentieth Century-Fox Film Corp. v. *Winchester Drive-In Theatre*, 351 F.2d 925 (9th Cir. 1965) 122

United States v. *ALCOA*, 148 F.2d 416 (2d Cir. 1945) . 151

United States v. *duPont & Co.*, 353 U.S. 586 (1957) . . 92, 116

United States v. *El Paso Natural Gas Co.*, 376 U.S. 651 (1964) 85

United States v. *General Motors Corp.*, 384 U.S. 127 (1966) 83

United States v. *Minnesota Mining & Mfg. Co.*, 92 F.Supp. 947 (D. Mass. 1950) 151

United States v. *Oregon State Medical Society*, 343 U.S. 326 (1952) 157

United States v. *Singer Mfg. Co.*, 374 U.S. 174 (1963) 81, 83, 85

United States v. *U.S. Gypsum Co.*, 333 U.S. 364 (1948) 81, 84, 85, 92, 117, 121

W.R.B. Corp. v. *Geer*, 313 F.2d 750 (5th Cir. 1963) 81

STATUTES AND RULES:

15 U.S.C. §1 7

15 U.S.C. §2 7

15 U.S.C. §15 79

15 U.S.C. §15b 88

15 U.S.C. §26 .... 76, 155

Fed. R. Civ. P. 13(a) 7

Fed. R. Civ. P. 52(a) 68, 81, 84, 121

Fed. R. Civ. P. 65(d) 15

OTHER AUTHORITIES:

15 Am. Jur. 2d, *Compromise and Settlement* §4 123

Moody's Industrial Manual (1968) 4, 5, 117

IN THE

Supreme Court of the United States

October Term, 1968.

No. 49

ZENITH RADIO CORPORATION, a corporation,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., a corporation, and
HAZELTINE CORPORATION, a corporation,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT HAZELTINE RESEARCH, INC.

FOREWORD

This case is before the Court on certiorari for review of the judgment of the Court of Appeals for the Seventh Circuit reversing treble damage judgments of the trial court in favor of petitioner Zenith Radio Corporation ("Zenith") and against Hazeltine Research, Inc. ("Hazeltine Research") and Hazeltine Corporation, respondents, in the total amount of $34,811,631.[1]

We recognize that the Court has made it clear on a number of occasions that treble damage actions should be viewed as an important means to aid in the enforcement of the public policy embodied in the antitrust laws. But *public policy does not justify, nor will it condone*, attempts to misuse the antitrust laws by treble damage claims knowingly made without basis in fact. Nor is the public interest served by treble damage claims based on *tainted and discredited evidence*, on testimony which the witnesses were later forced to *repudiate and recant*, on testimony by witnesses shown to be *careless with the truth*, or on testimony which is in direct *contradiction of the contemporaneous documents* of the claimant. But that is the case here, and the Court of Appeals was right in unanimously deciding that the huge judgments entered by the trial court against the respondents had to be reversed.

---

[1] The judgment order and the opinion of the Court of Appeals appear in Volume IX of the Printed Appendix (A. 4236-37, 4238-63).

If the judgments of the District Court were reinstated, they would be more than ten times the net worth of Hazeltine Research, and substantially more than the consolidated net worth of Hazeltine Corporation and all of its subsidiaries. Their assets, including valuable domestic color television patents of Hazeltine Research and foreign color television patents of Hazeltine Corporation, would potentially go to Zenith—all as a reward for a damage claim filed as an afterthought and prosecuted without any basis in fact. In short, we have here a case in which "the largest producer of television sets" in the United States (Z. Br. 59)[2] is attempting to misuse the antitrust laws to advance its position in the market.

---

[2] The following abbreviations are used in this brief:

Z. Br.	—Brief of Petitioner, Zenith Radio Corporation
A.	—Citations to the printed Appendix
PX	—Plaintiff's exhibit
DX	—Defendant's exhibit

Throughout this brief where emphasis appears in quotations, it has been supplied by us unless otherwise indicated.

QUESTIONS PRESENTED

Zenith's statement of questions presented (Z. Br. 3-5) has little relationship to the record in this case. Substantially without exception, it assumes facts not shown by the record or ignores facts which are shown, or asserts that the Court of Appeals reached factual or legal conclusions which it did not reach. Accordingly, it is necessary to restate the questions, based on the actual facts presented and the actual rulings of the Court of Appeals.

As concerns Zenith's treble damage counterclaim referred to in Zenith's questions 1, 2 and 4 to 7, the sole question is:

> (1) Whether, considering all the evidence, the Court of Appeals erred in holding, as a matter of fact, that the trial court's finding that Zenith was damaged during the relevant four-year period (June, 1959 - May, 1963) by patent pools in England, Canada and Australia was clearly erroneous.

As to the vacation of paragraph C of the injunction relating to foreign patent pools referred to in Zenith's question 3, the sole question is:

> (2) Whether, considering all the evidence, the Court of Appeals erred in vacating the injunction relating to foreign patent pools on the ground that the record, as a matter of fact, did not show a present threat by any one of the patent pools to Zenith's ability to export to Australia, England or Canada.

As to the matter of alleged misuse of United States patents referred to in Zenith's questions 8 to 10,[3] we submit the issue is moot. However, if not moot the questions would be:

> (3) Whether the Court of Appeals erred in holding

---

[3] Respondent, Hazeltine Corporation, is filing its separate brief dealing with Zenith's question 11.

that the offer made by Hazeltine Research on black and white television patents was not coercive in the light of commercial realities.

(4) Whether the Court of Appeals erred in holding that the offer to license at a royalty measured by total production was not a misuse of patents.

STATEMENT OF THE CASE

The Statement of the Case appearing in Zenith's brief omits or misrepresents many significant relevant facts. Since the issues involved are almost entirely factual, an extensive review of the record is necessary. We begin with a history of the litigation, which we believe essential to an understanding of the issues.

I. HISTORY OF THE LITIGATION

The Parties on Appeal

In view of the charges made by Zenith that the "Hazeltine companies" are among the "largest electronics companies in the world" (Z. Br. 101), engaged in a vast international conspiracy destructive of Zenith's business, an identification of the parties is necessary to place these charges in perspective.

Zenith, a Delaware corporation with its principal place of business in Chicago, Illinois, is engaged in the manufacture and sale of radio and television sets (A. 64). Zenith's consolidated net sales in 1962 were $312,212,334 and its consolidated net earnings after taxes were $19,637,068 (PX 62, A. 2849, 2854). Moody's Industrial Manual at 2216 (1968) indicates that Zenith's 1967 earnings after taxes were over $40,000,000.

Hazeltine Research is an Illinois corporation having its principal place of business in Chicago. It is not a manufacturer but is engaged solely in the business of research and development, ownership and licensing of United States patents, principally in the fields of television and radio (A. 142). It owns no foreign patents (A. 20). In 1964, the most recent year for which figures are in the record or of public record, the net income of Hazeltine Research after taxes was $219,777 and its net worth as shown on its December 31, 1964 balance sheet was $3,184,419 (A. 3007).

Hazeltine Corporation, which owns all of the stock of Hazeltine Research, is a Delaware corporation with principal offices at Little Neck, Long Island, New York.[4] It is engaged primarily in the business of research, development and manufacture of electronic equipment for military and related purposes for the United States Government and its allies (A. 145, DX 1, A. 940-47). It owns foreign patents in the television and radio fields but owns no domestic patents in those fields and does not manufacture or sell radios or television sets (A. 145, DX 1, A. 940-47). In 1964, the consolidated net income after taxes of Hazeltine Corporation and its subsidiaries, including Hazeltine Research, was $1,132,092 (A. 3007), and Hazeltine Corporation's 1967 earnings were $2,044,834 as indicated in Moody's Industrial Manual at 822 (1968). The consolidated net worth of Hazeltine Corporation and its subsidiaries on December 31, 1964, was $21,068,763 (A. 3007), *i.e.,* less than Zenith's current annual income.

The foreign patents of Hazeltine Corporation have been licensed to so-called "patent pools" in England, Canada and Australia,[5] but neither Hazeltine Research nor Hazeltine Corporation has ever been a member of the pools (A. 149-50, 174, 191, 252-53, 344, 350).

---

[4] Hazeltine Research, plaintiff in the patent infringement claim, and Zenith entered into a "Pre-trial Stipulation" which provided, *inter alia,* that: "Plaintiff agrees that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same Company" (A. 55). Thus, Hazeltine Research agreed that in this litigation it would stand good for the acts of its parent.

The Pleadings

The Patent Suit: On November 20, 1959, Hazeltine Research, as sole plaintiff, filed the complaint in this case in the United States District Court for the Northern District of Illinois against Zenith for infringement of its United States Letters Patent No. 2,547,648 relating to an automatic-control system for television apparatus (A. 11-13). On April 7, 1960, Zenith filed its answer alleging invalidity and non-infringement, and further alleging that the patent was unenforceable by reason of patent misuse and unclean hands (A. 14-19).

The patent misuse charge was based solely upon Hazeltine Research's alleged package licensing of its United States patents (Answer, para. 12, A. 16-18). The unclean hands defense asserted that plaintiff Hazeltine Research conspired with foreign patent pools in Canada, Australia, Great Britain and elsewhere which were said to have refused to license or permit the sale of radio and television apparatus imported from the United States under threat of patent litigation against distributors and purchasers of such apparatus, all of which was alleged to constitute a violation of the Sherman Act (Answer, para. 13, A. 18-19). Although Zenith now claims that at the very time of its answer it was losing enormous sales and suffering immense damage because of the refusal of the patent pools to permit imports to England, Canada and Australia, no counterclaim for damages was filed with the answer and none was filed for more than three years thereafter.

---

[5] Throughout this brief we have used the term "patent pool" as a term of convenience to describe placing patents of more than one company under common ownership or control. There is, of course, nothing illegal in patent pools as such, and our use of the term is not an agreement that any of the pools were unlawful.

The Counterclaim: On May 22, 1963, over three years after filing its answer, Zenith, with leave of court, filed its counterclaim for damages against Hazeltine Research charging violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§1, 2) (A. 64-69). To obtain leave to file the counterclaim at such a late date, Zenith filed the sworn statement of Francis Crotty, its vice president and a counsel of record, that the matters "which are the proximate cause of damages alleged and require the relief sought in said counterclaim, *occurred after the filing of the answer herein", i.e. after* April 7, 1960 (A. 63). It made the same representation in its motion for leave to file the counterclaim (A. 62).[6]

The counterclaim re-alleged paragraphs 12 and 13 of the answer as to package licensing of domestic patents and foreign patent pool conspiracies, and also the pendency of the instant patent infringement suit, and allegedly improper licensing offers by Hazeltine Research on its United States television patents subsequent to the filing of Zenith's answer (A. 65-67). However, at the trial Zenith made no claim or proof that these acts involving the U.S. patents had interfered with its foreign commerce. Zenith's counsel specifically stated that they "didn't have anything to do with" the alleged foreign conspiracy (A. 428), and *both* the trial court and the Court of Appeals so found (see pp. 126-28, *infra*).

---

[6] Counsel for Zenith admitted in its motion for leave to file the counterclaim that "said counterclaim is compulsory" (A. 62). Thus, had such a claim existed in 1960 when the answer was filed, it was likewise compulsory and accordingly was required by Fed. R. Civ. P. 13(a) to have been filed with the answer. If it had not been for the sworn representation made to the court when the counterclaim was filed in 1963 that the matters causing damage and requiring relief sought in the counterclaim occurred *after* the filing of the answer, the filing of the counterclaim three years after the answer would not have been permissible under Rule 13(a).

The Antitrust Trial and Findings

In February 1964, trial on the antitrust counterclaim (and the patent misuse defense) was held by the court without a jury.[7] The trial lasted about seven days and thereafter, Zenith filed findings and conclusions which were adopted by the trial court *in toto* (A. 2857-58).

In the course of the trial and in the findings submitted by Zenith to the trial court, Zenith repudiated the representation of its counsel under oath to the trial court that the matters "which are the proximate cause of damages alleged and require the relief sought in said counterclaim, occurred after the filing of the answer herein" (A. 63). Instead, its position as set forth in detail in its findings was that the injury of which it was complaining resulted from the acts of the so-called "patent pools" going back for many years into the 1920's and 1930's.

This was all set forth in Zenith's proposed findings, which were divided under three headings: "The British Patent Pool," Findings XV through XXIV (A. 2899-2903); "The Patent Pool in Canada," Findings XXV through XXXII (A. 2903-06); and "The Australian Pool," Findings XXXIII and XXXIV (A. 2906-07). As to each country, it was asserted that a "pool" had been created by the dominant manufacturing companies in that country for the purpose of licensing the radio and television patents issued in that country. Hazeltine Research was alleged to be a co-conspirator because its parent Hazeltine Corporation, though not a member of any pool, had permitted its patents in each country to be included (by license or sublicense) in the pool, with knowledge of that pool's alleged policy and agreements with respect to imports (Findings XVII, XXV, XXXIV, A. 2900, 2903, 2907; see also Conclusions X, XI, A. 2910-11). It was charged that the Hazeltine Corporation patents had been in pools since 1938, in England (Finding XVI, A. 2900), since 1943, in Canada (Finding XXV, A. 2903), and "for 35 years," in Australia (Finding XXXIV, A. 2907).

---

[7] The patent validity and infringement issues had been tried the previous Fall.

The acts of the patent pools which were said to have caused Zenith's injury were (a) their refusal to grant Zenith a license to import, and (b) their bringing suit or threatening suit against those who imported Zenith products without a license. Zenith claimed that these acts, which were said to have gone on for many years, both blocked its current attempts to import, and also prevented Zenith from previously building up a market in the three countries from which it could have derived profits during the alleged four-year damage period.

As to England, Finding XXI stated:

> "*For years* Zenith made every effort to export home receivers to distributors and dealers in the English market. *On each occasion,* however, the Pool threatened its distributors until they ceased buying Zenith products and no substantial trade outlets could be found which would risk handling the line since the Pool would not license the sale of imported merchandise" (A. 2901).

As to Canada, Finding XXIX stated:

> "For *many years* Zenith attempted to set up distribution for its products in Canada but *in every instance* where a Canadian distributor began to sell Zenith products he was warned by the Pool to stop and return the merchandise or face expensive infringement litigation. To ward off these attacks Zenith attempted to get a license from the Pool, but in every instance it was advised by the Pool manager that importation would not be permitted and, only local manufacture would be licensed" (A. 2905).

As to Australia, the proposed findings contained no statement that Zenith had attempted to obtain a license or that the patent pool had made any threats against Zenith or anyone attempting to import Zenith's sets. However, Finding XXXIV stated, *inter alia,* that "Hazeltine's" Australian patents had been in the Australian pool "for 35 years" subject to a "standard package license," and that:

> "A standard Pool license imposes the restrictions necessary to effectuate the division of territories involved in the over-all arrangements. It requires the licensee to agree not to export or import or sell or offer for sale in Australia any radio or television receiving apparatus not manufactured in Australia" (A. 2907).

The evidence offered by Zenith as to all three countries consisted largely of numerous ancient documents marked as deposition exhibits in a previous case in which Zenith had made substantially the same charges in a counterclaim against RCA, General Electric, and Western Electric.[8] That case was settled in September 1957 (A. 2751). All of this evidence offered by Zenith in the case at bar related to acts which took place prior to the September 1957 settlement, *i.e.,* over five years before the filing of the counterclaim herein and almost three years before the answer was filed.

---

[8] RCA v. The Ranland Corp. and Zenith Radio Corp., Civil Action No. 48 C 1818, N.D. Ill.

Zenith also put in evidence in the case at bar certain written pool agreements and license forms in the respective countries, and agreements between Hazeltine Corporation and its licensees in each of the countries (England: DX 51-71, A. 1194-1401; Canada: DX 118-24, A. 1645-1833; Australia: DX 180-95, A. 2305-2476), ascribing to them interpretations and effects which, as we shall show, were clearly wrong.

Wright, Zenith's president, and Kaplan, its executive vice president, gave some brief, general testimony, stating or implying that Zenith had been kept out of England, Australia and Canada by the pools for many years prior to 1959; that such interference had continued during the 1959-1963 period; and that but for this long standing interference Zenith would in the four-year period have had a share of the Canadian market equal to the share it had built up in the United States; a percentage of the English market equal to one-fourth its U.S. percentage, and a percentage of the Australian market equal to one-tenth its U.S. percentage (A. 457, 461, 465, 528-30; see also, A. 3446). *As we shall show, substantially all of this testimony was discredited and destroyed (in later proceedings in the case) not only by other evidence, including Zenith's own documents, but by the repudiation of their testimony by these same witnesses when its inherent incredibility had been revealed.*

Zenith claimed damages for the entire four-year period preceding the filing of the counterclaim, based on what was later referred to in the proceedings as the "mature market" or "established market" theory (*e.g.*, A. 3033, 3204). Zenith asserted that but for the alleged restrictive practices of the pools going back over many years, it would have been making exports to and sales in England, Canada and Australia for many years and thus by the beginning of the four-year period (June 1, 1959) Zenith would have *built up* an established market for its products in those countries (*e.g.,* A. 457, 465). Thus, it claimed as damages the entire profits it supposedly would have made from such established market in each country during the four-year period, minus sales actually made (A. 3203-04; see also A. 457, 461, 465).

Stevenson, an accounting employee of Zenith, prepared and put in evidence a summary, DX 220 (A. 509-19, 2661), purporting to show for each year or partial year of the four-year period beginning June 1, 1959,[9] its alleged lost sales and lost profits for each country.

On January 25, 1965, the court entered *verbatim* and without opinion Zenith's proposed findings of fact and conclusions of law, changing not so much as a comma. Finding XXXVI stated that "The foreign commerce of Zenith has been drastically curtailed by the patent Pools in England, Canada and Australia" (A. 2908), and that during the "4-year statutory damage period" Zenith's foreign commerce had been damaged in the amount of $6,297,392 as to Canada, $9,248,926 as to England, and $692,555 as to Australia, totaling $16,238,872, which after trebling would have amounted to approximately $48.7 million. As we shall show, the trial court itself later recognized that almost $14 million of this total would have been awarded erroneously, based on testimony of Zenith witnesses characterized by the trial court as not "believable" —the very witnesses on whose testimony Zenith places principal reliance in its brief to this Court.

---

[9] Zenith used the period beginning June 1, 1959, in its computations rather than May 22, the actual beginning of the four-year period preceding the date of the counterclaim. The calendar periods shown were thus the last seven months of 1959, the full years 1960, 1961 and 1962, and the first five months of 1963.

The Motions To Set Aside Findings and The Offers of Proof

The date for entry of judgment was postponed to permit additional counsel retained by Hazeltine Research after entry of the findings to study the record and file motions as appropriate. On March 26, 1965, before entry of judgment, Hazeltine Research filed its motion for withdrawal of the antitrust findings and conclusions and other relief, requesting that the counterclaim be dismissed as not proven, or in the alternative, that there be an opportunity for further discovery and proof (A. 2939-51). Supporting memoranda and offers of proof were also filed (A. 2955-97).

The motion pointed out, *inter alia,* that the theory of damages embodied in the findings and conclusions was different from that pleaded, that the theory embodied in the findings and conclusions had not been proved, and that there were matters and defenses relevant to the new theory which should be before the court, but were not pleaded or raised because not relevant to the counterclaim pleaded.

Hazeltine Research offered to prove, as to England and Australia, that during the period from World War II to June 1959 as to England, and to April 1960 as to Australia, there had been governmental embargoes prohibiting importation of radio and television receivers from dollar countries, so that it was the *acts of the governments,* and *not* the patent pools which were responsible for Zenith's inability to build up a market by June 1959 (A. 2986-90).

As to Canada, Hazeltine Research offered to prove that in the 1957 settlement of the Zenith-RCA case, Zenith had given broad releases covering damages which might thereafter result from past acts of the pool (A. 2957-60). Since Zenith asserted that Hazeltine Research was a co-conspirator with the defendants in that case, those releases covered all claims against Hazeltine Research for future loss of market share and profits occasioned by acts of the Canadian pool taking place prior to the releases. Further as to Canada, Hazeltine Research's offer of proof included excerpts from Zenith's Annual Reports for the years 1957 to 1961, inclusive, which were in direct conflict with the testimony of Zenith witnesses Wright and Kaplan as to a supposed damaging impact by the Canadian pool on Zenith imports into Canada (A. 2990-95).

Proceedings Following the Motions to Set Aside the Findings

Following argument on the motions, the trial judge ruled from the bench on April 1, 1965 (A. 3036-39), as follows:

1. He ruled that there should be hearings on the governmental import restrictions to determine "whether or not radios and television could have been imported into England and . . . [Australia] in commercial quantities prior to the start of the damage period" (A. 3038);

2. He granted leave for Hazeltine Research to file the defenses of release and statute of limitations before entry of judgment (A. 3037);[10]

3. He stated that except for the amount of damages as to England and Australia, he was prepared to enter a final judgment and decree in the form which had been submitted by Zenith (A. 3037-38).

On April 5, 1965, the trial court entered its first judgment as a "Final Judgment And Decree" (A. 3078-80).[11] Under this judgment:

---

[10] The affirmative defenses of release and limitations were filed (A. 3049-53) but the motion of Hazeltine Research to dismiss on these grounds (A. 3048) was denied (A. 3062).

(a) the patent in suit was held invalid and not infringed;

(b) Hazeltine Research and Hazeltine Corporation were enjoined from engaging in certain generally described licensing activities as to domestic patents with respect to Zenith and from engaging in concerted activities with others directly or indirectly restricting Zenith from exporting to foreign markets;

(c) Zenith was granted treble damages in the amount of $19,042,173 ($18,892,173 for the Canadian market and $150,000 for the domestic patent activities) plus costs and attorneys' fees to be fixed by subsequent order; and

(d) jurisdiction was reserved for the further hearings on damages in relation to the Australian and English markets (A. 3078-80).

On April 19, 1965, the court entered an order granting stay of execution of the judgment and approved the form of supersedeas bonds,[12] and separate appeals were taken by Hazeltine Research (A. 3082-83) and Hazeltine Corporation (A. 3084-85).

---

[11] Hazeltine Research objected to entry of this "Final Judgment And Decree" on the grounds that it was fragmentary and premature, and also objected to the scope and wording of the injunctive provisions as not being in conformity with the findings and conclusions and not meeting the requirements of Rule 65(d) of the Federal Rules of Civil Procedure (A. 3054-59). Hazeltine Corporation filed a special appearance objecting to its being named as a party to the judgment (A. 3008).

[12] Since both Hazeltine Research and Hazeltine Corporation were financially unable to furnish normal supersedeas bonds, the court approved a special supersedeas bond trust agreement under which they transferred legal title to all of their patents to The Northern Trust Company, as trustee, and deposited a total of $5 million in government bonds with the trustee. In addition, both corporations were prohibited from declaring any dividends pending the determination of the case.

The Hearings and Ruling on the Governmental Embargoes

Zenith counsel repeatedly and vigorously denied that Zenith's exports were blocked by governmental embargoes in England and Australia which Hazeltine Research had offered to prove (A. 3089-91, 3103, 3181-82) and accordingly the court set the matter down for hearing, providing the parties time to collect evidence and interview witnesses in England and Australia (A. 3089-91; 3113-14).

On August 26, 1965, the court entered an order further defining its oral order of April 1, 1965, stating that if the import restrictions were proved, "the Court will fix a date for a future hearing on the question of market share" and would give time for necessary discovery and depositions in foreign countries in that event (A. 3114).

There was a four-day hearing in October 1965 at which Hazeltine Research offered documentary evidence and testimony, including that of present and former governmental officials from England and Australia, establishing that embargoes barring imports of American-made radio and television sets had been imposed by the governments of England and Australia at the beginning of World War II and continued until June 1959, as to England, and April 1960, as to Australia (A. 3119-3202). At the conclusion of these hearings and oral argument, the trial judge ruled (A. 3202-06) that the existence of English and Australian governmental restrictions had been established and that these restrictions and *not* the patent pools had been the sole reason preventing Zenith from importing radio and television sets into those countries prior to the damage period. The trial judge said:

> "[T]he Court finds that the reasons that completed television and radio sets were not sold in the United Kingdom and Australia prior to the damage period was due to the fact that *they could not pass the iron curtain of government license restrictions* or embargoes . . . (A. 3203).
>
> • • •
>
> "The Court finds that the *embargoes and nothing else* were the cause of keeping completed sets out of the country prior to the damage period" (A. 3205).

Zenith never appealed these findings. *Thus, Zenith's contention* (embodied in its findings, see pp. 8-10, *supra*) *that the "patent pools" had kept Zenith from building up a market share in England and Australia prior to June 1959, was exposed as untrue on the face of the record.*

Contrary to his previously announced intentions (A. 3114), the trial court refused to reopen the matter for general hearings as to market share. Instead, he ruled as follows:

> "It is my opinion, from my recollection of the record, *that the same basis for establishing damages was used in England and Australia as was used in Canada; that is, there would have been an established market but for the pool.*
>
> "It is my impression from the record, . . . that the *figures offered* [*i.e.*, Exhibit 220, A. 2661] as to damages by those who testified regarding them was based upon this prior ability to establish a market which was prevented by the pool.
>
> "I intend to request those witnesses who testified to indicate more clearly than the record does what method was used in determining the share of the market in the two countries involved in this hearing, whether it was on the basis that Zenith could have established a share of the market prior to the damage period, or whether

the figures they used were figures that would be used in regard to a product newly introduced into the country.

"If it is ascertained that damages were figured in regard to these two countries as they were in regard to Canada, where the original premise did not exist, the Court will permit Hazeltine to present proof in rebuttal or present proof to contradict the estimates of damages heretofore given in regard to those two countries" (A. 3204).

The Recall Testimony of The Zenith Witnesses

Wright and Kaplan, Zenith's president and executive vice-president, on whose testimony Zenith's entire damage claim rested, were recalled to testify on November 22, 1965, as to the "basis for establishing damages" (A. 3204) which they had used in England and Australia. They were faced with certain dilemmas.

First, at the original trial they had contended, and led the trial court to believe that for many years the "pools" had kept Zenith out of Canada, England and Australia (A. 3204, 3446),[13] and this contention was shown to be false as to England and Australia by proof of the governmental embargoes.

Second, proof of the embargoes destroyed the theory under which the damage exhibit (DX 220, A. 2661) had been prepared. At the original trial, Wright and Kaplan had claimed that Zenith's market in each country would have been in a direct ratio to Zenith's share of the United States radio and television market (approximately 20 per cent). They said that Zenith's percentage share of the Canadian market would have exactly equaled its United States percentage; its percentage share of the English market would have equaled one-quarter of its United States percentage; and its Australian percentage would have been equal to one-tenth of its United States percentage (see pp. 11-12, *supra*). DX 220 (bound in this brief facing p. 23, *infra*) applied these percentages to each accounting period starting June 1, 1959 (*i.e.*, June-December 1959, 1960, 1961, 1962 and January-May 1963), and purported to show Zenith's alleged rightful market share, alleged lost sales, and alleged lost profits for *each* of the accounting periods including the first. Since it applied the full expected market share in each accounting period including the first, DX 220 was necessarily based on the assumption that the patent pools were responsible for Zenith's failure to have built up to that full expected market share in all countries *prior* to the beginning of the four years. But the finding that the "governmental embargoes" and *not* the patent pools had kept Zenith from building up a market in England and Australia made such an assumption impossible as to those countries.

---

[13] "By Mr. Kayser: [cross-examination of Kaplan on recall]

Q. Now, isn't it a fact, Mr. Kaplan, that Zenith has taken the position from the beginning of this litigation *that for many years it was excluded by patent pools* from importing radio and television sets *into all three countries,* Canada, England and Australia?

The Court: *Well, it has not only taken that position, Counsel, but they persuaded the Court to so find*" (A. 3446).

Faced with these dilemmas, the witnesses on recall repudiated their testimony and Zenith's prior contentions.

First, they both testified, despite their counsel's repeated assertions to the contrary, that they *knew all the time* about the English and Australian embargoes and their effect (Kaplan, A. 3441, 3448-49; Wright, 3490-93).

Second, they testified that their estimates of market share had been based on a *different assumption* in England and Australia from that used for Canada. They testified that in making their estimate of Zenith's expected market share *in Canada* they *had* assumed that, *but for the patent pool,* Zenith would have built up an established market share in Canada *prior* to the start of the damage period; *i.e.,* that but for the "pool" Zenith would have started the damage period with a "full blown organization" and with a market share developed by doing business in Canada over a "great many years" prior thereto (Kaplan, A. 3440, 3465; Wright, A. 3490-91).

However, as to England and Australia, they said, the percentages they had given at the original trial as Zenith's expected market share were based on the assumption of *no prior entry* or build-up and that Zenith would have been "starting from scratch" in those markets on June 1, 1959, the first day of the damage period (Kaplan, A. 3437; Wright, A. 3490). Kaplan explained the variation as follows:

> "Q. What do you mean by starting from scratch, Mr. Kaplan?
>
> A. That we didn't have an established dealer organization or marketing organization in England.
>
> THE COURT: Or Australia?
>
> THE WITNESS: Or Australia.
>
> • • •
>
> Q. Did you make the same assumption as to Canada?
>
> A. No.
>
> • • •
>
> Q. What was your assumption as to Canada?
>
> • • •

THE WITNESS: . . . In Canada, our assumption was that we commenced the period starting June 1, 1959 as if we had had a full blown organization, and had enjoyed the benefits of doing business there for years prior to that date.

* * *

Q. All right. Why did you engage in that assumption in Canada and not in England and in Australia?

A. *Because we knew that in England and in Australia, there were restrictions on the importation of our products.*

Q. Are you referring to the governmental restrictions on the import of completed radio and television sets?

A. Excuse me. I am referring to the governmental restrictions on the availability of exchange, and the unavailability of import quotas.

Q. You kept that in mind both in England and Australia?

A. Yes, sir" (A. 3438-41).

He testified further that *Zenith's counsel had suggested the June 1, 1959,* date, and told him "that there were no restrictions after that date" (A. 3449; see also A. 3441).

The net effect was that these witnesses were now testifying under oath that they had known all along about the existence and effect of the governmental import restrictions, although they had not told the trial court at the trial that they were taking such embargoes into consideration (see, *e.g.,* A. 528-30). Furthermore, in opposing reopening the proofs, Zenith counsel had vigorously denied that governmental embargoes blocked imports into England and Australia[14] and had forced the bringing of witnesses from England and Australia and a four-day hearing to prove the embargoes, which Zenith's witnesses said at the subsequent hearing they had known about all the time and had taken into account in their testimony at the suggestion of counsel (A. 3441, 3449).

In addition, they were still faced with the dilemma that Zenith's Exhibit 220 (A. 2661) purported to show Zenith's market shares, lost sales and lost profits for each accounting period in amounts which on their face would be an impossibility if Zenith started "from scratch" on June 1, 1959. For example, Exhibit 220 asserted that in England, Zenith should have sold 63,210 television sets and made $1,517,357 in profits during the June 1 - December 31, 1959 period, an obvious impossibility unless Zenith had developed a market prior to June 1, 1959 (see A. 3525-26).

Although Exhibit 220 itself and the testimony at the original trial showed that the exhibit had been prepared on exactly the same basis for all three countries, except only for the differences in the presumed percentage market shares (A. 509-19), Wright and Kaplan proceeded to reconstrue Exhibit 220. They testified on recall that it should be *interpreted* in one way as to Canada, and *differently* as

---

[14] During a proceeding relating to the fixing of a trial date for the embargo hearing, counsel for Hazeltine Research explained that his investigation had shown, and he expected to prove, that there was an embargo in England until June 7, 1959, and in Australia into 1960 which blocked the importation of radio and television sets from the United States. The court asked whether there was any contest with respect to the matter, and Zenith counsel answered: "Definitely. *I don't agree with a word that the man said, not one word.* * * * I made some investigations, too. We can prove exactly the opposite of what he said" (A. 3089-91; see also A. 3182).

DX 220

LOST SALES AND LOST PROFITS IN TELEVISION AND RADIO IN CANADA, UNITED KINGDOM AND AUSTRALIA—June 1, 1959 to May 31, 1963

	Market (Units)	Zenith Share of Market (%)	Zenith Share of Market (Units)	Zenith Sales in Market (Units)	Lost Sales in Market (Units)	Zenith Av. Fact. Sell. Pr. to Canada (U.S. $)	Lost Sales in Market (U.S. $)	Profit Applying to Add. Volume (%)	Lost Profit on Lost Sales (U.S. $)
CANADA									
Television									
1959 6/1–12/31	235,900	15.616	36,838	7,343	29,495	148.73	4,386,791	16.14	708,028
60	338,400	17.992	60,885	13,396	47,489	145.68	6,918,198	16.14	1,116,597
61	355,200	17.638	62,650	17,295	45,355	144.16	6,538,377	20.63	1,348,867
62	420,200	17.475	73,430	14,195	59,235	136.80	8,539,318	22.06	1,883,774
63 1/1–5/31	147,000	21.712	31,917	4,766	27,151	128.38	3,485,645	22.08	769,630
	1,496,700		265,720	56,995	208,725		29,868,329		5,826,896
Radio									
1959 6/1–12/31	270,200	12.839	34,691	10,238	24,453	35.24	861,724	16.02	138,048
60	393,600	12.316	48,476	16,935	31,541	28.77	907,435	16.02	145,371
61	296,400	11.332	33,588	18,906	14,682	26.59	390,394	17.48	68,241
62	273,300	10.664	29,145	15,062	14,083	27.12	381,931	19.80	75,622
63 1/1–5/31	89,300	12.937	11,553	4,059	7,494	27.59	206,759	20.90	43,213
	1,322,800		157,453	65,200	92,253		2,748,243		470,495
UNITED KINGDOM									
Television									
1959 6/1–12/31	1,619,100	3.904	63,210	0	63,210	Same	9,401,223	Same	1,517,357
60	1,816,800	4.498	81,720	1	81,719		11,904,824		1,921,439
61	1,508,400	4.410	66,520	21	66,499		9,586,496		1,977,694
62	1,370,400	4.369	59,873	28	59,845		8,186,796		1,806,007
63 1/1–5/31	557,500	5.428	30,261	15	30,246		3,882,981		857,362
	6,872,200		301,584	65	301,519		42,962,320		8,079,859
Radio									
1959 6/1–12/31	748,300	3.210	24,020	1,488	22,532	Same	794,028	Same	127,203
60	1,552,000	3.079	47,786	1,604	46,182		1,328,656		212,851
61	2,429,000	2.833	68,814	1,274	67,540		1,795,889		313,921
62	2,384,000	2.666	63,557	1,319	62,238		1,687,895		334,203
63 1/1–5/31	982,000	3.234	31,758	388	31,370		865,498		180,889
	8,095,300		235,935	6,073	229,862		6,471,966		1,169,067
AUSTRALIA									
Television									
1959 6/1–12/31	239,800	1.562	3,746	2	3,744	Same	556,845	Same	89,875
60	370,300	1.799	6,662	9	6,653		969,209		156,430
61	299,700	1.764	5,287	2	5,285		761,886		157,177
62	284,600	1.748	4,975	1	4,974		680,443		150,106
63 1/1–5/31	117,300	2.171	2,547	0	2,547		326,984		72,198
	1,311,700		23,217	14	23,203		3,295,367		625,786
Radio									
1959 6/1–12/31	138,100	1.284	1,773	1	1,772	Same	62,445	Same	10,004
60	279,800	1.232	3,447	9	3,438		98,911		15,846
61	287,700	1.133	3,260	3	3,257		86,604		15,138
62	284,800	1.066	3,036	12	3,024		82,011		16,238
63 1/1–5/31	129,700	1.294	1,678	23	1,655		45,661		9,543
	1,120,100		13,194	48	13,146		375,632		66,769
							85,721,857		16,238,872

to England and Australia. The net result of many pages of evasive answers (A. 3442-70) was that, although Exhibit 220 had exactly the same format as to all three countries purporting as to each to show lost sales and lost profits for each accounting period (see facing page), it was claimed that as to *Canada* the exhibit involved an accurate presentation of the market share, sales and profits which Zenith could, in fact, have achieved in each accounting period shown in the exhibit (Kaplan, A. 3462, 3465), but that in the case of *England and Australia* the exhibit was not intended to show potential sales and profits at all for any accounting period (Kaplan, A. 3442-70). Rather, it was asserted that as to England and Australia the *four-year totals* were correct, but the figures for *each accounting period* were repudiated, as being merely "accounting computations" (Kaplan, A. 3460-62) used to arrive at the four-year totals. Thus Kaplan testified as to England that "in the four-year period" Zenith could have done the total amount of business shown in the Exhibit 220 (A. 3442), but whenever asked whether Zenith could have sold the amount of sets claimed during *any particular period,* or would have made the profits shown for any particular period, the answer was "I don't know" (A. 3443, 3444, 3467). For example:

> "Q. . . . Is it Zenith's position, or your position, or your conglomerate position that for the last seven months of 1959, Zenith, starting from scratch on June 1, 1959 could have made a profit of $1,517,357 from the sale of television sets, [in England] starting from scratch?
>
> A. *If we took the position that we could sell 63,210 units in that exact seven-month period,* that would be so. *We have not taken that position* except for the purpose of an *accounting computation,* which I say is *better off considered in its entirety.*

> Q. This is an accounting computation in this Exhibit 220; is that it?
>
> A. That's right.
>
> Q. Was your figure in Canada also an accounting computation?
>
> A. No, *that's historical.*
>
> * * *
>
> Q. But these were the figures [DX 220 for England] you presented to the Court; right?
>
> A. For a mathematical computation.
>
> Q. And these were the figures that were totaled in your finding in this case for damages; right?
>
> A. They are in the mathematical computation.
>
> * * *
>
> Q. I asked the question whether in the case of Canada the figures would show a historical amount.
>
> A. I'm not sure that the word 'historical' is the correct word. But Canada was based on a different background, a different set of assumptions, that we were not enjoined from doing business there by anything except the pool, and that we would have been doing business there for a great many years prior to the damage period" (Kaplan, A. 3461-65).

After hearing this testimony, the court ruled from the bench (A. 3524-27), stating:

> "I feel that in regard to both countries [England and Australia], it is unrealistic to believe that starting out from scratch they could have achieved the percentage of the market and the percentage of profits that Exhibit 220 indicates they might receive (A. 3525).
>
> * * *
>
> "The Court has difficulty in believing—and as I understand it, *I'm not bound by the fact that evidence is uncontradicted and undenied; it must be believable in*

the first instance. And the Court is aware of the pride of officers in their corporation, and the belief in their product, but it is unrealistic to the Court for me to believe that Zenith, as a quality item, selling in excess of locally manufactured items, could have attained the profits for Zenith that are indicated by the *guesstimate* which everybody indicates is what Exhibit 220 is" (A. 3525-26).

The changes in testimony present shocking alternatives: either the witnesses were not testifying truthfully when they asserted on recall that they gave their original testimony with full knowledge of the existence and effect of the English and Australian embargoes (which if true they had not revealed to the court at the original trial); or, on the other hand, Zenith's witnesses had knowingly misled the court into believing that the patent pools had kept Zenith out of the two countries, and its counsel had attempted to perpetuate that deception by deliberately misrepresenting the facts when he denied that the embargoes blocked Zenith's imports knowing all along that Zenith's witnesses at his suggestion had testified with that very fact in mind.[15]

The Second Damage Award and Second Judgment

At the conclusion of the additional hearing as to England and Australia, the trial court proceeded to make a revised damage finding without any record support whatever.

He fixed April 1, 1960, as the date Zenith could first have entered the Australian market, and left June 1, 1959, as the start of the damage period for England (A. 3525-26). He then stated that in his opinion Zenith would and should have been satisfied during the first year "with not incurring a loss" and that there could, therefore, be no lost profits or damages in either country for the first year following the lifting of the government import restrictions. For the succeeding years, he arbitrarily selected percentages to be applied to the unbelievable and "unrealistic" figures in the DX 220 "guesstimate," (A. 3526) which Zenith's witnesses had themselves *repudiated.* All of these assumptions were without record support.

---

[15] The foregoing are not the only examples of repudiation of testimony by these witnesses. At the recall hearing they were also forced to admit that their testimony at the original trial about Zenith's purported efforts to enter the English television market during the 1959-1963 period was wholly without basis in fact (see pp. 31-39, *infra*).

At the conclusion of his oral ruling, the court added:

> "The record I want to indicate at this time—there has to be an end of litigation. I don't intend to permit a second chance to do the things that might have been done at the first trial. . . .
>
> "Then, whatever occurs from now on, I hope will occur on the 27th floor of this building [where the Court of Appeals sits] and not on the 21st floor" (A. 3527).

On December 13, 1965, Hazeltine Research made further extensive offers of proof dealing with the question of damages in England and Australia (A. 3550-4129), reminding the trial judge that in August he had ruled he would reopen the proofs for such evidence if the embargoes were established (A. 3540-44).[16] The trial judge's impelling desire to bring the litigation to an end in his court was underlined by the comment that: "This, in my opinion, is something that should have been offered at the original trial" (A. 3541).

---

[16] This evidence was assembled in preparation for the limited retrial on Australia and England (see A. 3089-91; 3113-14). Because the court below had refused to delay entry of the Canadian judgment, Hazeltine Research had no opportunity to offer similar economic evidence for Canada.

The trial judge then entered an Amendment to Finding XXXVI (A. 3537) based on his arbitrary formula (A. 3534-35) and entered a form of judgment submitted by Zenith against Hazeltine Research and Hazeltine Corporation, granting treble damages amounting to $15,919,458 as to England and Australia (A. 3539).

In addition to the fact that there was no record basis for the reduced judgment which was finally entered, the trial judge by his action recognized that Zenith's witnesses had misled him into an error of almost $14 million, for under the original findings the judgment as to England and Australia would have been $29,824,443 (A. 2908).

Zenith took no appeal from the rulings of the court that the government import restrictions found to exist in England and Australia, and nothing else, had kept Zenith out of those countries, or from the ruling of the trial court which struck almost $14,000,000 from the judgment as submitted by Zenith under the original finding.

Accordingly, after the second trial and entry of the second judgment, the judgments against Hazeltine Research and Hazeltine Corporation, which were reviewed by the Court of Appeals, consisted of:

> (1) The judgment of April 5, 1965, in the amount of $19,042,173 which included $18,892,173 for alleged damages as to the Canadian market and $150,000 for alleged damages with respect to Hazeltine Research's domestic patent activities (A. 3078-80); and
>
> (2) The judgment of December 13, 1965, in the amount of $15,919,458 for alleged damages with respect to the English and Australian markets (A. 3539);

all of which totalled $34,961,631.

The Appeal

On appeal, Hazeltine Research raised a number of issues, attacking the treble damage judgments, the injunctive decree, and the trial court's holding on the domestic patent questions.[17] The appeals were exhaustively briefed by Hazeltine Research and Zenith, the briefs totaling over 450 pages, and there was oral argument involving an entire court day, pursuant to order of the Court of Appeals.

On December 13, 1967, the Court of Appeals entered its judgment order (A. 4236-37). By that order the judgments against Hazeltine Corporation were vacated in their entirety for want of jurisdiction over its person. As to Hazeltine Research, the judgment on Zenith's counterclaim in the amount of $34,811,631 was reversed, and the injunction based on its alleged antitrust violations with respect to foreign patents was stricken. The District Court judgment as to invalidity of Hazeltine Research's patent in suit was affirmed, as was the judgment for $150,000 with respect to licensing offers under Hazeltine Research's domestic patents, but the injunction with respect to patent misuse by Hazeltine Research was modified.

In its opinion (A. 4238-63), the Court of Appeals held "that Zenith failed to sustain the burden of proving the essential fact of damage in the relevant period" (*i.e.*, June 1959 - May 1963), and that although there was "some slight evidence" of the fact of damage as to Canada, the court concluded that the trial court's finding of the fact of damage was "clearly erroneous" as to all three countries. It stated that accordingly "we need pass on no other contention, therefore, in reversing the judgment on the counterclaim" (A. 4254). Contrary to Zenith's implications, the Court of Appeals did not rule on the legality or illegality of the "pools," or on any other question. Thus, the sole issue presented to this Court as to the treble damage judgment is whether the Court of Appeals erred in concluding that on the entire record, as a matter of fact, the trial court's finding that Zenith was damaged during the relevant four-year period by patent pools in England, Canada and Australia was clearly erroneous.

---

[17] In addition, on the ground of lack of jurisdiction, Hazeltine Corporation filed motions attacking the entry of the two judgments as to it, which motions were by order of the Court of Appeals taken with the rest of the case.

II. THE FACTS AS TO ENGLAND

Zenith's statement as to England omits substantially all the relevant facts. We will, therefore, summarize the record with respect to each aspect of Zenith's claim as to England, considering both the evidence at the original trial and the later revelations of fact brought out at the subsequent hearings.

A. The Claim That the Pool Kept Zenith Out of England "For Years" Prior to June 1, 1959

As we pointed out above (pp. 8-9, *supra*), Zenith asserted that the British pool refused to issue patent licenses on imported sets, and that "[f]or years" Zenith tried to export to England but on "each occasion" when Zenith attempted to export, the pool "threatened its distributors until they ceased buying Zenith products" (Finding XXI, A. 2901), so that through such suits and threats of suit, the pool had prevented Zenith from building up its English market for radio and television sets prior to June 1, 1959.

The trial judge himself destroyed this contention when he later held that it was the "iron curtain" of the British governmental embargo *"and nothing else"* which kept

Zenith from exporting radio and television sets to England from World War II until June 8, 1959 (pp. 16-17, *supra*). Moreover, an examination of Zenith's evidence *even at the original trial* shows that it did not support the original findings.

As to alleged refusals to license, Zenith put in evidence some letters relating to the refusals of the British patent pool to license Zenith radio receivers for sale in England (DX 102-08, A. 1518-44), but all that correspondence was *dated in the 1930's*, and there was no such correspondence since World War II. Even in this Court Zenith pursues the same device which it used successfully in the trial court, but unsuccessfully in the Court of Appeals, and that is to refer to ancient documents as though they constitute recent expressions of pool policy, without revealing their ancient date. For example, on pages 33-34 of its brief Zenith quotes from a letter from R. A. Rothermel, Ltd. to Zenith as indicating current practices, failing to point out that the letter is *dated December 7, 1934* (DX 101A, A. 1517). And at page 34 it quotes at length, again without date, from a letter from J. Toubkin, a Zenith distributor, to Zenith, which letter is *dated September 13, 1937* (DX 108, A. 1542).

There was no testimony that Zenith had requested a license, the only testimony being by Wright who said he had a conversation in 1955 with an officer of a member of the British pool, who assertedly told Wright he did not believe the pool's policy with respect to imports would be modified (A. 462-63). Wright did not testify that he requested a license, and in fact the British governmental embargo was still in effect, so that if Wright had any such meeting, any discussion of a license would have been academic.

As to suits or threats of suit, Zenith put in no documentary evidence of any suit ever filed against a Zenith distributor at any time. Again, the only documentary evidence was correspondence tending to show that an English distributor had cancelled orders and had apparently stopped handling Zenith products because of pool threats back *in the 1930's* (DX 104, A. 1530, 1532; see also DX 102, A. 1518-22). The post-World War II correspondence between Zenith and its English distributor (DX 112, A. 1559-93), and with potential distributors or persons interested in Zenith's products in England (DX 113, A. 1594-1606) makes no mention of the British patent pool. Wright admitted on cross-examination, that he knew of no suits or threats of suit *since World War II,* and that there had been none against the English distributor Ramsay, appointed in 1959, who imported and sold Zenith radios (A. 473-74).

In spite of these facts, Zenith repeats the assertion that "throughout the years Zenith made many efforts to enter the English market" and that "[o]n each occasion, however, the Pool threatened its distributors so they ceased buying Zenith products" (Z. Br. 33). But Zenith knows full well that the embargo blocked its imports into England from the beginning of World War II until June 8, 1959, and that the distributor which it appointed after the lifting of the embargo has not been threatened and has not ceased buying Zenith's products.

B. The Claim That Zenith Tried to Market Television Sets During 1959-1963

The second aspect of Zenith's claim had to do with Zenith's alleged attempts to export television sets to the English market during the 1959-1963 period, after Ramsay had been appointed as distributor. A detailed analysis of the evidence at the trial, and of the disclosures of the truth at the later hearings, including the repudiation by the Zenith witnesses of their earlier testimony, provides another illustration of the complete lack of credibility of the Zenith witnesses.

1. The Differences in Broadcast Systems

The record shows there were a number of significant differences between television receiving sets equipped to receive television signals in the United States, and television sets equipped for reception in England (Kaplan, A. 541). One of the most significant was in the number of horizontal "scanning lines" which appear in each "frame" or television picture. The United States has used and now uses a system which involves 525 lines (A. 3169-70). A number of other countries outside of North America use a 625-line system, sometimes referred to as the "CCIR" system (A. 3476, 3500, 3169). England, however, beginning with its first television transmission in the 1930's has used a 405-line system (A. 541, 3476). While later one of the three channels broadcasting in England began using the 625-line system, only the 405-line system was in regular use in England during the June 1, 1959 to May 31, 1963 period (A. 3475-76). During that period it was publicly known that the British government was giving consideration to the adoption of the 625-line system (DX 112, A. 1561-63) and late in the period (September, 1962) limited *test* transmissions were started (DX 112, A. 1590-91).

Television sets equipped for one system will not receive a picture or "signal" transmitted over another system, without changes. As Wright admitted, a set equipped for the United States' system would not receive 405-line transmission (A. 464) and unless equipped to receive 405-line transmission was not marketable in the United Kingdom.

At the original trial the Zenith witnesses minimized these differences and testified that conversion of an American set to receive the British television signal was a simple matter which had been done by the distributor "in his back room" with the aid of kits sent to him by Zenith. They also flatly stated that the distributor had attempted to market such sets. The facts brought out later showed that this was not true.

2. The Testimony at the Original Trial

At the original trial, Wright testified as follows on direct examination:

> "Q. All right. Have you made any effort at all to go into the English market with television?
>
> A. *Well, we have only sent a very few television receivers to Mr. Ramsay, which he has attempted to market.* But we have not made any effort on television because we were informed that the pool license then in effect, and the one currently in effect, would not permit that, and there was no possibility of getting such a license.
>
> THE COURT: Since you were a manufacturer here, you couldn't sell any, could you?
>
> THE WITNESS: Yes, sir.
>
> THE COURT: Would it function?
>
> THE WITNESS: Well, yes, sir. Sometimes *we have to make minor* modifications in these sets. They use a *slightly* different system in England.
>
> THE COURT: That's what I mean.
>
> THE WITNESS: But these are modifications that aren't too difficult, ordinarily. It is just like having another model on the line. I believe in England they have a different number of lines, and they use AM

sound instead of FM sound, but these are modifications. We have the same situation—

THE COURT: I mean one off your line here wouldn't function in England.

THE WITNESS: No, sir.

BY MR. McCONNELL:

Q. You could set up a line that would?

A. *Oh, Mr. Ramsay in the back room of his little establishment could make the simple repairs and alterations that are necessary to make this work. We supply him with parts and kits to do that at times*" (A. 464).

Also at the original trial, Kaplan testified as follows on direct examination:

"Q. Well, let me ask you this, haven't you *actually* made sets at Zenith *that can be used in the British market?*

A. Yes, we have.

Q. I mean television and radios.

A. That is right" (A. 531).

On cross-examination at the original trial, Kaplan said:

"Q. Now, when we talk about Britain and Australia, Britain particularly, you do know that Britain has five different standards of transmission, five hundred and twenty-five lines.

A. No, they are 405 (A. 541).

* * *

Q. . . . Now, it is my information that if you are going to scan at 525 lines or 405 lines, you need a different kind of scanning system. It has different numbers in it.

A. Mr. Dodds, I would like to answer by saying that this difference *is so profound* that *our distributor* changes them in his back room" (A. 545).

Taken at face value, this testimony creates the impression that:

1) Zenith had sent television sets equipped to receive the 405-line English transmission to the English distributor Ramsay for sale;

2) Conversion of an American 525-line set to receive the British 405-line transmission was "simple," could be done in the distributor's "back room" and Zenith had sent Ramsay "parts and kits" to make such conversion;

3) Ramsay had made conversions of the American sets to receive the 405-line transmission; and

4) Ramsay had attempted to sell some sets equipped to receive 405-line transmission.

Thereafter the court entered Finding XXII (A. 2901-02), submitted by Zenith, which stated in part that the patent pool had kept Zenith out of England although:

> ". . . *Zenith has successfully engineered sets for the British market and has shipped some to its English distributor* with the hope that the injunctive relief sought in this suit would be granted and business on a commercial scale could be conducted" (A. 2902).

That the court was influenced by the above testimony is also shown by the following excerpt during the recall cross-examination of Kaplan:

> "Q. . . . You also told the Court that your English distributor had converted sets for use in England in its back room, did you not?
>
> A. That was my impression, that is right.

> Q. That was your testimony, was it not?
>
> THE COURT: I mean, somebody said that because I remember that. I don't know who it was, but I know that I heard it" (A. 3472).

The statement of Zenith's counsel at the original trial shows that this impression was intentionally created:

> "MR. McCONNELL: Wait a minute. If you are going to summarize the testimony, *it was also testified by Mr. Kaplan that all the changes that were necessary to be made, the distributor could make in a back room with a screwdriver*" (A. 758).

It must be assumed that Zenith's counsel thought his statement quoted above was a fair summary of the testimony of the Zenith witnesses and indeed it had impressed the trial judge as such (A. 3034, 3472). The Court of Appeals also referred to this testimony concerning ease of conversion "with a screwdriver," but despite its counsel's summary Zenith has the temerity to chide the Court of Appeals because it referred to the "screwdriver" story (Z. Br. 86).

3. The Facts Disclosed on Recall

Subsequent to the entry of the original findings, and before Wright and Kaplan were recalled, Hazeltine Research took the deposition of the English distributor Ramsay in London. This testimony disclosed that: (1) Zenith had *never sent* any 405-line sets to Ramsay (A. 3790, 3818); (2) Zenith had *never sent* Ramsay any parts, kits or instructions for converting a 525-line set to the 405-line system (A. 3790); (3) during the 1959-1963 period, Ramsay had *never converted* a single Zenith set to the 405-line system (A. 3788-90), and the only set he had ever converted to the 405-line system was for his own personal use and was converted after the Wright and Kaplan testimony[18] (A. 3790); (4) Ramsay had *never attempted to market* a 405-line set in England (A. 3790, 3818); and (5) the only conversion material which had been sent over had to do with the conversion of Zenith's 525-line set to the 625-line standard (A. 3788-90).

Zenith was, of course, aware of this discovery when Wright and Kaplan were later recalled to testify in November, 1965.[19] On recall Wright admitted that:

(a) *No television set sent by Zenith to its English distributor was equipped to receive the then-standard British 405-line transmission.*

> "Q. Well, referring back to your testimony about 'We have only sent a very few television receivers to Mr. Ramsay, which he has attempted to market,' *did Zenith in fact send* to Mr. Ramsay during the period from June 1, 1959, to June 1, 1963, any television sets which were usable to receive commercial broadcasts in England?
>
> A. We sent many television receivers during that period of time. *I do not believe* that those receivers had been converted to receive the 405-line transmissions that were the *principal* commercial broadcasts in England at that time" (Wright recall, A. 3498).

(b) *All sets shipped were ordinary television receivers made to United States standards.*

---

[18] Wright and Kaplan testified on February 19, 1964. At his deposition on September 15, 1965 (A. 3759), Ramsay said that the conversion of the set for his personal use had taken place "a few months ago," he believed in 1965 or 1964 (A. 3790).

[19] This discovery was ultimately included in Hazeltine Research's offer of proof, but in any event it was known to the Zenith witnesses when they were recalled.

"Q. What do you believe they were equipped to receive?

A. Well, they were—it is my understanding *now*, and I did not read the shipping tickets or the orders on these sets to know what was done with them, that these were *ordinary television receivers* which are made to our *U.S. standards*" (Wright recall, A. 3498-99).

(c) *When he testified originally that sets had been sent by Zenith to Ramsay which Ramsay had attempted to market, Wright, in fact, did not know whether those sets were equipped to receive the English television signal.*

"Q. In other words, *when you testified* back in—you told the Court back in February of 1964 that Zenith had sent a few television sets to Mr. Ramsay which he had attempted to market, *you did not know* whether or not those sets were equipped to receive English television?

A. *No, sir, I did not*" (Wright recall, A. 3499).

(d) *Wright, in fact, did not know whether the English distributor had attempted to market Zenith television sets.*

"Q. Well, *when you told the Court* that Mr. Ramsay had attempted to market these sets, *did you know* whether or not he did in fact attempt to market them?

* * *

A. *I didn't know* specifically what he had done" (Wright recall, A. 3500).

(e) *No kits or parts were sent to Ramsay for conversion of television sets to receive 405-line transmission.*

"A. We were testifying about a lot of different things, but when I testified specifically about our sending him parts and kits to modify sets, *the only thing I knew of* and what I meant at the time were the things

> necessary to add long wave to *radio sets*" (Wright recall, A. 3503).

Wright's attempt to escape from his previous testimony by referring to "long wave to *radio sets*" casts further doubt on his credibility because his original testimony (set out at pp. 33-34, *supra*) expressly concerned television and he was later forced to admit that it did (A. 3503).

(f) *Wright, in fact, did not know whether or not Ramsay had converted a Zenith set to the British 405-line standard.*

> "Q. Well, do you know, sir, did Mr. Ramsay ever, during this four-year damage period, ever convert a Zenith set to the 405 line standard?
>
> A. *I don't* of my own personal knowledge *know* whether he did or not" (Wright recall, A. 3503).

Kaplan similarily retreated from his previous unequivocal statements. As to whether Zenith ever sent Ramsay "any television sets which had been converted to receive the 405-line transmission," Kaplan's answer was "I don't know" (A. 3472). In 1964 he had testified unequivocally that Zenith "actually made sets . . . that can be used in the British market" (A. 531). Further, as to whether Zenith had ever sent Ramsay any kits or instructions for the conversion of the American 525-line sets to the English 405-line system, his answer was "I don't know," and as to whether Ramsay had ever converted sets to the 405-line system, he stated "it was my *impression* that they had" (A. 3475). This is the same man who testified unequivocally at the original trial that Ramsay had converted the sets "in his back room" (A. 545; see pp. 34-35, *supra*).

It was primarily on the basis of the testimony of these witnesses that the trial court had entered Zenith's finding calling for an award of damages of $3,079,859, before trebling, as to English television (Finding XXXVI, A. 2908).

C. The Real Reason Zenith Did Not Try To Market Television Sets in England

The record shows that the reason Zenith made no attempt to ship television sets to England during the 1959-1963 period was that it was *waiting for a change* in the British transmission standards from the 405-line system to the 625-line CCIR system. Zenith does not deny this fact. Rather, it attempts to hide behind the untrue assertion that this evidence is found only in an offer of proof (Z. Br. 86). On the contrary, proof of this fact is contained in Zenith's own records, put in evidence as part of Zenith's Bulk Exhibit No. 112 (A. 1559-93).

The question of a change from the unique English 405-line system to the 625-line system had been pending, and was expected by the trade for several years (see A. 1562-63). It was announced in mid-1962 that a new television channel of the BBC would employ 625-line transmission instead of the 405-line transmission then used by the BBC and the commercial channel (A. 1562-63, 1571, 1591).[20] The first test transmissions of the 625-line signals began in late summer or early fall of 1962 (see A. 1561-63, 1591), but regular broadcasting did not commence until after the close of the four-year period (Kaplan, A. 3471, 3475-76).[21]

---

[20] Zenith had exported 625-line sets or knock-down kits for local assembly to other countries including some on the continent of Europe (A. 3484-85).

[21] Contrary to expectations (A. 1566-67), even after the 625-line system came into regular use on the one British channel (BBC 2), there has been no market in England for a television set which would receive only 625-line transmission because BBC 2 broadcasts only for limited periods during the day and does not reach all of

That Zenith was delaying entry into English television because it was awaiting the change in the transmission system is shown by a series of letters and telegrams in 1961 and 1962 between Zenith and Ramsay, the English distributor of Zenith products (DX 112, A. 1559-93). This correspondence does not mention the then-standard 405-line British television system. Instead, it shows that Zenith and the English distributor were *waiting for* England's expected change to the CCIR 625-line system. One of these letters very near the end of the period stated that fact unequivocally:

> "Nobody knows yet when the regular [625-line] transmissions will start and *until such time naturally we cannot start marketing* . . ." (Letter from Ramsay to Zenith, dated November 8, 1962, A. 1593).

Following are some pertinent excerpts from the correspondence:

(a) *Zenith to Ramsay (September 14, 1961):*

> "The information in this letter and also the enclosed material will tend to deal with your *possibly* introducing Zenith television in the United Kingdom, in the very near future. Although this information is of a very technical nature, I believe that some of the enclosed materials will be of some help to you.
>
> • • •
>
> Enclosed also is a copy of our latest 'CCIR' Conversion instruction data.
>
> • • •
>
> Once you have entered the television market, we shall be glad to convert a television receiver, or two, to operate on *your local CCIR standards*" (A. 1559-60).

England. The two principal channels continue to use the 405-line system. To be salable, the sets must receive either 405- or both 405- and 625-line transmissions (Offer of Proof, A. 3597-98, 3604-05).

(b) *Ramsay to Zenith (March 28, 1962):*

"*Experimental transmissions* are definitely starting in July but the actual public transmissions will be known only after the report is published" (A. 1563).

(c) *Ramsay to Zenith (April 19, 1962):*

"We have now received from the B.B.C. a summary of proposed specification for the 625 line system in England and you will notice that it is intended to operate in the U.H.F. band.

• • •

I am sending you two copies of the proposed specification as well as two technical memorandums of the B.B.C. which may be of interest to your technical people but *what we are primarily concerned with is how difficult and complicated will be the conversion to your instruments to the proposed system*" (A. 1571).

(d) *Ramsay to Zenith (August 1, 1962):*

"This 625 business is a very great thing in England and I think we have a *fair* chance and as far as colour is concerned we have a very good chance.

• • •

Going back to the subject of T.V. sets it is quite clear now that if we want to do a real business of it *we must have a reasonably priced 19"*. As you know we took a sample of the K2108 and I would like to have your opinion whether it would be advisable to have a lower model to get the price down without making the conversion too difficult" (A. 1567).

(e) *Zenith to Ramsay (August 3, 1962):*

"As you know, we are very anxious to receive your report regarding the performance of the black and white television receivers you now have on hand. This is the first and most important point, since we cannot proceed to convert *any* of the present television receivers until we have a definite answer from you as to performance, channel overlapping, etc." (A. 1568-69).

(f) *Ramsay to Zenith (August 3, 1962):*

"I confirm my cable of today in which I asked you to go ahead with the conversions on the T.V. sets at the cost quoted.

* * *

In any case I believe that *very shortly you will be sending us conversion instructions to the British CCIR* [625-line] *system which we have not received yet*" (A. 1587-88).

(g) *Zenith to Ramsay (August 7, 1962):*

"Regarding the conversion instructions for the British CCIR [625-line] system, these are presently in the works, but *are not* expected to become *available for several weeks,* at least until some definite answers are known to us" (A. 1579).

(h) *Ramsay to Zenith (September 28, 1962):*

"I am taking this opportunity to mention that the B.B.C. have *now started the tests* but they are only putting on a test card and sound and generally I would say that the sets are well converted although some of them may need very slight adjustment which is understandable" (A. 1591).

(i) *Ramsay to Zenith (November 8, 1962):*

"*Nobody knows yet, when the regular transmissions will start and until such time naturally we cannot start marketing* but we are getting acquainted more and more with the T.V. business and the servicing side. In fact, we are getting all the test instruments from you next week" (A. 1593).

By not even mentioning the patent pools, this correspondence reflects a total lack of concern for the pool or any possible threat or suit by it. It also shows that as late as November 1962, Zenith and the English distributor were waiting for the adoption of the CCIR 625-line system in England and that they had no intention of entering the

British television market except with the 625-line set for which there was as yet no market (A. 4257).

D. The Claim That Zenith Could Not Obtain A License to Import

Zenith could have obtained a license from the British pool to import into England at any time during the four-year period, if it had wanted one.

As pointed out above, Zenith had *not requested a license* from the British pool since before World War II (A. 1518-45) and the only subsequent inquiry made of anyone who could be said to be connected with the pool was in 1955 when the embargo was still in effect (Wright, A. 461-63). Thus, Zenith's contention that the pool would not grant it a license to import during the four-year period rests solely on Zenith's interpretation of the pool agreement and the pool license forms themselves (embodied in the Zenith prepared Finding XVI, A. 2900). However, *changes* had been made in both these documents *after* Zenith's last inquiry to permit licenses without a prohibition against imports.

The pool agreement. The "pool agreement" is the contract among the members of the pool setting up the pool. That agreement for the period from January 1, 1953 to December 31, 1957 (DX 58, A. 1248-70), contained the following provision:

> "7. Unless otherwise agreed no licenses are hereby agreed to be granted to import Radio Apparatus[22] into the United Kingdom . . ." (A. 1258).

---

[22] "Radio Apparatus" was defined to include television sets (A. 1256).

It also contained the following provision relating to the granting of licenses by individual pool members:

> "18. No licenses shall be granted by any party hereto for Radio Apparatus in the British Isles in respect of the period from 1st January 1953 to 31st December 1957 except in accordance with the decisions of the Committee or in the cases mentioned in Clause 11 (c) (i) (ii) and Recital No. . . ." (A. 1267).

By letter dated September 23, 1957, this agreement was extended to June 30, 1960 (DX 59, A. 1271). However, in the next extension, from July 1, 1960 to June 30, 1964, (DX 60, A. 1272-76), paragraph 7 was expressly *deleted* (A. 1273) and paragraph 18 was amended to add "or for imports of such apparatus" (A. 1275). Thus, in pertinent part, paragraph 18 was changed to read:

> "No licenses shall be granted by any party hereto for Radio Apparatus in the British Isles . . . except . . . for imports of such apparatus."

The net result was that effective July 1, 1960, the agreement not to license imports and the provision prohibiting individual members from granting a license for imports were eliminated, and the individual members expressly retained the right to grant licenses under their respective patents "for imports of such apparatus."

The license form. The "license form" is the printed form used by the pool in issuing licenses. Form A7-T (DX 68, A. 1356-67), having a term of January 1, 1953 through December 31, 1957, contained the following provision:

> "4. The Licensee agrees with the Grantors as follows:
>
> (a) Not without the previous written consent of the Grantors to sell within the said territory any Television Receiver which has not been manufac-

tured in the territory for which this License is granted" (A. 1360).

However, the form expiring December 31, 1957 is the *last* license form to contain that provision. In the next printed license form (DX 71, A. 1391-1401) having a term of July 1, 1960 through June 30, 1964, *this paragraph was eliminated* (A. 1395). Moreover, plaintiff's Offer of Proof shows that this paragraph had previously been deleted from existing licenses and the change of policy announced by letter *effective January 1, 1958* (Offer of Proof, Dale-Harris, A. 3701-06).[23]

Zenith's finding (XVI, A. 2900) adopted by the trial court completely ignores these changes in the agreement and license, which are shown in Zenith's own exhibits (DX 60, A. 1272; DX 71, A. 1391).

E. The Claim That Zenith Suffered Injury As To Radio

The record shows Zenith admitted that after 1957, its imports of radios into England were in no way interfered with by the pool, and the trial court so found (Finding XXII, A. 2901-02). Nevertheless, after the original trial the trial court adopted Zenith's finding that Zenith's radio business in England had been "damaged" by the pool during the four-year period in the amount of $1,169,067 (Finding XXXVI, A. 2908).[24] We shall discuss the factual situation as concerns radios in the Argument (pp. 93-95, *infra*) when we discuss Zenith's attempt to justify the recovery.

---

[23] The stipulation on the settlement of the RCA case was entered September 27, 1957 (PX 43, A. 2751), and the letters to pool licensees eliminating paragraph 4(a) from their licenses were mailed in November, 1957 (Offer of Proof, Dale-Harris, A. 3701-06). While there was no change in the renewal of the pool agreement dated September 23, 1957 (just before the RCA settlement), the very next renewal covering the period commencing July 1, 1960, contained the changes mentioned above (DX 60, A. 1272-76).

[24] Later reduced to $745,102 (A. 3537).

III. THE FACTS AS TO CANADA

A. The RCA-Zenith Settlement

Any consideration of the facts concerning Zenith's claim as to Canada should start with the settlement in September 1957, of Zenith's case against RCA, General Electric, and Western Electric. That settlement is the first of several important cutoff dates applying to Zenith's claim, for in that settlement Zenith was fully compensated for everything which went before, and expressly released not only past damages but all damages which might result in the future from acts which occurred *prior* to the settlement (A. 3051-52).

The RCA-Zenith case, entitled *RCA* v. *The Rauland Corp. and Zenith Radio Corp.*,[25] involved Zenith and its subsidiary Rauland on the one hand and RCA, General Electric, and Western Electric on the other. RCA had sued for patent infringement and Zenith had counterclaimed, charging patent infringement and also charging RCA and the other two companies, brought in as cross-defendants, with involvement in an alleged conspiracy by reason of participation in patent pools in Canada, England, and Australia, and asserting the right to recover treble the damages allegedly caused by acts performed pursuant to the alleged conspiracy (PX 38-43, A. 2697-2752).

In September 1957, that litigation was settled without trial. Contrary to Zenith's assertions (Z. Br. 75), no

---

[25] Civil Action No. 48 C 1818 in the District Court for the Northern District of Illinois, Eastern Division.

"admissions" were made by anyone (PX 48, A. 2783). It was agreed that general releases would be exchanged, that Zenith would receive a cash payment spread over a period of ten years, that the pending infringement claims of Zenith and RCA against each other would be arbitrated, and that RCA, General Electric, and Western Electric would grant world-wide royalty-free licenses to Zenith under their radio and television patents (excluding color) (PX 48, A. 2783).

Pursuant to this agreement, Zenith executed general releases under date of September 27, 1957 (the form appears as a part of Hazeltine Research's pleading, A. 3051-3052). By the explicit terms of the release, Zenith released:

> ". . . all manner of action and actions, cause and causes of action . . . damages [etc.] . . . which . . . Zenith . . . ever had, now has or . . . *hereafter can, shall or may have* for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents . . ." (A. 3051-52).

Zenith has taken the position in the present litigation that Hazeltine Research, and its parent for whose acts Hazeltine Research agreed to stand liable, were co-conspirators in the alleged conspiracy or conspiracies charged in the RCA-Zenith case, and that the same conspiracies are the basis of its claim in the present case.[26] Accordingly, Hazeltine Research and its parent are entitled to the benefit of the general releases given by Zenith to their alleged joint tort-feasors in the *RCA* case and Zenith's counsel so stated (A. 3035). Contrary to Zenith's brief (Z. Br. 75), Hazeltine Research has never agreed, rather denies, that it or its parent has in fact been a co-conspirator as contended by Zenith. We have pointed out only that since Zenith's claim is based on the charge of co-conspiracy the releases necessarily apply to all alleged co-conspirators or alleged joint tort-feasors, a principle of law which Zenith concedes (see p. 122, *infra*).

---

[26] See Finding XIX (A. 2901), Finding XXII (A. 2901-02) and Finding XXX (A. 2905-06), which specifically mention the RCA litigation, and see Zenith's pre-trial and post-trial briefs on the antitrust issues: "The *same* conspiracy was the subject of a private treble damage action in this court brought in the form of a counterclaim filed by Zenith in a patent infringement action, similar to this suit, RCA v. Zenith and Rauland Corporation, 48 C 1818" (A. 3070, pp. 42-43 of post-trial brief). See McConnell: opening statement (A. 121-25); during trial (A. 159-60); and closing argument (A. 831-34, 839-40, 849-50, 857, 886); see also Z. Br. 7-9.

In addition to providing an important cutoff date for purposes of considering the evidence, the settlement is significant because of the world-wide licenses granted as a part of the settlement by RCA, General Electric, and Western Electric to Zenith (see Finding XXII, A. 2901-02). Zenith considered that these licenses and other direct licenses which had been granted to Zenith made its products "fully licensed to the extent that they employ any patents administered by Canadian Radio Patents Limited," the Canadian pool (DX 138, A. 1879).

B. The Evidence After the RCA-Zenith Settlement

Almost all the evidence which Zenith relies on as allegedly showing damage to its Canadian exports, relates to events which occurred prior to the September 27, 1957 releases given in the *RCA* case settlement.

Indeed, at least 72 of the exhibits which Zenith introduced in this case had been marked as deposition exhibits in the *RCA* case and many were dated in the 1930's, 1940's, and even some in the 1920's.[27]

Wright testified that commencing as early as 1927, the patent pool refused to grant Zenith a license permitting importation (A. 451-52); a letter dated November 30, 1936, from the pool informing Zenith that it was not the policy to license imports was introduced (DX 148, A. 2005), and also an inquiry by Zenith to the pool and a reply in July 1953, advising that a license for imports would not be given (DX 150, A. 2012-14). However, the record contained no request by Zenith for a license after 1953.

To show interference by suits or threats of suits against Zenith dealers or distributors in Canada, Zenith introduced into evidence correspondence dated in 1951 (DX 155-58, A. 2022-28), and in 1954 (DX 161-62, A. 2033-46; see also Wright, A. 452-53). But there is *no* similar evidence of any threat against a Zenith distributor or dealer *after* the Zenith-RCA 1957 settlement.

The record shows that following the September 1957 settlement and the receipt by Zenith of the world-wide licenses from the parties to the *RCA* case, Zenith made plans to enter, and successfully entered, the Canadian market. It extensively advertised and promoted its products in Canada (A. 4259, 3459; DX 218, A. 2642; see also pp. 54, 111-12, *infra*). As a result, in the four-year period involved here (June 1, 1959 through May 31, 1963), Zenith exported to Canada and sold more than 65,000 radios and nearly 60,000 television sets in Canada (A. 4258; DX 220, A. 2661), and its share of the Canadian market steadily increased to a high of about 5 per cent of the market (DX 218, A. 2632) before the Canadian government increased the tariff and changed the exchange ratio which "presented serious obstacles" to Zenith's Canadian business (PX 62, A. 2850). Despite the extensive importation, advertising and sales, no suit was brought or threat made against any Canadian distributor or dealer of Zenith products in that four-year period.

---

[27] See, *e.g.*, DX 111, A. 1557; DX 117, A. 1637; DX 162A, dated May 22, 1928, A. 2047; DX 162B, A. 2050; DX 162C, A. 2052; DX 162D, A. 2058, 2062-63, 2065 (5 different exhibits from the *RCA* case); DX 163, A. 2068; DX 164, A. 2070; DX 170, A. 2101; Defendant's Bulk Exhibit 179, A. 2152, 2157, 2159, 2161-63, 2165, 2167, 2170, 2174, 2175, 2177, 2180, 2182-83, 2185-86, 2188, 2190-91, 2193, 2196-97, 2202, 2204, 2207, 2210, 2212, 2215, 2217, 2221, 2224, 2226, 2229, 2233, 2235, 2244, 2246, 2249, 2251, 2253, 2256, 2261, 2268, 2270, 2275, 2277, 2279, 2283, 2287, 2291, 2293, 2295, 2298, 2301 (54 separate *RCA* case exhibits); DX 213, A. 2513; DX 214, A. 2519. See also DX 122, A. 1691; DX 135, A. 1870; and DX 157, A. 2027, which appear to have been deposition exhibits in that case.

There were only two incidents involving Zenith and the Canadian pool which occurred after the September 27, 1957 settlement, and, as we point out in more detail in the argument (see pp. 101-05, *infra*), neither had any effect whatsoever on Zenith's sales in Canada, which continued to increase. The first involved an advertisement of the Canadian pool which appeared in the August 1958 issue of a Canadian trade publication known as the "Trade Builder." The advertisement advised "importers, vendors, purchasers or users of radio and television receivers" that the pool would hold them liable for patent infringement if they were importing, selling or using unlicensed infringing receivers (DX 138, A. 1880).

Wright promptly sent a telegram to the pool demanding that such "advertisement"[28] be terminated and stating that it was detrimental to Zenith and that Zenith's "products are *fully licensed* to the extent that they employ any patents administered by Canadian Radio Patents Limited" (DX 138, A. 1879). He followed up with a letter again demanding that such advertisements be terminated and threatening suit if they were not (DX 138, A. 1882). Zenith says that the protest had no effect (Z. Br. 21), but the fact is that the pool, apparently acceding to Zenith's demand, never repeated such an advertisement. The repeated inference in Zenith's brief that these advertisements *continued* after August 1958 (Z. Br. 12, 14, 64) is not supported by anything in the record. Wright testified that this advertisement was typical of the advertisements which had regularly appeared "prior to 1957" (A. 452), but neither he nor anyone else ever testified that such an advertisement *appeared again* after his sharp protest to the pool.

---

[28] Zenith is critical of the Court of Appeals' use of the term "advertisement" (Z. Br. 64), but that is the term used by Wright in both his testimony (A. 450, 452, 471-72) and his telegram (A. 1879) and letter (A. 1882) to the pool.

Wright testified that following publication of this advertisement some of Zenith's Canadian dealers and distributors expressed concern (A. 472), but no such dealer or distributor was called to testify. Indeed, not one was even identified[29] and there is no documentary evidence indicating any concern by any Zenith dealer or distributor as a result of this 1958 advertisement. In any event, Wright did not testify that any dealer or distributor stopped handling Zenith's products, reduced its purchases of Zenith's products, or took any action as a result of this 1958 advertisement, and Wright acknowledged that there was no expression of concern after 1958 (A. 471-72).

The only other incident involving Zenith and the Canadian pool subsequent to the RCA settlement started in July 1958 with a meeting between executives of Zenith's Canadian subsidiary and McConnell of the Canadian pool, at which the pool sought information concerning Zenith's marketing plans in Canada and a diagram of its set (DX

---

[29] The letter to the Motorola dealer, referred to by Zenith (Z. Br. 17), which is strong evidence Zenith dealers were *not* threatened, is discussed herein, pp. 108-09, *infra*.

151-52, A. 2014-18), and culminated in a meeting on May 12, 1959, in Chicago between McConnell of the pool and Crotty and Curtis, two of Zenith's lawyers (A. 392). According to Crotty, McConnell stated that Zenith was infringing certain patents administered by the pool, that Zenith would need a license, and that the license would have to be for manufacture in Canada (A. 410). Crotty requested McConnell to send him a pool license form which McConnell did on June 5, 1959 (DX 154, A. 2021), but there was no further contact between them and no evidence of any action at any time by the pool, despite Zenith's growing business. Zenith had thus successfully adhered to its position that it was licensed to the extent that its products "employ any patents administered by Canadian Radio Patents Limited" (A. 1879), and the pool made no threats and took no action.

There is a further fact which shows that Zenith was not injured by either of these matters occurring after the RCA settlement. Zenith's answer in this case was filed on April 7, 1960 (A. 14-19), long after the last of those matters had occurred. Yet, it filed no claim for damages with its answer. Three years later, when it sought leave to file a counterclaim to obtain damages, Zenith said both in its motion for leave to file the counterclaim (A. 62) and in the affidavit of Crotty (A. 63), its vice president and counsel of record and one of the very people involved in the May 12, 1959 meeting, that the acts which were the proximate cause of the damage claimed in the counterclaim occurred after the filing of the answer:

> "2. That matters alleged in paragraphs 6-9 of defendant's counterclaim, to which this affidavit is attached, and *which are the proximate cause of damages alleged* and require the relief sought in said counterclaim, *occurred after the filing of the answer herein*" (Crotty Affidavit, A. 63).

This statement, made by Zenith for the purpose of inducing the court to grant leave for it to file a counterclaim three years after the answer was filed, not only establishes April 7, 1960 (the date of the answer) as a cutoff date as a matter of pleading, but also constitutes a judicial admission that the above referred to matters occurring subsequent to the RCA release but prior to the answer were *not* a proximate cause of damage to Zenith.

Having no evidence of any suits or threats against its Canadian distributors or dealers, or other actual interference with its imports into Canada after its answer or any time during the four-year period for which it ultimately claimed damages in this case, Zenith vaguely claimed that its alleged injury took the form of "clouds" and "uncertainties" which were the "residual effect" of the past acts of the pool (A. 457-58, 490). While Wright claimed that this "residual effect" influenced Zenith's "thinking" about what it was willing to spend on advertising (A. 490), the record showed that Zenith utilized a variety of advertising media in Canada, spending between 11 per cent and 13 per cent of its Canadian sales on advertising in 1960 (DX 218, A. 2642; A. 4259), which Kaplan said was what would be expected for a company "getting started into business in Canada" (A. 3459).

The only other alleged "residual effect" asserted by Wright was an alleged "feeling of uncertainty" among Zenith distributors and dealers (A. 490) and difficulty in getting distributors (A. 458). Yet, Zenith was unable to offer any correspondence or other documentary evidence of any dealer or distributor either refusing to handle its products or expressing concern for the patent pool within the 1959-1963 period, although such evidence for the period *prior to* the *RCA* case settlement was offered by Zenith (*e.g.*, DX 155-58, A. 2022-28, dated in 1951). In addition, as noted above, Wright could recall no expression of concern since 1958, and no dealer or distributor who cut down his purchases or refused to handle Zenith's products after the 1957 settlement testified or was even identified by Zenith (see p. 52, *supra*).

C. The Zenith Annual Reports 1957-1962

In connection with its motion to set aside the Antitrust Findings and Conclusions before entry of judgment, Hazeltine Research made an Offer of Proof of portions of Zenith's Annual Reports for the years 1957, 1958, 1959, 1960, and 1961 (A. 2961, 2990-95). The 1962 Report was already in evidence (PX 62, A. 725, 2847-54). The relevant pages of the other reports are reproduced in an appendix to this brief (Appendix A, A-1 to A-22) with brackets around the excerpts included in the offer of proof. Although the trial court refused to consider them, and the Court of Appeals apparently did not rely on them, we believe this Court may and should give consideration to these reports (see pp. 117-18, *infra*). These contemporaneous reports to Zenith's shareholders and the public disclose a practice by Zenith of reporting at length about the problems and adverse factors faced by Zenith in various foreign markets as well as reporting the progress or lack of progress being made in those markets. They are particularly relevant here because they give a history of Zenith's operations in Canada since 1957 which directly contradicts the testimony of Zenith's executives.

1957 Annual Report

> "[Y]our Company is inaugurating an aggressive program to set up distribution of radio and television receivers in Canada, where *it had previously been excluded* from participation in the market *through the operation of a cartel.* Experienced and capable personnel have been employed and arrangements are being made for larger facilities in Toronto and Montreal.

• • •

> "It is anticipated that independent distributors will be appointed to handle the distribution of Zenith products in the other areas of Canada" (A. 2990-91).

This report, dated March 7, 1958 (Appendix A, A-5), thus takes note of the September 1957 settlement, and there was *never again* any reference to the Canadian "cartel" in any subsequent report, although they are full of reports on problems in various markets, including Canada.

1958 Annual Report

> "Zenith Radio Corporation of Canada, previously engaged exclusively in the distribution of hearing aids in Canada, during the year *initiated the distribution of radio and television receivers* in the provinces of Ontario and Quebec. As a result, sales volume increased substantially, but the *expense of moving the operation* from Windsor to Toronto (with a new branch operation in Montreal) and the heavy starting costs in connection with the new distribution activities unfavorably affected earnings.
>
> * * *
>
> "The *substantial increase in sales* noted above accomplished in a difficult export market does not include a significant volume of purchases of television and radio receivers and phonograph units by Canadian distributors during 1958. During the year, an aggressive sales and operating organization was added to the personnel of the Company's subsidiary, Zenith Radio Corporation of Canada, to initiate the distribution of radio and television receivers to dealers in the provinces of Ontario and Quebec. *Four outstanding and experienced independent distributors* were appointed to handle the distribution of Zenith products in western Canada. Although there has long been a strong consumer demand for Zenith products in Canada, much work had to be done to establish a dealer organization and the major benefits of Canadian distribution will begin to be felt in 1959" (A. 2991).

This report was published March 6, 1959, six months after the *Trade Builder* notice, but instead of reflecting any difficulties concerning distributors, the report is to the contrary saying that "outstanding and experienced" distributors were appointed and that a "significant volume" of purchases had been made by Canadian distributors. On the other hand, there is no hesitancy to report other problems of high "moving" and "starting" costs.

1959 Annual Report

> "Zenith Radio Corporation of Canada made substantial progress during the year, but a continuation of the *heavy costs* in connection with the new radio and television receiver distribution activities, unfavorably affected earnings.
>
> • • •
>
> "The Company's Canadian subsidiary, Zenith Radio Corporation of Canada Ltd., showed marked progress in the sales of all products. The long established Hearing Aid Division continued its steady growth in sales and profits. The Radio and Television Division, established in 1958, *doubled its sales* over the first year and in the closing months *achieved a substantial gain* in its percentage of industry sales despite a decline in over-all Canadian industry sales of television receivers. This gratifying performance emphasizes the *wide acceptance* of Zenith products by the Canadian trade and public.
>
> *"Zenith now has a strong distribution network at both the wholesale and retail level throughout Canada, supported by powerful national and local advertising.*
>
> "Our Canadian management is confident that Zenith sales and profits together with its percentage of industry sales will continue to rise throughout 1960" (A. 2992-93).

Other portions of this report (A. 2992-93) make reference to "severe foreign competition from Japan" as a deterrent to exports and to "unfavorable trading factors and adverse conditions which exist in many major world markets," but it refers to no patent pool or alleged cartel in Canada. Instead, it reflects "marked progress" and "wide acceptance" of Zenith's products. Indeed, this report, published March 8, 1960, after the last contact between Zenith and the pool and after the instant suit was filed, directly contradicts Wright's vague statements about dealer and distributor uncertainties, difficulties in getting distributors, and curtailment of advertising.

1960 Annual Report

> "Zenith Radio Corporation of Canada, Ltd., in 1960 *successfully countered the downward industry sales trend* (which began in Canada in 1955) and made *important gains* in the sale of Zenith television and radio receivers.
>
> "The Company's Canadian management is confident that 1961 will see further increases in sales and profits and a rise in its share of industry sales, despite the possibility that total Canadian industry sales may continue to decline. *Plans are being readied for a manufacturing operation* in Canada *when* the Canadian subsidiary's annual unit *sales volume permits*" (A. 2994).

In other portions (A. 2993-94), this report recites a long list of difficulties in Zenith's exports, including "loss of Cuban sales," the problem of "new or more rigid import restrictions" in a number of foreign markets, "[c]ompetition from both U.S. and foreign manufacturers [which] was extremely severe in all major overseas markets," and the "advantage of low labor rates" enjoyed by foreign competitors. Yet, as concerns Zenith's Canadian experience, the report not only failed to mention any "clouds and difficulties," but, to the contrary, reflected that its Canadian operation had "successfully countered the downward industry sales trend" and "made important gains."

1961 Annual Report

> "Profits of Zenith Radio Corporation of Canada Ltd. were *adversely affected* during the year by the *Canadian government's action* which put the Canadian dollar at a discount, rather than the premium position it had previously held, in relation to the U.S. dollar.
>
> * * *
>
> "Zenith Radio Corporation of Canada Ltd. made *gratifying progress* during the year, selling *more television receivers than in the two previous years combined. Consistent national advertising* and the *enthusiasm of distributors and dealers* have created a growing demand for Zenith products in the Canadian market" (A. 2994-95).

Thus, in its 1961 report Zenith *did* report difficulties with its Canadian operation, but it attributed them to exchange control problems "which put the Canadian dollar at a discount," and not to any activities of the Canadian patent pool or any residual "clouds" or "uncertainties" (A. 457-58, 490). The reference to "[c]onsistent national advertising" and the "enthusiasm of distributors and dealers" exposes Wright's testimony as being sheer fiction.

In 1964, when on the witness stand and being pressed for some support for Zenith's claim that it was injured by the Canadian pool Wright vaguely claimed that Zenith held back on advertising and had trouble getting good distributors. Yet this 1961 Report and the previous reports show that in the actual period involved and before any counterclaim had been filed, Wright was telling Zenith's shareholders and the public just the opposite.

1962 Annual Report

> "Profits of Zenith Radio Corporation of Canada Ltd. were again affected as a result of *curbs instituted by the Canadian Government.* Its action in establishing an exchange ratio which further discounted the Canadian dollar in relation to the U.S. dollar and the imposition of additional tariffs presented serious obstacles to the Canadian operation" (PX 62, A. 2850).

The 1962 Report again shows difficulties from curbs instituted by the Canadian government, but *not one word* concerning the Canadian pool.

These reports thus show the success Zenith was having in Canada, adversely affected only by government actions.

D. The Domestic Patent Suit and Licensing Negotations

Tacitly recognizing that it has no evidence that the Canadian pool actually did anything to interfere with its imports into Canada in the June 1, 1959 to May 31, 1963 period, and that its claims of residual effects are not supported by the record, Zenith reverts to the assertion (Z. Br. 22-24, 71-74) that the instant domestic patent suit brought by Hazeltine Research against Zenith and the licensing negotiations in connection with U.S. patents were overt acts pursuant to the alleged Canadian conspiracy which caused Zenith to curtail its Canadian activities.

Zenith's assertion that the instant suit was brought to carry out an alleged threat of the Canadian pool is based solely on the fact that Zenith's meeting with the Canadian pool was in May 1959 and this suit was brought by Hazeltine Research in November 1959. There is no testimony or other evidence connecting these wholly unrelated events. The instant suit arose out of a completely different series of negotiations (see pp. 129-30, *infra*), and no witness testified that the pendency of the instant suit or the other domestic licensing negotiations had *any* effect on Zenith's Canadian sales or activities. Zenith itself at the trial made no attempt to prove any causal connection between these events, specifically indicating (A. 428) that the testimony concerning the U.S. patent licensing negotiations was "offered under the misuse theory" and "didn't have anything to do with the overall conspiracy," and both courts below agreed. All of the facts relating to this issue are more fully discussed in the Argument at pp. 124-33, *infra*.

E. The Amount of Damages—Zenith's Exhibit 220

In our brief to the Court of Appeals, we pointed out a number of errors in the findings and holding of the trial court in relation to the amount of damages. However, in light of its ruling on the issue of the fact of damage, the Court of Appeals felt it unnecessary to go into or decide any of the number of issues raised relating to the amount of damage. Since the only matters before this Court are those which were decided by the Court of Appeals, we will not discuss in detail either the evidence on the amount of damage or the errors made by the trial court with respect to that issue. We will, however, discuss briefly some of the evidence and Zenith's theory with respect to the amount of damage in order to enable us, in the Argument, (1) to answer Zenith's contention that in effect this evidence on the amount of damage was evidence of the fact of damage, and (2) to show additional contradictions and inconsistencies in the testimony of Wright and Kaplan which have a bearing on the credibility of their testimony as to the entire case.

Wright and Kaplan testified that but for the activities of the Canadian pool going back many years, Zenith would have had a share of the Canadian radio and television markets equal to its U.S. market share (Wright, A. 457, 3490; Kaplan, A. 3440, 3465). Accordingly, Zenith's damage exhibit, DX 220 (A. 2661), was prepared on the assumption that Zenith's share of the Canadian market starting June 1, 1959, and for the entire four-year period thereafter, would be exactly the same as its percentage share of the U.S. market.

Zenith's market share in the United States on June 1, 1959 had been built up over many years in the market. Zenith had been engaged in the manufacture and sale of radio receivers in the United States since at least the 1920's (A. 3468), and had entered the American television field in 1948 in its incipiency (A. 3495). Neither Wright nor Kaplan claimed that Zenith entering the market as it did in late 1958 could have expected to achieve the claimed 20 per cent share of the Canadian market by June 1, 1959. Instead, both testified that their assumption on Canada was that by June 1, 1959, but for the activities of the pool going back for many years, Zenith would have built up its market share and would have had a "full blown organization" (Kaplan, A. 3440, 3465; Wright, A. 3490-91).

Thus, as is more fully explained in the Argument, this testimony was based on the assumption that Zenith was entitled to recover for acts of the patent pool not only prior to its answer (April 7, 1960) and prior to the four-year statutory period, but also prior to the September 27, 1957 release. This testimony was not evidence that the pool had done anything after June 1, 1959 to interfere with Zenith's imports into Canada (see pp. 121-22, *infra*).

IV. THE FACTS AS TO AUSTRALIA

In its Statement (Z. Br. 26-28, 35-36), Zenith makes no claim that the Australian pool refused to grant it a license or brought infringement suits, made threats or otherwise took any action against Zenith or any distributor. Instead, it asserts only that the record shows that the pool had a policy against licensing imports and that this claimed policy kept Zenith from distributing its products in Australia (Z.Br. 36). The record evidence at the trial and during the additional hearings show that these assertions have no foundation.

A. The Original Trial

The testimony offered by Zenith as to Australia was indeed sparse. In fact, its evidence consisted almost entirely of a number of documents (DX 180-215, A. 2305-2590). These included license agreements and blank license forms together with correspondence between Zenith and persons or companies in Australia (DX 215, A. 2523-90), but none of this correspondence was between Zenith and the Australian pool, and none of the documents evidenced any attempt by Zenith to get a license, or a refusal by the pool to give one to Zenith *at any time.*

Kaplan testified as to the market share Zenith claims it should have had in Australia[30] but he did not assert either that Zenith had tried to export or that the Australian pool had taken any action or made any threats against Zenith.

Wright, Zenith's president, did not even testify concerning Australia on direct examination. On cross-examination he said he could not recall any request for a license made by Zenith to the pool within the last twenty years (A. 476).[31] He further testified that while he had talked with some people in Australia who told him they thought no license permitting imports was available, he had never talked with anybody connected with the pool concerning the availability of such a license (A. 476). When asked the date of the last time any Zenith dealer in Australia had been threatened by the pool, Wright stated that Zenith had not had a dealer there since the late 1920's or early 1930's (A. 474) and referred to being "thrown out of Australia in either the late twenties or the early thirties by the pool activity" (A. 475-76).

---

[30] Kaplan testified that he believed Zenith could have achieved in Australia a share of the market equal to 10% of the share of the market it achieved in the United States (A. 529-30).

[31] Similarly, so far as Kaplan knew, no request for a license was ever made by Zenith to the pool (A. 540-41).

There is no finding by the trial court that Zenith had ever been denied a license, had ever attempted to obtain a license, or had ever been threatened or sued, nor is there any finding that the pool in any way affected Zenith's ability to get distributors in Australia. As the Court of Appeals pointed out, the trial court entered no finding "with regard to *how* the alleged conspiracy prevented sales by Zenith in Australia" (A. 4256).

Following the trial, Zenith proposed and the trial court adopted a finding (Finding XXXIV, A. 2907) that rights under "Hazeltine's inventions have been granted the Australian Pool . . . for 35 years and have been the subject of the *only form of license agreement issued by the Pool* . . . [which] requires the licensee to *agree not to export or import* or sell or offer for sale in Australia any radio or television receiving apparatus not manufactured in Australia" (A. 2907). Contrary to this finding prepared by Zenith, the record shows that the pool issued *two* kinds of licenses: one for manufacturers, each new edition of which bore an identification number; and one for local assemblers, each new edition of which bore the same number followed by the letter "B" (A. 804-06). For example, the manufacturer's ("whole-numbered") license for the period July 1, 1953 through June 30, 1958 was labeled "License No. 6" (DX 193, A. 2438, 2441), and the local assembler's license for the same period was labeled "License No. 6B" (DX 194, A. 2452, 2456).

The "B" license forms (*i.e.*, for local assemblers) contain the following provision, obviously the one referred to in Finding XXXIV quoted from above:

> "4. The Licensee agrees with the Grantor as follows:
>
> * * *
>
> (b) Not without the previous written consent of the Grantor to sell or hire or offer or expose for sale or hire in the territory for which this License is granted any broadcast sound receiving apparatus or television receiving apparatus or radiogramophones which have not been manufactured in the territory for which this License is granted" (DX 194, A. 2452, 2457; DX 195, A. 2464, 2469; see also DX 191, A. 2412, 2416 which varies only slightly).

This same provision was in the whole-numbered licenses (*i.e.*, for manufacturers) *prior to 1951* (*e.g.*, DX 188, A. 2381, 2386; DX 189, A. 2395, 2400) but it was *deleted* from the whole-numbered licenses beginning with License No. 5 (DX 192, A. 2425), which had a term *commencing January 1, 1951* (A. 2428, 2430). See also License No. 6, which had a term of July 1, 1953 through June 30, 1958 (DX 193, A. 2438, 2441, 2443).

Zenith's statement of facts (Z. Br. 35-36) conveniently ignores these latter two licenses, both of which Zenith itself introduced into evidence, and asserts that the only proof that the import restriction was removed was contained in License No. 7, in effect beginning January 1, 1961, which

Hazeltine Research offered to prove in order to corroborate the absence of restriction and to complete the sequence of licenses available to Zenith during the four-year period (Offer of Proof, A. 2970-71, 2977). Proof that the restriction had been removed does not rest on this offer of proof because Licenses No. 5 and No. 6 put in evidence by Zenith had already established the removal of the import restriction from the manufacturer's license form. These licenses unequivocally contradict the trial court's findings in at least two respects: first, the pool did not grant only one form of license; and second, beginning in 1951, the pool did issue a license form without the requirement that the licensee agree not to import.

B. The Later Hearings

As pointed out above, Hazeltine Research proved at the "embargo hearing" that an Australian Government embargo had barred the importation of American-made radio and television sets into Australia from World War II until 1960. The trial court found that these governmental restrictions, "and nothing else," prevented Zenith from importing radio and television sets into Australia until April 1960 (A. 3205). Thus, Zenith's claim that the patent pool had kept it from importing for thirty-five years was exposed as untrue.

Moreover, the Australian Government statistics offered in evidence by Zenith itself during the embargo hearing (in attempting to disprove the embargo) affirmatively demonstrated that the Australian pool did not prevent the import of radio and television receivers into Australia. These statistics showed that during 1960 to 1964, substantial numbers of radio and television sets were imported into Australia.[32]

Thus, the record shows that the governmental embargo kept Zenith out of Australia until April 1960; that a patent license permitting imports was available since 1951; that Zenith has not been sufficiently interested to ask for a license; and that others have been importing into Australia.

The Court of Appeals correctly summarized the record when it concluded that: "We see no necessity of discussing at great length Zenith's failure to prove the *fact* of damage with respect to the Australian market, since there is *no* testimony that could reasonably support a finding of *fact* of damage there" (A. 4256).

V. THE PATENT MISUSE DEFENSE

Since the "Patent Misuse Defense" in relation to U.S. patents (Z. Br. 37-42) is totally unrelated to the main issues before this Court and has been rendered moot by the decision of the Court of Appeals below, we will not make a separate statement of the facts concerning this defense and the Court of Appeals' modification of the injunction dealing with domestic patents, but will instead review the pertinent facts in our patent misuse argument (pp. 159-68, *infra*).

---

[32] Zenith Cross-claimant Exhibit 4 (A. 3390, 3399-3406) shows the following Japanese imports of radio and television receivers into Australia:

	Radios		Television	
Fiscal Year	# Sets	£(A)	# Sets	£(A)
1960-61	40,706	203,735	*	*
1961-62	77,278	328,698	*	*
1962-63	157,191	564,695	413	12,498
1963-64	210,526	765,334	2,773	80,177

* Included in "Other Foreign Countries."

SUMMARY OF ARGUMENT

1. THE TREBLE DAMAGE COUNTERCLAIM
(Argument, Sections I through VII)

The Court of Appeals reversed the treble damage judgments as to Hazeltine Research solely on the basis of Zenith's failure to prove the essential "fact of damage" or impact on Zenith's business by the patent pools in any country during the relevant four-year period, June 1, 1959 to May 31, 1963. Following the requirements of Rule 52(a) of the Federal Rules of Civil Procedure, the Court of Appeals carefully reviewed the entire record and concluded that the findings of fact proposed by Zenith and mechanically adopted by the trial court, without opinion, were clearly erroneous as to all three countries. While stating that there was "some slight evidence" of the fact of damage as to Canada, upon reviewing all the evidence, the Court of Appeals came to a "firm conviction that the trial court made a mistake in inferring from the entire testimony that the essential element of the *fact* of damage had been established by Zenith." Thus the Court of Appeals applied the very test which this Court has repeatedly held should be applied to trial court findings in cases without a jury.

Zenith's principal contention is that the Court of Appeals erred because, Zenith says, the findings were supported by the testimony of Wright and Kaplan. Aside from the fact that the Wright and Kaplan testimony would not justify the decision of the trial court even if taken at face value, that testimony was repeatedly impeached, discredited and shown to be unworthy of belief. In substantial part it was repudiated by the witnesses themselves (*e.g.*, the testimony that the English distributor had attempted to market 405-line television sets which he had converted in his back room with kits supplied by Zenith, pp. 37-39, *supra*). Part of the testimony was later found by the trial judge to be not believable and unrealistic (*e.g.,* their recall testimony on market share estimates as to England and Australia claimed by the witnesses to be based on an assumption of "starting from scratch" in the markets on June 1, 1959, pp. 24-25, *supra*); other parts were shown to be internally inconsistent and inherently improbable (*e.g.,* their claim that DX 220, which had exactly the same format as to all three countries, should be interpreted one way as to Canada and another way as to England and Australia, although no such distinction had been indicated at the trial, pp. 22-24, *supra*); still other parts were in direct contradiction of Zenith's own contemporaneous documentary evidence in the record (*e.g.,* the claim that the patent pool was stopping Zenith from marketing television sets in England when the contemporaneous correspondence between Zenith and its distributor showed they were waiting for a change in the British broadcast standards, pp. 40-44, *supra*); and, finally, parts were shown to involve an unconscionable contradiction of previous positions taken by Zenith in this case (*e.g.,* the claim that they had taken into account the fact that governmental embargoes blocked Zenith imports into England and Australia when their counsel had said that there was no truth to any such embargo claim and that he could prove exactly the opposite, pp. 19-22, *supra*).

Zenith pretends that these revelations never occurred for it relies upon the discredited testimony of Wright and Kaplan, brazenly asserting that it stands undenied and unimpeached.

Moreover, the record as to each country *affirmatively shows* that Zenith was not damaged during any relevant period, and that its claim that the pools had an impact on its business during any relevant period is sheer fiction. Zenith filed no counterclaim with its answer which was filed on April 7, 1960. When it obtained lea to file its counterclaim in May 1963, it made a sworn representation to the court that the acts which were the proximate cause of the damages sought occurred *after* the filing of its answer, *i.e.*, after April 7, 1960. But the record can be searched in vain for any acts of any patent pool after April 7, 1960 which in any way involved Zenith or its distributors or dealers or in any way affected Zenith's export business. Indeed, the record is barren of any evidence of any act of the patent pools in any of the three countries within the four-year period preceding the filing of the counterclaim, or at any time subsequent to the September 1957 general releases, which had any impact on Zenith's exports to any of the three countries.

England (Section II, pp. 85-98, *infra*). The trial court found that a governmental embargo "and nothing else" blocked Zenith's imports into England from the beginning of World War II until June 1959. In June 1959, Zenith appointed an English distributor, Ramsay, who has since imported Zenith radios without a pool license and has been neither sued, threatened nor even contacted by the British pool. Zenith has never sought a license from the British pool at any time since the lifting of the governmental embargo. In fact, there were changes in the pool agreement and license forms removing the prohibition against imports as the result of which Zenith could have obtained a license from the pool at any time after the lifting of the government embargo, had it desired one.

As to radio, there was an express finding by the trial court that since the 1957 RCA-Zenith settlement there were no pool patents which could be asserted against radios and that Zenith has been able to export and has freely exported radios to England.

As to television, Zenith's executives Wright and Kaplan had testified unequivocally at the trial that the English distributor had attempted to sell some television sets which had either been manufactured by Zenith to receive the unique 405-line English television system or converted to the English system by the distributor with conversion kits furnished by Zenith, but that Zenith had been held back from larger sales by reason of concern for the patent pool. A finding proposed by Zenith and entered by the trial judge was based on this testimony. On recall, these witnesses recanted their testimony (after it had been exposed as untrue by the discovery deposition of the English distributor) and admitted Zenith had never sent any 405-line sets to its English distributor, and to their knowledge he had never converted any sets to the 405-line system or attempted to market any such sets. The truth was, as shown by the contemporaneous correspondence between Zenith and its English distributor, that Zenith was delaying marketing of sets because it was awaiting the expected change in the English television standards to the 625-line system, which did not take place during the period involved here. That this was the real reason for the delay was epitomized by the following statement in a late 1962 report from Zenith's English distributor: "Nobody knows yet when the regular [625-line] transmissions will start and *until such time naturally we cannot start marketing*" (pp. 41-43, *supra*).

Canada (Section III, pp. 98-124, *infra*). Zenith asserts it could not export radio and television sets to Canada in the absence of a pool license without exposing its products to confiscation and its dealers and distributors to patent infringement suits. This assertion is shown to be untrue by uncontradicted evidence, which reveals that in the period involved in this case, Zenith has exported and sold tens of thousands of radio and television sets in Canada without a pool license, none of its products has been confiscated, and none of its dealers or distributors has been sued for patent infringement or even threatened with suit by the pool.

The only incidents which occurred after the 1957 settlement of the RCA-Zenith case were the 1958 publication of a pool advertisement in a Canadian trade publication, and conversations between the pool and Zenith in late 1958 and early 1959. While Zenith's president Wright claimed that dealers expressed concern following the 1958 publication, no such dealer testified or was even identified, no documentary evidence was offered and Wright acknowledged he could recall no expressions of concern after 1958. Similarly there is nothing in the record to show that the 1958-1959 discussions had any impact on Zenith's business. Rather, the record shows that following the 1958 publication, Zenith in strong language advised the pool that Zenith considered itself "fully licensed" under all relevant patents controlled by the Canadian pool; and threatened suit against the pool in case of any interference. Since that time Zenith has imported into Canada in growing quantities and has extensively advertised its products throughout Canada, with absolutely no interference or threats of any kind by the Canadian pool.

Moreover, these two 1958-1959 incidents were before the filing of Zenith's answer. By its failure to assert any claim in April 1960 when it filed its answer and by its sworn representation when its counterclaim was filed in May 1963, that the acts which caused its damage occurred *after* the filing of its answer, Zenith not only waived any right to rely upon these incidents as damage-causing acts but admitted that they caused *no injury* to Zenith's business.

The vague claim of Zenith's president Wright that Zenith had somehow and in some undetermined amount held back on its advertising in Canada was contradicted by Zenith's own exhibits showing that it spent 11 to 13% of its sales dollars on advertising in Canada in 1960, and by its vice president Kaplan who said Zenith's Canadian advertising expenses were what would be expected when entering a new market.

In addition, Zenith's contentions concerning alleged effects on its abilities to obtain distributors, its alleged holding back on advertising, and its contention that the continued existence of the Canadian pool somehow affected its business, are directly contradicted by the admissions contained in Zenith's contemporaneous Annual Reports to its shareholders during the relevant period. These reports reveal that Zenith, at the time of its activities in Canada, was telling its shareholders and the public exactly the opposite of what Wright and Kaplan claimed to be the fact in their testimony several years later. For example, Zenith's 1959 report, covering the very first part of the period for which Zenith was granted damages in this case and published *after* the *last* act of the patent pool in any way involving Zenith, not only referred to "substantial" gains and "gratifying performance" by its Canadian market, but also said:

> "Zenith now has a strong distribution network at both the wholesale and retail level throughout Canada, supported by powerful national and local advertising."

The domestic patent suit and negotiations (Section IV, pp. 124-33, *infra*). Zenith's contention that the bringing of the instant domestic patent suit by Hazeltine Research and the licensing negotiations on U.S. patents interfered with Zenith's Canadian business is an attempt to revive claims which Zenith abandoned in the trial court. At the trial, Zenith's counsel specifically stated that the evidence concerning the domestic patent negotiations "didn't have anything to do with" the conspiracy charges. There is no testimony or other evidence connecting these domestic acts with anything done by the Canadian pool or any other pool and no testimony or evidence that these domestic patent activities had any effect on Zenith's business in Canada or any other country. Both the trial court and the Court of Appeals agreed that these domestic activities had nothing to do with the alleged conspiracies.

Australia (Section V, pp. 133-40, *infra*). As in the case of England, an embargo instituted by the Australian government at the beginning of World War II was an absolute barrier to Zenith's imports. In Australia the embargo was in effect until April 1, 1960. Subsequent to the lifting of the embargo, Zenith was not even sufficiently interested in the Australian market to inquire of the Australian pool whether a license could be obtained, although one was in fact available if Zenith wanted it.

Zenith's claim as to Australia is based entirely upon a theoretical restraint which it creates by an erroneous contention that the Australian pool would issue only one form of license agreement which prohibited the licensee from importing, whereas in fact the pool issued two forms of licenses, and the manufacturer's form available to Zenith had permitted imports ever since 1951. The record shows that substantial quantities of radio and television sets have been imported into Australia by others, and the only reason Zenith did not import or obtain a license was an apparent lack of sufficient interest in the Australian market, no doubt due to economic barriers such as high tariffs, transportation costs, etc., which would have made it difficult to compete in the Australian market.

Demand for a license (Section VI, pp. 140-42, *infra*). Contrary to Zenith's assertion, the Court of Appeals did not hold that a demand for a license was a prerequisite to recovery. Rather, the Court of Appeals merely considered the failure of Zenith to request a license from any of the pools during any relevant period as one of a number of facts indicating the pools had no impact on Zenith's business.

Offers of proof (Section VII, pp. 143-44, *infra*). Contrary to Zenith's contention, the Court of Appeals did not rely on offers of proof in concluding that the fact of damage had not been proven as to any country. Rather, it relied on matters clearly in evidence, and largely matters which Zenith itself had put in evidence.

2. THE AMOUNT OF DAMAGES
(Argument, Section VIII)

The question of the amount of damage was not decided by the Court of Appeals and is not before this Court. If that matter were to become an issue, the case should be remanded to the Court of Appeals. The record shows that as to England and Australia the only evidence was discredited by the proof of the embargoes, the witnesses' own recall testimony, and the findings of the trial court that it was neither "realistic" nor "believable," and as to Canada there is no evidence as to loss of market share, sales or profits resulting from alleged pool activities during the relevant period.

3. THE CHARGE OF UNLAWFUL CONSPIRACY
(Argument, Section IX)

The question of the legality of the foreign patent pools and the participation of Hazeltine Research or its parent in such pools is not before the Court because it was not passed on by the Court of Appeals. In any event, the record shows that Hazeltine Corporation acted in good faith in dealing with its foreign patents.

4. THE INJUNCTION
(Argument, Section X)

The Court of Appeals correctly vacated the injunction as to foreign commerce. It did not, as Zenith contends, hold that proof of actual injury was necessary to warrant an injunction. Its holding was that on the facts of record "injunctive relief against 'threatened loss or damage' directed at those pools, alleged by Zenith to be unlawful conspiracies, cannot be justified under 15 U.S.C. Sec. 26." The facts here show that there was no threatened loss or damage to Zenith's business in any of the countries involved. Zenith's inflammatory assertions about alleged *current* conditions are unsupported and untrue. The English pool has been out of existence since June 30, 1964, a license has been available from the Australian pool since 1951, and Hazeltine Corporation's patents have been out of the Canadian pool since the end of 1965.

5. THE DOMESTIC PATENT MISUSE "DEFENSE"
(Argument, Section XI)

The patent in suit has been held invalid, a finding of domestic misuse on other grounds was affirmed, Zenith has been awarded all the damages it requested, and Hazeltine Research has not sought review of these holdings. The misuse "defense" argued at length in Zenith's brief is therefore moot. But even if not moot, there is no merit to Zenith's contentions. Hazeltine Research's license offer as to black and white television patents was reasonable in light of the then existing commercial realities and was not coercive to force acceptance of a package license. Indeed, a number of licensees accepted a license under a single patent in response to the same offer. Similarly, the royalty basis proposed by Hazeltine Research, *i.e.*, measuring royalties on the total production of the type of products licensed, was proper under *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U.S. 827 (1950).

ARGUMENT

I. INTRODUCTION

Zenith asserts that the record shows a "clear case of intentional injury to petitioner's electronic business in three foreign markets" (Z. Br. 59). This assertion is made despite the fact that in two of the countries (England and Australia) licenses with no import restrictions have been available at all times when governmental embargoes did not constitute an absolute barrier to importation, and despite the fact that in the third country (Canada) Zenith has freely imported tens of thousands of radio and television sets during the entire supposed damage period without interference by the patent pool.

Zenith's argument (Z. Br. 55, *et seq.*) is a thinly disguised appeal to this Court to award it damages on the theory that if respondents have been somehow connected with "patent pools" public policy would be furthered by the payment of these enormous sums to Zenith. It is a brazen attempt by the boasted giant of the television industry, under the guise of public policy, to persuade this Court to award to it millions of dollars of damages which it never suffered, against companies not possessing the assets to pay such judgments, but which do possess valuable television patents.

Zenith is even prepared to go so far as to make an *insin-*

uation of treason to try to create prejudice against respondents. Allegedly to show the "public interest involved," Zenith reproduces (Z. Br. 101) a part of the remarks of Senator Russell B. Long at a hearing of a Senate subcommittee, the quotation being so excised and arranged as to make it appear that Senator Long was suggesting that Hazeltine Corporation's patents had been put in "[i]nternational patent pools" which had been *"used in the past to transmit military information—even to our enemies."*

The fact is that in his statement Senator Long referred to the findings and conclusions of the trial court in this case, which somebody had furnished him.[33] He then went on to a *new subject*—the alleged use of international patent pools to transmit military information, and on this subject mentioned two companies, *neither* of which was Hazeltine Corporation.[34] Yet Zenith has included this reference to transmission of information "even to our enemies" in such fashion as to suggest that Senator Long was talking about Hazeltine Corporation!

Hazeltine Corporation's primary business consists of furnishing specialized military electronics equipment to the government of the United States and to allied governments, much of which is of the most highly sensitive nature (A. 4135-36). The deliberate inclusion and distortion of these excerpts from the Senate hearing is indefensible.

---

[33] This statement was made before the appeal was decided and it seems fair to question whether the Senator was aware that the decision was being challenged on appeal.

Concerning Senator Long's remarks about use of government funds to pay for Hazeltine Corporation's research, there is no indication that the patents involved in this suit were in any way related to or derived from Hazeltine Corporation's military work.

[34] So that the Court may fully understand what Zenith has done, we reproduce in Appendix B to this brief the full text of Senator Long's remarks on "Some International Aspects of Government Patent Policy" as printed by the U.S. Government Printing Office.

A. The Court of Appeals Was Correct in Holding That Zenith Had the Burden of Showing Damaging Impact or the "Fact of Damage" During the Relevant Period.

The Court of Appeals held that "the crucial question is whether the district court's finding that Zenith was in fact damaged by the pools in the three countries during the four-year damage period preceding the filing of the counterclaim is clearly erroneous" (A. 4254). It pointed out that:

> "Zenith had the burden at the trial of showing an 'injury to [its] business,' 15 U.S.C. Sec. 15, by proving the unlawful conspiracies and the *fact* of damage as a proximate result of the alleged unlawful conspiratorial activities. *Story Parchment* v. *Patterson*, 282 U.S. 555; *Bigelow* v. *RKO Radio Pictures, Inc.*, 327 U.S. 251; *Continental Ore* v. *Union Carbide*, 370 U.S. 690" (A. 4254).

An antitrust treble damage claimant is not entitled to financial recovery for acts allegedly in violation of the Sherman Act unless he proves the fact of *damaging impact* on his business or property, resulting from the alleged antitrust violation (15 U.S.C. § 15). This requirement is nothing more than the tort concept that a claimant must prove he was injured by something the defendant did or was legally responsible for.

Under some circumstances, the courts have allowed some liberality in the proof required to show the *amount* of damage once the damaging impact on the claimant resulting from the alleged antitrust violation has been established. However, the "clear distinction" between the "measure of proof necessary to establish the fact that petitioner had sustained some damage, and the measure of proof necessary . . . to fix the amount" has been uniformly recognized since this Court's decision in *Story Parchment Co.* v. *Paterson Parchment Paper Co.*, 282 U.S. 555, 562 (1931). The decisions since then have been recently summarized by the Court of Appeals of the Fourth Circuit as follows:

> "It is uniformly held that liberality may be used in estimating the amount of damages after it has been shown that they were caused by acts contrary to the anti-trust statutes, but that this liberality does *not* extend to proof that the damages were caused by the illegal acts." *Dantzler* v. *Dictograph Prods., Inc.*, 309 F. 2d 326, 330 (4th Cir. 1962), *cert. denied*, 372 U.S. 970 (1963).

While Zenith's statement that "there has been a great deal of confusion" as to the proof required of the "so-called 'fact of damage'" (Z. Br. 59) appears to take issue with this well established rule followed by the Court of Appeals, Zenith apparently concedes that the fact of damage *must* be proved when it says that it can be proved just as any other fact in contested litigation (Z. Br. 60). Here, as the Court of Appeals held, Zenith not only failed to prove damaging impact on its business, but the record affirmatively shows that in the period involved, other factors were the cause of its failure to import into England and Australia, and that in fact Zenith imported substantial quantities into Canada without interference by the pool.

B. The Court of Appeals Applied the Proper Legal Standard in Reversing the District Court.

Although Zenith repeatedly asserts that the Court of Appeals made various holdings "as a matter of law" (see, *e.g.*, Z. Br. 64, 66, 70, 75), almost all of its arguments ultimately come down to *questions of fact.* Rule 52(a) of the Federal Rules of Civil Procedure provides that findings of fact in actions tried without a jury may be set aside when "clearly erroneous." And in *United States* v. *U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948), this Court determined that:

> "A finding is 'clearly erroneous' when *although there is evidence to support it,* the reviewing court *on the entire evidence* is left with the definite and firm conviction that a mistake has been commited."[35]

The Court of Appeals' review of the trial record in this case caused it to have such a conviction (A. 4257, 4259).

Zenith repeatedly points to the testimony of Wright and Kaplan as evidence allegedly supporting the findings adopted by the trial court, even referring to testimony which the witnesses themselves later repudiated (*e.g., compare* Z. Br. 87-88 *with* pp. 32-39, *supra*; pp. 88-90, *infra*).

But Rule 52(a) was intended to enable an appellate court to reverse the judgment of a trial court sitting without a jury despite evidence supporting the findings of the trial court. This Court and the Courts of Appeals have repeatedly held that under Rule 52(a) the trial court's findings of fact in actions tried without a jury may be set aside as "clearly erroneous" if the appellate court after considering "the entire evidence" is left with the firm conviction that a mistake has been committed (see cases cited at n. 35, p. 81, *supra*).

---

[35] This test has been uniformly followed, see, *e.g.*, United States v. Singer Mfg. Co., 374 U.S. 174, 194-95 n.9 (1963); Commissioner v. Duberstein, 363 U.S. 278, 291 (1960); Plastic Contact Lens Co. v. Butterfield, 366 F.2d 338, 346 (9th Cir. 1966), *cert. denied,* 385 U.S. 1009 (1967); Tenney v. A.B. & W. Transit Co., 364 F.2d 493, 494-95 (4th Cir. 1966); Oil Screw Noah's Ark v. Bentley & Felton Corp., 322 F.2d 3, 5-6 (5th Cir. 1963); W.R.B. Corp. v. Geer, 313 F.2d 750, 753 (5th Cir. 1963), *cert. denied,* 379 U.S. 841 (1964); Bjornson v. Alaska S.S. Co., 193 F.2d 433, 433-34 (9th Cir. 1951).

Moreover, contrary to Zenith's contention (Z. Br. 62), the Court of Appeals may take into account the credibility of the testimony. As recently noted by the Court of Appeals for the District of Columbia in *Jackson* v. *United States,* 353 F.2d 862, 866 (D.C. Cir. 1965):

> "While the trial judge's observation of demeanor must be given appropriate weight, it must be remembered that '[c]redibility involves more than demeanor. It apprehends the overall evaluation of testimony in light of its rationality or internal consistency and the manner in which it hangs together with other evidence.' Carbo v. United States, 9 Cir., 314 F.2d 718, 749 (1963), cert. denied, 377 U.S. 953, 84 S.Ct. 1625, 12 L.Ed.2d 498 (1964). Thus, to the extent that the credibility of the police officers in this case turns on their demeanor, we must defer. But that the officers seemed to be telling the truth does not end the matter. A number of other factors often considered in judging credibility must be examined, such as whether the witness was interested in the outcome, his reputation, his degree of recall, the internal inconsistencies in his testimony, and the likelihood of his story."

See also *Holbrook* v. *Institutional Ins. Co. of America,* 369 F.2d 236, 241-42 (7th Cir. 1966); and *McDonald* v. *Kropp,* 373 F.2d 549, 558 (6th Cir. 1967), in which the court acknowledged that credibility is generally for the district judge but said that "there can come situations in which the reviewing court *can and must* reverse when *on the entire* *evidence* it 'is left with the definite and firm conviction that a mistake has been committed.'"

The trial judge himself found that certain parts of the testimony of Wright and Kaplan were not believable (pp. 24-25, *supra;* pp. 119, 145, *infra*), and there are other matters in the record (wholly unrelated to demeanor, *cf. United States* v. *General Motors Corp.,* 384 U.S. 127, 141-42, n.16 (1966)) which cast doubt upon the credibility of their entire testimony. The testimony of these witnesses at the original trial was inconsistent with facts subsequently brought out and with their own testimony on recall (see pp. 18-21, 54, *supra;* pp. 111-12, *infra*). On some important matters, they were forced to recant their earlier testimony (see pp. 37-39, *supra;* pp. 88-90, *infra*). The testimony is also inconsistent with the contemporaneous documents (see pp. 40-43, 55-60, *supra;* pp. 91-92, 113-16, *infra*).

In addition, the findings themselves are contradicted by statements of the trial judge (*cf. Holbrook* v. *Institutional Ins. Co. of America,* 369 F.2d 236, 242 (7th Cir. 1966)), and are also internally inconsistent (*cf. United States* v. *Singer Mfg. Co.,* 374 U.S. 174, 194-95 n.9 (1963)). For example, Finding XXII (A. 2901-02) acknowledges that after 1957 all basic radio patents had expired and that "Zenith *has been able* for the first time to export to and sell its radio receivers in the English market." Yet, another finding (Amended Finding XXXVI, A. 3537) awards Zenith $2.2 million (when trebled) for alleged damages in loss of radio sales in England in the period from 1959 to 1963.

Ignoring the distinction between a jury determination of facts and findings of a trial judge, Zenith argues (Z. Br. 61) that the Court of Appeals was required to view the evidence in the light most favorable to Zenith and give it the benefit of all inferences. This is a correct statement of the rule applicable in jury cases[36] because:

> "Where a jury has tried the matter upon correct instructions, the only inquiry is whether it cannot be said that reasonable men could reach differing conclusions on the issue." *Commissioner* v. *Duberstein*, 363 U.S. 278, 290-91 (1960).

That the same test does *not* apply in a nonjury case, however, was made clear by this Court in *United States* v. *U.S. Gypsum Co.*, 333 U.S. 364, 394-95 (1948). Referring to Rule 52(a) this Court said:

> "It was intended, in all actions tried upon the facts without a jury, to make applicable the then prevailing equity practice. Since judicial review of findings of trial courts does *not* have the statutory or constitutional limitations on judicial review of findings by administrative agencies or by a jury, this Court *may reverse* findings of fact by a trial court where 'clearly erroneous.' The practice in equity prior to the present Rules of Civil Procedure was that the findings of the trial court, when dependent upon oral testimony where the candor and credibility of the witnesses would best be judged, had great weight with the appellate court. *The findings were never conclusive, however.*"

Thus, in a nonjury case where the issue is the correctness of findings entered by a trial judge, the Court of Appeals can review *and reject the inferences drawn by the trial judge* even when there is some evidence to support them, if they are clearly erroneous (333 U.S. at 393, 395-96). See also *United States* v. *Singer Mfg. Co.*, 374 U.S. 174, 194-95 n.9 (1963).

---

[36] Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690 (1962), upon which Zenith principally relies, was a jury case in which the Court of Appeals decided that a verdict for the defendants should have been directed (370 U.S. at 696), and of course under such circumstances, the court must view the evidence in the light most favorable to the claimant.

Moreover, there is a highly important factor relating to the findings in this case which Zenith has failed to bring to the Court's attention. The findings here are not the independently drafted findings of the trial court but are instead findings submitted by Zenith and "mechanically adopted" by the trial judge. See *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651, 656-57 (1964). Indeed, the trial judge did not even file an opinion but merely sent the parties a letter stating he was adopting the findings of Zenith (A. 2857-58). Since the findings were prepared by an advocate and not "drawn with the insight of a disinterested mind" (376 U.S. at 656), the Court of Appeals was even more justified in being guided by the over-all impact of the whole record.

II. THE COURT OF APPEALS WAS CORRECT IN HOLDING THAT ZENITH SUFFERED NO INJURY AS TO ENGLAND.

With respect to England, the Court of Appeals said:

> "We also conclude that Zenith failed to prove the *fact* of damage with respect to the English market. A World War II embargo prevented Zenith from importing its products into England until June, 1959. At that date all basic radio patents had expired, and Zenith had no difficulty in doing radio business in England. The difficulty Zenith had in the English market with its TV products cannot reasonably be at-

> tributed to the activity of an unlawful conspiracy in that country. Significant barriers other than patent difficulties operated to prevent sales of Zenith TV receivers in England. Zenith sets manufactured in the United States operated on 525-line and 625-line scanning signals. The English standard was a 405-line signal until changed to 625-line after the damage period. Zenith sets sold in England would be in competition with substantially lower priced British sets. There was no testimony that the British pool, during the damage period, had threatened or filed suit on any patents.
>
> "We think it is unreasonable to infer that Zenith intended to and was prepared to enter the English television market during the damage period. The only reasonable inference is that it was waiting for a change in English standards to a 625-line system. Zenith was not aided, in showing loss of probable profits, by the testimony that its man in England could adjust Zenith sets to the English standard 'with a screwdriver in the back of the shop in a few minutes'" (Emphasis by the court; A. 4257).

Zenith's brief as to England, both in the Statement of the Case and in its Argument, constitutes an obvious and callous attempt to brazen out the fact that [illegible]s entire claim and its testimony were affirmatively discredited. It seeks to do this by almost completely ignoring the record.

A. The Claim That for Years the Pool Kept Zenith Out of England Was Destroyed by Proof of the Embargo.

We have pointed out how the original finding that for years prior to the 1957 RCA settlement Zenith tried to import into England and was kept out by the pool (Finding XXI, A. 2901) was proven false by the trial court's finding after the embargo hearing that the "iron curtain" of the English governmental embargo "and nothing else" had kept Zenith out of England from World War II until June 8, 1959 (pp. 16-17; *supra*; A. 3203, 3205). Zenith never appealed from this finding. Thus, Zenith can hardly quarrel with the Court of Appeals' statement that "A World War II embargo prevented Zenith from importing its products into England until June, 1959" (A. 4257).

Nevertheless, Zenith *still* asserts that "[t]he record shows that *throughout the years* Zenith made many efforts to enter the English market," but "[o]n each occasion" was kept out by pool threats (Z.Br. 33). ~~But all it~~ can cite as purported support for the charge is: (a) the statement by Wright that sometime in 1955 he had conversations with an officer of a pool member who indicated that he did not think the pool provisions would be modified (A. 462-63);[37] (b) the testimony of Wright that Zenith had made some attempts to enter the English market "in the thirties" (A. 473-74); and (c) two letters (DX 101A, A. 1517-18; and DX 108, A. 1542-44) which had been written on *December 7, 1934* and *September 13, 1937* (Z. Br. 33-34). This then is the "evidence" by which Zenith seeks to get this Court to overlook the ruling of the trial court and the Court of Appeals concerning the embargo.

B. The Claim as to Television Was Based on Discredited Testimony.

Zenith could have no claim as to England unless and only to the extent it could show damage-causing acts after the lifting of the embargo on June 8, 1959.[38] We outlined in the Statement of the Case (pp. 32-39, *supra*) how Zenith's witnesses at the original trial told a story about attempts to enter the English television market during the 1959-1963 period, and how on later recall they were forced to recant that testimony.

---

[37] Such a conversation, if it occurred, was academic since the embargo lasted until June 1959.

That outline showed that Wright and Kaplan had testified at the original trial that Zenith "*actually made sets* at Zenith that can be used in the *British market*" (Kaplan, A. 531); that Zenith *had sent* "a very few *television* receivers to Mr. Ramsay," the English distributor, "which *he has attempted to market*" (Wright, A. 464); that "we have to make *minor modifications* in these sets" (Wright, A. 464); that "we *supply him* [Mr. Ramsay] with *parts and kits* to do that at times" (Wright, A. 464); and that the changes are so simple that "our distributor *changes them in his back room*" (Kaplan, A. 545). Finding XXII, adopted by the trial court assumed this testimony was correct: "Zenith *has successfully engineered* sets for the British market and *has shipped some* to its English distributor" (A. 2902). On this basis, the trial court initially entered a damage finding of $8,079,859 as to English television (Finding XXXVI, A. 2908), which would have been *over $24 million after* trebling.

---

[38] Irrespective of the embargo, Zenith's claim in England, as in the other two countries, is subject to other limitations. First, Zenith's counsel Crotty swore in connection with Zenith's motion for leave to file its counterclaim that its damage was caused by acts occurring after its answer was filed on April 7, 1960 (A. 63); second, it is also faced with the limitations contained in its Finding XXXVI asserting damages only for the "4-year statutory damage period" (A. 2908), as well as Section 4B of the Clayton Act (15 U.S.C. § 15b); and finally, all damages suffered after September 27, 1957 from alleged pool interference which occurred on or before September 27, 1957 would be barred by the releases given by Zenith in the RCA-Zenith case (see pp. 47-49, *supra*).

Then, additional discovery revealed the fact that Zenith had *never sent* any sets *designed* for English standards to Ramsay; had *never sent* him any *parts, kits* or instructions for converting sets to the 405-line system; the distributor had *never converted* a single Zenith set to the English system (except one set for his own use after the Zenith witnesses had testified); and he had *never attempted to market* any 405-line sets in England (pp. 36-37, *supra*).

Finally, when Wright and Kaplan were recalled to the stand, and were faced with the fact that the truth had been discovered, they were forced to admit on cross-examination that "I do not believe" that sets converted to receive the English transmission were sent (Wright, A. 3498); that "it is my understanding *now*" that *un*converted sets were sent (Wright, A. 3498-99); that "I didn't know" whether Ramsay had attempted to market any sets (Wright, A. 3500); and that "I don't of my own personal knowledge know" whether Ramsay ever attempted to convert any sets (Wright, A. 3503). Wright even went so far as to try to cover up his original testimony by saying that the parts and kits previously testified to had been "to install a *long wave band on radio receivers*" (A. 3503), but he was then forced to admit that his original testimony about "parts and kits" (A. 464) referred to television sets and made no mention of radio (A. 3503) (see pp. 37-39, *supra*).

And the testimony of Kaplan, previously so unequivocal that Ramsay had converted sets in his back room and that Zenith had made sets for the English 405-line system, was a series of "I don't know," "I don't know," and "it was my *impression*" (A. 3472, 3473, 3475) (see p. 39, *supra*).

Nothing could be more revealing than the following two answers on cross-examination of Joseph Wright on recall:

> "Q. In other words, *when you testified* back in—you told the Court back in February of 1964 that Zenith

had sent a few television sets to Mr. Ramsay which he had attempted to market, *you did not know whether or not* those sets were equipped to receive English television?

"A. No, sir, *I did not*" (A. 3499).

* * *

"Q. Well, *when you told the Court* that Mr. Ramsay had attempted to market these sets, *did you know whether or not* he did in fact attempt to market them?

* * *

"A. *I didn't know* specifically what he had done" (A. 3500).

These are the same men, the principal executives of a major corporation, who had given the previous unequivocal testimony which had led the trial court to enter a finding as to English television calling for a treble damage award of over $24 million.

Yet, despite these disclosures, Zenith's brief to this Court (Z. Br. 86-88) quotes at length from some of this *same discredited testimony,* and asserts: "There was *no denial* of this testimony, and there is *no other evidence* in this record on the issue" (Z. Br. 88)! Zenith seeks to avoid the revelation of the truth by pretending it never occurred.

Another illustration of Zenith's brazenness is shown by the circumstances surrounding its criticism of the Court of Appeals' statement that "Zenith was not aided, in showing loss of probable profits, by the testimony that its man in England could adjust Zenith sets to the English standard 'with a screwdriver in the back of the shop in a few minutes'" (A. 4257). Zenith now says that there is "no such testimony in this record" (Z. Br. 86), but at the trial its own counsel so characterized the testimony, saying:

"MR. McCONNELL: Wait a minute. If you are going to *summarize the testimony, it was* also testified by Mr.

> Kaplan *that all of the changes* that were necessary to be made, the distributor could *make in a back room with a screwdriver*" (A. 758).

In light of the record, the Court of Appeals' comment that "Zenith was not aided" by such testimony was charitable to say the least, and reflects the doubts of the court as to the credibility of Zenith's witnesses.

As pointed out in the Statement of the Case (pp. 40-44, *supra*), the real reason Zenith did not attempt to enter the English television market during the four-year period was that it was awaiting a change in the English broadcast standards from the English 405-line system to the 625-line (CCIR) system, used in some other countries to which Zenith was already exporting. The Court of Appeals after reviewing all the evidence, concluded:

> "We think it is unreasonable to infer that Zenith intended to and was prepared to enter the English television market during the damage period. The only reasonable inference is that it was waiting for a change in English standards to a 625-line system" (A. 4257).

Zenith attacks this conclusion by asserting that the Court of Appeals "retried the damage issue in England . . . *de novo,* not on [the] basis of the original record but apparently relying largely on offers of proof" (Z. Br. 85) and that the Court of Appeals' conclusion was based "substantially on the basis of post-trial offers of proof which petitioners [sic] had no opportunity to meet" (Z. Br. 86). Like so many of Zenith's statements, the assertion that the court's conclusions as to England were "based on offers of proof" is untrue. For the Court of Appeals not only had before it the spectacle of Wright's and Kaplan's forced retreat from their original testimony, but also the revelations from documents from Zenith's *own* files *in evidence* as part of a Zenith "Bulk Exhibit" at the original trial (DX 112, A. 1559-93; see pp. 40-44, *supra*).

The fact that Zenith was waiting, not because of any supposed pool activity, but for a change in the English transmission standards from 405-line to the 625-line CCIR system, is shown over and over again in that Zenith-Ramsay correspondence. Nothing could more clearly support the Court of Appeals' ruling than the letter of *November 8, 1962,* near the end of the four-year period, from Ramsay to Zenith, stating: "Nobody knows yet when the regular [625-line] transmissions will start *and until such time* naturally *we cannot start marketing . . .*" (A. 1593).

The conclusion of the Court of Appeals thus rests squarely upon contemporaneous documents in evidence from Zenith's own files. Such documentary evidence is controlling over discredited testimony of interested witnesses. *United States* v. *duPont & Co.,* 353 U.S. 586, 602 (1957); *United States* v. *U.S. Gypsum Co.,* 333 U.S. 364, 395-96 (1948).

It is true that Hazeltine Research did make offers of proof of *additional* material which it had collected in anticipation that the trial court would allow additional hearings once the embargo was established (Offer of Proof, A. 3550-3708, 3758-4129). One such document offered was Ramsay's printed price list for Zenith radios and stereophonic equipment (Plt. London Dep. Exh. 47, A. 3987-89) stating that:

> *"We regret that for the time being our combined Television/*Radiogram units *cannot be used* in the U.K. *until the system of television transmission is changed to 625 lines* which is now under consideration" (A. 3989).

Facts *in evidence* showed that the price of the average Zenith set imported into England would be almost double the price of the average British-made set (see p. 144, *infra*). The offer of proof contained evidence of *additional* factors bearing on imports. These additional factors, such as transportation, taxes and the added cost of a distributor-importer, not disclosed in the original record, would have made Zenith sets *more* than double the average British price, making a meaningful market penetration impossible (Ewing Aff., A. 3570, 3582-84; Ramsay Dep., A. 3815-16; Plt. London Dep. Exh. 60, A. 4061-62).

However, there is nothing in the opinion of the Court of Appeals indicating that it relied upon any offer of proof. Its conclusions that "it is unreasonable to infer that Zenith intended to and was prepared to enter the English television market during the damage period," and that "[t]he only reasonable inference is that it was waiting for a change in English standards to a 625-line system" (A. 4257) were inescapable in light of the admissions of Zenith's own witnesses on recall and Zenith's own documents *in evidence*.

C. The Trial Court Findings and Zenith's Own Evidence Affirmatively Establish the Absence of Any Damaging Impact on Zenith's Radio Exports to England.

At the original trial Wright admitted that Zenith's English distributor had been importing radios since 1959 and that "[a]pparently *the pool has not bothered him insofar as radio is concerned,* and I am not surprised at that because, actually, there are hardly any radio patents left that anyone would seriously think of threatening infringement with" (A. 463-64). Accordingly, Finding XXII included the statement that following the settlement in the RCA-Zenith case, Zenith "began to ship radios to the British market" and that "since all basic radio patents have expired, Zenith *has been able* for the first time to export to and sell its radio receivers in the English market" (A. 2901-02). Nevertheless, adopting Finding XXXVI proposed by Zenith, the trial court initially awarded Zenith damages in the amount of $1,169,067 before trebling for "England—Radio" (A. 2908), and ultimately included in the final treble damage judgment over $2.2 million for alleged lost radio sales to England (A. 3537).

In view of the admitted fact that there was no interference after 1957, and in view of the indisputable fact that the embargo imposed by the British government was the sole reason Zenith was kept out of England from 1939 to June 8, 1959, there is no basis for any damage award to Zenith concerning radio, either in the original amount or in the reduced amount ultimately granted by the trial court.

Zenith's brief, assuming that the pool was responsible for Zenith's failure to import television sets (which we have shown it was not), asserts that Zenith could not develop the English radio market unless its radio imports were accompanied by imports of television (Z. Br. 34-35). There is no suggestion of this in the trial court findings or the evidence. The record references referred to by Zenith contain not one word in support of this theory; in fact, they support the contrary. References A. 463-64, 474, are to Wright's testimony in which he *admitted* there had been no *interference* as concerns radio. The only other reference is to Zenith's Bulk Exhibit 113 (A. 1594-1606), a random series of letters during 1958 and 1959 from individuals and a would-be distributor inquiring about Zenith's products, but the significant thing is that practically all of these inquire about Zenith *radios* only, and not one suggests any difficulty in marketing radios without television sets!

Again we have an illustration of how Zenith, having misled the trial court into an award of damages without basis in the record, seeks to substitute ingenuity for a record basis. The Court of Appeals' conclusion that, "At that date [June 1959] all basic radio patents had expired, and Zenith had no difficulty in doing radio business in England." (A. 4257) is the only conclusion which could be reached on this record.

D. The English Pool Agreement and License Forms Were Changed to Remove the Prohibition Against Imports.

We have outlined in the Statement the changes in the English "pool agreement" and the license form (see pp. 44-46, *supra*). As pointed out, the record shows that as of July 1, 1960, the provision in the pool agreement prohibiting the licensing of imports by individual pool members was eliminated and the right of individual pool members to license "for imports" was expressly recognized. The last pool license forms in evidence containing an agreement by the licensee not to import expired by their terms on December 31, 1957 (DX 67, A. 1344, 1346, 1348; DX 68, A. 1356, 1358, 1360) and the only license forms in evidence after that date (forms A8-T and A8-S, July 1, 1960-June 30, 1964, DX 70-71, A. 1380-1401) contain no such provision. Moreover, Hazeltine Research's offer of proof showed that the provision prohibiting imports by the licensee had actually been *deleted effective January 1, 1958* by letter sent by the manager of the pool to licensees on about November 20, 1957, offering an extension of licenses to June 30, 1960 (A. 3701-06).

Zenith's answer to this (Z. Br. 30-34) constitutes a masterpiece of dissembling, *designed to obscure the fact that these changes were made*. First, as concerns the pool agreement itself, Zenith quotes (Z. Br. 31) paragraph 7 of the agreement effective January 1, 1953 (DX 58, A. 1248, 1258), which did involve an agreement not to license imports except to a limited extent. Then Zenith says, "The last Pool agreement in evidence . . . by its terms ran until June 30, 1964 . . ." (Z. Br. 31). So it did, but Zenith deliberately *omits telling this Court* that the restrictive *paragraph 7* was expressly *deleted* from *that* pool agreement. The extension of the pool agreement to June 30, 1964, specifically provided that "Clauses . . .7 . . . shall be *deleted*" (DX 60, A. 1273). Finally, Zenith quotes from clause 11(g) of the pool agreement indicating that no change should be made in licenses A8-S and A8-T without unanimous consent of the parties (Z. Br. 31), but it ignores the fact that those licenses had already been changed to eliminate the provision requiring the licensee not to import (see pp. 45-46, *supra*).

This tactic continues in connection with the changes in the license form itself. After first asserting that "[t]he A8 license agreements [July 1, 1960-June 30, 1964] . . . *like all the preceding pool licenses*" were restricted to local manufacture (Z. Br. 31), Zenith quotes a paragraph from the *previous* form (*paragraph* 4(a)), which prohibited the licensee from selling sets manufactured outside the country (DX 69, A. 1368, 1372). But the quoted paragraph 4(a) had been *completely omitted* from the A8-S and A8-T forms (DX 70, A. 1380, 1383-84; DX 71, A. 1391, 1395). Thus, the A8 forms were *not* "like all the preceding pool licenses."

In making the statement that the A8 license form was limited to local manufacture and the sale of sets so manufactured, Zenith apparently relies upon language in the granting clause in the A8 license which was similar to that contained in the granting clause of the previous licenses. However, reliance upon this language or any other provision in the license form to support an argument that the pool continued to prohibit imports must unreasonably assume that the pool went to the trouble not only of striking the quoted paragraph 4(a) of the license form which had expressly prohibited imports by the licensees, but also of deleting the quoted paragraph 7 of the basic pool agreement, without intending that the changes have any effect. Such an unreasonable assumption is not only contrary to settled principles of contract construction,[39] but it could have been proved or disproved by a simple inquiry to the pool had Zenith been sufficiently interested in a license to request one.

Clearly, if Zenith *had been* suffering the millions of dollars of damage in England which it now claims, it would have inquired of the pool after the embargo was lifted as to whether a license to import was then available. The absence of any injury is shown by the fact that Zenith made no such inquiry, yet it now claims damages for a theoretical restraint based on a deliberately erroneous construction of the pool agreement and license form.

Finally, Zenith refers to and quotes from a number of memoranda and letters concerning the pool (Z. Br. 32-34), omitting to point out the age of any of them. For example, the quoted letter from Commander Mayer (Z. Br. 32) is *dated November 17, 1949* (A. 1484); and the Schoenberg letter (Z. Br. 33) *is dated December 13, 1926* (A. 1499). Zenith has not, and cannot, cite any correspondence or memoranda for the period *after* the lifting of the governmental embargo in 1959 indicating that the pool required its licensees not to import or that the pool had any effect on imports.

---

[39] See Roos v. Texas Co., 23 F.2d 171, 173 (2d Cir. 1927); Phillips Petroleum Co. v. McCormick, 211 F.2d 361, 365 (10th Cir. 1954).

Zenith thus seeks to misuse this ancient history to try to obscure the fact that the British pool *changed its practices* by removing the prohibition against imports. The truth is that Zenith had no interest in a license during the period involved here. Indeed, the British pool itself expired by the terms of the pool agreement on June 30, 1964 (DX 60, A. 1272) and went completely out of existence on that date (Offer of Proof A. 3701-03, 3707-08); yet, Zenith was so little interested that when Wright testified on recall in November 1965, he did not even know that the pool had been out of existence for over a year (A. 3497-98).

III. THE COURT OF APPEALS WAS CORRECT IN HOLDING THAT CONSIDERING ALL THE EVIDENCE ZENITH HAD FAILED TO PROVE THE ESSENTIAL FACT OF DAMAGE AS TO CANADA.

The Court of Appeals said that the testimony of Zenith's president Wright could be considered as "some slight evidence of the fact of damage" (A. 4258). However, based on its review of the entire record, the court concluded:

> "We hold that even though there is some testimony of damage suffered by Zenith in the damage period as a result of pool activities in Canada, we have a *firm conviction* that the district court made a mistake in inferring from the entire testimony that the essential element of *fact* of damage had been established by Zenith" (A. 4259).

Zenith asserts that the Court of Appeals erred and claims that it was injured by (1) the refusal of the Canadian pool to grant Zenith a license to import its American-made radio and television sets into Canada, and (2) infringement suits, threats of infringement suits, and warning notices by the pool against those who imported Zenith sets into Canada without a license.

While Zenith has written its brief in a manner which obscures the date relationship between events, certain critical dates are particularly important in evaluating the record as to Canada:

(1) The September 1957 release. As pointed out above, Zenith gave general releases in September 1957 which released all damages which might result in the future from acts which occurred prior to the date of the releases (see pp. 47-49, *supra*).

(2) May 22, 1959, the cutoff date for the statutory four-year damage period asserted by Zenith in Finding XXXVI (A. 2908).

(3) April 7, 1960, the date of Zenith's answer. In its motion and supporting affidavit of Crotty, its vice president and counsel of record, Zenith represented that the acts which were the proximate cause of damages claimed in the counterclaim occurred *subsequent to* the filing of the answer (see pp. 7, 53-54, *supra*).

With Zenith's contentions and these dates in mind, we turn to the record.

A. There Was No Refusal to License During the Relevant Period.

As pointed out in the Statement, the evidence as to refusals to license is largely ancient history, dealing with events in the early 1950's and before (pp. 10, 49-50, *supra*). These events are not only long prior to the claimed four-year damage period, but also prior to the general releases given by Zenith in September 1957, and prior to the cutoff date (April 7, 1960) established by the Crotty affidavit. Any recovery based on alleged injury caused by those acts was not only waived by Zenith in its motion for leave to file the counterclaim, but fully compensated for and released as a result of the RCA settlement in 1957.

Zenith says the record is "replete" with efforts by Zenith to obtain a license from the pool (Z. Br. 11). However, as the Court of Appeals noted (A. 4258), the record contains no request by Zenith for a pool license after 1953. Having no explanation for that fact, Zenith argues (Z. Br. 74) that its request for an injunction in the instant suit was in effect a demand for a license. But Zenith's request for an injunction against Hazeltine Research was not a demand for a license from the Canadian patent pool. The injunction which Zenith itself proposed and obtained in the trial court did not in any way require or request that the Canadian patent pool grant Zenith a license. It ran only against Hazeltine Corporation and Hazeltine Research, Inc., requiring them not to enter into any agreement which prevents Zenith from exporting (A. 3079-80). Moreover, if the request for an injunction constituted a demand for a license and if Zenith really wanted a license, why did it not request any such injunction when it filed its answer in this case in 1960?

The reason Zenith never requested a license after the 1957 settlement is clear. As a part of that settlement Zenith received a world-wide license from RCA, General Electric, and Western Electric under all their patents including their patents in the Canadian pool (Finding XXII, A. 2901-02). As a result of these and other direct licenses, Zenith considered its products "fully licensed to the extent that they employ *any* patents administered by Canadian Radio Patents Limited" (DX 138, A. 1879; see also A. 1882, and p. 49, *supra*). Entering the market in late 1958 *without a pool license* Zenith was, in fact, able to sell tens of thousands of radio and television sets in Canada (DX 220, A. 2661). After the RCA settlement Zenith neither wanted a license nor thought one was necessary.[40]

---

[40] In its brief to this Court (p. 66) Zenith accuses the Court of Appeals of distorting and misstating the record concerning

There were discussions between representatives of the pool and Zenith's Canadian subsidiary in the second half of 1958 culminating in a conversation in Chicago on May 12, 1959, between Brian McConnell, the president of the Canadian pool, and Crotty and Curtis, two of Zenith's lawyers (A. 392, 410; see pp. 52-53, *supra*). But entirely aside from the fact they occurred before the four-year statutory damage period claimed by Zenith,[41] the subsequent actions of Zenith were an admission that no damage resulted. For when Zenith filed its answer in April 1960, some nine months later, it filed no counterclaim, despite the fact that, according to Zenith itself, such counterclaim would have been *compulsory* if Zenith had been injured (A. 62). In addition, the statement in the Crotty affidavit (A. 63) that the acts which caused its damage occurred *after* April 7, 1960, was a judicial admis-

---

Wright's statement that Zenith considered itself fully licensed to the extent it employed any patents administered by the pool, pointing out that the licenses did not include color television. However, Zenith *limited* its damage claim to black and white television, and *expressly excluded* color television as to all three countries (A. 502). The *issue* is whether Zenith lost any sales of black and white television sets. Accordingly, Wright's statement that Zenith considered its sets fully licensed and Zenith's sales of large quantities of black and white television sets in Canada without a pool license are highly relevant to the issue of the fact of damage and were properly construed and applied by the Court of Appeals.

[41] At the May 12, 1959 meeting, Crotty asked McConnell to send him a copy of the Canadian pool's license form, and McConnell did so on June 5, 1959 (DX 154, A. 2021). Zenith seeks to rely on this letter of June 5, 1959 because it was after the beginning date for the four-year statutory period. However, this follow-up mailing itself adds nothing to the events of May 12, 1959, for if there were a request for a license and a refusal of the pool to grant a license, they occurred on May 12, 1959. Zenith's right to sue, if any, accrued then and was not dependent upon later receipt of the blank license form. See Emich Motors Corp. v. General Motors Corp., 229 F.2d 714, 719-21 (7th Cir. 1956).

sion that Zenith was *not* damaged by these 1959 events upon which it now places such great reliance in its brief to this Court, and a waiver of any right to rely on such events (see pp. 53-54, *supra*).

Further, Zenith failed to offer any evidence that the McConnell meeting caused it any injury. Crotty did not testify that he requested that the pool grant Zenith a license to import, nor did he testify that he considered a license from the pool necessary to enable Zenith to sell in Canada (A. 392, 410-15). So far as the record shows, Zenith was adhering to the position previously taken by Wright that it needed no license (pp. 51-52, *supra*). There was no evidence that the conversation caused Zenith to lose any distributor or dealer or that it was even made known to any Zenith distributor or dealer. Nothing came of the conversation, there were no further contacts between the pool and Zenith or any of its Canadian distributors, and Zenith continued to export to and sell its sets in Canada in increasing quantities (see DX 220, A. 2661; see also pp. 50-51, *supra*).

B. There Were No Suits or Threats of Suit Against Zenith Distributors or Dealers During the Relevant Period.

Crotty testified that Zenith's difficulty in the Canadian market resulted from "the threat brought by the pool against [Zenith's] dealers and distributors to stop them selling Zenith radio sets which [were] imported" (A. 565). As proof, Zenith put in evidence correspondence relating to a threat of patent litigation by the pool against a Winnipeg distributor in 1951 which apparently caused that dealer to cease handling Zenith products (DX 155-58, A. 2022-28). A similar threat was made in 1954 against Zenith distributor MacCuspie with similar results (A. 452; DX 161-62, A. 2033-46). But there is *no evidence* of any similar threat to any Zenith distributor or dealer after the settlement of the RCA case in 1957, much less subsequent to Zenith's answer in this case.[42]

Indeed, subsequent to the releases given in the RCA case, the record establishes only one act by the patent pool which could possibly be regarded as a threat to Zenith dealers, and that was the August 1958 advertisement published by the pool in a Canadian trade publication (see p. 51, *supra*). But Wright took sharp exception to the advertisement, informing the pool by telegram and letter that Zenith, as a result of the settlement of the RCA case, was "*fully licensed*" to the extent that it employed any patents administered by the pool and threatening suit if such publications were repeated (DX 138, A. 1879, 1882). There is *no* evidence that the advertisment was *ever published again* (see pp. 51-52, *supra*).

The finding that such advertisements "continued to be run" (Finding XXX; A. 2905) was clearly erroneous and Zenith's statements in its brief (Z. Br. 14, 64) that such notices were "continuing" to appear are grossly misleading. The exhibit it cites for the statement that such advertisements continued to be run (DX 144, A. 1973-74) is dated *January 13, 1954*. The other advertisements to which Zenith refers at length are all *earlier* than the August 1958 advertisement. One is dated in 1929 (DX 131, A. 1865), another in 1930 (DX 132, A. 1866), another is undated but from its text is obviously from a period before Canada even had television (DX 130, A. 1861-64), and several are dated in the early 1950's (DX 134-35, A. 1868-71), but *none* is dated after August 8, 1958. Moreover, that no such advertisement appeared after 1958 is shown by the fact that Zenith never brought legal action against the pool as it had threatened to do if the advertisement appeared again (see p. 103, *supra*).

---

[42] Even if the contacts between the pool and Zenith itself or its Canadian subsidiary in 1958 and early 1959, were construed to be a threat of infringement suit as Zenith asserts (Z. Br. 63), nothing resulted and they caused no damage as Zenith has admitted (pp. 101-02, *supra*).

Wright asserted that shortly after the advertisement a number of distributors came to Zenith and expressed concern (A. 472). But Wright not only failed to identify a single distributor or dealer who had stopped handling Zenith's products or whose sales had been reduced because of the advertisement, but Zenith produced no distributor or dealer witness, or any correspondence with dealers or other evidence to show that Zenith's operations or sales were in any way affected by the advertisement (see p. 52, *supra*). The Court of Appeals noted (A. 4258) the failure of Zenith to call any distributor witnesses, who would have been able to testify about any interference had it occurred. Under this Court's decision in *Interstate Circuit, Inc.* v. *United States*, 306 U.S. 208, 226 (1939), the inference must be that their testimony would be adverse to Zenith.

Zenith not only failed to follow up its threat in 1958 by bringing legal action against the pool, but it also did not assert a counterclaim against Hazeltine Research when it filed its answer in this case in 1960, a year and one-half after the last such advertisement. Indeed, as in the case of the 1958-1959 negotiations between Zenith and the pool, Zenith's pleadings in this case constitute a clear admission that the advertisement caused it no damage (pp. 101-02, *supra*).

Zenith argues (Z. Br. 64) that the Court of Appeals misapprehended the effect of the pool advertisements and held "as a matter of law" that such a notice could not possibly injure Zenith's Canadian business. On the contrary, the

Court of Appeals did not hold that such advertisements could not possibly injure Zenith's business, but rather held that "[t]here was *no showing that* the 1958 advertisement *had* any adverse effect on Zenith's sales" (A. 4258).

On page 65 of its brief, Zenith says that the Court of Appeals' holding with respect to the 1958 advertisement ignores testimony of Wright that a distributor has to make an investment in inventory and hire salesmen to develop a territory and that "it was *impossible* to get *anyone* who was willing to take that sort of risk." Reading this testimony in context, it is apparent that Wright's reference to such impossibility related to the period *prior to* the 1957 RCA settlement (see A. 452-53). If, as Zenith now contends (Z. Br. 65), Wright's statement was intended to apply to the period *after* 1958, either Wright did not tell the truth on the witness stand, or Zenith did not tell the truth to its shareholders and the public in its annual reports issued in the period from 1958 through 1962. Those reports stated that "[f]our outstanding and experienced independent distributors were appointed to handle the distribution of Zenith products in western Canada" (A. 2991); that Zenith had a "strong distribution network at both the wholesale and retail level throughout Canada" (A. 2993); that its products had "wide acceptance" by the Canadian trade (A. 2993); and that its successes in Canada were the result of the "enthusiasm of distributors and dealers" (A. 2995).[43]

Zenith places considerable reliance upon a report of a Canadian Royal Commission on Patents and on the testimony of Mr. Henderson, a Canadian patent lawyer, concerning that report (Z. Br. 68-70).[44] The principal point in that report relied upon by Zenith is the statement that the Canadian pool (CRPL) portfolio consisted of 5,000 patents, that the pool had a policy of enforcing its patents against infringers, and that, in the absence of a license from CRPL, "it is doubtful if anyone could sell in Canada a radio or television receiver" (PX 50A, A. 2830). Even if the doubt expressed in the report were justified as to one who had no license under *any* of the pool's patents, it has no probative value as to Zenith.

---

[43] These contemporaneous documentary admissions, contained in the Zenith Annual Reports which were part of an offer of proof made by Hazeltine Research before entry of judgment, are discussed in more detail at pp. 112-18, *infra*.

Zenith already had a license under the patents of RCA, which at one time (1944) held over 79 per cent of the pool's important patents (DX 166, A. 2076), and under the patents of General Electric and Canadian General Electric, the pool's largest shareholder (A. 454-55). It also had a license from Western Electric and licenses under other patents, such as the Parker intercarrier sound patent (A. 480; DX 138, A. 1882). Thus, Zenith asserted that its products were "fully licensed to the extent that they employ *any* patents administered by Canadian Radio Patents Limited" (DX 138, A. 1879; see also A. 1882).

---

[44] Zenith says (Z. Br. 70) that, in the face of testimony concerning this report, it was error for the Court of Appeals to distinguish Continental Ore Co. v. Union Carbide Corp., 370 U.S. 690 (1962), on the ground that in *Continental Ore* "there was clear evidence of defendant's refusal to deal with the Continental Company, as a result of which it had to drop out of the vanadium business" (A. 4260). However, the Court of Appeals was correct in distinguishing *Continental Ore* on this ground because the record here conclusively shows that Zenith did *not* have to drop out of the radio and television business in Canada but that its business in Canada was flourishing and continued to grow until the Canadian government raised its tariff (DX 220, A. 2661; PX 62, A. 2850).

Apparently the pool ultimately agreed with Zenith, for in the four-year period for which Zenith seeks damages in this case, the pool took no action in spite of the fact that Zenith extensively advertised its products and sold over 56,000 television sets and over 65,000 radios in Canada (DX 220, A. 2661). Indeed, at one time during this period, before the tariff was increased (see PX 62, A. 2850), Zenith obtained as much as 5 per cent of the Canadian television market (DX 218, A. 2632). Thus, the record shows that Zenith did effectively compete in Canada without a pool license, and the pool did absolutely nothing to interfere. The logical inference to be drawn from this is that the Canadian pool has acceded to Zenith's position that Zenith products were "fully licensed."

Zenith says that the Court of Appeals held that any exclusion short of total exclusion does not constitute injury (Z. Br. 67). The Court of Appeals made no such holding. Rather, it noted that Zenith had made these substantial sales and had engaged in extensive advertising without any interference by the patent pool (A. 4258-59). If, as Zenith repeatedly contends in its brief, the patent pool had a policy of threatening, suing, and harassing dealers and distributors who imported Zenith's American-made goods, such open and extensive sales and sales activity as was carried on by Zenith[45] and its distributors in Canada during the 1959-63 period would certainly have produced such suits or harassment. Yet the record is barren of any such evidence.

These facts also dispose of Zenith's argument that the mere continued existence of the Canadian pool was a damage-causing overt act (Z. Br. 74-75). The existence of the pool neither stopped Zenith from entering the market nor prevented it from steadily building up its share of the market in Canada. There is no showing that the existence of the Canadian pool caused any dealer or distributor in Canada to cut down on his purchases or to refuse to handle Zenith's products. Moreover, the continued existence of the pool, even if it is assumed arguendo to be an illegal conspiracy, does not create a private cause of action. Zenith or any other private treble-damage claimant must prove, in addition to the existence of a conspiracy, that the conspiracy did something which had an impact on its business (see pp. 79-80, *supra.*)[46] In any event, the existence of the pool itself did not injure Zenith because it was in existence in April 1960 when Zenith filed its answer without counterclaim, and Zenith has admitted that it had no cause of action on that date (see pp. 6-7, 101-02, *supra*).

---

[45] Zenith's own exhibit (DX 218, A. 2647), shows that in Canada in 1960, for example, Zenith itself utilized all forms of advertising media from magazines and newspapers (both trade and general) to billboards and national exhibits.

Zenith places reliance upon an incident involving a *Motorola* distributor in May 1962, contending that the Court of Appeals drew the wrong inference from it (Z. Br. 62-63). However, an analysis of the record shows that the only logical inference was that Zenith dealers and distributors were *not* being bothered by the pool. A letter dated May 17, 1962 was sent by the Canadian pool to a Motorola dealer (DX 162D, A. 2054-56); but there is no evidence that such a letter was sent to any Zenith dealer or distributor. Yet, at the very same time this letter was sent to the Motorola distributor, Zenith had a distributor, Mac-

---

[46] See also Baldwin v. Loew's Inc., 312 F.2d 387, 391 (7th Cir. 1963); Suckow Borax Mines Consol. v. Borax Consol., 185 F.2d 196, 208 (9th Cir. 1950), cert. denied, 340 U.S. 943 (1951); Rutkin v. Reinfeld, 229 F.2d 248, 252 (2d Cir. 1956), cert. denied, 352 U.S. 844 (1956).

Cuspie, in the same Canadian town (A. 2053, 2054). The pool's sending of this letter only to the Motorola dealer in that town indicates that the pool was no longer contacting Zenith dealers or distributors.

Indeed, MacCuspie clearly thought so because, when he forwarded the letter received by the Motorola dealer to Wright in Chicago, he said:

> "[I]t is quite evident that our friends Canadian Radio Patents Ltd., are trying to use the same tactics *as they did on us a number of years back*" (DX 162D, A. 2053).

As noted at page 102, *supra*, the pool *had* threatened MacCuspie in 1954 (A. 452; DX 161-62, A. 2033-46), but he was back in business as a Zenith distributor after the RCA settlement. The language of the letter which he wrote to Zenith is that of one member of the Zenith family to another and it does not express any concern about the pool. Although Zenith now attempts to create the impression that MacCuspie was not a Zenith distributor at the time of the Motorola letter, characterizing him as a "former Zenith distributor" (Z. Br. 17, n.4), the fact is that when this letter (DX 162D, A. 2053) was written he was in business as a Zenith distributor as shown not only by the language employed in the letter itself, but by his letterhead which identifies him as a "distributor" and bears the Zenith trademarket saying "Zenith Radio Television Stereo-HiFi."[47]

In any event, Wright could recall no complaint about interference by the pool by *any* Zenith dealer or prospective dealer in Canada after 1958 (A. 471-72, 477-78).

---

[47] The letterhead was not reproduced in the printed appendix. We have, therefore, reproduced it as Appendix D (A-34) to this brief.

Thus, the finding that the pool "immediately attacked by infringement suit or threat thereof any dealer found to be selling imported receivers" (Finding XXVII, A. 2904) either does not apply to Zenith dealers or must have reference to events prior to the RCA settlement; and the finding that "in every instance where a Canadian distributor began to sell Zenith products he was warned by the Pool to stop and return the merchandise or face expensive infringement litigation" (Finding XXIX, A. 2905) is not supported by any evidence of any such occurrences at any time since at least 1958.

The record thus reduces to certain undisputed facts: *First*, in the four-year period involved here Zenith has sold tens of thousands of radios and television sets in Canada (see DX 220, A. 2661), so that Zenith's assertions that its sets would be confiscated and that *no* dealers or distributors would handle them are untrue. *Second*, no Zenith dealer or distributor had complained of interference by the patent pool since 1958 (Wright, A. 471-72). *Third*, at no time after the last discussion between the pool and Zenith in May 1959, nor at any time during the four years preceding the filing of Zenith's counterclaim has the patent pool either sued or threatened suit against any Zenith distributor or dealer in Canada (see pp. 50-51, 102-03, *supra*).

Not being able to show any suits, threats, or refusals to license in the period involved here, Zenith claimed, through Wright, that the earlier activities of the pool had created "clouds" and "uncertainties" (A. 457, 490) and had a "residual effect" (A. 458). Wright could come up with only two very general allegations as to what this "residual effect" was: (1) it influenced "our own thinking about what we were willing to undertake in the form of promotions and advertising" (A. 490),[48] and (2) it created a "feeling of uncertainty" on the part of Zenith's distributors and dealers (A. 490) and made it difficult for Zenith to get good distributors (A. 458).

Advertising. Zenith offered no evidence as to *how much* it had allegedly reduced its advertising expenditures or what it would have spent on advertising and promotions absent the pool; nor did it offer evidence of the extent to which its sales were supposedly affected by the alleged reduction in advertising. Zenith asserts that Wright's testimony is undenied (Z. Br. 24), but Kaplan's testimony on recall reveals that Zenith did *not* hold back on advertising. Explaining why Zenith used its Canadian figures in making its calculations as to Australia and England, Kaplan said:

> "We also used our actual cost experience in our Canadian operation to the best extent that we knew, and included in this was a portrait of a company getting started into business. *And as a result of getting started into business in Canada, we spent ten per cent in advertising in the first nineteen months period*—ten to eleven per cent. I forget the figure now. And that was gradually—
>
> "THE COURT: Ten to eleven per cent of what?
>
> "THE WITNESS: Of our billings, your Honor.
>
> * * *
>
> "Q. During what period was that?
>
> "A. This is the first nineteen months.

---

[48] In its brief (Z. Br. 22, 74), Zenith asserts that Wright said this alleged curtailment was due to the filing of the instant suit for infringement of Hazeltine Research's United States patent. However, as pointed out in detail in section IV, *infra*, pp. 124-33, neither Wright nor any other witness testified that the domestic patent suit had *any* effect on Zenith's Canadian operation, much less that it caused Zenith to curtail its advertising there.

> "Q. You mean—what nineteen months are you referring to?
>
> "A. I'm referring to the nineteen months starting June 1, 1959 to December 31, 1960.
>
> * * *
>
> "Q. I thought you started in Canada before June 1, 1959.
>
> "A. But that is the basis—we did start prior to that, *so we probably had higher advertising expenses prior to that*" (A. 3459).

As noted by the Court of Appeals (A. 4259), the record shows that Zenith spent 11.47% of its Canadian TV sales and 12.94% of its Canadian radio sales on advertising in 1960 (DX 218, A. 2642).

Distributors and Dealers. Zenith was unable to offer any correspondence or other documentary evidence of any dealer or distributor either refusing to handle its products or expressing concern for the patent pool within the 1959-1963 period, although such evidence for the period *prior to* the RCA-Zenith settlement was offered by Zenith (see p. 50, *supra*). In fact, Zenith neither called as a witness nor even identified a single distributor or dealer who had refused to handle or stopped handling Zenith's products, or whose sales were affected because of concern for the patent pool at any time after the RCA-Zenith settlement. As noted above, the failure to call such witnesses gives rise to an inference that their testimony would have been adverse to Zenith (see p. 104, *supra*). Moreover, Wright could recall no expression of any concern by any dealer or distributor since 1958 (p. 52, *supra*).

C. Zenith's Testimony Is Directly Contradicted by Zenith's Annual Reports.

Although not mentioned in its opinion and apparently not relied upon by the Court of Appeals, the statements made by Zenith in its annual reports to shareholders and the public, *contemporaneous with its activities* in Canada after the RCA case settlement, directly contradict the later testimony of Wright and Kaplan. The trial court refused to consider these annual reports.[49] We believe that this Court may and should consider these reports (see pp. 116-18, *infra*), which completely "destroy" that testimony.

A comparison of Wright's testimony in February, 1964, with Zenith's annual reports for the years 1957 through 1961[50] shows that the testimony about (1) difficulties in getting adequate dealers and distributors, (2) holding back on promotion and advertising, and (3) being prevented from making an effective entry into the market, was an afterthought created for the purpose of this case.

(1) Wright said Zenith had difficulty getting dealers and distributors (A. 458, 490). *What did Zenith's contemporaneous annual reports say?*

1957 Report "[Y]our Company is inaugurating an aggressive program to set up distribution of radio and television receivers in Canada. . . . Experienced and capable personnel have been employed . . . in Toronto and Montreal. . . . It is anticipated that independent distributors will be appointed to handle the distribution of Zenith products in other areas of Canada" (A. 2990-91).

---

[49] The 1962 Zenith Annual Report was received in evidence at the trial (PX 62, A. 725-26, 2847); the others, 1957-1961 are part of an Offer of Proof made in the trial court before entry of judgment, and are reproduced in Appendix A to this brief.

[50] In each case the reports were issued in March of the year following the year the report covered. For example, the 1957 report is dated March 7, 1958 (Appendix A, A-5).

1958 Report	"Four *outstanding* and *experienced* independent distributors were appointed . . . in western Canada" (A. 2991).
1959 Report	"Zenith now has a *strong distribution network* at both the *wholesale* and *retail* level *throughout Canada*" (A. 29[illegible]3).
1961 Report	"[T]he *enthusiasm of distributors and dealers* . . . created a growing demand for Zenith products" (A. 2995).

(2) Wright said Canadian promotion and advertising were held back (A. 490). *What did Zenith's contemporaneous annual reports say?*

1959 Report	Zenith's Canadian distribution network is "supported by *powerful national* and *local* advertising" (A. 2993).[51]
1961 Report	"*Consistent national advertising* . . . created a growing demand for Zenith products in the Canadian Market" (A. 2995).

(3) Zenith claimed it was prevented from making an effective entry into the market, and thus lost sales and profits. *What did Zenith's contemporaneous annual reports say?*

1957 Report	"[Y]our Company is inaugurating an aggressive program to set up distribution of radio and television receivers in Canada . . ." (A. 2990).
1958 Report	". . . *significant volume* of purchases of television and radio receivers and phonograph

---

[51] Zenith's Exhibit 218 (A. 2647) shows that in 1960 it used a great variety of advertising media in Canada, including "Magazine advertising," "Trade paper advertising," "Newspaper advertising," "National Exhibits," "Billboard," "Broadcasting-radio stations," etc.

units by Canadian distributors during 1958" (A. 2991).

1959 Report "... *marked progress* in the sales of all products. ... The Radio and Television Division, established in 1958, *doubled its sales* over the first year and in the closing months achieved a *substantial gain* in its *percentage* of industry sales despite a decline in over-all Canadian industry sales of television receivers. ... wide acceptance of Zenith products by the Canadian trade and public. ... Canadian management is confident that Zenith sales and profits together with its percentage of industry sales will continue to rise throughout 1960" (A. 2993).

1960 Report "... successfully *countered* the downward *industry sales trend* (which began in Canada in 1955) and *made important gains* in the sale of Zenith television and radio receivers. ... Canadian management is *confident* that 1961 will see *further increases* in sales and profits and a *rise in its share* of industry sales, despite the possibility that total Canadian industry sales may continue to decline" (A. 2994).

1961 Report "... *gratifying progress* during the year, *selling more television* receivers than in the two previous years combined. ... growing demand for Zenith products in the Canadian market" (A. 2994-95).

Finally, these annual reports make no reference to any continuing "clouds," "threats," or "uncertainties." The 1957 Report, dated March 7, 1958, in announcing plans for Canada stated that Zenith "*had previously been excluded* from participation in the market through the operation of a *cartel*" (A. 2990) but subsequent reports never again mention the Canadian pool.

It is not that Zenith never advised its shareholders of its problems, for these reports are full of descriptions of problems in various markets. As to Canada, for example, there are references to "heavy starting costs" which "unfavorably affected earnings" (1958 and 1959 Reports, A. 2991, 2992); "profits . . . were adversely affected" by governmental action putting the "Canadian dollar at a discount" (1961 Report, A. 2994); and profits were affected by a change in "exchange ratio" and "imposition of additional tariffs" (1962 Report, A. 2995). As to exports generally and in other markets, the problems reported include "severe foreign competition from Japan" (1959 Report, A. 2992); "new or more rigid import restrictions," "low labor rates" and "lower priced products" of "foreign manufacturers" (1960 Report, A. 2993); "dollar exchange shortages" (1961 Report, A. 2994); and "[c]ompetition from foreign producers" (1962 Report, A. 2995). Yet *not once* after the 1957 Report was there any mention of alleged Canadian pool interference or threats, later claimed to have been causing such enormous damage during this very period.

Wright was Zenith's president or executive vice president when all these reports were issued (A. 440-41); in fact, he signed the 1959, 1960, 1961 and 1962 reports (Appendix A, A-15, A-19, A-22; PX 62, A. 2851); and Kaplan was financial vice president or executive vice president during that time (A. 523).

These contemporaneous published reports completely destroy the vague, generalized, self-serving testimony of Wright and Kaplan several years later. In *United States v. duPont & Co.*, 353 U.S. 586, 602 (1957), a case in which the contemporaneous documents included annual reports, this Court held that such contemporaneous documents were controlling and no contrary finding by the trial court was permissible:

> "This background . . . , particularly the plain implications of the contemporaneous documents, *destroys* any basis for a [contrary] conclusion. . . ."[52]

So here, the "plain implications" of Zenith's contemporaneous annual reports strongly support and sustain the judgment of the Court of Appeals.

Nowhere in its brief does Zenith attempt to explain the direct conflict between the testimony of Wright and Kaplan and the contemporaneous documentary admissions contained in its annual reports. Instead, it asks this Court to close its eyes to those admissions (Z. Br. 114) and award Zenith millions of dollars of damages shown by those admissions to be unfounded. It urges that the Court rely upon tainted testimony instead of contemporaneous documents because the annual reports are in the record only as an offer of proof. Aside from the question of whether this Court could take judicial notice of these published statements,[53] and aside from the fact that this Court may rely upon offers of proof to sustain the decision of a lower court (in this case the Court of Appeals),[54] it is clear that it was an abuse of discretion for the trial judge to refuse to reopen the proof to receive these annual reports once his attention had been directed to them prior to entry of judgment. *Smith v. Dravo Corp.*, 203 F.2d 369, 377 (7th Cir. 1953).

---

[52] Accord, United States v. U.S. Gypsum Co., 333 U.S. 364, 396 (1948).

[53] See Owens-Illinois Glass Co. v. American Coastal Lines, Inc., 222 F. Supp. 923, 927 (S.D.N.Y. 1963), where the court took judicial notice of information in Moody's Industrial Manual, which is based in part on company reports to shareholders. See, *e.g.*, Moody's Industrial Manual at iv (1968).

[54] *Cf.* Jaffke v. Dunham, 352 U.S. 280, 281 (1957), where this Court held an appellate court may sustain a judgment based on evidence ruled inadmissible by the trial court. Certainly this Court can similarly consider such evidence to support the decision of the Court of Appeals, particularly when the evidence consists of documentary public statements of the party.

In *Marconi Wireless Telegraph Co. v. United States,* 320 U.S. 1, 48 (1943), this Court said that one of the factors a trial court should consider in deciding whether to reopen proof is "whether adequate consideration of the question [at issue] . . . can be had on the existing record, or whether additional testimony should be received." Certainly, once the trial court had been made aware of the direct conflict between the controlling documentary evidence and the testimony, consideration of the question of Zenith's alleged injury in Canada required that this documentary evidence be received.

Zenith argued in the Court of Appeals, and may do so here, that these reports should not be considered because Zenith had no chance to explain them away. The answer to that is that they are conclusive. They "destroy" the Wright and Kaplan story, unless Zenith is now prepared to say these corporate reports by Zenith to its shareholders were not truthful.

The question is a simple one. Can this Court, *as a matter of equity and justice, permit* the award of almost $19 million for alleged damages as to Canada, in the face of the fact that the contemporaneous documentary records of the claimant, whether or not in evidence, show that the claim is unfounded?

D. The Testimony Relied Upon By Zenith Was Not Credible.

Zenith argues (Z. Br. 67) that the court below failed to give proper weight to the testimony of Wright and Kaplan that but for the Canadian pool, Zenith could have obtained the same share of the market in Canada as it obtained in the United States, asserting that this testimony was not denied by any other evidence or impeached by cross-examination. Zenith's criticism of the Court of Appeals is wrong for a number of reasons.

First, the credibility of the testimony of Wright and Kaplan on any material issue is impaired by the record, particularly by the later hearings after the trial. For example, the trial court found that the similar testimony of Wright and Kaplan on recall concerning the market share Zenith could have achieved in England and Australia was "unrealistic" and not "believable" (A. 3525). He thus necessarily concluded either that Wright and Kaplan were not telling the truth, or that they were careless with the truth and given to gross exaggeration to their own advantage. Similarly, the fact that these witnesses were forced on recall to retract their previous testimony concerning the conversion of Zenith television sets to the 405-line English system and the purported attempt at marketing such sets by Zenith's English distributor (see pp. 31-40, *supra*), at the very least, shows either a carelessness of the truth or a willingness to make categorical statements without actual knowledge of the facts. The Court of Appeals also had before it the testimony of these witnesses that they had been aware of the effect of the English and Australian embargoes, yet had led the trial court to believe that the pools had kept Zenith out of these countries prior to the damage period and to adopt Zenith's damage findings on that basis (p. 18, *supra*). These matters, based not on demeanor, but on the record, clearly impeach the credibility of these witnesses.

Second, the credibility of the Zenith testimony as to Canada was directly contradicted by other evidence. For example, Wright's testimony at the trial concerning the alleged curtailment of advertising (A. 490) was impeached by Kaplan on cross-examination on recall (pp. 111-12, *supra*). As another illustration, the testimony that the United States and Canadian market shares should be exactly identical is impeached by the 1962 Zenith Annual Report *in evidence* which says that Zenith's business in Canada was adversely affected by a change in currency exchange regulations and an increase in the tariff, factors which would not have affected domestic sales (PX 62, A. 725-26, 2850).

The testimony of Wright and Kaplan that Zenith could build up to 20% of the Canadian black and white television market is further impeached by the extra-record statistics and information which Zenith now asserts concerning its sales activities in Canada since the injunction was entered in this case. If the statements in the Appendix to Zenith's brief to this Court and in its Petition for Certiorari can be taken at face value, they show that Zenith's Canadian sales of black and white television sets and radios (the only products involved in this case and in the testimony; see A. 502) actually were *lower in 1967* than they were *in 1960 and 1961.* Zenith's Schedule 2 (Z. Br. A-26) indicates that its total export sales of radio and television sets to Canada in the calendar year 1967 were $12,694,000. Its brief deceptively creates the impression of a substantial sales gain in radio and black and white television by not indicating how much of this total is color television sales. However, in its Petition for Certiorari (p. 10), Zenith said that its 1967 Canadian sales of *color* television sets amounted to $12,260,000. *If this is so then in 1967 its Canadian sales of both black and white television sets and radios combined were only $434,000.* Yet, according to DX 218 (A. 2644), the sum of Zenith's total sales of radio sets and black and white television sets in Canada in 1961 was $3,021,846. Thus, as to both black and white television and radios, Zenith's own figures show that the testimony as to what

Zenith could expect to achieve was inaccurate because instead of building up to a 20% share of the market for those products, Zenith's Canadian sales of those products have declined drastically.[55]

In reviewing the record and findings under Rule 52(a), a Court of Appeals *can* reject testimony when it is inconsistent with other evidence, *Orvis* v. *Higgins,* 180 F.2d 537, 539-40 (2d Cir. 1950); or when it is inherently improbable, *Jackson* v. *United States,* 353 F.2d 862, 865-66 (D.C. Cir. 1965); *Geigy Chemical Corp.* v. *Allen,* 224 F.2d 110, 114 (5th Cir. 1955); or when the testimony is overborne by evidence requiring contrary inferences, *NLRB* v. *Pittsburgh Steamship Co.,* 340 U.S. 498, 502 (1951); or when considering all of the evidence in the record, the appellate court has a firm conviction that a mistake has been made, *Commissioner* v. *Duberstein,* 363 U.S. 278, 291 (1960); *United States* v. *U.S. Gypsum Co.,* 333 U.S. 364, 395 (1948).

In any event, the testimony, or "guesstimate"[56] of Wright and Kaplan relied upon by Zenith (Z. Br. 67) is not evidence of the fact of damage *in the period relevant to this case.* Neither claimed that Zenith's failure to have 20 per cent of the Canadian market during the four-year period was due to anything occurring during that period or at any time after the release or after April 7, 1960 (see pp. 61-62, *supra*). Instead, both testified only that Zenith would have *built up* to the 20 per cent market share *by the beginning* of the damage period had it not been excluded from the Canadian market for a "great many years" *prior* thereto (Kaplan, A. 3440, 3465; Wright, 3490). But whatever lack of market share and resulting loss of sales and profits Zenith claims to have suffered during the June 1959-May 1963 period, because acts occurring prior to September 1957 had interfered with its gradual build-up of an established market by June 1, 1959, was released and fully compensated for by the RCA settlement (see pp. 47-49, *supra*). As the Court of Appeals held (A. 4261), the effect of the settlement was to release and to preclude recovery by Zenith for damages that might result in the future from activities of the Canadian pool prior to September 27, 1957, the date of the settlement.[57] Zenith does not dispute the principles applied by the Court of Appeals, but instead makes the curious argument that the settlement is an admission of the fact of damage in the years *after* that settlement (Z. Br. 75).

---

[55] Moreover, even if Zenith's exports of color television sets to Canada in 1967 were not $12,260,000 as represented in its Petition for Certiorari, the statistics taken from the same public sources relied upon by Zenith in the Appendix to its brief and relied upon by Zenith in preparation of its damage exhibit at the original trial show that Zenith's share of either the total Canadian market of both black and white and color television sets or the Canadian market of the black and white television sets alone could not possibly have reached anywhere near the 20 per cent of the market which Wright testified Zenith could build up to. See Appendix E to this brief, p. A-40, *infra,* which shows that *all* U.S. exports to Canada (including Zenith's) were less than 8% of the 1967 Canadian market.

[56] The term "guesstimate" was applied to this testimony by the trial judge (A. 522, 3525-26).

Aside from the fact that Zenith's contention is obviously fallacious because the settlement entered into in 1957 could not be an admission that something happened in the period from 1959 through 1963 to injure Zenith, it is hornbook law that the settlement of litigation does not constitute an admission of any kind. See 15 Am. Jur. 2d, *Compromise and Settlement* § 4, 938; *Domarek* v. *Bates Motor Transport Lines, Inc.*, 93 F.2d 522, 526 (7th Cir. 1937); *Hawthorne* v. *Eckerson Co.*, 77 F.2d 844, 847 (2d Cir. 1935); *Lewis* v. *Dixie-Portland Flour Mills, Inc.*, 356 F.2d 54, 57 (6th Cir. 1966).

---

[57] As Zenith admits (A. 3035), and the cases confirm, the release of one alleged joint tort-feasor releases all. See, *e.g.*, Dura Elec. Lamp Co. v. Westinghouse Electric Corp., 249 F.2d 5, 6 (3d Cir. 1957). Unless the claimant expressly reserves rights against an alleged co-conspirator, he is precluded from attempting to base a claim against any alleged co-conspirator based on acts prior to the release. Twentieth Century-Fox Film Corp. v. Winchester Drive-In Theatre, 351 F.2d 925, 931 (9th Cir. 1965), *cert. denied*, 382 U.S. 1011 (1966). The Zenith releases cover future damages from *past* acts, see Sitchon v. American Export Lines, Inc., 113 F.2d 830, 831-33 (2d Cir. 1940), *cert. denied*, 311 U.S. 705 (1940); they do not purport to release damages from *future acts*.

Zenith concludes its argument on the fact of damage as to Canada by asserting that the Court of Appeals' decision requires that the only way Zenith could prove any damages would be to search out each potential customer in each market and then estimate how much business would have been gained if such customer had not been intimidated by the pool (Z. Br. 75-76). On the contrary, the effect of the Court of Appeals' holding here is that Zenith failed to prove *any* potential customer had been intimidated by the pool in the period for which damages were awarded by the trial court. This long record can be searched in vain for *any* evidence that *any* customer or potential customer, *any* dealer or potential dealer or *any* distributor or potential distributor refused to purchase Zenith's products or in any way cut down on its purchases of Zenith's products in the four-year period asserted in this case by reason of anything done by the patent pool.

Zenith made a similar argument in the Court of Appeals citing this Court's statement in *Continental Ore Co.* v. *Union Carbide Corp.*, 370 U.S. 690, 698-99 (1962), that the evidence should be viewed "as a whole" and not "by dismembering and reviewing its separate parts." But the point here is that the record viewed as a whole shows *no* damage to Zenith. It was on the basis of the entire record that the Court of Appeals reached "a firm conviction that the district court made a mistake in inferring from the entire testimony that the essential element of *fact* of damage had been established by Zenith" (A. 4259; emphasis by the court).

IV. ZENITH'S CONTENTION THAT THE INSTANT DOMESTIC PATENT SUIT AND DOMESTIC LICENSING NEGOTIATIONS INTERFERED WITH ITS CANADIAN EXPORTS IS WITHOUT MERIT.

Zenith argues (Z. Br. 22-24, 71-74) that the pendency of the instant domestic patent suit and the alleged assertion against it by Hazeltine Research of nine U.S. color patents were acts "pursuant to the conspiracy" and that these acts were "directly responsible for the resulting curtailment of Zenith's business" in Canada (Z. Br. 73). These contentions are without foundation. They have been rejected by both courts below, and in fact, were expressly abandoned by Zenith during the trial.

In the course of examination of Zenith's witness Crotty concerning these negotiations and alleged infringement charges by Hazeltine Research on domestic patents, Zenith's counsel expressly disclaimed any connection between those charges and the alleged conspiracy:

> "THE COURT: This I assume is all offered under the misuse theory?
>
> "MR. McCONNELL: Correct, it *didn't have anything to do with the overall conspiracy.*
>
> "THE COURT: I understand" (A. 428).

That Zenith was *not* claiming that the domestic license negotiations affected its foreign business is shown by its post-trial brief on the antitrust issues. In that brief, under the heading "(a) *Damages Incurred by Zenith as a Result* of Plaintiff's Unlawful Domestic Conduct," Zenith stated:

> "*As a result* of Hazeltine's illegal package licensing activities *and the assertion of patents, including the institution and prosecution of this infringement action and the threat to file other actions* on numerous other patents if the standard package license is not signed, *Zenith has incurred to date expenses of over fifty thousand dollars*" (pp. 39-40).[58]

There was not one word in its post-trial brief or in its proposed findings attributing alleged "curtailment" of its business in Canada to the charges of infringement of Hazeltine Research's domestic patents.

In fact, *the only finding* which Zenith proposed and the trial court entered concerning alleged damages as a result of the domestic suit and licensing negotiations is itself a clear *admission* that those matters did *not* have any effect on Zenith's foreign commerce. Finding XIII states:

> "XIII. As of the date the trial began Defendant [Zenith] *had been injured in its business and property* as the proximate result of the acts and demands of Hazeltine, referred to above, in the amount of $50,065" (A. 2898).[59]

The "acts and demands of Hazeltine" referred to in Finding XIII included the pendency of the suit and the licensing negotiations in question (see Findings VII to XI, A. 2894-98). These "acts and demands" did *not* relate to the foreign pools, which were covered in later, separate findings.

---

[58] Zenith's post-trial brief was not printed in the Appendix, but is included in the record filed with the Clerk of the Court.

[59] This was the amount of legal expense incurred by Zenith in connection with the domestic patent litigation up to December 31, 1963, as testified to by Crotty (A. 550-54).

In other words, not only did Zenith's counsel tell the trial court that the domestic patents "didn't have anything to do with" alleged foreign conspiracies, the *finding* which Zenith itself proposed *confirmed* the fact that the *sole claimed injury to Zenith's "business and property"* up to the time of trial (February 1964) resulting from Hazeltine Research's domestic licensing negotiations and the suit on its U.S. patent was the cost of the domestic patent investigations and this litigation—$50,065.[60] Yet *now* Zenith argues that the injury to "its business and property" from the domestic patent suit and licensing negotiations involves millions of dollars in damage to its Canadian exports.

In addition, the only statements by the trial judge on this subject indicate that he found *no* merit in Zenith's theory that the domestic activities were related to the foreign patent pools, and that had any such finding been submitted to him, it would have been rejected. For example, in the course of the hearing before the trial court on Hazeltine Research's motion to set aside the findings and conclusions, the trial judge indicated his understanding that any charge that the domestic patent activities were related to foreign conspiracies was dropped from the case:

> "THE COURT: Well, certainly in regard to the American patents, *there was no evidence or any charges in*

---

[60] Based on this finding, the trial court in its judgment of April 5, 1965 (A. 3078-81) included an award to Zenith of $150,000, treble the amount of Zenith's claimed legal expenses. The Court of Appeals affirmed this award based on its concurrence with the trial court's findings of domestic patent misuse in connection with Hazeltine Research's 1962 license offer to Zenith under U.S. patents for color television (A. 4251, 4262). Thus, the Court of Appeals awarded Zenith all the damages it ever claimed as a result of pendency of the instant infringement suit and charges of infringement of domestic patents and neither party has appealed from that award.

> *the pleadings in regard to a conspiracy in regard to the American patents, was there?* I mean, this is strictly put on Hazeltine, on their package deal thing and *Hazeltine had* no [illegible]-conspirators in regard to American patents, did they?" (A. 3031).

Further, when counsel for Hazeltine Research explained that Zenith's theory had once been that the domestic infringement suit was detrimental to Zenith's foreign business, the trial judge *expressly agreed* with counsel's comment that the theory "doesn't make much sense" (A. 3032).

Similarly, the Court of Appeals said:

> "Zenith argues that HRI's [Hazeltine Research's] instant infringement suit is in furtherance of the alleged Canadian conspiracy. There is nothing in the record to show that this suit had any effect to damage Zenith's Canadian business. The record shows that this claim was not taken seriously by the district court" (A. 4259).

Thus, both courts below rejected Zenith's contention, and their concurrent determination of the matter adverse to Zenith should foreclose Zenith's contention in this Court. See *Berenyi* v. *Immigration Director,* 385 U.S. 630, 635 (1967); *Graver Mfg. Co.* v. *Linde Co.,* 336 U.S. 271, 275 (1949), *adhered to on rehearing,* 339 U.S. 605 (1950).

Zenith argues (Z. Br. 73) that "the Trial Court was free to draw the inference" that the instant patent suit was "pursuant to the conspiracy," but significantly Zenith cites no reference to where the court in fact drew such an inference. Being unable to cite to any "finding" as authority for its statement that "the trial court *found* that the instant suit was brought in furtherance of the conspiracy" (Z. Br. 71), Zenith relies upon the general language of the trial court's letter to counsel indicating that he was finding for

Zenith on the counterclaim and adopting Zenith's proposed findings. But neither the trial judge's letter to counsel (A. 2857-58) nor the findings submitted by Zenith and adopted by the trial judge (A. 2892-2912) contain a single statement suggesting that the instant patent suit was brought in furtherance of the alleged conspiracies or had any effect on Zenith's foreign business. In fact, the trial court's statement that he understood that there was no conspiracy with respect to domestic patents was made *after* the findings were entered (see pp. 126-28, *supra*).

Moreover, Zenith offered not one bit of evidence during the trial to show that the instant suit or negotiations on domestic patents had any connection with the Canadian pool or any bearing or effect on its exports to Canada or any other country.[61] In an attempt to create the illusion that the record contains something it does not, Zenith asserts (Z. Br. 74) that "as testified to by Wright, Zenith's president, [Zenith] had of necessity to curtail its operations in Canada until the outcome of the instant suit could be determined (A. 453)." The cited page of Wright's testimony may be searched in vain for any such statement or anything supporting it. Wright's testimony there had to do with the notices which the Canadian pool had allegedly been sending out prior to 1957, and his previous requests to the Canadian pool for a license to import. *It had nothing whatsoever to do with the domestic patent litigation.* Zenith makes a similar assertion at page 73 of its brief, saying that the domestic patent suit caused the "*resulting* curtailment of Zenith's [Canadian] business, *testified to by both Wright and Kaplan.*" But Zenith here does not even attempt to cite a record reference as to where they testified that the supposed curtailment *resulted from* the domestic patent litigation. The fact is that neither Wright, Kaplan, nor any other witness testified that the instant domestic patent suit had any effect on Zenith's exports.

---

[61] Zenith now attempts to create the impression of a connection between the foreign pools and the domestic license negotiations by erroneously asserting that the grant of a license on a U.S. patent would normally grant a license *by implication* under the foreign counterparts (Z. Br. 23, 73). It is firmly established that the rights conferred under a patent license are co-extensive with the rights granted under the patent itself, Cold Metal Process Co. v. United Eng. & Foundry Co., 235 F.2d 224, 229 (3d Cir. 1956), and these rights have no effect in another country that has issued its own patent on the same invention. Boesch v. Graff, 133 U.S. 697, 703 (1890); ALCOA v. Sperry Products, Inc., 285 F.2d 911, 925-26 (6th Cir. 1960), *cert. denied,* 368 U.S. 890 (1961). The only case cited by Zenith (Z. Br. 23, 73), Curtiss Aeroplane & Mtr. Corp. v. United Aircraft Eng. Corp., 266 Fed. 71 (2d Cir. 1920), is *not* contrary to this rule and in fact supports it because the court there acknowledged that:

> "It is admitted that, if the [patented articles] which are alleged to infringe [U.S. patents] had been built in Canada . . . *under a Canadian patent,* and then brought into the United States, *infringement would have been made out*. But that is not this case" (266 Fed. at 79).

Not only is there no evidence or finding to support Zenith's theory but the record affirmatively shows that the circumstances which led to the filing of the domestic patent suit by Hazeltine Research in 1959 were completely unrelated to the alleged Canadian conspiracy. The five-year license granted to Zenith under Hazeltine Research's domestic patents was to expire June 30, 1959, and shortly prior to that expiration, Dodds of Hazeltine Research met with Crotty of Zenith to discuss a possible renewal (A. 434; Finding VII, A. 2894). Four black and white patents were initially brought up but the discussion narrowed down to the '648 patent on which Hazeltine Research later brought the instant suit (A. 438). Zenith was offered a license under that patent, but refused it contending it needed no license

(A. 436, 438).[62] Those negotiations continued for a few months after the license expired (A. 783) until in October 1959, Hazeltine Research served notice of infringement (DX 9, A. 1008), and one month later on November 20, 1959, filed suit for infringement of the '648 patent. Thus, contrary to Zenith's present assertion, these events resulting in the instant domestic patent suit came about solely as a result of the domestic activities of Zenith and were completely unrelated to Zenith's May 12, 1959 meeting with representatives of the Canadian pool.

The negotiations concerning domestic color television patents similarly were unrelated to any supposed activities of the Canadian pool. Zenith was not making color television sets during the negotiations preceding the suit (A. 436), but after it commenced marketing color receivers in the Fall of 1961 (A. 646-47), Zenith and Hazeltine Research commenced negotiations with respect to a possible license under nine of Hazeltine Research's color patents (A. 419-20). Although various licensing proposals were made to Zenith (DX 12, A. 1013-31; DX 15-18, A. 1035-71), negotiations ended in 1963 without agreement on a license (A. 432-34), and Zenith has continued to make and sell color sets. There is no evidence that Zenith has been contacted in any way by the Canadian pool at any time since it has been making and selling color sets.

Lacking any evidence of a connection between these domestic patent matters and the discussions between Zenith and the Canadian pool, Zenith attempts to create an illusion of some connection by implying that one of the Canadian patents discussed in Zenith's May 1959 meeting with representatives of the Canadian pool was the counterpart of the U.S. patent on which Hazeltine Research brought suit (Z. Br. 21-22, 72). But the fact is that Zenith's own vice president Crotty, who attended the meeting, testified that the Canadian patent discussed was *not* the counterpart of the patent in suit (A. 438). The facts reviewed above show that the instant suit was brought because of a breakdown in the domestic negotiations between Zenith and Hazeltine Research and not, as Zenith suggests, to carry out any supposed threat by the Canadian pool.

---

[62] Although it never expressed any such concern during the negotiations, Zenith now claims that it faced a "serious" dilemma in that if it took a license under Hazeltine Research's domestic patents, it "thereby admitted the validity of all the foreign counterparts" of those patents (Z. Br. 74). The licenses offered to Zenith by Hazeltine Research, including DX 2 (A. 955, 971) cited by Zenith, contain no such requirement, and Zenith cites no legal authority to support its contention.

Zenith attempts also to create the impression that Dodds, counsel for Hazeltine Research, in his opening statement at the trial "admitted" that there was a connection between the domestic patent litigation and Zenith's meeting with the Canadian pool representative in May 1959 (Z. Br. 22, 72). This is a distortion of Mr. Dodds' comments. At the place quoted in part by Zenith (A. 131-32), Dodds was explaining that the foreign patent pools in the foreign countries could not stop Zenith from importing and selling television receivers in their respective foreign countries without first bringing a successful infringement suit on the foreign patent or patents held by the pool. Noting that it was "the same as if you infringe a patent in this country," he gave as an analogy Hazeltine Research's pending action in the United States, saying:

> "And we can't prevent Zenith from selling sets without an adjudication, which we are in the process of trying to get now. We believe they infringe" (A. 132).

He was obviously referring to stopping sale *in the United States* by obtaining an adjudication on the U.S. patent in suit which Hazeltine Research believed Zenith infringed, and was *not* suggesting that a U.S. adjudication could prevent sales *in Canada.* His point was simply that, just as Hazeltine Research could not stop Zenith from selling in the United States except through a successful infringement action in the United States, a foreign patent pool could not stop Zenith from selling in that country without bringing and successfully prosecuting a patent infringement suit on a patent of that country. The distortion of counsel's statement by Zenith merely emphasizes the lack of merit in its position.

Finally, there is no merit in Zenith's suggestion that Canadian courts will automatically recognize the validity of Canadian patents when their American counterparts have been upheld in American courts (Z. Br. 72). In its brief to the court below and in its Petition for Certiorari to this Court, Zenith argued that this claim was supported by the case of *Nu Tec, Ltd.* v. *Hearst,* 38 Ont. Weekly Notes 2 (1930), a decision which we pointed out was *reversed* on appeal in *Nu Tec, Ltd.* v. *Hearst,* 39 Ont. Weekly Notes 110 (1930). In reversing, the Canadian appellate court held a Canadian patent *invalid* despite the fact that the U.S. counterpart of that patent had been held *valid* by a U.S. district court.[63]

---

[63] The other cases cited by Zenith for this proposition at best state only that a U.S. judgment buttresses the presumption of validity created by the issuance of patents in both Canada and the United States. For example, in American Arch Co. v. Canuck Supply Co., 3 Dominion Law Reports 567 (1924), quoted incompletely by Zenith (Z. Br. 72), the Court said: "A strong presumption in favor of the validity of the [Canadian] patent is created *by the issue of the Canadian and the United States patents and* by the judgment [of the U.S. court] herein above referred to" (3 Dominion Law Reports at 571). In its quote from this passage, Zenith omitted entirely the portion we set out in italics.

Zenith's argument that the charges of infringement on domestic patents were acts in furtherance of the Canadian pool is pure fiction writing. It is an attempt by Zenith again to change its position with respect to alleged damage-causing acts and resurrect a theory of recovery on which it offered no evidence, which it expressly abandoned in the trial court and in its proposed findings, and which was found to have no evidentiary support by both the trial court and Court of Appeals.

V. THE COURT OF APPEALS WAS CORRECT IN HOLDING THAT ZENITH SUFFERED NO INJURY AS TO AUSTRALIA.

With respect to Australia, the Court of Appeals concluded:

> "No specific findings were made with regard to how the alleged conspiracy prevented sales by Zenith in Australia. We see no necessity of discussing at great length Zenith's failure to prove the *fact* of damage with respect to the Australian market, since there is no testimony that could reasonably support a finding of *fact* of damage there. Until April, 1960, Australian government regulations prevented Zenith's selling radio and TV sets in that country. Zenith's case rests on the testimony of its officers that conversations between Zenith employees and Australian businessmen who were not members of the patent pool led it to believe that it could not obtain a license to import radio and TV receivers into Australia after 1960. There is no evidence that Zenith ever attempted to obtain a license from the Australian pool, nor is there any proof of use by the Australian patent pool of restrictive license forms to prevent import. Indeed, during the post-1960 period a large number of low priced Japanese radio and TV sets were sold in Australia. Actually, high import duties and shipping costs posed a formidable barrier to Zenith sales. There is

no evidence to warrant the inference that Zenith intended to or was prepared to enter the Australian market. *Triangle* v. *National Elec. Prod. Co.,* 152 F. 2d 398; *Volasco Prod. Co.* v. *Fry Roofing Co.,* 309 F. 2d 383, 395" (A. 4256-57; emphasis by the Court).

In its brief, Zenith pays minor attention to the matters referred to by the Court of Appeals in reaching its conclusion that there was a total failure of proof of the fact of damage in Australia. Instead, its argument is directed primarily to an attempt to show that the patent licenses offered by the pool do not mean what they say, and to an attempt to show that the court below "ignored" certain "facts" and relied on offers of proof. We shall discuss first the licensing agreements, and then Zenith's other miscellaneous arguments.

A. Patent Licenses Without Import Restrictions Were Available to Zenith from the Australian Pool Since 1951.

We have pointed out in the Statement of the Case (pp. 64-65, *supra*) that the Australian pool offered *two* types of licensing agreements: the whole-number license forms (*e.g.,* License No. 6, DX 193, A. 2438-51) which were offered by the pool to *manufacturers,* and thus available to Zenith; and separate forms bearing the same number but followed by the suffix "B" (*e.g.,* License No. 6B, DX 194, A. 2452-63) which were issued for the same periods of time to local assemblers (A. 804-06).

The "B" license forms offered to local assemblers did contain, and continued to contain, provisions requiring the licensee to agree not to export or sell or offer for sale any radio and television receivers not manufactured in Australia (see p. 65, *supra*). Although similar provisions had appeared in *early* whole-number license forms, which were issued to manufacturers (see, *e.g.*, DX 189, A. 2395, 2400), these restrictive provisions were expressly *deleted* from the license agreements *available to manufacturers* such as Zenith, *beginning January 1, 1951.* Thus, License No. 5, available from the pool during the period January 1, 1951 to June 30, 1953 (DX 192, A. 2425-37), does not contain these restrictions (see A. 2430), and neither does License No. 6 available during the period July 1, 1953 to June 30, 1958 (DX 193, A. 2438-51, see 2443) (see also p. 65, *supra*). These license forms are in evidence and are Zenith's own exhibits.

In the trial court, Zenith created the impression that all Australian pool licenses had the terms and provisions of the "B" license. In fact, Zenith asserted that it was the "only form" in use. That this was Zenith's tactic is expressly revealed at page 90 of its post-trial brief to the trial court on the antitrust issues.[64] Zenith there asserted that "the *only form* of license agreement issued by the pool" was "the standard pool license, which imposes the restrictions" and it then quoted from paragraphs 4(a)-(b) of this so-called standard license specifically identifying these paragraphs as being contained in "(*License No. 7B*, dated 1961—Def. Exh. 195)."[65]

This misrepresentation of the record was carried over into the findings adopted by the trial court without change.

---

[64] Zenith's post-trial brief is not printed in the Appendix, but is part of the record on appeal filed with the Clerk of the Court.

[65] Zenith persists in these tactics even in this Court. In the Appendix to its brief (A-18) where it purports to set forth citations supporting Finding XXXIV that the standard license required the licensee "to agree not to export or import," it lists exhibits 188, 189, 191, 194 and 195 and *omits* reference to exhibits 192 and 193 (A. 2425-51), which are the relevant No. 5 and No. 6 license forms.

Finding XXXIV stated that licensing by the pool is by a "standard package license" which is stated to be "the *only form* of license agreement *issued* by the Pool" and that the standard form "requires the licensee to agree not to export or import or sell or offer for sale in Australia any radio or television receiving apparatus not manufactured in Australia" (A. 2907).

The Court of Appeals was not misled and correctly pointed out "nor is there any proof of use by the Australian patent pool of restrictive license forms to prevent import" (A. 4256).

Zenith does not deny that the manufacturer's license form was available to it but instead makes two spurious arguments in an attempt to avoid the effect of the clear proof that in 1951 a fundamental change permitting imports was made in the license forms.

First, it asserts manufacturer's License No. 7 was the only evidence that the restrictions on imports had been removed, and points out that this was an offer of proof (Z. Br. 89). But the removal of the restrictions *beginning in 1951 had already* been established by Licenses No. 5 and No. 6 (DX 192 and 193, A. 2425-51), which were put in evidence by Zenith. License No. 7, which covered the period from January 1, 1961 through December 31, 1965 (Offer of Proof, A. 2970-71, 2977), was offered merely for the purpose of bringing the license forms up-to-date.

Second, Zenith argues that other provisions in License No. 7, while not expressly restricting imports by the licensee, nevertheless make it "abundantly clear" that this was the unexpressed intent (Z. Br. 89-90). For example, it points to a provision in License No. 7 calling for the licensee to affix a patent plate reciting that the "instrument was manufactured under a Licence" (A. 2977) granted by the pool, and argues that it follows from this that the licensee was not permitted to import (Z. Br. 90).

The logic of this argument is somewhat obscure to say the least. For example, if the provisions on which Zenith relies were intended to have this meaning, why were express restrictions on imports included in the "[illegible]" forms for local assemblers, for those licenses have the same provisions on which Zenith relies, including the identical patent plate requirement (*e.g.,* License 7B, DX 195, A. 2464-75, see A. 2464, 2469-70). Moreover, Zenith's tortured argument assumes that the deletion in 1951 from the manufacturer's license of the paragraphs restricting imports was not intended to have any effect.[66]

The clear documentary proof that a change was made in the pool license in 1951, taking out the prohibition against imports, cannot be overcome by such bald assertions as "the Pool has never granted a license to import American sets into Australia" (Z. Br. 36). The exhibits cited by Zenith as support for this statement are the various blank license forms *including Licenses No. 5 and No. 6* (DX 192, 193, A. 2425, 2438) from which the provision requiring the licensee not to import had been stricken. Furthermore, there is no evidence in the record to indicate that licenses have been refused to American companies or that since 1951 any American company ever asked for or desired a license.

Similarly without merit is Zenith's assertion that "Hazeltine patents" have been in the pool "for 35 years" and "*during all this time* have been licensed in such a way as to

---

[66] Such an assumption is contrary to settled rules of contract construction as we pointed out at p. 97, *supra,* where we discussed Zenith's similar argument with respect to licenses offered by the British pool.

preclude and exclude any imports of radio or television sets into Australia" (Z. Br. 36). Its only support for this assertion is a memorandum dated *April 5, 1939!* (DX 197, A. 2482). Moreover, the Australian Government statistics put in evidence by Zenith affirmatively disprove this contention. Those statistics show that during the 1960-64 period over 500,000 radios and over 2,700 television sets *were imported* into Australia from Japan alone (see p. 67, *supra*). It is obvious therefore that the pool did not "preclude and exclude any imports of radios or television sets into Australia" as claimed by Zenith.

Finally, Zenith's assertion that the Court of Appeals "conced[ed] that a conspiracy existed in . . . Australia" (Z. Br. 85-86) distorts beyond recognition the holding of the Court of Appeals. Leaving aside the fact that the court specifically limited its holding to Zenith's total failure to prove injury, it also found that there was no proof "of use by the Australian patent pool of restrictive license forms to prevent import" (A. 4256). If the licensees were not prohibited from importing, there could be no unlawful conspiracy.

B. Zenith's Other Attacks on the Conclusions of the Court of Appeals Are Similarly Unfounded.

Zenith asserts that the decision of the Court of Appeals "ignores the fact . . . that Zenith sought distributors in Australia but was unable to obtain them because of the Pool" (Z. Br. 86). However, the trial court made no finding that the pool in any way prevented Zenith from obtaining distributors or that Zenith sought any distributors in Australia, and the testimony of Wright (A. 476) relied on by Zenith provides no support for such an assertion. Wright said that he had talked with "many people in Australia with a view to distribution" and "there was no question in *their* mind" that Zenith could not get a license to import (A. 476). However, Wright admitted that he did not talk to anyone from the pool concerning a license permitting imports (A. 476) and both Wright and Kaplan admitted they knew of no request to the pool for a license within the twenty-year period before they testified in 1964 (A. 476, 540-41).

This testimony demonstrates Zenith's lack of interest in the Australian market. It is simply not believable that Zenith, without making a direct inquiry to the pool, relied instead on the views of others that a license for importing was not available, and then stayed out of the Australian market and lost substantial profits every year. If Zenith had been suffering the losses it now claims, it is incredible that it would not once after the 1930's, or at least after the governmental embargo was lifted in 1960, make some inquiry to the pool concerning a license. When the embargo was lifted, Zenith could have imported to Australia, and if it had checked with the pool, it would have found that such a license had been available since 1951 (see pp. 64-65, *supra*).

Zenith also asserts that the Court of Appeals "retried the damage issue in . . . Australia *de novo*, not on [the] basis of the original record but apparently relying largely on offers of proof . . ." (Z. Br. 85), mentioning only the court's statement that "high import duties and shipping costs posed a formidable barrier to Zenith sales" (Z. Br. 88). The fact is that Australian statutes and orders showing the prohibitive import duties and tariffs were identified by an Australian Government official during the embargo hearings and received in evidence (A. 3119, 3144-60). The trial judge ultimately did not consider them because he refused to consider the market share issue after the embargo was proved, but these statutes and orders were in evidence.

Moreover, while the Court of Appeals noted that the import duties and tariffs were indeed a formidable barrier to Zenith sales,[67] its decision was based upon a review of the entire record as to Australia as shown by the detailed discussion in its opinion (pp. 133-34, *supra*). We submit that the conclusion of the Court of Appeals that Zenith had not "been injured in its business by the activities of the alleged unlawful conspiracies in Australia" (A. 4257) was the only conclusion possible on this record.

VI. THE COURT OF APPEALS DID NOT HOLD THAT A DEMAND BY ZENITH FOR A LICENSE WAS NECESSARY.

Zenith argues (Z. Br. 91-96) that the Court of Appeals held that Zenith had to make a "perfectly useless and futile demand of the respective pools" for a license to import (Z. Br. 92) and that decisions of this Court indicate that such a demand is not necessary, citing *Continental Ore Co.* v. *Union Carbide Corp.*, 370 U.S. 690 (1962) and *Hanover Shoe, Inc.* v. *United Shoe Mach. Corp.*, 392 U.S. 481 (1968).

The Court of Appeals made no such holding. The court merely referred to the fact that Zenith had not requested a license as being among many factors which when taken together showed that Zenith was not interested in a license because: (a) it had no intention and was not prepared to export to *Australia* (A. 4256-57); (b) it did in fact ship to and sell in *Canada* tens of thousands of radio and television sets without a license and without interference by the pool and indeed claimed to be fully licensed as a result of the 1957 settlement to the extent it used any patents administered by the Canadian pool (A. 4258); and (c) Zenith and its distributor in *England* were awaiting the change to the 625-line television system—"until such time naturally we cannot start marketing" television sets (DX 112, A. 1593; A. 4257)—and Zenith had been importing radios into England since the lifting of the government embargo *without* a pool license and without interference from the pool (Finding XXII, A. 2901-02, A. 4257).

---

[67] In contrast to Wright's testimony that the tariff in Australia was 20 per cent or 30 per cent and possibly "lower" (A. 467), the tariff in 1963, for example, was 45 per cent plus $55.50 which alone would almost double Zenith's price (PX 71, A. 3150, 3272, 3277-78).

It may not be necessary for a claimant to prove a demand and refusal if it is shown by other facts and circumstances that such claimant desired a license and that a demand would have been futile. But the absence of a request for a license from the pools under the undisputed facts and circumstances of this case is strong evidence that Zenith did not desire a license. It is inconceivable that any company suffering the millions of dollars in damages Zenith now claims to have been suffering because it did not have a license from the patent pools would not at least once after the settlement of the *RCA* case have requested a license from at least one of the pools. Zenith says that Wright talked with numerous people about Australia (Z. Br. 91) but Wright admitted that he had never talked with anyone connected with the pool (A. 476) (see pp. 63-64, *supra*). Zenith does not deny that it made no request or inquiry of the English pool after either the RCA settlement or the lifting of the government embargo. Zenith implies that it requested a license from the Canadian pool in the May 12, 1959 meeting (Z. Br. 91), but there is no evidence that Zenith requested a license at that meeting or was abandoning its position that it needed no license from the pool (see pp. 53, 101-02, *supra*).

Zenith is claiming over $15 million in treble damages as to England and Australia based on its after-the-fact construction of the Australian and English license forms. A simple request to the pools in those countries would have made reliance upon such strained *ex parte* constructions unnecessary. However, despite a hiatus of twenty years following the beginning of World War II, during which time the whole question of imports was rendered moot by governmental embargoes, and despite changes in the pool licenses in both countries eliminating the prohibition on imports, Zenith has not even *inquired* of the pools whether their licensing policies would in fact permit the granting of a license to import radio and television sets (see pp. 44-46 and 63-65, *supra*).

Under the circumstances here, if the Court could not take into account the fact that no request had been made, someone who did not want or need a license and would not have taken one if offered (such as Zenith in Canada) or who was not in fact interested in importing (such as Zenith in Australia and in England as to television) could sit back for years (as Zenith did here) and then assert a right to damages on the claim that no license had been available to it.

All this Court held in *Continental Ore* and *Hanover Shoe* was that, under the particular circumstances of those cases, a demand was not a legal prerequisite to recovery. Nothing the Court of Appeals said here is inconsistent with those decisions. The Court of Appeals here did not hold that a demand was necessary, but merely included the absence of a request as one of a number of facts it considered.

VII. THE COURT OF APPEALS REACHED ITS DECISION WITHOUT RELIANCE UPON OFFERS OF PROOF.

Zenith argues (Z. Br. 113-15) that in determining that the trial court's fact of damage findings were erroneous, the Court of Appeals utilized offers of proof. However, the opinion of the Court of Appeals neither refers to nor relies upon offers of proof, and Zenith's so-called "examples" show nothing to the contrary.

The first example given by Zenith is the Court of Appeals' statement: "nor is there any proof of use by the Australian patent pool of restrictive license forms to prevent import" (A. 4256; Z. Br. 114). The Court of Appeals there is talking about the absence of proof, not about any offer of proof.[68]

The second example is a comment made by the court concerning Australia that "Actually, high import duties and shipping costs posed a formidable barrier to Zenith's sales" (A. 4256; Z. Br. 114). Kaplan himself recognized during his testimony at the original trial that shipping costs to Australia could run as much as 6 per cent (A. 531), which is no small amount when it is considered that Zenith's profits on its substantial exports to Canada in the period of 1960 through 1963 ranged from about 3.9 per cent to a high of about 9 per cent (DX 218; A. 2642, 2644-46). The statutes and regulations showing the prohibitive Australian tariff were received in evidence (p. 139, *supra*).

The final example which Zenith cites (Z. Br. 115) is a statement by the Court of Appeals that "Significant barriers other than patent difficulties operated to prevent sales of Zenith TV receivers in England . . . Zenith sets sold in England would be in competition with substantially lower priced British sets" (A. 4257). Zenith's contention that this statement rests upon post-trial offers of proof is not correct. The average price of Zenith sets is shown by Zenith's exhibit 220 (A. 2661) to be about $143.00 F.O.B. Chicago. The average price of English-made television sets with which the Zenith imports would be competing can be calculated from statistics of the English government put *in evidence* by Zenith and relied upon by Zenith in preparing its damage exhibit (DX 216, A. 2600, 2602). Calculating the average price of English sets from those exhibits in exactly the same manner as Zenith calculated the average price of its sets, it can be seen that the average price of television sets sold by English manufacturers ranged from about $90 to $96. Adding only the minimum English tariff of 20 per cent, as testified to by Kaplan (A. 529), and *not* taking into account shipping charges, the cost of converting the sets or a distributor-importer's profit, the average Zenith price becomes about $171, almost double the average English price. All this, which rests solely on evidence in the record, was pointed out at pages 104-05 of Hazeltine Research's brief in the Court of Appeals.

---

[68] As previously noted (p. 135, *supra*), pool licenses which did not prohibit imports *were in evidence*.

Zenith's contention that the Court of Appeals relied upon post-trial offers of proof thus finds no support in the opinion of the Court of Appeals. Indeed, the basis for the conclusion of the Court of Appeals was the *deficiency* in Zenith's proof, *i.e.*, Zenith's *failure to prove* the essential fact of damage.

VIII. ZENITH'S ARGUMENTS AS TO THE AMOUNT OF DAMAGES ARE ERRONEOUS AND RAISE AN ISSUE NOT BEFORE THIS COURT.

Zenith argues the subject of the alleged *amount* of damages in England, Australia, and Canada (Z. Br. 26-28, 53, 56, 76-85), but that issue is not before this Court. Although it was raised in the Court of Appeals, it was not decided for that court based its decision entirely on the failure of Zenith to prove damaging impact from pool activities. The issue of the amount of damages is also outside the scope of issues raised by Zenith's Petition for Certiorari.

If this Court should conclude, contrary to our contentions, that the judgment of the Court ~~of Appeals~~ should be reversed, of course the case should be remanded to the Court of Appeals to consider the issue of the amount of damages, as well as the other undecided issues. In order that the Court may realize the important issues unresolved and the absence of any credible evidence as to the amount of damages, we feel it is appropriate to point out some of the errors of the trial court in deciding this issue.

A. England and Australia

We have shown (pp. 18-25, *supra*) that Zenith's Market share estimates and exhibit 220, which was the only evidence as to amount of damages at the original trial, were discredited by the later proof of the embargoes, the recall testimony of Wright and Kaplan attempting to reconstruct exhibit 220, and the findings of the trial court that the estimates were "unrealistic" and "not believable." This left the record with *no credible evidence* as to the amount of damages in either England or Australia. However, the trial court refused either to dismiss the counterclaim or to hold the promised further hearings on amount of damages, even though Hazeltine Research stood ready to present extensive economic and marketing evidence which would show that Zenith could have expected to make no meaningful penetration of either market.[69]

---

[69] When the trial court refused to permit further hearings this evidence was presented as an offer of proof (A. 3527, 3540-44). This extensive Offer of Proof on Market Share and Damages is printed in Volume VIII of the printed Appendix (A. 3550-4129).

Instead, because he was anxious to bring the case to a conclusion (A. 3527), the trial judge devised his own damage formula which was without any basis in the record and which utilized the discredited DX 220. After first saying that Zenith should not expect any profits in the first year of entry into a new market, the trial judge said that for the second year Zenith's damages would be "50 per cent of those *indicated* for the second period on Chart 220;" that for the third year they would be "75 per cent of the profits *indicated* . . . in the last column on 220;" and that for the fourth year they would be "100 per cent of the amount *indicated* on the lost profit or loss-of-sales item in the last column on Exhibit 220" (A. 3526). Thus, the trial judge not only devised an arbitrary formula (0%-50%-75%-100%) which had no basis in the record, but he proceeded to apply it to DX 220 in a manner which assumed that the figures shown on that exhibit *for each accounting period* were claimed by Zenith to represent its expected sales and profits *in that accounting period.* But these figures could not be used as a basis for any damage computation for any particular period because Kaplan testified on recall that *no figures* for *any individual period* were intended to reflect what Zenith could have done during that period (pp. 22-24, *supra*).

Thus, on the issue of the amount of damage with respect to England and Australia, the trial judge committed reversible error in at least three respects:

> (1) once he concluded that the only Zenith testimony on the issue was unrealistic and not believable, it was error not to dismiss the counterclaim with respect to England and Australia on the ground that Zenith had failed to prove the amount of its alleged damages by any competent evidence;

(2) it was error to award damages on the basis of a formula which had no evidentiary basis; and

(3) at the very least, once the proof had been reopened and Hazeltine Research had established the embargo and the Zenith testimony had been discredited, it was an abuse of discretion to refuse to permit Hazeltine Research to go forward with its proffered evidence on Zenith's alleged damages.

B. Canada

Similarly, there is *no evidence* from which the amount of Zenith's alleged damages as to Canada could be determined. The Wright and Kaplan estimates which were the basis of Exhibit 220 and ultimately the Canadian judgment, were based upon the assumption of the right to collect a second time for interference which occurred prior to the September 1957 releases and to collect for interference which occurred prior to the May 22, 1959 beginning of the four-year statutory period and prior to the April 7, 1960 cut-off date established by the Crotty affidavit. Both Wright and Kaplan testified that Zenith's failure to have the same share of the Canadian market during the four-year period as it had in the United States was due to pool interferences with Zenith's market buildup going back "for many years" (see pp. 20-21, *supra*). In fact, Wright testified that the interference began as early as 1927, when Zenith was allegedly refused a license permitting imports (A. 451-52). Even if we assume arguendo that there was interference after the 1957 release and that there was interference within the four-year period and after the April 7, 1960 filing of Zenith's answer, there is absolutely no evidence in this record showing or estimating the amount of damages from such interference and there was no finding of such damages by the trial court.

The release in September 1957 wiped the slate clean. Thus, any method of estimating the amount of damages would have to be based on the market share Zenith might expect to develop *first entering the market* after September 1957. Assuming that Zenith entered the market in late 1958, as it did, no witness estimated what Zenith's share of the market would have been in the 1959-1963 period had Zenith been free of the supposed pool interference after the release.

The same principle would apply with respect to the cut-off date established by Zenith's motion for leave to file the counterclaim and the Crotty affidavit (see p. 7, *supra*). That is, having said that the proximate cause of its damages were acts which occurred since April 7, 1960, Zenith's burden was to show the amount of damages which flowed from those acts; but it made no attempt whatsoever to estimate *what the growth in its market share* would have been after April 7, 1960, and there is no trial court finding as to the amount of damages caused by anything occurring after that date. Of course, we have pointed out in the argument on the issue of the fact of damage that there were no such acts.

If, as Zenith has asserted, the U.S. market forms a basis of comparison, the only such comparison which would have any value would be one which utilizes Zenith's experience when it first entered the U. S. television market and not its experience in 1959-1963 after it had been in that market for many years. By 1959, Zenith had been in the U.S. radio market for about thirty-six years and in the television market for eleven years (see p. 62, *supra*). Obviously, Zenith could not expect to *start* business in Canada with the same market share it took many years to develop in the United States.

Zenith's beginning experience in the television market in the United States is shown by statistics which Zenith itself had compiled as an interrogatory answer in the RCA-Zenith litigation (Offer of Proof, para. V., A. 3563-65). Aside from the 1962 fall-off caused by the increase in the Canadian tariff and change in the exchange ratio (PX 62, A. 2850), Zenith's results in the Canadian television market were comparable to its experience in the first four years in the U.S. television market (A. 3563-65). In its third full year in the U.S. television market (1951), Zenith had approximately 5.1 per cent of the market (A. 3564), not materially different from the 4.9 per cent it achieved in Canada in 1961, its third full year in that market (DX 220, A. 2661).

IX. THE CHARGE OF UNLAWFUL CONSPIRACY.

Zenith asserts that the Court of Appeals conceded "that a conspiracy existed in both England and Australia" (Z. Br. 85-86), and that Hazeltine Research conceded unlawful conspiracies and participation therein (Z. Br. 98, 25). But the Court of Appeals did not pass on the question of whether the patent pools constituted unlawful conspiracies or whether Hazeltine Research, or its parent Hazeltine Corporation, were parties thereto. On the contrary, the court was careful to use the words *"alleged* conspiracies" when referring to the pools (A. 4254, 4256, 4257, 4259) and said that since the fact of damage had not been proved, "We need pass on no other contention . . ." (A. [illegible]254).

Similarly, Hazeltine Research has made no such concession. Zenith all through this litigation has pursued the approach that a "patent pool" is *per se* unlawful, and a statement that patents are in a "pool" is treated as being an admission of participation in unlawful conduct. No citation of authority is required to point out that a "patent pool" may be a completely lawful arrangement under the Sherman Act, and that in the case of the English, Australian and Canadian patent pools, the question is whether they were in fact restrictive and had an impact on Zenith's foreign commerce during the alleged damage period.[70]

We comment on this question, not for the purpose of arguing this issue which is not before the Court, but only to respond to Zenith's attempt to create the impression that Hazeltine Research, and its parent, were and continue to be willfully engaged in unlawful conspiracies, designed to throttle the foreign commerce of Zenith and others in the American electronics industry (*e.g.*, Z. Br. 59).

A. England and Australia

The patents of Hazeltine Corporation issued in England and Australia were licensed or conveyed to corporations in those countries. These corporations licensed or otherwise made the patents subject to patent pools. The Hazeltine Corporation English patents were licensed to General Electric Company Limited of England which placed them under the English pool agreement (A. 344, 350). The Australian patents were owned by Neutrodyne Proprietary Ltd., an Australian company in which Hazeltine Corporation has a stock interest (A. 93, 252-53), and Neutrodyne licensed the patents to the Australian Radio Technical Services and Patents Company Prop. Ltd. (A.R.T.S.) (A. 275; DX 184, A. 2357).

In times past, the pool licensing policies were protective of local manufacture and patent licenses prohibited impor-

---

70. In this connection, Zenith's brief twice makes reference to a statement by a counsel for Hazeltine Research in argument on the motion to set aside the findings (Z. Br. 16-17, 98), where he stated that so far as he knew the "pools" were still in existence. This, of course, was not an admission of illegality or of damage to Zenith. In fact, the purpose of the motion to set aside the trial court's findings (A. 2939-51), then being argued, was to point out to the trial court that the pools were not restrictive to and had no impact on Zenith's foreign commerce.

tation by the licensee. This was, of course, an expression of nationalistic interest, and these practices are not shown to have been violative of the laws of either country. However, it also appears on the face of the record that the *policies of these pools changed* prior to any period relevant to this lawsuit, to provide for the granting of patent licenses which did not prohibit imports (see pp. 44-46, 64-66, *supra*).

In the case of A.R.T.S., the Australian pool, this change came at least as early as January, 1951. Thereafter patent licenses not prohibiting imported radio and television sets were available (pp. 64-66, *supra*).

In the case of England, the last pool license form to contain an agreement by the licensee not to import expired December 31, 1957, and the only license form in evidence after that date had that provision deleted (see pp. 44-46, *supra*). As shown by offer of proof (A. 3701-06) the change came January 1, 1958, which was shortly after the Zenith-RCA settlement; but whether or not this change resulted from the settlement, the fact is that the British pool did change its policy on that date, and abandoned the policy of protecting local industry which it had followed previously.

The applicable law was set forth in *United States* v. *ALCOA*, 148 F.2d 416, 443-44 (2d Cir. 1945), where the Second Circuit sat by designation for this Court. It was there held that foreign agreements involving foreign participants and foreign activities do not constitute conspiracies in violation of the Sherman Act, even if intent to affect foreign commerce were present, unless such agreements do *in fact* have an effect upon United States foreign commerce. See also *United States* v. *Minnesota Mining & Mfg. Co.*, 92 F.Supp. 947, 958 (D.Mass. 1950). It is clear that in both England and Australia there were governmental embargoes lasting until June, 1959 in England and April, 1960 in Australia which constituted a complete bar to imports of radios and television sets from the United States (see pp. 16-18, *supra*). Both the English and Australian pools had changed their policies on the matter of import restrictions prior to the lifting of those embargoes. Thus, there could have been no effect on United States foreign commerce and hence no Sherman Act violation at any time since 1939 because the governmental embargoes prevented imports from the United States from that date until *after* the date the pools terminated restrictions on imports.

Further, the English pool agreement expired by its terms June 30, 1964 (DX 60, A. 1272), and was not renewed (Offer of Proof, A. 3700-03). Also the Hazeltine Corporation patents are no longer licensed to General Electric of England. Hazeltine Corporation itself controls its English patents and Zenith has been so advised (see p. 157, *infra*).

B. Canada

Hazeltine Corporation's patents were (but no longer are) licensed by it to Canadian Radio Patents Limited (CRPL). Hazeltine Corporation has never been a member of CRPL (see pp. 5-6, *supra*).

It is true that CRPL had a policy of not licensing imports. However, there was no showing that it had any actual effect on U.S. exports to Canada after the RCA settlement. In addition, Hazeltine Corporation understood that under Canadian patent law it was essential to limit imports of articles made under Canadian patents to avoid action by the Canadian Patent Commissioner for "abuse" including possible forfeiture of the patents.

Section 67 of the Canadian Patent Act (PX 49, A. 2787) provided that a patent was considered to be abused if the "working of the invention within Canada on a commercial scale is being *prevented or hindered by the importation* from abroad of the patented article by the patentee or persons claiming under him" (*i.e.,* licensees) (Section 67 (2)(b), A. 2789). Working on a commercial scale is taken to mean sufficient local production to be reasonably close to meeting the Canadian demand (A. 672). Under Section 68 (A. 2790) it was provided that the Commissioner of Patents has certain powers in "case of abuse" even to "order the patent to be revoked" (Section 68(d), A. 2791-92). The operations of CRPL were found by a Royal Commission to be lawful under Canadian law (A. 683; PX 50A, A. 2811, 2829-34).[71]

While Zenith argued and convinced the trial judge that the Canadian law did not require the pool's policy, it did recognize that the question is not free of doubt for the finding proposed by Zenith and adopted by the trial court, read:

> "XXXII. The proofs establish as a fact that *in the circumstances of this case* the Canadian Patent Act does not require the Pool to refuse to license importation, as contended by plaintiff. Nor does the Act penalize in any way a patentee who licenses for importation *where,* as in this case, *there is being carried on extensive manufacturing in Canada* under its patents" (A. 2906).

Thus, in this finding, Zenith tacitly recognizes that there were circumstances where the refusal to license imports would be proper.

Hazeltine Corporation had relied on its understanding of the effect of the Canadian Patent Act. However, although the decision of the trial court concerning the effect of the Canadian Patent Act is subject to question, Hazeltine Corporation immediately took steps to secure a modification or termination of its license agreement with CRPL. Hazeltine Corporation secured an early termination of its license agreement with CRPL, and has been prepared to and has entered into agreements covering one or more of its Canadian patents as the other party may see fit with no restrictions on imports, recognizing that it does run the risks created by the Canadian Patent Act. This is set forth in more detail at p. 159, *infra* and in the affidavit of David Westermann, President of Hazeltine Corporation, Appendix C to this brief.[72]

---

[71] That it was the purpose of the Canadian government to protect local industry is apparent on a reading of excerpts from the Patent Act (PX 50, A. 2799-2808).

As stated above, in presenting the foregoing Hazeltine Research is not arguing the legality or illegality of the patent pools which is an issue not before this Court. Rather, it has presented these facts to point out the reasons for and good faith of the conduct of Hazeltine Corporation in view of the repeated suggestions by Zenith that Hazeltine Research and its parent are willful wrongdoers.

X. THE COURT OF APPEALS' VACATION OF THE INJUNCTION AS TO FOREIGN COMMERCE WAS CLEARLY CORRECT.

Zenith attacks (Z. Br. 96-101) the action of the Court of Appeals in vacating Paragraph C of the injunction, drafted by Zenith and adopted by the trial court on April 5, 1965. This paragraph prohibits Hazeltine Research and Hazeltine Corporation from:

> "C. Entering into, adhering to, enforcing or claiming any rights under any contract, agreement, under-

---

[72] The original executed Westermann affidavit has been filed with the Clerk of the Court.

> standing, plan or program, with any other person, company, patent pool, organization, association, corporation or entity which directly or indirectly restricts or prevents defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, from exporting any electronic apparatus from the United States into any foreign market" (A. 3080).

Zenith asserts that the Court of Appeals held that there can be no threat of damage unless "actual damage is proven" (Z. Br. 96), and that the court required "proof of actual injury as a condition to injunctive relief" (Z. Br. 101). This is a misstatement of the Court of Appeals' holding. Section 16 of the Clayton Act (15 U.S.C. § 26) permits injunctions only "against threatened loss or damage," and the Court of Appeals held that "injunctive relief against 'threatened loss or damage' directed at those pools, alleged by Zenith to be unlawful conspiracies, *cannot be justified* under 15 U.S.C. Sec. 26" (A. 4261-62). Any fair analysis of the court's opinion makes it clear that its decision on the injunction was based on the conclusion that no future loss or damage was threatened, not because actual damage had not been proven.

The fact is that Zenith has used its "injunction" argument primarily as a springboard for its inflammatory, prejudicial charges intended to distract from the truth. These charges include the insinuation of treason against Hazeltine Corporation previously referred to (pp. 77-79, *supra*), and a number of charges relating to supposed *current* conditions. For example, without any support Zenith erroneously asserts that the vacation of the injunction "leaves Zenith's foreign business exposed to ruinous infringement litigation and at the mercy of the Pool's enforcement policy," and "deprives Zenith of any protection for this business" (Z. Br. 100) and that the decision will destroy "the competition of all other electronic companies seeking to export to the markets involved, and this at a time when this country desperately needs to preserve its foreign trade" (Z. Br. 100).

These charges were directly answered by the fact that in each country there has been no interference or threat of interference for many years:

Australia: There is no showing or finding of any interference at any time with Zenith's foreign trade with Australia, other than the hearsay statement of Wright that Zenith was thrown out of Australia "in either the late twenties or early thirties" (A. 475). Patent licenses permitting imports of radio and television sets into Australia have been available to Zenith since at least 1951 (DX 192, A. 2425), several years before the embargo blocking imports from dollar countries was lifted (see pp. 16-17, 65, *supra*). Others are importing freely into Australia subject only to economic conditions (see statistics on imports, p. 67, *supra*), but Zenith has never been sufficiently interested even to ask for a license (see pp. 63-64, 138-39, *supra*).

Yet Zenith asserts that "the pools" threaten "destruction of foreign markets in . . . Australia" (Z. Br. 101).

England: There is no showing that the English pool threatened or took any action against Zenith or its distributor who has been importing Zenith products since the lifting of the governmental embargo in 1959 which had been an absolute bar to Zenith imports (see pp. 16-17, 31, *supra*). Moreover, the policy of the English pool with respect to imports was changed a decade ago, and in any event the pool itself went out of existence June 30, 1964 (see pp. 44-46, *supra*). Nevertheless Zenith asserts that the vacation of the injunction "will destroy not only Zenith's competition to the Pools [including the English pool] but the competition of all other electronic companies seeking to export to the markets involved" (Z. Br. 100).

This assertion is particularly outrageous as to England in view of the fact that not only is the pool out of existence, but the Hazeltine Corporation patents are no longer even licensed to General Electric Company, Limited. Hazeltine Corporation itself has complete control of these patents, and *Zenith knows it.* Attached to the David Westermann affidavit (Appendix C, A-28 to A-30) is a copy of a letter of October 10, 1966, from Westermann, then Vice President and General Counsel of Hazeltine Corporation, to John Borst, Jr., a partner in the firm of McConnell, Freeman, Curtis & McConnell (now McConnell, Curtis, Mahon & Borst), Zenith's counsel here, expressly advising of that fact, and that "anyone interested in a license under any of these [British] patents should address his inquiry to Hazeltine Corporation in New York" (A-31). Hazeltine Corporation has never received a response to that letter—but the unfounded, inflammatory charges continue.

Canada: The record shows that following discussions between Zenith and CRPL in 1958 and 1959, and apparently in the light of Wright's strong assertion that Zenith was licensed under all relevant Canadian patents controlled by CRPL, Zenith has imported into Canada for almost 10 years, with absolutely no interference or threats of any kind by CRPL (see pp. 50-51, *supra*). Those final occurrences in 1958 and 1959 were at most like those referred to in *United States* v. *Oregon State Medical Society*, 343 U.S. 326, 334-35 (1952), where this Court, in denying injunctive relief, stated: "There were hints . . . [of] reviving the expulsion threat . . . but nothing came of it."

As support for its argument that the injunction should not have been lifted, Zenith points to its 1967 exports to Canada, saying that these exports were possible because of the protection of the injunction (Z. Br. 100). Zenith's assumption that these sales were the result of the injunction and would be lost if the injunction were lifted, is fallacious for a number of reasons.

First, in over six years *prior* to the injunction, during which Zenith was openly importing and selling radio and television sets in Canada, the pool took no action against Zenith, or its distributors or dealers. Thus, it can hardly be assumed that the continued lack of interference by the pool with continued importation and sales by Zenith in the three and a half years since the issuance of the injunction, was the *result of* the injunction.

Second, Zenith's figures do not show that its share of either the Canadian black and white television market or the Canadian radio market has increased substantially from the 5% it obtained in 1961 (see pp. 120-21, *supra*). According to Zenith's own figures its increased exports to Canada in 1967 were almost entirely color television (*compare* Zenith's Petition for Certiorari, p. 10, *with* its brief, p. 100), which is essentially a new product in Canada. Broadcasting of color programs on Canadian stations did not start even on a limited basis until mid-year 1966 (see Appendix E to this brief, pp. A-37 to A-39), so the only previous color television business was limited to markets where the user could receive broadcasts from American stations. In its brief, Zenith has carefully avoided informing the Court as to how much of its $12,694,000 exports to Canada in 1967 were color television sets. It is clear, however, that Zenith's 1967 percentage share of either the Canadian black and white television market or the Canadian market for all television sets could not have been substantially higher than the 5% Zenith obtained in 1961, years before the injunction (see pp. 120-21, *supra*).

Finally, even if we assume that Zenith's share of the relevant Canadian markets has increased, there is no reason to believe that the increase was a result of the injunction as opposed to an expected progression of increased sales resulting from the fact that by 1967 Zenith had been exporting to Canada for ten years. Since the Canadian pool was not shown to have done anything either before or after the injunction, any increase in Zenith's business in Canada in 1967 over what it had done in the years 1959-1963 can hardly be attributable to the injunction.

In any event, the reinstatement of the injunction could have no impact on the Canadian pool because, as shown in the Westermann affidavit (Appendix C), the Hazeltine Corporation patents *have not been licensed to the Canadian pool* since December 31, 1965, except for the right of CRPL to grant sublicenses to existing sublicensees until June 30, 1966. Since that time Hazeltine Corporation has been prepared to enter into agreements covering any one or more of its Canadian patents as the other party may see fit, and with no restrictions on imports. A number of such agreements have been entered into with United States, Canadian and Japanese television manufacturers, and such an agreement is available to Zenith on a non-discriminatory basis, should it desire one (Appendix C, A-29 to A-30).

XI. ZENITH'S ARGUMENT ON THE "PATENT MISUSE DEFENSE" RAISES MOOT QUESTIONS AND IS ERRONEOUS.

Zenith argues at length what it calls the "Patent Misuse Defense" (Z. Br. 37-42, 102-13). Just what Zenith is defending *against* is not clear because the Court of Appeals, affirming the trial court, held that the single patent sued on was invalid; that there was evidence to support the finding that Hazeltine Research misused its patents in connection with its 1962 offers to Zenith on color patents; and awarded Zenith $150,000—treble the amount of its claimed expenditures in defending the patent suit and investigating Hazeltine Research's U.S. patents (A. 4251, 4262-63). Since Hazeltine Research has not appealed from this judgment it is obvious that the misuse "defense" is moot. See *St. Pierre* v. *United States*, 319 U.S. 41, 42 (1943).

Although the Court of Appeals held the Hazeltine Research patent to be invalid and misused, the court did reject two of Zenith's misuse arguments and modified two paragraphs of the injunctive decree relating to license offers on Hazeltine Research's domestic patents (A. 4252, 4262). In this section we will show that the court was correct in rejecting these two misuse arguments and then deal with some of Zenith's more flagrant misstatements of the record, most of which are directed to matters not before this Court.

A. The Offers in 1959 on Patents for Black and White Television Were Fair and Reasonable in Light of Commercial Realities.

The license proposal offered to Zenith in 1959 was formulated by Hazeltine Research when only three or perhaps four of its patents were in general use in black and white receivers (A. 775-76, 3076-77). Under this proposal, a license under all of Hazeltine Research's patents was available at a royalty rate of 0.95% of the selling price of receivers made and sold by the licensee with an annual maximum of $50,000; a license under one patent was offered for 50% of that rate and an annual maximum of $25,000; a license under two patents for 80% of that rate and an annual maximum of $40,000; and a license under three or more patents for 100% of that rate with the $50,000 annual maximum (A. 776).

Recognizing that the charge of "economic coercion" requires an examination of the facts, the Court of Appeals reviewed the undisputed facts in the record, and concluded that:

> "The district court concluded erroneously that HRI's [Hazeltine Research's] 50% for one—80% for two—100% for three or more patents formula offered Zenith in 1959 was unlawful economic coercion. This court has not considered the formula *per se* unlawful. *Apex Electrical Mfg. Co. v. Altorfer Bros.*, 238 F.2d 867 (7th Cir. 1956). Actually the formula allowed licensees to save money by taking licenses of less than three patents. Eight TV manufacturers took licenses for only one patent under the formula, the one here in suit. There were only three HRI patents in general use in 1959 and therefore the formula appears reasonable in light of commercial realities. Zenith under the offer was free to take a license only for what it needed. Although discussion of a license between Zenith and HRI originally involved four patents, the discussion narrowed to the patent in suit, Zenith's rejection of the offer, and HRI's infringement suit" (A. 4252).

Zenith argues only that the Court of Appeals "failed to perceive the misuse inherent in the 50-80-100%" formula (Z. Br. 107) and ignores the factual basis for the court's decision. Zenith's argument is that the offer would coerce the prospective licensee to take the package of all patents, yet a number of other television manufacturers—including Magnavox, Westinghouse, Giannini Control Corporation, Curtis Mathes, Packard-Bell, Warwick, Wells-Gardner and Setchell Carlson—when offered this same proposal did *not* take a package license but instead took a license as concerns monochrome television under the *single* patent in suit at the 50% rate (A. 106-08, 3073-74). Many of these manufacturers were smaller than Zenith and obviously less able to withstand "economic coercion" than Zenith which asserts it is "the number one producer of television sets in the United States" (Z. Br. 77).

Having no explanation for the direct contradiction between its argument and these compelling facts, Zenith resorts to misstating the record. It asserts that Hazeltine Research in 1959 "demanded that Zenith sign a package license" (Z. Br. 38) but its own vice president Crotty testified that during these negotiations Hazeltine Research offered Zenith a license under the *single patent* sued on at the 50% rate with a $25,000 annual maximum (A. 438). This offer was rejected by Zenith, not because of so-called coercion, but on the ground it did not need any license (A. 436), for as stated in its brief, it contended that "*none*" of the patents discussed was "valid or infringed" (Z. Br. 38).

These facts, ignored by Zenith and the trial court, make it clear that the trial court's finding of "economic coercion" was clearly erroneous and that, as found by the Court of Appeals, the 50-80-100% formula was "reasonable in light of commercial realities" (A. 4252). Furthermore, these facts clearly distinguish this case from the *American Securit* case (Z. Br. 110-11) where the licensor "consistently refused to license individual patents" and only as a last resort offered individual patents but at the *same* rate as the package rate (154 F.Supp. at 894).

Zenith also claims that "as a result" (Z. Br. 107) of the Court of Appeals' conclusion that the 50-80-100% formula was not a misuse of patents, it improperly modified the injunction drafted by Zenith and entered by the trial court. It asserts that the modification permits "licensing of individual patents 'the sum of which is greater than the package rate'" (Z. Br. 102), but Zenith fails to point out that the court added the qualifying language "*so long as* the rates for individual patents are not so disproportionate to the package rate as to amount to economic coercion to force the taking of the package" (A. 4262).[73]

B. It Is Not a Misuse of Patents to Propose Royalties on Total Production.

Hazeltine Research's license forms, including those offered to Zenith, provided that the royalty percentages be based on the licensee's total production of receivers of the type licensed (*e.g.*, DX 2, A. 955, 959; DX 18, A. 1044, 1047), and the trial court held this to be a misuse of patents (Finding XII, Conclusion VI, A. 2898, 2909-10). In reversing the trial court,[74] the Court of Appeals relied on *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U.S. 827, 834 (1950) where this Court, in considering this same royalty provision, held that "it is not *per se* a misuse of patents to measure the consideration by a percentage of the licensee's sales."

In contending that the Court of Appeals erred, Zenith first asserts that the payment of royalties based on a percentage applied to the licensee's total production of "a class of goods," whether or not the licensed patents are used, is "a flagrant patent misuse under the established principle of the tie-in cases" (Z. Br. 112). However, this Court rejected this same argument in the *Automatic Radio* case stating:

---

[73] The court also made other modifications in the injunction because the decree, as drafted by Zenith was vague and ambiguous and could be construed to require that Zenith be given an advantage over other licensees (A. 4262). Zenith has not challenged these changes.

[74] Based on its reversal, the court modified paragraph A of the injunctive decree by deleting the words "or upon the paying of royalties on the manufacture, use or sale of apparatus not covered by such patent" (A. 4262). It did not, as Zenith asserts (Z. Br. 103), strike that paragraph entirely.

> "The principle of those [Tie-in] cases cannot be contorted to circumscribe the instant situation. This royalty provision does not create another monopoly; it creates no restraint of competition beyond the legitimate grant of the patent. The right to a patent includes the right to market the use of the patent at a reasonable return" (339 U.S. at 832-33).[75]

Next, Zenith argues that this Court's holding in *Automatic Radio* is "distinguishable" and applies only to "arms length" transactions and that it is no sanction for Hazeltine Research's alleged "demand" that Zenith accept a license with such a royalty provision (Z. Br. 112-13). However, Zenith has cited no testimony or other evidence in the record that it ever objected to this royalty provision or requested a different method of measuring royalties. Its reference (Z. Br. 113) to DX 115 (A. 1035-36) certainly does not evidence any "demand." This letter transmitted a royalty schedule to Zenith in March of 1963 and invited Zenith to discuss the schedule with Hazeltine Research (A. 1035) and Zenith never replied (A. 629-31). The fact is that the record is totally void of any evidence that this royalty provision was even discussed by Zenith with Hazeltine Research. There have, therefore, been no "demands" but rather *offers* which were rejected by Zenith without discussion of the royalty provision. Thus, this is ***not*** a case where a licensor has insisted upon such a royalty provision over the objection of the prospective licensee.[76]

---

[75] See also Plastic Contact Lens Co. v. Butterfield, 366 F.2d 338, 342-43 (9th Cir. 1966), *cert. denied*, 385 U.S. 1009 (1967); Hazeltine Research, Inc. v. Avco Mfg. Corp., 227 F.2d 137, 146-49 (7th Cir. 1955), *cert. denied*, 350 U.S. 987 (1956); Hazeltine Research, Inc. v. Admiral Corp., 183 F.2d 953, 955-56 (7th Cir. 1950), *cert. denied*, 340 U.S. 896 (1950), all of which upheld this method of measuring royalties and relied on this Court's decision in *Automatic Radio*.

If, as this Court held in *Automatic Radio,* licenses measuring royalties by total production may be entered into, someone, presumably the licensor, must have proposed such a license. To say that such a proposal is lawful if the licensee accepts it, and unlawful if the licensee simply refuses a license without objection to this provision, is absurd.

C. Zenith's Other Charges of Coercion and Misuse Are Erroneous and Totally Irrelevant to Any Issue Before This Court.

Zenith argues at length (Z. Br. 38-40, 106-07) about the license proposals made by Hazeltine Research on color patents, an issue not before this Court. The issue at the trial with respect to these proposals was whether a $200,000 annual maximum in Hazeltine Research's proposals was available no matter which patent or groups of patents the licensee selected or whether, as Zenith contended, the maximum was available only if a licensee took a total package license. It was the intent of Hazeltine Research that, as a matter of fairness, the $200,000 maximum, which was in its license to RCA, was to be made available to all licensees no matter which patent or patents they selected (A. 582-83); however, the trial court found in favor of Zenith and the Court of Appeals held there was substantial evidence to support this finding as concerning the proposal in 1962 (A. 4251). Accordingly, this issue is totally moot and is included in Zenith's brief solely in an attempt to prejudice Hazeltine Research on other issues.

---

[76] The extent to which Zenith will go in distorting the record in a vain attempt to show that Hazeltine Research had as its objective the collection of royalties on unpatented products is shown by its misleading quotation (Z. Br. 41-42, 112) from DX 38 (A. 1148-51). It quotes a part of that exhibit and through substitutions makes the quote read:

> ". . . it would not make any practical difference in Hazeltine's income if he switched to the alternate . . . design [*that doesn't use the licensed patents*]."

The truth is that the full statement was that,

> ". . . it would not make any practical difference in Hazeltine's income if he switched to the alternate single gun tube television set *design and used ten or so of the unspecified patents instead of the patents listed under A above*" (A. 1149).

In other words, if the licensee did not use one group of licensed patents he would be using another group of licensed patents.

Zenith has also devoted some of its "misuse" argument to an attempt to persuade this Court that there was some connection between the domestic patent license negotiations and the "foreign pools." For example, it wrongly asserts that the trial court "found" that Hazeltine Research "restrict[ed] its domestic licenses to the United States pursuant to the conspiracy" (Z. Br. 37) and that the Court of Appeals did not "appreciate the connection between Hazeltine's domestic licensing activities and its participation in foreign pools" (Z. Br. 107). Zenith offered no evidence at the trial to support these charges; it expressly abandoned the charges at the trial; and *both* courts below found there was no evidence to support them (see pp. 124-29, *supra*).

Finally, Zenith has filled its misuse Statement and Argument (Z. Br. 37-42; 102-113) with totally unsupported and unsupportable charges, in some cases without any record references whatever, and in other cases with record references that either do not support the statements made or support the contrary. It is unnecessary to burden the Court with an extensive answer to this barrage of irrelevant and unsupported misstatements, which would unreasonably extend this brief beyond its present considerable length. But in order that the Court may appreciate the extent and nature of these misstatements, we will point out a few flagrant examples:

1. In connection with its persistent, reiterated contention that Hazeltine Research "would not license its patents except under a package license," Zenith cites and quotes (Z. Br. 103) from a Dodds memorandum written in 1961 (DX 3, A. 985-95). The fact is that this memorandum specifically contradicts Zenith's contention. It states:

> "It is believed that it would be hazardous for Hazeltine to refuse to negotiate in good faith on a license on any of its patents that a licensee may want and Hazeltine has consistently done so, *as evidenced by the many licenses now outstanding on single patents*" (A. 991-92).

Yet Zenith cites this document as authority for its claim that Hazeltine Research would grant only "a package license."

2. In connection with its contention that the 50-80-100% formula for black and white television patents was unlawful, Zenith quotes (Z. Br. 108-09) from notes by Ruestow in which, it says, Ruestow "conceded the misuse inherent" in the 50-80-100% formula. Zenith fails to state that these notes *did not have anything to do with* the application of the formula to the three or four *black and white patents.* Rather, Ruestow suggested that it might be a misuse of patents if this formula *were* offered in connection with the *10 color patents.* But it was *never offered* for color patents. Ruestow testified that the 50-80-100% proposal had been made *only* in connection with the monochrome patents (A. 636, 640-41) and wrote that the proposal was *not* available for color patents (DX 25, A. 1093).

3. Zenith quotes at length (Z. Br. 108-10) from other notes and memoranda of Ruestow, asserting that they constitute an "admission" of illegality and misuse. What Zenith fails to disclose is that these memoranda and notes were *criticisms* of the recommendations of

others concerning possible licensing proposals, and that Ruestow's recommendations were followed, and the proposals which he objected to were abandoned (A. 607-10; *e.g., compare* Ruestow's 1961 proposal, A. 1085, *with* Schedule A to the April, 1962 proposal to Zenith, A. 1031).

The flagrant misstatements made by Zenith in connection with an argument directed toward a claimed "defense" to the patent suit demonstrate the lack of merit in Zenith's arguments and the extent to which it will go to distort the record in this case.

CONCLUSION

For all the reasons set forth above, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

JOHN T. CHADWELL
VICTOR P. KAYSER
C. LEE COOK, JR.
JOSEPH V. GIFFIN
135 South La Salle Street
Chicago, Illinois

M. HUDSON RATHBURN
20 North Wacker Drive
Chicago, Illinois

LAURENCE B. DODDS
160 Middle Neck Road
Great Neck, New York

Attorneys for
Hazeltine Research, Inc.,
Respondent

Of Counsel:

CHADWELL, KECK, KAYSER,
RUGGLES & MCLAREN
135 South La Salle Street
Chicago, Illinois 60603
RAndolph 6-2545

MASON, KOLEHMAINEN,
RATHBURN & WYSS
20 North Wacker Drive
Chicago, Illinois 60606
FInancial 6-1677

Dated: September 19, 1968

APPENDIX TO THE BRIEF
FOR RESPONDENT
HAZELTINE RESEARCH, INC.

APPENDIX A

1957

TO THE SHAREHOLDERS

OF ZENITH RADIO CORPORATION

The year ended December 31, 1957 was one of great significance in the progress of your Company, marked by three important milestones.

1. Your Company made outstanding progress in its pattern of solid growth and increasing importance within the radio and television industry. This was accomplished despite an unfavorable change during the year in basic national economic conditions and in the face of unusually competitive and depressed conditions within our own industry.

The Company's sales of civilian products during the year established an all-time record. Despite a reduction from the year before in the total number of TV receivers produced and sold by the industry during 1957, your Company enjoyed a substantial increase in TV receiver unit and dollar sales, thus accomplishing the highest percentage of the total industry TV business that it had ever achieved.

The exclusive and patented Space Command Remote TV Control developed in our own research department together with the recognized high quality and performance of the Company's products were important factors in achieving this substantial increase.

2. On October 17, 1957, the Federal Communications Commission provided for a three-year trial period of commercial operations in Subscription television. The basic framework of this order represents a reasonable and well thought out approach which provides adequate safeguards for the continuance of the present type of "free" broadcasting, acknowledges the right of businessmen to launch new enterprises in the market place, and in effect assigns to the public the final decision as to whether Subscription TV is in the public interest by the simple process of buying or not buying the superior programs Subscription TV will offer.

3. In September, the Company arrived at a favorable out-of-court settlement of the previously reported litigation with Radio Corporation of America, General Electric Company and Western Electric Company. The litigation involved was commenced by Zenith in December 1946.

EARNINGS AND FINANCIAL

Consolidated net income for the year was $8,165,577 (or $16.56 per share), an increase of 32% over the $6,178,717 (or $12.55 per share) earned for the year ended December 31, 1956. The profits reported for the year were the highest earned by your Company in any complete fiscal period.

(They were exceeded only by the $8,479,390 (or $17.22 per share) earned in the pro-forma, 12-month period ended December 31, 1950, which consisted of an estimated 4-month period from January 1, 1950 to April 30, 1950, plus the 8-month short fiscal period from May 1, 1950 to December 31, 1950.)

Consolidated sales for the year of $160,018,978 represented an increase of 13% over the $141,529,856 sales reported for 1956 and were the second highest in the Company's history, being exceeded only by the $166,753,276 sales for 1953, which included a substantial amount of government contract business.

Sales of consumer type products during the year established an all-time record. We have previously pointed out to our shareholders that our sales volume is composed almost entirely of radionic products such as radio and television receivers, phonographs and hearing aids. This should be borne in mind in any comparisons because many of our larger competitors include in their reported sales, refrigerators, washing machines, air-conditioners, records, ranges and other items not directly connected with the radionics and electronics industry.

In addition to the net income earned for the year, less the dividends paid thereon, a total of $10,413,565 has been added to earned surplus. Of this amount $9,761,953 represents the net after tax result of the settlement of the litigation previously referred to. This includes the settlement of $10,000,000 plus previously provided accruals for possible liability resulting from the suit, which are no longer deemed necessary. The balance of $651,612 represents the net after tax result of previously established accruals for renegotiation, federal taxes, etc., which are no longer required.

The accompanying consolidated balance sheet as of December 31, 1957 certified by our auditors reflects a further improvement in the strong financial position of your Company. Cash and government securities (after earmarking $12,900,000 of government securities for payment of federal income taxes) total $38,482,058, an increase of 10% over the total of $35,016,761 shown at December 31, 1956.

Accounts receivable of $14,518,070 (net of reserve) reflected a $2,294,286 increase over the $12,223,784 shown the year before. $1,000,000 of this increase represents the installment receivable due October 1, 1958 as a result of the litigation settlement and the balance is the result of the substantially increased December sales volume.

Total inventories of $12,126,754 were up $1,380,784 from the year before as a direct result of the Company's larger sales volume in December and January. Finished goods inventories of $3,480,251 increased $430,306 from the previous year, also directly attributable to the Company's increased volume.

Working capital increased by $7,076,714 to $45,187,819 as compared to $38,111,105 at December 31, 1956.

SUBSIDIARIES

Wincharger Corporation, the Company's subsidiary in Sioux City, Iowa, which manufactures small radios under contract for the parent company, dynamotors for government contracts, electric motors and power generators, reported lower sales and profits for the year.

A-2

The Rauland Corporation, our cathode ray tube manufacturing subsidiary, had a satisfactory increase in sales and earned a substantial profit during the year. Continued close control of overheads and high production efficiencies contributed to the satisfactory profit.

The Company's wholesale distributing subsidiaries in New York and Chicago reported increased sales and satisfactory profits in the light of extremely competitive conditions in those markets.

DIVIDENDS

The Company paid dividends of 75c per share on March 29, June 28, September 27 and December 27, 1957. An extra dividend of $2.00 per share, also paid on December 27, brought the total paid for the year to $5.00 per share. In addition, a special dividend of $2.00 per share payable January 31, 1958 was declared out of 1957 earnings.

PRODUCTS AND MERCHANDISING

The soundness and value of the basic policies which your Company has followed for the past 39 years were again strikingly proven during the past year.

Although industry production and shipments of television receivers were the lowest in 5 years, your Company produced and shipped to its distributors the greatest number of television receivers in its history. Of equal importance and significance is the fact that shipments of Zenith television receivers from distributors to dealers during 1957 were also at a record high—proof that the increase in factory sales represented current sales movement and not inventory accumulation in the hands of distributors.

The result of the Company's increase in television receiver volume in the face of the substantial industry reduction was the attainment of the highest percentage of total industry volume that the Company has ever achieved.

The ability of your Company to move counter to the industry trend was in a large measure the result of its policy of offering to the public exclusive advanced features and high quality, which make Zenith merchandise a better dollar value than competitors' merchandise selling at much lower prices.

Although television receivers offered for sale by the Company during the previous year had received high ratings in competitive tests conducted by an independent testing laboratory, your Company designed, tooled and placed into production early in 1957 a new horizontal 21-inch television chassis which gives improved performance, greater reliability and lower service and maintenance costs than the excellent vertical type chassis which it replaced. Later in the year, your Company placed into production another newly engineered horizontal TV chassis to replace the highly rated 14 and 17-inch vertical chassis.

In the design of these two new chassis, your Company's development and production engineers weighed the production cost benefits available through the use of printed circuits as opposed to the higher service costs and maintenance problems that have been reported on television receivers using extensive printed circuits. Their final decision was to insure the superior performance, greater reliability and lower servicing costs of the receivers by the continued usage of the more dependable hand soldered and wired type of chassis, even at a moderate cost disadvantage.

(Conversely, in carefully selected smaller and less complicated circuits, such as certain radio receivers, they have determined that printed circuits often present an advantage both to the manufacturer and the ultimate consumer.)

The new horizontal television chassis featured a new type of "Sunshine" picture tube (developed by The Rauland Corporation) which requires far less video drive than conventional picture tubes and permits the television circuits to be broad banded to get more "sparkle" in the form of more detail and information from the reproduced picture. The reduced overall length of this new tube permits a substantial reduction in cabinet depth without having to resort to the 110-degree picture tube used by many other manufacturers, with its attendant production problems.

The popular and exclusive Space Command television remote control introduced in the summer of 1956 became an even more important factor in the Company's business from the standpoint of attracting consumer attention to the complete Zenith line and also from the standpoint of generating a very substantial amount of business in the receivers featuring this development. The obvious advantages and convenience of this exclusive Zenith engineering achievement, which makes use of ultrasonic or "silent sound" to activate and control a television receiver from across the room, gained even wider public recognition during the past year.

The Wavemagnet Antenna, which has contributed to the fine performance of our radio receivers in the past, was perfected for television application and was added to several of the Company's portable TV receivers. It is an effective replacement for the present type "rabbit ear" antennae on television receivers in those locations where the use of an outdoor antenna is either impossible or impractical and has the distinct advantages of small size and inconspicuousness.

During the year, the Company augmented its wide range of television cabinets with a new highly styled Decorator Group, which added many new fine furniture styles to complement the interior of any room, Provincial, Traditional, or Modern.

Each category of the Company's TV receiver business, table models, consoles, and console combinations showed an increase over the previous year both in unit and dollar sales. 70% of the Company's TV receivers sold were in the 21-inch tube size category as compared to 60% for the industry as a whole. This fact, plus the substantial sales volume of Space Command receivers, plus the impetus of the Decorator Group of cabinets, permitted the Company in 1957 to increase its average unit TV sales price, which has historically been higher than the industry average.

The Company continued to make good progress in the production and sale of radio receivers during the year.

The year 1957 witnessed the introduction of the Royal 1000—the world's most magnificent radio—a portable standard and short wave Trans-Oceanic receiver with advanced transistor circuitry throughout—the smallest and lightest standard and band spread short wave portable radio ever produced. This fine receiver can tune in short wave broadcasts from all over the world, weather reports, ship-to-shore stations; and is powered by ordinary flashlight batteries obtainable the world over.

This outstanding new receiver has been most enthusiastically received by our dealers and by consumers and has been in short supply since its introduction. There is no question that this magnificent new all-transistor portable will further enhance the enviable reputation your Company has earned in the past with its world-renowned short and standard wave *tube type* Trans-Oceanic portable, which has continued to enjoy a steady sale and will be continued in production.

In December, the Company introduced the Royal 500D, an improved version of its outstanding Royal 500 all-transistor pocket portable which, although priced higher than its competition, because of its superior quality and performance, was probably the best selling transistor portable in 1957. The new improved version is the first commercially produced entertainment type of transistor pocket receiver to have a radio frequency amplification stage, which further increased its sensitivity many times over.

Several new lower priced transistor models were also introduced in December which will make it possible for the Company's dealers to offer a complete line of high performing transistor sets in 1958.

In the AM/FM receiver category, a newly designed line of receivers introduced during the year was well received. Your Company continues to be the dominant factor in the AM/FM receiver field.

The category of record players, high fidelity phonographs, and phonograph combinations became increasingly important during the past year both as a result of increased public interest and the Company's aggressive merchandising and advertising efforts in this field. Many new high output multispeaker models were added to the line, several featuring the beautiful Decorator Group cabinets.

The Company's very substantial sales increase in this category cannot fairly and intelligently be translated into percentages because of the low base of comparison in previous years. Your Company feels that its reputation for quality earned during the past 39 years gives it an important advantage in the high fidelity field and it is planning to make this an even more important segment of its business.

A most important factor in the increased sales volume and greater stature within the industry which your Company enjoyed during the past year has been its aggressive and well-planned merchandising and advertising activities.

In designing and selecting its merchandise, much thought and planning was given to merchandising features and intelligent price-value comparisons and step-ups.

Complete merchandising programs were made available to our distributors, taking into full consideration operating expenses and profit margins. Included in these merchandising programs were step-by-step outlines for sales activities for different classes of dealers, pointing out the potential for the sale of Zenith merchandise and the advantages and profits to be derived therefrom.

These merchandising programs were supported by aggressive point of sale and newspaper advertising campaigns and further augmented by well-placed national magazine advertisements and a national television program in the latter part of the year.

Another important ingredient in our merchandising activities was the continued close control of production and of merchandise inventories at every level, factory, distributor and dealer. This contributed substantially to alleviating one of the major elements of risk, namely, the deterioration of inventory values which dealers had experienced on other lines of merchandise.

A great deal of favorable comment has been received by the Company from distributors and dealers, who welcomed our understanding and appreciation of these problems, and our stable businesslike solutions.

HEARING AID

1957 was a year of continued growth for the Company's Hearing Aid Division. Sales showed an increase over the previous year and Zenith quality hearing aids continued in a position of leadership in the industry.

The new Zenith eyeglass hearing aid introduced in August helped immeasurably in breaking the vanity barrier that has stopped many people from enjoying the benefits of a hearing aid. Experience with the new eyeglass hearing aid and the Diplomat, which is worn behind the ear, plus supplemental marketing information, strongly indicate that inconspicuous, at-the-ear hearing aid models will become more important in the Zenith line of hearing aids.

The other seven models in Zenith's complete line of quality hearing aids maintained a strong sales volume. The completeness of the Zenith line permits Zenith dealers to offer the proper instrument for every electronically correctable hearing loss. The new Model "50R" introduced during the year and priced at $50.00, despite increasing costs, makes top performing hearing aids available for people of all incomes.

Your Company's Hearing Aid Division strengthened its personnel and engineering facilities in order to bring the newest advancements in hearing aids to the hard-of-hearing. A new laboratory for research was substantially completed in the summer of 1957. Here, hard-of-hearing people can be tested accurately to determine the degree of help they receive from existing hearing aids—and even more important—the degree of improvement which might be provided by hearing aids not yet fully designed. The engineering completion of such non-existent instruments is, of course, stimulated by these findings.

In the latter part of 1957 arrangements were completed with Bausch and Lomb Optical Company to handle the marketing of Zenith hearing aids in 90 foreign countries. Bausch and Lomb have established distribution channels in these countries, and it is anticipated that Zenith hearing aids will be the unquestioned leader the world over in a very short time.

EXPORT

Although U. S. industry exports of TV and Radio receivers were down 9%, your Company's export sales volume in 1957 increased 33% compared with 1956. Contributing to the substantial gain were our exports of television receivers, which in 1957 were 68% ahead of the preceding year. Exports of radio receivers to Zenith distributors were up 24%, but sales to overseas post exchanges of U. S. Army, Air Force, and Navy decreased 19% compared with the previous year.

Adverse trading factors such as scarce and expensive dollar convertibility, increasing tempo of import controls, nationalistic protection of local industries, political unrest and upheavals, tended to depress export business generally during the year. Foreign competition reached its highest level of penetration in export markets in 1957 and accounted for a large portion of the world's exports of radio receivers and radio-phonograph combinations.

Your Company's outlook for export business in 1958 is good, based on the rising acceptance abroad of our excellent performing television receivers and the increasing activities of licensed local assemblers of Zenith products in Latin America.

In addition, your Company is inaugurating an aggressive program to set up distribution of radio and television receivers in Canada, where it had previously been excluded from participation in the market through the operation of a cartel. Experienced and capable personnel have been employed and arrangements are being made for larger facilities in Toronto and Montreal. The operation in these areas will be conducted as a division of your Company's subsidiary, Zenith Radio Corporation of Canada, Ltd., which is presently distributing hearing aids throughout the Dominion. It is anticipated that independent distributors will be appointed to handle the distribution of Zenith products in the other areas of Canada.

PHONEVISION

The order of the Federal Communications Commission on October 17, 1957 providing for a three-year trial period of commercial operation of Subscription television was an important milestone in the development of Phonevision, the name applied to the Company's several pay-as-you-see television systems. The order provides that any TV station operating in a market served by four or more TV stations may apply to the FCC to serve its community with Subscription television programs. The order further provided that each acceptable Subscription television system would be limited to operation in three markets during the three-year trial period and provided adequate safeguards to insure that Subscription television would be as promised by its proponents, a supplemental service to "free" television service presently available.

Subsequent to this order, and unquestionably as a result of a high pressure campaign initiated by the networks who fear the competition of Subscription television, the House and the Senate Interstate Commerce Committees adopted resolutions requesting the Federal Communications Commission to delay the approval of any specific authorizations for Subscription television operation until Congress had had an opportunity to consider the subject further. These resolutions are strictly informal declarations of these committees. They do not have the effect of law because neither house has acted on this question.

The FCC has indicated that if Congress has not made its position clear by the end of this session, the FCC will proceed to process applications from stations 30 days after Congress adjourns.

During 1957 research and engineering on Phonevision went forward with particular emphasis on production engineering of both decoders and encoding equipment. This has resulted in performance improvements, cost reductions, and increased reliability.

In addition, several models of manufacturing process control and inspection equipment have been developed and tested because the production of decoders, each different from any other, although made from mass production parts, requires the application of special highly automatic methods of manufacture and inspection. The use of transistors and the development of novel transistor circuits especially applicable to the decoder has received much attention.

NEW FACILITIES

On January 1, 1958 a new display salon was opened in the 666 Fifth Avenue building in New York City. This salon, located on the corner of Fifth Avenue and 53rd Street, is a street level showcase of the Company's products. Although all Zenith products will be on display in this salon, no sales will be made except for hearing aids.

The Company has for years operated a display salon at 333 North Michigan Avenue in Chicago, and (primarily for wholesale purposes) a display salon in the Merchandise Mart also in Chicago.

Because of the Company's favorable experience with its two display salons in Chicago, it had anticipated similar favorable results from the New York salon, except on a much broader national and international basis. The actual results to date have exceeded its highest expectations. Comments received from Zenith distributors and dealers throughout the United States and in many foreign countries are adequate proof that the salon is operating in accordance with our plan as an extension of our distributors' and dealers' showrooms.

The general offices of Zenith Radio Corporation of New York, radio, television and hearing aid distributing operation, were moved from 445 Park Avenue to the second floor of the 666 Fifth Avenue location.

The additional plant which The Rauland Corporation, the Company's subsidiary, purchased in July 1956 was made available for its use during 1957. Construction is in progress on a small addition which will have the effect of connecting this new plant to the adjacent presently existing plant. When this construction and alterations are completed, increased efficiency will be obtained by consolidating some of the Company's operations that are now at other locations and adequate facilities will be available for the possible manufacture of color tubes in the future.

LITIGATION

The long pending litigation between Zenith Radio Corporation and its subsidiary, The Rauland Corporation, on one side, and Radio Corporation of America, General Electric Company and Western Electric Company on the other side, was terminated by an out-of-court settlement resulting in dismissal with prejudice on September 27, 1957 of all claims by either side against the other side in the Federal District Courts in Chicago, Illinois and Wilmington, Delaware.

The general basis of the settlement was a royalty-free exchange of domestic and foreign licenses under existing patents for radio and TV receiving sets, including tubes therefor (excluding color TV, color tubes and Phonevision), for a term beginning at that date and extending to January 1, 1963.

The agreement also provided for payments to Zenith and Rauland of the sum of $10,000,000 in equal yearly installments of $1,000,000 payable on the first day of October of each year. (The first payment was received on October 1, 1957.)

The agreement also provided for arbitration of the amount owing to RCA for alleged infringement of certain RCA patents and for arbitration of the amount which RCA owes Zenith and Rauland for alleged infringement of Zenith and Rauland patents. The maximum and minimum amounts of these liabilities are specifically provided for in the settlement. Adequate provision has been established on Zenith's and Rauland's books to cover any possible liabilities under this arbitration.

The exchange of licenses, including foreign patents, will make it possible for the Company to reenter certain foreign markets, from which it had previously been excluded.

On January 10, 1958, the Company brought suit in the United States District Court of Illinois against Marshall-Wells Company of Duluth, Minnesota, alleging acts of unfair competition on their part in respect to the trademark "Zenith" and charging a conspiracy to commit acts of unfair competition against Zenith.

On February 11, 1958, the Company filed suit in the United States District Court of Illinois against Admiral Corporation of Chicago, charging it with infringement of five Zenith patents and with having wilfully and knowingly copied two of Zenith's most important TV features. The features copied were Zenith's Fringelock circuit, for maintaining a set picture in areas of poor reception, and its Space Command remote control device which uses ultrasonic "silent sound" to control a TV set from across the room.

The Company is also involved in certain other actions arising out of matters incident to the ordinary conduct of its business and adequate provision has been made for any possible liability resulting therefrom. In the opinion of management and counsel the outcome of the foregoing litigations should be favorable to the Company.

EMPLOYEE RELATIONS

The Company during the past year continued to enjoy an excellent relationship with its employees and the unions representing its hourly paid employees.

The Zenith Profit-Sharing Retirement Plan, now in its ninth year, continues to show great value as an incentive for efficient operations and for attracting desirable employees and cementing employee relationship with the Company.

During the past year the Zenith Pioneers—employees with more than 20 years of service—grew from 300 active members to 479—from a total of 7,000 years of active service with the Company to more than 12,000 years.

OUTLOOK

There exists presently a wide variation of opinion concerning the extent and duration of the unfavorable trend in basic economic conditions which began last year. By far the great majority of businessmen and economists feel that conditions will change for the better before the end of 1958.

In our own industry, some of the excesses and bad practices of the past have been alleviated, but the industry remains extremely competitive.

Production and shipments of your Company's products in the first two months of 1958 were substantially ahead of the same period the year before.

Your management foresees a continuing substantial volume of television receiver sales based on the normal replacement and obsolescence of the more than forty-five million TV receivers presently in use, plus the additional business available in the form of second and third sets in a household.

The radio receiver category which showed renewed strength during 1957 should show even greater growth in 1958 because of the stimulating effect of the application of transistor usage in portable sets and larger higher frequency radio receivers. The original advantages of the transistor's small-size, low power consumption and long life have now been augmented by specialized transistor circuits and applications, and new transistor devices.

The importance of the application of transistors to our present type of products may be observed by reference to the radio and hearing aid pages in the Product Section of this report.

The continued growth of the market for high fidelity phonographs and combination receivers represents a great opportunity for your Company because in this category the customer places the greatest importance on high quality and outstanding performance, which gives Zenith an important advantage in this field.

Substantial progress has been made in our research and development work in the simplification of circuitry, picture brightness and other technical improvements in color TV receivers. Your management is continuing to carefully evaluate the public's reaction to the modest number of color receivers sold to date and our shareholders may be assured that Zenith will have reliable color television receivers in production when the time is appropriate.

Your Company is continuing its heavy emphasis on engineering and research because from these processes are born the outstanding exclusive developments and the built-in quality, performance and value that have enabled Zenith to maintain its growth. From this source also can come products leading to a desirable diversification of your Company's activities.

Your management is deeply appreciative of the loyalty, cooperation and conscientious effort of the Company's employees, shareholders, directors and officers who contributed so much to our successful operation during the past years.

We are particularly grateful for the aggressive efforts, splendid cooperation and loyalty of the Company's outstanding distributors and dealers.

This report is made for the information of shareholders in accordance with the established custom of the management and is not a representation, prospectus or circular with respect to the shares of the corporation.

At a special shareholders' meeting held February 27, 1958 the shareholders approved the Company's plan to change the legal situs of the corporation from Illinois to Delaware, and effect certain other changes as outlined in the proxy statement dated January 31, 1958, sent to all shareholders.

Respectfully submitted,

E. F. McDonald Jr.
President

March 7, 1958

1958

TO THE STOCKHOLDERS

OF ZENITH RADIO CORPORATION

Zenith's 40th year of operations was marked by a continuation and acceleration of its steady growth and progress despite the fact that during a large portion of the year the basic national economy was in a recession period and production and shipments of television receivers suffered a greater reduction than the general economy.

Your management is pleased to summarize herewith the highlights of our progress. During the year ended December 31, 1958 your Company:

1. Established a new record in earnings.
2. Established a new record in production and sales.
3. Established a new record in production and shipments of television receivers—15% more than its previous record established in 1957—although industry production and shipments of television receivers for the year were the lowest in 9 years—down 20% from 1957.
4. Obtained the highest share of total industry TV volume in its history—a 46% greater share than 1957 and it is believed attained the number one position in production and sale of monochrome television receivers.
5. Increased its share of the total industry radio receiver business almost 25% over 1957.
6. Increased its unit production and sale of transistor type radios 145% over 1957 and increased its share of industry sales of this type of receiver 44%.
7. Increased sales in the overall category of stereophonic high fidelity and phonographs 43% over 1957.
8. Increased Hearing Aid sales and earnings.
9. Introduced several new products and developments which may have a significant future potential.

EARNINGS AND FINANCIAL

Consolidated net income for the year was $12,116,165, or $12.30 per share—the highest earnings by your Company in any fiscal period—an increase of 48% over the $8,165,577, or $8.29 per share, earned the previous year.

Consolidated sales for the year of $195,041,624, also a new record, represented an increase of 22% over consolidated sales of $160,018,978 reported for the previous year.

Earnings in 1958 were favorably affected by an expanded volume of sales and a continuing close supervision of overheads and costs.

The accompanying consolidated balance sheet as of December 31, 1958, certified by our auditors, reflects a continuing improvement in the strong financial position of your Company.

Cash and government securities (after earmarking $10,700,000 of government securities for payment of federal income taxes) totaled $47,178,485, an increase of 23% over the total of $38,432,058 shown at December 31, 1957.

Accounts receivable of $17,425,087 (net of reserves) were up 20% from the $14,518,070 reported at December 31, 1957 reflecting the substantially increased sales volume in the last quarter and the deferred payment terms which the Company extended to its distributors at its successful December showing of its new Spring line. Included in the total for both periods is $1,000,000 representing the installment of the litigation settlement due October 1, of the ensuing year.

Total inventories of $16,240,605 represented a 34% increase over the $12,126,754 reported at December 31, 1957 and were a direct result of the Company's higher sales volume in the last quarter of 1958 and larger production schedules for the first quarter of 1959.

Finished goods inventories included in the above totals, which included inventories on hand and en route to our wholesale distributing subsidiaries, were also increased as a result of a higher pace of sales activity.

Working capital increased by $7,806,666 from $45,187,819 at December 31, 1957 to $52,994,485 at December 31, 1958.

SUBSIDIARIES

The Rauland Corporation, our subsidiary engaged principally in the manufacture of cathode ray tubes, reported a substantial increase in profits and sales primarily as a result of Zenith's increased requirements of cathode ray tubes, high production efficiencies and continuing close control of overheads and costs.

Wincharger Corporation, the Company's subsidiary in Sioux City, Iowa, which manufactures small radio receivers under contract for the parent company, dynamotors for government contracts, electric motors and power generators, reported slightly higher sales and satisfactory profits for the year.

The Company's wholesale distributing subsidiaries in New York and Chicago reported increased profits, primarily as a result of very substantially increased sales.

Zenith Radio Corporation of Canada, previously engaged exclusively in the distribution of hearing aids in Canada, during the year initiated the distribution of radio and television receivers in the provinces of Ontario and Quebec. As a result, sales volume increased substantially, but the expense of moving the operation from Windsor to Toronto (with a new branch operation in Montreal) and the heavy starting costs in connection with the new distribution activities unfavorably affected earnings.

DIVIDENDS

On January 31, 1958, the Company paid dividends of $2.00 per share (declared out of 1957 earnings) on the then outstanding 492,464 shares of no par value common stock and on March 31, 1958, $1.00 per share was paid on this stock. (This is equivalent to $1.00 and 50¢ per share respectively on the 984,928 shares of $1.00 par value stock presently outstanding.) The Company also paid dividends of 50¢ per share on June 30, 1958, September 29, 1958 and December 29, 1958. An extra dividend of $2.00 per share, also paid on December 29, 1958, brought the total *paid* for the year to $5.00 per share on the present outstanding 984,928 shares. A special dividend of $2.00 per share payable January 30, 1959, declared out of 1958 earnings, made a total of $6.00 dividends *declared* during the year.

PRODUCTS AND MERCHANDISING

The basic policies which your Company has followed for the past 40 years continued to show their soundness and value in the past year, which was a difficult one for the general economy as well as our own industry.

In the two years of 1957 and 1958, industry production and shipments of TV were lower than the comparable quarter the year before in seven out of the eight quarters. Contrary to this industry trend, Zenith's production and shipments of television receivers during each quarter of the past two years were substantially higher than the comparable quarter the year before.

Your Company's ability to move counter to the industry trend and to continue its pattern of growth can be attributed to these sound basic policies developed and followed for the past 40 years:

1. Devotion to high quality in production and in performance (with resulting low service costs).
2. Specialization in designing and inventing outstanding advances and demonstrable technical features that the customer recognizes and wants.
3. Painstaking efforts in anticipating consumer preferences and tastes.
4. Emphasis on dollar value rather than price alone.
5. Application of sound business principles to aggressive merchandising and advertising programs designed to make Zenith products the best and soundest value at all levels of distribution, including the ultimate consumer.

The complete new line of television receivers introduced at a national showing early in June incorporated styling refinements in harmony with modern trends in household furnishings, and also new circuitry and features giving improved performance.

As in all Zenith products, your Company's television receivers are designed with a continuing emphasis on quality and reliability. All television receivers are made with the dependable horizontal hand-soldered and wired type of chassis, which has been so well received by dealers, customers and by service men who are pleased with the accessibility of parts and the ability to service the chassis at a very reasonable cost to the consumer.

The Zenith-Rauland developed Sunshine Picture Tube, which requires far less video drive than conventional picture tubes and permits television circuits to be broadbanded to get more "sparkle" in the form of more detail and information, was used in all receivers.

The popular and exclusive Space Command Television Remote Control (on which your Company holds basic patents), introduced in the summer of 1956, became even more important in the Company's business. The increase in sales over the year before of television receivers incorporating Space Command accounted for more than 40% of the total increase in dollar sales of Zenith TV receivers last year.

The obvious advantage and convenience of this exclusive Zenith engineering achievement, which makes use of ultrasonic or "silent sound" to activate and control a television receiver from across the room, prompted several competitors to market their own remote control devices, some of which infringed, in the opinion of our counsel, Zenith's patents.

Significant improvements were made in the new line of Space Command receivers. A new microphone with markedly improved sensitivity and frequency response was used, and a volume control was added to previously available features, which also permit the user to turn the set on or off, change stations, or mute the sound while the picture remains on the screen. A "touch bar" tuning mechanism introduced on Space Command models permits the changing of channels when the user is standing at the television set merely by touching the tuning bar.

The Zenith Space Command Remote Control, in competitive tests conducted by an independent testing laboratory, received the highest rating for overall quality and has been judged "the most convenient remote control system."

Your Company's 14-inch and [illegible]-inch receivers, which had previously received high ratings, were further improved by the addition of a full powered transformer and tube rectifier circuit.

The Company's 21-inch receivers again received the highest ratings from an independent testing laboratory for overall quality in strong and medium signal areas.

Both categories of the Company's TV receiver business, table models and consoles, showed an increase over the previous year. The increase was particularly significant in consoles, which increased almost 48% in units over the previous year. In the overall 21-inch category, including consoles and table models, your Company's increase was 22%.

In radio receiver production and sales, your Company reported an increase of 18% over 1957 as compared to a decrease in the industry of 9%. Zenith's percentage of the industry increased almost 25%.

During the year, significant changes occurred in the industry overall category mix. Regular tubed type AC-DC receivers, clock radios, portable receivers and phonographs suffered substantial reductions, although your Company had an increase in the production and sale of tubed AC-DC receivers, clock radios and phonographs over the year before, attributable in a large measure to the introduction of attractive newly designed merchandise.

There were substantial industry increases in the sales of AM/FM receivers and in transistor type portable radio receivers. The industry increase in transistor type portable radio receivers was very significant, almost 70%. However, your Company's 145% increase was more than double the average of the industry.

The Company's line of transistor radios was considerably expanded during the year through the introduction of new models which permitted Zenith dealers to offer attractive merchandise in price classes ranging from a suggested list price of $44.95 for a powerful 7-transistor pocket type portable radio to a suggested list price of $275.00 for the Model Royal 1000D, an all-transistor standard and short wave Trans-Oceanic receiver with added long-wave bands, making it useful for navigation as well as entertainment and other purposes.

It seems quite probable that Zenith, in its radio and hearing aid usage, continues as the largest user of transistors in devices sold to the public.

The category of record players, high fidelity phonographs and stereophonic high fidelity phonographs and combinations became increasingly important during 1958 both as a result of increased public interest and the Company's aggressive merchandising and advertising efforts in this field. In this total category, the Company achieved an increase in sales volume of 43% over the year before.

The Company's high fidelity phonographs were completely re-engineered during the year for the finest performance and a complete line of stereophonic record playing instruments was introduced, many of which are capable of giving 40 watts of undistorted power output and up to 80 watts maximum.

The Company pioneered a "self-contained stereophonic" unit in addition to the "stereo-equipped" models with which a separate remote speaker is used. The combination of high quality high fidelity reproduction and stereophonic directional effect gives a new dimension of sound reproduction which had not been previously available to the public in home phonographs.

Well-planned merchandising and advertising activities were a most important factor contributing to the increased sales volume and greater stature within the industry which your Company enjoyed during the past year.

Much thought and planning went into the designing, engineering and selection of merchandise to provide attractive merchandising features and intelligent price-value comparisons and step-ups.

Aggressive merchandising programs were made available to our distributors to provide substantial incentives for Zenith dealers to increase their purchases and displays of Zenith merchandise. These programs proved to be an outstanding success at both the distributing and dealer levels. Effective point of sale and newspaper campaigns were used to support these merchandising programs, and well-planned national magazine advertisements and a national television program in the latter part of the year, all featuring quality and value, completed and integrated the entire program.

Continued close control of production and merchandise inventories at every level, factory, distributor and dealer, was recognized as alleviating one of the major elements of risk in this industry, namely, the deterioration of inventory values which occurs when manufacturers, distributors or dealers become overstocked and are faced with inventory liquidation.

HEARING AID

Hearing aid sales during 1958 again showed an increase over the previous year as Zenith improved its position in providing quality hearing aids for the hard-of-hearing throughout the world.

During the year, eight new hearing aid instruments were introduced to give even more benefits to those suffering a hearing loss. Probably the most dramatic instrument was the new Citation eyeglass hearing aid with advanced fitting features providing greater comfort and a more natural fit for the user. Zenith also incorporated the bone conduction hearing principle into its Imperial eyeglass hearing aid. In this instrument, the sound is transmitted to the nerve through the mastoid bone and eliminates the necessity for wearing anything in the ear canal.

While its present line of eleven all-transistor hearing aids features eight instruments that were new or redesigned during the year, increased merchandising effort and dealer support have also played an important part in keeping Zenith hearing aids moving ahead in the industry. During the year many new full-time hearing aid dealers were franchised and many existing dealers continued the trend of improving their facilities. Our hearing aid marketing program was further improved by an extensive consumer survey to determine the differences in attitudes between first-time users and repeat users of hearing aids. The results of this survey were the foundation for a successful Fall merchandising campaign to tell the public about Zenith "Living Sound" Quality Hearing Aids.

The momentum generated during 1958 should make its full significance evident during 1959 with even greater increases in hearing aid sales and profits.

EXPORT

The Company's 1958 export sales of television and radio receivers, phonographs, high fidelity and stereophonic instruments, and parts reached the highest level in Zenith's history, reflecting a substantial increase of 13% over 1957. The record was particularly notable because 1958 was generally a poor year for exports. Significant gains were achieved in all product categories exported during the year to Zenith's foreign distributors and assemblers.

During 1958, such important markets as Mexico, Colombia, Venezuela and Cuba went through political changes or upheavals that generally depressed our exports to those countries. Much more severe controls were imposed on dollar convertibility in many countries, principally Argentina, Brazil, Uruguay, Philippines, South Africa and the Middle East countries, which tended to restrict importation or make the cost of imports prohibitively expensive. In addition to the traditionally strong European protectionist block, other countries, including Argentina, Brazil, Chile, Mexico, South Africa and the Philippines, which in the past were good export markets for Zenith, were subjected to sweeping import restrictions designed to protect local industry. Increased activities of foreign competitors enabled them to penetrate markets which had heretofore favored U.S. products by a wide margin. The heavy inroads into foreign (and domestic) markets made by Japanese all-transistor radios were particularly disturbing because they were being offered at very low prices, based on the extremely low labor rate paid to workers. Other foreign manufacturers also offered reduced prices and extended payment terms over long unsound periods of time.

The year 1959 looms as a difficult one for the export business, with a continuation, and possibly an increase, in the unfavorable trading and competitive situations. However, continuing improvement in the performance and merchandising values of Zenith products, the growing strength of Zenith export distributors and assemblers, together with the Company's increased marketing efforts abroad, may offset the unfavorable factors and make it possible to have another fine export year in 1959.

The substantial increase in sales noted above accomplished in a difficult export market does not include a significant volume of purchases of television and radio receivers and phonograph units by Canadian distributors during 1958. During the year, an aggressive sales and operating organization was added to the personnel of the Company's subsidiary, Zenith Radio Corporation of Canada, to initiate the distribution of radio and television receivers to dealers in the provinces of Ontario and Quebec. Four outstanding and experienced independent distributors were appointed to handle the distribution of Zenith products in western Canada. Although there has long been a strong consumer demand for Zenith products in Canada, much work had to be done to establish a dealer organization and the major benefits of Canadian distribution will begin to be felt in 1959.

PHONEVISION

In our last annual report you were advised that on October 17, 1957 the Federal Communications Commission had authorized a three-year trial period of commercial operations of subscription television, an important milestone in the development of Phonevision, the trade name used to designate the Company's systems of subscription television.

Following this authorization a campaign of unprecedented vigor was conducted by various opponents of subscription television for the purpose of securing some legislative restriction or prohibition against carrying out the

Commission's order. These pressures resulted in delaying the effectiveness of the Commission's order.

In the meantime, a countervailing force has become increasingly evident in the wider public realization that current television programming is not adequate to satisfy the public demand and that only through some means whereby the public can share directly in their cost can substantially better programs be shown on television.

At this writing there has been no modification of the Federal Communications Commission's previous announcement that no applications for authorization to engage in subscription broadcasting will be processed until after the current session of Congress has adjourned. However, a number of officials who have heretofore expressed themselves as unalterably opposed even to any trial of subscription television, have now modified their views to the extent that they feel that a fair and adequate trial of the service should be permitted. There are also some signs that the television networks may have modified their position on this subject.

For these reasons we are optimistic that in time this political log-jam will be broken and it will be possible to conduct initial operation of the service in some markets in the United States.

During the year your Company made further progress in refining and simplifying decoder designs. A number of components used in the decoder were re-engineered for improved performance, improved reliability, and a further increase in security of the system.

Many aspects of the operational procedures associated with a subscription service were also under continuous study during the year. These investigations have resulted in detailed planning and engineering of a number of business machines needed for this unique application.

FACILITIES

Production requirements of the Company's expanded radio, stereophonic phonograph and television receiver business indicate the need for additional facilities in order to provide an adequate supply of merchandise on an efficient low cost basis during the peak season of the year. This problem has been under study by your management for many years and reports have been made from time to time to your Board of Directors. At a Directors' Meeting held on November 25, 1958 the officers and management of Zenith Radio Corporation were authorized to undertake a capital expansion program for the parent company and its subsidiaries during the year 1959 in the amount of $7,500,000.

Because many of the plans and projections in connection with this expansion have not been completed, it is unlikely that this entire amount will be spent in 1959.

In February 1959, as the first phase of this expansion program, the Company purchased a plant at 6501 W. Grand Avenue, Chicago, containing approximately 110,000 square feet of factory and office space, plus approximately 40,000 feet for parking. It is planned to immediately transfer certain activities to this new location.

The public display salon at 666 Fifth Avenue, New York City, has produced favorable results far beyond any previous expectations of the management. The impact of this display salon has gone far beyond its local effect in New York City and has proven to have a beneficial effect on a national and international scale.

Your management feels that the same favorable results can be obtained by an improved and larger showroom in Chicago and accordingly the Company has taken a long-term lease on the property at 200 North Michigan Avenue, a very heavily traveled location both for automobile and foot traffic. It is expected that this display salon will be completely remodeled and opened to the public by May 1, 1959.

LITIGATION

The Company's lawsuit against Marshall-Wells Company of Duluth, Minnesota, for unfair competition in respect of its merchandising of kitchen and laundry appliances under the trademark ZENITH, which began on January 10, 1958, is in the early stages of pre-trial discovery. During the year, Marshall-Wells Company joined issue with Zenith's complaint and filed an unfair competition counterclaim. Pre-trial motions brought by both parties are awaiting decision by the Court. Preparation for the taking of discovery depositions is currently under way.

With respect to the litigation commenced on February 11, 1958 charging Admiral Corporation with patent infringement and with having wilfully and knowingly copied Zenith's Fringelock circuit and its Space Command remote control system, two additional Zenith patents which issued in 1958 on further features of the Space Command system have been added to the litigation, making a total of seven Zenith patents involved. Admiral has counterclaimed for infringement of two of its patents on record changer devices. Pre-trial discovery depositions are expected to commence in March, 1959.

Preliminary steps have been taken with respect to the arbitration provided for under the agreement which terminated the litigation between Zenith Radio Corporation and its subsidiary, The Rauland Corporation, on one side, and Radio Corporation of America, General Electric Company and Western Electric Company on the other side, with the selection of the arbitrator, the Honorable Judge John P. Barnes, retired, formerly Chief Judge of the U.S. District Court for the Northern District of Illinois.

This arbitration is to determine the amount owing to RCA for alleged infringement of certain RCA patents and the amount which RCA owes Zenith and Rauland for alleged infringement of Zenith and Rauland patents. The maximum and minimum amounts of these liabilities have been specifically provided in the settlement agreement. Adequate provision has been established on Zenith and Rauland books to cover any possible liabilities under this arbitration.

The Company is also involved in certain other actions arising out of matters incident to the ordinary conduct of its business and adequate provision has been made for any possible liability resulting therefrom. In the opinion of management and counsel the outcome of the foregoing litigations should be favorable to the Company.

EMPLOYEE RELATIONS

During the year the Company continued to enjoy an excellent relationship with its employees and the unions representing its hourly paid employees.

The Zenith Pioneers, employees and retired employees with more than 20 years of service, continued to grow and now number 504.

The Zenith Profit-Sharing Retirement Plan, now in its tenth year, continues to show great value as an incentive for efficient operations and for attracting desirable employees and cementing employee relationship with the Company.

During the year the Profit-Sharing Fund purchased from the estate of E. F. McDonald, Jr. 30,000 shares of Zenith common stock and thus became the largest Zenith stockholder, owning slightly more than 7% of the total outstanding stock. It is felt that this additional stock ownership will augment and intensify the incentive of Zenith employees to reduce costs, improve performance and increase profit.

RESEARCH AND NEW PRODUCTS

During 1958 several of the products of your Company's past efforts in research and development were announced and offered for sale. The first of these, made public in August, was a wide band, low noise, high gain Parametric Amplifier Tube which can greatly extend the effective range of military defense radar used in distant early warning systems for detection of unfriendly aircraft, as well as the range of inter-continental missile and earth satellite tracking systems.

In September our subsidiary, The Rauland Corporation, announced the successful development of the first large size, all-purpose image amplifier tube for medical x-ray. This new x-ray device permits a physician to examine a large image at least 350 times brighter than that shown on present fluorescent screens and reduces substantially the total amount of radiation to which both patient and physician are exposed during x-ray examinations.

The Company's research subsidiary, Zenith Radio Research Corporation, Redwood City, California, is now producing new type flash x-ray equipment designed to take x-ray type shadow pictures of high speed phenomena such as the fragmentation of bullets and shells and the "burning" pattern of solid and liquid fuel propellants used in rocketry and missile work.

During the year, your Company purchased the entire capital stock of Central Electronics, Incorporated, of Chicago, which had been in business since 1950 producing high quality single sideband equipment for radio amateurs, and other electronic products.

While Central Electronics, Incorporated, has not been a large operation in the past, your Company feels that the potential of its products in the amateur field and in the fields of military and general communications is very attractive.

The advantages and potential of the Company's new developments and products are more fully described in the Products Section of this report.

During 1958 laboratory facilities were completed which permit the making of experimental transistors of various types, as well as other more sophisticated semi-conductor devices. With these new facilities, it is possible to tailor-make semi-conductor devices in conjunction with circuit applications.

Research is continuing in the ceramic condenser field. Your Company has conducted a ceramic condenser manufacturing operation for many years, supplying a large part of its own requirements. Basic studies are also continuing in the physics of solids and in the physics and chemistry of solid surfaces.

The Company has produced in its laboratories transistorized television receivers and, in conjunction with The Rauland Corporation, is continuing research and development on color television receivers and tubes so that the Company will be prepared to enter into the manufacture of these receivers and tubes when the time is appropriate.

OUTLOOK

The improvement in business conditions which began last year is continuing into 1959 and is expected by many economists and business men to accelerate in the 1960's.

In our own industry there are indications that 1959 may show a substantial recovery from the depressed levels of 1958. Many of the pertinent marketing factors, such as population growth, household formation, replacement and obsolescence of existing equipment and the intent to purchase additional sets for the home all point in the direction of future substantial growth.

These factors will be strengthened by improved performance features, the gratifying public acceptance of operating improvements such as your Company's exclusive Space Command Remote Control feature and the outstanding values which the industry is offering in comparison to other products.

We remain firmly convinced that the number of television sets in use will grow steadily from its present 50,000,000 units to 70,000,000 units or more. This growth can be accelerated if the character and quality of present television programming is upgraded to a more desirable level either by the networks and sponsors or by the addition of a supplemental subscription television service.

The same force, namely, improved and increased programming would also be a stimulant to the future public acceptance of color television if it is combined with a more realistic pricing approach which would make the public understand that color television will have to be a deluxe supplemental service for many years in the future rather than an immediate replacement for monochrome television.

The increased usage of transistors in new and novel applications in radio receivers continues to expand this market and gives indication of substantial continued growth.

The category of phonographs and stereophonic high fidelity instruments gives promise of becoming increasingly important as the consumer learns to appreciate the high quality of musical reproduction which can be made available in the home.

The increased stature which your Company has attained within the industry and with the consumer, and its present strong momentum are sound foundations for a continuation of Zenith's progress, but in this intensely competitive industry we realize that it will require our continuing best efforts and ingenuity to maintain our leadership.

It is impossible at this time to make an intelligent forecast of the future sales potential of the new developments and products which your Company has introduced this year, but based on the interest which the prospective users have shown, there is good reason to feel optimistic about their future.

Your management wishes to acknowledge the fine cooperation, loyalty and conscientious efforts of its employees, directors and officers, and express its gratification and appreciation of the results of their teamwork.

The Company's outstanding distributors and dealers made significant contributions to your Company's progress during the year and your management is deeply grateful for their support and loyalty.

This report is made for the information of stockholders in accordance with the established custom of the management and is not a representation, prospectus or circular with respect to the shares of the corporation.

Respectfully submitted,

Hugh Robertson

President

March 6, 1959

A-11

1959

TO THE STOCKHOLDERS
OF ZENITH RADIO CORPORATION

Your Company's continuing progress and sound growth during the year ended December 31, 1959 (the 41st since the business was established) was highlighted by many accomplishments and milestones.

Zenith Radio Corporation during the year:

1. Established a new record in production and sales—for the second successive year.
2. Established a new record in earnings—for the second successive year.
3. Produced and sold more than 1,000,000 television receivers, a 40% increase over the Company's previous record established in 1955, as compared to an over-all industry increase in shipments of only 24%.
4. Obtained the highest share of total industry TV volume in its history and further strengthened its claim to No. 1 position in the production and sale of television receivers.
5. Produced and sold the greatest number of home radio receivers in its history and significantly increased its share of the industry radio business.
6. Established a new record in the production and sale of transistorized portable radios—a significant 53% increase over the previous year.
7. Increased production and sales of phonograph and high fidelity stereo units over 1958.
8. Maintained its position as the leading factor in the hearing aid industry.
9. Continued its progress in research and in other activities looking toward the future.

EARNINGS AND FINANCIAL

For the second successive year Zenith Radio Corporation and its subsidiaries set a new record in consolidated earnings. Net profit of $16,630,144 was equivalent to $5.63 a share on the 2,954,784 shares outstanding at December 31, 1959. This represented a 37% increase over the $12,116,165, or $4.10 a share, earned in the previous year.

Contributing to this substantial gain in earnings was the increase in consolidated sales. The record sales volume of $260,033,866 reached a new high for the second consecutive year and represented an increase of 33% over the sales of $195,041,624 reported for the year ended December 31, 1958.

Your Company's consolidated financial position at year-end showed continued improvement. Working capital at December 31, 1959 was $61,403,593, an increase of $8,409,108 from the $52,994,485 reported last year. The accompanying consolidated balance sheet as of December 31, 1959, certified by our auditors, reflects this continued strong financial position.

Cash and Government securities, after allocation of $14,400,000 in Government securities to provision for Federal income taxes, totaled $54,223,917, an increase of $7,045,432 over December 31, 1958.

Accounts receivable of $21,564,293 (net of reserves) increased $4,139,206 from the previous year. This increase of 24% is accounted for by the earlier mentioned 33% increase in sales volume. Included in the total receivables is $1,000,000 representing the annual installment of the litigation settlement due October 1 of the ensuing year.

Total inventories of $21,157,559 were $4,916,954, or 30%, above the $16,240,605 reported at December 31, 1958. The increase in both in-process and finished goods inventories is attributable to expanded sales volume and larger production schedules for the first quarter of 1960.

SUBSIDIARIES

The Rauland Corporation, our subsidiary engaged principally in the manufacture of cathode ray tubes, reported increases in both sales and profits primarily as a result of Zenith's increased requirements of cathode ray tubes.

Wincharger Corporation, the Company's subsidiary which manufactures small radio receivers under contract for the parent company, dynamotors for Government contracts, electric motors and power generators, was adversely affected by a two-month strike, but nevertheless, reported satisfactory sales and profits for the year.

The Company's wholesale distributing subsidiaries in New York and Chicago reported substantially increased profits primarily as a result of record sales.

Zenith Radio Corporation of Canada made substantial progress during the year, but a continuation of the heavy costs in connection with the new radio and television receiver distribution activities unfavorably affected earnings.

Central Electronics, Inc., the Company's subsidiary engaged principally in the manufacture of single side band transmitters, was unable to show a profit for the period primarily as a result of continued heavy engineering and startup costs on its popular new transmitter.

A new subsidiary, Zenith Sales Corporation, which will perform the marketing function for Zenith Radio Corporation, commenced operation on January 1, 1960. It will be responsible for sales, distribution, product planning, advertising, sales promotion and market research for television, radio, phonograph and stereophonic home instruments in the United States and export markets.

DIVIDENDS

On January 30, 1959, the Company paid dividends of $2.00 per share (declared out of 1958 earnings) on the then outstanding 984,928 shares of common stock and on March 31, 1959, 75¢ was paid on this stock. (This was equivalent to 66⅔¢ and 25¢ per share respectively on the 2,954,784 shares presently outstanding.) The Company also paid dividends of 25¢ per share on June 30, 1959, and 40¢ per share on September 29, 1959 and December 29, 1959. An extra dividend of 65¢ per share, also paid on December 29, 1959, brought the total *paid* for the year to $2.61⅔ on the presently outstanding 2,954,784 shares. (A special dividend of 65¢ per share payable January 29, 1960, declared out of 1959 earnings, made a total of $2.60 per share *declared* during the year.)

PRODUCTS AND MERCHANDISING

Forty-one years ago your management adopted a policy of specializing in radionics exclusively, devoting all its time, effort and resources to development, production and merchandising of high quality products with exclusive new features. The basic objective of this policy was to satisfy customers through emphasis on quality and value. Your Company's progress in 1959, its most successful year to date, can be traced directly to the sound business decisions made forty-one years ago.

The television receiver industry shared in the strong national economy which prevailed during 1959 and increased factory shipments of television receivers from [illegible] in 1958 to 6,378,476, an increase of 24%. Without the benefit of Zenith's better than average gain over 1958, the industry increase in shipments would be less than 22%.

Your Company's better than average increase in television sales over 1958 is directly attributable to the following factors:

a. The high quality and excellent performance of the Company's television receivers.

b. Outstanding demonstrable technical advantages.

c. Pleasing appearance and diversified cabinetry to suit all tastes.

d. Intelligent, aggressive merchandising and advertising which brought before the dealers and the public the reasons why Zenith receivers represent the best values for consumers and the soundest merchandise for dealers.

Sales of receivers incorporating the Company's exclusive and patented Space Command television remote control increased 110% over the preceding year, reflecting the popularity of the 17" slim line receivers which incorporated this feature for the first time.

The obvious advantage and convenience of this original and exclusive Zenith engineering achievement which makes use of ultrasonic or "silent sound" to activate and control a television receiver from across the room, prompted many manufacturers to market their own type of remote control devices, some of which, in the opinion of our counsel, infringe Zenith patents.

The Company continued to feature the "Sunshine" picture tube (developed by The Rauland Corporation), which requires far less video drive than conventional tubes and permits the television circuits to be broad-banded to get more "sparkle" in the form of more detail and information. The 100% higher efficiency of the new electron gun allows up to 250,000 cycles more picture information to reach the screen for better picture detail.

The Company continued its policy of incorporating technical advances and improvements in its receivers only after development and adequate testing to insure high quality performance. Thus in 1959 the Company produced receivers with 110-degree deflection picture tubes only after several years of development work on circuits and on the tubes themselves to insure the same high quality performance offered with the 90-degree tubes.

In the line of TV receivers introduced in June, 1959, all 21" instruments were offered with 20,000 volts of picture power, a feature which previously had been offered only on the highest priced models. The new line introduced a new Super H-20 Horizontal type television chassis with hand wiring and all connections carefully hand soldered. Quality-plus components were firmly fastened to the rugged metal base to make servicing requirements infrequent, fast, easy and economical when required.

The decision to make a television receiver as service-free as possible, and still economical to service when necessary, is one that must be made when the receiver is being engineered and designed, and kept in mind during all the engineering and production processes.

The new television sets also continued to feature the Zenith "fringe lock" circuit using the Zenith developed "6BU8 Miracle Tube" for greater picture stability and offered Zenith advances such as its new exclusive impedance matching IF circuit stabilizer and the "Gated Beam" Sound stabilizer.

Both categories of the Company's TV receiver business, table models and consoles, showed increases over the previous year of 30% and 49%, respectively.

Several new models were introduced in December, 1959 incorporating the new 23" picture tube with bonded protective glass, offering the advantages of a new, larger, more rectangular picture shape and overcoming the problem of cleaning dust which adheres to the face of the tube.

In radio receiver production and sales your Company attained an increase of 32% over 1958 as compared to [illegible] industry increase of 21%. Significant increases were achieved in the categories of FM/AM receivers and transistor portable radios, in which categories your Company has enjoyed a leading position for many years.

The FM/AM category was augmented by the addition of several new models, including a new high fidelity deluxe model, the "Super Interlude", and a low priced FM only table model in a compact cabinet.

A new transistorized FM/AM portable, the Royal 2000, is scheduled for introduction in March. This receiver, the first of its type to be produced domestically, may be favorably compared with the Royal 1000 transistorized Trans-Oceanic short wave receiver which, with its tube type predecessor, the B600, has been the standard of the industry for almost 20 years. The new FM/AM portable receiver offers high performance and excellent sound reproduction on both FM and AM, with effective automatic frequency control on FM and other advanced features.

The 53% increase in the sale of the Company's transistor portables is attributed to the public's continued recognition of the outstanding quality, high performance and greater dollar value offered by these sets. This is particularly significant in view of the increasing competition of imported Japanese transistor sets and cheap sets produced domestically from imported Japanese parts.

The Royal 500E, the acknowledged leader of all pocket type transistor radios, continuously improved in performance and features since its introduction in 1957, showed a very substantial increase in sales over any previous year. The line of transistor portables was augmented by a powerful all-transistor portable radio, the Royal 250, with a suggested list price of $39.95 so that Zenith dealers were able to offer attractive merchandise in all price ranges from $39.95 to $275.00 for the model Royal 1000D.

As a part of the Company's program of further miniaturizing portable transistor radios, a new model, the Royal 100, has been developed and is presently being shipped. This is the smallest portable produced to date by Zenith and offers excellent performance without the technical compromise of some smaller competitive models. The set uses 6 transistors plus 2 diodes and other thoroughly tested components, and conventional Penlite Batteries.

The category of record players, high fidelity phonographs, and stereophonic high fidelity phonographs and combinations continued to increase in importance during 1959 both as a result of increased public interest and the new features offered by the Company's products.

A basic technical advance in stereo sound reproduction was introduced in our deluxe record playing instruments. This exclusive Zenith feature, called "extended stereo", gives the user control over the degree of stereo effect. This control ranges from "monaural" effect (no stereo) to "standard stereo", which corresponds to ordinary stereo reproduction and to "extended stereo", which provides an enhanced stereo effect making the sound directionality more realistic and giving the desirable illusion of increasing the separation of the speakers in a single unit cabinet. In addition, the stereo balance adjustment is made less critical and becomes in effect automatic.

Another advance in stereo sound reproduction is the use of small middle and high-range speakers in very small enclosures to permit placing these speakers with wide separation in rooms where a conventional large remote speaker cabinet cannot be accommodated. This development stems from the technical finding that the direction of a sound source is perceived through the middle and high frequencies, making it unnecessary to use more than one low-frequency or woofer speaker cabinet.

Well-planned merchandising and advertising activities continued as an important factor contributing to the increased sales volume and greater stature within the industry which your Company enjoyed during the past year. Much thought and planning went into product development, designing, engineering and selection of merchandise to provide attractive merchandising features and intelligent price value comparisons.

Aggressive merchandising programs made available to our distributors provided substantial incentives for Zenith distributors and dealers to increase their purchases and displays of Zenith merchandise. These programs proved to be an outstanding success at both the distributing and dealer levels. Effective point of sale and newspaper campaigns were used to support these merchandising programs, and well-planned national magazine advertisements, featuring quality and value, completed and integrated the entire program.

Continued close control of production and merchandise inventories at every level, factory, distributor and dealer, was recognized as alleviating one of the major elements of risk in this fast changing industry, namely the deterioration of inventory values which occurs when manufacturers, distributors or dealers become overstocked and are faced with inventory liquidation.

HEARING AID

The Company's Hearing Aid Division continued as the leading factor in the industry in 1959 and introduced several new, imaginative products to better serve hard-of-hearing people throughout the world.

One important new product was the "Extended Range" model, the world's first high fidelity hearing aid. The result of many years of engineering research, this advanced instrument is bringing hearing to thousands who could not be adequately helped by former instruments. Zenith advances in circuitry design make it possible for the "Extended Range" to reproduce and amplify a 98% greater range of sound frequencies than ever before possible, with virtually no distortion or background interference. Dealer and public acceptance proves its tremendous performance and sales potential.

Zenith continued to engineer and produce hearing aids that would appeal to the style conscious and bring better hearing to more of the hard-of-hearing. The new Medallion eyeglass model, the world's smallest and slimmest eyeglass hearing aid, gives Zenith additional sales potential in this important segment of the market. Extensive research and development produced new, miniaturized components to make this possible.

New sales fields were opened by the introduction of a diagnostic audiometer, the ZA-300 Audio Analyzer, which provides further opportunity to better serve otologists, clinics, hospitals, and other professional groups. This is another step by Zenith to create added sales potentials in the field of hearing conservation.

While new products and improvements are always essential to growth, steps were taken in 1959 to further strengthen our marketing procedures. Intensified market studies and a continuing program of improving our dealer structure will permit us to continue to grow in the hearing aid field and further increase our leadership.

The Hearing Aid Division moved to larger quarters during the year, where engineering, sales, advertising and administration are now coordinated in one building.

New products, improved facilities and new marketing programs indicate that growth of the Hearing Aid Division in 1960 will be even greater and more profitable.

EXPORT

The Company's 1959 export sales (excluding Canada) of television sets, radio receivers, phonographs, and stereophonic instruments were down less than 1% from 1958. This was a remarkable record in the face of adverse factors and conditions that faced the general export market for those products in 1959. During the year, important large markets for U.S. radio, TV, and phonograph products such as Argentina, Cuba, Colombia and Venezuela, imposed further severe or new restrictions to make the importation of such products practically prohibitive.

Another serious deterrent to U.S. exports, particularly of radios, during the year was the severe foreign competition from Japan, which flooded practically all world markets with a wide range of cheap transistor products at very low prices. The impact of Japanese competition has been much stronger in export than in the domestic market.

Our exports to Europe in 1959 improved slightly due particularly to the appointment in mid-year of an energetic independent distributor in the United Kingdom. For almost 30 years previously, the British market had been closed to our products because of cartelization and restrictions. Since July, 1959, our exports have been increasing, concentrated, however, in several models which have no direct counterparts in British production.

Our sales to the U.S. Armed Forces Overseas PX's gained 15% in 1959 over 1958, reversing for the first time in several years the declining trend of these sales. There was a substantial increase in TV sales and there are signs that the overseas PX's, especially in Europe, are showing preference for U.S. products after several years of handling cheaper products of foreign competition.

In the light of the unfavorable trading factors and adverse conditions which exist in many major world markets, 1960 can be another difficult year for U.S. exports.

The Company's Canadian subsidiary, Zenith Radio Corporation of Canada Ltd., showed marked progress in the sales of all products. The long established Hearing Aid Division continued its steady growth in sales and profits. The Radio and Television Division, established in 1958, doubled its sales over the first year and in the closing months achieved a substantial gain in its percentage of industry sales despite a decline in over-all Canadian industry sales of television receivers. This gratifying performance emphasizes the wide acceptance of Zenith products by the Canadian trade and public.

Zenith now has a strong distribution network at both the wholesale and retail level throughout Canada, supported by powerful national and local advertising.

Our Canadian management is confident that Zenith sales and profits together with its percentage of industry sales will continue to rise throughout 1960.

PHONEVISION

The 1959 order of the Federal Communications Commission, which reauthorized a three-year commercial trial period for subscription television, was another important milestone in the development of Phonevision, the trade name used to designate the Company's systems of subscription television.

The original authorization issued in 1957 had been suspended in 1958 to permit further investigation by Congress and the FCC. In the past year, however, spurred on by growing public demand for better programming, the FCC renewed its original authorization, in slightly modified form, with the tacit approval of Congress. The terms of this order are set forth in the Phonevision section of this report.

During the year, the Company has been in negotiation with several organizations looking forward to an arrangement for conducting the test proposed by the Commission order. It is expected that an announcement regarding the status of these negotiations will be made in the near future.

Progress was made during the year in refining and simplifying decoder designs and continuing studies were made of the business procedures associated with a subscription television service.

FACILITIES

The plant at 6501 West Grand Avenue, Chicago, purchased in February, 1959, was placed in operation during the summer equipped with the most efficient and modern production facilities.

Later in the year, construction was begun of a new $1,250,000 addition to the Company's plant at 1500 North Kostner Avenue, Chicago. Both of these plants will be used to provide expansion and re-location of manufacturing and assembly operations now at the Kostner Avenue and at the Zenith main plant, and for expansion of the Company's components manufacturing activities.

Late in December, Zenith Radio Research Corporation purchased a 30,000 square foot modern building on a 2.88 acre site, plus an adjoining 2.5 acre site in Bohannon Industrial Park at Menlo Park, California.

This facility will be used for the expansion of research laboratories and production facilities for the Company's microwave products such as the parametric amplifier tube and associated devices and systems which are now presently in a smaller plant at Redwood City, California.

These added facilities, plus other programs not yet finalized, are a part of the $7,500,000 expansion program authorized by the directors of the company on November 25, 1958 to take care of the Company's expanded production requirements for radio, stereophonic phonographs and television receivers and other products which the Company expects to market in the future.

The new Display Salon at 200 North Michigan Avenue, Chicago, which was opened to the public in June, 1959, has increased store traffic 300% over its previous location and has produced the same favorable results obtained from the public display salon at 666 Fifth Avenue, New York City. These beautiful public display salons have more than proven their value on a local, national and international scale.

LITIGATION

During the year extensive discovery proceedings were conducted in preparation for trial in the Company's law suit against Marshall-Wells Company for unfair competition in its use of the Zenith trademark in merchandising of Zenith-branded kitchen and laundry appliances. The suit, in which damages and injunctive relief are sought, was filed on January 10, 1958.

With respect to the litigation commenced on February 11, 1958 in the Federal Court in Chicago, Illinois, charging Admiral Corporation with infringement of Zenith's patents on its Fringelock circuit and its Space Command remote control system, and with having willfully and knowingly copied Zenith's Space Command system, pre-trial discovery has been virtually completed. During the year the Company filed a similar suit against Admiral Corporation in the United States District Court for the Western District of Oklahoma.

On April 15, 1959, the Company filed suit in the United States District Court for the Northern District of Illinois against Motorola, Inc., of Chicago, charging it with infringement of five Zenith patents on its Fringelock and Space Command features.

On November 20, 1959, the Company was sued by Hazeltine Research Inc. for alleged infringement of a single Hazeltine patent which assertedly covers the use of gated automatic contrast control in television receivers. In the opinion of counsel, no valid claim of the Hazeltine patent is infringed by the Zenith receivers.

There has been no change in the status of the arbitration provided for under the settlement agreement which terminated the litigation between Zenith Radio Corporation and RCA et al.

The Company is also involved in certain other actions arising out of matters incident to the ordinary conduct of its business and adequate provision has been made for any possible liability resulting therefrom. In the opinion of management and counsel the outcome of the foregoing litigations should be favorable to the Company.

EMPLOYEE RELATIONS

During the year the Company continued to enjoy an excellent relationship with its employees and the unions representing its hourly paid employees. The strike at the Wincharger Corporation is the only major disturbance in the history of the Company's labor relations.

Over 600 employees with more than 15,000 years of accumulated service are now members of the Zenith Pioneers—employees with more than 20 years of continuous service with the Company.

The Zenith Profit-Sharing Retirement Plan, which commenced operations in the year ended April 30, 1950, continues to show great value as an incentive for efficient operations and for attracting desirable employees and cementing employee relationship with the Company.

The Profit-Sharing Plan during 1959 made additional purchases of Zenith Radio Corporation common stock, as well as various other investments, and continues as the largest Zenith stockholder. Ownership of Zenith stock by the Plan will augment and intensify the incentive of Zenith employees to reduce costs, improve performance and increase profit.

RESEARCH AND NEW PRODUCTS

Your Company is continuing its heavy emphasis on engineering and research because from these processes are born the outstanding exclusive developments and the built-in quality, performance and value that have enabled Zenith to maintain its growth. From this source also can come products leading to a desirable diversification of your Company's activities.

The Company's success in product design engineering is directly related to its advance development activities which lead to future products. Extensive tests involving many hard-of-hearing subjects indicated that a significant improvement could be made in hearing aids by extending the response to both higher and lower frequencies. The Company's transistor research group developed circuits to give this desirable response and, without excessive battery drain. The result of these basic studies is the new "Extended Range" hearing aid described elsewhere in this report. The tremendous acceptance of this new hearing aid shows graphically the benefits to be derived from this type of aggressive research.

Continuing efforts are being made toward miniaturization of radio and television receivers to make possible compact efficient portable models. Basic improvements are being made in such fields as wireless remote control for television, new circuits, picture tubes for higher quality television receivers, high voltage research for television and high-performance radio circuits. Substantial progress has been made on a new method of obtaining improved stereophonic and high fidelity techniques in broadcasting as well as in our own consumer products.

Zenith research has consistently taken the view that the best performance of electronic devices can be achieved only where the individual scientist or engineer is entirely familiar with all parts and functions of the device.

Accordingly, Zenith research has avoided extreme specialization of the sort which results in the development of experts who know all about a vacuum tube or transistor and practically nothing about the circuit in which it works or vice-versa. This unified attack has in the past resulted in such developments as the 6BN6 limiter-discriminator tube and associated circuits, in the development of fringe lock and many other technical advances.

The problems of transistors and transistor circuits have been approached in the same way, the possibilities of both transistor and circuit and their limitations being constantly kept in mind, and by the same person. As a consequence, your Company now has in pilot production new transistors specifically designed together with their circuits for optimum performance.

Some equipments utilizing these newly developed transistors and circuits are expected to go into production during the coming year.

The electron-beam parametric amplifier, invented and developed by Zenith research scientists, and announced in mid-1958, has continued to set the pace for outstanding low-noise amplifiers in the UHF and microwave frequency range. Efforts to expand the usefulness of this device have led to significant advances in low-noise performance and extensions of the operating frequency range.

An important development for radar applications, a mode of operation known as "synchronous pumping" was reduced to engineering practice within the past few months. This makes possible the full utilization of the low-noise potentialities of the quadrupole amplifiers in high-performance moving target indicator radars. Development of practical radar preamplifiers and testing of the system on an actual operational radar began in February, 1960, with excellent results. Performance improvements in usable sensitivity were obtained equivalent to a 50% increase in range or a 125% increase in area covered.

Complete Zenith parametric amplifier units are now under test and in use throughout the United States and abroad. Typical users include radio astronomers at AFCRC, Cambridge, Massachusetts, and Jodrell Bank, England; National Aeronautics and Space Administration, Redstone Arsenal, and The Martin Company are making use of these units in missile and satellite tracking systems; experimental equipment for radar applications are under test at the Rome Air Development Center, Raytheon Corporation, MIT Lincoln Laboratory, and Marconi Wireless Company. Other fields of application under investigation include tropospheric-scatter communications, reconnaissance receivers, and radiometry.

The Company's research subsidiary, Zenith Radio Research Corporation, continued to produce new type flash x-ray equipment and has also made significant contributions to the development of the parametric amplifier.

The special products group also developed a portable transistorized Secondary Time Standard which makes possible the measurement of time intervals with extreme accuracy. This lightweight instrument has usage in cosmic ray measuring equipment, scintillation and other sophisticated counters used to detect and measure radiation from outer space, etc. It can also be utilized industrially with measuring equipment used to record flow, viscosity, temperature, etc. in oil and gas pipelines.

The image amplifier tube for medical x-ray developed by our subsidiary, The Rauland Corporation, has been in production during the past year and improvements have been made increasing brightness amplification from 350 times brighter to 1,000 times brighter than that shown on present fluorescent screens.

Central Electronics, Inc., after many engineering and production delays necessitated by its unwillingness to compromise with the performance potential of its advanced type single side band transmitter, appears to have solved its production problems and is now making regular deliveries against its order backlog.

Over the years, the Company has spent millions of dollars in continuing research and development on color television receivers and tubes and is prepared to enter into the manufacture of these receivers and tubes when the time is appropriate.

OUTLOOK

Your management is looking forward to the year 1960 with confidence and optimism. The improvement in business conditions which was evident in 1959 is expected by many economists and businessmen to accelerate or at least continue in 1960.

In our own industry, there are many indications that 1960 will show a substantial improvement over 1959.

The demands of a growing population with higher personal incomes and confidence in the future based on a high level of business activity can only result in a higher standard of living and a larger demand for our products. Because we are operating to a large extent in a replacement and second set market, the greater sophistication and intelligence of our customers based on their experience with our products and competitive products is of particular advantage to a company like Zenith which has over the years earned a reputation for high quality, great value, dependability and the greatest technological improvements and conveniences.

In addition, your Company will have the benefit of the increased stature and momentum which we have attained within our industry.

The success which your Company has had in the past years was entirely the result of the outstanding efforts of people—our employees, our dealers, our distributors and the employees and management of our thousands of suppliers. Your management wishes to express its thanks and appreciation for their fine cooperation, loyalty and conscientious efforts, and particularly to express its thanks to its millions of satisfied and loyal customers.

This report is made for the information of stockholders in accordance with the established custom of the management and is not a representation, prospectus or circular with respect to the shares of the corporation.

Respectfully submitted,

Hugh Robertson

Hugh Robertson, *Chairman*

Joseph S. Wright

March 8, 1960

Joseph S. Wright, *President*

1960

[redacted] TO THE STOCKHOLDERS *of Zenith Radio Corporation*

During the past year, in common with most companies, Zenith was subjected to the pressures accompanying a general decline in economic activity. Nevertheless, your management is pleased to report that both sales and earnings in 1960 were the second highest in Zenith's 42-year history, exceeded only by the record year of 1959.

Our operations were affected as the normally competitive conditions in the consumer electronic industry intensified with the decline in industry volume. In addition to the impact of the external forces, sales and profits were adversely affected also by the strike in August which shut down Zenith's main plants for the first time in the company's history.

EARNINGS AND FINANCIAL

Consolidated net income for the year was $15,225,819, or $5.11 per share, on the 2,978,614 shares outstanding at December 31, 1960. This represented an 8% decline from the record earnings of $16,630,144, or $5.63 per share, reported for 1959 on the then outstanding 2,954,784 shares. However, earnings were 26% above the previous second best year of 1958, when net profit had been $12,116,165, or $4.10 per share.

Consolidated sales for the year of $254,111,740, also representing Zenith's second best year, were 2% below the record $260,033,866 reported for 1959 but 30% ahead of the previous record set in 1958.

The accompanying balance sheet as of December 31, 1960, certified by our auditors, reflects a continuation of the strong financial position of your company. Working capital of $68,285,118 at December 31, 1960 was $6,061,525 greater than at the end of the preceding year.

Cash and Government securities, after allocation of $14,400,000 in Government securities to provision for Federal income taxes, totaled $59,700,837, an increase of $6,476,920 over December 31, 1959.

Accounts receivable (net of reserves) of $18,204,721 and inventories of $19,459,397 were down from the year before, reflecting the decline in sales and production during the latter months of 1960.

SUBSIDIARIES

The subsidiary companies reported generally satisfactory operations for the year. However, abnormally high costs incurred by The Rauland Corporation in starting production on several new types of cathode ray tubes had an adverse effect on their profits.

Central Electronics, Inc., engaged principally in the manufacture of single sideband transmitters, continued to experience heavy costs in further refining its products and manufacturing processes.

Zenith Sales Corporation, responsible for the marketing of Zenith consumer products in the domestic and export markets, completed its first year of operation. Your company's better than average showing for the year can be attributed in large measure to the timeliness and effectiveness of the marketing subsidiary's programming.

DIVIDENDS

On January 29, 1960 the company paid a special dividend of 65¢ per share (declared out of 1959 earnings). In addition the company paid dividends of 40¢ per share on March 31, 1960, June 30, 1960, September 30, 1960 and December 29, 1960. An extra dividend of 50¢ per share was also paid on December 29, 1960, which brought the total *paid* for the year 1960 to $2.75 per share.

A special dividend of 50¢ per share payable January 27, 1961 was also declared out of 1960 earnings, making a total of $2.60 per share *declared* during the year.

PRODUCTS AND MERCHANDISING

In 1960, for the second successive year, Zenith produced and sold more than one million television receivers. In maintaining a level of television unit sales down only slightly from the record year of 1959, while industry sales declined substantially, your company significantly increased its share of the total industry volume and further strengthened Zenith's No. 1 position in the industry.

Radio receiver unit production and sales established a new record, exceeding the previous best year of 1959. Significant increases were achieved in the categories of AC-DC receivers, clock radios and FM-AM receivers.

Stereophonic sound has become the dominant factor in the high fidelity market with stereo instrument sales taking the lead over monaural by a three-to-one ratio. Difficulties in procurement of critical components held back our sales during the year. However, your company plans to play an increasingly greater role in this growing segment of the home entertainment market.

The reliability, performance and convenience superiority of Zenith products were strengthened during the year with the introduction of a number of new models incorporating exclusive features.

Introduced during the year, to assure the finest television picture reception, even in weak signal and fringe areas, was the "Gold Video Guard Turret Tuner." An added convenience of the new tuner is the "Perma-Set" feature which enables the user to permanently tune each channel separately from the front of the set.

The exclusive Space Command remote control, making use of ultrasonic or "silent sound" to control a television receiver from across the room, was improved with a newly designed mechanism for changing channels faster and more quietly.

Transistor portables, a category in which Zenith has continually held a leading position, were further strengthened during the year by the addition of several new models. The new transistorized FM-AM portable introduced in the spring, the Royal 2000, received an enthusiastic reception. Representing an industry first, this new Zenith receiver offers high performance and excellent sound reproduction on both AM and FM, with automatic frequency control for "drift-free" FM tuning and other advanced features.

During the fall the shirt pocket size Royal 50 was introduced to further augment the Zenith line of transistor portable radios. This model is the smallest and lowest priced transistor radio the company has yet produced, and while completely American in design and manufacture, it is priced competitively with imported Japanese radios. With the introduction of the Royal 50, with a suggested list price of $29.95, Zenith dealers are able to offer a complete line of transistorized portable radios in all price ranges from $29.95 to $275.00.

The outstanding contribution to stereo reproduction in 1960 was the introduction of the Zenith "Stereo Professional" record changer. This exciting new record changer, the first specifically designed for the exacting requirements of stereo reproduction, is the outgrowth of several years of work in our engineering laboratories.

These, and many other outstanding features, have contributed to the prestige and acceptance of Zenith products at the market place. Representative Zenith products and some of their exclusive features are highlighted later in the report.

Intelligent, aggressive merchandising and advertising continue to play an important role in keeping our dealers and the public informed of the reasons Zenith products represent the best value for the consumer and the soundest merchandise for the dealers. Well-planned and integrated advertising and merchandising campaigns, utilizing point of sale, local newspaper and national magazine media, provide our distributors and dealers with powerful tools for stimulating the sale of Zenith products.

In summary, your management continued its historically successful marketing philosophy of providing:

1. High quality and excellent performance.
2. Outstanding demonstrable technical advantages.
3. Pleasing appearance and diversified design to suit all tastes.
4. Effective advertising and merchandising programs.
5. Close control of product inventory at factory, distributor and dealer levels to avoid obsolescence and subsequent price deterioration.

HEARING AID

The company's Hearing Aid Division further strengthened its position as the world's leading producer of quality hearing aids. During the year eight new instruments were introduced, bringing the complete line to twelve hearing aids, with models designed for every electronically correctible hearing loss—slim eyeglass models, compact behind-the-ear hearing aids, and advanced design conventional instruments.

Outstanding public acceptance of the new hearing aids, setting new standards of quality, appearance and performance, permitted your company to make a further penetration of the growing hearing aid market.

EXPORT

Export sales of radios, television receivers, phonographs and stereophonic high fidelity instruments in 1960 showed a moderate decline from 1959. Major contributing factors to this expected decline were the loss of Cuban sales and the imposition of new or more rigid import restrictions in such important markets as Argentina, Chile, Brazil and Mexico.

Competition from both U.S. and foreign manufacturers was extremely severe in all major overseas markets. Foreign manufacturers had the advantage of low labor rates, enabling them to offer lower priced products.

Even though a large number of restrictions will continue in major export markets, the outlook for 1961 is optimistic. The anticipated improvement of the balance-of-payments picture and a new climate of cordiality towards the U.S., especially in Latin America, should assist the U.S. in its promotion of exports and the drive for gradual reduction of foreign trade restrictions.

Zenith Radio Corporation of Canada, Ltd., in 1960 successfully countered the downward industry sales trend (which began in Canada in 1955) and made important gains in the sale of Zenith television and radio receivers.

The company's Canadian management is confident that 1961 will see further increases in sales and profits and a rise in its share of industry sales, despite the possibility that total Canadian industry sales may continue to decline. Plans are being readied for a manufacturing operation in Canada when the Canadian subsidiary's annual unit sales volume permits.

PHONEVISION

The F.C.C. approved in February, 1961 the application of Hartford Phonevision Company for a three-year test of pay television at Hartford, Connecticut. RKO General, Inc., Teco, Inc., and Zenith Radio Corporation also joined in the application.

This will be the first full-scale test of Phonevision, the trade name used to describe Zenith's subscription TV systems. A review of Phonevision activities begins on page 22 of this report.

COLOR TELEVISION

In February, 1961, your management announced plans for the fall introduction of a complete line of new and unique color television receivers. These new receivers are the results of the expenditure of several millions of dollars over a period of eight years of extensive research and development work at Zenith—research aimed at improving the standards of performance and reliability of the receivers in the home. Innovations will include a Zenith developed color demodulation system employing a new tube invented by Zenith scientists. The sets have been especially designed for simplified operation and will have a three-gun shadow mask picture tube with greatly increased brightness. The completely new receivers will include the service-saving features of horizontal chassis design and hand-wired circuits that will improve performance, stability and reliability of color sets, and will achieve the same dependable performance which has made Zenith the number one producer of black and white television sets.

FACILITIES

During 1960, Zenith Radio Corporation and subsidiaries expended $4,[illegible]41,000 in the expansion, modernization and replacement of their facilities. Highlights of the important steps taken towards the completion of a $7,500,000 program for the expansion of research, engineering and manufacturing facilities are presented on page 25.

LITIGATION

During the year extensive discovery proceedings were conducted in preparation for trial in the company's law suit against Marshall-Wells Company for unfair competition in merchandising of Zenith-branded kitchen and laundry appliances. The suit, in which damages and injunctive relief are sought, was filed on January 10, 1958.

The United States District Court for the Western District of Oklahoma, in September, 1960, entered judgment, finding that Zenith's Fringelock and Space Command patents are valid and were infringed by Admiral Corpotation. The counterclaim of Admiral, charging your company with infringing a record-changer patent, was dismissed. The case is now on appeal, but in the opinion of counsel, the outcome of the appeal should likely [illegible] be favorable.

On April [illegible], 1959, the company filed suit in the United States District Court for the Northern District of Illinois against Motorola, Inc., charging its with infringement of five Zenith patents on its Fringelock and Space Command features. This suit is similar to the suit against Admiral and, in the opinion of counsel, your company should prevail in the litigation. On December 14, 1960, Motorola brought suit in the same court against Zenith, alleging infringement of a television circuit patent. In the opinion of counsel the latter suit is without merit.

On November 20, 1959, the company was sued by Hazeltine Research, Inc., for alleged infringement of a single Hazeltine patent which assertedly covers the use of gated automatic contrast control in television receivers. In the opinion of counsel, no valid claim of the Hazeltine patent is infringed by the Zenith receivers and the patent is unenforceable.

The company is also involved in certain other actions arising out of matters incident to the ordinary conduct of its business and adequate provision has been made for any possible liability resulting therefrom. In the opinion of management and counsel the outcome of these litigations should be favorable to the company.

EMPLOYEE RELATIONS

In the late summer of 1960, your company, for the first time in its history, suffered a complete work stoppage at its Chicago plants as a result of a strike called by the union representing the hourly paid employees. Your management regrets this unfortunate temporary interruption of the harmonious relationship that had so long existed between the company, the hourly paid employees and the union. The interruption, resulting in substantial loss of wages and profit sharing to the employees, likewise had an impact upon your company's earnings for the year.

The Zenith Pioneers' Club, an organization of employees with more than 20 years of continuous service, has doubled its membership during the last four years. More than 600 employees with an accumulation of over 15,000 years with the company are now members.

The Zenith Profit-Sharing Retirement Plan during 1960 made additional purchases of Zenith Radio Corporation common stock, as well as various other investments, and continues as a major Zenith stockholder. Ownership of Zenith stock by the Plan augments and intensifies the incentive of Zenith employees to improve performance, reduce costs and increase profits.

RESEARCH AND NEW PRODUCTS

Zenith continued to expand its program of bringing the benefits of science to the home, industry and government.

Research and engineering, directed exclusively to electronics, has been a major contributing factor to the growth and acknowledged leadership of your company in the electronics field. It is the source of new and improved products incorporating exclusive developments which mean better quality, performance and value for the consumer. From research come the ideas for products to further our diversification and growth—products contributing to the security, health and enjoyment of the people of the free world.

During the year improvements and modifications were made in the electron beam parametric amplifier, invented and developed by Zenith scientists. The parametric amplifier is finding increased acceptance as a low noise, highly stable amplifier for extending the range of radar, radio telescopes, missile tracking, aerial navigation and other systems in the UHF and microwave frequency ranges. Our California subsidiary, the Zenith Radio Research Corporation, is making substantial contributions to the design and improvement of the amplifier for defense and industrial application.

Flash X-ray is one of the other major development projects at Zenith Radio Research Corporation. An X-ray system, incorporating The Rauland Corporation image intensifier for industrial applications, created wide spread interest when shown for the first time at a public demonstration in November. Experimental work will continue in the development and design of X-ray systems for specific applications in the industrial and medical fields.

In 1960 The Rauland Corporation further expanded its production and sale of special purpose tubes for industrial and government applications. The image intensifier tube, increasing the brightness of X-ray images approximately 2,000 times, is being used in an increasing number of hospitals and clinics. Rauland's flat face radar and scan converter tubes are used in FAA Air Control Centers throughout the country. It is anticipated that research and development will lead to the further expansion of the subsidiary's special tube sales.

Basic research and development work in many fields of electronics is in progress at our Chicago laboratories. A number of projects, particularly in the fields of solid state physics and microwave communications, are government sponsored.

As a culmination of several years of development work, Zenith participated in a field test of FM-Stereo conducted under the auspices of the National Stereo Radio Committee to bring the advantages of stereo reproduction to radio broadcasting. The results of the test were encouraging in appearing to favor the Zenith developed system of FM-Stereo multiplexing. The Federal Communications Commission is currently studying the results of the test preparatory to issuance of a ruling establishing standards applicable to FM-Stereo broadcasting. However, regardless of the system ultimately specified by the commission, Zenith is in a position to immediately produce and market FM-Stereo receivers to increase the listeners pleasure.

OUTLOOK

A wide variation of opinion exists concerning the duration and extent of the general economic decline which began last year. A widely accepted theory at the moment is that the nation will resume its long-term growth during the last half of this year. The stature Zenith has attained in the industry and with the consumer provides a sound foundation for continued growth and expansion with the upturn of economic conditions.

Your management views the year 1961 with cautious optimism, although a reversal of economic trends may not immediately alleviate the growing "cost-price squeeze" experienced by most businesses during the past year. The technological progress and competitive climate of the era ahead will provide challenges requiring the best effort and ingenuity of your company management and personnel.

The Board of Directors wishes to express its gratitude for the outstanding efforts of the thousands of people who have contributed to the growth and success of your company. The loyalty, outstanding ability and conscientiousness of Zenith employees, distributors, dealers and suppliers continue as our great strengths.

Respectfully submitted,

Hugh Robertson

Hugh Robertson, *Chairman*

Joseph S Wright

March 7, 1961

Joseph S. Wright, *President*

1961

TO THE STOCKHOLDERS

OF ZENITH RADIO CORPORATION

The year 1961 was a period of significant progress and continued growth for your Company.

During the year Zenith Radio Corporation and its subsidiaries:

- Established new records in both sales and earnings.
- Introduced two outstanding, new consumer products: color television and Stereo FM receivers.
- Produced and sold more than one million black and white television receivers for the third successive year.
- Attained the highest percentage of total television industry sales to dealers of any year in their history.
- Continued their first place position in the intensely competitive television industry.
- Set a new record in the production and shipment of radio receivers.
- Maintained their position of leadership in the hearing aid industry.
- Significantly increased research, production and sales in the government and special products areas.
- Further strengthened and accelerated their programs in research and development aimed at growth and diversification.

FINANCIAL

Consolidated net income for the year was at a record high of $18,014,788, ($1.99 per share on the 9,031,542 shares outstanding at December 31, 1961) an 18% increase over the $15,225,819 ($1.70 per share) reported for 1960 and 8% over the previous best year of 1959.

Consolidated sales for the year of $274,167,987 also set a new record, 8% above the $254,111,740 reported for 1960 and 5% over the previous record sales reported for 1959.

The accompanying comparative balance sheet as of December 31, 1961, certified by our auditors, reflects a continuation of the strong financial position of your Company. Working capital increased to $69,241,438, after segregation of $10,000,000 in government securities to finance our planned plant expansion program scheduled to start early this year.

Accounts receivable and inventories increased 33% and 21% respectively from the year earlier as a result of substantially higher sales volumes in the last quarter of 1961 and larger production schedules for the first quarter of 1962.

DIVIDENDS

Dividends declared during 1961, after adjustment for the November 3, 1961 stock distribution of two additional shares for each share outstanding, amounted to $1.00 per share. Dividends paid in 1961 amounted to $1.16⅔ per share (including the special dividend of 16⅔¢ per share declared out of 1960 earnings).

SUBSIDIARIES

Subsidiary company operations contributed record sales and earnings for the year. Individual company operations, in most instances, surpassed any prior year.

Zenith Sales Corporation, responsible for marketing consumer products in the domestic and export markets, reported excellent results in both sales and earnings for its second year of operation.

The Rauland Corporation, with high starting costs on several new cathode ray tubes absorbed in 1960 behind them, reported substantial increases in both sales and earnings despite increased expenditures for new product research and development.

Profits of Zenith Radio Corporation of Canada Ltd. were adversely affected during the year by the Canadian government's action which put the Canadian dollar at a discount, rather than the premium position it had previously held, in relation to the U. S. dollar.

CONSUMER PRODUCTS

Your Company's constant objective to insure Zenith's leadership was highlighted in 1961 by two new consumer electronic products and the introduction of a number of exclusive new features to strengthen and improve existing products.

In August, your Company introduced a complete line of color television receivers. The new color television receivers, designed to give superior performance, stability and reliability comparable to Zenith's black and white sets, are the result of years of extensive research and development work at Zenith and Rauland. The new color receivers, featured on pages 10 and 11, have received an enthusiastic market reception and it was necessary to expand production facilities in an effort to meet consumer demand.

Production of the new Zenith Stereo FM receivers began in September. FM Stereo brings to the public an entirely new concept in radio broadcasting and reception to enhance the radio listener's pleasure. The new system developed by Zenith engineers was first tested over the Company's Chicago FM station, WEFM. The broadcasting standards approved by the Federal Communications Commission, with minor modifications, are based on this Zenith development. We are proud of the creative role Zenith played in this important new development.

The quality, performance and technical advantages of black and white television receivers featuring Zenith developed automatic Fringe Lock circuit, Gold Video Guard Turret Tuner, handwired chassis, Space Command remote control, and other exclusive features have again made Zenith the No. 1 choice of the consumer. Production and factory shipments of Zenith black and white television receivers during 1961 were the highest of any year in the Company's history, exceeding one million units for the third successive year. Zenith distributor sales to dealers during the year were also at a record high.

Radio receiver production and shipments in 1961 established a new record high. Significant increases were attained in the AM/FM and the transistorized portable categories. The acknowledged leadership of the Royal 500, pocket-type transistor radio, was further strengthened during the year with introduction of the new Zenith Royal 500H, a completely re-engineered model incorporating an advanced new speaker to increase performance.

The smallest hearing aid ever to be designed and produced by Zenith was introduced during the year to further strengthen our complete line of quality products for the hard-of-hearing. The Hearing Aid Division enjoyed one of the best years in its history.

Representative Zenith quality consumer products, along with some of their exclusive features, are highlighted later in the report.

RESEARCH AND SPECIAL PRODUCTS

Of significant importance to your Company's future growth and diversification is the increased recognition being accorded the scientific and development efforts of Zenith Radio Corporation and its subsidiaries.

Research and engineering, directed exclusively to electronics, have been major contributing factors to Zenith's acknowledged leadership in the electronics field. During 1961 our programs in this area were further strengthened and accelerated.

The electron beam parametric amplifier, invented and developed by Zenith scientists, has found increased acceptance as a low-noise, highly stable amplifier for extending the range of radar, radio telescope, missile tracking, aerial navigation and other systems in the UHF and microwave frequency ranges. The Zenith parametric amplifier's characteristics have proven it uniquely applicable to our government's advanced space and defense programs. Research and development contracts for parametric amplifier tubes showed a substantial increase in 1961.

The new emphasis upon conventional weapons in our country's defense efforts has resulted in Zenith receiving a number of contracts for the development and manufacture of proximity fuzes. Your Company has continued to be one of the leaders in the development and manufacture of mechanical and electrical arming devices for the military services.

Sales of image intensifier, scan converter, flat face radar, and other special purpose tubes manufactured by The Rauland Corporation were at an all time high during 1961. An extensive expansion program to provide Rauland with additional facilities to assist in meeting the growing demand for their products and service is scheduled to start early in 1962.

During the year the flash X-ray system, developed by Zenith Radio Research Corporation, was further engineered and improved to expand its application in the medical and industrial fields.

EXPORT

Export sales of television receivers, radios, stereophonic high fidelity and other consumer products were at an all time high in 1961, up 65% from 1960. As in previous years, export operations were hampered by import restrictions and dollar exchange shortages. During the year the severity of foreign competition in many world markets was without precedent. This was particularly true of transistor radios where prices dropped sharply due to over production and heavy inventories in Japan.

Zenith Radio Corporation of Canada Ltd. made gratifying progress during the year, selling more television receivers than in the two previous years combined. Consistent national advertising and the enthusiasm of distributors and dealers have created a growing demand for Zenith products in the Canadian market.

LITIGATION

The United States Court of Appeals for the Tenth Circuit on November 15, 1961, affirmed the judgment of the District Court, holding all of the Zenith Space Command patents litigated valid and infringed by Admiral Corporation. The amount of damages to be recovered by Zenith will be determined in an accounting proceeding conducted in the United States District Court for the Western District of Oklahoma. Zenith's claims against Admiral Corporation for infringement of its Fringe Lock patents were favorably settled after the District Court had entered judgment holding those patents valid and infringed.

On April 15, 1959, a similar suit was filed in the United States District Court for the Northern District of Illinois against Motorola Inc., charging it with infringement of five Zenith patents on its Fringe Lock and Space Command features. On December 14, 1960, Motorola brought suit in the same court against Zenith, alleging infringement of a television circuit patent. In the opinion of counsel, the latter suit is without merit.

On November 20, 1959, the Company was sued by Hazeltine Research, Inc., for alleged infringement of a single Hazeltine patent. In the opinion of counsel, no valid claim of the Hazeltine patent is infringed and the patent is unenforceable.

During the year extensive discovery proceedings were conducted in preparation for the Company's law suit against Marshall-Wells Company for unfair competition in merchandising of Zenith-branded kitchen and laundry appliances. The suit, in which damages and injunctive relief are sought, was filed in 1958, and it is expected that the action will be tried in 1962.

The Company is also involved in certain other actions arising out of matters incident to the ordinary conduct of its business and adequate provision has been made for any possible liability resulting therefrom. In the opinion of management and counsel the outcome of these litigations should be favorable to the Company.

PHONEVISION

Production and testing of transmitter and decoder equipment to be used in the Hartford, Connecticut, test of the Company's Phonevision system of subscription television are progressing on schedule. The Hartford test is scheduled to start prior to July 1 of this year.

A review of Phonevision activities is summarized on pages 22 and 23.

FACILITIES

In August production was started in the new 100,000 square foot plant constructed in Paris, Illinois for Central Electronics, Inc.

Plans are being finalized for the new 700,000 square foot building to be constructed on the land acquired in 1960 adjacent to Zenith's main plant. The new building will be devoted to manufacturing, warehousing, and general administrative offices. Construction of the new plant is scheduled to begin early this year.

EMPLOYEE RELATIONS

One of the Company's most important assets is the loyalty and diligence of its employees who have contributed immeasurably to Zenith's progress and growth. An excellent relationship continues to exist between the Company, the employees and the unions representing hourly paid employees.

During the past year 162 new members joined the Zenith Pioneers, an organization of employees having twenty or more years of active service. The present 724 Pioneers represent a total of more than 17,000 years of service with the Company.

The Zenith Profit Sharing Retirement Plan, whose holdings include 672,300 shares of Zenith stock, provides our employees with a strong incentive to reduce costs, improve performance and increase profits.

OUTLOOK

The year 1962 gives promise of being another period of outstanding growth for Zenith. Based on the pattern set in January and February it is expected that sales for the first three months of 1962 will be the highest for any first quarter in Zenith's history.

Your management is grateful for the loyalty and outstanding efforts of the thousands of people—employees, distributors, dealers and suppliers—who have contributed so much to our success, and upon whom we rely for our future progress.

Respectfully submitted,

Hugh Robertson

Hugh Robertson, *Chairman*

Joseph S Wright

March 8, 1962

Joseph S. Wright, *President*

APPENDIX B

HEARINGS

Before the
SUBCOMMITTEE ON
PATENTS, TRADEMARKS, AND COPYRIGHTS
of the
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
Eighty-Ninth Congress
First Session
pursuant to
S. RES. 48
on
S. 789, S. 1809, and S. 1899

Part 1

June 1, 2, and 3, 1965

• • •

[1] GOVERNMENT PATENT POLICY

Tuesday, June 1, 1965

U.S. Senate, Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 3302, New Senate Office Building, Senator John L. McClellan presiding.

Present: Senators McClellan, Hart, and Burdick.

Also present: Thomas C. Brennan, chief counsel; Edd N. Williams, assistant counsel; and Stephen G. Haaser, chief clerk, Subcommittee on Patents, Trademarks, and Copyrights.

Senator McClellan. The committee will come to order.

This hearing by the Subcommittee on Patents, Trademarks, and Copyrights has been called for the consideration of four bills concerned with various aspects of Government patent policy. Three of these bills—S. 789, introduced by Senator Saltonstall; S. 1809, introduced by myself; and S. 1899, introduced by Senator Long of Louisiana—are primarily concerned with the disposition of property rights in inventions resulting from Government-financed research and development. The fourth bill before the subcommittee is S. 1047, by Senator Williams of New Jersey, which deals with the procurement by the Government of products which have been produced in violation of U.S. patents. Senators Saltonstall, Long, and Williams have indicated that they will appear at tomorrow's hearings of the subcommittee.

This subcommittee has been engaged for some time in a study of the patent policies and practices of the various departments and agencies. A number of studies have been published by the subcommittee, and extensive hearings have previously been conducted.

• • •

[328] GOVERNMENT PATENT POLICY

• • •

AFTERNOON SESSION

Senator McClellan. Senator, come around, please, sir.

STATEMENT OF HON. RUSSELL B. LONG, A U.S. SENATOR FROM THE STATE OF LOUISIANA; ACCOMPANIED BY BENJAMIN GORDON, STAFF ECONOMIST, MONOPOLY SUBCOMMITTEE OF SENATE SMALL BUSINESS COMMITTEE

Senator Long. Mr. Chairman, I wish to beg the forgiveness of this committee for not being here this morning. I was discussing national security matters with the President.

Senator McClellan. That is all right.

Senator, how do you want to handle your prepared statement? Do you want to read it or submit it?

Senator Long. I would just as soon read it, if I may.

Senator McClellan. All right, proceed.

Senator Long. Mr. Chairman,

* * *

[331] GOVERNMENT PATENT POLICY

* * *

III. SOME INTERNATIONAL ASPECTS OF GOVERNMENT PATENT POLICY

There are many reasons why the Government should retain title to the results of publicly financed research. One of these reasons is the effect on the country's balance of payments and the military aspects. Let me give you some specific, concrete cases.

A recent court decision in the U.S. District Court for the Northern District for the Court of Illinois (*Hazeltine Research, Inc.* v. *Zenith Radio Corporation*) has revealed how a firm, the Hazeltine Research, Inc., with a large patent portfolio, has prevented American firms such as Zenith, through international patent pooling arrangements, from exporting their goods to important foreign markets.

I ask consent of the chairman that the findings of fact and conclusions of law of this case be inserted into the record at the conclusion of my remarks.

Senator McClellan. Without objection, so ordered.

Senator Long. What is especially intolerable is that U.S. Government funds paid for 90 percent of the research which enabled this company to accumulate its patents. In essence, then, public funds have been used to prevent Americans from exporting their goods. Indications are that this practice is widespread, and the effects on our balance of payments are undoubtedly very serious.

It doesn't make sense to allow this to go on, and at the same time make it difficult for ordinary citizens who have saved their money for years to go on a foreign vacation or to make it hard for them to bring in gifts for their friends and families by cutting down customs exemptions from $100 to $50, while at the same time we spend public money to put an American corporation in a position to forbid another American corporation to export products invented and produced here.

International patent pools can also undermine our national safety. They have been used in the past [332] to transmit military information—even to our enemies. A good example is the case of the Bausch & Lomb Optical Company. Contracts between this company and Carl Zeiss of Germany resulted in Bausch & Lomb transferring to the German concern, the designs and engineering data developed with funds supplied by our own Navy Department. Senator Kilgore, of West Virginia, in a speech on the Senate floor on May 19, 1947, told of his experience after V-E Day when he discovered German binoculars made by Zeiss which were an exact duplicate of the Navy's 7.5 binoculars, which we thought were secret. The use of this patent pool enabled the entire German Army to be equipped with the latest optical instrument we had, and which was developed with public funds. In other words, Mr. Chairman, public funds were used to assist those who wanted to destroy us.

Another example of the use of international patent cartels is the case of magnesium. A cartel arrangement among I. G. Farbenindustrie, the Aluminum Co. of America and Dow Chemical Co., established Dow as the sole producer of the metal in the United States. The U.S. output was deliberately kept small because of a high-price policy followed by Dow for its own private gain and because of the Aluminum Co.'s insistence that Dow not offer a cheap substitute for aluminum. In 1938, when Hitler's Germany had a production of 12,000 tons, our own production was kept at only 2,400 tons for the advantage of a private American firm. Moreover Dow's exports were limited to a specified amount to a single customer in Great Britain, who was then preparing to defend freedom in Europe, and to certain quantities which I. G. Farbenindustrie agreed to buy. Dow, by agreement couldn't even export to the European Continent. In this particular case an international patent cartel undermined the defense programs of our allies in Europe by withholding strategic raw materials from them and kept our own country weak by restricting production of this essential material.

The pushing and shoving by private firms to get the right to patent the results of Government-financed research must be stopped. Otherwise, we shall find that most of the results of our research, paid for by the American public, will be in the hands of foreign cartels. We already have considerable material showing that this is happening. The Monopoly Subcommittee of the Senate Small Business Committee since 1962 has been studying the relationship of Government patent policy, international cartels, and their effect on our foreign trade and balance of payments.

IV. PHILOSOPHY OF PATENT SYSTEM

* * *

APPENDIX C

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1968

No. 49

ZENITH RADIO CORPORATION,
a corporation,
Petitioner,
vs.
HAZELTINE RESEARCH, INC.,
a corporation, and
HAZELTINE CORPORATION,
a corporation,
Respondents.

AFFIDAVIT OF DAVID WESTERMANN

State of New York }
County of Queens } ss.

DAVID WESTERMANN, being duly sworn, on oath deposes and says:

1. He is President and chief executive officer of Hazeltine Corporation, one of the respondents, and has held such office since December 21, 1966. From November 15, 1961 to December 21, 1966, he was Vice President and General Counsel of Hazeltine Corporation.

2. In late September of 1966, he was advised by Mr. David Lewis, legal counsel of The General Electric Company Limited, in London, that Mr. John Borst, Jr., an attorney in the firm of McConnell, Freeman, Curtis & McConnell,

134 South La Salle Street, Chicago, Illinois, counsel for Zenith Radio Corporation, had on Zenith's behalf inquired of Mr. Lewis in London as to whether General Electric was the licensee or licensing agent for the British television patents of Hazeltine Corporation.

Following receipt of such information he, David Westermann, wrote to Mr. Borst under date of October 10, 1966 advising that The General Electric Company Limited was neither licensee nor licensing agent of Hazeltine Corporation's British color television patents or other patents, and that "anyone interested in a license under any of those patents should address his inquiry to Hazeltine Corporation in New York." Copies of said letter of October 10, 1966 (and of the September 30 and October 4 letters referred to therein) are attached hereto. Hazeltine Corporation has never received an inquiry or an acknowledgment of the letter from Mr. Borst or anyone else connected with Zenith. These patents are still owned by Hazeltine Corporation, and the statement that anyone desiring a license under those patents should contact Hazeltine Corporation still applies.

3. After the trial court had entered his April 5, 1965 judgment and decree as to Canada against Hazeltine Research, Inc. and Hazeltine Corporation, Hazeltine Corporation promptly initiated steps to secure modification or termination of the agreement licensing its Canadian patents to Canadian Radio Patents Limited (CRPL) which by its terms was not subject to termination until June 30, 1966. The agreement was terminated effective December 1, 1965, by agreement dated as of December 30, 1965, except that CRPL agreed to such early termination only subject to reservation by CRPL of the right to grant additional sublicenses to its existing licensees for the existing term expiring June 30, 1966, on a non-exclusive basis.

4. Hazeltine Corporation has at all times believed that the agreement licensing its patents to CRPL was lawful and not a violation of the Sherman Act. However, it decided that the burden of continuing and possible further litigation over the legality of its license to CRPL and of CRPL's practices would be prohibitive, and that accordingly Hazeltine Corporation would have to accept the risks involved under the Canadian Patent Act in the event it were determined that its licensing of imports constituted an abuse of its Canadian patents.

5. Since the termination of said agreement with CRPL, Hazeltine Corporation has been prepared to enter into agreements covering any one or more of its Canadian patents as the other party may see fit, and with no restriction on imports. A number of such agreements have been entered into with United States, Canadian and Japanese television manufacturers, and such an agreement is available to Zenith, on a non-discriminatory basis, should it desire one.

/s/ David Westermann

Subscribed and sworn to
before me this 13th day
of September, 1968.

/s/ Barbara A. Blumlein
Notary Public

Notary Public State of New York
Qualified in Nassau County
My Commission Expires: March 30, 1970

HAZELTINE CORPORATION
LITTLE NECK 62, NEW YORK

CABLE
NEUTRODYNE

FACULTY 1-2300
TELETYPE 428-0092
AREA CODE 212

1966 October 10
Serial XXX-66-G1-837

John Borst, Jr., Esq.
McConnell, Freeman, Curtis
& McConnell
134 South LaSalle Street
Chicago, Illinois 60603

Dear Mr. Borst:

We have received from Mr. David Lewis of The General Electric Company Limited in London a copy of your letter to him of September 30 and of his reply of October 4 addressed to you in Chicago. Also, I have talked to Mr. Lewis on the telephone. I believe that a clarification of your expressed understanding is in order.

My understanding is that Mr. Lewis did not tell you that The General Electric Company Limited is licensing agent for Hazeltine Corporation on the color television patents owned by Hazeltine Corporation in Great Britain, and that he suggested to you that any inquiry concerning the licensing of such patents should be addressed by you to Hazeltine Corporation in the United States. The fact is that The General Electric Company Limited is neither licensee nor licensing agent of Hazeltine Corporation's British color television or other patents, and anyone interested in a license under any of those patents should address his inquiry to Hazeltine Corporation in New York.

Very truly yours,

D. Westermann
Vice President and
General Counsel

DW:jl

The Carlton Tower,
Cadogan Place,
London.S.W.1.

September 30th.1966

Mr. David Lewis,
Legal Director,
General Electric Co.Ltd.
1.Stanhope Street.
London.W.1.

Dear Mr.Lewis,

This letter will confirm the matters I today discussed with you and as well with Mr. Holland, Manager of the G.E.C. Patent Department.

Zenith Radio Corporation, as I informed you, is preparing to market its American manufactured Color TV receiving sets and components in Great Britain in time for the scheduled introduction of color broadcasting in October 1967. In consequence I have come to Great Britain to make arrangements for securing any necessary patent licences to permit the importation of Zenith apparatus for sale on this market.

The General Electric Co.Ltd., you confirm, is licensing agent for Hazeltine Corporation on the Color TV patents obtained by Hazeltine in Great Britain.

I therefore today sought to determine whether G.E.C. would grant to Zenith a licence under such Hazeltine Color TV patents as may be applicable to Zenith's apparatus and which would permit the importation into Great Britain for domestic sale of Zenith Color TV receiving sets and components.

You advise me that G.E.C. is not in a position at present to answer this inquiry and that the availability of the licences sought by Zenith depends upon such instructions as G.E.C.may receive from Hazeltine Corporation in United States. You therefore suggested that Zenith confer directly with Hazeltine Corporation with reference to securing the subject importation licence.

I believe that this letter correctly summarises our conversation but would appreciate receiving a letter from you at our Chicago offices in the event I have in any way misunderstood your advice.

Very truly yours,
MC CONNELL, FREEMAN, CURTIS & MCCONNELL

By: John Borst Jr
John Borst, Jr.

134.South La Salle Street.
Chicago. Illinois, 60603.
U.S.A.

c.c. D. Westermann, Esq.

L.44

Mr. John Borst, Jr.,
Messrs. McConnell, Freeman,
Curtis & McConnell,
134, South La ~~Salle Street,~~
CHICAGO, Illinois 60603.

4th October, 1966.

Dear Mr. Borst,

I acknowledge receipt of your letter of the 30th September and I regret that you appear to have misunderstood what I said.

It is unfortunate that, in elaborating the theme of our talk in your letter, inaccuracies have crept in but there is no point in dealing with these item by item. If I were asked to summarise our telephone conversation I would say :-

"You stated that you were in England to negotiate, inter alia, a licence to use Hazeltine United Kingdom Colour TV patents and I told you that you would have to negotiate such a licence with the Hazeltine Corporation in the United States."

There is really nothing relevant which one could add to this.

Yours sincerely,

D. Lewis.

Major Appliances

ZENITH
Radio
Television
Stereo-Hi-Fi

Ideal Electric Supply Limited

DISTRIBUTORS

895 PRINCE ST. PHONE 893-9463
TRURO, NOVA SCOTIA

23rd July, 1962.

RECEIVED
JUL 26 1962
JOSEPH S. WRIGHT

Hazeltine Research, Inc.
vs. Zenith Radio Corporation
Defendant's Exh. No. 162 D
C.A. No. 59-C-1847

Zenith Radio Corporation.
6001 Dickens Ave.
Chicago 39.
Illinois.
U.S.A.

Att: Mr Joseph S. Wright. President.

Dear Mr Wright:

When in Montreal and Toronto in June at the Open House Showing I was given to understand that either you or Mr Caplin would be interested in receiving a copy of the letter our competitors namely Electrical Distributors Ltd., of this town received from our friends Canadian Radio Patents Ltd., of Toronto relative to them importing sets manufactured in U.S.A. by Motorola.

If you were not the interested party in this information would you kindly hand same on to Mr Caplin, as I was able to receive a photostatic copy from Electrical Distributors Ltd. of this town, it is quite evident that our friends Canadian Radio Patents Ltd., are trying to use the same tactics as they did on us a number of years back.

If you are interested in any further information as to the proceedings now taking place I would be glad to obtain for you the photostatic copies of such correspondence.

Thanking you for past favours, I remain,

Yours very truly,
IDEAL ELECTRIC SUPPLY LTD.

N. A. MacCuspie

N.A. MacCuspie. President.

NAM/pw

APPENDIX E

Le Secrétaire d'État | The Secretary of State
Canada

I, Bondfield Marcoux, Special Assistant to the Secretary of State, hereby certify that attached hereto are true copies of the cover page and pages 7[illegible]25, 7626 and 7627 of the reports of the Debates of the House of Commons, First Session, 27th Parliament, 15 Elizabeth II, Volume VII, 1966.

That the said reports were published under the authority of the Queen's Printer for the Government of Canada.

Ottawa, August 27, 1968.

Bondfield Marcoux

R Saint-Martin

Witness

Library
Dept. of the Secretary of State
Bibliothèque
Ministère du Secrétariat d'État
June 5, 1967

CANADA

HOUSE OF COMMONS DEBATES

OFFICIAL REPORT

FIRST SESSION—TWENTY SEVENTH PARLIAMENT

15 ELIZABETH II

VOLUME VII, 1966

COMPRISING THE PERIOD FROM THE TWENTIETH DAY OF JUNE, 1966,
TO THE FOURTEENTH DAY OF JULY, 1966, INCLUSIVE

INDEX ISSUED IN A SEPARATE VOLUME

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

23022—4181

giving my office notice of this question. I have checked with Mr. Hamel, and the chief electoral officer advises me that this report is many thousands of pages in length. Normally in the past it has taken eight to ten months to prepare and print it after each election. He informs me that members may expect to have it some time during the month of September.

HEALTH AND WELFARE

ESTROGEN—TREATMENT OF ANIMALS USED IN DRUG PRODUCTION

On the orders of the day:

Mr. T. S. Barnett (Comox-Alberni): Mr. Speaker, I have a question for the Minister of National Health and Welfare. I should like to ask the minister whether the government has had any discussions with the Ayerst-McKenna Company in Montreal, which I am informed has a monopoly on the production of the drug estrogen, in connection with ensuring that no inhumane practices are involved in the treatment of animals which are required for the production of this drug.

Hon. A. J. MacEachen (Minister of National Health and Welfare): Mr. Speaker, I myself have had no discussions. I will inquire whether my officials have had any discussions on this matter.

[*Translation*]

CANADIAN BROADCASTING CORPORATION

REQUEST FOR REPORT ON DISCUSSIONS WITH UNIONS

On the orders of the day:

Mr. Maurice Allard (Sherbrooke): Mr. Speaker, I would like to direct a question to the Minister of Labour.

Can he tell the house how much progress has been made by the ministerial committee in the conflict which involves, on the one hand, the C.N.T.U. and the employees of the C.B.C. French network and, on the other hand, the National Industrial Relations Board about the definition of the negotiating unit?

[*English*]

Hon. J. R. Nicholson (Minister of Labour): Mr. Speaker, for some reason that I have not been able to understand the transcript of the proceedings of the meeting of the cabinet committee with the Canadian Labour Congress and the railway brotherhoods when they made their submissions is not yet available. Whether this is because of a shortage of translators or whatever the reason, the committee has not received the copies of the transcript. We are anxiously awaiting it, and will give the matter prompt attention when the transcript is received.

BUSINESS OF THE HOUSE

COMMITTEE CONSIDERATION OF LABOUR SAFETY CODE

On the orders of the day:

Hon. J. R. Nicholson (Minister of Labour): Mr. Speaker, while I am on my feet, may I deal with a matter that was raised by the hon. member for Ontario during the question period a few days ago.

In reply to the question asked by the hon. gentleman with regard to Bill S-35, may I say this. He asked whether an opportunity would be given to interested organizations to present their views to a committee of this house. I stated that such an opportunity had been afforded in the other place to appear before that committee, and some organizations had taken advantage of it. However, since now there are others who want to be heard they will be afforded the opportunity to so appear. It is the intention of the government to refer this matter to the committee of this house on labour and employment as one of its first items of business after the recess.

● (3:20 p.m.)

TELEVISION

ANNOUNCEMENT RESPECTING ALTERATION IN TIMETABLE FOR COLOUR TRANSMISSION

Mr. Speaker: Order. I understand the Secretary of State wishes to revert to motions for the purpose of making a statement. Does the house agree?

Some hon. Members: Agreed.

Miss Judy V. LaMarsh (Secretary of State): Mr. Speaker, the house may recall that last September the government announced its decision to implement the introduction of colour television in Canada by a three-stage process.

By this decision, stations prepared to undertake colour casting were permitted to commence test transmissions during the night-time period starting July 1; to begin regular colour transmissions on a shakedown basis on October 1; and to have all colour transmissions up to full technical requirements by next January 1.

This timetable was worked out in consultation with all interested parties and was accepted by them at that time. The primary consideration in setting the various dates was the need to allow sufficient time for the necessary technical installations and staff training.

In recent months, however, it has become apparent that technical preparations for colour casting are advancing within the industry on a much quicker basis than had been anticipated. In view of these developments, representations have been made to the government, particularly by the Canadian Association of Broadcasters, to amend the colour timetable accordingly and especially to move up the October 1 date for full colour transmissions to coincide better with the start of fall program schedules.

The government has given consideration to these representations and, in view of the declared readiness of the various elements of the broadcasting industry to meet an earlier date, we are now prepared to authorize full colour transmissions as of September 1. The remaining four months of this year will continue to be treated as a shakedown period during which minor equipment and operating adjustments can be made in order that all technical requirements may be met as of January 1.

The decision to permit full colour transmissions is open to both the public and private sectors of the broadcasting industry. In the case of the Canadian Broadcasting Corporation, however there is a caveat. Any alteration in its plans will have to be carried out within the limits of operating and capital funds already approved for the current fiscal year. This is in keeping with the government's view on this subject as outlined in the white paper on broadcasting.

Mr. Speaker, I believe the advance of one month in the introductory date for full colour transmissions will be of value both to the broadcasters and to the viewing public in permitting both to enjoy the benefits of colour from the outset of the fall program season.

Mr. L. R. Sherman (Winnipeg South): Members of this party heartily welcome the announcement which the hon. lady has just made with respect to colour telecasting in this country. We are delighted that technical developments as outlined by the minister have been proceeding faster than anticipated, and that the colour schedule can be up-dated as a consequence. We certainly think the news will be welcomed by all Canadians, at least by those of them within range of television outlets.

Colour telecasts on an east-west basis can, in the opinion of hon. members of this party, make a great contribution to Canadian unity and will be particularly valuable in centennial year. Hopefully, the new medium will provide a great opportunity for Canadians from coast to coast to experience in living colour, as the phrase goes, the beauties of this land in all its provinces and all its various regions. In addition, the colour telecasting of many of the great centennial pageants and programs which are planned should serve to inspire all of us with the love for Canada which we all hold, but all too seldom express.

However, colour production is not the be all and the end all of television programming and we would urge that the government proceed with all possible haste in extending television service to the north and to those other regions which are currently under-serviced. This, we believe, is a primary priority. As I say, while welcoming the announcement with respect to colour broadcasting we hope the government will proceed with all possible dispatch to cover those regions which desire to be included within the broadcasting net.

Mr. David Lewis (York South): The other day the hon. member for Winnipeg South and I had some disagreement with regard to one field of broadcasting. I rise on behalf of this party today to express full agreement with him in his emphasis on the need, first, of extending the opportunity for television reception to areas which do not presently have it. This must be given first priority in our plans, and I do not need to take the time of the house by emphasizing it.

As to colour television itself, I should like to express my fear that the financial limitations which have been placed upon the Canadian Broadcasting Corporation may result in private broadcasting stations securing a really important advance in this field over the corporation. I hope the Secretary of State and her advisors will keep a careful eye on developments so as to avoid the C.B.C. falling behind private broadcasting in this field.

[*Translation*]

Mr. Gérard Laprise (Chapleau): Mr. Speaker, we listened with interest to the statement made by the Secretary of State (Miss LaMarsh) and we are happy to learn that we will have colour television in a not too distant future.

As far as I am concerned, I would have much preferred that the Secretary of State announce that more remote areas, such as the Chibougamau-Chapais area, where people must deposit $200 and must pay a $100 surtax per annum to watch black and white television, would get free black and white television service, like all other regions of Canada.

In any event, I hope that work will continue in the C.B.C. toward providing television service as soon as possible to all northern regions so as to give them the same services as enjoyed everywhere else in Canada.

[English]

INCOME TAX ACT

The house resumed from Thursday, July 7, consideration of the motion of Mr. Sharp for the second reading of Bill No. C-216 to amend the Income Tax Act and to repeal the Canadian Vessel Construction Assistance Act.

Mr. Speaker: Is the house ready for the question?

The hon. member for Nanaimo-Cowichan-The Islands.

Mr. Colin Cameron (Nanaimo-Cowichan-The Islands): Thank you, Mr. Speaker. I am aware that my title is a great trial to you.

An hon. Member: It is to you, too.

Mr. Cameron (Nanaimo-Cowichan-The Islands): It is to me, too, I may say.

I had not intended earlier to speak on second reading of the income tax bill on the ground that most of what could be said had already been said during the budget debate. However, since that time the minister has introduced other legislation in this field which reveals rather clearly, in conjunction with the income tax bill, the economic philosophy of the minister and of the government. In the bank bill it became obvious that the minister's policy was to control inflationary pressures by a certain method. He had two courses open to him; one was that of a monetary course and the other was that of a fiscal course. He has chosen the monetary course.

(3:30 p.m.)

I was interested to hear him tell us a few moments ago that the government had done everything in its power to control inflationary pressures. I presume he had reference to the pleas which the government made to subordinate governments and private industry to curtail expansion in their investment programs. I think this clearly underlines the fact that the choice of the monetary method of controlling inflationary pressures is not the most suitable means by which to achieve this end. I would suggest to the minister that had he been prepared to deal with this problem as a fiscal one, he might well be likely to achieve some success. It is pretty well recognized that the principal stimulus to economic expansion, and thereby to inflationary pressures in certain periods, lies not so much in the field of consumer spending power as it does in the level and direction of investment.

I should have liked to see the government tackle this problem, and the other problems in our society, in a fiscal manner. I suggest if the minister and the government are seriously concerned about the dangers of inflationary pressures, then there should have been a review of the level of the corporation profits tax, and a review of the present rather generous depreciation and depletion allowances in order that the drive toward growth and greater investment would have been to some extent curtailed.

After all, a classic method of preventing inflation getting out of hand is to impose taxes on the large corporations which, from their internally generated savings, are able to add to inflationary pressures by an expanded investment program. I would suggest at the same time that had this been done it would also have been advisable to have considered a revision of the personal income tax structure in the interests of equity in our society, and also I would suggest in the interests of some control of the inflationary pressures, because it is fairly well generally accepted now that additions to the purchasing power of certain economic groups, the lower economic groups in our society, do not necessarily lead to inflationary pressures.

Certainly there can be no argument about the necessity for a revision from the point of view of equity. We in this party have urged for a long time that the category of those who are exempt from personal income tax should be enlarged.

I want to make it quite clear, Mr. Speaker, that I am not advocating a revision of the income tax exemptions because I am well aware that if one merely moves up the limit of income tax exemptions, he profits those in the higher income brackets more than those in the lower income brackets. But I do suggest that means should be found whereby married couples, with an income of $3,000 and less, should be exempt from paying

1967 CANADIAN TELEVISION MARKET AND ZENITH'S SHARE THEREOF

	Number of Sets
Canadian Manufacturers' Sales*	522,700
Total Imports into Canada from All Countries*	199,600
Total Canadian TV Market	722,300
Total Exports from U.S. to Canada**	56,393
Total Exports of TV Sets from U.S. to Canada as a Percentage Share of Total Canadian TV Market	7.8%

Thus, even if we assume that all the TV sets exported from the U.S. to Canada were Zenith (which of course was not the case), Zenith's share of the total Canadian TV Market in 1967 could not have been more than 7.8%. And if we assume (as Zenith represents) that it had 18% of the Color TV Market in Canada, its share of the Black and White Market must have been substantially less than 7.8%, and, thus, not much higher (if indeed at all higher) than the 5% share it achieved in 1961, long before the injunction.

---

* Source: Canadian Statistical Review, Dominion Bureau of Statistics, Ottawa, Canada, Vol. 43, No. 5, Table 58, p. 41 (May, 1968) (see p. A-42, *infra*), which is the same source used by Zenith in preparation of its damage exhibit (see A. 2610).

** Source: U.S. Bureau of the Census, U.S. Exports—Commodity by Country, Report FT 410, December Edition for years 1965-1967, which is same source used for Zenith's Appendix B, Schedule 1 at p. A-25 of its brief.

Table 58: radio and television receiving sets[1] (thousand units)

monthly averages or months		manufacturers' sales of "made-in-Canada" sets														imports[4]	
		radio receivers						television receivers									
		total	home sets	portables	auto	combinations[2]	record players[3]	total	Atlantic prov.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	radio sets	television sets
1965		93.1	23.2	1.7	55.3	12.8	20.9	46.3	3.8	12.5	17.4	2.6	1.8	3.4	4.7	113.7	5.3
1966		95.5	17.8	1.0	68.6	12.2	23.0	43.3	3.5	11.1	17.1	2.5	1.5	3.2	4.3	96.1	10.3
1965	O	122.7	34.7	2.2	69.1	16.8	37.8	64.2	5.6	17.1	23.5	3.9	2.6	4.8	6.9	131.4	10.3
	N	126.4	34.1	1.3	69.1	21.9	49.2	62.4	5.2	16.1	23.8	3.8	2.5	4.4	6.7	139.5	6.8
	D	137.6	42.3	3.3	68.2	23.8	41.9	55.6	4.4	14.2	22.2	2.8	2.2	4.2	5.4	109.7	1.9
1966	J	83.8	10.1	0.9	64.6	8.2	8.9	31.1	2.7	7.9	12.2	1.8	0.9	2.4	3.1	53.7	3.3
	F	98.6	13.9	1.5	73.6	9.7	11.7	37.7	3.7	9.0	15.2	2.4	1.3	2.4	3.6	64.7	5.8
	M	74.6	15.3	0.7	49.3	9.4	14.0	38.7	3.4	10.0	16.2	1.6	1.2	2.9	3.5	88.6	3.6
	A	73.4	13.0	0.4	51.8	8.3	11.0	36.9	3.4	9.1	16.1	1.8	1.0	2.4	3.2	81.1	5.8
	M	83.3	14.4	1.8	61.7	5.4	13.3	29.8	2.0	8.3	12.2	1.6	1.0	2.1	2.6	111.5	8.6
	J	70.9	13.7	0.9	49.6	6.6	13.3	32.6	2.8	9.1	12.7	1.6	0.8	2.4	3.2	106.1	6.0
	J	41.0	14.4	1.1	19.4	6.0	12.7	33.5	2.2	9.4	13.1	1.9	1.1	2.1	3.8	143.7	7.1
	A	82.9	16.3	0.5	51.6	14.5	21.3	48.0	3.5	12.2	18.4	3.3	1.9	3.9	4.8	110.5	9.3
	S	122.1	24.1	1.1	81.9	15.0	36.5	59.7	4.4	15.3	23.5	3.6	2.1	4.3	6.5	134.4	23.0
	O	151.6	27.9	0.9	106.9	15.9	38.6 r	61.4	4.8	15.8	22.3	3.8	2.7	5.0	7.0	145.4	15.9
	N	169.8	26.2	1.0	120.1	22.4	50.4 r	60.6	5.0	14.8	23.4	3.6	2.5	5.0	6.3	151.0	21.2
	D	142.6	24.3	0.6	92.6	25.0	59.8 r	49.8	4.4	12.6	20.1	2.8	1.7	3.8	4.4	97.9	13.6
1967	J	98.5	8.5	0.9	78.0	11.1	12.2	36.1	3.2	9.1	14.6	2.0	1.1	2.7	3.4	114.3	17.4
	F	101.7	11.7	0.7	79.1	10.2	11.9	37.4	3.5	9.0	14.3	2.2	1.5	3.1	3.8	89.5	11.1
	M	109.5	12.0	0.7	86.5	10.3	16.9	36.1	3.5	10.3	12.6	2.3	1.2	2.6	3.7	129.3	11.2
	A	126.7	13.2	1.0	104.1	8.4	10.8	39.2	3.2	11.8	13.9	2.4	1.3	2.9	3.7	110.7	13.2
	M	122.0	10.9	0.1	103.5	7.5	10.7	31.0	2.5	8.9	12.2	2.0	1.0	1.7	2.6	144.0	11.3
	J	109.6	9.8	0.3	90.5	9.1	16.9	36.9	2.5	11.8	14.4	1.6	1.0	2.6	3.0	133.5	13.9
	J	61.0	10.9	1.2	39.6	9.4	14.7	33.9	2.5	8.9	14.2	1.8	1.2	2.4	3.0	191.5	18.4
	A	142.3	14.4	1.4	112.2	14.4	25.0	43.4	3.6	11.4	16.4	2.8	1.6	3.2	4.5	172.2	20.9
	S	193.3	22.4	1.9	149.0	20.0	36.3	58.0	4.6	14.3	21.5	3.6	2.0	4.6	7.2	167.9	19.2
	O	156.0	21.9	4.2	110.5	19.4	42.3	64.0	5.2	16.0	24.0	3.5	2.7	5.5	7.1	227.6	19.4
	N	175.0	20.6	1.3	131.5	21.6	50.3	61.4 r	5.3	14.7	24.4	8.6	2.3	5.2	5.8	224.0	25.8
	D	187.4	17.8	0.2	147.8	21.6	42.2	45.3 r	3.9	11.8 r	18.6	2.2	1.4	3.8	3.5	117.0	17.8
1968	J	152.6	7.1	–	136.0	9.5	9.8	36.9 r	3.0	8.2	15.6	1.7	1.3	3.3	3.7	123.1	18.6
	F	141.6	10.3	–	119.3	11.9	12.1	40.9	3.7	10.7	16.3	2.2	1.5	3.2	3.4	101.9	15.0

---

[1] Includes record players. [2] Radio phonograph combinations. [3] Includes monaural and stereo with and without amplifiers. [4] Customs clearance; radio sets include radio phonographs, radio receiving sets transistor, n.e.s. and radio receiving sets, n.e.s. Source: Radio and Television Receiving Sets (43-004). D.B.S.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 10 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

REPLY BRIEF FOR THE PETITIONER ZENITH RADIO CORPORATION.

THOMAS C. MCCONNELL,
PHILIP J. CURTIS,
FRANCIS J. MCCONNELL,
JOHN BORST, JR.,
Attorneys for Zenith Radio Corporation, Petitioner.

Of Counsel:
MCCONNELL, CURTIS, MAHON & BORST,
134 South La Salle Street,
Chicago, Illinois 60603,
RA 6-9131.

INDEX.

PAGE

FOREWORD 1

QUESTIONS PRESENTED 5

CONTRA-STATEMENT OF THE CASE 5
- (a) History of the Pools 6
- (b) The Pleadings 9
- (c) Antitrust Findings and Competency of the Proofs 12
- (d) The Appeal 19
- (e) The Facts as to England 20
- (f) The Facts as to Canada 24
- (g) The Facts as to Australia 31
- (h) The Patent Misuse Defense 32

ARGUMENT:

I. The Decision of the Court of Appeals That the Petitioner's Foreign Business Is Not Entitled to Protection Under Federal Antitrust Laws from Injury by Foreign Patent Pools Joined in by Respondents Is Erroneous and Must Be Reversed by This Court if the Application of Such Laws to Foreign Commerce Is Not To Be Nullified 33
- (a) The Treble Damage Judgments 35
- (b) The Injunction 43
- (c) The Court of Appeals Did Not Apply the Correct Legal Standard in Reversing the Trial Court 45

II. The Amount of Petitioner's Damages Was Properly Proven and Is Here for Decision Under the Precedent of the Bigelow Case 47

III. The Misuse Defense Is Not Moot 49

IV. There Was No Merit in Hazeltine's Post Trial Motions and They Were Properly Denied by the Trial Court 50

  (a) Hazeltine's Offer of Proof Not Constituting Newly Discovered Evidence Failed to Warrant a New Trial as a Matter of Law 53

  (b) There Is No Merit in the Claimed Affirmative Defenses of the Statute of Limitations 54

  (c) The Release 55

V. The Dismissal from the Suit of Hazeltine Corporation Is Not Justified in This Record.... 55

  (a) Hazeltine Corporation Waived Any Objection to Personal Jurisdiction by Consent, Agreement and Acts Constituting a General Appearance 57

  (b) The Trial Court's Decision Necessarily Adjudicates That the Subsidiary Was the Alter Ego of the Parent and That the Two Are One Corporation.................. 58

Conclusion 61

CITATIONS.

Cases.

Aladdin Mfg. Co. v. Mantle Lamp Co. of America, 116 F. 2d 708 (7th Cir. 1941) 53

Allied Chemical Co. v. Randall, 321 F. 2d 320 (7th Cir. 1963) 59

Anderson v. National Producing Co., 353 F. 2d 834 (2d Cir. 1958) 54

Barber-Greene Co. v. Bruning Co., 357 F. 2d 31 (8th Cir. 1966) 46

Bigelow v. RKO Radio Pictures, Inc., et al., 327 U. S. 251 (1946) 36, 40, 48

Bigelow v. RKO Radio Pictures, Inc., et al., 150 F. 2d 877 (7th Cir. 1945) 47

Continental Ore Co. v. Union Carbide Corp., 370 U. S. 690 (1962) 36, 38, 41, 45

Fisser v. International Bank, 282 F. 2d 231 (2d Cir. 1960) 59

Hanover Shoe v. United Shoe Machine Corporation, 20 L. Ed. 2d 1331 (1968) 39

Hansberry v. Lee, 311 U. S. 32 (1940) 56

Hardy Salt Company v. State of Illinois, 377 F. 2d 768 (8th Cir. 1967) 54

Helvering v. Gowron, 302 U. S. 238 (1937) 56

Hyde v. United States, 225 U. S. 347 (1912) 43

I. B. T. v. United States, 291 U. S. 293 (1934) 43

Indemnity Insurance Co. v. Pioneer Valley Savings Bank, 343 F. 2d 634 (8th Cir. 1965) 45

Interstate Circuit Inc. v. United States, 306 U. S. 201 (1939) 37

Lawler v. National Screen Service Corp., 349 U. S. 322 (1955) 55

Louisville & N. R. Co. v. Schmidt, 177 U. S. 230 (1900). 60

McCullough Tool Co. v. Wells Surveys, Inc., 343 F. 2d 381 (10th Cir. 1965) 53

Mayer v. Higgins, 208 F. 2d 781 (2d Cir. 1953) 53

Merrill v. United Air Lines, Inc., 25 F. R. D. 68, aff'd 288 F. 2d 218 (2d Cir. 1961) 60

Milwaukee Towne Corp. v. Loew's Inc., 190 F. 2d 561 (7th Cir. 1951) 11, 48

Neirbo Co. v. Bethlehem Shipbuilding Corp., 308 U. S. 165 (1939) 57

Ocean Accident and Guaranty Co. v. Felgemaker, 143 F. 2d 950 (6th Cir. 1944) 60

Radovich v. National Football League, 352 U. S. 445 (1956) 35

Sanitary District of Chicago v. United States, 266 U. S. 405 (1925) 60

Standard Title Insurance Co. v. Roberts, 349 F. 2d 613 (8th Cir. 1965) 54

St. Louis Testing Laboratory v. Mississippi Valley Structural Steel Co., 375 F. 2d 565 (8th Cir. 1967) .. 46

Systems Inc. v. Bridge Electronics Co., 335 F. 2d 465 (3rd Cir. 1964) 54

United States v. General Electric, et al., Civil Case No. 410-157 (S. D. N. Y. filed November 28, 1958) 54

United States v. Kissell, 218 U. S. 601 (1910) 43

United States v. Scophony Corp., 333 U. S. 795 (1948). 59

United States v. U. S. Gypsum Co., 333 U. S. 364 (1948) 46

Velk v. St. Louis, S. F. R. Co., 220 U. S. 580 (1911)... 50

Weisser v. Mursam Shoe Corp., 127 F. 2d 344 (2d Cir. 1942) 59

Statute.

Clayton Act § 16, 15 U. S. C. § 26.................... 43

Rules.

Rule 52 (a) of the Federal Rules of Civil Procedure.. 10

Rule 23(1)(c) United States Supreme Court Rules.... 30

IN THE

Supreme Court of the United States

October Term, 1968.

No. 49.

ZENITH RADIO CORPORATION, a Corporation,
Petitioner,
vs.
HAZELTINE RESEARCH, INC., a Corporation, and
HAZELTINE CORPORATION, a Corporation,
Respondents.

REPLY BRIEF FOR THE PETITIONER ZENITH RADIO CORPORATION.

FOREWORD.

A very serious charge is made in the respondent's brief: that petitioner, one of the leading electronics companies in the world, and its counsel, who has been practicing antitrust law for over 40 years, and its chief executive officers are all engaged in an attempt "to misuse antitrust laws by treble damage claims knowingly made without basis in fact." It therefore is highly significant that respondents cannot by record reference controvert one single fact set out in petitioner's statement of the case or point to one error in any record reference contained in the original brief. Apparently, in desperation, respondents and their counsel have adopted the tactic of attempting to obscure record facts by unsupported charges of an irresponsible character against the integrity of petitioner and its counsel.

The respondents seek to cast themselves in the role of victims at the hands of Zenith because they say they are small companies and Zenith is a large one.

While this contention is irrelevant to the issues in this case, it probably should be pointed out that the consolidated respondent companies are not small. In 1962, they had a gross annual income of forty seven million dollars; over one million of which was income received from illegal patent pools (Finding III, A. 2893; Def. Ex. 1, A. 939, 951; Def. Ex. 32, A. 1128-1130). And while their statements show only net assets of approximately twenty-one million dollars, they own over 500 domestic and foreign patents and patent applications which they assert control the color television business of the entire world (Def. Ex. 1, A. 946) which are carried in their consolidated balance sheet at cost less depreciation for a nominal value (A. 950). Respondents say that they have "a major patent position in color television on the basis of its many important patents which appear to cover television receiver designs now on sale by substantially all manufacturers in the television receiver industry." Respondents would have this court ignore the fact that they have been found in this case to be in a conspiracy which violates the Federal antitrust laws with the following companies whose stipulated worth is set forth below. These companies are (A. 91-100):

Australian Radio Technological Services and Patents Company with
approximately $240,000 of capital;

Amalgamated Wireless, Ltd., with
capital of $12,000,000 and total assets in excess of $31,200,000 and an annual turnover in excess of $40,000,000;

Canadian Marconi Co., with
total assets as of 1962 in excess of $15,000,000 and a net worth of over $9,000,000;

Canadian Westinghouse Co., Ltd., with total assets as of 1962 in excess of $79,000,000;

Northern Electric Co., Ltd. with net worth in excess of $80,000,000;

Standard Radio, Ltd. with a net worth in excess of $2,000,000;

Canadian Radio Patents, Ltd., with an authorized capital of $50,000 representing Canadian General Electric Co., Canadian Westinghouse Co., Northern Electric Co., Canadian Marconi, Philips Electronics Industries and Hazeltine Corporation;

Electric and Musical Industries, Ltd., which is one of the largest public companies in the electronics industry in England;

General Electric Co., Ltd., with assets of over $225,000,000;

Marconi Wireless Telegraph Co., which is capitalized at $91,600,000;

Philips Electric Co., Ltd., which company controls Philips-Croyden Works; Philips-Hamilton Works; Philips Records, Ltd.; Mullard Radio Valve Co.; Cossor Radio & Television, Ltd.; Stella Radio & Television Co. The radio and television branch of this business employs over 4,000 workers and ranks as one of the world's leading commercial enterprises.

Pye Ltd., which is capitalized at $21,600,000;

Standard Telephones & Cables, Ltd., which is capitalized at $33,600,000 employing 26,000 persons; and

The Gramophone Company, Ltd., which is capitalized at $8,016,000.

Thus, we see that Zenith, in its effort to compete, is confronted by companies with aggregate assets of hundreds of millions of dollars and is obviously engaged in a fight for its very life against such conspirators in the foreign markets here involved. As we have pointed out in our original brief, unless Zenith is protected by the antitrust laws, its entire foreign business amounting to millions of dollars a year in Canada alone (Pet. Br. Appendix, p. A. 26) is exposed to destruction and the damage to the company and its thousands of stockholders and employees would be incalculable.

As to the claim made in respondent's brief that they are victims; in view of the scurrilous remarks of counsel, the Court should bear in mind that the trial court found that the respondents started the instant suit pursuant to the Canadian conspiracy (A. 11, 2857), and that this suit, as its then counsel admitted in open court, is part of an effort to enforce a patent restriction against imports imposed by the Canadian pool (A. 131-132).

The instant counterclaim is claimed to be stale but, as the proofs show, it was filed as soon as the four years of damages had accrued in England and Australia and was a compulsory counterclaim which Zenith was forced to file in this suit or forever lose its claim. The claim respondents now make and which they made at length in the court below, that the courts are entitled to ignore all the activities of respondents' co-conspirators and confine respondents' liability to some amount commensurate with its net worth discloses a complete departure from the well established rule that each co-conspirator is liable for all the damage caused by every conspirator in the course of the conspiracy.

Respondents have deliberately relegated the discussion of the Canadian proofs to which they have no defense whatever, to a sandwich position in their brief between a great deal of irrelevant and disingenuous argument concerning England and Australia.

One more point is deserving of mention in this foreword. In view of the attack on the evidence in this case as "ancient'', it should be noted that all of this evidence was introduced by pre-trial stipulation and the competency of the evidence on the conspiracy and damage issues was expressly admitted. See Evidence Stipulation (A. 72-90).

QUESTIONS PRESENTED.

Respondents have presumed to limit this Court's jurisdiction under its grant of the writ of certiorari. The questions raised here are set forth at pp. 3-5 of our original brief and at pp. 2-5 of the petition for certiorari. Respondents' claim that this Court cannot decide these questions ignores the rules of this court which provide that the issues shall be those presented as questions in the petition for certiorari. Respondents' present attempt (Br. p. 3) to remove these questions from consideration by their own limitation on the grant of the writ is, to say the least, gratuitous. Respondents have not argued or answered in their brief questions 1, 3, 4, 7, 8, 9, and 10 set forth at pp. 3-5 of our original brief.

CONTRA-STATEMENT OF THE CASE.

We will not attempt here any restatement of the facts in this case since we have made a full and complete statement in our original brief. Nor shall we now, attempt a sentence by sentence reply to the many inaccuracies and misleading contentions in respondents' statement of the case. All we attempt here is to point out the more glaring misstatements of fact which have no support in the record. As far as we can, we will follow the respondents' order of presentation in their Statement of the Case.

(a) History of the Pools.

At p. 4 of their brief, it is claimed that Zenith charged at p. 101 of its brief that the Hazeltine companies are among the largest electronic companies in the world. What Zenith actually said was:

> "This case involves the activities of the foreign subsidiaries of the largest electronic companies in the world. They include, among others, General Electric, Westinghouse, RCA, the Philips Company of Holland, British General Electric, Electrical and Musical Industries, Standard Telephone & Cables, Telefunken, Marconi Wireless and the Hazeltine Companies." (Pet. brief, p. 101.)

As we have pointed out, these companies have an aggregate net worth of billions of dollars. (A. 91-100) They control the electronics markets of the world.

At p. 5 it is stated that Hazeltine Research, Inc. owns no foreign patents. But it was admitted that the foreign counter-parts of Hazeltine Research domestic patents were in the pools (A. 131, 145; Def. Ex. 32, A. 1127-1128) and it was stipulated that plaintiff agrees for the purposes of this litigation, plaintiff and its parent corporation are one and the same (A. 55). All of the patents of Hazeltine Corporation have been exclusively licensed to so-called patent pools in England (Def. Exs. 42-50, A. 1165-1193), Canada (A. 178-9; Def. Ex. 128, A. 1841) and Australia (Def. Ex. 116, A. 1636; Def. Ex. 184, A. 2357). Counsel for respondents now say that neither Hazeltine Research nor Hazeltine Corporation has ever been a member of the pools. However, L. B. Dodds, respondents' trial counsel, testified (A. 178-9):

> "Q. You knew something was going on in the way of an attack of American companies against the pool, didn't you?

"A. Yes.
"Q. You had known that for a long time?
"A. Yes.
"Q. You still stayed in the pool?
"A. Most definitely—and we intend to continue to stay in the pool."

Dodds further said (A. 130):

> "There are now and there have been for more than thirty years general industry wide patent pools in Canada, Australia and Great Britain."

After that admission the following colloquy between Court and counsel occurred (A. 131):

> "The Court: You say that Hazeltine is not in any pool there. Let me ask you this, are any of the counterparts of the American patents in the pool?
> "Mr. Dodds: Yes they are.
> "The Court: All right, that answers my question.
> "Mr. Dodds: Yes, they are.
> "The Court: All right."

It was proved that respondents joined the Canadian pool over 25 years ago by placing their patents in the pool under written agreements which prevented these patents from being licensed except by the pool and except under the restriction that such patents could not be licensed for the import of electronic products into Canada (Def. Ex. 150; A. 2013; Pl. Ex. 50-A; A. 2811, 2828-30). In England, respondents' patents were licensed to the pool until 1964 under restrictions against using them to license importation into England. (Def. Ex. 58; A. 1248, 1251, 1258; Def. Ex. 60; A. 1272; Def. Ex. 70-71; A. 1380-1401). And, for over 35 years, respondents' patents were put into the Australian pools (Def. Exs. 188-195; A. 2381-2475) under the same restriction against competition and import (Def. Ex. 197; A. 2482, 2483; Def. Ex.'s 188-195; A. 2381-2475). The claim now made that the licensing of imports was permitted in later years was found by the trial court to be false (Finding XXXIV; p. 54 of Pet. for Certiorari), and we show specifically at pp. 21-24 of this brief that this claim is still false.

Respondents knew the effect of these restrictions were to throttle commerce with foreign markets as shown by Defendant's Exhibit 115, (A. 1634) as follows:

> "We have always told our licensees in the United States that, while we could guarantee them no protection on their exports to foreign countries, as a matter of policy we would not collect a second royalty on sets exported to foreign countries where Hazeltine had complete control of its patent situation. *In those countries where the Hazeltine patents are included in any industry-wide pool they are, of course, beyond our control and our licensees have to make their own arrangements with such pool.*" (Italics ours.)

As we have pointed out at great length in our original brief, the only arrangement possible with the pools was to build a local factory and manufacture the sets in the foreign country; thus ending any foreign commerce between the United States and such foreign market.

The trial court found (A. 2903) in Finding XXV:

> "The patent pool existing in Canada is called Canadian Radio Patents Limited. This organization was formed in 1926 by the General Electric Company of the United States through its subsidiary, Canadian General Electric Company and by Westinghouse, through its subsidiary,—Canadian Westinghouse. The shareholders of Canadian Radio Patents Limited are Canadian General Electric, Canadian Westinghouse, Standard Radio Mfg. Corp., Ltd., the Canadian subsidiary of Philips of Holland, Canadian Marconi and Northern Electric (an affiliate of AT&T and Western Electric). The Pool has been largely made up of Canadian manufacturers, (most of which are subsidiaries of American companies) who were and are competitors of Zenith with respect

to sales sought to be made in Canada. The Pool, for many years, has had the exclusive right to sub-license not only the patents of the member companies but also the patents of Hazeltine, RCA and a number of other foreign companies. Since 1943 Hazeltine has been an active participant in the activities of the Pool and has been receiving a substantial share of its profits. The Hazeltine patents go into the Pool pursuant to an exclusive license agreement between Hazeltine and Canadian Radio Patents Limited, which grants to the Pool the right to include Hazeltine's Canadian patents, present and future, in its licensing and litigation activities. This arrangement has been extended to a date beyond the filing of the instant counterclaim."

(b) The Pleadings.

It is stated, at p. 6 of respondents' brief, that the patent misuse pleaded "was based solely upon Hazeltine Research's alleged package licensing of its United States patents." However, paragraph 13 of the answer (A. 18) stated:

> "Plaintiff has entered into international agreements and cartel arrangements with domestic and foreign companies constituting a combination and conspiracy in restraint of trade between the United States, on the one hand, and Canada and other countries of the world, on the other hand, in violation of the Sherman Act. (United States Code, Title 15, Sects. 1 and 2.) Pursuant to such agreements, combination and conspiracy, plaintiff and its co-conspirators have set up pools of patents in Canada, Great Britain and Australia, countries in continental Europe, and other areas foreign to the United States, for the purpose and with the effect of unlawfully dividing the market areas of the world into exclusive territories parceled out among the conspirators, controlling the manufacture, use, and sale of radio and television apparatus in such foreign countries, and preventing the importation of said ap-

> paratus into such countries, from the United States by defendant and other United States manufacturers not parties to the conspiracy."

Paragraphs 12 and 13 of the Petitioner's answer in the patent suit set up the licensing of respondents' patents under the illegal restrictions of foreign pools as a defense to the assertion of the patents against petitioner under the doctrine of "unclean hands" (A. 19).

The trial court concluded (A. 2910) in Conclusion No. VII:

> "The defense of misuse asserted by defendant is a valid one."

The court further concluded (Conclusion X):

> "The combinations represented by the patent pools in Canada; England and Australia had as their express purpose the prevention of importation into those markets of radio and television apparatus made in the United States and other countries. Hazeltine knowing of the restrictions against imports imposed by those Pools, nevertheless chose to permit its patents to be used in furtherance of the scheme and thereby obtained a substantial share of the pool's income. It thereby became a co-conspirator and legally liable for all the acts of the Pool and its members performed in furtherance of their patent licensing plan to divide markets and prevent competition from imported sets." (A. 2910, 2911).

It is therefore obvious that putting respondents' patents into the illegal pools was a misuse of the patents and was properly pleaded as such.

Parenthetically, it is argued throughout respondents' briefs that since the trial court adopted the findings submitted by petitioner rather than the findings submitted by respondents that therefore such findings are not within the application of Rule 52(a) of the Federal Rules of Civil Procedure.

The Court of Appeals for the 7th Circuit in the case of *Milwaukee Towne Corp.* v. *Loew's Inc.,* 190 F. 2d 561, 564-5 (7th Cir. 1951) disposed of this contention as follows:

> "* * * [w]e must keep in mind that under Federal Rules of Civil Procedure Rule 52 (a), 28 U. S. C. A. as universally interpreted and applied we are bound to accept the findings of fact made by the district court unless clearly erroneous. And *we are not impressed, and certainly not convinced, that the application of that rule should be weakened or emasculated from the fact that the court adopted as its findings those proposed by the plaintiff rather than those proposed by the defendant.*" (Italics ours.)

However, in the instant case the Court also entered its own order and opinion as follows (A. 2857):

> "The court has reviewed the evidence, exhibits and briefs of the parties in both the patent and antitrust phases of the above cause and finds for the defendants on the issues raised by the complaint and answer and the counterclaim."

Respondents at page 7 of their brief argue that because Zenith had not filed its counterclaim for damages on April 7, 1960, the day its answer was due, that therefore there is no merit in its counterclaim. The trial court found that Zenith had no claim for damages in England prior to June 8, 1960 and no claim for damages in Australia prior to April 1, 1960 (A. 3525). The counterclaim asked for four years of damages and was filed within the time such four years of damages accrued. The antitrust act itself permits the filing of treble damage claims for the damages accruing within the four year period of limitations. Therefore there can be no merit in the contention that Zenith should have filed its counterclaim before its cause of action for four years of damages had accrued in England and Australia.

At page 7 of respondent's brief an argument is made that petitioner was not claiming damages caused by the patent pools even though it appears from the face of the counterclaim itself, that petitioner asked for damages caused by the Pools to Zenith export business in the three markets involved (A. 64-69). Further, respondents would have this Court ignore the Motion for Leave to File a Counterclaim signed by Zenith's counsel stating (A. 62):

> "Said counterclaim arises out of the matters set forth in Paragraphs 12-13 of defendant's answer herein *and* current related unlawful activities of plaintiff occurring since the filing of the answer which activities are the proximate cause of present and continuing damage to defendant sustained after the filing of the answer."

(c) Antitrust Findings and Competency of the Proofs.

At p. 10 of the respondents' brief, it is stated that the findings contain no statement that Zenith attempted to obtain a license to import into Australia from the Australian pool. The findings however show that such a license was, at all material times, unavailable. See Finding XXXIV (A. 2907) which provides *inter alia*:

> "* * * A standard pool license imposes the restrictions necessary to effectuate the division of territories involved in the overall arrangements. It requires the licensee to agree not to export or import or sell or offer for sale in Australia any radio or television receiving apparatus not manufactured in Australia. Hazeltine has been fully aware of the Pool's plan and policy not to license for importation and has cooperated with and approved the operation of the Pool with respect to all the Hazeltine Australian patents."

It is next stated, respondents' brief, page 10, that the evidence offered by Zenith as to the Pools, which implemented the conspiracy, consisted largely of numerous "ancient" documents marked as deposition exhibits in a previous case.

An examination of the record will disclose that the reason these documents were "ancient" is because they relate to the time the conspiracies were formed and while evidence of the illegal activities of the pools was still available for a subpoena. These documents evidenced the formation and participation of the respondents and their co-conspirators in the pools. The evidence was admitted pursuant to a pre-trial stipulation which admitted its competence (A. 72-90).

Apparently respondents' present contention is if they have maintained a conspiracy long enough, evidence of its inception loses any probative value. This is not a new contention and has been used in much of the antitrust litigation of the past forty years.

Further, respondents themselves put into evidence the settlement papers of the previous Zenith-RCA case in which three of Hazeltine's co-conspirators paid Zenith ten million dollars for damages accruing up to October, 1957. This is the same conspiracy which Hazeltine now contends and the Court of Appeals has held could not, as a matter of law, cause Zenith's Canadian business any damage whatsoever.

The Court of Appeals holds that the evidence of this settlement has no probative value on the issue of the "fact of damage" even though it was an admission made by Hazeltine's co-conspirators made in the course of the conspiracy in an effort to keep their Canadian patent pool alive and get it out from under the formidable legal attack of the Zenith counterclaim in the RCA suit. The Court of Appeals holds it incompetent on the ground that evidence of settlements is not admissible. Here, no question of admissibility is present because respondents put the evidence in the record as their own exhibits (A. 466; Pl. Ex. 48, A. 2783, 2785-6).

It is next stated that Zenith has wrongfully interpreted the license agreements showing restrictions against imports in the three markets involved. The trial court, after studying the documents in evidence found:

Finding XXVI:

> "The organization, purposes, and functions of the Canadian pool are, in principle, identical to those of the English pool. Approximately 5,000 patents are amassed for licensing *and the only form of license available is strictly limited to manufacture in Canada.* . . ." (A. 2903-2904.) (Italics ours.)

In Finding XVI with reference to the English pool, the trial court found:

> "* * * Each of the participating parties in all of the interrelated agreements, including Hazeltine by virtue of the exclusivity of its joint agreements with General Electric Co. Ltd. contractually pledged that during the period of the agreements no license would be issued that would permit the export of radio and television receivers from the United States into the British market, and that the only license employed by the pool would be a standard package license limited to local manufacture." (A. 2900.)

At p. 11 of respondents' brief, the testimony of Wright, Zenith's president, and Kaplan, its executive vice president is cavalierly disposed of with a statement that respondents will show that the testimony was discredited and destroyed. How it was destroyed is not shown because no witness denied it (A. 452) and after further extensive hearings conducted by the respondents' present counsel the trial court said, after hearing everything respondents had to offer, that his decision would be the same as it had previously been on the conspiracy and the "fact of damage" issues, which issues were supported by the Wright-Kaplan testimony (A. 3524). The trial court went on to say:

> "There could be no question in my mind that Zenith

> suffered damages during the damage period by virtue of the pools which I have found and reiterate existed at the time of the damage period. * * * And, as I have indicated, there is no question they lost money by virtue of the pools excluding them." (A. 3524-5.)

If these remarks constitute impeachment of undenied testimony then a new rule of impeachment for the Federal court has been established by the respondents. Up to now the only way to impeach a witness has been by showing that testimony on a material fact, as distinguished from opinion testimony, is false. Nothing remotely resembling impeachment of the Wright and Kaplan testimony has been presented on this record. Further, this claim that the witnesses are impeached because the trial court cut down the amount of damages estimated by the Wright and Kaplan testimony as to England and Australia would mean that every time a court failed to allow all the damages claimed that therefore the witnesses were impeached.

Further, the Kaplan and Wright testimony as to Canada was adopted completely by the trial court's findings and was corroborated by Zenith's operations and profits in Canada when protected by the trial court's injunction against the pools. We have pointed this out in our main brief at p. 83.

It is next claimed, at page 11 of respondent's brief, that Zenith claimed damages only on a "mature market" or "established market" theory. No one ever heard of such a theory until a year after the case was tried when respondents' present counsel injected it by way of motion to rehear the case (A. 1942).

At p. 13 and throughout their brief respondents utilize offers of proof as if they were part of the present record and discuss at length proceedings occurring a year after the trial of this case. The only relevance these proceedings have here is that as a result of the subsequent proceedings the damage findings were modified as to amount in England and Australia but affirmed as to the issue of the "fact of damage" in Canada, Australia and England (A. 3038-3039; 3524-3527).

The respondents' post trial motions asked the trial court to withdraw its findings of fact and conclusions of law and to dismiss the counterclaim as not proven or provide for further pleading, discovery and proof (A. 2939, 2950-2951). Respondents advanced three grounds in support of this motion.

As a first ground, respondents charged that L. B. Dodds, respondents' counsel, had been surprised by an alleged variance. The trial court disposed of this contention as follows:

> "I think the pre-trial briefs show that he [Dodds] wasn't suddenly confronted with this, because the pre-trial briefs were filed many months before trial and indicated to Mr. Dodds what the theory of the complaint was." Court of Appeals, App. 1865.*

As a second ground, Hazeltine sought to assert the Statute of Limitations a year after the case was tried (A. 3033) and to plead the release of the Zenith-RCA litigation in 1957 long after the case had been submitted for decision. The trial court permitted the filing of the pleas as of a date a year after the trial (A. 3037), and then promptly overruled the motion to dismiss the counterclaim on these grounds (A. 3037).

As a third ground, Hazeltine contended that Zenith had failed to establish the fact and amount of damage through proof adequate to sustain the judgment. This motion was overruled (A. 3037).

Hazeltine also submitted offers of additional proof in support of the antitrust motion (A. 2955-2995). These included (1) proof of Zenith-RCA litigation releases, (2) proof of Zenith's annual reports for the years 1947-63, (3) proof of tariffs, taxes and other matters claimed to affect importation of television and radio sets in Australia, Canada and England, and (4) proof of changes alleged to be necessary to adapt American television sets in Australia and England to a different broadcasting system. After hearing, the trial court ruled that no change would be made in the damage finding with respect to Canada and directed Zenith to prepare and submit a judgment for damages in Canada and for injunctive relief in the three markets (A. 3038-39). The trial court had permitted the case to be reopened for the sole and limited purpose of determining whether an embargo existed in Australia and England which would have prevented Zenith from establishing a market for its radio and television sets *prior* to the beginning of the four year damage period (A. 3087).

---

* By stipulation (A. 4282) the Court of Appeals Appendix is made part of the record here.

At pp. 19-25 of respondents' brief an attempt is made to re-argue factual questions in the trial court's damage findings. As we point out at page 48 of this brief, the only question open for review in the court below was whether the exhibit showing the amount of damages was legally sufficient so that the trial court would be permitted to base its findings on the exhibit. Exhibits 218 and 220, which show the computation of the amount of damage, were not denied and their accuracy was admitted (A. 324; 716-64; 2661).

At page 21 of respondents' brief counsel try to make it appear that the trial court found the testimony of Wright, the Zenith president, and Kaplan, the Zenith vice-president, as to an estimated possible market share in England and Australia to be perjury. The court properly treated this estimate testimony as "expert testimony" and said it was "not bound by the fact that the evidence is uncontroverted and undenied." The court's remarks had nothing to do with the testimony of these witnesses as to material facts on the issues of the case. Even in the evidence of the estimate of market share in England and Australia, the court was careful to point out that the differences between his view and that of the witnesses did not reflect on their good faith or integrity but arose only because "the Court is aware of the pride of officers in their corporation, and the belief in their product, * * *" (A. 3525-6).

However, the trial court is the sole judge as to the credibility of witnesses, and the weight of the evidence; obviously the trial court did not attach any credence to the arguments of counsel that Wright and Kaplan were attempting to mislead him because after all the evidence in the second hearing had been heard, the trial court reaffirmed his finding as to the damages in Canada which were in large part based on the Wright and Kaplan testimony (A. 3037).

At p. 27 respondents in their brief say, "Zenith took no appeal from the rulings of the court that governmental import restrictions found to exist in England and Australia and nothing else had kept Zenith out of those countries." From this statement one might believe that the court had held that the pools did not keep Zenith out of these markets after the governmental restrictions were removed. These restrictions were removed in England on June 8, 1959 and in Australia on July 1, 1960. The trial court allowed damages after these dates and pointed out that as soon as the government restrictions were removed, the pool restrictions against imports were again imposed to the damage of Zenith (A. 3539). The court said on this specific question (A. 3524-5) "There could be no question in my mind that Zenith suffered damages during the damage period by virtue of the pools which I have found, and reiterate, existed at the time of the damage period. * * * And as I have indicated, there is no question they lost money by virtue of the pool's excluding them." (A. 3525.)

(d) The Appeal.

(Answering pp. 28-29 of Respondents' Brief.)

The respondents, in an attempt to limit this court's disposition of the questions presented in the petition for certiorari say contrary to the opinion of the Court of Appeals that the court below did not rule on the illegality of the pools or on any other question except the "fact of damage" and that the sole issue is whether the Court of Appeals erred in concluding on the entire record that the trial court's Finding that Zenith was damaged "was clearly erroneous."

The Court of Appeals in its opinion stated "the district court concluded that the alleged conspiracies had, as their express purpose, prevention of importation of TV apparatus made in the United States, that HRI, by participating in the conspiracies had violated the Sherman Act, and that Zenith had established that it had been injured in its business as a result of the unlawful activities of the pool." The Court of Appeals reversed the finding that the foreign commerce of Zenith had been drastically curtailed by the patent pools but did not, in any way, modify or change the finding of the illegal conspiracy.

Under decisions of this Court, to which we will later refer in this brief, in order to determine whether or not on the entire record the trial court's finding that Zenith was damaged "was clearly erroneous" the court must determine the nature and intendment of the Pools and whether or not they are illegal under the Federal anti-trust law.

(e) The Facts as to England.

(Answering pp. 29-47 of Respondents' Brief.)

The proofs as to the English conspiracy are set forth at pp. 29-35 of our original brief and need not be repeated here. It is established on this record that it was not possible to export Zenith sets into England during the periods starting with the war and ending in June 1959 because of import restrictions. However, these restrictions were repealed June 8, 1959. Respondents now say that proofs prior to the government restrictions are not available to petitioner because they are too "ancient". These proofs were documentary and admitted without objection. The same contention was made in the *Continental Ore* case referred to later in this brief which case is discussed at page 41 of this brief.

It is true, as stated in respondents' brief at page 36, that Zenith made no effort to sell television sets in England after June 8, 1959. This was because of the patent pool and its obvious and inherent threat to sue Zenith and its customers had it attempted to sell television sets without patent protection in England (A. 464). Respondents' contention, that since Zenith therefore stayed out of the market it could not be injured, is a complete *non sequitor*. It ignores the fact that the pool was organized to prevent imports by the inherent threat of infringement suits on massed television patents against a company such as Zenith which was solvent and able to respond in damages. Since the threat succeeded it must follow that Zenith was injured because except for patent protection it was certainly equipped to compete in the English market. Wright, Zenith's president, testified specifically that the threat of suit by the pool kept Zenith out of England during the entire damage period (A. 464). As we have pointed out in our original brief at p. 61, even though we should admit arguendo that some other factors contributed in keeping Zenith out of the English market Zenith could still hold the Pool legally liable for its damages in having been deprived of a television market in England.

The contention made about 405 and 625 line systems of television receivers, made at page 35 of respondents' brief, is answered at pp. 86-88 of our original brief and that answer need not be repeated here. Also, the argument advanced at page 40 of respondents' brief that the reason Zenith did not ship television sets to England was because it was waiting for a change to the 625-line CCIR system is nothing but a contention by counsel. *Zenith did not ship any sets after the change was made.* Wright testified that the reason they were not shipped was the threat of suit by the Pool (A. 464).

At p. 45 of respondents' brief it is claimed that the English pool permitted imports under the extension agreement of the pool from July 1, 1960 to June 30, 1964. That statement is false.

It is argued that the deletion of paragraph 7 (A. 1258) of the 1957 pool agreement by the extension agreement permitted the licensing of imported products. However, Clause 11 (g) of the prior pool agreement was amended by the extension agreement, as follows (A. 1275):

> "Clause (11g) shall be read as if the following words, 'Provided, however, that no variations shall be made in the terms and conditions of said license A8S and A8T without the unanimous consent of the parties hereto except the British Thomson-Houston Co., Ltd. as at the 30th of June, 1960. Subject as aforesaid . . .' were inserted after the words 'majority decisions' in line 7 of that clause."

The extension agreement extending the pool until 1964 also provided that Clause 11 (b) of the prior pool agreement shall read that licenses issued by the pool "... shall be in the form of License A8S and License A8T attached hereto (or in such other form as may be agreed by the parties hereto as hereinafter provided) and each of the parties hereto agree to accept licenses in such form in the event that it or any of its subsidiaries is engaged in the manufacture and/or sale of radio apparatus" (A. 1274).

The A8S and A8T licenses ran from July 1, 1960 to June 30, 1964, a date subsequent to the trial of this case. By their terms the above licenses were limited to products manufactured in Great Britain, Northern Ireland, the Channel Islands and the Isle of Man (A. 1382; Def. Ex. 70). The A8S license also provided that it was a personal, non-exclusive, non-assignable license "for the purpose of manufacturing broadcast sound receivers within Great Britain, Northern Ireland, the Channel Islands and the Isle of Man (hereinafter called the territories) and using, selling or letting for hire such broadcast sound receivers so manufactured hereunder." (A. 1382)

The A8T license had the same provisions (A. 1393-94). The net result of all of this was that while the clause expressly prohibiting the licensing of imports was deleted, the same thing was accomplished by the agreement of the pool members not to issue any license except by an attached form of license; limited by its terms for the purpose of manufacturing products within Great Britain, the Channel Islands and the Isle of Man.

It is further argued that adding the words "or for imports of such apparatus" to paragraph 18 of the extension agreement constituted a blanket authorization to issue individual licenses to import. The language is not susceptible to that construction. The language did not change the agreement not to grant individual licenses except in the case of apparatus covered by Clause 11(c) (i) and (ii) and Recital 3 of the agreement.

Clause 11(c) (i) and (ii) provides (A. 1261) "each of the parties hereto reserves the right to grant licenses separately under all or any of its own patents or patent rights in the following cases, namely:

(i) in cases where the principal consideration is not the payment of royalties or commercial arrangements in relation to the supply, purchase or sale of goods and

(ii) in cases in which and to the extent that they respectively are or may be obliged to grant licenses for television receivers by virtue of their now existing or future commitments to the BBC or to the postmaster general with regard to television."

Section 18 again states that no individual member of the pool can license at all "except in accordance with the decision of the committee". (A. 1267)

The only other apparatus mentioned as being excepted from the restriction against importation is under Recital 3rd which refers to "stocks on hand at the expiration of the A6 license" and products covered by license to the British Thomson-Houston Company. (A. 1251). This excepts British Thomson-Houston from the restriction against imports but that company was always excepted from the restrictive provisions of the agreement against imports (A. 1272). It was further provided in the A8S and A8T licenses that the form of the license could only be changed by unanimous consent of the parties thereto (A. 1275). This made the conspiracy more binding than it was in the previous agreement which permitted alteration of the licenses by "majority decision." (A. 1262)

So we see that the respondents' argument that the conspiracy against imports was ended by the above clauses is a dishonest argument which falls of its own weight. This is the same sort of tenuous contention used with reference to the Australian pool. All it proves is that the pool members apparently realizing their vulnerable legal position took the more obvious evidence of their illegal restrictions against imports out of the agreements and then put them right back in in a more subtle way. These agreements and restrictions against import by the members of the pool constitute a conspiracy of companies who would have been competitors of Zenith in the sale of its T. V. sets if it could have imported its product into the English market past the restrictions of the pool.

Respondents would have this court hold as a matter of law that this is a court sanctioned way to end an illegal conspiracy under our antitrust laws. In determining that issue we submit that the court should view the 1960 extension of the Pool against the background of evidence of a restrictive conspiracy that had exercised control over an entire market for more than a quarter of a century.

At p. 46 respondents claim that Zenith could not be damaged in its radio business because the Pools' radio patents had already expired. However, Zenith officers testified (A. 472) that proper distribution of radios could not be obtained in England without the right to distribute a full line of products which included television sets. The export of television sets was, as we have pointed out, blocked by the pool.

(f) The Facts as to Canada.

The facts as to the Canadian pool are set forth at length at pp. 7-25 of our main brief and need not be repeated here. Not one of these facts was denied in the court below or in the trial court or here. While counsel for Zenith has been accused of distorting the record not one of our record references to the Canadian conspiracy proofs is challenged in any way. Further, the respondents ignore their own evidence when they say at page 152 of their brief that they are not in the pool. That respondents had no defense to the conspiracy proofs in Canada is admitted. At page 152 of their brief they say: "It is true that CRPL had a policy of not licensing imports."

The most conclusive piece of conspiracy evidence in the entire case was put into the record by the respondents themselves (A. 2812-2829). This was plaintiff's exhibit 50A. While it is conclusive on the conspiracy issue the first mention respondents make of it is at p. 105 of their brief and the Court of Appeals did not even mention it in its opinion. However, since respondents sponsored it as evidence and filed no countervailing evidence it proved the entire Canadian conspiracy as it existed in 1959 during the damage period. This document recites:

> "Canadian Radio Patents Limited (hereinafter called CRPL) was incorporated in 1926 for the purpose of acting as a patent licensing agency. At the time of the presentation of its brief to this Commission it acted as the central patent licensing agency in the administration of patent rights in the radio, television and general electronics fields in respect of patents owned by its then five shareholders:
>
> > Canadian General Electric Company, Canadian Westinghouse Company, Northern Electric Company, Canadian Marconi Company and Canadian Radio Manufacturing Company.
>
> It also acted as licensing agent in Canada for RCA Victor Company *and Hazeltine Electronics Corporation. . . .*
>
> * * * * *
>
> *"The portfolio in respect of which CRPL had the right to grant licenses consisted of 5,000 patents, and in the absence of a license from CRPL it is doubtful if anyone could sell in Canada a radio or television receiver.*
>
> "CRPL indicated that it does not grant a license to any importer of radio or television receivers, except

> in the limited situation where the type or kind of radio or television receiver sought to be imported *is not manufactured by any radio or television receiver manufacturer in Canada. It is particularly in respect of the policy of CRPL in precluding importers from bringing into Canada radio and television receivers that the complaint was made to this Commission.*
>
> "It was stated to be the policy of CRPL to enforce its patent rights against any person who sells in Canada an imported radio or television receiver which infringes any one or more of the patents in its portfolio . . .". (Italics ours.)

It is now claimed that Zenith was fully licensed in Canada and therefore could not be intimidated by any threat by the Pool of infringement of any patents administered by Canadian Radio Patents, Ltd. However, on July 30, 1958 two years after the settlement of the RCA case, McConnell, the pool manager, called on the Zenith Canadian subsidiary in Toronto, Canada and told Mr. Floyd Kiely, its general manager "that even though patent licenses covering imports had been obtained by Zenith from RCA, General Electric and Western Electric as a result of the RCA-Zenith litigation, the pool had many other patents and no license permitting import would be granted by the pool (defendant's exhibits 151-152, A. 2014-18). Thereafter, in a conference with Zenith's vice-president Frank Crotty on May 12, 1959 (Def. Ex. 154, A. 2021) McConnell told Crotty that Zenith was infringing some of the pool patents "one of which was a patent of Hazeltine origin. He told me that I would have to take the license; that the license could not be for importation, it would have to be for local manufacture." (A. 410.)

For obvious reasons, the respondents did not bring McConnell to the trial as a witness to deny the conversation. No denial is found in this record.

The settlement in 1957 expressly excluded color TV patents from its terms and only included licenses on patents issued prior to September 1, 1957 owned by the three companies involved (Pl. Ex. 43, A. 2783-4). Obviously many patents held by the pool were not affected by the settlement.

At pp. 49-55 of their brief, respondents attempt to show that the evidence of damage to Zenith's business was old and that nothing happened after the settlement. The evidence of what happened after the settlement is discussed at length at pp. 20-25 of our original brief and is argued at length at pp. 62-76 of that brief and no good purpose would be served by repeating it here.

One glaring misstatement on this issue is made at p. 50 of respondents' brief. There the statement is made that: "To show interference by suits or threats of suits against Zenith dealers or distributors in Canada, Zenith introduced into evidence correspondence dated in 1951, and in 1954. But there is no similar evidence of any threat against a Zenith distributor or dealer after the Zenith-RCA settlement."

The testimony was undenied that because of the activity of the pool Zenith could not obtain any distributors except in Western Canada (A. 456). For this reason, Zenith was forced to use its Canadian hearing aid distributor as a television distributor (A. 456). In 1959 and within the damage period, McConnell, the pool manager in Canada, threatened suit against Zenith's distributor on a Hazeltine patent and served notice of infringement of a Canadian Patent No. 562,773 because of the use of such patent in Zenith television receivers (A. 2019, 2020, 2021).

This threat was received by Zenith within the damage period (A. 2021).

Shortly thereafter the instant suit was started by respondents, who were in the conspiracy at that time, on a patent whose counterpart was in the Canadian pool (A. 131; 272).

Documentary evidence proves that Hazeltine had been used before as the "catspaw" of the pool in bringing suit against alleged infringers of pool patents used in imported sets. See defendant's exhibit 142 (A. 1964, 1967-8) which states:

> "* * * the operations of CRPL are of very substantial benefit to the industry as a whole and to all the shareholders, if for no other reason than the threat against dumping."
>
> "Recently a writ was issued against Faucher Electric of Montreal for selling imported Dumont sets. The plaintiffs were CGE, CRPL *and Hazeltine.*" (Italics ours.)

It is further argued at p. 51 of respondents' brief that there were only two incidents after September 7, 1957, showing restrictive activity of the Pool and neither had any effect on Zenith's sales in Canada. This argument is answered at pp. 63-76 of our original brief. However, in passing, it should be noted that the pool and Hazeltine's participation therein continued during the entire damage period and the effect of the pool's activities was continuous and cumulative and its prior activities carried forward into the damage period just as much and with just as great a threat to and effect on Zenith's potential dealers and customers as if we had introduced separate proofs of such activities for each day of the damage period. As Mr. Wright, Zenith's president, testified, the pool's activities were well known, having been publicized to the trade continually by the CRPL warning notices (A. 452). The pool itself advised the trade; "newspapers from coast to coast carry the tremendous total of 4,343,084 advertising messages to help put a stop to importation of cheap, substandard imported radios." (A. 1863.) As soon as it is perceived that the court is dealing with a continuing and "cumulative" conspiracy to stop imports, its impact on the market is seen as obvious.

At pp. 55-62 of respondents' brief, there is a long discussion of Zenith's annual reports. These, while available to respondents at the time of the trial, being public records, are not in evidence in this case. They were submitted as offers of proof a year after the trial of the case (A. 2956-95) and their use attempted here is the same as that in the court below; namely, to have them considered as if in evidence in the case and as a basis for an argument against the trial court's findings. Even though they did not constitute newly discovered evidence and their submission as an offer of proof was rejected by the trial court (A. 3037-38) they are treated here as if they were part of the record in this case. The trial court's comment on these annual reports as an offer of proof was apt. He stated "there is no obligation to cry on the stockholders shoulders." (Ct. of Appeals App. 1905.)

At page 105 respondents attempt to impeach the testimony of Joseph Wright, Zenith's president with Zenith's annual reports from 1958 through 1962—which are not in evidence at all. See footnote respondents' brief p. 105.

At page 113 respondents complain that the trial court refused to consider these reports *which were not in evidence.* This is probably the most unique complaint ever advanced in a lawsuit. However respondents now exceed themselves and say at p. 113 that this court acting as a trial court should impeach the Wright testimony with those documents *which are not in evidence* and then for that reason affirm the holding of the court below that there is clear error in the Findings. This has to be the most ridiculous contention ever advanced in defense of an anti-trust suit.

At p. 60 it is asserted that there is no evidence of a causal connection between the instant suit and the pool. However, that causal connection was expressly admitted by respondents' trial counsel in his opening statement in speaking of the way the Pool could prevent imports (A.

131-2). This statement was as follows: "These pools don't have any power to keep out anything. * * * All it means is that if you import goods into Great Britain or Canada or Australia, and if what you are importing are infringements of the patents they administer, you may subject yourself to an infringement suit, the same as if you infringed a patent in this country. *And we can't prevent Zenith from selling sets without an adjudication, which we are in the process of trying to get now.*"

At p. 61 it is claimed that the issue of the amount of petitioner's damages is not before this court, even though it is now claimed that there is no damage of any kind shown by this record. This is one of the questions for review which was set forth in the petition for certiorari granted by this court.

Rule 23 (1) (c) of this court's rules provides *inter alia* "* * * The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition or fairly comprised therein will be considered by the court."

Question 5 in the petition for certiorari is as follows:

> "Whether the uncontradicted testimony of Zenith's officers, based on personal knowledge of business conditions and concerning the volume of business which Zenith would have done in Canada, England and Australia absent the unlawful interference of the pools constitutes substantial evidence within the meaning of Rule 52 (a) of the Federal Rules of Civil Procedure in support of the District Court's damage findings."

This issue is discussed at length at pp. 77-84 of our original brief and at pages 14-15 of this brief. The present claim that petitioner's exhibit 220 was not competent on the issue because it assumed "a mature market" is an afterthought by respondents' counsel. The exhibit was introduced without objection (A. 769) and there is no countervailing evidence of the amount of damage by opinion evidence or otherwise in this record.

(g) The Facts as to Australia.

It is asserted that Zenith made no claim that the Australian pool refused to grant it a license. We have shown at pp. 91-96 of our original brief that such a license demand was not necessary because a license to import in Australia was never available because of the conspiracy.

It is now asserted that the testimony introduced by Zenith "as to the Australian pool was indeed sparse." However, it all came out of Hazeltine's files (A. 58, 399) and was admitted in evidence either without objection or included in a pre-trial stipulation (A. 72) and it shows without denial an illegal patent pool which has been in existence for over 35 years (Def. Exs. 180-195, A. 2305-2475).

No evidence was introduced by respondents that a license to import was available or would have been granted by the Pool to Zenith, if requested.

It is claimed here, and was claimed in the Court below, that the license agreements themselves evidenced no restrictions against imports. We have shown that this argument is completely without merit at pp. 89-90 of our original brief. It is the same sort of argument now made for the first time with reference to the English pool which we answer at pp. 21-24 of this brief. The trial court heard it and rejected it by refusing to set aside its findings of conspiracy in the Australian market (A. 3038).

Finally, it is claimed that government statistics affirmatively disprove the contention that exports were kept out of Australia by the Pools (Pet. Br. p. 138).

However, the Pool in its entire history has never granted a license to import American sets into Australia (Def. Exs. 188-195, A. 2381-2476; Def. Ex. 197, A. 2482). The import statistics referred to by respondents actually corroborate this. Thus during the damage period only 53 American made sets were imported into Australia (A. 3399).

(h) The Patent Misuse Defense.

It was argued in the answer to our petition for certiorari that this issue is moot. In our reply we pointed out that it could not be moot because it was made a basis for the treble damage judgment and because four other black and white patents were asserted, along with nine color-television patents, under the same conditions found by the trial court to constitute misuse. Further, the injunction entered by the trial court which protected Zenith from misuse of respondents' patents under the antitrust laws by enjoining the foreign patent pools, was modified by the court below by striking out such protection from the injunction decree and the question of whether this is legally justified has been accepted for determination by this Court by its grant of certiorari.

ARGUMENT.

I.

THE DECISION OF THE COURT OF APPEALS THAT THE PETITIONER'S FOREIGN BUSINESS IS NOT ENTITLED TO PROTECTION UNDER FEDERAL ANTITRUST LAWS FROM INJURY BY FOREIGN PATENT POOLS JOINED IN BY RESPONDENTS IS ERRONEOUS AND MUST BE REVERSED BY THIS COURT IF THE APPLICATION OF SUCH LAWS TO FOREIGN COMMERCE IS NOT TO BE NULLIFIED.

Any fair view of the record evidence, viewed as a whole and not cut up into fragments or bits and pieces, must lead to the conclusion that the court below has ruled that the undenied facts showing illegal conspiracies to stop foreign commerce cannot constitute injury as a matter of law to an American company equipped to compete in the three markets involved. The result of such a ruling is to state by judicial decree to the foreign patent pools that they have complete immunity under the Federal antitrust laws to stop all foreign trade between the United States and such markets by the illegal use of pooled patents so long as they follow the script shown by the undenied evidence in this record. The net of respondents' position here and below is that they are immune from the application of the antitrust laws on the ground that they are entitled to join foreign patent pools with impunity even though they admit, "There are certain restrictions on importation they impose, * * *", because it is to their advantage both financially and in enforcement of their patents to do so (A. 403, 408, 409).

In the trial court respondents' then counsel, as shown by the following colloquy, exercised complete candor in stating respondents' position (A. 409):

> "The Court: I assume, Mr. Diggins, that prior to putting Hazeltine's patents in the Canadian Pool, Hazeltine was aware of the fact that the Pool was not going to permit the importation of American merchandise and, knowing that, put their patents in the Pool. Does that, in your opinion, make any difference?"
>
> "Mr. Diggins: Your Honor, I don't think it makes a particle of difference."
>
> The Court: (A. 408-9) I mean, why couldn't you have just retained them, and issued licenses there as you do here?
>
> Mr. Diggins: Several reasons, your Honor. In the first place, the Pool is the big licensing agency up there. Secondly, it would be quite an expensive operation to set up a policing agent, a licensing agency in Canada. If we did it in Canada, why not require us to do it in Great Britain and Australia?"

It is also argued that under the Federal antitrust laws, respondents should be immune from treble damage claims for the damage the pools create because it exceeds their ability to respond to the judgment (Br. p. 2). It would seem elementary that the question presented here is whether on the undisputed facts on this record the respondents have violated the law and as a result of the activity and restrictions of the pools which they have joined Zenith has suffered damages. Whether or not Zenith is a large or small company and whether Hazeltine companies are rich or poor are questions completely beside the point.

It should be noted that in the lower court it was contended that Hazeltine had to enter the Canadian conspiracy because "those same restrictions have to be imposed under Canadian law or else the owner of the patents is subject to forefeiture of his rights" (A. 404). That contention was found by the trial court to be false (Finding XXXII, A. 2906) and, as conceded at page 153 of respondents' brief, has now been abandoned.

(a) The Treble Damage Judgments.

It must be apparent to this court that whether or not illegal patent pools exist in all three markets involved and whether or not they prevent the export of Zenith's products to such markets are questions charged with tremendour public import because those restrictions apply not only to Zenith but to every American electronic company (Pl. Ex. 50A, A. 2830). Obviously it was to afford relief against such illegal practices that the anti-trust laws were passed by the Congress in the first place and obviously the right given by the Congress to private litigants to enforce these laws by a suit for treble damages was granted to further the public interest involved in the enforcement of these laws. See *Radovich* v. *National Football League,* 352 U. S. 445, 453-4 (1956) where this Court said:

> "Congress has, by legislative fiat, determined that such prohibited activities are injurious to the public and has provided sanctions allowing private enforcement of the anti-trust laws by an aggrieved party. These laws protect the victims of the forbidden practices as well as the public * * *."

The record shows that the Hazeltine Companies on their foreign counterpart patents (A. 947) are receiving over one million dollars a year from these illegal pools (A. 23; Def. Ex. 32; A. 1855) and it is understandable that they are very unhappy over the prospect of the anti-trust laws being enforced against them. However, we feel sure that the invective used in their brief against Zenith and its counsel will not obscure the evidence proving the conspiracy issues and that the resulting damage therefrom is not in dispute and not denied and that the case stands in the posture of a demurrer to the evidence. This issue was first raised by motion to dismiss in the trial court (A. 2939) which that court promptly denied (A. 3037-8). In the court below the ruling of the trial court was reversed on the same demurrer to the evidence thus testing its legal sufficiency to show the resulting damage and its amount and the threat of future damage caused by the illegal pools.

The Court of Appeals decision did not set aside the findings of fact entered by the district court and described in the Court of Appeals decision as follows (A. 4254):

> "The district Court concluded that the alleged conspiracies had as their express purpose, prevention of importation of television apparatus made in the United States; that HRI by participating in the conspiracies had violated the Sherman Act. . . ."

The witness L. B. Dodds', counsel and an official of the Hazeltine companies and who had managed the licensing of both domestic and foreign patents for respondents for a quarter of a century (A. 144) testified that his company had participated in the pools for many years and "intended to continue to stay in the pool" (A. 179). He also stated (A. 400) in colloquy with the trial court:

> "Mr. [illegible]dds: Well, in Canada, Hazeltine itself did put the patents in the Pool by an agreement with the Canadian Radio Patents Pool."

The Court of Appeals holds that illegal pools proven by documentary evidence to be designed to stop Zenith's export business and cause damage to that business as a matter of law could not even constitute a threat to Zenith's export business under 15 U. S. C. § 26. It is obvious that while admitted and uncontradicted facts are present in the record the Court of Appeals decision that such facts do not justify an injunction or treble damage award raises a question of law under the antitrust laws which this court can resolve as a legal proposition. See *Bigelow* v. *RKO Radio Pictures, Inc., et al.,* 327 U. S. 251 (1946) and *Continental Ore Co.* v. *Union Carbide Corp.,* 370 U. S. 690 (1962).

Respondents argue at pp. 45 and 64 of their brief that documents in evidence in this case do not prove a restriction of imports into England and Australia. This issue they ask this court to decide without remand because they have to concede it was decided in their favor in the court below.

We have set forth at length in our original brief the undenied and uncontroverted testimony as to the conspiracies implemented by patent pools designed to control the entire electronics market in the respective countries. No one can seriously contend that under the decisions of this court this evidence is not legally sufficient to prove a conspiracy which violates the Federal antitrust laws.

Thus, this court held in *Interstate Circuit Inc.* v. *United States,* 306 U. S. 201, 227 (1939) that even without direct evidence of conspiracy, such as is presented here:

> "Acceptance by competitors without previous agreement of an invitation to participate in a plan, the necessary consequence of which, if carried out, is restraint of interstate commerce is sufficient to establish an unlawful conspiracy under the Sherman Act."

This court also said at p. 225 of the same opinion in referring to the right of a court to draw the inference of conspiracy "this inference was supported and strengthened when the distributors, with like unanimity, failed to tender testimony at their command of any officer or agent of a distributor who knew or was in a position to know whether in fact an agreement had been reached among them for concerted action."

Of course, in the instant case, no denial by any official was possible because the conspiracy was proved by documentary evidence and the documents were conclusive. No officer of any of the pools and no officer of respondents denied any document in the case or denied any of the conspiracy proofs. In Canada, McConnell, the pool manager, was not produced as a witness at the trial to deny that the pool did damage Zenith or to deny that he threatened an infringement suit against Zenith or to deny that the instant suit was instituted and prosecuted by respondents as a part of the overall conspiracy to prevent Zenith from exporting sets into Canada.

It is now argued in the respondents' brief that this court cannot hold the respective patent pools violate the law because the only thing decided by the Court of Appeals was that there was no "fact of damage."

Assuming *arguendo* that the only issue decided in the treble damage counterclaim was a damage issue; to even reach that issue the Court of Appeals necessarily had to approve at least tacitly the conspiracy findings of the trial court. We have pointed out under the rules of this court "the statement of a question presented will be deemed to include every subsidiary question fairly comprised therein."

The Court of Appeals took no issue with the trial court's findings and conclusions that the pools were formed and carried on by conspiracy and were illegal. As far as Canada is concerned; the following language from the court's opinion had to assume that an illegal patent pool was involved, otherwise the damage even if it existed was irrelevant. The Court said "Zenith's Wright's testimony with respect to the Canadian market can be considered as some slight evidence of the fact of damage."

Furthermore, as a matter of law a conspiracy of this kind cannot be dismembered into different periods of time as respondent's attempt but the evidence has to be viewed as a whole not only as to its sufficiency on the conspiracy issues but as to "the character and effect" of the conspiracy on the issue of damages as well.

As this court said in *Continental Ore Co.* v. *Union Carbide Corp.*, 370 U. S. 690, 699 (1962) cited above:

> "The character *and effect* of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole." (Italics ours.)

It is apparent that in order to determine the amount of damage or the "fact of damage," the court has to view the conspiracy proofs as a whole to determine whether the trial court's Finding that the purpose of the conspiracy was to damage the petitioner by excluding its product from patent protection in the three markets involved was correct.

One of the questions presented in the petition for certiorari was whether the record shows error by the court below in vacating the injunction against the illegal pools. Whether or not the Court of Appeals erred in vacating the injunction cannot be determined without a decision by this court as to the legality of the pools which threatened Zenith's business. As we have already pointed out in our original brief, the only defense to the conspiracy issue ever attempted by respondents was that in Canada the pool was justified by the Canadian Patent Act (A. 404). That defense, while presented at length in the trial court was abandoned in the Court of Appeals and no attempt has been made to legally justify the pools either in the Court of Appeals or here.

As we have pointed out, the respondents seek to have this court ignore all the evidence of the formation and activity of the pools prior to October, 1957, the date of the settlement of the RCA-Zenith case. Such a contention was disposed of in the recent decision of *Hanover Shoe* v. *United Shoe Machine Corporation,* 20 L. Ed. 2d 1331 (1968) where this Court in a footnote said:

> "United has also advanced the argument that because the earliest impact on Hanover of United's lease-only policy occurred in 1912 Hanover's cause of action arose during that year and is now barred by the ap-

> plicable Pennsylvania statute of limitations. The Court of Appeals correctly rejected United's argument in its supplementary opinion. We are not dealing with a violation which, if it occurred at all must occur within some specific and limited time span. Compare *Emich Motors Corp.* v. *General Motors Corp.* 229 F. 2d 714 (CA 7th Cir. 1956) upon which United relies. *Rather, we are dealing with conduct which constituted a continuing violation of the Sherman Act and which inflicted continuing and accruing harm on Hanover.* Although Hanover could have sued in 1912 for the injury that United inflicted, it was equally entitled to sue in 1955." (Italics ours.)

This discloses that there is no merit in the unpleaded defenses of release and statute of limitations relied on in the court below but apparently abandoned here.

Further, this court has expressly dealt with the respondents' contention that the earlier evidence having to do with the activities of the pool cannot be disregarded on the issue of the fact of damage. In *Bigelow et al.* v. *RKO Radio Pictures, Inc.*, 327 U. S. 251, 264 (1946) this court stated:

> "In the absence of more precise proof, the jury could conclude as a matter of just and reasonable inference from the proof of defendant's wrongful acts and their tendency to injure plaintiff's business, and from the evidence of the decline in prices, profits and values, not shown to be attributable to other causes, that defendant's wrongful acts had caused damage to the plaintiffs."

Since it is conceded in respondent's brief that the issue of the "fact of damage" is before this court for decision it follows that to determine whether petitioner was damaged by respondents' wrongful acts this Court has to determine as part of that issue whether respondent's acts in participating in the pools were or were not wrongful. Under the decisions of this Court, the facts showing the illegal nature of the conspiracy and their tendency to damage petitioner's business were necessarily involved in the Court of Appeals decision and are necessarily involved in the decision of the issues here on review.

Furthermore, the facts shown by this record of the operation of the pools prior to the RCA settlement in 1957 are relevant and pertinent evidence on the nature of the pools and their tendency to damage petitioner's business by their cumulative effect.

In *Continental Ore Co.* v. *Union Carbide Corp.,* 370 U. S. 690, 709, 710 (1962) this Court stated:

> "Petitioners sought to introduce evidence that the conspiracy and monopolization alleged began in the early 1930's, that overt acts in furtherance thereof occurred in the 1930's and that it was pursuant to this anticompetitive scheme that respondents sought to and did eliminate petitioners from the vanadium industry after 1938. This evidence was clearly material to petitioners' charge that there was a conspiracy and monopolization in existence when they came into the industry and that they were eliminated in furtherance thereof."

This Court, in that same case, stated at p. 699 of its opinion "in cases such as this, plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each. *United States* v. *Patten,* 226 U. S. 525, 544; and in a case like the one before us the duty of the jury was to look at the whole picture and not merely at the individual figures in it: *American Tobacco Co.* v. *United States,* 147 F. 2d 93, 106 (CA 6th Cir.). See *Montegue & Co.* v. *Lowry,* 193 U. S. 38, 45, 46, 48 L. Ed. 608, 611, 612."

As stated in the *Shoe Machinery* case cited above, the effect of this instant conspiracy constituted a continuing violation of the Sherman Act which caused "continuing and accumulating harm" to Petitioner's foreign business.

In our main brief (p. 13) we have shown that the pool sent out continuous "warning notices" to the trade (A. Def. Ex. 134; A. 1869) seeking to induce a boycott of imported radio and television sets. The pool held meetings with dealer organizations seeking to impose such a boycott and sent out notices to the trade papers that "newspapers from coast to coast carry the tremendous total of 4,343,084 advertising messages to help put a stop to the importation of cheap, substandard imported radios." (A. 1863)

The Court of Appeals dismissed from consideration any damaging effects not shown to have been initiated within the damage period. The record shows that the activities of the Canadian pool have been going on since 1926 and their effects on people Zenith sought to do business with were cumulative. Those effects obviously did not come to a halt merely because the damage period started on a certain date in June 1959, because the Pool was still operating at a permanent address and with a permanent staff (Pl. Ex. 50(a); A. 2812-2829).

The respondents admitted a threat of the pool to assert pool patents against Zenith during the damage period but say such threat could not damage Zenith as a matter of law. Although the warning notices (A. 1869) by their terms sought to induce a boycott of the trade against Zenith products it is claimed that this could result in no damage as a matter of law. It would seem to be self evident that this activity was intended to and did damage Zenith's business. That such activity would necessarily damage Zenith's business was admitted by respondents' own witness Henderson (A. 701, 703-5) and by the Royal Commission report (Pl. Ex. 50A, A. 2812) introduced in evidence by respondents themselves.

The respondents made no effort and adduced no testimony or other evidence to show that the illegal activity of the pools had ever ended prior to the entry of an injunction in this case. In fact, their counsel admitted that the pools were still in existence and that Hazeltine companies were still participating therein a year after the case was tried (A. 3036) and, "that these arrangements have continued and, so far as I know, are in existence today. There is no question about that."

In the instant case, having shown the inception by conspiracy of the continuing and cumulative activities of the pool which were designed to control an entire industry, these activities were presumed to continue until respondents had shown by proof that they had ended. (See *U. S.* v. *Kissell,* 218 U. S. 601, 607-8 (1910); *Hyde* v. *United States,* 225 U. S. 347, 369 (1912); *Local 167, I. B. T.* v. *United States,* 291 U. S. 293, 297-8 (1934).

(b) The Injunction.

As we have pointed out in our original brief, the question of whether illegal patent pools posed a threat to Zenith's business in the markets involved is before this court for determination because the court below has vacated the injunction against the pools. To determine the question this court must necessarily determine whether or not a conspiracy has been proven and is illegal, and whether or not the intended damage to Zenith's business constitutes a threat to that business within Section 15 of the Clayton Act.

Respondents now say, by affidavit of David Westerman, president of Hazeltine Corporation, that they have sought a modification and termination of the agreement licensing Canadian Radio Patents, Ltd. with Hazeltine patents which, by its terms, was not subject to termination "until June 30, 1966", which was two years after the case was tried.

Under the terms of the district court's decree, the Hazeltine companies were enjoined from continuing in any of the pools (A. 3080). Since there was no stay or supersedeas entered during the appeal on the injunction order (A. 3080) if Hazeltine had not taken steps to get out of the pools it would have been in contempt of court. How they improve their legal position by filing an affidavit of compliance as an exhibit to their brief is not pointed out. That the injunction greatly improved Zenith's Canadian business is shown at pp. 83-84 of our original brief.

It must be apparent to this Court that the entire Canadian business of Zenith is threatened with disaster and complete destruction unless the injunction against the Canadian pool is reinstated. As is shown by respondents own exhibit, plaintiff's exhibit 50A (A. 2811; 2829-30) the pool has some 5,000 patents which it can assert against Zenith. Hazeltine has nine color patents whose Canadian counterparts are in the pool, and which Hazeltine says control the color television business (A. 946). It now appears that Zenith's television business in Canada amounts to over twelve million dollars per year (App. B to main brief, p. A. 26). If any one of the patents in the pool can be sustained against Zenith's television sets, Zenith becomes liable for millions of dollars of damages and suits can be maintained by respondents against its distributors and customers, and confiscation of its products will follow under the Canadian patent law (A. 458). If such an injunction is not reinstated the only way that Zenith could get a pool license and continue in business in Canada would be to build a factory at a cost of millions of dollars, abandon its export business and pay off in damages to the Pool or engage in expensive and never ending litigation over the validity of the 5,000 pool patents.

We doubt that a more drastic and disastrous prospect has ever faced a litigant such as Zenith under the antitrust laws. If the decision of the court below is permitted to stand then such laws cannot prevent the threatened damage from the illegal Canadian pool, and we most respectfully submit that then such laws have no sanctions whatever for the protection of American export business and that such result would be gleefully bruited around the world by the greatest conspiracy of competitors which any individual company has ever faced in an effort to export its products to the markets of the world.

(c) The Court of Appeals Did Not Apply the Correct Legal Standard in Reversing the Trial Court.

At p. 61 of our original brief, we quoted from *Continental Ore Co.* v. *Union Carbide Corporation,* 370 U. S. 690, 696 (1962) as follows:

> "The Court of Appeals was, of course, bound to view the evidence in the light most favorable to Continental and to give it the benefit of the inferences which the evidence fairly supports, even though contrary inference might reasonably be drawn."

At p. 84 of respondents' brief, the statement is made that *Continental Ore* cannot be relied upon for the purposes cited because it was a jury case and because the court of appeals decided: "That the verdict for the defendants should have been directed."

We submit that the rule we quoted applies in the instant case. In the first place, the same rule as to the inferences and intendments applies to the findings of the trial judge as applies to a jury verdict.

In *Indemnity Insurance Co.* v. *Pioneer Valley Savings Bank,* 343 F. 2d 634, 644 (8th Cir. 1965) it is stated:

> "Moreover, in appellate review of a decree in equity, and similarly of a judgment in an action at law tried by the court upon waiver of a jury trial, the prevailing party is entitled both to the acceptance by the reviewing court of that view of the evidence which is most favorable to such prevailing party, and likewise to

> the benefit of all favorable inferences which may reasonably be drawn from the facts proved, and if, when so viewed, there be substantial evidence to sustain the findings of the trial judge, then the judgment may not be reversed by the appellate court, unless it be against the clear weight of the evidence, or unless it be influenced by an erroneous view of the law."

In *St. Louis Testing Laboratories* v. *Mississippi Valley Structural Steel Co.*, 375 F. 2d 565, 566 (8th Cir. 1967) the court said:

> "We have in mind the accepted standards that, in a case tried by the court, its findings are presumptively correct; that we are to take that view of the evidence favorable to the appellee; that the findings are not to be disturbed unless clearly erroneous and that the appellee is entitled to the benefit of all favorable inferences."

To the same effect is *Barber-Greene Co.* v. *Bruning Co.*, 357 F. 2d 31 (8th Cir. 1966) at p. 36.

This court's decision in *United States* v. *U. S. Gypsum Co.*, 333 U. S. 364, 395 (1946) cited at p. 81 of respondents' brief is not in point. This court reversed because it found contemporaneous documents which were undisputed and uncontradicted in evidence which were in conflict with defendants' denials they were in a conspiracy. In the instant case, the converse is true. Here the Petitioner's evidence of conspiracy and of damage is documentary and undenied and corroborated by the post trial results of Zenith's business in Canada when protected by the trial court's injunction.

II.

THE AMOUNT OF PETITIONER'S DAMAGES WAS PROPERLY PROVEN AND IS HERE FOR DECISION UNDER THE PRECEDENT OF THE BIGELOW CASE.

This record shows that the illegal conspiracies in Canada, England and Australia have been in force for well over a quarter of a century. In Canada the conspiracy has completely destroyed an open market since 1926 (P. Ex. 50A, A.2811, 2829-30). Ordinarily, a comparison of petitioner's profits while operating without restrictions, with profits made in a restricted market would be a proper proof of petitioner's damages, *Bigelow et al.* v. *RKO Radio Pictures, Inc. et al.*, 150 F. 2d 877. As we have pointed out since the injunction was issued against the pool Zenith has had an open market in Canada and has done over twice as much business as it did before in Canada (App. B to our main brief, pp. A25-A41). However, at the time of the trial no such comparison was possible since the respondents and their co-conspirators had destroyed such comparisons because they destroyed an open market. The best evidence available to Petitioner for a comparison was the evidence of petitioner's results in the open market in the United States with petitioner's results in the restricted Canadian market. This was the comparison used and there was no objection to it as to competence or relevance in the trial court. Further, there was no question raised on this record of the competency or relevance of defendant's exhibit 220 (A. 324, 2661, 716-64), used as proof of the amount of petitioner's damage.

There is an attempt, in respondent's brief, to reargue the weight of the evidence. That such an issue cannot be entertained here is shown in the case of *Milwaukee Towne*

Corp. v. *Loew's Inc. et al.*, 190 F. 2d 561, 566 (7th Cir. 1951), where the Court of Appeals stated:

> "Neither do we need to follow defendants in their detailed argument designed to show numerous fallacies and inaccuracies in the exhibit prepared and submitted by plaintiff's accountant, for the reason that under the rationale of the *Bigelow* case we are satisfied that it was within the province of the trier of the facts to rely upon the computation there disclosed, providing, of course, there was proof of the fact of damage."

There was no denial of the amount of Zenith's damages and no countervailing testimony or exhibits offered at the trial. The question therefore resolves itself into whether or not the damage exhibits had any value at all as evidence in the case. That question is resolved in *Bigelow et al.* v. *RKO Radio Pictures, Inc. et al.*, 327 U. S. 251, 267 (1946) where this court said:

> "* * * The wrongdoer may not object to the plaintiff's reasonable estimate of the cause of injury and of its amount, supported by the evidence, because not based on more accurate data which the wrongdoer's conduct has rendered unavailable. * * * The constant tendency of the courts is to find some way in which damages can be awarded where the wrong has been done. Difficulty of ascertainment is no longer confused with the right of recovery for a proven invasion of the plaintiff's rights."

Further, under this decision the amount of plaintiff's damages is inextricably bound up in and becomes a substantial part in the proof of the "fact of damage". The question here is whether or not the pools had caused monetary damage to petitioners' radio and television business; the proofs of the amount of damage show that they did.

This, we submit, is not an issue to be remanded to the lower court as respondents now assert but one that can be determined here on proofs to which there is no denial.

While it is contended that this court can not decide the issue of the amount of damage because the Court of Appeals did not decide it; in *Bigelow* the Court of Appeals did not pass on the amount of petitioner's damages either but attempted to dispose of the entire case on a determination that there was no "fact of damage." This court reversed the Court of Appeals on the "fact of damage" issue and approved the finding of the amount of damages without remanding the case for further decision by the Court below.

III.

THE MISUSE DEFENSE IS NOT MOOT.

We have already pointed out at pp. 102-113 of our original brief that there is no defense to the misuse issue and we need not repeat that argument here. It is now argued that because petitioner's counsel in the trial court argued that the package licensing provisions of the tendered licenses were illegal in and of themselves, irrespective of whether the general overall conspiracy was proved, that therefore counsel abandoned the contention that the conspiracy also made out the misuse defense. This is too ridiculous a contention to justify any extended argument.

In the first place, no such concession was made. In fact, it was argued throughout the trial that all of Hazeltine's licensing activities were tied in with the activities of the pool and that the conspiracy was enforced and implemented by the refusal of the respondents to grant domestic licenses unless limited in such a way as to prevent a foreign license being created by implication. It was argued throughout the case that the refusal of Hazeltine to grant unrestricted domestic licenses, discussed at pp. 72-3 of our original brief was tied into the conspiracy and designed to prevent the domestic licensee from obtaining a license to export by operation of law. It is now claimed that the issue is moot. It is admitted at p. 160 of respondents' brief that "the court did reject two of Zenith's misuse arguments and modified two paragraphs of the injunctive decree relating to license offers on Hazeltine Research's domestic patents."

Since petitioner seeks reversal of these modifications of the injunction decree and this court has granted certiorari on the questions, it is difficult to see why the questions are moot.

The entire issue is discussed at pp. 102-113 of our original brief and need not be reargued here.

IV.

THERE WAS NO MERIT IN HAZELTINE'S POST TRIAL MOTIONS AND THEY WERE PROPERLY DENIED BY THE TRIAL COURT.

With extensive argument and offers of proof in post trial proceedings in the trial court, respondents sought and were denied a new trial in the District Court. The issue of whether or not respondents were entitled to a new trial has been by argument and innuendo submitted for determination to this court. As we shall show, nothing but legal issues were presented by the post-trial motions and there is no occasion for remanding the issue for a ruling by the Court of Appeals.

This Court stated in *Velk* v. *St. Louis, S. F. R. Co.*, 220 U. S. 580 (1911) that "as the case is here upon certiorari to review a judgment of the Circuit Court of Appeals, this Court has the entire record before it with the power to review the action of that court as well as direct such disposition of the case as that court might have done." . . . (220 U. S. at p. 588.)

On March 29, 1965, a year after the case had been tried and shortly after findings and conclusions had been entered by the trial Court; respondents, represented by new counsel, filed motions to set aside the court's findings and to grant a new trial (A. 2939, 2951).

As a first ground for the motion, respondents charged that L. B. Dodds, their trial counsel, was surprised by a variance between the pleadings and the proofs. The trial court disposed of this contention by saying:

> "The Court: I think the pretrial proofs show that he was not suddenly confronted with this, because the pretrial briefs filed many months before trial indicated to Mr. Dodds what the theory of the case was." (Court of Appeals App. 1865.)

As a second ground, Hazeltine argued that the statute of limitations, as well as the release of the RCA-Zenith litigation would have been pleaded if they had understood the nature of the petitioner's claims. However, the trial court ruled both these defenses insufficient as a matter of law (A. 3062), even if they had been properly pleaded.

As a third ground Hazeltine contended that Zenith had failed to establish the fact and amount of damage. This was raised by motion to dismiss and the trial court ruled against respondents and the court below reversed so the issue is here for review (A. 3062).

Respondents also submitted offers of proof in support of the motions. These included proof of (1) Zenith's RCA release; (2) Zenith's annual financial reports to stockholders for the period 1957-63, (3) tariffs, taxes and other matters claimed to affect the importation of television and radio sets in the Australian and English markets, (4) changes alleged to be necessary to adapt American television sets for the English market and (5) licenses and licensing practices of the Australian pool (A. 2955-2995).

Hazeltine also filed as an offer of proof an accounting report prepared by Ernst & Ernst based on an *ex parte* interpretation of Zenith's damages based on additional materials not even in the trial record (A. 2960). Respondents' counsel stated with reference to the above offers of proof that "in asking for this extraordinary relief here that we are not doing so on the ground of newly discovered evidence." (Ct. of Appeals App. 1865.)

All the matters raised by respondents' motions were given full and careful consideration by the trial court after being submitted on briefs and in a three-day oral argument (A. 3086). Following the hearing, the trial court ordered that the case be reopened for the sole and limited purpose of determining whether an embargo existed in Australia and England prior to the start of the damage period. The court ruled that no change would be made in the damage findings with respect to Canada and directed Zenith to prepare and submit a judment for damages in Canada and for injunctive relief in the three markets (A. 3038, 3039, 3524-7).

The court disagreed with that part of the Hazeltine argument dealing with the conspiracy and the "fact of damage" and remained convinced that its conclusions were right and said that "I have little hesitancy in saying that I think the evidence warranted doing what I did, and if I had to do it all over again—I would do it all over again." (A. 3086.)

Except for the allowance of a further hearing on the amount of petitioner's damages in England and Australia (A. 3038-9; 3524-7) the court denied the Hazeltine motions, rejected its offers of proof and reaffirmed its findings of fact and conclusions of law (A. 3079). Respondents now argue, and did argue in the Court of Appeals as if the post trial offers of proof constituted actual evidence in the case and were a proper part of the trial record (see respondents' brief p. 55).

There is submitted for decision here by the respondents' argument, the limited issue of whether as a matter of law an abuse of discretion could be shown in the trial court's denial of respondents' motions in view of the fact the evidence offered was admittedly not newly discovered, and the tendered pleas of the statute of limitations and release raised legal issues, which had no merit.

(a) Hazeltine's Offer of Proof Not Constituting Newly Discovered Evidence Failed to Warrant a New Trial as a Matter of Law.

We have already shown that it was admitted that the offers of proof contained no newly discovered evidence. The rule limiting the granting of a new trial to newly discovered evidence is as follows:

> "There must be a showing that the alleged newly discovered evidence was discovered since the trial; facts from which the court may infer reasonable diligence on the part of the moving party; that the evidence is not merely cumulative or impeaching; that the evidence is material; and the evidence is of such character that in a new trial it would probably produce a different result." *McCullough Tool Co.* v. *Wells Surveys, Inc.*, 343 F. 2d 381, 410 (10th Cir. 1965).

See also *Aladdin Mfg. Co.* v. *Mantle Lamp Co. of America*, 116 F. 2d 708, 712 (7th Cir. 1941); *Mayer* v. *Higgins*, 208 F. 2d 781, 783 (2d Cir. 1953).

Since Hazeltine's offers of proof fail in every respect to qualify as newly discovered evidence, there could be no abuse of discretion as a matter of law on the part of the trial court in refusing to grant a new trial.

(b) There Is No Merit in the Claimed Affirmative Defense of the Statute of Limitations.

In the first place, affirmative defenses were waived by the failure on the part of respondents to plead them before the conclusion of the trial. See *Systems Inc.* v. *Bridge Electronics Co.,* 335 F. 2d 465, 466 (3rd Cir. 1964); *Standard Tile Insurance Co.* v. *Roberts,* 349 F. 2d 613, 622 (8th Cir. 1965); *Anderson* v. *National Producing Co.,* 353 F. 2d 834, 838 (2d Cir. 1958).

Secondly, the so-called defense of the statute of limitations was tolled by reason of Section 5b of the Clayton Act.

In the government's civil case of *United States* v. *General Electric, et al.,* civil case No. 410-157, filed by the government on November 28, 1958, in the Southern District of New York, *Hazeltine was expressly named as a co-conspirator.* The complaint and the consequent decree therein were put in evidence by respondents and the decree was entered against the defendant, General Electric on November 1, 1962 (Pl. Ex. 48, A. 2783, 2785-6).

By reason of the pendency of the government's suit, the Federal four years statute of limitations applicable to private anti-trust cases was tolled at all times between November 28, 1958 and November 1, 1963. Consequently, even if the statute of limitations was pleaded, Zenith was entitled to recover in this suit for damages occurring prior to the date of the filing of this counterclaim back to and including November 24, 1954. See *Hardy Salt Company* v. *State of Illinois,* 377 F. 2d 768 (8th Cir. 1967); Cert. Den. 389 U. S. 912 (1968).

Since only four years of damages prior to the filing of the instant counterclaim were sued for, it is a little difficult to see what merit there could be in the statute of limitations defense.

(c) The Release.

The contention made that a release of an antitrust suit in October 1957 could release an action for damages because of a continuing conspiracy in 1959 is likewise a little difficult to understand. This court has held that future causes of action for tort liability cannot be released. See *Lawler v. National Screen Service Corp.*, 349 U. S. 322, 327-8 (1955).

Since the damages entered in the district court only included damages from June 1, 1959 to May 31, 1963, the four year damage period subsequent to the 1957 release, the release defense obviously has no merit even though it had been properly pleaded.

V.

THE DISMISSAL FROM THE SUIT OF HAZELTINE CORPORATION IS NOT JUSTIFIED ON THIS RECORD.

Respondent Hazeltine Corporation has filed a separate brief seeking an affirmance of the decision of the Court of Appeals reversing the trial court's finding of jurisdiction (A. 2893) and dismissing respondent from this case. The only contentions made are that (a) the stipulation relied upon by Zenith was signed only by named parties to the counterclaim and (b) that the judgment was not based on an *alter ego* doctrine.

Since, if Hazeltine Corporation was the *alter ego* of its child or subsidiary, when its counsel did sign the stipulation, then it did in fact sign—the question really is—can a decision of the district court be sustained on the *alter ego* theory? Respondent Hazeltine Corporation says it cannot because it says that the trial court's decision cannot be sustained except by the literal terms of the stipulation itself.

Respondent bases this conclusion on its statement at

p. 30 of its separate brief that "during the argument on the special appearance, the court never once referred to the *alter ego* doctrine or to any supposed evidence on that question. Instead his remarks and inquiries to counsel related to the stipulation."

In the first place, the statement is erroneous. The court at the hearing referred to by respondent said to Kayser, respondents' counsel "The Court: The basis for your argument, I assume, is that a child cannot bind its parent. Mr. Kayser: That is part of it, but it goes beyond that, your Honor." (A. 3043).

This colloquy shows that the trial court knew from the entire record that the "child" was binding its "parent" both factually and legally.

However, assuming arguendo that the trial court confined its reasoning to the literal terms of the stipulation itself that would not preclude petitioner from showing that the ruling of the district court was correct.

In the case of *Helvering* v. *Gowron,* 302 U. S. 238 (1937) at p. 245, this court stated:

> "In the review of judicial proceedings, the rule is settled that if the decision below is correct it must be affirmed, although the lower court relied upon a wrong ground and gave a wrong reason."

Here the record is abundantly clear that Hazeltine Corporation submitted the issue of whether or not it was in the case by virtue of the stipulation for determination by the trial court (A. 3043). If the trial court had jurisdiction to decide the issue then the case of *Hansberry* v. *Lee,* 311 U. S. 32, 40-41 (1940), upon which respondents rely, is not in point and no Constitutional question is involved here.

In *Hansberry,* the petitioner had not appeared in the court below before judgment was entered. Petitioner, there, had not asked for a determination of the issue of whether or not the court in the prior suit had personal jurisdiction over the litigant. In that case the petitioner never appeared in the first suit and the question was raised collaterally in a second suit by respondent attempting to assert that the prior suit had adjudicated the issues in the second suit on the merits against the petitioner on the theory that the first suit was a class suit. In *Hansberry,* the petitioner stayed out of the original suit and treated it as a nullity. Here the respondent came into court and asked for an adjudication on the entire record of whether or not the court had personal jurisdiction over the respondent and made this contention before any judgment was entered in the case. Obviously the respondent was before the court voluntarily, free to raise any question as to jurisdiction available in the entire record of the case and reopen the case for further proofs. Obviously no jurisdictional question is presented and the only question is whether the respondent submitted its person to the jurisdiction of the Court. This is a factual question which the Court of Appeals made no attempt to review.

(a) Hazeltine Corporation Waived Any Objection to Personal Jurisdiction by Consent, Agreement and Acts Constituting a General Appearance.

We submit that, the only issue which can be presented here is whether or not jurisdiction over the person of respondent was conferred by stipulation or acts constituting a general appearance. In the case of *Neirbo Co.* v. *Bethlehem Shipbuilding Corp.,* 308 U. S. 165, 167 (1939), the court said:

> "The jurisdiction of the Federal courts, their power to adjudicate, is a grant of authority to them by Congress and thus beyond the scope of litigants to confer. But the locality of a law suit—the place where

> judicial authority may be exercised—though defined by legislation relates to the convenience of litigants and as such is subject to their disposition. This basic difference between the court's power and the litigant's convenience is historic in the Federal courts. * * * "Being a privilege, it may be lost. It may be lost by failure to assert it seasonably, by formal submission in a cause or by submission through conduct."

At the outset, this court should observe that by proposed finding of fact No. 8 (A. 2914) respondent admitted jurisdiction of the subject matter, described itself and its parent Hazeltine Corporation under the heading of jurisdiction and parties, and described the stipulation here as having been entered into to avoid the otherwise triable issue of whether or not "it is appropriate to 'pierce the corporate veil'."

As we have pointed out at pp. 121-2 of our original brief, Hazeltine Corporation sought affirmative findings sanctioning all aspects of its foreign licensing activities. *Since Hazeltine Research, Inc. had no foreign patents, this proposed finding had to be for the benefit of the parent company.* If these proposed findings had been entered, this court would have found Hazeltine Corporation making the same arguments in favor of the district court's jurisdiction as we have made here and we would have had no answer to them.

(b) The Trial Court's Decision Necessarily Adjudicates That the Subsidiary Was the Alter Ego of the Parent and That the Two Are One Corporation.

It is contended that on contract principles, Hazeltine Corporation was not bound by the stipulation because it was signed by L. B. Dodds acting as plaintiff's counsel and not acting as the vice president of Hazeltine Corporation.

This ignores the reason for the stipulation, that the two companies were the same. In its proposed finding No. 8, the consolidated company stated (A. 2914) that the two companies were to be considered as one in order to avoid the necessity of proving the two companies were the same or that each was the *alter ego* of the other. In *Allied Chemical Co.* v. *Randall*, 321 F. 2d 320, 323 (7th Cir. 1963), it was stated:

> "The effect of applying the alter ego doctrine of course, is that the corporation and the person who dominates it are tried as one person, so that any act committed by one is attributed to both, and if either is bound, by contract, judgment or otherwise, both are equally bound."

Obviously, if the *alter* ego doctrine applies, the signature of Hazeltine Research, Inc. by Dodds, its attorney, bound the parent Hazeltine Corporation.

Respondents contend that because the stipulation in question was signed by L. B. Dodds, only for the research company, then therefore, it is not bound. Similar arguments have been rejected by other courts dealing with the issue. See *Fisser* v. *International Bank*, 282 F. 2d 231, 233-5 (2d Cir. 1960); *Weisser* v. *Murson Shoe Corp.*, 127 F. 2d 344 (2d Cir. 1942).

Respondents further assert that being a Delaware corporation, with its principal office in New York, it could not have been served here for its antitrust violations because of a lack of venue. This ignores the fact that the parent directed the starting of the instant case (A. 131-2) which the trial court found to be a part of the overall conspiracy alleged in the counterclaim (A. 67-8; 2857) and the further fact that the subsidiary is the agent of the parent so no question of venue is involved.

See *U. S.* v. *Scophony Corp.*, 333 U. S. 795, 808 (1948).

It appears from this record that Hazeltine Corporation, has at all times been present in this case since it caused to be filed the original complaint in 1959 as a part of and pursuant to the Canadian conspiracy; the trial court so found (A. 2857) and reiterated that finding after Hazeltine Corporation appeared in the case. Such finding makes Hazeltine Corporation a party to this case unless this court finds there is no substantial evidence to support it.

Here the stipulation was repudiated only after new counsel had been hired. This tactic is not new. It is not looked on with favor by the courts. See *Merrill* v. *United Air Lines, Inc.*, 25 F. R. D. 68, 78-9; affirmed 288 F. 2d 218, 220 (2d Cir. 1961).

As we have already pointed out in our original brief, Dodds and Ruestow tried the case for respondents and submitted proposed findings of fact on every issue in the case. This was a submission by Hazeltine Corporation to the jurisdiction of the trial court. See *Louisville & N. R. Co.* v. *Schmidt*, 177 U. S. 230, 237 (1900); *Ocean Accident and Guaranty Co.* v. *Felgemaker*, 143 F. 2d 950, 952 (6th Cir. 1944).

Finally, the trial court's knowledge of the stipulation and how it was formulated in pretrial hearings was firsthand, intimate and detailed. As often happens where a judgment is large, positions that counsel would not ordinarily have the temerity to advance are presented as a last gasp in a losing case. As the late Mr. Justice Holmes stated in *Sanitary District of Chicago* v. *United States*, 266 U. S. 405, 425 (1925):

> "* * * cost and importance, while they add to the solemnity of our duty, do not increase the difficulty of decision except as they induce argument on matters that, with less mighty interests, no one would venture to dispute."

CONCLUSION.

For the reasons stated here and in our original brief, it is respectfully submitted that the judgment below insofar as it changed, reversed or modified the trial court's decision of the case should be reversed and the judgments entered by the district court reinstated.

Respectfully submitted,

Thomas C. McConnell,
Philip J. Curtis,
Francis J. McConnell,
John Borst, Jr.,
Attorneys for Zenith Radio Corporation, Petitioner.

Of Counsel:
McConnell, Curtis, Mahon & Borst,
134 South La Salle Street,
Chicago, Illinois 60603,
RA 6-9131.

LIBRARY
SUPREME COURT, U. S.

FILED
NOV 1968
DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF OF RESPONDENT HAZELTINE RESEARCH IN RESPONSE TO ZENITH REPLY BRIEF

JOHN T. CHADWELL
VICTOR P. KAYSER
C. LEE COOK, JR.
JOSEPH V. GIFFIN
135 South La Salle Street
Chicago, Illinois

M. HUDSON RATHBURN
20 North Wacker Drive
Chicago, Illinois

LAURENCE B. DODDS
160 Middle Neck Road
Great Neck, New York

Attorneys for
Hazeltine Research, Inc.,
Respondent

Of Counsel:

CHADWELL, KECK, KAYSER,
RUGGLES & McLAREN
135 South La Salle Street
Chicago, Illinois 60603
RAndolph 6-2545

MASON, KOLEHMAINEN,
RATHBURN & WYSS
20 North Wacker Drive
Chicago, Illinois 60606
FInancial 6-1677

TWENTIETH CENTURY PRESS, INC., CHICAGO 60606

CITATIONS

PAGE

Hanover Shoe v. *United Shoe Machinery Corp.*, 392 U.S. 481 (1968) 6, 7, 9
✓

Fed. R. Civ. P. 13 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF OF RESPONDENT HAZELTINE RESEARCH IN RESPONSE TO ZENITH REPLY BRIEF

Zenith's reply brief makes so many incorrect statements as to the record, and new contentions, that it would not be possible to deal with them in oral argument and leave time to consider the real facts and issues. We are therefore filing this reply brief.[1]

---

[1] In this brief, we use the same abbreviations as set forth at footnote 2, page 2, of Hazeltine Research's answering brief. In addition, we refer to Zenith's Reply Brief as "Z.Rep.Br." and to Hazeltine Research's answering brief as "H.R.Br." Where emphasis appears in quotations in this brief, it has been supplied by us unless otherwise indicated.

1. At page 1 of its reply brief, Zenith makes the statement that "respondents cannot by record reference controvert *one single fact* set out in petitioner's statement of the case or point to *one error* in any record reference contained in the original brief."

In our original brief we have pointed out a great number of errors in the statements made in Zenith's brief and failures of the record references cited by Zenith to support the statements made by it. For example, at pages 94-95, and 128-129, we called attention to glaring misstatements of the record. Without attempting to be exhaustive, we point out that other instances of incorrect statements in Zenith's opening brief, or of misleading representations of the record, or of the citation of record references which do not in fact support the statements made, were noted in Hazeltine Research's answering brief at pages 30, 31, 51-52, 65-66, 90-91, 91-93, 95-96, 103-04, 105, 109, 125-26, 135, 138, 139, 143-44, 155-57, 162, 165 (n. 76) and 167.

Further, we point out in this memorandum additional instances of new misstatements appearing in Zenith's reply brief.

2. In an attempt to create the impression that the Canadian pool kept Zenith from obtaining distributors after the RCA settlement, Zenith's Reply Brief (p. 27) states, "The testimony was undenied that because of the activity of the pool Zenith could not obtain any distributors except in Western Canada (A. 456)." Not only does the cited record reference fail to support the statement, but Zenith's own published records show it is not so. Zenith's Annual Reports stated that in 1958 Zenith appointed "[f]our outstanding and experienced independent distributors . . . in western Canada," and that by the end of 1959 "Zenith *now has a strong distribution network* at

both the wholesale and retail level *throughout Canada*" (1958 and 1959 Zenith Annual Reports, A. 2991, 2993). We suggest that the truth should not be suppressed just because the trial judge incorrectly refused to admit the Annual Reports in evidence (H.R. Br. 117-18).[2]

Zenith attempts to explain away its Annual Reports by reference to the trial court's statement that "there is no obligation to cry on the stockholders' shoulders" (Z.Rep.Br. 29). The answer is two-fold: First, Zenith *ignores* entirely the fact that instead of "crying," these reports are full of *affirmative* and glowing statements and representations by Zenith as to the outstanding growth and success which followed its entry into the Canadian market after the 1957 settlement, including references to the "enthusiasm of distributors and dealers," "successfully countered the downward industry sales trend," "gratifying progress" and the like (H.R.Br. 113-115). Second, Zenith *did* freely and at length "cry on its stockholders' shoulders"—when there was something to cry about. Thus each year it reported to its shareholders about its various problems in foreign markets, including such things as "severe foreign competition," "lower priced products"; and specially as to Canada it reported on "heavy starting costs," problems of "exchange ratio," "imposition of additional tariffs," and the like (H.R.Br. 116). But *never once* after 1957 did Zenith make any mention of the Canadian pool or of any problems with the Canadian pool.

3. Zenith takes issue with the foreword in the Hazeltine Research brief concerning the lack of substance to Zenith's claims (Z.Rep.Br. 1-2). Yet Zenith's reply brief provides further proof of the lack of credibility of Zenith's claims.

---

[2] Zenith agrees that its Annual Reports are "public records" (Z.Rep.Br. 29).

(a) Zenith admits that its original contention and findings that the pools prevented it from building up a market in England and Australia were untrue. Zenith's original damage claims as to England and Australia (as well as Canada) as set forth in the findings were based on the contention that for many years prior to the alleged damage period *the pools* had kept Zenith from importing into those three countries and from establishing a market:

> "Q. Now, isn't it a fact, Mr. Kaplan, that Zenith has taken the position from the beginning of this litigation that for many years it was excluded by patent pools from importing radio and television sets into all three countries, Canada, England and Australia?
>
> "The Court: Well, it has not only taken that position, Counsel, but they persuaded the Court to so find.
>
> • • •
>
> "A. I think that that is correct" (A. 3446-47; see also A. 3204 and H.R. Br. 8-10).

In later hearings, over the vigorous opposition of Zenith,[3] Hazeltine Research proved that it was *not the pools,* but the governmental embargoes "and nothing else" which had kept Zenith from exporting to England and Australia and building up its markets in those countries (H.R.Br. 16-17). And on recall in November 1965, faced with the truth, Zenith's witnesses asserted that they had at all times been aware of the embargoes and their effect (H.R.Br. 19-22).

In its reply brief Zenith now not only *admits* that "It is established on this record that it was not possible to export Zenith sets into England during the periods starting with the war and ending in June 1959 because of import restrictions" (Z.Rep.Br. 20), but *seeks to rely on the embargoes* imposed in England and in Australia to explain its conduct in failing to file a counterclaim with its Answer in 1960 (see p. 10, *infra*). In other words, Zenith and its witnesses admitted, on recall, and in its reply brief Zenith *now admits again,* that its original claims as to England and Australia, involving the contention that *the pools* had kept Zenith out of those countries for many years prior to 1959, *were not true.*

---

[3] See footnote 14, H.R.Br. 22.

(b) Zenith continues to rely on testimony which the witnesses themselves repudiated. Zenith's witnesses had testified at the trial in February 1964 that: (1) Zenith had imported television sets into England which had been modified by Zenith to the English 405-line standard; (2) Zenith's English distributor had converted Zenith sets to the 405-line English system; and (3) its distributor had made limited sales of such modified sets (H.R.Br. 33/36). Accordingly, Zenith proposed and the trial court entered Finding XXII, reciting that "Zenith has successfully engineered sets for the British market and has shipped some to its English distributor . . ." (A. 2902).

But on deposition of Zenith's English distributor it was disclosed that no 405-line sets had been sent by Zenith to the English distributor, none had been converted to the 405-line system by the distributor, and no such sets had been offered for sale by the English distributor, and thereafter, upon recall of the Zenith witnesses in November 1965, they recanted their original testimony and admitted it had no basis (H.R.Br. 36-40).

Zenith's own records disclose the reason Zenith made no effort to enter the English television market after the lifting of the embargo on June 8, 1959, namely, that Zenith was waiting for a change in the broadcast standards to the 625-line system (H.R.Br. 40-44), and the Court of Appeals properly so concluded (A. 4257). Nevertheless, Zenith ignores its own contemporaneous records and asserts that its failure to attempt to sell television sets in the English market was because of the "obvious and inherent threat" of the English pool (Z.Rep.Br. 20). What does Zenith cite as support? It refers to A. 464 and pages 86-88 of its original brief (Z.Rep.Br. 20, 21). The material cited consists primarily of the *very testimony of Messrs. Wright and Kaplan* given in February 1964 which *they repudiated* at the later hearing in November 1965 (H.R.Br. 33-40).

It was pursuant to its original contentions and testimony, afterwards repudiated as outlined above, that Zenith sought "damages" as to "England-Television" (A. 2908) in the amount of $8,079,859 or $24,239,577 after trebling—all without basis in fact.

4. Zenith's reply brief comes up with a new approach on the question of damaging impact or fact of damage. It argues that the effect of the alleged activities of the pools going back to 1926, the date of the inception of the Canadian pool (Z.Rep.Br. 42) was "continuing" and "cumulative" and that *those effects* "carried forward" into the damage period (see, e.g., Z.Rep.Br. 28, 41-42). This is merely another way of asserting Zenith's old contention that it is entitled to recover damages for its inability to build up markets allegedly resulting from activities of the pools taking place *prior to* the damage period, even as far back as 1926 (H.R.Br. 147-48).

This argument is based on a misconstruction of this Court's opinion in *Hanover Shoe* v. *United Shoe Machinery Corp.*, 392 U.S. 481 (1968). Zenith refers to footnote 15 at 392 U.S. 502 where this Court stated that the practice of United Shoe in refusing to sell shoe machinery "constituted a continuing violation of the Sherman Act" which inflicted "continuing and accumulating harm" (Z.Rep.Br. 39-40). But this Court did not hold that recovery could be had for activities occurring prior to the relevant damage period. Instead, the point being considered in the footnote was whether an *initial* impact on Hanover in the year 1912, not sued on within the statutory period after that date, barred recovery on the instant claim which was based on a continuation of United's lease-only practice and resulting impact on Hanover in later years. This Court held that failure to sue within the limitations period after 1912 did not bar the recovery sought by Hanover (392 U.S. at 502), but the only recovery sought and permitted was limited to damages flowing from rental payments which Hanover was forced to pay United during the damage period, *i.e.,* from 1939 (the beginning of the applicable statutory period) until 1955 (392 U.S. at 483-84, 494-495):

> "Our conclusion is that Hanover proved injury and the amount of its damages for the purposes of its treble damage suit when it proved that United had overcharged it *during the damage period* and showed the amount of the overcharge . . ." (392 U.S. at 494).

In footnote 15 referred to by Zenith, this Court was making reference to a continuing violation "of the Sherman Act" *within* the period of limitations "which inflicted continuing and accumulating harm" *during* that period (392 U.S. at 502, n. 15). It did not say that Hanover could collect damages for injury caused by acts which took place from 1912 to 1939, prior to the relevant damage period, which is what Zenith claims a right to do here.

Zenith's argument also ignores the record in the instant case:

(a) *Embargoes.* In the case of England and Australia, since the governmental embargoes "and nothing else" kept Zenith from importing to those countries from World War II until June 1959 as to England, and April 1960 as to Australia (A. 3203-05), the English and Australian pools *had no effect* on Zenith's business, "continuing," "cumulative" or otherwise, for twenty years prior to the four-year period. There is nothing in the record to show that the acts of the pools taking place prior to the inception of the embargoes at the outbreak of World War II in 1939 hurt Zenith during 1959-1963. In fact, Zenith's witnesses admitted that these pre-World War II acts did not have any effect after 1959 because they acknowledged that in both England and Australia they would have had to "start from scratch" after the lifting of the embargoes (A. 3437-38, 3490; H.R.Br. 18-22).

(b) *Crotty Affidavit.* As to all three countries, Zenith's 1963 motion for leave to file its counterclaim represented, and Crotty in his affidavit in support *swore,* that the *acts causing damage* had occurred *since* the filing of the answer (April 7, 1960). (A. 63; H.R.Br. 7). This is totally inconsistent with any contention that prior acts had caused damage to Zenith during the relevant period. Zenith's attempt to escape the limitations of its motion and affidavit (Z.Rep. Br. 12) fails on its face. For the paragraph of the motion cited by Zenith, after alleging that the counterclaim rose out of the "matters set forth" in paragraphs 12 and 13 of the answer, "and current related unlawful *activities* of plaintiff occurring *since the filing of the answer,*" stated "which *activities* are the proximate cause of present and continuing damage to defendant sustained after the filing of the answer" (A. 62). Irrespective of the wording of the motion, the clear and unambiguous language of the Crotty affidavit limits the motion by stating that the matters "which are the proximate cause of damages alleged and require the relief sought in said counterclaim, occurred after the filing of the answer herein" (A. 63).

(c) *Releases.* The releases given by Zenith in settlement of the *RCA* case in September 1957 expressly released damages which might result in the future caused by acts prior to September 1957 (A.2957-60; H.R.Br. 47-49). Thus, Zenith released whatever damage, cumulative or otherwise, it might have incurred in 1959-1963 as a result of acts which took place before September 1957. Yet, it is precisely such damages that Zenith claims a right to recover. Contrary to Zenith's assertion (Z.Rep.Br. 40), there is nothing in this Court's decision in *Hanover Shoe* which in any way weakens the defense of the release or the statute of limitations because the only damages awarded to Hanover were those suffered *in* the damage period as a result of the illegal acts *during* the damage period (392 U.S. at 483-84, 494-95).

Furthermore, in *Hanover,* the impact in the damage period was clear because plaintiff desired to buy the machines, could not engage in its business without the machines and was therefore forced to pay rentals (392 U.S. at 487). Here, there was no impact as to Canada because Zenith took the position that it was already fully licensed, and thus would not have taken a license if offered. Zenith went into Canada and sold in large quantities without a pool license and without interference by the pool (H.R.Br. 51-53). There is no showing that it incurred any additional cost or expense as a result of its not having a pool license, and there was no showing that any dealer or distributor either refused to handle its products, or cut down on the purchases of its products at any time during the damage period as a result of Zenith's not having a pool license. There was no impact in the other countries because, as we have pointed out, the record shows, among other things, that in Australia a license was available to Zenith, and in England the contemporaneous documents in evidence show that Zenith was not kept out of the television market by the pool but that it stayed out of that market because it was waiting for a change in the system which did not take place during the damage period (H.R.Br. 40-46, 64-66).

5. At pages 4 and 11 Zenith purports to explain why it did not file a counterclaim in 1960 despite the fact that it asserted in the original findings adopted by the trial court that it had been suffering damage for many years prior thereto (H.R.Br. 8-11). Its newly devised explanation is that it was waiting for "four years of damages" to accrue as to England and Australia, because the governmental embargoes in those countries prevented any damage from accruing prior to June 1959 and April 1960, respectively.

But as we have pointed out (H.R.Br. 21-22; p. 4 *supra*), Zenith denied that embargoes had prevented imports from the United States to England and to Australia, and Zenith shifted its position only after the trial court held in October 1965 that these embargoes "and nothing else" had kept Zenith out of those countries (H.R.Br. 16-17, 19-21).

The speciousness of Zenith's new explanation is further emphasized by the fact that:

(a) It could have no application to a failure to file a counterclaim as to Canada in 1960 if Zenith in fact was being hurt, for no governmental embargo had existed in Canada.

(b) Zenith's 1963 motion and the Crotty affidavit, purporting to explain why no counterclaim had been previously filed, made no mention of the embargoes or "waiting for four years of damage" to accrue (A. 62-63).

(c) In May 1963, when the counterclaim was filed, the Australian embargo had been lifted for only three years (H.R.Br. 16-17), not for "four years."

(d) In effect, Zenith argues that a counterclaim is not compulsory until the entire statutory period of limitations has accrued and that one need not file a compulsory counterclaim until all of the damages which could be permitted to accrue under the statute have accrued. Rule 13 of the Federal Rules of Civil Procedure does not permit such delay. Even if only one month or one year of damages had accrued, the counterclaim would have been compulsory and should have been filed, had such a claim existed.

6. In purported support of its contention that the Australian pool prevented the importation of radio and television sets, Zenith asserts that "during the damage period only 53 American-made sets were imported into Australia" (Z.Rep.Br. 32).[4] But Zenith's contention was that the pool policy prevented the importation of radio and television sets into Australia from *all* countries, not just from the United States (see Finding XXXIV, A. 2907), and an examination of the Australian statistics (A. 3396-3406) shows that during the period radio and television sets were imported from a number of countries in substantial quantities, including imports from the United Kingdom, Japan, Germany, The Netherlands, Hong Kong, and other coun-

---

[4] The statement is misleading because the Australian government import statistics covering the years in question (1959-60 to 1962-63, A. 3396-3406) show that in this period, in addition to 53 television sets, there were some hundreds of radios imported into Australia from the United States.

tries. The fact that there were not substantial imports from the United States was a result of the high import duty, high transportation cost and high prices of American-made sets (see H.R.Br. 139-40).

7. At pages 9-10 Zenith suggests that both "Paragraphs 12 and 13 of the Petitioner's answer" were held by the trial court to have been proved as part of the "defense of misuse asserted by" Zenith (Z.Rep.Br. 9-10). In fact, *paragraph 13* of the answer relating to foreign patent pools was *stricken* as a defense to the domestic patent suit on September 10, 1963 (Docket entry 9/10/63, A. 2; the order appears at Court of Appeals' Record page 55). Zenith's incorrect statement is obviously an attempt to create the impression that the trial judge found a connection between the domestic patent activities of Hazeltine Research and the foreign patent pools whereas the trial judge and the Court of Appeals both concluded otherwise (see H.R.Br. 124-27).

8. Zenith asserts that the "Hazeltine Companies . . . are receiving over one million dollars a year from these illegal pools" (Z.Rep.Br. 35; see also Z.Rep.Br. 2). None of the record references cited at either page in Zenith's reply brief supports these statements. In fact, the income received from the three patent pools involved in this case is not shown by the record, but counsel for Hazeltine Research can state to the Court that during the 1959-63 period, the total average annual receipts by Hazeltine Corporation from all three of these pools, directly or indirectly, were under $150,000 per year and have been substantially less since 1963. In fact, nothing has been received from the

English pool since 1963 or from the Canadian pool since 1965.

Respectfully submitted,

John T. Chadwell
Victor P. Kayser
C. Lee Cook, Jr.
Joseph V. Giffin
135 South La Salle Street
Chicago, Illinois

M. Hudson Rathburn
20 North Wacker Drive
Chicago, Illinois

Laurence B. Dodds
160 Middle Neck Road
Great Neck, New York

Attorneys for
Hazeltine Research, Inc.,
Respondent

Of Counsel:

Chadwell, Keck, Kayser,
Ruggles & McLaren
135 South La Salle Street
Chicago, Illinois 60603
RAndolph 6-2545

Mason, Kolehmainen,
Rathburn & Wyss
20 North Wacker Drive
Chicago, Illinois 60606
FInancial 6-1677

Dated: November 14, 1968

INDEX

	Page
Questions presented	1
Statement:	
I. The history of the litigation	2
II. The foreign patent pools	5
A. The Canadian pool	6
B. The English pool	12
C. The Australian pool	17
D. The injunction	18
III. The misuse of domestic patents	19
Introduction and summary of argument	21
Argument:	
I. Whether the evidence is sufficient to support a finding that Zenith was damaged in its business of exporting radios and television sets to Canada and television sets to England; and whether the findings of the district court on these issues are deficient in crucial respects	28
A. Whether the evidence is sufficient to support a finding that the activities of the Canadian pool injured Zenith's Canadian trade	34
1. Zenith must show only a reasonable probability of injury	34
2. The evidence permits an inference that the activities of the pool in Canada reduced the business Zenith did there	37
3. The findings of the district court are inadequate because they do not explain the connection between the pool's activities and Zenith's inability, if any, to find Canadian distributors during the damage period	45

Argument—Continued

Page

I. Whether the evidence is sufficient, etc.—Con.
  B. Whether the evidence is sufficient to support a finding that the pool was the cause of Zenith not entering the English television market ---------- 46
    1. An award of treble damages for exclusion from a market must be based on findings that the claimant had both the intent and the capacity to enter the market ---------- 46
    2. The evidence is sufficient to support a finding that Zenith would have sold television sets in England during the relevant period but for the pool ---------- 49
    3. The findings of the district court are inadequate because they do not explain the connection between the English pool's activities and Zenith's lack of English distributors during the damage period ---------- 52
    4. If on remand the district court finds that the pool foreclosed Zenith from exporting television sets to England during the damage period, it should redetermine the damages ---------- 54
II. HRI's participation in the Canadian and English patent pools unlawfully restrained the foreign commerce of the United States ---------- 57
  A. The Sherman Act is violated when a foreign patent pool uses its patents to restrain exports from the United States ---------- 58
  B. HRI violated Section 1 of the Sherman Act when it knowingly allowed patent pools in Canada and England to use its patents to exclude American made products from those countries ---------- 61

Argument—Continued

Page

III. The court of appeals improperly vacated the injunctive provision which barred HRI from participating in foreign patent pools that exclude Zenith from exporting to foreign markets 68

IV. HRI misused its domestic patents by demanding that Zenith pay royalties on its entire production, including unpatented articles 73

Conclusion 78

CITATIONS

Cases:

American Banana Co. v. *United Fruit Co.*, 166 Fed. 261, affirmed, 213 U.S. 347 48, 65

Automatic Radio Mfg. Co. v. *Hazeltine Research, Inc.*, 339 U.S. 827 21, 27, 28, 75, 76

B. B. Chemical Co. v. *Ellis*, 314 U.S. 495 75, 77

Bedford Cut Stone Co. v. *Journeymen Stone Cutters' Assn.*, 274 U.S. 37 69

Bigelow v. *RKO Radio Pictures*, 327 U.S. 251 23, 24, 29, 34, 35, 36, 37, 38, 41, 52

Brulotte v. *Thys Co.*, 379 U.S. 29 59

Continental Ore Co. v. *Union Carbide & Carbon Corp.*, 370 U.S. 690 29, 37, 61, 65, 66, 67

Eastman Kodak Co. v. *Southern Photo Co.*, 273 U.S. 359 36

Ethyl Gasoline Corp. v. *United States*, 309 U.S. 436, affirming 27 F. Supp. 959 59

Marconi Wirless Corp. v. *United States*, 320 U.S. 1 34

Mercoid Corp. v. *Mid-Continent Investment Co.*, 320 U.S. 61 75, 77

Minnesota Mining & Manufacturing Co. v. *New Jersey Wood Finishing Co.*, 381 U.S. 311 29

Morton Salt Co. v. *Suppiger Co.*, 314 U.S. 488 75

Pennsylvania Sugar Ref. Co. v. *American Sugar Ref. Co.*, 166 Fed. 254 47

Scott Paper Co. v. *Marcalus Co.*, 326 U.S. 249 59, 75

Standard Oil Co. v. *United States*, 283 U.S. 163 59

Standard Sanitary Mfg. Co. v. *United States*, 226 U.S. 20 59

Stearns v. *Tinker & Rasor*, 252 F. 2d 589 49

Story Parchment Co. v. *Paterson Co.*, 482 U.S. 555 36

Cases—Continued — Page

Strassheim v. *Daily*, 221 U.S. 280 — 61, 65
Thomsen v. *Cayser*, 243 U.S. 66 — 61
Thomsen v. *Union Castle Mail SS. Co.*, 166 Fed 251 reversing, 149 Fed. 934 — 47
Timken Roller Bearing Co. v. *United States*, 341 U.S. 593 — 61, 64
Triangle Conduit & Cable Co. v. *National Elec. Prods. Corp.*, 152 F. 2d 298 — 49
United States v. *Aluminum Co. of America*, 148 F. 2d 416 — 64
United States v. *Bausch & Lomb*, 321 U.S. 707 — 67
United States v. *Concentrated Phosphate Export Assn.*, 37 L. Week 4045 — 73
United States v. *General Electric* 1962 CCH Trade cases, ¶¶70, 546, 70, 438, 70, 432 — 62
United States v. *Line Material Co.*, 333 U.S. 287 — 59, 60
United States v. *Masonite Corp.*, 316 U.S. 265 — 59
United States v. *National Lead Co.*, 63 F. Supp. 513, affirmed, 332 U.S. 319 — 59, 60, 61
United States v. *Oregon State Medical Society*, 343 U.S. 326 — 50
United States v. *Pacific & Arctic Ry. & Nav. Co.*, 228 U.S. 87 — 61
United States v. *Radio Corp. of America*, CCH Antitrust Cases Summaries, 1957–1961, ¶45, 058 — 62
United States v. *Radio Corp. of America*, 1958 CCH Trade Cases, ¶69, 164 — 22, 62
United States v. *Singer Mfg. Co.* 374 U.S. 174 — 59, 61, 67
United States v. *United States Gypsum Co.*, 333 U.S. 364 — 30, 50, 59, 78
United States v. *W. T. Grant Co.*, 345 U.S. 629 — 73
Utah Pie Co. v. *Continental Banking Co.*, 386 U.S. 685 — 29
Volasco Products Co. v. *Lloyd A. Fry Roofing Co.*, 308 F. 2d 383 — 48

Statutes and rule:
Clayton Act, 38 Stat. 730, as amended, 15 U.S.C. 12 *et seq.*:
Section 4 — 3
Section 16 — 3, 69
Sherman Act, Section 1, 26 Stat. 209, as amended, 15 U.S.C. 1 — 26
Rule 52(a), Federal Rules of Civil Procedure — 30

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 49

ZENITH RADIO CORPORATION, PETITIONER
v.
HAZELTINE RESEARCH, INC., AND HAZELTINE CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is filed in response to the Court's order of November 25, 1968, inviting the Solicitor General to file a brief expressing the views of the United States.

QUESTIONS PRESENTED

In this brief we shall discuss the following questions:

1. Whether the evidence is sufficient to support findings that patent pools in Canada, England and Australia injured Zenith by restraining the latter in its business of exporting television and radio receivers from the United States.

2. Whether Hazeltine Research, Inc. ("HRI") participated in unlawful conspiracies and combinations in restraint of the trade in television and radio receivers between the United States and foreign nations when it appointed, as the exclusive licensee of its television and radio patents in Canada and England, patent pools in each of those countries.

3. Assuming that HRI so participated in an unlawful conspiracy or combination, whether Zenith's continuing exports to Canada and its plans for entering the English market justify an injunction proscribing HRI's continuing participation in foreign patent pools.

4. Whether HRI's misuse of its domestic patents included its refusal to license them except at a fee measured by the licensee's full production of television receivers, including sets that made no use of any item covered by an HRI patent.

STATEMENT

I. THE HISTORY OF THE LITIGATION

Petitioner, Zenith Radio Corporation, is one of the principal manufacturers of radio and television sets in the United States, having had, during the period in issue here, some 15 to 20 percent of the domestic market for home television receivers (I A. 503; DX 218, VI A. 2621; IX A. 4256).[1] Respondent Hazeltine

---

[1] Roman numerals refer to the printed volumes of the record in this Court. "DX" and "PX" refer to defendant's (Zenith) and plaintiff's (HRI) exhibit numbers. The record citation following an exhibit number is to the printed copy of the exhibit.

Research Corporation is a wholly owned Illinois subsidiary of respondent Hazeltine Corporation (VI A. 2893). The business of the two Hazeltine companies, and their affiliates, grew out of the early radio inventions of Allen Hazeltine (I A. 145). The Illinois subsidiary, which we shall hereafter refer to as "HRI," is a research and development company which owns and licenses United States—but not foreign—patents, mainly relating to television and radio receivers (I A. 20, 142). The parent is a research, development, and manufacturing company which produces various electronic equipment (I A. 145; DX1, III A. 940–947). It owns foreign patents for television and radio inventions but owns no domestic patents (I A. 145; DX 1, III A. 940–47).

Up to May 1959, Zenith had taken standard package licenses which HRI offered to cover all of its patents. The final five year license expired in May 1959, and Hazeltine requested that it be renewed. Zenith refused, contending that no license was needed (VI A. 2894).

This litigation began in November 1959, when HRI sued Zenith for patent infringement in the United States District Court for the Northern District of Illinois. The alleged infringement was of a patent which covered a device used in television receivers to adjust automatically incoming signals to a uniform strength (I A. 11–13). On May 22, 1963, Zenith, by leave of the district court, filed a counterclaim for damages under Section 4 of the Clayton Act and for injunctive relief under Section 16 of that Act, claiming that HRI had misused its domestic patents and had injured Zenith's export business by participating in patent pools in Canada, England and Australia (I A. 64–69).

The district court tried the factual questions relating to HRI's patent infringement claim in October 1963 (I A. 2) and held a further trial in February 1964 on the antitrust and patent misuse charges of Zenith's counterclaim (I A. 3). The court held that the patent claims relied on in the infringement action were invalid (VI A. 2891), and the court of appeals affirmed this conclusion. (IX A. 4238, 4244–4249) On the counterclaim, the district court ruled (1) that HRI had misused its domestic patents, and (2) that through its participation in the Canadian, English and Australian patent pools, it had violated the Sherman Act. Findings entered on January 25, 1965, awarded Zenith damages that, after trebling, totaled approximately $48.7 million for injuries to its export business and $150,000 for misuse of HRI's domestic patents. (VI [illegible]. 2898; VII A. 3078, 3539.)

On March 26, 1965, HRI, through counsel retained after the entry of these findings (I A. 4), moved for withdrawal of the findings and leave to undertake further discovery and offer further proof. (VII A. 2939–2951). The district court heard additional evidence, which demonstrated that government embargoes on the importation of television and radio sets into England and Australia, which were instituted in World War II, remained in effect until 1959 and 1960, respectively. On the basis of that proof the court reduced the trebled damages to a total of approximately $35 million. (VII A. 3239.) The court declined, however, to reopen the record for further proof as to the impact of the foreign patent pools on Zenith's business (VII A. 3204). The court also enjoined HRI from participating in or aiding the efforts of any foreign patent pool to prevent Zenith from exporting its products into any foreign market; from conditioning a license under any of its domestic patents on the taking of a license under any other patent or offering to license any patent at rates as high as that charged for a package license; ~~and from~~ requiring payment of royalties under a license on the manufacture of unpatented products. (VII A. 3079, 3080.)

The court of appeals reversed both the damage award ($35,000,000) and the injunction relating to participation of HRI in foreign patent pools (IX A. 4239, 4254). It affirmed the damages awarded ($150,000) for patent misuse (IX A. 4253), but modified the pertinent injunctive provisions in certain respects (IX A. 4262).

II. THE FOREIGN PATENT POOLS

HRI has followed the same general pattern in giving control of foreign exploitation of its patents to patent pools in Canada, England, and Australia. Beginning in the early days of radio, manufacturers in each of those countries, including subsidiaries of American companies, pooled their radio patents. HRI's patents were placed under the exclusive control of each pool, either through a direct arrangement by which HRI gave the pool exclusive rights to license its patents in the country involved or through a similar agreement with a company that itself was a member of the pool. The original pool agreements provided that no patent would be licensed except on terms agreeable to the members of the pool; that licenses would be granted only for the package of all patents within the pool, that no license would be granted to allow importation into the particular country, and that all licenses would be at a fee measured by the licensee's total production including receivers that did not use any patent covered by the license (VI A. 2899, 2908, 2906–2907).

There are, however, a variety of circumstances that vary from country to country and are of importance in considering the court of appeals' holding that Zenith had failed to demonstrate injury to its trade or business of exporting radio and television receivers to the three foreign nations. We shall, therefore, set out in the following portion of this Statement what we consider to be the principal facts bearing on each of the three pools and on Zenith's dealings or attempts to deal in each of the three countries.

A. THE CANADIAN POOL

The Canadian pool is called Canadian Radio Patents Limited (CRPL). It was formed in 1926 by Canadian subsidiaries of General Electric and Westinghouse (VI A. 2903). HRI began to participate in 1943 when it entered into an exclusive license agreement with the pool, which ran beyond the date of the filing of the counterclaim in the instant case (VI A. 2903).

The organization, purposes and function of the pool follow the general pattern. Licenses are limited to manufacture in Canada (VI A. 2903–2904). To police its policy of excluding imported products from the Canadian market, CRPL has used patent agents and investigators to locate and stop the sale of imported receivers. The district court found that suits or the threat of suits kept dealers from handling American made sets. (VI A. 2904.) A number of documentary exhibits evidence the pool's interest in barring exports from the United States; such evidence includes reports of pool meetings and threats made to Canadian distributors of Zenith products in the early and mid-fifties, and advertisements published up to the middle of 1958 threatening sellers and users of unlicensed merchandise with infringement actions. (DX 129, 131–141, 143, 144, 155–162, IV A, 1844, 1865–1958; V A. 1959–1972, 2022–2046).

The district court also found that Zenith "[f]or many years" had attempted to set up distribution of its products in Canada but that "in every instance" its dealers encountered threats of suits by CRPL (VI A. 2905). The court further found (*ibid.*) that "To ward off these attacks" Zenith sought a license "but in every instance" was told that no license for imports would be granted. The evidence shows that between 1927 and 1953 Zenith made five attempts to secure a license covering export of radios from the United States into Canada. In 1927 it was told that it could have a license but that exports would be limited to a value of $100,000 a year (DX 146, V A. 1982–1987), which Zenith said was not worth its while

(DX 147, V A. 1989). In 1930, Zenith was told that no new licenses were then being granted (DX 147, V A. 1989–1991). In 1936, Zenith was told that "[b]y reason of the requirements of the Canadian Patent Act it is not the policy of" the pool "to grant licenses for the importation of radio receiving sets into Canada." (DX 148, V A. 2005–2006.) Another inquiry was made in 1951, but apparently produced no information of a change in policy (DX 149, V A. 2009–2011). The Canadian pool rejected the last request for a license made in 1953, on the ground that "There has been no change in the 'working in Canada' requirements of the Canadian Patent Act or in the specific rulings * * * given by the Canadian Commissioner of Patents to the effect that [the pool] cannot grant licenses for importation." (DX 150, V A. 2012–2014).

In 1951 Zenith attempted to distribute American-made radio receivers through a Canadian company, but it stopped doing so after warnings were issued by the Canadian pool (DX 155–158, V A. 2022–2028). In 1952 and 1953, Zenith declined requests to export radios to Canada, attributing its action to the Canadian pool. (DX 159–160, V A. 2029–2032.) In 1954, when it again sought to distribute its American made equipment in Canada, its distributor, Ideal Electric Supply Company, was met with objections from the Canadian pool (DX 161–162, V A. 2033–2046).

Insofar as this record discloses, Zenith made no attempt to distribute its equipment in Canada during the next several years. Then, in 1957, it settled treble damage litigation which it had brought against Radio

Corporation of America, General Electric Company and Western Electric Company, which involved, *inter alia,* the activities of those American companies in the Canadian patent pool. That settlement gave Zenith $10 million and world-wide rights under the patents of the three defendants, including the patents of their foreign subsidiaries (DX 114, IV A. 1607, 1610, 1616–1617, 1622–1623, 1628–1629). Zenith executed a release that absolved the defendants from any further liability for damages resulting at any time—past or future—from their acts up to the date of the settlement (DX 48, VI A. 2783, appendix in the court of appeals, p. 1883). Prior to the settlement of this litigation Zenith learned of the opinion of RCA's patent counsel that Canadian law did not prevent the licensing of patents for import into that country (I A. 484–485).

Thereafter, Zenith sought to sell its American made radios and television sets in Canada, taking the view that the licenses it had received in the 1957 settlement were sufficient to cover the merchandise it would export to Canada (VA. 2905). Representatives of the Canadian pool asserted to Zenith that its products made use of patents not covered by the 1957 licenses, including some of HRI's, that were within the Canadian pool, that Zenith would need a pool license to do business in Canada, and that no imports would be permitted. (DX 151–153, VA. 2014–2020; VI A. 2905, I A, 410–411).

Zenith's then president testified at trial that Zenith had attempted to obtain Canadian distributors for its radios and television sets. He said that distributors had been found in the western provinces, but that

Zenith had been unable to find Canadian companies willing to handle its radio and television products elsewhere in Canada, and that potential distributors based their refusals on their fears of infringement actions by the Canadian pools. He stated that Zenith had used its own subsidiaries—whose business previously was restricted to hearing aids—to distribute in the central provinces and, with less success, in the Maritime provinces. Although he did not specifically state when these attempts were made, they were after 1958. He also testified that the inability to establish a television distribution system had impaired Zenith's ability to sell radios in Canada. (I A. 472–473.)

The only documentary evidence showing efforts by the pool to enforce its patents against imports after 1958 is a 1962 letter from a man in Nova Scotia who had handled Zenith's products in the early fifties, but had dropped the line when threatened with infringement action by the pool. The 1962 letter said that a Motorola dealer in the vicinity had received a threat comparable to the one the author had received some ten years before; a copy of the letter from the pool's president to the Motorola dealer was attached (DX 162–D, V A. 2053–2056).

The district court found that the Canadian Patent Act did not require that licenses be limited to local manufacture. It further found that HRI was fully aware of the purpose and policy of the Canadian pool to exclude imports (VI A. 2906). The court concluded that by participating in the pool HRI had violated the Sherman Act (VI A. 2912). Treble damages of $18,892,173 were assessed (VII A. 3079, 4254). The damages were based on the testimony of Zenith's then President, Mr. Wright, and Executive Vice-President and Treasurer, Mr. Kaplan, that, in the absence of the Canadian pool, Zenith would have had the same 15 to 20 percent of the market in Canada as it has in the United States (I A. 457, 528).

The court of appeals held that the district court finding of the "fact" of damage was clearly erroneous (IX A. 4254). While recognizing that there was "some slight evidence of the *fact* of damage", the court noted that during the damage period under the four-year statute of limitations (1959–1963), Zenith had sold 65,000 radios and nearly 60,000 television sets in Canada; that Zenith had not sought a pool license after 1953; that there had been no threat of suit for importing radios since 1957; and that the evidence did not demonstrate that the Canadian pool's 1958 advertisement had adversely affected Zenith's sales. The court also relied on the facts that Zenith neither had called any Canadian distributor to testify nor had shown the experience of its American competitors who were doing business in Canada; that Zenith had spent a significant amount on advertising in Canada; and that the pool had made no efforts to prevent imports during the damage period. In conclusion, the court of appeals evinced "a firm conviction that the district court made a mistake in inferring from the entire testimony that the essential element of *fact* of damage had been established by Zenith." (IX A. 4258–4260; emphasis original.)

B. THE ENGLISH POOL

The district court found that the dominant radio and electrical companies in Great Britain had set up the English patent pool into which flowed thousands of patents owned or controlled by these companies and others affiliated with them in the pool (VI A. 2829). HRI's patents entered the pool in 1930 pursuant to an agreement (DX 43, III A. 1167–1169; see, also, DX 42, III A. 1165–1166) with General Electric Co. Ltd., which was the exclusive English licensee of HRI's patents and had the right to sublicense (VI A. 2829). General Electric—acting both for itself and on behalf of Hazeltine—contractually agreed with the other pool members that the pooled patents would be licensed for use in Great Britain only on terms agreeable to all pool members. The pool agreement expressly provided that only package licenses would be granted and that licenses would be limited to local manufacture. The form of license used by the pool has always required payment of royalties measured by the value of the licensee's entire production, whether or not any of the pool patents were used. (VI A. 2900.) The district court found that HRI participated in the pool with full knowledge of these agreements "for the purpose and effect" to exclude American and other imported products from the English market, and that HRI was participating in the pool at the time of trial "and intends to continue its participation" (VI A. 2900).

Zenith's then President, Wright, testified that in mid-1955 he had asked a representative of the pool whether Zenith could be licensed to import radios and/or television sets into Great Britain, and that the representative confirmed his understanding that "the policy of the pool * * * required that sets be made in England, and that nothing would be licensed if it was imported from abroad * * *." The Zenith President further testified that the pool's representative "saw no possibility" that this policy would be modified in the future (I A. 462–463).

Thereafter, Zenith interested an English company owned by a man named Adam Ramsey in distributing Zenith radios in Great Britain; Wright testified that "the pool has not bothered him insofar as radio is concerned". The latter fact was attributed to the expiration of significant radio patents. (Id., 463–464.)

Wright further testified that at that time Zenith made no effort to export television sets to Great Britain because there was no possibility of getting a license from the pool (*id.*, 464). He said that from 1958 on Zenith had spoken to several men in England about selling radios, "but we were given to understand that the television was just out of the question" (*id.*, 474).

Zenith officials recognized that there were technological differences between the systems used to transmit television signals in the United States and England, and in the circuitry of the receivers required to receive those signals (I A. 464–465). Thus English television transmissions were then using AM sound and a 405 line per second picture scanning system, whereas the Zenith sets were made to receive FM sound and 525 and 625 line scanning signals. (Great

Britian began to use the 625 line system after the end of the damage period in issue here.) (IX A. 4257.) Wright testified, however, that adjustments "could" be made in the distributor's shop to adapt Zenith's sets to English requirements (I A. 464, I A. 545). While Zenith's Executive Vice-President Kaplan acknowledged that such changes could not be done on a large scale basis, he and Wright testified that Zenith could produce a set designed for the English system with no more difficulty than would be involved in producing a new model for sale in the United States and Kaplan asserted that such a set would have many components in common with the sets produced to receive United States transmissions (I A. 464, II A. 530–531, 543–546).

The district court found that Zenith had made "every effort" to enter the English market, but had been thwarted by the pool's refusal to license imports (VI A. 2912). It awarded Zenith $30,746,778 in treble damages (VI A. 3539, IX A. 4254). This award was based on the testimony of Wright and Kaplan that in the absence of the pool Zenith would have achieved a share of the English market equivalent to 20–25 percent of its penetration of the United States market, *i.e.,* 3 to 5 percent of the English market (I A. 465, II A. 529).

After the entry of these findings, the court allowed Hazeltine to prove that a government-imposed embargo had forbidden importation of television sets and radios into England from the beginning of World War II until June 8, 1959 (See VII A. 3524–3525). When recalled to the stand to testify with respect to these embargoes, Wright and Kaplan acknowledged, that, at the time of their original testimony, they had been aware of government barriers to imports into England and Australia; they said, however, that they had not understood those barriers to be an absolute prohibition but had thought that, with some effort, import licenses could have been obtained. They further asserted that the existence of the barriers had been among the factors upon which they had based their original testimony as to the market share that Zenith could have obtained in England and Australia. They said that their estimates of expected shares of the English and Australian markets had assumed that business began from "scratch" in June 1959, and that the estimates of market share given should be taken as an average figure for the damage period and not as an amount that would be achieved in each year of that period (VII A. 3453–3455, 3521–3522). When asked about tariffs and shipping costs, they asserted that Zenith would be able to sell in England even if those factors required it to charge a higher price than its competitors; as for the prior testimony that Zenith sets could be adjusted by a distributor to receive English stations, they conceded they knew of no instance where that had been done (VII A. 3472–3472, 3498–3503).

After hearing the evidence relating to the embargo, the district court held (*id.*, 3524–3525) that "there could be no question in my mind that Zenith suffered damages during the damage period by virtue of the pools which I found, and reiterate existed at the time of the damage period." Turning to evidence developed during the hearing on the embargo to the effect that Zenith would have had to sell at a price higher than its competitors (*id.*, 3513–3515, 3519–3520), the court said that Zenith (*id.*, 3525),

> must of necessity have sold for much more [than its would-be competitors] in the United Kingdom and Australia. However, because of the fact that it's a premium article, I feel certain that there would have been those, after becoming convinced, who would have paid that premium to obtain a Zenith.

The court concluded that "it would be unrealistic to indicate that Zenith suffered any economic loss by virtue of the pools" up to the lifting of the embargoes. The court also expressed "difficulty in believing" that Zenith "could have obtained the profits * * * that are indicated by the guesstimate which everybody indicates is" the basis for the original computation of damages; Wright and Kaplan's estimates were attributed to "the pride of officers in their corporation, and the belief in their products". In conclusion the court ruled that Zenith, in the absence of the pool, would have made no profits on exports to Great Britain in the first year of the damage period, and would have gradually built up to its full market share by the end of that period (VII A. 3536). It amended its finding to reduce Zenith's treble damages to $15,174,078. (VII A. 3537)

The court of appeals held the finding of damage to Zenith during the relevant period clearly erroneous (IX A. 4254, 4257). It concluded that the World War II embargo and technical barriers rather than the actions of the pool had prevented Zenith from entering the English market (II A. 4257). As it viewed the evidence, it believed that (*ibid.*) "The only reasonable inference is that it (Zenith) was waiting for a change in English standards to a 625 line system.'

C. THE AUSTRALIAN POOL

A number of the same companies involved in the English and Canadian patent pools set up a similar organization in Australia known as Australian Radio Technical Services and Patents Company Pty. Limited (ARTS) (VI A. 2906). Under an exclusive licensing arrangement dated September 11, 1928, and still in effect at the time of trial, Neutrodyne Proprietary Limited, a 70 percent owned subsidiary of Hazeltine, is authorized to place HRI patents in the pool (VI A. 2906-07). The district court found that the only form of license available from the pool was a standard package license limited to manufacture in Australia, and that HRI has been fully aware of this anti-import policy (VI A. 2907).

Wright testified that Zenith had exported no products to Australia since the late 20's or early 30's, when dealers then selling Zenith products had received threats from the Australian pool. While he could not recall any specific request that the Australia pool grant Zenith a license in the 20 years prior to trial, he stated that Australian officials of Stromberg-Carlson and an official of the Rola Corporation, a Zenith licensee (not in Australia) which made components in Australia, had told him that "there was no question in their mind that we could not get such a license, and there was no use talking about any sort of arrangement that contemplated that" (I A. 474-476).

Although the district court did not specifically find that Zenith had sought or desired to enter the Australian market during the damage period, or at any time after the early 1930's, it found that the foreign commerce of Zenith "has been drastically curtailed by the patent pools in England, Canada, and Australia" and that Zenith had sustained damages thereby (VI A. 2908). It assessed treble damages of $2,077,665 with respect to Australia (VI A. 2908). This figure was based on Wright and Kaplan's testimony that absent the pool, they would have expected Zenith to have done a tenth as well in Australia as in the United States—*i.e.*, that it would expect to have about 1.5 to 2 percent of the Australia market.

As in the case of England, the trial court thereafter received evidence showing an Australian embargo that had barred imports until April 1960. The findings were amended to reduce the treble damages to $745,380 (VII A. 3539, IX A. 4253).

The court of appeals concluded that the finding of damage with respect to Australia was clearly erroneous (IX A. 4257). It relied upon the government embargo, Zenith's failure to attempt to secure an Australian license, and high import duties (IX A. 4256). It also cited a lack of proof that the Australian pool pursued a licensing policy designed to curb imports (*ibid.*).

D. THE INJUNCTION

Having concluded that HRI's participation in the three foreign patent pools violated the Sherman Act (VI A. 2908, 2912), the district court ruled that Zenith was entitled to injunctive relief (*id.*, 2913). It therefore enjoined HRI from (VII A. 3080):

> C. Entering into, adhering to, enforcing or claiming any rights under a contract, agreement,

> understanding, plan or program, with any other person, company, patent pool, organization, association, corporation or entity which directly or indirectly restricts or prevents defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, from exporting any electronic apparatus from the United States into any foreign market.

The court of appeals, however, set aside this portion of the injunction, stating (IX A. 4261–4262):

> It follows from our conclusion with respect to the foreign patent pools that injunctive relief against "threatened loss or damage" directed at those pools alleged by Zenith to be unlawful conspiracies, cannot be justified under 15 U.S.C. Sec. 26.

III. MISUSE OF DOMESTIC PATENTS

HRI has accumulated more than 500 patents, both foreign and domestic, for use in its patent licensing business (VI A. 2893). Its policy has been to grant a standard five-year package license covering all present and future HRI patents. Royalties under this license were computed as a percentage of the retail value of the licensee's total production of radios and television sets, regardless of whether any HRI patent was actually used (VI A. 2893).

In 1959, Zenith rejected HRI's offer to renew its standard package license for monochrome (black and white) patents, contending that it did not require the use of any patents in the package. HRI countered by alleging that Zenith was infringing at least four of its patents, and alternatively offered to license any one of its patents for 50 percent of the package rate, any two for 80 percent, or any three for 100 percent of the package rate of $50 thousand a year. Zenith rejected this counter proposal (VI A. 2894).

In 1962 and 1963 HRI made two other offers to Zenith, involving color television patents. Under the first of these proposals Zenith would have paid a percentage of the value of its production, up to a maximum of $435,000 for nine color patents, $500,000 for all HRI color patents, or, in the alternative, $150,000 as a package rate for all of HRI's color and monochrome patents. Under the other proposals Zenith would have paid a maximum of $200,000 annually for two color patents, $275,000 for ten, or $300,000 for all existing color patents, or $310,000 for all existing and future Hazeltine color patents (VI A. 2895–97). HRI at the same time offered a package license that would cover all present and future monochrome and color patents for a maximum annual fee of $200,000 (VI A. 2897).

The district court held that the 1962 and 1963 offers constituted attempts to coerce acceptance of the total package (VI A. 2895–2897). The court of appeals affirmed the district court in this point (IX A. 4251–4253), and it is no longer in issue.

The district court held that the "50–80–100" offer of 1959, coupled with the later proposals made by Hazeltine constituted misuse of patents and illegal attempts to extend patent monopolies (VI A. 2902). The court of appeals reversed the finding of the district court as to the "50–80–100" plan (IX A. 4252), holding the offer "reasonable in light of the commercial realities." It directed that paragraph B of the district court's injunction (VII A. 3079) be modified to permit "licensing of individual patents at rates the sum of which is greater than the package rate so long as the rates for individual patents are not so disproportionate to the package rate as to amount to economic coercion to force the taking of the package" (*id.* 4262). It directed (*ibid.*) two other changes—not in issue here—in this paragraph because of the district court's failure to "describe the acts restrained in reasonable detail" (see p. 22, n. 3, *infra*).

In all proposals to Zenith, Hazeltine included a provision that royalties be based on production of receivers without regard to whether any patents licensed were actually used (VI. A. 2898). The district court concluded that this feature of the Hazeltine offers was unlawful (*id.*, 2910) and enjoined Hazeltine from placing such provisions in agreements with Zenith (VII A. 3079). The court of appeals held that such provisions were not patent misuse, citing *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U.S. 827, and struck this part of the injunction (IX A. 4262).

INTRODUCTION AND SUMMARY OF ARGUMENT

The briefs of the parties cover a large number of issues that must be resolved in deciding whether the district court correctly rendered judgment in favor of Zenith on its counterclaim. In this brief, we discuss all but three of these issues. Two of the three—the liability of Hazeltine Corporation to satisfy the judgment[2] and the proper wording of paragraph B of the injunction[3] appear to be unique to this law suit; the third—the lawfulness of HRI's "50–80–100" license offer—does not seem to have affected the relief granted.[4] All the other issues, however, have significance in the administration of the antitrust laws, and we therefore deem it appropriate for the United States

---

[2] Whether Hazeltine Corporation, HRI's parent (VI A. 2893), is bound by the judgment of the district court appears to depend on a stipulation peculiar to this litigation. HRI concedes

---

(HRI Brief, p. 5, n. 4) that under that stipulation "it would stand good for the acts of its parent." Accordingly, we do not in this brief distinguish between the acts of HRI and its parent, but for the purposes of our discussion attribute the acts of each to HRI.

[3] Paragraph B of the injunction entered by the district court (VII A. 3079) apparently required HRI to license any of its domestic patents to Zenith at a royalty less than the lowest price at which HRI, at any time, offered any third party a license of a package that included the patent desired by Zenith. This relief affects only the parties to this suit, and there seems to be no basic dispute as to the propriety of some injunctive relief similar to that granted in paragraph B. We do not disagree with the court of appeals' opinion (IX A. 4262) that paragraph B did not "describe the acts restrained in reasonable detail" or with that court's requirements that the maximum royalties to Zenith be measured by "those presently in effect with other licensees" and not "be given to Zenith for longer periods than they are available to others." We have some doubt about the desirability of the court of appeals' addition to the injunction that allows "licensing of individual patents at rates the sum of which is greater than the package rate so long as the rates for individual patents are not so disproportionate to the package rate as to amount to economic coercion to force the taking of the package." Compare paragraph V(F) of the consent judgment in *United States* v. *Radio Corp. of America*, 1958 CCH Trade Cases ¶69,164, at p. 74,566.

[4] Although the record seems to support the district court's finding that this proposal was part of HRI's attempt to coerce the taking of a package license, and we would suggest that such a licensing formula, to be noncoercive, should rest on differences in the value of individual patents or in the cost of administering a licensing agreement, the court of appeals' ruling on this subject does not seem to have affected the relief allowed.

to express its views on them in response to the Court's invitation.

I

We shall first discuss the questions arising out of the court of appeals' decision that Zenith had failed to prove the "fact" of damage from the operations of the foreign patent pools. This aspect of the case presents two important legal questions involving the standard of proof that a victim of an exclusionary scheme must meet to show injury to his trade or business.

One question concerns the proof that will establish a partial exclusion from the market: when a party claims that an antitrust violation has restricted his sales in a market—as petitioner says of its Canadian business and its sales of radios in England—with what exactitude must it show that it would have had more business and greater profits in the absence of the violation? The other main damage issue involves the standard that must be met when the claim is total exclusion from the market—as Zenith claims with respect to the television business in England and the export of radios and television sets to Australia.

It is not clear to us that the court of appeals recognized the realistic limits on the proof of impact that may reasonably be expected from a party who has been the victim of unlawful restraints upon his entry into a market. The situation is closely comparable to that involved in *Bigelow* v. *RKO Radio Pictures,* 327 U.S. 251. In Canada, between 1927 and 1953, Zenith several times attempted unsuccessfully to obtain pool licenses to cover American-made goods. Added to the rejection of these overtures, the pool, up to the eve of this suit, undertook to avoid and to deter imports into Canada. Zenith's executives testified that these efforts impaired its abilities to find distributors and inhibited its efforts to exploit the Canadian market. Nothing in the record refutes their testimony that Zenith, in the absence of restraints, could be expected to have similar shares of the Canadian and United States markets, and *Bigelow* supports the view that Zenith's failure to offer other corroborative testimony is not fatal to its case.

Insofar as Great Britain and Australia are concerned, the question differs somewhat, since Zenith never sold television sets in England and sold neither radios nor television sets in Australia. To award damages, the finder of fact must determine that but for the violation, the claimant would have entered the market and been able to show a profit. A long line of cases in the courts of appeals hold that the claimant must show that he had both the purpose and the capacity to enter the market. Thus the standard is in part one of the subjective intent and in part one of the physical and financial ability to produce and to deliver. Here, too, the nature and quantum of proof required must be gauged realistically in view of the fact that the more effective the violation, the fewer are the overt efforts that the rational businessman will make to enter a restrained market before bringing suit.

Applying these considerations to the present case, it can be concluded that Zenith established a *prima facie* case of impact upon its attempt to export television sets to England. We do not suggest that the proof was overwhelming or conclusive, but merely that it was sufficient to place the issue within the province of the finder of fact.

We conclude, however, the findings actually made are inadequate to support an award of damages—as to Canada or England—and that a remand to the district court is necessary for such further findings as can be made on this record.

In addition, we think it was conceded by the trial testimony of Zenith's president that Zenith failed to demonstrate any impact on its ability to export radio receivers to England. We further suggest that Zenith's contacts with the Australian market were so tenuous as to foreclose the district court from finding the necessary intent to export to that country.

II

If the Court agrees that the record would support a conclusion that Zenith was injured in its exports to Canada and its potential of exporting television sets to England, it becomes necessary for an appellate tribunal to decide HRI's contentions that its participation in the Canadian and English patent pools did not violate the Sherman Act. Because of its view that damage was not established and injunctive relief was not warranted, the court of appeals did not reach the questions, and the issues might therefore be remanded to it. Because, however, there is no essential issue of fact and the governing principles of law are well established, the Court may deem it appropriate itself to decide the issue. We therefore discuss the issue and suggest that the district court correctly held that the activities of the Canadian and English patent pools constituted patent misuse that violated Section 1 of the Sherman Act.

III

We shall then consider the court of appeals' action in striking from the injunction the provisions which barred HRI from further participation in the foreign pools.

Whatever the Court may conclude on the question of damages, the court of appeals' judgment should be reversed insofar as it eliminated these provisions of the injunction. Although the basis of the court of appeals' action is obscure, it apparently reasoned that there can be no injunctive relief unless there has been some injurious impact on the antitrust claimant's trade or business. That plainly is not the proper test. The pertinent question under Section 16 of the Clayton Act is whether a threat of future injury has been shown. It is clear from this record that Zenith will continue to export to Canada and is likely to export television sets to England as well. Hazeltine's prior participation in the patent pools in those countries and the prior threats and refusals to license obviously are an adequate basis for the injunctive relief given by the district court under the standards of Section 16.

IV

As for the issues arising from HRI's misuse of its domestic patents, there is no question before the Court regarding the propriety of the district court's award of $150,000 in treble damages. The court of appeals affirmed that part of the judgment and HRI has not brought the question here. The principal question on this phase of the case stems from the decision below that HRI's misuse did not include its insistance that royalties on its domestic licenses be measured by the licensee's full production, whether or not the HRI patent is used, and the resulting direction that the pertinent part of the district court's injunction be stricken.

We suggest that the court below misread *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U.S. 827, in holding that HRI may lawfully demand that its licensees pay royalties based on their entire production, whether or not an HRI patent is used. *Automatic Radio* does not, as the court of appeals seems to conclude, authorize such royalty arrangements regardless of the surrounding circumstances, but merely holds that such an arrangement is not *per se* improper. The general vice of such an arrangement is that it extends the patentee's monopoly by allowing him royalties on unpatented as well as patented goods. Moreover, it inhibits invention by the licensee, which, if subject to such a license, is availed nothing if it "invents around" the licensed patent. Thus such a license arrangement tends to forestall invention and technological development, the exact opposite of the purposes underlying the patent clause of the Constitution.

The most that *Automatic Radio* holds proper is the situation where both parties freely agree to the royalty arrangement because other methods of computing a royalty would be cumbersome or impractical. But this is not such a case, and less restrictive alternatives are ordinarily available. In this case the royalty arrangement demanded by HRI must be viewed against the background of Hazeltine's other coercive activities, and the circumstances here do not suggest that the royalty arrangement was voluntarily accepted by or met the convenience of HRI's licensees. *Automatic Radio* should not have been viewed as countenancing HRI's royalty practices.

ARGUMENT

I. WHETHER THE EVIDENCE IS SUFFICIENT TO SUPPORT A FINDING THAT ZENITH WAS DAMAGED IN ITS BUSINESS OF EXPORTING RADIOS AND TELEVISION SETS TO CANADA AND TELEVISION SETS TO ENGLAND; AND WHETHER THE FINDINGS OF THE DISTRICT COURT ON THESE ISSUES ARE DEFICIENT IN CRUCIAL RESPECTS

The major question in this case—and the one that obviously is of greatest importance to the parties—is whether the court of appeals was warranted in setting aside the $35 million awarded by the district court for the injury it found Zenith had suffered as a result of the activities of the patent pools. Although the district court found (VI A. 2908) that "[t]he foreign commerce of Zenith has been drastically curtailed by the patent pools in England, Canada and Australia," the court of appeals upon its review of the record, reversed this finding as clearly erroneous, holding that Zenith had not established the "fact" of such damage (IX A. 4253–4261).

The United States has no interest in the resolution of the factual question whether the record does or does not support the district court's finding that Zenith was damaged in its foreign trade as a result of the activities of the pools. The United States is concerned, however, with whether the court of appeals, in reviewing that finding, applied the correct standard, since imposing an unduly heavy burden of proof of injury upon a treble damage plaintiff could seriously weaken the role of private antitrust suits as "one of the surest weapons for effective enforcement of the antitrust laws" (*Minnesota Mining & Manufacturing Co.* v. *New Jersey Wood Finishing Co.,* 381 U.S. 311, 318).

This Court has recognized that the nature of an antitrust violation, generally involving the partial or complete exclusion of the plaintiff from a market, makes it impossible for the plaintiff to prove what his profits would have been had he not been so excluded "with the exactness which would otherwise have been possible" (*Bigelow* v. *RKO Radio Pictures,* 327 U.S. 251, 264). "The tortious acts had in each case precluded ascertainment of the amount of damages more precisely, by comparison of profits, prices and values as affected by the conspiracy, with what they would have been in its absence under freely competitive conditions" (*ibid.*). As a corollary of this proposition, the Court also repeatedly has recognized that a jury in such a case has broad discretion to find that the plaintiff has been damaged by the defendant's illegal acts and to fix the amount of such damage, even though the evidence on both issues might not have the same specificity and weight that is required in other types of cases. See *Bigelow, supra,* and cases there cited; *Continental Ore Co.* v. *Union Carbide & Carbon Corp.,* 370 U.S. 690; *Minnesota Mining, supra; Utah Pie Co.* v. *Continental Baking Co.,* 386 U.S. 685.

The present case, of course, was tried to the court rather than to a jury, and a court of appeals ordinarily has somewhat greater leeway in reviewing such findings under the "clearly erroneous" standard in Rule 52(a) of the Federal Rules of Civil Procedure than it has in reviewing jury determinations. See *United States* v. *United States Gypsum Co.,* 333 U.S. 364, 394–395. On the other hand, the considerations noted above that have led this Court to give great weight to jury determinations in private antitrust cases are no less applicable where such cases are tried to the court. It therefore seems appropriate that the appellate courts should give similar deference to the trial court's determinations of injury and damages, when these are based on adequate evidence, and relevant and sufficiently specific findings.

Our review of the record in this case leads us to conclude that, in dealing with Canada and television sets in England, the court of appeals failed to accord such deference to the findings of the trial court, and that the appellate court therefore applied an erroneous standard of review by in effect deciding the factual issues *de novo.*[5] We believe that the evidence relating to those two countries would justify the trier of the facts in going either way, and that the district court thus had an adequate basis in the record for resolving the issues

---

[5] On the other hand, we agree with HRI that the evidence is insufficient to support a finding that Zenith was injured in exporting radios to England or radios or television sets to Australia. Zenith's basic theory was that but for the pools, it would have had a long established business in each of these products during the damage period controverted here. However, once the district court found that the government embargo foreclosed imports into England until June 1959, the determination and measurement of Zenith's injury with respect to the English market was premised on the assumption that Zenith's business in England could in no event have begun

---

until the end of the embargo. Against this background, we suggest that Wright's testimony forecloses any finding that Zenith was restrained in its business of exporting radios to Great Britain. Wright testified that Ramsey, Zenith's British distributor (I A. 463–464):

> was willing to take a chance to go ahead and see what he could do, at least in the field of radio, to see what the result of this would be. * * *
>
> Apparently the pool has not bothered him insofar as radio is concerned, and I am not surprised at that because, actually there are hardly any radio patents left that anyone would seriously think of threatening infringement with.

In contrast to his testimony about Canada (*id.*, 470–473), Wright did not suggest that the English pool sought to enforce expired radio patents, or that radio distribution was hampered by the lack of television distributors.

To sustain a finding of impact with respect to Australia, the district court must be able to find on this record that Zenith had the intention and the capacity to export to Australia and was stopped from doing so by the Australian pool. See pp. 46–49, *infra.* The evidence fails to allow a finding that Zenith had the necessary intention. To begin with, the Australian findings make no suggestion that Zenith ever intended or desired to establish a business of exporting radios or television sets to Australia (see VI A. 2906–2907); there are not even findings comparable to finding XXI with respect to England and finding XXIX with respect to Canada. (See pp. 45–46 and 52–54 *infra.*)

The only discussion of Zenith's interest in Australia appears in Wright's testimony (*id.* 474) that Zenith had a dealer in Australia in "the early thirties or the late twenties" and "were thrown out * * * by the pool activity." Wright's only other statement of Zenith's interest in exporting to Australia was his testimony of discussing "with officials of Stromberg-Carlson in Australia, Mr. Beam * * * [and] the head of a company that makes components in Australia and is a licensee of ours in to some extent in favor of Zenith. On the other hand, it is our view that the district court considered the case without appropriate attention to detail, so that its findings are deficient in critical respects, and we suggest that this Court should remand the case to the district court to make further findings on the questions indicated below.

Before discussing the evidence, however, it is important to ascertain what evidence should be considered. After the trial court had entered its findings on January 25, 1965 (almost a year after the case was tried in February 1964, I.A. 110, II A. 935), HRI on March 26, 1965, through newly retained counsel (I A.

---

another area—Mr. Webb of the Rola Corporation", who told him "we could not get such a license, and there was no use talking about any sort of arrangement that contemplated that." (I A. 476.)

Apparently the only documentary evidence of Zenith's contacts with the Australian market near the damage period are a group of letters, dated between 1956 and 1960 (DX 215, VI A. 2523-2590). Most are inquiries from people in Australia seeking to buy Zenith radios and Zenith's response. In two, dated December 1956 and March 1957 (*id.*, 2523-2526), Zenith attributed its inability to export to the Australian pool. The later ones do not refer to the pool. The last documents in the group suggest, if anything, that the embargo foreclosed Zenith from Australia (*id.*, 2588-2590).

Whether the evidence here is sufficient to sustain a finding that Zenith had the requisite intent depends, we suggest, on what the ordinary, rational businessman would do in the particular situation to evidence his desire to enter the foreclosed market. Here, however, the indicator of what is reasonable is Zenith's evidence with respect to Canada and England. There is a stark difference between what Zenith said it did in attempting to enter the former areas and its evidence with respect to Australia. Therefore, taking this record as a whole, we see no basis for inferring that Zenith had any intention of building an export business to Australia during the damage period in issue here.

4), moved the district court to withdraw its findings and to reopen the record to receive offers of proof that were then tendered (VII A. 2939–2995). The district court reopened the record "for the sole and limited purpose of submitting proof of damages as to Australia and England" (VII A. 3040; see, also, *id.*, 3031–3039). HRI undertook discovery, and a further hearing was held at which it introduced additional evidence (VII A. 3207–3522) on that issue.[6] On the basis of such evidence, the district court amended its findings on Australia and England, and reduced the damages for the violations relating to these countries (VII A. 3524–3526). The court refused to receive any other evidence, however, stating (*id.*, 3527):

> I want to indicate at this time—there has to be an end of litigation. I don't intend to permit a second chance to do the things that might have been done at the first trial.

The court permitted extensive additional offers of proof, which occupy all but the last page of volume VIII of the printed record in this Court (pp. 3547–4129).

Before this Court HRI relies importantly on the material contained in the offer of proof, and urges that the district court erred in refusing to admit it into evidence. It is ordinarily held that the determination whether to reopen a case lies within the informed discretion of the trial court. Here the court permitted reopening on some issues, but not on others. There is no claim that the material in the offer of proof was either unavailable at the time of the original trial or could not have been there offered. In the circumstances it is difficult to conclude that the trial court's denial of this belated request to reopen the entire case was improper. Cf. *Marconi Wireless Corp.* v. *United States,* 320 U.S. 1, 48. Accordingly, we limit our discussion of the evidence to that actually in the record.

---

[6] The evidence (VII A. 3207–3522) was designed to show that government-imposed embargoes, and not the pools, had barred imports of radios and television sets into England and Australia until June 1959 and April 1960, respectively; and that thereafter tariffs and shipping costs would have required Zenith to charge far higher prices than its competitors. To a lesser degree, HRI explored the suitability of Zenith television sets for use in England.

A. WHETHER THE EVIDENCE IS SUFFICIENT TO SUPPORT A FINDING THAT THE ACTIVITIES OF THE CANADIAN POOL INJURED ZENITH'S CANADIAN TRADE

1. *Zenith must show only a reasonable probability of injury*

If, as this portion of our brief assumes, HRI, in contributing its patents to the Canadian pool, participated in an unlawful conspiracy and combination in restraint of the foreign commerce of the United States (see the discussion in Point II, *infra,* pp. 56–57), HRI must respond in damages to the extent that the pool's activities restrained Zenith's ability to compete in the Canadian market during the years in issue here. On this record, the question is whether the evidence is sufficient to support a finding that the pool's unlawful activities reduced Zenith's sales and thereby its profits in Canada.

The controlling legal standards were announced in *Bigelow* v. *RKO Radio Pictures,* 327 U.S. 251, and similar cases. In that treble damage action, a motion picture theater operator claimed that a conspiracy among film distributors to deny him first run pictures had injured him. He relied upon two items of evidence as proof of the fact and the amount of damages. The first was a comparison of his profits with the contemporaneous experience of a competing theater, which had access to first run features. The second was a comparison of his profits for the period when the conspiracy affected him with his profits during an earlier period when he had been able to obtain first runs.

The jury found that there was a conspiracy, the court of appeals affirmed, and this Court agreed. The jury awarded damages, but the Seventh Circuit held that the evidence was too imprecise to support the award. This Court reversed, reasoning as follows (*id.* at 264–265):

> In such a case, even where the defendant by his own wrong has prevented a more precise computation, the jury may not render a verdict based on speculation or guesswork. But the jury may make a just and reasonable estimate of the damage based on relevant data, and render its verdict accordingly. In such circumstances "juries are allowed to act upon probable and inferential, as well as direct and positive proof." *Story Parchment Co.* v. *Paterson Co., supra,* 561–4; *Eastman Kodak Co.* v. *Southern Photo Co., supra,* 377–9. Any other rule would enable the wrongdoer to profit by his wrongdoing at the expense of his victim. It would be an inducement to make wrong-

> doing so ~~effective and~~ complete in every case as to preclude any recovery, by rendering the measure of damages uncertain. Failure to apply it would mean that the more grievous the wrong done, the less likelihood there would be of a recovery.
>
> The most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created. See *Package Closure Corp.* v. *Sealright Co.,* 141 F. 2d 972, 979. That principle is an ancient one, *Armory* v. *Delamirie,* 1 Strange 505, and is not restricted to proof of damage in antitrust suits, although their character is such as frequently to call for its application. * * *

The Court reinstated the jury verdict, holding (327 U.S. at 264) as it had in *Eastman Kodak Co.* v. *Southern Photo Co.,* 273 U.S. 359, 377–379, and *Story Parchment Co.* v. *Paterson Co.,* 282 U.S. 555, 561–564, "that in the absence of more precise proof, the jury could conclude as a matter of just and reasonable inference from the proof of defendants' wrongful acts and their tendency to injure plaintiffs' business, and from the evidence of the decline in prices, profits and values, not shown to be attributable to other causes, that defendants' wrongful acts had caused damage to the plaintiffs."

In short, the very nature of the violation in cases such as this—actual or attempted exclusion of a competitor from the market—in itself places serious practical limits on the proof of injury that the antitrust plaintiff may reasonably be expected to produce. He can never show with certainty that he would have had more business and made more profits. As in *Bigelow*, he must often proceed by comparisons of his experience in the unlawfully restrained business with his or a competitor's experience in a comparable but unrestrained market. Necessarily, such comparisons involve numerous uncertainties and to a large measure rest on speculative factors. They are offered as proof of what *would* have been, when no man can say more than what *might* have happened, if the restraint had not been imposed.

But, as a practical matter, such comparisons often are the best—indeed the only—proof available. To require greater precision and specificity would place the burdens of uncertainty on the victim and not on the wrongdoer, where it properly belongs, and would enable the antitrust violator to diminish his liabilities in direct ratio to the success of his predatory venture. As long as the antitrust plaintiff introduces evidence showing a reasonable probability that the "defendants' wrongful acts and their tendency to injure plaintiffs' business * * * had caused damage to the plaintiffs" (*Bigelow, supra,* 327 U.S. at 264), the trier of the facts is justified in drawing that inference. See, also, *Continental Ore Co.* v. *Union Carbide & Carbon Corp.,* 370 U.S. 690, 697, and cases there cited.

2. The evidence permits an inference that the activities of the pool in Canada reduced the business Zenith did there

a. The proof on which the finding of impact in Canada depends falls into three categories: 1) the historical background, which showed that from 1927 until the later 1950's, when Zenith began to import into Canada, the pool actively sought to stop such imports;

2) testimony that the activities of the pool impaired Zenith's ability to establish a distribution network in Canada; and 3) the opinion of Zenith's executives that the American and Canadian markets were sufficiently similar so that, had it not been for the pool's restrictions, they would have expected Zenith to gain the same share of the market in Canada as it enjoyed in the United States. The first two elements show how the pool impaired Zenith's ability to compete in Canada. The third, much like the comparisons used in *Bigelow,* allows the inference that such impairment in fact occurred as a result of the pool's activities.

Between 1927 and 1954 Zenith made a number of unsuccessful attempts to secure a license from the Canadian pool to cover exports from the United States to Canada. At times Zenith was told the pool simply did not grant licenses for import, and at other times the refusal was attributed to Canadian law. (I A. 410–11, 451; DX 146–150, V A. 1982–2013.) When Zenith sought to license distributors in the early 1950's, its dealers were met with threats and they stopped handling Zenith's products (I A. 450–53; DX 155–162, V A. 2022–2065). Zenith knew that the pool actively policed the Canadian market, and threatened dealers and buyers of imported merchandise with infringement actions. These activities continued up to the middle of the 1950's. Then, when Zenith asserted the right, under the licenses it received in the 1957 settlement of its litigation against RCA, General Electric, and Western Electric, to export into Canada, it was met with warnings from the pool that such exports would infringe the patents still controlled by the pool, including some of Hazeltine's. (I A. 410–412; DX 151–154, VA. 2014–2021)

Thus, at the outset of the 1959–1963 damage period, Zenith's officials had experienced a long and consistent history of attempts by the pool to bar Zenith from exporting to Canada. They had no reason to believe that there was any reasonable prospect that the pool would change its position in the future.

The finder of fact was entitled to conclude that by 1959 the pool, through a course of conduct spanning decades, had done everything possible to convince Zenith that exports to Canada would be met with infringement actions and to convince potential merchandisers and buyers of Zenith products that they too would suffer legal action by dealing in or using imported television sets and radios. The more successful these efforts had been, moreover, the less need there would be for the pool to make similar overt efforts during the damage period. HRI argues (HRI Br. 54) that the lack of proof of specific overt acts—except a threat to a Motorola dealer—during the damage period negates any finding of injury; but the finder of fact was entitled to attribute the pool's relative quiescence during this period to the success rather than the collapse of the pool's opposition.

The effect of this long course of conduct is shown in Wright's testimony of Zenith's difficulties in establishing a network of distributors in Canada. He stated that Zenith had been able to find outlets in the western provinces, but had been forced to use its hearing aid subsidiary to sell its radios and television sets in the central parts of Canada, and, with lesser success, had used that subsidiary in the Maritime Provinces. He further testified that Zenith had approached potential distributors in these localities, but had found them unwilling to handle Zenith's goods and that they attributed this reluctance to the threat of infringement actions by the pool (I A. 450, 455-456, 458).[7]

The third and final element of proof of impact is the opinion testimony of Wright and Kaplan, Zenith's President and Executive Vice-President and Treasurer. They stated their opinions that Zenith, if allowed to compete without restraint in Canada during the damage period, would have obtained 15 to 20 percent of the market—the same share the company had in the United States (I A. 461, II A. 528). This testimony was founded on Kaplan's assertions that the characteristics of the two markets were similar, that the nature of the competition was similar because many Canadian companies were subsidiaries of American manufacturers, and that Zenith's advertising in the United States would have a "spill over" effect in Canada because American television commercials and publications had some audience in Canada.[8] (I A. 451, 461, 479–480, II A. 509, 528–529).

---

[7] It is true, as HRI points out (Br. 52), that Wright's testimony is lacking in particulars; once the mid-1950's are passed, there are no specific details given of who was approached or when, and there is no documentary corroboration of the claimed attempts to obtain outlets, as there was regarding similar efforts during the early and middle 1950's. But these factors go to the weight to be given the testimony, and the district court credited it despite these defects.

As Wright and Kaplan acknowledged on direct examination (I A. 56, II A. 528), this testimony necessarily contains some element of speculation. As in *Bigelow,* no person can be certain of the results Zenith would have secured if the pool had not existed, or whether it would have been able to obtain a Canada-wide group of distributors notwithstanding the pool. But in this respect, Zenith's position was the same as that of any other victim of an exclusionary antitrust violation. The proof available to it was restricted by the tortfeasors' conduct. Perhaps it *might* have produced other or more convincing proof. The question, however, is whether it introduced enough evidence to permit the trier of fact reasonably to conclude that it had been damaged by the violation. What the Court said in *Bigelow* is applicable here

---

[8] HRI contends that the testimony of Zenith's officials as to Canada was "not credible" (HRI Br. 118–124). It relies on testimony regarding the adaptability of American made sets to English usage (as to which see p. 49 n. 9, *infra*) and discrepancies in Wright and Kaplan's testimonies regarding Zenith's expenditures on advertising in Canada. Wright testified at the 1964 trial that Zenith scaled down its Canadian advertising because of the pool's activities (I A. 4900), but Kaplan, after the case was reopened, testified that the expenditures were normal for an attempt being made to enter a new market (VII A. 3459). Under our analysis, Wright's testimony as to advertising is not essential to support a finding of impact as to Canada, and the degree to which these discrepancies affect the weight given other aspects of Wright and Kaplan's testimony is for the finder of fact to determine. There was no discrepancy as to the matters that we suggest would support a decision favorable to Zenith.

(327 U.S. at 265–266):

> [T]he wrongdoer may not object to the plaintiff's reasonable estimate of the cause of injury and of its amount, supported by the evidence, because not based on more accurate data which the wrongdoer's misconduct has rendered unavailable. * * *
>
> "The constant tendency of the courts is to find some way in which damages can be awarded where a wrong has been done. Difficulty of ascertainment is no longer confused with right of recovery" for a proven invasion of the plaintiff's rights. *Story Parchment Co.* v. *Paterson, supra* [282 U.S.], 565; and see also *Palmer* v. *Connecticut R. Co.,* 311 U.S. 544, 559, and cases cited.

b. There remains HRI's claim (Br. 47–49) that the release Zenith gave RCA, General Electric and Western Electric in 1957 absolves it as well as them from the damage claims that Zenith has asserted here. That release, given in exchange for $10 million and worldwide licenses of the defendants' patents, released those defendants from further liability for all damages, past or future, resulting from all their acts up to the date of the release. HRI's theory (*id.,* 48–49) is that it is entitled to rely on the release even though it was not a party and was not expressly released—presumably it relies on the common law rule that a release of some joint tortfeasors releases all—and that much of the damages awarded here with respect to Zenith's Canadian business flowed from the pool's activities prior to the release. Zenith has apparently not challenged HRI's assertion that the common law rule determines the scope of a release given in an antitrust action. Although we have some reservations that the public interest in the enforcement of the antitrust laws and the Court's interest in the orderly administration of complex litigation are consistent with the general application of that rule in antitrust cases, it does not appear necessary to resolve the point here since Zenith seemed to concede (VII A. 3035) that this particular release extended to liabilities resulting from the pre-1957 acts of all parties to the conspiracy charged in that earlier litigation.

Nevertheless we suggest that there is basis in the record which allows the finder of fact to attribute Zenith's difficulties, at least to some extent, to activities that occurred after the 1957 release. Thereafter Zenith undertook to enter the Canadian market, asserting that the licenses it had obtained relieved it of any obstacle the pool might otherwise have imposed. It soon found that the pool asserted otherwise, and rested its threat of infringement actions in part on Hazeltine patents. These threats and patents, the finder of fact could properly conclude, made Zenith unable to secure proper distribution facilities in the central and Maritime regions of Canada.

On the other hand, we suggest that the settlement of the litigation against RCA, GE, and Western Electric should be taken into consideration in determining the amount of damages. The findings here purport to state Zenith's total losses in Canada, not just those attributable to HRI's actions. Ordinarily, this would be the proper measure of liability, since one conspirator must be liable for the total injury caused by the restraint. But Zenith insisted at trial that the $10 million payment was supposed to compensate it for damages to its Canadian trade. Under the release, the $10 million covered future as well as past damages from past acts. Without showing unlawful conduct after the release was given, the release barred Zenith from recovery of further damages from RCA, General Electric or Western Electric for the damage period of this case or any other period after September 1957. If, as Zenith seems to concede, the release was intended to cover all members of the pre-1957 pool, HRI should be entitled to the same benefits.

~~Therefore, the burden of proving a proper basis for allocation.~~

It therefore may be, as HRI suggests (HRI Br. 47–49), that it at most must pay for the difference between what Zenith earned in Canada during the damage period and what the district court finds would have been earned if Zenith started from scratch, as it tried to do, after the 1957 settlement.

This theory, to be sure, was not advanced until HRI's post-findings motion. Zenith, however, proved the terms of the settlement at trial. See p. 9, *supra*. Although the release was part of the excluded offers of proof (VII A. 3051–3052), its terms were not in dispute. (See VII A. 3035–3037; see also appendix in the court of appeals, pp. 1882–1885.) It is unclear whether the court, in its post trial action, allowed HRI to assert the release as an affirmative defense, or only allowed a motion to be filed seeking leave to seek such an amendment (see VII A. 3040). If leave was denied, it may be, however, that the ground was not untimeliness, but the view that the release was irrelevant. The district court at least should speak with greater clarity to this issue, and determine whether, on the basis of the evidence, HRI is entitled to a partial set off with respect to Canada.

3. The findings of the district court are inadequate because they do not explain the connection between the pool's activities and Zenith's inability, if any, to find Canadian distributors during the damage period

Thus far, we have discussed the findings that *could* be made on this record; we now turn to the findings that *were* made. We believe that those findings are defective in their failure to state specifically whether Zenith was unable to find Canadian distributors during the relevant 1959–1963 period, and, if so, whether that inability was attributable to the activities of the pool.

The findings recite in detail all of the events that occurred through 1958, but that was before the start of the damage period. The only reference to Zenith's attempts to find distributors is in finding XXIX (VI A. 2905):

> For many years Zenith attempted to set up a distribution for its products in Canada but in every instance where a Canadian distributor began to sell Zenith products he was warned by the pool to stop and return the merchandise or face expensive infringement action. To ward off these attacks Zenith attempted to get a license from the pool, but in every instance it was advised by the pool manager that importation would not be permitted and, only local manufacture would be licensed.

This finding must refer to events that preceded 1957, for it was only for that period that the evidence demonstrates overt threats against Canadian sellers of Zenith products and resulting attempts by Zenith to obtain a license for imports. The trial court made no finding on the essential question whether Zenith was unable to obtain a full-fledged Canadian distribution system during the damage period, and that the pool caused this inability. Since, under Zenith's theory of the case, this is a necessary element to its claim of damage with respect to its trade in Canada, the case should be remanded to the trial court to make findings on this issue.

B. WHETHER THE EVIDENCE IS SUFFICIENT TO SUPPORT A FINDING THAT THE POOL WAS THE CAUSE OF ZENITH NOT ENTERING THE ENGLISH TELEVISION MARKET

The issue with respect to Great Britain is somewhat different than for Canada, because Zenith never exported television sets to that country in commercial quantities during the 1959–1963 damage period. The question therefore is whether Zenith probably would have sold television sets in England in the absence of the restrictions imposed by the pool, and this in turn depends upon whether (1) the responsible Zenith officials intended to export to England, and (2) Zenith had the capacity as a business enterprise to do so. We conclude (1) that the evidence is adequate to allow the finder of fact to conclude that Zenith had the necessary intent and capacity, but (2) that the findings on this point are not sufficiently specific, so that the case should be remanded for further findings.

1. An award of treble damages for exclusion from a market must be based on findings that the claimant had both the intent and the capacity to enter the market

In proving that his trade or business has suffered injury in a market in which he has never competed, an antitrust claimant faces a unique problem of proof. The courts of appeals have consistently required such a claimant to prove that it was the illegal activity, and not his own preferences or the physical or financial limitations on his capacity to do business, that led to his failure to enter the market.

This rule has its origin in three cases decided in the Second Circuit in 1908. In *Thomsen* v. *United Castle Mail S.S. Co.,* 166 Fed. 251, the plaintiff alleged that a shipping conference had coerced him into paying unreasonable freight rates, which were to be repaid to him only if he refrained from using carriers who did not belong to the conference. In dismissing the complaint, the district court observed that the plaintiff had obtained his business by agreeing to do business with the conference and that treble damages could not be recovered for injury to "trade which they never had before", 149 Fed. 933, 936. In reversing, the court of appeals held (166 Fed. at 253): "It is as unlawful to prevent a person from engaging in business as it is to drive a person out of business."

The other two cases were decided together, ten weeks after *Thomsen. Pennsylvania Sugar Ref. Co.* v. *American Sugar Ref. Co.,* 166 Fed. 254 (C.A. 2), involved a claim that the defendants had conspired to prevent the plaintiff from manufacturing sugar by acquiring voting control of the plaintiff's stock. The plaintiff had been out of business for some years because of the Spanish-American war, and had constructed a new plant with a view to beginning anew. The defense in part rested on the ground (*id.* at 260) "that the plaintiff was not engaged in business at the time of the conspiracy; that it had no established business to injure." The court of appeals rejected both this theory and the argument that recovery should be barred because the plaintiff had no more than "a naked intention to engage in interstate commerce" (*ibid.*).

The third case is *American Banana Co.* v. *United Fruit Co.,* 166 Fed. 261 (C.A. 2). The plaintiff's main claim was that the Costa Rican government, at the defendant's instigation, had seized its plantation and put it out of the banana growing business; the Second Circuit found such acts to be beyond the scope of the Sherman Act, and this Court affirmed, 213 U.S. 347. Alternatively, the plaintiff argued that the defendant had prevented it from buying bananas from other growers for import into the United States. The Second Circuit rejected this contention as a basis for recovery because (166 Fed. at 264):

> * * * it is necessary to state facts showing an intention and preparedness to engage in business. * * * it is not alleged that the plaintiff had made any preparations to engage in the business of buying bananas independently of the operation of its own plantation, nor that it desired or intended to engage therein as a separate and independent business. It is not averred that the plaintiff invested any money in preparing to engage in any such independent business; nor does the extent to which, or even the country in which, it desired or intended to engage therein, appear. * * * Certainly the allegations are too indefinite and uncertain to state a cause of action * * *.

This rule has since been followed and applied in a variety of cases. *E.g., Volasco Products Co.* v. *Lloyd A. Fry Roofing Co.,* 308 F. 2d 383, 395–396 (C.A. 6);

Stearns v. *Tinker & Rasor,* 252 F. 2d 589, 606 (C.A. 9); *Triangle Conduit & Cable Co.* v. *National Elec. Prods. Corp.,* 152 F. 2d 398 (C.A. 3).

This principle is a sound one; it represents the application to this type of antitrust claim of the rule that the claimant must show the defendant's acts were the proximate cause of its injury. If an antitrust plaintiff would not have sought or would not have been able to enter a market even in the absence of the defendant's exclusionary activity, then the violation was not the proximate cause of injury; indeed, where the independent reason for not entering is the claimant's own lack of interest, or own lack of ability, there has been no injury.

2. The evidence is sufficient to support a finding that Zenith would have sold television sets in England during the relevant period but for the pool

After reopening the case to allow proof of the embargoes, the district court found that the governmentally-imposed barrier would have foreclosed Zenith from the English market so long as it existed, independently of the English patent pool. Thus the factual question is whether the evidence allows a finding that after the termination of the embargo in June 1959, Zenith would have sought to enter the English television market but for the existence of the pool (VII A.3524–3526). HRI's contention is that Zenith had no interest in the English market at that time, but was awaiting the decision of the English government on whether television transmissions should be changed from one that scanned 405 lines per second to a 625-

line-per-second system used outside England and for which Zenith's production was designed.

There is no contention that Zenith was incapable of producing a set that could receive the English picture transmissions and that would receive the English sound transmissions, which use AM rather than the FM used in the United States. There is no challenge to Wright and Kaplan's testimony (I A. 464–66; II A. 530–531, 544) that Zenith could have engineered a set for England, that such a set would have used many of the same components as domestic sets, and that production of such sets would have been no more complicated than the addition of a new model to Zenith's domestic line.[9] In addition, there is no suggestion that Zenith could not have produced the number of sets required to engage in business in England; indeed HRI's trial counsel elicited testimony showing that satisfaction of the percent of the English market that was used as a basis for Zenith's calculation of damages would have required but a very small fraction of the number of sets that Zenith regularly produces. (II A. 543–44)

---

[9] HRI makes much (Br. 33–39, 87–93) of a claim that Wright and Kaplan's testimony at the 1964 trial that Zenith sets "could" be adapted to receive English systems has been "discredited." No doubt, in their 1965 testimony they at least modified their 1964 assertions. See p. 15 *supra.* They did not, however, retreat from their testimony regarding Zenith's capacity to mass produce a set designed for the English market. The variations in their testimony with respect to the adaptability of the sets Zenith was producing for the American market, of course, bore on their credibility and would have justified the district judge in deciding that other aspects of their testimony were also unworthy of belief. This, however, is not a situation as in *United States* v. *United States Gypsum Co.*, *supra*, where there was a direct conflict between trial testimony and contemporaneous documents; the district court here was therefore free to accept parts of their testimony and reject others, as he gauged credibility. Cf. *United States* v. *Oregon State Medical Society*, 343 U.S. 326.

The essential question rather goes to Zenith's intentions, *i.e.,* did it intend to stay out of the English market until the English government decided whether to change transmission systems? The only evidence indicating that Zenith was awaiting the change in systems is correspondence between it and Ramsey, its English distributor. (See HRI Br. pp. 40–42). These letters, which constituted Zenith's exhibit No. 112 (IV A. 1559–1593), include one written by Zenith in September 1961 and nine written between March and November of 1962, mostly by Ramsey to Zenith. The only letter containing a firm statement that Zenith was awaiting the change is in the November 8, 1962 letter from Ramsey to Zenith, which said: "until such time naturally we cannot start marketing * * *" (IV A. 1593). There is no comparable statement in any of Zenith's letters or in any others of Ramsey. To be sure, each of the extracts quoted by HRI speaks of preparations being made for the anticipated change, and the letters make clear Zenith's intent to begin exports once the change was made. But these statements were all made at the end of the damage period, and are not strong evidence of Zenith's intentions up to three years earlier.

As against these letters, Zenith's officers expressly denied at trial that they were awaiting the change in transmission systems. Wright testified that Zenith had sought to interest English distributors in handling Zenith television sets, that they had declined, and that the reason for the failure was the distributors' fear of infringement actions by the pool. (See p. 13, *supra*).

In sum, the evidence on this issue is conflicting, and it would support a finding that, absent the ~~proof~~ pool, Zenith would have sought to enter the market upon termination of the embargo, notwithstanding the fact that the English government might, as of some then undetermined time, change its transmission system. Although the evidence suggesting that Zenith sought television distributors during the damage period is very imprecise, this would not preclude a finding of damage. The victim of a predatory scheme may justifiably conclude that it is useless to seek to enter a market, however much he may wish to. *Bigelow* and the related cases establish that the testimony of Zenith's attempts in the 1950's to find distributors, if credited, and the evidence of the English pool's policies to bar imports would justify an inference that the pool made Zenith unable to find dealers, and this inability continued into the damage period.

3. The findings of the district court are inadequate because they do not explain the connection between the English pool's activities and Zenith's lack of English distributors during the damage period

As with Canada, the findings that were made with respect to England are not sufficiently specific to justify the district court's conclusionary finding that Zenith suffered injury to its trade or business of exporting television sets to England. The one mention of Zenith's attempt to find English distributors is in finding XXI. It states (VI A. 2901):

> For years Zenith made every effort to export home receivers to distributors and dealers in the English market. On each occasion, however, the Pool threatened its distributors until they ceased buying Zenith products and no substantial trade outlets could be found which would risk handling the line since the Pool would not license the sale of imported merchandise.

First, this finding is inadequate in two respects. It does not indicate the time period to which it relates; since the evidence shows no Zenith television distributors during the damage period, the finding must relate to an earlier period. The very least that is necessary to sustain a finding of impact on this record is a further finding that it was not reasonable for Zenith to expect to find English television distributors in view of the pool's activities.

Second, the finding is that "on each occasion, the Pool threatened its distributors until they ceased buying Zenith products * * *." There is, however, no evidence that Zenith television sets were ever sent to England and met with threats or that threats ever caused distributors to *stop* handling them. On the contrary, Wright apparently testified (I A. 462-464, 473-474) that at no time after World War II could Zenith induce an English distributor to take television sets, except for "a very few" sent Ramsey (*id.,* 464). Rather, the testimony and Zenith's theory was (*ibid.*) that "we have not made any effort on television because we were informed that the pool license then in effect (sic), and there was no possibility of getting such a license." The documentary evidence Zenith cites to support this finding (Zenith Br. p. A-12) consists of letters between Zenith and English dealers (DX 100-109, IV A. 1512-1545), all dated between 1931 and 1938, stating an unwillingness by one side or the other to have Zenith *radios* exported to England because of the threat of infringement action by the pool.

Thus the finding is responsive to neither Zenith's theory nor the evidence. The district court made no findings on the factual questions essential to a holding that Zenith was injured by being foreclosed from exporting television sets to England. The case should be remanded to the district court to make findings on these issues.

4. If on remand the district court finds that the pool foreclosed Zenith from exporting television sets to England during the damage period, it should redetermine the damages

The damages originally assessed with respect to England were based on Wright's and Kaplan's testimony that, in the absence of the British pools, Zenith would have obtained in England about 25 percent of its market share in the United States; *i.e.,* 3 to 5 percent of the English market. As in the case of Canada, they acknowledged the uncertainty of their assessment, but stated that they had taken into account the differences in the nature of competition and tariff and shipping costs (I A. 465-466; II A. 528-

529). The amount of damages calculated in the district court's original findings accepted this testimony and assumed that Zenith would have had a share in the English market equal to a quarter of Zenith's share of the United States market for each year of the damage period.

After the trial court reopened the record to receive further evidence respecting England and Australia, Wright and Kaplan were recalled. They asserted that at the time of their original testimony, they had known that there were government restrictions on entry into those markets, but were of the view that there was no complete bar and that import licenses could be obtained, albeit with some difficulty. Each asserted that these difficulties had been taken into consideration in their original estimates of the market share they expected Zenith to have in England, that they had assumed Zenith would have started from scratch in England in 1959, that their 3 to 5 percent market figure should be viewed as an average for the four year damage period and they had not intended to suggest that Zenith would have had this share during each of the years in question. (VII A. 3437, 3439, 3441–3444, 3448–3449, 3451–3455, 3469–3471, 3489–493, 3496).

At the end of this hearing, the district court concluded that notwithstanding the English patent pool, the Government's embargo would have foreclosed Zenith imports until June 8, 1960. The court further decided that it should not accept Wright's and Kaplan's testimony to the effect that Zenith, over the damage period, would have averaged 3 to 5 percent of the English market. The court said of that evidence (VII A. 3525–3526):

> it must be believable in the first instance. And the Court is aware of the pride of officers in their corporation, and the belief in their product, but it is unrealistic to the Court for me to believe that Zenith, as a quality item, selling in excess of locally manufactured items, could have attained the profits for Zenith that are indicated by the guesstimate which everybody indicates is what Exhibit 220 is.

The court then ruled (*id.*, 3526) that damages should be calculated on the assumption that Zenith would have had no profits in England during the first year following the end of the embargo, and would have had 50 percent of the amount Wright and Kaplan projected in the second year, 75 percent for the third year and the full projected share in the fourth year.

These latter conclusions, however, seem to represent the court's own opinion of the success Zenith would have had in England after the embargo. Apart from Wright's and Kaplan's testimony, there is no evidence to support this analysis. Perhaps the district judge simply scaled down that testimony according to his judgment of the degree of puff in those witnesses' opinions. But if that was the theory, the court never said so, and for that reason alone the findings appear inadequate.

Furthermore, if this Court agrees with our analysis of the evidence with respect to Zenith's imports of radios to England (see p. 30 n. 5, *supra*), that would put an entirely different complexion on the measurement of damages. For the evidence (DX 220, VI A. 2661) shows that Zenith's actual sales of radios in England were far less than the amounts Wright and Kaplan projected. These are the actual sales Zenith had, and Zenith's theory was that its success in television and radio in England would each appear the same in relation to its success in the United States market. Perhaps the district court would on reexamination conclude that Zenith would have had relatively greater success with television sets than it did with radios in England. Be that as it may, if its finding with respect to radios is found unsupported, reexamination of the damages found with respect to television sets would also seem required.[10]

II. HRI'S PARTICIPATION IN THE CANADIAN AND ENGLISH PATENT POOLS UNLAWFULLY RESTRAINED THE FOREIGN COMMERCE OF THE UNITED STATES

Because of the court of appeals' disposition of the damage issue and its elimination of the provision of the injunction barring HRI from further participation in the patent pools, it did not reach the question whether HRI violated the Sherman Act when it allowed the foreign exploitation of its inventions to be controlled by patent pools. If this Court reverses the court of appeals on either of those rulings, the legality of the pools will then have to be decided. Although that issue could be remanded to the court of appeals, this Court might deem it appropriate to decide it. The relevant legal questions have previously been settled by this Court, and findings of the district court having adequate support in the record in our view disclose a classic case of violation. We first discuss the governing principles and then their applicability to the Canadan and English pools. We will not discuss the Australian pool because of our view that no damages may be assessed with respect to that country and because the pertinent part of the injunction may be sustained whether or not the Australian pool was lawful.

---

[10] In addition, on remand the same factor might lead the district court to reexamine its measurement of damages as to Canada. However, the differences between the Canadian and English markets may be sufficient to warrant a conclusion that Wright and Kaplan's testimony is acceptable with respect to Canada but not with respect to England.

A. THE SHERMAN ACT IS VIOLATED WHEN A FOREIGN PATENT POOL USES ITS PATENTS TO RESTRAIN EXPORTS FROM THE UNITED STATES

Ownership of a patent allows a businessman to exercise a variety of options that might otherwise be foreclosed to him by the antitrust laws, since a patent represents a seventeen year monopoly over the invention and its exploitation. But the antitrust laws and the patent laws provide limits upon a patentee's use of his monopoly, and an owner transgresses those limits when he employs the patent in a manner that extends his monopoly beyond that inherent in the patent itself.

One touchstone of these limits is that holders of different patents cannot act concertedly to increase the power of each to restrain competitors of both. As in any other context, the Sherman Act requires each seller to act independently, without the assistance of any other seller, in meeting common competitors. For example, two patentees cannot together determine the terms that will be imposed on third persons who use the patents of either. *United States* v. *Line Material Co.,* 333 U.S. 287, 305–315.

In case after case the Court has made clear that Section 1 of the Sherman Act prohibits any concerted acts of patentees that restrain competition. Thus the Court said in *United States* v. *Singer Mfg. Co.,* 374 U.S. 174, 196–197:

> * * * It is well settled that "[b]eyond the limited monopoly which is granted, the arrangements by which the patent is utilized are subject to the general law," *United States* v. *Masonite Corp., supra,* at 277, and it "is equally well settled that the possession of a valid patent or patents does not give the patentee any exemption from the provisions of the Sherman Act beyond the limits of the patent monopoly. By aggregating patents in one control, the holder of the patents cannot escape the prohibitions of the Sherman Act." *United States* v. *Line Material Co., supra,* at 308.

See, also, *Brulotte* v. *Thys Co.,* 379 U.S. 29; *United States* v. *United States Gypsum Co.,* 333 U.S. 364; *Scott Paper Co.* v. *Marcalus Co.,* 326 U.S. 249; *United States* v. *Masonite Corp.,* 316 U.S. 265, 280–281; *Ethyl Gasoline Corp.* v. *United States,* 309 U.S. 436, 455–456, affirming 27 F. Supp. 959, 965–966 (S.D.N.Y.); *Standard Oil Co.* v. *United States,* 283 U.S. 163, 174; *Standard Sanitary Mfg. Co.* v. *United States,* 226 U.S. 20; *United States* v. *National Lead Co.,* 63 F. Supp. 513, 5124 (S.D.N.Y.), affirmed, 332 U.S. 319.

Patent pools by their nature involve the most flagrant form of the abuses condemned in these cases. The phrase "patent pool" is used "to convey the idea of a linking of the right to use patents issued to more than one patentee." *United States* v. *Line Material Co., supra,* 333 U.S. at 313, n. 24. The pool is a combination peculiarly subject to unlawful use, since it represents not a single monopoly, but an aggregation of monopolies which through cumulative effects may control competition in a broad range of products. Because the patents of all participants are subjected to a single control, prices may be made subject to the agreement of all participating patentees, and markets may be divided and entry controlled through restrictions on licenses or assertions of infringement against nonparticipants. When, as here, all significant patents in an industry are within the pool, the pool becomes an all-powerful cartel with complete control over entry, price, production, and distribution.

Perhaps the classic statement of the restraint inherent in such a patent pool is that of Judge Rifkind in *United States* v. *National Lead Co., supra,* 63 F. Supp. at 523:

> To have access to the patents of the combination, the stranger must not only have the consent of the member of the combination in whose "territory" he would operate, but he must adhere to the principles of the combination. The cornerstone of the system was the private regulation of international trade. The suppression of competition was the cement which held the superstructure in place.

> Whether the form of association they created be called a cartel, an international cartel, a patent pool, or "a technical and commercial cooperation," is of little significance. It is a combination and conspiracy in restraint of trade; and the restraint is unreasonable. As such it is outlawed by Section 1 of the Sherman Act * * *.

Of course, foreign patent pools, like foreign cartels, are themselves not subject to the antitrust laws of the United States. But any such arrangement that restrains commerce between United States and foreign countries violates the Sherman Act, and any participant who is subject to the jurisdiction of the United States courts may here be called to answer. *United States* v. *Pacific & Arctic Ry. & Nav. Co.,* 228 U.S. 87, 105–106; *Thomsen* v. *Cayser,* 243 U.S. 66, 88; cf. *Strassheim* v. *Daily,* 221 U.S. 280, 284–285. "A conspiracy to monopolize or restrain the domestic or foreign commerce of the United States is not outside the reach of the Sherman Act just because part of the conduct complained of occurs in foreign countries." *Continental Ore Co.* v. *Union Carbide & Carbon Corp., supra,* 370 U.S. at 704; see, *e.g., Timken Roller Bearing Co.* v. *United States,* 341 U.S. 593; *United States* v. *National Lead Co., supra;* cf. *United States* v. *Singer Mfg. Co., supra.*

B. HRI VIOLATED SECTION 1 OF THE SHERMAN ACT WHEN IT KNOWINGLY ALLOWED PATENT POOLS IN CANADA AND ENGLAND TO USE ITS PATENTS TO EXCLUDE AMERICAN MADE PRODUCTS FROM THOSE COUNTRIES

The United States has brought antitrust suits against a number of the participants involved in these pools. In civil and criminal actions against the Radio Corporation of America, a plea of *nolo contendere* and consent judgments were entered based upon RCA's participation in all three of the pools; and a civil action against General Electric and other American companies based solely on the Canadian pool also terminated in a consent decree. See *United States* v. *Radio Corp. of America* (S.D.N.Y., Civil No. 97-38), 1958 CCH Trade Cases, ¶69,164; *United States* v. *Radio Corp. of America* (S.D.N.Y., Criminal No. 155-107), CCH Antitrust Cases Summaries, 1957-1961, ¶45,058; *United States* v. *General Electric* (S.D.N.Y., Civil No. 140-157), 1962 CCH Trade Cases, ¶¶70,546, 70,428 and 70,342. In the RCA criminal case and the General Electric civil suit, HRI was named a co-conspirator.[11]

In this case the court of appeals did not consider the district court's conclusions and supporting findings of fact that the three pools are conspiracies in restraint of trade and that Hazeltine's knowing participation in them violated the Sherman Act. In this brief, we consider the findings that relate to Canada and England.

1. As for Canada, the finding that the pool's chief purpose was protection of its members from competition by importers (VI A. 2904) is supported by the findings of a Canadian government commission (VI A. 2830), the pool's own license form (V A. 2013),

---

[11] Although the civil actions were settled by consent judgments which enjoin the defendants from permitting use of their patents by foreign pools to prevent importation by American manufacturers, HRI is not bound by those judgments, and its patents are still available to the pools.

and the testimony of an expert in Canadian patent law and practice (II A. 704–705). HRI's knowledge of the exclusionary purpose and its willingness to permit use of its patents in its furtherance (VI A. 2906) is shown by its correspondence with prospective licensees (V A. 2133–2134) and with the pool (*id.*, 2143–2149).

Until 1957 the English pool agreement expressly required that no licenses be granted for import into England (III A. 1258). In that year the agreement was amended and seemingly would allow imports on terms agreeable to the "committee", composed of representatives of the participating companies, that managed the pool. (DX 60, III A. 1275). However, another portion of the amendment required (III A. 1274) that licenses be granted only "for the purpose of manufacturing * * * within Great Britain, Northern Ireland, Eire, the Channel Islands and the Isle of Man." (DX 70, III A. 1382; DX 71, III A. 1393–1394).

HRI's contribution of its patents to the English pool was effectuated through agreements between it and General Electric Ltd., and those agreements expressly referred to the pool and expressly contemplated that General Electric Ltd. would exercise its functions as HRI's exclusive English licensee through the pool (DX 51, 53 and 58, III A. 1196–1197, 1221, 1267).

Thus the documents demonstrate that the Canadian and English pools continued their purpose of excluding American imports up through the damage period in issue here. These documents also show that HRI licensed these pools to control the Canadian and English exploitation of HRI's patents with full knowledge of the pool's exclusionary purposes. *Timkin Roller Bearing, National Lead,* and the other cases cited above demonstrate that this conduct is the exact type of restraint on American export trade that the Sherman Act was intended to forbid.

2. While arguing that the issues are not before the Court (HRI Br. 150), HRI advances various reasons why its participation in the pools did not violate the Sherman Act. In substance, these reduce to two theories: *First,* that foreign cartels do not violate the Sherman Act unless an actual impact on American export trade is shown, and *Second,* that the pools, or HRI at least, abandoned their bars on exports. The latter point, we believe, is refuted by the evidence discussed above.

The initial difficulty with HRI's other defense is that the cases do not support its thesis that actual impact must be shown. HRI's argument rests on a statement in *United States* v. *Aluminum Co. of America,* 148 F. 2d 416, 443 (C.A. 2), that the Sherman Act does not incompass "conduct which has no consequences within the United States."

Of course, if the Court agrees with our view that the evidence would support a finding of impact, *i.e.,* a finding that the Canadian and English pools restrained Zenith's ability to export to those countries, then the pools obviously had "consequences within the United States," and the argument fails for that reason. More importantly, the *Aluminum Co.* statement would appear to be incorrect, if it means that such impact need be established before the prohibitions of the Sherman Act can be applied to a foreign-based conspiracy which seeks to restrain exports from the United States.

The Second Circuit's suggestion that foreign-based conduct is beyond the ambit of the Sherman Act unless there is impact was based on the view that this Court's decision in *American Banana Company* v. *United Fruit Co., supra,* compels such a result. In *American Banana* this Court held that the Sherman Act did not cover the conduct of an American company that induced a foreign government to seize a competitor's banana plantation. But some two and one-half years later, in *Strassheim* v. *Daily,* 221 U.S. 280, this Court indicated the limited nature of the holding in *American Banana,* saying (221 U.S. át 285):

> Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power. *Commonwealth* v. *Smith,* 11 Allen, 243, 256, 259. *Simpson* v. *State,* 92 Georgia, 41. *American Banana Co.* v. *United Fruit Co.,* 213 U.S. 347, 356. * * *

More recently, in *Continental Ore Co.* v. *Union Carbide & Carbon Corp., supra,* this Court expressly said, 370 U.S. at 704, 705, that intervening decisions had stripped this part of *American Banana* of its vitality. There the Sherman Act was held to protect an American company from exclusion from Canada, even though the unlawful scheme had been implemented by a defendant which, acting as the direct agent of the Canadian Government, had eliminated the plaintiff's quota for imports into Canada. In terms of the interrelation between the Sherman Act and conspiracies having their foundation or part of their activities beyond the United States, HRI's participation in the Canadian and English pools is no more immune than was the activity of the defendant in *Continental Ore.*

Furthermore, the record refutes the factual premise of HRI's argument that the pools were wholly the work of foreigners. The district court expressly found (VI A. 2900, 2906) that HRI allowed the Canadian and English pools to use its patents with full knowledge of the pool's exclusionary purposes. As we have pointed out above, the documents in evidence fully support this conclusion.

In the instant circumstances knowledge must be equated with culpability. HRI knew that the pools' objectives included the restraint of exports from the United States. By making its patents available to the pool, HRI enlarged the pool's capacity to achieve its objective. Thus an American company turned over the foreign exploitation of its American patents to the foreign patent pools for use in strengthening the barriers the pools sought to erect against the foreign commerce of American manufacturers. Whether HRI's American patents found their way into the pools' control directly, as in Canada, or through an intermediary, as in England, or whether the actual transaction transferring the patents to the pool took place in or out of the United States, is irrelevant.

"Whether the conspiracy was achieved by agreement, by tacit understanding, or by 'acquiescence * * * coupled with assistance in effectuating its purpose is immaterial.' " *United States* v. *Singer Mfg. Co., supra.,* 374 U.S. at 193, quoting from *United States* v. *Bausch & Lomb,* 321 U.S. 707, 723.

3. HRI raises one other defense of its participation in the Canadian pool. While it agrees (HRI Br. 152) that the pool would not license imports, it argues that it should be absolved of complicity because it believed that Canadian law required the restriction. The district court found that "in the circumstances of this case" Canadian law did not so require. HRI apparently does not challenge this finding (see HRI Br. 154), and it is supported by Wright's testimony that Zenith, in settling its litigation against RCA, General Electric and Western Electric, learned that there was no such legal barrier, at least in the opinion of RCA's patent counsel (I A. 484–485).

HRI's dealings in Canada must be viewed in light of its total course of conduct, and those dealings paralleled exactly its dealings with the other pools. HRI points to nothing that remotely suggests that any Canadian official would have required the exclusion of American radios and television sets. That is the very least that is needed to support the defense tendered here. See *Continental Ore Co.* v. *Union Carbide & Carbon Corp., supra,* 370 U.S. at 702–707.

In the final analysis, HRI's conduct must be judged by United States law, to the extent that the conduct was aimed at the export trade of an American manufacturer. If, as HRI claims it believed, Canadian law barred imports, HRI could have satisfied its obligations under Canadian law by unilaterally declining to give licenses for exports to that country. But it is not claimed that Canadian law required HRI to participate in the Canadian pool. When it did so, it participated in concerted action which went beyond even its claimed conception of what Canada required, and this was action which the Sherman Act forbids.

III. THE COURT OF APPEALS IMPROPERLY VACATED THE INJUNCTIVE PROVISION WHICH BARRED HRI FROM PARTICIPATING IN FOREIGN PATENT POOLS THAT EXCLUDE ZENITH FROM EXPORTING TO FOREIGN MARKETS

Paragraph C of the injunction entered by the district court prohibited HRI from (VII A. 3080):

> Entering into, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program, with any other person, company, patent pool, organization, association, corporation or entity which directly or indirectly restricts or prevents defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, from exporting any electronic apparatus from the United States into any foreign market.

The court of appeals ordered this provision stricken (IX A. 4262). Its sole explanation was that "it follows from our conclusion with respect to the foreign patent pools that injunctive relief against 'threatened loss or damage' directed at those pools, alleged by Zenith to be unlawful conspiracies, cannot be justified under 15 U.S.C. Sec. 26" (*id.* 4261–6262).

Since the court's only conclusion as to the pools was that the "fact" of damage was not established, the court apparently believed that proof of damage is a prerequisite to injunctive relief under Section 16 of the Clayton Act, at least in this case.[12] If so, this appears to be error. Section 16 on its face provides protection against "threatened loss or damage." In *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Assn.*, 274 U.S. 37, 54, this Court stated:

> The record does not disclose whether petitioners at the time of bringing suit had suffered actual injury; but that is not material. An intent to restrain interstate commerce being shown, it is enough to justify equitable interposition by injunction if there be a dangerous probability that such injury will happen; and this clearly appears. The Anti-Trust Act "directs itself against that dangerous probability as well as against the completed result." * * *

The injunction against HRI's participation in the foreign patent pools was proper provided that the record shows a present threat of injury to Zenith by any one of the pools. For Zenith is entitled, in that event, to relief that protects it against the particular misconduct and any comparable activities, wherever they may occur. Of course, if the only finding was that one of the pools was unlawful, the district court could enter an injunction restricted to that country. However, a court of equity need not, and seldom would, so restrict its relief, particularly where, as here, Zenith has evinced an interest in exporting to other countries. The least that could be said is that if HRI participated in one unlawful patent pool, Zenith is entitled to an injunction broad enough to protect it against HRI continuing in that pool or continuing in or joining in comparable pools elsewhere. Because the threat of injury is particularly uncomplicated with respect to the Canadian pool, we will focus on the findings and evidence concerning that pool.

---

[12] There is nothing in the court of appeals' opinion that supports HRI's statement (Br. 3) that the court's ruling rested "on the ground that the record, as a matter of fact, did not show a present threat by any one of the patent pools to Zenith's ability to export to Australia, England or Canada." (See, also, Br. 155.) Perhaps the court, in its reference to "threatened loss or damage" in the sentence quoted on p. 68, meant that the lack of impact in the past showed that future injury is not probable. But the court did not so state, and in any event the inference is highly dubious.

At the time of trial Zenith was, and intended to continue as, an importer of radio and television receivers into Canada. Whether or not the court of appeals was correct in concluding that the pool had not restrained Zenith's Canadian trade during the damage period, the record shows that there is a reasonable probability that the pool will cause future difficulties for Zenith.

The Canadian Royal Commission on Patents, Copyright and Industrial Designs found in 1959 that the pool would refuse to license for import and would threaten infringement actions against importers (VI A. 2830). At least as late as 1958, the pool ran advertisements designed to discourage distributors and retailers in Canada from carrying unlicensed imports (VI A. 2904). In 1958 and 1959 the manager of the pool expressly warned Zenith that it was infringing the Hazeltine patent which was the basis of this litigation (VI A. 2905). As late as 1962, a Canadian Motorola distributor was warned by the pool against carrying products manufactured without a pool license (VI A. 2054-2056)—plainly, evidence of a continuing desire and effort to inhibit imports. Given the purpose and these activities of the pool, HRI's more than 500 patents covering the electronics industry (VI A. 2893) represent a formidable potential weapon in effectuating the exclusionary design. Moreover, HRI's counsel stated in a deposition introduced in evidence at trial that his client intended to remain in the pool (I A. 178-179).

When a private plaintiff has proved the existence of a long-standing and continuing combination and conspiracy to restrain the type of trade in which he is presently engaged, and the record does not clearly establish that the unlawful activity has or will be irretrievably terminated, or that the unlawful purpose has been abandoned, a sufficient showing of probable loss or damage has been made to warrant injunctive protection without requiring proof of specific current threats directed at the plaintiff. Private actions for injunctive relief, no less than treble damage suits, serve to expose and deter violations of the antitrust laws. To be sure, the promise of treble damages is usually thought of as the principal incentive to assertion by private parties of antitrust rights, but the plaintiff and the public also have a strong interest in securing legally enforceable protection for the future. Any requirement of an unduly rigid standard of proof of threatened damage to support injunctive relief against proven unlawful conduct would substantially reduce the effectiveness of private antitrust actions as a means of stopping actual and threatened violations.

The Canadian pool and HRI's participation in it continued through the litigation of this case. Zenith, it is true, managed to export radios and television sets to Canada during this period. Even assuming, however, that those exports represented the maximum potential of Zenith's business in those years, the fact remains that HRI and the pool made continuing efforts during the fifties—up to the eve of suit—to bar Zenith from Canada. If, in these circumstances, the district court is powerless to grant equitable relief, then any antitrust defendant can avoid injunctive proscriptions merely by foregoing the outward manifestations of his exclusionary designs during the pendency of his victim's suit. Courts of equity have never—in antitrust or in any other sort of case—allowed their corrective powers to be thus circumvented.

Once a course of conduct such as HRI's has been proven, only the most conclusive proof of the impossibility of recurrence should avoid the injunction. Nothing of that sort is present here—in the record or without[13]—and paragraph C of the injunction should be reinstated.

---

[13] HRI asserts here that injunctive relief is not necessary because it has taken its patents out of the Canadian pool since the trial (see Westermann affidavit, HRI.Br. A-29). This Court has often made clear, however, that injunctive relief is not

IV. HRI MISUSED ITS DOMESTIC PATENTS BY DEMANDING THAT ZENITH PAY ROYALTIES ON ITS ENTIRE PRODUCTION, INCLUDING UNPATENED ARTICLES

As the district court found (VI A. 2898):

> In all of its proposals to Zenith, Hazeltine insisted as an alternative to litigation that Zenith for a period of five years pay royalties in large sums based on its entire production of receivers whether or not any Hazeltine patent was employed in any way in its products. Plaintiff thus insists that royalties be paid on admittedly unpatented apparatus.

In its conclusions of law, the court ruled (VI A. 3909–3910) that this aspect of the proposals

> in and of itself constitutes an illegal attempt to extend the patent monopolies. * * * Plaintiff's demands that royalties be paid on admittedly unpatented apparatus constitute misuse of its patent rights and plaintiff cannot justify such use of the monopolies of its patents, by arguing the necessities and convenience to it of such a policy. While parties in an arms-length transaction are free to select any royalty base that

---

barred by abandonment of challenged practices in the face of litigation or judgment. *E.g., United States* v. *Concentrated Phosphate Export Assn.*, 37 L. Week 4045, 4046; *United States* v. *W. T. Grant Co.*, 345 U.S. 629, 632. That principle should be especially applicable where, as here, the withdrawal from a long-standing and profitable relationship comes only after entry of the very injunction now sought to be avoided. Indeed, the affidavit on its face (HRI Br. A–30) recites a belief in the legality of Hazeltine's agreement licensing its patents to the pool. Without the protection afforded by the injunction, there is neither assurance nor even reason to believe HRI will not again place its patents within the pool.

> may suit their mutual convenience, a patentee has no right to demand or force the payment of royalties in unpatented products.

To implement these findings and conclusions, the district court, in paragraph A of its injunction, barred HRI from conditioning licenses of "any domestic patent * * * upon the paying of royalties on the manufacture, use or sale of apparatus not covered by such patent" (VII A. 3079).

The court of appeals ruled that this practice did not constitute misuse of patents and struck the pertinent part of paragraph A (IX A. 4262). The court did not consider whether, in the context of this case, such provisions were reasonable, but merely cited *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U.S. 827, in support of its conclusion (VII A. 4262).

Automatic Radio does not support the court of appeals' decision. The Court there held only "that in licensing the use of patents to one engaged in a related enterprise, it is not *per se* a misuse of patents to measure the consideration by a percentage of the licensee's sales" (339 U.S. at 834). The Court reasoned that since it would be permissible to require a lump sum payment as consideration for an option to take a license on a large package of patents, there could be no objection to a running royalty on sales of all products, patented and unpatented, based on a fixed percentage of sales volume. The result was expressly premised on the licensee's concession (*id.*, 831) that the tie-in cases did not apply, its abandonment (*ibid.*) of an assertion that Hazeltine would grant only package licenses of all its patents, the absence (*id.,* 832) of proof of a conspiracy, and a failure to prove (*id.,* 834) other charges of misuse.

Here the situation is far different. HRI's insistence on and attempts to coerce a package license are proven. The parallel between its domestic licensing activities and its foreign conspiracies is obvious. Its scheme for measuring royalties must be viewed against the full panoply of patent misuse that was found by the district court.

Against this background, a substantial extension of *Automatic Radio* would be necessary to support the court of appeals' result. We submit that such an extension would be unwise.

In this Court's view, the element needed to establish illegality which was missing in *Automatic Radio* was a demonstration that Hazeltine's method of determining royalties represented "the extension of the monopoly of the patent to create another monopoly or restraint of competition—a restraint not countenanced by the patent grant" (339 U.S. at 832). With such proof, the same result could not have been reached, for numerous cases make clear that a patent may not be exploited in a way that seeks or secures such an extension of its monopoly. Thus, *Mercoid Corp.* v. *Mid-Continent Investment Co.,* 320 U.S. 661, *Morton Salt Co.* v. *Suppiger Co.,* 314 U.S. 488, and *B. B. Chemical Co.* v. *Ellis,* 314 U.S. 495, all show that a patentee cannot require a licensee to take an unpatented article together with the patented one.

Moreover, although the patent laws are designed to foster technological innovation, see *Scott Paper Co.*

v. *Marcalus Co.,* 326 U.S. 249, 255, computation of royalties on total production—including production not involving the licensed patents—tends to have the opposite effect. Such a royalty obviously removes any incentive a licensee may have to "invent around" the patent, since the royalty must be paid even if a patent-free way is discovered to produce the product.

In *Automatic Radio* the Court suggested that such a royalty provision may be justified as "the most convenient method of fixing the business value of the privileges granted by the license agreement" (339 U.S. at 834). There may, of course, be some situations where it is difficult to determine whether or not an end product incorporates or itself infringes one or more of the licensed patents. But even where this is so, less restrictive alternatives are ordinarily available. Indeed, if the licensee cannot readily determine whether its product does or does not incorporate or infringe one of the licensor's patents, it can decide unilaterally to avoid the risk of an infringement suit by paying a royalty on the product. At best, it might in certain situations be reasonable for the licensor to shift to the licensee, as a condition for non-payment, the burden of proving that his product does not infringe the licensed patents.

Assuming *arguendo* the correctness of *Automatic Radio,*[14] its rational should apply only to situations where it is proven that the parties, bargaining as equals, freely agreed that computation of royalties on total production would serve the convenience of both. The convenience of the licensor alone cannot justify such an extension of the patent monopoly, and the anticompetitive potentials of such a royalty arrangement are too clear to warrant an assumption that is the product of arms-length bargaining. See *Mercoid* v. *Mid-Continental Investment Co., supra,* 320 U.S. at 666; *B. B. Chemical Co.* v. *Ellis, supra,* 314 U.S. at 498.

---

[14] If necessary to the decision here, we would contend that *Automatic Radio* should be overruled.

The record here demonstrates that this form of royalty did not involve the mutual convenience of the parties and did involve an over-all design of patent misuse. The district court found that the requirement that royalties be paid on total production was a part of HRI's policy in licensing electronics manufacturers in the United States (VI A. 2893). Nothing suggests that the nature of the electronics business requires this approach as a convenience, and it plainly is not required as an aid to enforcement since radios and television sets are mass produced items and details of their circuitry are readily available. Plainly, the provision was not designed to meet the needs or convenience of Zenith.

Although Zenith appears never to have specifically objected to the provision, it did reject each package or alternative offer after 1959 of which the provision was a part; the district court found that each of these offers was an unlawful attempt to compel acceptance of the standard package as a condition for receiving a license under any patent therein; and the court of appeals agreed except as to the 1959 offer. Thus, this record fully supports the district court's conclusion that the royalty provision was part of HRI's misuse of its patents.[15] The injunction against requiring payment of royalties on unpatented apparatus should be reinstated.

CONCLUSION

In our view, the judgment of the court of appeals should be reversed insofar as it determined that Zenith had failed to demonstrate injurious impact upon its trade of exporting radios and television sets to Canada and television sets to England, that injunctive relief is inappropriate with respect to HRI's participation in foreign patent pools, and that HRI's misuse of its domestic patents did not include its demand that licensees pay royalties with respect to their full production. The judgment should be affirmed to the extent that it holds that Zenith failed to demonstrate injurious impact with respect to its export of radios to England and had failed to demonstrate an intention to export radios and television sets to Australia. The case should be remanded to the district court for further findings on this record with respect to whether Zenith suffered injury in its trade with Canada and England, and if so, the amount of HRI's liability.

---

[15] See *United States v. United States Gypsum Co.*, 333 U.S. 364, 389, 400, where this Court recognized that a license arrangement whereby royalties based on the value of unpatented as well as patented products contributed to the restraint of trade found in that case.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
EDWIN M. ZIMMERMAN,
Assistant Attorney General.
HARRIS WEINSTEIN,
Assistant to the Solicitor General.
GREGORY B. HOVENDON,
NEIL E. ROBERTS,
Attorneys.

JANUARY 1969.

U.S. GOVERNMENT PRINTING OFFICE: 1969

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 17 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT HAZELTINE RESEARCH, INC. IN RESPONSE TO BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

JOHN T. CHADWELL
VICTOR P. KAYSER
C. LEE COOK, JR.
JOSEPH V. GIFFIN
135 South La Salle Street
Chicago, Illinois

M. HUDSON RATHBURN
20 North Wacker Drive
Chicago, Illinois

LAURENCE B. DODDS
160 Middle Neck Road
Great Neck, New York

Attorneys for
Hazeltine Research, Inc.,
Respondent.

Of Counsel:

CHADWELL, KECK, KAYSER,
RUGGLES & MCLAREN
135 South La Salle Street
Chicago, Illinois 60603
RAndolph 6-2545

MASON, KOLEHMAINEN,
RATHBURN & WYSS
20 North Wacker Drive
Chicago, Illinois 60606
FInancial 6-1677

TWENTIETH CENTURY PRESS, INC., CHICAGO 60606

INDEX

PAGE

INTRODUCTION 1

THE PUBLIC INTEREST AS TO THE TREBLE DAMAGE CLAIMS 3

QUESTIONS PRESENTED 5

ARGUMENT 5

I. The Court of Appeals Did Not Impose An Unduly Heavy Burden on Zenith, As A Treble Damage Claimant, But Correctly Applied the Standard of Rule 52(a) 5

A. There Is No Authority or Logic to Support the Contention That a Special Exception to Rule 52(a) Should Be Adopted by Reviewing Courts for Treble Damage Cases 6

B. The Special Circumstances of This Case Demonstrate That the Mechanically Adopted Findings of the Trial Court Are Not Entitled to Any Special Deference by the Reviewing Court 9

C. A Reviewing Court Is Not Bound to Accept Testimony Shown on the Record to Lack Credibility 11

II. Canada 16

A. A Finding Favorable to Zenith on the Essential Question of Whether the Pool Prevented It from Obtaining a Full-Fledged Canadian Distribution System During the Damage Period is Foreclosed by Zenith's Annual Reports 16

B. The Testimony Relied Upon by the Government to Support its Argument That a Finding of Impact "Could" Have Been Made is Not Relevant, Adequate or Credible 18

PAGE

C. The Statements Contained in Zenith's Annual Reports Are Conclusive and the Government's Apparent Suggestion that They Be Ignored Would Result in a Denial of Justice 28

D. The Judgment of the Court of Appeals Should Be Affirmed But if Not Affirmed There Should Be a Remand for Full Consideration of All Available Evidence on the Issues Remanded 32

III. England 33

A. The Error in the Critical Findings Pointed Out by the Government Is Alone Sufficient Basis for Affirming the Decision of the Court of Appeals as to England 33

B. There Is No Evidence to Support a Finding of Fact of Damage 35

1. Zenith Had No Intention of Entering the English Television Market Until the 625-line Standard Was adopted 36

2. There Is No Basis for a Finding That Zenith Was Unable to Obtain Distributors During the Damage Period 43

C. The Court of Appeals' Decision With Respect to England Should Be Affirmed But If There Is a Remand, It Should Be For Full Consideration on All Available Evidence on the Issue 47

D. There Is No Basis for the Amount of Damages Awarded as to Television in England .. 47

IV. The Charge of Unlawful Conspiracy 48

PAGE

V. Vacation Of Paragraph C of the Injunctive Decree Was Proper Since There Was No Proof of Threatened Loss Or Damage to Zenith 51

VI. Domestic Patent Misuse 53

CONCLUSION 55

CITATIONS

CASES:

American Banana Co. v. *United Fruit Co.*, 213 U.S. 347 (1909) 49, 50

Automatic Radio Co. v. *Hazeltine Research*, 339 U.S. 827 (1950) 53-54

Bigelow v. *RKO Pictures, Inc.*, 327 U.S. 251 (1946) .. 8

Boston and M.R.R. v. *David*, 167 F.2d 722, 725-26 (1st Cir. 1948) 31

Bowles v. *Six State Coal Co.*, 64 F.Supp. 651, 652 (W.D.Pa. 1946) 30

Builders Steel Co. v. *Commissioner of Internal Rev.*, 179 F.2d 377 (8th Cir. 1950) 31

Continental Ore Co. v. *Union Carbide and Carbon Co.*, 370 U.S. 690 (1962) 49

Ditter v. *Yellow Cab Company*, 221 F.2d 894 (7th Cir. 1955) 29

First Nat'l Bank of Arizona v. *Cities Service Co.*, 391 U.S. 253, 88 S. Ct. 1575, 1593 (1968) 6

Foman v. *Davis*, 371 U.S. 178, 183 (1962) 30

Halverson v. *Campbell Soup Co.*, 374 F.2d 810, 812 (7th Cir. 1967) 31

In re Barry Yao Co., 286 F.2d 299, 302 (9th Cir. 1961) 31

PAGE

Interstate Circuit, Inc. v. *United States*, 306 U.S. 208, 226 (1939) 25

Jackson v. *United States*, 353 F.2d 862, 866 (D.C. Cir. 1965) 40

Jaffke v. *Dunham*, 352 U.S. 280, 281 (1957) 32

Marconi Wireless Telegraph Co. v. *United States*, 320 U.S. 1, 48 (1943) 31

McDonald v. *Kropp*, 373 F.2d 549, 558 (6th Cir. 1967) 15

Ring v. *Author's League of America*, 186 F.2d 637, 642-43 (2d Cir. 1951) 52

Rose v. *Great Northern Ry. Co.*, 268 F.2d 674, 678-79 (8th Cir. 1959) 31

Schaedler v. *Reading Eagle Publications, Inc.*, 370 F.2d 795, 798 (7th Cir. 1967) 30

Severi v. *Seneca Coal & Iron Corp.*, 381 F.2d 482, 490 (2d Cir. 1967) 31

Smith v. *Dravo Corp.*, 203 F.2d 369, 377 (7th Cir. 1953) 29

Strassheim v. *Daily*, 221 U.S. 280 (1911) 49

Surowitz v. *Hilton Hotels Corp.*, 383 U.S. 363, 373 (1966) 30

United States v. *ALCOA*, 148 F.2d 416, 443-44 (2d Cir. 1945) 50

United States v. *Borden Co.*, 343 U.S. 514, 518 (1954) 52

United States v. *DuPont & Co.*, 353 U.S. 586, 602 (1957) 30, 37, 38, 43

United States v. *El Paso Natural Gas Co.*, 376 U.S. 651, 656-57 (1964) 10

United States v. *General Motors Corp.*, 384 U.S. 127, 141 n. 16 (1966) 30

United States v. *Minnesota Mining & Mfg. Co.*, 92 F.Supp. 947, 958 (D. Mass. 1950) 50

PAGE

United States v. *Oregon State Medical Society*, 343 U.S. 326, 333 (1952) 52

United States v. *Sisal Sales Corp.*, 274 U.S. 268 (1927) 49

United States v. *U.S. Gypsum Co.*, 333 U.S. 364, 394-95 (1948) 5, 6, 7, 16, 30, 38, 43

STATUTES AND RULES:

Fed. R. Civ. P. 52(a) 5, 9, 27, 40

Fed. R. Civ. P. 56(e) 6

Clayton Act, Section 16 52

OTHER AUTHORITIES:

Brewster, Antitrust and American Business Abroad 65-74 (1958) 50

Fugate, Foreign Commerce and the Antitrust Laws 55 (1958) 50

Report of Attorney General's National Committee to Study the Antitrust Laws, 242 (1955) 49, 50

Timberg, United States and Foreign Antitrust Laws Governing International Business Transactions, in Surrey and Shaw, eds., A Lawyer's Guide to International Business Transactions, 622 (1963) 50

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT HAZELTINE RESEARCH, INC. IN RESPONSE TO BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

INTRODUCTION

We should first point out that the government's brief[1] agrees with Hazeltine Research on a number of important points as follows:

---

[1] The brief of the Solicitor General filed in response to the Court's Order inviting him to file a brief expressing the views of the United States is referred to herein as the "government's brief" and cited as "Govt. Br." All other abbreviations are as set forth at footnote 2, page 2, of our main brief and footnote 1, page 1, of our reply brief.

Where emphasis appears in quotations in this brief, it has been supplied by us unless otherwise indicated.

1. It agrees that Zenith has not shown any impact as to Australia and that Zenith's entire claim as to Australia is without merit (Govt. Br. 25, 30-32, n. 5).
2. It agrees that Zenith has shown no impact on its exports of radios to England and that this claim is without merit (Govt. Br. 25, 30-32, n. 5).
3. It agrees that the issue of legality of the Canadian and English pools need not be decided unless it should be determined that such pools in fact had an impact on Zenith's business during the claimed damage period, June 1959 to May 1963, or that such pools involve a threat to Zenith requiring injunctive relief (Govt. Br. 25, 57).
4. It agrees that, in any event, irrespective of the question of impact or legality of the pools, the amount of alleged damages claimed to be suffered by Zenith as to Canada and as to television in England during the four-year period has not been established (Govt. Br. 42-44, 54-57).

The government's brief tacitly admits that on the present state of the record the reversal by the Court of Appeals was correct, because essential findings as to impact were not made, but suggests that there is testimony by Zenith's witnesses which, if credited, could support findings to that effect. We disagree with that suggestion for not only is the testimony referred to discredited by the later admissions of the witnesses, by Zenith's contemporaneous documents, and by later proofs and findings, but even if believed it would not justify the findings which the government says are essential to Zenith's claim (see p. 11-15, 16-27, 33-46, *infra*).

With respect to whether it has been shown that acts of the pools had an impact upon Zenith's business during the damage period, the government makes the following points:

(a) As to Canada, even under Zenith's theory of action, and irrespective of other considerations, it was essential for Zenith to establish that it was unable to obtain distributors during the four-year damage period because of acts of the Canadian pool occurring after the September 1957 releases (Govt. Br. 43, 45-46).

(b) As to England, even under Zenith's theory of action, and irrespective of other considerations, it was essential for Zenith to show that it had in fact an *intent* and capacity to enter the English television market during the alleged four-year period ("*i.e.,* did it intend to stay out of the English market until the English government decided whether to change transmission systems?") and that acts of the English pool after the lifting of the embargo in June 1959 were the cause of Zenith's failure to enter the market (Govt. Br. 51, 46-49, 52-53).

(c) The trial court had entered no specific findings as to the foregoing points and that such findings would be essential to any judgment in Zenith's favor (Govt. Br. 45-46, 52-54).

THE PUBLIC INTEREST AS TO THE TREBLE DAMAGE CLAIMS

The government's brief states that so far as the United States is concerned, its interest is to secure a determination whether, in reviewing the question of impact or injury, the Court of Appeals applied the correct standard or whether it imposed "an unduly heavy burden of proof of injury upon a treble-damage plaintiff" (Govt. Br. 29). The brief states that the United States has no interest in "the factual question whether the record does or does not support the district court's finding that Zenith was damaged," observing, however, that it "obviously is of greatest importance to the parties" (Govt. Br. 28).[2]

However, we suggest that there is another matter of public interest which the government has overlooked. As pointed out in our main brief (H.R.Br. 1-2), we recognize that treble damage actions serve as a means for enforcement of the antitrust laws. But we suggest that there is also a great public interest, involving the most basic concepts, to make sure that the courts do not enforce claims which are completely without merit, and that the policy of the antitrust laws is not misused as a vehicle for the assertion of baseless claims. Finding truth and doing justice is, after all, the purpose of any lawsuit, antitrust or otherwise.

We thus pose two questions:

> Would not the public interest be defeated by entry of findings of injury and damage on the basis of testimony which has been discredited and shown to be unreliable?
>
> Would not the public interest be defeated by excluding from consideration contemporaneous documentary material constituting records and admissions of the claimant, which affirmatively and conclusively demonstrate that the treble damage claim is completely baseless?

We most respectfully suggest that the effect of the government's contentions is to invite such results (see pp. 11-15, 16-18, *infra*). Apparently because it has "no interest in the resolution of the factual question" (Govt. Br. 28), the government overlooks the fact that what is involved here is a factual question having enormous potential consequences, so that the *factual determination of the truth must be of paramount importance.*

---

[2] It is of paramount interest to respondents, for the $35,000,000 amount involved is over ten times the net book value of Hazeltine Research, and well in excess of the net book value of its parent Hazeltine Corporation, should it be held liable (see H.R.Br. 4-5).

QUESTIONS PRESENTED

We do not agree with the phrasing of the questions presented in the government's brief (Govt. Br. 1-2), but urge that the questions presented on this appeal are those stated at pages 3-4 of our original brief.

ARGUMENT

I. THE COURT OF APPEALS DID NOT IMPOSE AN UNDULY HEAVY BURDEN ON ZENITH, AS A TREBLE DAMAGE CLAIMANT, BUT CORRECTLY APPLIED THE STANDARD OF RULE 52(a).

The government begins the argument of its brief by saying that its interest in this case is in seeing that the Court of Appeals applied a correct legal standard and did not impose an unduly heavy burden of proof of injury upon a treble damage claimant (Govt. Br. 28-29). But the Court of Appeals' opinion shows that it did not impose any unreasonable or heavy burden upon Zenith. On the contrary, it merely subjected the evidence to a careful scrutiny and applied the test provided in Rule 52(a) of the Federal Rules of Civil Procedure which has been applied many times by this Court. See *e.g., United States* v. *U.S. Gypsum Co.,* 333 U.S. 364, 394-95 (1948).

Recognizing that the decision of the Court of Appeals is correct under Rule 52(a) as "ordinarily" applied (Govt. Br. 29-30), the government argues that special deference should be given the findings entered by the trial court in this case and, in effect, argues that the rule applicable to jury cases should be applied here[3] because this is a private antitrust case won in the trial court by the claimant (Govt. Br. 29-30).[4]

A. There Is No Authority or Logic to Support the Contention That a Special Exception to Rule 52(a) Should Be Adopted by Reviewing Courts for Treble Damage Cases.

The government's contention that the rule applicable to the review of jury verdicts in treble damage cases should also apply in *non-jury* treble damage cases contradicts the express holding of this Court in *United States* v. *U.S. Gypsum Co.,* 333 U.S. 364, 394-95 (1948), that "judicial review of findings of trial courts does *not* have the statutory or constitutional limitations on judicial review of findings . . . by a jury," and that an appellant court "*may reverse* findings of fact by a trial court where 'clearly erroneous'" (333 U.S. at 394-95).

Further, the government's brief is permeated with the suggestion that if there is *any* evidence to support a finding, regardless of its character or weight, the appellate court may not set that finding aside (*e.g.*, Govt. Br. 51-52). This novel suggestion, which also appeared in Zenith's brief (*e.g.*, Z.Br. 86-88), is likewise contrary to the holding in *U.S. Gypsum,* 333 U.S. at 395, where this Court determined that:

---

[3] It is somewhat difficult to follow the government's point here. It appears to contend that the Court of Appeals erred in not giving some special deference to the trial court's findings, saying this special deference should be afforded the trial court's determinations "when these are based on adequate evidence and relevant and sufficiently specific findings" (Govt. Br. 30). But, the government itself then states that the findings are "deficient in critical respects," are not adequate and some are not supported by any evidence (Govt. Br. 32, 45-46, 52-53), thereby acknowledging that the trial court did *not* make "relevant findings."

[4] Just last year this Court rejected a similar argument that a special exception should be made in favor of plaintiffs in private antitrust cases in applying Rule 56(e). *First Nat'l Bank of Arizona* v. *Cities Service Co.,* 391 U.S. 253, 88 Sup. Ct. 1575, 1593 (1968).

> "A finding is 'clearly erroneous' when *although there is evidence to support it,* the reviewing court *on the entire evidence* is left with the definite and firm conviction that a mistake has been committed."

The reason advanced by the government for applying the jury standard in private treble-damage cases (when the claimant wins) is that, because of the nature of the antitrust violation, the claimant might have difficulty showing with exactness the fact and amount of his alleged damages (Govt. Br. 29-30). But that rationale has no application here because: (1) the testimony of the witnesses upon which the claim rests is not only lacking in exactness, but these witnesses have been affirmatively shown to be lacking in credibility (see pp. 11-15, *infra*); and (2) the deficiency in the proof on "essential" elements of Zenith's case is not the result of anything the pool did, but is instead the result of the failure or inability of Zenith to offer evidence which, if the facts were as Zenith claimed, would have been in Zenith's possession or available to it.

For example, the government says that the "essential question" under Zenith's theory as to Canada was whether the pool in Canada prevented Zenith from having a nationwide distribution system during the damage period (Govt. Br. 45-46). But specific and concrete evidence of that fact, *if true*, would have been available to Zenith. Zenith could at least have identified the distributors which it had attempted to get and was unable to get. In fact, it could not identify a single one. Zenith could have produced documents or correspondence relating to attempts to get distributors and being turned down by distributors because of concern for the pool. It produced none. Zenith could have taken distributor depositions and offered distributor testimony to the effect that the distributor had refused to handle Zenith's products because of concern for the pool, or would have handled Zenith's products but for the pool, or held back on its purchases, or had stopped handling Zenith's products because of the pool. *Had these things happened,* the evidence would have been in Zenith's own files or at least fully available to it (see H.R.Br. 52, 104).

This, then, is not a situation similar to that involved in *Bigelow* v. *RKO Pictures, Inc.,* 327 U.S. 251 (1946), relied on by the government (Govt. Br. 23-24, 34-38, 41-42). In *Bigelow,* the plaintiff proved that it could not get first-run motion pictures,[5] and its problem was to prove that it would have made more profits had it obtained those first-run motion pictures, and further, to prove the amount of the additional profits which it would have made. Under such circumstances, it may well be that the plaintiff is unable to prove with exactness that it would have made more profits, or the amount of those profits. But that is not the case here. This is not a case where there would be an "absence of more precise proof" because of the "tortious acts" of the defendant (327 U.S. at 264), for if Zenith had made unsuccessful attempts to obtain distributors during the damage period, it could offer concrete and specific evidence of those attempts.

---

[5] The government is not completely accurate in its statement that the evidence of *"fact and amount"* of damages in *Bigelow* consisted only of a comparison of plaintiffs' profits in their theatre during the damage period with their profits in an earlier period when they were able to get first-run films and a comparison of their profits with the profits of a competing theatre. In *Bigelow,* this Court expressly stated that the plaintiffs *"were not able* to procure such films during the five year [damage] period which followed, although there is evidence that *they made diligent efforts to do so*" (327 U.S. at 258). Thus, there was clear proof of impact or "fact of damage" in that case.

Indeed, in the case of Canada the government has noted the sharp contrast between the specific details and documentary corroboration of attempts to obtain outlets during the early and middle '50's (before the release), and the unspecific and uncorroborated testimony relating to the critical period in this case (Govt. Br. 40, n. 7). The obvious reason that the specific details and documentary corroboration are not available in the period after the release is that the facts which *did* exist before the release did *not* exist during the damage period of 1959-1963. If there were any doubt on that subject, it should certainly be resolved by reference to the Zenith Annual Reports in the offer of proof, for the 1959 Report in the very first year of the damage period unequivocally states that:

> "Zenith now has a strong distribution network at both the wholesale and retail level throughout Canada, supported by powerful national and local advertising" (A. 2993; H.R.Br. 57, 113-18).

B. The Special Circumstances of This Case Demonstrate That the Mechanically Adopted Findings of the Trial Court Are Not Entitled to Any Special Deference by the Reviewing Court.

Even if the special exception to Rule 52(a) urged by the government should apply in an ordinary treble damage case, it is clear that it should not apply in the special circumstances of this case which indicate that the findings are not entitled to special deference and, on the contrary, have little weight.

First, the trial judge wrote no opinion or findings, but instead "mechanically adopted" *verbatim* the findings submitted by Zenith. This Court has said that such findings do not have the value of independently drafted findings of the trial judge. *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651, 656-57 (1964). The government itself *admits* "the district court considered the case without appropriate attention to detail" (Govt. Br. 32). Yet it suggests that these "mechanically adopted" findings are entitled to even greater weight than "ordinarily" given to trial court findings (Govt. Br. 29-30).

Second, the government has conceded that the findings are "deficient in critical respects" (Govt. Br. 32), are "inadequate" on "essential" issues (Govt. Br. 45, 52, 53), and that certain of the findings dealing directly with the issue of impact are supported by "no evidence" and are "responsive to neither Zenith's theory nor the evidence" (Govt. Br. 53-54).

Indeed, the government itself points out that the very finding which it says is entitled to special deference, Finding XXXVI which states that Zenith's foreign commerce had been "drastically curtailed by the patent Pools in England, Canada, and Australia" (A. 2908), was clearly erroneous as to three of the six product markets involved, *i.e.*, as to radio in England, and as to both radio and television in Australia. The government concedes that the evidence "forecloses" that part of Finding XXXVI which concerns Zenith's exports of radios to England; and that the evidence furnishes "no basis" for that part of Finding XXXVI that concerns Zenith's exports of radios and television sets to Australia (Govt. Br. 30-32, n. 5). Under these circumstances, the balance of that same finding is surely not entitled to special and extraordinary deference, to say the least.

The government is thus in the anomalous position of arguing, on the one hand, that the findings of the trial judge are entitled to special deference greater than that in an ordinary case, and at the same time conceding, on the other hand, that those findings are "inadequate" on "essential" issues, "deficient in critical respects," and unsupported by evidence in many instances (Govt. Br. 32, 45, 52, 53).

Third, the findings which were entered or, according to the government, *could* have been entered, are inconsistent with the contemporaneous documents in evidence and inconsistent with other documents erroneously excluded by the trial court, some of which are clear admissions against interest by Zenith, and as to which this Court may take judicial notice, at least in part (see pp. 16-18, 31, 36-43, *infra*).

Finally, the sole evidence to support findings on essential elements of Zenith's case is the testimony of interested witnesses whose testimony has been shown to be completely lacking in credibility on these and other important issues and in direct conflict with the contemporaneous documents (H.R.Br. 87-93, 112-22; pp. 12-15, *infra*).

C. A Reviewing Court Is Not Bound to Accept Testimony Shown on the Record to Lack Credibility.

The government's argument assumes throughout that the credibility of witnesses is the exclusive province of the trial judge (*e.g.*, Govt. Br. 50, n. 9), overlooking the fact that credibility of a witness is not to be determined solely on the basis of his demeanor, but can depend also upon other factors which an appellate court is equally qualified to consider, such as inconsistency of the testimony, conflict with contemporaneous documents, and the like (H.R.Br. 80-85). The record in the instant case is full of facts and circumstances, having nothing to do with demeanor, which destroy the credibility of Zenith's witnesses:

(1) The witnesses Wright and Kaplan led the trial court to believe that the patent pools in England and Australia had kept Zenith out of those countries and from building up markets in those countries for many years prior to the start of the damage period (see H.R.Br. 18; A. 3446-47). It was later shown that governmental embargoes and *not* the pools had kept Zenith out of England and Australia, prior to the damage period (H.R.Br. 16-18). Thus, the testimony of these witnesses dealing with the very question of whether the pool had an effect upon Zenith's business at least for the period prior to 1959 was shown to be false.

The government admits that this contention of long exclusion "was" Zenith's "basic theory" of recovery and that this "basic theory" was shown to be baseless upon the finding of the governmental embargo (Govt. Br. 30, n. 5). It was after this "basic theory" was so exposed that these witnesses, on recall, brazenly changed their version of the facts (see H.R.Br. 18-25). But the effect of the government's position is that the Court of Appeals *must credit* the testimony of the witnesses who misled the trial court into adopting that original baseless theory.

(2) These same witnesses were forced on recall to recant testimony given at the original trial concerning attempts to enter the English television market, the conversion of sets to the English 405-line system by Zenith and by its distributor "in his back room," the sending of parts and kits to the English distributor to make such conversions, and the distributor's attempts to market converted sets (see H.R.Br. 32-40).

Again the government admits that such testimony was not truthful. It refers to this recanting of testimony by saying the witnesses "at least modified their 1964 assertions," talks about "variations in their testimony," but finally, admits the ultimate fact when it says this testimony could justify a conclusion that "*other aspects* of their testimony were *also* unworthy of belief" (Govt. Br. 50, n. 9).

(3) At the original trial Wright and Kaplan did not tell the court they were taking any embargo into account in estimating Zenith's expected market share. When we asserted that governmental embargoes blocked Zenith's imports into England prior to June 1959 and into Australia prior to April 1960, Zenith's counsel vigorously and repeatedly denied our statement, and said Zenith could prove *"exactly the opposite"* (H.R.Br. 22, n. 14). Then, after a trial at which the court concluded that the embargoes "and nothing else" had blocked Zenith's imports into those countries, Wright and Kaplan said they had known about the embargoes all along and, in making their damage estimates, had assumed that they *were* a complete barrier (H.R.Br. 19-21). Zenith's counsel has now gone so far as to suggest that the embargoes (which he vehemently denied) were the reason Zenith waited until 1963 to file its counterclaim (H.R.Reply Br. 10).

The government's reference to this testimony (Govt. Br. 55) overlooks the fact that it is in conflict with Zenith's "basic theory" of recovery asserted at the original trial (see Govt. Br. 30, n. 5).

(4) These same witnesses claimed that Zenith could have obtained from 2.7 to 3.2 percent of the English radio market, if it were a free market (A. 465, 528-29; H.R.Br. 11). But, as the government points out (Govt. Br. 30-31, n. 5), these witnesses agreed that the English radio market during the damage period 1959-1963 *was* a free market, yet during that period Zenith's actual sales were never more than two-tenths of one percent (0.2%) of the market (see DX 220, facing p. 22 H.R. Br.). Thus their "estimate" was 13 to 16 times greater than the fact. Either the Zenith witnesses deliberately overstated Zenith's ability to penetrate foreign markets, or they were badly uninformed. In either case, the credibility of their testimony is highly questionable.

The government agrees that this error of over one thousand per-cent in Zenith's estimate as to radio in England casts doubt upon their testimony as to television in England (Govt. Br. 56-57), and that it "might" also lead the trial court to re-examine its measure of damage as to Canada (Govt. Br. 57, n. 10).

(5) The trial judge himself found that the testimony of these witnesses estimating the market share Zenith could have achieved in England and Australia starting from "scratch" was not "believable" (see H.R.Br. 24-25; pp. 47-48, *infra*).

The government would apparently excuse this testimony as merely involving "a degree of puff"—even under oath (Govt. Br. 56). While the trial judge referred to the "pride of officers" in their company and its products, he also said: "The Court has difficulty in believing—and as I understand it, *I'm not bound by the fact that evidence is uncontradicted and undenied; it must be believable in the first instance.*" (A. 3525; H.R.Br. 24-25). Thus regardless of the reason for the inaccuracy in their testimony, the trial judge said it was *not* believable.

(6) These witnesses misled the trial court into awarding over $2.2 million for alleged lost profits as to radio sales in England and over $700,000 as to Australia (H.R.Br. 94; Govt. Br. 30-32, n. 5);

The government admits this (Govt. Br. 30-32, n. 5), yet asserts that the rest of the testimony of these same witnesses *must* be accepted by the Court of Appeals (*e.g.*, Govt. Br. 39-42).

(7) Wright asserted at the original trial that Zenith had held back on advertising in Canada because of the pool's activities, but on recall his fellow executive and Zenith's chief financial officer, Kaplan, admitted that Zenith's advertising expenditures were normal for entry into a new market (H.R.Br. 119-20);

The government admits these "discrepancies," but suggests they should be ignored because "not essential" to Zenith's claim and that their affect on other aspects of Wright's and Kaplan's testimony is solely for the trier of fact (Govt. Br. 41, n. 8).

(8) The testimony of these witnesses on "essential" issues is directly contradicted by contemporaneous documentary evidence from Zenith's own files (see H.R.Br. 40-44).

The government acknowledges the conflict between the testimony and these documents in evidence, going so far as to say that one of the documents contains a "firm statement" in conflict with the testimony (Govt. Br. 51). But the government is nevertheless willing to "credit" the testimony. The government, while recognizing that "the evidence on this issue is conflicting," nevertheless says "it would support a finding" in favor of Zenith (Govt. Br. 52). However, as we point out at page 37-40, *infra,* this argument ignores the fact that the contemporaneous documents are controlling.

The government brushes aside these instances, apparently on the belief that these are factors to be considered only by the trial court and that the Court of Appeals was bound to close its eyes to them. On the contrary, these matters, which bear directly upon the credibility of the witnesses, can be judged as well by the Court of Appeals as by the trial court. Neither the government nor Zenith has disputed or even commented on the cases cited at pages 82 and 83 of our main brief, which hold that credibility involves more than demeanor and that it is a matter which an appellate court may take into account in reviewing trial court findings. While the issue of credibility may generally be for the trial court, there are instances, such as here, "in which the reviewing court *can and must* reverse when on the entire evidence it 'is left with the definite and firm conviction that a mistake has been committed'" *McDonald* v. *Kropp,* 373 F.2d 549, 558 (6th Cir. 1967).

The government does not deny that the Court of Appeals, in concluding that the trial court's findings were "clearly erroneous," applied the established standard, *i.e.*, that laid down by this Court in *United States* v. *U.S. Gypsum Co.*, 333 U.S. 364, 394-95 (1948). Particularly in the circumstances of this case, that standard imposes no undue burden on the antitrust treble damage claimant. Indeed, to apply any other standard would prevent the Court of Appeals from doing justice where required. For if the government's position is adopted, an appellate court (and even this Court) could not reverse findings of a trial court if there is *any* testimony consistent with the findings, even though the appellate court, upon a careful review of the entire evidence, is left with a firm conviction that the trial court has made a mistake. Carried to its logical extreme the government's argument would produce the result that the Court of Appeals could not correct a gross injustice if there is *any* testimony to support the finding of the trial court, no matter how untruthful that testimony is shown to be, and no matter to what extent contradicted by contemporaneous documents.

II. CANADA

A. A Finding Favorable to Zenith on the Essential Question of Whether the Pool Prevented It from Obtaining a Full-Fledged Canadian Distribution System During the Damage Period is Foreclosed by Zenith's Annual Reports.

The government's brief acknowledges that the validity of Zenith's claim of damage for Canada rests on "the essential question whether Zenith was unable to obtain a full-fledged Canadian distribution system during the damage period," and that the findings of the trial court are "defective in their failure to state specifically whether Zenith was unable to find Canadian distributors during the relevant 1959-1963 period, and, if so, whether that inability was attributable to the activities of the pool" (Govt. Br. 45-46). In view of this, the government urges that the case be remanded to the trial court "to make findings on this issue" (Govt. Br. 46). Although we agree with the government's analysis of the theory of Zenith's claim and its statement of some of the defects in the trial court findings, we do *not* agree with its assertion that the evidence would warrant a finding of fact of damage.

On the assumption that the basic purpose of any litigation, antitrust or otherwise, is to ascertain the truth, we point out at the outset that the contemporaneous documentary public admissions of Zenith in its Annual Reports conclusively demonstrate that what the government concedes is a "necessary element" of Zenith's claim could not be shown. Pointing out that the trial court made no finding on this issue, the government says that "the essential question" was:

> "[W]hether Zenith was unable to obtain a full-fledged Canadian distribution system during the damage period" (Govt. Br. 45-46).

The 1959 Annual Report, covering the very first year of the damage period, answers that question in unequivocal terms:

> "Zenith *now* has a strong distribution network at both the wholesale and retail level throughout Canada" (A. 2993; see H.R.Br. 114).

The continued operation of this "strong distribution network . . . throughout Canada" was reflected in Zenith's 1961 Annual Report which stated that "the enthusiasm of distributors and dealers have created a growing demand for Zenith products" (A. 2995). Indeed, without "a full-fledged distribution system," Zenith would have not been able to achieve the substantial success which it did enjoy in Canada during the damage period, as shown not only by the Annual Reports which use such phrases as "gratifying progress," "successfully countered the downward industry sales trend," "important gains," "marked progress," and "substantial gain" in referring to Zenith's radio and television sales in Canada (H.R.Br. 56-59, 114-15), but also by Zenith's actual Canadian sales statistics, put in evidence by Zenith, which reflect the sales of tens of thousands of sets in Canada in the damage period (H.R.Br. 50-51).

Despite the fact that these documentary public admissions are dispositive of the "essential question" (Govt. Br. 45), the government would apparently have this Court close its eyes to these reports and assume that the trial judge could find just the opposite, merely because he did not receive the reports in evidence (Govt. Br. 33-34). In the interest of justice, this Court can and should consider these reports (see pp. 28-32, *infra*). However, as we shall show in succeeding sections, irrespective of the Annual Reports, the record shows that Zenith failed to prove that it was prevented from establishing a full-fledged distribution system because of the activities of the pool and that the Court of Appeals was clearly correct in concluding that the trial judge had made a mistake in inferring the fact of damage.

B. The Testimony Relied Upon by the Government to Support its Argument That a Finding of Impact "Could" Have Been Made is Not Relevant, Adequate or Credible.

The government asserts (Govt. Br. 37-38) that the evidence upon which a finding of impact *could* have been made falls into three categories: (1) the historical background from 1927 to the later 1950's, (2) testimony as to the pool's alleged impairment of Zenith's ability to establish a distribution network, and (3) the opinion of Zenith's executives that but for the pool's restrictions Zenith would have had the same share of the Canadian market as it had of the United States market.

Reliance upon testimony falling in the first and third categories is foreclosed by the release given by Zenith on September 27, 1957. The government acknowledges that the release by its terms released "all damages, past or future, resulting from all . . . acts up to the date of the release" (Govt. Br. 42). Thus, the release forecloses reliance upon acts which occurred prior to September 27, 1957, as the cause of Zenith's damages recoverable in this case. To the extent that any shortcomings in Zenith's distribution system (and any resulting lack of profits) during the damage period was a result of acts which occurred prior to September 27, 1957, recovery is barred by the release (H.R.Br. 47-49, 122). The government does not dispute this principle (Govt. Br. 42-43).

The release also forecloses reliance upon the opinion testimony of Zenith's witnesses estimating Zenith's prospective market share in Canada. That estimate was admittedly based upon the alleged exclusion of Zenith from Canada for many years prior to the damage period, including the years prior to the release (see H.R.Br. 18, n. 13, 21, 61-62). On the issue of the amount of damages, the government apparently recognizes that the proper estimate would be one which estimates the share of the market Zenith would have obtained during the damage period, starting "from scratch" after the 1957 settlement (Govt. Br. 44). But the government fails to recognize that the Wright-Kaplan testimony suffers from the same defect on the issue of impact. It cannot be considered evidence of impact in the damage period from pool activity after the settlement because it was admittedly based upon the assumption of a right to recover for the acts which occurred many, many years prior to the start of the damage period and thus necessarily before September 1957 (H.R.Br. 18, 21, 61-62).

The government does not dispute the *effect* of the release but does erroneously suggest that the record is "unclear" as to whether the trial court allowed Hazeltine Research "to assert the release as an affirmative defense," or merely allowed a motion to be filed "seeking leave to seek such an amendment" (Govt. Br. 44). It even suggests that leave to file the defenses may have been denied (Govt. Br. 44), although there is no record reference cited for such a "denial" and no basis in the record or in fact for such a suggestion.

The government refers to one record reference which is unclear (A. 3040) and completely *ignores* the other references which make it entirely clear that the trial court *granted leave to file the defenses* of release and limitations and *that they were in fact so filed.*

The transcript of the April 1, 1965 proceedings show this beyond any doubt (A. 3036-37). Counsel for Hazeltine Research orally moved for "*leave* at this time *to file* within a short date *our affirmative defenses* as a formal pleading of release and statute of limitations" (A. 3036), and the court granted the oral motion, saying "the record will show that *leave is given to file them at this time,* after proofs are closed and after findings have been made" (A. 3036, 3067). Further, the transcript for April 1, 1965 (printed in the Court of Appeals Appendix on file in this Court), shows in Volume IV, page 2043, the following colloquy later in the proceedings:

"Mr. Kayser (counsel for Hazeltine Research):

And, your Honor, how long may I have *to file* this [these] *affirmative defenses?*

"The Court: 5 days *nunc pro tunc* as of today."

Such "Defenses of Hazeltine Research, Inc.," were filed April 2, 1965, and recited that "Hazeltine Research, Inc., . . . pursuant to leave granted by District Judge Richard B. Austin, United States District Judge, on April 1, 1965, on motion of counsel for Hazeltine Research, Inc., *hereby files nunc pro tunc* as of April 1, 1965, the following defenses:" (A. 3049). These defenses were release and statute of limitations (A. 3049-53).

Finally, the list of "Relevant Docket Entries in District Court" includes the following:

> "4/2/65 Filed defenses of Hazeltine Research, Inc." (A. 5).

We suggest that the record is not "unclear." On the contrary, it is undeniable that the trial court allowed the filing of the defenses. We are at a loss to understand how the government's brief writer came to his conclusion.

We now turn our attention to the testimony on the issue of alleged pool interference with Zenith's ability to establish a distribution network in Canada after the settlement. On pages 39-40 of its brief, the government purports to summarize Wright's testimony "of Zenith's difficulties in establishing a network of distributors in Canada." While this summary is more accurate than that contained in the Zenith brief, it does not correctly summarize Wright's testimony. For example, the government says that Wright "testified that Zenith had approached potential distributors in these localities [the Central and Maritime provinces of Canada], but had found them unwilling to handle Zenith's goods and that they attributed this reluctance to the threat of infringement actions by the pool" (Govt. Br. 40). For this statement the government cites pages 450, 455-56 and 458 of

Volume I of the Appendix.

On page 450, Wright testified that following the settlement of the Zenith-RCA litigation in September 1957:

> "[Zenith] went to Canada and made an effort to secure wholesale distributors and other people to participate with us in the marketing of our products and to really build up from virtually no business at all to a thriving business. And we were in the process of doing this and of building a marketing organization in Canada when just about one year later this advertisement appeared, which I must say came as a great surprise to us because we had assumed that this Canadian Radio Patents Limited situation had been ended with the settlement of the RCA case."

There is thus no testimony on page 450 that distributors had been unwilling to handle Zenith's goods and had attributed their reluctance to the threat of infringement suits.

On pages 455-56, Wright again talked about the settlement of the RCA case and the licenses under pool patents which Zenith had from Canadian General Electric, RCA and others, and was asked whether Zenith was able to develop business in Canada after the settlement. He answered:

> "We were able to put on some distributors in Canada, particularly in Western Canada, and we developed through Zenith Radio Corporation of Canada our own distribution in Ottawa and Ontario, and I believe Quebec; so we have gradually increased our business in Canada despite the fact that there still hangs over us this threat from CRPL" (A. 456).[6]

---

[6] This testimony about appointing distributors in western provinces and being less successful in the central provinces and the maritime provinces of Canada is substantially repeated at pages 472-73 during cross-examination, but the government does not cite to these statements. Again, it does not support the government's summary.

Thus, there is also no testimony on pages 455-56 of Wright's testimony that distributors were unwilling to handle Zenith's goods, and that they had attributed their reluctance to threats of infringement actions by the pool.

On page 458, referring to the pool advertisement in the trade publication which had run in August 1958 and never again appeared (see H.R.Br. 51-52), Wright testified that:

> "This has a serious effect on your ability to get the kind of distributors that you would need to do the kind of marketing job that we have been talking about, to be able to get them to make the kind of investment and do the promotion and the advertising and to build a sales force that will do it."[7]

This testimony also is not a statement that any distributor actually had turned down Zenith and attributed his unwillingness to handle Zenith's goods to the threat of infringement actions by the pool. Moreover, since it relates to the advertisement which appeared in August 1958, almost a year before the start of the damage period, it certainly can not be considered evidence that Zenith attempted to get distributors in the damage period, that these distributors were unwilling to handle Zenith's products, and that they attributed their unwillingness to the threat of infringement actions by the pool. In addition, the testimony of Wright must also be considered in light of his statement that he could recall no complaint by a dealer or prospective dealer since 1958 (A. 471-72). We respectfully submit that the government is reading too much into Wright's testimony.

Not to be ignored on this issue is the important fact that Zenith was unable to offer any correspondence or other documentary evidence of any dealer or distributor refusing to handle its products during the damage period (or at any time after the release); and Wright did not even identify a single distributor who had turned Zenith down.[8] As noted by the Court of Appeals, no Canadian distributor was called as a witness by Zenith (A. 4258). While contending that it goes only to the weight to be given to the testimony, the government admits that:

---

[7] Similar testimony appears at A. 490, but it also does not support the government's characterization of Wright's testimony.

> "It is true, as HRI points out (Br. 52), that Wright's testimony is lacking in particulars; once the mid-1950's are passed, there are no specific details given of who was approached or when, and there is no documentary corroboration of the claimed attempts to obtain outlets, as there was regarding similar efforts during the early and middle 1950's" (Govt. Br. p. 40).

---

[8] While the government acknowledges the total absence of any evidence of pool interference with any Zenith distributors or dealers in the damage period (Govt. Br. 45-46), it refers, in a manner which may be misleading, to a letter which the Canadian pool sent to a Motorola dealer in 1962. This letter had been sent to a Motorola dealer in Nova Scotia. At the request of Zenith, MacCuspie, the Zenith dealer in the same town, obtained a copy of the letter and forwarded it to Zenith (DX 162-D, A. 2053). In referring to this incident (Govt. Br. 10), the government characterizes MacCuspie as having been a Zenith distributor who dropped the Zenith line when threatened with infringement actions "ten years before." However, apparently because it was misled by an erroneous statement in Zenith's brief (see H.R.Br. 109), the government neglects to point out that MacCuspie was *back in business as a Zenith distributor* at the time of the letter to the Motorola dealer in 1962. Indeed, as we pointed out in our main brief (H.R.Br. 109), both the fact that the pool sent no such letter to MacCuspie, who was then a Zenith distributor in the same town as the Motorola dealer, and the wording of MacCuspie's forwarding letter, make it quite clear that the pool was not interfering with MacCuspie's distribution of Zenith sets, and that he no longer considered that the Canadian pool was a threat to Zenith dealers or distributors.

What the government overlooks is the fact that Zenith obtained and offered specific details and documents relating to the much earlier period but did not do so for the 1959-1963 damage period. This in itself strongly indicates that the conditions were not the same during the damage period.[9]

Certainly, considering all the circumstances, the Court of Appeals could take into account this total lack of direct and specific evidence which would have been fully available to Zenith, if Zenith actually had trouble finding distributors to handle its products in the damage period. Indeed, as this Court pointed out in the leading case of *Interstate Circuit, Inc.* v. *United States,* 306 U.S. 208, 226 (1939):

> "The production of weak evidence when strong is available can lead *only* to the conclusion that the strong would have been adverse. *Clifton* v. *United States,* 4 How. 242, 247. Silence then becomes evidence of the most convincing character."

The suggestion in the government's brief that "the very nature of the violation" would deprive Zenith of other or more convincing proof (Govt. Br. 36) simply cannot apply to the "essential question" here; *i.e.,* whether Zenith had actually been turned down by distributors or dealers during the damage period. Direct and specific evidence would be available if Zenith had been turned down by any dealers or distributors (see pp. 7-9, *supra*).

---

[9] At one point in its brief, the government suggests that the "finder of fact was entitled to attribute the pool's relative quiescence during this [damage] period to the success rather than the collapse of the pool's opposition" (Govt. Br. 39). Of course, even if true, this has nothing to do with whether distributors actually turned down Zenith during the damage period because of the pool. But the suggestion of the government is, in any event, contrary to the record. Zenith's exhibits in evidence show that in the damage period Zenith's sales in Canada increased substantially, amounting to tens of thousands of sets annually, and rising to as much as 5 per cent of the Canadian market (before the tariff was increased) (see H.R.Br. 50-51). A finder of fact could hardly conclude from this that the supposed pool's opposition had been a success.

The Court of Appeals did not ignore the testimony of Wright. In fact, it said that this testimony might be considered "some slight evidence" of the fact of damage (A. 4258), and, in effect, that is all the government says it is. However, considering the entire record in this case, the Court of Appeals was left with the "firm conviction" that the trial court "made a mistake in inferring from the entire testimony that the essential element of the fact of damage had been established by Zenith" (A. 4259).

In arriving at that conclusion, the Court of Appeals was not only entitled to take into account the vagueness of the Wright-Kaplan testimony, the lack of corroboration for it in sharp contrast to the evidence which existed prior to 1957, and the other factors in the record; it was also entitled to take into account the other testimony and evidence in this case which showed the total lack of credibility of Wright and Kaplan (see pp. 11-15, *supra*).[10]

---

[10] It should also not escape this Court's attention that Wright gave other testimony *as to Canada* which was shown to be untrue, *i.e.,* his testimony at the original trial in February 1964 to the effect that Zenith had scaled down its advertising because of the pool's activities. This testimony was exposed as being untrue by the recall testimony of Kaplan in November 1965 when he admitted on cross-examination that Zenith's expenditures in Canada were normal for entering a new market (A. 3459), and shown to be untrue by other facts, including Zenith Exhibit 218 which showed extensive use of advertising (H.R.Br. 111-12, 114). The Court of Appeals pointed this out (A. 4259).

The government brief, in its persistent tolerance of the unreliability of the testimony of Zenith's witnesses (Govt. Br. 41, n. 8, 50, The government's assumption that the Court of Appeals is bound to credit the uncorroborated and non-specific oral testimony of an interested witness, no matter what else the record shows concerning the lack of credibility of that witness, is not only unsupported by either logic or authority but is directly in conflict with the rule that an appellate court can and should consider credibility (not involving demeanor) in reviewing findings under Rule 52(a) (see p. 15, *supra* and pp. 39-40, *infra*).

Contrary to the suggestion of the government (Govt. Br. 34), there is no need for the application of "reasonable probabilities" in this case. The truth of the matter is before this Court in the form of Zenith's Annual Reports. The government's brief states that the Wright and Kaplan testimony "necessarily contains some element of speculation" and that:

> "As in *Bigelow, no person can be certain . . . whether* it [Zenith] would have been able to obtain a Canada-wide group of distributors notwithstanding the pool. . . . Perhaps it *might* have produced other or more convincing proof" (Govt. Br. 41).

There is no need to engage in "speculation." Zenith knew the truth, it had the proof, but it did not produce it. That proof was contained in the admissions in Zenith's Annual Reports, produced in the offer of proof of Hazeltine Re-

---

n. 9), appears to excuse what it calls these "discrepancies" by stating that Wright's discredited testimony "is not essential to support a finding of impact as to Canada" (Govt. Br. 41, n. 8). But these "discrepancies" were before the Court of Appeals at the time it reached its firm conviction, after reviewing the entire record, that despite the "slight evidence of the fact of damage" contained in Wright's testimony, the trial court made a mistake in inferring that the fact of damage had been proved (A. 4257-59).

search, over the objection of Zenith (H.R.Br. 55-60). These contemporaneous documentary admissions expose the sham of Zenith's claim. For example, there can be no uncertainty or "speculation" as to whether Zenith "would have been able to obtain a Canada-wide group of distributors notwithstanding the pool" (Govt. Br. 41). Zenith admitted that it had in fact done so by 1959 when it said:

> "Zenith now has a strong distribution network at both the wholesale and retail level *throughout* Canada" (A. 2993).

In the face of this statement, how can there now be said to be any question whether Zenith "would have been able" to obtain Canada-wide distribution? There can be no denying that *it did*—a strong distribution network—at both the wholesale and retail level—throughout Canada.

C. The Statements Contained in Zenith's Annual Reports Are Conclusive and the Government's Apparent Suggestion That They Be Ignored Would Result in a Denial of Justice.

The Annual Reports of Zenith (H.R.Br. 55-60) and a great deal of other evidence in the form of documents and proffered testimony are contained in offers of proof made by Hazeltine Research after the original findings were entered but before judgment. Saying that "it is ordinarily held" that the determination of whether to reopen a case is within the informed discretion of the trial court, the government states that "we limit our discussion of the evidence to that actually in the record" (Govt. Br. 34). But where, as here, the proffered materials show that the asserted facts which are essential to Zenith's case cannot be true, it is certainly not in the public interest, but contrary to the interests of justice, to ignore these materials. Indeed, it would seem *no more* in the public interest to see that the Court of Appeals does not impose an "unduly heavy burden of proof of injury" upon treble damage plaintiffs, as the government says (Govt. Br. 29), than to insure that multi-million dollar judgments, constituting a death sentence to a party, should not be sustained when the Court has before it documentary proof conclusively showing that the claim is a sham.

While it is our position that the decision of the Court of Appeals should be sustained irrespective of the offers of proof, we do believe that the government is wrong under the circumstances of this case in stating that "it is difficult to conclude that the trial court's denial of the belated request to reopen the entire case was improper" (Govt. Br. 34). This is not an ordinary case in which the evidence offered is merely repetitious or cumulative, and therefore, would not change the result. *E.g., Ditter v. Yellow Cab Company,* 221 F.2d 894 (7th Cir. 1955). The evidence proffered here goes right to the heart of Zenith's claim and exposes it as baseless. Indeed, the government's own argument with respect to Canada shows this fact, for it says that the "essential question" was whether Zenith could get distributors in Canada during the damage period (Govt. Br. 45-46).

Thus, far from "an ordinary case," this case falls within the principle applied in *Smith v. Dravo Corp.,* 203 F.2d 369, 377 (7th Cir. 1953), where the Court of Appeals held it was error not to receive evidence offered late, saying:

> "Looking at the evidence against an outline of a perfectly tried lawsuit, it was part of the case in chief. But we are of the opinion that, despite this fact, the District Court should have heard the testimony. It was, after all, *concerned with ascertaining the true facts* in a sharp dispute. Had this evidence been merely cumulative we might take a different view of its ex-

> clusion. But it stood alone serving to prove the very heart of plaintiff's case with respect to the customer lists. In the exercise of its sound judicial discretion the court should have admitted this evidence" (203 F.2d at 377).

The evidence not only went directly to the heart of Zenith's case, but it was in the form of contemporaneous documentary admissions of the highest character, being published public reports in which Zenith was bound to tell the truth. This Court has repeatedly held that contemporaneous documents are controlling and cannot be denied. See *United States* v. *DuPont & Co.*, 353 U.S. 586, 602 (1957); *United States* v. *U.S. Gypsum Co.*, 333 U.S. 364, 396 (1948); *United States* v. *General Motors Corp.*, 384 U.S. 127, 141 n. 16 (1966). In *DuPont*, the contemporaneous documents which were held to be controlling, specifically included annual reports. The government's brief overlooks these decisions and the logic which supports their rule.

The effect of the government's position with respect to the offers of proof would be to place procedural rules ahead of the achievement of substantial justice. In *Surowitz* v. *Hilton Hotels Corp.*, 383 U.S. 363, 373 (1966), this Court pointed out that pervading the modern procedural rules is the "basic purpose . . . to administer justice through fair trials. . . . These rules were designed in large part to get away from some of the old procedural booby traps. . . ." See also *Foman* v. *Davis*, 371 U.S. 178, 183 (1962); *Schaedler* v. *Reading Eagle Publication, Inc.*, 370 F.2d 795, 798 (3d Cir. 1967).

"[A] lawsuit is not a battle or contest of wits; it is a fair struggle for a just decision * * *. It is the primary duty of the court to render justice and fairness to all persons concerned in any litigation. . . ." *Bowles* v. *Six State Coal Corp.*, 64 F.Supp. 651, 652 (W.D.Pa. 1946). To the end of achieving justice, reviewing courts have repeatedly encouraged liberal reception of evidence, particularly in non-jury cases. See, *e.g.*, *Builders Steel Co.* v. *Commissioner of Internal Rev.*, 179 F.2d 377 (8th Cir. 1950). As noted by the Court of Appeals in *Halverson* v. *Campbell Soup Co.*, 374 F.2d 810, 812 (7th Cir. 1967), a district court may exercise discretion "to conduct a fair and orderly trial," but its principal role is to "insure a fair trial" and it is an abuse of discretion for it to bar important evidence.

This Court, in *Marconi Wireless Telegraph Co.* v. *United States*, 320 U.S. 1, 48 (1943), ~~pointed out that~~ one of the factors a trial court should consider in deciding whether to reopen a case is "whether adequate consideration of the question [at issue] . . . can be had on the existing record, or whether additional testimony should be received. . . ." See also *In re Barry Yao Co.*, 286 F.2d 299, 302 (9th Cir. 1961), *reversing*, 175 F.Supp. 726 (S.D. Cal. 1959). We respectfully submit that once these Annual Reports were made known to the trial court before entry of judgment, it could not in fairness resolve the issues in this case as to Canada in favor of Zenith.

There can be no doubt that this Court can consider the offers of proof including the Annual Reports,[11] particularly since it was error for the trial judge to refuse to admit them in evidence. See *Boston and M.R.R.* v. *David*, 167 F.2d 722, 725-26 (1st Cir. 1948); and *Severi* v. *Seneca Coal & Iron Corp.*, 381 F.2d 482, 490 (2d Cir. 1967), where, as here, the excluded evidence was "documentary evidence" and "a statement by a party against its interest" (381 F.2d at 490). See also, *Rose* v. *Great Northern Ry. Co.*, 268 F.2d 674, 678-79 (8th Cir. 1959). This is particularly so where the excluded evidence is being used, as here, to affirm the decision of a lower court, in this case the Court of Appeals. See *Jaffke* v. *Dunham*, 352 U.S. 280, 281 (1957), cited at footnote 54 page 117 of our main brief.

---

[11] Since the Annual Reports are public records, the Court should be able to take judicial notice of them. See H.R.Br. 117, n. 53.

D. The Judgment of the Court of Appeals Should Be Affirmed But If Not Affirmed There Should Be a Remand for Full Consideration of All Available Evidence on the Issues Remanded.

The government suggests that there should be a remand to the trial court with respect to Canada both on the issue of impact and on the issue of the amount of damages (Govt. Br. 44-46). However, on the issue of impact the government appears to suggest that the remand should be limited to the trial court's consideration of the existing record, apparently without receipt of any additional evidence. The government thus appears to take the position that the interests of justice could be served by remanding the case to the trial judge to permit him, based on the vague generalities of an interested witness, unsupported by any documents or corroborating evidence, to find that Zenith was unable to get distributors in Canada in the damage period, when at the same time it is known by all that Zenith unequivocally stated that it *was* able to get distributors throughout Canada at all levels of trade by the year 1959 (pp. 16-18, *supra*).

We urge that the decision of the Court of Appeals as to lack of impact with respect to Canada should be affirmed. But, if not affirmed, we submit there must be a remand and upon such remand the interests of justice could be achieved only by the trial court's receipt and consideration of all available relevant evidence.

With respect to the amount of damages, the government agrees that the trial court did not consider the effect of release given in September of 1957 (Govt. Br. 42-44). It also appears to agree that the proper measure of damages, assuming that there was some impact after the 1957 release, would be "the difference between what Zenith earned in Canada during the damage period and what the district court finds [on remand] would have been earned if Zenith started from scratch, as it tried to do, after the 1957 settlement" (Govt. Br. 44). We submit that Zenith offered no such evidence, unless it is the evidence of the substantial sales which Zenith did make in Canada during the damage period (see H.R.Br. 50-51). This evidence shows that what Zenith "tried to do" resulted in substantial sales in Canada and in fact that Zenith did as well there as it reasonably could have been expected to do after starting in the market in 1958.

We urge that the decision of the Court of Appeals should be affirmed with no remand to the trial court. On the other hand, if the Court should conclude that findings of impact could be made, there should be a remand both on the issue of impact and the issue of the amount of damages which should include consideration of the release and all relevant evidence the parties can produce upon such issues.

III. ENGLAND

A. The Error in the Critical Findings Pointed Out By the Government Is Alone Sufficient Basis For Affirming the Decision of the Court of Appeals As to England.

Throughout this litigation, including its briefs to this Court, Zenith has argued with respect to England that it had been injured because "[*t*]*he record shows* that throughout the years Zenith made many efforts to enter the English market" and that "[o]n each occasion, however, the Pool threatened its distributors so they ceased buying Zenith products" (Z.Br. 33). At the trial, Zenith proposed and the trial court entered Finding XXI which paraphrased this argument and stated (A. 2901):

> "XXI. For years Zenith made every effort to export home receivers to distributors and dealers in the English market. *On each occasion, however, the Pool threatened its distributors until they ceased buying* Zenith products and no substantial trade outlets could be found which would risk handling the line since the Pool would not license the sale of imported merchandise."

We pointed out that this finding was clearly erroneous for a number of reasons (H.R.Br. 86-95), *and the government agrees.* It correctly points out that this is the *only* finding relating to Zenith's alleged attempts to get distributors in England, and that there is "*no evidence* that Zenith television sets were ever sent to England and met with threats or that threats ever caused distributors to stop handling them" (Govt. Br. 52-53). Accordingly, the government concludes that Finding XXI "is responsive to *neither* Zenith's theory *nor the evidence*" (Govt. Br. 54), and that there are insufficient findings "to justify the district court's conclusionary finding that Zenith suffered injury to its trade or business of exporting television sets to England" (Govt. Br. 52).

The anomalous position of the government is that, on the one hand, it argues that the Court of Appeals should have given special deference to the findings of the trial court, but, on the other hand, the government itself correctly points out that the trial judge was so unfamiliar with the facts in this case that he entered without change Zenith's finding (indeed, the only specific finding relating to distributors in England) which was supported by "no evidence."[12]

We submit that this fact alone requires an affirmance of the Court of Appeals' decision with respect to English television. Certainly, Zenith should not be permitted to have the decision of the Court of Appeals reversed when, as the government recognizes (Govt. Br. 53-54), Zenith misled the trial court into adopting this finding for which there is no evidence and continues to assert in this Court, as a basis for reversal of the Court of Appeals, that the statements contained in the finding are true and supported by evidence. Under such circumstances, the decision of the Court of Appeals should be affirmed without consideration of any other issues with respect to television in England.

B. There Is No Evidence to Support a Finding of Fact of Damage.

The government's brief admits that in order to show the fact of damage or impact as to England, Zenith must have established (1) "an intention and preparedness to engage in" imports of television sets (Govt. Br. 48), *and* (2) that Zenith in fact failed to enter the television market during the four-year period because of "the pool's activities"

---

[12] The government also overlooks the full significance of the trial judge's error in awarding Zenith over $2.2 million with respect to alleged lost sales of radios in England when, in fact, there was absolutely no basis for any such award (Govt. Br. 30-31, n. 5). While the government acknowledges that the gross error in the estimate of the Zenith witnesses as to what Zenith could have done in the English radio market casts doubt upon their estimate of what Zenith could have done in the English television market (Govt. Br. 57), it fails to recognize that the making of such a spurious claim by Zenith and the blind adoption of such findings by the trial court reflects adversely not only on the credibility of Zenith and its witnesses, but also upon *all* the findings of the trial court, including those as to Canada.

(Govt. Br. 53). A finding against Zenith on either issue would mean it failed to prove damaging impact.

While the government acknowledges that the trial court entered no findings on these essential issues, it contends that there is evidence which, although it could go either way, would support findings in favor of Zenith on these questions (Govt. Br. 52). We respectfully submit, however, that the evidence conclusively shows that Zenith did not intend to enter the English television market during the damage period, and that Zenith did not show that it failed to enter the television market because of "pool activities."

1. Zenith Had No Intention of Entering the English Television Market Until the 625-line Standard Was Adopted.

The government correctly spells out as a "sound principle" the requirement that:

> ". . . it is necessary to state facts showing an intention and preparedness to engage in business" (Govt. Br. 48, 49).

In discussing that requirement, the government states:

> "If an antitrust plaintiff *would not have sought* or would not have been able *to enter a market even in the absence of the defendant's exclusionary activity,* then the violation was not the proximate cause of injury; indeed, where the independent reason for not entering is the claimant's own lack of interest, or own lack of ability, there has been no injury" (Govt. Br. 49).

As we pointed out in our main brief (H.R.Br. 40-44), contemporaneous documents in evidence, consisting of correspondence between Zenith and its English distributor, conclusively establish that there *was* an "independent reason" for Zenith not entering the English television market during the damage period, *i.e.*, that it was waiting for the English government to change its standard of transmission from the unique British 405-line system to the widely used 625-line system. And the Court of Appeals so held (A. 4257).

The government refers to evidence that Zenith "could" have made a set which would receive the British 405-line system (Govt. Br. 50). However, that is not the relevant question here, for there is no doubt that Zenith could have made such a set; the question is whether it would have been willing to set up a special line for such sets and whether it actually intended to enter the market with such a specially made set in light of the economic factors which indicated that it could expect only limited business in England (see pp. 40-41, *infra*). Indeed, the government acknowledges that the question of Zenith's intention is critical in this case. It states that:

> "The *essential* question rather goes to Zenith's intentions, *i.e.,* did it intend to stay out of the English market until the English government decided whether to change transmission systems?" (Govt. Br. 51).

In its briefs, Zenith has pretended that the documentary evidence to which we referred did not exist. The government, on the other hand, recognizes that it *does* exist and that it constitutes a "firm statement" supporting the conclusion of the Court of Appeals, but then argues that since there is an oral denial by an interested witness, the evidence is in conflict and the Court of Appeals could not rely on the documents (Govt. Br. 51, 52).

Contrary to the government's contention, the contemporaneous documents are controlling. As this Court held in *United States* v. *DuPont & Co.,* 353 U.S. 586, 602 (1957), the "plain implication of the contemporaneous documents, destroys any basis for a [contrary] conclusion." Indeed, the Court of Appeals was not only entitled to rely upon this contemporaneous documentary evidence, but it would have been error for it to do otherwise:

> "Where such testimony is in conflict with contemporaneous documents we can give it little weight, particularly when the crucial issues involve mixed questions of law and fact. Despite the opportunity of the trial court to appraise the credibility of the witnesses, we *cannot* under the circumstances of this case rule otherwise than that Finding 118 is clearly erroneous" *United States* v. *U.S. Gypsum Co.*, 333 U.S. 364, 396 (1947).

Curiously, in discussing the conflict between the original testimony and the testimony on recall, the government distinguishes the *U.S. Gypsum* case on the ground that it involved "a direct conflict between trial testimony and contemporaneous documents" (Govt. Br. 50, n.9). However, in discussing the issue with respect to Zenith's waiting for a change in the English television system, the government expressly acknowledges that there *is* a conflict between the oral testimony and the contemporaneous documents, but does not even mention *U.S. Gypsum* as if the well-established rule enunciated in that case and in *DuPont* did not exist (Govt. Br. 51-52).

Even if, contrary to well-settled law, the trial court could rely upon oral testimony of an interested witness over unequivocal contemporaneous documents, it would be error to do so in this case where the witnesses' testimony was demonstrated to be lacking in credibility on material matters relating directly to Zenith's alleged intentions and attempt to enter the English television market (see pp. 12-13, *supra;* and H.R.Br. 31-44). The only testimony to which the government refers is that of Wright and Kaplan, and it is these witnesses who were forced to admit that the testimony they had given at the original trial was not true. The testimony, which they were forced to recant, was that

Zenith had sent television sets to its English distributor which had been converted to the English 405-line system by Zenith or by the distributor in the back room of his shop with kits and parts supplied by Zenith, and that he had attempted to market some sets so converted (see H.R.Br. 33-39). The original testimony was given partially in response to a question raised by the trial judge as to whether American sets would work in England, and it is obvious that the testimony was designed to convince the trial judge that, since conversion was supposedly not a problem, Zenith would have entered the English television market but for the pool (see A. 464). This testimony and the recanting of it not only shows the general unreliability of these witnesses but emphasizes Zenith's lack of a bona fide intention with respect to the English television market.

The government acknowledges that there were "variations in their testimony," and that "[n]o doubt, in their 1965 testimony they at least modified their 1964 assertions" (Govt. Br. 50, n.9).[13] However, the government apparently takes the view that credibility is solely the province of the trial judge and cannot be considered by the Court of Appeals. But, as we pointed out above (p. 15, *supra*), an appellate court *can* take credibility of witnesses into account when considering whether findings of a trial judge are clearly erroneous under Rule 52(a). See *Jackson v. United States*, 353 F.2d 862, 866 (D.C. Cir. 1965), and other cases cited at pages 82-83 of our main brief. This is particularly true where, as here, the matters showing the lack of credibility relate not to demeanor but instead to the fact that the testimony is internally inconsistent, was recanted in material respects, and is contradicted by documents (see pp. 11-15, *supra*). As pointed out by the Court of Appeals in the *Jackson* case:

---

[13] While the government acknowledges a "variation" and modification in the testimony, it appears to say that the original testimony by these witnesses was only that Zenith sets "could" be converted to the English system (see Govt. Br. 15, 50). On the contrary, the clear purport of the testimony of both Wright and Kaplan was that sets *had been* converted. Kaplan: "Mr. Dodds, I would like to answer by saying that this difference is so profound that our distributor *changes* them in his back room" (A. 545). Wright: "Sometimes *we have to make* minor modifications in these sets. They use a slightly different system in England. * * * Oh, Mr. Ramsay in the back room of his little establishment could make the simple repairs and alterations that are necessary to make this work. *We supply him with parts to do that at times*" (A. 464).

> "While the trial judge's observation of demeanor must be given appropriate weight, it must be remembered that '[c]*redibility involves more than demeanor.* It apprehends the overall evaluation of testimony in light of its rationality or internal consistency and the manner in which it hangs together with other evidence.' Carbo v. United States, 9 Cir., 314 F.2d 718, 749 (1963), cert. denied, 377 U.S. 953, 84 S.Ct. 1625, 12 L.Ed.2d 498 (1964)" (353 F.2d at 866).

Moreover, the fact that Zenith was awaiting the change in the British television system to a 625-line system as shown in the Zenith-Ramsay correspondence is also supported by the other circumstances involved. Zenith was not making a 405-line set, but it was then making 625-line sets for export to other markets (A. 3484-85). Zenith knew that its prices would be substantially higher than those of British made television sets (A. 3519-20; H.R.Br. 93, 144).[14] It also knew that its experience from entering the English radio market (which was admittedly free of any interference from the pool) was unsuccessful—it never achieved more than token sales amounting at all times to less than two-tenths of one per-cent of the British market. Under the circumstances, it was certainly understandable that Zenith would not want to set up a special line to make sets which were saleable only in England in limited quantities when it could wait for the change in the English system and attempt to supply the market with the 625-line sets which it was already making.

---

[14] Indeed, we pointed out in our main brief that the evidence shows that the Zenith prices would have been so much higher on the average than the average price of British-made television sets, that Zenith could not have expected to make any meaningful penetration of the British television market during the damage period (H.R.Br. 93, 144). In fact, Zenith's average price, considering only the duty and ignoring shipping cost and other obvious costs,

The only fault that the government seems to find in the contemporaneous correspondence between Zenith and Ramsay is that there is only one "firm statement" of Zenith's intentions and it and the other statements of Zenith's "intent to begin exports once the change was made . . . were all made at the end of the damage period" (Govt. Br. 51).

The fact that there is only one document containing a "firm statement" of Zenith's intentions is no answer. There are no contrary documents,[15] and the government itself points out with respect to the other letters which are in evidence:

> "To be sure, each of the extracts quoted by HRI speaks of preparations being made for the anticipated change, and the letters make clear Zenith's intent to *begin* exports once the change was made" (Govt. Br. 51).

---

was almost *double* that of the average English-made television set during the damage period, and Wright admitted that Zenith could not expect to make any penetration of the English market if its average prices were double those of the average sets in the market (see A. 3520; H.R.Br. 144).

[15] Zenith did not put in evidence a single document which in any way evidenced an intent or desire to enter the English television market before the expected change to the 625-line system.

The fact that the particular letters in evidence are dated in the last two years of the damage period also does not weaken their force but, if anything, makes it clear that the condition which was keeping Zenith out of the English television market (*i.e.*, the lack of 625-line broadcasting) was in existence right up until the end of the damage period.

The government also suggests that the trial court and this Court could properly assume that the facts evidenced by the letters did not exist in the earlier part of the damage period and states the letters "are not strong evidence of Zenith's intentions up to three years earlier" (Govt. Br. 51). The making of such an unwarranted assumption illustrates the gross injustice which could result from ignoring the additional documentary evidence in the offer of proof. The offer of proof not only contains numerous reports and documents reflecting that the British government's consideration of the possible change to a 625-line system dated back to before the start of the damage period (see, *e.g.*, A. 3645, 3660, 3663-65, 3890, 3894), but it also contains a letter (A. 4075) from Ramsay, Zenith's English distributor, to Zenith dated September 28, 1959 (near the very beginning of the damage period) which encloses a copy of an article from a British trade publication reporting on and quoting an interview with Mr. Ramsay. This article which Ramsay described as "a good write-up on the introduction of Zenith to U.K." (A. 4075) included the following statement:

> "Mr. A. R. Ramsay, Managing Director of United Mercantile, who has recently been for some time in the U.S.A. studying marketing problems, told our representative, 'We shall keep a very close watch on the U.K. market, so that as the situation warrants it we can bring in more Zenith products. *At the moment we are waiting to see what the Government's decision will*

> *be regarding the third TV channel before we commit ourselves on importing TV receivers.'"* (A. 3972; see also A. 4021).

In its zeal to make certain that "unduly heavy burdens" are not imposed upon a treble damage claimant, the government is apparently willing to overlook the settled law of the *U.S. Gypsum* and *DuPont* cases. When, as here, the truth is shown by the contemporaneous documents in evidence, it is certainly not error (or the imposition of an unduly heavy burden on the claimant) for the Court of Appeals to rely upon those documents, as it did (A. 4257). Since the government acknowledges that a finding that Zenith was *not* awaiting the change in the British television system is "essential" to Zenith's case, the Court of Appeals should be affirmed because no such finding can be made in the face of the unequivocal documentary evidence.

2. There Is No Basis for a Finding That Zenith Was Unable to Obtain Distributors During the Damage Period.

The government also recognizes that in addition to intent and preparedness to enter the English television market, proof of injury in this case also requires proof "that the pool made Zenith unable to find dealers, and this inability continued into the damage period" (Govt. Br. 52). Apparently the government's argument is that this burden could be satisfied by a finding, not made by the trial court, that it was "useless" for Zenith to seek distributors in the damage period "in view of the pool's activities" (Govt. Br. 52, 53), and that this could be inferred from the testimony of Zenith's alleged attempts in the 1950's and the evidence of the English pool's alleged policy to bar imports (Govt. Br. 52).

We respectfully submit that such a finding cannot be justified on this record:

First, the fact that Zenith was waiting for a change in the British system during the damage period (see pp. 36-43, *supra*) shows that it was not the pool which prevented Zenith from having dealers and distributors for television in England during that period.

Second, the government's suggestion that a finding that it was reasonable for Zenith to conclude that it should make no further attempts to obtain distributors because it would be unable to find any "in view of the pool's activities" assumes that the pool had done something. But there is no evidence that the English pool took or threatened any action against any importer or distributor at any time since the 1930's (see H.R.Br. 30-31). There was thus simply no evidence of pool "activities" which would justify anyone concluding that it would be unreasonable to attempt to find English television distributors.[16]

Third, the inference the government seeks to draw is inconsistent with other facts, which show it would be patently unreasonable for Zenith to assume, from alleged experiences in the 1950's, that it was useless to seek distributors during the 1959-1963 damage period. The government embargo on imports of television sets to England was lifted in 1959, after being in effect and excluding radio and television imports to England for nearly twenty years (H.R.Br. 16-17). We submit that any reasonable businessman, who genuinely wanted to import television sets to England, would, after he discovered the embargo was lifted in 1959, have at least contacted the pool to see if there had been any change in the pool's policy with respect to imports. Yet the record shows that Zenith did not do so.[17] Indeed, the record shows that Zenith was so little interested in the English market after the government decided to continue using the 405-line system on its principal channels that Wright, when he testified in the fall of 1965, did not even know that the pool had gone out of existence on June 30, 1964 (see H.R.Br. 98).

---

[16] The government refers to a ~~conversion~~ conversation which Wright claimed he had in 1955 with an officer of one of the companies in the English pool (Govt. Br. 12-13). Contrary to the government's characterization, there is no evidence that this person was a "pool representative." Moreover, this conversation can hardly have any probative value with respect to the 1959-1963 damage period because at the time of the alleged conversation there was an absolute government embargo against American sets, making any such conversation purely an academic matter. Moreover, it was before the changes which were made in the pool agreement and license form (see p. 45, n. 17, *infra*), and four years before Zenith appointed its English distributor.

Fourth, there simply is no competent evidence to support the finding which the government suggests could have been entered. The government acknowledges that the testimony with respect to Australia was inadequate and insufficient to support a finding that Zenith had the intention to enter the market and was stopped from doing so by the Australian pool (Govt. Br. 30-32, n. 5). However, concerning alleged attempts to obtain distributors, the testimony is even more worthless with respect to England than Australia. As to Australia, Wright said that he had discussions with people in Australia "with a view to distribution, and there was no question in their mind that we could not get such a license, and there was no use talking about any sort of an arrangement that contemplated that" (A. 476), and he even identified two of the people to whom he had allegedly talked (A. 476). But the only testimony to which the government can point to as to England is Wright's statement that from "'58 on, we talked to several men in England . . . but we were given to understand that television was just out of the question" (A. 474) (see Govt. Br. 13). He identified no such person or gave any details concerning the alleged conversations.[18] We respectfully submit that this testimony, which is even weaker than the testimony on Australia which the government admits is inadequate, would not justify the finding that it was reasonable for Zenith to conclude that it would be useless to seek distributors in the damage period.

---

[17] We pointed out that changes were made in the pool agreement and the pool license form with respect to imports (H.R.Br. 44-46, 95-97). While the government apparently does not agree with our position with respect to the effect of the changes (Govt. Br. 63), it nevertheless agrees that a change was made. We submit that any businessman who was genuinely interested in importing would have at least made an inquiry of the pool in view of the change of the license form and pool agreement and the lifting in 1959 of the embargo. But Zenith did not do so.

Finally, the inference or assumption that Zenith was "unable" to find distributors and that this "inability continued into the damage period" is wrong because the record shows Zenith did have a distributor in England, namely Ramsay, who was *going* to distribute television sets *when and if* the English government changed the system to 625-lines (see pp. 42-43, *supra*). Thus, the fact is that Zenith did not refrain from seeking television distributors because of the pool, but instead because it already had a distributor to whom it had sent some sets to be converted to the 625-line system for display, with the view that he would start marketing them when and if the government adopted a 625-line system.

---

[18] It will be noted that contrary to the statement in the government's brief (pp. 51-52), Wright did not testify why, according to these men in England "television was just out of the question." Insofar as it appears, the reason could well have been because of the major differences between sets necessary to receive the English 405-line system, as against the U.S. 525-line system; or the fact that in 1958 the government embargo was still in effect.

C. The Court of Appeals' Decision With Respect to England Should Be Affirmed But if There Is a Remand, It Should Be for Full Consideration on All Available Evidence on the Issue.

We urge that the judgment of the Court of Appeals as to England should also be affirmed. The government apparently suggests that the case should be remanded to the district court for it to decide, "on this record" whether it finds for Zenith on the critical factual issues (Govt. Br. 25). We submit that the record could not justify findings of impact. Further, the findings which were entered by the trial judge and which the government says are inadequate were submitted by Zenith. These findings, prepared by Zenith and adopted by the trial court, were extensive and included many matters which the government itself admits were not true. Surely if Zenith had believed there was any semblance of a basis for the type of findings as to the four-year period involved which the government says are essential, they would have been proposed by Zenith and entered by the trial court.

However, if the case should be remanded, as the government argues, it would be manifestly unjust if Hazeltine Research is not also given a chance to have considered all the evidence it can discover and offer on this question, thereby enabling the trial court to make a fully-informed judgment. Indeed, in light of what has occurred in this case, any further consideration by the trial judge of *any* issue should, in the interests of justice, be a full-scale consideration of that issue, permitting either party to offer all available relevant evidence on that question.

D. There Is No Basis for the Amount of Damages Awarded as to Television in England.

The government agrees that there is "no evidence to support [the] analysis" of the trial court with respect to the amount of damages awarded to Zenith as to England. It also points out that since Zenith's actual sales of radios in England were far less than the amounts Wright and Kaplan projected, a "reexamination of the damages found with respect to television sets would also seem required" (Govt. Br. 57).

When the district judge concluded that the testimony of Wright and Kaplan estimating damages as to England was not "believable" (A. 3525), the record was left with *no* credible evidence of the amount of Zenith's damages. Since it was Zenith's burden to prove the amount of its damages, the counterclaim should have been dismissed. However, should this Court decide that Zenith should have a second chance to prove the amount of its alleged damages, the consideration of that question by a lower court should take into account all of the relevant evidence either party can discover and offer.

IV. The Charge of Unlawful Conspiracy.

As the government's brief recognizes, the question of legality of the patent pools was not involved in the Court of Appeals' decision, and would not be reached unless the Court of Appeals' decision as to lack of impact of these pools upon Zenith's export business were reversed. Under those circumstances, in our previous brief (H.R.Br. 149-54) we commented only briefly on the question of legality. In view of the government's discussion (Govt. Br. 57-58) we comment on the matter further here, but again only briefly because of the posture of the case.

The government's brief states, quite correctly, that:

> "Of course, foreign patent pools, like foreign cartels, are themselves not subject to the antitrust laws of the

United States" (Govt. Br. 61).[19]

However, the government asserts that such foreign pools are a violation of the Sherman Act if they have the "purpose of excluding American imports" (see Govt. Br. 63) regardless of whether "an actual impact on American export trade is shown" (Govt. Br. 64).

The cases cited do not support this proposition. In fact, in *Strassheim* v. *Daily,* 221 U.S. 280 (1911), which the government says indicates the "limited nature of the holding in *American Banana,*" (Govt. Br. 65) the quotation of this Court referred to condemns "Acts done outside a jurisdiction, but intended to produce *and producing* detrimental effects within it. . . ." (221 U.S. at 285).

Another illustration is *Continental Ore Co.* v. *Union Carbide and Carbon Co.,* 370 U.S. 690 (1962), relied upon by the government (Govt. Br. 61), where Justice White based jurisdiction partly on the fact that "the conspiracy . . . was effectuated both here and abroad" (370 U.S. at 706). He also pointed out that the Court had distinguished *American Banana Co.* v. *United Fruit Co.,* 213 U.S. 347 (1909), previously (in *United States* v. *Sisal Sales Corp.,* 274 U.S. 268 (1927)) on the ground that "the activities of the defendants *had an impact within the United States* and upon its foreign trade" (370 U.S. at 705).

---

[19] We note that at pages 59-60 the government comes very close to suggesting that patent pools in the United States are *per se* unlawful, stating "Patent pools by their nature involve the most flagrant form of the abuses condemned in these cases." We believe no argument is needed to support the principle that "patent pools" are not *per se* unlawful, but rather their legality turns upon the nature of the particular agreement. See Report of Attorney General's National Committee to Study the Antitrust Laws (1955) 242.

In *United States* v. *ALCOA*, 148 F.2d 416, 443-444 (2d Cir. 1945), where the Second Circuit sat on behalf of this Court, Judge Learned Hand stated that where agreements "made beyond our borders" are under attack, both an intent and actual effect on American trade must be shown.[20] Contrary to the government's assertion (Govt. Br. 65), *ALCOA* does not rely on *American Banana.*

Recent text writers on the subject have reached a similar conclusion. Mr. Fugate of the Department of Justice, after reviewing the cases, concluded that all Sherman Act cases based on the foreign commerce clause of the Act, and particularly cases involving foreign-based agreements, must show a "substantial" effect on American trade. Fugate, Foreign Commerce and the Antitrust Laws, 55 (1958); see also, Brewster, Antitrust and American Business Abroad, 65-74 (1958); Timberg, United States and Foreign Antitrust Laws Governing International Business Transactions, in Surrey and Shaw, eds, A Lawyer's Guide to International Business Transactions, 622 (1963).; Report of the Attorney General's National Committee to Study the Antitrust Laws, 76 (1955).

The government's brief says that Hazeltine Corporation's presence prevents the pool agreements from being "wholly the work of foreigners" (Govt. Br. 66). But nationality has no effect on the applicability of the rule that a substantial effect on American commerce must be found in cases of this kind. Virtually all of the cases upon which the rule is based involved American firms.

---

[20] In United States v. Minnesota Mining & Mfg. Co., 92 F. Supp. 947, 958 (D. Mass. 1950), the court stated it was "axiomatic" that private action charged with interfering with exports would not violate the Sherman Act when conditions beyond defendants' control made exports impossible.

V. VACATION OF PARAGRAPH C OF THE INJUNCTIVE DECREE WAS PROPER SINCE THERE WAS NO PROOF OF THREATENED LOSS OR DAMAGE TO ZENITH.

The government argues that the Court of Appeals erred in vacating that part of the injunctive decree relating to foreign pools. The government has seized on the language of the court that "*it follows* from our conclusion with respect to the foreign patent pools that injunctive relief against 'threatened loss or damage' . . . cannot be justified" and argues that "the court *apparently* believed that proof of damage is a prerequisite to injunctive relief" (Govt. Br. 68-69).

We do not urge that proof of actual damage is a prerequisite to obtaining injunctive relief and we submit that any fair reading of the Court of Appeals' opinion will demonstrate that it did not apply such a test. The government's interpretation of the court's opinion depends on the assumption that the court had reference only to the ultimate conclusion with respect to the foreign patent pools, *i.e.,* that the fact of damage was not proved. However, the court also reached other conclusions on specific facts concerning each of the pools which showed not only the absence of the "*fact* of damage" but also the absence of any "threatened loss or damage" to Zenith (Australia: A. 4256; England: A. 4257; Canada: A. 4258-59).

The counterclaim seeking injunctive relief was not filed in this case until May 22, 1963 and the trial was in February 1964. Licenses not prohibiting imports had been available from the Australian pool since 1951 (H.R.Br. 134-37). There was no evidence of any actual interference with imports by the English pool since before 1939 (H.R.Br. 29-31). Zenith's last contact with anyone even remotely connected with the English pool was 1955 (eight years before the counterclaim was filed), and Zenith appointed a distributor in 1959 who had been importing and selling Zenith radios in England and who in the four years he had been in business before the filing of the counterclaim had not even been contacted by the pool (H.R.Br. 30, 93, 156). Similarly, the last contact between Zenith and the Canadian pool was four years before the filing of the counterclaim for injunctive relief and almost five years before the trial. In the four years immediately preceding the filing of the counterclaim, Zenith imported tens of thousands of sets into Canada and the pool took no action (H.R.Br. 50-53, 100-02, 107).

Under the circumstances, the Court of Appeals was certainly justified in concluding that there was no present threat to Zenith. As this Court held in *United States* v. *Oregon State Medical Society,* 343 U.S. 326, 333 (1952), it is not proper to infer a threatened violation of the antitrust laws from ancient evidence of past violations; there must be proof of "a *real threat* of future violation or a contemporary violation of a nature likely to continue or recur."

The government also urges that this Court adopt a rule that in private antitrust cases a trial court can enter an injunction "without requiring proof of specific current threats directed at the plaintiff," and that a trial court may instead base the injunctive order on proof of a "conspiracy to restrain *the type of trade*" in which the plaintiff is engaged, unless the record "clearly establishes" that the conspiracy or its unlawful purposes has been abandoned (Govt. Br. 71). This argument is contrary to all authorities. Section 16 requires the party seeking the relief to prove "threatened loss or damage", *Ring* v. *Author's League of America,* 186 F.2d 637, 642-43 (2d Cir. 1951), *cert. denied,* 341 U.S. 935 (1951); and as this Court noted in *United States* v. *Borden,* 347 U.S. 514, 518 (1954), a private claimant "may obtain injunctive relief against such violations *only* on a showing of threatened loss or damage, *and this must be of a sort personal to the plaintiff.*" It is thus clear that threatened loss or damage "personal" to the claimant cannot be presumed from a conspiracy to restrain "the type" of trade in which the plaintiff is engaged.

VI. DOMESTIC PATENT MISUSE

The government's brief acknowledges that the color patent proposals made by Hazeltine Research to Zenith, argued at length to this Court by Zenith (see Z. Br. pp. 38-40, 106-07) are "no longer in issue" (Govt. Br. 20). It also acknowledges that the 50-80-100% formula is not an issue here because the Court of Appeals' decision concerning that formula "does not seem to have affected the relief granted" (Govt. Br. 22). The government takes issue only with the Court of Appeals' holding with respect to the provision in Hazeltine Research's licensing proposals calling for measuring the royalty by the licensee's total production of receivers of the type licensed. It urges that the Court of Appeals' reliance on this Court's decision in *Automatic Radio* v. *Hazeltine Research,* 339 U.S. 827 (1950) was misplaced under the facts of this case.

In *Automatic Radio,* this Court considered this same royalty provision and held that "it is not per se a misuse of patents to measure the consideration by a percentage of the licensee's sales." (339 U.S. at 834). The government's primary contention is that the "rationale" of *Automatic Radio* "should apply only to situations where it is proven that the parties, bargaining as equals, freely agreed . . . [to] computation of royalties" on this basis (Govt. Br. 76-77). However, if agreeing on this method of computing royalties is permissible, it follows that it must likewise be permissible for *someone,* presumably the licensor, *to propose* such a provision to the prospective licensee, and that is all that Hazeltine Research did here. The government acknowledges that "Zenith appears *never* to have specifically objected to the provision . . ." (Govt. Br. 77), and as we have shown the record is void of any evidence that this provision was ever even discussed between Zenith and Hazeltine Research (H.R.Br. 164). Thus, there has been no "insistence" or "demand" by Hazeltine Research that Zenith accept this provision. On the contrary, it was merely offered to Zenith without discussion and we submit that such an offer is certainly permissible under *Automatic Radio,* even under the government's interpretation of that case.

The fact is that the negotiations never even got to the question of how to measure royalties. Zenith took the position that it was not infringing any black and white patent and needed no license of any kind (H.R.Br. 162; Z.Br. 38); and as to the color patents, the negotiations never got to the point of a serious discussion between Hazeltine Research and Zenith as to terms. In fact, Hazeltine Research transmitted a form of color license agreement to Zenith in March 1963 together with an invitation to discuss it and Zenith did not respond (H.R.Br. 164).

Certainly if a patent licensor and licensee may legally *enter into* an agreement whereby royalties are measured by total production, as the government seems to agree, it must be permissible for the prospective licensor to propose such an arrangement. As has already been pointed out in Hazeltine Research's main brief (H.R.Br. 164-65), the situation might well be different if the licensor were to *insist* that royalties be measured by total production, but that circumstance is not present here.

CONCLUSION

For the reasons set forth in this brief and in the briefs we have previously filed in this case, we respectfully submit that the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

JOHN T. CHADWELL
VICTOR P. KAYSER
C. LEE COOK, JR.
JOSEPH V. GIFFIN
135 South La Salle Street
Chicago, Illinois

M. HUDSON RATHBURN
20 North Wacker Drive
Chicago, Illinois

LAURENCE B. DODDS
160 Middle Neck Road
Great Neck, New York

Attorneys for
Hazeltine Research, Inc.,
Respondent

Of Counsel:

CHADWELL, KECK, KAYSER,
RUGGLES & MCLAREN
135 South La Salle Street
Chicago, Illinois 60603
RAndolph 6-2545

MASON, KOLEHMAINEN,
RATHBURN & WYSS
20 North Wacker Drive
Chicago, Illinois 60606
FInancial 6-1677

Dated: January 17, 1969

LIBRARY
SUPREME COURT. U. S.

Office-Supreme Court, U.S.
FILED
JAN 18 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.

ANSWER BRIEF FOR ZENITH RADIO CORPORATION TO THE BRIEF OF THE UNITED STATES AS AMICUS CURIAE.

THOMAS C. MCCONNELL,
PHILIP J. CURTIS,
FRANCIS J. MCCONNELL,
JOHN BORST, JR.,
Attorneys for Zenith Radio
Corporation, Petitioner.

Of Counsel:
MCCONNELL, CURTIS, MAHON & BORST,
134 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

PAGE

FOREWORD 1

I. THERE IS NO NEED FOR A REMAND FOR FURTHER FINDINGS OR FOR A RECOMPUTATION OF DAMAGES IN CANADA 2

A. The Release 2

B. The Findings Are Adequate 7

II. THERE IS NO NEED FOR A REMAND FOR FURTHER FINDINGS OF FOR A RECOMPUTATION OF DAMAGES IN ENGLAND 10

A. The Fact of Damage as to Radio 10

B. The Adequacy of the Findings as to Television 11

III. THE DISTRICT COURT'S FINDINGS AND JUDGMENT AS TO AUSTRALIA SHOULD BE REINSTATED BY THIS COURT 14

CONCLUSION 17

CITATIONS.

Cases.

Anderson v. National Producing Co., 253 F. 2d 834 (2d Cir. 1958) 4

Connecticut Importing Co. v. Frankfort Distilleries, 101 F. 2d 79 (2d Cir. 1939) 6

Continental Ore Co. v. Union Carbide Corp., 370 U. S. 690 (1962) 16

Ginsberg v. Royal Ins. Co., 179 F. 2d 152 (5th Cir., 1950) 8

Hardy Salt Company v. State of Illinois, 377 F. 2d 768 (8th Cir., 1967) 7

Hazeltine Corporation v. General Motors Corporation, 131 F. 2d 34 (3rd Cir., 1942) 8

Lawlor v. National Screen Service Corp., 349 U. S. 322 (1955) 5
Leh v. General Petroleum Corp., 382 U. S. 54 (1965) .. 7
Mercoid Corp. v. Mid-Continent Invest. Co., 320 U. S. 661 (1944) 6
Milwaukee Towne Corp. v. Loew's Inc., 190 F. 2d 561 (7th Cir., 1951) 14
Minnesota Mining v. New Jersey Wood F. Co., 381 U. S. 311 (1965) 7
O'Toole v. United States, 242 F. 2d 308 (3rd Cir., 1957). 8
Standard Title Insurance Co. v. Roberts, 349 F. 2d 613 (8th Cir., 1965) 4
Systems, Inc. v. Bridge Electronics Company, 335 F. 2d 465 (3rd Cir., 1964) 4
United States v. General Electric (S. D. N. Y. Civil No. 140-157), 1962 CCH Trade Cases ¶¶ 70,546, 70,428, 70,342 7
~~United States v. Loew's Inc., 371 U. S. 38 (1962)~~ 17
United States v. Yellow Cab Co., 338 U. S. 338 (1949) .. 16

Statutes and Rules.

15 U. S. C. § 16 (b) 7
Rule 15 (b) of the Federal Rules of Civil Procedure .. 4
Rule 52 (a) of the Federal Rules of Civil Procedure .. 7
Uniform Contributions Among Joint Tort-Feasors Act § 4 6

Text.

5 Moore's Federal Practice (2d Ed. 1968) ¶ 52.06 [1] pp. 2652-61 8

IN THE

Supreme Court of the United States

October Term, 1968

No. 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,
vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.

ANSWER BRIEF FOR ZENITH RADIO CORPORATION TO THE BRIEF OF THE UNITED STATES AS AMICUS CURIAE.

FOREWORD.

The government agrees with petitioner that the patent pools in Canada and England violate the Federal antitrust laws. It also agrees that the record adequately establishes the fact of damage and the threat of future damage to petitioner's business in these markets which requires reinstatement of the District Court's findings. However, the government suggests that the cause should be remanded for certain more specific findings and for recomputation of damages in Canada and England. It also suggests that the Court of Appeals decision should be affirmed with respect to Australia. It is to these suggestions that this reply is directed.

I.

THERE IS NO NEED FOR A REMAND FOR FURTHER FINDINGS OR FOR A RECOMPUTATION OF DAMAGES IN CANADA.

A. The Release.

1. The government's principal ground for suggesting a remand on Canada appears to be based on a misunderstanding of the record concerning the so-called defense of release. It apparently believes that the Trial Court may have permitted Hazeltine to amend its pleading in order to assert this affirmative defense (Govt. Br. 44). The record shows that no such permission was ever granted.

The release issue was actually raised for the first time one year after trial and after findings had been entered as part of an offer of proof (A. 2957) made when Hazeltine's new counsel moved to withdraw the findings and to dismiss the counterclaim (A. 2939). The motion was based on a contrived contention that the antitrust issues had been tried on a "surprise" theory of action not stated in the counterclaim but for which surprise the defenses of release and limitations would have been pleaded by Hazeltine at the inception of the case (A. 2943). The Trial Court took a dim view of this contention and carefully pointed to the pleading allegations and pre-trial briefs which in his opinion made Zenith's theory plain to anyone able to "understand the English language" (Court of Appeals Appendix, A. 1865, 1870, 1934, 1950). The Court completely rejected Hazeltine's change in legal theory argument but did permit it to file unsigned copies of the Zenith-RCA releases as an offer of proof "to be sure that you [Hazeltine] feel that your record is adequately protected" on this issue (Court of Appeals Appendix, A. 1953).

Hazeltine counsel then asked "for the sake of the record . . . to make a couple of oral motions" in view of the fact "that the question has been raised as to whether or not the cause of action for damages stated in the findings was in fact disclosed and pleaded" (A. 3036). He first moved for leave to file "within a short date, our affirmative defense as a formal pleading of release and statute of limitations" and "again, to complete the record, to move at this time . . . that the counterclaim as embodied in the findings be dismissed . . . by reason of the bars of the statute of limitations and the releases" (A. 3036). The Trial Court declared that "the record will show that leave is given to file them at this time, *after proofs are closed and after findings have been made*" and immediately went on to hold that "In regard to Canada there will be no change [in the findings] as far as the Court is concerned" (A. 3037, 3038). His ruling was reflected in a minute order entered the same day which stated "Oral motions of Hazeltine for lv to fl affirmative defenses and to dism counterclaim for lack of proof & lv is granted to fl said motions in writing within 5 days *nunc pro tunc* as of Apr. 1, 1965." Hazeltine's motions to withdraw the findings as to Canada and to dismiss the counterclaim were then promptly denied (A. 3038, 3040, 3062).

The record thus shows that the Trial Court did not permit Hazeltine to amend its answer in order to plead the affirmative defense of release. It did, however, extend respondent every opportunity to protect his record in the event a reviewing court was prepared to take a more charitable view of Hazeltine's "surprise" change of legal theory contention. His rulings in this regard were in complete accord with the federal precedents which without significant exception hold that "an affirmative defense which is neither pleaded as required by rule 8(c) nor made the subject of an appropriate motion under rule 12(b) is waived [citations]. The waiver is final if the defendant fails to correct the omission either prior to trial or during trial as permitted by rule 15(a)(b) of the Federal Rules of Civil Procedure, 28 U. S. C. A." *Systems, Inc.* v. *Bridge Electronics Company*, 335 F. 2d 465, 466 (C. A. 3, 1964); *Standard Title Insurance Co.* v. *Roberts*, 349 F. 2d 613, 622 (C. A. 8, 1965); *Anderson* v. *National Producing Co.*, 253 F. 2d 834, 836 (C. A. 2, 1958).

In this case the Rule 15(b) provision for post trial pleading amendment was completely inapplicable because Hazeltine did not attempt to amend its answer to conform to the proofs adduced at the trial. The releases were never introduced or offered in evidence and no release issue was ever tried. While Hazeltine did place the Zenith-RCA settlement agreement in evidence, this document was offered to show that the settlement "was not a one-sided capitulation by which RCA gave up everything and got nothing" in return (A. 660). It was never suggested by Hazeltine that an undetermined part of the settlement proceeds represented a present recovery of some speculative future damage not incurred when the settlement was made. As a matter of fact Hazeltine's counsel contended that the RCA litigation had "very little relationship" to this case (A. 921-2) and involved "widely different charges" (A. 658). Now Hazeltine does an about-face and claims that the two cases are identical and that this case should be remanded to permit them to show a partial satisfaction based on settlement of the RCA case.

2. In considering the release issue the government also comments that Zenith has never challenged Hazeltine's as-

sertion that the common law rule concerning release of joint tort feasors should be given effect in antitrust actions (Govt. Br. 42). The assertion was not previously challenged for the reason already stated and for the equally compelling reason that Zenith never claimed damages in this action for illegal pool activity pre-dating the 1957 release. Its recovery only represented the damages Zenith actually incurred during the 1959-1963 period as a proximate result of the continued existence and operation of the Canadian pool after the Zenith-RCA settlement.

The record shows that Zenith management was directly confronted by Hazeltine and the Canadian pool in 1958 and 1959 and the Canadian trade was again warned and reminded of the consequences of trading in imported receivers (A. 410, 1879-80, 2014-18). The confrontation continued throughout the pretrial and trial of this case with Hazeltine asserting that the Canadian Patent Act protected the activities of the pool (A. 131, 134), that it intended to remain in the pool (A. 178-9), and that Zenith should expect to be sued for importing infringing receivers into Canada (A. 131, 132). Moreover, the damaging effect on Zenith of all of this activity is recognized in the government's brief (Govt. Br. 6-11, 34-41).

The 1957 release therefore would have no bearing on this case even if it had been pleaded as an affirmative defense. At the very most execution of that document in 1957 could the very most execution of that document in 1957 could only have disposed of Zenith's then existing antitrust claims. It did not constitute a blank check for Hazeltine and the Canadian pool to continue the same illegal conduct which was the subject of the RCA litigation. *Lawlor* v. *National Screen Service Corp.*, 349 U. S. 322 (1955). This much was even conceded by Hazeltine counsel who agreed that a release of any future antitrust violation would be "against public policy." (Court of Appeals Appendix, A. 1885, 2019.)[1]

3. Were the release defense otherwise applicable in this case, Zenith would not concede that Hazeltine was thereby absolved from liability for patent pool activities that occurred prior to the 1957 release date. The common law rule upon which Hazeltine relies, *i.e.,* that the release of one joint tort-feasor releases all, grew out of old common law procedural concepts which have no modern relevancy. The rule ordinarily conflicts with the intention of the parties, results in windfalls for co-conspirators who thereby manage to avoid any liability for damages, and frequently requires a plaintiff either to forego a partial settlement opportunity with one defendant or to give up his entire claim against others without full compensation.

We submit that rather than adopt the outmoded common law doctrine, a federal rule should be fashioned whereby a release given by an antitrust plaintiff to one defendant would not discharge his co-conspirators unless the release expressly so provides. This would be in keeping with the approach taken in Section 4 of the Uniform Contributions Among Joint Tort-Feasors Act (U. C. A. T. A. § 4) and would be more consonant with the public interest in the enforcement of the antitrust laws. Cf. *Mercoid Corp.* v. *Mid-Continent Invest. Co.,* 320 U. S. 661, 669-70 (1944).

The record and offers of proof here show that Hazeltine was not a party to the Zenith-RCA litigation (A. 2727), was not described as a co-conspirator in Zenith's complaint (A. 2726, 2734), contributed nothing to the settlement (A.

---

[1] Moreover, had Zenith sought anticipated damages in 1957 for the 1959-1963 period, which it did not (A. 2726-2733), such damages would not have been recoverable because of their speculative nature. *Connecticut Importing Co.* v. *Frankfort Distilleries,* 101 F. 2d 79, 81 (C. A. 2, 1939). Such an unmatured claim could not be discharged by release.

2783, 2784), and was not named in the release given RCA, General Electric, and Western Electric (A. 3051, 3052). Under these circumstances even had the release been pleaded and received in evidence, no sound reason would exist for permitting Hazeltine to escape liability for its illegal conduct during any period of time open under the statute of limitations.[2]

B. The Findings Are Adequate.

The only other ground advanced by the government for suggesting a remand on Canada is that the trial court's findings are insufficient to show that the Canadian pool was the cause of Zenith's inability to achieve proper distribution of its product during the damage period (Govt. Br. 45-6). While the findings relative to this issue contain no detailed recital of the testimony and documentary evidence, they were plainly adequate to perform their function.

We start with the principle that under Rule 52 (a) of the Federal Rules of Civil Procedure, a District Court as trier of fact is only required to set forth such ultimate facts as are necessary for proper adjudication of the case and is not obliged to make findings encompassing each and every detail borne out by the evidence. Findings are satisfactory when they adequately apprise an appellate tribunal of the basis for decision. *Ginsberg* v. *Royal Ins. Co.*, 179 F. 2d 152, 153, 154 (C. A. 5, 1950); *Hazeltine Corporation* v. *General Motors Corporation*, 131 F. 2d 34, 37 (C. A. 3, 1942); *O'Toole* v. *United States*, 242 F. 2d 308, 310, 311 (C. A. 3, 1957); 5 *Moore's Federal Practice* (2nd Ed. 1968) ¶ 52.06 [1], pp. 2652-61. If the findings comply with these standards they need not also negative or formally reject the contentions of the losing parties.

---

[2] The damage period available to Zenith not only would include the entire period after the September, 1957 R. C. A. settlement but would actually extend back to 1954 because of the pendency of the government civil action referred to at page 62 of the government brief. See *United States* v. *General Electric* (S. D. N. Y. Civil No. 140-157), 1962 CCH Trade Cases ¶¶ 70,546, 70,428, 70,342. Hazeltine was named as a co-conspirator in that case and by virtue of the amended tolling statute, 15 U. S. C. § 16 (b), the statute of limitations was tolled during the pendency of the government action from November 24, 1958 (A. 2753) to November 1, 1963, one year after termination of the proceeding through entry of the final consent decree against General Electric (A. 2767). *Minnesota Mining* v. *New Jersey Wood F. Co.*, 381 U. S. 311 (1965); *Leh* v. *General Petroleum Corp.*, 382 U. S. 54 (1965); *Hardy Salt Company* v. *State of Illinois*, 377 F. 2d 768 (C. A. 8, 1967), cert. den. 389 U. S. 912 (1967).

In the present case, after entering detailed findings on the pools and their object and purpose to prevent importation, the Trial Court formally found that "The foreign commerce of Zenith has been drastically curtailed by the patent Pools in England, *Canada* and Australia" and that "Zenith's foreign commerce has been damaged by the Pools in the following amounts during the 4-year statutory damage period: . . ." (Finding XXXVI; A. 2908). This finding as it relates to Canada was clearly based on Wright's testimony concerning the two-pronged effect on Zenith of the pool's publicized existence and operations. He testified that dealers and distributors were unwilling to assume the obvious risk of handling merchandise that would subject them to infringement charges (A. 453, 494) and further that Zenith management, as rational businessmen, dared not undertake the risks to Zenith of full scale penetration of the Canadian market until the cartel controversy was resolved in this litigation (A. 490). Wright also pointed out the obvious impact of continued publication of the pool's warning notice on the Canadian trade and their willingness to handle unlicensed receivers (A. 458).

This testimony was not only credited by the trial court, in Finding XXXVI, but its significance was recognized by the government in its brief. For example the government states:

> "Zenith's executives testified that these efforts impaired its abilities to find distributors and inhibited its

> efforts to exploit the Canadian market. Nothing in the record refutes their testimony . . ." (Govt. Br. 24.)
>
> • • • • •
>
> ". . . the more effective the violation, the fewer are the overt efforts that the rational businessman will make to enter a restrained market before bringing suit." (Govt. Br. 24.)
>
> • • • • •
>
> "The finder of the fact was entitled to conclude that by 1959 the pool, through a course of conduct spanning decades, had done everything possible to convince Zenith that exports to Canada would be met with infringement actions and to convince potential merchandisers and buyers of Zenith products that they too would suffer legal action by dealing in or using imported television sets and radios. The more successful these efforts had been, moreover, the less need there would be for the pool to make similar overt efforts during the damage period. HRI argues (HRI Br. 54) that the lack of proof of specific overt acts—except a threat to a Motorola dealer—during the damage period negates any finding of injury; but the finder of fact was entitled to attribute the pool's relative quiescence during this period to the success rather than the collapse of the pool's opposition." (Govt. Br. 39.)
>
> • • • • •
>
> "The victim of a predatory scheme may justifiably conclude that it is useless to seek to enter a market, however much he may wish to." (Govt. Br. 52.)

We submit that to require the Trial Court to make an additional finding at this stage that "Zenith was unable to obtain a full-fledged Canadian distribution system during the damage period" because of the pool, would be merely ordering it to state in different words that which has already been clearly found.

II.

THERE IS NO NEED FOR A REMAND FOR FURTHER FINDINGS OR FOR A RECOMPUTATION OF DAMAGES IN ENGLAND.

A. The Fact of Damage as to Radio.

The government concludes that the evidence is insufficient to support a finding that Zenith was injured in exporting radios to England (Govt. Br. p. 30-1). It bases this conclusion on Wright's testimony that most of the important radio patents had expired and that the pool had not interfered with Zenith's distributor Ramsey (A. 463-4). In so concluding, the government fails to give petitioner the full benefit of its evidence and permissible inferences. The government's position also ignores commercial realities. Wright testified that it was Zenith's usual marketing practice to distribute radio and television together. He said "well, we really handle radio and television together as a distribution thing; the same concern will handle both of them together" (A. 472). Wright further testified that Zenith could only distribute radios in England because a pool license for television was unavailable. He said that Ramsey was "unwilling to try to invest much in the television business because this required too large an inventory speculation for him" in view of the pool threat to television and that for the same reason Zenith had not made any effort on television (A. 463-4). Not only were Zenith's radio sales thus hampered by the lack of television distributors, but even as to radios Zenith only had limited distribution. Wright testified that Ramsey "was willing to take a chance and bring radios in without a pool license and . . . build up *some* distribution" and that he knew of no pool interference "with reference to his *limited* distribution" (A. 474). Wright also testified that although there were few important radio patents by 1959, this would not prevent the pool from asserting radio patents and threatening infringement suits on them (A. 471). Ramsey obviously was aware, just as another prospective distributor had written years before, that the line had to be handled with "discretion" (DX 108, A. 1542-3). Finally, the Wright and Kaplan projections as to radio sales assumed a completely open market, free of *all* pool restrictions on imports, both radio *and television* (A. 465; 528-9). We submit that the foregoing was more than adequate to support the District Court's damage findings as to radio.[3]

B. The Adequacy of the Findings as to Television.

The government agrees that the evidence is adequate to allow the finder of fact to conclude that Zenith had the necessary intent and capacity to export television to England (Govt. Br. p. 46) and that Zenith would have sold television sets in England during the damage period but for the pool (Govt. Br. p. 49). It suggests, however, that the case should be remanded for an additional finding tracking Wright's testimony that further attempts to secure television distribution in England during the damage period were futile in view of the pool's policy not to license imports (Govt. Br. p. 53). What we said about Canada with respect to the adequacy of the findings applies equally in the case of England.

---

[3] Moreover, Zenith was precluded from making arrangements to use the distributing organizations of British radio and television manufacturers. As pool licensees, such manufacturers were prohibited by the terms of their license from dealing in imported radio and television receivers. The pool license provided: "The Licensee agrees with the Grantors as follows:—(a) Not without the previous written consent of the Grantors to sell within the said territory any Broadcast Sound Receiver which has not been manufactured in the territory for which this License is granted. No Broadcast Sound Receiver shall be deemed to have been so manufactured within the meaning of this License which incorporates imported components to an extent per Broadcast Sound Receiver greater in value than ten per cent of the retail list price thereof" (A. 1337). Twelve British manufacturers accounted for 80% of the English radio and television market. (DX 78B, A. 1442). Moreover, the evidence showed that these manufacturers would not deal with distributors handling imported apparatus (DX 111, A. 1557-8).

Wright testified that after 1958 Zenith talked to several men in England "about all of the products [radio and television], but we were given to understand that television was just out of the question" (A. 474), that although Ramsey "was willing to take a chance and bring radios in without a pool license" (A. 474), he was "unwilling to try and invest much in the television business because this required too large an inventory speculation for him" (A. 463) and that "we [Zenith] have not made any effort on television because we were informed that the pool license then in effect, (sic) and there was no possibility of getting such a license" (A. 464). See also Govt. Br. pp. 12-13.

On the basis of this testimony and other evidence the District Court expressly found that "Zenith has been *constrained* from entering the British television market by the threat of the assertion against it of pooled patents, although Zenith has successfully engineered sets for the British market and has shipped some to its English distributor with the hope that the injunctive relief sought in this suit would be granted and business on a comercial scale could be conducted" (Finding XXII, A. 2902). The Court also found that "The foreign commerce of Zenith has been drastically curtailed by the patent pools in England, Canada and Australia" (Finding XXXVI, A. 2908) and after the embargo hearing, again observed, "There could be no question in my mind that Zenith suffered damages during the damage period by virtue of the pools which I have found, and reiterate, existed at the time of the damage period" (A. 3524). In view of these findings, we are at a loss to understand what useful purpose would be served by a remand for further findings on this issue as the government suggests.

The government next comments that the findings are inadequate because they do not indicate the basis for the Court's recomputation of damages in England and that apart from Wright's and Kaplan's testimony there is no evidence to support the Court's amended damage award (Govt. Br. 56). The government, however, proceeds to answer its own argument when it states in the next sentence "Perhaps the district judge simply *scaled down* that testimony according to his judgment of the degree of puff in those witnesses' opinions." That the Court was simply "scaling down" the damage estimates is clear from his remarks at the time. He did not reject the Wright and Kaplan testimony, but concluded that Zenith could not have obtained the market share testified to by them "starting from scratch" in 1959 and, accordingly, reduced the damage amounts (A. 3524-5). Referring to the Wright and Kaplan estimates the Court observed, "the Court is aware of the pride of officers in their corporation and the belief in their product" (A. 3525). At the same time he reduced the damage amount the District Judge reiterated his finding that Zenith had suffered damages during the damage period because of the pools (A. 3524) stating, "there is no question they lost money by virtue of the pools' excluding them" (A. 3525).

Finally, the government suggests that if Zenith were not damaged in its radio sales in England that this may require a recomputation of television damages "for the evidence shows that Zenith's actual sales of radios in England were far less than the amounts Wright and Kaplan projected" (Govt. Br. 57). This, of course, assumes that Zenith's radio sales represented sales in an unrestricted market contrary to the District Court's finding and what the record shows. Even the government concedes that England was a partially restricted market inasmuch as Zenith could not obtain television distribution without a pool license which was unavailable and that this could have affected radio sales (Govt. Br. 31). Moreover, as appears from DX 220 (A. 2661), Zenith enjoyed a substantially greater percentage of the United States television market than it did for radio (17.4% for television and 10.6% for radio in 1962). The projections of radio and television sales in England were based on 25% of Zenith's United States market share. The projections for television sales, however, were not tied to radio sales. Accordingly, it does not follow, as apparently the government concedes (Govt. Br. 59), that Zenith's television experience would be similar to its radio experience. This being the case, and the fact of damage having been conceded as to television, we see no basis for disturbing the District Court's determination of the damage amount as to television. See *Milwaukee Towne Corp.* v. *Loew's Inc.,* 190 F. 2d 561, 566 (C. A. 7, 1951).

III.

THE DISTRICT COURT'S FINDINGS AND JUDGMENT AS TO AUSTRALIA SHOULD BE REINSTATED BY THIS COURT.

The government does not question that Zenith had the capacity to export radio and television to Australia; nor does it dispute that the ARTS pools license would not permit imports. It concludes, however, that the evidence is insufficient to establish that Zenith had the requisite intent to enter this market (Govt. Br. 31). As the government concedes the issue of intent depends "on what the ordinary, rational businessman would do in the particular situation to evidence his desire to enter the foreclosed market" (Govt. Br. 32), and ". . . the more effective the violation, the fewer are the overt efforts that the rational businessman will make to enter a restrained market before bringing suit" (Govt. Br. 24).

The record shows that Zenith attempted to enter the Australian market in the early 30's but was blocked by the pool (A. 475-6) and the District Court found that importation on a commercial scale was precluded independently of the pool because of so-called government embargoes from 1946 to April, 1960. As to the period immediately preceding the damage period, Wright testified that he had talked to business people in Australia about the possibility of distributing Zenith's radio and television products but was told that in order to do business in Australia, Zenith would have to set up a factory there (A. 474-5). Wright further testified he had "discussed this matter with many people in Australia with a view to distribution and there was no question in their mind that we could not get such a license and there was no use talking about any sort of arrangement that contemplated that" (A. 476). A letter dated March 20, 1957 by Zenith's International Sales Manager states: "Although we have always been interested in marketing our Zenith sets in Australia, we have not been successful in this effort because of the Australian Patent Pool. Anyone in Australia importing, distributing or reselling Zenith products has been harassed and threatened with lawsuits by this Pool, in consequence of which importers, distributors and dealers have been discouraged to handle our products. It is hoped that in the not too distant future this situation can be broken to permit us to offer freely our products from (sic) distribution and resale in Australia without restrictions or difficulties, except those normally encountered from government import license and exchange regulations" (DX 215, A. 2526) (See also DX 215, A. 2524).

The government credits this evidence, but says that it is not enough to show intent. But where the critical issue is subjective intention, that issue is a matter peculiarly within the province of the trier of fact. See *United States* v. *Yellow Cab Co.*, 338 U. S. 338, 341-2 (1949). Moreover, what more would the government require? Certainly a formal demand on the pool for a license to import was not necessary. Such a demand would have been futile because the record shows that a license to import was not available and this Court has held that a formal demand is not a condition precedent to maintaining a treble damage action. *Continental Ore Co.* v. *Union Carbide Corp.*, 370 U. S. 690, 702 (1962). See also Zenith's opening brief pp. 91-6. The only other action which Zenith could have taken to manifest its intention to enter the Australian market would have been to establish its own distributing organization in Australia and commence to export radios and television on a commercial scale. Apart from the obvious expense involved, Zenith thereby would have risked infringement litigation and confiscation of its sets. We submit that responsible management could not be expected to take this further step. The District Court obviously agreed. Implicit in the Court's findings of damage in Australia is the finding that Zenith had the necessary intent and interest in exporting to this market and would have done so but for the pool. The Court not only found that Zenith's foreign commerce to Australia had been "drastically curtailed" but that Zenith had incurred substantial damages because of the pool restrictions (A. 2908). Any doubt as to the District Court's thinking was put to rest when he reiterated his finding of injury after the embargo hearing (A. 3524-5).[4]

---

[4] Turning to one final matter, we note that while the government does not officially comment on the modification of Paragraph B of the injunction, it does express "some doubt" about the Court of Appeals' addition to the injunction which once again permits Hazeltine to license individual patents at more than the package rate (Govt. Br. 22). This addition completely destroyed the relief obtained to deal with the coercive licensing proposals which even the Court of Appeals recognized as a misuse. The

CONCLUSION.

In our view, the findings in this case are wholly adequate to sustain the judgments entered by the Trial Court. They are sufficiently comprehensive to form a basis for the Court's decision and are fully supported by the evidence. We therefore fail to see how any useful purpose would be served by requiring the Trial Court to enter additional findings in order to further detail the evidence or to negative the rejected contentions of Hazeltine.

As the government observes, Hazeltine's activities "involve the most flagrant form of the abuses condemned" by the decisions of this Court in prior patent pooling cases (Govt. Br. 59-60). Its conduct was not inadvertent or a gray-area violation. It was continued in the face of government criminal and civil prosecutions involving these very pools and in the face of the settlement of Zenith's litigation with RCA, General Electric and Western Electric. During the trial of this case, Hazeltine re-asserted its intention to remain in the pools (A. 179). In view of this deliberate and flagrantly illegal conduct, we submit that Hazeltine should not be relieved of the consequences of its wrongdoing merely because the resulting damages involve large amounts.

Respectfully submitted,

Thomas C. McConnell,
Philip J. Curtis,
Francis J. McConnell,
John Borst, Jr.,
Attorneys for Zenith Radio Corporation, Petitioner.

Of Counsel:
McConnell, Curtis, Mahon & Borst,
134 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

---

government's position should be contrasted with that taken in *United States* v. *Loew's Inc.*, 371 U. S. 38 (1962), where it was quick to complain about the adequacy of relief granted with respect to the package licensing of films.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 18 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968.

No. 49

ZENITH RADIO CORPORATION, a corporation,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., a corporation, and
HAZELTINE CORPORATION, a corporation,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONER ZENITH RADIO CORPORATION TO HAZELTINE RESEARCH, INC. REPLY BRIEF.

Thomas C. McConnell,
Philip J. Curtis,
Francis J. McConnell,
John Borst, Jr.,
Attorneys for Zenith Radio Corporation, Petitioner.

Of Counsel:
McConnell, Curtis, Mahon & Borst,
134 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

CITATIONS.

PAGE

Hanover Shoe Co. v. United Shoe Machinery Corp., 392 U. S. 481 (1968) 4

Lawlor v. National Screen Service Corp., 349 U. S. 322 (1954) 4

Timken Roller Bearing Co. v. United States, 341 U. S. 593 (1950) 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONER ZENITH RADIO CORPORATION TO HAZELTINE RESEARCH, INC. REPLY BRIEF.

Under the guise of correcting Zenith's "misstatements" of the record, Hazeltine has filed a further brief denominated a "Reply". The brief is nothing but an attempt to have the last word and is essentially a reargument of matters argued at length in Hazeltine's answering brief. We confine ourselves to responding to the alleged misstatements.

1. Hazeltine challenges the accuracy of the following statement in Zenith's reply brief: "The testimony was undenied that because of the activity of the pool [after the

Zenith-RCA settlement] Zenith could not obtain any distributors except in Western Canada (A. 456).'' Not only is this statement supported by the record reference given but also by Wright's testimony two pages later in the record where in referring to continuing pool interference and the pool's ''Warning Notice'' of September, 1958, he testified: ''Here is a threat by an apparently respectable organization which is composed of companies like Canadian General Electric and the Telephone Company in Canada and Westinghouse, Phillips, the Marconi group [that] everyone that handles our product from the user on up to the distributor is going to be sued. *This has a serious effect on your ability to get the kind of distributors that you would need to do the kind of marketing job that we have been talking about, to be able to make the kind of investment and do the promotion and the advertising and to build a sales force that will do it*'' (A. 458). See also Wright's testimony at A. 450-3, 461, 472-3.

In an attempt to discredit this testimony Hazeltine again resorts to rejected post trial offers of proof of Zenith annual reports. Respondent apparently contends that because Zenith did not complain of pool interference in these reports, this circumstance somehow impeaches the evidence on that subject introduced at the trial. The trial judge certainly was not impressed with this contention, observing, ''I know of no requirement that you cry on your stockholders' shoulders'' (Ct. of Appeals Appendix, A. 1905). The omission of such self serving statements in Zenith's annual reports obviously has no significance.

2. Hazeltine next charges that Zenith's acknowledgement of the existence of government import restrictions in England and Australia prior to the damage period, constitutes an admission ''that its original contention and findings that the pools prevented it from building a market in England and Australia were untrue''. Nothing could be

further from the fact. The record shows that Zenith sought to enter these markets since as early as the 1930's but the pooling agreements were then already in effect and continued at all times down to the date of trial. They were never abandoned by the pool members as an unnecessary restraint on importation during the 1946-1959 period when government restrictions were in effect. The Trial Court so found and these findings were not disturbed as a result of the embargo hearing (See Findings XVI, A. 2900, XXXIV, A. 2907). The Trial Court after the embargo hearing reiterated his finding as to the exclusionary nature of the pools, stating, "there could be no question in my mind that Zenith suffered damages during the damage period by virtue of the pools which I have found, and reiterate existed at the time of the damage period" (A. 3524). The Court, however, concluded that because of the double barrier of governmental embargoes in the pre-damage period, Zenith could not have obtained the share of the English and Australian markets testified to by Wright and Kaplan "starting from scratch" and, accordingly, reduced the damage amounts (A. 3525).

While Zenith conceded the existence of government import licensing restrictions in England and Australia, it introduced evidence during the embargo hearing to show that these restrictions did not constitute an absolute prohibition or embargo on imports and that importation remained possible on a commercial scale. See *Timken Roller Bearing Co. v. United States*, 341 U. S. 593, 599 (1950). The District Court, however, decided otherwise and no appeal was taken by Zenith from this ruling. The fact that the pool agreements restricting imports were continued and renewed during the so-called embargo period indicates that the pool members and their co-conspirators were not satisfied to rely only on government licensing policy which could and did change.

3. Hazeltine claims Zenith has misconstrued this Court's decision in *Hanover Shoe* v. *United Shoe Machinery Corp.*, 392 U. S. 481 (1968). It is Hazeltine's contention that Zenith not only released any claim for damages caused by pool activity before September, 1957 (the RCA-Zenith settlement date) but also is barred in this suit from showing the "continuing and accumulating" effects of such pool activities to block imports on Zenith's business in 1959-1963. A similar contention was rejected in *Hanover Shoe.* There it was urged that because United's lease-only policy was initiated in 1912, Hanover was therefore barred by limitations from seeking damages in 1955 based on this *same* lease-only policy. This Court said: "[W]e, are dealing with conduct which constituted a continuing violation of the Sherman Act and which inflicted continuing and accumulating harm on Hanover. Although Hanover could have sued in 1912 for the injury that United inflicted, it was equally entitled to sue in 1955." Similarly, here, although Zenith could and did sue for damages in an earlier period, it was equally entitled to sue in 1963 for damages during the period 1959-1963 resulting from the pool's continuing policy not to license imports. See also *Lawlor* v. *National Screen Service Corp.*, 349 U. S. 322, 327-8 (1954).

Wright testified that Zenith was unable to obtain adequate distribution and properly develop the Canadian market because of the continuing threat posed by the pool and the fact that Zenith's sets were unlicensed (A. 450-3, 456-8, 461, 472-3). This testimony related specifically to the period *after* the RCA-Zenith settlement in 1957. For thirty years the pool had conditioned the Canadian market against handling imported sets. Distributors and buyers of imported sets were warned by the pool that they would be sued for infringement, and they were sued! (DX 130-138, A. 1861-82; DX 143-44, A. 1968-77). Publication of the pool's "Warning Notice" in 1958, after the settlement, was notice to all that the pool's policy against imports remained unchanged. This notice, as Wright testified, had the effect of reasserting all the illegal conduct which preceded the settlement with "cumulative harm".

Moreover, the release on which Hazeltine relies was raised for the first time *after* trial by offer of proof and *after* the District Court had entered findings in favor of Zenith (A. 2956-59, 3036-7, 3040, 3048, 3049-52). During the trial Hazeltine's then counsel, Dodds, took the position that Zenith was seeking and could only recover damages because of pool activity subsequent to the start of the damage period in June, 1959 (Court of Appeals Appendix, Z. A. 347-8, 390). He never contended that some part of the ten million settlement represented damages sought in the instant case and no evidence to this effect was offered by Hazeltine during the trial (or by offer of proof after trial) although this would have been its affirmative burden had the defense been pleaded.

However, after findings had been entered, Hazeltine's new counsel urged that Hazeltine had been misled as to Zenith's theory of the case and that but for this fact the defense of release would have been pleaded (A. 2996-7, 3036-7). The District Court expressly rejected this claim of surprise when he denied Hazeltine's motions to dismiss the counterclaim and to reopen the case for further proofs as to Canada (A. 3037-9). At the time the Court observed (Court of Appeals Appendix, A. 1865):

> "I think that the pretrial briefs show that he wasn't suddenly confronted with this, because the pretrial briefs filed many months before trial indicated to Mr. Dodds what the theory of the cross-complaint was".

In entertaining Hazeltine's motion for leave to file the defense of release (A. 3036-7, 3040) the District Court indicated that it was not reopening the case on this issue but was only permitting Hazeltine to show that this defense was tendered on April 1, 1965 "after proofs are closed and after findings have been made" (A. 3037). As in the case of offers of proof, Hazeltine was permitted to file whatever it wanted to file "for the sake of the record" (A. 3036) but the Court in the exercise of its discretion expressly declined to reopen the case except on the limited embargo issue in England and Australia (A. 3037-9).[1]

4. Hazeltine next asserts that because paragraph 13 of Zenith's answer to the patent infringement claim was stricken these allegations were not proved, contrary to our representation. Hazeltine, not Zenith, is misstating the record. Hazeltine neglects to point out that paragraph 13 of the answer which related to Hazeltine's alleged misuse of patents because of its patent pool activities, as well as paragraph 12 of the answer which related to Hazeltine's alleged misuse of patents because of its domestic package licensing activities, were realleged and incorporated in paragraph 4 of the counterclaim (A. 65). Paragraph 13, *inter alia,* alleged that Hazeltine and its co-conspirators had employed their inventions, including the alleged invention covered by the patent in suit and the inventions covered by the package license described in paragraph 12, "*both in the United States and abroad,* for the purpose and with the effect of restraining and preventing defendant . . . from engaging in foreign commerce" (A. 18-19). The issues raised by paragraphs 12 and 13 of the answer, as incorporated in paragraph 4 of the counterclaim were, as represented, determined in Zenith's favor (A. 2857, 2910, 2911).

5. Finally, Hazeltine takes issue with our statement that it receives a million dollars a year from illegal patent

---

[1] Zenith does not concede that Hazeltine would be entitled to the benefit of the RCA release even if pleaded as a defense. Hazeltine was neither a party nor named as a co-conspirator in the Zenith-RCA case and is not mentioned in the releases. See Zenith reply to government brief.

pool activities. It counters with the unsworn statement of its present counsel that receipts from the Canadian, English and Australian pools did not exceed $150,000 a year during the damage period. However, in answers to interrogatories it was admitted that counterparts of Hazeltine's domestic patents were not only in these pools, but in patent pools in Finland, Norway, Sweden, Austria, Belgium, France, Hungary and Switzerland as well (A. 22; DX 32, A. 1128). As part of the consideration for putting its patents in foreign pools Hazeltine received cross licenses under the United States patents of its foreign co-conspirators. These patents were included in Hazeltine's domestic package licenses from which it derived royalty income (A. 1156-7). According to Hazeltine's own report it received total royalty income "from all sources, both within and outside the United States" of $1,084,000 in 1960. During the eleven-year period between 1950 and 1960 royalty income totalled $18,361,000, or an average of $1,669,181 per year (DX 32, A. 1130). We submit that the foregoing completely substantiates our statement.

Respectfully submitted,

THOMAS C. MCCONNELL,
PHILIP J. CURTIS,
FRANCIS J. MCCONNELL,
JOHN BORST, JR.,
Attorneys for Zenith Radio Corporation, Petitioner.

Of Counsel:
MCCONNELL, CURTIS, MAHON & BORST,
134 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

SUPREME COURT OF THE UNITED STATES

No. 49.—October Term, 1968.

Zenith Radio Corporation, Petitioner, v. Hazeltine Research, Inc., et al.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[May 19, 1969.]

Mr. Justice White delivered the opinion of the Court.

Petitioner Zenith Radio Corporation (Zenith) is a Delaware Corporation which for many years has been successfully engaged in the business of manufacturing radio and television sets for sale in the United States and foreign countries. A necessary incident of Zenith's operations has been the acquisition of licenses to use patented devices in the radios and televisions it manufactures, and its transactions have included licensing agreements with respondent Hazeltine Research, Inc. (HRI), an Illinois corporation which owns and licenses domestic patents, principally in the radio and television fields. HRI is the wholly owned subsidiary of respondent Hazeltine Corporation (Hazeltine), a substantially larger and more diversified company that has among its assets numerous foreign patents—including the foreign counterparts of HRI's domestic patents—which it licenses for use in foreign countries.

Until 1959, Zenith had obtained the right to use all HRI domestic patents under HRI's so-called standard package license. In that year, however, with the expiration of Zenith's license imminent, Zenith declined to accept HRI's offer to renew, asserting that it no longer required a license from HRI. Negotiations proceeded to a stalemate, and in November 1959, HRI brought suit in the Northern District of Illinois, claiming that Zenith television sets infringed HRI's patents on a particular automatic control system. Zenith's answer alleged invalidity of the patent asserted and noninfringement, and further alleged that HRI's claim was unenforceable because of patent misuse as well as unclean hands through conspiracy with foreign patent pools. On May 22, 1963, more than three years after its answer had been filed, Zenith filed a counterclaim against HRI for treble damages and injunctive relief, alleging violations of the Sherman Act by misuse of HRI patents, including the one in suit, as well as by conspiracy among HRI, Hazeltine, and patent pools in Canada, England, and Australia. Zenith contended that these three patent pools had refused to license the patents placed within their exclusive licensing authority, including Hazeltine patents, to Zenith and others seeking to export American-made radios and televisions into those foreign markets.

The District Court, sitting without a jury, ruled for Zenith in the infringement action, 239 F. Supp., at 68–69, and its judgment in that respect, which was affirmed by the Court of Appeals, 388 F. 2d, at 30–33, is not in issue here. On the counterclaim, the District Court ruled, first, that HRI had misused its domestic patents by attempting to coerce Zenith's acceptance of a five-year package license, and by insisting on extracting royalties from unpatented products. 239 F. Supp., at 69–72, 76–77. Judgment was entered in Zenith's favor for treble the amount of its actual damages of approximately $50,000, and injunctive relief against further patent misuse was awarded. Second, HRI and Hazeltine were found to have conspired with the foreign patent pools to exclude Zenith from the Canadian, English, and Australian markets. Hazeltine had granted the pools the exclusive right to license Hazeltine patents in their respective countries and had shared in the pools' profits, knowing that each pool refused to license its patents for importation and that each enforced its ban on imports with threats of infringement suits. HRI, along with its coconspirator, Hazeltine, was therefore held to have conspired with the pools to restrain the trade or commerce of the United States, in violation of § 1 of the Sherman Act, 15 U. S. C. § 1, and was liable for injury caused Zenith's foreign business by the operation of the pools. 239 F. Supp., at 77–78. Total damages with respect to the three markets, when trebled, amounted to nearly $35,000,000.[1]

---

[1] In its initial findings, handed down on January 25, 1965, 239 F. Supp., at 76, the District Court concluded that Zenith had suffered actual damages of $16,238,872 as a result of the restraints imposed by the three pools upon Zenith's export business during the four-year damage period:

Canada:	
Television	$5,826,896
Radio	470,495
England:	
Television	8,079,859
Radio	1,169,067
Australia:	
Television	625,786
Radio	66,769
Total	16,238,872

On April 5, 1965, the District Court entered partial judgment, awarding Zenith treble damages for patent misuse and treble damages with respect to Canada, but reserving jurisdiction for further hearings on damages in the English and Australian markets. The further proceedings were held in October and November 1965, after which the District Court amended its findings on damages for England and Australia:

England:	
Television	$4,312,924
Radio	745,102
Australia:	
Television	223,508
Radio	24,952
Total	5,306,486

These revisions reflect the proof submitted at the further proceedings, showing that government embargoes in England and Australia, in

Judgment in this amount was awarded Zenith, along with injunctive relief against further participation in any arrangement to prevent Zenith from exporting electronic equipment into any foreign market.

Relying upon its finding that HRI and Zenith had stipulated before trial that HRI and Hazeltine were to be considered as one entity for purposes of the litigation, see 239 F. Supp., at 69, the judgments for treble damages and injunctive relief, both with respect to patent misuse and conspiracy, were entered against Hazeltine as well as against the named counter-defendant, HRI.

On appeal by HRI and Hazeltine, the Court of Appeals set aside entirely the judgments for damages and injunctive relief entered against Hazeltine, ruling that the District Court lacked jurisdiction over that company and that the stipulation relied upon by the District Court was an insufficient basis for entering judgment against Hazeltine. 388 F. 2d, at 28–30. With respect to Zenith's patent misuse claim, the Court of Appeals affirmed the treble damage award against HRI, but modified in certain respects the District Court's injunction against further misuse. 388 F. 2d, at 33–35, 39.

The Court of Appeals also reversed the treble damage award for conspiracy to restrain Zenith's export trade. Without reaching any of the other issues presented by the appeal on this phase of the case, the court held that Zenith had failed to sustain its burden under § 4 of the

---

effect until 1959 and 1960 respectively, precluded entry by Zenith into the English and Australian markets. The District Court found, with respect to England, that because of the embargoes, Zenith's damages were zero for the first year of the damage period, 50% of the figure initially accepted by the court for the second year, 75% for the third, and 100% for the fourth. With respect to Australia, the District Court adopted a similar 0–50–75–100% revision of the original figures used by the court in computing the damage findings of January 25, 1965.

Clayton Act, 15 U. S. C. § 15, to prove the fact of damage—injury to its business—within the relevant four-year period preceding May 22, 1963, the date Zenith's counterclaim was filed.[2] Finally, the Court of Appeals struck the injunction against HRI's participation in conspiracies restricting Zenith's trade in foreign markets.

We granted certiorari, 391 U. S. 933, to consider among other things the question whether the Court of Appeals properly discharged its appellate function under Rule 52 (a) of the Federal Rules, which specifies that the findings of fact made by a District Court sitting without a jury are not to be set aside unless "clearly erroneous."

I. The Judgment Against Hazeltine.

The named plaintiff in the patent infringement complaint which began this litigation was HRI, not its parent, Hazeltine; Zenith's counterclaim named only HRI as the "counter-defendant," identifying HRI and Hazeltine as "counter-defendant and its parent." After Zenith had filed its answer and had delivered a draft of its counterclaim to HRI's attorneys—both the answer and the counterclaim alleging that HRI had unlawfully conspired with Hazeltine and foreign patent pools—HRI and Zenith stipulated that "for purposes of this litigation plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company,"

---

[2] The record discloses that Zenith, HRI, and the courts below all considered the damage period to be the four years prior to the date on which Zenith filed its counterclaim. No argument was made that the counterclaim, in whole or in part, related back to an earlier pleading, thereby expanding the damage period to include years prior to 1959. Cf. *Bull* v. *United States*, 295 U. S. 247, 262 and n. 10 (1935); *Cold Metal Process Co.* v. *E. W. Bliss Co.*, 285 F. 2d 231 (C. A. 6th Cir. 1960), cert. denied, 366 U. S. 911 (1961). Compare Fed. Rule Civ. Proc. 15 (c) (amended pleading relates back to date of original pleading if the "claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading").

On May 22, 1963, two weeks after the stipulation had been signed, Zenith filed its counterclaim, seeking money damages from HRI and an injunction against HRI and those "in privity" with it. Hazeltine was not served with the counterclaim and was not named as a party, although it was alleged to be a coconspirator with HRI and the foreign patent pools. Hazeltine made no appearance in the litigation until Zenith proposed that judgment be entered against it, at which time Hazeltine filed a "special appearance." Insofar as the record reveals, Hazeltine did not formally participate in the proceedings until after the District Court had entered its initial findings of fact and conclusions of law. On April 5, 1965, after Hazeltine's special appearance, the trial judge entered judgment against Hazeltine as well as HRI, thereby rejecting Hazeltine's objection that the court was without jurisdiction over it. Apparently, the trial court based its decision on the pretrial stipulation[3] and its earlier finding that:

> "The parties stipulated that for purposes of this litigation Hazeltine Research, Inc., and its parent,

---

[3] During the proceedings before the District Court on April 2, 1965, the trial judge noted: "Well, of course, Hazeltine Corporation wasn't a party to the lawsuit." The court's reliance upon the stipulation as a basis for its decision to enter judgment against Hazeltine as well as HRI is reflected by the interchanges between the court and counsel for Hazeltine during those proceedings. An example is the following:

"Mr. Kayser [Counsel for Hazeltine]: . . . Could anyone really believe for a minute that if he had any thought of bringing the parent into this lawsuit that he would not have named them and that he would be relying on this stipulation which was intended to simplify and expedite the trial? Would any lawyer who has been practicing for two years expect to hold somebody liable on a judg-

Hazeltine Corporation, would be considered as one entity operating as a patent holding and licensing company, engaged in the exploitation of patent rights in the electronics industry in the United States and in foreign countries." 239 F. Supp., at 69.

The Court of Appeals was quite right in vacating the judgments against Hazeltine. It is elementary that one is not bound by a judgment *in personam* resulting from litigation in which he is not designated as a party or to which he has not been made a party by service of process. *Hansbury* v. *Lee,* 311 U. S. 32, 40–41 (1940). The consistent constitutional rule has been that a court has no power to adjudicate a personal claim or obligation unless it has jurisdiction over the person of the defendant. *E. g., Pennoyer* v. *Neff,* 95 U. S. 714 (1878); *Vanderbilt* v. *Vanderbilt,* 354 U. S. 416, 418 (1957).

Here, Hazeltine was not named as a party, was never served and did not formally appear at the trial. Nor was the stipulation an adequate substitute for the normal methods of obtaining jurisdiction over a person or a corporation. The stipulation represented HRI's agreement to be bound by and to be liable for the acts of its parent, but it was signed only by HRI, through its attorney, Dodds. Hazeltine did not execute the stipulation, and Dodds, although an officer of Hazeltine, did not purport to be signing on its behalf. The trial court apparently viewed the stipulation as binding Hazeltine, as equivalent to an entry of appearance, or as consent to entry of judgment against it. The stipulation on its face, however, hardly warrants this construction, and if there were other circumstances which justified the trial court's conclusion, the findings do not reveal them.

---

ment when he didn't even name them? He relied on some pretrial stipulation.

"The Court: You mean that pretrial stipulations are worthless?"

Perhaps Zenith could have proved and the trial court might have found that HRI and Hazeltine were *alter egos;* but absent jurisdiction over Hazeltine, that determination would bind only HRI. If the *alter ego* issue had been litigated, and if the trial court had decided that HRI and Hazeltine were one and the same entity and that jurisdiction over HRI gave the court jurisdiction over Hazeltine, perhaps Hazeltine's appearance before judgment with full opportunity to contest jurisdiction would warrant entry of judgment against it. But that is not what occurred here. The trial court's judgment against Hazeltine was based wholly on HRI's stipulation. HRI may have executed the stipulation to avoid litigating the *alter ego* issue,[4] but this fact cannot foreclose Hazeltine, which has never had its day in court on the question of whether it and its subsidiary should be considered the same entity for purposes of this litigation.

Likewise, were it shown that Hazeltine through its officer, Dodds, in fact controlled the litigation on behalf of HRI, and if the claim were made that the judgment against HRI would be *res judicata* against Hazeltine because of this control, that claim itself could be finally adjudicated against Hazeltine only in a court with jurisdiction over that company.[5] See *G. & C. Merriam Co.*

---

[4] There is some indication that the genesis of the stipulation was a pretrial conference, when a question was raised as to whether or not a subpoena served upon HRI could reach certain records of Hazeltine relating to the latter's foreign patents. Hazeltine, of course, argues that the stipulation's only purpose and effect were to facilitate discovery and trial by obviating the necessity of litigating whether or not Zenith could "pierce the corporate veil" between HRI and its parent.

[5] In its brief in this Court, Zenith seems to argue that Hazeltine is estopped to deny that it is bound by the stipulation. Not only was HRI's counsel, Dodds, an officer of Hazeltine, but also Ruestow and Westermann, Hazeltine's general patent counsel and general

v. *Saalfield*, 241 U. S. 22 (1916); *Schnell* v. *Peter Eckrich & Sons, Inc.*, 365 U. S. 260 (1961).

Neither the judgment for damages nor the injunction against Hazeltine was proper. Although injunctions issued by federal courts bind not only the parties-defendant in a suit, but also those persons "in active concert or participation with them who receive actual notice of the order by personal service or otherwise," Fed. Rule Civ. Proc. 65 (d), a nonparty with notice cannot be held in contempt until shown to be in concert or participation. It was error to enter the injunction against Hazeltine, without having made this determination in a proceeding to which Hazeltine was a party.[6]

---

counsel, were present during trial and failed to "repudiate" the construction allegedly given the stipulation by the parties at trial to the effect that it bound Hazeltine to any adjudication on the counterclaim. We find this theory untenable on the record of this case, for the references during trial to the stipulation are equally consistent with the interpretation advanced by Hazeltine that the stipulation merely eliminated the necessity for Zenith to perform the time-consuming task of piercing the corporate veil in proving its counterclaim against HRI. Also, Ruestow and Westermann were called as witnesses during trial, and assuming they were present throughout the trial—a fact which is neither proved nor disproved by the record—their failure to repudiate Zenith's proposed construction of the stipulation is entirely consistent with the proposition that they were present only as witnesses, and not as authorized representatives for a person who might be bound by the litigation.

[6] Just as the *alter ego* issue was not litigated after Hazeltine had made its special appearance and while it had an opportunity to be heard, see p. 8, *ante*, so the District Court evidently did not rely upon anything more than the stipulation as a basis for entering the injunction against Hazeltine as well as HRI. The record does not support the contention, implicit in Zenith's brief, that when Hazeltine appeared to contest jurisdiction it was found by the District Court to be "in active concert and participation" with HRI and that, by entering its special appearance, Hazeltine consented to be bound by such a finding. See generally Dobbs, The Validation of Void Judgments: The Bootstrap Principle (pts. 1 and 2), 53 Va. L. Rev. 1003, 1241 (1967).

II. THE FOREIGN PATENT POOLS.

A. *The Treble-Damage Award.*

HRI's major points in the Court of Appeals were that no injury to Zenith's business during the damage period had been proved; that if Zenith had suffered injury, it resulted wholly or partly from conduct prior to May 22, 1959, and to this extent was barred by the statute of limitations and by Zenith's 1957 settlement of certain antitrust litigation against RCA, General Electric, and Western Electric, which had the effect of releasing HRI from all liability for pre-settlement acts of the foreign patent pools;[7] that the Hazeltine companies had not illegally conspired with foreign pools; and that the damage award was excessive. Passing the other issues pressed by HRI, including the limitations defense, the Court of Appeals held that Zenith had failed to prove any injury to its export business during the damage period which resulted from pool activities either before or after the beginning of the damage period, and that the District Court's finding to the contrary was clearly erroneous.[8]

---

[7] Although HRI and Hazeltine were not parties to this prior litigation and did not enter the settlement agreement, HRI urged that all joint tortfeasors, including HRI and Hazeltine, were released from liability for injuries flowing from the pre-settlement acts of the pools. The 1957 release appears to be relevant only to Zenith's claim for injury to its Canadian trade; the embargoes in England and Australia were thought by the District Court to preclude any injury from acts of the English and Australian pools, and the embargoes were not lifted until well after the settlement was executed.

[8] The Court of Appeals did not disturb, nor do we, the findings of the District Court that HRI and Hazeltine conspired with the Canadian pool to deny patent licenses to companies seeking to export American-made goods to Canada. Accepting these findings, we have no doubt that the Sherman Act was violated. See, *e. g.*, *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 599

We have concluded that the Court of Appeals erred in setting aside the District Court's decision with respect to the fact of damage in Canada. Zenith's evidence, although by no means conclusive, was sufficient to sustain the inference that Zenith had in fact been injured to some extent[9] by the Canadian pool's restaints upon imports of radio and television sets. On the other hand, we agree with the Court of Appeals that the District Court erred as to the English and Australian markets.

1. *The Canadian Pool.*

The findings of the District Court with respect to the operations of the Canadian pool may be briefly summarized. The Canadian patent pool, Canadian Radio Patents, Ltd. (CRPL), was formed in 1926 by the General Electric Company of the United States through its subsidiary, Canadian General Electric Co., and by Westinghouse through its Canadian subsidiary. The

---

(1951); *Continental Ore Co.* v. *Union Carbide & Carbon Corp.*, 370 U. S. 690, 704 (1962). Once Zenith demonstrated that its exports from the United States had been restrained by pool activities, the treble damage liability of the domestic company participating in the conspiracy was beyond question. *Continental Ore Co.* v. *Union Carbide & Carbon Corp., supra.* Compare *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347 (1909); *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 443 (C. A. 2d Cir. 1950). Although patent rights are here involved, the same conclusions follow. See, for example, *United States* v. *Line Material Co.*, 333 U. S. 287, 305–315 (1948); *United States* v. *Singer Mfg. Co.*, 374 U. S. 174, 196–197 (1963).

[9] Zenith's burden of proving the fact of damage under § 4 of the Clayton Act is satisfied by its proof of *some* damage flowing from the unlawful conspiracy; inquiry beyond this minimum point goes only to the amount, and not the fact of damage. It is enough that the illegality is shown to be a material cause of the injury; a plaintiff need not exhaust all possible alternative sources of injury in fulfilling his burden of proving compensable injury under § 4. *Continental Ore Co.* v. *Union Carbide & Carbon Corp.*, 370 U. S. 690, 702 (1962); *Perma Life Mufflers, Inc.* v. *International Parts Corp.*, 392 U. S. 134, 143–144 (1968) (concurring opinion).

pool was made up largely of Canadian manufacturers, most of which were subsidiaries of American companies. The pool for many years had the exclusive right to sublicense the patents of its member companies and also those of Hazeltine and a number of other foreign concerns. About 5,000 patents were available to the pool for licensing, and only package licenses were granted, covering all patents in the pool and strictly limited to manufacture in Canada. No license to importers was available. The chief purpose of the pool was to protect the manufacturing members and licensees from competition by American and other foreign companies seeking to export their products into Canada.

CRPL's efforts to prevent importation of radio and television sets from the United States were highly organized and effective. Agents, investigators, and manufacturer and distributor trade associations systematically policed the market; warning notices and advertisements advised distributors, dealers, and even consumers against selling or using unlicensed equipment. Infringement suits or threats thereof were regularly and effectively employed to dissuade dealers from handling American-made sets.

For many years Zenith attempted to establish distribution in Canada, but distributors were warned off by the pool, and Zenith's efforts to secure a license for American-made goods were unsuccessful. Zenith then brought an antitrust suit against RCA, General Electric, and Western Electric.[10] This litigation was favorably settled, Zenith receiving, among other things, worldwide licenses on patents owned by the named defendants. Armed with these and other licenses, Zenith in 1958 began exporting radio and television products to Canada. It was promptly informed by CRPL that to continue business in Canada, Zenith would be required to sign CRPL's standard license, which did not permit importation, and that to sell in Canada it must manufacture there. Zenith was notified at the time that it was infringing at least one of Hazeltine's patents which had been placed with CRPL for licensing in Canada. Soon after this demand by CRPL, HRI began its infringement suit against Zenith..

---

[10] Zenith's antitrust claim was asserted as a counterclaim in a patent infringement suit brought by RCA against Zenith and its subsidiary, the Rauland Corporation.

Some of the trial court's findings describing the operations of the Canadian pool and its "drastic" impact upon Zenith's foreign commerce did not date the events or state whether they had occurred before or after May 22, 1959. The damage award was confined to injuries sustained during the statutory period, but the trial court apparently deemed it immaterial whether the damage-causing acts occurred before or after the start of the damage period. Damages were awarded on the assumption that Zenith, absent the conspiracy, would have had 16% of the Canadian television market on May 22, 1959, and throughout the damage period rather than its actual 3% share.[11] Since the failure to have 16% of the market on the first day of the damage period was ascribed to pool operations, those operations must have occurred prior to May 22, 1959. Some part of the damages awarded, therefore, necessarily resulted from pre-damage period conduct.[12]

---

[11] The computation of damages, prepared by Zenith's experts and accepted by the District Court, see 239 F. Supp., at 76, reflects a comparison between Zenith's percentage share of the United States television market, ranging from 15.6% in 1959 to 21.7% in 1963, and Zenith's actual share of the Canadian market during the same period, ranging from 3.1% in 1959 to 5.2% in 1961 and down to 3.2% in 1963. Although we discuss only the measure of damages utilized for computing Zenith's injury in the Canadian television market, a comparable method was employed to determine Zenith's lost radio sales.

The Court of Appeals reversed the District Court because it considered the evidence insufficient to prove the fact of any damage to Zenith after May 22, 1959. Having put aside HRI's statute of limitations defense, belatedly raised in the District Court and pressed in the Court of Appeals,[13] the import of the court's decision was that Zenith had not been damaged after May 22, 1959, by any act of the pool, whether occurring before or after that date. The Court of Appeals' overriding judgment—as it had to be if its no-injury rationale were to meet claims of damage period injury from pre-damage period conduct—was that Zenith would have done no more business in Canada after May 22, 1959, had the patent pool never operated in that country.

---

[12] On November 22, 1965, during the further proceedings held to consider damages for England and Australia, Zenith's executive vice-president and treasurer, Kaplan, testified:

"In Canada, our assumption was that we commenced the period starting June 1, 1959, as if we had had a full blown organization, and had enjoyed the benefits of doing business there for years prior to that date."

[13] HRI's answer to Zenith's counterclaim did not plead a statute of limitations defense. However, in the course of proceedings after entry of the District Court's initial findings of fact and conclusions of law, but before judgment, the trial court granted the oral motion of HRI's new counsel for "leave to file" defenses based on the statute of limitations and on the release given by Zenith pursuant to the 1957 settlement agreement. The thrust of the former was primarily that the findings as to Canada had erroneously included damages resulting from conduct occurring prior to May 22, 1959. The trial court, without further mention of these defenses, forthwith refused to set aside or amend the damage award as to Canada, thus either rejecting the statute of limitations defense or considering it to have been waived under Fed. Rule Civ. Proc. 12 (h), as urged by Zenith in both the District Court and the Court of Appeals.

Zenith itself had requested damages only for the four-year period prior to the filing of its counterclaim, and the findings of the District Court expressly limited the damages awarded to those occurring "during the 4-year statutory damage period." 239 F. Supp., at 76. The Court of Appeals, although not purporting to pass on the statute of limitations defense, referred to the "four year damage period" and identified it as "[f]our years prior to the May 22, 1963, filing date of Zenith's counterclaim. 15 U. S. C. Sec. 15b." 388 F. 2d, at 35 and n. 4. The parties have not argued the matter here, and we make no further effort to penetrate the confusion surrounding this issue or to deal with the question of whether damage period injury from pre-damage period conduct is recoverable where an unwaived statute of limitations defense is properly asserted.

The Court of Appeals was clearly in error. The evidence was quite sufficient to sustain a finding that competing business concerns and patentees joined together to pool their Canadian patents, granting only package licenses and refusing to license imported goods. Their clear purpose was to exclude concerns like Zenith from the Canadian market unless willing to manufacture there. Zenith, consequently, was never able to obtain a license. This fact and the pool's vigorous campaign to discourage importers, distributors, dealers, and consumers from selling, handling, or using unlicensed foreign merchandise effectively prevented Zenith from making any headway in the Canadian market until after the 1957 settlement with RCA and its co-defendants. And even in 1958, when Zenith undertook in earnest to establish its distribution system in Canada and to market its merchandise, Zenith was met with further pool advertisements threatening action against imported goods and further notifications, continuing past May 22, 1959, that its products were infringing pool patents and that no license was available unless Zenith manufactured in Canada.

This evidence clearly warrants the inference that CRPL's past conduct interfered with and made more difficult the distribution of Zenith products in 1959 and later years. The District Court could reasonably conclude that the cumulative effects of the pool's campaign against imported goods had consequences lasting well into the damage period. It could also rationally be found from the evidence that Zenith, beginning in 1958, could not have reached its maximum potential by May 22, 1959, that the pool had effectively prevented an earlier beginning, and that Zenith therefore suffered damage during the damage period from having a smaller share of the market than it would have had if the pool had never existed.

We also conclude that the record evidence is sufficient to support a finding of damage resulting from events occurring after the beginning of the damage period. We need not merely assume that the Canadian pool continued throughout the period of this suit, as we are entitled to do in the absence of clear evidence of its termination. See, *e. g., Local 167* v. *United States*, 291 U. S. 293, 297–298 (1934); *United States* v. *Oregon State Medical Society*, 343 U. S. 326, 333 (1952). HRI frankly conceded the continuation of the pool before the District Court,[14] and it appears sufficiently clear that throughout this time Zenith was deprived of what had always been refused it—a license on pool patents permitting it to sell American-made merchandise in Canada.

On May 12, 1959, ~~the pool~~ manager conferred with Zenith's vice president, informing him that Zenith was infringing pool patents and would require a license, but that licenses were granted only for local manufacture. This was followed on June 5, 1959, by a letter stating without reservation that Zenith receivers were infringing and enclosing the pool's standard license form. This was nothing more nor less than a demand during the damage period that Zenith either manufacture in Canada and take the standard package license or cease its activities in that country.[15] There is no evidence that the pool ever retreated from that position during the next four years.

---

[14] On April 1, 1965, during the further proceedings held by the District Court before judgment, counsel for HRI stated:

"Now what [counsel for Zenith] is really trying to sell this court is the idea that if he can show that these pools continued after 1957 and, as he defines the pools, yes, yes, they did. There is no question about it, that these arrangements in relation to patents—that characterized necessarily as he characterizes them, but that these arrangements have continued and, so far as I know, are in existence today. There is no question about that."

HRI does contend, however, that the ties between the Canadian pool and the Hazeltine companies were broken in December 1965, when Hazeltine secured an early termination of its licensing agreement with CRPL. See n. 25, *infra*.

Zenith thus continued to operate without a patent license unburdened by conspiratorial conduct and granted on terms which would satisfy the antitrust laws. This deprivation in itself necessarily had an impact on Zenith and constituted an injury to its business. We find singularly unpersuasive the argument that Zenith was as well off without a license as with one. This is little more than an assertion that pool licenses, from which CRPL and its participants enjoyed substantial income, were without value. Without the license, doing business in Canada obviously involved weighty risks for Zenith itself, besides requiring it to convince the trade that it could legally and effectively do business without clearance from CRPL.[16]

---

[15] That Zenith failed to make a formal request for a CRPL license during the damage period can properly be attributed to Zenith's recognition that such a request would have been futile. The pool had made its position entirely clear, and under these circumstances the absence of a formal request is not fatal to Zenith's case. See *Continental Ore Co.* v. *Union Carbide & Carbon Corp.*, 370 U. S. 690, 699-702 (1962); *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U. S. 481, 487, n. 5 (1968).

[16] In 1960, the Report of the Royal Commission on Patents, Copyright and Industrial Designs was published. This Report described the magnitude of the risk taken by Zenith and its distributors in selling imported products in Canada:

"The portfolio in respect of which CRPL had the right to grant licences consisted of 5,000 patents, and in the absence of a licence

Of course, Zenith determined to take these risks, serious as they were. Although HRI brought the instant litigation claiming infringement of an HRI domestic patent, the foreign counterpart of which had been made available to the Canadian pool by Hazeltine, Zenith persevered in its Canadian efforts. The claim is now pressed, and the Court of Appeals so held, that the pool bothered neither Zenith nor its distributors after mid-1959 and that Zenith ran the gauntlet so successfully that not having a license made no difference whatsoever.

It is true that the record discloses no specific instance of subsequent infringement suits or threats against Zenith's existing or potential distributors or dealers. But there is evidence that the pool was not dormant after May 1959. The record contains a letter from the pool to a distributor of Motorola products containing clear warnings against handling unlicensed, imported merchandise.[17] More significant, the fair import of the testi-

---

from CRPL it is doubtful if anyone could sell in Canada a radio or television receiver.

"CRPL indicated that it does not grant a licence to any importer of radio or television receivers . . . . It is particularly in respect of the policy of CRPL in precluding importers from bringing into Canada radio and television receivers that the complaint was made to this Commission.

"It was stated to be the policy of CRPL to enforce its patent rights against any person who sells in Canada an imported radio or television receiver which infringes any one or more of the patents in its portfolio . . . ."

[17] This letter, brought to Zenith's attention by ~~an ex~~-Zenith dealer, warned the Motorola dealer that his importation of American-made television sets and FM radios probably infringed pool patents. The dealer not only was cautioned that CRPL remained willing to litigate infringements, describing two recent and successful suits, but also was reminded of CRPL's policy against licensing imports:

"In closing, I wish to inform you that we would be most happy to issue a license to you to make or have made in Canada any equipment coming within the ambit of our patents."

mony by Zenith officers was that the pool remained active during the damage period and prevented Zenith from establishing an effective distribution system throughout Canada. Zenith was able to obtain independent distributors in the Western Provinces, but it was unable to do so in the Central and the Maritime Provinces, where it necessarily relied on its own subsidiaries for distribution. These officers, experienced businessmen, also testified to the similarities between the Canadian and American markets, attributing Zenith's much poorer Canadian performance to the discouraging and repressive effects of the pool. The Court of Appeals did not refuse to credit this testimony, as HRI insists we should do,[18] but accepting it as some evidence of damage, considered it of insufficient weight to prove injury to Zenith's business. In this respect the Court of Appeals both gave insufficient deference to the findings of the trial judge and failed to adhere to the teachings of *Bigelow* v. *RKO Radio Pictures, Inc.*, 327 U. S. 251 (1945), and other cases dealing with the standard of proof in treble-damage actions.

---

[18] HRI urges that the trial testimony as to Canada of each of two Zenith officers, Wright and Kaplan, was inconsistent with his own testimony on recall, inconsistent with the testimony of the other, and inconsistent with documentary evidence, and that we should therefore disregard their testimony. It is true that the trial judge's views as to credibility are not completely impervious, but Rule 52 (a) admonishes due regard for the trial court's opportunity to assess the credibility of witnesses. The Court of Appeals clearly took into account this evidence, and we see no adequate basis in the record for refusing to accept the testimony of the two Zenith officers as probative evidence. See *United States* v. *United Shoe Machinery Co.*, 247 U. S. 32, 37–38 (1918); *Walling* v. *General Industries Co.*, 330 U. S. 545, 550 (1947); *Graver Tank & Mfg. Co.* v. *Linde Air Products Co.*, 339 U. S. 605, 609–612 (1950); *United States* v. *Oregon State Medical Society*, 343 U. S. 326, 332 (1952); *Orvis* v. *Higgins*, 180 F. 2d 537, 539–540 (C. A. 2d Cir.), cert. denied, 340 U. S. 810 (1950); *Ruth* v. *Utah Construction & Mining Co.*, 344 F. 2d 952 (C. A. 10th Cir. 1965). HRI relies heavily in this respect on Zenith's annual reports for the years 1957–1962, but aside from the fact that these reports, except for 1962, were never admitted into evidence, we find them quite insufficient to undermine the credibility of Wright and Kaplan.

In applying the clearly erroneous standard to the findings of a district court sitting without a jury, appellate courts must constantly have in mind that their function is not to decide factual issues *de novo*. The authority of an appellate court, when reviewing the findings of a judge as well as those of a jury, is circumscribed by the deference it must give to decisions of the trier of the fact, who is usually in a superior position to appraise and weigh the evidence. The question for the appellate court under Rule 52 (a) is not whether it would have made the findings the trial court did, but whether "on the entire evidence [it] is left with the definite and firm conviction that a mistake has been committed." *United States* v. *United States Gypsum Co.*, 333 U. S. 364, 395 (1948). See also *United States* v. *National Assn. of Real Estate Boards*, 339 U. S. 485, 495–496 (1950); *Commissioner* v. *Duberstein*, 363 U. S. 278, 289–291 (1960).

Trial and appellate courts alike must also observe the practical limits of the burden of proof which may be demanded of a treble-damage plaintiff who seeks recovery for injuries from a partial or total exclusion from a market; damage issues in these cases are rarely susceptible to the kind of concrete, detailed proof of injury which is available in other contexts. The Court has repeatedly held that in the absence of more precise proof, the factfinder may "conclude as a matter of just and reasonable inference from the proof of defendants' wrongful acts and their tendency to injure plaintiffs' business, and from the evidence of the decline in prices, profits and values, not shown to be attributable to other causes, that defendants' wrongful acts had caused damage to the plaintiffs." *Bigelow* v. *RKO Pictures, Inc., supra*, 327 U. S., at 264. See also *Eastman Kodak Co.* v. *Southern Photo Materials Co.*, 273 U. S. 359, 377–379 (1927); *Story Parchment Co.* v. *Paterson Parchment Paper Co.*, 282 U. S. 555, 561–566 (1931).

In *Bigelow*, a treble-damage plaintiff claimed injury from a conspiracy among film distributors to deny him first-run pictures. He offered evidence comparing his profits with those of a competing theater granted first-run showings and also measuring his current profits against those earned when first-run films had been available to him. This Court, reversing the Court of Appeals, found the evidence sufficient to sustain an award of damages. Although the factfinder is not entitled to base a judgment on speculation or guesswork,

> "the jury may make a just and reasonable estimate of the damage based on relevant data, and render its verdict accordingly. In such circumstances, 'juries are allowed to act upon probable and inferential, as well as direct and positive proof.' *Story Parchment Co.* v. *Paterson Co., supra*, 561–564; *Eastman Kodak Co.* v. *Southern Photo Co., supra*, 377–379. Any other rule would enable the wrongdoer to profit by his wrongdoing at the expense of his victim. It would be an inducement to make wrongdoing so effective and complete in every case as to preclude any recovery, by rendering the measure of damages uncertain. Failure to apply it would mean that the more grievous the wrong done, the less likelihood there would be of a recovery." 327 U. S., at 264–265.

Here, Zenith was denied a valuable license and submitted testimony that without the license it had encountered distribution difficulties which prevented its securing a share of the market comparable to that which it enjoyed in the United States, and which its business proficiency, demonstrated in the United States, dictated it should have obtained in Canada. CRPL was an established organization with a long history of successfully excluding imported merchandise; and in view of its continued existence during the damage period, the injury alleged by Zenith was precisely the type of loss that the claimed violations of the antitrust laws would be likely to cause. The trial court was entitled to infer from this circumstantial evidence that the necessary causal relation between the pool's conduct and the claimed damage existed. See *Continental Ore Co.* v. *Union Carbide & Carbon Corp.*, 370 U. S. 690, 696–701 (1962).

2. *The English Pool.*

Hazeltine patents were made available to the English pool in 1930. The pool issued only package licenses, restricted to local manufacture. Although pool radio patents had expired prior to the beginning of the damage period, the trial court found, and we assume, that the pool held television patents which would not be licensed for television sets made in the United States.[19] Zenith was interested in the English market and made exclusive arrangements with one distributor desiring to handle its merchandise. At no time during or before the damage period, however, did Zenith make available or offer for sale a substantial number of television sets suitable for the English market or make any other serious efforts to enter that market. It attained no appreciable position in the English television market.

---

[19] Wright testified that in mid-1955 a representative of the English pool had confirmed his understanding that "the policy of the pool . . . required that [radio and television] sets be made in England, and that nothing would be licensed if it was imported from abroad." Wright further testified that the pool representative "saw no possibility" that this restrictive policy would be changed in the future. Subsequently, during its dealings with its English radio distributor, Zenith was "given to understand that the television was just out of the question."

Having initially found the patent pool responsible over the years for Zenith's failure to participate in the English market, the trial court, after further proceedings, held that a government embargo, not the patent pool, was the sole reason for Zenith's not entering the English market prior to the beginning of the damage period in 1959; until then, the District Court found, the pool "was not called upon to exercise the type of conduct that they exercised in Canada." It did not, however, retreat from its conclusion that restraints imposed by the pool had foreclosed Zenith during the damage period.[20] In this respect we agree with the Court of Appeals that the trial court clearly erred. Based on our own examination of the record, we are convinced that even with the ending of the embargo in mid-1959, Zenith faced other obstacles which effectively discouraged its entry into the English market and for which the pool was not responsible.

Positing that Zenith could not get a license from the English pool and that it did not enter the British market before or during the damage period, the issue is whether, once the embargo was lifted, Zenith wanted and intended to enter, had the capacity to do so, and was prevented from entering by its inability to secure a patent license and by other operations of the English patent pool. Section 4 of the Clayton Act required that Zenith show an "injury to its business or property by reason of anything forbidden in the antitrust laws." If Zenith's failure to enter the English market was attributable to its lack of desire, its limited production capabilities, or to other factors independent of HRI's unlawful conduct, Zenith would not have met its burden under § 4.[21]

---

[20] Because the embargo precluded any recovery by Zenith for the first year of the damage period, the trial court modified its initial measure of damages to reflect the time it would have taken Zenith, starting with the removal of the embargo, to build up its market share. See n. 1, *supra*.

Zenith was interested in the English market; this much is clear. But its standard domestic television set was manufactured to operate on 525 and 625–line-per-second scanning signals, whereas the 405-line signal was standard in England until after the damage period. Similarly, while FM transmission was utilized in the United States for the audio portion, AM signals were used in England. Zenith's regular product thus was not salable in the English market. To succeed at all, Zenith had either to produce a differently equipped set or provide for the mass conversion of its standard receivers. Unquestionably, the company had the facilities and the ability to follow either course. But it is equally clear that it pursued neither.[22] A change in the standard British broadcast to include a 625-line signal was under consideration, even imminent, during the damage period. Zenith's merchandise would in any event have sold at prices substantially higher than those prevailing in the English market; tariffs and freight costs tended to widen the differential. Producing a new set for the English market, or modifying existent models on a large-scale basis, would have involved substantial costs.

---

[21] See *American Banana Co.* v. *United Fruit Co.* 166 F. 261, 264 (C. A. 2d Cir. 1908), affirmed without specific reference to this issue, 213 U. S. 347 (1909); *Stearns* v. *Tinker & Rasor,* 252 F. 2d 589, 606 (C. A. 9th Cir. 1958); *Volasco Products Co.* v. *Lloyd A. Fry Roofing Co.,* 308 F. 2d 383, 395–396 (C. A. 6th Cir. 1962), cert. denied, 372 U. S. 907 (1963). Compare *Pennsylvania Sugar Rfg. Co.* v. *American Sugar Rfg. Co.,* 166 F. 254, 260 (C. A. 2d Cir. 1908).

[22] During trial, Wright and Kaplan testified that adjustments could be made by Zenith's English distributor in his shop to adapt Zenith television sets to the English transmission system. However, the fair import of their testimony, both during trial and in November 1965 on recall, was that conversion of Zenith sets to the English system, whether done before shipment to England or in the distributor's shop, had in fact been carried out only occasionally in the past and was of questionable utility on a commercial basis. Wright and Kaplan stated that Zenith could have manufactured a television set suitable for English use without appreciably more difficulty than Zenith faced in producing a new model for the American market, but the record does not indicate that Zenith took any steps in this direction before the end of the damage period, except in anticipation of the British changeover to the 625 line-per-second transmission system.

Based on the evidence before us, including the correspondence between Zenith and its British representative, we think the Court of Appeals correctly rejected the inference that "Zenith intended to and was prepared to enter the English television market during the damage period," and correctly concluded that Zenith was in fact "waiting for a change in English standards to a 625-line system." 388 F. 2d, at 37. It clearly emerges from the evidence that Zenith had every intention to promote the sale of its television sets if and when the signal change occurred. Given that event, neither the absence of a pool license nor pool threats against it or its customers would have deterred Zenith from a major effort to penetrate the British market. Why the existence of the pool, which as far as the record shows was quiescent during the damage period, should be credited with the power to discourage Zenith's entry before the signal change but not after is difficult to grasp. But the question at hand is not whether, if Zenith had decided to enter the market, the pool would have been a deterrent and inflicted damage. Rather, it is whether Zenith was in fact constrained by the pool to stay out of England during the damage period or whether Zenith's own business calculus led it to await more favorable conditions. As we have said, the latter is the only permissible inference from this record.

3. *The Australian Pool.*

The Australian patent pool, which had exclusive rights to license Hazeltine patents, also granted licenses only for local manufacture. Had HRI and Hazeltine's conspiracy with the Australian pool effectively kept Zenith from that market, a compensable violation of the antitrust laws unquestionably would have occurred. But the findings of the District Court are wholly silent as to how the Australian pool had any impact on Zenith's business. An officer of Zenith revealed that Zenith had exported no products to Australia since the 1920's or early 1930's. Zenith had not requested a pool license during the 20-year period preceding the trial. A government embargo was found by the District Court to have foreclosed Zenith's American-made merchandise until well into the damage period. High tariffs and shipping costs were additional barriers, as well as the prospect of vigorous competition. Nothing in the record before us would permit the inference that Zenith either intended or was prepared to enter the Australian market during the damage period. The Court of Appeals was correct in reversing the District Court's award of damages with respect to the Australian market.

B. *The Injunction.*

In setting aside the District Court's grant of injunctive relief against continued participation by HRI and Hazeltine in any patent pool or similar association restricting Zenith's export trade,[23] the Court of Appeals stated, without more:

> "It follows from our conclusion with respect to the foreign patent pools that injunctive relief against

---

[23] Paragraph C of the District Court's injunction prohibits HRI from

"Entering into, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program, with any other person, company, patent pool, organization, association, corporation or entity which directly or indirectly restricts or prevents defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, from exporting any electronic apparatus from the United States into any foreign market."

> 'threatened loss or damage' directed at those pools, alleged by Zenith to be unlawful conspiracies, cannot be justified under 15 U. S. C. § 26. Paragraph C of the injunction granted must be stricken." 388 F. 2d, at 39.

The evident premise for striking Paragraph C was that Zenith's failure to prove the fact of injury barred injunctive relief as well as treble damages. This was unsound, for § 16 of the Clayton Act, 15 U. S. C. § 26, which was enacted by the Congress to make available equitable remedies previously denied private parties, invokes traditional principles of equity and authorizes injunctive relief upon the demonstration of "threatened" injury.[24] That remedy is characteristically available even though the plaintiff has not yet suffered actual injury, see *Bedford Cut Stone Co.* v. *Journeymen, Stone Cutters' Assn.*, 274 U. S. 37, 54–55 (1927); he need only demonstrate a significant threat of injury from an impending violation of the antitrust laws or from a contemporary violation likely to continue or recur. See *Swift & Co.* v. *United States*, 196 U. S. 375, 396 (1905); *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Assn., supra*, at 54; *United States* v. *Oregon State Medical Society*, 343 U. S. 326, 333 (1952); *United States* v. *W. T. Grant Co.*, 345 U. S. 629, 633 (1953).

Moreover, the purpose of giving private parties treble damage and injunctive remedies was not merely to provide private relief, but was to serve as well the high purpose of enforcing the antitrust laws. *E. g., United States* v. *Borden Co.,* 347 U. S. 514, 518 (1954). Section 16 should be construed and applied with this purpose in mind, and with the knowledge that the remedy it affords, like other equitable remedies, is flexible and capable of nice "adjustment and reconcilation between the public interest and private needs, as well as between competing private claims." *Hecht Co.* v. *Boles,* 321 U. S. 321, 329–330 (1944). Its availability should be "conditioned by the necessities of the public interest which Congress has sought to protect." *Ibid.*

---

[24] Section 16 provides:

"Any person, firm, corporation or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, *against threatened loss or damage by a violation of the antitrust laws*, . . . when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings . . . ." (Emphasis added.)

Judged by the proper standard, the record before us warranted the injunction with respect to Canada. The findings of the District Court were that HRI and CRPL were conspiring to exclude Zenith and others from the Canadian market; there was nothing indicating that this clear violation of the antitrust laws had terminated or that the threat to Zenith inherent in the conduct would cease in the foreseeable future. Neither the relative quiescence of the pool during the litigation nor claims that objectionable conduct would cease with the judgment negated the threat to Zenith's foreign trade.[25]

---

[25] HRI informs us that Hazeltine, having obtained an early termination of its licensing agreement with CRPL, is now prepared to license any one or more of its Canadian patents "with no restriction on imports." Since Hazeltine's abandonment of its participation in the Canadian pool occurred only after—and, apparently, in response to—the District Court's judgment and decree, we cannot agree with the suggestion that injunctive relief as to Canada has been rendered unnecessary and inappropriate. See *United States* v. *Oregon State Medical Society,* 343 U. S. 326, 333 (1952); *United States* v. *Concentrated Phosphate Export Assn.,* 393 U. S. 199, 202–203 (1968). Although HRI is free to attempt to demonstrate in the future that the need for injunctive relief with respect to Canada has now been eliminated, or that a change of circumstances elsewhere justifies additional modifications of the injunction, see,

That threat was too clear for argument, and injunctive relief against HRI with respect to the Canadian market was wholly proper.

We also reinstate the injunction entered by the District Court insofar as it more broadly barred HRI from conspiring with others to restrict or prevent Zenith from entering any other foreign market. In exercising its equitable jurisdiction, "[a] federal court has broad power to restrain acts which are of the same type or class as unlawful acts which the court has found to have been committed or whose commission in the future, unless enjoined, may fairly be anticipated from the defendant's conduct in the past." *NLRB* v. *Express Publishing Co.,* 312 U. S. 426, 435 (1941). See also *United States* v. *National Lead Co.,* 332 U. S. 319, 328–335 and n. 4 (1947). Given the findings that HRI was conspiring with the Canadian pool, its purpose to exclude Zenith from Canada and its violation of the Sherman Act were clearly established. Its propensity for arrangements of this sort was also indicated by the findings revealing its participation in similar pools operating in England and Australia.[26] Zenith, a company interested in expanding its foreign commerce and having suffered at the hands of HRI and

---

e. g., United States v. *W. T. Grant Co.,* 346 U. S. 629, 633–636 (1953), we are not willing at this time to undertake a reappraisal of the injunction in light of post-trial developments.

[26] Having not disturbed the District Court's findings that HRI and Hazeltine were conspiring with English and Australian patent pools which refused to license imports, the Court of Appeals in any event should have sustained the injunction with respect to the English and Australian markets. These findings, together with Zenith's demonstrated intent to expand its export business, were sufficient foundation for the conclusion that continued participation by HRI and Hazeltine in the English and Australian pools posed a significant threat of loss or damage to Zenith's business.

its coconspirators in the Canadian market, was entitled to injunctive relief against like conduct by HRI in other world markets. We see no reason that the federal courts, in exercising the traditional equitable powers extended to them by § 16, should not respond to the "salutary principle that when one has been found to have committed acts in violation of a law he may be restrained from committing other related unlawful acts." *NLRB* v. *Express Publishing Co., supra,* at 436. Although a district court may not enjoin all future illegal conduct of the defendant, or even all future violations of the antitrust laws, however unrelated to the violation found by the court, *e. g., New York, N. H. & H. RR.* v. *I. C. C.,* 200 U. S. 361, 401 (1906), "[w]hen the purpose to restrain trade appears from a clear violation of law, it is not necessary that all of the untraveled roads to that end be left open and that only the worn one be closed." *International Salt Co.* v. *United States,* 332 U. S. 392, 400 (1947). This is particularly true in treble-damage cases, which are brought for private ends, but which also serve the public interest in that "they effectively pry open to competition a market that has been closed by defendants' illegal restraints." *Id.,* at 401.

III. THE PATENT MISUSE ISSUE.

Since the District Court's treble damage award for patent misuse was affirmed by the Court of Appeals, and HRI has not challenged that award in this Court, the only misuse issue we need consider at length is whether the Court of Appeals was correct in striking the last clause from Paragraph A of the injunction,[27] which enjoined HRI from

> "A. Conditioning directly or indirectly the grant of a license to defendant-counterclaimant, Zenith Radio

---

[27] The District Court's injunction also included a paragraph barring HRI from continuing to coerce acceptance of its package license

> Corporation, or any of its subsidiaries, under any other patent *or upon the paying of royalties on the manufacture, use or sale of apparatus not covered by such patent.*" (Emphasis added.)

This paragraph of the injunction was directed at HRI's policy of insisting upon acceptance of its standard five-year package license agreement, covering the 500-odd patents within its domestic licensing portfolio and reserving royalties on the licensee's total radio and television sales, irrespective of whether the licensed patents were actually used in the products manufactured.[28]

In striking the last clause of Paragraph A the Court of Appeals, in effect, made two determinations. First, under its view of *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U. S. 827 (1950), conditioning the grant of a patent license upon payment of royalties on unpatented products was not misuse of the patent. Second, since such conduct did not constitute

---

through the mechanism of offering a much lower royalty rate for those licensees who take a license on the entire package of patents rather than a license on merely a few of them. Paragraph B enjoined HRI from

"Conditioning directly or indirectly the grant of any license to defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, under any domestic patent upon the payment of the same or greater royalty rate than the rate at which licenses have been granted or offered to others under a group of domestic patents which includes said patent."

The Court of Appeals modified this paragraph in certain respects, 388 F. 2d, at 39, but we do not disturb these modifications.

[28] The District Court concluded:

"Plaintiff's demands that royalties be paid on admittedly unpatented apparatus constitute misuse of its patent rights and plaintiff cannot justify such use of the monopolies of its patents, by arguing the necessities and convenience to it of such a policy. While parties in an arms-length transaction are free to select any royalty base that may suit their mutual convenience, a patentee has no right to demand or force the payment of royalties on unpatented products." 239 F. Supp., at 77.

patent misuse, neither would it be violative of the antitrust laws within the meaning of § 16 of the Clayton Act, under which Zenith had sought and the District Court had granted the injunction. With respect to the first determination, we reverse the Court of Appeals. We hold that conditioning the grant of a patent license upon payment of royalties on products which do not use the teaching of the patent does amount to patent misuse.

The trial court's injunction does not purport to prevent the parties from serving their mutual convenience by basing royalties on the sale of all radios and television sets, irrespective of the use of HRI's inventions. The injunction reaches only situations where the patentee directly or indirectly "conditions" his license upon the payment of royalties on unpatented products—that is, where the patentee refuses to license on any other basis and leaves the licensee with the choice between a license so providing and no license at all. Also, the injunction takes effect only if the license is conditioned upon the payment of royalties "on" merchandise not covered by the patent—where the express provisions of the license or their necessary effect is to employ the patent monopoly to collect royalties not for the use of the licensed invention, but for using, making, or selling an article not within the reach of the patent.

A patentee has the exclusive right to manufacture, use, and sell his invention. See, *e. g.*, *Bement* v. *National Harrow Co.*, 186 U. S. 70, 88–89 (1902). The heart of his legal monopoly is the right to invoke the State's power to prevent others from utilizing his discovery without his consent. See, *e. g.*, *Continental Paper Bag Co.* v. *Eastern Paper Bag Co.*, 210 U. S. 405 (1908); *Crown Die & Tool Co.* v. *Nye Tool & Machine Works*, 261 U. S. 24 (1923). The law also recognizes that he may assign to another his patent, in whole or in part, and may license others to practice his invention. See, *e. g., Waterman* v. *Mackenzie,* 138 U. S. 252, 255 (1891). But there are established limits which the patentee must not exceed in employing the leverage of his patent to control or limit the operations of the licensee. Among other restrictions upon him, he may not condition the right to use his patent on the licensee's agreement to purchase, use, or sell, or not to purchase, use, or sell, another article of commerce not within the scope of his patent monopoly. *E. g., Ethyl Gasoline Corp.* v. *United States,* 309 U. S. 436, 455–459 (1940); *International Salt Co.* v. *United States,* 332 U. S. 392, 395–396 (1947). His right to set the price for a license does not extend so far, whatever privilege he has "to exact royalties as high as he can negotiate." *Brulotte* v. *Thys Co.,* 379 U. S. 29, 33 (1964). And just as the patent's leverage may not be used to extract from the licensee a commitment to purchase, use, or sell other products according to the desires of the patentee, neither can that leverage be used to garner as royalties a percentage share of the licensee's receipts from sales of other products; in either case, the patentee seeks to extend the monopoly of his patent to derive a benefit not attributable to use of the patent's teachings.

In *Brulotte* v. *Thys Co., supra,* the patentee licensed the use of a patented machine, the license providing for the payment of a royalty for using the invention after, as well as before, the expiration date of the patent. Recognizing that the patentee could lawfully charge a royalty for practicing a patented invention prior to its expiration date and that the payment of this royalty could be postponed beyond that time, we noted that the post-expiration royalties were not for prior use but for current use, and were nothing less than an effort by the patentee to extend the term of his monopoly beyond that granted by law. *Brulotte* thus articulated in a particularized context the principle that a patentee may not use the power of his patent to levy a charge for making, using, or selling products not within the reach of the monopoly granted by the Government.

Automatic Radio is not to the contrary; it is not authority for the proposition that patentees have *carte blanche* authority to condition the grant of patent licenses upon the payment of royalties on unpatented articles. In that case, Automatic Radio acquired the privilege of using all present and future HRI patents by promising to pay a percentage royalty based on the selling price of its radio receivers, with a minimum royalty of $10,000 per year. HRI sued for the minimum royalty and other sums. Automatic Radio asserted patent misuse in that the agreement extracted royalties whether or not any of the patents were in any way used in Automatic Radio receivers. The District Court and the Court of Appeals approved the agreement as a convenient method designed by the parties to avoid determining whether each radio receiver embodied an HRI patent. The percentage royalty was deemed an acceptable alternative to a lump sum payment for the privilege to use the patents. This Court affirmed.

Finding the tie-in cases such as *International Salt Co.* v. *United States,* 332 U. S. 392 (1947), inapposite, and distinguishing *United States* v. *United States Gypsum Co.,* 333 U. S. 364 (1948), as involving a conspiracy between patentee and licensees to eliminate competition, the Court considered reasonable "the payment of royalties according to an agreed percentage of the licensee's sales," since "[s]ound business judgment could indicate that such payment represents the most convenient method of fixing the business value of the privileges granted by the licensing agreement." 339 U. S., at 834. It found nothing "inherent" in such a royalty provision which would extend the patent monopoly. Finally, the holding by the Court was stated to be that in licensing the use of patents "it is not *per se* a misuse of patents to measure the consideration by a percentage of the licensee's sales."

Nothing in the foregoing is inconsistent with the District Court's injunction against conditioning a license upon the payment of royalties on unpatented products or with the principle that patent leverage may not be employed to collect royalties for producing merchandise not employing the patented invention. The Court's opinion in *Automatic Radio* did not deal with the license negotiations which spawned the royalty formula at issue and did not indicate that HRI used its patent leverage to coerce a promise to pay royalties on radios not practicing the learning of the patent. No such inference follows from a mere license provision measuring royalties by the licensee's total sales even if, as things work out, only some or none of the merchandise employs the patented idea or process, or even if it was foreseeable that some undetermined portion would not contain the invention. It could easily be, as the Court indicated in *Automatic Radio,* that the licensee as well as the patentee would find it more convenient and efficient from several standpoints to base royalties on total sales than to face the burden of figuring royalties based on actual use.[29] If convenience of the parties rather than patent power dictates the total-sales royalty provision, there are no misuse of the patents and no forbidden conditions attached to the license.

The Court also said in *Automatic Radio* that if the licensee bargains for the privilege of using the patent in all of his products and agrees to a lump sum or a percentage-of-total-sales royalty, he cannot escape payment on this basis by demonstrating that he is no longer using the invention disclosed by the patent. We neither disagree nor think such transactions are barred by the trial court's injunction. If the licensee negotiates for "the privilege to use any or all of the patents and developments as [he] desire[s] to use them," 339 U. S., at 834, he cannot complain that he must pay royalties if he chooses to use none of them. He could not then charge that the patentee had refused to license except on the basis of a total-sales royalty.

---

[29] The record and oral argument in *Automatic Radio* disclose no basis for the conclusion that Automatic Radio was forced into accepting the total-sales royalty rate by HRI's use of its patent leverage.

But we do not read *Automatic Radio* to authorize the patentee to use the power of his patent to insist on a total-sales royalty and to override protestations of the licensee that some of his products are unsuited to the patent or that for some lines of his merchandise he has no need or desire to purchase the privileges of the patent. In such event, not only would royalties be collected on unpatented merchandise, but the obligation to pay for nonuse would clearly have its source in the leverage of the patent.

We also think patent misuse inheres in a patentee's insistence on a percentage-of-sales royalty, regardless of use, and his rejection of licensee proposals to pay only for actual use. Unquestionably, a licensee must pay if he uses the patent. Equally, however, he may insist upon paying only for use, and not on the basis of total sales, including products in which he may use a competing patent or in which no patented ideas are used at all. There is nothing in the right granted the patentee to keep others from using, selling, or manufacturing his invention which empowers him to insist on payment not only for use but for producing products which do not employ his discoveries at all.

Of course, a licensee cannot expect to obtain a license, giving him the privilege of use and insurance against infringement suits, without at least footing the patentee's expenses in dealing with him. He cannot insist upon paying on use alone and perhaps, as things turn out, pay absolutely nothing because he finds he can produce without using the patent. If the risks of infringement are real and he would avoid them, he must anticipate some minimum charge for the license—enough to insure the patentee against loss in negotiating and administering his monopoly, even if in fact the patent is not used at all. But we discern no basis in the statutory monopoly granted the patentee for his using that monopoly to coerce an agreement to pay a percentage royalty on merchandise not employing the discovery which the claims of the patent define.

Although we have concluded that *Automatic Radio* does not foreclose the injunction entered by the District Court, it does not follow that the injunction was otherwise proper. Whether the trial court correctly determined that HRI was conditioning the grant of patent licenses upon the payment of royalties on unpatented products has not yet been determined by the Court of Appeals. And if there was such patent misuse, it does not necessarily follow that the misuse embodies the ingredients of a violation of either § 1 or § 2 of the Sherman Act, or that Zenith was threatened by a violation so as to entitle it to an injunction under § 16 of the Clayton Act. See, *e. g., Morton Salt Co.* v. *G. S. Suppiger Co.,* 314 U. S. 488, 490 (1942); *Transparent-Wrap Machine Corp.* v. *Stokes & Smith Co.,* 329 U. S. 637, 641 (1947); *Laitram Corp.* v. *King Crab, Inc.,* 245 F. Supp. 1019 (D. C. D. Alaska 1965). See also Report of the Attorney General's National Committee to Study the Antitrust Laws, at 254 (1955); Nordhaus & Jurow, Patent-Antitrust Law 122–123 (1961); Frost, Patent Misuse As A Per Se Antitrust Violation, in Conference on the Antitrust Laws and the Attorney General's Committee Report 113–123 (Ed. Rahl & Zaidins 1955). Compare Staff of Antitrust Subcomm. of House Comm. on the Judiciary, 84th Cong., 2d Sess., Antitrust Problems in the Exploitation of Patents 23 (Comm. Print. 1956); Schueller, The New Antitrust Illegality Per Se: Forestalling and Patent Misuse, 50 Col. L. Rev. 170, 184–200 (1950). Whether the findings and the evidence are sufficient to make out an actual or threatened violation of the antitrust laws so as to justify the injunction issued by the District Court has not been considered by the Court of Appeals, and we leave the matter to be dealt with by that court in the first instance.

Accordingly, the judgment of the Court of Appeals is affirmed in part and reversed in part, and the case is remanded to that court for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 49.—October Term, 1968.

Zenith Radio Corporation, Petitioner, v. Hazeltine Research, Inc., et al.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[May 19, 1969.]

Mr. Justice Harlan, concurring in part and dissenting in part.

I concur in Parts I and II of the Court's opinion. However, I do not join Part III, in which the Court holds that a patent license provision which measures royalties by a percentage of the licensee's total sales is lawful if included for the "convenience" of both parties but unlawful if "insisted upon" by the patentee.

My first difficulty with this part of the opinion is that its test for validity of such royalty provisions is likely to prove exceedingly difficult to apply and consequently is apt to engender uncertainty in this area of business dealing, where certainty in the law is particularly desirable. In practice, it often will be very hard to tell whether a license provision was included at the instance of both parties or only at the will of the licensor. District courts will have the unenviable task of deciding whether the course of negotiations establishes "insistence" upon the suspect provision. Because of the uncertainty inherent in such determinations, parties to existing and future licenses will have little assurance that their agreements will be enforced. And it may be predicted that after today's decision the licensor will be careful to embellish the negotiations with an alternative proposal, making the court's unravelling of the situation that much more difficult.

Such considerations lead me to the view that any rule which causes the validity of percentage-of-sales royalty provisions to depend upon subsequent judicial examination of the parties' negotiations will disserve rather than further the interests of all concerned. Hence, I think that the Court has fallen short in failing to address itself to the question whether employment of such royalty provisions should invariably amount to patent misuse.[1]

My second difficulty with this part of the Court's opinion is that in reality it overrules an aspect of a prior decision in this Court, *Automatic Radio Co.* v. *Hazeltine Research, Inc.*, 339 U. S. 827 (1950), without offering more than a shadow of a reason in law or economics for departing from that earlier ruling. Despite the Court's efforts to distinguish *Automatic Radio*, it cannot be denied that the Court there sustained a Hazeltine patent license of precisely the same tenor as the one involved here, on the ground that "[t]his royalty provision does not create another monopoly; it creates no restraint of competition beyond the legitimate grant of the patent." 339 U. S., at 833.

In finding significance for present purposes in some of the qualifying language in *Automatic Radio*, I believe that the Court today has misconstrued that opinion. A reading of the opinion as a whole satisfies me that the *Automatic Radio* Court did not consider it relevant whether Hazeltine Research had "insisted" upon inclusion of the disputed provision, and that in emphasizing that the royalty terms had no "inherent" tendency to extend the patent monopoly and were not a "*per se*" misuse of patents, the Court was simply endeavoring to distinguish prior decisions in which patent misuse was found when the patent monopoly had been employed to "create *another* monopoly or restraint of competition." 339 U. S., at 832. (Emphasis added.)[2] Until now no subsequent decision has in any way impaired this aspect of *Automatic Radio.*[3]

---

[1] I find it unnecessary to consider the further question whether inclusion of such a provision should be held to violate the antitrust laws.

2

Since the Court's decision finds little if any support in the prior case law, one would expect from the Court an exposition of economic reasons for doing away with the *Automatic Radio* doctrine. However, the nearest thing to an economic rationale is the Court's declaration that:

> "just as the patent's leverage may not be used to extract from the licensee a commitment to purchase, use, or sell other products according to the desires of the patentee, neither can that leverage be used to garner as royalties a percentage share of the licensee's receipts from sales of other products; in either case, the patentee seeks to extend the monopoly of his patent to derive a benefit not attributable to use of the patent's teachings." *Ante,* at 33.

The Court then finds in the patentee a heretofore nonexistent right to "insist upon paying only for use and not on the basis of total sales . . . ." *Ante,* at 36.

What the Court does not undertake to explain is *how* insistence upon a percentage-of-sales royalty enables a patentee to obtain an economic "benefit not attributable to the use of the patent's teachings," thereby involving himself in patent misuse. For it must be remembered that all the patentee has to license is the right to use his patent. It is solely for that right that a percentage-of-sales royalty is paid, and it is not apparent from the Court's opinion why this method of determining the *amount* of the royalty should be any less permissible than the other alternatives, whether or not it is "insisted" upon by the patentee.

---

[2] The *Automatic Radio* Court explicitly distinguished a number of cases of that kind, including *United States* v. *U. S. Gypsum Co.,* 333 U. S. 364 (1948), and *Mercoid Corp* v. *Mid-Continent Investment Co.,* 320 U. S. 661 (1944). See 339 U. S., at 832–833.

[3] *Brulotte* v. *Thys Co.,* 379 U. S. 29 (1964), involved a different question: whether a royalty based solely upon use of the invention could be collected for use occurring after the patent's expiration.

One possible explanation for the Court's result, which seems especially likely in view of the Court's exception for cases where the provision was included for the "convenience" of both parties, is a desire to protect licensees against overreaching. But the Court does not cite, and the parties have not presented, any evidence that licensees as a class need such protection.[4] Moreover, the Court does not explain why a royalty based simply upon use could not be equally overreaching.

Another possible justification for the Court's result might be that a royalty based directly upon use of the patent will tend to spur the licensee to "invent around" the patent or otherwise acquire a substitute which costs less, while a percentage-of-sales royalty can have no such effect because of the licensee's knowledge that he must pay the royalty regardless of actual patent use. No hint of such a rationale appears in the Courts' opinion. Moreover, under this theory a percentage-of-sales royalty would be objectionable largely because of resulting damage to the rest of the economy, through less efficient allocation of resources, rather than because of possible harm to the licensee. Hence, the theory might not admit of the Court's exception for provisions included for the "convenience" of both parties.

Because of its failure to explain the reasons for the result reached in Part III, the Court's opinion is of little assistance in answering the question which I consider to be the crux of this part of the case: whether percentage-of-sales royalty provisions should be held without exception to constitute patent misuse. A recent economic analysis[5] argues that such provisions may have two undesirable consequences. First, as has already been noted, employment of such provisions may tend to reduce the licensee's incentive to substitute other, cheaper "inputs" for the patented item in producing an unpatented end-product. Failure of the licensee to substitute will, it is said, cause the price of the end-product to be higher and its output lower than would be the case if substitution had occurred.[6] Second, it is suggested that under certain conditions a percentage-of-sales royalty arrangement may enable the patentee to garner for himself elements of profit, above the norm for the industry or economy, which are properly attributable not to the licensee's use of the patent but to other factors which cause the licensee's situation to differ from one of "perfect competition," and that this cannot occur when royalties are based upon use.[7]

---

[4] Cf. *American Photocopy Equip. Co.* v. *Rovico,* 359 F. 2d 745 (1966).

If accepted, this economic analysis would indicate that percentage-of-sales royalties should be entirely outlawed. However, so far as I have been able to find, there has as yet been little discussion of these matters either by lawyers or by economists. And I find scant illumination on this score in the briefs and arguments of the parties in this case. The Court has pointed out both today and in *Automatic Radio* that percentage-of-sales royalties may be administratively advantageous for both patentee and licensee. In these circumstances, confronted, as I believe we are, with the choice of holding such royalty provisions either valid or invalid across the board, I would, as an individual member of the Court, adhere for the present to the rule of *Automatic Radio*.

---

[5] Baxter, Legal Restrictions on Exploitation of the Patent Monopoly: An Economic Analysis, 76 Yale L. J. 267 (1966).

[6] See *id.*, at 299–301, 302–306.

[7] See *id.*, at 300–301, 302–306, 331–332.